

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 4th 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): Honorable Senators, please use the Supplementary Order Paper, which I think has been provided.

Sen. Cherargei, what is your intervention?

Sen. Cherargei: Mr. Speaker, Sir, the Clerk-at-the-Table is reading the Order of the day, but you are informing us that there is a Supplementary Order Paper. However, we are yet to see it in our gadgets. It is important to have it, so that we are in tandem because we cannot trace it.

Thank you.

PETITIONS

The Speaker (Hon. Lusaka): Hon. Senators, in the interest of time, I am deferring all Petitions.

REPORT ON PETITION: IMPLEMENTATION OF TJRC REPORT

NON-PAYMENT OF SALARIES BY NANDI COUNTY GOVERNMENT

HISTORICAL LAND INJUSTICES INVOLVING PLOT NO. 162/V/M.N.CR 1070, IN MOMBASA COUNTY

(Petitions deferred)

Let us move on to the next Order.

The Speaker (Hon. Lusaka): Proceed, Chairperson of the Committee on Justice, Legal Affairs and Human Rights. He is not here.

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Sen. (Dr.) Zani: On a point of order, Mr. Speaker, Sir. It looks like we are having problems with our gadgets. We are trying to follow the new Supplementary Order Paper and none of us is able to open it. Could we find a way forward either technologically or on how will we proceed? There is a problem and these gadgets are not opening at the moment.

The Speaker (Hon. Lusaka): Secretariat, what is it? Can the technicians look at the challenge with the gadgets? Have you managed to open? Are we there?

Actually, the Papers that are being laid are in the old Order Paper. As we try to sort out the problem, you can use the old Order Paper. The Chairperson of the Committee on Legal Affairs, Justice and Human Rights was to---

(Sen. Cherargei spoke off record)

Order, Sen. Cherargei!
Senate Majority Leader, proceed.

(Sen. Murkomen spoke off record)

Order, Sen. Murkomen!
Let us move on.

PAPERS LAID

Sen. Dullo: Thank you, Mr. Speaker, Sir. I beg to lay the following Papers on the Table of the Senate today, Tuesday, 4th August, 2020-

THE CROPS (FIBRE CROPS) REGULATIONS, 2020

The Crops (Fibre Crops) Regulations, 2020.

THE CROPS (HORTICULTURAL CROPS) REGULATIONS, 2020

The Crops (Horticultural Crops) Regulations, 2020.

I thank you.

(Sen. Dullo laid the documents on the Table)

The Speaker (Hon. Lusaka): Let us move on to the next Order.

Do we have any Member from the Committee on Justice, Legal Affairs and Human Rights? Sen. Sakaja, proceed.

Sen. Khaniri, what is your intervention?

Sen. Khaniri: Mr. Speaker, Sir, I heard you say that we can proceed because the Papers being laid are on the old Order Paper. I want to inform you that the gadgets are not opening. We do not have even the old Order Paper. We cannot follow the proceedings of the House without the Order Paper.

The Speaker (Hon. Lusaka): Is that the common problem?

Hon. Senators: Yes.

The Speaker (Hon. Lusaka): Proceed, Sen. Madzayo.

Sen. Madzayo: Asante, Bw. Spika. Ni jambo la kusikitisha kwamba tuko na kitengo ambacho kinahusika na urekebishaji wa hivi vidude au vipopolipo.

(Laughter)

The Speaker (Hon. Lusaka): Eti umesema vinaitwa vipi?

Sen. Madzayo: Vipopolipo.

Bw. Spika, leo katika Bunge la Seneti mitambo yetu haifanyi kazi vilivyo. Ingekuwa heri kwetu ikiwa unaweza kutoa uamuzi ya kwamba hivi vilolopipo au vipopolipo pamoja na mitandao hii virekebishwe vifanye kazi mara moja. Waambie warekebishe mtambo huu.

The Speaker (Hon. Lusaka): Do we have the technicians here to assist?

Sen. Cherargei, what is your intervention?

Sen. Cherargei: Mr. Speaker, Sir, this is a very important day for us because there are serious issues we are supposed to discuss. In future, if the Secretariat will be experiencing challenges, they should let the House know well in advance. Let us proceed as the technological challenges are rectified. We do not want to use papers here because of the challenges of COVID-19.

In my own opinion, let us proceed with the order of the day as the Secretariat works around the clock in ensuring that it is fixed.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir. It is unfortunate on such an important day, some of our colleagues want us to adjourn. We can proceed because we have the Senate Business on the official *WhatsApp* page. It is posted there, so that everyone who has a phone can easily access it. I meant the Supplementary Order Paper is posted there.

The Speaker (Hon. Lusaka): Open your *WhatsApp* platform and access it.

Proceed, Sen. (Prof.) Kindiki.

Sen. (Prof.) Kindiki: Mr. Speaker, Sir, I am in support of us continuing on condition that we do not pass the contentious formula.

(Laughter)

The Speaker (Hon. Lusaka): You are out of order, Sen. (Prof.) Kindiki!

Sen. Sakaja, kindly, proceed.

Sen. Sakaja: Mr. Speaker, Sir, I do not understand why you have let Sen. Cheruiyot get off with that proposal of *WhatsApp*. He is a commissioner. He needs to

report to this House what is happening with this system because last time we had challenges with some of the microphones. I remember Sen. Olekina was contributing, but we could not hear.

Today, I am made to understand that there are certain amendments to my Motion and no one can see them. We need a report from the PSC as to whether this is like the servers or what is happening--- We also want to see those amendments.

Mr. Speaker, Sir, going forward from today, please allow the Secretariat to printout the Order Paper. There are three amendments to the formula. We are already discussing the Motion that I brought before the House, so that we can all look at it. Let us look at the mathematics and decide how to move forward.

I would urge if the technical system is not sorted out, we all get hard copies of those proposals by Sen. Wamatangi and Sen. Orengo, so that we can also bring ourselves up to speed with that.

The Speaker (Hon. Lusaka): Okay. They are going to run hard copies. Can we make progress? Let us move on to the next Order.

The Vice-Chairperson of the Standing Committee on Justice, Legal Affairs and Human Rights, Sen. Sakaja, proceed.

PAPER LAID

REPORT ON THE ELECTIONS (AMENDMENT) BILL, 2019

Sen. Sakaja: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, Tuesday, 4th of August, 2020-

Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Elections (Amendment) Bill (Senate Bills No.18 of 2019).

I thank you.

(Sen. Sakaja laid the document on the Table)

The Speaker (Hon. Lusaka): Next Order. Senate Majority Leader, kindly, proceed.

Wear your masks, please.

NOTICE OF MOTION

SUSPENSION OF THE SITTING OF THE SENATE OUTSIDE NAIROBI FOR THE FOURTH SESSION, 2020

Sen. Dullo: Thank you, Mr. Speaker, Sir. I beg to give Notice of the following Motion-

THAT, AWARE THAT, pursuant to Article 126(1) of the Constitution and Standing Order No. 31(1) of the Senate, the Senate by

resolution passed on 21st June, 2018, resolved that a sitting of the Senate be held away from the traditional premises in Parliament Buildings in Nairobi and that such sitting take place in all regions during the term of the Third Senate.

RECOGNIZING THAT, the COVID-19 pandemic has continued to persist in the country resulting in disruptions to the conduct of the business of the Senate and Parliament as a whole.

APPRECIATING THAT, in accordance with the World Health Organization (WHO) and the Ministry of Health advisory for the containment of the pandemic, a set of guidelines have been issued for both the Senate Plenary and Committee to contain the spread of the pandemic in Parliament in particular, and in Kenya as a whole.

NOW THEREFORE, the Senate resolves that, notwithstanding the resolution of 21st June, 2018, the sittings outside Nairobi for the Fourth Session, 2020, to be suspended.

The Speaker (Hon. Lusaka): The next Order is still yours.

Sen. Dullo: Is it the one for Managed Equipment Scheme (MES)?

The Speaker (Hon. Lusaka): Yes.

Sen. Dullo: Let Sen. Wetangula move. I am unwell.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Members! Please, let us observe social distancing. It is serious.

Proceed, Sen. Wetangula.

EXTENSION OF MANDATE OF *AD HOC* COMMITTEE ON MES

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

THAT, aware that the on 19th September, 2019, the Senate resolved to establish a select Committee comprising nine Senators to investigate and establish the facts surrounding the leasing of the Medical Equipment, in the now 119 beneficiary hospitals country wide.

APPRECIATING, that the initial mandate of the Select Committee lapsed on 5th October, 2019, and extensions of the same approved by the Senate on 12th November, 2019, on 4th March, 2020, and on 14th July, 2020, respectively;

REGRETING, that due new evidence arising from the hearings revealed important gaps that need to be addressed in the inquiry, and further owing to the sheer scale and magnitude of the investigations, and the amount of documentation involved;

NOW THEREFORE, the Senate resolves to renew the mandate of the Committee by a further period of 34 days to enable the *Ad hoc*

Committee to conclude its work and table its report in the Senate on or before 8th September, 2020.

The Speaker (Hon. Lusaka): Hon. Senators, the Order on Statements is deferred because of what we have before the House.

STATEMENTS

APPOINTMENT OF SEN. (DR.) GERTRUDE MUSURUVE
AS CO-CHAIR OF THE INTERNATIONAL
PARLIAMENTARY NETWORK ON EDUCATION

BOOSTING OF DOMESTIC TOURISM IN KENYA

ALLEGED APPROVAL OF THE VAGINAL RING TO
CURB SPREAD OF HIV/AIDS IN AFRICA

POLLUTION OF THE ENVIRONMENT
BY INDUSTRIAL EMISSIONS

PROPOSED INCREASE OF EXCISE DUTY ON BEER
MADE FROM SORGHUM, MILLET AND CASSAVA

SOURCE AND UTILIZATION OF FUNDS ON THE BEAUTIFICATION AND “NGARISHA JIJI”
PROGRAMME BY NAIROBI CITY COUNTY

MISAPPROPRIATION OF STAFF EMOLUMENTS,
STATUTORY DEDUCTIONS AND OTHER
LABOUR RELATIONS VIOLATIONS

PAYMENT OF ALLOWANCES TO OFFICE ADMINISTRATIVE PERSONNEL WORKING IN THE
HEALTH SECTOR IN COUNTY GOVERNMENTS

STATE OF AFFAIRS AT THE POSTAL CORPORATION OF KENYA

DESTRUCTION BY FIRES, OF THE CONSERVATION
AREA AROUND THE TSAVO NATIONAL PARK

ALLEGED ASSAULT AGAINST A RESIDENT OF
ISIOLO COUNTY AT BARAMBATE POLICE POST

STATUS OF DOCK WORK JOB OPPORTUNITIES FOR
YOUTHS AT LAMU PORT

HUMAN-WILDLIFE CONFLICT IN ISIOLO COUNTY

STATUS OF PREPAREDNESS FOR COVID-19 BY
WAJIR COUNTY GOVERNMENT

OPERATIONS OF ADAK AND THE RAMPANT DOPING
TEST FAILURE BY KENYAN ATHLETES

STATUS OF GRADUATIONS IN VARIOUS LEARNING
INSTITUTIONS IN 2020

USE OF EXCESSIVE FORCE BY POLICE WHEN
ENGAGING WITH CIVILIANS

ACTIVITIES OF THE COMMITTEE ON JUSTICE,
LEGAL AFFAIRS AND HUMAN RIGHTS

DEMISE OF RENOWNED ARTIST PAPA SHIRANDULA

ACTIVITIES OF THE COMMITTEE ON AGRICULTURE,
LIVESTOCK AND FISHERIES

ACTIVITIES OF THE COMMITTEE ON DEVOLUTION
AND INTERGOVERNMENTAL RELATIONS

ACTIVITIES OF THE COMMITTEE ON EDUCATION

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 8TH SEPTEMBER, 2020

(Statements deferred)

BILL

First Reading

THE MUNG BEANS BILL
(SENATE BILLS NO. 9 OF 2020)

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

The Speaker (Hon. Lusaka): Next Order.

MOTIONS

SUSPENSION OF SITTING OF THE SENATE OUTSIDE
NAIROBI FOR THE FOURTH SESSION, 2020

The Speaker (Hon. Lusaka): Who is moving the Motion?

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

THAT, aware that, pursuant to Article 126(1) of the Constitution and Standing Order 31(1) of the Senate, the Senate, by Resolution passed on 21st June, 2018, resolved that a sitting of the Senate be held away from the traditional premises in Parliament Buildings in Nairobi and that such sittings take place in all regions during the term of the Third Senate;

RECOGNISING THAT, the COVID-19 pandemic has continued to persist in the country, resulting in disruptions to the conduct of business of the Senate and of Parliament as a whole;

(Loud consultations)

The Speaker (Hon. Lusaka): Let us consult in low tones as we observe social distancing.

Sen. Dullo: APPRECIATING that, in accordance with the World Health Organization (WHO) and the Ministry of Health advisory for the containment of the pandemic, a set of guidelines have been issued for both Senate Plenary and Committee to contain the spread of the pandemic in Parliament in particular, and in Kenya as a Whole;

NOW THEREFORE, the Senate resolves that, notwithstanding the Resolution of 21st June, 2018, the sittings outside Nairobi for the Fourth Session, 2020, be suspended.

Mr. Speaker, Sir, this is a Procedural Motion, which is straightforward. The reason we will not have sittings outside Nairobi this year is because of the challenges we are facing.

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

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. This is a straightforward Motion. We cannot sit outside Nairobi because of the prevailing circumstances of the COVID-19 pandemic. For this Session we should postpone this visit to another time.

I second.

(Question proposed)

(Question put and agreed to)

Next Order!

EXTENSION OF MANDATE OF *AD HOC* COMMITTEE ON MES

Sen. Wetangula: Mr. Speaker, Sir, I beg to move the following Motion-
THAT, aware that the on 19th September, 2019, the Senate resolved to establish a select Committee comprising nine Senators to investigate and establish the facts surrounding the leasing of the Medical Equipment, in the now 119 beneficiary hospitals country wide.

APPRECIATING, that the initial mandate of the Select Committee lapsed on 5th October, 2019, and extensions of the same approved by the Senate on 12th November, 2019, on 4th March, 2020, and on 14th July, 2020, respectively;

REGRETING, that due new evidence arising from the hearings revealed important gaps that need to be addressed in the inquiry, and further owing to the sheer scale and magnitude of the investigations, and the amount of documentation involved;

NOW THEREFORE, the Senate resolves to renew the mandate of the Committee by a further period of 34 days to enable the *Ad hoc* Committee to conclude its work and table its report in the Senate on or before 8th September, 2020.

Mr. Speaker, Sir, this is a request to the House to expand the time of the Committee. I would like to inform the Senate that all the hearings have been concluded and a raw draft of the report is nearly concluded. Last week, the Speaker approved our retreat to Naivasha and we worked round the clock for four days. We are aware that all things being equal, the House is to take a recess for about a month at the end of the sitting today.

In my humble view, the *Ad Hoc* Committee on MES has done a sterling job in trying to unearth a difficult situation where each of our counties has been paying huge sums of money towards a suspect scheme. We want as the Committee to bring to this House a report that is deep, well researched, factual and brings to a conclusive and definitive end to the saga of leasing medical equipment.

I do not want to go into the details of our draft report, but Members may recall that some of our hearings have been aired live in several national televisions and we thank the media for that. We have received positive response from the public. Therefore, I urge the House to extend the time for us. If we were not going on recess, we would have brought the report before the House in the next 10 days or less. I would also like to confirm to the House that the membership of the Committee of nine Members has been extremely engaged and co-operative. In most of our sittings, we have been having 100 per cent turn out of Members asking very inquisitorial questions. We had an online Zoom meeting last week with the former CS in the Ministry of Health, Amb. (Dr) Mailu, who is currently in Geneva. We also had a meeting with the former Attorney-General and other persons of interest.

