

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Monday, 17th August, 2020

Special Sitting

*(Convened via Kenya Gazette Notice No.5756 of
14th August, 2020)*

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

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

PRAYER

The Speaker (Hon. Lusaka): Hon. Senators, this morning we adjourned and I gave an assignment to the Committee on National Security, Defence and Foreign Relations. I now invite the Chairperson to report to the House the findings of the Committee.

Sen. Haji: Mr. Speaker, Sir, the Committee on National Security, Defence and Foreign Relations met as directed by you. The Clerk to the Committee sent emails to the Cabinet Secretary, the Principal Secretary and other officers who are supposed to accompany them. They have also sent a Short Message (SMS). One of the officers in the Office of the Cabinet Secretary informed us that the Cabinet Secretary is on the 10 days' leave given by the President and, therefore, he was not available. By extension, the Principal Secretary, the Inspector General and the Director of Criminal Investigation (DCI) cannot come without being accompanied by the Cabinet Secretary.

Mr. Speaker, Sir, the Committee decided to report accordingly. May be, if the Speaker pleases, he can give us further direction.

The Speaker (Hon. Lusaka): Sen. Olekina, you have the Floor.

Sen. Olekina: Mr. Speaker, Sir, there is something called the doctrine of separation of powers. Each House has got its powers given by the Constitution. You gave a clear direction to the Committee on National Security, Defence and Foreign Relations. We would be failing in our duty if we entertain such excuses that the Cabinet Secretary is on a 10-day leave.

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The Constitution is very clear. Article 125 gives this House the same powers as a court of law. So, I do not understand how a Committee sitting can request for the Cabinet Secretary to appear, then we get such frivolous responses.

It is about time we behaved maturely as a country and respected each other. We are from Kitengela where we witnessed what our friend, Sen. Malalah, was going through. They siphoned the fuel from his vehicle so that he could not drive it. They disconnected his power and water to intimidate him.

Mr. Speaker, Sir, it will be very wrong for us to proceed any further before your directives have been complied with. I would have been very happy if your directives were very clear. I remember Sen. Orengo telling you before we adjourned that you had to be specific and use your powers. You hold a very powerful position. We are here now writing history and this House must be respected.

If the Cabinet Secretary and other departments do not comply, I do not see the reason as to why we should sit here. This should be the first order of business. We should convert the entire House into a Committee and deliberate on this issue, then you give further directions.

This is a serious matter and I beseech you to be firm. History will judge you harshly if you let this fly.

The Speaker (Hon. Lusaka): Sen. (Prof.) Kindiki, Proceed.

Sen. (Prof.) Kindiki: Mr. Speaker, Sir, thank you for this opportunity. I want to thank the Chairperson of the Committee on National Security, Defense and Foreign Relations for the report. However, the report is extremely underwhelming. It makes a big joke of this House and the institution of Parliament.

Mr. Speaker, Sir, I am here on Standing Order 105, read together with Standing Order 60(h) which allows any Senator to move a Motion without any notice. This Motion is moved under Paragraph (h) of Standing Order 60 read together with Standing Order 1, which gives you vast powers on procedural issues.

Today is a sad day for our country. Let me go directly to the point, we have no business being here discussing anything if the Senator for Kakamega, Sen. Malalah, the Senator for Bomet, Sen. (Dr.) Lang'at and the Senator for Samburu, Sen. (Dr.) Lelegwe, are not here. We may be here making speeches and trivializing a grave matter. It took a desperate young man in Tunisia to burn himself to cause change in that country.

Mr. Speaker Sir, subject to the three days' notice, we are willing to comeback on Friday, Saturday, Sunday, any day or hour. The Constitution says this House can sit anywhere, anytime; any hour as decided by this House for the interest of the country. I listened with disbelief as Senators tried to flaunt and flag curfew regulations and applying them to this House.

If this House is called to decide whether or not the President should deploy the Kenya Defence Forces (KDF) in war to defend our country, this country can meet at 4.00 a.m. in the morning on any day with or without curfew. With due respect to the COVID-19 protocols, there is no way this House can be treated as if we are here for disco so that we are forced to go home at 9.00 p.m.

Mr. Speaker, Sir, the Parliament of Kenya must face the Executive head on. The Parliament of Kenya must face the Judiciary head on. There is no way we are going to entertain any arm of Government to run this institution. They can arrest us or kill us but we will not yield. The kind of anger we have caused in this country; I dread is the kind of anger that made the citizens of Burkina Faso to burn down Parliament three years ago. When the President of Burkina Faso, Blaise Compaoré, heard that their Parliament was in flames, he fled and that is how he was voted out of office. By fire, by force, bring the Senators for Kakamega, Samburu and Bomet counties.

I move that this House adjourns until when our three colleagues will be here. I do not want to belabor the point because I know the trick that those who are peddling a dangerous formula of dividing revenue in this country are using. They think that without the three Senators, they will have 24 Senators to pass the ugly formula. We will not allow it. I have in my possession a letter which you received in your office 10 minutes ago from the Senator of Kakamega County, Sen. Malalah, saying that nobody should try to vote in his place.

(Applause)

Mr. Speaker, Sir, we cannot trivialize a serious constitutional institution like the Senate. History is before you. Destiny is staring at you as the Speaker who will deliver this Senate from the bondage of malevolent and capricious men. I am glad that some of our colleagues who were trying to peddle this formula toned down including my former student, the Senator for Murang'a County. However, there are people who have not given up and they are trivializing this matter. They think that they are very big. We are being treated to things like systems and deep state.

History is replete with strong generals and powerful kings and monarchs who have been brought down by the power of the people. I would like to remind this House of a man called Belshazzar; a man who God summoned. Belshazzar is a man who God favoured to be king in the book of Daniel. Instead of being grateful that God had honoured him among so many millions of citizens to be their leader, he entertained a Government that was so divisive and oppressive. Belshazzar organized a party and invited all the important men whose mothers and fathers were important people at that time. The Bible says that he made a feast where he entertained them and went on to commit sacrilege by using the utensils that had been taken from the temple to commit and drink the drink of fornication. As they were enjoying and making merry, as the deep state was celebrating, suddenly, I say suddenly there is going to be a war in this country. There is going to be a writing on the wall: *MENE, MENE, TEKEL and PARSIN*"

Mr. Speaker, Sir, we will not sit here to discuss anything until Sen. Malalah, Sen. (Dr.) Lelegwe and Sen. (Dr.) Langat are here.

I beg to move and request Sen. Mutula Kilonzo Jnr. to second.

The Speaker (Hon. Lusaka): Hon. Senators just like I made a correction in the morning, let the order be read.

MOTION

APPROVAL OF THE THIRD BASIS FOR REVENUE
ALLOCATION AMONG THE COUNTY GOVERNMENTS

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the Third Basis for Revenue Allocation Among the County Governments, laid on the Table of the Senate on Monday, 13th July, 2020, and that pursuant to Article 217 of the Constitution, approves the proposed Third Basis for Revenue Allocation Among the County Governments as contained in the Report, subject to the deletion of recommendation appearing as paragraph 26 of the Report and substituting therefor the following new recommendation -

(26) The Senate resolves that pursuant to Article 217 (1) of the Constitution, the Third Basis for sharing revenue among counties, for the Financial Year 2020/2021 to 2024/2025 be as follows-

a) **Equitable share not exceeding Kshs. 270 billion**

The following formula shall apply

$$CA_i1 = 0.45PN_i + 0.26ES_i + 0.18PI_i + 0.08LA_i + 0.02FE_i^1 + 0.01DF_i^2$$

Where,

CA_i1 is revenue allocation of the i^{th} County; PN_i is Population Factor (Population of i^{th} County/total population); ES_i is Basic Equal Share Factor (Total Equal share/47); PI_i is Poverty Gap (Poverty Resources of i^{th} County/total poverty Resources); LA_i Land Area Factor (Land Area (Sq. Kms.) of i^{th} County/Total Land area); FE_i is Fiscal Effort Factor (County's own revenue increment/2009 population of the i^{th} County); and DF_i is Development Factor=

$$13E_i * Ni \text{ Sum } E_i * Ni + W_i * Ni \text{ Sum } W_i * Ni + URN_i \text{ Sum } URN_i$$

Where E_i is proportion of household with access to electricity of the i^{th} County

W_i is proportion of household without access to improved water of the i^{th} County

URN_i is Un-paved road network of class D, E, F, G, H, J, K, M, N & P of the i^{th} County.

b) **Equitable share over and above Kshs. 270 billion**

The following formula shall apply

$$CA_i = 0.16 * Population Index_i + 0.19 * Health Index_i + 0.11 * Agriculture Index_i + 0.05 * Urban Index_i + 0.14 * Poverty Index_i + 0.08 * Land Area Index_i + 0.01 * Fiscal Effort_i + 0.06 * Roads Index_i + 0.20 * Basic Share Index_i^3$$

Where,

| Parameter | Indicator of Expenditure Need |
|-----------------------|--|
| Health services | Health index- health facility-gaps (20%), three years average number of primary health care visits to levels 2 and 3 health facilities (60%) and three years average in-patient days in levels 4 and 5 hospitals (20%) $Facility\ gap\ factor_i = \frac{Facility\ gap\ funding\ in\ county\ i}{\sum_{i=1}^{47} facility\ gap\ funding\ in\ county\ i}$ $Primary\ health\ care\ factor_i = \frac{No.\ of\ primary\ health\ care\ visits\ in\ county\ i}{\sum_{i=1}^{47} No.\ of\ primary\ health\ care\ visits\ in\ county\ i}$ $In - patient\ days\ factor_i = \frac{No.\ of\ in - patient\ days\ in\ county\ i}{\sum_{i=1}^{47} No.\ of\ in - patient\ days\ in\ county\ i}$ |
| Agriculture services | $Agriculture\ Index_i = 0.005 * Minimum\ Share\ index + 0.095 * \frac{Rural\ households\ in\ county\ i}{\sum_{i=1}^{47} Rural\ households\ in\ county\ i}$ |
| Other county services | $Population\ index_i = \frac{Population\ in\ county\ i}{\sum_{i=1}^{47} Population\ in\ county\ i}$ |
| Minimum share | Basic share index $= 0.19 * Equal\ Share\ index + 0.01 * \frac{inverse\ of\ population\ in\ county\ i}{\sum_{i=1}^{47} inverse\ of\ population\ in\ county\ i}$ |

| | |
|---------------|--|
| Minimum share | Basic share index $= 0.19 * Equal\ Share\ index + 0.01 * \frac{inverse\ of\ population\ in\ county\ i}{\sum_{i=1}^{47} inverse\ of\ population\ in\ county\ i}$ |
| Land | $Land\ area\ index_i = \frac{Land\ area\ in\ county\ i}{\sum_{i=1}^{47} Land\ area\ in\ county\ i}$ |
| Roads | $Roads\ index_i = \frac{Rural\ access\ index\ in\ county\ i}{\sum_{i=1}^{47} Rural\ access\ index\ in\ county\ i}$ |
| Poverty level | $Poverty\ index_i = \frac{No.\ of\ poor\ people\ in\ county\ i}{\sum_{i=1}^{47} No.\ of\ poor\ people\ in\ county\ i}$ |

³ The formula will use the 2019 population and 2015/16 KIHBS poverty statistics

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| | |
|---------------|---|
| Urban service | $\text{Urban Index } i = \frac{\text{urban household in county } i}{\sum_{i=1}^{47} \text{Urban Household in County } i}$ |
| Fiscal effort | $\text{Fiscal effort index}_i = \frac{\text{OSR collections of county } i}{\text{GCP of county } i}$ |

The basis used is as shown

| No. | Parameter | Weight |
|-----|-----------------|-----------|
| 1 | Population | 16% |
| 2 | Health | 19% |
| 3 | Agriculture | 11% |
| 4 | Urban | 5% |
| 5 | Roads | 6% |
| 6 | Poverty | 14% |
| 7 | Land | 8% capped |
| 8 | Basic Share | 20% |
| 9 | Fiscal Effort | 1% |
| 10 | Fiscal Prudence | 0% |

b) **Total Equitable share of a County**

The following formula shall apply

$$\text{TES}_i = \text{CA}_{i1} + \text{CA}_{i2}$$

Whereas;

TES_i = Total Equitable share of County_i

CA_{i1} = Equitable share not exceeding Kshs. 270 billion

CA_{i2} = Equitable share over and above Kshs. 270 billion

SIMULATION FOR ILLUSTRATION ONLY

Simulation using equitable share of Kshs. 316.5 billion for FY 2020/2021 -

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| No | County | Actual Allocations 2019/20 | Equitable share of Kshs. 270 billion using 2nd generation formula | Application of Remaining Kshs. 46.5 billion using Sen. Linturi Amendment | New Allocation Ksh 316,500) | Net Change between FY19/20 Allocation & Proposed FY 2020/21 Allocation |
|----|-------------------|----------------------------|---|--|-----------------------------|--|
| 1 | Mandera | 10,222.95 | 8,721.00 | 1,256.69 | 9,977.69 | (245.26) |
| 2 | Kwale | 7,785.90 | 6,642.00 | 966.00 | 7,608.00 | (177.90) |
| 3 | Wajir | 8,545.50 | 7,290.00 | 1,079.88 | 8,369.88 | (175.62) |
| 4 | Marsabit | 6,773.10 | 5,778.00 | 838.16 | 6,616.16 | (156.94) |
| 5 | Kilifi | 10,444.50 | 8,910.00 | 1,381.08 | 10,291.08 | (153.42) |
| 6 | Mombasa | 7,057.95 | 6,021.00 | 901.77 | 6,922.77 | (135.18) |
| 7 | Narok | 8,039.10 | 6,858.00 | 1,050.68 | 7,908.68 | (130.42) |
| 8 | Makueni | 7,406.10 | 6,318.00 | 980.91 | 7,298.91 | (107.19) |
| 9 | Nyamira | 4,810.80 | 4,104.00 | 608.86 | 4,712.86 | (97.94) |
| 10 | Tana-River | 5,855.25 | 4,995.00 | 780.53 | 5,775.53 | (79.72) |
| 11 | Tharaka-Nithi | 3,924.60 | 3,348.00 | 500.42 | 3,848.42 | (76.18) |
| 12 | Garissa | 7,026.30 | 5,994.00 | 957.15 | 6,951.15 | (75.15) |
| 13 | Vihiga | 4,652.55 | 3,969.00 | 615.47 | 4,584.47 | (68.08) |
| 14 | Isiolo | 4,241.10 | 3,618.00 | 581.37 | 4,199.37 | (41.73) |
| 15 | Homa-Bay | 6,741.45 | 5,751.00 | 961.31 | 6,712.31 | (29.14) |
| 16 | Kisii | 7,785.90 | 6,642.00 | 1,119.16 | 7,761.16 | (24.74) |
| 17 | Taita-Taveta | 4,241.10 | 3,618.00 | 606.96 | 4,224.96 | (16.14) |
| 18 | Murang'a | 6,298.35 | 5,373.00 | 909.37 | 6,282.37 | (15.98) |
| 19 | Samburu | 4,620.90 | 3,942.00 | 675.42 | 4,617.42 | (3.48) |
| | Total Loss | 126,473.40 | 107,892.00 | 16,771.20 | 124,663.20 | (1,810.20) |
| 1 | Kitui | 8,830.35 | 7,533.00 | 1,303.12 | 8,836.12 | 5.77 |
| 2 | Nyandarua | 4,874.10 | 4,158.00 | 722.01 | 4,880.01 | 5.91 |
| 3 | Nyeri | 5,412.15 | 4,617.00 | 801.39 | 5,418.39 | 6.24 |
| 4 | Turkana | 10,539.45 | 8,991.00 | 1,557.89 | 10,548.89 | 9.44 |
| 5 | Lamu | 2,595.30 | 2,214.00 | 398.51 | 2,612.51 | 17.21 |
| 6 | Elgeyo-Marakwet | 3,861.30 | 3,294.00 | 586.50 | 3,880.50 | 19.20 |
| 7 | Kisumu | 6,836.40 | 5,832.00 | 1,031.70 | 6,863.70 | 27.30 |
| 8 | Meru | 8,039.10 | 6,858.00 | 1,209.33 | 8,067.33 | 28.23 |
| 9 | Migori | 6,773.10 | 5,778.00 | 1,026.69 | 6,804.69 | 31.59 |
| 10 | Embu | 4,304.40 | 3,672.00 | 672.60 | 4,344.60 | 40.20 |
| 11 | Siaya | 5,791.95 | 4,941.00 | 893.94 | 5,834.94 | 42.99 |
| 12 | Busia | 6,013.50 | 5,130.00 | 928.49 | 6,058.49 | 44.99 |
| 13 | Kericho | 5,380.50 | 4,590.00 | 836.15 | 5,426.15 | 45.65 |
| 14 | Machakos | 7,754.25 | 6,615.00 | 1,188.13 | 7,803.13 | 48.88 |
| 15 | Kakamega | 10,412.85 | 8,883.00 | 1,598.86 | 10,481.86 | 69.01 |
| 16 | Bomet | 5,507.10 | 4,698.00 | 878.79 | 5,576.79 | 69.69 |
| 17 | Bungoma | 8,893.65 | 7,587.00 | 1,379.02 | 8,966.02 | 72.37 |
| 18 | Laikipia | 4,177.80 | 3,564.00 | 689.37 | 4,253.37 | 75.57 |
| 19 | Kirinyaga | 4,241.10 | 3,618.00 | 702.66 | 4,320.66 | 79.56 |
| 20 | Baringo | 5,095.65 | 4,347.00 | 831.86 | 5,178.86 | 83.21 |
| 21 | West Pokot | 5,000.70 | 4,266.00 | 818.24 | 5,084.24 | 83.54 |
| 22 | Kajiado | 6,424.95 | 5,481.00 | 1,031.13 | 6,512.13 | 87.18 |
| 23 | Trans-Nzoia | 5,760.30 | 4,914.00 | 940.48 | 5,854.48 | 94.18 |
| 24 | Nairobi City | 15,919.95 | 13,581.00 | 2,459.53 | 16,040.53 | 120.58 |
| 25 | Uasin-Gishu | 6,330.00 | 5,400.00 | 1,072.56 | 6,472.56 | 142.56 |
| 26 | Nakuru | 10,476.15 | 8,937.00 | 1,688.21 | 10,625.21 | 149.06 |
| 27 | Nandi | 5,348.85 | 4,563.00 | 935.14 | 5,498.14 | 149.29 |
| 28 | Kiambu | 9,431.70 | 8,046.00 | 1,546.50 | 9,592.50 | 160.80 |
| | Total | 190,026.60 | 162,108.00 | 29,728.80 | 191,836.80 | 1,810.20 |

(Resumption of debate interrupted on 17.8.2020 – Morning sitting)

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The Speaker (Hon. Lusaka): Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, when we adjourned in the morning, we drove to Sen. Malalah's residence and found him there. There were four Subaru vehicles and numerous armed policemen. By virtue of our training as lawyers and the law, we proceeded to inquire the reasons for the arrest of Sen. Malalah and we learnt that there was no warrant of arrest. The officers from the DCI said that they had been given instructions. On further inquiry as to the circumstances that would lead to the suspicion and the arrest of Sen. Malalah, would you believe that the person in charge told us that Sen. Malalah is accused of having distributed Government of Kenya sanitizers in Mumias yesterday.

