Thirteenth Parliament (No. 078)



Third Session (1559)

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT - (THIRD SESSION)

THE SENATE

VOTES AND PROCEEDINGS

WEDNESDAY, JULY 31, 2024 (AFTERNOON SITTING)

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

3. QUORUM OF THE SENATE

The Speaker, having counted the Honourable Senators present at the commencement of the Sitting and confirming that there was no Quorum, directed that the Bell be rung for ten minutes, pursuant to Standing Order 40;

And there being Quorum before the expiry of the ten minutes;

The Speaker invited the Clerk to call the Orders of the Day.

4. COMMUNICATIONS FROM THE CHAIR

The Speaker conveyed the following Communications from the Chair:

i. Consideration of the Valuers (Forms and Fees) (Amendment) Rules 2024 (Legal Notice No. 69 of 2024), the Survey (Amendment) Regulations, 2024 (Legal Notice No. 71 of 2024) and the Land Adjudication (Amendment) Regulations, 2024 (Legal Notice No. 76 of 2024)

"Honourable Senators,

The Senate will recall that at the sitting held on Thursday, 2nd May, 2024, the following regulations were tabled by the Senate Majority Leader:

i. The Valuers (Forms and Fees) (Amendment) Rules, Legal Notice No. 69 of 2024.

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- ii. The Survey (Amendment) Regulations, Legal Notice No. 71 of 2024.
- iii. The Land Adjudication (Amendment) Regulations, Legal Notice No. 76 of 2024.

In accordance with section 12 of the Statutory Instruments Act, the regulations were referred to the Select Committee on Delegated Legislation. Section 15 (2) of the Statutory Instruments Act states-

"Where the Committee does not make the report within twenty-eight (28) sitting days after the date of referral of the statutory instrument to the Committee or such other period as the House may, by resolution approve, the statutory instrument shall be deemed to have fully met....."

The Committee was required to review and scrutinize the regulations within a period of twenty-eight (28) sitting days. The time allowed for the Committee to consider the regulations was scheduled to lapse on Tuesday, 30th July, 2024.

Honourable Senators,

You will recall that at the sitting of the Senate held yesterday, Tuesday, 30th July, 2024, pursuant to section 15 (3) of the Statutory Instruments Act, the Chairperson of the Select Committee on Delegated Legislation, gave a notice of Motion seeking an extension of time for consideration of the aforementioned regulations for a further period of twenty-one (21) days in order to enable the Committee to conclusively consider them.

The substantive Motion for debate and approval, was scheduled in the Order Paper for Tuesday, 30th July, 2024 at order No. 28. The Speaker reorganized the sequence of business pursuant to Standing Order 45 (2), after the divisions, to give this Motion priority. However, at the conclusion of the debate, and in the absence of the requisite Quorum for the Question to be put, the Mover requested for the Question to be deferred to a later date pursuant to Standing Order 66 (3).

Honourable Senators,

Section 15 (1) of the Statutory Instruments Act, requires a Committee to which a statutory instrument has been referred, to table a report to Parliament, "containing only a resolution that the statutory instrument that stands permanently referred to the Committee be revoked."

As earlier highlighted, Section 15 (2) states that in the event that the Committee does not table a report within twenty-one (21) days, or such other

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period as the House may resolve, the statutory instrument shall be deemed to have been approved.

The Motion before the Senate was seeking an extension for consideration of the regulations and the failure to approve the Motion during the sitting of the Senate, held yesterday, on Tuesday, 30th July, 2024, takes us back to the provisions of section 15 (2) of the Statutory Instruments Act.

Honourable Senators,

This being the case, the Valuers (Forms and Fees) (Amendment) Rules, Legal Notice No. 69 of 2024, the Survey (Amendment) Regulations, Legal Notice No. 71 of 2024 and the Land Adjudication (Amendment) Regulations, Legal Notice No. 76 of 2024, are deemed to have met the requirements set out at section 13 of the Act and are further deemed to have been approved by the Senate.

