

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 28th February, 2023

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

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

The Speaker (Hon. Kingi): Clerk, do we have quorum?

(Clerk at the Table approached the Chair)

Serjeant-at-Arms, kindly ring the Quorum Bell for five minutes.

(The Quorum Bell was rung)

The Speaker (Hon. Kingi): Serjeant-at-Arms, I am informed we have quorum. You may proceed and stop the Bell.
First Order.

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM THE GAMBIA NATIONAL ASSEMBLY AUTHORITY

The Speaker (Hon. Kingi): Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon, a visiting delegation from the Gambia National Assembly Authority.

The delegation comprises leadership of the National Assembly of Gambia who are on a five-day study tour in the Senate.

I request each Member of the delegation to stand when called out so that you may be acknowledged in the Senate tradition-

1. Hon. Hon. Fabakary Tombong Jatta, the Speaker of the National Assembly of Ghana.
2. Hon. Alhagie S. Darboe Minority, Leader and Member of the Authority.
(Applause)

(The Clerk consulted the Speaker)

Hon. Members, it seems the delegation is yet to arrive in the Chamber. A few minutes ago, they paid a courtesy call in my office. I will hold onto this Communication until the delegation makes its way into the House.

Hon. Members, we will proceed with the other Order.

(Communication from the Chair deferred)

Next Order.

The Speaker (Hon. Kingi): The Chairperson of the Standing Committee on Finance and Budget, kindly proceed to lay your papers.

PAPERS LAID

Sen. Ali Roba: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, 28th February 2023-

REPORT ON THE 2023 BUDGET POLICY STATEMENT AND MEDIUM TERM DEBT MANAGEMENT STRATEGY

Report of the Standing Committee on Finance and Budget on the 2023 Medium Term Debt Management.

THE 2023 BUDGET POLICY STATEMENT

Report of the Standing Committee on Finance and Budget on the 2023 Budget Policy Statement.

(Sen. Ali Roba laid the documents on the Table)

The Speaker (Hon. Kingi): The Chairperson Standing Committee on Justice, Legal Affairs and Human Rights, kindly proceed to lay your Paper.

PROPOSED APPOINTMENT OF HON. JOHNSON
MUTHAMA AS A COMMISSIONER TO THE PSC

Sen. Wakili Sigei: Thank you, Mr. Speaker, Sir. I beg to lay the following Paper on the Table of the Senate today, 28th February 2023-

Report of the Standing Committee on Justice, Legal Affairs and Human Rights, on the proposed appointment of Hon. Johnson Muthama, as a Commissioner to the Parliamentary Service Commission (PSC) under Article 127(2d) of the Constitution of Kenya.

(Applause)

(Sen. Wakili Sigei laid the document on the Table)

The Speaker (Hon. Kingi): Sen. Tabitha Mutinda, kindly proceed to lay your Paper.

REPORT OF THE 61ST SESSION OF THE OACPS AND
42ND SESSION OF THE OACPS-EU JOINT PARLIAMENTARY ASSEMBLY

Sen. Tabitha Mutinda: Thank you, Mr. Speaker, Sir. I beg to lay the following Paper on the Table of the Senate today, 28th February 2023-

Report of the 61st Session of the Organisation of African, Caribbean and Pacific States (OACPS) Parliamentary Assembly and the Report of 42nd Session of the OACPS-EU Joint Parliamentary Assembly held in Maputo, Mozambique on 23rd October to 2nd November, 2022.

(Sen. Tabitha Mutinda laid the document on the Table)

The Speaker (Hon. Kingi): Next Order.
The Chairperson of the Committee on Finance and Budget.

NOTICES OF MOTIONS

ADOPTION OF THE REPORT ON THE STANDING COMMITTEE
ON FINANCE AND BUDGET ON THE 2023 BUDGET POLICY STATEMENT

Sen. Ali Roba: Hon. Speaker, Sir, I beg to give notice of the following Motion-
THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the 2023 Budget Policy Statement laid on the Table of the Senate today Tuesday, 28th February, 2023, and pursuant to Section 25 (7) of the Public Finance Management Act and Standing Order 186 (7) of the Senate.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Chairperson, you had two notices of Motions to give. Is that so?

ADOPTION OF REPORT ON THE 2023
MEDIUM TERM DEBT MANAGEMENT STRATEGY

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

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the 2023 Medium Term Debt Management Strategy laid on the Table of the Senate on Tuesday, 28th February, 2023.

The Speaker (Hon. Kingi): Chairperson of the Committee on Justice, Legal Affairs and Human Rights, kindly proceed.

ADOPTION OF REPORT ON THE PROPOSED
APPOINTMENT OF HON. JOHNSON MUTHAMA TO PSC

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

THAT, the Senate adopts the Report of the Standing Committee on Justice, Legal Affairs and Human Rights, on the proposed appointment of Hon. Johnson Muthama, as a Commissioner of the Parliamentary Service Commission, laid on the Table of the Senate on Tuesday, 28th February, 2023, and pursuant to Article 127(2)(d) of the Constitution, Section 9(2) of the Parliamentary Service Act and Standing Order 77 (3), approves the appointment of Hon. Johnson Muthama as a Commissioner of the Parliamentary Service Commission.

Thank you.

The Speaker (Hon. Kingi): Kindly proceed, Sen. Tabitha Mutinda.

REPORT OF THE 61ST SESSION OF OACPS PARLIAMENTARY ASSEMBLY
AND THE 42ND SESSION OF OACPS-EU JOINT PARLIAMENTARY ASSEMBLY

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

THAT, the Senate notes the Report of the 61st Session of the Organisation of African, Caribbean and Pacific States (OACPS) Parliamentary Assembly and the 42nd Session of the OACPS-EU Joint Parliamentary Assembly held in Maputo, Mozambique on 23rd October to 2nd November, 2022.

The Speaker (Hon. Kingi): Next Order.
Sen. Cherarkey, proceed

STATEMENTS

GOOD PERFORMANCE BY KENYANS AT
THE WORLD CROSS COUNTRY CHAMPIONSHIPS

Sen. Cherarkey: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.52(1) to make a Statement on an issue of general topical concern and national importance namely; Good Performance Posted by Kenya's Cross Country Team at the just concluded World Athletics Cross Country Championships in Australia.

It was a great honour to see our gallant athletes performing at World Cross Country Championships where the Kenyan team topped the medal standing with 10 medals; six golds, two silvers and two bronze. They also managed to claim two individual titles. That is mixed relay title and three team titles.

Our team, captained by Kibiwott Kandie, saw Beatrice Chebet, scale to senior ranks in style by winning Senior Women's 10 kilometres title as Agnes Chebet settled for bronze in the same race. She has no relationship with the famous Agnes Chebet that was killed a few years ago.

Ishmael Kipkirui and Reynold Kipkorir won one-two in the men's Under 20 (U20), 8 kilometres race. Pamela Kosgei claimed bronze in the women's Under 20 (U20), 6 kilometres contest. Emmanuel Wanyonyi, Miriam Cherop, Kyumbe Munguti and Brenda Chebet won the mixed relay race.

Mr. Speaker, Sir, this superb performance has sent a serious warning to our competitors and the world, that Kenya is still a force to reckon with and home of athletics in the world. I wish to appreciate the early team selection and good preparations that was accorded to this team before, during and after the Championship in Australia.

I wish that Athletics Kenya (AK), Ministry of Youth Affairs, Sports and The Arts, and other stakeholders, would continue with this trend for the entire season, especially in the upcoming major events across the country.

The issue of doping has become a serious concern in our sports. I wish to call upon our athletes to remain clean and dedicate to their careers by avoiding doping that has dented the image of our athletes and the country at large at the world stage. The consequences of doping are very dire.

In conclusion, I wish to call upon the Government to use these upcoming and promising athletes as brand ambassadors. The Government could issue them diplomatic passports and ensure their finance and rewards. Additionally, their awards across the championships should be tax free.

They should also be provided with counselling and advice on financial management to enable them to grow and remain motivated at all times.

Mr. Speaker, Sir, on behalf of the great people of Nandi County, the source of champions, the Senate and Kenyans of goodwill, I wish to congratulate our gallant athletes for this performance of getting 10 medals. I wish them well and I assure them of

our commitment and support at all times as they continue to fly the flag of our great nation at the world stage of athletics.

With those many remarks, I thank you.

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

Sen. Cheptumo: Mr. Speaker, Sir, I am sorry. I think I pressed the button unknowingly. I have no point of order.

The Speaker (Hon. Kingi): Very well. Sen. Mwaruma, proceed with your Statement. He is not here. Therefore, the Statement is deferred.

OWNERSHIP STATUS AND ADJUDICATION
OF KISHAMBA B LAND B, VOI SUB-COUNTY

(Statement deferred)

Sen. Kibwana, proceed. She is also not here. Her Statements are deferred.

THE STATE OF NUT INDUSTRY IN KENYA
STEPS TAKEN TO ACHIEVE KENYA'S GREENHOUSE
GAS EMISSION REDUCTION TARGETS

(Statements deferred)

Next Statements by Sen. (Prof.) Tom Ojienda, SC. He is not in the Chamber. Therefore, his Statements are deferred.

THE STATE OF THE 63KM KISUMU-CHEMELIL-MUHORONI ROAD
PENDING BILLS OF KISUMU COUNTY GOVERNMENT

(Statements deferred)

Next Order.

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

The Speaker (Hon. Kingi): What is your point of order, Senate Majority Leader?

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, thank you for your indulgence. I humbly plead that you help us rearrange the Order Paper because before us we have a Motion which has a statutory deadline. If we do not consider the Motion on the approval of the Non-Member Commissioner to PSC by tomorrow, then the Member stands confirmed despite the lack of participation by the Senate.

I humbly request that we dispense of this Motion and allow colleagues to speak to it as briefly as we can. This is because when we go to the annals of history in future, it

will be known that the Senate also made a contribution into the confirmation of this particular Member.

The Speaker (Hon. Kingi): Thank you, Senate Majority Leader. Indeed, we shall proceed to prosecute that business as a priority, noting that today is actually the deadline.

Clerk, kindly proceed to rearrange and call that particular Order.

Proceed, the Chairperson, Committee on Justice Legal Affairs and Human Rights (JLAHR).

MOTION

ADOPTION OF REPORT ON THE PROPOSED APPOINTMENT OF HON. JOHNSON MUTHAMA AS A COMMISSIONER TO PSC

Sen. Wakili Sigei: Thank you very much, Mr. Speaker, Sir. I beg to move the following Motion-

THAT, the Senate adopts the Report of the Standing Committee on Justice, Legal Affairs and Human Rights, on the proposed appointment of Hon. Johnson Muthama, as a Commissioner of the Parliamentary Service Commission laid on the table of the Senate today on Tuesday, 28th February, 2023, and pursuant to Article 127(2)(d) of the Constitution of Kenya, Section 9(2) of the Parliamentary Service Act and Standing Order 77(3), approves the appointment of Hon. Johnson Muthama, as a Commissioner of the Parliamentary Service Commission.

Mr. Speaker, Sir, I move the Motion and request the hon. Sen. Tabitha Mutinda to second.

Sen. Tabitha Mutinda: Mr. Speaker, Sir, I rise to second the Motion.

I will proceed and contribute to the same Motion. Hon. Johnson Muthama is a reputable leader in this country. He is the immediate former Chairman of the United Democratic Alliance (UDA). Kenya Kwanza Coalition recognises and appreciates his services on how he managed the party to the point of delivering the President and Deputy President of this country.

He was a Member of Parliament (MP) from 2007 to 2013. He was also a Senator from 2013 to 2017. He is a reputable leader and businessperson who runs different companies. Currently, he is the Director of Gemstone Limited. I believe he will execute diligently the duties and mandate of this new position as expected.

Apart from him being a Kamba leader and a politician, he is also qualified academically and he will do well as a commissioner.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): What is your point of order, Sen. Cheptumo? You do not need to raise your hand, if you need to contribute.

Sen Cheptumo: Thank you, Mr. Speaker, Sir.

An. hon. Senator: The Motion has not been proposed.

(Sen. Cheptumo sat in his place)

The Speaker (Hon. Kingi): Sen. Cheptumo, from the intervention here, you are rising on a point of order. We are yet to get to that stage, which you want to participate.

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

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

Sen. Kinyua: Bw. Spika, nimemsikia Sen. Tabitha Mutinda akisema mheshimiwa tunayemjadili hapa kuwa komishna ya Tume ya Bunge ni Mkamba. Ningependa kumukumbusha kwamba mheshimiwa ni kiongozi katika nchi ya Kenya. Alikuwa mwenyekiti wa chama kinachoongoza cha UDA. Kwa hivyo, nilitaka tuondoe matamshi hayo katika kumbukumbu zetu ili isionekane kana kwamba yeye ni kiongozi wa Wakamba.

The Speaker (Hon. Kingi): Seneta, ikiwa nimemsikiza vizuri Sen. Tabitha Mutinda amesema ya kwamba mheshimiwa ni kiongozi wa kitaifa wa Kikamba na anatoka Ukambani.

(Laughter)

(Question proposed)

The Speaker (Hon. Kingi): Hon. Members, you may now proceed to make your contributions.

Proceed, the Senate Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir. I rise to support the Motion that has been brought by the Committee on Justice, Legal Affairs and Human Rights, requesting us, as a House, to approve the nomination, after successful interview of Hon. Johnson Nduya Muthama, by the Parliamentary Service Commission itself.

He is a former colleague whom we served with in this House. He was quite an interesting Member. He actually made most of his contributions in Kiswahili. I enjoyed debating him those days, together with my colleague, who is now on this side of the House, Sen. (Dr.) Khalwale. Then, they sat on the opposite side of the isle. They kept Government in check as it was expected of them those days. As political fate would have it, we are now together batting for the same team.

Mr. Speaker, Sir, until very few weeks ago, Sen. Muthama quit as the Chairperson of the party that I belong to, the United Democratic Alliance, to pursue his dreams of representing members of the public in PSC.

