

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 27<sup>th</sup> September, 2017

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

*[The Temporary Speaker (Sen. (Prof.)  
Kamar) in the Chair]*

### PRAYER

### PAPERS LAID

**Sen. (Eng.) Mahamud:** Madam Temporary Speaker, I beg to lay the following Papers on the Table of the Senate, today, 27<sup>th</sup> September, 2017:

#### THE SENATE CALENDAR FOR 2017

The Senate Calendar (Regular Sessions of the Senate) for the Year 2017 (August to December 2017).

#### ANNUAL REPORTS AND FINANCIAL STATEMENTS FOR UFAA/UFTF, 2016

The Annual report and Financial Statement of the Unclaimed Financial Assets Authority (UFAA) for the period ended 30<sup>th</sup> June, 2016.

The Annual report and Financial Statement of the Unclaimed Financial Trust Funds (UFTF) for the period ended 30<sup>th</sup> June, 2016.

#### ANNUAL REPORT AND FINANCIAL STATEMENT OF MARSABIT COUNTY EXECUTIVE

Report of the Auditor General on the Financial Statements of the Marsabit County Executive Mortgage Scheme for the period ended 30<sup>th</sup> June, 2016.

## ANNUAL IPU REPORT FOR 2016

The Annual Report for the Inter-Parliamentary Union for 2016

THE ANNUAL REPORTS AND FINANCIAL STATEMENTS  
OF KILIFI/MALINDI WATER COMPANIES

Report of the Auditor General on the Financial Statements of the Kilifi-Mariakani Water and Sewerage Company Limited for the year ended 30th June, 2016.

Report of the Auditor General on the Financial Statements of the Malindi Water and Sewerage Company Limited for the year ended 30th June, 2016

*(Sen. (Eng.) Mahamud laid the documents on the Table)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Senators, please, switch to the Supplementary Order Paper.

Next Order!

### NOTICE OF MOTION

#### APPROVAL OF THE SENATE CALENDAR FOR 2017

**Sen. (Eng.) Mahamud:** Madam Temporary Speaker, I beg to give notice of the following Motion:-

THAT, pursuant to Standing Order 29(1), this House approves the Senate Calendar (Regular Sessions of the Senate) for the year 2017 (August to December, 2017) laid on the Table of the House today, Wednesday, 27<sup>th</sup> September, 2017.

### STATEMENT

#### CLASHES BETWEEN THE MAASAI AND KIPSIGIS COMMUNITIES IN NAROK COUNTY

**Sen. Olekina:** Madam Temporary Speaker, I rise pursuant to Standing Order No.46 (2) (b) to seek a Statement from the Senate Majority Leader regarding the recent and frequent clashes between the members of the Maasai community in Esoit-Naibor and members of the Kipsigis Community in Kirindoni area of Kimintet Ward in Narok County.

In the Statement, the Senate Majority Leader should:-

a) state whether the Government is aware that the land dispute between the Maasai in Esoit-Naibor and Kipsigis in Kirindoni area, Kimintet Ward, Narok County is going out of hand, leading to loss of life and property;

b) state the number of persons killed in the last two months as a result of the clashes in the area;

3) confirm whether the killing of Mr. Ben Kolian, a Maasai from Narok County, Mr. Nicholas Nge'tich and four other persons whose bodies were found dumped in Esoit-Naibor were as a result of the land dispute between the two communities living in the area;

4) explain whether the disarmament exercise that was carried out was successful and why the officers carrying out the disarmament exercise are allegedly from one community;

5) state what the Government is doing to solve the dispute between the two communities and avert further loss of life and property.

Thank you, Madam Temporary Speaker.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you, Senator.

Could the Senate Majority Leader give an undertaking on the Statement?

**Sen. (Eng.) Mahamud:** Madam Temporary Speaker, we will give the Statement in two weeks.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Is two weeks okay with you, Sen. Olekina?

**Sen. Olekina:** Madam Temporary Speaker, two weeks is way too long given that people are dying.

**Sen. (Eng.) Mahamud:** Madam Temporary Speaker, without anticipating debate, we will not be able to give the Statement in two weeks because we will be on recess. With the indulgence of the Member, I request for two weeks starting 10<sup>th</sup> October, 2017.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Sen. Olekina, I am sure that the Senate Majority Leader is looking at the weight of your request. It may be necessary to give him the time he has requested for, so that he can give a thoroughly-researched answer.