I thank you."

ii. Consideration of the Report of the Standing Committee on Finance and Budget on the Senate Nominees, on behalf of County Governments, to the Position of Member of the Salaries and Remuneration Commission (SRC)

"Honourable Senators,

As you may recall, at the sitting held on Wednesday, 24th July 2024, the Senator for Kakamega County, Sen. (Dr.) Boni Khalwale, MP, was called upon to move the Motion for consideration of the Report of the Standing Committee on Finance and Budget on the Senate nominees, on behalf of the County Governments, to the position of member of the Salaries and Remuneration Commission (SRC). Before the Senator could proceed to move the Motion, he sought the intervention of the Chair, through a point of order, on the grounds that new information that had been presented to the Committee, relating to one of the interviewed candidates for the position. The Senator stated that the new information was received after the Committee concluded its report and tabled it in the Senate.

In the point of order, Sen. (Dr.) Boni Khalwale, MP informed the Senate that on 24th July, 2024, the Committee received correspondence from the University of Nairobi, indicating that one of the candidates, Hon. Abdirahman Ali Hassan, was conferred with a Bachelor's degree in Arts (Gender and Development Studies) on 19th December, 2008, and that the candidate was a student at the said University between 2005 and 2008.

The Senator further informed the Senate that the contents of the letter received on 24th July, 2024 contradicted an earlier letter received on 22nd

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July, 2024 from the same University, which indicated that the certificate submitted for verification by Hon. Abdirahman Ali Hassan was not genuine and that it was not issued by the University of Nairobi. Sen. (Dr.) Khalwale also informed the Senate that during the interview, Hon. Abdirahman Ali Hassan was ranked first but that following receipt of a letter from the said University on 22nd July, 2024, the Committee had dropped him from the recommended list of candidates.

From the foregoing, the Senator sought the directions of the Speaker on how to proceed with the Motion, stating that –

"I would like you to guide us because if then the certificate is genuine, it means we have no grounds to knock [out] that candidate from the list. Therefore, his name should be before the House."

The Senators who rose in support of the point of order by Sen. (Dr.) Khalwale, MP, including Sen. Danson Mungatana, MP, Sen. Richard Onyonka, MP, Sen. Enoch Wambua, MP and Sen. William Kisang, MP, expressed concern on the authenticity of the two (2) letters from the same institution, and urged that the Senate exercises caution.

Honourable Senators,

Given the circumstances, I directed Sen. (Dr.) Boni Khalwale, MP to table the letter received on 24th July, 2024 from the University of Nairobi and thereafter undertook to give a ruling on Tuesday, 30th July, 2024, after examining the matter.

Consequently, the Motion of the Standing Committee on Finance and Budget on the Senate nominees to the SRC was deferred pending the ruling, which I now proceed to make.

Honourable Senators,

As a way of background and to put the matter into context, at the Sitting of the Senate held on Tuesday, 11th June, 2024, I issued a Communication relating to a vacancy arising in the membership of the Salaries and Remuneration Commission. In the Communication, I stated that vide letter Ref. EOP/CAB.26/4A/VOL.III/(175), dated 23rd May, 2024, the Office of the Clerk received notification from the Chief of Staff and Head of the Public Service, that the tenure of six (6) Members of the Salaries and Remuneration Commission was scheduled to lapse on 10th September, 2024. This included the nominee of the Senate on behalf of county governments, pursuant to Article 230(2)(b)(vii) of the Constitution.

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In the notification letter to the Senate, the Chief of Staff and Head of the Public Service requested each nominating body to forward the names of two (2) persons, of either gender, to the Cabinet Secretary for the National Treasury and Economic Planning, for transmission to His Excellency the President for appointment.

Pursuant to standing order no.77(1) of the Senate, I referred the matter to the Standing Committee on Finance and Budget for consideration. The Committee was required to-

- i. advertise the position by notice published in the *Gazette*, a newspaper of nationwide circulation and the Senate website inviting applications from suitable candidates;
- ii. longlist the applicants and cause the list to be published;
- iii. shortlist the candidates that meet the set criteria and cause the list to be published
- iv. facilitate public participation on the suitability of the short-listed candidates;
- v. conduct the interviews of the shortlisted candidates; and
- vi. table a report for consideration by the Senate.

I thereafter directed the Committee to observe the timelines highlighted in the notification letter from the Chief of Staff and Head of the Public Service, for the Senate to make a determination on the nominees on/or before 31st July, 2024.