Mr. Speaker, Sir, I urge the House to give the *Ad Hoc* Committee this extension so that we can bring the report at the opening of the House after the recess. I promise that

we will not come back to the House to ask for any further extension. I invite Sen. Omanga, a Member of the Committee, to second the Motion and urge the House to give us the support we need, so that we put this aside and move to the real business of the day, today.

Mr. Speaker, Sir, I beg to move.

Sen. Omanga: Asante sana, Bw. Spika. Naunga mkono Hoja ya kuiongezea kamati maalum ya MES muda wa kukamilisha uchunguzi wao. Kamati hiyo maalum imefanya kazi nzuri na tungepata siku mbili au tatu zaidi, tungekamilisha ripoti hiyo na kuileta katika *Floor* ya Seneti.

(Laughter)

Bw. Spika, *I second.*

The Speaker (Hon. Lusaka): Sen. Omanga, I was going to tell you to be careful. Kindly look at the Senate Standing Orders on language use.

(Question proposed)

Sen. Nyamunga: Mr. Speaker, Sir, I rise to support the extension of the period that is required by the *Ad Hoc* Committee on MES. I have faith in the Committee taking into account the work that we have seen them do. It is important that we get to the root of the matter on the issue of medical equipment leasing. Many counties have lost a lot of money to the MES project, so it is important for us to get to the root of the matter and solve the problem once and for all. I hope that this is the last extension that we shall give the *Ad Hoc* Committee on MES. They should conclude their investigations as soon as possible.

I thank you.

The Speaker (Hon. Lusaka): Kindly proceed, Sen. (Dr.) Mwaura followed by Sen. (Dr.) Lang'at.

Sen. Mwaura: Bw. Spika, naunga mkono Hoja hii ya kuiongeza kamati maalum inayochunguza MES muda wa kukamilisha uchunguzi wao. Kamati hiyo imechukua muda zaidi tayari. Kamati hiyo maalum ilienda mahali pa faragha wiki iliyopita ili kutatua maswala ibuka ambayo yanahusu ripoti yao maalum. Swala la MES ni jambo sugu ambalo Wakenya wengi wanadadisi kwamba itaonyesha ubabe wa Bunge la Seneti.

Naisihi kamati hiyo maalum kuingazia kwa kina na maana zaidi ili tuweze kutatua ubadhilifu huu wa rasilimali za nchi yetu na ili tuweze kuwa na afueni katika sekta ya afya.

Bw. Spika, naiunga mkono Hoja hii.

The Speaker (Hon. Lusaka): Hon. Members, kindly do not move too close to the Speaker when you come to consult.

Kindly proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, a barrier should be installed around your seat so that we do not move too close to you.

I rise to support the Motion to extend the time of the *Ad Hoc* Committee on MES. I must say that this is the longest serving *Ad Hoc* Committee. There is nothing much we can do, but give them an extension being the last day. I hope that Sen. Dullo and Sen. Wetangula who serve as the Chairperson and Vice-Chairperson respectively will not disappoint us. We are only extending the time for the *Ad Hoc* Committee on MES because we do not want to be disappointed. We have seen reports in the public domain and so we are already making our own conclusions in the court of public opinion. All that the *Ad Hoc* Committee on MES needs to do is validate what we have always thought about the MES project was a mess.

I beg to support the Motion.

The Speaker (Hon. Lusaka): Kindly proceed, Sen. (Dr.) Lang'at before I put the question.

Sen. (Dr.) Lang'at: Mr. Speaker, Sir, I thank you for giving me the opportunity to support this Motion on the extension of the time for the *Ad Hoc* Committee on MES. The Committee was almost concluding its investigation when COVID-19 struck. The Committee has faced a lot of challenges in meeting various persons of interest who were meant to give important information. Some of the persons of interest are currently serving as ambassadors outside the country and so it was not easy to reach them.

I would like to remind the *Ad Hoc* Committee that every Kenyan is looking forward to their report because MES has become a mess. Every Kenyan is looking forward to a solution to the MES problem that has been taking away money meant for the counties right from the source to the tune of KShs200 million annually. I support the extension of time for the *Ad Hoc* Committee and remind them that Kenyans are eagerly waiting for their report.

Mr. Speaker, Sir, I support the extension of time for the *Ad Hoc* Committee on MES.

The Speaker (Hon. Lusaka): Take your seats hon. Senators.

(Sen. Malalah stood up in his place)

Take your seat, Sen. Malalah. I will now proceed to put the question.

(Question put and agreed to)

The Speaker (Hon. Lusaka): I ask the Senate Majority Leader to issue a Statement before we move to the next Order.

STATEMENT

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 8TH SEPTEMBER, 2020

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Sen. Dullo: Thank you, Mr. Speaker, Sir. Pursuant to Standing Order No.52(1), I hereby present to the Senate, the business of the House for Tuesday, 8th September, 2020.

Pursuant to the Senate Calendar passed on 27th February, 2020, and as amended by resolutions made on 17th March, 2020, 14th April, 2020 and 2nd June, 2020, respectively, the Senate is scheduled to proceed on recess at the rise of the House, today, 4th August, 2020 until Tuesday, 8th September, 2020. On that day, Tuesday, 8th September, 2020, the Senate Business Committee (SBC) will meet to schedule the business of the Senate. The Senate will consider Bills scheduled for Second Reading and those at the Committee of the Whole stages on 8th September, 2020. The Senate will also continue with consideration of business that will not be concluded in today's Order Paper, including Motions, Petitions and Statements.

I would like to commend all Senators for the work we have been able to do, even under the prevailing COVID-19 pandemic circumstances. I would particularly wish to commend Senators for the work that we have done in this Session so far, including passage and subsequent enactment into law of the following Bills-

(1) The County Governments (Amendment) (No. 2) Bill (Senate Bills No. 7 of 2017);

(2) The County Governments (Amendment) Bill (Senate Bills No. 11 of 2017);

(Loud consultations)

The Speaker (Hon. Lusaka): Order Senators, let us consult in low tones. Sen. Cheragei, have you become a nomad?

Sen. Dullo: The other Bills are-

(3) The Office of the County Attorney Bill (Senate Bills No. 3 of 2018);

(4) The Petition to County Assemblies (Procedure) Bill (Senate Bills No. 22 of 2018);

This brings the total number of Bills that have been passed by the Senate and assented to by His Excellency the President into law to 12 Acts of Parliament. However, a total of 19 Bills are still due for Second Reading and a further 17 Bills are at the Committee of the Whole Stage. I am aware that there are more legislative proposals which are under development by individual Senators and Standing Committees. This will undoubtedly, upon approval by the Speaker, increase the total number of Bills in the Senate and the workload before us.

The SBC will continue to prioritize these Bills accordingly. In this respect, I urge the relevant Standing Committees to use the opportunity during the coming recess to expeditiously conclude consideration of these Bills and table reports pursuant to the Standing Orders. Likewise, I urge Standing Committees to also conclude consideration of Petitions and Statements referred to them and table reports pursuant to the Standing Orders.

Even as the Senate proceeds on recess, critical business still remains relating to financial matters, namely, the Third Basis for Revenue Allocation among County Governments and the County Allocation of Revenue Bill. Following the tabling of the

Report of the Standing Committee on Finance and Budget, on 13th July, 2020, on the revenue allocation formula, and the concerns that were raised by colleagues on the proposed formula, efforts were made, through the intervention of the Senate Leadership, by constituting a team of Senators from both sides, to address these concerns. Unfortunately, following from the debate of this Motion which commenced on Tuesday, 28th July, 2020, and which is scheduled to resume today, we Senators, are still grappling on this matter.

I continue to urge my fellow colleague Senators, that as we resume the debate today, we need to proceed with patience, understanding and objectivity, as the matter is undoubtedly weighty.

Ultimately, Mr. Speaker Sir, as the House of Parliament mandated with protection of the interests of counties and their governments as stated at Article 96 of the Constitution, we want what is best for not only our individual counties, but all counties collectively. A resolution on this matter will then pave way for consideration of the County Allocation of Revenue Bill.

Mr. Speaker, I thank you and hereby lay the statement on the Table of the House.

(Sen. Dullo laid the document on the Table)

The Speaker (Hon. Lusaka): Next Order.

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

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

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir. I have said this severally and I know that I am at the risk of sounding like a broken record. The Report of the Senate Majority Leader on the business that we have conducted cannot be complete without a report of the business that is lying in the National Assembly. We are owed that duty. The Members of the SBC might be aware of what is happening, but this Plenary is owed a duty of the pending Bills that we have passed.

That Report is not complete and I will be glad to have those directions for the next report to be complete.

The Speaker (Hon. Lusaka): Okay. I think that the leadership of the majority side has noted what has been raised by Sen. Mutula Kilonzo Jnr.

Next Order.

MOTION

ADOPTION OF REPORT ON THE THIRD BASIS FOR REVENUE ALLOCATION AMONG 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.

(Sen. Kibiru on 28.7.2020)

(Resumption of debate interrupted on 28.7.2020)

Sen. Murkomen: Mr. Speaker, Sir, I beg to rise under Standing Order No. 105(1) which states that-

‘A Senator who wishes to postpone to some future occasion the further discussion of a question which has been proposed from the Chair may, for reasons stated, claim to move “That, the debate be now adjourned”, or, in Committee of the Whole “That, the Chairperson do report progress”.

The subject matter that is before us is extremely important. We have the Report of the Committee and Sen. Sakaja proposed an amendment to it. In law, we do say that one has to take judicial notice. We are aware that the amendment which was brought by the Senate Majority Whip was extremely contentious on the Floor of this House. The House was adjourned at 9.00 p.m. on that day which led to the adjournment of the debate on the amendments brought by Sen. Sakaja.

Mr. Speaker, Sir, I know that there is debate across the country on division of revenue and that everybody is looking up to the Senate; the Senate being the citadel of hope. It is the place that everybody looks to for wisdom.

There are many questions that Kenyans are asking. Is this the same Senate where Sen. Haji, the Chairperson of the Building Bridges Initiative (BBI) is sitting? Is this the same Senate where the Attorney-General, *Emeritus*, Sen. Wako, is sitting? Is this the same Senate that has three Senior Counsels in law, among them Sen Orenge and Sen. Omogeni? Is this the same Senate that has elders that the whole country is looking up to for leadership?

Why would a Senate with that repository of knowledge, wisdom and experience be a House where we cannot agree on a process that unites the country? Sen Sakaja has brought a very important amendment to the Committee report, but it has not helped to unite the country. The original report will not help unite the country, but there is an opportunity for all of us, as a Senate, to have a conversation around this subject matter and come to a conclusion that those who are losing by a huge margin may perhaps lose very little and those who are gaining by a huge margin, may gain a little and then we keep our country together.

Mr. Speaker, Sir, it is with this in mind that I rise to ask that this House adjourns the debate on this report. This House cannot fail to find a solution. I ask myself this, the Majority Leader in this House comes from a party that got the highest number of MPs from Samburu, Narok and Garissa.

How will the party leader sitting in this House feel if he has to vote against Samburu, which gave that party three MPs? What will Sen. (Dr.) Lelegwe go back to

Samburu to tell his people? What will the party leader of that country tell the people of Samburu? We cannot close our eyes to the fact that if you look at the map of the losers, you will realize that there is a huge red map of a greater land mass of this country who are losing, then there are dots in green in a particular corner that are gaining. Sen. Orenge captured it very well last week. I wish we listened to him.

Mr. Speaker, Sir, we then have the confidence to tell the people that Kenya is about population, but the definition of a country is its people and its territory.

(Applause)

We cannot close our eyes on the conversation that even though Mandera has a few people now and it is less occupied by people, its potential has not been exploited. In the same manner, I would say that other counties like Turkana, which has 700,000 people, if we develop it well---

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

The Speaker (Hon. Lusaka): Sen. Cherargei, what is your point of intervention?

Sen. Cherargei: My issue is that my leader, Sen. Murkomen, wants to mislead the country. The amendment by Sen. Kang'ata was proposed---

(Sen. Murkomen stood up in his place)

The Speaker (Hon. Lusaka): Sen. Murkomen, take your seat in the meantime, and put on your mask.

Sen. Cherargei: Sen. Murkomen is making a very good presentation, but he should not mislead the country on one thing, that the amendment by Sen. Kang'ata had proposed to freeze for three financial years, to ensure that a part of the country can find a solution to this issue. My point of order is that he should stop misleading the country and tell us that he is supporting Sen. Sakaja's amendment, instead of glossing over issues.

Thank you, Mr. Speaker, Sir.

Sen. Murkomen: Mr. Speaker, Sir, first of all, Sen. Cherargei, who I truly respect and he truly respects me; who was my very bright student, has moved to a different subject, which is the Motion itself. I am moving an adjournment Motion and I am making a case for this adjournment Motion.

I am making a case that it is not possible that the rest of us who come from the few parts of the country that are dotted with green would congregate in the Chambers of this House and completely disregard our brothers and sisters that are crying for a conversation. A country that is not able to sit down with its own people; a leadership of a Senate like this that has men and women who are aspiring to lead this country, some who are party leaders, cannot take sides against its citizens. The reason people are not occupying Turkana today and yet everybody was running there when we said that there is oil is because of its potential.

Mr. Speaker, Sir, there are many counties that are going to get more resources, but Taita/Taveta County, which has Tsavo National Park and contributes immensely to our

national resources is supposed to be one of the counties we should ignore and say that since it has few people, we forget about it. I am requesting that under Standing Order No.105, let us give reason an opportunity---

Sen. Kang'ata: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): There is a point of order from Sen. Kang'ata. What is your point of order, Sen. Kang'ata?

Sen. Kang'ata: Mr. Speaker, Sir, I rise pursuant to Standing Order No. 58 of the Senate, and will read it out -

“Certain Motions not to be moved-

(1) No Motion which is the same in substance as any question which has been resolved, either in the affirmative or in the negative may be moved during the preceding six months in the same session”

Mr. Speaker, Sir, before this Motion is supported by whoever will second it, I invite your ruling on the question whether this Motion is the same as the Motion that was moved last week by Sen. Orengo, which we voted on, and it was defeated.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. Kang'ata, it is different.

Sen. Murkomen: Mr. Speaker, Sir, it is so obvious that the adjournment Motion Sen. Orengo moved was during the amendment of Sen. Kang'ata. I know that I was not asked to make any ruling, you will make it at your own time, but allow me to conclude the Motion I was moving.

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

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

Sen. Sakaja: Mr. Speaker Sir, while at this point I might not fully agree with the Motion by Sen. Murkomen, but I am willing to hear him, since you have been asked by the Majority Whip to make a decision. First, I would first like to encourage him to be reading things to the end. It is a very nice habit. Standing Order No. 58 talks about a Motion in its substance, and that is mainly a substantive Motion. If you go to Standing Order No. 58(2) it states as follows-

“A Motion to rescind the decision on such a question may be moved with the permission of the Speaker”

The fact that you have allowed Sen. Murkomen to move it means that you have given him the permission to move a Motion to consider that decision that was made by the House.

Mr. Speaker, Sir, it is just an exhortation to Sen. Kang'ata to read more.

The Speaker (Hon. Lusaka): Sen. Murkomen, conclude.

Sen. Murkomen: Mr. Speaker Sir, I have tremendous respect for Sen. Kang'ata because he was the SONU leader who led us to the streets when I joined first year in university.

(Sen. Kang'ata stood up in his place)

The Speaker (Hon. Lusaka): Sen. Kang'ata, can you take your seat! Read the Standing Orders.

Sen. Murkomen: For the record of the public, when we joined the University of Nairobi, Sen. Kang'ata was the SONU Vice-Chairperson, and he led a very serious demonstration whereby we came up to Parliament to see people like Sen Orengo; these were the guys we were looking up to. As a result of that, Sen. Kang'ata was then expelled. I am sure Sen. Kang'ata is very sympathetic to the situation in Makueni, because Sen. Mutula Kilonzo Jnr. came through for him at that time. Suffice to note that we went to campaign with him as a councillor in Murang'a, so I have a lot of respect for him.

