

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Friday, 9th June, 2017

Special Sitting

*(Convened via Kenya Gazette Notice
No.5338 of 7th June, 2017)*

*The House met at the Senate Chamber,
Parliament Buildings, at 12.10 p.m.*

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

PRAYER

COMMUNICATIONS FROM THE CHAIR

CONVENING OF SPECIAL SITTING OF THE SENATE

The Speaker (Hon. Ethuro): Hon. Senators, I have a Communication on the convening of this Special Sitting.

I take this opportunity to welcome you back for this Special Sitting during the Fifth Session of the Senate. I sincerely thank you for finding time from your busy schedule to attend this sitting. I am aware of the busy schedules each one of you has at such a critical time as this in our election calendar.

Hon. Senators, by a letter dated 5th June, 2017 and pursuant to Standing Order No. 29 (1) of the Senate, the Senate Majority Leader and the Senate Minority Leader, supported by the requisite number of Senators, requested the Speaker to convene a Special Sitting of the Senate to conclude consideration of the following business:-

(a) The Division of Revenue Bill (No.2) National Assembly Bill No.22 of 2017) and other pending Bills before the Senate; and,

(b) Petitions due for presentation and reporting to the Senate.

Hon. Senators, following consideration of the request by the Senate Majority and Minority Leaders, I was satisfied that it met the requirements of Standing Order No. 29(2). It is in this respect that I convened this Special Sitting of the Senate via Kenya Gazette Notice No.5338 of 7th June, 2017.

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As required by Standing Order No. 29 (5), the Gazette Notice specifies the business to be transacted at this Sitting and it is the business scheduled in today's Order Paper. Indeed, as specified and in accordance with Standing Order No. 29(5) of the Senate, the business listed shall be the only business before the Senate during this Special Sitting.

Hon. Senators, although this Special Sitting comes at a time when we have officially entered the official campaign period for the August 2017 general elections, the Senate must discharge its mandate up to the end of its term. I am, therefore, glad that you all heeded to the call of your constitutional duty and came for this Special Sitting.

I would like to reiterate that in accordance with Article 123 of the Constitution and Standing Order No.71, for the Senate to approve some of the business scheduled in today's Order Paper, the support of a majority of all the 47 delegations is required. Therefore, I hope that some of your colleagues are on their way. I, therefore, urge you all to remain in the Chamber for the transaction of the business as scheduled and until its conclusion.

I thank you.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Thank you for the Communication. The prerogative and responsibility of convening such a Special Sitting rests entirely on the membership of the House. Our Standing Orders are very explicit; they describe that to seek such a sitting, we should at least have 15 Members.

My concern is that the Senate Majority and Minority Leaders consulted before convening this session. However, we are short of the required 15 Members. I am not trying to raise a quorum issue because I think they will be coming. My concern is that they should have been the first to arrive. Indeed, we need to later consider our Standing Orders such that if a Senator appends his or her signature as one of the 15 Members, he or she is compelled to attend such a sitting.

The Speaker (Hon. Ethuro): Order, Members. What Sen. (Dr.) Machage has stated is self-explanatory. I have nothing more useful to add.

Proceed, Sen. Leshore.

Sen. Leshore: Mr. Speaker, Sir, I would like to strongly support the sentiments of Sen. (Dr.) Machage. I was one of those Senators who appended my signature on that paper. I am, therefore, compelled by that signature to be here today, otherwise I would have been in Samburu County campaigning. Let us critically look at the Standing Orders. Whenever anyone appends his or her signature, he or she is compelled to be here.

The Speaker (Hon. Ethuro): Hon. Members, you will have an opportunity to do so when you review the Standing Orders but as it stands now, there is no such provision. I think we all appreciate the circumstances. Let us give it a bit of time as Sen. (Dr.) Machage had earlier stated. I have the same belief that the Members are on their way.

SENATORS' *KAMUKUNJI* TO REVIEW REPORT ON
PROPOSED AMENDMENTS TO STANDING ORDERS

Hon. Senators, I have a second Communication from the Chair on a *Kamkunji* to be held in the Senate Chamber on Tuesday, 13th June, 2017 at 11.00 a.m.

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As you may recall, the Procedure and Rules Committee has since September, 2016, been undertaking a comprehensive review of the Senate Standing Orders. This is in line with its mandate under Standing Order No.249 requiring the Committee to carry out such a review at least once in every term of Parliament.

In undertaking this exercise, the Committee invited and received submissions from hon. Senators, the office of the Clerk and members of the public. The Committee has since concluded this exercise and prepared a report which is due to be tabled in the Senate next week when the House resumes from recess.

It is in this regard that a *Kamukunji* has been scheduled to enable the Committee take the hon. Senators through the proposed amendments before the report is tabled in the House. The *Kamukunji* is scheduled to be held in the Senate Chamber on Tuesday, 13th June, 2017 at 11.00 a.m.

I invite and urge all Senators to attend this very important briefing.

I thank you.

Let us move on to the next Order.

MESSAGES FROM THE NATIONAL ASSEMBLY

PASSAGE OF THE DIVISION OF REVENUE (No.2) BILL (NATIONAL ASSEMBLY BILL NO.22 OF 2017)

Hon. Senators, I have two Messages from the National Assembly. The first is on the passage of the Division of Revenue (No.2) Bill (National Assembly Bill No.22 of 2017).

I wish to report to the Senate that pursuant to Standing Order No.43(3) and (5), I received the following Message from the Speaker of the National Assembly on 5th June, 2017 regarding the passage, by the National Assembly, of the Division of Revenue (No.2) Bill National Assembly Bill No.22 of 2017. I quote:

“Pursuant to the provisions of Standing Order Nos.41 and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly:-

WHEREAS, the Division of Revenue (No.2) Bill National Assembly Bill No.22 of 2017 was published by vide the Kenya Gazette supplement No.69 of 12th May, 2017 to provide for the equitable division of revenue raised nationally between the national and county governments in the 2017/2018 Financial Year;

WHEREAS, on Tuesday May, 30th 2017 the National Assembly considered and passed the said Bill with amendments and in the form attached hereto;

NOW, THEREFORE, in accordance with the provisions of Article 110(4) of the Constitution and Standing Order No.41 of the National Assembly Standing Orders, I hereby refer the said Bill to the Senate for consideration.”

Hon. Senators, this Message was received at a time when the Senate was on recess. Pursuant to Standing Order No.40(5), I transmitted the Message to every Senator.

Pursuant to Standing Order No.148 which requires that a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order

No.129, I now direct that the Bill be listed for First Reading in the Order Paper of today, 9th June, 2017.

I thank you.

(Several Senators stood up in their places)

Hon. Members, I see there is a bit of interest. I ask for your indulgence. Let me just read the second one and then we can take whatever issues that you would wish to raise.

APPROVAL OF REPORT OF THE JPS COMMITTEE ON
THE ELECTION OF MEMBERS TO EALA

Hon. Senators, the second Message is also from the National Assembly on the approval of the Report of the Joint Parliamentary Select Committee on the Election of Members to the East African Legislative Assembly (EALA).

