

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Tuesday, 29<sup>th</sup> November, 2016

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

*[The Speaker (Hon. Ethuro) in the Chair]*

#### PRAYER

### COMMUNICATION FROM THE CHAIR

#### SELF-ASSESSMENT EXERCISE ON THE LEVEL OF GENDER SENSITIVITY IN THE PARLIAMENT OF KENYA

**The Speaker** (Hon. Ethuro): Order, Members! I have a Communication to make on the self-assessment exercise to evaluate the level of gender sensitivity of the Parliament of the Republic of Kenya.

Hon. Senators, the Inter-Parliamentary Union (IPU) sent an expert mission to Kenya from 12<sup>th</sup> to 17<sup>th</sup> July, 2015, to offer advice on the way forward in implementing the constitutional requirement of the two-thirds gender rule upon a request by the Parliament of Kenya.

Following consultative meetings with Members of Parliament of both Houses, the Executive, constitutional commissions and civil society organizations, the expert mission forwarded its report to Parliament on 23<sup>rd</sup> July, 2015. The report contains suggestions on how to meet the two-thirds gender rule based on the discussions that were held and further identifies the following three additional areas of collaboration between the Parliament of Kenya and IPU:-

- (a) Building the capacity of women parliamentarians.
- (b) Evaluation of the level of gender sensitivity of the Parliament of Kenya through the conduct of a self-assessment exercise.
- (c) Organizing a parliamentary debate on women's participation.

Hon. Senators, as a follow up on the suggested areas of collaboration, the IPU on 3<sup>rd</sup> October, 2016 wrote to the Speakers of the Senate and the National Assembly requesting to collaborate with the Parliament of Kenya in a self-assessment exercise on the level of gender sensitivity in the Parliament of Kenya; a request which was granted.

Consequently, the IPU in collaboration with our Parliament has organized a sideline meeting during the ongoing Second High Level Meeting of the Global Partnership for Effective Development Cooperation aimed at undertaking the several assessment exercises. The meeting started yesterday, Monday, 28<sup>th</sup> November, 2016 at The Stanley Hotel, Nairobi. It will end tomorrow, Wednesday, 30<sup>th</sup> November, 2016. I had the opportunity to attend the opening session together with some Members of the Senate and Members of the National Assembly. I found the deliberations quite insightful.

Hon. Members, the IPU has designed an assessment tool in the form of a questionnaire which I have instructed the Office of the Clerk to circulate to all Senators this afternoon. I urge you, all, to fill the questionnaire and hand it to the Serjeant-At-Arms at the entrance to the Senate Chamber so that it can be given back to the IPU team by close of the day today.

I thank you.

### PAPERS LAID

#### REPORT ON ALLEGED CORRUPTION AND MISMANAGEMENT BY THE KISUMU COUNTY EXECUTIVE

**The Speaker** (Hon. Ethuro): Sen. Mositet!

**Sen. Mositet:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today, Tuesday, 29<sup>th</sup> November, 2016.

Report of the Joint Committee on Finance, Commerce and Budget and the Sessional Committee on Devolved Government on a Petition by some Members of the Kisumu County Assembly on the alleged corruption and gross mismanagement by the Kisumu County Executive.

*(Sen. Mositet laid the document on the Table)*

#### REPORT ON DISORDERLY CONDUCT IN CPAIC BY THE GOVERNOR OF MURANG'A COUNTY

**The Speaker** (Hon. Ethuro): Sen. (Prof.) Anyang'-Nyong'o!

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I beg to lay on the table a Report of the Senate Sessional Committee on County Public Accounts and Investments on the disorderly conduct of Hon. Mwangi wa Iria, the Governor of Murang'a County.

### NOTICE OF MOTION

#### ADOPTION OF REPORT ON DISORDERLY CONDUCT IN CPAIC BY THE GOVERNOR OF MURANG'A COUNTY

**The Speaker** (Hon. Ethuro): Sen. (Prof.) Anyang'-Nyong'o!

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I would like to move the following Motion:-

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THAT the Senate adopts---

**The Speaker** (Hon. Ethuro): Order, Senator! You cannot move what you have not given notice of.

**Sen. (Prof.) Anyang'-Nyong'o:** My apologies, Mr. Speaker, Sir. I would like to give notice of the following Motion:-

THAT, the Senate adopts a Report of the Senate Sessional Committee on County Public Accounts and Investments(CPAIC) on the disorderly conduct of Hon. Mwangi wa Iria, the Governor of Murang'a County.

### STATEMENTS

**The Speaker** (Hon. Ethuro): Order, Members! Are there any requests for Statements, if not, we can proceed to Statements to be issued.

#### STATUS OF THE NORTHERN COLLECTOR TUNNEL PROJECT IN MURANG'A COUNTY

I do not see the Member who is supposed to issue it. The Statement is dropped.

*(Statement dropped)*

#### HYACINTH MENACE IN LAKE VICTORIA

I do not see the Member who is supposed to issue it. The Statement is dropped.

*(Statement dropped)*

Next Statement, Chairperson for the Standing Committee on Labour and Social Welfare.

#### COLLAPSE OF A SECTION OF BUKHUNGU STADIUM IN KAKAMEGA COUNTY

**Sen. Madzayo:** Mr. Speaker, Sir, I have just received a response but it is not adequate. I have given my colleague, Sen. (Dr.) Khalwale, the copies of what I have received. The bottom line is that a substantive answer has not come from the Governor of Kakamega County. He has not responded and we have asked that we be given up to 12<sup>th</sup> December, 2016 – I do not know whether we shall be sitting at that time but that is the correspondence so far to enable us get a substantive answer to the question that was asked by Sen. (Dr.) Khalwale.

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, how I wish you had a copy of what the Chairman is calling a response. It is not. He is referring to a letter---

**The Speaker** (Hon. Ethuro): Order, Senator! If the Chairman admits that it is not a response, you think it is not, why would you want the Speaker to have a copy of such?

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**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I wanted to make you angry.

*(Laughter)*

My concern is that there is a letter from the procurement section and another one from the Ministry of Sports, Culture and Arts. Both of them do not help the Senate to come to the bottom of my concern. Therefore, I am worried that as we go for Christmas Recess, nothing will move. I want to request you to direct that the answer comes on Thursday this week.

**The Speaker** (Hon. Ethuro): Chairman.

**Sen. Madzayo:** Mr. Speaker, Sir, I am surprised that my colleague says there is no response at all. We have a response from the Ministry of Sports, Culture and Arts by the Cabinet Secretary (CS) which tells us that with regards to the collapse of this construction of the stadium in Kakamega, that response can only be obtained from the Office of the Governor of Kakamega. I thought that is what I have given him as communication. It is in that regard that the procurement department wrote that they are seeking up to 12<sup>th</sup> December, 2016 to respond. These are the communications---

**The Speaker** (Hon. Ethuro): Order, Chairman! When you deal with responses, you deal with the substance and not the form, not the correspondence and not the procedure of obtaining information. So, Sen. (Dr.) Khalwale is right when he says there is no response. It is just as good as there is nothing. So, get the substantive response in the way we understand it on Thursday this week. Let us move to Statement (d)! Where is the Chairperson?

*(Statement deferred)*

#### CIRCUMSTANCES THAT LED TO INJURING OF GOVERNOR ISAAC RUTTO

**Sen. Haji:** Mr. Speaker, Sir, I am sorry I do not have the statement. I was expecting to get it this afternoon as I was told by the Clerk Assistant but up to now, it has not reached me.

**The Speaker** (Hon. Ethuro): Chairman, at least something is on the works, we can trust that before the end of the Order, you might get it or not later than tomorrow. So, the statement will appear on the Order Paper tomorrow afternoon.

*(Statement deferred)*

That is the end statement hour. What is it, Sen. Wangari?

**Sen. Wangari:** Mr. Speaker, Sir, I was expecting two statements that you had directed to be brought today. First, is on the hiring of officials for ministry of health in the counties. Secondly, is that one that was to be issued by the Committee on Legal Affairs and Human Rights Chairperson on the issue of Malewa West Ward in Gilgil

Constituency about the borders that was supposed to be delivered today. I am yet to get any response from the Chairs.

**The Speaker** (Hon. Ethuro): Is the Chairperson, Health Committee there?

ONGOING RECRUITMENT OF PERSONNEL  
BY THE MINISTRY OF HEALTH

**Sen. (Dr.) Machage**: Thank you, Mr. Speaker, Sir. I had given a detailed answer to Sen. Wangari but this is the response:-

The Fourth Schedule, Articles 185 (2), 186 (1) and 187 (2) outlines the distribution of functions between the national and county governments. The Ministry of Health has indicated that they recruit on the basis of delegated authority by the Public Service Commission. However, Article 234 (3) (d) prohibits the Public Service Commission from recruiting for the county governments while Article 235 assigns the responsibility to the county governments. The Ministry is basing its recruitment on the Fourth Schedule of the Constitution which allows the national Government to provide capacity building and technical assistance to the counties. This is done through consultation and co-operation.

Mr. Speaker, Sir, the Committee is in the receipt of communication from the Council of Governors (CoG) and their position is that the county governments enjoy human resource recruitment autonomy and the national Government cannot unilaterally without any consultation recruit staff. It is, therefore, the Committee's opinion that consultations did not take place at all for those recruitments that have been done so far. The Ministry of Health insists that the consultation process took place. However, as stated above according to the CoG, no such consultations took place.

Mr. Speaker, Sir, the Ministry of Health has indicated that the ongoing recruitment of health personnel will continue to engage the counties. It is the opinion of the Committee that the process needs to be stopped.

In terms of remuneration by the Ministry, it states that it will seek assurance from the counties affected that they will absorb the recruited staff. We intend to invite the CS and the Principal Secretary (PS) of Health to discuss this issue further. Thank you.

**Sen. Wangari**: Mr. Speaker, Sir, the Chair has mixed up the response from the Ministry and the opinion of the Committee. Looking at this response, it is not as detailed as the Chair says. In fact, on the issue where I sought to know whether it is the mandate of the national Government to recruit staff for the county governments, the Ministry says that they did so through consultation and co-operation.

Mr. Speaker, Sir, the CoGs have already protested this move. I do not know who they consulted. The Chair should clarify whether it took place as it is under Article 189 of the Constitution and the burden of absorbing these staff. If you look at the response, in the fifth issue where we asked that the arrangement for deployment and remuneration be cleared, the Ministry says they will seek an assurance from the counties affected that they will absorb recruited officers at the end of the contract period.

This burden that is being brought to the county government is already a problem of health and personnel in the counties. So, the Ministry went ahead to recruit for a contract and after it expires, it expects the counties to absorb them without knowing

whether it is in the budget plan and without any consultation. I would like to get the clarification from the Chair. What does it mean that they will seek assurance from the counties and why are they recruiting before getting that assurance?

**The Speaker** (Hon. Ethuro): Sen. Wetangula!

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, this is a serious matter and I thank Sen. Wangari for bringing it. Health is a devolved function and being so, the purview of recruiting staff for devolved units of health rests with the county governments, nothing less. That is why you see every day in the counties strikes by medical staff for non-payment, inadequate payment and all manner of things. Now, what the Chairman has told us – and I thank him for his candor – that the Ministry of Health at the headquarters is recruiting staff for counties alleging delegation and consultation. He has told us that the counties have disputed that there has been neither delegation nor consultation. This is an illegality, annulity, unconstitutionality and one of the many processes of undermining devolution.

Mr. Speaker, Sir, could the Chairman tell us – I know he has already indicated that it ought to stop – at the end of this session extract a direction from you as the Speaker of this House to the Ministry of Health to stop the unlawful recruitment of staff on behalf of counties where they have no delegation or consultation?

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Khalwale!

**Sen. (Dr.) Khalwale**: Mr. Speaker, Sir, just like the global funds on HIV/AIDS, Tuberculosis, Malaria and so forth, the national Government is hanging on that money in Nairobi. Now, they are going further by attempting to recruit staff for our governors. Could the Chairman tell us when the Government is going to align the national policy on health with devolution?

**The Speaker** (Hon. Ethuro): Sen. Ndiema.

**Sen. Ndiema**: Mr. Speaker, Sir, you may recall that as a supplementary question, I asked the Chairman to confirm whether staff recruited by counties since 2013 have been entered into any pension scheme. Counties have been recruiting and we are not sure whether the staff they have recruited on permanent and pensionable basis are permanent and pensionable. It is inhuman to recruit staff and not provide them with any pension.

**The Speaker** (Hon. Ethuro): Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.**: Mr. Speaker, Sir, the recruitment of staff; although it appears to have been excused, it is a pretext that it is under the Public Service Commission Act. The truth of the matter is that the Health Bill that was amended in this Senate gives the powers of how the Ministry of Health in collaboration with counties would recruit staff.

Mr. Speaker, Sir, is the Chairman aware of the status of the Health Bill that would give the position that he stated here? The Public Service Commission Act does not give such mandate under the new Constitution.

**The Speaker** (Hon. Ethuro): Sen. Sijeny.

**Sen. Sijeny**: Mr. Speaker, Sir, could the Chairperson also clarify what became of the defunct local government officers within local hospitals? Could he also clarify what became of the defunct local government officers within the local hospitals and were they redeployed within the counties? Why do they want to employ more? They need to give us the data.

**The Speaker** (Hon. Ethuro): Order, Sen. Sijeny! These were clarifications. Yours appears like a new one. So, if the Chairperson wishes to respond fine. If he does not, I will agree with him.

Proceed, Chairperson, on those other clarifications that have been sought.

**Sen. (Dr.) Machage:** Thank you, Mr. Speaker, Sir. Sen. Wangari wants to know why the national Government is still recruiting for the county governments. According to the Committee's observations, it is totally wrong and illegal. There was a gazette notice in accordance with the Constitution and the Transition Authority (TA). Through the Gazette Notice of No.116 of August 2013, health functions were transferred to the counties. Therefore, the counties took the responsibility to all that appertains to those functions.

Further, provisions of Articles 6(42) and 189 of the Constitution create compulsory obligation for one level of government not to interfere with the other level in exercising these functions. In this regard, county governments enjoy human resource recruitments. As far as we are concerned, they enjoy that autonomy fully.

Sen. Wetangula is very right. The Committee agrees with his sentiments. The national Government is carrying out an illegality by deploying health personnel to county governments. They are not supposed to do that according to the Constitution.