Honourable Senators,

Pursuant to section 7(2) of the Salaries and Remuneration Commission Act, the Standing Committee on Finance and Budget publicized an advertisement for the position of "Nominees of the Senate on behalf of the County Governments to the Salaries and Remuneration Commission", on 12th June, 2024. In the advertisement, candidates were requested to submit their applications by 3rd July, 2024, at 5:00 p.m.

The Committee embarked on the interview exercise on 19th July, 2024 after longlisting and shortlisting the candidates, and subsequently prepared a report which was tabled on Tuesday, 23rd July, 2024. The tabling of the Committee Report was pivotal as this was the first time that the Committee was making available its findings to the Senate, and in so doing, making the Report available for public information and scrutiny.

Following the tabling of the Standing Committee report, the Chairperson, as is standard procedure on such an undertaking, gave Notice of Motion pursuant to Standing Order 60 of the Senate, during the Morning Sitting of Wednesday, 24th July, 2024. In the Notice of Motion, the Standing Committee

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recommended two (2) candidates for consideration for nomination to the position of Member of the Salaries and Remuneration Commission, pursuant to Article 230(2)(b)(vii) of the Constitution and section 7(2) of the Salaries and Remuneration Commission Act.

Honourable Senators,

Appreciating the timelines given for submission of the names of the two (2) nominees from the Senate, the substantive Motion for the consideration of the Committee report was scheduled in the Order Paper for the Afternoon Sitting of Wednesday, 24th July, 2024.

It was at this point, that Sen. (Dr.) Boni Khalwale, MP raised the point of order highlighted above. The point of order was a legitimate concern as it brought to light two (2) letters from the same institution that gave contradicting information to the Senate. I therefore find that the point of order merits consideration as the information contained in the correspondence from the University of Nairobi, would in either case, positively or negatively impact the nomination of candidates.

Honourable Senators,

The matter which required the Speaker's intervention arising from the point of order by Sen. (Dr.) Khalwale, MP was two fold –

- i. admissibility of the letter received on 24th July, 2024; and
- ii. if the answer to (i) is in the affirmative, the procedure to be followed in examining the letter in the context of the Motion already before the Senate, and the evidence adduced for the Committee to arrive at the recommendation made.

To address the first concern, I have previously ruled that in undertaking an assessment of documents tabled in the Senate as evidence, one must be satisfied that the evidence tabled is from a source which by parliamentary practice is official and verifiable. After reviewing the letter received on 24th July, 2024, I established that –

- a. the letter, Ref. UON/AA/CEC/1/22/1, is dated 22nd July, 2024;
- b. the letter is ostensibly signed by an individual by the name Mr. Emmanuel Mumba for the Registrar Academics; and
- c. The letter is on the letterhead of the Deputy Vice Chancellor (Academic Affairs) of the University of Nairobi.

In this respect, I find that the letter meets the admissibility criteria mentioned above.

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The next question that required my determination was the procedure to be followed in addressing the letter in the context of the Motion already before the Senate. This process requires authentication.

This is an undertaking that the Speaker, in the present context, is illequipped to perform. From my perspective, the organ of the Senate that has an intricate understanding of the matter at hand is the organ that undertook the interview process. It is for this and other reasons that the Constitution at Article 124 (1), gave power to either House of Parliament to establish committees. Select Committees, as agents of the Senate, are tasked with functions that would otherwise be cumbersome or difficult for the entire Senate, sitting in Plenary to perform.

Besides, the nomination of candidates to an institution as important as the SRC, cannot be brought to disrepute on account of lack of due diligence on the part of the Senate. As you are all aware, the matter of academic credentials of public officers is a matter that has been in the limelight in the recent past, thus necessitating the Senate to thoroughly scrutinize certificates and other testimonials presented by candidates for appointment to public offices.

Honourable Senators,

I, therefore, direct that this matter be referred back to the Standing Committee on Finance and Budget for consideration. The task before the Committee will be limited to consideration of the two (2) letters from the University of Nairobi in respect of the candidate in question, Hon. Abdirahman Ali Hassan, and to establish the correct position. The Committee will in no way, reopen the interview process. I further direct the Standing Committee to table a report on/or before Tuesday, 6th August, 2024.