Mr. Speaker, Sir, there are two positions reserved for one man and woman as per the dictates of Article 127 of our Constitution. The drafters of our Constitution felt that even inside PSC, which is made up of insiders of Parliament that, include the Speaker of National Assembly and Members drawn from both sides, there was need to have two members of the public, who would infuse and bring the public perception and views into

matters and debates that go on in PSC. I know this for a fact having served previously as a Commissioner representing the Senate in PSC.

I know the important role that members of the public who are nominated to PSC serve. On many occasions when we have our debates, they remind us that despite the fact that Parliament is a very powerful institution, it is important that we shoulder and carry the responsibility bestowed upon us, even as we do our budget and all matters that we consider before PSC, members of the public are looking up to us.

I fully endorse Sen. Johnson Muthama knowing his capacity as a politician and leader in this country. The PSC is even richer because of his inclusion, once this House ratifies and agrees with the recommendation of Committee on Justice, Legal Affairs and Human Rights.

Mr. Speaker, Sir, I also wish to state that even as we continue with the deliberations that are going on between this House and the 'lower' House, PSC Act remains to be a thorn in the flesh. One of the reasons why I approached you this afternoon is because I felt that it would be a tremendous injustice and travesty if we went on discussing other matters and not conclude on this business today. Remember we have an Act that governs the operation of both Houses of Parliament that was only considered by one House.

I must appreciate the Committee on Justice, Legal Affairs and Human Rights for the good work they have done in expediting this process and ensuring that the report is ready, despite the short time and period that they had to consider this particular matter.

Mr. Speaker, Sir, it would have been terrible if we did not conclude this Motion. It would still be because I know, probably, many people still want to speak to it. In fact, I will restrict my comments because I would wish that as many colleagues speak about PSC because it is our body; it represents our interests and addresses all our challenges. This is one such Motions, I wish that as many as all the colleagues who are in the House and are willing to speak are granted an opportunity.

I am glad that we are considering this Motion today. Hon. Muthama will remember and know what the thoughts of Senators were, should this House agree with the Standing Committee on Justice, Legal Affairs and Human Rights and successfully pass and approve this Motion.

Secondly, I wish to remind our colleagues, specifically Members that serve in the PSC to always defend the position of the Senate and remember that before being commissioners, they are Senators first. I see Sen. Kinyua is in the House. I do not see my friend, Sen. Omogeni and Sen. Joyce Korir.

We have succeeded to add another Senator. Despite the fact that Sen. Muthama previously served in the National Assembly, at least, under this Constitution, he served as a Senator. Many of his views are tempered. He understands our position, challenges and unique and difficult situation that we find ourselves in as Senate of always continuing to be underrepresented in PSC.

Unfortunately, in the terms that I have been in this House, the Majority side has no control over the representation and the number that Senate can send to PSC. This is

because, out of the four positions that are granted, the Majority side will always divide two from the Senate and two from the National Assembly.

It is our colleagues from the Minority side that can help us to pass the point to the leadership of their parties to understand that in a particular term of Parliament, if you give out your three slots to PSC; two to the National Assembly, this term, then it follows that in the subsequent term, the two commissioners should come from the other House. I wish they were here when I spoke about this. I remember Members canvassing on his point when we first came into this House.

It is unfortunate that in the last three sessions, the Minority side has always sent two representatives from the National Assembly and one from the Senate to the PSC. Therefore, tilting the balance of scale more to the side of the National Assembly.

I am glad that the nomination of Sen. Muthama attempts to bring some equity and equilibrium in this conversation. There are matters to be discussed and important decisions that are made in PSC that affect our welfare, wellbeing and how we execute and live up to the constitutional responsibility that we have been granted by the people of Kenya, as Members of Parliament (MPs).

Mr. Speaker, Sir, I want to challenge our colleagues who sit in PSC, as soon as this House dispense of this matter to have a conversation with Sen. Muthama. Let him know that as Senate, we look up to him, having been our colleague, to advance the interest of Parliament and the public that he represents.

It is, therefore, important that our place in PSC is guaranteed and the many different decisions that are made in PSC are upheld in favour of us as a House. This is because we, unfortunately, suffer the constitutional design of not being the House that controls the purse.

Mr. Speaker, Sir, you know what Chinua Achebe said about the yam and the knife. He who has the knife determines the size of the yam that they are going to share with you. That is the unfortunate situation we find ourselves. We neither have the knife nor the yam. On many occasions, as Senate, we feel short-changed. However, we have progressively, over the years, succeeded in being at par with our colleagues from the National Assembly on many fronts. I celebrate the work that the PSC has done.

I wish Sen. Muthama well as he serves us, as Parliament, and as he represents the views of the public.

Finally, Parliament must have an introspective attitude despite the fact that the Constitution grants its enormous powers. For example, it can control the budget of the country which is presented before it. Many times, we, as Parliament, find ourselves in situations where there are excesses on our side and forget the unique situation we find ourselves in as a country. The entire globe is suffering from an economic recession and as a country, we are particularly affected because of our debt situation.

I know as they budget and make plans and considerations, they will always remember the number one thing that also the Senators have continued to speak passionately about. That is the issue of the Senate Oversight Fund, which unfortunately,

as much as we wish and desire to have as soon as yesterday, is not a decision that only we, as a House, can execute.

In fact, some have falsely held the view that that decision can be made at PSC. The answer I have for the House and I know this from practice having tried five times to appear before the Committee on Finance and Budget of the National Assembly, is that the decision rests there.

As PSC, year after year, we made recommendations, and we put them in our budget and our annual estimates. However, when presented before this Committee. Unfortunately, when the rubber meets the road and the Appropriation Bill is brought before the Assembly, somehow, somewhere, it never finds its way there. I hope that the new team that we are putting in the office can find ways through which this can be agreed.

I beg to support and wish Sen. Johnson Nduya Muthama well as he serves in PSC. I thank you, Mr. Speaker Sir.

The Speaker (Hon. Kingi): Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I rise to support this Motion as read, moved and proposed. I wish to congratulate, Sen. Johnson Nduya Muthama, on this appointment.

I pray to this House, colleagues, both Majority and Minority sides that we pass this name unanimously. This is because Sen. Muthama has seen it all. I remember when I first worked with him in the National Assembly and later in this Senate. When we were drafting the Constitution we took time to decide which commissions would stand in the Constitution and what they would be doing.

As a result of that consideration, we found that the Judiciary would be stronger if we had a Judicial Service Commission (JSC) and Parliament would be stronger, effective and fair if we had a PSC.

I wish to celebrate the fact that due process, without any undue influence, has allowed the name of Johnson Muthama to appear before the Floor of this House.

For Kenyans who might not appreciate who Sen. Muthama is, the English people say, if you know my name, but you do not know my story, you do not know me. I know Sen. Muthama's name. I know his story and I vouch for him. With him, we shall have a stronger Parliament.

When Sen. Muthama was MP for Kangundo in the National Assembly, he rose to become the Chief Whip. Sen. Muthama as Chief Whip of former President Mwai Kibaki, worked together with the Chief Whip of hon. Raila Odinga, Jakoyo Midiwo, during the Grand Coalition Government. They led the House.

Under these two men, I was privileged to have an opportunity to serve as the Chairperson of the Public Accounts Committee (PAC) and we really fought corruption. There is a company called De la Rue that approached the Government for a joint venture to print the Kenyan currency. Sen. Muthama, then MP for Kangundo and I, connived and fought that joint venture. Unfortunately, we lost.

As I look back, I say that the Majority is not always right because as we lost our fight against the joint venture, little did the Majority know that we were right. Today, when Kenya lost an investment of Kshs650 million in a joint venture with De La Rue, the company has walked out. They have suspended the contract of printing Kenyan currency. Today we have 300 workers who have been rendered jobless by De La Rue accompanied with another 3,000 Kenyans who have lost jobs in the supply chain of the currency printing.

Mr. Speaker, Sir, when hon. Muthama was a Senator in this House he demonstrated that he was indeed a son of the struggle to the extent that there was a time that hon. Muthama, Sen. Orengo, Sen. Wetangula and I created a tag team, went to the National Assembly and pleaded with them to be aware of poor legislation. Those were the days of the tyranny of numbers.

Thanks to the tyranny of numbers, we visited this House and this country with the infamous miscellaneous laws on our security. Again, the Majority won in this House, but we, the Minority, went to court and we won. In some of the cases, hon. Muthama literally used to pay for us.

Hon. Muthama has left strong footprints in the struggle for good leadership. I remember when I would sit down with him for many hours plotting how to make Raila Odinga stronger and we did.

Mr. Speaker, Sir, when we were defeated in the election and were forced to go to the opposition, again, we faced Raila and told him that you do not just oppose for the sake of opposing; you must be a responsible opposition. That is how we broke out with him because he decided to lie to Kenyans to go to Uhuru Park and he swore himself in as the President. To do good politics, you do not always have to oppose everything for the sake of it.

Mr. Speaker, Sir, I am glad that I have put my name on this particular Motion. I hope that when hon. Muthama comes, he will be the same man of integrity that he has been all these years.

I support.

The Speaker (Hon. Kingi): Sen. (Prof.) Kamar, you may have the Floor.

Sen. (Prof.) Kamar: Thank you, Mr. Speaker, Sir, for giving me the opportunity to join my colleagues, first, in congratulating hon. Muthama for the nomination to be in the PSC. You and I were in the 10th Parliament where he served as a Member of Parliament and we know how much he knows about parliamentary rules and services. I really believe that he is going to serve as a very good commissioner.

Hon. Muthama is one person who has served both in the National Assembly and in the Senate. I want to agree with the Senate Majority Leader that this is one person that may bring in equality between the two Houses when it comes to benefits and services of all Members of Parliament.

The PSC plays a very important role in the welfare and interest of the House. It is always the welfare and interest of the House that will push the performance of the MPs. I

personally have no doubt that we have the right person in the person of hon. Muthama to join the colleagues in both Houses in transacting the matters.

We will encourage him to continue to be neutral and look at the two Houses equally. We have only two external Members in the PSC. When there are conflicts between the interests of each of the Houses, we expect them to stand out and be the ones that will look at things in a very moderate manner and to be able to equalize.

With those remarks, I congratulate hon. Muthama and thank the Committee for working on this document very fast.

Thank you, I support.

The Speaker (Hon. Kingi): Sen. Mungatana, MGH, you may have the Floor.

Sen. Mungatana, MGH: Thank you, Mr. Speaker, Sir, for giving me the opportunity to contribute to this Motion.

At the very onset, I want to state my support for hon. Muthama as the nominee to the PSC. As it has been said before by colleagues with whom we served at the National Assembly previously, there is no doubt that he will bring in good experience and the much-needed familiarity with the systems that are working in this House.

Hon. Muthama has served in important positions previously. One that is standing out as notable is that he was a Vice-Chairman of KANU. He also served in the position of Chairman of United Democratic Alliance (UDA) party where I belong. This tells you that he is a person who can adapt to either side.

He has also served as a co-chair of the The Coalition for Reforms and Democracy (CORD), The National Super Alliance (CORD-NASA) coalition. Now, he has served as Chairman on the side of the Government where we successfully ran this election to form the next Government. This tells you he is an individual who can stay on either side and still perform to the highest level.

Mr. Speaker, Sir, the PSC is one of the independent commissions that have been formed under Article 127 of the Constitution. The calibre of people that we are taking there is of the highest possible in this nation. Looking at the Curriculum Vitae of the hon. Muthama, he fits the bill.

I also want to emphasize that the age of hon. Muthama gives us comfort that in case things go wrong or tempers are flaring, he will be the much-needed stabilizing factor when hard decisions must be made.

One of the main functions of the PSC is to run the National Assembly and the Senate efficiently and effectively. As he comes in, my expectation is that he will not come in as a Senator or a Member of the National Assembly, but that he will come in and look at us and the PSC from an outsider's eye. I say so because when people look at the PSC, there are many things that need to be looked at afresh.

I hope hon. Muthama will look at costing of services in Parliament and whether we are getting value for the money allocated here.

He should see if service providers are balanced. For example, Sen. Muthama should tell how many service providers in this Parliament are coming from Tana River County. We would like him to look and question things. Are the costs and the money we

pay for running this efficient and effective? Are the services coming from all over the country?

I want Sen. Muthama - when he comes in as an hon. Commissioner - to tell us the segregation or the number of people who are employed by PSC and how many are coming from Tana River County. Is it fair? Are the numbers speaking to the equality, fairness and justice that Parliament should stand for? He needs to look at things from outside.

I pray that he will not just join in, sit and be part of the system that is established. He should check and bring in fresh ideas and ask the hard questions. Are these service providers Nairobi-centric or do we have some coming from other counties to reflect the reality of this Senate House and the National Assembly?

Are the employment opportunities reflective of what should happen in the PSC? We have this faith that because he is an old man and he is coming not as a Senator nor a Member of the National Assembly, but an outsider he will be able to give a fresh look, to how PSC functions and whether it is within Article 127 of the Constitution as it should be.

Mr. Speaker, Sir, I have interacted with Sen. Muthama. I have full faith as an elder, friend, and colleague in the way he steered our party to elections, the role he played and the energy he exhibited. We have faith that he will do the same in the PSC.

I beg to support.

The Speaker (Hon. Kingi): Proceed, Sen. Veronica Maina.

Sen. Veronica Maina: Thank you, Mr. Speaker, Sir, for the opportunity to contribute to this Motion. I rise to support the proposed appointment of hon. Muthama as an external male nominee to the PSC.

I have had the opportunity to work very closely with him at the party. He is the outgoing Chairperson and I was working as the Secretary General (SG) until yesterday.

I must vouch to the level of integrity that he stood for during the nomination processes, his level of competence and very good networking skills. He is a people's person. He traversed, the whole country in the 47 counties making sure that he united all Kenyans under one cause.

I witnessed a leader who did not have a bias based on the areas, the places, ethnic division and the ethnic differences between people. One who did not regard those tendencies that other people would have. He brought people together and was able to reconcile members when they had differences. I can vouch that he is bringing in competence to the PSC.

This morning as we went through the approval hearing of hon. Muthama we sought to know his understanding regarding whether the Joint Services Board, in Parliament was needed or was in conflict with any other institution. He had a level of clarity of mind which is inspired by his earlier experience in this Parliament both at the Senate and the National Assembly.

His tenure as a Majority Whip is remembered by many people, even members of the public-when government was not losing Motions, that did not require to move. He was an efficient servant.