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No.40(3) and (5), I received the following Message from the Speaker of the National Assembly on 5th June, 2017 regarding the approval of the Report of the Joint Parliamentary Select Committee on the election of Members to the EALA. I quote:

“Pursuant to the Provisions of Standing Order No.41 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly:-

WHEREAS, the Joint Parliamentary Select Committee considered the nomination papers for persons nominated for election as Members of EALA under the said rules and tabled a report thereof in the National Assembly on Wednesday 17th May, 2017 and;

WHEREAS, on Wednesday 31st May, 2017 the National Assembly considered and adopted the said report without amendments;

NOW, THEREFORE, in accordance with the provisions of Standing Order No.41 of the National Assembly Standing Orders and in line with the Houses of Parliament Joint Sittings Rules, I hereby convey the decision of the National Assembly.”

Hon. Senators, this Message was received at a time when the Senate was on recess. Pursuant to Standing Order 40(5), I transmitted the Message to every Senator. You also note that as a House, we had already deliberated on the same report and passed it without amendments and forwarded it to the National Assembly.

I thank you.

Sen. M. Kajwang: Mr. Speaker, Sir, I would like to comment and seek some clarification on the first Message regarding the Division of Revenue Bill. My memory recollects that the Senate and the National Assembly had gone to mediation on this particular Bill where the Senate had made recommendations that were beyond what the National Assembly had proposed. Is it in order for this House to be briefed on the outcome of the mediation and a report of the mediation committee also be tabled in this House?

Further, is it in order for us to understand whether this is a fresh Bill or an original one that has gone round from the National Assembly, the Senate, to mediation and back to the National Assembly? If, indeed, it is a fresh Bill, has it waited for the six months that a Bill is supposed to wait before it is re-introduced, if the first effort fails?

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The Speaker (Hon. Ethuro): Let me just take all the points of order. Proceed, Sen. (Eng.) Muriuki.

Sen. (Eng.) Muriuki: Thank you, Mr. Speaker, Sir. My comment is on the Division of Revenue Bill. Where we are now as a country is a very awkward situation because in a few weeks, we will be starting the new financial year. However, without the Division of Revenue Bill, and subsequent to that, the County Allocation of Revenue Bill, it will look like we can end up with no money going to the counties. Mine is to seek direction from the Chair, because presuming we are due to adjourn *sine die* next week on Thursday and it looks like the normal process and the time needed will not be there; and presuming I am correct that the *sine die* adjournment is on Thursday, maybe give us direction ahead of time on which way this is likely to go.

Even if we did the Division of Revenue Bill and that was in place; in which case we now know for sure how much money will go to the national Government and how much will go to the county governments, without the County Allocation of Revenue Bill, funds will not go to the county governments. But it will go according to Article 220 and 221 in the Constitution; for the national Government it will go, but for the county governments, it will not go.

Mr. Speaker, Sir, I would wish to seek direction ahead of time because we are in campaign mood and members are not available fully here to transact this important business. Perhaps, you could give us direction so that we could mobilise our colleagues to come here so that funds get to our counties.

Sen. Ndiema: Thank you, Mr. Speaker, Sir. Considering that the Bill of Division of Revenue had earlier come to this House; the two Houses had disagreed and we have not been told what the final decision is. Without pre-empting debate on this matter and considering the time that we still have, what would happen in the event that we do not agree again with the two Houses? Would it not be in order that this matter is deliberated in a *Kamukunji* way initially so that some issues are ironed out before we formalise some of these matters?

Sen. (Prof.) Lonyangapuo: Thank you, Mr. Speaker, Sir. Let me comment on these two messages from the National Assembly. About EALA, the list we had last time and the deliberation we had in this House, we referred a lot back to the coalition parties where, for example, the NASA or CORD fraternity were supposed to raise 12 people instead of 4. What has come here---- We would definitely want to see whether the names have now been trimmed from 15 to 5 for the Jubilee and from 12 to 4 for the CORD coalition.

A number of us here are very keen because we are in a coalition government or a coalition of friendly parties. We are moving to the next stage of election and the interests of particular parties must also be catered for in this. Otherwise, political parties' marriages can collapse before 8th August this year.

Lastly, about the Division of Revenue Bill, it seems like there is a game going on concerning whatever this House decides and passes on behalf of the counties. We are legally in this House to protect the interests of those counties and represent them while our colleagues who are in the "Lower" House are simply rotational fellows and leaders who are supposed to be taking care of sub-counties or constituencies. Why would they, in the first place, return the document without taking into consideration what we and the

mediation Committee discussed? They have returned to your office the same document and our officers are faithfully processing the same document that we rejected in this House.

Mr. Speaker, Sir, Item No.4 on the Order Paper, should be deleted completely. We do not need it. If this House is just a rubberstamp, then we can equally finish it because in the next few days the life of this Parliament will come to an end. Let it die with this issue so that we see the impact of what will happen.

The Speaker (Hon. Ethuro): Finally, Sen. (Dr.) Machage. Hon. Members, remember this communication from the Chair is not an issue for debate.

Proceed, Sen. (Dr.) Machage.

Sen. (Dr.) Machage: Thank you, Mr. Speaker, Sir. Thank you for the advice. My concern is with the nomination of the EALA members. This is the second time in the History of the East African Community (EAC) that the function of EALA may be put into prejudice because of the inability of the Kenyan Parliament to select or appoint members to that House in good time.

My concern is the bad name that we are creating with that perpetuity. Indeed, the EALA is not sitting because of an injunction that was raised in the East African Court of Justice (EACJ). It is a pity that we have Sudan that is now following in the footsteps of Kenya. They are finding themselves in a difficult situation with regard to the nomination of members to EALA. The important issue here is to note the significance of coming out with the treaty within which the East African Community operates.

I happened to have been an Assistant Minister for East African Community sometime back. It is an organ that deserves to be taken with pride by all the membership of the 5 countries. My advice to our Houses is that let us not enjoy the gimmicks or game that is now being played by the major parties of our Parliament. The Jubilee and--- I do not know whether NASA is a party; it is not to our fame and pride as Kenyans.

The Speaker (Hon. Ethuro): I had said, "Finally Sen. (Dr.) Machage," but whenever I say so, it seems like I trigger more interest. Sen. Sijeny.

Sen. Sijeny: Thank you, Mr. Speaker, Sir. I also wish to comment on the issue of the EALA nominees.

The Speaker (Hon. Ethuro): Order! Sen. Sijeny. You need to be charitable to me for allowing you to speak.

Sen. Sijeny: Thank you very much. That is why I say "thank you, Mr. Speaker". I did not finish the sentence to appreciate your reconsideration and using your prerogative powers to give me a chance to comment after you have said "finally".

This issue of EALA has become very embarrassing. I have just come from Kampala where I met the EALA nominees from other countries and the comment they made was that, "Kenya; why are you denying us an opportunity to work as we wish to?" "Why do you not sort out your issues?" I tried to look for a few words here and there and I told them that the matter has been resolved.

I know that to be the case because, as a Coalition of NASA, we have given our list. I do not see why our brothers and sisters in Jubilee would want us to give another list. I will just wish for this matter to end immediately because the confluence is neither here nor there. We should rise above our differences or personal interests and let people move and give others opportunity. Tomorrow will come and there will be more years and

all those people who wish to may compete. The world is not coming to an end. Let us move on and stop embarrassing Kenya within the continent.

The Speaker (Hon. Ethuro): Finally, I can confirm that there is no further interest on this matter. I will deal with the issues raised on the Communication on the East Africa Legislative Assembly (EALA). I know that most of them are points of argument. However, I want to confirm that both Houses are seized of this matter.