Sen. (Dr.) Khalwale talked about the Government not honouring the policy of devolution. Yes, they are dishonouring it. They should read the Constitution and honour it to the letter.

I may not be able to comment on what Sen. Mutula Kilonzo Jnr. raised because the Health Bill is not yet law. If you remember, we amended it here and it was sent back for further negotiations. It is not yet law. Therefore, it is not binding.

I am not in a position to answer Sen. Sijeny's concerns.

**Sen. Hargura:** On a point of order, Mr. Speaker, Sir. While I appreciate my Chairman's response to the question asked by Sen. Wangari, I believe he is an honest character and he has really laid bare the response according to the Ministry of Health. We are not heading anywhere. The truth is one level of government can still---

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. Will you allow the distinguished Sen. Hargura to refer to the Chairman who is the Senator of Migori County as a character? Is it lack of English or deliberate assumption that we do not know English Language?

**The Speaker** (Hon. Ethuro): Order, Sen. Hargura! Indeed, I was astonished and perplexed to hear the distinguished Senator referring to the more distinguished Chairperson, Panelist and Doctor of Medicine as a character.

**Sen. Hargura:** Mr. Speaker, Sir, it is very uncommon of me to demean a colleague. I hold a lot of respect for my Chairman and very able friend, the Senator for Migori County. It is a slip of the tongue. I apologise.

I want to proceed by saying that the ultimate solution to our problem here lies in with the Chairman. In this case, he is giving us the response from the Ministry of Health. It is true one level of government can perform the function of the other with agreements and delegation. Honestly, I want to know is there such an arrangement? If not, then we will expect the Speaker to direct that the Chairman of Committee on Health gives us a

better response and particularly that the Ministry of Health withdraws this kind of arrangement in future.

**Sen. Billow:** Mr. Speaker, Sir, I find the answer given by the Chairman of Committee on Health contradictory because he is speaking, as Sen. Hargura said, as the Chairman and as Government. Therefore, he needs not to lament what the Government is doing is an illegality. I want him to clarify who are these doctors posted to work in the counties? Are they the ones that have been trained on a bond by the Ministry and, therefore, the Government is obligated to have them work for Government? Since these services have now been devolved, there is, probably, no alternative. What category or what type of doctors are we talking about? Normally, I know the Government bonds are paid for and they have to go and work somewhere. So, is it that situation or is there any situation where doctors actually get posted?

**The Senate Minority Leader (Sen. Wetangula):** Mr. Speaker, Sir, that point raised by the Senator for Mandera is very important. Could the Chairman also clarify to the House if there are any doctors sent or posted to the counties by the national Government? Is the national Government responsible for their remuneration or is it the responsibility of the county governments to pay such doctors? If it is so, is it harmonized across the country, or counties will pay in accordance with the capacity and ability?

**Sen. Ndiema:** Mr. Speaker, Sir, I sought an answer on the issue of pension. I sought it then, I have sought it now and I am not hearing from him.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I would want to totally remove the erroneous feeling that a Chairman of a Committee will speak on behalf of a Government. I am not a mouthpiece of the Government. I am the Chairperson of the Health Committee of the Senate. I, therefore, collect and collate information in order to answer your questions as it is. It may please the Government or not. While we recognise that the national Government---

**Sen. Billow:** On a point of Mr. Speaker, Sir. You heard the Chairman. He needs to be very careful because when he is giving a response to a statement, he cannot at the same time contradict himself. In answering the question, he cannot stand up again and tell us that what the national Government is doing is illegal. This is because he is giving a statement on behalf of the national Government. So, it is contradictory. He needs to reconcile his position with the answer he is reading.

**The Speaker (Hon. Ethuro):** Order, Sen. Billow! I was about to use the word take the trouble of listening, but you do not need to take any trouble. Just enjoy the listening and you will appreciate that the Chairman has not contradicted himself at all.

Proceed, Chairman.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, thank you for the protection. While we recognise that the national Government has constitutional responsibility to offer capacity building and technical assistance to the counties, this does not mandate the Ministry to unilaterally and without any form of consultation, proceed to recruit staff for the counties. That is the Committee's position. This is the reason that we have an upheaval of strikes.

In my attempt to answer Sen. Ndiema, I would like to say that the TA did not give enough guidelines on how the hitherto personnel employed by the national Government were to be absorbed by the county governments. That has raised an issue of remuneration and who takes responsibility to other remunerations such as the Pension Fund. That is



why we are having many strikes at that level concerning promotions, educational, enhancement and other remunerations. We are in the process of trying to see how we can help on this. It is true some staff are in limbo because some of them have found themselves unemployed because counties are rejecting them on the basis that they were forced onto them by the national Government during the TA period. That is the law, only we talk about employment and who has to handle what. What is provided for in the Constitution in the Fourth Schedule must be followed to the letter. I must repeat by saying the national Government should not only stop, but they should desist from employing unless they fully comply with Article 187 of the Constitution that allows for negotiations.

**Sen. Wako:** Thank you, Mr. Speaker, Sir. The other subsidiary issue following on this is what I learnt particularly as far as Busia County is concerned where the strike is ongoing. One of the reasons for the strikes is that the paramedical staff have not received the requisite promotions when the requisite is due. When you go to the county governments, they say it is very difficult for them to do that because files have not come from the national headquarters. So, it is very difficult to classify them on what they have done and those who deserve promotion. If that is true, we request the Government to make sure that the files of these workers are transferred to the respective county governments.

**The Speaker (Hon. Ethuro):** Order, Sen. Wako! You could do more with a bit of listening. It is not a debate, there were just clarifications.

Order, Members! I see that Sen. Ndiema is interested. However, this is a straightforward matter. Definitely, there is a dispute between the Ministry of Health at the national level and the Council of Governors (CoGs). A Member has sought a statement to clarify on what was actually advertised. I have received in my office a complaint letter from the CoGs raising the same matter.

So, I am going to direct as follows:-

First, the provisions of the Constitution with regard to Sovereignty of the People says:

1 (1) All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.

(3) Sovereign power under this Constitution is delegated to the following state organs, which shall perform their functions in accordance with the Constitution-

(b) the national executive and the executive structures in the county governments.

Article 1(4) provides that:-

“The sovereign power of the people is exercised at—

(a) the national level; and,

(b) the county level.”

Article 6 (1) provides that:-

“The territory of Kenya is divided into the counties specified in the First Schedule.

Article 6(2), which the Chairman quoted, gives the *modus operandi* on how that relationship can operate. It provides that:-

“The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.”

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That is expounded also in Article 189. Therefore, the Constitution is quite elaborate on how to deal with these issues. Article 189 (3) states:-

“In any dispute between governments, the governments shall make every reasonable effort to settle the dispute, including by means of procedures provided under national legislation.”

I want to pronounce myself clearly on this one. The national Government cannot recruit on behalf of the county governments without their express permission. The fact that the Council of Governors has written to the Senate to confirm that they are not in concurrence, to dispute that particular advertisement, can only confirm that there was no such concurrence and there were no discussions.

Under the circumstances, I direct the Chair that he needs to summon the Cabinet Secretary for Health and lay bare the facts and the law as provided in our Constitution. That is the law of the land. All of us must exercise our powers only in accordance with this Constitution.

*(Applause)*

**The Senate Minority Leader** (Sen. Wetangula): On a point of order Mr. Speaker, Sir. This has nothing to do with what you have ruled. Would the House be in order to applaud a sound and solid decision, like what you have made, by tapping on our benches rather than thumping the ground because the structure of this furniture is such that thumping does not give the effect it requires?

I have seen in the Parliament of Tanzania and you saw today when you were addressing the East African Legislative Assembly (EALA), I think they have picked it from that Parliament. Members are allowed to tap their desks in approval and applause of what they think has been done right, like what you have said.

*(Sen. Wetangula tapped the Table repeatedly)*

*(Sen. Boy Juma Boy and Sen. Haji joined the Sen. Wetangula in tapping)*

**The Speaker** (Hon. Ethuro): Order, Members. Sen. Wetangula, nobody is following suit, except for some sporadic responses from Sen. Haji and Sen. Boy Juma Boy.

My point is that we do not need to borrow from other traditions because we already have ours. We should just proceed along those lines.

**Sen. Omondi:** On a point of order, Mr. Speaker, Sir. I am in agreement with the Senate Minority Leader because the action of thumping discriminates me. In order to avoid discrimination in this House, I do agree with him.

*(Applause)*

**Sen. Wangari:** Mr. Speaker, Sir, I wish to applaud your ruling on this matter. It is an urgent issue and my worry is the timeline of the Committee. It is in the public domain

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that we will go on a long recess. Since the process will be ongoing, is it possible for you to extend the time for the Committee on Health, say, for a week, to give time for summons to the Cabinet Secretary, so that the process is stopped?

**The Speaker** (Hon. Ethuro): Order, Sen. Wangari. My understanding from the response of the Chair was that they were already in communication with the Ministry of Health. In fact, the Committee intends to invite the Cabinet Secretary and the Principal Secretary to discuss this issue. So, they do not need any extension.

I expect them to appreciate all the concerns you have raised, including the urgency of this matter. They need to stop it forthwith. I leave the Chair to determine given their communication, but not later than a week.

Order, Members. On the bit by Sen. Omondi, I can give an exception to her under the circumstances, but that exemption cannot be extended to the Senate Minority Leader.

*(Laughter)*

MISERY OF RESIDENTS OF KASARANI IN MALEWA  
WEST WARD, GILGIL CONSTITUENCY

**Sen. Wangari:** Mr. Speaker, Sir, I do not want you to lock my Statement out from the Committee on Legal Affairs and Human Rights on the issue I raised about the boundaries in Malewa West Ward. When young men from Kasarani go to Gilgil for recruited they are told to go to Naivasha because their identity cards read Naivasha. When they go to Naivasha, they are told to go back to Gilgil. It is an urgent issue. and I am still waiting for that Statement so that it can be settled and the opportunities can be equal to everyone.

*(The Speaker consulted with Sen. Wetangula)*

**The Speaker** (Hon. Ethuro): Sen. Wangari, you may have to repeat.

**Sen. Wangari:** Mr. Speaker, Sir, I was reminding you of my pending Statement from the Committee on Legal Affairs and Human Rights on the issue of the youth from Kasarani in Malewa West Ward of Gilgil. When they go to Gilgil to be recruited into the Kenya Defence Forces (KDF) and Kenya Police Service, they are told to go to Naivasha because their Identity Cards read Naivasha. When they go to Naivasha, they are told---

**The Speaker** (Hon. Ethuro): Order, Sen. Wangari!

**Sen. Wangari:** Yes, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): When you are ordered, it does not mean you should respond. It is to allow me to intervene. First, you are seeking the Statement and not the content. The Chair and Vice Chair are both in the House, but let us hear from the Chair.

**Sen. Wako:** Mr. Speaker, Sir, I must admit that I am not specifically aware of that request. Had it been made when I was here, I would have said that it is a matter for the Committee on National Security and Foreign Relations that deals with registration of persons and related issues. Is it not a policy issue? The matter should be redirected to the right committee, which is, the Committee on National Security and Foreign Relations and not the Committee on Legal Affairs and Human Rights. They are not asking for an

opinion on legal issues, but why the Government is doing that. It is a policy issue that properly falls within the Ministry of Interior and Coordination of National Government.

**Sen. Wangari:** On a point of order, Mr. Speaker, Sir. Is the Chairman in order to mislead this House? This matter has been pending in this House for over a month. In fact, his deputy had committed to bring a response without any of the issues that he has raised. Is he in order to take us back, when there was a commitment from the Committee to bring the Statement?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I am shocked that the distinguished Senator for Busia County can rise on such a point of order. Before Sen. Wangari asked the question, she had approval from the Office of the Speaker and she demonstrated that the matter deserved to go to the Committee on Legal Affairs and Human Rights. Is he in order to want to reverse a process that was concluded over a month ago?

**The Speaker** (Hon. Ethuro): Order, Members. The more useful route is what Sen. Wangari just made in the intervention. The Chair of the Committee on Legal Affairs and Human Rights was not properly briefed by his Vice Chair who has been handling the matter.

Yes, Vice Chair.

**Sen. Sang:** Mr. Speaker, Sir, unfortunately again, we still do not have this Statement. However, you will recall that I shared the progress we have made on this matter with the House. The issue raised by the Chair is exactly what I said. The Statement was directed to our Committee and we channelled to the Attorney General's Office. However, the Attorney General's Office informed us that the matter is within the provincial administration and registration of persons, which falls squarely within the Ministry of Interior and Coordination of National Government.

They undertook to contact them and transmit the request for the statement. As at now, we have not received it and I still seek the indulgence of the House as we pursue this. I would also request the experienced Chairperson of the Committee on National Security and Foreign Relations to help us as we pursue this Statement. I am sure that he has better connections and discussions with the Ministry than us in the Committee on Legal Affairs and Human Rights.

*(Statement deferred)*

ALLEGED MISAPPROPRIATION AND LOSS OF  
PUBLIC FUNDS IN THE MINISTRY OF HEALTH

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I have a pending anticipation of a Statement on the audit in the Ministry of Health that unearthed the fraud that is now being discussed publicly. I do not know if the Chairman of the Committee is available with the Statement, so that we can interrogate it.

**The Speaker** (Hon. Ethuro): The Senate Minority Leader, to who was that directed?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, to the Committee on Health.

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Machage, respond to that.

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**Sen. (Dr.) Machage:** Thank you, Mr. Speaker, Sir. I have documents that I will Table on the interim audit report of the end year procurement and payments. This document was tabled in the Committee by the Cabinet Secretary on 8<sup>th</sup> November, 2016 and again, re-tabled by the internal auditor of the Ministry of Health. We have compared and the copies are the same.

The Ministry of Health has informed us that the procurement documents of 2015/2016 mentioned in this interim audit report are with the investigation---

**The Speaker** (Hon. Ethuro): Order! That was just to find out the status first. You seem to be ready, but let us dispose the matter by Sen. Wangari.

Sen. Wako, if you need assistance from your colleague, the Chairperson of the Committee on National Security and Foreign Relations, he can do so. This Statement will appear on the Order Paper tomorrow afternoon. So, between now and tomorrow, get your act together.

