



**REPUBLIC OF KENYA**

**TWELFTH PARLIAMENT – (FIFTH SESSION)**

**VOTES AND PROCEEDINGS**

**TUESDAY, SEPTEMBER 21, 2021 AT 2.30 P.M.**

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

3. **PAPER**

The following paper was laid on the Table of the Senate -

Report of the Standing Committee on Health on the Third Progress Report on the COVID-19 pandemic situation.

*(Sen. Olekina Ledama on behalf of the Chairperson, Standing Committee Health)*

4. **STATEMENTS**

a) **Pursuant to Standing Order 47(1)**

The Senator for Nairobi County (Sen. Johnson Sakaja, MP) made a statement on an issue of general topical concern, namely, the status of the new Dandora Stadium in Nairobi City County.

Thereupon, the Senator informed the Senate that the new Dandora Stadium in Embakasi North Constituency was commissioned in 2018 by the county government of Nairobi and it was to be completed in 24 months. However, up-to date the stadium was yet to be completed.

He further informed the Senate that the project had been marred by controversies in its procurement process and allegations of poor workmanship by the contractor who was awarded the contract; which have become subject of investigation by the Ethics and Anti-corruption Commission.

The Senator decried the delay in the completion of this facility saying it was a great disservice to thousands of talented young people who had hopes that it would be of use to them in enhancing their talents, especially in sports.

In conclusion, the Senator requested the relevant Committee of the Senate to summon the acting Governor of Nairobi City County and the Director General of Nairobi Metropolitan Services to give a full status report on the progress made towards the completion of the project and the costs that have been incurred to date.

**b) Pursuant to Standing Order 48 (1)**

- i) The Senator for Nairobi City County (Sen. Johnson Sakaja, MP) sought a statement from the Standing Committee on Land, Environment and Natural Resources, regarding the status of water boreholes installed by the Nairobi Metropolitan Services across Nairobi City County.
- ii) The Senator for Nandi County (Sen. Samson Cherarkey, MP) sought a statement from the Standing Committee on Justice, Legal Affairs and Human Rights regarding the delay by the Kenya School of Law in processing Post Graduate Diploma for students who have completed training for Gazettement.

**c) Pursuant to Standing Order 51(1)(a)**

The Chairperson Standing Committee on Energy issued a statement pursuant to Standing Order 51 (1)(a) made a statement on a matter for which the Committee is responsible; namely the substantial increase of fuel by the Energy and Petroleum Regulatory Authority (EPRA) on 15th September, 2021.

Thereupon, the Chairperson informed the Senate that Sen. Samson Cherarkey, MP, had requested for a statement from the Committee regarding the increase in fuel prices as announced by the Energy and Petroleum Regulatory Authority (EPRA), arising from this statement the Committee held a series of meetings with the Cabinet Secretaries trying to mitigate on the cost of fuel and electricity which has had a triple effect on the economy and the subsequently increased the cost of living and cost of doing business significantly on an already burdened citizenry.

He stated that following deliberations in the Senate, the Committee was directed to invite the Cabinet Secretary, Ministry of Petroleum and Mining and the Cabinet Secretary, Ministry of Energy appear before the Committee of the Whole on Tuesday, 21<sup>st</sup> September, 202, unfortunately the two Cabinet Secretaries did not attend.

In conclusion, the Chairperson informed the Senate that the Committee of the Whole noted that the two cabinet Secretaries abdicated their responsibilities as stipulated in article 153 (3) of the Constitution and the Senate should find them culpable, in contempt of the Constitution and that the application of the Parliamentary Powers and Privileges Act, 2017be enforced.

Thereupon, numerous Senators rose on points of order castigating the conduct of the two Cabinet Secretaries and requested the Speaker to suspend the Session in order to enable Senators to consult on the way forward.

5. **SUSPENSION OF THE SENATE TO ENABLE SENATORS TO CONSULT ON THE WAY FORWARD REGARDING THE STATEMENT ISSUED BY THE CHAIR OF THE ENERGY COMMITTEE UNDER S.O. 51(1)(a)**

The Speaker suspended the Senate at thirty minutes past Three O'clock to enable enable Senators to consult.

6. **THE SENATE RESUMED** - at forty minutes past Four O'clock. Speaker in the Chair

7. **COMMUNICATION FROM THE CHAIR CONCERNING BREACH OF BROADCAST RULES BY MEDIA HOUSES**

The Speaker conveyed the following Communication from the Chair-

“Honourable Senators,

As you may recall, on Wednesday, 15<sup>th</sup> September, 2021, the Senator for Murang'a County, Senator Irungu Kang'ata, CBS, MP, rose on a Point of Order pursuant to Rule 6(2) and (3) of the First Schedule to the Standing Orders. Senator Kang'ata drew the attention of the Senate to the plenary proceedings of Tuesday, 14<sup>th</sup> September, 2021, when he had been given the floor via video conferencing, to seek a Statement from the Standing Committee on Tourism, Trade and Industrialization, concerning the operations of the Murang'a County Creameries.

