

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 30th March, 2022

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

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

PRAYER

PAPER LAID

REPORT ON THE KENYA MEDICAL SUPPLIES AUTHORITY (AMENDMENT) BILL, 2021

Sen. (Dr.) Mbiti: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate today, 30th March, 2022-

Report of the Standing Committee on Health on the Kenya Medical Supplies (Amendment) Bill, (Senate Bills No.53 of 2021).

I thank you.

(Sen. (Dr.) Mbiti laid the document on the Table)

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

STATEMENTS

The Speaker (Hon. Lusaka): I want to invite Sen. Kibiru because he has a Statement to make.

REPORT ON THE STATUS OF THE COUNTY GOVERNMENTS GRANTS BILL, 2021

Sen. Kibiru: Thank you, Mr. Speaker, Sir, for this opportunity to make a Statement. I would like to clarify an outstanding issue so as to allow the Senate to continue with its business.

Mr. Speaker, Sir, for two sessions, we have been debating about the County Governments Grants Bill. I would like to report to the House that we have had discussions since morning and we agreed to lobby. I was with the leadership of the House. We met the leadership of the other House and the Chairman concerned regarding the matters we are deliberating.

It is on record that it was unanimously agreed and communicated that the mediation team will meet tomorrow at 10.00 a.m. We agreed that it will be an annual Bill. The two Clerks have already started making the necessary arrangements for a meeting tomorrow.

I want to clarify to the House that we have it on record that we will have a report on the County Governments Grants Bill tomorrow afternoon conforming to what we proposed in the Bill.

(Sen. Orenge walked into the Chamber)

As the Senate Minority Leader gets in, he can confirm that that was the position of the deliberations.

I thank you.

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

Sen. Murkomen: Mr. Speaker, Sir, I would like to get some clarification on what exactly was ---

(Loud consultations)

Mr. Speaker, Sir, you and your party leader are confusing me.

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

Sen. Murkomen: Mr. Speaker, Sir, I need to get clear clarification. What is the import of what Sen. Kibiru has reported to the House? First, the report he is giving us is under which Standing Order? Is it a Statement of a Chair, Personal Statement or Statement of comfort? I do not understand exactly what he is trying to communicate and how we can hold him to account as far as that Statement is concerned.

Secondly, I have been a Member of mediation committees and I also served in the leadership of this House. How shall we hold Sen. Kibiru, the Chairman of the Standing Committee on Finance and Budget, to account for the Statement he has made here, if there is no signed mediated version of the Bill because he might have been given a verbal promise by somebody somewhere? We have been given so many verbal promises.

Mr. Speaker Sir, senior leadership of this House has been to State House where we were told that this week you will get your money. I have also been in the presence of the President where we have been told “this week, the oversight fund will be in your accounts”.

That was like three years ago, and “this week” has never arrived. That promise was given by the highest office in the land. How shall we believe this one for Sen. Kibiru and how shall we hold him accountable?

The Speaker (Hon. Lusaka): Sen. Cheruiyot, you may have the floor.

Sen. Cheruiyot: Mr. Speaker, Sir, I wanted to protest while Sen. Murkomen was still on the Floor because he appears to be demeaning Sen. Kibiru, the indefatigable Chairman of the Senate Committee on Finance and Budget. When he says that they have received assurances from the highest office in the land, is he insinuating that Sen. Kibiru's office is the lowest in the land and therefore, we should not in any way believe whatever he is saying? I am a Member of the Committee on Finance and Budget and I think that is unfair to my Chairman.

I may not necessarily support the Chairman in the statement he has made, because, even as a Committee, that is not our position. You remember that a deal was made here yesterday and that deal was made by somebody who holds a very high office in this Parliament. It was none other than a son of Kericho, who happens to be the Senator of Siaya.

He came, gave me the assurance and told me: "My brother, my Senator, please let us pass the Second Reading, but I assure you, in the interest of this House that I love so much, even though I may not be planning to make a comeback here, I want to leave a strong House that is dignified and respected".

He assured me together with Sen. Dullo, the Deputy Majority Leader, that we shall not make any progress until Sen. Kibiru makes progress with the County Grants Bill. I believe that is the position.

As good gentlemen and ladies, please lead us in that direction. Anything else, you will be throwing this institution under the bus and you know the history too well

I plead with you.

Sen. Kibiru: Thank you, Mr. Speaker, Sir. I may not stand a chance when it comes to the verbal discussion with Sen. Murkomen because he has been practicing it for quite some time but I am a man of few words, I have made many promises in this House and I have never let this House down. After all, I am the one who even raised this issue and I promise the House that I will see to it that even if I am exiting the House, I will not be eroding the job description of the House.

Mr. Speaker Sir, for the comfort of Sen. Murkomen, I stood under standing Order No. 51 (a) and it says:

"A committee chairman may make a statement relating to a matter for which the committee is responsible"

Thank you.

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

Sen. Murkomen: Mr. Speaker, Sir, I asked a very specific question. I know you are consulting my colleague Sen. Kavindu Muthama but there are two things.

One, Sen. Kibiru cannot claim to have made statements in the past that have come to be true. Sen. Kibiru came here with Building Bridges Initiative (BBI), and told us he wants to give counties at least 35 per cent. Sen. Kibiru has come back with another Bill saying that we give counties the same amount we gave last year, which if calculated using the BBI standards, will be like 17 per cent of the revenue.

First, he has no credibility because the subject he is prosecuting on finance has not met the test of the promises he has made. However, that is beside the point. I asked

him a specific question: Is he laying a foundation for something else using this Statement he is giving? The statement on its own might be okay; it is a promise. He did not even need to make it because tomorrow we will come here in the afternoon to receive the report of the Mediation Committee. Why does he feel like he needs to make this communication?

I hope it is not tied to us being told: “On the promise of some people who are not in this House and a promise that we cannot rely on, let us do another business”. That is all. I just want that assurance from Sen. Kibiru. He can make his promise; 24 hours is a very short time. We will see tomorrow if his promise will come true. He should just not use it as a promissory note to withdraw anything from this House.

The Senate Minority Leader (Sen. Orenge): Mr. Speaker, Sir, I stand here first of all to congratulate Sen. Kibiru - not for what has happened today - that the issue that is of concern to the Senate, he was the first to raise it. Remember when we were discussing the Division of Revenue Bill, during the Second Reading, Sen. Kibiru, on account of making his contribution to that Bill, made a statement here which many of us were not conscious of.

He did say at that time in very clear terms that to proceed with the Division Revenue Bill, without resolution of the County Grants Bill would be a big mistake.

I am so happy because the other day when I was coming for the Second Reading, merely to come and cast my vote, I had the opportunity to read the HANSARD of what Sen. Kibiru raised on account of the necessity as a fundamental condition precedent to passing the Division of Revenue Bill that we must have a resolution of the County Grants Bill, which is a Bill that originated from this Chamber.

Yesterday the most radical statement that was made about the powers of the Senate being eroded on account of not passing the County Grants Bill in the format in which it was passed by the Senate. The person who said that we will be eroding the powers of the Senate if that happened was Sen. Kibiru.

I am very happy that his position has not shifted. I want to report that this morning, I was called into a meeting in which his counterpart in the National Assembly participated in. On that account, they agreed that tomorrow the Mediation Committee will sit to agree on the framework as proposed by the Senate. Not the five-year framework, but the one year, the annual legislation in terms of a Bill coming to this House.

Tomorrow, I am aware that there is a meeting which has been convened of his Committee to deliberate upon a report that is going to accept the Senate’s version of the Bill. That was a good report for him to give because yesterday, people were not quite excited about the proceedings and we had to go into a Kamukunji. Sen. Kibiru went to approach his people in the other House on the basis of what we agreed yesterday.

That Order now requires us to go into the Third Reading. That Bill is being piloted by the Senate Majority Leader and not Sen. Kibiru. So, this is the appropriate time for him to make the statement so that when we reach that Order, we will know that we have made some progress. Now it will be upon the House to determine whether we proceed further into the Third Reading or we wait until that Report is tabled tomorrow.

On my part, I am satisfied from what I saw today that the National Assembly is now committed to passing the Senate version of the Bill.

I do not know whether those assurances are enough for Sen. Murkomen. There was a time when he believed that Raila Amolo Odinga should be the President then he changed his mind.

I accept that he can change his mind any time including the fact that somebody in Elgeyo Marakwet County told me that their Senator has changed his mind about running for Governor because the possibility of Raila Amolo Odinga winning the election is so high that he has to retrace his steps.

I want to make sure that he is not going to come back to a weak Senate. He is going to come back to a very strong Senate, which Sen. Kibiru has ensured that that is what is going to happen.

For once, we are all Hon. Members when Sen. Kibiru who had made those statements yesterday, stands up here and say we now have a settlement, I think we should take him seriously.

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

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. I am a very serious supporter and fan of Sen. Orengo. I really enjoy his speeches and he has been a friend with a great mind. I feel sad that he decided to retreat to the villages of Siaya County, which I believe is out of sacrifice to go and serve the people there. I would have loved to serve my third term here in the Senate with him, but I wish him the very best.