Hon. Senators: Shame!

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I am looking into your eyes because I am addressing you. Yesterday, Sen. Malalah was distributing sanitizers in Western, particularly Mumias. Yesterday, Sen. Kasanga was in the press talking about the COVID-19 millionaires; the people who have stolen masks and sanitizers to go and sell. Sen. Malalah was distributing sanitizers to widows. Sen. Omogeni and I should not have let Sen. Malalah off but we were told there is mischief in this Chamber. Against our oath as lawyers, we have let Sen. Malalah who was supposed to go to the Nairobi Area to go to Mumias.

Mr. Speaker, Sir, I am looking at you because it is you that has been defied. If you cannot sit on that seat, this will be a good time to resign for me to sit there.

(Applause)

This is a Chamber of Parliament. You have such powers that if there was a vacancy in the Executive, you could be a President. There are rumours that you are under pressure. Pressure from who? Did God call you? Did you speak to God this afternoon? Who is pressurizing you?

The Speaker (Hon. Lusaka): It is good that you have stated that it is a rumour. I am not under any pressure.

(Laughter)

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, if you are not under any pressure and nobody has called you, this sitting must end now. If you gazzetted a Special Sitting and somebody distributed sanitizers which is viewed as a misdemeanor, we would have paid for a bond and finished this business. Sen. Malalah would have been charged even if they wanted to take him to Somalia or Kakuma.

Mr. Speaker, Sir, there has never been a day, since your election, that you were under trial. It is not us, we have done our bit. If you can issue a directive seated in your Chair and somebody says that he is on leave, imagine what would happen if the car that is

driving Sen. Malalah at high speed rolls somewhere in Naivasha. God forbid. Would the Cabinet Secretary (CS) also be on leave? The contempt that they are treating us, people who were elected, tells you that this country is on the brink.

Let me just finish, because in my anger, I might say something that might lead to things that I do not want to say. This is what the 32nd President of the United States of America (USA) said, and I am talking to the powers that be because other than taking my life, they have no control over me. In 1941, he said this-

“We too, born to freedom, and believing in freedom are willing to fight and maintain freedom. We, and all others who believe deeply as we should would rather die on our feet than live on our knees.”

We will not live on our knees!

(Applause)

Mr. Speaker, Sir, if you direct that we proceed, there will be so much chaos on this Floor. There will be no action. You will have to call police officers to arrest all of us, because we cannot proceed. It is chilling to think that we can proceed when our Senators are being taken by force across the country, on the highway, by people carrying guns. If there has been a violation on Parliament---

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

The Speaker (Hon. Lusaka): What is your point of order, Sen. M. Kajwang’?

(Sen. Murkomen spoke off record)

Order, Sen. Murkomen!

Sen. M. Kajwang’: Mr. Speaker, Sir, Sen. Murkomen will not teach me how to prosecute my business here, because I was brought here by the people of Homa Bay. I did not want to disrupt Sen. Mutula Kilonzo Jnr., I feel him and I hear him. Could you just advise him not to threaten chaos in the House? That would be the orderly way to proceed.

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

Sen. Mutula Kilonzo Jnr.: Sen. M. Kajwang’ is my friend. He is famous for blowing whistles. He is the wrong person to advise me.

(Applause)

Keep your cool, boy! The same person who blew whistles on the President is advising me about chaos! What are you talking about? Shut up and listen to wisdom! This is not a laughing matter. The lives of our colleagues are on the line. We could leave this Chamber and allow you to pass whatever you want to pass. We walked out of this Chamber and the election laws were passed, but they were nullified by the court. What the hell do you guys think you are doing to us? It is not going to happen. We must speak

as a Senate. That means that you should enforce your direction, it is not us. You are not an inferior person to the CS.

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

The Speaker (Hon. Lusaka): What is your point of order, Sen. Wamatangi?

Sen. Wamatangi: Mr. Speaker, Sir, equally, I would not want to interrupt the flow of thought and the wave of rising emotion that Sen. Mutula Kilonzo Jnr. is up to on this matter. All of us feel it. My point of order---

(Loud consultations)

Mr. Speaker, Sir, there is only one Speaker in this House.

The Speaker (Hon. Lusaka): Order, Members! Make your point of order.

Sen. Wamatangi: Mr. Speaker, Sir, my point of order is very simple. Is the Senator for Makueni in order? When we left this House, we were united on the course of action to take, and you gave directions. Why is Sen. Mutula Kilonzo Jnr. saying, "What are trying to do to us" Who? We?

Unfortunately, Sen. (Prof.) Kindiki spoke before I could rise on a point of order---

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Members. Wind up your point of order, Sen. Wamatangi. We agreed on how you would prosecute your point of order.

Sen. Wamatangi: Mr. Speaker, Sir, the question I am asking which I am pointing out to be out of order, is that it is wrong for Sen. Mutula Kilonzo Jnr. to impute improper motives, by whichever way, by telling this House and the country that there are Senators who are doing anything against them. We are united in this matter. The threat of chaos will not sell either, it will not!

The Speaker (Hon. Lusaka): Order! You have made your point of order.

Sen. Mutula Kilonzo Jnr., continue.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I was concluding my remarks. If I confused Sen. Wamatangi, I want to say that when I say "we" I mean lots of people. I mean, "we". A narrative has been planted in this House. The other day, when the churches were closed, Bishop Mulwa of the African Inland Church (AIC) told me that when we close churches, the devil rules. After the Coronavirus Disease (COVID-19), I think we allowed the devil to walk into this Chamber. That devil is ruling this Chamber. That is the devil that says that you can pit 24 against 23 or 29. Those are not three votes. They are three Senators, one of them the deputy of Sen. Orengo.

Even if we sound emotional, what I have seen today, with my eyes--- As we told the police to allow us to take Sen. Malalah to the Chamber and we will hand him over to them for whatever they want, they blocked the road, and guess what? They put handcuffs on the gate, so that we could not leave. The estate was locked using handcuffs. How sad can we get?

Mr. Speaker, Sir, I support this Motion, not because of anything, but I cannot imagine sitting in this House to debate anything. Sen. Malalah, Sen. (Dr.) Lelegwe and Sen. (Dr.) Langat are not just voters in this House. They are elected Senators, and they are human beings. If the Government of Kenya is not humane to Senators, I pity your role today.

Thank you, Mr. Speaker, Sir.

(Question, that the debate be now adjourned, proposed)

The Speaker (Hon. Lusaka): Sen. (Dr.) Ali.

Hon. Senators: Put the question!

Sen. (Dr.) Ali: We want to talk!

(Loud consultations)

The Speaker (Hon. Lusaka): Order! If you want to talk, then I cannot put the question. If you want to vote, then I will put the question.

(Loud consultations)

Hon. Senators: We want to talk.

The Speaker (Hon. Lusaka): That is okay.

Sen. (Dr.) Ali, proceed.

Sen. (Dr.) Ali: Thank you, Mr. Speaker, Sir. The other day, Sen. Orenge told us that people need to talk here. There is democracy, so do not push us not to talk. That is why we came here. We came to this House to talk. We were brought here by our people to talk and fight for their rights. We cannot continue with the issue of revenue allocation until our friends are brought back. This is not right. This cannot happen, and it cannot continue.

I am surprised by some people who are jumping up and down here. In 1998, when I was in the National Assembly, Sen. Ndwiga knows what used to happen very well. Are we going back to that state? I am sorry to say that is exactly where we are going. Sen. Khaniri knows what was happening those days.

We cannot be intimidated. I was in the Kenya African National Union (KANU), but I was a rebel, and I used to have a rough time. I am now an old man. After going through all those problems, what has happened to this country? After the removal of Section 2(a) and everything else, we are now going back to worst areas than that. This is not acceptable.

This House should adjourn even if it is up to 8th September; I do not mind. If people want to discuss the formula, we will have all the time to do it. Nobody is going to die because the formula has not been passed. Nobody will not get money because the formula has not been passed. The county governments should get their share of 50 per

cent. There is no vacuum here if we allow what some people are trying to do here, that we continue.

I went to the Nairobi Area Police Station because I was told that Sen. (Dr.) Langat was there. When I got there, I was told that he was not there; he had been taken to Bomet. Why do they have to cheat? Why can they not take them there and give them what they need? Why not take them to court?

I talked to Sen. (Dr.) Lelegwe when he was passing Naivasha while blindfolded. Is that right? Why should this happen to us? What have we done to deserve this? Is it just because our counties are losing and we said “no” to that formula? Arrest all of us and put us in jail. Until you do that, then this should not continue. This is very wrong.

I urge Members of this House to look at their friends. What is happening to your brothers? If you think you have power now, there is nothing about power here. I am supposed to be in Jubilee *tena 'kieleweke'* of all. However, I am opposed to this because my people are losing. Should I be arrested because of that? I do not think that is right.

This is not the way to go. This is not a tribal issue. This is not a regional issue. This has nothing to do with other people. The issue of the formula is for this House. Let the Members of this House decide. Let the older people in this House lead us properly. We cannot be taken back.

Mr. Speaker, Sir, I beg that we are allowed to adjourn this House and give instructions that we go for a retreat in Naivasha to discuss this issue and come with amendments and solutions, but not at the expense of our people being jailed.

I beg to support.

Sen. Khaniri: Mr. Speaker, Sir, I want to thank the Chairperson of the Standing Committee on National Security, Defence and Foreign Relations, Sen. Haji, for convening the meeting that you ordered them to convene.

However, I want to categorically state here that we will not entertain the reason that has been given by the Chairperson, Sen. Haji, for the Government not responding to what you ordered the Committee to do.

Mr. Speaker, Sir, your order is being treated with contempt. This House is being treated with contempt, and we must stand up to be counted to defend it. I have been here long enough and I can read through the crude strategy that is being employed by those who are pushing for this formula to go through. It is crude and archaic. There is a better way they can do it.

I rise to support the Motion as moved by Sen. (Prof.) Kindiki and seconded by Sen. Mutula Kilonzo Jnr. I, Sen. George Khaniri, the Senator for the great County of Vihiga, will not participate in any debate on the formula until my brothers, Sen. Malalah, Sen. (Dr.) Langat and Sen. (Dr.) Lelegwe are brought back here; I will not participate.

The reason that we adjourned this morning was that we wanted to find out why our colleagues have been detained. We said that we would proceed with the debate after ascertaining the true positions. To me, the reasons that sent us on that adjournment still prevail and, therefore, we cannot continue with the debate.

We will not continue with the debate unless the people of Kakamega are represented by their duly democratically elected Senator, Sen. Malalah. I will not allow. This is a very critical vote that we are supposed to take.

I know there is a provision of appointing a proxy from the delegation to vote for a Senator. However, Sen. Malalah and Sen. (Dr.) Langat have written to you officially saying that this is a critical matter that they would not want anybody or any proxy to vote on their behalf and we must grant them that.

Mr. Speaker, Sir, I was among the team that went to Sen. Malalah's house after we adjourned. Sen. Mutula Kilonzo Jnr. has narrated what we saw over there. It is such a shame that the regime is taking us back to the years where we fought so hard to come from. This cannot happen in this era and age.

We want to tell the regime, and I said this in the morning, that we fear no one, but only God. No amount of intimidation will make us change our stand on this matter. We will fight to the bitter end to ensure that there is equity.

Mr. Speaker, Sir, we urge you to put your foot down. Your orders and rulings cannot be treated with the contempt that I am seeing here. Put your foot down and you have the law behind you that supports you. Do not allow this House to continue with this debate until the fate of the three Members is known.

I thought they had committed some serious criminal offences. However, when we got to Sen. Malalah's house, we were told the reason he was arrested is because he was distributing sanitizers to people in Mumias without observing the COVID-19 protocols. Is that a reason to block a Senator from coming to execute his mandate? It is a shame, and we will not allow this.

I strongly support that the House adjourns until this matter is resolved. I support the Motion.

Sen. Kang'ata: Mr. Speaker, Sir, I rise to oppose this Motion. My brothers from the other side are the ones who signed the Petition and requisitioned today's Sitting.

Hon. Senators: Which ones?

Sen. Kang'ata: We all know. We have 17 colleagues who signed that they wanted the Sitting to be held today. I want to tell them that we are ready for the vote today.

Kenyans have been waiting for this vote for a very long time, and we are ready today. We feel for our brothers who are currently having issues. However, no one has shown any connection between that arrest and this Sitting. There is no connection at all. These are issues that are not connected.

Therefore, I urge colleagues that we take this vote. I will strongly oppose it because we do not have a legal framework allowing the Government to give out 50 per cent to the counties yet. Therefore, as a result of this stalemate, we are making counties not to get money to pay salaries. However, that does not mean that we do not have empathy for the Senators who have been arrested.

The only problem I have with that argument is that no evidence has been tabled to show the connection between this sitting and our colleagues' arrests.

I will support and urge my colleagues---

Sen. Omanga: On a point of order, Mr. Speaker, Sir. Is it in order for the Majority Whip to say that he is aware that the arrest is not connected with today's vote yet the agencies you directed the Committee to invite and come before them disregarded the invitation and did not appear before them? We have got no information.

If you remember very well what senior counsel James Orengo said earlier that we will only proceed when we have been assured of security and safety of our colleagues? Is it in order for Sen. Kang'ata to come and trivialize this issue and say that he knows that they are not connected with the arrest? Is he part of the Criminal Investigation Department (CID) or the agencies that we were talking about?

Sen. Kang'ata: Mr. Speaker, Sir, I have a lot of respect for the nominated Sen. Omanga. However, I strongly believe that that is an opinion that she has rendered but she has not addressed the issues that I have raised. Currently, there is no evidence to show the connection between that arrest and today's sitting.

We have adjourned this matter nine times, and therefore, it is time now for us to make a decision and decide the best way forward.

The idea that we are pushing or some people are pushing this sitting so that we cause some counties to lose money is not true. The current options that we have on the Table, none of them proposes a single county to lose, except, Sen. Linturi's amendment. It is the only one that is going to make 18 or 19 counties to lose money today. When you look at the option by Sen. Wamatangi, no county will lose money today. The option by Sen. Were, proposes almost 39 counties to get billions of shillings.

Therefore, this idea that the Government wants to cause some counties to lose money as what my colleague from Wajir has said is not true. What we want to ask our colleagues to do today is to kindly make a decision today and ensure that you look at the issues objectively.

Sen. Madzayo: Asante, Bw. Spika. Je, ni sawa ya kwamba ndugu yetu, Seneta wa Murang'a, anaweza kusema ya kwamba wale wenzetu walio ndani, hakuna chochote kilichosemwa hapa kinachowahusisha ya kwamba ni kwa sababu walikuwa wanakuja kwenye Bunge na wakashikwa kisha wakazuiwa, watatu katika historia ya Kenya? Wabunge watatu ambao wako na Mjadala muhimu sana unaohusika na Kitaifa, wa ugavi wa pesa katika kaunti wamezuiliwa na sasa yeye anasema ya kwamba hakuna kielelezo chochote kinachoambatana na ambacho kinachoweza kuhusisha ule Mjadala ulioko hapa na wao kama Seneta. Je, ni haki hiyo?

Tunaelewa kwamba jukumu la kwanza kulinganishana na Kipengele cha 96 cha Katiba, mimi kama mwanasheria, kila Seneta anahusika na ugavi wa pesa, si Seneta wa Garisa, si Seneta wa Wajir, si Seneta wa Turkana, si Seneta wa Kilifi, si Seneta wa Mombasa au Seneta wa Kwale. Kila Seneta hapa anahusika na ugavi. Je, ni sawa sawa kusema kwamba leo mimi nikishikwa itakuwa si haki kwa mimi kuja hapa kupiga kura kwa niaba ya watu wa Kilifi?

Sen. Kang'ata: Mr. Speaker, Sir, I think that my point is still correct. I would be urging colleagues to produce evidence showing that connection so far. No connection

has been established, and therefore, I strongly believe and I urge the House to oppose this adjournment because we have adjourned this matter for a record, nine times.

The counties are suffering. County employees have not been paid and there is a connection between this statement and non-payment of dues owing to county employees.

I urge colleagues that as we oppose this Adjournment Motion to take into account that this Government cannot arrest a person on the basis of wanting to stop his democratic right to vote in a certain way; it cannot. This Government, led by His Excellency Uhuru Kenyatta, does not condone such actions.

Mr. Speaker, Sir, we have come to this House, we have lost several votes and no one has ever been victimized at all because we believe in freedom of expression. We believe in democracy, and therefore, anyone coming here to say that the Government has caused some Senators to be arrested is not true. However, we empathize with them and urge them to give us instructions to go and act for them in court. We want to tell them that indeed, if at all you have been arrested for exterior reasons, we shall pray for you and we shall send the best lawyers to represent you.

Nonetheless, I want to vouch for the Government that no one has caused their arrest. I know why my colleagues want to cause this adjournment. We are ready, let us vote and for us, we believe that the current options that we have are going to put this country ahead.

Thank you, Mr. Speaker, Sir, and I oppose.

Sen. Murkomen: Mr. Speaker, I am extremely emotional when I think about the circumstance under which this House has been put.