*(Statement deferred)*

*(Interruption of Statements)*

## COMMUNICATION FROM THE CHAIR

### VISITING DELEGATIONS FROM NYAMIRA AND KAKAMEGA COUNTIES

Before the Chairperson proceeds with the Statement sought by Sen. Wetangula, allow me to acknowledge, in the Speaker's Gallery this afternoon, a visiting delegation from Nyamira County Assembly who are here on attachment.

I request each member of the delegation to stand up when called out so that they may be acknowledged in the great Senate tradition.

1. Eric Orangi Angwenyi
2. Gilbert A. Onduko
3. Hassan Mokaya

I hope that you have a fruitful programme. On behalf of the Senate and my own behalf, I welcome you to the Senate and wish you well for the remainder of your stay.

I thank you.

The second delegation is from Kakamega County Assembly who are seated in the Speaker's Gallery. They are also here on attachment. I request each member of the delegation to stand when called out so that they can be acknowledged in the Senate tradition.

They are as follows:-

- |                          |   |                        |
|--------------------------|---|------------------------|
| 1. Hon. Kundu R. Makhanu | - | Majority leader        |
| 2. Hon. Bonface Osanga   | - | Deputy Minority Leader |
| 3. Hon. Swaka Limera     | - | Majority Chief Whip    |
| 4. Hon. Mohammed Kuloba  | - | Minority Chief Whip    |
| 5. Hon. Dorcus Mulwale   | - | Deputy Majority Whip   |
| 6. Hon. Robert Lutatwa   | - | Deputy Minority whip   |

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7. Hon. Loy Maviala - Member

They are accompanied by the following staff:-

1. Mr. Patrick Kamwesa - Clerk of the County Assembly
2. Ms. Judith Achieng - Executive Secretary
3. Ms. Stacy Florence - Secretary/Clerk assistant
4. Ms. Phylvan Inziani - Clerk Assistant II
5. Mr. Ramathan Mohammed - Clerk Assistant III
6. Mr. Patrick Litaba - Serjeant-at-Arms
7. Mr. Titus Vutiya - Personal Assistant to the Speaker.

I hope that they have had a fruitful programme. On behalf of the Senate and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.

**Sen. Khaniri:** Mr. Speaker, Sir, kindly allow me to join you in welcoming the two delegations from Nyamira, particularly from Kakamega County. Kakamega happens to be the mother county of my own county, Vihiga, which was hived out from Kakamega County. My birth certificate and passport read Kakamega. That is where I was born.

I thank the delegation for finding time and taking advantage of the programme that you initiated in trying to empower Members of County Assemblies (MCAs) to do their oversight role adequately and effectively. County assemblies are very important in devolution. We rely fully on them. They are our first line of defence to ensure that devolution works. Therefore, the programme that you started is very useful. My county, Vihiga, has embraced it fully and sent so many delegations here. I think by now, each Member of Vihiga County has been here for this training.

However, let me send a strong message to the Governor for Kakamega County through the ladies and gentlemen in the Gallery. We have 47 governors in this Republic. All 46 governors have appeared before the Senate to answer questions raised by the Auditor-General. The last one was the Governor for Machakos County who was very reluctant, but was here yesterday. He appeared before the Committee and responded to the queries by the Auditor-General.

The only man standing now is the Governor for Kakamega, my good friend, Hon. Oparanya. Please, take a very strong message to him that once he accepts the position of leadership and responsibility, he must be ready to be accountable to the Kakamega County Assembly and to this Senate. Tell him we are waiting for him here to come and answer questions.

I wish you well.

**Sen. Omondi:** Mr. Speaker, Sir, thank you for allowing me to join you to welcome the visiting delegations from the two counties. I also thank you for the initiative of training clerks from different counties. Last week, we had delegation from Kakamega County. I am honoured to see my county getting capacity building. I know this will empower them to deliver quality work effectively and efficiently.

I wish them a fruitful stay here in Nairobi. I also thank other counties that have joined us today.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, as part of the leadership of the House, I also welcome the two delegations from Nyamira and

Kakamega counties, particularly close to me are both counties because Nyamira is represented in this House by a Senator on my party. Kakamega is represented in this House by my Deputy Party Leader, the distinguished, Sen. (Dr.) Khalwale.

I encourage the delegations to engage with the committees of this House and learn as much as they possibly can. More particularly, I encourage them to sit in the County Public Accounts and Investments Committee (CPAIC) and disabuse the public of the false notion that CPAIC is an instrument of witch hunt. As the County Assembly has come to learn, I also encourage them to avoid any temptation to be captured by governors. They are the primary oversight instruments in the counties. I was recently horrified when I went to CPAIC to attend some session and the Governor under interrogation had the majority leader from his county assembly carrying his briefcase coming to witness the interrogation. How do you expect that majority leader from a county carrying the governor's briefcase to come CPAIC, to go back and oversight him?

These are some of the things that are giving devolution a bad name. I have no doubt that my distinguished colleagues from Kakamega and Nyamira counties are not in this bracket and that you will carry out your oversight responsibility without fear, favour or prejudice and that the money that we vote in this House to come to your counties is put to the benefit of the people and not the use of governors to carry seats to funerals to sit on as other people do not sit in funerals.

**Sen. Elachi:** Mr. Speaker, Sir, I also take this opportunity to thank the visiting delegations from Nyamira and Kakamega counties. I wish them well as they continue benchmarking. I thank them for coming in at the right time knowing that we are about to go for recess. The most important thing is what foundations we leave behind so that the next Senate and county assemblies will have a footing in what they would wish to do for their counties come 2017.

I urge the MCAs to always remember that as you do your work, there are those who voted for you in a ward somewhere. At any given time, they would wish that you fight for them. Therefore, sometimes you can be with your governor, but in most occasions, you must stand with the challenges of your people. In so doing, they will respect you and know that they, indeed, voted in a leader. As you go back home, just remember to work for your people. It is important to give your people services, but not an individual.

**Sen. Wako:** Mr. Speaker, Sir, I welcome the distinguished delegations from Kakamega and Nyamira counties. Coming from what used to be Western Province, I want to particularly welcome the distinguished delegation from Kakamega knowing the role that Kakamega has played in giving birth to Bungoma County and Bungoma County, in turn, gave birth to Busia County. So, we are like grandsons, but grandsons who have come of age and ready to lead the entire former western province. I am glad that on a number of issues, the other counties are providing leadership. I am talking about the most important function of the Senate and the county assembly as Government which is oversight.

I would like to see Kakamega leading other counties, particularly in western province on the issues of oversight. As my colleagues have stated, the Governor and Speaker of Busia County have appeared before the CPAIC. The Governor, the Speaker and Busia County Assembly have appeared before this Committee. The same applies to

Bungoma and Vihiga county assemblies. I am pleased to say that as far as Kakamega County is concerned, even the County Assembly has not only appeared before this Committee, but at one time, they made a similar visit like you, sat in and saw what we were doing.

I join my colleagues, therefore, in appealing to you. I know the majority leader is here and the minority leader is also part of the delegation and so on. I am sure you can be persuasive in asking my friend, the Governor for Kakamega County, to now come along and appear before us in the CPAIC.

**The Speaker** (Hon. Ethuro): Order, Sen. Wako! You are pursuing a very slippery path.

**Sen. Wako:** Mr. Speaker, Sir, I thank you.

**The Speaker** (Hon. Ethuro): We do not plead with people. We invite and summon.

*(Laughter)*

**Sen. Wako:** Mr. Speaker, Sir, I am not pleading with anybody. All I am asking is can they go and plead with the governor to come. Yes, I cannot plead, but we summon. However, I can show you somebody whom I know has the ear of the governor to come. This is exactly what I am doing. The Governor for Machakos County was---

**The Speaker** (Hon. Ethuro): Sen. Wako, conclude.

**Sen. Wako:** The Governor for Machakos County was with us yesterday and is coming again tomorrow. He said that if he does not, he will come next week. He is now ready and has now seen that we engage in a constructive dialogue on these issues. Please, appeal to him. Otherwise, we may use our immense powers that the Speaker has talked about and just summon and arrest.

**The Speaker** (Hon. Ethuro): Finally, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, thank you for hosting the team from Kakamega and Nyamira counties. Just like my party leader has said, we are very proud of Nyamira County because our Senator here from that county belongs to our party. Next year, you remember your former colleague, Hon. Okioma, he will be the Governor for Nyamira County and is running on FORD-K Party. So, the future is very bright.

I also welcome the team from Kakamega County. When I think of Kakamega County, I am very proud. I am the only Senator in the Republic of Kenya who is a Senator in Nairobi and his son-in-law is an MCA in Kakamega County. Mr. Osanga is my son-in-law. He has married my first born daughter. Welcome, son.

*(Laughter)*

Mr. Speaker, Sir, it is true; you look doubtful.

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale, I have no reason at all to doubt you.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, as my party leader said, yesterday, we were shocked when Gov. Mutua appeared before the County Public Accounts and Investments Committee (CPAIC) accompanied by the chairman and the vice chairman of

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the Public Accounts Committee of the County Assembly of Machakos. They came in solidarity with the Governor. Our Chairman was thrown into confusion but he said that our Constitution allows any member of the public to attend Committee meetings. Therefore, this training is timely, so that the Members of County Assembly (MCAs) can know that they have a role to play in oversighting the governors.

Members of the County Assembly of Kakamega, I want to absolve your Speaker from what Sen. Khaniri said. It is true that Gov. Oparanya has not appeared before the County Public Accounts and Investments Committee (CPAIC), but the Speaker of the County Assembly of Kakamega has appeared and done a good job. Give him our greetings when you go back.

Mr. Speaker, Sir, I am so proud of the Speaker of the County Assembly of Kakamega because he has written to this Senate complaining that the development budget for the construction of a chamber for the County Assembly of Kakamega has been denied. As if that is not enough, this week, the governor cut the supplementary budget which had allocated Kshs277 million for the construction of the county assembly. He will give the county assembly Kshs100 million only and take the remaining Kshs177 million to the office of the governor. This is the work of my dear MCAs from Kakamega. Your legacy will be that you failed to build a county assembly.

Finally, the matters of the collapse of Bukhungu Stadium and the stage-managed stealing of computers from the procurement office are already in this Senate. We hope that you will also play your role. If you do not, elections are coming next year and people will speak.

**The Speaker** (Hon. Ethuro): Before we move to the next order, Sen. (Dr.) Machage was to issue a Statement.

*(Resumption of Statements)*

ALLEGED MISAPPROPRIATION AND LOSS OF  
PUBLIC FUNDS IN THE MINISTRY OF HEALTH

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I have already tabled the interim audit report as demanded by the hon. Senator.

Regarding the second question, the Ministry of Health has written informing us that procurement documents of 2015/2016 Financial Year mentioned in the interim audit report are with the investigative agencies. They will provide the documents to us once they are available.

Mr. Speaker, Sir, I want to add that the Committee met the Cabinet Secretary and Permanent Secretary of Health on 8<sup>th</sup> November, 2016 and this promise was made. They also made a promise to provide a complete audit report to us once it is completed, and it will have this information. However, I have a complete audit report by the internal auditor that was availed to us later, which I will table.

The list of companies that were awarded the said tenders are:-

- (1) Dentmed Kenya Limited which was awarded a tender of Kshs2,992,490
- (2) Life Care Medics Limited which was awarded a tender of Kshs201,011,550.
- (3) Rayovac Industries Limited which was awarded a tender of Kshs4,992,656.

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(4) Sundales International Limited which was awarded a tender of Kshs41 million.

(5) Estama Limited which was awarded a tender of Kshs800 million.

Regarding the fourth question, we had questioned the Ministry of Health to provide details of directors, financial statements and tax returns of the companies that were awarded the tenders. However, the Ministry stated that the only information they have are the tender documents, which usually include the PIN number, tax compliance certificate printed online and valid at the time of the tender. They had no other information. I have, therefore, instructed my secretariat to get the rest of information from the Registrar of Companies, especially the ownership of the said companies.

Regarding the fifth question, the Ministry of Health has informed us that payments of Kshs550,311,436.25 were made after settling all free maternity programme reimbursement claims amounting to a total of Kshs3,862,195,000 from the counties in the Financial Year 2015/2016. The items that expenditure was incurred on are supporting components on the free maternity programme. We have asked for the supporting components from the Ministry on the free maternity programme, but we are yet to get them.

Regarding the sixth question, the Ministry has informed us that they did not deny the auditor full access to the financial documents; they were busy preparing the books of accounts to be submitted to the Auditor-General, as it is required by the Public Audit Act. The internal auditor was asked to get the developments any other time. However, my Committee met the auditor and asked him the same question. He indicated that he had some difficulties in getting the payment vouchers from the procurement and accounting departments. He, however, indicated that he would show some of the payment vouchers to the Ethics and Anti-Corruption Commission (EACC) and will provide the same when the report is complete.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I have with me the statement that I sought and the answer that the distinguished Chairperson is reading. The two are completely unrelated. I do not know whether he is using my statement to give answers. For example, question No.1 was: "The Chairperson to state the budget of the Ministry of Health in the Financial Year 2015/2016." The answer is: "I would like to table an interim report."

Question No.2 was: "The amounts cited in the audit report to have been pilfered or un-accounted for on the period thereof." In the answer, he says: "The Ministry has written to us informing that the procurement documents have been taken away."

Under question No.3 I asked for the vote heads under which the money was released. In his answer, he has listed companies that were awarded tenders. This goes on and on to the end. What the Chairperson has answered is definitely unrelated to the Statement that I asked for.

More importantly---

**The Speaker** (Hon. Ethuro): Order, Senator. How many questions did you ask?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I asked 10 questions.

**The Speaker** (Hon. Ethuro): Did he respond to the 10 questions?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, in fact, he answered up to No.6 and stopped there.

**The Speaker** (Hon. Ethuro): Proceed.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, under No.5, I asked whether the tender committee ascertained---

**The Speaker** (Hon. Ethuro): Order, Senator. I was trying to do a sample. Since you have done four out of six, you do not need to proceed.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, all of them are unrelated to the answers.

**The Speaker** (Hon. Ethuro): You have made your point.

**Sen. (Dr.) Khalwale**: On a point of order, Mr. Speaker, Sir. The Statement that the Chairperson is speaking to is a very topical matter in this country and of national importance on the issue of corruption real or imagined. Could the Chairperson tell us whether they were able to find answers to the following questions when they met the Ministry:-

(1) Did they confirm whether the sister of the President, as reported in public domain, got a tender worth Kshs40 million, as affirmative action meant for the disabled?