Sen. Orengo knows that I have never considered running for Governor. If I ran for Governor, we would be together in the Council of Governors. However, I still want to make my contribution here in this House. Sen. Orengo and Sen. Kibiru are both going to the counties. You must give me benefit of doubt and listen to me more than them. They only have three months before they can exit this Chamber.

Sen. Wambua, Sen. Wetangula, Sen. Cheruiyot, Sen. Dullo and I among others, have greater interest to protect this House, compared to them. Senator for Machakos County is here. She can attest that we are the ones who have greater desire to have a stronger Chamber. It will be very sad if the people who have participated in weakening this House in the last four years of the handshake government would take top leadership at the government. That is why I do not wish his candidate to become President because they will continue the tradition of weakening this House.

I thank my friend Sen. Kibiru, for the good report but please listen from experience. Forget about Hon. Kanini Kega, from the highest office, we have been told that our oversight fund will be in the account this week. You better listen to me and give this people those funds. This is the only time to strike a deal.

It will only take us 24 hours to make that decision. Meet tomorrow at 10 am, agree on the version of the Bill and bring it to the Chamber in the afternoon. We have sat here to pass Bills that were not so urgent. Tomorrow, we will sit here up to midnight to pass for you the Bill proposing the Kshs370 billion. In any case, the state had promised us Kshs600 billion, but we will pass the Kshs370 billion if that is what is there.

We will realise that even by tomorrow, the decision of the Supreme Court on Building Bridges Initiative (BBI) will have come out. We will realise that all these people who used to preach about BBI and tell us 35 per cent never believed in it because they brought us another Kshs370 billion. Be it as it may, let us at least take something, let us take this Grants Bill tomorrow.

The difference between today and tomorrow is 24 hours which is too short for us to be told to let the Chairman of the committee give us a report about mediation, a promissory note which comes from one Chairman who is a Member of Parliament of a Constituency then a whole Senate believes in his reported speech, it was not even written, passes a serious Bill then comes here tomorrow and regrets saying the Chairman says he received a phone call from somewhere and we are unable to pass that Bill. Let us be serious.

The Speaker (Hon. Lusaka): Sen. Wetangula, please proceed.

Sen. Wetangula: Mr. Speaker, I sat there listening and appreciating Sen. Orogos' exuberant optimism about his party leader becoming the President. It is a far shot. Sen. Kibiru, my hardworking and bright Chairperson, we have come a long way between this House and the 'Lower House' and never trust any promise from them. I can assure you, you will be cornered into passing a Bill of such momentous importance and tomorrow you will be told 'we have changed our minds.'

We have had so much altercation, mistrust and distrust with that House that some of us have graduated into Thomas from the Bible: That seeing is believing. I want to encourage you not to be too optimistic and too believing because it will not happen. If they will bring and send to you what you have promised tomorrow, we wait and see it. I am ready to be a Thomas on this particular matter. We should have a commitment in writing.

If what you are saying is true, what is so difficult for the Speaker of the National Assembly to write to our Speaker and say we have this matter and the progress in this end is this much, we will reach here, please proceed if you can, or even from Clerk to Clerk. My Chairman is still licking wounds from a recent debacle. When he was frightened from joining a party of his choice and he is now stuck with people he does not like.

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

Sen. Kibiru: Mr. Speaker, Sir, I need to set the record straight. The House knows that I have been an independent Senator, but I support the Government. I do not know the implications, but I can bring affidavits, I also want to report that I am no longer Charles Reubenson Kibiru, I am officially Charles Kibiru CK.

It is within that process that some people thought that I can be mischievous and try to remove him from one party to another. Let the record be clear, I am currently in Jubilee party but that does not mean that I cannot make choices.

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

The Senate Minority Leader (Sen. Orogos): On a point of order, Mr. Speaker, Sir. The Senator for Bungoma County, I think your memory fails you tragically. Remember when the Waiguru matter came here, when everybody, including myself took the position that there was no sufficient evidence to impeach her.

Sen. Kibiru was under a lot of pressure from the side of this House that he belongs in to vote in a particular way that they were required to vote on that issue. However, he took a determined position to the end. If you look at the record, Sen. Wetangula and Sen. Kibiru did not vote at that time when it really mattered.

Fortunately, Sen. Wetangula and the Governor are now on the same side. When our issues came up, he voted the other side. That is not the important issue. What I am just trying to say is that I think give credit where it is due.

On this issue, I think Senator Kibiru has done a lot of work since last night. Not to do it for any purpose but to achieve what the House demanded yesterday. I am glad Senator Sakaja has arrived. Senator Sakaja you are much aware of what we agreed yesterday.

(An hon Senator spoke off record)

That is what Senator Kibiru --- I am saying that you are out of order because you are saying that you do not trust Senator Kibiru. No! You said it. He is an Honorable Member. When you do not trust an honorable Member like yourself, like Senator Slade used to say, the moment a Member who is an honorable Member does not believe an Honorable Member, that is when the House becomes dishonorable as a whole.

All that Senator Kibiru was trying to do Sen. Wetangula, was not to ask you to vote on the Bill. He was just trying to make sure that what is required of him today and what we agreed from yesterday is work in progress. I agree with Senator Cheruiyot that so far, we do not have anything that has been laid on the table but tomorrow Sen. Wetangula, you are going to be on that Committee. I am not in that Committee. You are going to be in that Committee tomorrow courtesy of Senator Kibiru who has made sure that there is going to be a meeting.

He does not even convene that meeting where we are going to make sure that our position on the County Grants Bill is achieved immediately. In fact, the process is much easier because if the mediation process reaches an agreement, the Bill as far as we are concerned and Parliament is concerned, will just be due for assent.

So, let us give Senator Kibiru a little credit that what he has told us today is a development from where we were yesterday. The two Chairpersons met and tomorrow the Committees are meeting. By the time we meet tomorrow in the afternoon, we will have a report before the National Assembly and before the Senate. We are not doing anything before the National Assembly also acts. Both o Houses can do the same work at the same time. That is when now we can be able to deal with the Bill that is before us.

The Speaker (Hon. Lusaka): Sen. Wetangula, continue.

Sen. Wetangula: Before Senator Orengo jumped in, I had I had actually cast no aspersions on my good friend. The only thing I had said in jest is that he tried to join a Party he liked but he was frightened off and he moved elsewhere. He has given an unconvincing explanation on the issue.

All we are saying, Senator Orengo, is that we have history with the National Assembly. This Mediation Committee in which I am is a Committee of five- five

Members. We can reach a stalemate and bring no report. The two Chairpersons can agree and go to the Committee and find a different scenario. It is possible.

Senator Kibiru has done a sterling job as our Chairman of the Committee. Senator Cheruiyot and I sit in that Committee. We have never ever had any misgivings about his ability to chair or his industry as a Chairperson. He has done a very good job. On this particular one, we want to encourage you Senator that you bring a tangible report here, a commitment or a passed Bill then we deal with ours.

To rely on a promise from the “Lower House”? We have a history. I want to encourage my distinguished “nephew” not to be prodded into this by Senator Orengo and smile and say I was part of the discussion. A discussion is not an agreement.

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

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

Sen. Sakaja: Mr. Speaker, I know my distinguished “uncle” knows many things. He knows how I operate. Is he in order to already insinuate and cast aspersions before I have spoken? I intend to speak on this matter. I spoke very strongly yesterday. He is my Principal in Kenya Kwanza. He should not worry. I am who I am.

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

Sen. Wetangula: I have never had any doubt that my distinguished Nephew will always be on the right side of history regardless of the weight of the moment. I want to end by urging him that we have something tangible before we make our next move.

Senators Orengo, Murkomen, others and I have battled for the last nine years to uphold the dignity of this House against an assault from the other House. That assault has not only been physical. It has also been in the form of fake and false promises that we receive and nothing happens.

None other than myself, Senator (Prof.) Lonyangapuo, Sen. Kiraitu Murungi, Sen. Muriuki Karue sat to prepare a document for the Oversight Fund. We finished and brought it to the House. The House looked at it and agreed. It is now gathering dust somewhere. It was frustrated by the same House that we are now supposed to believe on a verbal promise.

The Speaker (Hon. Lusaka): Senator Wambua, proceed.

Sen. Wambua: Mr. Speaker Sir, thank Sen. Kibiru although he is walking out. It is important that you listen to this. Sen. Kibiru has reported a progress on the matter of the Grants Bill. If I sat in this House yesterday and I followed debate, what Members asked the Chairman of Finance and Budget Committee to do is not to come back and report progress or the restarting of a process.

I think that the Members were clear that what they expected the Chairman to do is that at the fulness of time he was going to table a report on an acceptable version of the Mediated Bill (National Assembly Bills No.8 of 2022) in this House so that the progress on the Division of the Revenue Bill could continue.