In the Point of Order, the Senator for Murang'a County informed the Senate that on that day, upon being given the floor through the Zoom video conferencing platform, there was a challenge with regard to his settings occasioning the Speaker to rule that the Senator relocates to a more appropriate location before seeking the floor again. The Senator thereupon complied with the Speaker's directive and proceeded to the Senate Chamber and made the request for the Statement from the floor of the Senate.

Senator Kang'ata brought to the attention of the House, a recording of the proceedings of the Senate, capturing the exchange between the Honourable Speaker and himself, at the point at which the Speaker was trying to establish the location of the Senator, before giving him an opportunity to seek the Statement. Senator Kang'ata stated that there was in circulation a version of the recording that had been manipulated to introduce a voice-over, in which an unknown person is heard stating that Senator Kang'ata was at 'Sabina Joy', a bar in Nairobi, from where he was attempting to address the Senate. The Hon.

Senator complained that the manipulated recording which had been circulated in various social media platforms, and was calculated to malign him and cast him in bad light in the eyes of the public.

Senator Kang'ata claimed that the complained of recording had also been aired and reported as news by four mainstream media houses; namely, Citizen TV Digital, the Star Online Digital, K24 TV and Kameme TV, thereby giving it undeserved legitimacy. This, the Senator alleged to be a contravention of Rules 5 (3), 6(2) and (3) of the First Schedule to the Standing Orders on broadcasting rules.

Honourable Senators,

A number of Senators rose in support of Senator Irungu Kang'ata's Point of Order. They included the Senator for Kitui County, Senator Enoch Wambua, MP, the Senator for Bungoma County, Senator Moses Wetangula, MP, the Senator for Makueni County, Senator Mutula Kilonzo Jnr., MP, the Senator for Wajir County, Senator (Dr.) Abdullahi Ali, MP, the Senator for Kericho County, Senator Aaron Cheruiyot, MP, and the Senator for Taita Taveta County, Senator Johnes Mwaruma, MP.

The Senator for Kitui County observed that professional ethics on the part of the media houses required that they verify any information received, to ascertain its accuracy and authenticity, before publishing it as a news item. The Senator further observed that the dignity of the Senate had been undermined and the Senate brought into disrepute on account of the publication of this false recording as a news item by the media houses. The Senator for Bungoma County, pointed out that a number of Senators who were in the House on the material day saw Senator Kang'ata as having been in a moving vehicle, and that he shortly thereafter walked into the Chamber and subsequently prosecuted the Statement which he had earlier attempted while on the Zoom platform.

The Senator for Bungoma also stated that those in the Chamber did not hear anyone call out "Sabina Joy" when Senator Kang'ata was on the online platform. He called for the media houses to apologize to the Senator for Murang'a County, the Speaker of the Senate and the Senate. The Senator for Makueni County called for the correct video recording to be released to the media houses by the Parliamentary Broadcasting Unit, in order to curtail further circulation of the offending recording.

Honourable Senators,

That being the first time the matter was being brought to my attention; I undertook to make a ruling on the matter today. The sum of the question on which I was called upon to rule was whether the recording in question and the manner in which it was carried by the media houses amounted to a violation of

the Standing Orders, and if so, what action was appropriate to be taken by the Senate against the offending media houses.

In making a determination on this matter therefore, I directed the Office of the Clerk to submit to my office, the alleged recording, the Hansard recording in both audio and print, and the Parliamentary Broadcasting Unit recording for Tuesday, 14<sup>th</sup> September, 2021. In addition, Honorable Senators will recall that I was, myself, presiding at the time the offending recording was purportedly made and I am therefore also able to recollect what transpired.

Honourable Senators,

After going through the official records of the proceedings of Tuesday, 14<sup>th</sup> September, 2021, against the recording in question, I have no difficulty in finding that the offending publication was an amateurish and poor counterfeit of the authentic recording of the proceedings of the Senate by the superimposition of a voice-over introducing the words complained of. It is a clear manipulation and a misrepresentation and fabrication of the sequence of events and proceedings of the Senate held on that day. While it is lamentable, that certain individuals using the anonymity of various social media platforms contrived, for reasons known to themselves, to produce and purvey this fabricated recording, it is unfathomable that mainstream media houses could join such a bandwagon.