I want to speak, like Sen. Orengo said, from my heart, my soul and my whole body. I really want your undivided attention on this matter.

Two weeks ago, a Government functionary actually, in the Office of the President, came to me and told me that if the formula will not pass the way the Government wants, some Senators can even be abducted; they can even be arrested. We discussed and joked about it.

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

(Sen. Murkomen was standing)

The Speaker (Hon. Lusaka): Take your seat, Sen. Murkomen.

The Senate Majority Leader (Sen. Poghisio): So that we do not derail debate in any way by the dilatory motions, is my neighbor, the Senator for Elgeyo Marakwet, in order to insinuate without facts, without substantiating, and in fact, leading on a very dangerous direction of pointing out public servants and statements, which really lead us to think that there is something that can be said like abduction claims by the Government? That must be substantiated; it must have been said by somebody and we need to know.

Sen. Murkomen: Mr. Speaker, Sir, Sen. Poghisio remembers two years ago when three Pokot young men were abducted in Kapenguria, murdered and burned at

Kaptagat Forest in Elgeyo/Marakwet County. Three months down the line, my Personal Assistant (PA), former Member of County Assembly (MCA), the late Benson Kiptire, was abducted in Eldoret - we were with the President in town - killed and dumped in Kapenguria. He cannot pretend to be a visitor in Jerusalem. He knows that the victims of these kinds of strategies have even affected the people from our two counties.

I am speaking from my personal testimony. He cannot challenge my personal testimony. I am not alleging that newspapers or so forth; let me give my story. Listen, Sen. Poghisio, and listen to us because we are Senators. As Senators, we are at the mercy of the Speaker and not your mercy.

I thought that he was joking when he said that they will do anything to abduct two or three Senators. I put that information on public domain on Saturday and Sunday. Sen. (Dr.) Langat was called by many people, including leaders from this Chamber, and they asked him to leave his house. I was with him last night. He was asked to quietly go to Bomet and they even promised to facilitate him as long as he does not come to this Chamber to vote. Sen. (Dr.) Lelegwe was told that charges will be preferred against him if he does not vote with the Government. I do not know what the position of Government is.

Sen. Kang'ata has asked us to continue and take a vote on the Motion. He cannot tell me that there is no relationship between the withdrawal of the three Senators, who would have voted in both the Procedural Motion and the Substantive Motion, and the voting.

(Senators consulted loudly)

The Speaker (Hon. Lusaka): Order, Senators. Let us consult in low tones.

Sen. Murkomen: One cannot convince me that there is no relationship between their removal from the jurisdiction of this House and the voting. If that is not true, then confirm to me that no other Senator in this Chamber will vote on behalf of Sen. Malalah. Confirm to me that Sen. (Dr.) Milgo has not been aligned to vote on behalf of Sen. (Dr.) Langat even though Sen. (Dr.) Langat and Sen. Malalah have written, in no uncertain terms, that no one else should vote on their behalf. If you confirm that, I will know that the conspiracy that we are talking about is not there.

We are not children. I have been the Senate Majority Leader and the Deputy Senate Majority Leader for more than five years. There is something about the magic 24 number. We had 25 Senators voting as one in this House last week. Their desire is to reduce that number from 25 Senators to 23 Senators. Their plan is to have Sen. (Dr.) Milgo vote instead of Sen. (Dr.) Langat and have either Sen. (Dr.) Musuruve or Sen. Shiyonga vote on behalf of Sen. Malalah. That is how they plan to defeat the will of the people. You cannot ask us to proceed. It is not possible. This is Kenya. We cannot be fools to take the position of the minority.

Mr. Speaker, Sir, you are sitting in that Chair because Sen. Malalah, one of the few Senators from the opposition, voted for you and that is how you got the 42 votes.

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Sen. (Dr.) Lelegwe and Sen. (Dr.) Langat were among the 42 Senators who voted for you. You sacrificed me and Sen. Kihika, please, do not sacrifice Kenya. Do not sacrifice the----

The Speaker (Hon. Lusaka): Order, Sen. Murkomen. Sen. Murkomen, I know that we are discussing an important Motion, but you must respect the Speaker. I do not act as a person. I am guided by the law; the Standing Orders and the Constitution. The decisions that I make in this House are anchored on those two. I will not allow this House to degenerate to that level.

Sen. Murkomen: Mr. Speaker, Sir, I love the fact that you have restated your constitutional responsibility as the Speaker.

A Report has been brought to this House that the Cabinet Secretary (CS) is not available to come to this Chamber yet the same CS, Dr. Matiang'i, has just updated that he was launching a *boda boda* information management system with the CS for the Ministry of Information and Communication, Mr. Mucheru. The Inspector General has posted that he was launching a sanitation component towards better human and environmental health with the CS, Dr. Matiang'i.

I do respect your authority and the others should also respect your authority. We should not force this House to punish 18 counties. Elgeyo Markawet County and Bomet County, where Sen. (Dr.) Langat, who has suffered, comes from, are not the losing counties. Kakamega County, where Sen. Malalah comes from, is not a losing county. We are just but honest patriots who want the best for this country. We are willing to suffer for the unity of this nation. We have come this far to make this decision because we want this country to be one. History will be kind to us.

The determination of a historical moment shifts to your Chair. Do not let this House to be used by those who are sitting out there to force a decision against the Standing Orders. You have assured me that you are going to follow the Constitution and the Standing Orders which means that you will respect the letters of Sen. Malalah and Sen. (Dr.) Langat where they have requested that no one should vote for them. Do not make the same mistake that you made in my situation on this important issue---

The Speaker (Hon. Lusaka): Order, Sen. Murkomen. Sen. Murkomen, take your seat.

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

The Speaker (Hon. Lusaka): What is your point of order, Sen. Poghio?

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, Sen. Murkomen has left but some of the claims that he made needed to have been withdrawn because they were an attack on the Chair. If we allow some of these things to continue, they will grow bigger to a point where people will now direct their eyes on the Chair and hold themselves desecrate to the Chair. I am requesting you to take us back to where we belong; the House of order.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I want to raise a constitutional and procedural matter. I am worried about the clerks. There are certain procedural issues that are making us talk without conclusion.

At the beginning, the Chairperson of the Committee on National Security, Defence and Foreign Relations gave a Report and we moved to the Motion of Adjournment even before we listened to the reaction to the Report. I am worried that you have been put on trial. We must distinguish between the charges against the Speaker, that which is within the powers of the Speaker and that which is within the powers of the House. If we dealt with the Report that was given by the Chairperson of the Committee on National Security, Defence and Foreign Relations, we would not have had lamentations. One can lament forever and someone sitting somewhere can say, 'let them talk until tomorrow.' I do not want us to be the House of lamentation.

We should not take the Report that was given by the Chairperson of the Committee on National Security, Defence and Foreign Relations for granted. If we were a court of law, we would have asked ourselves what we need to do with the contempt that Sen. Khaniri talked about. That is where your power is. You should deal with the contempt before dealing with the question of adjournment. There is a great violation against the dignity of the Senate which has not been dealt with.

Now we are talking generally and we can talk generally until tomorrow without a resolution. I like the speeches I am hearing but at the end of the day, they signify nothing because nothing will come out of it.

I know of men and women like the late hon. Shikuku who could speak for a month but at the end of the day, there were questions of relevance. What can the Senate or Parliament decide, because Parliament does not act in vain? We adjourned for a purpose. Have we achieved the purpose of that adjournment?

Mr. Speaker, Sir, I invite you to look at Article 125 of the Constitution. There are two issues within the powers of this House. Those powers are equal to the powers of the High Court. You can address us on those two powers. You can direct now and not tomorrow.

The first is not just to invite but to summon. When Parliament summons, it does not matter whether you are on leave, honeymoon or in a Cabinet meeting. The summons of a Parliament, in my view, in fact, supersedes those of the High Court. This is because we make the laws.

The Cabinet Secretary and other Government officials were summoned but they did not turn up. What do we do? We cannot just let it rest there. Some of them say: Let them talk; they can talk until tomorrow and come again tomorrow to complain.

Mr. Speaker, Sir, I have had an incidence in the old times when the Kenya African National Union (KANU) was what it was. A Speaker put a Minister using the orderlies for two hours waiting for a committee because he was in contempt. He let him rest there until the Speaker decided what to do with him.

If that summons has not been complied with, the second provision is that you can enforce attendance and there are consequences. I believe that it is within your powers

now to enforce the attendance of the Cabinet Secretary and even the Director of Public Prosecutions (DPP) because we oversight all the institutions, including the presidency.

Mr. Speaker, Sir, instead of lamenting, you should stand up where you sit and deal with the contempt. The contempt has been committed on the face of the Senate because you gave that direction. I saw you standing up when you were giving that direction.

The second issue is separate and distinct. You can deal with the first issue. For the second issue, it is upon us as Members of the Senate. To adjourn or not to adjourn is not within your powers. I want to advise you, if you may take my advice. It is upon us to adjourn. We are not going to invite you to exercise those powers to decide whether to adjourn or not.

In the morning, I addressed you on why we needed to adjourn. So, I invite you to, first of all, deal with the question of contempt. When we finish that one, we will come to the question of adjournment where we will address you sequentially and then we finish with the business of the House as it is in the Order Paper.

Sen. Wetangula: Mr. Speaker, Sir, I rise to join Sen. Orengo. I want to draw your attention to Article 153(3) of the Constitution which states as follows-

“A Cabinet Secretary shall attend before a committee of the National Assembly, or the Senate, when required by the committee, and answer any question concerning a matter for which the Cabinet Secretary is responsible.”

You should read that with Article 125. It vests the authority of the High Court with penal consequences on any public servant who is accountable to this House who does not appear to answer any question.

I agree with Sen. Orengo that we have totally mixed two issues. I belong to the Committee of Sen. Haji but I was not able to attend the meeting because I was attending to some other important issues elsewhere.

When Sen. Haji gave us the report, this House should have ventilated on it and made a decision on what to do with the public servants who decide not to honour invitations to Parliament, which invitations can graduate to summons. The debate was veering towards a situation where innuendos are being thrown on the Floor like you bear responsibility for the servants not coming.

We want committees to exercise their authority given by this Constitution and the Standing Orders. All we need is to tell the Clerk to send summons. I have seen committees fine Cabinet Secretaries and governors who do not appear.

The arrest of colleagues is a grave matter. Whatever the reasons, one cannot fail to resist the temptation to think that the arrest is malicious. All the Cabinet Secretary needs to do is to come and satisfy the Committee and the House that it is not malicious if he has different reasons. To simply ignore the invitation of the Committee is ignoring the authority of this House and ignoring the power vested in this Senate by the people of Kenya.

Mr. Speaker, Sir, I urge you to give direction to this based on the two articles of the Constitution I have pointed out, which Sen. Orengo also pointed out, and the Standing Orders of this House, so that we put to finality the continued disregard of this House.

We have had situations where Cabinet Secretaries go running when they are invited to the “lower House.” When they are invited to this House, they give all manner of excuses. This should not be condoned.

On the issue of adjournment, I agree fully with Sen. Orengo that you cannot stop this House from adjourning a Motion because as the Speaker, you have no vote. All you need to do is to listen to us and leave it to us to decide whether we should adjourn a debate or not. This is unlike the old days when the Speaker used to have a casting vote.

In the Seventh Parliament, I used to sit in that Chair as a Member of the Speakers Panel. We used to have a casting vote when there was a tie. That casting vote is no longer available to the Speaker. You simply listen to us and put the question, so that we decide whether to go one way or the other. Whichever decision we make, it is an enhancement of democracy.

We have enjoyed tremendous reputation in this country as a House. Even my colleagues and friend such as Sen. Linturi when he was promoted by the people of Meru to come to this House from the “lower” House” confided in me that he was very proud to be a Senator. That was tremendously different from the House where he previously served. He saw a lot of decorum and time for Members to speak and to be listened to and opportunity to be respected because of what we do.

Let us not get carried away, my colleagues. Let us maintain that dignity. The late Kofi Anan used to say, “I am a man with a soft voice with a powerful message.” A very soft voice can deliver a very powerful message which can change things.

Let us try to stay back from our positions of brinkmanship and maintain the dignity of this House that Kenyans love so much. If we do not do that, we will also be dragging ourselves in the same tunnel of filth that we try to avoid in being Senators of this Republic.

(Applause)

Sen. Cheruiyot: On a point order, Mr. Speaker Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Cheruiyot?

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir. I agree with the Senate Minority Leader, Sen. Orengo, that you need to guide this House on the issues he has brought before you.

I wish to add a further one. Section 21 of the Parliamentary Powers and Privileges Act says this about false witnesses and I will be inviting your ruling on the same.

“Any person who before any Committee intentionally gives false answers to any questions material to the subject of inquiry which may be put to him during the course of examination shall be guilty of an offence under the Section 108 of the Penal Code.”

It has been reported before this House by the Chairperson of the Senate Committee on National Security, Defense and Foreign Relations that a public officer informed them that the Cabinet Secretary was not available because they were on leave. Further evidence has been adduced before this House confirming that the Inspector General (IG) of Police was at a public function. The CS was somewhere launching a *boda boda* savings and credit cooperative.

Mr. Speaker, Sir, we are calling upon you to further give direction in furtherance of Sen. Orengo's point on what will be done to this officer who misled a Committee of this House. We are now here with a stalemate on our hands because they did not give the right information. Had they been prudent and diligent to ensure they gave Sen. Haji's Committee the proper information, then we would not be here. I humbly request that you guide us with regard to that issue.

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

The Speaker (Hon. Lusaka): What is your point of order, Sen. Cherargei? We will then have Sen. Wamatangi.

Sen. Cherargei: Thank you, Mr. Speaker, Sir, for this opportunity. When I moved the Motion of Adjournment in the morning, which was seconded by Sen. Mutula Kilonzo Jnr., there were specific directions that you gave. As the Mover of the Motion having read Articles 153 and 125, there were specific directions that needed to be given. I like what Sen. Wetangula has said that in the words of Kofi Anan that you do not know the value of something until you lose it.

I empathize and sympathize with colleagues that have been arrested. I have been intimidated and arrested before. I can imagine the speed at which Sen. Malalah is approaching Nakuru. It is not a good speed. I went through Kakamega, Bungoma to Kisumu. That car does not have breaks.

The other day, I was arrested somewhere on Ngong Road. Thanks to Sen. Omogeni and most of the learned seniors here who came. I was being driven there as a patient in an ambulance.

Mr. Speaker, Sir, there were specific instructions that you gave. You said that the Committee on National Security, Defence and Foreign Relations should come back with information and directions that they would have undertaken. As I support the Senate Minority Leader, for the sake of continuity, let us dispose of the feedback from the Committee chaired by Sen. Haji. We can then move to the second Adjournment Motion that was moved by Sen. (Prof.) Kindiki. If we go that way, the CSs and senior civil servants will respect this House.

If you do not give directions on this matter today, this House will be treated like a rubberstamp in future decisions. As you retreat to provide directions and orders on this matter, the CS and the IG and other Government officials who were supposed to provide answers to the Adjournment Motion I moved on the arrest of Sen. (Dr.) Langat, Sen. (Dr.) Lelegwe and Sen. Malalah, should satisfy the House that the reasons for which they were being arrested and which we are tempted to believe were not malicious, it is very important for this country that we separate those issues.

Finally, the intimidation, coercion and blackmailing of elected leaders will be determined by your ruling today. I am paraphrasing what someone said here in the morning that when they came for the Jew, I did not speak because I was not a Jew. When they came for me, there was no one to speak for me.

Please provide direction. If it is possible the CS, Ministry of Interior and Coordination of National Government, the IG of Police and the Director of Criminal Investigations (DCI) must be summoned to appear before the Senate of the Republic of Kenya to tell the country what is happening. It was disheartening to see Senators peeping out of windows like prisoners in their own houses.

I am the champion of this revenue formula on one-man-one-vote-one shilling. However, when it comes to impunity and forcing people to make choices, I am afraid, I will not be party to coercion and blackmail so that people can make certain decisions. I want Kshs1.4 billion to go to Nandi County. However, I do not want blood to be spilled for the people of Nandi County to gain.

(Applause)

Let us make a decision where everybody will be comfortable. That is why in the morning, in my own wisdom, I moved an Adjournment Motion, for the sake of our colleagues. Let us allow the Senate as a House to make these decisions based on their own comfort not under coercion, intimidation and blackmail.

Personally, I am not afraid of being arrested. I have been arrested four times. I know what to do when I am being arrested. I know quite a number of DCIOs and officers and I talk to them nicely to ensure that I get good food. I do not fear arrest. There should be a parliamentary privilege that our colleagues must enjoy.

Mr. Speaker, Sir, you are not on trial, but the decisions you make today will go in the annals of history of this country. Somebody said and I think he is a good reader of the Bible, that do not fear those who kill the flesh only, but fear the one who can kill both flesh and soul.

Give direction to this House by summoning the CS, Ministry of Interior and Coordination of National Government and the IG of Police. The IG of police is an appointee of this House because we vetted him. Why do we not summon him? The CS, Ministry of Interior and Coordination of National Government is also the chairman of Government projects. How can he disobey the hoe that he needs to partner with him when he is coordinating national Government projects?

Mr. Speaker, Sir, make us proud once again and make the Senate great again.

The Speaker (Hon. Lusaka): what is your point of order, Sen. Wamatangi? Keep them short.

Sen. Wamatangi: Mr. Speaker Sir, I hope to keep it short. I hope that does not insinuate I am the one who keeps them longest.

This is a not only a House of rules, but also precedents and customs. We have a way through which we execute our business. You gave very clear directions before we

adjourned that the relevant officers of the Government be available, contacted by the Committee and give a response.

As a result of the traditions and customs of this House, the easiest thing that would have happened is that if the Committee would have tabled to you or to this House for that matter, the invitation that they have sent out to the individuals who are just across the road. Once we have that invitation, you are able to give clear direction.

Mr. Speaker, Sir, if in the event that the Committee sat and overlooked the necessity to put it quickly in writing and take it across, can you direct that they do so, such that when you give orders, they are backed? Can the Chairperson confirm that communication was made in a way that you can incontrovertibly give clear directions on? Were it not for the misunderstanding that is being brought here, every Senator in this House is clear.