We formed a Joint Committee that sat and gave us a report, which we passed without amendments and the National Assembly did the same. So, we are just informing. A process was put and ‘without amendments’ meant that the side with minimal numbers needed to increase them. That is your work and output. There is a timeline where that was called. We voted names and the Committee will sit on Tuesday. From the deliberations of the same Committee, it will come here for your final determination. As far as I am concerned, we have put our own timeline of activities that should lead to election of Members to the EALA.

However, I also want to agree with the sentiments by Sen. (Dr.) Machage and Sen. Sijeny that we seem to be developing a very bad habit of stalling processes. That is not our nature as Kenyans; I do not know what we can do about it.

On the second matter, you have raised all the substantive issues in terms of procedure, expectations and our Calendar. I will give a substantive Communication next week. In the meantime, for Sen. (Eng.) Muriuki, Parliament can work optimally when it decides. So, I am not so much worried about the timeframe. I have given instructions for the County Allocation of Revenue Bill to be published and to be ready by next week. It is, therefore, really for you to mobilise your Members. It is possible to get it done within the remaining period.

Whether it is an original or new Bill, subject to certain duration, you know what happened to the mediation process. I hope that the Members of the Mediation Committee will give us a full report. It is my expectation that they will do so next week.

However, my understanding is that we definitely formed a Mediation Committee that sat and elected the Chairperson of the Budget and Appropriations Committee of the National Assembly as the Chair. However, that Committee could not get quorum, and we would like to know the details.

Given the period allowed according to Standing Order 154 (6), the Bill elapsed. The idea of a Mediation Committee is to agree on a version of a Bill acceptable to both Houses. The fact that, that process did not take place is another question in itself. However, on the basis of just the elapsing of the period, a new Bill had to be prepared. These are all within our procedures and so, the Bill is properly before the House.

To allay the fears of Sen. (Prof.) Lonyangapuo, you know what the Bills go through. You will deal with them either in the same format or change them. Those opportunities will be availed to you and that is why the Bill has come. However, I think there are quite a number of issues that we may need to deal with, including the deliberations on when the Bill was introduced in the other House. It is important for people to appreciate that a Bicameral Parliament is in existence and it must work.

Thank you.

Next Order!

The Clerk-at-the-Table: Order No. 3; Petitions.

The Speaker (Hon. Ethuro): Do you have a petition, Sen. M Kajwang?

Sen. M. Kajwang: Mr. Speaker, Sir, we moved to the next Order rather fast. I just want to seek one clarification following your Communication.

The Speaker (Hon. Ethuro): Proceed.

Sen. M. Kajwang: Mr. Speaker, Sir, I am looking at Standing Order No. 146 against Article 113 of the Constitution. We went into a Mediation exercise where there was no quorum and the Bill was negatived.

For the same Bill to be reintroduced, our Standing Order No. 146 is quite clear on the duration. Are we satisfied as a House that, that duration has been respected or has there been any amendment to these Standing Orders that we are not aware of?

My expectation is that the Mediation process would have provided the cure to the problem that we currently find ourselves in. We have not received a report of the Mediation Committee. In the spirit of being statesmen and stateswomen, probably, this Mediation Committee needs to go and sit somewhere and pretend that they have agreed with the version that the National Assembly wants us to pass today. Otherwise, we will be committing an illegality.

Mr. Speaker, Sir, the mediation process is a constitutional matter under Article 113, while the issue of reintroduction is in our Standing Orders. We cannot sit here and perpetuate an illegality for the purpose of being expedient. More so, we have been treated to the kind of charade by the National Assembly, which seems to live in a cloud where they think that Kenya is a country where Parliament consists of only one Chamber.

It would be improper for us to proceed to consider this Bill without addressing those fundamental questions in Standing Order 146 and Article 113 of our Constitution. It would be unfair for the Mediation Committee not to give us a report. If they want to break this impasse, they should retreat to somewhere and pretend to be doing something. They can work backwards to give us a solution to this. Otherwise, what we are doing today on the Division of Revenue Bill is illegal.

The Speaker (Hon. Ethuro): Order, Sen. M Kajwang. There is nothing we are doing today that is illegal. We are just reporting on a Message sent to us. You are at liberty to disagree, but we not doing anything illegal.

Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I am sorry for coming to the House a bit late. It is because we are already in the field, campaigning, and our counties are far removed from Nairobi. I thought about this as I drove to Nairobi - for all the hours it has taken me - and told myself: Let me see how the Speaker will drive this.

According to parliamentary traditions, the Speaker does not move the House on its business. Regarding the business before this House, in respect of this Mediation Committee, the very least I would have expected is that we be moved by the Senate Majority Leader, the Senate Minority Leader or a person representing them.

If the Committee failed to meet and elect a Chair and Vice Chairperson, who would then have ordinarily moved this House on this important business that nothing took place? In the absence of the Senate Majority Leader and the Senate Minority Leader moving the House, are we sure that we are doing the right thing when we now give you that responsibility; that you are reporting to us that a Committee which you appointed did not meet?

With due respect, that is not your work. If it is, then guide us so that we see how we can now allow the Speaker to leave the Chair and come to the Dispatch Box and move the House.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale. To which side will the Speaker go if he leaves the Chair? As I have already said, I will give a comprehensive Communication on this matter. You are raising substantive issues, but remember that there are two processes at work here. One is that I am not moving the House, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale, perish the thought! Maybe because you came late, I was responding to what hon. Members had raised. I would be shirking my responsibility if I did not respond and give the information that I have. Whatever information I have, definitely should be for the benefit of the Members and the House.

Secondly, there is the whole process of mediation. I think Sen. M. Kajwang is raising issues with the rest of the Members that addressed those issues earlier. That is one issue we will address in terms of what happened to that process, the expected outcome, whether some of the recommendations he is making are workable or not, or whether the time has expired on that particular root.

The second one is the issue of a new Bill or a Bill being introduced. How do we proceed? Those are issues that we will address on Tuesday.

Next Order.

BILL

First Reading

THE DIVISION OF REVENUE (NO.2) BILL
(NATIONAL ASSEMBLY BILL NO. 22 OF 2017)

*(Order for First Reading read – Read the First
Time and ordered to be referred to the relevant
Senate Committee)*

The Speaker (Hon. Ethuro): Order, Members! If you look at the Order Paper, the next Order and the subsequent Orders, most of them are the Committee of the Whole. I do not think we have enough numbers to proceed on that basis.

So, under the circumstances, we will go to Order No. 32.

MOTION

ADOPTION OF REPORT OF MEDIATION COMMITTEE ON THE
HEALTH BILL (NATIONAL ASSEMBLY BILL NO. 14 OF 2015)

Sen. (Dr.) Machage: Thank you, Mr. Speaker, Sir. I beg to move:-

THAT, the Senate adopts the Report of the Mediation Committee on the Health Bill (National Assembly Bill No. 14 of 2015) laid on the Table of the Senate on

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Thursday, 25th May, 2017 and pursuant to Article 113 of the Constitution and Standing Order 115(3) of the Senate Standing Orders, approves the mediated version of the Bill.

Pursuant to the provisions of Standing Order No.29, I wish to notify the House that I will be moving Clause 18 of the mediated version of the Health Bill 2015 in an amended form in Paragraph B of the Bill by inserting the word “other” immediately after the word “form”.

This is the justification, Mr. Speaker, Sir. The amendment will ensure that the Director-General of Health mandatorily forms the directorate contemplated under Clause 18(A).

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Machage. The amendments will come at the time of the amendments.

Sen. (Dr.) Machage: Sorry, Mr. Speaker, Sir. I am moving the Motion in an amended form by inserting one word. I have to do that at the beginning as the mover.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Machage. There is also a procedure for doing so. When you move a Motion, you move.