Mr. Speaker Sir, I was saying that there is no part of our country that we can really donate to anybody. I had trouble as the Chairperson of the Committee on Devolution and Intergovernmental Relations when I visited Tana River, Garissa, Wajir, Marsabit, and Turkana. Sen. Wako will bear me witness that we were given a chance to address the county assemblies to understand the marginalization of those regions.

Mr. Speaker, Sir, I wish this conversation about those counties would be done when we are visiting those areas. There are parts of this nation where people are still walking without clothes. There are parts of this nation, for example, in Wajir, where people have to go for one week before they get water.

Mr. Speaker, Sir, for us to appreciate this kind of conversation, I am requesting my colleagues to give dialogue one more chance. Let us adjourn this Motion, for us to have a conversation on how to find a way forward that can unite all of us.

The Speaker (Hon. Lusaka): Sen. Poghio, what is your point of order?
Sen. Murkomen, try to conclude.

(Loud consultations)

The Senate Majority Leader (Sen. Poghio): On a point of order, Mr. Speaker, Sir. I am just saying there are loud consultations and Senators are not keeping social distancing.

The Speaker (Hon. Lusaka): Hon. Senators, Coronavirus Disease (COVID-19) is real. Please observe the protocols, I am pleading with you.

Sen. Murkomen: Mr. Speaker, Sir, I really want to beg my colleagues, like Sen. Orengo attempted to last time, I want to make the last attempt, to request my colleagues that we have a chance.

Those of us from Jubilee and the Orange Democratic Movement (ODM), people of Kenya respected us and elected Uhuru Kenyatta to be the President. He is not the President of the 28 of us only. The people of Kenya respected us and gave the former Prime Minister a large number of votes and he almost became the president. He is a leader for all of us. I request---

The Speaker (Hon. Lusaka): There is a point of order from Sen. Wetangula.

Sen. Wetangula: Mr. Speaker, Sir, is Sen. Murkomen in order to insinuate that there are only two parties in this House? There is the Amani National Congress (ANC),

Wiper Democratic Party, Kenya African National Union (KANU), Chama Cha Uzalendo (CCU), FORD-Kenya led by yours truly, and other parties. There is even an independent Senator.

Hon. Senators: Yes!

(Applause)

Sen. Wetangula: Sen. Murkomen, you cannot insinuate that there are only two parties, Jubilee and ODM. Are you in order?

The Speaker (Hon. Lusaka): Sen. Murkomen, you will have to conclude because of time. We have a heavy agenda ahead of us.

Sen. Murkomen: Thank you, Mr. Speaker, Sir. I recognise Sen. Moses Masika Wetangula as the bona fide party leader of FORD-Kenya. I want that to go on record.

(Applause)

The reason I mentioned Jubilee and ODM is because the Bible says-
“To whom much is given, much is expected”

Mr. Speaker, Sir, because it is us who were given more votes, the minorities, marginalized and the corners of this country that gave us these votes for us to lead, expect much from us.

The Bible says in Luke 6:32-33-

“If you love those who love you, what credit is that to you?”

I know a whole region or part of the country is suffering. We must demonstrate our love as the Senate, to find a lasting solution. I have no doubt in my mind that reason will prevail if we take off this agenda at the moment. I have seen other proposed amendments by Sen. Wamatangi, among others. This gives us room for us to go and find a lasting and uniting formula.

I beg Sen. Sakaja, even though we have received as many threats and many problems, including headlines, I beg you to accept this adjournment Motion, be part of it and support it. Let us find a formula that will unite our country.

I beg to move and request Sen. Faki to second.

The Speaker (Hon. Lusaka): Before that, you know we are trying to observe the protocols.

The following Senators are sitting in the wrong places - Sen. Wako, Sen. M. Kajwang', Sen. Madzayo, Sen. Pareno, Sen. Linturi, Sen. Mwaura, Sen. (Dr.) Lelegwe, Sen. Kang'ata, Sen. Halake and Sen. Moi. Please move to the Extended Chamber.

(The Senators moved to the Extended Chamber)

Sen. Faki: Asante Bw. Spika kwa fursa hii kuunga mkono Hoja ya kuahirisha mjadala ambao ulikua unaendelea kuhusu Hoja ambayo imeletwa Bungeni na Sen. Sakaja wa Kaunti ya Nairobi.

Tayari nchi ilikua imegawanyika kati ya walahai and walahoi. Zile kaunti 19 ambazo zilikua zinapoteza pesa walikua wanajiita walalahoi na wale 28 ambao walikua wanapata walikua wanajiita walalahai.

Hiyo ingekua ni kugawanya nchi yetu ambayo waanzilishi walitoa damu, rasilimali zao na maisha yao ili kuahakikisha tuko na Kenya moja.

Tunapoimba wimbo wa taifa, tunasema haki iwe ngao na mlinzi. Haki hii ni ipi? Tunapozungumzia haki, je ni sawa kaunti 19 zipoteze pesa kwa sababu tunapata zingine 28 ambazo zinaongezewa? Hiyo siyo haki ambayo tunazungumzia katika wimbo wetu wa taifa, kwamba haki iwe ngao na mlinzi.

Pendekezo la kuahirisha mjadala litatoa fursa Maseneta wakae chini pamoja wazungumzie swala hili bila kuleta mgawanyiko katika nchi ama vyama. Hii ni kwa sababu tunaona vyama vilikua na hatari ya kupasuka. Chama chetu cha ODM, Maseneta saba walipiga kura juzi kupinga Hoja ya Sen. Kang'ata na wengine watano wakapiga kuunga mkono.

Hiyo ni dhahiri kwamba tayari vyama vilikua vinapata misukosuko na hiyo inge maanisha kwamba tunapoenda mbele wakati tunajadiliana maswala ya *Building Bridges Initiative (BBI)* ingekua nchi ambayo inapelekwa katika njia isiyokua sawa.

Nampongeza Sen. Murkomen aliyekuwa Kiongozi wa Wengi hapo awali kwa kuja na Hoja hii ya kuahirisha mjadala kwa sababu inatoa fursa kwa Bunge la Seneti kuangalia swala hili tena kwa undani zaidi ili tuhakikishe haki inatendeka kwa wananchi wote wa Kenya.

Kama Maseneta na kaunti zao, tunaunganika katika kiuno. Hatuwezi sema kaunti fulani haifai ama ingine haina idadi kubwa ya wananchi. Kaunti zote zina tegemeana. Kwa hivyo, lazima Hoja itakayoletwa izingatie nchi nzima kwa jumla.

Bw. Spika, wakati tulipozungumzia swala hili wiki iliyopita, sote tuliona kwamba kuna haja ya Maseneta kukaa chini na kuangalia usawa unapatikana katika nchi yetu. Tusijipige kifua kuwa sisi ni wengi ama sisi tunapata, la.

Wakati unapoangalia, angalia kama maswala ya Kenya iko mbele ama maswala ya nyumbani kwetu yako sawa. Tukieka maswala ya Kenya mbele, tutaona kwamba kuna haja ya Maseneta na watu kukaa chini na kuhakikisha kwamba haki inatendeka kwa WaKenya wote.

Bw. Spika, kama Seneta wa Mombasa, ninaunga mkono Hoja ya kuahirisha mjadala ili tutoe fursa kwa watu kuangalia swala hili kwa makini na kuhakikisha kuwa Kenya inabakia moja na wananchi wote wanapata haki.

Asante, Bw. Spika, kwa kunipa fursa hii. Naunga mkono Hoja ya Sen. Murkomen.

(Question proposed)

Sen. Wamatangi: Thank you, Mr. Speaker, Sir. I rise to oppose the Motion to adjourn debate which is in the Order Paper on the matter of the proposed allocation of funds to counties.

We have to be honest with ourselves. Last week any person in this country watching the debate on the Floor of this House, especially on the Motion that was moved by the Senate Minority Leader, Sen. James Orengo, saw how it was defeated with resounding pomp and song. Among the most jubilant people about the defeat of that Adjournment Motion was the Mover of this Motion.

Do we help this country by, first, as admitted by the Mover of the Motion, that we are in a gridlock and that we can only resolve it by further extending it? Further to that, we have in this Order Paper, another three proposals aimed at resolving the same matter.

If with the past debates we have had problems, I think the way forward is to deal with the problem at hand without adjourning the debate on the Motion by Sen. Sakaja. Let us dispose of that first Motion and then we move on to the next Motion and deal with it. However, at the end of the day, no one in this Chamber can argue that they have not heard the cries of county governments who do not have funds to operate.

Last week the Committee on Finance and Budget, which I am a Member, had discussion with the Cabinet Secretary for Finance and National Treasury on how to ensure funds are being released to the counties because of what has been happening in this House.

I do not think it is helpful either to the country or to the Senate to propose to adjourn the process that we started. Last week on Tuesday, we adjourned the debate because of the 9.00 p.m. curfew. We sat here, discussed and debated. This is a Chamber of debate. Issues are resolved in the Senate by talking about them, coming up with proposals and counter proposals.

The way forward about the current Motion is to, first, defeat it, proceed with the debate, let Members air their views and let whoever who is disagreeing with either of the proposals put their views on the Table and then from there we can ask ourselves what is the way forward is. However, if we adjourn a hundred times, we will never be able to arrive at a solution.

Lastly, continuing with the debate does not mean that anyone who debates is either ignorant or not sensitive to the fact that we need solutions in this country. It is not right to try and depict a picture that by continuing with the debate that we are ignoring, the fact that there are hundreds, thousands and millions of people who need to be recognized with the interests that they have.

The people of Kiambu County, Mandera County and, indeed, all counties expect a resolution. I want to propose that we proceed with the discussion. Let us have a healthy debate, proper contributions and a resolution to this matter to ensure that services can continue to be given to county governments upon a decision by the Senate.

In my view, we will look worse by being indecisive than being decisive. At the opportune time, if we find that there is a matter that requires to be resolved, then you can advise the House. We can vote on any other proposals for adjournment, but not adjournment because we fear to get into the discussion. It is the wrong premise to adjourn.

I oppose.

Sen. Khaniri: Mr. Speaker, Sir, I rise to support the Motion that was moved by the Senator for Elgeyo-Marakwet, Sen. Kipchumba Murkomen.

I will start by debunking what Sen. Wamatangi has just put forth as his reasons for opposing the Motion. I just want to tell him that it is only fools who do not change their minds. The fact that we opposed the adjournment that was proposed by Sen. James Orengo does not mean that we should also oppose this one. We have since changed our minds. We think that people should sit down, reason and come up with a formula that will be acceptable to all.

Secondly, he says that there are three other proposals. That is the more reason why we must adjourn because some of us even up to now have not had a chance to look at the proposal by Sen. Orengo and other proposals. Up to now, we have not had a chance to look at the Order Paper. I have just come in now.

Mr. Speaker, Sir, the formula proposed by the Committee if implemented, will mean that a county like Vihiga and others should just close shop and maybe transfer their functions to the national Government. In that formula, Vihiga is losing Kshs361 million. As it is, even with the Kshs361 million, we are barely surviving. So, if you take away that from us, then there will be no operations in Vihiga County.

We are pleading with our colleagues to understand where we are coming from. The proposals that were being put last week by Sen. Kang'ata were not solving our problem. They were just postponing our problem.

I want to plead with my colleagues, Sen. Wetangula, my elder brother, and Sen. Wako, what enjoyment will you have if you have plenty of food on your table and your younger brother next door is starving?

(Applause)

Mr. Speaker, Sir, any formula that we will come up with must ensure that no county loses what they already have. Sen. Kang'ata's proposal was to postpone, that is still unacceptable to us.

The Speaker (Hon. Lusaka): Sen. Khaniri, I think that now you are getting into the debate.

Sen. Khaniri: Mr. Speaker, Sir, the point that I am trying to argue is that the proposals that are being put forth like what Sen. Kang'ata and what Sen. Orengo is about to put forth; is just to postpone our problem. We want adjournment so that we can sit down. Sen. Wetangula had proposed this in our *Kamukunji*, so that we can sit down and see if we can come up with a formula that will be acceptable to all of us.

That is the point that I am trying to make.

The Speaker (Hon. Lusaka): Are you through, Sen. Khaniri?

Sen. Khaniri: It is okay, Mr. Speaker, Sir. I just wanted to say that we must ensure equity. I want to plead with my colleagues that we support this Motion. This time round, if we go for negotiations, let us be reasonable and leave our hardline stands and come up with a formula that is acceptable to all.

I thank you, Mr. Speaker, Sir.

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

The Speaker (Hon. Lusaka): I encourage you to wear your mask.

Sen. Sakaja: Yes, Mr. Speaker, Sir; I have a problem. The hon. Senator is not 1.5 metres close to me. I have issues breathing, but I am careful not to spit.

Mr. Speaker, Sir, you had given directions on the manner in which amendments are processed. You said that the amendments to this very important and technical Motion, first, must go through the Budget Office and their constitutionality be tested and veracity of the figures also be proven.

The system has just come up. Going through some of the amendments, we need you to affirm that they, indeed, went through that process. I can give you one example of amendment by Sen. Wamatangi, providing that the Treasury to provide additional funds equal to the losses. This will not pass any constitutional test. So, I am asking you to rule on constitutionality. I am not debating, Sen. Wetangula.

You gave a ruling that each and every amendment shall go through a certain procedure. I just want you to confirm because we will get to that.

The Speaker (Hon. Lusaka): Sen. Poghisio---

Sen. Sakaja: I am on a point of order. Someone cannot rise on a point of order when I am on a point of order.

Sen. Poghisio, you have been in this House for long, even before I was born. So, he knows.

Mr. Speaker, Sir, just affirm that it went through that process; just that. On the face of it, there is a test of constitutionality that is completely off.

The Speaker (Hon. Lusaka): Sen. Sakaja, the matter came to my Office and I approved it. It was also approved by the Senate Business Committee (SBC) where you sit. So, it came through the right process.

Sen. Cheruiyot: On a point of order, Mr. Speaker, Sir. Sen. Sakaja's point of order is not without validity. We agree that the SBC might have looked at it and you approved it. However, there is only one other check that he needs your confirmation and that will be it. That is the Parliamentary Budget Office (PBO).

Sen. Wetangula: On a point of order, Mr. Speaker, Sir. The point of order by the Senator for Nairobi City County may be valid, but coming at the wrong time. The question before the House is whether we adjourn the debate or not.

If, indeed, he has a point, then at the time those amendments are raised, he will legitimately be correct to stand and raise the issues he is raising and the House or the Speaker may decide on what to do. As it is now, do we adjourn or we do not? That is the question before the House; not the merit or validity or constitutionality of any matter on the Order Paper.

The Speaker (Hon. Lusaka): That is the correct position. I can see a lot of interest, but I want to make this ruling.

Hon. Senators, you know that we have to make a decision because we have weighty matters ahead of us. The way to dispose of this matter is by voting the normal way by Roll Call. I have made that ruling because we must make progress.

Sen. (Prof.) Kindiki: Mr. Speaker, Sir, thank you for that ruling. I want to plead with you to guide us further by reconsidering your own ruling because this is the most important issue in this country at the moment. If we are discussing whether or not to adjourn, assuming Sen. Murkomen's Motion carries the day, there are consequences. Likewise, even if the Motion by Sen. Murkomen does not carry the day, there are also serious implications.

I beg you to allow a few more Senators to ventilate, so that whatever decision is taken, the people of this country can be with the House in that decision.

The Speaker (Hon. Lusaka): Hon. Senators, the whole country is watching us. People have been watching us and now this is the seventh time. We are just moving forth and backwards. We are going to look ridiculous. We must move forward.

There are issues being raised. You will find that last time somebody said something, but today they are saying something completely different from what they said. I say that with a lot of respect to Sen. Khaniri.

I want us to take a vote so that we determine whether we should move forward or not. This is because people are now getting into the substance of the debate.

I direct that the Division Bell be rung for one minute. We will have Roll Call Voting because of those in the extended Chamber.

(The Division Bell was rung)

Let us have the Tellers for the "Ayes" and "Noes". We should have one from each side. Leaders, please give us the Tellers.