It is well that the Chairperson has met the other Chairperson and they have discussed. It is an indication of progress but that is not what we were waiting for. At the point that that discussion then yields some fruits, then we can restart the negotiations on Division of Revenue Bill (National Assembly Bills No.8 of 2022).

I encourage my friend Sen. Kibiru to move now beyond talks with other Chairman and make sure that the Committee sits, concludes this Bill, they bring a Report and we move to the substantive Division of Revenue Bill (National Assembly Bills No.8 of 2022).

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

Sen. Cheruiyot: Mr. Speaker, I encourage my Chairman not to be a near do-good. Otherwise, he will set a very bad example that he nearly does the right thing every now and then especially in this season. You know, yesterday he gave a very good promise before this House and we respected him for that. That we have take this position because we firmly believe that this is an assault on our pivotal place as Senate.

That if we are taken out of this budget making process, or we allow people outside this Chamber to determine for us that we can consider certain matters, then those of us that are pleading with electorate to allow us to come back to this, we will be coming back to a skeleton.

Therefore, I plead with my colleagues especially those whose hearts are still here beyond August in spirit. My good neighbor and friend Sen. Rose Nyamunga, I plead with you. Do not allow those who have left this House in spirit already, and are only here in body to mislead us.

It will be very unfair because we had a deal and a deal is a deal. The deal was to pass Second Reading and then consider the Counties Grants Bill, bring a Committee Mediation Report; we will pass The Division of Revenue Bill (National Assembly Bills No.8 of 2022).

The explanation by the Senate Minority Leader, Sen. Orengo makes perfect sense. The only question I have for him is why can they not wait, the same way they are asking us? They can also wait.

Once the mediation report is brought before this House, I can assure you, nobody will raise a single question to that Bill. We will pass it in a record time.

I plead with you that for the sake of your colleagues, whom you are leaving behind in this House as you go to do good service to the people of Siaya, allow us to hold. Tomorrow, the Mediation Committee on the County Governments Grants Bill, will happen. When we will be given the green light that they have agreed, we will come and receive the report here. By 3.45 p.m. at the very latest, we would have passed the Division of Revenue Bill.

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

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

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I just urge that we do not turn this into a debate. This is because within the confines of the Third Reading, there is no intervention that Sen. Kibiru can make. He was trying to report progress on a matter that arose out of a *kamukunji*. We were not discussing the Bill in an any formal way. All that he was doing is just to report progress.

We have, however, not moved an inch from the position we were yesterday. We are taking a lot of time. However, I assure you that what Sen. Kibiru was trying to do, is

to report progress knowing that there are people like, my Senator, Sen. Cheruiyot, who is very difficult. If he does not have the good spirit of Sen. Kibiru, for political reasons which have nothing to do with the Bill, he may try to say what Sen. Wetangula was trying to say. That he may not agree tomorrow.

I do not want to anticipate. I am not a cynic or a skeptic. The basis was, that when we come to the Third Reading of the Bill, there must be evidence before this House, in a documentary form, that some progress has been made. Sen. Kibiru made it very clear. That is what is happening.

I plead with you.

Even if I do not come back to this House, I have an interest in a Kenya where institutions are working. I do not want a cynical Senate. I want a Senate that plays a constitutional role.

What we are actually trying to do, in terms of the County Governments Grants Bill, is very important for those who manage counties. It is not just for this Senate. It is important on questions of accountability and oversight of how these grants work and how they are allocated.

I plead with you. Let us take this in good spirits.

Sen. Kibiru has been doing a good work and he deserves commendation.

Never forget that there is somebody in this Houses called Sen. Dullo, the Senate Deputy Majority Leader. She has carried the burden of most of the oversight frustrations that we have had before. As you remember, she was doing the negotiations on our behalf with the National Treasury.

All of us have that memory. That, once bitten twice shy.

I plead, let us make some progress.

The Speaker (Hon. Lusaka): Lastly, proceed, Sen. Sakaja. You have been waiting for long.

(Sen. Murkomen spoke off record)

Okay, what do you want? What is your point of order?

Sen. Murkomen: Mr. Speaker, Sir, I really like the spirit with which Sen. Orengo is now speaking, towards the end of this conversation.

I agree with him that our colleagues who are hoping to become governors, have a greater stake in this Bill than most of us who will remain here. It will benefit them and the country. Therefore, they should be in the forefront to ensure that we pass this Bill tomorrow.

Mr. Speaker, Sir, be that as it may, can we then take the statement of Sen. Orengo? He has said here that we are not departing from the position that we took yesterday. That it be an additional information in the same stature as the one given by Sen. Kibiru?

Mr. Speaker, Sir, Sen. Kibiru has given the progress up to now. Sen. Orengo says that the position of yesterday still stands. This means that we cannot process the Bill further, until we finish the County Governments Grants Bill. Can we also take it as a

communication of the same stature as that of Sen. Kibiru or even higher, considering the position of Sen. Orengo as a Leader in this House?

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

Sen. Sakaja: Mr. Speaker, Sir, I am grateful to Sen. Kibiru for raising this matter. The Committee on Finance and Budget has stood on its ground to make sure that before we deal with the Division of Revenue Bill, we address the County Government Grants Bill.

It is a very important issue. I prevail upon the leadership of the Senate Majority and Minority leaders. I am glad Sen. Orengo has spoken to balance the pressure which I am sure could be for the interest of the House.

We are talking of Kshs39 billion. I know for me, it is Kshs800 million, for Nairobi. As I said yesterday in the *kamukunji*, if we do not sort out this now, before the Third Stage and Division, we might as well just forget about it.

I am happy that the Mediation Committee on County Government Grants Bill is meeting tomorrow at 10.00 a.m.

Mr. Speaker, Sir, in fact, with your colleague on the other House, you have the authority to make them meet now and bring us the report. I am sure that we will have 47 Members voting, "Yes" with or without amendments.

Let us set a precedence the same way the Speaker of the National Assembly said that they will not deal with the budget estimates before the Division of Revenue Bill has gone there. Then the precedence the Senate would have set, is that before the Division of Revenue Bill is done, we sort out the County Governments Grants Bill.

The Director, Parliamentary Budget Office, told us very clearly yesterday that until that is done, the Division of Revenue Bill is hanging because we do not know how to apply that Kshs37 billion.

Mr. Speaker, Sir, we are grateful for the tremendous progress. Yesterday, we consulted with the Leadership. I am sure Sen. Kibiru has gone to consult further.

Once they meet by 10.00 a.m., we will be very ready to pass it. We should not vote today, before we see the mediation report. It is just 24 hours. It is just one sitting. It will not upset the calendar in a big way.

Mr. Speaker, Sir, I assure Members that if we pass the Division of Revenue Bill today, you will never see the County Governments Grants Bill. We want this money after August. You will need it in Siaya. I need some of it in Nairobi.

Remember, out of the Kshs39 billion, it is only Kshs7 billion that is from the national Government. The rest of this money is from donors. A lot of it is for the health sector which is suffering. Possibly, this money has been diverted or gone to other projects but what behooves us as a Senate is to protect it.

You can never give out your leverage before going to the table. There is no way we can vote, then go to mediation tomorrow. They will walk out. We have been in this mediation processes many times. Without leverage at mediation, we will look at each other in the eye, then they will say, we can go to hell and there is nothing we can do. The only leverage that we have is the Third Reading. So, let us wait for it. I am grateful and agree with Sen. Orengo.

The Speaker (Hon. Lusaka): Finally, the Senate Majority Leader.

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, I thank you for the opportunity, to join colleagues in this Statement.

Mr. Speaker, Sir, we will probably say more as we get to the item on the Order Paper. There is a way in which Members are both grateful, praising Sen. Kibiru and at the same time, not believing or casting aspersions in what he has to say. It is a bit confusing.

Mr. Speaker, Sir, the kind of work that Sen. Kibiru and some of us have done since morning, is like moving mountains. Where we have reached so far, as it has been said, is a matter of the Mediation Committee to come together. Everything has been agreed as he reported.

Mr. Speaker, Sir, we must have a little faith in some of these things that we have decided to do. We must believe that it is going to happen. That is one thing that I want to say.

Mr. Speaker, Sir, Sen. Sakaja has said that if we do not pass it, then we should forget about the grants. How do we forget about grants? We should not lose monies and so do not worry. The Bill will be here tomorrow and we will finish with it---

Sen. Sakaja: On a point of order, Mr. Speaker, Sir. The Senate Majority Leader is putting words in my mouth. I did not say that we forget about grants because we need them. I said that once we lose our leverage, that Bill will not--- How long has it taken for the mediation to be done? It has not been done and it will not be done.

That is my opinion. He may not agree with it but I have not said forget about it. I have even said the exact amount of money I expect in Nairobi. I do not know how much West Pokot County was to get.

Mr. Speaker, Sir, actually, Kshs800 million is extremely important. So, we cannot forget about it. Since we cannot forget about it, we are waiting for it to come tomorrow, so that we vote on it first before the Committee of the Whole.

The Speaker (Hon. Lusaka): Senate Majority Leader, I thought you had finished?