The Speaker (Hon. Lusaka): Keep it short, Sen. Wamatangi. That is not a point of order.

Sen. Wamatangi: Mr. Speaker, Sir, no single Senator in this House is for any Senator's arrest. That point is settled.

The Speaker (Hon. Lusaka): Do you want to be informed?

Sen. Wamatangi: Mr. Speaker, Sir, let me finish. I do not think I need the information because I want to finish. My point is very clear that all of us are clear in our minds that there is no person who can sit here, elected or nominated, to support the arrest of another colleague. Let us not mix these two issues. When we speak about the incarceration of Members, we have to speak clearly, with authority and firmly. When we speak on the other issues, we also have to be clear.

The Speaker (Hon. Lusaka): What is your point of order?

Sen. Wamatangi: Mr. Speaker, Sir, my point of order is very clear. Can the Chairperson and the team in that Committee put before this House the invitation or what they have used to invite the necessary officer, so that we can act on it?

The Speaker (Hon. Lusaka): What is your point of order, Sen. (Dr.) Mwaura then Sen. Dullo? Why do you not speak from where you are, Sen. (Dr.) Mwaura?

Sen. (Dr.) Mwaura: Mr. Speaker, Sir, I want your guidance, so that we make a determination on whether we are now discussing the Motion to adjourn debate or the report of the Committee on National Security, Defence and Foreign Relations. This is so that instead of using points of orders to debate, then it becomes very confusing.

I seek your indulgence. Having said this, let me just put it on record that this House is the one actually on trial. This is because if we allow extra-Senatorial moves or Motions to predetermine how this House conducts itself, we are going on a very slippery road to nowhere. There is one aspect here that we may differ politically and, indeed, we can differ until the cows come home. In fact, I would want to say that I have come to realize that in politics, people have learnt how to hunt with the foxes and to run with the hares. That is the nature of our politics. However, if we allow that this House, based on an opinion of an individual, that you can actually be refused to express that opinion, I beg to differ.

As a human rights defender, somebody who stands for the rights of the marginalized and the downtrodden, we have a wondrous occasion to demonstrate that devolution must be defended because devolution is the revolution.

(Applause)

The Speaker (Hon. Lusaka): What is your point of order?

Sen. (Dr.) Mwaura: Mr. Speaker, Sir, as I conclude, I want to say---

The Speaker (Hon. Lusaka): What is your point of order?

(Laughter)

Sen. (Dr.) Mwaura: Mr. Speaker, Sir, is it in order, therefore, for us to be discussing a substantive Motion while having an Adjournment Motion? I seek your guidance that you must rule on what debate is actually on the Floor of the House. I support that we should ensure that all Senators are protected.

Hon. Senators: Point made!

(Applause)

The Speaker (Hon. Lusaka): Proceed, Sen. Orengo then Sen. Dullo.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I am sorry to rise again. Those lawyers who are here like Sen. Omogeni know that you can go to court on a writ of *habeas corpus*. I want to be listened to carefully. Sen. Wamatangi, please.

The Speaker (Hon. Lusaka): Order! Let us listen to what Sen. Orengo is saying. The Majority Whip, you are so nomadic!

(Laughter)

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, if you approach the court on a writ of *habeas Corpus*, you do not need to be heard both sides. You can go on application or affidavit. If somebody has disappeared or you do not know his or her whereabouts, the court in looking at the material that it has before it can make a decision.

This is a matter which you can act *suo motu* or *sua sponte* which means that you made an order yourself. You do not need to be persuaded that there has been a violation. I urge you to make a ruling on the question of the violation and then we proceed to the question of adjournment. Otherwise, we will be mixing the two. Let us have a ruling on that question of the violation by the Cabinet Secretary (CS) and his team.

The Speaker (Hon. Lusaka): Are these points of order? Sen. Dullo, is it a point of order? I wanted to make a ruling on that. What is it, Sen. Dullo?

Sen. Dullo: Mr. Speaker, Sir, I wish to thank you for this opportunity. I want to inform the House that I sit in the Committee on National Security, Defence and Foreign

Relations. After you gave your ruling, we went out and called the Clerk of the Committee. We agreed that we should call both the CS and the Principal Secretary (PS) for Interior and Coordination of National Government and other relevant stakeholders to appear before us at 1.00 p.m.

I want to put this on record because my colleague here, Sen. Wamatangi, was asking for a record on whether we summoned the CS or not. Before we even met, the Clerk of the Committee wrote to the CS and the PS. Secondly, they sent a message to all those relevant institutions. Thirdly, the Clerk was able to call the Personal Assistant (PA) to the CS. I do not think it is really fair for us to go round in circles trying to justify whether the Committee has done what is required or not.

Mr. Speaker, Sir, finally, we even discussed the matter of summons. Clearly, as far as the procedure of the Senate is concerned, a summon requires seven days. The matter before us does not require us to take seven days to make a decision on it. I urge you that the matter before us today is very important.

It has been adjourned and this is almost the tenth time. It was not the making of certain Senators in this House. However, what is before us are the lives of our colleagues who are in incarceration. You must make a ruling on this matter. We cannot proceed on any other Motion or anything else until our colleagues are produced on the Floor of this House.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. Sakaja, what is your point of information? I want to make a ruling on this.

Sen. Sakaja: Mr. Speaker, Sir, I just want to inform you and the House. First, Sen. Wamatangi asked for the correspondence. This was a directive from the Chair that you sit on. In fact, the HANSARD alone is enough and you already said it clearly. This is a Committee I have chaired and I know how we have been working with that Ministry. Sometimes many security issues are urgent in nature.

Mr. Speaker, Sir, people do not come here holding fort for different arms of Government and saying that a letter needs to go for seven days. There is no coincidence as to why three Members were arrested on the same day that they were coming to vote. We do not need to be poetic about it.

Mr. Speaker, Sir, what I heard Sen. Orengo, Sen. Mutula Kilonzo Jnr. and others ask for in the morning is that you, with the authority of the Senate, as the leader of this House, direct. This is because we do not want to be told that a certain Member is being charged for distributing sanitizers or because he did not social distance. You were to direct that the IG of Police produces those three Senators before this House. That is the direction that we wanted.

After that happens, is when we will meet. This is because the Committee can sit down and they will give us all sorts of excuses that the CS has given. They can give any reason. For instance, they can say a Member has another case of graft *et cetera*.

Mr. Speaker, Sir, what we asked is for the three Senators to be produced before this House before any further discussion on the Third Basis for Revenue Allocation among the county governments. That is what we want and it is irreducible.

The Speaker (Hon. Lusaka): Sen. Haji, kindly proceed.

Sen. Haji: Mr. Speaker, Sir, I did not intend to stand up, but---

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators! I can hardly hear what---

Sen. Haji: Mr. Speaker, Sir, as a result of the question raised by Sen. Wamatangi as to what the Committee did, I laid on the Table of the House the minutes of the Committee which he can read.

Sen. (Dr.) Kabaka: On a point of order, Mr. Speaker, Sir

The Speaker (Hon. Lusaka): Sen. (Dr.) Kabaka, is it on the same? What is your intervention?

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, I will be very short on what you are about to rule.

I want to give some caution to the direction which Sen. Orengo and Sen. Wetangula have requested you to do.

Mr. Speaker, Sir, I want you to look at the logic and the issue of the timelines, so that you do not fall short of the logic in terms of ruling. I am not being preemptive. You have been told by Sen. Orengo that the three Senators who have been arrested can be represented by lawyers in court. I would also concur with Sen. Dullo that before we do anything, the three Senators who are incarcerated must be produced before we do any other debate. That is the logic. Otherwise, if you will rule that we proceed then, definitely it would mean---

The Speaker (Hon. Lusaka): You are anticipating my ruling.

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, I am finishing.

The Speaker (Hon. Lusaka): You are anticipating my ruling.

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, it is the fear that I have which may come to pass---

The Speaker (Hon. Lusaka): No.

Sen. (Dr.) Kabaka: Mr. Speaker, Sir, it may come to pass.

Hon. Senators: No! No!

Sen. (Dr.) Kabaka: Give me time to speak because I represent the good people of Machakos. When other Members were speaking, I did not utter a word.

(Sen. Nyamunga spoke off record)

Mr. Speaker, Sir, you need to protect me from the nominated Senator from Kisumu, Sen. Rose Nyamunga, whom I respect so much. She is interfering with my flow of thought. I do not know what she has eaten; she is yet to tell us.

The Speaker (Hon. Lusaka): Kindly conclude.

Sen. (Dr.) Kabaka: Maybe she has taken something; *mbuta*.

Mr. Speaker, Sir, I am not being preemptive, but look at the bigger picture of what all the Senators are saying in this Senate. Under Article 1 of the Constitution, they are the representatives of the people. Those Senators must be here for any vote of any nature and kind.

Mr. Speaker, Sir, I support the adjournment.

The Speaker (Hon. Lusaka): Sen. (Prof.) Kamar, what did you want? Sen. (Prof.) Ekal was on the Floor, but there is a point of order.

Sen. (Prof.) Kamar, is it on the same?

Sen. (Prof.) Kamar: Mr. Speaker, Sir, I also rise to support that you rule on the Report from the Committee before we go into the---

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators! I can hardly hear what---

Sen. (Prof.) Kamar: Mr. Speaker, Sir, this morning, Sen. Cherargei moved a Motion that passed unanimously. Some of us did not get a chance to contribute, although we were anxious to support that we adjourn for the sake of our colleagues who are not here. It will be a shame that we have colleagues, who are very senior lawyers in the House and our colleagues are suffering. It was good that we adjourned as all of us supported unanimously.

Mr. Speaker, Sir, we need to sort out that before we talk of adjournment. I am urging you that even as you rule on this adjournment, we start thinking about our relationship with those whom we call to the Committees. This is not the first time that we have had members of the Executive not appearing before the Committees. There are Members who never appear at all. They say that they should appear only before the National Assembly. When an issue like this takes place, then we ask ourselves: how then shall we get justice for ourselves?

Mr. Speaker, Sir, I support that we separate those two issues, so that we dispose of this and go straight to the Motion by Sen. (Prof.) Kindiki on adjournment. Mixing it has confused a number of us on where we are going.

Mr. Speaker, Sir, I do not want to take more time. I just want to support that you, first, deal with the Motion that the Chair of the Committee on National Security, Defence and Foreign Relations has tabled.

I thank you.

The Speaker (Hon. Lusaka): Okay. Order, Members. I think there was that mix up because there was no Motion on the report. This is a Special Sitting. My direction at that time and this time is that the Committee on National Security, Defence and Foreign Relations uses the provisions of Article 153 (3) and 125 to summon the CS and his team by Wednesday, this week. It is so directed.

Sen. (Prof.) Ekal, kindly, proceed.

Sen. (Prof.) Ekal: Thank you, Mr. Speaker, Sir. It has been a while since I wanted to speak because I had things to say about all that has passed. I have risen to support the adjournment.

I want to speak on three issues. First, I want to speak about the formula that has brought us to where we are today. That formula is going to split---

The Speaker (Hon. Lusaka): We are talking about adjournment and not the formula.

Sen. (Prof.) Ekal: Mr. Speaker, Sir, I wanted to begin from where I should have been when I did not get the chance to talk. However, let us talk about the adjournment.

Mr. Speaker, Sir, I would like you to consider the idea of adjournment without voting. Respect the views of the rest of us. We think that for fairness, we should adjourn without voting until further notice. The reason is that three of our colleagues are not here. There is no reason those three Members are not here.

Only a little child of less than two years can be convinced that those Members were arrested because they committed an offence. One Senator was accused of distributing sanitizers to people who need them. Surely, in this country, who would accuse somebody of distributing sanitizers? There are so many people who are dying or infected and need sanitizers to stay clean and keep away COVID-19.

Another Member has been arrested on the question of cattle rustling. It is very hard for me to think that somebody would accuse a Senator of cattle rustling. Cattle rustling is as old as the communities that rustle cattle today.

Those communities do cattle rustling because of various reasons. There are very few resources. As a result, they want to have cattle for their livelihood.

Mr. Speaker, Sir, you have been a District Commissioner (DC) in Turkana. You had reports about cattle rustling in different parts of Kenya. Even today, cattle rustling is still on going in some of parts of the country. How can we accuse a Member of Parliament of being involved in cattle rustling? This is a flimsy reason. Why is he being arrested now? It is true those Senators were arrested so that they could not vote. I request you to adjourn the Motion until they are here to vote.

Sen. Kwamboka: Thank you, Mr. Speaker, Sir. I rise to oppose the adjournment. Kenyans are watching. We have been here several times discussing this revenue issue. If someone is arrested, then we are not special than the common *mwananchi*. Let the police do their mandate and we focus on our mandate. We came here for the Special Sitting to discuss the revenue issue.

Mr. Speaker, Sir, through your wisdom, please guide us and show us direction. Let us vote for the adjournment or oppose it so that we move on.

Sen. Mwaruma: Thank you, Mr. Speaker, Sir, for giving me this opportunity. I was worried because my people were asking me why I was not contributing. However, the truth of the matter is that many of us here were contributing by way of points order.

It would be good if we adjourn as the Senator for Turkana has proposed. We do not have the numbers and do not know why some of our Members are not here. We also do not know why they were arrested. We adjourned in the morning to find out the

problem. I was among the leaders who went to Sen. Malalah's house and he told us he was being arrested because of distributing sanitizers.

We want fairness in this matter because some of us who have been marginalized for long time. For us, devolution is everything. We are only able to determine division of revenue to our counties which is Kshs316.5 billion, but we do not know how what happens to Kshs2.7 trillion. People of Kakamega County are represented here by their Senator. Sen. Malalah is supposed to be in this House as we debate revenue allocation to the counties. We have the people of Bomet who are supposed to be represented here by their Senator. However, he is not in the house to exercise his constitutional mandate of representing them.

(Loud consultations)

The Speaker (Hon. Lusaka): Consult in low tones.

Sen. Mwaruma: Mr. Speaker, Sir, I support the Motion of adjournment. We need to adjourn until these people are produced in this House. When we are adjudicating on this issue of revenue sharing, we want to see all the delegations represented here participate.

Even if we were to proceed to voting, we need to be assured that the delegations like Kakamega and Bomet who have written letters that they do not want to be represented in the voting are not represented. We need that assurance.

The Senator for Nairobi City County said that at times when you are almost losing the match, you run away with the ball. However, we want to see a situation where fairness is served right because injustice here is injustice everywhere. What we are going through as a country is sad because we have regions that have been historically marginalized.

If we continue without our people from the other side of the isle who have decided to support us, we will lose. These are the people who are gaining money, but have said they want a united Kenya. That is why they are voting with us. These leaders know the people who have been marginalized for long time cannot donate any money because they have nothing to donate. We shall fight for devolution because it serves us right as the marginalized people using our sweat, blood and flesh.

The Speaker (Hon. Lusaka): Sen. (rev.) Waqo, proceed and try to use five minutes.

Sen. (Rev.) Waqo: Thank you, Mr. Speaker, Sir, for allowing me to add my voice to this Motion of adjournment. I want to touch a bit on my life before I came to the Senate. As I was deliberating on whether to join politics or not, the issue of being a nominated member came up; majority of the people who have been my friends and have always walked with me were so excited that I would be a Senator in the Senate of Kenya. Even if I was getting into politics, they thought the Senate was the best place to begin.

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

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

Madam Deputy Speaker, the same friends have prayed for me because of what the Senate is going through. Life has been difficult. It has been hard for us to sleep at night and the weekends have been too long. We have also been switching off our phones just because of the many things that keep on coming.

To make matters worse, anytime you say something, you are told; "remember, you are a nominated Senator." This is what makes me to speak with all the boldness. Even if I am nominated Senator, it does not mean I have come to the Senate to be intimidated. I am a mother and grandmother and cannot allow somebody to tell me 'remember you are a nominated Senator. I am a cannon of the church. I have been in the Senate and in politics for only three years and my future is in God's hands.

Madam Deputy Speaker, today is a sad day for the Senate. Some of us did not sleep and we came fully prepared. Unfortunately, we have been struggling throughout the day. The struggle continues and it is very sad that the Senate is going through this. The whole world and the nation is watching us while we are unable to make decisions because of the interference around us.

The other time I spoke, I said we should be our brothers' keeper. Today, three of us are on the road. Some of us may not know where they are headed to, but we know they are being taken somewhere. This is why we are pleading that we adjourn today so that we can sit together and reason.

It is unfortunate if no one can listen to us today as the Senate of Kenya. I am not proud of being a Member of this House anymore because of the way we are behaving. This morning, I watched many despicable things happen before the House began and I must warn fellow Senators that we are not in a market. We are in the Senate of Kenya. We are hon. Members.

Madam Deputy Speaker, I beg to support this Motion of Adjournment so that we can be our brother's keeper. I plead that reason guides us. We are no longer objective. We are not trying to unite this nation anymore. We are being led by emotions we have become more tribal. I support it and pray that Senators will have time to reason together as the leaders of this nation. The world is watching and history will judge us.

I thank you and beg to support.

The Deputy Speaker (Sen. (Prof.) Kamar): A number of Senators have expressed interest on this matter. Let us exercise generosity to one another by taking three minutes or less.

Proceed, Sen. Cheruiyot.

Sen. Cheruiyot: Madam Deputy Speaker, I will try to make my comments brief.

I rise to support this Motion. It is a very fair request by three of our colleagues who are faced with very difficult circumstances this afternoon. I had the unfortunate pleasure of standing outside the house of Sen. (Dr.) Langat the whole of last night. I left Sen. (Dr.) Langat's house at 5.30 a.m. because he personally requested me as a friend and neighbour not to desert him at his hour of need.

I plead with my colleagues that as we were setting the Motion of debate that is before us today, emotions may have run high and things may have been said that were about to divide us along the usual lines of party lines or the proposed revenue sharing formula. I humbly plead with my fellow Senators that three of our colleagues who are facing danger have been picked out of their homes. We have just returned from Kitengela and seen what has happened to our colleague. Sen. Malalah is my age mate and a good friend. Just imagine no offence has been revealed to him and yet he was put in a police vehicle and driven off at extremely high speed that made me worried if this was about pursuit of justice. Why would they use the kind of force that they used on him?