(Loud consultations)

Hon. Senators, we are in session. Please observe social distancing. Take your seats because we want to start.

(Hon. Senators carried out consultations)

The Speaker (Hon. Lusaka): Please, observe social distancing. If possible, vote from where you are sitting so that we do not overuse one microphone. Just use the microphone that is near you when you are called to vote.

(Roll Call voting in progress)

The Speaker (Hon. Lusaka): Sen. Wako, you are supposed to vote.

Hon. Senators, kindly observe social distancing.

Order, Senators! Take your seats. I can see somebody on his feet when I am on my feet.

Hon. Senators, I would like to announce the results of the vote.

DIVISION

ROLL CALL VOTING

(Question, that Debate be now adjourned pursuant to Standing Order No.105, put and the Senate proceeded to vote)

AYES: Sen. (Dr.) Ali; Sen. Boy; Sen. Cheruiyot; Sen. Dullo; Sen. (Prof.) Ekal; Sen. Faki; Sen. Farhiya; Sen. Halake; Sen. (Eng.) Hargura; Sen. Iman; Sen. (Dr.) Kabaka; Sen. Kasanga; Sen. Khaniri; Sen. (Prof.) Kindiki; Sen. (Dr.) Lelegwe; Sen. Linturi; Sen. Madzayo; Sen. (Eng.) Mahamud; Sen. Malalah; Sen. Murkomen; Sen. Mutula Kilonzo Jnr.; Sen. Mwaruma; Sen. Olekina; Sen. Omanga; Sen. Omogeni; Sen. Pareno; Sen. Sakaja; Sen. Seneta; Sen. Wambua; Sen. (Rev) Waqo; Sen. Wario, Sen. Were; Sen. Wetangula and Sen. (Dr.) Zani.

Teller of the Ayes: Sen. Omanga.

NOES: Sen. Chebeni; Sen. Cherargei; Sen. (Prof.) Kamar; Sen. Kang'ata; Sen. Kibiru; Sen. Kihika; Sen. Kinyua; Sen. (Eng.) Maina; Sen. Kwamboka; Sen. (Dr.) Langat; Sen. M. Kajwang'; Sen. (Dr.) Mbiti; Sen. (Dr.) Milgo; Sen. Moi; Sen. (Dr.) Musuruve; Sen. Mwangi; Sen. Mwaura; Sen. Ndwiga; Sen. Nyamunga; Sen. (Dr.) Ochillo-Ayacko; Sen. (Prof.) Ongeru; Sen. Orengo; Sen. Outa; Sen. Poghisi; Sen. Shiyonga and Sen. Wamatangi.

Teller of the Noes: Sen. Shiyonga.

ABSTENTIONS: Sen. Wako.

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

AYES: 34

NOES: 26

ABSTENTIONS: 1

The "Ayes" have it.

(Question carried by 34 votes to 26)

(Debate on the Motion was adjourned)

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

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

Sen. Wetangula: Mr. Speaker, Sir, in a book written by a great Tanzanian writer called Shaaban Bin Robert - the book is called "*Kusadikika*." He says, "*Mara mingi nchi huficha mashujaa wake mpaka janga kuu litokee*". *Leo janga kuu limetokea*.

The country is sitting on the edge. All eyes are on this Senate. I want to urge you that having gotten this window, which was my idea in the first place when we had a *Kamukunji* out there. We came here with Sen. Orengo, moved the Motion and the House rejected it, as it has the right to do.

Mr. Speaker, Sir, now that we have retraced our steps. Under Article 96 of the Constitution, every Senator in this House represents all the 47 counties. That is what Article 96 envisages. I want to urge the leadership; the distinguished Senator for West Pokot, the distinguished Senator from Siaya, your office and all of us, now we do not have the luxury of time. We must give the country direction.

Let us not make the country start rethinking the importance of this House. From the Petitions that come to this House, you can conclude without any fear of contradiction whatsoever that Kenyans believe in this House. They bring here each and every problem of whatever nature, for the House to deal with.

Mr. Speaker, Sir, now that it is obvious we are adjourning because the Motion by the distinguished Senator for Elgeyo-Market has been carried, let us not waste time. Let us look for a venue and sit as the House. From the last meeting you took us to Bomas of Kenya, even with social distancing and the fear of COVID-19, we can still transact our business or erect a dome at Nyayo Stadium and lock away everybody. Give these Senators an opportunity with the CRA, the way we did in the last Parliament. Those who are here; Sen. Cheruiyot, Sen. Khaniri, Sen. Orengo, Sen. Murkomen and Sen. Wamatangi, we went to Naivasha at Enashipai Resort, came here and voted “yes” as the 47 delegations. Kenyans were the winners.

In a majoritarian situation, the winner takes it all. However, is it the way we want to go as a country? We must understand that a pain to one Kenyan is a pain to all Kenyans. My county, where you and I come from, was gaining Kshs928 million. However, we are ready to let go and sit with other Kenyans and say we are ready to lose a little of that money for Wajir to gain a bit of what they have lost. This is so that we have some degree of equity.

As I finish, one idea the Senate is blind to is that we are fighting over Kshs316 billion in a Budget of Kshs3 trillion. Where do the other trillions go? If the other trillions were evenly spread and equitably developing the country, this protraction would not be there. Nonetheless, this is our country Kenya. We know our failings and we hope we will change. I urge that we hit the ground running. If it means tomorrow, you retreat us to solve this problem, let it be.

The Speaker (Hon. Lusaka): Sen. Orengo, proceed.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, the House has spoken through the vote that we have just taken. I moved a similar Motion last week which was seconded by the Senator for Bungoma County, Sen. Wetangula, which was negated. I am glad that we have had another opportunity to move a similar Motion. In contributing to the situation that has arisen, if you read the chapter of the Constitution dealing with public finance and the one dealing with devolution, emphasis is on the word ‘equity’ throughout. The chapter that deals with the Bill of Rights talks about equality.

Mr. Speaker, Sir, dealing with equality is much easier than dealing with equity. There are two fundamental principles contained in our Constitution. When it comes to public finance and allocation of resources, we are dealing with the concept of equity.

The last time that I moved a point of order to defer debate, my point of reference was that taking a vote on the question of resources is always a very difficult question.

However, it is better for us to talk and achieve consensus rather than a situation where we create gainers and losers. The first sin of the simulation of the formulas is when it was reported that there are losers and gainers. In a free democratic country where everybody is equal before the law, we should not be talking about losers and gainers.

Mr. Speaker, Sir, equity is about the dealing with needs of communities, individuals and of areas of the country which are almost impenetrable because they do not lay at the centre of the country. I take this move as a positive development.

I urge the House to meet this week if possible and report back on Tuesday, next week. I say that because the consideration of the County Allocation of Revenue Bill under Standing Order 182 is time bound. The matter that is before the House is also time bound. I, therefore, urge leadership to do consultations in such a way that we come back here next week on Tuesday to consider this issue. I hope that when we come back here, we shall be unanimous one way or the other.

The Speaker (Hon. Lusaka): Kindly proceed, the Senate Majority Leader, Sen. Poghisio.

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker, Sir, on strategizing to keep this Motion going, I must give credit to the young Members who have brought this Motion of Adjournment. It is good to know what a week in time can do. Last week, same time as this, Sen. Orengo and Sen. Wetangula proposed a Motion of Adjournment, but it was negated. I must congratulate Sen. Murkomen for changing his mind and joining this side.

What we have done today is to leave everything as is which means that we will be required to come back and proceed from where we left things. Therefore, on the day that we shall appoint, we shall resume debate on the Motion as it is. We shall consider the amendments on the Order Paper and make a decision. These consultations are, therefore, around the same things.

If we postpone and extend the time to discuss, there must be an orderly way of arriving at a conclusion. I am not so sure that the whole House needs to meet at once. I suggest that we meet in small groups before proceeding to the entire House.

Mr. Speaker, Sir, after all is said and done, we need things sorted out by starting afresh. We are simply buying time. Buying time depends on your negotiation skills and the will of the people. The House has spoken. Members want to put this matter back on the Order Paper. The leadership and the Members of this House have been asked to reconsider this matter which we have done for so long that we know it like the back of our hands. We know the issues and exactly what we want, but we never seem to agree.

With the short time given to us, I hope that we will not come here to ask Kenyans for another postponement. We have had so many similar moments and that is why we wanted to move ahead today and deal with the matters as they are.

Mr. Speaker, Sir, since the House is supreme, we have agreed to come back another time. We will still be the same people, but I hope that we will allow all the 47 counties to be considered for what their dues are. I hope that we shall stop the bleeding and allow growth in the counties that are not growing. I am really hopeful that we shall reach a consensus on those issues.

Mr. Speaker, Sir, I beg to support the Motion and ask my colleagues to move with speed to bring this matter to a close in agreement.

Hon. Senators: Give us time

The Speaker (Hon. Lusaka): Hon. Senators, we are discussing a matter that a vote has already been taken.

Hon. Senators: Please give us time

The Speaker (Hon. Lusaka): I will give you three more minutes.

Kindly proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I thank you for this opportunity. I was beginning to worry about the Senate. This Senate has the privilege of having Members who include Sen. Wetangula, Sen. Orendo and Sen. (Prof.) Ongeru who sat in the National Accord Committee. This is a House of wisdom.

My personal plea to the Senators is that there are people who have been making very frivolous statements against one another. I am pleading with Sen. Cheragei to turn to the Lord and not to cast aspersions on anybody. I plead with him to ask for prayers. He is my junior in the legal profession, but he is my Chairperson. I urge him not to cast aspersions or call people bushes.

We had a meeting yesterday that the Speaker attended where we agreed on a framework for counties getting the balance of their payments which is Kshs29 billion. I must say it on the Floor of the Senate that we appeared disjointed as a Senate on counties getting funds.

As we continue to discuss this matter yet the Supreme Court pronounced itself on advisory opinion No. 3 of 2019 that the counties can get resources. I urge you to get the leadership to agree even if we all have to sign for us to concur with the advisory opinion of the Supreme Court. The counties should get up to 50 per cent of their resources as stated in the advisory opinion which is the judgement of the Supreme Court.

I urge Sen. Poghiso, as the Senate Majority Leader, together with Sen. Orendo to lead. We have faith in them. I request my former Chairman in the Wiper Party to lead the troops. The division that we have seen in this House is in violation of Article 96(3) of the Constitution of Kenya. We must fight the outsiders. We warn those who are warning Senators that we will go for them if they come for our Senators.

Sen. (Prof.) Kindiki: Thank you, Mr. Speaker, Sir. We want to make it clear that there will be no crisis in the counties because they will be able to access 50 per cent of what is due to them based on last year's figures. The media should not promote a narrative that counties will be in a crisis of funds.

We began on a wrong footing where counties were pitted against each other like the legendary story of Gog and Magog, but I am happy that this battle has now come to an end. We are now 47 counties under the territory of Kenya negotiating for good funding of all our 47 counties from the national Government.

The bad terms that have been used in this debate must come to an end. Each county is unique and has its own unique contribution to this country's progress. The populous and less populous counties must be seen as two feet walking our nation to progress and unity. Therefore, the foot that is ahead should not be proud and the foot that

is behind should not feel ashamed because they know that they will keep on exchanging positions until they arrive at their destination.

I support the decision that has been taken.

Sen. Olekina: Thank you, Mr. Speaker, Sir. I am happy that we have an opportunity to go and reason. I know that some of my colleagues like Sen. Sakaja are being harassed. It is ludicrous that we cannot stand as a Senate and stamp our authority in this country. I am proud of the 36 men and women who stood up for Kenya.

My plea is that we should look at all the amendments that are in the Order Paper. We do have an amendment by Sen. Orenge which is an attempt to rewrite Article 203 of the Constitution. There are other amendments by Sen. Wamatangi and others. I am sure that we can make progress if we can sit down and discuss.

My request is that we should be given an opportunity to unite this country. The threats that are being sent---

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. Olekina has claimed for the second time that certain Members have been threatened. It will be good for him to substantiate rather than making unsubstantiated claims.

The Speaker (Hon. Lusaka): Sen. Olekina, it will be important that---

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

The Speaker (Hon. Lusaka): Is that a point of order, Sen. Madzayo?

Sen. Madzayo: Asante, Bw. Spika. Je, nikosa Seneta yeyote kuongea kuhusu matisho kwa Seneta mwenzake? Ni haki kwa Kiongozi wa walio wengi katika Seneti kuuliza swali kama hiyo?

The Speaker (Hon. Lusaka): He asked Sen. Olekina to substantiate his claims that some Senators had been threatened. That is a grave matter.

Sen. Madzayo: Bw. Spika, tunajua mtu ambaye anashutumiwa kwa jambo kama hilo.

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

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

Sen. Cheragei: Mr. Speaker, Sir, is it in order for Sen. Olekina to claim without substantiating that some Members are being threatened yet he sent a tweet today and cast aspersions on this House. He wrote on his official Twitter handle that some Senators have been paid Kshs5 million. Did he cast aspersions on the same Members that he is accusing some agencies of threatening?

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

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

Sen. Wetangula: Mr. Speaker, Sir, I want to plead with the Senators not to be diversionary. We are dealing with a grave matter. We will be playing in the hands of those who do not want this Senate to do its job and succeed if we become diversionary. Let us focus on what we are here to do. We should keep our eyes on the ball.

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

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

Sen. Olekina: Thank you, Madam Deputy Speaker. We do not live in oblivion. We know what is happening in this country. Some of us wake up at 3.00 a.m. to read news. We do see what is being portrayed outside there. I was shocked to see a big banner on a highway targeting my colleague, Sen. Sakaja. These are things that are outside there.

The Senate Majority Leader asked me to substantiate my claims and I shall do so. When I came into this House, I met the distinguished Senator in his office. Very few people know that he spent part of his night in this *Bunge* for him to be safe. We are all mortal beings and no one will live forever. What we are doing here is a duty. We were elected to come here and defend our people. I defend my colleague because I care about the people of Nairobi City County that he represents.

I will not respond to the statement by Sen. Cherargei because I did not make that statement in this House. He can ask me to respond to it in another platform and I shall do it.

When we adjourn, we should unite this country and not divide it. We should not go down in history as the House that was controlled by some remote control device. We were elected, therefore, there should be a difference between elected leaders and somebody who is appointed out there to call the shots.

I will be very happy if this country---

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Olekina, are you on a point of order on the adjournment of debate, a contribution, or what is it because we need to agree on a way forward?

Sen. Olekina: Madam Deputy Speaker, I do not blame you because you just walked in. Your brother, the Speaker, had given me an opportunity to comment on---

The Deputy Speaker (Sen. (Prof.) Kamar): Were you to substantiate some allegations?

Sen. Olekina: Madam Deputy Speaker, when I was making my comments, I made statements which I was required to substantiate. That is what I was doing so that my comments would be clear in the HANSARD.

My last comments are as follows: Let us take this opportunity to look at the amendments. If we do not have facts, there are so many institutions in this country, which can guide us, for example, the Kenya Bureau of Statistics (KEBS). We want to unite this country and not divide it.

I support.

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

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

Sen. Sakaja: Madam Deputy Speaker, Sen. Cherargei is really surprising me. When your colleague stands and talks about---

The Deputy Speaker (Sen. (Prof.) Kamar): Are you on a point of order?

Sen. Sakaja: Yes, that is why you have given me the chance.

The Deputy Speaker (Sen. (Prof.) Kamar): Then make reference to it instead of telling us how surprised you are.

Sen. Sakaja: Madam Deputy Speaker, why do you not listen to the entire remark that I am making?

The Deputy Speaker (Sen. (Prof.) Kamar): Of course, we listen! Sen. Sakaja, you do not tell us to listen. Can you point out the Standing Order you are referring to?

Sen. Sakaja: Madam Deputy Speaker, I do not know what the matter is. Just allow me to make my point of order. A point of order has been raised on which Sen. Olekina has been asked to substantiate claims about threats to me.

The Deputy Speaker (Sen. (Prof.) Kamar): Are you referring to yourself?