The Senate Majority Leader (Mr. Poghio): Mr. Speaker, Sir, that is a point of opinion or whatever it is called.

I want to emphasise the fact that there is goodwill. In fact, we had other leaders with us to make sure this is discussed. We must have some faith in the leadership and the process.

As we have said, this is going to be delivered. When we get to the Third Reading, then we can talk more about this. There is good faith, and there is no way any of us in the leadership would slacken or leave anything to chance when it comes to this particular issue.

It is important and we are not going to leave it to chance. That is why we are giving a review about it so often and giving Statements that are credible. Let us believe each other.

The Speaker (Hon. Lusaka): I think we have heard. We are all Senators and it is important that we protect the House. Where I come from, there is a saying that when you want to kill a fly, you wait for it on the wound. You can interpret what that means.

Let us go to the next Statement by Sen. (Dr.) Musuruve.

WORLD WATER DAY

Sen. (Dr.) Musuruve: Thank you, Mr. Speaker, Sir, for the opportunity. I rise pursuant to Standing Order No.47(1) to make Statement regarding the World Water Day.

World Water Day is held on 22nd March every year and raises awareness of two billion people living without access to safe water. The theme for World Water Day was, “*Ground Water and Making the Invisible Visible*”.

This day is commemorated to educate people about the importance of water to the whole world and to raise awareness about the water crisis. The day also highlights the necessary improvement for access to water, hygiene facilities and sanitations in all countries.

This day was first formally proposed in Agenda 21 of 1992 United Nations Conference on Environment and Development in Rio de Janeiro. In December 1992, the United Nations General Assembly adopted resolution A/RES/47/193 by which on the 22nd March of every year was declared World Water Day.

Water has a salient role to play as an economic as well as social resource. Economically, water resources are critical for irrigated agriculture and in many industries such as mining and hydroelectric energy. It is used in the production of almost all goods.

Socially, some of its main uses includes bathing, drinking or hydration where it energises the body and flushes out toxins and improves skin complexion and other household needs as well, recreation or sports purposes. This indicates that no household can survive without water. Its essential role makes it a mandatory commodity.

Natural sources of fresh water include surface water, under-river flow, ground water and frozen water; whereas artificial sources of fresh water include treated waste or reclaimed water and desalinated sea water.

Research reveals that of the earth’s water, only 3 per cent is fresh water. Most of it is in icecaps and glaciers at 69 per cent and ground water is only 30 per cent, while all lakes, rivers and swamps combined only account for a small fraction that is 0.3 per cent of the world’s fresh water reserves.

Water resources are under threat due to scarcity, pollution, water conflict and climate change. Fresh water is a renewable source yet the world supply of ground water is steadily decreasing.

As we commemorate the World Water Day, I urge both levels of Government to have sustainable mechanisms in place of ensuring that water supply is efficient and sufficient in all counties.

I wish all Kenyans a belated happy World Water Day.

The Speaker (Hon. Lusaka): Sen. Nyamunga you want to say something?

Sen. Nyamunga: Mr. Speaker, Sir, I want to support the Statement by Sen. (Dr.) Musuruve. She is known for good things. Among them is coming up with topical issues that affect almost everybody in this country.

It is unfortunate that even as I speak, I do not have water in my village. Water is only targeted at schools and Government institutions but there are many people who live very far from Government institutions, I included. That makes it difficult to have clean water.

Mr. Speaker, Sir, that brings me to the point of Koru-Soin Dam which is critical to me. The Government should fast-track that project because that water will serve almost three regions; Rift Valley, Nyanza and part of Western Kenya, depending on the distribution channels.

Water is critical. Women suffer because they spend a lot of time and money looking for water. In Nyando where I come from, water is still a big dream for many people. More so, during drought seasons, it is difficult for most families to access water.

So, as we commemorate this, we are still lagging behind as a nation. We should do our best because water is life. Therefore, as many Kenyans as possible should be able to access clean running water. With water, we can do agriculture and it will help us to avoid water borne diseases.

Water is required in every village. Imagine sitting in your house in Nairobi and there is no single drop of water from your tap. You can become sick because it is a difficult situation. What about our women in the rural areas who have never even seen a tap? To them, to have water in the house is a big dream.

Mr. Speaker, Sir, the Government should prioritise water because it is one of the devolved functions of our county governments. It may be difficult for all county governments to work on water. That is why the national Government should come in handy to ensure that Kenyans have access to clean water.

I thank you.

The Speaker (Hon. Lusaka): The next Statement is by the Senate Majority Leader. Sen. Poghio, you have the Floor.

THE 12TH ORDINARY SESSION OF THE
PLENARY ASSEMBLY OF THE FP-ICGLR

The Senate Majority Leader (Sen. Poghio): Mr. Speaker, Sir, I rise pursuant to Standing Order No.47(1) to make a Statement on an issue of general topical concern namely; the 12th Ordinary Session of the Plenary Assembly of the Forum of Parliaments of the International Conference of Great Lakes Region to be held from 2nd to 6th April, 2022, in Nairobi, Kenya.

Mr. Speaker, Sir, as you are aware, the Forum of Parliaments of Member States of the International Conference of the Great Lakes Region (FP-ICGLR) is an inter-parliamentary organization of 12 parliaments of member states of the International Conference of the Great Lakes Region namely; the Republic of Angola, the Republic of Burundi, the Central African Republic, the Republic of Congo, the Democratic Republic of the Congo, the Republic of Kenya, the Republic of Rwanda, the Republic of Sudan, the Republic of South Sudan, the United Republic of Tanzania, the Republic of Uganda, and the Republic of Zambia.

Of the Forum's organs, the plenary assembly is the highest decision making body and is mandated to *inter alia*, approve the nomination of office bearers of the FP-ICGLR; adopt the Forum's budget; adopt the reports of committees; adopt the recommendations and resolutions to governments and parliaments of the member States of the ICGLR; and deliberate on all matters within the jurisdiction of the Forum. The plenary assembly meets on an annual basis and the venue of the event is held on a rotational basis between the member States.

The mission of the FP-ICGLR is to work for the prosperity and the stability of the ICGLR member States by the establishment and the entrenchment of democracy, good governance, the rule of law and the fight against poverty.

The Forum is chaired by a president drawn from the Speakers of parliaments of the member States and the president serves for a one-year term. The Speaker of the Senate of Kenya, the Rt. Hon. Kenneth Lusaka, EGH, MP, is the current sitting president of the Forum.

Mr. Speaker, Sir, the Parliament of Kenya has the singular honor of hosting the 12th Ordinary Session of the plenary assembly of the FP-ICGLR, in collaboration with the General Secretariat based in Kinshasa, DRC. The event is scheduled to take place from 2nd to 6th April, 2022, at the Nairobi Serena Hotel. This event will be the first one in two years following the disruptions and cancellations of in-person international events owing to the COVID-19 global pandemic.

A series of meetings will be held during the 12th Ordinary Session of the plenary assembly and will include: -

- (i) The 7th Statutory Meeting of the Committee on Democracy and Good Governance and the 4th Joint Statutory Meeting of the Committee of Gender, Children and Vulnerable Persons together with that on Social and Humanitarian Issues,
- (ii) The 24th Ordinary Session of the Executive Committee,
- (iii) The 12th Ordinary Session of the Conference of Speakers; and,
- (iv) The 12th Ordinary Session of the Plenary Assembly.

Mr. Speaker, Sir, the theme for this event is "The Role of Parliament in Conflict Resolution". On my part, the Forum could not have chosen a better theme given the current affairs on a global perspective. Since its establishment, the forum has been crucial in spearheading discourse on security, peace, stability and development in the region; a region that has over the years seen more than its fair share of bloody wars, famine and starvation, economic and social inequalities, religious strife and political instability.

Regional and global debate resonate around economic recovery post COVID-19, which continues to persist even as countries ease containment measures, following steady, robust and adaptive measures to fight the pandemic. We must, however, not lose sight of the root causes of conflicts pre-pandemic and institute measures to deal with them. Our failure to address these root causes will result in the same unsuccessful outcomes to eternal, inter-state, regional and global unrest.

The role of Parliaments in addressing the aforementioned challenges can therefore not be gainsaid. I am pleased that at the 12th Plenary Assembly of the Forum, this topic

has been chosen for discussion, for member Parliaments to take necessary action to strengthen governance systems and processes, inter-state and regional cooperation.

Mr. Speaker, Sir, the Parliament of Kenya will be represented by the following Members of Parliament who sit in various Committees of the Forum:

- a) Sen. Samuel Poghio, EGH, MP; - President of the Executive Committee and Member of the Committee on Economic Development, Natural Resources and Regional Integration;
- b) Sen. Sylvia Kasanga, MP; - Member of the Committee on Women, Children and Vulnerable Persons;
- c) Hon. William Kamket, MP; - Member of the Committee on Humanitarian and Social Issues;
- d) Hon. (Col.) (Rtd) Geoffrey Muturi King'ang'i, MP; - Member of the Committee on Peace and Security; and
- e) Hon. Paul Otiende Amollo, EBS, SC, MP; - Member of the Committee on Democracy and Good Governance.