On the question of oversight, we went into the depths on whether he understood the need for the oversight fund that the Senators would need in order to be effective in their work and mandate under the Constitution.

On a first-hand basis, hon. Muthama had experienced the difficulties and the challenges that Senators have when they have to utilize, their only salary to oversight whole counties and many constituencies. He also narrated how difficult it was for a Senator to set up county and constituency offices-which he had tried to do-to give members of the public an opportunity to bring their issues which would then be propelled to Senate.

It was clear from the interactions we had in the morning with him that without their oversight funds it was not going to be effective for any Senator to effectively oversight any county. He made a very clear case of Senate and the PSC looking into the issues of how Senate can be more affirmed in terms of being given more resources to perform its duties.

Hon. Muthama came through as one who understood the current relationship between the National Assembly and the Senate, especially on the issue of the flurry of litigations which have been traded between the two Houses. He came through very clearly that there was need now to settle that issue, once and for all. He was well equipped and ready to push that mandate.

On the projects that have been pending on the PSC table, he seemed very clear and conscious, that there is now need to bring to accomplishment some of the projects that have been long standing. They have been delayed either because they are not fully resourced or maybe there was need for better utilization of the funds allocated to projects that must benefit the current Parliament.

He is a man who has demonstrated patriotism and national unity. He is able to understand devolution, the rule of law and democracy and the need for participation of the people.

Mr. Speaker, Sir, he meets the criteria set under Article 10, National Values and Principles of Good Governance. He comes through as a personality that is minded of doing general good to the public.

It is notable that he has engaged in a lot of charitable organizations. He has lifted people who are on the low end of life, minded of their school fees and need to be assisted even through medical bills. He has a whole testimonial of how he has improved the lives of many Kenyans.

Mr. Speaker, Sir, for these reasons and the many others I have heard espoused on the floor of this House, I beg to support.

The Speaker (Hon. Kingi): Proceed, Sen. Kinyua.

Sen. Kinyua: Asante, Bw. Spika, kwa kunipa fursa hii niweze kuchangia Hoja iliyoletwa mbele ya Seneti. Kwanza kabisa, naiunga mkono kwa sababu ninamjua mhe. Muthama.

Pengine ningepata motisha ya kumjua hata zaidi iwapo ningesikia mahojiano na mawaidha yaliyopeanwa hapa na viongozi. Nimewasikia Sen. Cheruiyot, Sen. (Dr.) Khalwale na Sen. Mungatana, MGH, wakisema kwamba walifanya kazi naye kwa muda mrefu.

Bw. Spika, mimi nimemjua kama kiongozi wa chama cha UDA na pia mtu mwenye uzoefu sana katika maswala ya kisiasa. Nilipokuwa katika harakati za uchaguzi, nilienda kwake kumuuliza wosia wake kuhusu mambo ya siasa. Nilimuona kama mtu aliyekomaa na kuboea katika kazi yake. Ninasema hivi kwa sababu ukiongea na yeye, anaongea kwa utaratibu huku akijua mambo ambayo anapaswa kulenga.

Kwa kuwa amekuwa kiranja wa Walio Wachache na hata wa Walio Wengi katika wakati tofauti tofauti. Kwa hivyo, ninajua ataleta mawiano katika Tume ya Bunge. Kuna viongozi wengi lakini ninajua yeye ni mpole na ana uzoefu wa utendaji kazi. Kwa hivyo, ataleta uongozi mwema katika Tume ya Bunge.

Ningependa kufahamisha Bunge hili la Seneti ya kwamba nimezungunza na mhe. Muthama. Maoni yake ni sawa na ya Sen. Cheruiyot ambaye amesema sisi tumekandamizwa kidogo katika Tume ya Bunge. Sitaki kuongea mengi kwa sababu nitamwaga mtama penye kuku wengi. Sisi tayari tunajipanga na tunafanya mambo yatakayoendelea kusaidia Bunge la Seneti.

Kwa kuwa mhe. Muthama alihudumu na hatimaye kuacha siasa baada ya kuhudumu katika Bunge la Seneti, ninajua atakuwa mstari wa mbele kutusaidia sisi Maseneta katika kutatua shida tulizo nazo. Ninajua ataangazia kwa mapana na marefu shida nyingi zinazozungumziwa hapa na Maseneta.

Bw. Spika, ninaunga mkono na ninamkaribisha katika Tume tufanye kazi pamoja. Ningependa kumhakikishia kwamba tutafanya kazi tukiwa kitu kimoja kwa sababu umoja ni nguvu na utengano ni udhaifu.

The Speaker (Hon. Kingi): Sen. Okenyuri, please proceed.

Sen. Okenyuri: Asante sana, Bw. Spika. Ninaunga mkono Hoja hii ya uteuzi wa mhe. Muthama. Yeye amekuwa na uzoefu wa Bunge na ninajua anajua mahitaji ya Bunge hili. Amefanya kazi kwenye sekta ya biashara, siasa na hata katika chama tawala cha UDA ambapo mimi ni mwanachama.

Katika kazi yetu kama vijana tulipokuwa tunashughulika na mambo ya kutafuta kura huku na kule, nilishirikiana naye kwa karibu. Ni mtu ambaye ana roho ya kusaidia hasa vijana. Ni kama baba ambaye anajali masilahi ya watoto wake. Kwa hivyo, uteuzi wake umekuja wakati ufaao. Tunatarajia kuwa atashirikiana na wenzake katika Tume hiyo ili kusaidia Bunge la Seneti.

Bw. Spika, jambo la mwisho ni kwamba uzoefu wa mhe. Muthama katika biashara utachangia katika Tume ya Bunge. Sisi kama Wabunge tunaunga mkono uteuzi wake.

(Sen. Cheptumo consulted the clerk-at-the-Table)

The Speaker (Hon. Kingi): Sen. Cheptumo, please proceed.

(Laughter)

Sen. Cheptumo: Thank you, Mr. Speaker, Sir. I was consulting on something else and I was already on the line.

Mr. Speaker, Sir, I join my colleagues in supporting this Motion. I am a Member of the Committee on Justice, Legal Affairs and Human Rights. This morning, Hon. Muthama appeared before the Committee and we had a very long engagement with him.

I served with Hon. Muthama in the National Assembly. I believe it was in the 10th Parliament. That time, he served as the Chief Whip and he showed a high level of leadership and he was able to do mobilise Members.

Hon. Muthama served in this House and he was able to express the suffering he went through as a Senator during his tenure in this House. As we are all aware, the challenge we have is that we do not have the resources to execute our oversight functions.

He gave an example of being the Senator for Machakos County, compared to several constituencies. As we all know, the amount he was allocated is equivalent to the allocation of a Member of the National Assembly. It was very difficult for him to perform his function. In fact, he spent his own resources so as to serve his county in his time.

These are the challenges the House faces today. I have no doubt that having been in this House, Hon. Muthama will advocate for fairness and justice to enable Senators perform their functions.

He shared his personal life. He is a very successful businessman dealing in gemstones and he has earned our country foreign currency. I see him as a man that has succeeded in business and politics. So, we have a man who will be useful in PSC. He is capable of applying his experience from the National Assembly as well as this House. With that, he will be able to serve the two Houses in a manner that will facilitate Members in terms of Article 127(6) of the Constitution.

Mr. Speaker, Sir, he also fulfilled the other law requirements for him to be appointed a Commissioner. As a Committee, we were satisfied with his documents from the Ethics and Anti-Corruption Commission (EACC), National Intelligence Service (NIS), Kenya Revenue Authority (KRA) and all the other agencies. He has a matter pending in court, but he explained the circumstances of that particular case.

He demonstrated that he is a Kenyan who pays taxes and this means that he will set a good example even in leadership in PSC. As a Committee, we were satisfied that he fulfilled the legal requirements and the constitutional threshold required for him.

Mr. Speaker, Sir, in conclusion, hon. Muthama was the Chairperson of the UDA, the party where I belong. During his entire leadership as our chairperson, he was able to manage our resource. Prudence of managing resources is critical. There is no situation that was too hard for him to handle and Sen. Veronica Maina attested to that. In the time

that he was the Chairperson of our party, there was no situation where he faced any challenge.

Today, you enjoy a lot of respect because you served as a Governor for two terms. The fact that Sen. Muthama served in the National Assembly and also in this House and in various positions as explained by Sen. Mungatana, is a confirmation that the PSC will be lucky to draw from that experience of a very dynamic Commission.

Finally, is the issue of fairness in the PSC. Today, if you look at serving of the PSC, and I think that was said by Sen. Mungatana here; the fairness--- We want a situation where when there are staffers to be employed, every county must be represented, so that we do not have a situation where the Commissioners are the ones who are sharing those slots amongst themselves.

They should be fair and ensure that every county is represented and has a share of those to be employed. That is the only way we are going to have a Commission that is able to stand and be proud that it is serving the two Houses and the country.

I join my colleagues in supporting the appointment and nomination of Hon. Muthama as a Commissioner in the PSC. I believe that he will add value to the PSC.

The Speaker (Hon. Kingi): Sen. Osotsi, you have the Floor.

Sen. Osotsi: Mr. Speaker, Sir, I am not willing to contribute to this debate because my leader, the Senate Minority Leader, has an issue to raise which he will be raising.

The Speaker (Hon. Kingi): Sen. Osotsi, if, indeed, you have nothing to say, do not queue in the system.

Sen. Cherarkey, please, proceed.

Sen. Cherarkey: Thank you, Mr. Speaker, Sir. From the outset, I support this Motion. There is nothing much that can be said about hon. Muthama. He was our immediate former chairperson of UDA, which he ceded to Gov. Cecily Mbarire.

Talking about his Curriculum Vitae (CV), I have gone to the report. We have an advantage as the Senate because he served with us. He understands the constraints that we go through in terms of discharging our mandate as per Article 96 of the Constitution.

This man led along with other leaders, including yourself, to ensure that Kenya Kwanza won the election and subsequently formed the Government. He is a national leader. I would be cautious to say that he is a “Kamba Leader,” as my sister said. We respect this national leader so much now. He has a record of accomplishment that he has performed despite wherever he comes from. We believe in the word of Martin Luther King Junior, where all of us will be judged by the content of our character, as opposed to who we are or where we come from. I would have expected Sen. Maanzo to be very happy about this appointment because he knows why.

On Article 127 of the Constitution, this issue of PSC, the Senate is unfairly represented. I do not fear to contradict myself on that aspect. The Chairperson of PSC is the Speaker of the National Assembly, your counterpart, Sen. Moses Masika Wetangula.

One of our representatives is also the Clerk of the Senate who is the Secretary to the PSC, Mr. Jeremiah Nyegenye. We are aware that by imagination by individuals

within the National Assembly, they wanted to water down the powers of the Clerk of the Senate, who is also the Secretary to the PSC. We are aware of those machinations because their intention is to make PSC one-man's show in favour of the National Assembly, but the Constitution is very clear. Whether you want to legislate the PSC Act the way, they want, the Constitution remains that the Secretary to the PSC is the Clerk of the Senate.

My advice to my brother and sisters in the National Assembly is that they will gain nothing by trying to water down and create other offices that water down the Secretary to the PSC. The PSC has other Members, seven, who we have elected. It is good that the Minority side is back in the House. I can see my lawyer Commissioner, Sen. Omogeni--- I have never understood and this is my plea to the minority leadership, led by the Senate Minority Leader, my brother, Sen. Madzayo. In future, I would like the Minority side to send two representatives to the PSC, just like the Majority side.

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

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

The Majority side sends two representatives to the PSC. Next time, I hope that the Minority side will have two representatives, probably Sen. Omogeni and another, preferably a woman. I can see there are many ladies on the Minority side. If we do so, we will achieve balance of power in the PSC.

Mr. Speaker, Sir, Article 127 of the Constitution gives the power the PSC to provide facilities to Members. Can you believe that there are Members of Parliament who are squatting because they do not have offices?

The Temporary Speaker (Sen. Veronica Maina): Please, refer to me as 'Madam Temporary Speaker.'

Sen. Cherarkey: Sorry, Madam Temporary Speaker and congratulations. You used to be our Secretary General (SG). We wish you well in your future endeavours.

The Temporary Speaker (Sen. Veronica Maina): Thank you

Sen. Cherarkey: Madam Temporary Speaker, Article 127(6) of the Constitution gives the power the PSC to provide facilities to Members. Up to now, there are Members of the National Assembly and the Senate, who are still squatting on corridors of Protection House, Kenyatta International Convention Centre (KICC) and many other places. These facilities must be provided by the PSC.

In KICC where some of us have had offices for some time, we were living with cockroaches. Sometimes you would be in the office and a number of cockroaches, a million of them, show up. There are no lights on the corridors and the toilets are in a pathetic state. In fact, someone who lives in Korogocho or other places have better toilets than what we have in KICC. There is no water; it is not well lit and it impairs the discharge of services.

The PSC must do something about the pathetic situation. It is good that we have Members here and hon. Muthama, and we must be treated well. Our safety is also not assured. There are strangers who roam around our offices without a proper accreditation. Our facility should put in place safety measures.

Finally, on the issue of Salaries and Remuneration Commission (SRC). Why is it that PSC is behaving as if it is under the SRC? Sen. Omogeni, before we elected him as a Commissioner, had even challenged the gazette notice at that point before the Floor of this House.

[The Temporary Speaker (Sen. Veronica Maina) left the Chair]

[The Speaker (Hon. Kingi) resumed the Chair]

Why is it that the PSC is behaving as if it is under SRC and yet the SRC and PSC are a creation of the Constitution?

I note the change of Chair.

Mr. Speaker, Sir, hon. Members of Parliament are facing many problems because of the SRC. We want to encourage, challenge and beseech the PSC to do something. We want to give *yale mate ya baraka* to PSC, so that they do not allow SRC to blackmail and intimidate them.

Why do you fear the SRC? They are issuing circulars left, right and centre. The SRC Chairperson was giving herself a Kshs10 million car grant, while Members of Parliament were given Kshs6 million. In fact, the SRC should be made a part-time Commission because it does not have much business. The review of salaries is provided under the law. I, therefore, challenge the PSC not to be intimidated. The PSC should not behave as if the SRC is up and we are down. The PSC should work from up and down.