**The Speaker** (Hon. Ethuro): Order, Senator. You need to remain relevant. This is response time; you should not generate new questions.

**Sen. (Dr.) Khalwale**: Mr. Speaker, Sir, could he confirm that she actually got that tender under those circumstances?

(2) Could he confirm that Mr. Joseph Kinyua, the Chief of Staff of the President, also directed that Kshs400 million may be taken to county hospitals, of which Kshs200 million was taken to Laikipia County Hospital for purposes of the tender of consultancy, which is the latest name in stealing money from the Government?

**Sen. Omondi**: Mr. Speaker, Sir, as a Member of the Committee on Health, I want to inform Sen. (Dr.) Khalwale. I clearly heard the Chairperson of the Committee on Health tell this House that we are still interrogating relevant people and institutions as far as this matter is concerned.

**The Speaker** (Hon. Ethuro): Order, Sen. Omondi. Whereas the Chair appreciates your desire to assist your Chairperson, for now, he has the Floor and not you. You can request to inform your Chairperson, so that he can allow you.

**Sen. (Dr.) Machage**: Thank you, Mr. Speaker, Sir. I appreciate the concern of Sen. Wetangula that the answer may not have been done in the chronological order as he desired in his request. Most of those answers are found in several documents, some of which I have already tabled and I am yet to table others. All said and done, if he so wishes that I answer them in that chronology, I beg to be given that opportunity to do it the way he wants.

Regarding Sen. (Dr.) Khalwale's question, I have clearly indicated in this House that I am yet to receive a report from the Registrar of Societies on the particulars of the individuals who own these companies. I beg for his patience. I will avail the information when it is available. I am not aware of the names he has mentioned.

**The Speaker** (Hon. Ethuro): Order, Members. Sen. (Dr.) Khalwale has raised secondary issues that are new. Let us deal with the old issues which were raised by Sen. Wetangula. Sen. Wetangula has made it abundantly clear that the Chairperson did not

respond to any issue. The Chairperson, in his response, has treated it as a chronological error; there is a whole world of difference. A chronological error means that you found the answer to question No.1 under No.6. In this case, you had 10 issues and you attempted to respond to six, and the answers are all irrelevant to the questions posed.

My ruling is that you need to respond to the questions that were put to you. The Chairperson should not have difficulty with that because he has owned that by tabling the report, he has attempted to answer the questions.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. According to the Statement that was demanded, the question under bullet No.4 was in regard to the companies that were awarded the tenders and the directors thereof. Therefore, he cannot come and give the impression that these are secondary issues. He needed to come to this House with an answer to that. We want to know the owners of this company.

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! I agree. He is not then one who said it is secondary. I am the one who said I am also disadvantaged. I do not have copies of the Statement sought and the response to the statement. The manner in which you raised the issues yourself, you did not connect the previous ones as you have done now. Therefore, they are very legitimate. However, the Chairperson is not ready to prosecute the matter. Therefore, Chairperson, you can bring the response on Thursday. He still needs some information from the Registrar of Companies.

What is it, Sen. Wetangula?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, unfortunately, I will not be around on Thursday. I request that the answer be brought tomorrow.

**The Speaker** (Hon. Ethuro): The Statement will be on the Order Paper tomorrow afternoon.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, while I note the urgency of the matter by Sen. Wetangula as well as your ruling, it will be difficult for me to accept what I may not achieve by tomorrow afternoon. I seek your order that I bring the answer on Thursday. This is the property of the House. If Sen. Wetangula will not be in the House on Thursday, he has the capacity to appoint someone to speak on his behalf in the House. I will answer to the House.

**The Speaker** (Hon. Ethuro): What is it, Sen. Wetangula?

Members, we need to make progress.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, that is preposterous. When I requested for this Statement, you directed that it be brought in two weeks. This was on 1<sup>st</sup> November, 2016. We are now on 29<sup>th</sup> November, 2016. Asking the Chairperson to bring the answer tomorrow is asking for too much. In fact, he should be feeling your wrath for the inordinate delay in bringing the answer after four weeks instead of two weeks as directed. I request that the answer be brought tomorrow. If the disjointed manner in which he has framed the answer is the issue, we can go and restructure and recast it so that we interrogate this matter fully.

**The Speaker** (Hon. Ethuro): What is it, Sen. Khaniri?

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. Did you hear the Senator for Bungoma say that what the Chairperson said was preposterous? My understanding of preposterous is utterly foolish, senseless, absurd, lack of common sense. Is he in order?

(Laughter)

**The Speaker** (Hon. Ethuro): Order, Sen. Khaniri. Can you confirm that that is the only meaning of that word?

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. I would like to confirm that, indeed, the word preposterous has got only one meaning. It means completely contrary to nature, reason or common sense, absurd, senseless or utterly foolish.

(Laughter)

**The Speaker** (Hon. Ethuro): Sen. Wetangula!

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, what the distinguished Senators for Vihiga and Kakamega Counties are not telling the House is that the word preposterous means any one of those that they are reading, not all of them. I had absolutely no reason to make reference to Sen. (Dr.) Machage as utterly foolish. I used the word preposterous to mean outrageous. In the Oxford English Dictionary, outrageous is also included in the description of preposterous.

**The Speaker** (Hon. Ethuro): What is it Sen. (Dr.) Machage?

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, Sen. Wetangula is not only the Senate Minority Leader in this House, but also one of the principals of my political coalition. This is not the first time he has exhibited this kind of character by using lots of words to insult Members in this House. Would I be in order to demand that Sen. Wetangula explains what he meant? Secondly, he should profusely apologize to me and to my political party and withdraw the remarks.

**Sen. Omondi:** On a point of Order, Mr. Speaker, Sir. Is the Senate Minority Leader in order to use un-parliamentary words that are demeaning Members of this House?

**The Speaker** (Hon. Ethuro): Order Members! If the Senate Minority Leader in the House has used an unparliamentary word, he is completely out of order. However, we are using words. The only word that has been challenged here is the word preposterous. The only two submissions I received are from people who are reading from some source that is highly suspect. They never quoted an authority by the way. Therefore, it is not authoritative, thus I cannot admit.

My understanding of the word preposterous is along the lines the Senate Minority Leader has explained. It is in terms of outrageous. That is very parliamentary. It does not demean the honourable Chairperson whom all of you know his capabilities and competences which do not need repeating. Therefore, I will give this one more chance to examine and determine the veracity of all those accusations. I will come back to the House on Thursday to confirm.

**Sen. (Dr.) Machage:** On a point of order, Speaker, Sir. Sen. Wetangula has confirmed to this House that he will not be available on Thursday. Therefore, he will not be in a position to receive your wrath.

**The Speaker** (Hon. Ethuro): Order! You are shooting yourself on your foot. You had already discounted that particular bit about Sen. Wetangula's absence or presence on Thursday. You actually suggested to him to appoint a representative. All of us have been sitting in this Plenary this afternoon. The Senate Minority Leader confirmed that his deputy party leader will be available and therefore, there will be no vacuum. He did not tell us that both of them will be away.

The discussions were on the lines of principals and co-principals and parties, thus very appropriate. I will hold you responsible to your own assertions. In any case, judgments and rulings are different. I can still make a determination on Thursday and mete the punishment another day.

Order, Members! According to Standing Order No. 31, I will allow the Majority Leader to give notice of a Procedural Motion.

### NOTICE MOTION

#### ESTABLISHMENT OF JOINT COMMITTEE ON SENATE MONITORING AND EVALUATION FUND REGULATIONS, 2016

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to give notice of the following Motion.

WHEREAS, the Parliamentary Service (Senate Monitoring and Evaluation) (Procedure for Management for Funds) Regulations, 2016 were published on 27<sup>th</sup> September, 2016 and tabled in the Senate and the National Assembly on 4<sup>th</sup> and 6<sup>th</sup>, October, 2016, respectively;

AWARE, that the Sessional Committee on Delegated Legislation of the Senate considered the said regulations resolved that they be acceded to and pursuant to Standing Order No. 214 (4) (a) of the Senate Standing Orders conveyed the said decision to the Parliamentary Service Commission;

WHEREAS, the National Assembly considered the said regulations and pursuant to the provisions of Sections 18 and 19 of the Statutory Instruments Act, 2013 annulled the Regulations entirely;

FURTHER WHEREAS, the National Assembly sent a Message to the Senate seeking concurrence to the resolution;

NOW THEREFORE, pursuant to Standing Order Nos. 215 (3) (b) and 216, the Senate resolves to establish a Joint Committee comprising of the following Senators:-

1. Sen. Kiraitu Murungi,
2. Sen. Abdirahman Hassan,
3. Sen. Beatrice Elachi,
4. Sen. (Eng.) Muriuki Karue,
5. Sen. (Dr.) Agnes Zani,
6. Sen. Billow Kerrow,
7. Sen. Stephen Sang,

8. Sen. (Prof.) Lonyangapuo,
9. Sen. Peter Mositet,
10. Sen. Judith Sijeny,
11. Sen. Gertrude Emma Mbura,
12. Sen. Janet Ong'era,
13. Sen. Kimani Wamatangi,
14. Sen. (Dr.) Bonny Khalwale and
15. Sen. Mike Mbuvi Kioko Sonko;

to consider the Parliamentary Service Senate Monitor and Evaluation Procedure for Management of Funds Regulations, 2016 and to report back within 21 days.

Thank you.

**The Speaker** (Hon. Ethuro): Proceed with the Motion.

### PROCEDURAL MOTION

#### ESTABLISHMENT OF JOINT COMMITTEE ON SENATE MONITORING AND EVALUATION FUND REGULATIONS, 2016

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir. I beg to move the following Motion.

WHEREAS, the Parliamentary Service (Senate Monitoring and Evaluation)(Procedure for Management for Funds) Regulations, 2016 were published on 27<sup>th</sup> September, 2016 and tabled in the Senate and the National Assembly on 4<sup>th</sup> and 6<sup>th</sup>, October, 2016, respectively;

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6. Sen. Billow Kerrow,

7. Sen. Stephen Sang,
8. Sen. (Prof.) Lonyangapuo,
9. Sen. Peter Mositet,
10. Sen. Judith Sijeny,
11. 11.Sen. Gertrude Emma Mbura,
12. Sen. Janet Ong'era,
13. Sen. Kimani Wamatangi,
14. Sen. (Dr.) Bonny Khalwale and
15. Sen. Mike Mbuvi Kioko Sonko

to consider the Parliamentary Service Senate Monitory and Evaluation Procedure for Management of Funds Regulations, 2016 and to report back to the Senate within 21 days.

Mr. Speaker, Sir, I do not know whether it is in order that you give me one second to consult the Minority Leader on a small item concerning this Motion so that we can pass it as expeditiously as possible.

**The Speaker** (Hon. Ethuro): Proceed.

*((Sen.(Prof.) Kindiki consulted Sen. Wetangula))*

**The Speaker** (Hon. Ethuro): What is it, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. This is a new one. What is the current status of the House?

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! You have been around and you will recall one time when one of our former Speakers was sitting at the Committee of the Whole House on the constitutional debate. He took a five minutes break. You were here with me. So, there is nothing new.

What is it, Sen. Obure? In any case, when it is a request by the Majority Leader to consult his counterpart, it can only be for the good of the House.

Proceed, Sen. Obure.

**Sen. Obure:** On a point of order, Mr. Speaker, Sir. It is not a good reflection for the House to be left in abeyance. We know they may have been consulting for the good of the House but could our two leaders be requested to do these consultations earlier rather than hold us in suspense?

**The Speaker** (Hon. Ethuro): So ordered. That is a good contribution, Sen. Obure. I hope the leaders are listening.

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. Would I be in order to congratulate the two leaders for being so wise in such a situation that they need a mutual consultation? Would I be in order to also encourage that behavior?

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Machage! I am inclined to agree with you except that I am waiting for the outcome of the consultations.

*(Laughter)*

Proceed, Majority Leader.



**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir, for indulging me. On behalf of the Minority Leader and I, I want to appreciate your indulgence. I know this is not ordinary.

Mr. Speaker, Sir, I want to thank the Members for being patient. The reason why this interruption happened – it was not deliberate – is because the Leader of Minority noted something that I had not noted about this Motion and we did not want it to suffer any setback. In particular, Members are aware of the background of this matter and its life before us. Last week, we got a communication from the Chair which sadly communicated to us that the “Lower House” had maliciously and illegally annulled the Regulations that the Senate Committee on Delegated Legislation had recommended regarding the oversight funds.

Mr. Speaker, Sir, As a result of that, it is important for us to carry this matter forward. What the Senate Minority Leader brought out was about the balance and the membership that there were a lot more Members from the Jubilee side although I have not counted. I have actually taken his word. They are ten from Jubilee side and five from the Opposition. However, I want to assure the House that the matter was done administratively than by the two of us. That is something that we can let go because of the greater good.

I want to thank the Senate Minority Leader for his magnanimity as it was not intentionally done by me or any other person. When drafting this Motion, a lot of attention was given to Members who have been involved in the fight for these funds and that is how the party balancing was lost. The resolve of this House, hon. Members, to stamp our authority on this matter is an equivocal. I do not think it should be distracted by something that has happened in this nature.

Once more, I appreciate the Senate Minority Leader’s magnanimity and I want to assure him every Member who has been proposed here has a history with this matter, not that the rest of us do not have a history. However, I want to urge those who are lucky to be nominated in this Committee to put their best feet forward to make sure that we resolve this matter with finality. I am tired of lamenting here every other time about the kind of sabotage we have seen.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. The House has heard the apology by the Senate Majority Leader on the composition. Whereas he has given him, we are now setting precedent. It might very well in future come to pass that this would be a reference that a Special Committee of the House can have such a skewed membership where the opposition has five and Government has got 10 members. I do not see any difficulty, if we must maintain our traditions, for him, in his own motion because the rules permit him, if he could change two names and ask for replacement from the opposition side, so that we do not move away from Standing Order No.1 (2).

**Sen. Sang:** On a point of order, Mr. Speaker, Sir. On several occasions in this House, we have had Motions being moved in amended version. These are serious issues because this is a matter that we need to move in a bipartisan manner. Since there are issues, we request the Senate Majority Leader to move this Motion in an amended version and ensure that all of us are reading from the same page. I know the battle ahead of us on this particular matter is very huge. If we have issues with the composition we are unlikely to make headway in terms of the other challenge ahead of us.