Honourable Senators,

In terms of the way forward, depending on the outcome of the report of the Standing Committee to be tabled on 6^{th} August, 2024, standing order 71 states-

"After the Question has been proposed on a Motion, the Motion shall be deemed to be in the possession of the Senate, and such Motion shall not be withdrawn without the leave of the Senate."

For the avoidance of doubt, I wish to point out to all Honourable Senators that the Motion on the Senate nominees to the SRC, is not yet in the possession of the Senate, as it has neither been moved nor seconded and hence no question thereof has been proposed.

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Standing Order 61(1) and (2) states as follows -

"(1) A Notice of Motion may be withdrawn by the Senator who gave the notice.

(2) A notice of the Motion withdrawn under paragraph (1) may be given again either by the same or by any other Senator."

Upon tabling of the report on the candidate in question, the Committee will therefore, have the option to: -

- i.) Proceed to move the Motion for which Notice was given on Wednesday, 24th July, 2024; or
- ii.) Withdraw the Notice of Motion given on Wednesday, 24th July, 2024 so as to facilitate giving of another Notice of Motion.

The Senate is accordingly guided.

I thank you."

5. PAPERS LAID

The following Papers were laid on the Table of the Senate: -

- i) The Pest Control Products (Labelling, Advertising and Packaging) Regulations, Legal Notice No. 99 of 2024.
- ii) The Pest Control Products (Inspection and Certification) Regulations, Legal Notice No. 100 of 2024.
- iii) The Pest Control Products (Importation and Exportation) Regulations, Legal Notice No. 101 of 2024.
- iv) The Pest Control Products (Fees and other Charges) Regulations, Legal Notice No. 102 of 2024.
- v) The Pest Control Products (Disposal) Regulations, Legal Notice No. 103 of 2024.

(The Senate Majority Whip on behalf of the Senate Majority Leader)

vi) Report of the Standing Committee on Finance and Budget on its consideration of the National Assembly amendments to the Equalisation Fund Appropriation (No. 2) Bill (Senate Bills No. 30 of 2023).

(The Chairperson, Standing Committee on Finance and Budget)

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6. **QUESTIONS AND STATEMENTS**

i. Statements pursuant to Standing Order 53(1)

- i.) The Senator for Turkana County (Sen. James Lomenen, MP) sought a Statement from the Standing Committee on Land, Environment and Natural Resources regarding unauthorized occupation of the Turkana South National Reserve by pastoralists from the neighbouring West Pokot County.
- ii.) The Senator for Turkana County (Sen. James Lomenen, MP) sought a Statement from the Standing Committee on Roads, Transportation and Housing concerning the rehabilitation and grading of murram roads in banditry prone areas in Turkana East, Turkana South and Loima Constituencies in Turkana County.
- iii.) The Senator for Nyandarua County (Sen. John Methu, MP) sought a Statement from the Standing Committee on Roads, Transportation and Housing regarding the status of insurance cover for motor vehicles belonging to the County Government of Nyandarua.
- iv.)The Senator for Kisii County (Sen. Richard Onyonka, MP) sought a Statement from the Standing Committee on Land, Environment and Natural Resources regarding the exploration of minerals in Kenya.
- v.) The Senator for Marsabit County (Sen. Mohamed Chute, MP) sought a Statement from the Standing Committee on Land, Environment and Natural Resources regarding the operations of the Northern Rangelands Trust (NRT) in Marsabit County.
- vi.)The Senator for Taita Taveta County (Sen. Johnes Mwaruma, MP) sought a Statement from the Standing Committee on Land, Environment and Natural Resources regarding the status of the World Bank funded project for the upgrade of water supply and sewerage systems in Taita Taveta County.
- vii.)The Senator for Taita Taveta County (Sen. Johnes Mwaruma, MP) sought a Statement from the Standing Committee on Land, Environment and Natural Resources regarding the change of user, from agricultural to commercial, of the land in Taita Taveta County held by M/S Voi Point Limited on leasehold tenure.
- viii.) The Senator for Meru County (Sen. Kathuri Murungi, MP) sought a Statement from the Standing Committee on Justice, Legal Affairs and Human Rights regarding the governance issues in Meru County.