Finally, the PSC is doing well. As per Article 118 of the Constitution, we want to encourage the PSC to promote parliamentary democracy. They are building the Centre of Parliamentary Studies and Training (CPST) in Karen. Therefore, we are proud of what they are doing in terms of promoting parliamentary democracy. There is bill tracking that is online and other facilities that Members are enjoying, including water.

We challenge the secretariat to, biannually, provide us with the Constitution, documentation and an update of the iPad, so that it becomes easy to execute our duty. There is a catalogue of laws that should be provided in our offices. After the COVID-19 pandemic, why should we be seeing these big catalogues?

Mr. Speaker, Sir, I am sure where you are seated, you have been well resourced online, so that it becomes easy to preside. Provision of internet to our offices is important. The internet we have in our offices is behaving like the Kenya Power Company. It disappears and comes back at its own will. Who is the provider of *Wi-Fi*? We are not using *Wi-Fi* to watch *Tiktok* videos. We use it to research and enrich the issues we present before the Floor of the House.

Alongside Sen. Muthama, Sen. Wetangula, Hon. Moses Musalia Mudavadi, His Excellency President William Ruto, the Deputy President, Hon. Rigathi Gachagua alias “Riggy G” and other Members of the Majority side, we have to support Sen. Muthama. He must be a commissioner in the PSC. We want him to serve everybody regardless of what they believe in or where they come from.

I do not want to say other issues on the Floor of the House. I will reserve them and speak at the Speaker’s *Kamukunji*. However, I support this Motion and wish the PSC all the best as they serve us and ensure that our welfare is top priority, so that we discharge our duty for the benefit of Kenyans.

I almost forgot. Allow me a second to mention that the PSC should ensure that our staff are well catered for, so that they are able to assist us. This is because they are our aid. These staff are doing a good job in ensuring that we are well resourced in terms of research and provision of services. We are not saying that the PSC should only push for the agenda of MPs. They must include the staff as well. They should be well resourced, so that they support us to discharge the mandate that our people gave us.

I congratulate and wish Sen. Sifuna the very best. Today, he is sitting on the seat of the Deputy Minority Whip.

The Speaker (Hon. Kingi): Sen. Maanzo, proceed.

Sen. Maanzo: Thank you, Mr. Speaker, Sir. I rise to support the appointment of Sen. Muthama, who has been a colleague for a long time. At one time, I was his lawyer when he was in the National Assembly. He got into trouble and found himself with the “Pangani Six”.

He was instrumental in formation of Orange Democratic Movement Kenya (ODM-K) Party and was elected to the National Assembly. He later on became a Senator. Therefore, he understands what happens in the National Assembly and the Senate.

We have one big problem, which I believe the PSC will sort out, that is, the office of a Senator at the county. It is surprising that other Government offices exist. When I was MP, I constructed an office in the middle of the constituency. Now, I have to rent a shop, yet the PSC spent a huge budget.

I believe that Sen. Muthama understands these things. We should come up with a budget, where, instead of paying rent, we can construct an office for the Senator in the headquarters of the county. That is a challenge that the PSC can handle and have a budget line for it, so that Senators have offices where Kenyans can access them.

I believe that Sen. Muthama, being a person who deals with real estate and properties, will be instrumental to the Commission to give these ideas, so that we are better facilitated to serve Kenyans who elected us to represent them.

I believe in Sen. Muthama, having gone through a similar experience and understanding of how the National Assembly operates. He is also a senior citizen in this country. Therefore, he commands the respect necessary at the PSC, to drive through some of the issues we have.

He is also from my community. He is one of the persons who was instrumental when I was forming ODM-K. Then, I was his chairperson. He has buttressed the

foundations of politics in this country. Later on, the party became Wiper Democratic Movement-Kenya, which is the third biggest party in the country. Therefore, having been the person who formed the party, he later on went on to other parties. I still expect him back one day as a permanent member of ODM-K, and subsequently, Wiper Democratic Movement Kenya.

I support him.

The Speaker (Hon. Kingi): Sen. Kisang', proceed.

Sen. Kisang': Thank you, Mr. Speaker, Sir. I rise to support the Motion on nomination of Sen. Muthama as a Member of PSC.

Sen. Muthama has been in this House. He was the first Minority Whip in the 11th Parliament. Before that, he was the Vice Chairperson of Kenya African National Union (KANU). He also has several businesses.

For the last three or two years, he has been the chairperson of the UDA until yesterday. I believe he resigned yesterday, so that he is appointed as a Commissioner in the PSC to serve this House and the National Assembly impartially and that he is not aligned to any political party when he serves as a commissioner.

When you check on the suitability, Sen. Muthama is suitable to be a commissioner because of the experience that he has. He was a Member of the National Assembly in the 10th Parliament and 11th Parliament as a Senator and he served well.

I believe that when he comes as a non-Member of Parliament, he will bring in checks and balances. We know that there are many things that are not right in the PSC, especially because of the SRC, who come in with different salaries every five years. They release the changes before an election. Sen. Muthama needs to bring in the knowledge that he has as a business person and seasoned politician.

We have MPs in the National Assembly and the Senate, who do not have offices. I had been allocated a tiny office in KICC, but I refused to move there. However, I got a good office at the Red Cross Building.

We are waiting for the opening of the new building which has been incomplete since the 10th Parliament. I hope when Sen. Muthama report, he will sit with other commissioners to ensure they fast-track completion and equipping of the modern offices, so that Members can move in, enjoy the offices, have good internet and work.

People are complaining that the internet is poor. We are in the middle of the Capital City of Kenya and there is fiber optic connection across. Therefore, we believe that *Wi-Fi* should be supplied to all the offices, so that slow or dropping of internet is something of the past.

That way, our employees can do research for us, so that when we come to this House, we are able to contribute meaningful information that is up to date.

I wish Sen. Muthama well as he is approved by the Senate and the National Assembly, so that he can serve us as soon as possible.

I wish him well

The Speaker (Hon. Kingi): Hon. Senators, there being no other Senator wishing to contribute to this Motion, I call upon the Mover to reply.

Sen. Wakili Sigei: Thank you, Mr. Speaker, Sir. As I reply to this Motion, I want to support the sentiments and accolades that the hon. Senators have given as they contributed to this Motion with regard to hon. Johnson Muthama.

This nominee whom we had a session with earlier in the morning is indeed a national leader. He is experienced and has done over 30 years in leadership in the National Assembly, the Senate and other leadership positions in this country. Therefore, he fits the bill to serve as a Commissioner in the PSC.

The Senators who spoke before me confirmed that hon. Muthama steered the ruling party; that is, the UDA, to win the 2022 elections until he resigned just the other day, in order to facilitate his appointment as a Commissioner in the PSC to serve the people of Kenya and Members of this House in that capacity as a non-member of Parliament.

Mr. Speaker, Sir, in his steering the party to success, hon. Muthama managed pre-election and post-election coalitions. He depicted the character of a leader who has no borders. Looking at hon. Muthama's CV, which was shared with the Committee and Kenyans, you will note that he qualifies to be an excellent Member of the PSC.

Having been in this House, he came out to be an experienced leader who understands the challenges that the PSC has had with the two Houses. We are aware that the National Assembly and the Senate have had various challenges, which we spoke about in our session with the nominee. He showed the capability of a committed leader, Member and Commissioner, who will serve the interests of this House without blemish.

Mr. Speaker, Sir, having been a Member of this House, I also know that he understands and will steer the interests of not only the public that he serves, but also the Senate.

My colleagues have talked about the Parliamentary Service Act. This same Act requires us to vet or subject a nominee to a process of approval, yet the same Act was not passed in this House, as required by Article 110 of the Constitution.

For the benefit of hon. Senators, the Court of Appeal, in its finding at paragraph 178 of the Judgment declared that the Parliamentary Service Act ought to have passed through the Senate because it affects the operations and mandate of both Houses. I believe that with the experience of hon. Johnson Muthama in this House and in other leadership positions, he will steer the interests of this House and ensure the mandate as provided for under the Constitution is served within the four tenets of the Constitution.

Mr. Speaker, Sir, hon. Members have confirmed the qualifications and experience of the nominee and as a Committee. I would like to confirm and thank the Members for their efforts, commitment and the purpose they put into the process, which we undertook, leading to the presentation of this report. This Motion is seeking the approval of hon. Johnson Muthama to serve as a Commissioner of the PSC. We believe and expect that he will serve the people of Kenya with utmost good faith, commitment and integrity.

I request the House to pass this Motion in unison, so as to ensure that the PSC is fully constituted.

Mr. Speaker, Sir, I beg to reply.

(Question put and agreed to)

The Speaker (Hon. Kingi): Hon. Senators, before we move to the next Order, kindly allow me make the following Communication.

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM THE GAMBIA NATIONAL ASSEMBLY AUTHORITY

The Speaker (Hon. Kingi): Hon. Senators, I wish to acknowledge the presence, in the Speaker's Gallery this afternoon, a visiting delegation from the Gambia National Assembly Authority. The delegation comprises the leadership of the National Assembly of Gambia who are on a five-day study tour in the Senate.

Hon. Senators, I request each Member of the delegation to stand when called out, so that you may be acknowledged in the Senate tradition.

They are:

1. Hon. Fabakary Tombong Jatta - Speaker of the National Assembly
2. Hon. Alhagie S. Darboe - Minority Leader and Member of the Authority
3. Hon. Alhagie Mbow - Member of the Authority
4. Hon. Maimuna Ceesay - Member of the Authority
5. Mr. Momodou A Sise - Clerk of the National Assembly
6. Mr. Gibairu Janneh - Director of Communications, ICT and Press
7. Ms. Sally Secka - Principal Accountant
8. Ms. Jestina Greywoode - Principal Administrative Officer (Office of the Speaker)
9. Mr. Ousman FT Jatta - Personal Assistant to the Hon. Speaker.
10. Ms. Clara Mutanda - Associate Programme Officer, International Institute for Democracy and Electoral Assistance (IDEA)

(Applause)

On behalf of the Senate and on my own behalf, I extend a warm welcome and wish them a fruitful visit.

VISITING DELEGATION FROM THE COUNTY ASSEMBLY OF MAKUENI

Hon. Senators, I also wish to acknowledge the presence in the Speaker's Gallery this afternoon of a visiting delegation from the County Assembly of Makueni.

The delegation comprises of staff from the Serjeant-at-Arms Department, who are in the Senate on a four-day benchmarking visit with the counterpart department in the Senate.

Hon. Senators, I request each member of the delegation to stand when called out, so that you may acknowledged in the Senate tradition -

1. Leonard Ndwala - Serjeant-at-Arms
2. Christine Muendo - Serjeant-at-Arms
3. Benedict Mutua - Assistant Serjeant-at-Arms
4. Al Leon Wambua - Assistant Serjeant-at-Arms
5. Josphat Kimanthi - Assistant Serjeant-at-Arms
6. Felister Matheka - Assistant Serjeant-at-Arms

On behalf of the Senate and on my own behalf, I extend a warm welcome and wish you a fruitful visit.

(Applause)

Hon. Senators, I will allow the Majority Side to make remarks in welcoming the two delegations and, thereafter, give the Minority Side an opportunity to welcome the two delegations.

Minority Leader, proceed.

The Senate Minority Leader (Sen. Madzayo): Thank you, Mr. Speaker, Sir. Allow me to join you in welcoming the visitors who have come all the way from Gambia.

Gambia is a very nice country and part of us in Africa. I hope that by coming all the way to Kenya, our brothers and sisters are going to learn how we conduct our business here.

This is the Senate; the 'Upper' House. As you can see, we normally have a bi-partisan kind of relationship here to debate issues. Therefore, I do not want to spend so much time. I extend a big '*karibuni nyumbani.*' *Seneti ni Bunge lenu.*

I believe you have enjoyed your stay. You have learnt. We have very capable Serjeants-at-Arms here and very senior ones. I believe you will be in a position to learn---

The Speaker (Hon. Kingi): Minority Leader, you know very well that under the Standing Orders, if you choose to speak English you stick to it.

The Senate Minority Leader (Sen. Madzayo): I have taken back.

Finally, I want to say *karibuni*. '*Karibuni*' is a word that can be used in both English and Kiswahili.

Thank you, Mr. Speaker, Sir.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir. I welcome the visiting delegation from the Parliament of Gambia. Although I have never visited Gambia, I have many Gambian friends who do business and work in Kericho. They are led by a gentleman called Mr. Jipi Chor, who has been with us in the county that I represent in this House for quite a while.

I feel a special connection to the visiting team. I hope that they get full value of their time in the Republic of Kenya and get to learn and interact with Members of Parliament.

To the best of my knowledge, their Parliament is pretty much similar to ours both in structure and size. Therefore, their pick and choice of Kenya and the Kenyan Parliament as a place to take their study and comparison is most welcome.

Mr. Speaker, Sir, I congratulate them because they live up to the spirit of what I have chosen to advocate for in the last few months as the Senate Majority Leader. As Africans, there are many Members in this House, both now and previously, in the Senate and the National Assembly, who can barely name five African capital cities that they visit, yet they know every street in Europe by name.

That is extremely embarrassing. We have said that this time let us buy, build and travel in Africa. Get to know Africa and make our continent better.

Thank you, the Gambian team, for making that a true spirit and example.

Thank you, Mr. Speaker, Sir.

Sen. Osotsi: Thank you, Mr. Speaker, Sir, for this chance to welcome the guests from Makueni County Assembly and the Gambian Parliament.

Gambia is a key country to Kenya although it is in the western part of Africa. It is a country that we can learn a lot from, and they can also learn a lot from us. Allow me to specially recognize my good friend, hon. Alhagie, who is the Vice-Chair of the Africa Parliamentary Network on Internet Governance (APNIG). It is a caucus that brings together Members of Parliament across Africa on matters of internet governance.

Mr. Speaker, Sir, internet is a key asset in global communication and interaction. Mr. Alhagie is one of the founders of that network. He has worked very hard alongside other members to promote the spirit of Pan-Africanism and connectivity in Africa.

We encourage members to also pay a lot of interest on caucuses at the continental level, like APNIG, so that we achieve the goals we want to achieve as the African continent.