Would I be in order to request the other leadership of this House to move this Motion in an amended version? This will ensure that whatever needs to be adhered to is adhered to so that we have a team ready to deal with the issue ahead of us?

**The Speaker** (Hon. Ethuro): Order, Members! To respond to what Sen. (Dr.) Khalwale stated is that there is no precedent being set in terms of skewed distribution along the political parties as long as that has been undertaken with the concurrence of the parties. I will tell you this because Sen (Dr.)Khalwale has been a beneficiary of such concurrence. Hon. Members, I am only giving you observations that are factual.

So, what you are affirming here is the correct one in terms of principle. However, once there is a political agreement, they can always decide what to do.

The other route would have been that, of course, the Motion gets amended. However, this particular Motion is not subject to individual amendments. This is a Motion where you have to deal in terms of the whole; you either accept the list or reject it. So, what we have suggested to the Majority Leader is now to move the Motion in an amended version *ab initio*.

**The Senate Majority Leader** (Sen. (Prof. Kindiki): Thank you, Mr. Speaker, Sir. I beg to move the following in an amended form.

WHEREAS, the Parliamentary Service (Senate Monitoring and Evaluation)(Procedure for Management for Funds) Regulations, 2016 were published on 27<sup>th</sup> September, 2016 and tabled in the Senate and the National Assembly on 4<sup>th</sup> and 6<sup>th</sup>, October, 2016, respectively;

AWARE, that the Sessional Committee on Delegated Legislation of the Senate considered the said regulations resolved that they be acceded to and pursuant to Standing Order No. 214 (4) (a) of the Senate Standing Orders conveyed the said decision to the Parliamentary Service Commission;

WHEREAS, the National Assembly considered the said regulations and pursuant to the provisions of Sections 18 and 19 of the Statutory Instruments Act, 2013 annulled the regulations entirely;

FURTHER WHEREAS, the National Assembly sent a message to the Senate seeking concurrence to the resolution;

NOW THEREFORE, pursuant to Standing Order Nos. 215 (3) (b) and 216, the Senate resolves to establish a Joint Committee comprising of the following Senators:-

1. Sen. Kiraitu Murungi
2. Sen. Abdirahman Hassan
3. Sen. Beatrice Elachi
4. Sen. Muriuki Karue
5. Sen. (Dr.) Agnes Zani
6. Sen. Billow Kerrow
7. Sen. Stephen Sang
8. Sen. (Prof.) John Lonyangapuo
9. Sen. Peter ole Mositet
10. Sen. Judith Sijeny

11. Sen. Henry ole Ndiema
12. Sen. Janet Ong'era
13. Sen. Kimani Wamatangi
14. Sen. (Dr.) Bonny Khalwale
15. Sen. Sen. Christopher Obure

to consider the Parliamentary Service (Senate Monitoring and Evaluation) (Procedure for Management of Funds) Regulations, 2016 and to report back within 21 days.

Mr. Speaker, Sir, as I said, last week, we got some unpleasant Communication to this House, which had annulled the regulations on the Senate oversight funds. The regulations were extensively developed after a lot of work and effort by the Senate Committee on Delegated Legislation and the special Committee that had been set up under the Chairmanship of Sen. Murungi.

Once the Communication was made, Members expressed themselves and in that context, the Speaker's *Kamukunji* is scheduled for tomorrow, at 11.00 a.m. I urge Members to attend so that we can take this matter forward and address it once and for all.

Mr. Speaker, Sir, for a long time this House has been taken for granted. The fact that we are more mature politicians has been abused by various people and institutions. They think that we can sit here and entertain subversive behaviour that is threatening the order that has been established in our Constitution and law.

As I said last week, as the Senate Majority Leader, my focus and resolve remains unequivocal, focussed and undivided. This time round, we shall get a solution on this matter. This solution will outlive this Senate and assist in the entrenchment of devolution and in the creation of an enabling environment and space for the Senate of this country to function.

Mr. Speaker, Sir, I take this opportunity to thank other Members who had an occasion to comment on that Communication. My feeling is that politics will not divide us, as much the political arena is highly charged. This matter is purely institutional, and I can count on the commitment of each and every colleague, both in the Government and the Opposition sides.

Allow me to say two other things because this is a purely procedural Motion, before I ask the Senate Minority Leader to second. First, I have full faith in the membership that has been proposed. Even in the amended form, each one of us has been a vanguard and foot soldier in the fight towards securing the dignity of our House. Therefore, I urge those who have been fortunate to be nominated to put their best feet forward and help us to resolve this matter. The Senate Minority Leader and I will provide the necessary political support to making sure that the House speaks in one voice.

Mr. Speaker, Sir, finally, at the expense of repeating myself, I apologise to the House because our consultation should have happened earlier on. It was not intentional. I appreciate the indulgence of the Chair, the Senate Minority Leader and the House as we amended this Motion, so that we can pass it and have the Committee in place as soon as possible. We should adjourn on Thursday for the December Recess after we have put in place a mechanism that will ensure that by the time we resume, we would have resolved this matter once and for all. I have faith in this Committee and the Senate of the Republic

of Kenya. I reiterate my firm and undivided commitment and loyalty to this House and the course of devolution.

With those few remarks, I beg to move, and request the Senate Minority Leader to second.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir. I second the Motion. Allow me to thank you for being soft on us and allowing us to consult even in the process of proceedings. That is the way to go, so that we can make progress. Allow me too to thank the Senate Majority Leader for his humility in accepting whenever he finds that the step taken is not the right one. With that humility that he continuously displays in this House - and I dare say I cannot say the same of his deputy- we are able to make progress.

**Sen. Sang:** On a point of order, Mr. Speaker, Sir. Is the Senate Minority Leader in order to try and create a wedge between the Senate Majority Leader and his deputy, when we know they read from the same script? In fact, the Senate Majority Leader has trained his deputy properly and inculcated all the qualities that the Senate Majority Leader has. Is he in order to create a wedge between the Senate Majority Leader and his deputy, when we have always respected him and know that he reads from the same script with his Senate Deputy Minority Leader?

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. I stand under Standing Order No. 90 (3). Is the Senate Minority Leader in order to refer to a Senator in this House in a derogatory manner? We all know who Senate Deputy Majority Leader is.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I do not understand Sen. Sang and Sen. (Dr.) Machage. How does my saying that the Senate Majority Leader has displayed great humility and that I cannot say the same of his deputy drive a wedge between them? This is my perception, understanding and appreciation of the two gentlemen.

**The Speaker** (Hon. Ethuro): Order, Senators! First, this debate should be concluded because it is an agreed position.

Secondly, Sen. (Dr.) Machage referred to Standing Order No. 90 (3) which provides that:-

“It shall be out order to use offensive or insulting language whether in respect of Senators or other persons.”

I do not understand how relativity can be offensive. When we talk of ‘greater,’ the next position is still great. Sen. Sang, by your own admission the instructor and the student cannot be the same.

*(Laughter)*

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir, for that display of enormous wisdom.

I second the Motion in an amended form. The amendment is that at No.11 we are putting Sen. Henry Tiolo Ndiema, the Senator for Trans Nzoia. At No.15, we are putting the name of the distinguished Senator for Kisii, Sen. Christopher Obure, in place of Sen. Sonko. This is a matter that we have a common position on and I do not want to belabour too much.

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Mr. Speaker, Sir, this House is at crossroads and in a state of agony in more ways than one; in the manner in which our mandate has been routinely undermined. Last week, we spoke strongly about this unmitigated energy that is being weighed on us.

I thank the Senate Majority Leader for being firm on the matter to the extent that we are in agreement that whether we hang jointly or separately; either way we shall be hanging. This House must stand and defend itself because nobody else will do it.

Mr. Speaker, Sir, this House must stand and make itself relevant because nobody else will. We have had resistance - and you have said it even from the Chair- from every direction and quarter. Injunctions at the law courts against us are issued like cakes in the market.

We have the Council of Governors (CoG) with a war chest that is singularly put to resist the Senate. We have insulting governors who cannot come to the Senate on invitation or summons even if they are within the law and the Constitution. We have a sister House, the “lower” House, that sees this House as an irrelevant appendage to the institution of Parliament and many others. The relevance of this House shall and will not be pronounced and ring-fenced by anybody other than this House itself. That is why I am happy to see that the committee that we are putting in place is a committee of members who have been in the process of dealing with the issue about this oversight fund. In fact, Sen. Murungi, the first on the list has been the Chair. I hope that if there will be need for Co-Chairs, he is given the privilege and opportunity to continue with that job.

Further, talk of driving a wedge. Whoever drafted the original Motion was trying to bring unnecessary and unhelpful difficulties between the Senate Majority Leader and I because the normal operation of things in this House is that where you are 15, it will be eight from across the Floor and seven from this side of the House. I am happy that you have allowed us to do so, so that we send a Committee with membership that is balanced and representative. I do not want to cast aspersions on anybody, but some of the Members that had been listed have a history of not attending meetings at all. If they were to go to that negotiation Committee and a vote is necessary, we would be disadvantaged *ab initio* by having one or two Members whose notoriety in non-attendance of meetings is a matter of public knowledge.

This team has one singular duty; to defend the interest and integrity of this House. This House is not on a begging mission. I can see three Members of the Committee here; Sen. (Eng.) Muriuki, Sen. Obure and Sen. (Dr.) Khalwale. Remember the words of the distinguished revolutionary, Che Guevara, where he said: “I would rather die standing than live on my knees.” This House should take that adage that we would rather die standing than live on our knees. To do anything else is to reduce this House to what some people wanted it to be when the Constitution was being crafted. Some called it a House of chiefs, others a House of elders and others a House of provinces and all manner of things. Everybody wanted to avoid the distinguished title “Senate” or “Upper House”.

Be that as it may, when the proper and serious audit of the Constitution comes into place, and there will be men and women of honour, valor and candor to review the Constitution, if wisdom prevails, the dignity and status of this House will be crafted properly in the Constitution. This House is a House of review. Like in all other jurisdictions and we have had an opportunity to visit several of them, this House is, so to speak in lose terms, an appellate House. In proper jurisdiction, all Bills from the National

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Assembly must come to this House for review before they go to the Head of State for assent. This time will come.

Anybody who wants to wish away, belittle or undermine the Senate is on a slippery road to nowhere because the people of this country, even out there, respect this House more than any other legislative institution in this country. You hear it from their speeches, reactions and read them from their social correspondence and hear from their radio talks. It is only from this House that you hear somebody from Embu County crying: “We have a problem, where is our Senator?” It is only from this House that you will hear from Nyandarua County, a caller to a radio station saying: “We have a problem. Where is our Senator?” Nobody cries to say: “Where is our so-and-so?” It is because they know that in this House, we are men and women who have been tested and proven to be able to lead this country somewhere.

That is why between the two Houses, this is the only one that can boast of having a serious and credible presidential candidate being put out there to compete with others for the leadership of this country. You must be very proud that after the next elections, you may have one of your own from this House elsewhere that will be looking at this House differently and will assist in having this House be what it should be. I urge---

**Hon. Senators:** Where is “elsewhere”?

**The Senate Minority Leader** (Sen. Wetangula): State House, if you want to hear.

*(Loud consultations)*

This list and our colleagues who have been given the opportunity to serve, I urge you that you all; Sen. (Eng.) Muriuki, you are the doyen of devolution and the father of the Constituencies Development Fund (CDF) that has now been bastardised into a different thing. I urge all the Members because nobody can compromise Sen. (Dr.) Khalwale, Sen. Obure, Sen. Murungi, Sen. Abdirahman or anybody, go and represent this House with all the capacity that you have, to come up with a solution that will take us to the next level.

We are sick and tired of this ping pong. These cock fights are not helpful. In fact, we look bad in the eyes of the public constantly squabbling and others call it “sibling rivalry”. We have absolutely no rivalry with the “lower” House. The “lower” House is a subordinate to the “upper” House and the “upper” House ought to be a House of review for the “lower” House. So, where is the rivalry? We pursue and discharge different constitutional mandates.

With those few remarks, I beg to second.

.... *(Words expunged at the Order of the Hon. Speaker)*

**The Speaker** (Hon. Ethuro): Hon. Members, the last words by The Senate Minority Leader should be expunged from the HANSARD because they are irrelevant to seconding this Motion.

*(Question proposed)*

*(Interruption of debate on Motion)*

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Before we proceed, allow me to make one Communication because I have to attend to other matters.

### COMMUNICATION FROM THE CHAIR

#### PARTICIPATION AT THE SECOND HIGH LEVEL MEETING OF THE GLOBAL PARTNERSHIP FOR EFFECTIVE DEVELOPMENT CO-OPERATION

**The Speaker** (Hon. Ethuro): Hon. Senators, this is to notify you that the Second High Level Meeting (HLM2) of the Global Partnership towards inclusive and accelerated implementation of the 2030 Agenda is taking place in Nairobi, Kenya, since Monday 28<sup>th</sup> November and is scheduled to end on 1<sup>st</sup> December, 2016.

The Global Partnership for Effective Development Co-operation (GPEDC) is an inclusive multi-stakeholder partnership and brings together the full range of development factors to ensure that finance, knowledge and policy have maximum impact on development results. Through multi-stakeholder platform, the global partnership provides practical support and guidance and shares knowledge to boost development impact with a strong country focus to implement internationally agreed effectiveness principles at country level.

Hon. Senators, the global partnership tracks progress in the implementation of Busan commitments for more effective development co-operation through its monitoring framework, comprising a set of ten indicators which focus on strengthening, developing country institutions, increasing transparency and predictability of development co-operation and enhancing gender equality as well as supporting greater involvement of the civil society, parliaments and private sector in development efforts.

The monitoring framework is currently being refined to fully reflect the 2030 Agenda and will contribute to the review of targets for Sustainable Development Goals (SDGs) Nos.5 and 17 and implementation of the financing for development agreements. The HLM2 aims to amplify the positive impact of development co-operation over the next 15 years.

Hon Senators, to strengthen the voice of parliaments at the HLM2, the Parliament of Kenya, the Inter-parliamentary Union (IPU) and the Association of European Parliamentarians with Africa (AWEPA) have organized a parliamentary forum today, 29<sup>th</sup> November, 2016. This meeting is expected to adopt a parliamentary statement to be shared at the HLM2 that will build on the conclusions of a similar forum during the first HLM.