**Sen. Olekina:** Madam Temporary Speaker, could the Senate Majority Leader give me the exact date because two days ago over ten people were killed. We were able to recover only eight bodies. The more we wait, the more the damage. Could he give an undertaking on the particular action that will be taken before he brings a full report?

**The Temporary Speaker** (Sen. (Prof.) Kamar): Kindly give us a specific date.

**Sen. (Eng.) Mahamud:** Madam Temporary Speaker, I propose 10<sup>th</sup> or 11<sup>th</sup> October, 2017. That is two weeks away.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Do you mean Tuesday, 10<sup>th</sup> October, 2017?

**Sen. (Eng.) Mahamud:** Yes, Madam Temporary Speaker. It is two weeks from now.

**NOTICE OF MOTION FOR ADJOURNMENT  
UNDER STANDING ORDER NO 34**

HEIGHTENED POLITICAL TENSION IN THE COUNTRY

**Sen. Mwaure:** Madam Temporary Speaker, I beg to give notice of the following Motion:-

THAT, pursuant to Standing Order No.34, the Senate do adjourn to discuss a matter of urgent national importance regarding the heightened political tension in the country.

*(Several Senators stood up in their places)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Order, Members. You may resume your seats.

*(The Senators resumed their seats)*

Hon. Members, having received the request on time and the hon. Member has the support from more than the required minimum, which is normally five Senators, I accept it. We will adjourn at 4.30 p.m. or at the end of Order No.8, whichever comes first, to discuss that Motion which is of an urgent nature.

Next Order.

**MOTIONS**

APPROVAL OF THE SENATE CALENDAR FOR 2017

**Sen. (Eng.) Mahamud:** Madam Temporary Speaker, I beg to move the following Motion:-

THAT, pursuant to Standing Order No. 29(1), this House approves the Senate Calendar (Regular Sessions of the Senate) for the year 2017 (August to December, 2017), laid on the Table of the House today, Wednesday, 27<sup>th</sup>September, 2017.

Madam Temporary Speaker, attached to the Supplementary Order Paper is an annex which has got the proposed Calendar. The House started sitting on 31<sup>st</sup> August, 2017 and we had a short recess to attend the induction retreat in Naivasha last week. We resumed yesterday, 26<sup>th</sup> September, 2017.

It is proposed that we go on recess from 28<sup>th</sup>September to 9<sup>th</sup> October, 2017. The reason for this is a few housekeeping issues that need to be ironed out with regard to preparation for the presidential election. The Senators also have to go to their counties to set up offices. It is, therefore, proposed that we go on recess tomorrow, Thursday, 28<sup>th</sup> September, 2017 and resume on the 10<sup>th</sup> October, 2017. It is proposed that from 10<sup>th</sup> to

12<sup>th</sup> October, we will be in part three of the first session. From 13<sup>th</sup> October, 2017 to 6<sup>th</sup> November, 2017 we will go on recess.

This is the period that is envisaged for the 26<sup>th</sup> October, 2017 repeat Presidential Elections. We will then come back on 7<sup>th</sup> November, 2017 and go for the mandatory recess on 8<sup>th</sup> December, 2017 to 12<sup>th</sup> February, 2018 for the Christmas holiday. This is the proposed Calendar of the Senate. During the recess period, we have a lot of work to do as Senators; we have to deal with our counties and other national duties.

I beg to move that this Motion be adopted. I ask hon. Haji to second.

**Sen. Haji** seconded.

*(Question Proposed)*

**The Temporary Speaker** (Sen.(Prof.) Kamar): Is there any Member who wishes to contribute to that?

**Sen. Mwaura:** Thank you, Madam Temporary Speaker. I rise to “second” the Motion in relation to the Calendar of the Senate. I am trying to adjust to the fact that the Senate only sits in the afternoon---

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Member, may I correct you, you have talked of seconding the Motion but it is now time to debate. The Motion has already been seconded by Sen. Haji.

**Sen. Mwaura:** Thank you, Madam Temporary Speaker. I stand guided. As I was saying, I am still coming to terms with the adjustments that the Senate sits on Tuesday, Wednesday and Thursday afternoon. Clearly, as legislators we have a serious role of ensuring that we have enough business to conduct. The Senate has a slow start being the third Senate in the history of our Republic and the second under the new Constitution.