Sen. (Dr.) Machage: Mr. Speaker, Sir, I have already moved the Motion.

The Speaker (Hon. Ethuro): Just repeat, Sen. (Dr.) Machage.

Sen. (Dr.) Machage: Mr. Speaker, Sir, I beg to move:

That the Senate adopts the Report of the Mediation Committee on the Health Bill (National Assembly Bill No. 14 of 2015) laid on the table of the Senate on Thursday, 25th May 2017 and pursuant to Article 113 of the Constitution and Standing Order No. 155 (3) of the Senate Standing Orders, approves the mediated version of the Bill.

The Speaker (Hon. Ethuro): That is where my problem is, Sen. (Dr.) Machage.

Sen. (Dr.) Machage: Mr. Speaker, Sir, I stand to be guided.

The Speaker (Hon. Ethuro): You need to start by saying that you are going to move the motion in an amended form, not the way it is.

Sen. (Dr.) Machage: Mr. Speaker, Sir, thank you for the guidance. I am going to move the Motion in an amended form. Pursuant to the provisions of Standing Order No. 49, I wish to notify that I will be moving Clause 18 of the mediated version of the Health Bill 2015 in an amended form in Paragraph 18 B of the Bill by inserting the word “other” immediately after the word “form”.

This is because the amendment will ensure that the Director-General of Health mandatorily forms the directorates contemplated under Clause 18 A.

Further, the amendment will make certain that Paragraph A of the Bill is not discriminatory. Finally, the word was erroneously omitted from the Order Paper but appears in the final version of the mediated Bill that was tabled in the House.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Machage. You need to help me. The amendments must be approved by me. I have not seen any. Two, how do you amend a mediated version of a Bill? The whole purpose of mediation is for both Houses to agree on a form of a Bill as acceptable, which means it must be accepted at the time that the Report was adopted.

Sen. (Dr.) Machage: Mr. Speaker, Sir, it was accepted. It is only that the word was erroneously omitted. However, I seek your advice on this. It is the only word that was omitted as an editorial issue. The document that was tabled includes that word.

The Speaker (Hon. Ethuro): Which word, Sen. (Dr.) Machage?

Sen. (Dr.) Machage: Mr. Speaker, Sir, the word “other”.

The Speaker (Hon. Ethuro): So, is that more clerical?

Sen. (Dr.) Machage: Mr. Speaker, Sir, it is more clerical than the way they changed the whole subject. However, I stand advised on this. It is just an omission in the document that I am now using.

(Loud consultations)

The Speaker (Hon. Ethuro): Order Members! Sen. Machage, you may approach the Chair as I allow Sen. Okong’o to rise on his point of order.

(Sen. (Dr.) Machage approached the Chair)

The Speaker (Hon. Ethuro): Proceed, Senator. I gave you the Floor.

Sen. Okong’o: Mr. Speaker, Sir, the concern was on the presentation by Sen. (Dr.) Machage alluding to the fact that they want to make an amendment on a Bill which was accepted through mediation.

Variation, be it a letter, word or comma may reshape the agreement. That is why we are waiting for your guidance; whether Sen. (Dr.) Machage is in order to move an amendment on a Motion while presenting a Bill.

Sen. (Dr.) Machage: Mr. Speaker, Sir, I note the concern of Members of the House but let me inform the House that the same clerical error has been amended in the same form in the other House. So, I am moderating the papers to be similar. We agreed.

Mr. Speaker, Sir, if I may be allowed.

The Speaker (Hon. Ethuro): Hon. Members, what the Chairman calls an amendment is clerical. We even allow our Clerks-at-the-Table to do those things before Bills are assented to.

So, proceed.

Sen. (Dr.) Machage: Mr. Speaker, Sir, this may be the last Bill that I may present to the House before I move to the ---

The Speaker (Hon. Ethuro): Order, Senator! Move your Motion.

Sen. (Dr.) Machage: Mr. Speaker, Sir, I have already moved it.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Machage, you are being directed to move the Motion. Do not argue with the Chair. You have moved it in two versions. There is one we have agreed on.

Sen. (Dr.) Machage: Mr. Speaker, Sir, I beg to move:-

THAT, the Senate adopts the Report of the Mediation Committee on the Health Bill (National Assembly Bill No. 14 of 2015) laid on the Table of the Senate on Thursday, 25th May, 2017 and pursuant to Article 113 of the Constitution and standing order 155 (3) of the Senate Standing Orders, approves the mediated version of the Bill.

This is with a slight amendment.

The Health Bill (National Assembly Bill No. 14 of 2015) was published in the Kenya Gazette Supplement No.44 of 2015 as a Bill originating in the National Assembly. The Bill underwent the First and Second Readings and was subjected to public

participation as required by the Constitution and the National Assembly Standing Orders and was passed on 29th March, 2016.

It was then referred to the Senate for consideration pursuant to the National Assembly Standing Order No.142. The Senate subjected the Bill to a First and Second Reading and public participation as required by the Constitution and the Standing Orders, and was passed on 14th July, 2016 with amendments and referred back to the National Assembly.

The National Assembly, during the House Sitting of 24th November, 2016, considered the proposed amendments from the Senate and by a resolution, rejected the Senate's amendments. Consequently, pursuant to National Assembly Standing Orders No.149 and Standing Orders of our House No.154, the Bill was referred to a Mediation Committee with the sole objective of developing a version of the Bill that would be presented to both Houses for approval.

Mr. Speaker, Sir, the Mediation Committee on the Health Bill (National Assembly Bill No. 14 of 2015) was constituted by the Speaker of the National Assembly pursuant to Standing Order No.149(2) of the National Assembly; and the Speaker of the Senate, pursuant to Standing Order No.154 on 15th February, 2017 respectively and 26th January, 2017.

The Mediation Committee derives its mandate from the provisions of Articles 112 and 113 of the Constitution and Standing Order No.149 of the National Assembly and Standing Order No.154 of the Senate which outlines the functions of the Committee as follows:-

First, consider Bills where the Houses do not agree on all or any other amendments made by either House.

Secondly, consider Bills where either House rejects a Motion that a Bill which originated in the other House be read a Second or Third Time and;

Lastly, attempt to develop a version of the Bill that both Houses will pass.

The Committee was therefore established to develop an agreed version of the Health Bill (National Assembly Bill No. 14 of 2015) which would then be presented to both Houses for approval as provided for by the Standing Orders of both Houses.

Mr. Speaker, Sir, the Committee held its first meeting on 4th April, 2017 and elected the Hon. (Dr.) Rachael Nyamai, MP and Sen. (Dr.) Wilfred Machage, MP as Chairperson and Vice Chairperson respectively and held a total of five meetings.

I wish to take this opportunity to thank the officers of the Speaker and the Clerks of the National Assembly and the Senate for the necessary support extended to the Mediation Committee in the execution of our mandate.

Mr. Speaker, Sir, allow me to thank the following Members for their participation, in this House:-

Sen. (Dr.) Wilfred Machage

Sen. (Prof.) Wilfred Lesan

Sen. Mvita Mshenga and

Sen. (Eng.) Muriuki Karue

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Machage. How many Senators go by the name Sen. (Dr.) Machage?

Sen. (Dr.) Machage: Mr. Speaker, Sir, it is only yours truly.

The Speaker (Hon. Ethuro): So, you are thanking yourself.