The Speaker of the Senate had the opportunity to grace the official opening of the session this morning at the Kenya International Convention Centre (KICC), where the Parliament of Kenya was also ably represented. I want to sincerely thank and commend the Senators and Members of the National Assembly who participated at the forum.

I thank you.

Proceed, Sen. Mugo.

*(Resumption of Debate on the Motion)*

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**Sen. Mugo:** Thank you, Mr. Speaker, Sir, for allowing me to contribute to this Motion, which I support fully. It is unfortunate that matters have come to this. I believe in the devolved governments. Senators have a key role to play in oversighting the counties, so that they can be accountable and make sure that the programmes carried out by the counties have the mandate of the people.

I congratulate the Members who have been nominated to serve in this Committee. I encourage them to put more effort to reverse this very unfortunate situation. I would like to assure this House, without any fear of contradiction, that the Parliamentary Service Commission fully supports this fund. When we heard the news that the “Lower House” had annulled the regulations, every commissioner, including the ones from the “Lower House” was angry and disappointed. All commissioners agreed that Senators have a critical role to play in over sighting the counties.

As a Commission, we had identified where the funds would come from. We also insisted that the money should be properly utilised because the term of the Senators is coming to an end. I encourage those who will speak for this House to speak with vigour and authority, knowing that they have the full support of the Parliamentary Service Commission.

Mr. Temporary Speaker, Sir, some of the reasons that were given to the commissioners did not carry any weight. One of the reasons was that the Nominated Members should not be given the fund. We put it to them that it is the Senators to complain about that. The “Lower House” should not complain on behalf of the Senators.

I want to re-assure this House that as far as the Parliamentary Service Commission and its leadership is concerned, it is committed to this Fund.

Mr. Speaker, Sir, I would like to inform my brother, Sen. Wetangula, before he walks out that I fully agree with him that we need to amend the Constitution to give the Senate its true position and image. We can drive that change if we all agree this is what we want without taking partisan positions. We all want the Senate to get its real status. In fact, when we go benchmarking, people out there cannot understand how our Senate is not the Upper House.

I would also like to remind my brother here and all those who were with me in the Tenth Parliament that the mistake came from the Tenth Parliament which we were also part of. Many people said many things that demeaned the status of this House. Therefore, we carry part of the blame. However, we can correct that image. Let us together change the Constitution.

I support the amended Motion.

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Machage!

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I will quote Article 96(3) of the Constitution. It states:-

“The Senate determines the allocation of national revenue among counties, as provided in Article 217, and exercises oversight over national revenue allocated to the county governments.”

It says, exercises oversight. Any function that has been prescribed by the Constitution must be funded. That is a function that was prescribed by this very

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Constitution that the Members of the “Lower House” so nobly swore to defend. Lest they have forgotten, I remind them that the same Constitution on Chapter 1, Article 2(1) says that the Constitution is the supreme law of the Republic and binds all persons and state organs at both levels of Government. That includes the National Assembly. They are bound by this Constitution. Article 2(3) says that the validity or legality of the Constitution is not subject to challenge by anybody before any court or any other state organ.

The Senate has a function so prescribed. The “Lower House” has a function also prescribed. We forget that Chapter 1 of the Constitution, Article 3 says that every person has an obligation to respect, uphold and defend this Constitution. Their actions are totally unconstitutional and unacceptable. Maybe that is what we would refer to as “preposterous”.

*(Laughter)*

I once served in the same Cabinet with the late John Michuki - God rest his soul in peace - who once said that if you rattle a snake, be ready to be bitten”

A snake might be short and lazy, but if one rattles it, I cannot describe the effect thereafter. The Constitution prescribed the formation of Commissions in which the Parliamentary Service Commission (PSC) belongs. It is a duty we are calling upon through a committee we are creating today that the PSC wakes up and performs the function that will be so identified.

I support the list of names of Members of this House that have been nominated by the two sides of the House. They are able legislators and elders. Unlike in the “Lower House”, being an elder here is not an abuse. Those Members who have been so nominated are elders that will serve us for that purpose.

I support.

**The Speaker** (Hon. Ethuro): Sen. (Eng.) Muriuki!

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, I stand to support this very important Motion. As the Senate of the Republic of Kenya, we find ourselves in a very awkward position. This is the first step. We have done many things before, but this is the first cut off point to decide whether we will go anywhere as a Senate or not. Article 186 of the Constitution created two Houses of Parliament; the Senate and the National Assembly and their functions are clearly defined.

The national funds, that is the Budget of the national Government is taken to the National Assembly, deliberately so by the framers of the Constitution which we approved. The funds which are going to the counties are brought to this House for allocation. Whether it is by formula or whichever method we go by, the fact is that this House is the one which allocates funds to various counties. All over the world, wherever there is democracy, the legislature that allocates funds is the same to oversight.

More so, Article 196 of the Constitution is very clear. This House is not only allocating funds to various counties but also our duty to oversight over those funds.

The Senate Majority Leader and the Senate Minority Leader have left the House.

*(Sen. Murkomen walked into the Chamber)*

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The Senate Deputy Majority Leader has arrived. However, it is not a good habit. He moved the Motion and then walked out. The Senate Minority Leader seconded and moved out. There are some sentiments and issues we want to raise. They should be here to hear them.

**The Speaker** (Hon. Ethuro): What is it, Sen. Murkomen?

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. While it is nice and good order for all Senators to sit here and listen to their colleagues, this is a House of records. The Senator for Nyandarua, Sen. (Eng.) Muriuki, who we respect as a leader in this House, should be aware that when he speaks, he speaks for record and for the nation. He should not worry who it suits and who it does not.

By the way, while attending to his responsibilities in his office, the Senate Majority Leader is also listening to the debate. This House enabled his office, including your office to follow proceedings in this House. I just want to add that I came from the House of Commons and the House of Lords where Members, whether in the Chambers or not, all the precincts or the building are enabled to ensure that Senators and Members of Parliament follow the proceedings.

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, it is good that the Deputy Majority Leader has just come from a house where those facilities are there. Whether you are the majority leading an important Motion like this or another Member is fair. Sen. Murkomen calls it good practice and it is true.

Having said that, I wish to say, when this annulment – I do not know whether it was an annulment or a resolution to annul because the regulations had not come into place, the Parliamentary Service Commission had not effected them. Nonetheless, when this resolution came, if you recall, the media in this country especially two main newspapers were all over the place saying how the National Assembly was right to annul this and that the Senate has no business overseeing funds in the counties.

*[The Speaker (Hon. Ethuro) left the Chair]*

*[The Temporary Speaker (Sen. (Dr.) Machage) took the Chair]*

Mr. Temporary Speaker, Sir, in the County Public Accounts and Investments Committee, which I have had an opportunity to serve in, when we invite the governor of a particular county, say, the Governor for Kisii County, we also invite the Senator for Kisii County. The reason why we do so is that he not only contributes to the deliberations in the meeting but he should also be in a position to give an insight to the issues being raised pertaining to that county. We will expect the Senator for that county to be useful in those deliberations when matters of that county are discussed. We must facilitate him to move around, scrutinize things and interrogate things to the extent that he is able to contribute to County Public Accounts and Investments Committee (CPAIC) or any other interrogative meeting which might happen with regard to the counties.

Mr. Temporary Speaker, Sir, that is the importance of the formation of this Committee and having this Fund operational however long it takes. I would like to urge Members to take this matter to its logical conclusion. If we do not have a way of the

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Senator elected to represent the county to look at the matters where he/she is elected, that person is not useful to the county. Never mind the funds but even other matters. Sometimes, we get border issues and various things that might come. The Senator of that county must be facilitated to oversight and look around the county where he represents.

Mr. Temporary Speaker, Sir, there are also things which are not necessarily to do with funds oversight *per se* but they are all related. We end up with situations where you find a project has been funded by the county government and the national Government through the National Government Constituencies Development Fund (NGCDF). We need to facilitate the person who oversees public funds to ensure that public funds we allocate to the counties are used for the intended purpose. There is no any other way other than facilitating the Senator of that county.

Mr. Temporary Speaker, Sir, I support the list of the Members who have been nominated to serve in this Committee and I believe they are capable of performing their duties. The issue of attendance which has not been cited by other Members; I would also like to join that voice. When we sit in that Committee, let us take time. We have other functions but this is the life of the Senate. Let us be available and attend these meetings so that we can get to the conclusion.

As I conclude, Mr. Temporary Speaker, Sir, I want to say that the National Treasury has fully supported this initiative from the beginning. This effort has been going on for the nearly two years. The first time that we interacted with the Cabinet Secretary (CS) and the Principal Secretary (PS) for National Treasury, they were supportive. In fact, they have guided us on what needs to be done. Otherwise, how else are we going to oversight funds which the Senate is allocating to the various counties?

With those few remarks, I beg to support.

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I rise to support this Motion. Before I do so, I am reminded in my mind that this is the first time I am speaking, in the last few days after two disastrous things have happened in East Africa. I want to use this opportunity to register my sympathy and send condolences to family and friends of the people of Mumias in Kakamega County who were physically injured, maimed, lost lives and raped by police forces in the name of trying to recover seven guns that had been lost at a police station. Similarly, the people of Kasese in Uganda, 62 people have been massacred under circumstances that suggest excessive use of force by security forces.

Mr. Temporary Speaker, Sir, the first point I will speak to is the composition of this Committee. It could have been better. We are now coming to the end of the life of this Senate and we know each other better. I want to talk about two people in this Committee. I am glad that – allow me to call him Senator *mzee* – the Senator for Kisii County has made it to the list. Not many Kenyans especially those in the National Assembly know that this is a leader in this country who fast ran for Parliament in 1969 when I was nine years old. The Senator has served this country as a Minister for Finance, a Minister for Foreign Affairs, a Minister for Agriculture, a Minister for Industrialization and his last service was Minister for Roads and Public Works.

Mr. Temporary Speaker, Sir, I want to speak about myself. I want to thank the leadership of this House for giving me the opportunity to sit on this critical Committee. I want to assure this House that I will not disappoint just in the same way I was given the

privilege of chairing the first impeachment Committee and we delivered. Just in the same way I was given the privilege to sit on the Parliamentary Joint Committee that reviewed matters concerning the Independent Electoral and Boundaries Commission (IEBC) and we delivered. I have no doubt that I am going to deliver on this one.

Mr. Temporary Speaker, Sir, where did the rain start beating us on this thing? It is because we refused to speak in this House and in public to a non-constitutional provision in this country called CDF. There is no room for CDF. CDF is money meant to go to constituencies which exist in counties. All of us know CDF has made a difference. We needed to align it to the Constitution so that the money is given to the governor as a conditional allocation for onward transmission to the constituencies. We did not do this and allowed Members of the National Assembly to engage a gear of competition. I have been talking to my senior here, Sen. Obure, whom I have described and he tells me how we wish we had started from there.

Mr. Temporary Speaker, Sir, it is because of this that MPs started competing with governors, and Women Representatives wanted to join. I do not know what they did to the President. They were also given money. If you ask them what they are using the money for, you hear stories which you do not want to write in your autobiography if you were one such a leader. This brings me to the point of oversight.

I want Members to remember that even the County Public Accounts and Investments Committee was never in the Standing Orders of this House. We had to deliberately create it. Somebody at the beginning never wanted this Senate – in spite of the provisions of Article 96 (3) – to oversight monies going to the counties.

So, I support this Fund not because it is CDF. In fact, if I knew or if somebody told me that you want to give me some money to go and start building classrooms, or health centres in Kakamega County, I would refuse because it is a county of two million people, 12 constituencies, 60 wards and 289 sub-locations. What amount of money can you give me that can make me do what the governor is supposed to do?

We would like this little fund to enable the Senator to follow projects and programmes in the county real-time. What do I mean? I mean I look into the future. I see a future, with all due respect to the Jubilee Government, where after the next election we in the opposition, CORD, shall provide this country with a President. It could be that that President will be Baba. It could be that that President will be His Excellency Kalonzo Musyoka. It could very well be that that President will be Moses Masika Wetangula. I understand when the man I admire, Sen. Kiraitu, mocks me. So was Donald Trump mocked by the honchos of not just the Democratic Party, but even from the Republican Party.

**Sen. Sang:** Mr. Temporary Speaker, Sir, is Sen. (Dr.) Khalwale in order to mislead us that Donald Trump was mocked as if to give comparison that we are doing that on this other side when we know that they are the ones actually who mocked Donald Trump? Those of us on this side, sympathized with him and we gave him the moral support. Actually, their candidate lost, but ours won.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! You are both out of Order! I would like to draw you to Standing Order No.109 on irrelevance and repetition. Please, stick to the Motion.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. It does not just end there. I am very honest about some of these things.

I also sleep praying that the elections for next year, because you cannot force people, that I win the election to be the Governor of Kakamega.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! I may order you to read loudly Standing Order No.109. However, I will save you on that. Please, stick to the Motion.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I will not deviate from the Motion.

The point I am building, and if you will bear with me, is that I am seeing something beyond my speech. I am seeing why in spite of not being the one who will be the Senator in the office in Kakamega, why I need this Senator who will oversight me in Kakamega to be so equipped.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well that is properly said. What I do not want is this House to be used for campaigns.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. So, that future that I see where the President will be CORD and the Governor of Kakamega will be Bonny Khalwale. I see a future where the Senator is capacitated enough to oversight me real-time because I will have nothing to hide.

I see a future where from day one, I would have room to give life to the thoughts of young Stephen Sang, Senator for Nandi; that is I have an opportunity to invite the County Development Forum Membership. How would I ever run a huge county like Kakamega without support from the 12 Members of Parliament or without support from the 60 members of the county assembly together with the nominated ones who come to 87 MCAs? That answer is in this Fund. I want to be in that Fund together with my county secretary as secretaries to the Board and the Senator who knows it all about the money that they bring from here to sit in the Chair so that they give us the opportunity on how best we can all move our county together.

Imagine in the Financial Year 2016/2017, Kakamega County is set to get a whopping Kshs11.6 billion yet you want to leave that colossal sum of money in the hands of somebody who has bragged publicly that Kakamega is not like Embu or Murang'a where MCAs can impeach him. If that is the kind of governor I would bring into our office, then let me have a serious Senator who would wake me up from that kind of slumber.