Sen. Sakaja: Yes, I am referring to myself. I can show you the Standing Order. For everyone who is standing on a point of order, you have not asked them to give you its number. You are just starting from now.

The Deputy Speaker (Sen. (Prof.) Kamar): I am starting from now so that we move in an orderly manner.

Sen. Sakaja: Madam Deputy Speaker, the Standing Orders provide that every Senator shall be responsible for the accuracy of any facts that the Senator alleges to be true and may be required to substantiate any such facts instantly. That is the Standing Order 100(1).

I know the Standing Orders. If you make such a grave allegation on a Member, it becomes a laughing matter. I put it in the public record that on Friday, I was being trailed by police officers from the Directorate of Criminal Investigations (DCI) in a car with registration number KBZ 317W. I saw them and they left.

I raised it with the Inspector-General of Police, but he did not respond. Let me not even talk about the other incidents. Yesterday, there were reports of my impending arrest, so that I am not here today. I heard that Members in this House know. Some of them know it. Some of them were discussing it. I did not even stay in my own home. I was in this Senate at 5.30 a.m. today. I sat in my car in the basement until midday.

Sen. Cherargei, that is not a laughing matter.

Madam Deputy Speaker, everybody here knows the kind of vitriol--- Let me finish because it is very hurting.

The Deputy Speaker (Sen. (Prof.) Kamar): I am only having one problem, Sen. Sakaja. I wish you came with a Statement.

Sen. Sakaja: Let me finish, I will bring a Statement later. Just allow me to finish. If it happened to you, you will be allowed to say it.

The Deputy Speaker (Sen. (Prof.) Kamar): Well, I will allow you to conclude, but you had a very nice opportunity to make a very nice Statement.

Sen. Sakaja: Madam Deputy Speaker, when your life is threatened, you do not think of Standing Orders. You do not sit and plan.

This is not a small matter. They were sticking out of my house the day before yesterday. I saw them. The reason I did not speak about it is because I knew their

objective. Some of you who were strategizing might know, but it was for me not to come to the House. Even the person who votes after me in my delegation was told not to come, so that the vote would go one way or the other. Let me not speculate on that. Now that I have come and I have voted, those who want to arrest me, please go ahead.

Madam Deputy Speaker, you know the vitriol and you have seen those banners being put out there for me to change my position. I am not one to be intimidated. I am the son of Emily Ayoti Kubasu, a champion. I will not be intimidated. I stand for one Kenya.

Finally, I have heard people saying that they will expel me from the party or will do this and that. I am persuading Sen. Poghisio, the Senate Majority Leader, who I respect a lot, and the Majority Whip, Sen Kang'ata because they are leaders in this House to know that a party position is not an individual's opinion. A party position is not even your opinion. A party position is when you call your members, you caucus, discuss an issue, and agree to disagree, but that agreement reached, is binding. I have been a chairman of a party and I know what a party position is.

You can do ten more *hashtags*, it is okay. In fact, yesterday I helped to tweet them. Since we are not voting, it is okay. I was born in this town in Ngara. I am used to this life. I can stay in cells, but I will stand for one Kenya.

(Applause)

The party position that I know of in the Jubilee Party is the position of one Kenya, indivisible. I stand for that.

I am glad that we now have an opportunity to look at the proposals which I had brought, the proposal that I heard Sen. Linturi and Wamatangi talking about and we can harmonize. This country will move forward together.

As for those threats, they mean nothing. I am ready for whatever consequence for the price of this country. People have lost more. They have even lost lives, not just party positions.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen Sakaja, you lost an opportunity to make a Statement and Members would have been able to talk on it, but not now. We will not go that direction because we need to agree on a way forward for the decision that we have made. You will do so later.

(Sen. Sakaja spoke off record)

Sen. Sakaja, I was just telling you as a matter of fact that if it was a Statement, then other Members would have made reference to it. However, we do not want to direct ourselves in the wrong direction without a Motion on the Floor.

I see Sen. (Dr.) Zani. Is she also on appoint or order?

Sen. (Dr.) Zani: It is a contribution.

The Deputy Speaker (Sen. (Prof.) Kamar): Then the point of order is from Sen Kang'ata. Sen Madzayo, are you also on a point of order?

Sen. Madzayo: Yes.

Sen. (Dr.) Zani: Madam Deputy Speaker, can I proceed? I had explained to the Speaker, Hon. Lusaka.

The Deputy Speaker (Sen. (Prof.) Kamar): You are the next one for a contribution.

Sen. (Dr.) Zani: Thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): I will allow two points of order from Sen. Kang'ata and Sen. Madzayo.

Sen. Kang'ata: Madam Deputy Speaker, I rise on a point of order that provides a procedure on how a Member can bring an issue that is affecting him personally. I strongly believe that what my colleague from Nairobi City County has said ought to have been brought procedurally through a formal Statement.

Notwithstanding that, I want to confirm that the security of each and every Senator should be protected by the Republic of Kenya. My brother is entitled to security. The Government does not support actions that may be geared to threaten his personal security at all.

Madam Deputy Speaker, we must also allow Kenyans to thrive democratically. It is the democratic right of the people of Nairobi to express themselves in whichever manner they would want to. As a democrat, I strongly believe that he is, he will support that kind of endeavour. Whether through *hashtags* or *WhatsApp*, it is the democratic right of Kenyans.

Madam Deputy Speaker, on that score, I also urge my colleague to remember we had a parliamentary group of the Jubilee Party. We called several Members of the Jubilee Party. Several Members who do not support the position of the party attended.

I want to remind him that Sen. (Dr.) Ali attended and opposed the party position. Sen Dullo---

(Loud consultations)

He did not attend that meeting. He refused to attend the parliamentary group meeting. It is a fact! Therefore, he should not come to mislead the House.

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kamar): Order, Sen. Kang'ata! You do not misuse a point of order, please. That is why I will be watching the points of order from now.

I can see Sen. Madzayo is on a point of order, then the Senate Majority Leader, and that is it.

Sen. Madzayo: Asante, Bi. Naibu Spika. Uzuri wetu ni kuwa maisha ya mmoja wetu yakiwa hatarini au ikiwa Seneta anaweza kupoteza maisha yake kwa sababu ya vile anavyofanya kazi hapa, Bunge la Seneti linatupa haki ya kujadiliana na kuhakikisha kwamba Seneta huyu anafanya kazi yake bila matisho kama hayo.

Saa 2.30 p.m. tulipokuwa tunaingia hapa, askari walikuwa wamejaa hapa nje wakiangalia sisi ilhali kama hiyo haikubaliwi katika Bunge.

Pia Sen. Malalah amepata tishio kama hilo. Tutaendelea hivi kwa miaka mingapi? Hii ni kwa sababu katika historia ya Bunge la Kenya, tunajua kwamba ukishakisiwa kuwa wewe ni mtu wa msimamo fulani, basi unaweza kupatikana katika msitu wa Ngong. Wabunge waliokuwa wakakamavu katika siasa walipoteza maisha yao ndani ya msitu wa Ngong.

Hatutaki kuona msemu kama huo ukisemwa ama ukitokea hivi sasa. Sen. Sakaja ni kijana mdogo sana ambaye ana familia changa. Sitaki kuamka kesho asubuhi na kusoma kwamba yeye amepoteza maisha yake huko Ngong Forest. Tunamhitaji hapa Nairobi. Ni kijana ambaye amejitolea muhanga, kufa kupona, kuona kwamba Kenya ni nchi moja. Sote tuko hapa kwa sababu ya ugavi wa pesa zinazokwenda katika serikali za mashinani.

Uongozi wa upande wa walio wengi ukiongozwa na Sen. Poghisio umefeli mtihani; hawawezi hiyo kazi. Sisemi kitu ambacho hakiko sawa. Sen. Kang'ata hawezi kumshawishi hata Seneta mmoja upande wake wa walio wengi kuenda upande wowote. Kuna umuhimu kwamba tuwe kitu kimoja ili Kenya ibaki kuwa nchi moja.

Asante, Bi. Naibu Spika.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, it should be very clear that we cannot impute improper motive on one another unless we have substantive Motions.

I do not want us to debate the statement that Sen. Sakaja is going to bring. I gave him the offer that he needs to bring a Statement, so that colleagues can add or minus from it.

I want the last point of order from Sen. Cherargei. I will rule on the issue of contributions because there is something technical about the contributions that you are talking about.

Sen. Cherargei: Madam Deputy Speaker, I heard Sen. Mutula Kilonzo Jnr. saying that I should turn to the Lord. I want to confirm to him that I have received Jesus Christ as my saviour.

Secondly, I have been arrested before, intimidated and have two court cases. I sympathise and empathise with Sen. Sakaja and hope that the concerned agencies will be able to address his concerns.

Finally, it is very unfortunate that as the Senate we failed today for the seventh time to move forward as a country. We were not elected to come here and fail to make decisions.

Madam Deputy Speaker, I can assure you that when we come back we will have 47 formulae before this House and we will not make any progress. It is so sad. It is unfortunate for the country because we have been having these caucuses for a long time.

The other day, Sen. Mutula Kilonzo Jnr. and company were saying: "If you want to kill us, kill us now." Why change the tune now, yet we had given them an offer through Sen. Kang'ata's amendment last time? As I said, it is very unfortunate that we, as

the Senate, have failed to make progress. We have failed in our constitutional obligation as provided for under Article 217 of the Constitution.

Madam Deputy Speaker, we were ready to put this matter to rest. The more we procrastinate as the Senate, it paints a bad picture before the public. Many people have argued that it will divide the country. There are many decisions that we have made here before. We kicked out Sen. (Prof.) Kindiki. Is Tharaka Nithi or the country divided as a result of that? No! Let us stop the hogwash that we are selling to the public. It is unfortunate that we were not able to proceed.

On the issue of Sen. Sakaja, let your office, Madam Deputy Speaker, take this matter seriously. I want to urge those people who are trailing him that they should just lobby him. He is a good man and they know where to find him before curfew hours. They can see him and discuss with him, so that he can support us.

Thank you, Madam Deputy Speaker.

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

Hon. Senators: He has already spoken!

The Deputy Speaker (Sen. (Prof.) Kamar): He is not contributing to this matter; I think he had a point of order.

The Senate Majority Leader (Sen. Poghisio): Madam Deputy Speaker, when we---

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, when we have a person on a point of order, we allow that person to prosecute, then we will come to you.

The Senate Majority Leader (Sen. Poghisio): Madam Deputy Speaker, on the Motion to adjourn, we adjourned. Using Standing Orders, we have reopened debate. This matter was already resolved. The debate has been suspended.

I want to bring to your attention that we need to make progress rather than continuing to reopen debate, which has already been closed.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senate Majority Leader.

Sen. (Dr.) Zani, was it a point of order?

Sen. (Dr.) Zani: Madam Deputy Speaker, what we are trying to do is to make sure that during the period of adjourning, certain things will happen the way we expect them.

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

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Sakaja, we have given you a chance to raise points of order three times. Allow other Members to speak.

Sen. Sakaja: Madam Deputy Speaker, when I rose on a point of order, you told me that I have to show the Standing Order that I am rising on. I told you that you do not do that to anybody else. Everyone subsequently, including the Senate Majority Leader and now Sen. (Dr.) Zani, you forget your new rule.

Madam Deputy Speaker, please, be fair.

The Deputy Speaker (Sen. (Prof.) Kamar): I will stick to my new rule.

Sen. (Dr.) Zani is on a point of order. Please, respect her.

Sen. (Dr.) Zani: Let me finish my bit. I will keep it brief. From what we are saying, the fact that we need to caucus is very key. Probably, we would not have been in this situation if we had caucused more at different levels. As we adjourn, it is important for us to do so.

The second thing that I want to speak about is the confusion about the formulas that are out there; the first basis formula, the second basis formula, moving to the third from the CRA and the other one from the Standing Committee on Finance and Budget. In their discussions, the media has picked this in the wrong way. They keep discussing the CRA formula, yet that is not what was on the table of the Senate. What was on the table was the recommendation by the Standing Committee on Finance and Budget.

As we go out, I hope that we can address this as Senators of various counties. Under Article 96 of the Constitution, we stand as Senators taking care of the interests of all counties. Even when we look at the particular formula and what is happening with the various counties, we need to discuss this formula.

As we continue to caucus, let us get a position where counties are able to manage. From the losses that counties are making, among them are Kwale, Mombasa and Garissa. Some of these counties will not be able to operate. As we move into the adjournment, let us keep this at the forefront of our minds, so that we can execute.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, please, take your seats. Are you coming in or going out?

Sen. Murkomen: We are out!

The Deputy Speaker (Sen. (Prof.) Kamar): Please, leave so that we can continue. Sen. Murkomen, do not do it *kienyeji*.

Hon. Senators, we had agreed that we were going to adjourn. This had been moved and supported by Members. Therefore, we are going to adjourn. The only direction that I can give on that one is that, at the rise of the Senate, the leadership should go and consult. At the rise of the House, you should go and consult, and choose days for consultations, so that we come back. As was raised by Sen. Orengo, we want this by latest Tuesday. However, should the Leadership decide that we come back on Friday for a sitting, we will be very happy.

I want to urge the Leadership to move forward very quickly, decide when the consultations are going to take place; how they are going to take place and inform the Members as soon as possible. I think we are all happy with that because that is what Sen. Orengo's Motion had intended. Although we defeated it last time, it was supposed to have done exactly that for us.

With that, we move to the next Order.

Sen. (Dr.) Ochillo-Ayacko: On a point of order, Madam Deputy Speaker---

The Deputy Speaker (Sen. (Prof.) Kamar): Please, do not take us back to the old one because we have already ruled on that one.

Sen. (Dr.) Ochillo-Ayacko: Madam Deputy Speaker, I am sorry to be speaking after you have given your ruling.

Through the ruling, which you as Speaker gave to this Senate, the other Chamber is equal to this Chamber, and on the basis that every Member should be heard and their

feelings be recorded. However, in that other Chamber, the whole afternoon, we have been trying to catch your eye. It is only in this Chamber where you recognize people and they speak. Would I be in order to ask the Speaker to exercise some fairness and give every Member an opportunity to speak?

We have been seated there and have things to say, but we are not being recognized by the Speaker and given an opportunity to speak. Therefore, I am asking with all humility that the Members in that Chamber also be allowed to speak.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator. As you may understand, the reason we did not move even out of this is the fact that there was already a ruling. We had agreed to adjourn, and when we agree to adjourn, we do not allow room for any debate.

Sen. Shiyonga: On a point of order, Madam Deputy Speaker. It is very hurting that we cannot catch your eye or the eye of any Chair when we want to speak, yet you repeatedly give an opportunity to the same people in this House to speak. Are they more special than us who are here that we cannot speak even a word? Can we not be given even an opportunity to speak?

If points of order are the way that we are going to contribute in the House, then, we shall be raising points of order.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Shiyonga, you may miss the eye of the Speaker, but the eye sees everywhere and fairly.

Sen. Mwaura: On a point of order, Madam Deputy Speaker. I rise on Standing Order No.116, which states as follows: -

“(1) A Senator is disorderly if the Senator-

- (a) creates disorder;
- (b) knowingly raises a false point of order;
- (c) unnecessarily interrupts the proceedings or consults in a disruptive manner;
- (d) fails to record abstention in a Division;
- (e) makes allegations without, in the Speaker’s opinion, adequate substantiation or
- (f) commits any other breach of these Standing Orders that in the opinion of the Speaker constitutes disorderly conduct.” “

Let me not read the whole of it, but up to that.

We are living in very interesting times. There are some Senators here who have made it their habit; you cannot even make a contribution because they feel so entitled that they can always stand on points of order. I think this is very unfair! Some of us are queuing in the line to make contributions, but you hear Sen. Sakaja speaking four times and Sen. Cherargei five times. It is creating a sense of entitlement; that there are Senators who are more equal than others, and it is also disrupting the procedure of this House.

I have never seen a House that is ruled by Standing Orders that are false and disorderly, and at the same time, Statements which are discussed up to 5.00 p.m.