Sen. (Dr.) Machage: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Proceed.

Sen. (Dr.) Machage: Mr. Speaker, Sir, allow me also to thank the following Members from the National Assembly:-

Hon. (Dr.) Rachael Nyamai, MP – Chairperson

Hon. (Dr.) Purkose, MP – Vice Chairperson of the Health Committee of that House

Hon. (Dr.) Naomi Shabaan, MP

Hon. (Dr.) Enock Kibunguchy, MP

Hon. (Dr.) James Nyikal, MP

Mr. Speaker, Sir, although most of this information is in the report, allow me to comment on a few of the mediated clauses. I particularly, will zero in on the fact that a lot of attention is put on the clauses that were mediated; Clause 5 which was describing the standards of health in this county; Clause 15 which described the duties of the national Government. There has been controversial on what the national Government should control in the Ministry of Health. We had to put it to rest because the places they occupied were hitherto thought to belong to the county governments. This has been rectified by this Bill.

Mr. Speaker, Sir, on Clause 16, office of the Director General was created and its functions described. Clause 17 also gave the functions of the Director General. Clause 18 created directorates under the office of the Director General which included directorates of medical services, nursing, pharmaceutical services, public health and administrative services.

Clause 19 is also important. Clause 20 describes the duties of the county governments in enacting this Bill. Clause 24 discusses the retention of service provision. Clause 25 talks about classifications of all levels of health care facilities in this country.

Mr. Speaker, Sir, it is important to note that we classified hospitals in this country into several levels; for example, we have level 1, level 2, level 3, level 4, level 5 and level 6. In so describing, we protected the current level 5 hospitals which are being developed by county governments from automatically being taken over by the national Government once they attain standards that could have been described as level 6. That was a major protection by this Bill so that county governments are not prevented from improving hospitals under their jurisdiction.

Mr. Speaker, Sir, Clause 30 describes the establishment of the Kenya Health Human Resource Advisory Council. In view of what is going on in the country, this may be a major topic in this Bill. We all know nurses, doctors and other medical personnel are on strike. This is because they have no council to negotiate for enhanced salaries, promotions and better working conditions for them. This is a very important clause that will help clear the current mess in the medical services in this country.

Mr. Speaker, Sir, the discussion and deliberations of these clauses were thorough because three quarters of membership of the Committee are medical personnel.

I, therefore, proudly present this Bill to this House and beg Sen. (Eng.) Muriuki to second it. I beg to move

Sen. (Eng.) Muriuki: Thank you, Mr. Speaker, Sir. I stand to second this Motion. In seconding it, let me, first of all, start by commending the work of this Committee.

I was a member of this Committee. It is one of those few occasions where a mediation Committee between this House and the National Assembly has come to a fairly cordial conclusion. I would urge this House to adopt this report.

Mr. Speaker, Sir, we have had many occasions where Bills originate from this House and when they are sent to the National Assembly, we hear of petty arguments being advanced by our colleagues in that House. Those arguments sometimes are driven by forces outside Parliament. I would urge the incoming Parliament to desist from allowing outside forces to interfere with its legislative work.

Mr. Speaker, Sir, currently we are in a health crisis because of the strike by nurses. Prior to their strike, we had the strike by doctors for more than three months. This strike by nurses is not about to end anytime soon. Having been in legislation for sometime representing a constituency for some time and seeing how medical services operate, especially in the grassroots level in medical health centres and level 4 hospitals; it is wananchi who feel pinch of this strike.

There has been a back and forth approach of throwing the buck from the Council of Governors (CoGs) to the national Government and so on. The national Government seems not prepared properly to tackle a crisis of this magnitude. Currently, we are seeing the Ministry of Labour and the Ministry of the Health indulging in endless discussions while our people continue to suffer. The national Government pretends to be the saviour. However, in the real sense, no one wants to take up responsibility fully so that we can take care of our medical personnel.

My suggestion is that we should revisit Article 248 of the Constitution which sets out various independent commissions and create a Medical Workers Service Commission which will take care of the wellbeing of medical personnel. The service maybe within the County, but like we do with the teachers where we have the Teachers Service Commission (TSC), a teacher can work in any part of this country without necessarily having to be employed by this county or that county. This commission can deal with the transfer of medical personnel and so forth.

I foresee a situation where if we had a commission dealing with the medical workers both the doctors and the nurses and other people in the medical fraternity, probably, we would be closer to having a more harmonized situation of medical workers. Right now, we see a number of governors dealing with their medical personnel independently because of frustrations. They are proposing to pay their nurses or doctors in their counties better than their counterparts in other counties.

Mr. Speaker, Sir, the harmonization which was supposed to be done by the Salaries and Remuneration Commission (SRC) was never done. This passing of the buck, I believe would come to an end. I believe one day we will have a harmonized system where the medical workers will work under one commission.

At the same time when devolution started we had very many cases of doctors being posted in some counties, but county Assemblies had issues with them. Some rejected them on the basis of ethnicity or hailing from this and that county and so on.

If we had one umbrella body, it would oversee the transfer of a doctor from one county or level 5 to level 6 facility without much noise being made. We know some

doctors were employed by the defunct local authorities. I believe we need to revisit this issue and harmonize the whole situation.

I second.

(Question proposed)

Hon. Senators, this is as good as the Bill itself. Therefore, it is a matter affecting counties. I will defer the vote on it until next Time. Let us move on to the next Order.

(Putting of the question on the Motion deferred)

THE COUNTY PENSION SCHEME BILL

(SENATE BILL NO.20 OF 2016)

Second Reading

Sen. (Eng.) Muriuki: Mr. Speaker, Sir, I stand to move that the County Pension Scheme Bill (Senate Bill No.20 of 2016) be now read a Second Time.

You will recall that this Bill, in an earlier version, was tabled before this House way back in 2014. The House, in its wisdom, rejected that original version of the Bill. The Standing Committee on Labour and Social Welfare, in conjunction with various stakeholders, developed another version of the Bill, which is what is before the House.

This Bill was subjected to public participation and because of the very wide interests in the national Government and across the county governments, which have quite a number of separate entities--- There is the Speakers' association, several workers' associations, the Council of Governors' and so on. This Bill has gone through a lot of consultations and stakeholders' participation. The version which is now before the House is what has been agreed upon by the all the stakeholders.

The Committee has come up with a number of suggestions; we will be shortly tabling a report on that, I believe on Tuesday. If there is anything important that this Senate is going to do for this nation and the devolved governments, it is the passage of this Bill and the eventual establishment of a harmonised pension scheme for the county government workers.

At the moment, we have a very awkward situation where some pension schemes and provident fund schemes were inherited from the earlier local authorities. When devolution came into place, those who were manning the several schemes under the local authorities moved quickly to try to incorporate the workers into this or that scheme. The Council of Governors also had their way of thinking on how the county government workers would be catered for once they retire.

At the moment, we do have a semblance of two schemes. One is an insurance scheme and the other is a provident fund. We, as a Committee, looked at a way of harmonizing this. We would like to urge the House to pass this Bill after we have harmonised this, after consultation with all the other Members. We do appreciate that this Bill, after being passed by the Senate, will still go to the National Assembly for

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passage. However, it is very important to note that after all the years of toiling after being employed, without a proper retirement scheme, one ends up in a lot of problems.

We have seen very many workers who have worked in the private sector and with the Government for many years retire without pension. When they leave employment many of them live in a pathetic situation because they do not have any income at all. What the Committee worked very hard to get is a system where when one retires they are able to get something until the end of their days. There were all manner of opposing voices but what we have now is something acceptable to all Members.