I welcome the County Assembly of Makueni as well to come and learn how we do our work here, so that they can make our county assemblies stronger like this Senate and the National Assembly. Welcome to the Senate of Kenya.

Thank you, Mr. Speaker, Sir.

Sen. Olekina: I thank you, Mr. Speaker, Sir. Let me begin by welcoming the delegation from Gambia.

Gambia is similar to my county of Narok, where there are lots of wildlife. I know tourism is one of your main foreign income earners. I want to encourage them, while here, to visit Narok County, the Maasai Mara Game Reserve. Hopefully, you will get a chance to see sister leopards like the ones from Gambia.

Your culture when it comes to music is something I really admire. I have an affinity to the music industry in Gambia. It is something that helps. I have always wanted to travel to the Gambia. I hope that when I will be doing my trip of West Africa, Gambia

and Senegal are two of the countries that I really admire to go and interact with the people.

To our visitors from Makueni, let me begin by congratulating Gov. Mutula Kilonzo Jnr. for winning his Petition today. You are very lucky to have a good governor. He was one of us; very diligent. I hope that you will support him as the County Assembly and also oversight, encourage and support devolution, so that we can grow.

We are living in very interesting times when there are many challenges. Right now, Makueni County, the entire Lower Eastern, Machakos, Kitui, Kajiado, Narok, we have all been hit hard by the drought. I hope that we can sit down and talk. At the Assembly, you may encourage your colleagues to look at this issue of water from Nolturesh, so that it is a resource that can be utilised by the three counties effectively.

Thank you for coming. I hope that when you go back to Gambia and Makueni County, you will be able to share what you have learnt from this Senate.

Thank you, Mr. Speaker, Sir.

CONDUCT OF BUSINESS IN THE HOUSE

The Speaker (Hon. Kingi): Hon. Senators, before we move to the next Order, I have further Communication to make.

Hon. Senators, as you are all aware, the Second Session of the 13th Parliament begun on 14th February, 2023. This came after a First Session that was largely characterized by the swearing-in of hon. Members, orientation and induction sessions.

Induction Sessions were intended to facilitate Senators to acclimatize to parliamentary customs, rules and traditions, as well as equip Members with the skills and competencies for parliamentary work.

We began the Second Session with an already full plate. This was mentioned by the Senate Majority Leader in his Statement to the House, pursuant to Standing Order 57(1). It highlighted 16 Bills that are in our in-tray, as well as Motions, some of which are critical to the budget process and which have a major bearing on the management and operations of our counties.

Majority Leader, have your seat.

(Sen. Cheruiyot took his seat)

Hon. Senators, the proceedings in the Senate in the past two weeks, have deprived us of the opportunity to pass critical legislation. This may have the potential to deny the Senate the opportunity to pass important Motions, within the time lines provided in statutes and the Standing Orders.

The last two weeks also witnessed an unprecedented series of events in the Senate, that have made it necessary for me to make this Communication. During this time, there was display of defiance and disrespect to the Chair that is alien to the conduct expected of a Senator.

The directions of the Chair were ignored and some Senators conducted themselves in the most dishonourable manner. How will the Senate remain of good standing, deliver on the aspirations of the people and protect the interests of counties and their governments, if we do not maintain the confidence and trust that the public have bestowed upon us?

Hon. Senators, as your Speaker, I am deeply concerned about the state of affairs in the Chamber in the first few sittings and the abuse of privilege by some Senators in this august House. Even when one is not pleased with the directives of the Speaker or the Chair, as will sometimes happen, there are better ways of addressing grievances than resorting to outright disorder.

The Standing Orders provide a framework for debate and order in the House. The Senate leadership has made concerted efforts to ensure that you are well versed with the Standing Orders. At every opportune time, the Chair has urged Senators to observe and apply the Standing Orders.

I say this with particular reference to Parts XVII and XX of the Standing Orders that touch on Rules of Debate and Order in the Senate and in Committees. I continue to urge all Senators to acquaint themselves with these provisions. They are at the core of orderly, smooth and predictable transaction of business in the Senate.

Allow me to reiterate what constitutes disorderly conduct and gross disorderly conduct, pursuant to Standing Orders No.121 and 122, respectively. Among others, Order No.121 states that:

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

- (a) creates disorder;
- (b) knowingly raises a false point of order;
- (c) unnecessarily interrupts proceedings or consults in a disruptive manner;
- (e) makes allegations without, in the Speaker’s opinion, adequate substantiation.”

Order No.121 states that:

“(1) A Senator commits an act of gross disorderly if the Senator-

- (a) defies a ruling or direction of the Speaker or Chairperson of Committees;
- (h) demonstrates or makes disruptive utterances against the suspension of a named Senator;
- (k) disrupts or attempts to disrupt the Speaker’s Procession;
- (m) commits any other breach of these Standing Orders, that in the opinion of the Speaker, constitutes gross disorderly conduct.”

Hon. Senators, Standing Orders No.121(2) and 122(2) provide for the consequences of creating disorder and gross disorder in the Senate. In the first instance of disorderly conduct, Order No.121(2) says:

“The Speaker may call a Senator whose conduct is disorderly to order, and-

- (a) caution the Senator; or

(b) order the Senator to withdraw from the precincts of the Senate for the remainder of that day's sitting."

In the second instance of gross disorderly conduct, Order No.122(2) says:

"The Speaker may call a Senator whose conduct is grossly disorderly to order, and shall order the Senator to withdraw immediately from the precincts of Parliament –

(a) on the first occasion, for a maximum of three sitting days, including the sitting day of suspension; and

(b) on the second or subsequent occasion during the same session, for a minimum of seven sitting days and a maximum of twenty-one sitting days, including the day of suspension."

Hon. Senators, we owe it to our forbearers who established the Senate as an institution of order, decorum and amicable debate and as a dignified Chamber, to maintain it as such. Leaders lead by example. If we are to be the pacesetters for the many Kenyans who look up to the Senate and the counties that see hope in us, we have the solemn duty to conduct ourselves in a dignified manner, rise to the occasion to better legislators and uphold the provisions of the Standing Orders in our conduct in both Plenary and Committee meetings.

Hon. Senators, let it go on record that a recurrence of the kind of disorder that was witnessed in the Senate in the past two weeks, shall not – I repeat – shall not be tolerated.

As your Speaker and the entire Speaker's Panel, we shall discharge our duties without fear or favour when it comes to dealing with disorder, irrespective of where it emanates from. It may emanate from the Government or Minority Side.

Hon. Senators, kindly stand guided accordingly.

Thank you.

Next Order.

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

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

The Senate Minority Leader (Sen. Madzayo): Mr. Speaker, Sir, before you left last week, there was a communication that you were supposed to give to the House with regard to the leadership of the Minority Side.

There was sudden departure on your part and we did not understand what was happening. In the afternoon, your Deputy came and took over the House, which we understand.

Mr. Speaker, Sir, in case you leave for a trip or you are committed elsewhere, we understand. When your Deputy takes over, he actually assumes the powers of the Speaker. When your Deputy was sitting on that Chair, I do not know whether he acted within or outside your instructions.

First and foremost, there was that communication that you were supposed to deliver. You had promised to deliver it in the afternoon. Secondly, he seemed not to be

aware that there was a communication to be made. That is what brought all the hell loose here.

Finally, now that you are back and in charge, this question of our Communication to your Office has not yet been done. Could you be kind enough to communicate with regard to the leadership of the Minority Side?

Mr. Speaker, Sir, we are being suffocated on this side for lack of leadership because I stand alone with my Deputy. I do not have a Whip and a Deputy Whip. I have already communicated to you with regard to these changes.

Now that you are back to your Chair as the Speaker of this House, would you be kind enough to communicate to us with regard to the changes of leadership that I placed before you.

Thank you.

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

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

Sen. Mandago: Mr. Speaker, Sir, my point of order is in reference to Standing Order No.101. Is the Senate Minority Leader in order to mention the name of the Deputy Speaker and cast aspersions on his conduct while sitting as the Chair and Speaker of the Senate in your absence?

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

The Speaker (Hon. Kingi): You will have an opportunity to speak, Sen. Sifuna. Let me just dispense with the point of order by Sen. Mandago and Sen. Madzayo.

Hon. Senate Minority Leader, you have been in this Senate longer than most of the Senators in this House. The Speaker, the Deputy Speaker and any Member of the Speaker's Panel, while sitting on this Chair, exercises the powers of the Speaker. I remember the hon. Senator of Nairobi defining the word 'Speaker' to include the Deputy Speaker and Members of the Speaker's Panel. Let us not split hairs.

The Deputy Speaker, while sitting on this Chair, was exercising the powers of the Speaker of the House at that particular juncture. Whatever he said or ruled is deemed the ruling of the Chair and is binding. I cannot sit to appeal or review an order that was made by the Deputy Speaker or any Member of the Speaker's Panel. Therefore, if there was a ruling that was made by my Deputy, it is the ruling of the Chair, pursuant to the Standing Orders, and I am not in a position to disturb that ruling.

Going by what Sen. Mandago has raised on a point of order, Senate Minority Leader, you cannot certainly discuss the conduct of the Deputy Speaker. The Standing Order No.101, as quoted by Sen. Madzayo, is very clear. The Deputy Speaker was sitting as the Speaker. He ruled as the Speaker and not as a lesser Speaker. Therefore, we abide by the rulings made by the Deputy Speaker, if there were any rulings made, unless I am told that no rulings were made. If there was a ruling made, then that ruling is binding. I cannot disturb it.

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

Sen. Sifuna: Mr. Speaker, Sir, first, I am personally glad that you are back in that Chair as the substantive Speaker of this House. I am happy with the last thing that you have said about the powers of the Deputy Speaker and Members of the Speaker's Panel.

Mr. Speaker, Sir, the person who made it an issue, was the person who was then sitting on that Chair. In fact, we made the argument that there cannot be business brought in the House and then we are told to wait for the substantive Speaker. The problem we find ourselves in is that we were told here that the communication on the changes in the leadership of the Minority side has to wait for the substantive Speaker. The HANSARD can bear me witness.

In fact, if you look at the HANSARD proceedings of that day, I remember asking the question that if, indeed, a matter as simple as a communication, cannot be made by a person other than the substantive Speaker, then really, no one else would have the power to transact any other business. In my view, communication such as the ones you have made about visitors in the gallery is a matter so simple and straightforward. It does not have to wait for the substantive Speaker.

Mr. Speaker, Sir, first of all, having listened to you this afternoon, as a Senator elected to this House, I am ashamed of what happened in the past two weeks. I bear that shame together with all the Members of this Senate. We came here to discuss substantive matters that affect the people of Kenya.

If we are going to address the significant difference between the First Session that we had as a House and this particular Session, we must go to the root cause of all the events of the past two weeks. It is not enough for us to be admonished and told we are behaving unruly or in conduct that is not in line with the standings of a Member of this Senate.

Mr. Speaker, Sir, we as a House must ask ourselves questions. I asked this question last week. What happened to the collegiate nature of the debate that we used to have in this particular house, in the First Session? If you were following those proceedings, our position has remained that in fact, the Speaker of this House, has no role whatsoever in dealing with the matter of a communication in the changes of the leadership in the Minority or the Majority side.

Mr. Speaker, Sir, we have come to this particular juncture because of a matter that in our view is very straightforward. The Minority have made a decision to change their leadership. All that we are waiting for is this communication. We have likened this to a soccer game between Gor Mahia and Abaluhya Football Club (AFC). When the coach for AFC stands up to make a substitution and then the referee in that game says you cannot make that substitution; it is absurd. We want to respect the rules of this House.

Mr. Speaker, Sir, our greatest frustration is when we see the application of this rules being selective. It would not offend me, for instance, if somebody misconducted them and I saw fair application of the rules. We are very serious people. We have here very serious agenda. As the Senator for Nairobi, this morning, I saw traders from Nyamakima in the street, exercising their rights under Article 37, to demonstrate peacefully, about the invasion of the Chinese into the retail market of this country. They

wanted to present me with this Petition, so that I can come and canvass this matter here because that is why they elected me.

Mr. Speaker, Sir, we are stuck in this circular motion. If I remember correctly, we thought there was some middle ground, the last time. That there was some truce reached between the leadership of the Minority and Majority. In fact, people apologised here, for the conduct of that particular Session. Our expectation was that terms of a truce must be observed. I was not in that meeting. The meeting was expressed to have happened in your office.

We are wondering, what has happened to the spirit that was here on Thursday last week? We expected that the matter of the communication would be addressed.

Mr. Speaker, Sir, I do not want to go beyond that. I would like to give my other colleagues an opportunity to also address themselves to this matter. Nonetheless, please, let us address the root cause of this problem and you will not see any sort of misconduct from any side.

I thank you.

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

(Sen. Cheruiyot and Sen. Madzayo approached the Chair)

Sen. Cheptumo: Mr. Speaker, Sir, I appreciate the submission by my learned colleague. However, it appears to me that he is challenging the very decision that you have made and given direction.

(Loud consultations)

The Speaker (Hon. Kingi) I will allow you to consult, but in low tones.

Proceed, Sen. Cheptumo. I can hear you.

Sen. Cheptumo: Mr. Speaker, Sir, when you were away, the direction given by the Chair then, was that he was not giving the communication because he had been stopped by a court order. It was not because the substantive Speaker was not present. That is what I understood at that time.

My colleague is misleading the House that the communication was not given because the substantive Speaker was not present. It is because there was a court order that actually stopped the Speaker from issuing the communication.

Mr. Speaker, Sir, I think that is the true position as at that time, when the matter came before the House.

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

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

Sen. Olekina: Mr. Speaker, Sir, let me begin by thanking you for making that Communication. It is about time that we set the matter straight.

I want to comment on your Communication; maybe, just react to it in a very civil and polite manner. You have indicated, and I completely agree with you, that this House

shall be guided by the Standing Orders. I want to request that you abide onwards so that we can make progress.

I am happy that you referred to Article 107 of the Constitution, which gives your authority, as the main Speaker, to anyone else sitting in your seat. We have an issue that relates to the Minority side.