However, when I look at the Supplementary Order Paper, I realise that there are quite a number of Notices of Motions that are yet to be properly tabled before the House. I would want us to indulge ourselves; that based on our deliberations in Naivasha, where we were able to find out that we have about 60 Bills, we need to revive them and take advantage to populate our Calendar with a lot of business.

Madam Temporary Speaker, I commend the fact that this Calendar anticipates the repeat Presidential Elections which have now been gazetted to take place on 26<sup>th</sup>, October, 2017 and Members, who are also politicians, require to converse and mobilize the electorate to participate in these elections. However, even as I support, some of us - and I believe that I am speaking on behalf of quite a number of Members present - have the gusto and the willingness and fire in the belly to participate in the proceedings of the Senate. So, the recess that will take place from the 28<sup>th</sup> September, 2017 to 9<sup>th</sup> October, 2017 appears to be unnecessary because we have just come from the induction retreat and only after a week, we are supposed to go back and keep ourselves busy until that time.

Madam Temporary Speaker, may be, this is the time that we, as Senators, are supposed to be perusing through the various ideas that have been proposed to us by the people that we represent to make them legislative proposals within the ambit of the various tools that have been given to us by the Standing Orders in terms of Petitions, Motions and Statements, just like the one that has been canvassed on the Floor and other such avenues so that we can truly represent not only the entities which are counties

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represented by this ‘Upper House’ but also individual Kenyans who reside in those counties and also the special interests that we represent.

Madam Temporary Speaker, I also want to reiterate that this Calendar is flexible. I am sure that it can be adjusted depending on the matters that necessitate such. As we reiterated in our commitment during the Naivasha Retreat, we will be committed to ensure that this House has a proper quorum and that the debate shall be robust. This House has been rightfully accused of being a little bit boring. We may want to ensure that even when we express our wisdom and the sagacity that comes with being in the ‘Upper House’, we should also have some little pomp and colour to make sure that every Kenyan, in this country, understands that there is a true place of debate in the Senate of the Republic of Kenya.

Madam Temporary Speaker, I support.

**Sen. Seneta:** Thank you, Madam Temporary Speaker, for giving me this opportunity to also support this Motion on the Calendar of this House. It is quite in order for us to go for recess especially at a time like this. Most of us are in the Senate for the first time and we need to have time in our offices to study some of the issues that concern our counties. Many of us are not conversant with The County Governments Act and The Public Finance and Management (PFM) Act, 2012, that runs many institutions in the counties that we need to oversee. Much of the oversight role requires us to have a lot of knowledge on what we are supposed to do, especially in the county institutions.

We also need some time to look at the pending Bills that were supposed to have been tabled in this House. We also need to plan on what we will table in this House. This one week will be of great advantage to some of us because we have not been to those offices. We need to sit down and look at what is supposed to be done in the Senate.

I also concur that there is the issue of the repeat Presidential Election which many of us need to take part in. We also need to go back to our counties and persuade our supporters accordingly, so that they can also come out and vote.

According to this Calendar, it will be important for us to give the leadership of the House some time to come up with Committees where we can request for Statements. This time will also be of advantage to the leadership of this House to sit down and come up with the membership of the committees which we need to have after the repeat Presidential Elections.

Madam Temporary Speaker, I support.

## COMMUNICATION FROM THE CHAIR

### VISITING DELEGATION OF STAFF FROM MERU COUNTY ASSEMBLY

**The Temporary Speaker** (Sen. (Prof.) Kamar): Before I give a chance to the next Senator, hon. Members, I would like to recognize the delegation in the Speaker’s Gallery.

I would like to acknowledge the presence in the Speakers Gallery, this afternoon, of a visiting delegation of staff from Meru County Assembly. Could we please welcome them?

(Applause)

The county assembly officers are visiting the Senate on a one week attachment programme. I request each member of the delegation to stand up when I call out their names so as to be acknowledged in accordance with the Senate tradition.