I support this Fund and I have a lot of time and thanks for Sen. Kiraitu for the work they have put into this work. I will work with you. If it means we speak English, I will do it to push the cause. If it means we speak Kiswahili, I will make an attempt. If you say that I do it in Luhya, you will not believe the results, that is where I am perfect. I can engage in many tools, including the tools of bullfighting, so that we save this House.

Mr. Temporary Speaker, Sir, I had an opportunity to go to the Republic of Poland led by the Speaker, Hon. Ekwere Ekwere, and there is only one word that I came home with. My takeaway was the Senate is a House of reflection. You reflect. We want to reflect on the budget, we want to reflect on the laws, we want to reflect on oversight and we want to reflect on where we want to take our children.

In conclusion, is the issue of reflection. Imagine if in Uganda, they were having a Senate and that King whose palace was attacked had a Senator, then the House of reflection would have told the national Government that it is not a threat, it is just a King with excited agitating security guard. I am privileged you, my colleagues Senators and I, that we are serving at this very high level in our lives and let not our service be in vain.

I support.

**Hon. Senator:** He has just come!

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! He has just come but he notified me before you did.

**Sen. Sang:** Mr. Temporary Speaker, Sir, I rise to support this Motion. Sen. Kiraitu had not made a request and so I did. It should be clear that you gave me in order of merits and not on any other account.

I wish to support by stating clearly that it is an important Motion. From Kshs200 billion, we are now sending more than Kshs300 to the counties. Devolution was about service delivery and that is why if you look at the Fourth Schedule of the Constitution, we gave the county governments the functions that touch on ordinary *mwananchi*. We are talking about Early Childhood Development (ECD), infrastructure for county roads and health care service provision. This is an agriculture economy and thus need for trade development in the counties. We gave them the mandate to deal with some of the important and crucial issues touching on ordinary *mwananchi* to the county governments

Mr. Temporary Speaker, Sir, the billions of money that we send to counties must be directed towards the same so that the citizens who voted for a new Constitution must benefit from it. If you look at the work of the Senate, the Constitution gives us three major roles. First, is protecting and serving the interests of the counties, sending resources to counties and oversight.

This House, with regard to legislating to support devolution, has done exceptionally well. However, we have had a challenge between us and the National Assembly. We now have over 28 Bills, approved and passed by this House that are pending before the National Assembly. I have sponsored four Bills that are now at the National Assembly. They have never had an opportunity to be scheduled for processing. That is why the responsibility of enacting legislation given to this House has been undermined by the National Assembly.

We hope that moving forward, the Members of the National Assembly will appreciate that we have a two-Chamber Parliament.

If counties and the sub-counties are supported by various legislations, they will go along away in ensuring that their constituents get the services they require. That is with regard to legislation. This House has continuously pushed the amount of resources sent to counties from an initial of Kshs200 billion to the current Kshs300 billion and more. It means this House has risen to the occasion and ensured that our county governments are resourced.

Mr. Temporary Speaker, Sir, the third function given to this House is that of oversight. It is in furtherance of that particular responsibility that this House has had time to negotiate with the Parliamentary Service Commission (PSC), Members of the National Assembly and the National Treasury. It is sad that this Senate has been taken in circles. We have engaged all these institutions with utmost good faith but we got a rude shock

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when Members of the National Assembly through the Committee on Delegated Legislation rubbished and annulled in entirety the regulations that we worked together to develop.

We initially had these regulations under the Public Finance and Management Act (PFMA) but they told us that it was not the right way. Then, we had different arguments but we agreed that we anchor it under the Parliamentary Service Commission. When we did that, they took us back. That is why we are here today discussing regulations that were discussed mutually between the two Committees and the Houses, but they were rejected. We are giving the responsibility to this Committee to go and do a final attempt. What we are pursuing right now, it is unlikely that we shall achieve this and the current Senators will benefit from this Fund. However, we should not tire. We have to ensure that the next Senate will have this infrastructure.

Mr. Temporary Speaker, Sir, a number of us in this House have expressed interest in shifting from the current position in the Senate to the counties. However, if I get the opportunity to serve as the Governor of the Nandi County, I would want to have a Senate as a House that is properly equipped with the necessary capacity to carry out oversight. I wish the Members of the National Assembly, Members of county assemblies and their executive arm will appreciate the role that monitoring and evaluation will do in the counties.

I sponsored a Bill in this House; that is the County Development Boards Bill. Some of the issues that will send home most of the incumbent governors is the lack of the coordination and consultation and poor priorities in our counties. If the county development boards had been established, I can assure you that few of the Senators would have developed the intentions of vying for gubernatorial positions. It is most likely that the billions of shillings that were allocated to our counties would have been put into proper use.

Mr. Temporary Speaker, Sir, how useful is it for a county government to spend resources in buying curtains for hospitals when the same facilities do not have drugs? How does it make sense for a county government to spend millions of resources to buy ambulances to take people from the villages all the way to a referral hospital when their own county facilities are not working? How else will you ensure that quack doctors do not find their way into our county facilities?

In the case of Nandi County, we were in the news for the wrong reasons. A quack doctor claims that he had performed various successful caesarean sections when the truth is that many mothers have suffered under the hands of this quack doctor. When a whistleblower raised the issue that the person was not properly trained, the county government promoted him to the position of a medical superintendent. This kind of blatant disregard for the law can only be checked if this House is supported to do its work.

The county assemblies have the legal infrastructure. They have the law on their side. Nobody has challenged the mandate of the county assemblies. However, they do not have the political muscle to hold governors accountable. They do not have the political muscle. In this House, the law is weak in terms of supporting this House to carry out oversight but we have the political muscle to hold governors accountable. That is why you have seen governors running around trying to use the law to avoid accountability by this House.

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Mr. Temporary Speaker, Sir, I went last Sunday to a church fundraising in Kepeloi and I visited Kepeloi Health Centre. I was shocked that the maternity ward had no beddings for our mothers. When I called the County Director of Medical Services, he told me that there were over 300 beds lying within the county referral hospital. Nobody has taken the initiative of ensuring that the health facilities in the villages are equipped with the necessary support.

If we had support for Senators, they would commission a survey and check the way the counties are running around and executing their budgets. We would have identified some of these loopholes in good time to ensure that county residents get necessary facilities.

Mr. Temporary Speaker, Sir, I congratulate Sen. Murungi who is leading this team for his patience. Some of us ran out of patience long time ago when we realised that the Committee in the National Assembly was taking us round in circles. Sen. Murungi has been faithful to this course and pursued it. This is one battle that the Senate should not allow itself to lose. It is about the prosperity of this country and this House. We need to ensure that we set the right infrastructure for the next Senate and give them the necessary support to carry out their three responsibilities.

I have a request for Senators who might succeed to be elected governors. I hope we will not have the same story in this House next year when the same characters who have been in this House raising issues will then be the ones who will be forced to appear before the County Public Accounts and Investments Committee through warrants of arrest. I ask Sen. Murungi who will be the Governor for Meru, Sen. (Dr.) Khalwale who will be the Governor for Kakamega and myself, that we must be able to show magnanimity and fidelity to the law. In fact, if they believed in the Sang law that we passed in this House, we would be far as a country.

I would want to see Sen. Murungi being the Secretary of the Meru County Development Board and Hon. Mithika Linturi chairing that board and ensuring that Meru County gets the kind of support and development that is needed. We need to run an all-inclusive governments in counties. I am sure that we were not power hungry as Senators when we passed that law. However, we believed in it and we want to ensure that we implement it.

**Sen. Murungi:** On a point of information, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Sang, do you accept to be informed?

**Sen. Sang:** Yes, Mr. Temporary Speaker, Sir.

**Sen. Murungi:** Mr. Temporary Speaker, Sir, it is true we were all very disappointed when this House passed the Sang Bill establishing the County Development Boards across all the counties. That Bill was passed in the National Assembly too and assented to by the President. However, these rogue governors ganged up and went to court and blocked its implementation. I want to assure Sen. Sang that immediately I become the Governor for Meru County, whether that law is still in court or not, we will establish the Meru County Development Board and the Governor, Kiraitu Murungi, will be the secretary and the Senator for Meru, Mithika Linturi, will be the Chairperson.

*(Laughter)*

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**The Temporary Speaker** (Sen. (Dr.) Machage): Order! I advised that this House should not be used as a floor for campaign for some dreams. I do not want to invoke the Standing Orders of irrelevance on that. Please, even if you campaign, do it just a little and not too much.

**Sen. Cheruiyot:** On a point of order, Mr. Temporary Speaker, Sir. I just want to confirm with Sen. Sang whether he is a seer such that he has foreseen who will be elected Governor and Senator for Meru. To the best of our knowledge, ---

**The Temporary Speaker** (Sen. (Dr.) Machage): Could you frame your point of order properly; otherwise, I will rule you out of order?

**Sen. Cheruiyot:** Mr. Temporary Speaker, Sir, is Sen. Sang in order to foresee what may happen in Meru County next year? It would be in order to inform the House whether he has some documents or a gift in foretelling. Maybe he can also serve well to inform us in this House whether we will come back or not. We know ---

**The Temporary Speaker** (Sen. (Dr.) Machage): Whereas it is juicy, the only problem is that Sen. Sang was not on his feet when you raised that order. So, I rule you out of order.

*(Laughter)*

**Sen. Sang:** Mr. Temporary Speaker, Sir, I thank Sen. Murungi for that information. We are political human beings, especially in this Senate and we know what is happening in this country. Therefore, what Sen. Murungi has said is not far from the truth. I am sure that that will be confirmed in due course.

I ask this Committee to work with the National Assembly with exceptional speed and give the final push so that we can have oversight resources given to counties. This is so that Sen. Cheruiyot for Kericho County in the Twelfth Parliament should have resources to hold his governor accountable.

I beg to support.

**The Temporary Speaker** (Sen. (Dr.) Machage): There is a Swahili saying which I will remind the Members. It says “*Usikate kanzu kabla mtoto hajazaliwa.*” *Tafakari.*

**Sen. Obure:** Mr. Temporary Speaker, Sir, thank you very much for this opportunity. First of all, I take this early opportunity to thank Sen. (Dr.) Khalwale for the kind words that he said in reference to myself. I feel very humbled.

This Motion is about devolution and how to strengthen it in order to meet the hopes and aspirations of Kenyans wherever they live. One of the major functions of Senators is to oversight the work of the county governments; to oversight their programmes, activities and projects so that we can ensure the resources allocated are properly and effectively utilized to meet the objectives of devolution mainly to improve the welfare of our people. We are all aware of what has been going on in the counties. We see high level of corruption, misallocation of resources and empty promises which have been given in the last three or four years. In summary, we all know that there is nothing to show on the ground in the last four years. This is largely so because we have not been able to undertake that aspect of our role; namely, oversight.

Mr. Temporary Speaker, Sir, it is also the duty of all of us in this Senate to identify the mess that is going on in our counties. More importantly, it is also our duty to stop this mess. However, how can we, as Senators, carry out our oversight roles when we have not been provided with resources to enable us do so? For example, we know that there are Senators who have as many as 12 constituencies in their counties. How do you expect these Senators to move around in each of those constituencies, supervising the various projects and activities which are going on?

I come from a county with nine constituencies and 45 wards. My remuneration in my capacity as a Senator is equal to that of a single Member of Parliament (MP) of the National Assembly out of the nine. My remuneration as a Senator elected by nine constituencies with 45 wards is the same as a Member of the National Assembly who has three wards. How can we possibly be equated in terms of remuneration, yet I am expected to move around each constituency to supervise projects and oversight the work of the county government? It is grossly unfair. I see no logic or consideration whatsoever in this kind of arrangement.

Mr. Temporary Speaker, Sir, I take this opportunity to thank Sen. Kiraitu Murungi for doing a lot work and patiently soldiering on to actualize the desire for Members of the Senate to be facilitated to perform their oversight role.

I am happy that this Motion is before us. I am also happy to see that the membership of the proposed Committee is made up of highly respected Members of this Senate; people who are knowledgeable and passionate about the task ahead. I am glad to say that these Members are up to the task. I am also delighted that I have been proposed to serve in this Committee. I undertake to commit myself to work diligently to restore the dignity of the Senate. I hope that working together with my colleagues, we can deliver the expectations of this House and for once make sure that this House and its Members are enabled to do the constitutional function assigned to them under our Constitution.

Mr. Temporary Speaker, Sir, I support.

**Sen. Murungi:** Thank you, Mr. Temporary Speaker, Sir, for recognizing me to speak to this important Motion in which I have been involved for the last one-and-a-half years. The journey that we have travelled is painful. In my own analysis, what we are dealing with is more than meets the eye. We are dealing with a serious case of mischief, dishonesty and dishonourable conduct among Members of Parliament.

If I can retrace the steps, for purposes of record, the journey begun when upon reading the Constitution, the Senate was convinced that for us to control the plunder, theft and wastage of resources in our counties, it was necessary to empower the Senate with necessary resources to enable it to carry out its oversight functions under Article 96 of the Constitution. After several *kamukunji* meetings, the Senate formally appointed the Senate Oversight Fund Committee chaired by myself and deputized by the able Sen. (Dr.) Zani who supported me and other committed Members of this House.

Mr. Temporary Speaker, Sir, I must thank the lawyers provided by the Parliamentary Service Commission and the Parliamentary Budget Office who worked with us to develop the initial regulations, which were taken to the Parliamentary Service Commission. The Parliamentary Service Commission approved those regulations and their Chairman, who is the Speaker of the National Assembly, signed them. Thereafter, they were published and brought to this House for approval. The same regulations were

used to access the Kshs1 billion, which was approved after quite a lot of struggle and initial rejection by the Budget and Appropriations Committee of the National Assembly. As I speak, there is Kshs1 billion for Senate oversight within the funds allocated to the Parliamentary Service Commission.

Mr. Temporary Speaker, Sir, what we have now is merely a procedural struggle of how the Senate will access the money, which is already within the provisions of the Parliamentary Service Commission. The initial regulations were made under Section 24 of the Public Finance Management Act. When the regulations were published, they were taken to the Committee on Delegated Legislation of the National Assembly. They invited us for a meeting, which we attended with the lawyers of the Commission who had helped us to draft the regulations, and they came with their own lawyers from the National Assembly. We read those regulations one by one.

The only problem then, as far as the law was concerned, was that we had used the wrong enabling statute; the Public Finance Management Act. Ours was an internal fund of the Parliamentary Service Commission and not a fund in the National Treasury. Therefore, we all agreed that the regulations should be withdrawn and new ones be made under the Public Service Commission Act. We needed to change the title and the enabling provisions, which was the only thing that was found to be legally or technically wrong.