Honourable Senators,

This is not the first time that the conduct of media houses covering parliamentary proceedings has come under scrutiny. Some Honourable Senators will recall that in the 10<sup>th</sup> Parliament, *The Standard* newspaper published a picture carried on page six of its *Crazy Monday* pullout of Monday, 22<sup>nd</sup> March 2010, that became the source of the complaint. In a ruling made on 30<sup>th</sup> March, 2010, the then Speaker, Hon. Kenneth Marende, observed that-

*“...the purpose of media coverage of Parliamentary proceedings as envisaged in the Standing Orders and Broadcasting regulations and as would be reasonably expected is to relay fair and responsible presentation of parliamentary proceedings to the public”.*

The then Speaker further noted that-

*“...the spirit behind the provisions permitting media coverage of Parliament is really no more than that the public is entitled to follow the proceedings and conduct of their representatives in the Legislature. Media coverage should not be used to serve any other purpose”.*

These words ring as true today as they were then. Parliament is mandated under the Constitution at Article 118 to conduct its business in an open manner and to facilitate the involvement and participation of the public in its legislative and other business. It is for this reason that the Standing Orders, at Standing Order 239, provide for the proceedings of the Senate to be broadcasted and the rules for such broadcasting provided for in the First Schedule.

Rule 5(1) and (3) of the Broadcasting Rules provide that-

*5(1) Officers of the Parliamentary Broadcasting Unit shall conduct themselves in a professional and impartial manner, giving a balanced, fair and accurate account of proceedings.*

*5(3) Recordings of Senate proceedings may not be used for purposes of political party advertising, ridicule, commercial sponsorship or any form of adverse publicity.*

Rule 6 of the Broadcasting Rules that specifically make reference to external media houses state that –

*(2) No external media house or other person may broadcast any proceedings of the Senate except as received from the broadcast feed provided by the Parliamentary Broadcasting Unit or with the permission of the Speaker.*

*(3) A media house that receives a broadcast feed from the Parliamentary Broadcasting Unit shall broadcast it without any manipulation or distortion.*

Honourable Senators,

These rules of engagement were put in place in recognition of the strategic position that the media plays in information dissemination and reaching a much wider spectrum of the public than Parliament would otherwise. The work of the media in complementing the work of the Senate in democratic governance of the country cannot be gainsaid. The media plays a fundamental role in influencing and shaping public discourse and opinion, and in building trust in public institutions.

Section 35 (1) of the Media Act provides that the media shall “...*inform the public on issues of public interest and importance in a fair, accurate and unbiased manner whilst distinctly isolating opinion from fact...*”.

The media, in executing its work, must keep and maintain high professional and ethical standards and shall, at all times, have due regard to the Code of Conduct set out in the Second Schedule to the said Act. In this specific instance,

no inquiry on its veracity was sought from the Parliamentary Broadcasting Unit, the Office of the Clerk or indeed the Office of the Speaker before the publication of the complained of recording as a news item.

The media and the Senate have a long standing mutual and complementary relationship. It is worth noting that Parliament is open to the media and has always engaged the media through existing legal and institutional structures including the Media Council of Kenya and the Editors Guild. In particular, the Media Council which is established under the Media Council Act of 2013 is established to among other things promote and enhance ethical and professional standards amongst journalists and media enterprises. In furtherance of their mandate, the Media Council should ensure enforcement of the standards and code of conduct of the media at all times.

Honourable Senators,

In the present case, the conduct of the media houses in publishing the fictitious and fabricated recording of the proceedings of the Senate without due diligence and appropriate verification, was a clear breach of the Standing Orders and the rules as I have recited above. It is an abuse of the privilege and responsibility vested in the Fourth Estate to cover Parliamentary proceedings. The media houses abdicated their professional ethics by rushing to air a cheap and sensational fabrication without cross checking and verifying the facts and authenticity of the clip.

In this respect, Honourable Senators, Rule 7 (1) of the Broadcasting Rules provides that –

*“Any person who fails to comply with these Rules shall be liable to such penalty as the Senate may on the recommendation of the Committee of Privileges consider appropriate”.*

Before pronouncing myself on the appropriate recourse, in this matter, I wish to inform the Senate that it has come to my attention, and I am therefore able to take what in legal circles is known as ‘judicial notice’ of the fact that on Wednesday, 15<sup>th</sup> September, 2021 and on Thursday, 16<sup>th</sup> September, 2021, the Star online Digital, Citizen Digital, K24 TV and Kameme TV either pulled down and or apologized to Senator Irungu Kang'ata and the Senate for the complained of recording. These media houses acknowledged that they had aired a manipulated video and went ahead to broadcast the correct version of the proceedings. These are acts of contrition and I will take them into account as mitigating factors.