If we are being true to ourselves, then I beseech you to look back into the Standing Orders, so that they do not end up being a sword that only cuts one side. The sword should be used for both sides. If the Standing Orders are quite clear and they are explicit in what should follow, then that should be the case.

Mr. Speaker, Sir, the main bone of contention has been on the Standing Order No.23. The other main issue has been on *sub judice*. These are two matters that this House has pronounced itself, more than once, on what should ensue.

Following on your Communication, I beseech you to re-examine everything that has happened here. Yes, today, you have found it fit to reprimand us for our behavior. Being very polite, I would say that the Standing Orders have been drafted to guide this House. It would be very unfair if the Standing Orders will only be used to reprimand any Senator who complains, but when a matter is completely explicit, it is overlooked.

Now that you are back, I would like to invite you to relook at the Standing Orders, particularly Standing Order No.23, and look at the Communication that was given by the Minority side and then give us the way forward, so that we can put this matter to rest.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Sen. Samson Cherarkey?

Sen. Cherarkey: Mr. Speaker, Sir, while I agree with the Minority side that within the purview of Standing Order No.23, there is a process in which they can change their leadership, it is within their purview as the Minority side.

I do not agree with them when they do not want to follow the rule of law. Last week, whether you or the Deputy Speaker were there, the Office of the Speaker subsists. There were directions that were given that there was a court order.

In fact, Sen. Sifuna and Sen. Osotsi indicated that they thrive on issues of Political Parties Disputes Tribunal (PPDT). You can check the HANSARD. They assured the House that they will go back and ensure that they resolve the issue of change of their leadership position with the PPDT. Therefore, it was within your right to reprimand.

I remember when I was walking in the corridor, my colleagues were removing the name of Sen. Fatuma Dullo from the door of the Office of the Minority Whip, yet they want you to follow the same law. The law is a double-edged sword. If you want the Speaker to rule and give a decision on a particular issue of change in leadership, I beseech my colleagues on the Minority side, led by Sen. Stewart Madzayo and my prayerful friend, the Deputy Minority Leader, Sen. Wambua Kiio, to follow what the Standing Orders and the law says.

Last week, we subjected this Senate to unnecessary ridicule. I remember my colleagues whom we served with in the last Senate, including, Sen. Ledama, had a more

contentious issue, including the issue of the revenue formula. However, the House did not degenerate up to the level of the Speaker reprimanding the House.

That issue was more emotive because we were discussing revenue. I am not saying that on this issue of Minority leadership we should have a bipartisan approach because it is the decision of the Minority side and is within their purview. However, we ended up agreeing on the issue of the revenue formula, which was very contentious then.

I know that most of the colleagues who had not joined us then were also following those deliberations. Therefore, I appeal to the Minority side not to force you to communicate about their change of leadership.

In conclusion, on the supremacy of the Constitution, as the Speaker, you have a right to protect the Constitution. You are not a conveyor belt.

The fact that the Minority or the Majority side wants to change something that is unconstitutional or legal, you cannot be just a conveyor belt, where you just read a communication simply because the Standing Orders say, 'the Speaker shall not--- You have an obligation to protect our Constitution and build a precedent and traditions of the Parliament.

I would hate to go the same path that the Majority side then, under the Jubilee Party, changed the House Leadership. We do not want to set that precedent where the Speaker at that time, Gov. Lusaka, came and read the names. He did not give a ruling until he left. We cannot go through the same path.

Let us enrich this process, so that people who are purporting to change leadership, be it Minority or Majority side, are aware that they cannot bring their name to the Senate and change them the way they change their clothes. It does not happen like that. There must be a process. I appeal to you. Do not be intimidated, blackmailed or forced. We elected you as our Speaker. You must stand with the rule and fidelity of the law.

The Minority side should be patient enough and allow you to draft your communication. You are a man who is a seasoned lawyer. I know you might be on page 20, in your dispense of wisdom in this matter of the Minority side.

The Speaker (Hon. Kingi): Sen. Wambua.

Sen. Wambua: Mr. Speaker Sir, I thank you. I wish I could refer Sen. Cherarkey to Standing Order No.105, but let that matter just rest there. There is no Senator either on the Majority or Minority side who is trying to force the Speaker to do anything that he is not supposed to do.

I thank you for your Communication. However, as Deputy Minority Leader, I also want to go on record to clarify that what the Senate Minority Leader did when he stood on a point of order, was to remind you that the Deputy Speaker, whom we all respect, had taken an obligation. He had committed himself that upon the return of the substantive Speaker, the matter of the leadership of the Minority would be communicated.

It is a big shame, not just to the Minority Side, but to our collective consciousness as a Senate, that for two weeks, now the third week, we are stuck in the rut talking about the leadership of one side of the House.

I am not a lawyer. I have never attended a law class. However, I have taken the liberty to study the Standing Orders. I cannot pretend or claim to understand these Standing Orders better than you do.

My understanding of the Standing Orders of the Senate is that the Speaker of the Senate, on matters of political leadership, has no ruling to make whatsoever. That is my understanding and plain reading of the Standing Orders.

Once either side of the Senate; either the Majority or the Minority, follow the procedure of changing the leadership, the only duty that the Speaker has is to communicate that change of leadership.

What happened in the course of the last two weeks and now the third week, I urge you to reject this invitation. We, and I say “we” very deliberately, are inviting you to be a judge on matters political leadership and to make a ruling on a matter that you have absolutely nothing to do with apart from just communicating and satisfying yourself that the side that makes any changes has followed the Standing Orders.

Mr. Speaker, Sir, history will be written one day. I hope it will not be said that when the Speaker, Rt Hon. Kingi, presided over the Senate of the Republic of Kenya, that is the time that the rain started beating the Senate of the Republic of Kenya.

Yesterday, the Majority side - and we respect them - made a decision to change their leadership in their political party. We have absolutely nothing to do with that; it is their decision. We cannot lecture them on that. If it were left for me to say, I would have said “Perhaps, Sen. Veronica Maina has done a good job, let her continue doing what she has been doing,” but I have nothing to do with that.

Why is it that when the leadership of the Minority has followed the Standing Orders - as you have reprimanded all of us to do and we have complied with every provision, comma and sentence in these Standing Orders - the Majority Side wants you to make a ruling on that decision?

Mr. Speaker, Sir, as Sen. Sifuna said, we have serious issues facing this country. In fact, when the people who elected us to this Senate see us wrangling, fighting and shouting over the leadership of the Minority side, they wonder what kind of leaders they elected to the Senate.

People are going without food. Today, when I was getting in, a certain *Mzee* called me from Kitui County and said that his children have gone without food for two days and that he wants me to find a way of sending something, so that he can buy food. That is a call for leadership.

As I conclude on this matter of the leadership of the Minority side, I urge you, please, to refuse and reject the invitation to play any role in the determination of who becomes what on either side of the House.

Mr. Speaker, Sir, lastly, when we sat here and decided that we wanted to change the leadership of our side and we decided to replace Sen. Dullo, the Senator for Isiolo County with the Senator for Narok County, Sen. Olekina, whatever happened on the Floor of this House is highly regrettable.

What happened was that the Senator that was replaced took the microphone, called our side all manner of names and said: “If you want this thing, take it, I am not interested”. The following day, that Senator went and sat on the Majority side. What more evidence do we need that Sen. Dullo, the Senator for Isiolo County has lost the authority to whip this side?

Whipping is not just a position given to a Member; it comes with responsibility. You have to marshal Members to take a vote. You have to marshal Members to make a decision. Tell me, who among these Members would allow to be whipped by Sen. Dullo?

Mr. Speaker, Sir, so that we do not paralyze the operations of the Minority, and by extension the operations of the Senate, I urge you to do that which Standing Order 23(4) requires of you and we move forward.

I thank you.

The Speaker (Hon. Kingi): Hon. Senators, just like Sen. Wambua has observed, we cannot keep on debating the same thing, time and again. Each one of you standing starts with one sentence that “we have got better things to do in this House”, clearly meaning that this matter is of less consequence to this House. So then, why do we spend a lot of time debating this matter? Why do Senators go to the extent of behaving disorderly because of this matter?

Consistency is a major theme in human beings. In fact, it is a principle. I have watched this debate with amazement. Now, walk with me so that you understand where we are on this matter. This is because I can read a lot of insincerity in some of the points of order.

I have been informed by the secretariat, I have combed through the HANSARD for the period I was away and I know the position; I know what transpired in this House. For avoidance of doubt, allow me to just jog your memory on how this matter started and where we are today, so that all of us are on the same page.

Through a letter from the Minority side, a communication was made to me as the Speaker, communicating changes of the leadership of the Minority side. While a communication was being prepared in that regard for purposes of communicating on the Floor of the House, two letters were served upon the office of the Speaker; one from Sen. Dullo and the second from Sen. Abdul Haji, stating to the contrary and yet, they are Members of Azimio La Umoja-One Kenya Alliance.

The Senate Minority Leader will bear me witness having served as a Judge of the Labour Court that when two parties come before you, however weak the case of one party may be, you give them a chance to speak to you as a Judge and then retire to look at the weight of what has been submitted to you as a Judge. That is the rule of natural justice. That is exactly what I did.

Instead of communicating the letter from the Minority side, having been served with a letter to the contrary, as your Speaker, driven by fairness, I had to look at both letters.

Looking at those letters, I just needed two days. Unfortunately, the Thursday that I was supposed to make that communication, I was unwell. On that Thursday, the

communication was not ready. I informed my Deputy who was going to Chair that particular day that “kindly, inform the House that the communication is not ready”. If it was ready, the Deputy Speaker, would have read it out. This is because when he occupies this seat, he exercises the powers of a Speaker.

Now, the next immediate day that I would have possibly communicated was Tuesday. By Monday, the communication was ready and the secretariat is here to confirm that. It was ready to be communicated on Tuesday at the opening of the House. Immediately after administration, the Chair was going to communicate as per what the Minority had written to us after having considered the letter by the Minority Leader and the letter by the two Senators.

Unfortunately, on that Tuesday, at about 1.00 p.m., the office of the Speaker was served with a Court Order from the Political Parties Tribunal (PPT)

I was made aware where I was and after considering we had to seek for legal advice. Hon. Senators, I am not just the Speaker I am also a lawyer. I am an officer of the court just like Sen. Sifuna, Sen. Madzayo, Sen. Omogeni, Sen. Maanzo and Sen. Mungatana, MGH.

I am lucky to have gone to one of the best schools that is celebrated in this country; The Alliance High School. I do not suffer from intellectual deficiency when it comes to these matters. That communication was to be made on Tuesday at 2.30 p.m., but at 1.00 p.m., we were served with a court order from the PPT.

We had two options - to assume we are a monster and ignore the court order or become an institution governed by the rule of law and obey it. Our communication was made in that regard and it was delivered here by the Deputy Speaker.

The Deputy Speaker ruled that he was unable to read the communication that had earlier been prepared. In fact, if you go to the HANSARD, these are the words that the Deputy Speaker said, that the communication was ready to be communicated.

At the time he was occupying this Chair, he knew he had a copy. However, the only thing that made him not communicate was the fact that he was stopped by an order of the PPT. A substantive ruling on why that communication was not made was communicated to this House.

Hon. Senators, you cannot come back to me today and beg me to make a communication because one was already relayed to the effect that we could not deliver that communication of changes on the Minority side pursuant to an order that had been served upon us from the PPT.

That is the ruling and it is one that I am not willing to disturb neither do I have the powers to review. Sen. Sifuna, you have used Gor Mahia and AFC football clubs - the *Mashemeji* derby example that if Gor Mahia wants to substitute it should never be a concern of the referee. The person who stopped the communication was not the referee. It was not the Speaker because in this match, the Speaker is the referee. The person who stopped that communication was the PPT and as such, my hands are tied.

The reason I was talking about consistency as a major theme in our lives is due to what I have witnessed. On the day that the Deputy Speaker was delivering his ruling

immediately after to the effect that his hands are tied by the order from the PPT, a number of Senators rose on points of order, notably Sen. Sifuna.

He was very elaborate on his point of order. However, if you read that order, it is very clear that the position that is being contested and has been stayed by that order is one of the Minority Whip. As far as the position of the Deputy Minority Whip is concerned, that has not been stayed by the court order. Sen. Sifuna invited the Chair to rule as such.

On the following day pursuant to a request and persuasion of Sen. Sifuna and others; a Communication was made which agreed in totality with what Sen. Sifuna had submitted the previous day.

The Chair rose to make that Communication, but it was aborted prematurely. This was because there was anarchy and disorder from the very same people who were insisting that we delink those two and they be given the position of the Deputy Minority Whip and that they would also await and abide by the outcome of the tribunal.

Moreover, while agreeing with the Senators who rose on that point of order in that respect, the Deputy Speaker was heckled. That Communication was not completed. I am talking about consistency. When I walked into my office today – again - I see a letter from the Senate Minority Leader dated Tuesday, 23rd February, 2023.

Allow me to read this letter because this is the latest communication from the Senate Minority Leader to me. It goes as follows -

To the Speaker,
Senate, Nairobi.
Dear, Speaker

Changes in the Representation of Names in Leadership by the Minority Side

“Kindly note that as agreed, pending the hearing and determination of the matter relating to the changes in the Minority side of leadership, be notified that both the Minority Whip and Deputy Minority Whip position status be maintained until the matter is heard and finally determined.

Subsequently, any changes to be effected shall be simultaneously done to allow smooth transfer of leadership positions. The current Deputy Minority Whip, Sen. Olekina, retains his positions until changes are effected and only upon ascending to the new position of Minority Whip will he relinquish his current position.”

Signed,
Sen. Rt. Madzayo. CBS, MP

Honestly, Senators, why is the consistency here? The letter’s position from the Minority side, is please do nothing until the case at the tribunal is determined. What am I seeing today? What are we hearing today?

Hon. Senators, as your Speaker, I am willing to guide you accordingly to be as fair and just as I can. We are in this together. I am not here for the Government nor the Opposition side. I am here for the institution called the Senate.

Let us uphold the dignity of this institution. This being the latest correspondence to me from the office of the Senate Minority Leader, I will abide by it and it is so communicated.

I thank you.

Next Order.