- |                      |   |                          |
|----------------------|---|--------------------------|
| (1) John Macharia    | - | Assistant Hansard Editor |
| (2) Debra Kinyua     | - | Audio Officer            |
| (3) Evelyne Kagwiria | - | Hansard Reporter         |
| (4) Lindsay Makena   | - | Research Officer         |
| (5) Susan Muthoni    | - | Clerk Assistant.         |

Hon. Senators, on behalf of the Senate and on my own behalf, I welcome the delegation to the Senate and wish them well for the remainder of their stay.

Thank you.

**Sen. Wario:** Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute to this Motion. As we all know, we are heading to the repeat Presidential Election. This recess will give us an appropriate time to go to our counties to do some activities, for example, to visit our agents who will undertake the elections. We will also familiarize ourselves with the new county government and the county assembly so as to understand how they conduct their business.

This recess will also give us an opportunity to campaign in different parts of our county and meet our people. It will also enable us to interact with our people and thank them for voting for us. It has been a long time since we left our counties and the people who elected us want to see us.

I beg to support the Motion because it has come at the right appropriate time.

**Sen. Haji:** Thank you, Madam Temporary Speaker. First of all, I congratulate you for having been elected to sit on that Chair. I express my confidence in you, that you are an able leader and you will do this House proud.

I also welcome the delegation from Meru County who are with us this afternoon. I wish to tell them that their current governor was one of the pillars of this House. I am sure that they will enjoy working with him. We are here all the time to support counties.

Having said that, I want to support the Motion before us this afternoon. As has been said, since we were elected, we have been here in Nairobi County. Most of the new Senators and even we who have been here before have been in Nairobi following what has been happening in our country.

We have just come from an induction which was very rich and useful to many of us. Therefore, it is befitting and quite in order for us to go on recess so that we can interact with the people who elected us. Even those who were nominated come from areas where they live with their people. Therefore, it will be good for them.

Madam Temporary Speaker, I disagree with Sen. Mwaura's sentiments that some people say this is an idle House. This House has never been idle; it has been a very busy. Leaders here are very committed and they are prepared to work. I am sure even those of you who joined us recently are ready to work hard for a better country.

This perception which was created by our colleagues in the other House where he came from should be erased from his mind now that he is a Senator. He should stand with

the Senate and support its business. It is very unfortunate to see our colleagues on the other side of this House appearing on technical grounds. They must know they were elected to this House to represent their people, but not to appear here technically or when it suits them. Their people would like to hear their voice. This is the time that they should contribute to a Motion like this that affects the whole country.

I am also pleased that Sen. Mwaura has brought up a very good Motion on the status of security in the nation. It is of concern to all of us. It will be very sad if our colleagues on the other side will not be here to address the problem bedeviling our country.

With those remarks, I beg to support.

**Sen. (Rev.) Waqo:** Thank you, Madam Temporary Speaker. I also join Sen. Haji in congratulating you as I support this Motion that we go on recess.

First, we need to do that because all of us represent different counties. From 31<sup>st</sup> August, 2017, we have been busy doing different things here. Again, many of us come from counties that need our attention at this particular time. In a county like Marsabit where I represent, drought has wiped out animals. We have no water and mothers and young girls are suffering trying to fetch it. In those counties, when people do not see us, they see a big vacuum.

I feel that it is in order for us to go back now to our people and give them moral support and also create enough awareness on what is happening in this country. A repeat of the presidential election is a new thing in our country. Many of our people on the ground do not understand how we can repeat a presidential election. So, we need to go on the ground to encourage our people and tell them the importance of preparing ourselves for the presidential election.

I also support the Motion because even our elected leaders need to rethink of the work that we have given them; that is, the Speaker, the Deputy Speaker, the Senate Majority Leader and others. Much of our attention is taken by what is happening in our city and beyond.

In terms of politics, the political temperatures are rising. We need to react and respond to so many things. It is in order for us to give ourselves time to deal with the most urgent things now and come back when we can focus on other things that we need to focus on.

Madam Temporary Speaker, the future of our country depends on us, leaders; it is in our hands. It is my prayer that as we go for recess, we will preach messages of peaceful co-existence and peaceful election. I also pray that our Opposition leaders will also guide our people to have peaceful co-existence. When the time comes for elections, it is for us to guide our people. So, I think it is right and in order for us to recess.

I support that we go on recess, especially at this time.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Members, let me remind you that the Motion for Adjournment or recess will be discussed tomorrow. Today, the Motion before us is on Approval of the Senate Calendar. That is for clarification purposes.