Mr. Speaker, Sir, I must mention that we ended up with an argument where we have the Board of Directors proposing the scheme where the membership would come from various stakeholders. The workers' unions – right now we have three prominent ones and two others – would choose the members through a method stipulated. The Council of Governors would also choose one or two representatives. However, the entity to appoint them would be the office of the Cabinet Secretary for Public Service. That brought some argument because initially the Governors wanted to be the ones to do so. We argued and said that, that entity in the national Government is only appointing but whoever decides who is going to be on the Board is the various stakeholders. We may find that argument coming as we go on. Therefore, we have resolved it that way and the Council of Governors has agreed. I would like to urge the House to agree and pass this Bill.

Mr. Speaker, Sir, I do not have very much to say. I beg to move and request Sen. (Dr.) Machage to second this Bill.

Sen. (Dr.) Machage: Thank you, Mr. Speaker, Sir. Article 57 of the Constitution directs the country to take care of the aged. Most of the pensioners are people who are at an age that would be classified as so and hence, this Bill also addresses this section of the Constitution.

We have hitherto seen very sad appearances of former council employees and former councillors who, despite having worked tirelessly and in a very devoted manner towards the development of this country, end up dying not because they are due to die, but just because they cannot put food on the table, for a reason that should have been seen earlier and a solution prescribed; lack of pension especially so for former political leadership at that level of management.

Indeed, the introduction of the devolved system of government has given that impetus and reason to rethink about the after-work life of personnel who work at this level of government. It is our duty in the Senate to prescribe for that. Therefore, this Bill goes a long way to address that anomaly.

Mr. Speaker, Sir, without much ado, I beg to second.

(Question proposed)

The Speaker (Hon. Ethuro): Since there is no interest, I will call upon the Mover to reply.

Order, Senators! Sen. M. Kajwang would wish to contribute.

Sen. M. Kajwang: Thank you, Mr. Speaker, Sir. I would wish to, first of all, thank the Committee that worked on this particular Bill and for bringing it to the House.

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It is unfortunate that it is coming at the eleventh hour of the Senate, but it is better late than never.

I would not wish that this Bill moves from First Reading to Second Reading to Third Reading without having some input from the Members from this House, considering the history of this particular Bill.

In the year 2014, a Bill that attempted to cure the same problem, was roundly rejected by the Council of Governors (CoG). If you recall, the CoG had reservations that the original Bill did not take into account the two levels of Government and they were not involved in its formulation. Also, the Bill sought to centralise the pension system by delegating to the CS, National Treasury, the powers to make regulations that will operationalize the pension scheme.

I am comforted by the words of Sen. (Eng.) Muriuki that this Bill has taken into consideration the views and contributions of stakeholders including the CoG. It is in the public domain that the CoG is comfortable with this new Bill as opposed to the 2014 Bill that was withdrawn following the feedback from various stakeholders. I, therefore, wish to support this Bill. At the end of the day, we cannot legislate in isolation. We must be sensitive and conscious of the views and inputs of various stakeholders.

The pensions industry in this country is a significant driver of economic growth. It allows us to pool resources that can be used to develop the economy in different ways. Currently, we have two pension schemes that take care of workers in the county governments. We have the Local Authorities Pensions Trust (LAPTRUST) and the Local Authorities Provident Fund (LAPFUND). The total assets that these two funds manage is significant to finance close to ten different county governments annually. If we ensure that we streamline issues of pension and legislation relating to workers savings, we will be able to put in place a pool of cash that can be used to support devolution at different levels.

In as much as the Senate cannot prescribe the use to which these funds have to be put - we have a vibrant pension sector and the Retirement Benefits Authority that has taken a lead role in coming up with regulations and giving guidelines on utilisation of pension funds – the County Staff Pension Fund that we are trying to establish through this legislation should prioritise initiatives that can give life to devolution.

We have seen counties come up with various investment plans. In Meru, they have set up investment corporations that are purchasing hotels, running petrol stations and doing other things to subsidise and buttress the income streams that they get from the National Government and from locally collected revenue. How I wish there was a way to compel the County Staff Pension Fund to be the financier of choice for county governments that wish to undertake development.

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

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

I will give an example of the counties in western Kenya especially those bordering Lake Victoria that is: Siaya, Migori, Kisumu and Busia counties. These counties are sitting on a gold mine, which is the lake. It has a rich agricultural potential.

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The perennial complaint has been lack of adequate financing from the National Government. We will be discussing the Division of Revenue Bill and allocate revenue to the counties. We know these counties do not get more than Kshs7 billion every year. Sometimes they have legitimate needs to access cash in lumpsum from various government bodies to undertake their programs.

For example, the western Kenya counties can come together and put cash in place to develop a port to optimize the lake just as the Mombasa–Nairobi Standard Gauge Railway (SGR) has done at the terrestrial level. Counties can do something that can ensure when fish is caught, there are fish processing firms that can ensure fish farmers get great value as compared to what they are currently getting. Their options are to wait for the allocations that the Senate sends to the counties or to increase taxes to the *mama mboga* and cattle sellers in the markets.

I will not wish that counties increase taxes at this point in time. They can be more innovative. We do not want them to go to commercial banks that will charge them exorbitant rates. They can partner with bodies like the County Staff Pension Fund which is sitting on huge tranches of cash and come up with innovative ways of development and funding at concessionary rates so that we can give greater effect to devolution.

As I stated earlier, it is not the domain of the Senate, we can only suggest. We cannot legislate on how this fund will invest. Issues on investment and portfolio management are guidelines that are issued by the Retirement Benefits Authority (RBA).

As I conclude my submissions, this Bill will wind up the operations of LAPTRUST and LAPFUND. The County Staff Pension Fund will become the active fund where new employees are going to be enjoined. I hope that as we transit from the two funds to one fund, there will be clear identification of assets of those old funds. The Transitional Authority wound up without concluding its work on identification of assets that belonged to the defunct local authorities. I hope that the money owed to workers and employees are not subject to the current delineation exercise. In other words, LAPTRUST and LAPFUND can clearly identify their beneficiaries and the contributions and the benefits payable to them without having to wait for the Transition Authority or its successor to delineate the assets that belong to various parties.

Sen. (Eng.) Muriuki mentioned that public participation had already been undertaken. My understanding is that public participation will be undertaken during or after the stage that we are in. I hope that we are not processing this Bill for compliance purpose but there will be clear evidence that the CoG, LAPTRUST, LAPFUND and the Retirement Benefits Authority and other players in the pension sector are going to be invited so that they give their views and contributions on this Bill.

It is a few days to go before we wind up the work of the Senate. This is an important task that we cannot afford to hurry. If we suspect that there is an aspect of consultation that has not been taken into account and a level of consensus that has not been attained, the Senate of the Twelfth Parliament still has Members with a heart to ensure that the rights and interests of workers at the counties are taken care of. So, I hope that we are not rushing this Bill to ensure that this Senate goes on record as having passed it. Again, this is a matter that has to go back to the National Assembly.

The Temporary Speaker (Sen. (Dr.) Machage): Order! Senator. Who is rushing it? Please, watch your language. If you talk of rushing, then you must substantiate who is rushing it. I have not closed contributions on the same. Be careful.

Sen. M. Kajwang: Much obliged, Temporary Speaker, Sir. I said I hope that we are not rushing it. I still hope we are not rushing it.