I take this opportunity to welcome Member States of the Forum to Kenya and wish them fruitful deliberations in the 12th Ordinary Session of the Plenary Assembly.

I thank you.

The Speaker (Hon. Lusaka): Thank you, Leader of Majority. As the president of the ICGLR, I also want to extend the invitation to those who will be around and the member States who are coming to our beautiful City of Nairobi.

The next Statement is by Sen. Mwaruma but I do not see him in the Chamber. He had two Statements. The Statements are therefore, dropped.

UNFAIR DISMISSAL FROM EMPLOYMENT
OF MR. LEVINCE M. MWANYALO

(Statement dropped)

THE STATUS OF NYANGORO WATER PROJECT
IN TAITA TAVETA COUNTY

(Statement dropped)

The Speaker (Hon. Lusaka): Hon. Senators, I wish to rearrange the Order Paper for the convenience of the House.

Let us go to Order No.19

BILL

Second Reading

THE EMPLOYMENT (AMENDMENT) BILL

(SENATE BILLS NO. 54 OF 2021)

The Speaker (Hon. Lusaka): Yes, Sen. Cherargei.

Sen. Cherargei: Mr. Speaker, Sir, on Order No.19 on the Second Reading of the Employment (Amendment) Bill (Senate Bills No.54 of 2021), I will request Sen. Wambua to second this amendment.

This is a very straightforward amendment. The principle behind it is to ensure that we disconnect--

The Speaker (Hon. Lusaka): You need to move.

Sen. Cherargei: Mr. Speaker, I beg to move that the Employment (Amendment) Bill (Senate Bills No.54 of 2021), be read a second time.

This is an Act of Parliament to amend the Employment Act to provide for the right to disconnect; the right of employees to have their personal time and privacy respected and for connected purposes.

COVID-19 introduced the concept of virtual meetings and engagements. With the onset of technology, nowadays, you will find that people suffer from fatigue and are spending less quality time with the family. Technology has led to employees being called late at midnight and yet some of them are non-essential staff. Most of these issues have led to break-down of families and lack of quality time. As we know, any serious foundation is built on protection of family values.

We appreciate what technology has done to revolutionize the work environment and that is why the Standing Orders in this House were amended to introduce hybrid sittings in the House. However, when your boss calls you at night - especially if it is of the opposite gender - you might need to give a proper explanation to your spouse as to who that person is.

Let us learn to disconnect from work after working hours. The bosses should not have a leeway after working hours unless it is essential. Sen. Wambua has worked in media while my brother, Sen. (Prof.) Ongeru, the next governor of Kisii County, has worked as a medic. Some people can argue that medics offer essential services so they may be on call. I do not know whether media or the fourth estate are also on call.

We need to disconnect after work, protect our families and ensure they get quality time. When you are on leave, you need to be protected from overzealous bosses. You are on leave in the village somewhere in Bungoma or Nandi taking care of cows, and your boss calls you back to work in Nairobi or Mombasa. The purpose and intention of this amendment is to ensure that you are protected from overzealous and overexcited bosses in our work place especially to Kenyan employees.

When this amendment was gazetted, some people were commenting on social media that I am proposing *watu wapige sherehe bila kusumbuliwa*. It was misconstrued. What I meant is that we need to disconnect. This law does not allow those on call or working in the emergency services to disconnect. The misinterpretation I saw on social media is that people offering essential services will be doing weekend getaways.

Mr. Speaker, Sir, I propose that the Employment Act be amended by inserting the following new section after Section 27 where we have been provided for the hours of

work. An employer shall regulate the working hours of each employee. We know in Kenya our work time is between 8.00 am and 5.00 pm. That is why I am proposing that your boss or employer should call you between that time. From there, you disconnect from work unless you are defined as an essential worker and that is important.

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

[The Temporary Speaker (Sen. Nyamunga) in the Chair]

Madam Temporary Speaker, on weekends, you find somebody is enjoying good family time- I have noticed the change of Chair-somewhere in your farm in Nyando and someone calls you on work related matter. That is unfortunate. If it is a weekend, privacy should be observed. The right to privacy is very key. I also note people like Sen. Sakaja, the governor in waiting of Nairobi County and others who live within cities, want *kupiga sherehe bila kusumbuliwa*.

An employee has a right to disconnect from the employer. An employer may contact an employee during out of work hours if such are necessary for purposes of addressing an emergency. The people criticizing the amendment did not understand it because it has been provided. That is why I have mentioned people like doctors and those on call. During Covid-19, there was a circular with a list of essential services provided by the Ministry of Health. The Chairperson, Sen. Sakaja, led ably the Covid-19 taskforce that worked on approval of the rules and regulations.

It is easy because we know who are the essential workers. We appreciate what technology is doing but we do not want it to erode social fabric, undermine family values and the right to privacy. Sen. Kasanga moved a very important Bill on mental health. The reason for breakdowns and depression is because of labor work pressure. Imagine a journalist who has woken up at 5.00 a.m. to cover a fire breakout here in Nairobi. The journalist is forced to wake up at 4.00 a.m. and does the stories all through up to around midnight. That journalist will suffer from stress, burnout and breakdown. When that employee wants to settle down, there are phone calls coming in. You can imagine the pressure. This will cause mental anguish and forms part of mental health.

As human beings, we need to ensure that we relax. For purposes under which an employer can call an employee out of work hours, and you do not need to explain to your spouse, why Sen. Cherargei is calling you at 9.00 p.m. There is some level of engagement that should be provided for. If I call you at 9.00pm or 10.00pm, your spouse will be wondering why Sen. Cherargei is calling you at night. If I am calling you on a work related matter, your spouse will wonder why I did he not engage you before 5.00pm. Sen. Wambua will agree with me on that.

As we mourn the chairman of the men's conference, the late Mzee Jackson Kibor, these were some of the issues that we discussed in one of the conference. Another instance that we have highlighted in the Bill is on the use of electronic devices including phones, and computers to send or receive information, messages or any digital work related communication during out of work hours.

You have a right to disconnect from receiving messages, phone calls and even inbox on your Facebook, Twitter or WhatsApp account. If this law passes, and I hope our Clerks are noting this, they should be careful if you are sending messages to a Committee group after 5.00 pm. The Senate Business Committee (SBC) needs to be careful when we are having Special Sittings; When we decide on a very serious matter at midnight even if it is not limited to some issues that we normally transact as a House unless it is specially permitted.

You have a right to disconnect your phone, WhatsApp, Snapchat, Facebook, Twitter and phone short messages service (SMS) after work hours. Sen. Kavindu Muthama knows very well that when you disconnect, you can relax and enjoy your weekend. Circumstances under which the right to disconnect may be waived--- This gives leeway in case of an emergency, like when we had the Solai Dam Tragedy. Those are emergency situations where this right can be waived. It is important that it is noted there. If an emergency occurs today, the law allows that such circumstances can be waived. We need to specify the nature of compensation for those who work out of work hours. There are many employees in this city and across the country who are giving so much to their employers but the compensation for the work done beyond and above the time provided, should be compensated. What we are proposing, and labor unions and labor leaders should listen to this; we want proper compensation to the employees that work above and beyond the provided timeline as captured by Section 27 of the Employment Act.

We do not want to see workers working beyond and above the set time provided under the law, between 8.00 a.m. and 5.00 p.m. You get teachers in classrooms, drivers on the road, workers of all forms even casuals labourers working beyond 5.00 pm. The law is very clear on compensation. They must be compensated for their working hours. This amendment tries to address that.

The right to disconnect shall be subject to the conditions that I have stated. I have said, and this should come out clearly because I saw when this Bill was published for the first time, there was a lot of misinterpretation.

One of the misinterpretation was on the fact of the right to disconnect. When and how do you disconnect? Who are you to disconnect? The issue is we must protect the essential services and emergencies. Therefore, police officers, military and others shall not be reprimanded or subjected. This is very clear.

Today, your employer may be looking for you while you are on your annual leave as provided by Section 28 of Employment Act relaxing somewhere in Machakos, or at home with your grandchildren. The employer cannot say, "I called you on Friday evening at 8 pm, and you did not pick my call, therefore you are supposed to appear before the Board for disciplinary action. We are protected because of the right to disconnect, unless it is waived on an emergency condition or something of essential service.

We have put a caveat here in New Section 27 A (6) that says -

"An employer with over ten employees shall develop the policy under subsection (3) in consultation with the employees or the respective trade union."

For people who have house helps or cooks, if they are below ten, then this trade union law will not be able to apply but with consultation if they are above ten. That is why we thought it would be wise when I was drafting this amendment.

When an employer contacts an employee during a period where there is no mutual agreement out of work, the employee--- That is very important, you know nowadays with casual labourers before you close a hardware here in Kirinyaga Road, your boss can tell you, “*leo tutafanya kazi -*, we will do the job up to 9. 00 p.m.”