Earlier in the morning, as Sen. Malalah was trying to make sense of the whole situation, they disconnected power and water to his house. That tells you the kind of vengeance that people have on this particular issue. Last week, when I spoke on this issue, I was reminded by my colleagues to read the HANSARD reports of last term of the previous Senate. I read them with a lot of regret. I remember many of my colleagues along the isle would come to this House after battling with police officers the whole morning, smelling of tear gas, despite the fact that I may never have celebrated, or told my good friend, Sen. Moses Kajwang' sorry, I regret that I never spoke.

Madam Deputy Speaker, an opportunity is being afforded to fellow Senators to stand up for what is right. I have heard fellow Senators say every time they speak that we have been down these trenches. The fact that they have been down the trenches does not give them the right to support impunity at this particular time. Otherwise, what is the difference between them and the oppressor? If situations of life put you on the same side with the oppressor, never agree with them. I say this from the bottom of my heart. If a situation presents itself in the future when my friend will be controlling the levers of power, I will never allow such a thing to happen.

Mr. Speaker, Sir, I plead with my colleagues because this is not a decision on whether to vote this or the other way with regards to the proposed revenue sharing formula. Before we proceed, can we be assured of the safety of our colleagues? Can we say "no" to the kind of threats and intimidation and impunity that is reigning in this country at this particular hour?

Article 1 of the Constitution states that the first body that Kenyans donated sovereign power to is Parliament. Sen. (Dr.) Langat, Sen. (Dr.) Lelegwe and Sen. Malalah are holders of sovereign power. However, they cannot exercise it this afternoon because of the way the Government is behaving.

I plead with my fellow colleagues now not to take advantage because it is favourable to them now. I wish Sen. Orengo was here because he reminded us of the words that he said on the day he warned about Governments eating its own children. I plead with him that the same way he reminded us revolution eats its own children, he should not assist in holding the knife for the Government as it devours its children because that is the situation he finds himself in.

Madam Deputy Speaker, a request has been made by colleagues to hurry this debate on adjournment for us to proceed, but I plead that we be humane. I plead with my

good friend, the Senator for Murang'a County, Sen. Kang'ata, who is almost my age mate because I have had a robust conversation with him about this issue and reminded him that time and age is on our side. I would not like us to look back in history and be reminded that when we were presented with such an opportunity, we voted for things to go this way.

I am encouraged by the words of the Senator for Embu, Sen. Ndwiga who reminded us this morning that in his old age, he cannot support the things that he fought against when he was a young person. I respect him because he put his life on the line, fighting. This is a House that has elders who were there in past Parliaments. All is not lost. May be this disappearance of our colleagues will present an opportunity for a more amiable solution that will have the support of all the 47 counties as was the case in 2016.

Madam Deputy Speaker, with those may remarks, I beg to support this Motion.

The Deputy Speaker (Sen. (Prof.) Kamar): Proceed, Sen. Boy Juma Bo, followed by Sen. Dullo, and the Sen. Wario.

Sen. Boy: Asante sana, Bi. Naibu Spika kwa kunipa fursa hii kuchangia Hoja hii. Jambo la kusikitisha ni kwamba katika vikao maalum tulimekuwa navyo wiki iliyopita na leo asabuhi, nimesimama hapa kubonyeza mara mbili au tatu na Bw. Spika akiwa kwenye kiti sikupewa fursa ya kuzungumza. Nakupongeza sana Bi. Naibu Spika kwa kunipa nafasi hii ili mimi kama Seneta anayewakilisha watu wa Kwale, niweze kuzungumza na Maseneta wenzangu kwa kauli moja.

Nimesimama hapa kama Seneta wa Kwale kuhakikisha kwamba Maseneta watatu ambao wameshikwa wameachiliwa huru na kuja hapa kujadili swala muhimu la ugavi wa pesa katika kaunti zetu. Kila ninapokwenda kule Kwale, kila mtu ananiuliza ni vipi kuhusu swala la ugavi wa pesa kwa kaunti. Niliwahakikishia kwamba Maseneta watatafuta njia mwafaka ya kusuluhisha jambo hilo, lakini mambo yamekuwa tofauti kabisa leo. Kila mahali katika mitandao yetu ya kijami, habari ilikuwa kwamba Maseneta wenzetu wamekamatwa.

Napinga kuendelea kwa kikao hiki mpaka Maseneta hao watatu waletwe hapa. Mimi kama Seneta wa Kwale nitasimama kidete mpaka hao Maseneta watatu waje hapa.

Bi. Naibu Spika, asante tena kwa fursa hii. Kazi yangu si kuja hapa na kukosa nafasi ya kuchangia kwa sababu watu wangu huniuliza mimi hufanya nini katika Seneti kama sichangia hoja na miswada kama Seneta wa Kwale.

The Deputy Speaker (Sen. (Prof.) Kamar): Proceed, Sen. Dullo in three minutes.

Sen. Dullo: Madam Deputy Speaker, I stand to support this adjournment Motion. Before I say the reason for supporting it, let me put it on record because there are people who are asking why is it that I am opposing the formula by the Committee on Finance and Budget. I support the Government of the day 150 per cent, if there is anything like that, but I was elected by the people of Isiolo to represent their interests here. That is the reason why I oppose the amendment by the Committee on Finance and Budget.

Again, for the record, my county is losing Kshs868 million. With a budget of Kshs4.2 million, this means if this amendment goes through, we will close down our county as far as operations and development are concerned.

Madam Deputy Speaker, we have our colleagues who are out there. They are not in this House. The reason why we adjourned this morning was because Sen. (Dr.) Lelegwe whose county is losing is not in this House to represent his people. It is really unfortunate.

Secondly, there are two Senators who have said that in the interest of this House and that of Kenyans, they will support those who are opposing this formula. Let people not be selfish, especially those who think that a certain formula is better than the other because they are gaining. For as long as we have Kshs316.5 billion allocated to counties, there is no way we will not lose money if this formula is used.

Madam Deputy Speaker, Sen. Malalah and Sen. (Dr.) Langat gave authority to their nominated Senators to vote on their behalf in case the House takes a vote on this formula. I want to preempt this. They feel like they can use that against the numbers of the other side. Let me tell my colleagues, with all due respect, they do not have the numbers because Sen. Malalah has withdrawn his authority because he is the leader of the delegation. Sen. (Dr.) Langat has also withdrawn his authority.

I want to cite a precedent which took place in this House. In the last Senate, when the votes were not tallying on the Floor of this House, Sen. Obure authorized his Senator from Kisii to vote on his behalf. I want to tell those who think they will use the authority of Sen. (Dr.) Langat, or disregard the authority that was withdrawn to carry the vote today, that they are wrong. It will not happen because there is already a precedent on the Floor of this House.

Madam Deputy Speaker, we are each other's keeper. What we have on the Floor of this House today is dividing this country. It is dividing the Senators---

(Sen. Haji stood up in his place)

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Haji, are you on a point of order or on a contribution?

Sen. Haji: Madam Deputy Speaker, I want to contribute.

The Deputy Speaker (Sen. (Prof.) Kamar): I will give you a chance to contribute later.

Sen. Dullo: Madam Deputy Speaker, last week we adjourned simply because some people did not want the resolution that was to come out of that discussion. Today, we have a genuine reason why we want to adjourn this House. I have seen on social media that there is burning going on in Bomet. People in Bomet are protesting. In fairness to the people of Kakamega and Samburu and whose Senators are not in this House, we have all the reasons to adjourn this Motion.

Madam Deputy Speaker, I urge my colleagues to not let this formula divide this House. Let us reason together. I was in the last Senate and I am in this Senate right now. In the history of this country, we have never had what is happening in the Senate today. I request our colleagues who have taken a hard stand for selfish interests to change their positions and look at the bigger picture of this country and the Senate. How does it feel if

the plate of *ugali* on the table is taken away from you and given to a county that is getting more than you? That is what this formula is all about. In all fairness, I urge you to let us adjourn this House and we come back and reason together.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Wario.

Sen Wario: Asante, Bi. Naibu Spika, kwa kunipa nafasi hii. Nimesimama hapa kidete kupinga kushikwa kwa Maseneta watatu.

Mimi ninaunga mkono kabisa Hoja ya kuahirisha kikao cha leo. Si sadifa kuwa Maseneta watatu ambao wanawakilisha kaunti zao kushikwa leo kwa sababu sisi sote tunajua vile watapiga kura kuhusu swala hili la ugavi wa pesa. Wao wako upande mmoja na sisi.

Tunaambiwa Sen. Malalah alishikwa kwa sababu alikua anagawa *sanitizers* jana. Basi angekuwa ameshikwa jana angeachiliwa leo na angekuwa hapa leo. Kwa nini ashikwe leo wakati ambapo tunataka kupiga kura? Hii inamaanisha watu wa Samburu na Kakamega wemedhulumiwa kwa sababu Maseneta wao hawatapiga kura. Ikiwa watu hao hawatapatikani kupiga kura leo, basi inaonyesha kwamba watu wa Kakamega na Samburu hawatashiriki katika ugavi wa pesa za kaunti. Hakuna haki ambayo itatendeka hapa bila wao kuwa hapa. Kwa hivyo, tuihairishi Hoja hii mpaka Maseneta hawa wachiliwe huru ili tuweze kuja hapa tuendeleo na Mswada huu wa ugavi wa rasilimali za nchi. Sisi---

Sen. Mwangi: On a point of order, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): What is your point of order, Sen. Mwangi?

Sen. Mwangi: Madam Deputy Speaker, this debate has been extoled extensively. I am standing on Standing Order 104 to ask that the question be now put.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, I would like to allow Sen. Wario to finish what he was saying then I can react to your point of order.

Sen. Wario: Asante, Bi. Naibu Spika. Tunataka hii Hoja iahirishwe hadi siku ambayo hawa Maseneta watatu wataachiliwa ili Hoja hii irejeshwe tena.

Asante sana, Bi Naibu Spika kwa kunipa nafasi.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senators. Had I called Sen. Halake? Some Members are feeling that we should put the question now---

Hon. Senators: Yes!

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, I want a compromise. Should I take two from this side and two from the other side?

Hon. Senators: Yes!

The Deputy Speaker (Sen. (Prof.) Kamar): Okay, since Sen. Halake is on the way coming from the Extended Chamber, I would like to give Sen. Faki a chance. You have three minutes.

Sen. Faki: Asante Bi. Naibu Spika kwa kunipa fursa hii kuchangia.

Nilikuwa hapa wiki iliyopita lakini sikupata nafasi ya kuzungumza. Leo nimekuwa hapa mapema kabla ya 9.00 a.m. nikabofya na sikupata wakati wa kuongea. Kwa hivyo, ningemba, Bi. Naibu Spika, unipe dakika tano kama ulizowapa wengine.

Kwanza, naunga mkono Hoja ya kuahirisha Hoja ambayo imeletwa Bungeni na Sen. (Prof.) Kindiki. Ni masikitiko makubwa kwamba siku kama ya leo ambayo Bunge la Seneti linakaa, Maseneta watatu wameshikwa usiku wa manane. Polisi wameenda nyumba zao nikama kwamba hao ni wahalifu wakubwa wa kimabafu.

Jambo hili si geni. Usiku wa juzi kuamkia jana, polisi hao walivamia Madrasa kule Kilifi, Mtondia. Walipiga watu na kuvunja milango na kisha wakachukua walimu watatu wa Madrasa bila ya kujulikana waliopo hadi leo. Kitendo kama hiki lazima kikemetendeka kwa sababu lengo la polisi ni kuweka usalama.

Ni masikitiko kuwa Maseneta wetu ambao walikuwa Nairobi wote wamechukuliwa kiholela na kupelekwa katika kaunti zao za nyumbani bila kufuata taratibu zozote. Makosa Maseneta walifanya si ya jinai, ni makosa madogo ambayo wangeeza kupewa bondi ili waweze kuja mahakamani siku ambayo polisi watakuwa tayari kuwashtaki.

Bi. Naibu Spika, tunaunga mkono Hoja hii ya kuahirishwa kikao cha leo. Hii ni kwa sababu mambo haya yaliyo kinyume na sheria na uhuru wa demokrasia. Demokrasia inasema kwamba mwakilishi lazima apewe nafasi ya kutoa maoni yake ya kuunga au kutounga mkono Mswada au Hoja iliyo mbele ya Bunge bila kutishwa kwa njia yoyote.

Ikiwa Maseneta wako tayari kuja Bungeni na wanaweza kuzuiliwa na polisi katika nyumba zao, hiyo ina maana kuwa hatuna uhuru wa demokrasia hapa nchini. Uhuru wa demokrasia si kura tu kila baada ya miaka tano. Wakati mwingine kura hiyo zinaibiwa na watu hawana pahali pa kuenda kudai haki zao.

Uhuru wa demokrasia ni kuwa yule mwakilishi apewe nafasi na uwezo wa kuweza kuhudhuria Bunge na kujadili Miswada ambayo inayowasilishwa bila kushurutishwa kwa njia yoyote. Kitendo ambacho tumeona leo ni kuwa hakuna uhuru wa demokrasia katika Bunge letu.

Bi Naibu wa Spika, sisi kama Maseneta tuna haki ya kuunga mkono upande wowote ambao tunataka kuunga. Watu wasitishane kuwa tunaenda kinyume na msimamo wa chama. Chama ni nguo tu tunayovaa na kisha tunaivua. Lazima tupewe uhuru wetu kama Maseneta kujadili Miswada katika Bunge vile ambavyo tunapenda.

Bi Naibu Spika, kuahirishwa kwa Hoja hii kutatupa fursa sisi kama Maseneta kukaa chini tena ili tuweze kuwa na mwafaka wa kuweza kusonga mbele. Haya mambo ya kuvutana kila mara haitatusaidia kwa sababu tunalaumiana wakati wale ambao wana uwezo wa kusuluhisha mambo haya na kuongeza pesa katika kaunti zetu wamekaa raha kustarehe katika ofisi zao.

Asante, Bi. Naibu Spika.

Sen. Halake: Thank you, Madam Deputy Speaker. I thank you for giving me this opportunity to contribute to this debate.

For the last few sittings, I have been sitting quietly listening to the debate and I am in awe of some of the great orations by my colleagues. Sometimes great orations do not only capture the truth of the time or the debate, but they also capture the big lies.

There are many things that I am saddened with when people stand in this House, speak untruths and promote dishonest positions and think the citizens of this country are fools. If there is one place with intelligent people, it is the +254, as the youths of this country say.

I stand to support the adjournment Motion and say that what has been done to our colleagues is unacceptable. We condemn it in the highest and the toughest language possible.

Madam Deputy Speaker, allow me to go to a confession by German Lutheran pastor Martin Niemöller, it has been said over and over on this space. He said-

“First they came for the socialists, and I did not speak out - because I was not a socialist.

Then they came for the trade unionists, and I did not speak out - because I was not a trade unionist.

Then they came for the Jews, and I did not speak out - because I was not a Jew.

Then they came for me and there was no one left to speak for me.”

They have come for Sen. Malalah. Last week, there was a talk about Sen. Sakaja. There will be a time when there will be nobody left for us or for me.

I am coming here to talk about loyalty. We, nominated Senators, have been accused of being disloyal or disobedient. That is furthest from the truth. The kind of obedience and loyalty that is borne of fear and self-preservation is not loyalty at all. I do not subscribe to that kind of loyalty.

Today, I stand here more loyal than the Government of Kenya, the President of the Republic of Kenya and my party leader more than anybody else and my track record shows it. I am a lucky person because my party leader does not just inspire obedience and demand it. This is because he knows the fallacy of forced and narrow obedience that is borne of self-interest and self-preservation.

My party leader knows that great leaders do not focus on those, it is the bad leaders that focus of these things. The good leaders inspire principled behaviour from their people and that is what my party leader supports in me. Therefore, I can stand here without fear of persecution that I support the Motion to adjourn. I support the immediate release of my colleagues and this country is given the rightful leadership it deserves.

They say that the best value in a leader is courage for it ensures all other values. This House needs to be courageous today and do the right thing. I have listened to people that I adored, looked up to and who I loved to serve, who are about to become monsters of Kenyan history. They were yesterday’s angels and freedom fighters, but history will judge them so harshly. They will become monsters of hindsight of history.

I refuse to become one of the monsters of history in this country. I stand with the people of Kenya, the people of Isiolo, Mandera and Kiambu too because when

discrimination or injustice is not systemic, tomorrow it will be the people of Kiambu who will be crying the way the people of the 18 counties that are getting less money are crying today.

If an injustice is being made systemic for whatever reason, that sword will be turned on anybody who is party to that. The people of Kiambu deserve better and they do not need a formula that robs other people.

Before I sit because my time is running out, the 'one-shilling-one man-one vote' is not for the people, but for the self-interest and self-preservation of the political class that are trying to make people to think that it is for them. It is not for the citizens or the people that it is being purported to be, but for the political class---

The Deputy Speaker (Sen. (Prof.) Kamar): You time is up!

Hon. Senators, this is a Motion on adjournment. If we can concentrate on adjournment, two minutes is enough for a Member, so that we can vote on it.

The Senator of Kilifi, Sen. Madzayo Stewart Mwachiru has not spoken. I am only giving people who have not spoken since morning.

Sen. Madzayo: Asante, Bi. Naibu Spika. Ni vizuri kuwa umetamka majina yangu yote matatu.

Kwanza, nataka kumshukuru baba yangu, Seneta wetu wa Garissa kwa Ripoti yake aliyoleta hapa na matokeo yalivyokuwa katita mkutano wake. Jambo la pili ni kwamba historia itachukuwa mkondo wake hivi leo wala si kesho katika uamuzi ambao tutaufanya hapa.

Mimi naunga mkono kuhairisha Hoja hii kwa sababu ina madhara yake ikiwa tutaendelea bila wale Seneta wenzetu watatu kuwa ndani ya Bunge hili la Seneti ili kupiga kura. Kuna Maseneta 47 waliochaguliwa katika Kenya. Maseneta watatu wasipokuwepo, ni lazima waweze kueleza katika kaunti zao.