MOTION

ADOPTION OF REPORT ON THE 2023 BUDGET POLICY STATEMENT

Sen. Ali Roba: Mr. Speaker, Sir, I beg to move the following Motion:

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the Budget Policy Statement laid on the Table of this Senate on the 28th February, 2023, pursuant to Section 25(7) of Public Finance Management Act and Standing Order No.186(7) of the Senate, approves the Budget Policy Statement.

Mr. Speaker, Sir, the National Treasury submitted to Parliament the 2023 Budget Policy Statement (BPS) on 14th February, 2023 pursuant to Section 25 of the Public Finance Management Act.

Subsequently, the 2023 Budget Policy Statement was tabled in the Senate at its sitting held on 15th February, 2023.

Pursuant to Standing Order No.186(4) of the Senate Standing Orders, the 2023 Budget Policy Statement was committed to the Senate Standing Committee on Finance and Budget. The Committee was to submit its recommendations to the House within seven days.

Mr. Speaker, Sir, the Budget Policy Statement is a Government policy document that must be considered and approved by Parliament within 14 days after tabling, as provided in the law. The document sets out the broad strategic priorities and goals that guides the national and county governments in the preparation of budgets. It provides information on-

- a) The assessment of the current state of the economy and the financial outlook over the medium term, including the macro-economic forecasts;
- b) The financial outlook with respect to Government revenues, expenditures and borrowing for the next financial year and over the medium term;
- c) The proposed expenditure limits for the national Government, including those of Parliament, the Judiciary and other departments.
- d) The fiscal responsibility principles and the financial objectives over the medium term including limits on total annual debt; and

- e) The proposed division of revenue raised nationally, between the National Government and county governments.

Mr. Speaker, Sir, in compliance with the provisions of Standing Order No.186(6), the Committee proceeded to undertake consultative processes by inviting key stakeholders, including various Standing Committees of this Senate, to give their input.

Among the key stakeholders we have invited are; the National Treasury and Economic Planning; the Commission on Revenue Allocation (CRA); the Council of Governors (CoG); the Institute of Certified Public Accountants of Kenya (ICPAK); International Budget Partnership-Kenya Chapter; Institute of Economic Affairs (IEA); and, The Institute for Social Accountability (ISA).

Mr. Speaker, Sir, the 2023 Budget Policy Statement, under the provisions on the macro-fiscal framework, it is projected that the economy will grow at 6.1 per cent in 2023. This growth will be supported by private sector growth, recovery in agriculture and targeted implementation by Government of various sectors including the Hustler Fund. This is expected to increase access to private sector financing.

From the expenditure perspective, private consumption is expected to support aggregate demand, ongoing labour market recovery, improved consumer confidence and resilient remittances from abroad.

Mr. Speaker, Sir, the outlook of key macro-economic variables has also been reviewed, including inflation which is projected to average about 5.8 per cent in the Financial Year 2023/2024, supported by a tight monetary policy stance which is expected to anchor inflation expectations.

With regard to the exchange rate, the Kenya Shilling has weakened significantly against the US dollar but remains stable; supported by increased remittances from Kenyans in the diaspora, adequate foreign exchange reserves and improved exports receipts are also cushioning the Kenya Shilling a little bit.

Mr. Speaker, Sir, it is reported that as at November 2022, exports grew by 12.4 per cent driven by increased receipts from tea and manufactured goods across the closer regional neighbours but horticulture declined. It was also noted that imports increased by 11.7 per cent in the same period, mainly due to increased imports of oil and other intermediate goods.

Mr. Speaker, Sir, regarding the fiscal framework, the National Treasury projects ordinary revenues collected to stand at Kshs2.571 trillion, against a recurrent and development expenditure of Kshs2.459 trillion and Kshs744.2 billion respectively.

To this extent, there is a projected fiscal deficit of Kshs720 billion in the Financial Year 2023/2024 translating to 4.4 per cent of the Gross Domestic Product (GDP).

To meet this deficit, the National Treasury proposes to borrow Kshs521.5 billion from the domestic market and net foreign financing of Kshs198.6 billion in the Financial Year 2023/2024. This additional foreign debt is expected to increase future statutory expenditures.

Mr. Speaker, Sir, with regard to the Division of Revenue where this Senate needs to be extremely concerned with, in the Financial Year 2023/2024, the National Treasury

proposes an allocation of Kshs385.4 billion to counties. That amount has increased by about Kshs15 billion from the Kshs370 billion that the counties received in the preceding financial year. This is due to adjustment of revenue growth. An allocation of Kshs425 million is given towards transfer of library functions to counties.

It is indicated that the proposed equitable share allocation is 24.5 per cent of the last audited accounts of Kshs1.573 billion for the Financial Year 2019/2020 and 15 per cent of projected revenue in the Financial Year 2023/2024.

To justify the proposed county equitable share allocation, the National Treasury argues that the national Government continues to experience a high level of debt in the context of limited avenues to finance the budget gap. There are increased Government expenditures that relates to drought intervention, fertilizer subsidy and the Hustlers Fund, among others, that were cited by the National Treasury as reasons why the county governments could not be allocated more money.

Mr. Speaker, Sir, it is proposed that county governments will receive additional allocations amounting to Kshs44.3 billion in the Financial Year 2023/2024. This comprises of Kshs11.1 billion from the national Government's share of revenue and Kshs33.19 billion from proceeds of external loans and grants.

The conditional grants from the national Government's share of revenue are towards-

- (1) Leasing of medical equipment allocated Kshs5.86 billion;
- (2) Operationalisation of the national Government's programme on aggregated industrial parks allocated Kshs4.7 billion; and
- (3) Supplement for construction of county headquarters for five counties allocated Kshs454 million.

Mr. Speaker, Sir, it is important to note that there is also an unconditional allocation of Kshs108.7 million as remittances from court fines generated from enforcement of county legislation.

Mr. Speaker, Sir, the Committee considered the 2023 Budget Policy Statement (BPS) and made several observations, among them-

It is critical for the Senate to know;

a) The national Government commit to ensure that there is a complete transfer of county functions within six months as per the directives by the President when he addressed the Parliament. However, it has not provided a comprehensive list of county functions that are still being performed by the national Government and how those functions can be transferred and funds follow the functions.

b) The proposed equitable share allocation to county governments is based on the last audited accounts of 2019/2020 is not what was captured in the BPS of Kshs1.5 trillion but rather Kshs1.730 trillion. That means that there is an error in terms of how the figures have been computed. The BPS based its entire planning on Kshs1.573 billion as the last audited and approved by National Assembly whereas the figures of the Financial Year 2019/2020 accurately stands at Kshs1.730 trillion.

Similarly, the allocation to the equalization fund was based on this erroneous figure for the Financial Year 2019/2020

c) There is an inequitable sharing of revenue between the two levels of Government given that the national Government proposed allocation for the Financial Year 2023/24 has increased by 23 per cent while the county allocation has increased by only 4.2 per cent.

d) The Committee notes that the BPS has not given any policy guidelines on the measures to be taken to unlock arrears in allocation to the Equalisation Fund for the previous financial years that has not been provided for.

e) The leasing of medical equipment continues to receive funding despite unclear reporting on the progress made in the programme. In fact, the contract is not known to county governments; the content is not known and even that that is not known has expired. As at now, we do not have a renewed contract that the county government has signed with anybody as far as the information that we have is concerned.

f) County governments are accumulating pending bills at a fast rate so is the national Government. The BPS has only stated the pending bills for county governments, but did not provide the same information for the national Government.

g) While the BPS proposes an unconditional allocation of Kshs108.7million to ten county governments as proceeds from court fines collected in the enforcement of county legislation, the transfer mechanisms in terms of legislation and how that is going to take effect has also not been captured or a proposal given.

h) The inclusion of Kshs25 million meant for library services under the Kshs385.425 million was also erroneous as this once included under the Sharable Revenue of Kshs385.425, 000, it will only mean it can be equitably shared and the 33 counties that were supposed to benefit will not despite the fact the fact that they have libraries.

i) Whereas the Hustlers Fund meets a critical gap in terms of private sector credit access, there are other existing funds such as the Biashara Fund, Uwezo Fund, Women Enterprise Fund and Youth Enterprise Fund which were established to meet similar objectives. However, there is need for these funds including Uwezo Fund to communicate with each other to avoid duplication.

Mr. Speaker, Sir, the Committee having considered the 2023 BPS recommends that the Senate proceed to consider and approve the report with proposed policy recommendations and financial recommendations given by the Committee.

Among the recommendations are -

a) The Kshs425 million proposed as additional equitable share for transfer in lieu of library services, earmarked for salaries of respective staff of the 55 libraries to benefit 33 counties, be transferred to the counties as a conditional allocation under the County Governments Additional Allocations Bill.

b) The National Treasury should not transfer funds to the Medical Equipment Services (MES) but rather add that fund to equitable share for counties to share

because the MES project is mired with a bit of controversy in terms of details and information and there is no existing contract.

c) Noting that drought has become cyclic in nature and given the intensity of drought in our counties, there has not been in the BPS clear direction in terms of drought mitigation in the long-term in that document.

d) The National Treasury in collaboration with the Kenya Roads Board should put in place necessary mechanisms to ensure that the Road Maintenance Fuel Levy Fund which in the previous year was disbursed as equitable share to be disbursed to county governments as an additional allocation in line with the earlier years which this Fund has really benefited county governments.

e) The National Treasury must comply with the constitutional requirements related to the Equalization Fund and submit to the Senate, within 30 days of approval of BPS 2023, a framework on how they intend to clear the arrears of monies due to the Fund.

f) The Committee recommends fast-tracking of the development and enactment of a legal framework to enable the direct remittance to counties of court fines.

g) The computation for the total amount to be set aside for the Equalisation Fund under Article 204(1) of the Constitution which states one half percent of all the revenue before setting any revenue a side, the National Treasury should compute based on Article 204(1) of the Constitution.

h) The growth in county equitable share should be commensurate and reflect the projected revenue growth. The national Government revenue is projected---

(Sen. Cheruiyot consulted Sen. Ali Roba)

The Committee recommends that county equitable share growth be also at least 8.4 per cent to Kshs407 billion that takes care of the inflation as well as well as also give Kshs44.3 billion to county governments.

Mr. Speaker, Sir, also on the borrowing with respect to debt ceiling, Kshs720 billion that is proposed that will be outside the Kshs100 trillion debt ceiling that has been set and as such, we have only a gap of Kshs600 billion than can be borrowed.

Mr. Speaker, Sir, the Committee takes the opportunity to commend all the stakeholders that have responded to our invitation to give their submission, the Standing Committees for their submissions as well as the office of the Speaker and the Clerk for facilitating the same.

I also thank the Office of the Speaker and the Clerk of the Senate for the support they have extended to the Committee.

Mr. Speaker, Sir, I beg to move and request Sen. Tabitha Mutinda to second

Sen. Tabitha Mutinda: Mr. Speaker, Sir, I do second.

(Question proposed)

The Speaker (Hon. Kingi): Hon. Senators, you may proceed to make your contributions.

Sen. Nyamu, proceed.

Sen. Nyamu: Thank you, Mr. Speaker, Sir, for giving me the opportunity to contribute to this BPS.

This being the first BPS by the Kenya Kwanza Government, I wish to commend the National Treasury for their candidness in going head on to resolve the economic crisis and tackle the huge debt our country is facing.

Out of the five priority areas in this BPS, allow me to single out the digital highway and creative industry. If we are to compete economically and grow, we must leverage on technology.

I commend the President, His Excellency William Ruto, for giving Information Communication and Technology (ICT) the attention it deserves. This is a billion-dollar industry which, if supported, will create jobs for our youth.

The BPS demonstrates the willingness of the Kenya Kwanza Government in steering our economy from the mess that was created by the previous regime.

I also wish to commend the Kenya Revenue Authority (KRA) for the strategies that they have put in place to harness the collection of Revenue, and also, leveraging on technology as they have joined the telecommunication companies as stated in the BPS. They have also sought to digitize the rental income, as well as customs and border operations.

I am of the view that if this BPS is supported, the country will benefit and we will harness development.

I urge leaders especially on the Azimio Coalition to engage in politics of development as outlined in the BPS as opposed to what they are all about right now; that is demonstrations and politics of hullabaloo that do not help Kenyans.

I support the Motion.

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

The Speaker (Hon. Kingi): What is your point of order, Senate Majority Leader?

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I rise pursuant to Standing Order No.109. It is not one of my favorites. However, with the indulgence of colleagues noting that it is barely 14 minutes to the rise of the House. If we were to go into a long debate, there are Members, who for one reason or the other, are requesting that we conclude on this matter. The problem being that today is the last day.

One of the things we struggle with as a House, is that our recommendations on the BPS that Sen. Ali Roba is presenting, which I have presented for the last nine years, the National Treasury always ignores them.

We are trying to get to a point where our resolutions as a House are respected. Imagine the tragedy because if we fail to pass BPS today, there is no problem. The National Treasury will go ahead and do whatever they need to do.

It is for this reason that I request to invoke Standing Order No.109. Although there are colleagues, who maybe, for one reason or the other, want to say one or two things. I request that the Mover be called upon to reply so that we can proceed to vote before we lose the numbers.

(Sen. (Dr.) Khalwale and Sen. Okiya Omtatah walked into the Chamber and proceeded to take their seats)

The Speaker (Hon. Kingi): Hon. Senators, can you resume your seats?

Hon. Senators, the Senate Majority Leader has risen on a point of Order under Standing Order No.109 (1). The only way to dispose of that point of order is to proceed to propose the question.

If it carries the day, I will call the Mover to reply. If it does not carry the day, then we will proceed with the debate.

Hon. Senators, pursuant to the point of order raised, I now put the question that the Mover be now called upon to reply.

(Question, that the Mover be now called upon to reply put and agreed to)

May the Mover proceed to reply.

Sen. Ali Roba: Thank you, Mr. Speaker, Sir. I beg to reply.

The BPS document is critical for normal functioning of the Government. We have contacted all the critical stakeholders. The Committees of this House have all given their input. We have received input from 11 Committees. This means that it has been extensively interrogated by various Committees of this House and their input have been considered. I am grateful that the Committees have also given their input.

I beg to reply.