The Temporary Speaker (Sen. Nyamunga): Yes, what is the point of order, Sen. Sakaja?

Sen. Sakaja: You know this is a very serious House and we have rules. You have repeatedly ignored the casual manner in which the Senator for Nandi is mixing languages. This is not a *baraza* in the street or a forum in Kapsabet. This is the Senate of the Republic of Kenya. When you start in English, you finish in English. You do not mix unless you have quotations. When you start in Swahili, you finish in Swahili.

The Senator is treating the House very casually. His off the cuff remarks are very interesting. There are reasons why we have rules. Kindly, rule him completely out of order and ask him to take this debate a bit seriously because we are following. This is a very important Bill that was brought to my Committee and we have things to say. Just guide the content of speeches.

The Temporary Speaker (Sen. Nyamunga): Sen. Cherargei, apologize and please just have the seriousness with which this House is regarded.

Sen. Cherargei: You know, Madam Temporary Speaker, while I apologize, the reason is that since I saw that we have our Standing Orders in Kiswahili and English---

The Temporary Speaker (Sen. Nyamunga): Senator, you know we have both but once you start in one language, you continue with that. If you want Kiswahili---

Sen. Cherargei: My apologies, Madam Temporary Speaker. You know I---

The Temporary Speaker (Sen. Nyamunga): But you are even misleading this House further that now that we have Standing Orders for both languages, you can crisscross. That is not allowed.

Sen. Cherargei: My apologies, but this one I was trying to emphasize is not casual. I treat the Senate of the Republic of Kenya seriously. I always believe the consumers of what we debate here are ordinary Kenyans who would like to be on the same page. However, I would restrict myself to the language I started with. I hope Sen. Sakaja, will in future ensure how our primary consumers get that in a simpler version.

I was just asking what happens, for example, when you are working in a hardware in Kirinyaga Road and your boss says you shall work up to 9. 00pm. Or when you are working here in the Senate, with this our very good secretariat, we decide today there is no special sitting and go beyond 6:30pm. We just tell our secretariat and our Serjeant-at-Arms, that they would leave the Senate premises after 11.00pm. What happens?

Therefore, I have provided New Section 27 A (7) (a) and (b) that says -

“Where an employer contacts an employee during the period when there is no mutually agreed out of work hours, the employee—

(a) shall not be obliged to respond and shall have the right to disconnect; or
(b) may choose to respond, for which the employee shall be entitled to get compensation"

So if you have left, you can just switch off your phone, Sen. Wambua, and attend to your other issues. I may choose to respond; it is up to you. If, today, we decide at 6.30 pm, here that secretariat remains; if you have agreed they have a right to disconnect, then that is very important. The provisions of this Bill shall not apply to the provision of essential services.

I emphasize that the trade unions and Federation of Kenyan Employers (FKE) the labor unions including Central Organization of Trade Unions (COTU), should note that we are not in any way undermining the essential workers. I have seen most of the trade unions are busy doing campaigns. I have just seen Sen. Murkomen. He used to be my lecturer and I believe he used to be in University Academic Staff Union (UASU) doing politics.

I appeal to the trade unions that this issue should not be misinterpreted even by FKE. I know FKE would say we need to maximize the output of our employees and that they compensate based on the output. However, that one does not negate the labor rights that every employee has and should be treated rightfully.

Therefore, after this, we have the right to disconnect unless provided by law. You will be protected from harassment from your overzealous bosses. You will be able to disconnect if you have your leave. For example, under Section 28, you enjoy your leave, be it maternity, paternity or annual leave and any other form of off. If you are on off days, you have a right to off working hours.

You must also restrict yourself as Section 27 on the hours of work, commensurate with the compensation that you are being given. If you work beyond working hours, then it must be written and specified. I have seen exploitation of casual workers. I used an example where you work as a casual laborer in a hardware along Kirinyaga Road. The boss decides today we are not closing at 5.00 pm, but at 1.00 pm. How do they compensate that and even ensure provision of transportation?

I know most companies especially the ones in Naivasha that deal with flowers, sometimes provide transport, lunch. In no way does that give them the right for you to not disconnect. We also want strong families and our social fabric to be maintained.

We have provided for an offense New Section 27 A (9) that says -

"A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year or to both."

If for example, your boss calls you when you are supposed to be on leave in your farm, or have gone to visit relatives or friends outside or within the country and there is no explanation to why that disconnecting from work has been violated, there is a fine not exceeding Kshs500,000 or imprisonment for a term not exceeding a year or both.

The penalty of disturbing Sen. Wambua's holiday for example, if he works for a particular employer, that employer and FKE Kenya Private Sector Alliance and even the and other stakeholders who work in labor market should listen to this.

It is good to note that the Chairman of Committee of Labour and Social welfare Sen. Sakaja is here and he gave a good report. The way forward on this, the whole amendment, I am not talking about this specific provision, is Kshs500,000 or to one year. Employers will start behaving because to commit contravention if this is assented to, then you will be paid very good money.

This is a straightforward amendment. I wish to conclude in the next two to three minutes because I know my colleagues would want to comment on this. Therefore, out of work hours means hours other than the hours agreed. Section 27 of Employment Act provides very well on the hours of work agreed upon between an employer and employee in the contract of employment.

This is very important especially casual laborers because people in permanent and pensionable or in contract. I know for us in elected leadership are in contract with the people, although we have not signed that contract on how our timeline should work. Ours is more of essential service.

Madam Temporary Speaker, my advice to labour movements and trade unions is that they should look into the relationship of employees and their employers.

In my county, when they are hiring casual labourers, they tell them to sign a contract yet they do not know the pay, the task allocated, when to be paid and the length of the contract. Most of the counties have been violating this provision. Therefore, it is important to ensure that employees are protected.

The Committee on Labour and Social Welfare tried to tackle this issue when they were discussing the issue of the Early Childhood Development Education (ECDE). So, it must be put in writing.

Journalists working with a media house, for example, the Parliamentary Broadcasting Unit (PBU) which broadcasts the live proceedings are doing a fantastic job. Kenyans are able to follow live proceedings on *YouTube* and the Senate *Twitter* page. They now have access.

I saw the Cotton Industry Development Bill (Senate Bills No. 55 of 2021) in the Order Paper. Farmers who grow cotton in Kericho and Kisumu counties would like to know the progress of this Bill.

For example, if you are working for the PBU, the contract should indicate that you are working from 8.00a.m. to 6.30p.m. unless when we are having a Special Sitting. Therefore, it is important to define this, so that the Employment and Labour Relations Court can have an opportunity to interpret the law.

This is why I was emphasising that the trade unions have abandoned their role. They are; The Federation of Kenya Employers (FKE), Dock Workers Union, the Central Organization of Trade Union (COTU), the Kenya National Union of Teachers(KNUT), Kenya Union of Post Primary Education Teachers (KUPPET), Kenya National Union of Nurses (KNUN), Universities' Academic Staff Union (UASU) for academic and staff union in the universities, just to mention.

We must protect our employees. When we protect employees, we protect our families. If the law is followed, most families will continue being together and there will be no breakdown.

What does the ‘right to disconnect’ mean? I saw people comment and say when you leave on Friday 5.00 p.m., you have a right to switch off or disconnect up to the next time.

You being a legal practitioner and having a senior long-standing career in the legal realm, we wanted to ensure that the courts restrict themselves to the interpretation that the Act has provided such that when this matter appears before court, we do not open a window for abuse. If we allow a case where an employer calls an employee at 5.01p.m., then it will be litigious. People will also say they have a right to disconnect because of the provision in the law. The “right to disconnect” means an employee’s entitlement not to be contacted by the employer during out of work hours as per the employer’s policy.”

If your employer’s policy says 6.30 p.m. and they call you at 6.35p.m. then, the employer has violated their own employment policy.

As I conclude, in my four points, I have tied it up with the rising cases of the mental health issues. You have seen the incidents in the police service.

This is an essential service. However, due to the pressure of police officers working seven days a week including night shifts, they get tired yet in the houses where they rest, they share and partition them using a cloth. Some of the shooting cases are not only about relationship issues. Sometimes, it could be a breakdown from work related issues, stress and expectations.

In the work place nowadays, there is a lot of pressure to meet targets. This is why you see employers are pushing their employees to meet their targets even on weekends without considering their health and wellbeing. Therefore, employees continue to suffer.

I assure you that if we do not protect the employees from the work place pressure, we shall have an increase in mental cases, breakdown of families and children being raised without love and care of their parents which is important. These are some of the issues that the future Governments must continue to address and protect the families we have.

Thirdly, as we come to an end of the second generation of the Senate post devolution, this could be a good legacy for the Senate to leave an indelible mark.

This will be good for us who will come to the third Senate. This includes yourself because I have been told that you are mounting a titanic battle to take over the senatorial seat of Kisumu.

We would want to see more women become Senators. We have Sen. Kavindu Muthama, Sen. (Prof) Kamar, Sen. Kihika and, God willing, you too will be an elected Senator.