Hivi sasa, tuko na ndugu yetu, Seneta wa Samburu, Sen. (Dkt.) Lelegwe, Seneta wa Kakamega, Sen. Malalah na Sen. (Dkt.) Christopher Langat wa Bomet ambao kwa sasa wako katika magari wakielekea katika vituo vya polisi. Hatimaye hapo kesho, pengine watafikishwa mahakamani au watalazimishwa kuandika ripoti za uongo.

Martin Luther King alisifika sana kwa kupigania haki za binadamu huko Marekani. Alisema kwamba rafiki anajulikana wakati wa shida lakini wala si wakati wa starehe. Kama uko na rafiki ambaye anakutambua wakati wa starehe, huyo si rafiki. Akikutambua ukiwa na shida, huyo ndiye rafiki wa dhati. Wakati umefika sasa. Tunaambiana hapa: Je, wewe ukifurahi mimi nikilia nikiwa ninaenda zangu kwetu, ni haki hiyo? Ikiwa unafurahi, nitamwambia ndugu yangu, Sen. Orengo, akuregelee. Sen. Orengo alisema kwamba Serikali ambazo tunaziweka sisi ndiyo huja baadaye zikatugeukia.

Kwa hivyo, wewe ndugu yangu, Sen. Poghisio, ikiwa wewe ni kinara katika upande wa walio wengi na ndugu yangu, Sen. Kang'ata, ambaye nampenda sana, uko na historia ya kuitengeneza hivi leo. Ukubaliane nasi ya kwamba tuahirishe mpaka wale Maseneta wenzako wawe hapa.

Kuhairisha mjadala huu utaleta mafanikio kwa sababu watu husema kwamba ukifanikiwa, unakuwa na mama wengi. Ikiwa hautafanikiwa, utaanguka na kuwa yatima. Wazungu husema, *'success has many mothers, but if you are a failure, you are an orphan.'* Wakati huu sasa ndio wakusema kama sisi, hapa tuko na *many mothers* ama sisi hapa ni *orphans*. Kenya ni nchi moja na lazima ibaki hivyo.

The Deputy Speaker (Sen. (Prof.) Kamar): Your time is up!

Sen. Iman.

Sen. Iman: Thank you, Madam Deputy Speaker, for giving me this opportunity to join my colleagues and to support the Motion for adjournment and call for the release of three Senators who were arrested. Up to now, we do not know why they were arrested. The three Senators were elected by their people and have the responsibility to be there for their people.

Madam Deputy Speaker, I will not allow the intimidation that the Nominated Senators are going through. I have been receiving calls and told that I should not be seen in the corridors of the Senate. It is so unfortunate.

Allow me to quote an American author called, Og Mandino, who said:

"I am a lion and I refuse to talk, to walk and to sleep with the sheep. I will not hear those who weep and complain for their disease is contagious. Let me join the sheep. The slaughter house of the failure is not my destiny".

Thank you so much.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator. The last Senator on this side who has not spoken is Sen. Omogeni.

(Loud consultations)

I am told that he stood on a point of order.

Hon. Senators, this is a Motion for adjournment. We will still debate our own Motion. Let us close this one so that we can come back.

Sen. Omogeni: Thank you, Madam Deputy Speaker, for giving me this opportunity. I want to go on record as supporting this Motion for adjournment.

I want to look at Sen. Kang'ata and give graphic events of what has happened to your colleagues. If you are a Christian, you will be attentive and listen.

I have just spoken to Sen. (Dr.) Lelegwe who has just arrived in Samburu. He has gone through a very horrifying experience. In these times, when we are facing the threat of COVID-19, your colleague, whom I am sure you love, Sen. Kang'ata, because you are a Christian, was sandwiched in a vehicle with four police officers, who were not wearing masks and were coughing all the way to Samburu.

As you speak here, you are telling us to proceed with this business of House, your own colleague has been tormented and we do not know what will be the status of his health tomorrow.

I am empathetic to colleagues who face distress. I have been to your home twice. When you lost your father despite the fact that you are from Jubilee Party, I was there to

mourn with you. When you lost your dear mother, because of how mothers are close to their sons, I was there to mourn with you.

Sen. Kang'ata, I want to tell you that I am standing with my three colleagues, not because they belong to Orange Democratic Movement (ODM), but because I do not identify with the injustice that is being meted against them.

(Applause)

I want to tell you, Sen. Kang'ata, that I was raised as a Christian. I will tell anybody, however ranking they are in the Government, that I can never while I am alive and breathing, support injustice.

I want to sit in this Senate and witness you and my friend, Sen. Poghiso, lobbying Senators and get the number that you require, that is, 25. Defeat me and I will retreat to Nyamira and say that I was given an opportunity to say something on their behalf, but the majority carried the day.

We should never, under any circumstances, behave like crocodiles, who shed tears when they are eating somebody.

(Applause)

We are human beings - Christians - and must accept that an injustice here, is injustice meted to all Kenyans wherever they are.

Madam Deputy Speaker, it is by the grace of God that Sen. Murkomen and I are alive. Police officers who were in three vehicles pushed the car that we were in when we were leaving Sen. Malalah's house because they wanted to block us from seeing the destination of Sen. Malalah. I think I survived because of the prayers that I had with my dear wife at 5.00 a.m. This is not a laughing matter. This is serious business.

You are a lawyer and you know that it is a misdemeanor for your three colleagues to be picked by police on trumped-up charges. If a Senator defies the COVID-19 regulations, the police can write to them, ask them to appear before a police station, bond them and ask them to appear before court the next day. You do not need to cause drama like the one that we have seen today. You are young and have a long journey to travel in your political career.

Sen. Kang'ata: On a point of order, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): What is your point of order, Sen. Kang'ata?

Sen. Kang'ata: Thank you, Madam Deputy Speaker. I take this opportunity to express my sympathy to our colleagues---

(Several Senators spoke off record)

Yes, kindly allow me. Is it in order for my colleague, Senior Counsel, to seem like he is addressing me? He is somehow giving some implications to my personal character. I want that clarification. He should be addressing the House and not me. I have nothing to do with this.

The Deputy Speaker (Sen. (Prof.) Kamar): He should not be addressing the House, but the Speaker.

Sen. Kang'ata: Madam Deputy Speaker, I urge my colleague not to mention my name. He should address everyone who is with us.

The Deputy Speaker (Sen. (Prof.) Kamar): Point taken, Sen. Kang'ata. Hon. Senator, always remember to address the Chair.

Sen. Omogeni: Madam Deputy Speaker, some of our colleagues here have gone through the pain of highhandedness from the Government of the day. There are Senators in this House who know how painful intolerance can be. The Senate Majority Leader, Sen. Poghisio, who I started reading about when I was 18 years old, was expelled by his party, KANU, in 1988 because he was fighting for the interest of the people of West Pokot. At that time, he was the Member of Parliament for Kacheliba Constituency. I told him last year when we were in London that I admire the courage with which he fought for the interest of his people.

We all have a constitutional right to advocate for the interest of our counties. That should not invite the Government of the day to prefer fabricated charges against us. We cannot sit here and say that it is business as usual. It cannot be.

I am requesting my colleagues, Hon. Senators, seated here today that we have an opportunity to send a strong message to the Government. If they want us to pass business, the best option is to lobby us and not to arrest us in order for us not to appear in this House to cast our votes.

I support the Motion by Sen. (Prof.) Kindiki that this House adjourns until our three colleagues; Sen. (Dr.) Langat, Sen. (Dr.) Lelegwe and Sen. Malalah are produced before us.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, I will only give chance to Sen. Haji.

(Sen. Haji spoke off record)

Hon. Senators were concerned that I had ignored you, but you had told me that you would not want to talk now.

(Question, that the debate be now adjourned, put)

Hon. Senators, we are going to vote. We will ask the Members who are in the other Chamber to come forward. We will use the two systems for us to move fast. Can we have the screen for those who have their cards?

I direct that the Division Bell be rung for two minutes.

(The Division Bell was rung)

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, the bell has stopped ringing. You can now take your seats.

Hon. Senators, please walk in.

*(The Members from the extended Chamber
were allowed into the Chamber to vote)*

The screens are ready. You can start voting. It is electronic voting for those who were in here. Those who were in the extended Chamber will vote as assisted voters. Can we start?

(The Senators proceeded to vote)

The Deputy Speaker (Sen. (Prof.) Kamar): You may start voting now.

(Voting in progress)

(Several Senators entered into the Chamber)

Those who have come from the extended Chamber to move forward. You will vote as “assisted voters”. The clerks are ready for you.

Sorry, please hold on because the system has a problem. It will be fast if we vote electronically. That is why we allowed both systems.

Hon. Senators, 32 Members have voted successfully and the printout is out. So, you can sign.

(Loud consultations)

Order, hon. Members! Please consult in low tones.

We used the machines. Some people have succeeded, but some have not. If you have not succeeded, please come and tick against your name in front here.

*(Several Senators walked to the Clerks-at-the-Table
and registered their votes)*

Hon. Senators, please observe social distancing. Make sure you have your mask on and keep distance from your colleague.

Hon. Senators, if you have voted, please take your seats. There is no lobbying or campaigning. Please vote and take your seats. Some Members have voted, but they are still there. If you have voted, please go and sit down.

(Sen. Kang'ata spoke off record)

Sen. Kang'ata, we are not doing any campaign here.

(Voting in progress)

Order! Hon. Senators, I do not understand who is sitting there. Let us move and allow only Sen. Khaniri and Sen. Kang'ata to stand there.

Most of us are standing here and that is not correct. Before the clerks continue, I want everybody else to sit. If you have voted, please go and sit. Please, observe social distancing even if you are on the queue. Sen. (Eng.) Hargura, we need you after this. I know they have not voted, but that line seems to be too congested also.

Sen. Kang'ata, put on your mask, please. Sit if you have voted. It helps. Let us respect each other. Senators have a right to vote if electronic voting did not work.

(Voting in progress)

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, if you have voted electronically, please check. We are receiving errors already. If you have checked and voted, please leave the desk.

(Loud consultations)

Sen. Kang'ata and Sen. Khaniri, your job is to observe and not to campaign.

Sen. Khaniri: He is cajoling people to vote in a particular way.

The Deputy Speaker (Sen. (Prof.) Kamar): Can everybody else move from the desk, except the two people? We are having problems of intimidation when you have too many people crowding. Why does everybody want to know what other Members voted for?

(Voting in progress)

Hon. Senators, can you stop the process? We want the Tellers only; only two people. Can the rest of the Senators take their seats, please? It is also partly intimidating when you want to know the way people have voted. Please move away from the desk.

I allowed the Members who abstained to now vote in the direction they want. There were two abstentions. In case the other one was also an error, you have a right to vote. Allow the two Tellers and the Clerks to count for us.

(Loud consultations)

Hon. Senators, please take your seats. If you came from the other Chamber, you may go back after your cast your vote.

(Sen. Murkomen stood up in his place)

Order, Sen. Murkomen! Can you allow Sen. Khaniri to do his work? The Clerk will call you if you are not okay. Please take your seat.

(Voting in progress)

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

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

(Voting in progress)

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Members. There is a problem of social distancing here.

(Voting in progress)

Hon. Senators, take your seats.

DIVISION

ELECTRONIC AND ROLL CALL VOTING

*(Question, that the debate be now adjourned,
put and the Senate proceeded to vote)*

AYES: Sen. (Dr.) Ali; Sen. Boy; Sen. Cheruiyot; Sen. Dullo; Sen. (Prof.) Sen. Ekal; Sen. Faki; Sen. Farhiya; Sen. Haji; Sen. Halake; Sen. Iman; Sen. (Dr.) Kabaka; Sen. Khaniri; Sen. (Prof.) Kindiki; Sen. Linturi; Sen. Madzayo; Sen. (Eng.) Mahamud; Sen. Murkomen; Sen. Mutula Kilonzo Jnr.; Sen. Mwaruma; Sen. Olekina; Sen. Omanga; Sen. Omogeni; Sen. Sakaja; Sen. Wambua; Sen. (Rev.) Waqo; Sen. Wario; Sen. (Dr.) Zani and Sen. Zawadi.

Teller of the Ayes: Sen. Khaniri.

NOES: Sen. Chebeni; Sen. (Prof.) Kamar; Sen. Kang'ata; Sen. Kibiru; Sen. Kihika; Sen. Kinyua; Sen. (Eng.) Maina; Sen. Kwamboka; Sen. Loiptip; Sen. M. Kajwang'; Sen. (Dr.) Mbito; Sen. (Dr.) Milgo; Sen. Moi; Sen. Mpaayei; Sen. (Dr.) Musuruve; Sen. Mwangi; Sen. (Dr.) Mwaura; Sen. Ndwiga; Sen. Nyamunga; Sen. (Dr.)

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Ochillo-Ayacko; Sen. (Prof.) Ongeru; Sen. Orengo; Sen. Outa; Sen. Pareno; Sen. Poghisio; Sen. Shiyonga; Sen. Wamatangi; Sen. Were and Sen. Wetangula.

Teller of the Noes: Sen. Kang'ata

The Speaker (Sen. Hon. Lusaka): Hon. Senators, the results of the Division are as follows-

AYES: 29

NOES: 29

ABSTENTIONS: Nil

(Question negatived by 29 to 28 votes)

This takes us to Article 122 (2) (a) which states-

“On a question proposed for decision in either House-

(a) the speaker has no vote; and

(b) in the case of a tie, the question is lost.”

This means the question to adjourn has been lost and, therefore, we proceed to the next Order.

(Loud consultations)

Order, Senators! Please observe social distancing. You will have to remove your cards so that I am able to---

Members, let us now move on to Sen. Petronila Were's amendment.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Sakaja?

Sen. Sakaja: Mr. Speaker, Sir, the vote has been taken and we accept. However, there is a question that was raised in this House. You have heard the content and feeling of all the Members from both sides about the true intention of the happenings of the last 24 hours. Standing Order No.78 is very clear. There was a question that was raised earlier of correspondence that Sen. (Prof.) Abraham Kithure Kindiki, an alumnus of a great school called the Duke of York, later Christened Lenana School said---

An hon. Senator: On a point of order, Mr. Speaker, Sir.

Sen. Sakaja: I am on a point of order.

The Speaker (Sen. Hon. Lusaka): Order, he is on a point of order.

(Loud consultations)

Order Members!

Sen. Sakaja: Mr. Speaker, Sir, I know what they are guarding. Last time we said some people ran away with the ball. When the goal is being scored, you run with the ball and then you say: “I withdraw those comments of the referee training with one team.” That is not here right now.

My brother, Sen. Malalah Wakhungu, wrote a letter withdrawing his delegation. My other brother, the Senator for---

An hon. Senator: On a point of order.

Sen. Sakaja: I am on a point of order. You can raise a point of order at any point. We have also been in this House, and been Members of both Houses.

If you look at the videos, the Senator for Bomet, Sen. Dr. Langat has just been received so emotionally by his wife and children in Bomet. He said, as the elected Senator for Bomet County, that he has withdrawn his vote and his delegation.

Mr. Speaker, Sir, you must rule now whether our Standing Orders have changed. I have a delegation of seven Members. In my letter, the first person who votes if I am not there is Sen. Farhiya. When they arrest me tomorrow - I have just been informed I am on the list - it is okay---- If Sen. Farhiya is not there, it is Sen. Beth Mugo. If Sen. Beth Mugo is not there, it is Sen. Millicent Omanga; "*Mama Miradi*". If Sen. Omanga is not there, there is no vote.

Today, however, I can re-delegate it. I can say if I am not there, there is no one delegated to vote on my behalf. Those are the rules. Therefore, as we proceed on Sen. Were's---

I am raising this because we are discussing. You have ruled that---

(Sen. Murkomen spoke off the record)

The Speaker (Sen. Hon. Lusaka): Order, Sen. Murkomen!

Sen. Sakaja: Mr. Speaker, Sir, you have read out the next Order, which is Sen. Were's amendment, which will be voted on. We want to know who will vote on behalf of Sen. Malalah and Sen. (Dr.) Langat. I humbly ask that you give us direction on this because the last time people ran with the ball. Now, they have run with the strikers. Just tell us who will make the decision on behalf of those two counties, so that we determine how we will move ahead as a House. We have rules. Our rules are not suggestions. Our rules are the Standing Orders.

I humbly ask that without further debate, that you make that determination. We are sure you will make the right determination.

The Speaker (Sen. Hon. Lusaka): Sen. Kang'ata, what is your point of order?

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

Sen. Kang'ata: Mr. Speaker, Sir, I rise pursuant to Standing Order No.31(3) and (4) to move-

THAT, the Senate does resolve to extend its sitting time until the closure of business.

I ask Sen. Orenge to second.

I thank you.

(Loud consultations)

(Interruption of Debate on Procedural Motion)

The Speaker (Sen. Hon. Lusaka): Order, Senators! What is your point of order, Sen. Murkomen?

Sen. Murkomen: Thank you, Mr. Speaker, Sir. Again, this morning, Sen. Orengo said that we must move sequentially. There was a point of order raised by Sen. Sakaja; a very important one on the voting capacity of the Members of delegations of Bomet and Kakamega counties.

(Sen. Orengo spoke off the record)

Sen. Orengo, you cannot have your cake and eat it. You had your time at my age. Allow us to also have our time. Do not interrupt us.

The Senate Minority Leader (Sen. Orengo): On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Order, Senators! What is your point of order? Order, Senate Minority Leader!

Sen. Murkomen: I am on a point of order!

The Speaker (Hon. Lusaka): He is on a point of order. Order, Sen. Orengo!

Sen. Murkomen: Sen. Orengo, please, you have made me a point of reference in this House 100 times.

The Speaker (Hon. Lusaka): Sen. Murkomen, focus on your point of order.

Sen. Murkomen: Mr. Speaker, Sir, I am focusing on what I came to do here. In my contributions earlier on, I stated that the withdrawal of three Senators has had consequences on the Motion that we have just voted on. It must be clear to this House before we progress that the letters that were written by Sen. (Dr.) Langat and Sen. Malalah, which were received in your office, must be recognized to determine whether the motive of arresting the three Senators had something to do with delegating their vote and then someone else will vote against their will. We have debated this in this House.

Mr. Speaker, Sir, those Senators are very clear. Sen. (Dr.) Langat actually wrote a second letter after writing one in June. He repeated another one today asking the Speaker that no Member of his delegation can vote on his behalf. Why is this important? I know that Sen. Orengo, off the record, was trying to say that we are not yet there, but we are there because we are now moving to a Motion that concerns counties.