The Temporary Speaker (Sen. (Dr.) Machage): Order! I order that to be expunged from the HANSARD record.

Proceed.

Sen. M. Kajwang: Thank you, Temporary Speaker, Sir. Probably I was the one in a rush. I will take a few minutes to wind up my contribution.

This is a good Bill, we should have passed it way back. We could have passed it if we had done the right thing in terms of consultation and stakeholder engagement. I am praying that as we process this Bill, we will learn from the mistakes of the past efforts and make sure that we do proper stakeholder engagement and consultations. We have about 130,000 workers under various schemes. This is a huge population that we must give hope to. The demographics of these workers is that many of them are about to retire. Soon, this fund will be expected to pay out benefits to these members. Therefore, we need to get it right.

I support the Bill and when it comes for the Third Reading, we will be able to make the amendments that will have originated from the stakeholder engagement.

Thank you.

The Temporary Speaker (Sen. (Dr.) Machage): Let us have, Sen. (Prof.) Lonyangapuo.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I also join my colleagues in contributing to The Health Bill (National Assembly Bill No.14 of 2016).

Sen. M. Kajwang: On a point of order, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): What is, Sen. M. Kajwang?

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, on a point of information---

The Temporary Speaker (Sen. (Dr.) Machage): Order! what do you want?

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, I wish to inform Sen. (Prof.) Lonyangapuo.

The Temporary Speaker (Sen. (Dr.) Machage): Could you, therefore, stand on a proper address to the Chair?

Sen. M. Kajwang: On a point of information, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. (Dr.) Machage): Sen.(Prof.) Lonyangapuo, do you want to be informed?

Sen.(Prof.) Lonyangapuo: Yes, Mr. Temporary Speaker, Sir.

Sen. M. Kajwang: Mr. Temporary Speaker, Sir, I wish to inform Sen. (Prof.) Lonyangapuo that the contribution was on The County Pensions Scheme Bill and not on The Health Bill (National Assembly Bill No.14 of 2016).

The Temporary Speaker (Sen. (Dr.) Machage): Sen. (Prof.) Lonyangapuo, you have been informed. I can see you are not amused.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I am not amused because what is on the Table is The Health Bill (National Assembly Bill No.14 of 2016).

The Temporary Speaker (Sen. (Dr.) Machage): Order! Sen. (Prof.) Lonyangapuo! I think you need a few more minutes to acclimatize yourself to what is before the House. You also need to apologize to the Chair for coming late. Since there is no other interest from other Members---

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I have a contribution to make.

The Temporary Speaker (Sen. (Dr.) Machage): Can you notify me through the computer? I am Information Technology (IT) compliant.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I thank my colleague from Homa Bay County, which is north of West Pokot County.

It is quite important to make sure that the Pensions Act governs pensions of our retired officers because the process they go through when they retire is very frustrating. When they are active in the service, they are valuable to the nation. They are paid and awarded titles of recognition on time. They are also given opportunities to express themselves. However, the opposite of this happens the moment they retire from the service. This unfortunate thing happens in third world countries although Kenya is now slowly moving to a middle income country.

For example, retired teachers were valuable when they were still working. However, the moment they stop working, they became completely irrelevant. Today you see them queueing from one Government office to another, in search of their benefits and other services. We need to implement The County Pension Scheme Bill so that we can take care of the people who made us proud.

Mr. Temporary Speaker, Sir, The County Pension Scheme Bill should also cater for the uniformed officers who suddenly become beggars the moment they retire. The worst of all are officers who die in the line of duty because it becomes hard for their loved ones to access their benefits to cater for school fees and other needs. It is a nightmare. I hope that this Bill will address how these hiccups will be removed so that the retired officers are assisted easily after retirement.

Mr. Temporary Speaker, Sir, lastly, the beneficiaries of retirees are the most affected. The other day I read in the newspapers about teachers who retired many years ago and have formed a club to seek for support. They look back at the memorable times when they brought up senior citizens in Kenya like us and others in the national Government. This Bill should address how they can look-up to their retirement fund and the other benefits they will get instead of being frustrated.

The other day, councilors were also seeking for assistance. The County Pension Scheme Bill should provide other benefits for retirees, for example, to enable them to access facilities in their former places of work just like the way former parliamentarians get parking and catering services when they visit Parliament. This Bill should address the welfare of civil servants after they retire from the service. In short, we should not waste the brains of Kenyans who have served this nation by making them irrelevant. We should make them useful so that they can appreciate their motherland until the time when they will retire completely from this world.

The Temporary Speaker (Sen. (Dr.) Machage): Very well. I see no other interest. I call upon the Mover to reply.

Sen. (Eng.) Muriuki: Thank you, Mr. Temporary Speaker, Sir. Let me start off by thanking all the Members who contributed to this very important Bill. Let me tell Sen. M. Kajwang that the public participation is normally done in between the First Reading and the Second Reading. So, it took place. In fact, we did it twice for the simple reason because of what happened on the first Bill. This is the one this House rejected. We had the first public participation with various stakeholders who presented to us a lot of memoranda and so on.

We, as a Committee, even ended up giving opportunities to specific stakeholders like the insurance industry and the Council of Governors (CoG) to make presentation. We wanted to mop-up as much of the views and suggestions as we could get to enrich this Bill. Of course, that does not mean that we agreed with everything. Sometimes, you will find that many participants in the public and the Government make almost the same suggestions about the same provisions. Therefore, the Committee has to analyze all suggestions.

I must say that the controversy was very little in terms of the provision; it was much more to do about the board, who is appointing and so on. The provisions themselves, I would like to assure Sen. M. Kajwang and others; that I think that one has been done very well. Again, as I said, that does not mean that every view has been incorporated. It can be incorporated in the sense of that view and this view and so on.

Mr. Temporary Speaker, Sir, once this Act is in place, we will be talking of hundreds of billions of shillings. It is true that if the CoG and the county governments fraternity saw this and build this as the investment source of funding of choice, I think it will go a long way in also giving an opportunity to the county governments workers to buy shares in investment projects where, over and above the investment itself, they would also end up with some extra income out of the investment.

Let me echo one of the speakers, I think Sen. (Prof.) Lonyangapuo, who cited the need for when somebody, unfortunately, for example, passes on, sometimes we have a lot of problems of beneficiaries getting benefits, school fees and so on.

Mr. Temporary Speaker, Sir, looking at some of these things, we realise that a large part of the problem is created by ourselves because you will find a person passing on and he never told anybody that he had three other wives and so on. Their children and ladies will suddenly show up and so on. The handicap has got nothing to do with the law; it is probably our way of life. There is the issue of workers who work for many years without a pension scheme of any sort. A case in point, cited variously, is the councilors who worked for many years. They would be elected and earn only on an allowance because of the system; there was no law to help them. Even now, it is very difficult to help them because they have to be accommodated through *ex-gracia* because the law does not allow. So, it is very important that the county government workers are taken care of from the onset.

Last but not least, we are in the Third World; I believe there must be a second world somewhere. In the First World, pension is taken very seriously. I remember one time I was in a delegation of Parliament, when I was in the National Assembly in Europe. We were interacting with workers variously and at that time there was talk in Kenya that we are very heavily taxed in Kenya. However, we realised that we are not taxed heavily. People in some of those countries are much more heavily taxed because that money goes

into pension. People do not mind because once they leave work at whatever age, they will be more or less taken care of as though they were working. So, it is very important for this Bill to cater for the county government workers.