I hope we will have more numbers of women Senators coming to the Chamber so that we do not to feel cold. We also need the input of women in the decisions we make.

As you mount your political titanic battle to reclaim the senatorial seat of Kisumu, this can be one of the legacies. When you meet employees of Kibos Sugar and Allied Industries (KSAIL), the Dock Workers Union and any other company, you will tell them that the Senate will consider a law to protect the employees.

Madam Temporary Speaker, the last time I checked, Sen. Wambua was running for governor. However, we wish him well because this can be his legacy. He can go back to Kitui where I am told there is what we call Kitui County Textile Centre (KICOTEC).

Kitui County is one of the counties that have problems of not paying and firing workers. This amendment can be a legacy to show that the Senate of the Republic of Kenya has the interest of the employees.

The FKE, the rest of players like trade unionists and other employers we have in this country are watching. We are not in any way undermining the productivity and the performance of the employees. We are just safeguarding the rights of employees under Articles 41 and 43 of the Constitution of Kenya on labour rights.

Also, we want to maintain dignity in the work place. The FKE, the Government through the Ministry of Labour and Social Protection, they should maximize the output of employees between 8.00 a.m. to 8.00 p.m.

As a country, we must protect the employees.

Finally, I beg my colleagues to support this straightforward amendment. Let us pass this amendment, take it to the National Assembly, pass it and allow the President to assent to it.

God willing before we go to the 2022 General Election, this Bill will be assented to and become law. Parliament is a law-making House. So long as we are legally and constitutionally mandated, we have a right to amend and legislate.

The interpretation of law has been given to the courts of law. When we do this, we do it in the best interest of the country and in good faith.

I beg to Move and request Sen. Wambua to second.

The Temporary Speaker (Sen. Nyamunga): Sen. Wambua, you have the Floor.

Sen. Wambua: Madam Temporary Speaker, I rise to second the Employment (Amendment) Bill (Senate Bills No.54 of 2021) as moved by Sen. Cherargei of Nandi County.

Before I go to the substance of the secondment, I would like to correct a wrong impression created by the Mover that the Senator for Kitui County has a desire to vie for the position of Governor of Kitui County in the next general elections. I would like to make it clear that I have never had that intention or ambition. I will defend the position of Senator for Kitui County. I believe my fate is in the hands of God and the people of Kitui County.

Madam Temporary Speaker, I would like to thank Sen. Cherargei for coming up with this amendment Bill. Perhaps, there was no better Senator to come up with it than Sen. Cherargei.

Yesterday, I saw him enforcing his right to access and consume justice in a court of law. He engaged a magistrate in a very heated altercation, demanding that justice must be served to him. I believe that it in the same breath that he is pushing forward the agenda of the rights of workers.

Madam Temporary Speaker, the Bill speaks to a number of provisions in the Constitution of Kenya, 2010. It has something to do with Chapter Four where we have

the Bill of Rights. Article 41 is about labour relations and Article 43 is on economic and social rights.

In seconding this Bill, I am drawn to the Bill of Rights in Chapter Four. It states categorically that the rights and fundamental freedoms in the Bill of Rights belong to each Kenyan and are not granted by the State. Therefore, by extension, these rights are not granted by employers. They are fundamental to every Kenyan and must be enjoyed by every Kenyan.

We all appreciate that times have changed and, as contemplated in Article 41 of the Constitution, the working space and environment is not necessarily the physical office block in this day and age. Many times, that work environment and office space has moved to the phone because a lot of work and business is being transacted through the phone.

Madam Temporary Speaker, the import of this Bill is to say that we appreciate the fact that with changing times and advancements in technology, the work environment and the working space has moved from the office block to the phone. However, that does not make my phone a public space because it is still private space and a private property.

What has happened with the advancement of technology--- I hope Sen. Cherargei will sit down and take notes as I second this Bill, and not to move along the corridors, so that he is properly briefed and takes advantage of the serious input to this Bill.

The phone still remains private property though there is official work being transacted on it. With advancement of technology, many employers are now buying airtime for their employees to facilitate work. I know that Parliamentary Service Commission (PSC) is doing that for Members. Therefore, the fact that an employer can buy airtime for an employee does not convert his phones into the employer's property. This Bill seeks to ensure that work can be transacted outside the physical office space, but still respect the privacy of the individual employee.

Madam Temporary Speaker, I would like Sen. Cherargei to take note that in this Bill, there is need to define what essential services are. In most cases, that definition is left to the whims of the person making the definition, but that should not be the case. To suit the best interest of an employer, they may decide to put into the bracket of essential services which are not essential. Therefore, there is need for this Bill to go deep and define what essential services are.

Madam Temporary Speaker, we also have what is called 'working time.' What is the official working time? Is it between 8.00 a.m. and 5.00 p.m., or is it between 9 00 a.m. and 6.00 p.m.? Whatever time it is? There is need to define it. This is because even as we enforce this amendment, there will be no confusion about the time one is supposed to be working and when he is not supposed to be working.

Lastly, Madam Temporary Speaker, is the issue of the need for the employee to disconnect from work. With the availability of platforms for virtual meetings such as zoom and others on phones, when you go to a house at 9.00 p.m., you may find the husband attending a zoom meeting with their employer, the wife is in another zoom meeting with another employer, a son is another zoom meeting with an employer and so forth. We must also protect the social fabric of this country and respect family time. It

should not be open-ended. It should not be because we have access to technology, therefore, we can work for 16 hours in a day without compensation and lose out on the family front. It is important that this Bill define all that.

As I conclude, even as we talk about defining what essential services are, in my previous career as a journalist, if politics is also career because I am now in politics, there was never clear definition of what time you should go to work and what time you should go home.

Many a time, I would conclude publishing newspapers at midnight. However, before I get into the house, I would receive a call that something had happened. I had to go back to the office and do a special edition of a newspaper to cover certain events that had taken place.

I would like to emphasize that there is need for the Mover of this amendment Bill to define the meaning of essential service so as to avoid confusion in the system.

Madam Temporary Speaker, with those remarks, I second.

(Question proposed)

The Temporary Speaker (Sen. Nyamunga): Sen. (Dr.) Musuruve, proceed.

Sen. (Dr.) Musuruve: Thank you, Madam Temporary Speaker, for giving me an opportunity to add my thoughts to this Bill. Sen. Cherargei, has come up with a Bill that really needs a lot of in-depth thinking in the sense that we have loyalty of employees that is commitment.

Commitment of employees can lead to productivity in an organization. Even an organization that was not doing very well can come up very strongly when employees are loyal. Loyalty and commitment of employees goes beyond what is expected of employees. Sometimes employees might even be expected to use some of their spare time to ensure that the operations of the organization run smoothly.

As we think of this Bill, there is need to put into consideration the issue of employee commitment because employers are naturally inclined towards employees who are committed to their task. They will even want to give them incentives and make their work conditions better and all that.

Madam Temporary Speaker, there is need to see that this Bill is not bringing friction with regard to the relationship between employers and employees. In as much as employees have rights, employers also have rights and expectations from their employees.

One of the things that most employers would like to see is that employees depicting a good image for the organization. An image in terms of productivity, discipline and working beyond the expected time. So, there is need to think through this Bill so that it does not bring conflict.

There are instances when employees are called upon just to show their loyalty to organisations. Let me give an example of a classroom situation where, for example, you are a lecturer in a university and there is delay in the printing of the exam papers while you are supervising the exam. If that exam delays and starts at 5.00 p.m. instead of 3.00

p.m. a committed employee will go beyond that and decide to just press on because of the exam, even if it means leaving at 8.00 p.m. in the night.

This does not mean that the employer should compensate the employee for that or should be fined some amount of money. There is need to really re-think and ensure that this is not conflicting.

I also want to give a near example in a house environment where you have visitors and your workers normally go off duty on Saturdays. What do you do when you have visitors who are overwhelming? Naturally, you would want to talk to your employees to listen to you and be there for you. When they agree to be there for you, deep in your heart you feel that they are really committed and you would want to compensate them handsomely.

As I said, we have rights of employees and rights of employers. Therefore, there is need to ensure that this Bill is not bringing confusion among employees and employers.

There are instances when an employer would want clarification, probably from an employee who is well-versed with a certain issue that is salient to the organisation. So, in a situation where, for example, this employee is off-duty, does it mean that if the employer seeks clarification then he has to pay the employee? That should not be the case. So, this has to come out clearly.

We also have the issue of overtime which entails that an employee can work beyond the hours that are expected. However, a good employer is supposed to compensate the employee for the time he has worked beyond the expected time.

Madam Temporary Speaker, even as we look at these issues, we have to ensure they are not also bringing a wave of confusion in working environments and organisations where people keep taking their employers to court or where sometimes even employees can be rebellious. They may quote this Act and says: "In accordance to this Act, I will not respond or I pick phone calls." Yet that phone call is supposed to clarify something for seamless running of the organisation.