The Speaker (Hon. Lusaka): What is your point of order?

Sen. Murkomen: My point of order is that, we are requesting you to first make the ruling on the substantial question of whether Sen. (Dr.) Milgo, Sen. Shiyonga or Sen. (Dr.) Musuruve will vote on behalf of Sen. Malalah and Sen. (Dr.) Langat.

*(The Speaker (Hon. Lusaka) consulted
the Clerk-at-the-Table)*

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I need your attention. This event happened in this Senate in the last Session. When Sen. Obure delegated his vote, a Senator who used to sit at the back where Sen. Kihika is now, sneaked in after the bell. We then raised a point of order at the time and requested for a determination. At that point, it was already too late to raise that objection.

There was a second Senator, Sen. Leshore, who used to sit here. Sen. Leshore left the Chamber and delegated his vote by Short Message Service (SMS) to Sen. Lesuada. We raised a point of order at the time, but the Speaker ruled us out of order because we raised the point of order after the fact.

The Speaker (Hon. Lusaka): Order, Sen. Mutula Kilonzo Jnr. I have to cut you short because the Motion that has been moved to extend the sitting time is time-bound. We will come back to the point of order. If we do not extend, then we will not discuss.

(Resumption of Debate on Procedural Motion)

Who is seconding?

The Senate Minority Leader (Sen. Orenge): Mr. Speaker, Sir, in seconding this Motion, let us not debate in fear. Probably we are going on the same path, but let us do things correctly and sequentially. The question of whether some delegation here has a right to vote is one that we will deal with later. However, a Motion has been moved and it has not been seconded or proposed and you want to deal with another Order in the middle which has not been called. You allowed Sen. Kang'ata to move the Motion and before the seconder was called upon, I was not allowed to second.

Mr. Speaker, Sir, all I am saying is that this is a Procedural Motion. The issues that are being raised on whether a Member of a delegation without designation or whether there has been a revocation is an important question that we have deal with. Some people have evidence that we do not have yet.

I beg to second the Motion that time be extended then we can allow debate on this pertinent question. I am just one person from Siaya County. I would like to know what happens in the circumstance that I am not here and whether I can appoint somebody to vote on my behalf. This is a Procedural Motion, so I urge you to put the question so we can vote on it.

Hon. Senators: Put the question!

The Speaker (Hon. Lusaka): Order, Senators! Do not advise the Speaker on what to do. Let us have order.

(Question proposed)

Hon. Senators: Put the question!

What is your point of order, Sen. Cheruiyot?

(Sen. Murkomen consulted loudly)

The Speaker (Hon. Lusaka): Sen. Murkomen, you are not on Floor of the House. Proceed, Sen. Cheruiyot.

Sen. Cheruiyot: Mr. Speaker, Sir, what you are about to do has never happened in any Commonwealth Parliament in the world. Any time the Speaker proposes a question he or she must look up the screen to see if there are Members who want to contribute. Many of us want to contribute to this Motion. Allow us the privilege to contribute before you put the question.

The Speaker (Hon. Lusaka): Hon. Senators, you have to remove your cards so that I know who wants to contribute to this Motion.

Proceed, Sen. Khaniri.

Sen. Khaniri: Mr. Speaker, Sir, I rise to vehemently oppose the extension of time as moved by the Senate Minority Leader.

(Loud consultations)

This is now becoming a circus.

The Speaker (Hon. Lusaka): Order, Hon. Senators!

Sen. Khaniri: Mr. Speaker, Sir, I rise to oppose the Motion for extension for the simple reason that we had earlier adjourned because of our three colleagues who are incarcerated. The reasons we gave is that the matter before the Senate today on allocation of revenue to counties is such an important matter to the House. We also said we cannot proceed with that Motion in the absence of our colleagues who would have wished to be here and woke up early in the morning to be with us. However, because of other forces out there, they are not here with us.

They are not here with us because they have been arrested on some flimsy charges that areailable. I went to Sen. Malalah's house and we tried to plead with the officers of the Directorate of Criminal Investigations (DCI) that were there, that Sen. Malalah has a very important role to play in the Senate today. We asked that they allow him to go to the Senate and he will present himself tomorrow or after the sitting. That was rejected.

You can see that the whole essence of arresting these three Senators is coming up very clearly. If the Government of the day wants its Motion to go through - because we know that it is supported by the Government of the day - there are better ways of doing it. You can convince people, but you cannot throw people in jail so that you pass the Motion when they are in jail because they are not in a position to vote. This is wrong and unacceptable. We must oppose this to the end and insist that we can only vote on this Motion when our colleagues are released.

Mr. Speaker, Sir, I vehemently oppose.

The Speaker (Hon. Lusaka): Sen. Wamatangi.

(Loud consultations)

Order, Sen. Kang'ata! Order, Senators! The world is watching you.

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

The Speaker (Hon. Lusaka): What is your point of order, Sen. Wambua?

Sen. Wambua: Mr. Speaker, Sir, I draw your attention to Standing Order No.116. Since morning, the Senator for Murang'a County has disrupted debate over and over again. Can you invoke the provisions of Standing Order No.116 and bring it to bear on the Senator for Murang'a?

(Applause)

The matters that we are discussing here are serious, and the way he has been behaving since morning, I implore the Chair to invoke the provisions of Standing Order No.116, so that it serves as a lesson to him and other Senators.

The Speaker (Hon. Lusaka): Order, Senators! I know that our sugar levels may be going down, but let us try to maintain our integrity. Sen. Kang'ata, I caution you to please conduct yourself in a manner befitting a Senator, so that we are able to conduct this business to the end.

Sen. Wamatangi: Mr. Speaker Sir, there is nothing that would be more controversial--- I do not want to call it deceitful, because I want to use good language. With the questions that have been put to you for determination and the importance of it, which was raised by the same Senators who are saying that you should not extend time and have this matter discussed, then what are we saying? Is it a cat and mouse game? What kind of ball are we playing?

We have to be sincere. People must be sincere. There are issues that have been put here for determination. When people come to equity, they must do so with clean hands. When we say that we want to have those matters discussed---

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators!

Sen. Wamatangi: We have to ensure that happens. Give a determination. We need to extend time. Put all these matters to rest, and let this House go on recess when all the business in the Order Paper before us is prosecuted.

The Speaker (Hon. Lusaka): Sen. Olekina?

Sen. Olekina: Mr. Speaker, Sir, this is a very interesting time. The issue at hand affects 47 counties. Every county, regardless of the number of its people, is represented by one Senator. For example, Lamu County which has a population of 101,000 people has one Senator. Nairobi which has a population of four million has one Senator.

This is a matter which cannot be played around with and requires the Senator of that county to be here so that he can fulfil his constitutional mandate. This is the only thing that a Senator can stand up and say that I have fulfilled the mandate. Therefore, it will be unconstitutional for us to continue discussing issues that relate to Samburu,

Bomet and Kakamega counties when their Senators are not here. I have looked at the Standing Orders. They are very clear.

Mr. Speaker, Sir, you said that our sugar levels are going down because we have been here since morning. We have senior citizens here, Sen. Haji and Sen. Wako, the Attorney-General *emeritus* is an old man. The issue of COVID-19 is also serious.

Last week I raised the issue of the Senate Business Committee (SBC) having physical meetings. I received inboxes telling me *ni kubaya*. Those are the words. Why are we pretending? Are we saying that COVID-19 is not real? Are we saying that we can sit here the whole day from morning to evening?

The Senate Majority Leader (Sen. Poghisio): Put on your mask.

Sen. Olekina: Thank you, Majority Leader for reminding me to protect myself. I am glad you raised it. I was waiting for you to do so. If there is anything you have done today which makes me happy is reminding me to protect myself.

Mr. Speaker, Sir, I want to beseech you to listen to this Hon. Members. We are sick and tired of getting into a fight with the Executive. We should be sitting here to make our decisions. Let us not allow people from outside to control us. We are being controlled by remote control. I want to oppose the extension of time because we have been playing musical chairs here. We come here and talk about one Kenya, but there are some people who have an imaginary view of what one Kenya is.

When I was seated, it dawned on me and I wished I was there when people were writing the Constitution in Naivasha. I was in America then. I would have made sure that there was a provision that allows counties to secede if they so desired. We have 47 delegations in this House. All of them must be here to determine the issue of revenue.

If we try to rush things, what will happen is that we will deny the people of Kakamega and Bomet counties their right. We will deny the poor people of Samburu their right who for the last 57 years have been treated as if they do not exist. Today, their Senator was arrested on flimsy charges.

I wish they could tell us that they had gone to arrest the people who are stealing money of the sick people or the so called COVID-19 millionaires. They should not be arresting hon. Senators. I want to request my brothers and sisters here that, just the way they voted for us to continue and not adjourn, to do so, so that we have another day to address this issue when our colleagues are here. We want to get their wisdom and hear why they support or oppose. However, when we rush things, we will get nothing.

This will not help this country, the Executive and neither will it help the Judiciary. We must vote and decide on issues when the 47 delegations are here.

Mr. Speaker, Sir, you have been invited to make a Ruling on who should vote for Bomet and Kakamega counties. However, before we could contribute on that, here comes the distinguished Senator, the Majority Whip, who decides; “No, let us extend time.”

We need to think. Hon. colleagues, I beseech you, that we should think about Kenya when we are not here because we think as if even if today I give my brother Sen. Linturi Kshs1 billion and tell him: “Kula hii leo.” He will not finish it. Even if you had

the magic and you are able to consume all that money, you know where it will go, to waste.

On a very serious matter, I want to remind all of us that we are here because of our counties. We are not here because of a few individuals. Some of us have been ranting out there, but we are not afraid to stand here and tell people that what goes around comes around. It will come back again to bite you so dearly. I love what Sen. Kasanga said today; the Bible talks about a curse of four generations. As we sit down here today to determine whether to extend debate or not, I want you to remember one thing, we are also human beings and sometimes we get to a position where all you want to see is justice. It is that time now. Kenyans have been oppressed for a very long time.

I want to assure Kenyans out there and particularly the residents of Bomet, Kakamega and Samburu counties, that as I stand here, I will defend their rights. I will also defend the rights of their Senators to be here. I think it was out of a genius that only the elected can vote on matters affecting counties.

The Speaker (Hon. Lusaka): Conclude, Sen. Ledama so that we give others time.

Sen. Olekina: Mr. Speaker, Sir, thank you for your attention and for giving me more time. I vehemently oppose this issue of extending time. Let us go home, sit down and---

My Leader, Sen. Orenge, always tells me that let us talk about it, *pole pole*. My father, Sen. Haji always tells me: "*pole pole kijana wangu*". *Na pia mimi nawambia, pole pole*.

The Speaker (Hon. Lusaka): Let us have Sen. Kinyua then Sen. (Prof.) Kindiki. Where is Sen. Kinyua?

Hon. Senators: He is not here.

The Speaker (Hon. Lusaka): Sen. (Prof.) Kindiki, proceed.

Sen. (Prof.) Kindiki: Thank you, Mr. Speaker, Sir. I commend you for your patience today.

I will go straight to saying the following; whichever way the request to proceed with business goes, that is neither here nor there. What I want to do is under Standing Order No.78 and based on the Standing Order raised by my brother and junior, Sen. Sakaja, from the Duke of York School. I would like to table, for the record, I promised to do so, but I did not. I table the following-

- (1) The letter of Sen. Cleophas Malala, Member of Parliament and Senator for Kakamega County, Deputy Minority Leader, received today in your office; and,
- (2) A letter from Sen. (Dr.) Lang'at, received in your office today.

(Sen. (Prof.) Kindiki laid the documents on the Table)

The Speaker (Hon. Lusaka): Majority Leader, have you been overtaken by events?

(Sen. Poghisio spoke off the record)

You are speaking off the microphone.

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker, Sir, it is okay. Sen. (Prof.) Kindiki has tabled the documents in the middle of a different Motion. He has sneaked them in and I do not think that they are properly put before you.

The Speaker (Hon. Lusaka): Order. You can table anything in the course of your debate to support your argument. I do not think that he is out of order.

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

The Speaker (Hon. Lusaka): What is your point of order, Sen. Wamatangi?

Sen. Wamatangi: Mr. Speaker, Sir, I have a lot of respect for my colleague, Sen. (Prof.) Kindiki, and you have correctly ruled that a Senator can table a document in the course of a debate. However, there is something that he needs to substantiate. Sen. (Prof.) Kindiki intends to table documents that are addressed to you from the relevant Senators, but he should also present a letter authorizing him to act on behalf of those Senators.

Sen. (Prof.) Kindiki is the Senator for Tharaka Nithi County. I do not have a problem with you admitting the documents. However, to reach the threshold of proof and authenticity, it will be important that those Senators notify you that they have asked him to bring those documents. How can you and this House authenticate that those letters and instructions are from those Senators?

The Speaker (Hon. Lusaka): Order, Senator. I will be making a ruling on that. I want to confirm that I have received the letters.

Hon. Senators, we have to make a decision by 6.30 p.m. I seek your indulgence that I put the question for us to vote. That will help us to know if we will be proceeding or not.

We will vote by roll call because it is faster. I direct that the Division Bell be rung for one minute.

(The Division Bell was rung)

Hon. Senators, we are going to vote. So, take your seats. Let us observe social distance.

Let us have the Tellers for both sides. We have Sen. Kibiru for the “Ayes” and Sen. (Dr.) Kabaka for the “Noes”.

(Voting in progress)

The Speaker (Hon. Lusaka): Do not crowd around. Let us observe some social distance. If you do not have a business there, please let us observe that.

(Voting in progress)

Hon. Senators, you may now take your seats.

DIVISION

ROLLCALL VOTING

(Question, that pursuant to Standing Order No.31(3)(a), the Sitting of the Senate be extended until conclusion of business appearing at Order No.2 put and the Senate proceeded to vote)

AYES: Sen. Chebeni; Sen. Cherargei; Sen. M. Kajwang'; Sen. (Prof.) Kamar; Sen. Kang'ata; Sen. Kibiru; Sen. Kihika; Sen. Kinyua; Sen. Kwamboka; Sen. Loititip; Sen. (Eng.) Maina; Sen. (Dr.) Mbito; Sen. (Dr.) Milgo; Sen. Moi; Sen. Mpaayei; Sen. (Dr.) Musuruve; Sen. Mwangi; Sen. (Dr.) Mwaura; Sen. Ndwiga; Sen. Nyamunga; Sen.(Dr.) Ochillo-Ayacko; Sen. (Prof.) Ongeru; Sen. Orengo; Sen. Outa; Sen. Pareno; Sen. Poghio; Sen. Shiyonga; Sen. Wako; Sen. Wamatangi; Sen. Were and Sen. Wetangula.

Teller of the Ayes: Sen. Kibiru.

NOES: Sen. (Dr.) Ali; Sen. Boy; Sen. Cheruiyot; Sen. Dullo; Sen. (Prof.) Ekal; Sen. Faki; Sen. Farhiya; Sen. Haji; Sen. Halake; Sen. Iman; Sen. (Dr.) Kabaka; Sen. Khaniri; Sen. (Prof.) Kindiki; Sen. Linturi; Sen. Madzayo; Sen. (Eng.) Mahamud; Sen. Murkomen; Sen. Mutula Kilonzo Jnr.; Sen. Mwaruma; Sen. Olekina; Sen. Omanga; Sen. Omogeni; Sen. Sakaja; Sen. Wambua; Sen. (Rev) Waqo; Sen. Wario, Sen. (Dr.) Zani and Sen. Zawadi.

Teller of the Noes: Sen. (Dr.) Kabaka.

ABSTENTIONS: Nil.

The Speaker (Hon. Lusaka): Hon. Senators, the results are as follows-

AYES: 31

NOES: 28

ABSTENTIONS: Nil.

The "Ayes" have it.

(Question carried by 31 votes to 28)

CONSIDERED RULING

VOTING BY COUNTY DELEGATIONS TO FOLLOW PROVISIONS OF CONSTITUTION AND STANDING ORDERS

The Speaker (Hon. Lusaka): Hon. Senators, I want to make a pronouncement on an issue brought to my attention, which requires my direction and ruling. I want to refer

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to the Constitution of Kenya and the Standing Orders. Article 123 on the Decisions of the Senate states-

“(1) On election, all the members of the Senate who were registered as voters in a particular county shall collectively constitute a single delegation for purposes of clause (4) and the member elected under Article 98 (1) (a) shall be the head of the delegation.

(2) When the Senate is to vote on any matter other than a Bill, the Speaker shall rule on whether the matter affects or does not affect counties.

(3) When the Senate votes on a matter that does not affect counties, each senator has one vote.

(4) Except as provided otherwise in this Constitution, in any matter in the Senate affecting counties—

(a) each county delegation shall have one vote to be cast on behalf of the county by the head of the county delegation or, in the absence of the head of the delegation, by another member of the delegation designated by the head of the delegation;

(b) the person who votes on behalf of a delegation shall determine whether or not to vote in support of, or against, the matter, after consulting the other members of the delegation; and

(c) the matter is carried only if it is supported by a majority of all the delegations.”

Hon. Senators, Standing Order No.78 (1) and (2)(a) states-

“On election, all Senators who were registered as voters in a particular county shall collectively constitute a single delegation for purposes of paragraph (2) and the Senator elected under Article 98 (1) (a) of the Constitution shall be the head of the delegation.

(2) Except as otherwise provided in the Constitution, in any matter in the Senate affecting counties—

(a) each county delegation shall have one vote to be cast on behalf of the county by the head of the county delegation or, in the absence of the head of the delegation, by another member of the delegation designated by the head of the delegation.”

Hon. Senators, I indicated that I have received two letters from Sen. (Dr.) Lang’at and Sen. Malalah. Having received the two letters, I have looked at the terms of reference when they wrote to designate these Members. In the references, they said they can withdraw the delegation. Therefore, given what the Constitution and the Standing Order say, which guide us, my hands are tied. There is nothing I can do, but say that we shall follow the Standing Orders and the Constitution of the Republic of Kenya.

Hon. Senators we are proceeding with the Motion. We will proceed with the amendments by Sen. Were.

What is your point of order, Sen. Wamatangi?