I think that this House has also been adjourned in a disorderly manner in the past. We need to adhere to our Standing Orders, and in that manner, give every Senator a fair chance. Why am I saying so? It is not by right that every time you shout 'point of order,' you should be given a chance to speak. Even the Speaker can tell a Senator to sit down because when you are making your points of order to be more than the contribution, then you are derailing debate.

Today, some of the Senators who are here were complaining that we should adjourn comments on the debate after they themselves had made their contributions.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. (Dr.) Mwaura---

Sen. Mwaura: Madam Speaker, let me finish. The practice is that if you have actually contributed, you have no right to ask the House to adjourn debate because you have already had your chance.

Madam Deputy Speaker, I think that we need to have a fair chance at contributing.

The Deputy Speaker (Sen. (Prof.) Kamar): I just wanted to remind you that you are in the Speaker's Panel, and so, you are the one who will be sorting that out.

Hon. Senators, I would, therefore, like to---

Sen. (Dr.) Ochillo-Ayacko: Madam Deputy Speaker, just allow me to speak!

The Deputy Speaker (Sen. (Prof.) Kamar): Are you still standing up on the same issue? We have noted the issue of the extended Chamber.

Sen. (Dr.) Ochillo-Ayacko: Madam Deputy Speaker, I have not spoken in this House, unless you take our attendance here for granted.

I speak this with humility, not just about myself---

The Deputy Speaker (Sen. (Prof.) Kamar): I thought that you have already made your point!

Sen. (Dr.) Ochillo-Ayacko: But you did not give a ruling. Do we have a right to speak on any subject or we just leave? We cannot---

The Deputy Speaker (Sen. (Prof.) Kamar): Which subject are you talking about, Senator?

Sen. (Dr.) Ochillo-Ayacko: Madam Deputy Speaker, the adjournment that you ruled on was not---

The Deputy Speaker (Sen. (Prof.) Kamar): The adjournment---

Sen. (Dr.) Ochillo-Ayacko: Can I make my point, Madam Deputy Speaker.

The Deputy Speaker (Sen. (Prof.) Kamar): I want you---

Sen. (Dr.) Ochillo-Ayacko: Will you not allow me to even make my point? Can you let me make the point because we were seated there? Everybody spoke on this matter of the adjournment as a matter of right, and yet, you would not allow some of us who were there and wanted to speak. What are we doing in this House?

The Deputy Speaker (Sen. (Prof.) Kamar): I am trying to help you. I do not know why you do not want---

Sen. (Dr.) Ochillo-Ayacko: I just want an opportunity to speak. If that is how you want to help me, then let me sit down and then you help me.

The Deputy Speaker (Sen. (Prof.) Kamar): Senator, if you look at your Standing Orders on Motions of Adjournment, once a Motion of Adjournment has been pronounced, it is not debated on again. People started using the points of order to contribute, and Sen. (Dr.) Mwaura is right to say that to some extent, people have misused the points of order. That is why I was insisting that we need to start drawing reference to the Standing Order when we are doing that.

Adjournment means that the Motion is coming back and we wanted to move and make reconciliations that we want to do. If you want to contribute using a point of order, then it is disorderly, just the way the other Member has raised.

I would like to persuade you that because the Motion has been stood down by an adjournment, we will go and come back to discuss the same. As I am telling you that, I had five Members who were on points of order when you came in and we have not given any of them an opportunity to speak. Let us agree that we have adjourned.

Hon. Senators, I want to inform you that consultations will be held within this week and the communication I have received is that we will pass the same on Tuesday. So, please, check your pigeon holes, *WhatsApp* and emails to get information on where the consultations will take place.

Nonetheless, we will do consultations within the week, and next week, on Tuesday, we will vote on the same. This is good for us so that the country knows that we have ruled on when that is going to take place.

Thank you, Senators.

Hon. Senators, that being the case, I would, therefore, like to defer Order No.12, which was the Motion brought in by Sen. Sakaja. This is because it relates to the same negotiations and consultations that will take place within the week.

Next Order!

MOTION

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

THAT, AWARE THAT under Article 217 of the Constitution, the Senate by resolution is required to determine the basis for allocating among the counties the share of national revenue that is annually allocated to the county level of government;

FURTHER AWARE THAT, the Senate mandated the Standing Committee on Finance and Budget to consider the recommendations of the Commission on Revenue Allocation, and consulted the Cabinet Secretary responsible for Finance and the Council of Governors among others and subsequently conducted public participation pursuant to Article 118(1)(b) of the Constitution, as documented in the report tabled in the Senate on Monday, 13th July, 2020;

NOW THEREFORE 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. 316.50 billion**

The following formula shall apply

CA_{i1} = Allocation per County for FY 2019/20

b) **Equitable share over and above Kshs. 316.50 billion**

The following formula shall apply

CA_{i2} = $0.18 * \text{Population Index}_i + 0.17 * \text{Health Index}_i + 0.10 * \text{Agriculture Index}_i + 0.05 * \text{Urban Index}_i + 0.14 * \text{Poverty Index}_i + 0.08 * \text{Land Area Index}_i + 0.01 * \text{Fiscal Effort}_i + 0.06 * \text{Roads Index}_i + 0.01 * \text{Prudence Index}_i + 0.20 * \text{Basic Share Index}_i$ ¹

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 = $\frac{\text{Facility gap funding in county } i}{\sum_{i=1}^{47} \text{facility gap funding in county } i}$ Primary health care factor _i = $\frac{\text{No. of primary health care visits in county } i}{\sum_{i=1}^{47} \text{No. of primary health care visits in county } i}$ In – patient days factor _i = $\frac{\text{No. of in – patient days in county } i}{\sum_{i=1}^{47} \text{No. of in – patient days in county } i}$
Agriculture services	Agriculture Index _i = $0.005 * \text{Minimum Share index} + 0.095 * \frac{\text{Rural households in county } i}{\sum_{i=1}^{47} \text{Rural households in county } i}$
Other county services	Population index _i = $\frac{\text{Population in county } i}{\sum_{i=1}^{47} \text{Population in county } i}$
Minimum share	Basic share index = $0.19 * \text{Equal Share index} + 0.01 * \frac{\text{inverse of population in county } i}{\sum_{i=1}^{47} \text{inverse of population in county } i}$
Land	Land area index _i = $\frac{\text{Land area in county } i}{\sum_{i=1}^{47} \text{Land area in county } i}$
Roads	Roads index _i = $\frac{\text{Rural access index in county } i}{\sum_{i=1}^{47} \text{Rural access index in county } i}$
Poverty level	Poverty index _i = $\frac{\text{No. of poor people in county } i}{\sum_{i=1}^{47} \text{No. of poor people in county } i}$

¹ The formula will use the 2019 population and 2015/16 KIHBS poverty statistics

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	$\text{Fiscal effort index}_i = \frac{\text{OSR collections of county } i}{\text{GCP of county } i}$					
Fiscal prudence	No.	Variable	Indicator	Score	Responsible	Weighting
	1	Audit Report	Non-Qualified	4	County Executive Assembly	CE=90% CA=10%
			Qualified	2		
			Adverse	0		
			Disclaimer	0		
	2	Development Expenditure	At least 30%	1	County Government	100%
			Below 30%	0		
	4	Internal Audit Committee	In place	1	County Executive Assembly	CE=90% CA=10%
	4	County Budget Economic Forum	In place	1	County Government	100%
			Not In place	0		

c) **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} = Allocation per County for FY 2019/20

CA_{i2} = Equitable share over and above Kshs. 316.50 billion

The basis used is as shown

No.	Parameter	Weight
1	Population	18%
2	Health	17%
3	Agriculture	10%
4	Urban	5%
5	Roads	6%
6	Poverty	14%
7	Land	8% capped
8	Basic Share	20%
9	Fiscal Effort	1%

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10	Fiscal Prudence	1%
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(Motion deferred)

Sen. Faki: On a point of order, Madam Deputy Speaker. In view of the fact that the main Motion has been deferred, maybe we should go back to the Petitions, so that we dispose of some of them by Members who are here.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, Sen. Faki has made a valid statement. We deferred some of the Orders. We will go back to Order No.4 on Petitions.

PETITIONS

The first one is from the Chairperson of the Standing Committee on Justice, Legal Affairs and Human Rights, but he is not here. The second Petition is by Sen. Cherargei, who is also not here. The third Petition is to be read by the Chair, and I will do exactly that.

HISTORICAL LAND INJUSTICES INVOLVING PLOT NO. 162/V/M.N.CR 1070 IN MOMBASA COUNTY

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, there is a Petition to the Senate concerning historical land injustices regarding Plot No.162/V/M.N.CR1070.

Hon. Senators, I hereby report to the Senate that a Petition has been submitted, through the Clerk, by Mr. Salim Mwidadi among others, being citizens of the Republic of Kenya, on behalf of the Wajomvu Community in Mombasa County.

As you are aware, under Article 119(1) of the Constitution, and I quote:

“Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation.”

Hon. Senators, the salient issues raised in the said Petition are-

(1) That the petitioners are amongst the 12 Swahili tribes and the earliest tribes to settle in Jomvu Kuu, Mombasa, approximately 800 years ago

(2) That in 1877, a Jomvu elder allocated Dr. Krapf a parcel of land to establish a church; however, when the land adjudication was done in 1923, the Methodist Church was allocated 150 acres of the Wajomvu Community land.

(3) That recently, the Methodist Church has embarked on a sub division exercise and sale of the land to third parties.

(4) That the land is the ancestral land of the Wajomvu Community, who have been using the land for their livelihoods, cultural, and religious purposes, and that it is their route to Jomvu Maunguja, their fishing grounds and further that the community has no alternative land to settle on.

(5) That three years ago, the community submitted a memorandum on the matter to the National Land Commission (NLC), but to date, no response has been given.

The petitioners, therefore, pray that the Senate undertakes an inquiry into the matter, with a view to resettle the local community on their land.

Hon. Senators, pursuant to Standing Order No.231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

Sen. Faki: Asante Bi. Naibu Spika kwa kunipa fursa hii. Kwanza ningependa kumpongeza Salim Mwidadi na wenzake kwa kuleta malalamiko haya katika Seneti. Hii inamaanisha kwamba wana imani kwamba watapata haki katika hii Seneti.

Jambo la pili ni kuwa hii ni baadhi ya dhuluma za kihistoria ambazo zilitokea katika Jamhuri ya Kenya. Kama walivyosema katika malalamiko yao, mmishonari Ludwig Krapf alipoingia Kenya, alisafiri mpaka Rabai ambako alianzisha kanisa yake ya kwanza. Wakati huo, watu walisafiri kwa miguu. Wakati huo walikuwa wanatumia Old Port. Mtu alipofika hapo, alilazimishwa kutumia dau au vihori kusafiri mpaka Jomvu Kuu kisha aanze safari kwa miguu kuelekea sehemu zingine.

Wakati huo, Jomvu Kuu ilikuwa mwanzo wa safari zote kuelekea bara. Krapf hakujenga kanisa Jomvu Kuu kwa sababu wengi wa wakazi wake walikuwa Waislamu. Kwa hivyo, aliingia ndani na kuanzisha kanisa yake katika maeneo ya Rabai.

Walipewa sehemu ndogo ya kujenga kanisa. Jambo la kusikitisha ni kwamba 1901 wakati ardhi ilipoanza kutolewa, kanisa ilipewa ardhi kiasi cha ekari 150. Ekari zile ndizo mashamba ambayo wenyeji walikuwa wakitumia kulima na sehemu walikuwa wanatumia kuenda kufanya uvuvi. Sehemu zingine ni makavazi ya kale ambayo wanatumia wengine kufanya ibada ama wana mizimu yao ambayo wanakwenda kuitakaradhi wakati wanataka kufanya mambo makubwa katika eneo lile.

Bi. Naibu Spika, kwa hivyo, tumeona kwamba hii ni dhulma ya kihistoria kwa sababu ardhi ilipewa kanisa ambayo ilikuja na kupewa kijisehemu kidogo wakati ule. Wakati ule ilikuweco wengi waliokuwa pale walikuwa ni waislamu ambao hawakukubali kwanza kuwe na kanisa lakini baadaye wakakubali kuwe na kanisa. Ni vipi kanisa liweze kuja kupewa eraki 150 wakati wakaazi hawajapewa hata ardhi kidogo?

Jambo la pili ni kwamba mishonari Krapf alipokuja, alikuwa na kanisa yake ya *Anglican Church of Kenya* (ACK). Hata ukienda Rabai, utapata ya kwamba kanisa ya mmishonari Krapf ilikuwa ni ya ACK. Jambo la ajabu ni kuwa ardhi hii imebadilika kutoka kwa Jomvu Mission na kuja kuwa ni ya Methodist Church ambao wameamua kuigawanya ardhi ile na kuanza kuuza bila ya kuwahusisha wenyeji.

Bi Naibu Spika hii ni dhulma ya kihistoria kwa sababu hata *National Land Commission* (NLC) ilipoanzishwa, walipata fursa ya kuangalia swala hili lakini hakuna chochote kiliweza kufanyika. Ndio maana wakaazi wakaja katika Bunge la Seneti kutaka wapewe haki kwamba ardhi hii ni yao ya kihistoria. Ni ardhi ambayo wameikalia zaidi ya miaka 100 sasa kutoka walipoanza kukaa mahali pale. Wameitumia kwa ukulima, kuenda baharini kuvua na kama sehemu yao ya kale ya kuweza kuomba Mungu wakati wanahitajika.

Tunaomba kamati husika iangalie swala hili kwa undani na haraka. Juzi, wiki mbili zilizopita, kulifanyika maandamano makubwa katika eneo la Jomvu kuu ambapo baadhi ya watu waliweza kushikwa na polisi kwa sababu wameandamana kutaka haki yao.

Bi. Naibu Spika, Katiba yetu inatoa fursa kwa watu kuandamana wakati kuna matatizo au wakati wanataka kueleza malalamiko yao. Hatuoni sababu gani watu wale waliweza kukamatwa na kupelekwa mahakamani wakati kitu walikuwa wanatetea ni ya haki yao ya kuweza kupewa ardhi yao ya kihistoria.

Ardhi ndiyo chombo kikubwa cha uzalishaji mali. Hatuwezi kuwanyima wakaazi wa Jomvu ardhi yao kwa sababu ya dhulma za kihistoria ambazo zimefanyika katika nchi yetu hii. Katiba yetu ya 2010 inarejesha haki kama hizi kwa wenyeji ili waweze kupata haki zao na kuona kwamba haki inatendeka katika eneo lile.

Bi Naibu Spika, ninaunga mkono malalamiko haya ya watu wa Jomvu. Tunataka kamati husika ifuatilie swala hili kwa haraka ili tuweze kupata ufafanuzi mapema kabla hakujatokea maafa kutokana na swala hili.

Asante.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. Sen. (Dr.) Ochillo-Ayacko, proceed.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Madam Deputy Speaker for the opportunity to support the people of Jomvu and be in solidarity with my brother, Sen. Faki, on this matter. The issue of land, landlessness and freedom are all intertwined. Nobody in the world or anywhere can exercise freedom without owning the land upon which that freedom is exercised.

If today anybody was to come to Parliament and purport to speak here, they will be declared trespassers. If you came to my home uninvited and tried to exercise your right to speech or movement, I would take you to court and you would be charged with the offence of trespassing on my land.

Madam Deputy Speaker, the basis of freedom and liberty is land. Any person who is landless in Kenya or does not have a place that they can comfortably do what they are supposed to do under our fundamental freedoms, are people whose freedoms have been denied.

The Jomvu and Mombasa people who, for one reason or other, lost the right to that land are people we must be in solidarity with. The committee to which this matter will be referred to must look at it urgently and fairly, knowing that certain Kenyans are displaced and are, therefore, unable to exercise their right to freedom of any kind.

Madam Deputy Speaker, back in my county of Migori and in any other county, there are parcels of land placed under public and community land. They fall under county governments or national Government. When the opportunity to divide them arises, you will find that these opportunities are given to business people and those who know how to approach the determinants of allocating this land. The people who are disadvantaged and do not have voices are locked out.