Mr. Temporary Speaker, Sir, we are almost closing and Sen. Kajwang did mention that the Bill is coming at the eleventh hour. It is only that it has taken a very long time. It has actually taken about two years from the time that other Bill was rejected by this House. A lot of work has gone in between and it is only now maturing, but it is better late than never.

Earlier on, in the context of another matter before the House, there was a suggestion by one of the Senators that we should go the *Kamukunji* way. This has been applied before. I do recall when I was in the National Assembly that occasionally a Bill would come and because there was quite a bit of controversy, urgency and so on, we would sit in a *Kamukunji*, do all the amendments and agree on them---

*(Sen. Ndiema walked into the Chamber
without bowing to the Chair)*

The Temporary Speaker (Sen. (Dr) Machage): Order, Sen. Ndiema! Do what you are supposed to have done.

*(Sen. Ndiema walked back to the Bar
and bowed to the Chair)*

Yes, that is called civilization.

Sen. (Eng.) Muriuki: Mr. Temporary Speaker, Sir, I believe he is dully civilized now.

I wish to back the suggestion by one of the Senators in respect to one of the matters before the House earlier on, which is that when we have little time and the matter is not overly controversial, it helps to re-agree in an informal way, so that when we come to the Plenary, assuming we have the numbers, we do not have many speakers because it does not need a lot of time and we are able to pass it quickly.

With those few words, I beg to move and request under Standing Order No.5(4) that the question be put another day.

Thank you.

The Temporary Speaker (Sen. (Dr) Machage): It is so granted.

What is it, Sen. (Prof.) Lonyangapuo?

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Temporary Speaker, Sir. Allow me to read Article 96(1) and (4) of the Constitution.

“(1) The Senate represents the counties, and serves to protect the interests of those counties and their governments.

(4) The Senate participates in the oversight of state officers by considering and determining any resolution to remove the President or deputy president from office in accordance with Article 145.”

I have read this because this House was recalled to come today for this business. We got letters and Short Messages Service (SMSs) from the leaders of this House; the Senate

Majority Leader, The Senate Deputy Majority Leader, who is permanently absent and the one who wrote to us, including at night, the Chief Whip, and leaders on the other side of the House. The Constitution says that we can even afford to remove the President ---

The Temporary Speaker (Sen. (Dr) Machage): Order, Sen. (Prof.) Lonyangapuo! Please, take a seat. That was raised on the Floor of this House and this Chair has already taken the interests as necessary and replied to the reprimanding of the three officers you are attempting to name. I, therefore, would want to remind you of Standing Order No.107; that I may reprimand you for being repetitive of what has already been done. So, watch out.

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, the version I was bringing was that when the new House reconvenes in future, we need to have a clause. If we can attempt to remove people from the national Government, like the President and Deputy President, we must have a clause in our Standing Orders to remove our own leaders, even in a week, when they misbehave. That way we can offer Kenyans the direction we so need. I came all the way from West Pokot County where I was campaigning, hoping to go back to be a village elder serving as governor. Now, I am here and my bosses are not here; it pains. We need to revise these laws so that when we are not here to lead, we should be removed from office and replaced.

The Temporary Speaker (Sen. (Dr) Machage): The Standing Orders already prescribe for the same. Just go over your Standing Orders before you leave the Senate. I do not know whether you want to be a Governor, but before we adjourn *Sine Die*, make sure that at least you go with one understanding that the current Standing Orders that we have for the Senate contain a prescription on the modalities of removing a person from the leadership of the House, even if that person is appointed to this House by the political parties. So, it is not a *lacuna*.

What is it Sen. Abdirahman?

Sen. Abdirahman: Mr. Temporary Speaker, Sir, it has been overtaken by events. I almost responded on a point of order to the allegations; you might have overlooked.

The Temporary Speaker (Sen. (Dr) Machage): Very well. I have granted that the question will be put later according to the request by Sen. (Eng.) Muriuki. That is under Standing Order No.54 (3).

(Putting of the question on the Bill deferred)

I defer Order No.5 all the way to Order No.30.

COMMITTEE OF THE WHOLE

THE COUNTY ASSEMBLY SERVICES BILL
(SENATE BILL NO.27 OF 2014)

THE COUNTY STATUTORY INSTRUMENTS BILL
(SENATE BILL NO.10 OF 2015)

THE PRESERVATION OF HUMAN DIGNITY AND

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ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL
(SENATE BILL NO.8 OF 2015)

THE PERSONS WITH DISABILITIES (AMENDMENT)
BILL (SENATE BILLS NO.13 OF 2015)

THE NATIONAL CEREALS AND PRODUCE BOARD
(AMENDMENT) BILL (SENATE BILL NO.15 OF 2015)

THE COUNTY EARLY CHILDHOOD EDUCATION BILL
(SENATE BILL NO.32 OF 2014)

THE COUNTY GOVERNMENTS (AMENDMENT)
(NO. 4) BILL (SENATE BILL NO.18 OF 2014)

THE MEDICAL PRACTITIONERS AND DENTISTS
(AMENDMENT) BILL (SENATE BILL NO.2 OF 2016)

THE AGRICULTURE, FISHERIES AND FOOD AUTHORITY
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.17 OF 2015)

THE MICRO AND SMALL ENTERPRISES (AMENDMENT) BILL
(SENATE BILL NO.12 OF 2015)

THE NATIONAL HOSPITAL INSURANCE FUND
(AMENDMENT) BILL (SENATE BILLS NO.9 OF 2015)

THE SELF HELP ASSOCIATIONS BILL
(SENATE BILL NO.2 OF 2015)

THE PUBLIC APPOINTMENTS (PARLIAMENTARY APPROVAL)
(AMENDMENT) BILL (SENATE BILL NO.9 OF 2016)

THE COUNTY GOVERNMENTS (AMENDMENT) (NO.2)
BILL (SENATE BILL NO.7 OF 2016)

THE TREATY MAKING AND RATIFICATION (AMENDMENT)
BILL (SENATE BILL NO.5 OF 2016)

THE WAREHOUSE RECEIPTS SYSTEM BILL
(NATIONAL ASSEMBLY BILL NO.12 OF 2015)

THE LOCAL CONTENT BILL
(SENATE BILL NO.13 OF 2016)

THE IMPEACHMENT PROCEDURE BILL
(SENATE BILL NO.8 OF 2016)

THE PARLIAMENTARY POWERS AND PRIVILEGES BILL
(NATIONAL ASSEMBLY BILL NO. 35 OF 2014)

THE ASSUMPTION OF OFFICE OF GOVERNOR BILL
(SENATE BILL NO.10 OF 2016)

THE BASIC EDUCATION (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.35 OF 2014)

THE PHYSICAL PLANNING BILL
(NATIONAL ASSEMBLY BILL NO.46 OF 2015)

THE PERSONS WITH DISABILITIES (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.43 OF 2013)

THE COUNTY STATISTICS BILL
(SENATE BILL NO.11 OF 2016)

THE KENYA ROADS BILL
(NATIONAL ASSEMBLY BILL NO.26 OF 2015)

(Committees of the Whole deferred)

Second Reading

THE LAND VALUE INDEX LAWS (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.40 OF 2016)

(Bill deferred)

ADJOURNMENT

The Temporary Speaker (Sen. (Dr.) Machage): Hon. Senators, there being no other business for the House, the Senate stands adjourned until Tuesday, 13th June, 2017 at 2.30 p.m.

The Senate rose at 2.00 p.m.