The apology and retraction by the media houses was the right decision under the circumstances. In my view, the apologies rendered constitute an admission of guilt and make it unnecessary for me to refer this matter to the Committee of

Privileges for its consideration and recommendation in the manner contemplated by Rule 7 (1) of the Broadcasting Rules. In this case, the facts are no longer in dispute and a further inquiry and escalation of the matter may not be a productive use of limited parliamentary time and may not even be in the public interest.

That said, it needs to be noted that the conduct of the media houses in breaching the rules on broadcasting was serious and should be treated as such. This conduct is particularly worrying and must be nipped in the bud, coming as it does, at the advent of the electioneering season. At this time, more than any other, the media needs to act with utmost circumspection and caution lest careers are destroyed, institutions are debased and even the whole country is endangered on account of lapses of professional judgment.

Taking all the relevant factors into consideration including the apology and retraction I have referred to earlier, I consider it appropriate that a reprimand issues to the four media houses for contravention of Rule 5 and 6 of the Broadcasting Rules. Accordingly, the following media houses are reprimanded and cautioned that a repeat of the offending conduct will invite more severe action. They are-

- i) The Star online Digital;
- ii) Citizen Digital;
- iii) K24 TV; and
- iv) Kameme TV.

Let me conclude by calling on all media houses, and indeed, all persons including bloggers and other commentators on social media and other public spaces to exercise caution utmost responsibility in reporting on parliamentary proceedings. The democratic process will not be served by falsely and maliciously reducing the legislature which is the apex representative of the sovereignty of the people into an object of scandal and ridicule.

I thank you!"

8. **NOTICE OF MOTION - CENSURE OF HON. JOHN K. MUNYES, CABINET SECRETARY FOR PETROLEUM AND MINING AND HON. CHARLES KETER, CABINET SECRETARY FOR ENERGY**

(The Senate Minority Leader)

**THAT AWARE** that on 15<sup>th</sup> September, 2021, a statement was requested under Standing Order 48(1) regarding the recent increase of fuel prices by the Energy and Petroleum Regulatory Authority (EPRA);

**AND WHEREAS** the Speaker of the Senate directed the Standing Committee on Energy to invite the Cabinet Secretaries of the Ministries of Petroleum and



Mining; and Energy to appear before the Committee on Tuesday, 21<sup>st</sup> September, 2021 to apprise the Committee and the entire Senate on the unprecedented escalation of fuel prices in the country;

**AND WHEREAS** the Standing Committee on Energy invited the two Cabinet Secretaries, pursuant to Article 153 (3) and (4) of the Constitution, to appear before the Committee on Tuesday, 21<sup>st</sup> September, 2021 at 11.00 am;

**NOTING** that the said Cabinet Secretaries failed to honour the invitation to attend the meeting of the Committee;

**COGNIZANT** of the fact that the sharp increase in fuel prices in the country has had a ripple adverse effect on the economy leading to a rise in the cost of living and the cost of doing business on an already overburdened citizenry grappling with the effects of the COVID-19 pandemic ;

**FURTHER AWARE** that this increase in fuel prices has outraged a majority of Kenyans who bear the brunt of the effects of the increase such as high cost of transportation, high food prices, high cost of electricity among other adverse effects on most sectors of the economy;

**NOW THEREFORE the Senate-**

1. Expresses its grave concern on the unprecedented increase in fuel and electricity costs and the adverse effects that these have had on the economy and livelihoods on the people of Kenya; and
  2. Expresses its dissatisfaction with the conduct of the two Cabinet Secretaries, namely- Hon. John K. Munyes, Cabinet Secretary for Petroleum and Mining and Hon. Charles Keter, Cabinet Secretary for Energy in failing to appear before the Senate to address these urgent issues thereby abdicating their responsibilities as set out in Article 153 (3) and (4) of the Constitution.
9. **THE DISASTER RISK MANAGEMENT BILL (SENATE BILLS NO. 14 OF 2021)**

Order for Second Reading read;

Motion made and Question proposed-

THAT, the Disaster Risk Management Bill (Senate Bills No. 14 of 2021) be now read a Second Time.

*(Sen. Mutula Kilonzo Jr, MP and Sen. Sakaja Johnson, MP )*

Debate arising;

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

10. **SENATE ROSE** – at thirty minutes past Six O'clock.

**M E M O R A N D U M**

*The Speaker will take the Chair on  
Wednesday, September 22, 2021 at 2.30 p.m.*

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