We have large parcels of public land in Nyatike, which are idle, yet we have landless people there. We have large parcels of public land at a place called Lichota in Migori. These parcels of land are now being designed for development, but there are landless people in Suna East and Suna West who do not get this opportunity.

Madam Deputy Speaker, I plead with the committee to which this matter will be referred to first know that human beings, who have nowhere else to go, must be

considered by way of priority for allocation of land, because they also need somewhere they can exercise their freedom and be productive members of the society.

I am in total solidarity with the people of Jomvu and Mombasa as they try to resolve this matter. I hope that in the resolution, there will be an opportunity to allow our Islamic brothers and sisters to coexist with our Christian brothers and sisters. This is because land and all this opportunity must also unite our people.

Madam Deputy Speaker, in conclusion, I urge that we also think about the NLC and operationalize it by funding and allowing it to do what the Constitution envisaged that it should do.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator.

Sen. (Dr.) Zani, proceed.

Sen. (Dr.) Zani: Bi Naibu Spika, asante kwa fursa hii ili nizungumzie juu ya Ombi kutoka kwa watu wa Jomvu, Mombasa. Nakushukuru Sen. Faki kwa kuleta Ombi hili hapa Seneti. Kwa kweli vile alivyosema na vile ambavyo tumeona, haya maombi ni juu ya dhulma ya kihistoria.

Hawa ni watu ambao walikuwa na ardhi yao na walikuwa wakifanya shughuli zao na mambo yao ya kila siku. Lakini, inaonekana kwamba hapa kati kati mambo yaligeuka.

Inaonekana kwamba sasa hawawezi kuimiliki hiyo ardhi vizuri na wametupwa nje. Ninafikiria kwamba kwa sababu wameleta Ombi hili hapa Seneti, Kamati husika ina kazi ya kuangalia jambo gani haswa lilifanyika. Kwa upande wangu, sio vibaya kutoa ardhi kwa kanisa, lakini nimemuuliza Sen. Faki akaniambia ni karibu ekari 150 ambayo inahusika. Ekari hizi pia zinazwa kwa watu wengine sasa. Wale watu ambao walikuwa wakiishi pale tangu zamazi sasa hawapati nafasi. Wanaamini kwamba hii ni ardhi ya ukoo.

Bi Naibu Spika, ni ardhi ambayo wameiliki kwa miaka mingi sana na wanahitaji kama ni kwa upande wa uchumi, kufanya biashara, ukulima na chochote na ardhi ile. Kwa sababu wameona kwamba dhulma hii imeendelea, na haswa katika Pwani tumeona dhulma nyingi sana kwa upande wa ardhi, hawa watu wa Jomvu wanaoleta Ombi hili katika Seneti wameleta mahali sawa. Hili Ombi ni muhimu.

Nafikiria ikienda kwa Kamati hii itashughulikiwa na wataweza kutuelezea ni haswa jambo gani. Nafikiria wengine pia wataitwa hapa Seneti ili waweze kujieleza zaidi ili tupate kujua haswa ni kitu gani kilifanyika ili tuweze kutatua shida hiyo.

Bi Naibu Spika, kama hii ardhi ilipatiwa kanisa kwa sababu ya kazi fulani, basi sio ardhi yote, kama wale ambao ni wakaazi pale hawajapata chochote. Itabidi maswala haya yangaliwe.

Vyeti vya kumiliki ardhi pia viangaliwe kwa njia ambayo itaweza kusaidia kujuwa kwamba ardhi ilikuwa ni ya nani na ardhi inapaswa iwe na nani.

Hili swala la kuuza ardhi ni muhimu sana kutoka Pwani. Hii kwa sababu tunaona kwamba ardhi nyingi zikiuzwa, wale ambao walikuwa wakimiliki ardhi hizo wanapata kwamba hawana mahali pa kuenda. Ikiwa humiliki ardhi ya babu na nyanya zako wa zamani, itakuwaje sasa na utaishi wapi.

Kwa hivyo, Ombi hili ni muhimu. Namshukuru Sen. Faki ambaye ameleta Ombi hili kwa niaba ya watu ambao wanaishi Jomvu ambao wamepatikana na janga hili. Nafikiria katika Seneti, tutaweza kuliangali na kulikamilisha vilivyo na kuhakikisha kwamba wamepata haki yao.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator.

Sen. Boy, kindly, proceed.

Sen. Boy: Asante, Bi. Naibu Spika, kwa kunipa fursa hii kuchangia. Kwanza, nataka kumpongeza Bw. Salim Mwidali, mkaazi wa Jomvu, kwa kuleta hii *Petition* katika Seneti.

Bi. Naibu Spika, kama unavyojua, ardhi ni jambo sugu sana katika nchi hii. Kila unapokwenda, tatizo kubwa ni ardhi. Ukienda Mombasa, sehemu za Bonde la Ufa na sehemu zingine, shida kubwa utaona kwamba kuna unyanyasaji wa ardhi katika nchi hii yetu.

Kusema ukweli, mimi mwenyewe nikiwa mdogo, historia ya Jomvu tuliisoma katika vitabu vya historia ya Kenya. Inajulikana kuwa Jomvu iko sehemu gani na Jomvu ni pahali gani. Ni pahali ambapo katika historia, inajulikana sana. Jomvu ni mji wa zamani sana. Mji huu una historia ya biashara.

Bi. Naibu Spika, kusema ukweli, haki lazima ifuatiliwe. Sisi kama viongozi lazima pia tuweze kuchangia. Hii ni kwa sababu malalamikio haya yapelekwa katika National Land Commission (NLC) katika nchi yetu ya Kenya. Utakuta kwamba, kesi nyingi zikienda katika tume hii hawachukui jukumu la haraka kutatua tatizo hili ya ardhi. Wao wanasikiza malalamiko ya wananchi lakini haki na utendaji wa haki hazifuatiliwi.

Bi. Naibu Spika, haki katika ardhi hii lazima ifuatiliwe. Kama kuna kamati itachunguza hii ardhi ya watu wa Jomvu, basi wakae chini na wananchi wenyewe ili waweze kutatua tatizo hili sugu la ardhi.

Tatizo hili si la Jomvu pekee yake, bali katika Kaunti ya Kwale. Wakati huu kuna shida ya kule Ramisi ambayo imenyakuliwa na mabepari. Kila siku kuna maandamano. Maandamano hayo utakuta ni mambo ya ardhi pekee yake. Huko sehemu za Waa, Galu na Kinondo, matatizo ni hayo hayo.

Bi. Naibu Spika, mimi naomba kwamba hiyo Kamati ambayo itaangalia shida hii, iweze kufanya haki ili watu wa Jomvu wapate haki yako.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, Senator. Sen. Halake, proceed.

Sen. Halake: Thank you, Madam Deputy Speaker. I was one of the Members in the other Chamber that got forgotten today, but I am happy that I am able to contribute to this Petition. The issue of land is something that is very close to my heart. I would like to support the people of Jomvu who have brought it. They have done the right thing to come to the Senate.

Madam Deputy Speaker, Mr. Mohamed of Jomvu can be replicated in every part of the Arid and Semi-Arid Land (ASAL) counties as well. In fact, this reminds me of the allocation of revenue and resource sharing across the country, which we have just adjourned. However, when you look at that, it is basically the historical injustices, where

colonial style of laws and disfranchisement of communities is happening, especially with land.

Madam Deputy Speaker, all that anybody needs to do to take away from our communities, be it in Mombasa, Isiolo or Mandera, is to gazette. We are all for places of worship. In fact, if there is one place where people live in perfect harmony from any religion it is the coastal region. We would like our places of worship to have enough land. However, it is not right that community land is usually just acquired compulsorily without any consideration for the communities that have lived there for ages. All anybody needs to do is to gazette it and convert it either to public land or to private land. That is wrong.

Madam Deputy Speaker, if that land was private, somebody would have had to buy it. Why is it that when it is community land, it is just taken away from them with no consideration? Even relocation of compulsory acquisition must follow a process. Why is it that when comes to communities, no process is followed?

Madam Deputy Speaker, in the last two years alone, 50 forests have been gazetted to become public land and not a single compensation has been given to the communities that lived there. Why are we impoverishing our communities and taking away their land? If it was private land, somebody would have been paid for it.

Madam Deputy Speaker, that speaks to the resources allocation issues and that discrimination is rife at the coast when it come land. Injustices are rife when it comes to land, not just at the coast part also in Northern Kenya. Where I come from, Isiolo, we had Legal Notice No.150 which was illegal which converted public land to army land, disease free zones and gave it to the Government without compensating people that have lived there for all their lives.

Madam Deputy Speaker, I would like to stand with the people of Jomvu and to condemn any disfranchisement or any acquisition of land and impoverishment of the communities instead of sharing the resources equally and ensuring that the places of worship are there, but the communities that were there are also looked after.

I would like to urge the Committee where I used to be - the Standing Committee on Land, Environment and Natural Resources - to deliver justice to this. I also appeal to the National Land Commission not to take the issue of community land lightly. It is a ticking time bomb. If it is not dealt with properly, it will plunge this country into a lot of chaos.

I thank you, Madam Deputy Speaker, and I support.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you very much, Senator.

Hon. Senators, Standing Order No.232 (1) states that the Petition should be committed to the relevant Standing Committee for its consideration. In this case, I direct that the Petition be committed to the Standing Committee on Land, Environment and Natural Resources. The Committee is encouraged to work closely with the Standing Committee on Justice, Legal Affairs and Human Rights in preparing its report to the Senate.

In terms of Standing Order No. 232(2), the Committee is required in not more than 60 calendar days from the time of reading the payer, to respond to the petitioners by way of a report addressed to the petitioners and laid on the Table of the House.

I thank you.

*(The Petition was Committed to the Standing Committee
on Land, Environment and Natural Resources)*

The last Petition is from the Senator for Nandi County, Sen. Cherargei.

NON-PAYMENT OF SALARIES BY
THE NANDI COUNTY GOVERNMENT

Sen. Cherargei: Thank you, Madam Deputy Speaker. I stand to present a Petition to the Senate concerning non-payment of support staff salaries in contract with Nandi County Government.

“We, the people undersigned, as citizens of the Republic of Kenya and support staff in Nandi County, draw the attention of the Senate to the following-

- (i) That in October, 2019, the County Government of Nandi advertised job positions for support staff to Job Group B and Cleaner II, Job Group B.
- (ii) That in October, 2019, the County Government through the County Public Service Board issued letters to recruit staff who were to report to work on 1st November, 2019, for a contract of three years.
- (iii) That the duties of the staff were mainly security services, messenger services, cleaning duties and other assigned duties by their respective supervisors.
- (iv) That most of the staff were deployed to health department as cleaners and they have been working different county hospitals without pay despite several efforts of seeking assistance.
- (v) That despite having recruited and deployed the staff to various hospitals in Nandi county, they have never been paid their salaries and allowances for the last eight months since November, 2019, up to now.
- (vi) That the staff are languishing in poverty despite having secured a job at the county, most of them health department who are the frontline working in the fight of COVID-19 pandemic.
- (vii) That despite several attempts to seek the matter to be addressed by the County Public Service Board with the Chief Executive Officer of Health, nothing has been done.

Instead, staff are intimidated and blackmailed for seeking their wages.

THAT WHEREOF, your humble petitioners pray that the Senate investigates this matter and makes appropriate recommendation thereon with a view to-

- (1) Conducting investigations into the plight of recruited support staff, who were issued with official appointment letters in the months of October and

November 2019 and have never been remunerated up to date. They have not been paid for the last eight months, from November 2019 to now, August, 2020.

- (2) That the Senate investigates with a view to conducting a special audit to be done by the Auditor General on the Nandi County Government finance department, on the issue of payment of salaries and remittance of statutory deductions to Kenya Revenue Authority (KRA), National Health and Insurance Fund (NHIF) and the National Social Security Fund (NSSF) that they have been complied with.

Finally, none of the issues raised are pending in a constitutional institution or any court of law.”

The petitioners are Mark Sirma, Alice Kurgat, Judy Chepchumba, Nelly Chepng’etich and countersigned by yours truly.

Madam Deputy Speaker, I request the Committee that you will refer this matter to, which I predict is the Committee on Labour and Social Welfare – to do a special audit because most of these workers are security personnel. With the fight against COVID-19 pandemic these are the frontline workers, manning and cleaning the hospitals. They are more predisposed to dangers of COVID-19 infection. From November 2019 to now - the last eight months - the casual support staff have not been paid.

You can imagine the pain, agony and anguish their families have been in for the last seven to eight months that they have not been paid by the Nandi County Government. We request a special audit to be done on the issue of the statutory deductions by the Auditor General. We are aware that the Nandi County Government have not been remitting the statutory deductions of NHIF, NSSF and KRA.

Let the relevant committee, be it The Committee on Health, Committee on Labour and Social Welfare or the County Public Accounts and Investments Committee rescue the lives of many workers who are suffering because of nonpayment. The same people have been demanding for their rights. They called and informed me that some of the people who have been agitating for better pay were summoned to the County Government of Nandi offices in Kapsabet and the police were called in to arrest them. The people demanding for labour rights and wages were detained in Kapsabet police station for almost a full day for speaking out. This is blackmail and intimidation by the County Executive of Nandi to try and muzzle these staff deny them of their labour rights as enshrined under Article 41 of the Constitution of Kenya.

Therefore, I call upon the Senate to look at the plight of the people of Nandi, especially the casual labourers, who have not been paid for eight months. I request, through your office and the responsible Committee, that we come up with appropriate remedial action, so that our people can continue to enjoy their labour rights, as provided for and enshrined under Article 41 and even under Article 27 of the Constitution on the right to dignity. You work to get money; we are also being paid to be here. You can imagine how undignified it is when a father or mother goes back home everyday without pay.

Madam Deputy Speaker, thank you for the indulgence.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, pursuant to Standing Order 231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than 30 minutes.

Sen. (Dr.) Milgo, proceed.

Sen. (Dr.) Milgo: Thank you, Madam Deputy Speaker. I rise to support this Petition from Sen. Cheragei about employees, who were engaged on a contract basis in Nandi County and have not been paid for the last eight months.

Under Article 41 of the Constitution, on labour laws, those workers are supposed to be treated with dignity and paid their dues. Furthermore, these workers were contracted and engaged to work in critical conditions, particularly in hospitals where we have the COVID-19 pandemic. It is a challenge. Many people would not wish to work there. We are seeing healthcare workers succumbing to diseases out of being frontline workers. Nobody even knows whether these workers, who are contracted, have the right gear to use, that is, the Personal Protective Equipment (PPEs). We also do not know whether they have ever been paid at all or what conditions they are in when carrying out their jobs.

Furthermore, if a contracted worker works beyond six months, under the labour laws, they are supposed to be made permanent. Part of what the Committee that will look into this should do is implore upon the Nandi County to make these employees permanent, because they have worked past six months. They are no longer contracted workers.

In addition, we are being told that in the same county the statutory deductions in the name of NHIF and NSSF are being deducted without being remitted. This is an illegality which must be condemned in the strongest terms possible because of the fact that the deductions go out to assist the workers. If these workers were supposed to obtain any loans, they cannot do so. They cannot pay school fees because their monies have been deducted and nobody is remitting them. When this Committee will be conducting investigations, the County Government of Nandi should explain the reason they are deducting workers' salaries without remitting the same.

I am in the Committee on Labour and Social Welfare, and we have been coming across cases where several institutions engage workers without payment. We have seen nurses complain that they have been working and there is nonpayment. It is high time that the people who engage any worker should know the need to exercise caution in terms of ensuring that jobs are done with dignity and people are paid for being contracted. These workers in Nandi County must be paid as a matter of urgency, even before the Petition is brought to conclusion. We are urging the Governor of Nandi County to ensure that the eight months' salary is paid and the statutory deductions are also submitted.

I support the Petition and if it comes to the Committee on Labour and Social Welfare, we shall ensure that we expedite and bring it to conclusion.