Madam Temporary Speaker, there are plenty of benefits in being a loyal worker. Sometimes the benefits of being loyal can be surprise to you in terms of promotions can come because you have really decided to fly high the flag of the organisation. So, there is need to ensure that even as we talk about employee rights, we need to put into consideration that attitude is very important. A positive attitude from an employer that you are a perfect or a good or productive employee, will take an employee very far in terms of career progression.

Madam Temporary Speaker, there is need to strike a balance in this Bill to ensure that organisations are not suffering or not overtly going to court perpetually because of making a phone call and all that. Employees have rights and employers have expectations from their employees. The employer's expectation is to ensure that the operations of the organisation are running smoothly and productively. This can lead to a win-win situation for both the employers and the employees.

Madam Temporary Speaker, my suggestion is that even as I add my thoughts to this Bill, there is need for Sen. Cherargei to look at Clause 27 (7)(a) and ensure that it is

not bringing a conflict between employers and employees. Does it mean that when you call your employee at odd hours, you will have to pay a fine for doing so? This is because you could just be calling to clarify an issue from that employee you consider to be perfect and good employee. He may be the only employee who has valuable information that the organisation is seeking.

I support with amendments to the effect that Sen. Cherargei needs to ensure that he is not a hardliner in this Bill such that employers are always in problems and employees are always right, or do not give loyalty because of the Bill. These are my honest comments.

Thank you, Madam Temporary Speaker.

Sen. Ngugi: Thank you, Madam Temporary Speaker. I take this opportunity to congratulate the good Senator for Nandi County for bringing this Employment (Amendment) Bill because majority of the people who are affected when it comes to employment or unemployment are the young people that I represent in this House.

Madam Temporary Speaker, I get a lot of complaints through the calls that I receive daily on my phone of people who are always misused by their employers. One of the things that the employers have perfected is they know job opportunities are rare to come by and, therefore, they change the job description at will.

In some cases, you will find that someone had been employed as a driver. However, after sometime, he is told that he will be a gardener at half pay. Due to lack of job opportunities, those people have no option, but to take up such roles.

Another thing that Sen. (Dr.) Musuruve has spoken about is the issue of overtime. Normally a normal human being is expected to work from 8.00 a.m. to 5.00 p.m. However, a number of companies or employers force their employees to work from 6.00 a.m. up to midnight. They are expected to report on time the following day failure to which, they are punished. This amendment is going to bring sanctity.

Madam Temporary Speaker, another example are our house helps. Sometimes when they fall under crooks in the name of employers, you find that if an employer comes back home and finds out that a glass was broken, they deduct that amount of money. They are the people who decide the value of whatever has been broken and, therefore, at the end of the day, or at the end of the month, you find that even those people we call nannies have nothing to take home.

Madam Temporary Speaker, I congratulate the good Senator and tell him to keep this up. I hope that the good people of Nandi County are watching.

I thank you.

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, I do not see more interest on that Bill. I now call upon the Mover to reply.

Sen. Cherargei: Madam Temporary Speaker, this is a very straightforward amendment. I have noted issues that Sen. Wambua raised on public space and whether the phone should be part of the public space and the right to privacy. Before we vote on the Bill, during the Committee of the Whole, I believe we will have an opportunity to make amendments. I agree with Sen. Wambua and all of us that our offices or workplaces have changed into phones. Phones have become virtual offices.

Madam Temporary Speaker, I have also noted the proposal raised by Sen. (Dr.) Musuruve on the amendment and introduction of Clause 27 (7)(a) on the issue where an employee is being called and not obliged to respond. I agree with her on her sentiments. I will be willing to make an introduction of amendments during the Committee of the Whole to make it better.

I thank colleagues and many people who have contributed. This is an aim to protect the employees, push for labour rights and ensure that an employee has a right to disconnect, enjoy their privacy and family time. We should ensure that we protect the social fabric and the fabric of our nation going into the future.

I am very grateful to all the Members of the Committee on Labour and Social Welfare. I thank the Committee Chairperson, Sen. Sakaja, for the report that they prepared. I am grateful to the Committee of Labour and Social Welfare for the good job that they did on this Bill. I have assured them that they can have amendments as long as it does not affect the soul, the heart and the mind of this Bill. For the employees and the employers, this is a win-win for all of them. To ensure we protect them when they are off or on leave, they are not called by their bosses.

As I conclude, in the spirit of what Sen. Wambua said, it is also in the interest of the employers, that the employees are well rested and energetic, so that they also maximize the output. When we say we disconnect, we do not want to disconnect for the sake of just disconnecting. We want employees to disconnect so that they reenergize, refresh and give the maximum output.

I, therefore, thank everyone and pray that when it comes to voting, we can support this amendment, allow it to go to the National Assembly and the employees can have an opportunity of enjoying the fruits of rights to disconnect, especially in this era of technology.

Madam Temporary Speaker, pursuant to Standing Order 61(3), I request that putting of the question be deferred to a later date.

Thank you, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Thank you, Senators. We defer the putting of the question on the Bill to a later date.

(Putting of the Question on the Bill deferred)

Hon. Senators, we cannot proceed with the divisions that are listed on Order Nos. 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 due to lack of quorum.

I, therefore, defer Order Nos. 8 to 17.

BILLS

Second Reading

THE LANDLORD AND TENANT BILL (NATIONAL
ASSEMBLY BILLS NO. 3 OF 2021)

(Bill deferred)

Second Reading

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL
(SENATE BILLS NO. 29 OF 2020)

(Bill deferred)

Second Reading

THE ELECTION CAMPAIGN FINANCING (AMENDMENT) BILL
(SENATE BILLS NO.51 OF 2021)

(Bill deferred)

MOTIONS

ADOPTION OF AUDIT REPORTS FOR COUNTY EXECUTIVES FOR
FYs 2018/2019, 2016/2017, AND 2017/2018 (VOLUMES I, II AND III)

THAT, the Senate adopts the Report of the Sessional Committee on County Public Accounts and Investments on consideration of the Reports by the Auditor General on the Financial Statements of the following County Executives for the Financial Year 2018/2019- Embu; Homa-Bay; Kericho; Kilifi; Kirinyaga; Kisii; Kwale; Machakos; Mombasa; Nandi; Baringo; Bomet; Garissa; Kajiado; and West Pokot as contained in Volume 1 of the Report and the following County Executives- Isiolo; Kakamega; Kisumu; Laikipia; Mandera; Marsabit; Nakuru; Narok; Nyandarua; Samburu; Taita Taveta; Trans-Nzoia; Uasin- Gishu; Vihiga; and Wajir, as contained in Volume 2 of the Report, laid on the Table of the Senate on Thursday 2nd December, 2021.

(Motion deferred)

ADOPTION OF THE SPECIAL AUDIT REPORT ON
UTILIZATION OF COVID-19 FUNDS BY 28 COUNTY GOVERNMENTS

THAT, the Senate adopts the Report of the Standing Committee on Health on the special audit report on utilization of COVID-19 funds by twenty-eight (28) county governments, laid on the Table of the Senate on Wednesday, 9th February, 2022.

(Motion deferred)

COMMITTEE OF THE WHOLE

THE INTERGOVERNMENTAL RELATIONS (AMENDMENT) BILL
(SENATE BILLS NO. 37 OF 2021)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE LAW OF SUCCESSION (AMENDMENT) BILL,
(SENATE BILLS NO. 15 OF 2021)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE PRESERVATION OF HUMAN DIGNITY AND PROTECTION
OF ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILLS NO. 21 OF 2021)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE LIFESTYLE AUDIT BILL (SENATE BILLS NO. 36 OF 2021)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE SPECIAL NEEDS EDUCATION BILL
(SENATE BILLS NO. 44 OF 2021)

(Committee of the Whole deferred)

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, further, we are also unable to proceed with Order No.20 because the Senate Majority Leader is not in the Chamber.

I do not also see Sen. (Eng.) Maina to execute Order No. 21. I do not see Senate Majority Leader who is supposed to execute Order No. 22. The Chairperson of the Standing Committee on Tourism, Trade and Industrialization is also not in the House to execute Order No. 23. Lastly, Sen. Shiyonga is not in the House to execute Order No 24.

I, therefore, defer Order Nos. 20 to 24.

COMMITTEE OF THE WHOLE

THE DIVISION OF REVENUE BILL
(NATIONAL ASSEMBLY BILLS NO. 8 OF 2022)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE ELECTIONS (AMENDMENT) (NO. 3) BILL
(SENATE BILLS NO. 48 OF 2021)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE IRRIGATION (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO. 12 OF 2021)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE STREET VENDORS (PROTECTION OF LIVELIHOOD)
BILL (SENATE BILLS NO.7 OF 2021)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE KENYA MEDICAL SUPPLIES AUTHORITY
(AMENDMENT) BILL (SENATE BILLS NO. 53 OF 2021)

(Committee of the Whole deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Nyamunga): Hon. Senators, there being no other business on the Order Paper, the Senate stands adjourned until Thursday, 31st March, 2022 at 2.30 p.m.

The Senate rose at 4.37 p.m.