Sen. Wamatangi: On a point of order, Mr. Speaker, Sir. I am restrained because I have a lot of respect for the Chair. I would never challenge the Chair’s ruling. At your own time, I would like you to consider the issue of whether giving the power to designate

a member of the delegation equals to authority to deny a Member of the delegation to vote.

(Loud consultations)

Mr. Speaker, Sir, I have sought your intervention and you have permitted me to make my point.

The Speaker (Hon. Lusaka): I gave you a chance to speak, but do not challenge the ruling that I have made.

Sen. Wamatangi: I have only asked that at your own time, kindly give us clear guidance. I am the head of the Kiambu Delegation. I know that at any one time if there is a matter to be determined, I can designate a Member of my delegation. The question that requires your ruling is whether the power I have equals to denial of that Member. My answer is an emphatic “No”. I can designate the Member---

The Speaker (Hon. Lusaka): Order, Sen. Wamatangi!

Sen. Wamatangi: Mr. Speaker, Sir, what happens supposing I died tomorrow? Supposing a Member of a delegation dies tomorrow? I respect your ruling, but perhaps that is a matter that needs to be looked at before you guide this House.

(Sen. Murkomen consulted loudly)

I would like to tell Sen. Murkomen that I read the Constitution when I was younger than him.

The Speaker (Hon. Lusaka): Order, Senators!

(Loud consultations)

(The Speaker, (Hon. Lusaka) stood up on his feet)

Order, Senators! I am on my feet.

In my ruling, I stated that this is a House that is anchored on the Constitution and the Standing Orders, which have guided me in making that ruling. Let us proceed.

(Applause)

The Senate Minority Leader (Sen. Orengo): On a point of order, Mr. Speaker, Sir. I respect order and that you have made a ruling. When a Speaker makes a ruling, we have no recourse for an appeal. There is nobody above you. Unless there is a substantive Motion for you to review that decision, we will talk until tomorrow and nothing can happen. Earlier on, I said that I respect the Chair of the Speaker. When you make a ruling, whether we like it or not, it is the ruling. I may make a lot of noise, but will not succeed. I may or may not be happy, but that is the ruling of the Speaker.

(Resumption of Debate on Motion)

Mr. Speaker, Sir, in the circumstances, knowing what has transpired the whole day, and I am being very genuine--- In fact, I want to be judged from the first word that I uttered when this issue came before this House. At that time, Sen. Murkomen, who would never allow me to speak, actually supported me; that it was wrong for us to proceed to a debate without some kind of consensus.

Look at the figures - 29-29. If we continue to debate until midnight, I do not think we are going to achieve anything. I plead with you that we let this matter to rest. The first thing that should happen is that on Wednesday, Sen. Haji, the Chairperson of the Committee on National Security, Defence and Foreign Relations should hold those proceedings and report to the House.

I think we need another Special Sitting. In that Special Sitting, we are forced by circumstances to agree, whether we like it or not. I think we can agree. However, in the current circumstances, what I can say without fear of contradiction is that any further debate will be in futility.

You have made that ruling, and therefore, the Motion that is before the House is the one by Sen. Were, followed by Sen. Wamatangi, my Motion and Sen. Kibiru's Motion. The way we are divided, I do not think that we are going to see the light of day. I suggest that is the way we move.

The Speaker (Hon. Lusaka): Sen. Wetangula, Sen. Murkomen, then Sen. Kang'ata.

Sen. Wetangula: Mr. Speaker, Sir, thank you for the opportunity. Your interpretation and ruling based on the Constitution and the Standing Orders cannot be faulted. In fact, Sen. Murkomen, Sen. Orenge and others will recall the long protracted arguments we had about when to delegate and whether you can withdraw the delegation.

The Constitution is clear, and the words of the Standing Orders are lifted word for word from the Constitution. We agree with you that no amount of genius would have given you a different direction. However, I want us to appreciate that this House is irretrievably polarized because of this matter. We want to make a decision. We can make a decision and live with it, but we cannot make a decision and remain divided. This country needs us to hold it together.

Mr. Speaker, Sir, these Members can bear me out, and Sen. Orenge put it on record, that when we stood out in a *kamkunji* here, and we have come round to where we started--- I made a very candid proposal that a recess may have been necessary for us to find a common ground. For example, I have tremendous respect for Sen. Murkomen, who is my distinguished learned junior, but the manner in which he has rapidly become aggressive is worrying me. His level of aggression on the Floor---Sometimes when you degenerate into aggression, you may make or miss the point. However, when you debate soberly, things are different.

I want to urge the leadership of the House that this is yet another window to do what we did in the last Parliament. As it is, we have amendments by Sen. Were, Sen. Orengo, Sen. Wamatangi and Sen. Olekina, and it is already 7.00 p.m.

I want to urge that wisdom prevails; let us not be winners and losers. Let us be the Senate of the Republic of Kenya and find a ground that can take us to a direction that will help this country.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. Orengo wants to move it formally.

Sen. Sakaja: Mr. Speaker, Sir, a great man called Sir Francis Bacon once said- “Hope is a good breakfast, but a bad supper”

The process we have come through has led us here. I assure you that the Members – I do not want to say of my team, it is not mine – they know what we have been doing over the last few days.

(Sen. Orengo consulted other Senators)

Mr. Speaker, Sir, I wish Sen. Orengo would listen to me. There is no social distancing and the people around Sen. Orengo are highly suspected!

The Speaker (Hon. Lusaka): Kindly, observe social distancing.

Sen. Kang’ata and Sen. Mwaura, let Sen. Orengo listen to Sen. Sakaja.

Sen. Sakaja: I want to persuade you, Sen. Orengo. I want to ask Sen. Orengo and the rest of the Members that we are leaders of this country. Where we have reached, I strongly believe that it is possible for us to try and agree.

Whoever wanted to make a point has made a point. Whatever politics and whatever was being insinuated is done. The issue of those Members who were arrested, their votes are not counting now.

Mr. Speaker, Sir, I want to ask you, and I know Members will support that you give us 15 minutes’ break. I want to ask that you give us 15 minutes break to talk. I am confident that we can agree. If we do not, we will come back because we have extended the Sitting until 9.00 o’clock. Give us 15 minutes. Let us leave all the hearts of whatever political persuasion outside and let us give this country hope. It is possible and I am glad that Sen. Kang’ata and Sen. Orengo are agreeing.

As a mathematician, we do Veblen graphs. When you do probabilities, you say that you have two routes.

The Speaker (Hon. Lusaka): Sen. (Dr.) Zani, what is your point of order?

Let him finish because he is on a point of order.

Sen. Sakaja: In probabilities and statistics, when you draw a root diagram you have two parts. This part is asking us for 15 minutes and we can agree or not. The other part is asking us not to go and we will not agree. Why not try even if the probability is 25 per cent? Let us just try because we can persuade each other.

Mr. Speaker, Sir, I want you to use Standing Order No.1. I believe that with the wisdom in this House and the hearts of Kenyans, give us even 20 minutes. Let us come

back and say we did not agree. However, let us not have it that we did not try on this day, Monday 17th August 2020. That is my only request.

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir. Before I move my point of order, which I wanted to raise before Sen. Sakaja raised his, is it in order that every time this House adjourns and promises the county that we will meet to resolve, we never get to that point? If you had done this earlier, we would have never gotten to this point. This is time to plan and plot like the way we have seen being plotted on the Floor of this House this afternoon.

It is time we put our act together as we go on discussing. You can see that we are getting closer and closer to consensus. After all, if you look at the amendments, there is no such big difference. Can we put ourselves together and deliver to Kenyans?

Sen. Murkomen: Mr. Speaker, Sir, I want to thank my seniors; Senior Counsel James Orenge and Senior Counsel Wetangula. When Sen. Orenge stood to make this proposal outside here in a small *Kamukunji*, I was among the first people to agree.

If you read the HANSARD, when this process started, I am one of the leaders who said that from the experience of the first term, this thing is very divisive. In fact, I told my colleagues that this issue will not end in a day. Now, many of them are telling me behind here that they did not figure out what that would be. Those who will come to the next Senate and work on the Fourth Generation Formula will think it is easy, but it is not.

Mr. Speaker, Sir, I am in for any opportunity for us to have a conversation. I am in for any conversation that this House will have to make a final solution. Let me go on record because I have been accusing you of many things. I want to go on record to say that today you have not only stood for the Constitution, but for the welfare of the Members of this House.

(Applause)

They say, *Mgala muue na haki yake mpe*. Today, whatever problems that we had in the morning, making all the noise that we make, but in the evening, you have closed with a cleansing spirit that saves our brothers and makes them proud. One of them was driven in a police vehicle from Kitengela to Kakamega. Because of them and through the pain and suffering, this House must rise up to find a lasting solution. I have no problem.

If we go by way of Sen. Orenge's position, which he brought and that was supported by Sen. Wetangula, I have no issue. However, if it becomes better with what Sen. Sakaja suggested, we can have that break and come back here.

I can tell you that Sen. Sakaja is my friend and I believe in being a team player. When I became a Backbencher, I made up my mind that I will work and support those who are in leadership. Sen. Sakaja has been in leadership on this particular formula and I have been firmly behind him.

Mr. Speaker, Sir, I will listen to his position because of teamwork. If we are going to have a break, let us have it. However, I want to advise my brother on one thing

from the way we have been ‘zungushwad’; the way I did not sleep in Nyayo Estate. It is not a joke. This is from the time I drove so fast from my house at 9.00 p.m. up to the time I went back at 5.00 a.m. to prepare to come to this Sitting. I am surprised that I am not even as fatigued as I thought I would be. However, to be told square-root this versus that and this other one--- I suppose that with this tiredness, we might not be able to crush everything. Nonetheless, I am giving a chance to any position that this House might decide.

Seeing how people are fatigued, it will be of great benefit that we take a longer time to make this decision.

The Speaker (Hon. Lusaka): Sen. Kang’ata then I will give direction on this.

Sen. Kang’ata: Thank you, Mr. Speaker, Sir. In the entire debate on this issue, we have been on different sides with my brother and very good friend, Hon. Sakaja. However, today I stand to support his very good advice that we take a 15-minute break.

I will urge the Members to sit here, discuss and see if we can come up with Solomonic wisdom. We have fought and debated. The 15 minutes may be the time that is needed between us and giving this country the best solution.

Congratulations, Sen. Sakaja, for your request. I strongly support your idea. There is no need for us to keep on procrastinating.

Mr. Speaker, Sir, I urge you to agree to the suggestion by Sen. Sakaja.

Sen. Orengo: Mr. Speaker, Sir, I stood here hoping to move a substantive Motion for adjournment under Standing Order No.105. I am now persuaded, with the contributions that have been made, that we have a short break. I think 15 minutes is too short. We should make it 30 minutes.

A message has been sent to the nation that there are losers and winners, which has polluted the air. When I asked for an adjournment, I referred to the map of losers, which Sen. Sakaja has also referred to. I said that this debate will be difficult if we continue on that trajectory. I do agree that this is a decision that lies with the Senate. We cannot take it to the Commission on Revenue Allocation (CRA) or any other institution. We can move the Adjournment Motion if it will be necessary. Give us 30 minutes to consult for us to come up with a concrete solution on this issue.

The Speaker (Hon. Lusaka): Hon. Senators, under Standing Order No.1, I suspend the discussions for 30 minutes. We will reconvene here after 30 minutes, that is, at 7.40 p.m.

(The House adjourned temporarily at 7.10 p.m.)

(The House resumed at 7.40 p.m.)

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

The Speaker (Hon. Lusaka): Hon. Senators, since this was a request made by the Senate Minority Leader, I will give him the first chance.

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The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, at least, some consensus has emerged. The consensus is that we form a committee of the House to look into this issue and report back to us before we have a full sitting of the Senate.

The proposed committee consists of 12 Senators. As I read the names, this list has got no side, colour, race or tribe. It is as follows-

- (1) Sen. Johnson Sakaja, MP
- (2) Sen. (Eng.) Mahamud Mohamed, MP
- (3) Sen. Stewart Madzayo, MP
- (4) Sen. Kipchumba Murkomen, MP
- (5) Sen. Mutula Kilonzo Jnr., MP
- (6) Sen. Susan Kihika, MP
- (7) Sen. Samson Cherargei, MP
- (8) Sen. Moses Kajwang', MP
- (9) Sen. Anuar Loiptip, MP
- (10) Sen. Moses Wetangula, MP
- (11) Sen. Nderitu Kinyua, MP and
- (12) Sen. Ledama Olekina; MP

The terms that have been given to me are that they will meet tomorrow at 2.30 p.m. After the meeting, they will set their own work programme and schedule. Hopefully, they will inform us when we can have an informal sitting. If need be, we could have a *Kamukunji*.

The idea of a retreat is not too popular, so long as we can have a *kamukunji*. A Special Sitting is suggested for Tuesday next week.

(Applause)

For purposes of having some order in the Committee to be established, I suggest that we make Sen. Wetangula and Sen. Sakaja as co-conveners because we must have a reference point. If there are any objections, of course you will tell us. With this arrangement, I hope we will reach some consensus by the time we meet next week.

On the Secretariat, we need the Clerk of the Senate himself. Do not delegate it to another Clerk. Yes, you can have a team, but the Clerk himself must be there.

(Applause)

The Parliamentary Budget Office (PBO) must be there, particularly, Mr. Masinde who is very useful. He is a very brilliant young man.

There are other people you need to talk to, but that is the choice of the Committee; we cannot dictate for you. If you need the Commission on Revenue Allocation (CRA) and other players to come, that is up to you. So, there is some kind of public participation in this process.

We can then have the Special Sitting on Tuesday, next week at 2.30 p.m. *Tumemaliza*. I am sorry, I was speaking in *Kizungu*.

(Laughter)

Hopefully, we will have finalized this matter.

Mr. Speaker, Sir, to create an enabling environment, it will now be upon you on the basis of the instructions we gave about our three colleagues who are not with us. It will now be upon your office that the process is also driven with the same kind of energy and commitment as this Committee is going to do its work.

I hope that both the Committee and the Senate Committee on National Security, Defence and Foreign Relations will inform us on what will be happening. As we reach next week, there will be no cloud surrounding our debate over this very important issue.

That is all I have to say. Otherwise, if I say anything else, it may be beyond what has been agreed.

I thank you.

(Applause)

(Sen. (Eng.) Maina stood in his place)

The Speaker (Hon. Lusaka): Hon. Senator, you can read the mood of the House. Let us have the Senate Majority Leader.

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, I stand here to support this Committee. You had started this process when we had the stand-off. You said that every side should give five Members, and now this has been improved. It is beginning to get traction.

We are on recess, but it is being eaten into so much that we may want to see how to change our Calendar because we are working more.

Secondly, let us not call a Special Sitting unless we are ready. Let us not say that we will call for a Special Sitting on Tuesday. Let us make sure when we call the Special Sitting, it will solely be that one meeting.

(Applause)

Up to that point, I support.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators! No points of order. Read the mood of the House.

Senator, what is your point of order? You are off the microphone. Move closer to the microphone.

Sen. (Eng.) Maina: Thank you, Mr. Speaker, Sir. First, I want to thank you for having reached this point.

(Loud consultations)

The Speaker (Hon. Lusaka): Hon. Senators, we are still in session.

Sen. (Eng.) Maina: Thank you, Mr. Speaker, Sir. My point is only one. If we have reached this point in this House, I beseech all of us to stop the active sensationalization through *Twitter* and all kinds of social media. It is spoiling the mood of the House. We should create an atmosphere of reconciliation. I must say this.

(Sen. Mutula Kilonzo Jnr. spoke off record)

Sen. Mutula Kilonzo Jnr., you have spoken half the time in this House. Having said that, let us also stop name-calling and blaming in the social media. We should create a new sense in this House.

Finally, Mr. Speaker, Sir, call some good men of God to pray in the meantime.

(Applause)

The Speaker (Hon. Lusaka): Sen. Orengo, can you now officially move the Motion?

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I now formally move under Standing Order No.105 that debate on the Motion be now adjourned.

Since we are on recess, I cannot suggest the next hearing date. Since we are so tired, I beg to move and ask the Senate Majority Leader to second.

The Senate Majority Leader (Sen. Poghisio): Thank you, Mr. Speaker, Sir. I second the Motion.

We are on recess and have to work on this issue that puts us together.

I thank you.

(Interruption of Debate on the Motion)

COMMUNICATION FROM THE CHAIR

SENATORS TO SERVE IN SPECIAL COMMITTEE TO REVIEW THE THIRD BASIS FORMULA OF REVENUE SHARING AMONG COUNTIES

The Speaker (Hon. Lusaka): Order, Senators! Just for the record, I want to read out the names from my end.

They are-

(1) Sen. Johnson Arthur Sakaja, MP;

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- (2) Sen. (Eng.) Mohammed Mahamud, MP;
- (3) Sen. Stewart Madzayo, MP;
- (4) Sen. Kipchumba Murkomen, MP;
- (5) Sen. Mutula Kilonzo Jnr., MP;
- (6) Sen. Susan Kihika, MP;
- (7) Sen. Samson Cherargei, MP;
- (8) Sen. Moses Kajwang', MP;
- (9) Sen. Anwar Loitiptip, MP;
- (10) Sen. Moses Wetangula, MP;
- (11) Sen. Nderitu Kinyua, MP; and,
- (12) Sen. Ledama Olekina, MP.

The co-conveners are Sen. Wetangula and Sen. Sakaja.

Before I propose and put the question, I also want to take this opportunity to thank you, as a Senate.

(Applause)

I urge that we remain united the way we have been. Even after we go through this, I will ask the Secretariat, at an appropriate time, to organize for us a retreat, so that we can bond. It is very important that we remain united as a Senate and move together. This is because divided we shall fall, united we shall stand.

I thank you for your contributions.

(Resumption of Debate on the Motion)

*(Question, that debate on the Motion
be now adjourned, proposed)*

*(Question, that debate on the Motion be
now adjourned, put and agreed to)*

(Debate on the Motion was adjourned)

ADJOURNMENT

The Speaker (Hon. Lusaka): Hon. Senators, the House stands adjourned until Tuesday, 8th September, 2020, at 2.30 p.m.

The Senate rose at 7.55 p.m.