Thank you Madam Deputy Speaker, and I thank the Senator for Nandi for having great concern for the inhabitants of Nandi County.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, Standing Order 232(1) states that the Petition should be committed to the relevant Standing Committee

for its consideration. In this case, I direct that the Petition be Committed to the Standing Committee on Labour and Social Welfare.

In terms of Standing Order 232 (2) the Committee is required, in not more than 60 calendar days from the time of reading the prayer, to respond to the Petitioner by way of a report addressed to the Petitioner and laid on the Table of the Senate.

I thank you.

Hon. Senators, that brings an end to the Order on Petitions. I am informed that the Senate Majority Leader has a Notice of Motion to give.

Kindly, proceed, Sen. Poghisio.

NOTICE OF MOTION

ADJOURNMENT OF THE SENATE PURSUANT TO THE APPROVED CALENDAR FOR THE 2020 SESSION

The Senate Majority Leader (Sen. Poghisio): Madam Deputy Speaker, I beg to give notice of the following Motion: -

THAT notwithstanding the resolution of the Senate made on 27th February, 2020, 17th March 2020, 14th April 2020 and 2nd June 2020 altering the Senate Calendar, the Senate pursuant to Standing Order 29(4) and 31(3)(b) now resolves to hold a sitting on Tuesday, 11th August 2020 at 2.30 p.m. and thereafter, to adjourn and resume sittings on Tuesday, 8th September, 2020 pursuant to the Calendar.

The Deputy Speaker (Sen. (Prof.) Kamar: Hon. Senators, since the Motion that has been moved by the Senate Majority Leader is timed, we will skip everything else on the Order Paper and go to Order No.27.

MOTIONS

ADJOURNMENT OF THE SENATE PURSUANT TO THE APPROVED CALENDAR FOR THE 2020 SESSION

The Senate Majority Leader (Sen. Poghisio): Madam Deputy Speaker, I beg to move the following Motion: -

THAT notwithstanding the resolution of the Senate made on 27th February, 2020, 17th March 2020, 14th April 2020 and 2nd June 2020 alteration of the Senate Calendar, the Senate pursuant to Standing Order 29(4) and 31(3)(b) now resolves to hold a sitting on Tuesday, 11th August 2020 at 2.30 p.m. and thereafter to adjourn and resume sittings on Tuesday, 8th September 2020 pursuant to the Calendar.

We have resolved as a House to adjourn debate. We therefore need to open the opportunity for this House to come back and proceed with what we had planned before the Motion on Adjournment. It is our view that we do not adjourn today but after we

finish debate on the basis of the revenue sharing formula next week and proceed on our recess by an additional week.

This is a very straightforward Motion. I beg to move and ask the Senate Minority Leader to second.

The Senate Minority Leader (Sen. Orengo): Thank you, Madam Deputy Speaker. I support this Motion. It is without doubt that we must meet again next week because there is business that is still pending. We were supposed to go for recess but there are compelling reasons as to why we should reconvene on Tuesday, next week. I fully support the decision taken by the Senate Majority Leader.

In supporting this Motion, I want to say without fear of contradiction that nations go through moments where one has to either choose to resolve the great historical and political questions that are confronting a nation or run away from them. In those moments, one requires statesmen, who can even be adversaries, to come together on the table of brotherhood, as Martin Luther King Jr. would refer to it, to resolve the important questions that confront a nation.

We have repeatedly said on the Floor of this house that Kenya is one indivisible nation that believes in democracy and human rights. I want to remind Kenyans that unless we sit together, reason together and resolve the great questions that face the Republic of Kenya, this country cannot achieve the changes and the economic aspirations that our people want.

You may remember the two great statesmen in the Middle East called Yitzhak Rabin and Yasser Arafat. Yitzhak Rabin was a war hero who had fought and won many wars and Yasser Arafat was the liberation father. Those gentlemen got together and shook hands to bring peace in that part of the world that was so divided. Nelson Mandela and De Klerk, who were from different worlds, had a handshake, talked together and brought peace and freedom to the people of South Africa.

In Kenya today, we have a historical moment where the President of the Republic of Kenya, Uhuru Muigai Kenyatta, agreed to work with Raila Amolo Odinga and other political figures to bring peace and prosperity to this country for us to become a perfect union, one nation and one country. Therefore, I plead that we give ourselves the opportunity to talk to each other, reason together and come back with solutions that can make a difference to our nation and country.

I support and second the Motion on the alteration of the calendar and seek that you use your discretion in calling us to come on Tuesday next week.

(Question proposed)

Sen. (Dr.) Zani: Thank you, Madam Deputy Speaker. I wish to support this Motion. I think that we have all listened to the discussions in the afternoon and it is very clear that the momentum dictates that we continue with this process. We should try as much as possible to gain the much needed consensus to talk together and deliver for Kenyans who are waiting very anxiously.

We are looking at a formula that is going to guide the revenue allocation in counties for the next five years. Therefore, it is very critical and important that all counties are brought aboard this discussion, and that the idea of equity is well imputed, so that every county can understand what is going on.

Secondly, as I said earlier, it is very important at this point that the various formulas that are coming in are explained and understood. We have also had an idea of involving the Commission on Revenue Allocation (CRA) in looking at the parameters, because once any parameter is changed, it really creates a difference in the allocation that is given to the counties. Therefore, a lot of discussion and simulation will be needed. As we alluded earlier on we might even need to involve the budget office and come up with simulations that we can explain to each other.

Madam Deputy Speaker, we also have various amendments. I was just saying a few minutes ago that I feel like with these amendments, we are nearly there. If you look at the amendments, there is a lot of similarity in what we are proposing. I think the bottom line in all those amendments is to say let counties at least begin at the base line of what they received in the 2019/2020 allocation, because what they received is probably still not enough.

We had deficits in various counties in terms of them being able to attain what they need to attain. We are making a decision that we do not want to go on an adjournment now at as such a critical time. We are adjusting the calendar to allow us time to debate, consult, talk together, and be able to deliver.

Thank you, Madam Deputy Speaker.

I support.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. (Dr.) Milgo.

Sen. (Dr.) Milgo: Thank you, Madam Deputy Speaker. I also rise to support this Motion to come back and resolve the stalemate that is before this House. People in this country are really waiting for funding, particularly with what is happening in the country right now. Many of the county governors are complaining that they cannot even manage to put in place some of the necessary items to fight COVID-19. When we come back on Tuesday, if we are able to resolve this stalemate, we shall be able to assist our country in that.

Secondly, if retreating and coming back on Tuesday will bring harmony in this House, I think it will be worthwhile. However, whatever the case, as a mathematician, I know that the moment you apply any figure in any formula, it is actually a variance and there will be some counties that will lose. I think that by Tuesday, people will know that whatever variance we will use, some counties will lose. In any case, we should come together in harmony. Maybe this is the time we need to pass the Equalization Fund, so that it might cushion those counties that are going to lose funding.

Madam Deputy Speaker, I wish to support this Motion that we meet again on Tuesday.

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

Sen. (Prof.) Ongeru: Thank you, Madam Deputy Speaker, for this opportunity to also weigh in on this adjournment Motion. It is important that we put this Nation

together. It is critical that as a nation, we move together. As Senators representing the various counties in this country, we have merely postponed the problem. That issue has got to be decided on, one way or the other.

I urge and request that the leadership and the Speaker should convene, as early as possible, so that this matter can be deliberated upon and an agreement agreed on. If we do not do so, we increase the level of anxiety and make the counties very uncertain on how to handle their budgets. There is a need for predictability of these resources.

Therefore, we will live with the Motion of adjournment that was passed today, but should know that sooner than later, we shall be called upon to make a prudent decision on how these resources should be shared out.

Without discussing the merits and demerits of the Motion, when it eventually arises, we should be looking at those counties that have lost in this formula and how they can be cushioned, so that they can feel as part of the family.

Secondly, those who have gained should let go a little bit so that we can cushion back. There is the Equalization Fund which has built up to Kshs.20 billion. That Fund is sitting somewhere without any function whatsoever. This is the time to recruit that kind of a fund, so that we buttress some of the counties that are losing out on the shareable revenue.

At the national level, there are infrastructure programmes that need to be funded by the national Government. If we can look carefully and be able to take care of counties - let me be selfish a bit - counties like Nyamira should get something that can buttress the losses. There are many other counties, including Mombasa, Kwale, Kilifi, Mandera and others. We do not need to argue or quarrel about this issue. Eventually, we will agree.

With those few remarks, I support this Motion.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, this does not concern counties. So, I will proceed and put the question.

(Question put and agreed to)

Hon. Senators, the following Orders stand deferred; Orders No.13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24.

PROVISION OF CEMETERY, FUNERAL PARLOURS AND CREMATORIA IN ALL COUNTIES

THAT, AWARE THAT under Article 61 of the Constitution of Kenya, land in Kenya is classified into three categories, public, Community and private land;

FURTHER AWARE THAT, public land is vested in both the County and National Governments and is managed on their behalf by the National Land Commission, and that Article 62 (2) clarifies the distribution of public land between the two levels of government.;

COGNIZANT THAT, the Fourth Schedule of the Constitution delegates Cemeteries, funeral parlours and crematoria as a function of County Governments;

CONCERNED THAT, cemeteries in the Country are filling up, and counties are finding it increasingly difficult to identify land to allocate as “public” for use as a cemetery with the knowledge that any cemetery or burial-place that is crowded and therefore dangerous to health is defined as constituting a nuisance in the Public Health Act;

NOW THEREFORE, the Senate calls upon the county governments to ensure that funds are allocated in the County Annual Development Plans for FY 2020/2021, towards the planning and development of cemetery, funeral parlours and crematory facilities.

(Motion deferred)

CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS
TO THE COUNTY OUTDOOR ADVERTISING CONTROL BILL
(SENATE BILLS NO. 19 OF 2018)

THAT, the National Assembly amendments to the county outdoor advertising control bill (Senate Bills No. 19 of 2018) be now considered.

(Motion deferred)

BILLS

Second Reading

THE PROMPT PAYMENT BILL
(SENATE BILLS NO. 3 OF 2020)

(Bill deferred)

Second Reading

THE EQUALIZATION FUND BILL (NATIONAL
ASSEMBLY BILLS NO. 43 OF 2019)

(Bill deferred)

Second Reading

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT)

BILL (NATIONAL ASSEMBLY BILLS NO. 51 OF 2017)

(Bill deferred)

COMMITTEE OF THE WHOLE

THE STREET VENDORS (PROTECTION OF LIVELIHOOD)
BILL (SENATE BILLS NO. 10 OF 2019)

THE ELECTIONS (AMENDMENT) BILL
(SENATE BILLS NO. 18 OF 2019)

THE KENYA SIGN LANGUAGE BILL
(SENATE BILLS NO. 15 OF 2019)

(Committee of the Whole deferred)

BILLS

Second Reading

THE WILDLIFE CONSERVATION AND MANAGEMENT
(AMENDMENT) BILL (SENATE BILLS NO. 24 OF 2019)

(Bill deferred)

Second Reading

THE LAW OF SUCCESSION (AMENDMENT) BILL
(SENATE BILLS NO. 1 OF 2020)

(Bill deferred)

Second Reading

THE COUNTY RESOURCE DEVELOPMENT BILL
(SENATE BILLS NO. 2 OF 2020)

(Bill deferred)

Second Reading

THE SECTIONAL PROPERTIES BILL (NATIONAL

ASSEMBLY BILLS NO.23 OF 2019)

(Bill deferred)

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

Second Reading

THE COMMUNITY HEALTH SERVICES BILL
(SENATE BILLS NO.5 OF 2020)

Sen. (Dr.) Zani: Madam Temporary Speaker, I beg to move that the Community Health Services Bill (Senate Bills No.5 of 2020) be now read a Second Time.

I want to very quickly talk about community workers; what they do and why they are so important, especially during this time of COVID-19 pandemic. We did not know that it was going to erupt.

Madam Temporary Speaker, with your indulgence, allow me to remove my mask since there is social distance so that I can speak without it and then put it back when I am done.

We have a group of people called community health workers who work at the basic level in the community. They interact with the communities by moving from one household to another. They talk to members of those households and find out what kind of disease they have. They are able to sensitize them on some critical basic health information. Their work is so dire. In many communities, they are well received and recognized. During this time of COVID-19 pandemic, we saw what they did in Germany. They were doing very well because there already are structures in that country.

In this country, we have a structure of community health workers that goes right up to the community level. However, this category has not really been highlighted in terms of ensuring that their work is recognized and appreciated. Many times, they are referred to as community health volunteers because they volunteer to do their work.

The reason for this Bill is to upgrade them and address the issue of recognition. The definition of a worker according to the World Health Organization (WHO) is somebody who has a place within a particular society.

During the public participation of this Bill, many people were clear about the role that this particular group of workers has to play and the need to entrench the legal functional mechanism for recognition. That is where the legal gap is missing. That is why this legislation has come to fore.

As I speak here, there are certain counties that had gone ahead put in place their own Bills to address these community health workers. During public participation, the Council of Governors (COG), for example, were of the opinion that let them do their work within counties without a legislative framework.

This is a group of workers who are so important in the specific categories. There are many people in the community who are not able to go to a dispensary or hospital. They need the sort of intervention that community health workers give.

Madam Temporary Speaker, I have brought this Bill to the Floor of the House of Senate to show that many counties have already begun this process. We, as Senate, have come up with this legislation so that these particular counties entrench on and vary it to their specific issues within their counties.

The community health workers already exist. In some counties, they are given some allocation of money while in others, they are not given. It is done arbitrarily by some counties. Therefore, structuring of this is very important.

There are specific counties who have been able to put in place this legislation. We have Nairobi City County Community Health Services Bill. We have the Homa Bay County Community Health Services Bill. The Turkana Community Health Services Act, 2018, which was passed by Turkana County Assembly. It is an Act. We also have the Narok County Community Health Services Bill.

As I said, counties are already putting legislation in place, but we do not have the legal legislative framework nationally. That legal legislative framework can only come from the Senate.

There is evidence across the world about the impact of community health service health functionality on various aspects of health; be it reproductive, maternal, newborn children or adolescent health. Data actually shows, for example, increase in women attending at least four antenatal clinics raises their ability to have productivity heightened and child mortality improved which can improve from 39 per cent to 62 per cent.

When I finish moving this Bill, Sen. (Dr.) Milgo will second it so that we begin to debate. As I speak, counties are waiting and are hopeful that we will get to that point.

I will make a quick run through what this Bill is about. It specifies the role of national and county governments; establishes the position of Director of Community Health Services; procedures for appointing community health workers; functions of community health workers; and, inspection of the register among others. In short, we want to put order, functionality and legislation in the area of community health services.

Madam Deputy Speaker, I beg to move and request Sen. (Dr.) Milgo to second.

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senator, I hope you are aware that you are entitled to one hour. Proceed Sen. (Dr.) Milgo.

Sen. (Dr.) Milgo: Madam Deputy Speaker, I rise to second this Bill by Sen. (Dr.) Zani. It is an important Bill that seeks to bridge the legal gap in the area of community health workers, who are majorly volunteers.

Actually, what is missing in this particular area is the framework for recognising the functions of the national Government and county governments. That has come clearly in this Bill. If this Bill is assented to, it will go a long way to encourage this group of people to assist people in the communities.

I have seen such people going round in Kibra assisting those people who are terminally ill and others who have been staying in their houses due to lack of funding to seek healthcare. They have brought to the fore some of the conditions that have had to be

solved. I am sure if this Bill passes, it shall be a game changer for our community health workers.

I thank Sen. (Dr.) Zani and second.

(Question proposed)

The Deputy Speaker (Sen. (Prof.) Kamar): Hon. Senators, for the convenience of the House, we will now rise.

ADJOURNMENT

Hon. Senators, it is now 6.27 p.m., time to interrupt the business of the Senate. The House, therefore, stands adjourned until Tuesday, 11th August, 2020, at 2.30 p.m.

The Senate rose at 6.30 p.m.