Mr. Temporary Speaker, Sir, in the course of the debate between us and the Members of the National Assembly, other side issues were raised, for example, whether the Nominated Members of the Senate should benefit from this Fund. I listened to the Kenya Broadcasting Corporation (KBC) when Sen. Beth Mugo was contributing and what she said was correct. Whether or not Nominated Senators should benefit from the Fund was not an issue of the National Assembly; it was an issue of the Senate. We informed them that, in our view, it would be unconstitutional for us to leave the Nominated Senators out of this Fund because they represent certain national constituencies. We also have Nominated Senators who represent the youth and persons with disabilities. They need to benefit from the Fund, so that they can also oversight the counties with regard to the constituencies which they represent in the Senate.

However, it also dawned on us that some of those Members had personal interests. There are two Members from Nairobi who are very adamant on this. I have the right to name them here for the record. There was the Member for Dagoretti, hon. Simba Arati, who was opposed to the nominated Senators getting this Fund because Sen. Elachi, who is the Senate Majority Whip, has expressed interest in the same seat. He knows that if Sen. Elachi accesses this Fund, then the funds will be used to complicate the campaign in Dagoretti. The other person who opposed the regulations on the basis that nominated Senators would benefit is hon. T.J. Kajwang who represents another constituency in Nairobi. His issue was about one of the nominated Senators who usually sits sometimes where you are, has also expressed interest in that seat.

Mr. Temporary Speaker, Sir, therefore, it is these two hon. Members who drive the agenda for rejection of the rules largely for their own personal interests. We discussed with them and were able to convince Members of the Committee on Delegated Legislation of the National Assembly; that these were not sufficient grounds on which the rules could be annulled. It was agreed that once the old rules and the Public Finance

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Management Act were withdrawn and new rules were published under the Parliamentary Service Commission Act, there would be no debate between us and them. All the issues had been cleared. What was left was a technical exercise for the old rules to be taken to the Speaker to do a revocation notice which was done by Speaker Justin Muturi. I highly commend him for that.

The new rules were again now published under the Parliamentary Service Commission Act as agreed by our lawyers and their lawyers, their committee and our committee. Therefore, there was an agreement between the two Houses regarding the new set of rules. We also read the new set of rules word for word between our committee and their committee before those rules were sent for publication. We wanted to ensure that the comas and the full-stops were in the right place. When the rules were finally brought to this House---

**The Temporary Speaker** (Sen. (Dr.) Machage): Conclude. You have 30 seconds.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, give him two more minutes. He is our chairperson.

**The Temporary Speaker** (Sen. (Dr.) Machage): Sorry, you still have a lot of time; five minutes. Somebody had wrongly put on a red light. And being male, colour blindness is not uncommon.

**Sen. Murungi**: Mr. Temporary Speaker, Sir, we know you are a surgeon. You do not really rely on your eyes.

**The Temporary Speaker** (Sen. (Dr.) Machage): It is a "Y" chromosome linked deficiency. I hope you understand that.

**Sen. Murungi**: Mr. Temporary Speaker, Sir, I will ask the lawyer, Sen. Wetangula, to help me interpret that because lawyers know many things.

*(Laughter)*

When this new set of rules we had agreed on were published and brought to the House, we did not expect any debate at all because we had agreed. Indeed, when they were tabled before the Senate and taken to the Committee on Delegated Legislation, our Committee passed them. When they were taken to the Committee on Delegated Legislation of the National Assembly, we were informed that even before the Committee sat, those two Members whom I have mentioned; hon. T.J Kajwang and hon. Simba Arati, had raised new issues and they were saying the rules have not been published under the Public Finance and Management Act, 2012.

They are the same people with whom we had agreed that the rules should be published under the Parliamentary Service Commission Act. So, they invited Mrs. Phyllis Makau from the Parliamentary Budget office and asked her one question: Are these rules published and can a fund be established without reference to the Public Finance Management Act, 2012? They did not give her the details or the history. When she said the funds should be established under the Public Finance Management Act, 2012, they said it was okay. They wrote a report saying these rules should be allowed because they had not been published under the Public Finance Management Act, 2012.

Mr. Temporary Speaker, Sir, that is why I am saying these Members are dishonest. Indeed, we would not be having this Motion today if Members were honourable and dignified.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! May I remind you of your own Standing Order No. 90 (5) which says it shall be out of order for a Senator to criticize or call into question the proceeding in the National Assembly. So, walk carefully. Do not over do it.

**Sen. Murungi:** Mr. Temporary Speaker, Sir, I feel pain when you sit down with lawyers, you agree and then they turn around and stab you in the back. We requested to be invited for that meeting by the Committee on Delegated Legislation of the National Assembly. They rushed there, they did not invite us and the same afternoon, the report was before the National Assembly. So, I feel a lot of pain about this.

Mr. Temporary Speaker, Sir, there appears to be a broad conspiracy to make sure that this Senate is merely a debating club and that it does not deliver. That is why there are so many pieces of legislation passed by the Senate and still pending in the National Assembly. Next year, you will hear some people calling for the Senate to be abolished because it has not passed any laws. They themselves are the ones who have caused those laws not to be published. It gives me a lot of pain that the devolution which we fought for, the county governments for which we fought have now become a burden---

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. Sen. Kariuki Geoffrey Gitahi!

**Sen. (Dr.) G.G Kariuki:** Mr. Temporary Speaker, Sir, first, may I correct you. My name is Sen. (Dr.) G.G Kariuki.

**The Temporary Speaker** (Sen. (Dr.) Machage): Pardon me; Sen. (Dr.) G.G Kariuki. Let that be recorded properly. What is it, Sen. Wetangula?

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. Is it in order for the distinguished Senator to say his name is (Dr.) G.G Kariuki when, in fact, doctor is a title but not a name? Sen. G.G Kariuki is his name but he is (Dr.) G.G Kariuki; if you want to---. I congratulate him for getting a doctorate. I have no problem with that. It is just English usage. I hear people saying I am Hon. So-and so---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Wetangula!

Sen. (Dr.) G.G Kariuki, continue.

**Sen. (Dr.) G.G Kariuki:** Mr. Temporary Speaker, Sir, what I am saying here is that we have been talking about this matter for a long time. It is now two years and nothing has happened. We have been talking about this matter for a long time. Two years down the line, nothing has happened. When you talk about something and nothing happens, what do you do? Finally, it is only to speak the way we are speaking here towards the end of the journey. It is very difficult for us to move anywhere. Those who are refusing with this kind of resources know how many more months are remaining before the term of this Parliament ends.

Mr. Temporary Speaker, Sir, the Constitution is a political document. When anyone thinks that he is talking about the Constitution based on many other things, he must always understand those who are on the other side of the coin. What is the reason for them to raise these issues? Here we find ourselves in a very difficult position but we

never try to investigate ourselves. We are being guided by a paper here called the Constitution which belongs to the people of Kenya. We were sent here by our people to protect the Constitution.

I doubt what kind of work this Joint Committee will do. There is nothing happening in the National Assembly that can make them change their mind. My friend, Sen. Wetangula, looks at it in a legal way. That is wrong because the law belongs to the people of this country. It is the people who gave us this power, but if you do not use it satisfactorily, then return it back to them. That is where we are heading.

When we came here in 2013, I found that we were very energetic – young lawyers, young politicians and others who appeared to know everything. In fact, we all went one morning although I refused to listen to the judgment. You cannot judge politics. You will say yes and somebody else will come out and say this could have been done this way. So, the few Members who have been mentioned are going to be an obstacle for this development. They are not there by themselves because 12 Members of Parliament are not capable of changing others unless there is some whispering somewhere. Chair, you will agree that you have served for many years as Member of Parliament and you have seen a lot. I recall, at one time, you were sacked from the Cabinet through the radio and you understand.

We need to be careful without rushing to form committees. When I heard my friend reading out the names of this Committee, I believed that we will not move anywhere. We are not going to change the National Assembly to think otherwise. The only way you can make them speak otherwise is to have consultations and sit down with them. I talked to a few of them. When you believe in these issues, even a villager who was a politician and you know it, you cannot change him if he says no and he will continue fighting you.

We all know how important this matter is, but we refuse to recognise its importance. We put our ego and desire in front so as to be seen that we are doing well. That cannot work. The Constitution has given us a lot of power. I was consulting somebody and I asked him whether the Constitution gives the Senate the power on some matter. For example, Article 96 provides the powers of the Senate.

Mr. Temporary Speaker, Sir, the Constitution is a respected document and there should be no obstacles. Where we are cornered is where we expect money to be given by the National Assembly. If this were a law or an amendment to the Constitution, we could have been talking about it throughout and not lamenting. However, it is okay. The Committee will be meeting here several times within 21 days and they will report. We should not expect so much unless change takes place. The change is where one says no to change. I have no doubt in my mind that when it almost went through, the President had supported this idea, and everybody supported it.

However, somewhere because they have invisible powers, or sometimes invisible systems of government, there was no way of retrieving it. This matter has nothing to do with the President of Kenya. It is a matter between the two Houses by showing their personality and supremacy. Supremacy is when one thinks of being supreme and important. It is the beginning of being a fool. Let us all sit down and decide whether this matter can be negotiated amicably because when Sen. Murungi, Sen. Haji and I at one time talked to the Speaker of the National Assembly, although people were saying that

the Speaker of the National Assembly does not want to talk to us, that was totally wrong because you can see him at any time. He negotiates but he has lieutenants who will not allow him to decide by himself. Let us not pass blame to anyone.

First, the blame is in this House. We have not conducted ourselves properly. Secondly, the National Assembly is to blame for conducting themselves mischievously. We have a big stake here.

Mr. Temporary Speaker, Sir, may be you will be back and the biggest challenge that you will have are the governors. Let us not pride ourselves that things are changing. They may not change at all unless we start from the word go. We should try to recognise others. We went as far as fighting with the Judiciary because we felt that everybody is not supporting the Senate. They asked us why we want to be supported. They said we are already supported by the Constitution. It is clear just like daylight. The Constitution supports this Senate in a big way.

Mr. Temporary Speaker, Sir, I was very concerned about the seat I was vying for. I was interested in understanding how the Senate would function. I read the article of the Constitution on the role of the Senate. Finally, when we were elected to this House, I did not know there would be other forces that wanted to become "Crown Counsel". The journey is long. Sen. Murungi has narrated how they started this journey one-and-a-half years ago. The road has been difficult, but up to now, we are not yet there. In fact, I do not see it.

It is not within our visibility unless, as I said from the word go, being a public document, the Constitution is not a lawyers' document. Lawyers' documents deal with municipal laws, where they are given by interpretation on what the law says. It is not for them to read the Constitution and say; "This is what the Constitution says." Those who have read the Constitution and who have been in school for some time will tell you that if you want to interpret the Constitution, you must understand the mentality and intention of those who passed a particular article since they had some ideas which must be seen by any person interpreting the law. We have been interpreting what they have been saying and what their intentions were. They may not have written it properly for all of us to understand, however, the intentions are clear.

I appeal to my friend across whom I really respect - he is a very good debater and speaks very well. Please, let us forget personal ego and people thinking they have done well. Let us leave this to people like you and myself. If we sit down with Sen. Wetangula, Sen. Murungi, the Speaker and I, this issue will come to an end. However, when we say this and that from this sitting yet we are few, how do you expect that they will listen to us? They will say; "No, they abused another Member. We will not listen to them."

In the case of the Joint Committee, suppose we say we will not have it, which law will protect you? This will just die. That is where we are aiming at. So, Sen. Wetangula, next time, try to get some people who understand politics in those committees that you take people because of loyalty test. I particularly have failed this test; there is no committee that you can see me being recommended to.

**The Senate Minority Leader** (Sen. Wetangula): On a point of information, Mr. Temporary Speaker, Sir.

**Sen. (Dr.) G.G. Kariuki:** There is no need.

*(Laughter)*

Mr. Temporary Speaker, Sir, I think time has come---

**Sen. Sang:** To Dr. G.G. Kariuki.

**Sen. (Dr.) G.G. Kariuki:** You are talking to me and not Sen. (Dr.) G.G. Kariuki.

**The Senate Minority Leader** (Sen. Wetangula): On a point of information, Mr. Temporary Speaker, Sir.

**Sen. (Dr.) G.G. Kariuki:** I think you better give me the information.

**The Temporary Speaker** (Sen. (Dr.) Machage): Do you accept to be informed or you were coerced to accept?

**Sen. (Dr.) G.G. Kariuki:** Mr. Temporary Speaker, Sir, I accept. He is a senior Member.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I want to inform the distinguished Senator for Laikipia, Sen. (Dr.) G.G. Kariuki, that the point he is making is okay. We removed the Senator for Nairobi because even if we retained his name, he would not attend any meeting. That is why we have faith in Sen. Kiraitu Murungi. I suggested on the Floor that when the team goes, my troops are instructed--

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Wetangula. If you have to talk on the character of a Senator, you must be on a substantive Motion. You cannot talk about the Senator for Nairobi like that.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I have already instructed my troops that when they go to the Committee, Sen. Kiraitu should be the Chairman or the Co-Chair because he understands politics and the process.

**The Temporary Speaker** (Sen. (Dr.) Machage): You are again anticipating debate. You are out of order.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, there will be no further debate on this.

*(Laughter)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. Continue, Sen. (Dr.) G.G. Kariuki.

**Sen. (Dr.) G.G. Kariuki:** Mr. Temporary Speaker, Sir, I was about to withdraw my generosity because he went beyond the limit.

I want to appeal to the Senate Majority Leader and the Senate Minority Leader to consult each other when it comes to nominating Members to serve in committees. We are not here to promote people. Even if we were to stay here for many years, there are people who can never improve.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! I will use Standing Order No. 54 (1) and (2). I do not need a Senator to reply, unless he or she so wishes. Since this is not a county issue, I will now put the Question.

*(Question put and agreed to)*



**ADJOURNMENT**

**The Temporary Speaker** (Sen. (Dr.) Machage): Hon. Senators, it is now time to interrupt the proceedings of the Senate. The Senate, therefore, stands adjourned until tomorrow, Wednesday, 30<sup>th</sup> November, 2016, at 2.30 p.m.

The Senate rose at 6.30 p.m.