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ix.)Request for a Statement by the Senator for Kisumu County (Sen. (Prof.) Tom Ojienda, SC, MP) from the Standing Committee on Trade, Industrialization and Tourism regarding the management of the operations of Kibuye Market in Kisumu County was **dropped** in the absence of the Senator.

ii. Statement pursuant to Standing Order 58

The Senator for Marsabit County (Sen. Mohamed Chute, MP) made a personal statement on regarding the false reports of his arrest by the Ethics and Anti-Corruption Commission (EACC) officers.

Thereupon, the Senator clarified that he was not arrested on Thursday, 11th June, 2024, as alleged by the Chief Executive Officer (CEO) and Spokesperson of the Ethics and Anti-Corruption Commission (EACC). However, he appeared at the EACC offices on the stated date following an invitation from the Commission. The Senator stated that this invitation had emanated from several complaints he had made to the Commission regarding the misappropriation of funds in Marsabit County.

The Senator stated that on his arrival, he was informed by the investigating officer that his invitation was related to the ongoing investigations into the alleged cases of corruption by the governor of Marsabit County.

The Senator urged the Commission to make public any information regarding corruption cases against him and further stated that he had instructed his lawyer to institute a legal suit against the Commission for defamation and character assassination.

7. THE LAND (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 40 OF 2022)

Order for Second Reading read;

Motion made and Question proposed -

THAT, the Land (Amendment) Bill (National Assembly Bills No. 40 of 2022) be now Read a Second Time.

(The Senate Majority Leader)

Debate arising;

Rising on a point of order pursuant to Standing Order 110 (1), the Senator for Kakamega County (Sen. (Dr.) Boni Khalwale, CBS, MP) claimed to move,

That the debate be now adjourned for Senators to contribute to the Motion -

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Motion made and Question proposed;

THAT, the debate be now adjourned.

(Sen. (Dr.) Boni Khalwale, CBS, MP)

Debate arising;

There being no Senator wishing to contribute;

Before the Question was put and pursuant to Standing Order 84 (1), the Deputy Speaker ruled that the Motion does not affect counties.

Question put and <u>agreed to.</u>

8. <u>THE CONSTITUTION OF KENYA (AMENDMENT) (NO. 2) BILL (SENATE</u> <u>BILLS NO. 52 OF 2023)</u>

(Sen. Raphael Chimera, MP)

(Second Reading)

(Resumption of debate interrupted on Tuesday, 23rd July, 2024) (Division)

Order deferred.

9. <u>MOTION - REPORT OF THE STANDING COMMITTEE ON FINANCE AND</u> BUDGET ON THE SENATE NOMINEES, ON BEHALF OF THE COUNTY GOVERNMENTS, TO THE POSITION OF MEMBER OF THE SALARIES AND REMUNERATION COMMISSION (SRC)

(The Chairperson, Standing Committee on Finance and Budget)

Order deferred.

10. <u>COMMITTEE OF THE WHOLE</u> <u>THE GAMBLING CONTROL BILL (NATIONAL ASSEMBLY BILLS NO. 70 OF</u> <u>2023)</u>

(The Senate Majority Leader)

(Resumption of debate interrupted on Wednesday, 15th May, 2024 – Afternoon Sitting) (Division)

Order deferred.

11. <u>COMMITTEE OF THE WHOLE</u> <u>THE TEA (AMENDMENT) BILL (SENATE BILLS NO. 1 OF 2023)</u> (Sen. Wakili Hillary Sigei, MP)

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Order deferred.

12. COMMITTEE OF THE WHOLE THE MATERNAL, NEWBORN AND CHILD HEALTH BILL (SENATE BILLS NO. 17 OF 2023)

(Sen. Beatrice Ogolla, MP)

Order deferred.

13. COMMITTEE OF THE WHOLE THE METEOROLOGY BILL (SENATE BILLS NO. 45 OF 2023) (The Senate Majority Leader)

Order deferred.

14. COMMITTEE OF THE WHOLE THE NATIONAL CONSTRUCTION AUTHORITY (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 59 OF 2022)

(The Senate Majority Leader)

Order deferred.