The Speaker (Hon. Kingi): Hon. Senators, I make a determination that this matter does not affect counties---

(The Clerk-at-the-table consulted the Speaker)

Hon. Senators, sorry for that. Pursuant to Standing Order No.84 (2), I make a determination that this matter affect counties and voting shall be by delegation and it will be done electronically.

Clerk, proceed.

Serjeant-At-Arms, kindly ring the bell for three minutes.

(The Division Bell was rung)

Serjeant-at-Arms, kindly ring the bell for a further five minutes.

(The Division Bell was rung)

The Speaker (Hon. Kingi): Serjeant-at-Arms, kindly proceed to ring the Bell for a further three minutes.

(The Division Bell was rung)

The Speaker (Hon. Kingi): Hon. Senators, kindly take your seats so that we proceed with business and consult in low tones, please. Sen. Oketch Gicheru, kindly take your seat.

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

The Speaker (Hon. Kingi): What is your point of order, Sen. Ali Roba?

Sen. Ali Roba: Mr. Speaker, Sir, I rise on point of order under Standing Order No.66(3), to request you to defer the putting of the question to a later date on this Motion on BPS.

Thank you.

The Speaker (Hon. Kingi): Hon. Senators, for clarity, allow me to just read the Standing Order that has been quoted by the Chairperson of the Committee on Budget and Finance.

Standing Order No.66(2) says:

“At the conclusion of the debate, the Speaker shall put the question.”

Standing Order No.66(3) says:

“Despite paragraph (2), the Speaker may, on the request of a Senator, defer the putting of the question to a later date in which case the Speaker shall thereupon nominate a date and time in which the question shall be put.”

Pursuant to the point of order that has been raised by the Chairperson of the Committee on Finance and Budget, I proceed to defer the putting of this question to a later date.

Thank you.

(Putting of the question on the Motion deferred)

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

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

Sen. Kinyua: Mr. Speaker, Sir, in my understanding of the Standing Orders, it indicates that you have to specify the day.

The Speaker (Hon. Kingi): Due to the statutory timelines of this particular Motion, I will proceed to put the question tomorrow.

Thank you.

Next Order.

Proceed, Sen. Orwoba.

MOTION

PROVISION OF FREE SANITARY TOWELS TO END PERIOD POVERTY

Sen. Orwoba: Mr. Speaker, Sir, I rise to move the following Motion-

THAT, AWARE THAT period poverty refers to the common challenge plaguing women globally wherein they are unable to attend schools or work as a cause of a lack of funds for sanitary products that is both a health risk and a signal of gender inequity;

FURTHER AWARE THAT in rural Kenya, two out of three pad users receive pads from sexual partners and 65 per cent of women and girls can't afford sanitary pads, forcing them to use alternative materials like grass, cotton wool and cloth which lack adequate absorbent qualities resulting in frequent leakage and hygiene issues;

CONCERNED THAT period poverty also referred to as the "shadow pandemic" contributes to global and regional gender inequity, as women are forced to solicit help from men in order to satisfy a basic health need with 10 per cent of 15-years-old girls having sex to pay for sanitary products;

FURTHER CONCERNED THAT, data from the Ministry of Education indicates that a girl that is absent from school for four days a month loses 13 learning days, equivalent to two weeks of learning in every school term, translating to 39 learning days or six weeks of learning time in a term and up to 18 of 108 weeks in primary and 24 weeks of 144 weeks of learning in secondary school;

NOTING THAT, while the Government, through the State Department for Gender Affairs was charged with the responsibility of procuring and distributing sanitary towels for 3.7 million girls in public primary schools, special primary and secondary schools in the country at a cost of Kshs470 million during the 2017/2018 Financial year, which amount needs to be increased in order to fully address and mitigate the problem;

NOW THEREFORE, the Senate resolves that the Ministry of Public Service, Gender and Affirmative Action in partnership with the Ministry of Education and the Council of Governors to -

(1) Facilitate provision of feminine hygiene products in all public schools;

(2) Ensure that all schools that do not have bathrooms that facilitate privacy, cleanliness or proper disposal of hygiene products are properly equipped;

(3) Create awareness and take advocacy measures on reproductive health issues related to period poverty;

(4) ensure that all schools that don't have bathrooms that facilitate privacy, cleanliness, or, proper disposal of hygiene products are properly equipped;

(5) create awareness and take advocacy measures on reproductive health issues related to period poverty;

(6) include in the curriculum a dedicated lesson per week to teach girls about menstrual hygiene; and,

(7) ensure that sanitary products will be obtainable in a timely, consistent, and way that respects the dignity of concerned persons.

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

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

Mr. Temporary Speaker, Sir, finally, I want to thank you for allowing me to move this Motion. I can see that we are running out of time. I will, however, do my best. I know that in the Standing Orders, the Mover of a Motion requires 20 solid minutes, but I will do what I can with the time that I have.

First, I want to relay some statistics that are damning so that people can understand what we are talking about. There seems to be a lack of understanding of period of poverty.

Mr. Temporary Speaker, Sir, 65 per cent of women and girls cannot afford sanitary pads or menstrual hygiene products. Further, 50 per cent of girls between the ages of 15 and 19 years old are illiterate and, therefore, the lack of access to sanitary towels further affects their education because they are unable to stay put in school.

One in four girls are married off as child brides as a way of mitigating the issue of period poverty. So, I want Members of this House who claim to have so many daughters, to imagine that one out of their four daughters is married off because of period of poverty.

In addition, 10 per cent of the girls are starting menstruation as early as 11 years old. That means previously we used to have menstruation starting at a later date. However, we now have 10 per cent of our girls starting menstruation at 11 years old.

Finally, the damning statistics as they are, 54 per cent of the 10 per cent of the girls who start their menstruation early do not make it academically. Due to period poverty, they stay out of school and miss a lot of days in school

About a week ago, when I had my incident here, I was asked to leave the House. I want to state that this is not an issue that is only affecting women in the Senate.

We have girls who stain themselves in school and because of that, they are asked to go home and change. So, they end up missing a whole day from their academic work because someone is embarrassed on their behalf.

Mr. Temporary Speaker, Sir, the two things that I want to highlight when I move this Motion is, one, that there is something called period shaming. It is the culture we have inculcated and we have with many Senators in the House who think that menstruation is something that should not be talked about, be kept private and not seek pride in and celebrate for having been given powers to bring forth life. That it is something shameful. I heard in this House that it is disgraceful and disrespectful.

It is because of that, that the culture of period shaming in this country has been pushed. The fact of the matter is that period poverty occurs because of the poverty levels. We have issues around the current provision in the Education (Amendment) Act.

I have heard certain individuals saying that there is nothing new we are trying to legislate. However, I want to challenge legislators and lawyers to go and read the amendment that was slid into the Education Act. I want to ask them three questions. What is the frequency of provision of sanitary towels? What is the minimum budget allocation for these sanitary towels? Who stipulates which schools that get prioritized in terms of that piece of legislation?

When it comes to procurement, I want to challenge the legislators and the lawyers out there, to tell me as much as we are following the Public Procurement and Asset Disposal Act, 2015 on getting these free sanitary towels, is it really pushing the local manufacturing industry?

We have local manufacturers of Sanitary towels who have closed---

(Sen. Orwoba's microphone was switched off)

The Temporary Speaker (Sen. Wakili Sigei): Sen. Orwoba, I believe your time is up. Alright fine, go ahead.

Sen. Orwoba: Mr. Temporary Speaker, Sir, I believe I have 20 minutes as the Mover of the Motion. This has been my worry.

The Temporary Speaker (Sen. Wakili Sigei): You still need time, go ahead.

Sen. Orwoba: Mr. Temporary Speaker, Sir, the stigma and the period shaming that we are having is because of one thing; the lack of access to sanitary towels. We want to deal with two things when we are legislating. I am moving this Motion and we are going to debate, the two things that I want us to delve into is the period shaming and the period poverty. They both go hand in hand.

Mr. Temporary Speaker, Sir, for purposes of the men in this House and the male gender that is following and they are not aware of what I am talking about, women have periods. We actually menstruate every other month. We bleed. It comes out of our body for three to seven days. That is a biological fact and it is not propaganda.

While we are bleeding - which lasts for five to seven days - we need to find ways to carry on with our duties; to stand in Senate to speak, if it is the girls to be able to continue with their studies. That is what we are calling the menstrual hygiene products, the sanitary pads, tampons, menstrual cups and all other menstrual products.

We need up to six sanitary towels sometimes per day. Let me break it down. Six sanitary towels means that from the moment you wake up in the morning to the moment you go to bed - when we still wear the sanitary towels - we need this so that we can continue with our duties.

That means that on average, you need 30 pads for a person who is bleeding heavily every month. So that you understand the shadow pandemic that we are dealing with is actually a serious, I want to make a comparison. One packet of seven pads costs up to Kshs90. If you may need two or three packets, on average, you are using Kshs360 per period. When we say lack of access to sanitary towels, it does not mean that the sanitary towels are not there, they are there, but girls and women cannot afford these products.

So, what do they do? In some areas of this country, we have girls going out under a tree, digging a hole and sitting on the hole the whole time of their menstruation. I want my fellow Senators in the House to imagine that today you are missing a session because you are sitting in a hole somewhere in Samburu County or Kisii County because you have to bleed out on a natural process. That is the reality that is there.

When you go to prisons, we have some of the prisoners actually sharing sanitary towels. The visual image of that is that, when I am not on my heavy days I use a sanitary towel, I feel as though I might not be bleeding too much, I pass it over to a fellow prisoner because she is on her heavy days. These are the visual images that I want people to imagine, for lack of a better word.

When I walk in to the House with an accidental stain and that in itself is such a gory--- It is difficult for my fellow Senators to be able to put up with to the extent that they demand that I have to leave the House. I want them to imagine their constituents, electorates and bosses who gave them their votes sitting on a hole the whole day because they cannot afford sanitary towels.

I also want them to imagine their daughters--- I heard Sen. (Dr.) Khalwale saying that he has so many daughters and wives and, therefore, he understands the issues of women. I would like Sen. (Dr.) Khalwale to imagine all his daughters and all his wives, digging holes every single month and sitting on them so that they can bleed in peace because they cannot afford these sanitary towels.

I want them to imagine, for instance, that the last born who does not have a heavy flow can use a sanitary towel, pass it over to one of the wives because the wife have a heavy flow and use the same sanitary towel. That is the reality that we have as Kenyans. This is a real issue. It is a shadow pandemic that we seriously need to look into. That is why I am moving this Motion so that we can be able for once to discuss candidly and openly and debate on matters that directly affect those who have elected us to this House, so that we can come up, support the Bill with an understanding that this is a real shadow pandemic.

Mr. Temporary Speaker, Sir, on the issue of access to menstrual products I am pushing and it is my prayer that through the Bill, I am proposing, that we have free sanitary pads given to all public schools for both primary and secondary.

That is not the reality we have right now. Yes, there could be one line in our law that states that it should be done, but it is not the reality. We need to find ways to make it a reality. That is the first thing I am proposing.

On the issue of menstrual stigma and the misinformation. When I came to the House, I heard fellow Senators tell me it was not possible to have an accident because I should know when to expect my period. There was a lot of misinformation around that.

Just because you do not see the accidents that we, women, have when it comes to menstruation, it does not mean that they do not exist. There is a lot of misinformation that guides period-shaming and the policies in this country.

The problem that we have had is that those who were drafting the policies and laws do not understand what it means to bleed continuously without dying for seven days and having to manage that.

Mr. Temporary Speaker, Sir, in my submissions, I want us to consider that period-shaming is a real thing. We had a girl who committed suicide because she stained her dress. A teacher made a comment that devastated her and made her feel so ashamed that she took her own life.

You can imagine the ridicule I had when I came to the Floor of the House. Someone stood and said that this was a House of dignity and, at that moment, I was not befitting to be in here because I was on my period.

These are the kinds of things that our girls are going through down at the grassroots. The only difference is that they, probably, do not have the platform I have to speak out against certain things. The difference is that, perhaps being a Kisii from Kisii County and having been brought up by a single father, I probably have developed thick skin. However, it should not be the case that our girls are being shamed for going through a natural process.

The issue on period-shaming is a matter that should be taken into account when putting together this policy. There should be repercussions to teachers, to people of authority who castigate girls for going through their periods and those who makes funny comments. That is something that we can legislate. If we are able to legislate sexual harassment, sincerely speaking, we can legislate period-shaming.

Mr. Temporary Speaker, Sir, I know that I am running out of time, but I want to tell my fellow Senators - those who probably do not support this Motion - that it is a fact that all the women Senators here bleed. They have their periods every month, some even more than seven days, some heavier or lighter than I do.

They all bleed and it is nothing to be ashamed of and the first thing is to talk about it and accept it. If we, as legislators, are the ones castigating people for having periods then we are never going to deal with the issue of period-shaming and period poverty. They go hand in hand.

If I cannot access sanitary towels, I am forced to use other materials. Those materials are, probably, going to cause a leak. The leak is going to cause the shame. The shame is going to cause all sorts of other things, including trading my body for sex work, so that I can buy those sanitary towels.

In the end, we are dealing with teenage pregnancy because of lack of sanitary towels. We are also dealing with issues of Human Immunodeficiency Virus (HIV) prevalence within our teenage girls and a multitude of effects; a domino effect on our society, including early marriages.

The first point is to deal with the period-shaming and period poverty. I urge this House to support my Motion on Provision of Free Sanitary Towels when it comes—whether they are uncomfortable with the idea that all women bleed. I want you to picture your wife, daughter or sister being unable to manage their periods because they cannot receive the sanitary towels, then imagine that you have to deal with it.

We are here to legislate and that begins by the understanding of what we are dealing with. Periods are normal. Anyone who wants to shame me for bleeding is completely out of order.

I urge this House to adapt that it should never be in the history of this House again for any woman to be kicked out because of having stained their dress due to a period accident.

I thank you so much for this time and to my fellow Senators, kindly support the Motion that is coming to the House.

I thank you.

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, it is already 6.30 p.m. the secondment to this Motion will be done in our next sitting.

ADJOURNMENT

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, it is now time to adjourn the House. The Senate stands adjourned until tomorrow, Wednesday, 1st, March, 2023, at 2.30 p.m.

The Senate rose at 6.31 p.m.