15. THE LOCAL CONTENT BILL (SENATE BILLS NO. 50 OF 2023) (The Chairperson, Standing Committee on Energy)

(Second Reading) (Resumption of debate interrupted on Thursday, 25th July, 2024

Order deferred.

16. THE WILDLIFE CONSERVATION AND MANAGEMENT (AMENDMENT) BILL (SENATE BILLS NO. 46 OF 2023)

(Sen. Johnes Mwaruma, MP)

(Second Reading)

Order deferred.

17. THE WILDLIFE CONSERVATION AND MANAGEMENT (AMENDMENT) BILL (SENATE BILLS NO. 49 OF 2023)

(Sen. Lenku Ole Kanar Seki, MP)

(Second Reading)

Order deferred.

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18. <u>THE CO-OPERATIVE SOCIETIES (AMENDMENT) BILL (SENATE BILLS NO.</u> 53 OF 2023)

(Sen. Mariam Sheikh Omar, MP)

(Second Reading)

Order deferred.

19. THE EARLY CHILDHOOD EDUCATION (AMENDMENT) BILL (SENATE BILLS NO. 54 OF 2023)

(Sen. Eddy Oketch, MP)

(Second Reading)

Order deferred.

20. <u>THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL)</u> (AMENDMENT) BILL (SENATE BILLS NO. 1 OF 2024)

(Sen. Kathuri Murungi, MP)

(Second Reading)

Order deferred.

21. MOTION - REPORT OF THE SELECT COMMITTEE ON COUNTY PUBLIC ACCOUNTS ON ITS CONSIDERATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THARAKA NITHI, HOMA BAY, KAKAMEGA, KIRINYAGA, MAKUENI, MERU, BOMET, MURANG'A, NANDI, NYAMIRA, NYERI, SIAYA, VIHIGA, WAJIR AND SAMBURU COUNTY EXECUTIVES FOR THE FINANCIAL YEAR 2019/2020

(The Chairperson, County Public Accounts Committee)

THAT, the Senate adopts the Report of the Select Committee on County Public Accounts on its consideration of the Reports of the Auditor General on the Financial Statements of Tharaka Nithi,Homa Bay, Kakamega, Kirinyaga, Makueni, Meru, Bomet, Murang'a, Nandi, Nyamira, Nyeri, Siaya, Vihiga, Wajir and Samburu County Executives for the Financial Year 2019/2020 laid on the table of the Senate on Tuesday, 5th March, 2024.

Order deferred.

22. MOTION - REPORTS OF THE SELECT COMMITTEE ON COUNTY PUBLIC INVESTMENTS AND SPECIAL FUNDS ON ITS CONSIDERATION OF THE AUDIT REPORTS OF VARIOUS WATER SERVICE COMPANIES FOR THE FINANCIAL YEARS 2018/2019, 2019/2020 AND 2020/2021

(The Chairperson, Committee on County Public Investments and Special Funds)

THAT, the Senate adopts the Reports of the Select Committee on County Public Investments and Special Funds on its consideration of the

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Audit Reports for the Financial Years 2018/2019 (Volume IV), 2019/2020 (Volume V) and 2020/2021(Volume VI), for the following Water Service Companies laid on the table of the Senate on Wednesday, 29th May, 2024;

- i) Busia Water and Sewerage Services Company Limited;
- ii) Iten- Tambach Water and Sewerage Company Limited;
- iii) Kirinyaga Water and Sanitation Company Limited;
- iv) Malindi Water and Sewerage Company Limited;
- v) Mandera Water and Sewerage Company Limited;
- vi) Migori Water and Sanitation Company Limited;
- vii) Mombasa Water and Sanitation Company Limited;
- viii) Nanyuki Water and Sanitation Company Limited; and
- ix) Nithi Water and Sanitation Company Limited.

And there being no other business on the Order Paper, the Deputy Speaker adjourned the Senate at forty-seven Minutes past five O'clock without Question put, pursuant to the Standing Orders.

23. **SENATE ROSE** – at forty-seven minutes past five O'clock.

MEMORANDUM

The Speaker will take the Chair on Thursday, August, 01, 2024 at 2:30 p.m.

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