**Sen. Kinyua:** Thank you, Madam Temporary Speaker, for giving me this opportunity and I stand to support.

This has come at the right time because we will have enough time to go back to our counties to set up our offices as well as transverse the whole of our counties. It will also give us opportunities to interact with our people. It has been long since we were there because last week we had the induction workshop in Naivasha. Therefore, we have not had enough time with our constituents.

Again, it will give us an opportunity see exactly what is happening in our counties, specifically concerning the County Integrated Development Plans (CIDPs) and what is being done by governors. The CIDPs will help us in our oversight role. It will be a good opportunity for us to know what plans have been set and what we can follow.

I also disagree with my friend, Sen. Mwaura, on his sentiments because he does not represent a county per se, so to speak. Maybe that is why he feels out of place or being in a wrong place. I would like him to know that he is in the right place. This is a very busy House. When we are not in the House, we are busy talking to our constituents and following up on what governors are doing. For example, yesterday in the morning I was busy in my county when the governor was opening the County Assembly and I participated. So, for him to say that we are not busy, I find myself a bit confused unless he is the only person who is not busy. He is the only one who came from the National Assembly who has not gotten used to being in the Senate.

*(Sen. Haji spoke off record)*

Again, we will have enough time to go to campaign for His Excellency the President, Hon. Uhuru Muigai Kenyatta, so that on 26<sup>th</sup> October, 2017, he will be voted by a majority of 3 million votes. Therefore, this recess has come at the right time.

I stand to support.

**Sen. Cheruiyot:** Thank you, Madam Temporary Speaker, for giving me this chance.

Before making my contribution, I join my colleague, Sen. Haji, who took time to welcome the visiting delegation from Meru County Assembly. They have joined us this afternoon to have a look at how we transact our business and induct themselves on the operations of the Senate. In welcoming them, I personally know how much county assemblies, including the one that I represent, look up to the Senate in terms of procedure and so many things. I get many calls and requests from officers in my county assembly seeking to visit and acquaint themselves with various processes that happen here. I hope that the office that is responsible for these visits will continue working on how to improve on this programme that is very beneficial and enriching to county assemblies. To the visiting delegation, welcome.

Secondly, let me also contribute to this Motion on Approval of the Senate Calendar, noting that there are quite a number of things that I am in agreement with. I know many Members will speak to these things later on when we have the Motion because I have seen in the Order Paper that there will be an Adjournment Motion to discuss the security situation in the country. However, this Motion frees up a number of Senators to apply our minds to the current situation in our country.

Indeed, these are extra ordinary times which we also have to put up with and find ways to drive the agenda of this country and ensure that we navigate Kenya through this

path that is unchartered to date by any other African country. It is my sincere hope and prayer that we eventually navigate through this path successfully and those who will be declared the winners to be gracious. Those who will have lost to accept defeat and move forward the country. It will also set us on a great precedence.

However, that is not the main context of my contribution this afternoon. The main thing that I want to speak to is the fact that the way this calendar is structured, at least up to 7<sup>th</sup> December, 2017, shows that there is a lot of work that lies ahead of us. We may have a few days off in the beginning up to October. However, it is worth noting that eventually when we get to resume, it will be quite a busy moment for us. I support it in the context that it is. Of course, I am alive to the fact that there are things that will come up in between, especially given the current political situation. We may have to be recalled to pass a Bill here or transact business. We will be ready to do it any time.

In conclusion, Madam Temporary Speaker, I have mentioned to a few of my colleagues here – this is out of courtesy and experience that I got – that it is during such Motions as the one that is before us this afternoon that you cut your teeth as a legislator. You rise and speak because there is nothing technical to contribute to. I have asked many of them to please, press the button and say something but they asked me what they should say during such a session.

You realise that even myself in the last few minutes, there is not much that I have said. However, I was doing it, so that they get to learn because that is also how I was taught. When you are a beneficiary of something nice, you also pass it on to others. I have seen Sen. (Dr.) Langat from Bomet County has pressed his button. I hope he will be given a chance to make his contribution.

**Sen. Farhiya:** Thank you, Madam Temporary Speaker. I beg to support this Motion as a person who comes from drought prone areas. As it has been stated by my colleague, Sen. Jillo Waqo, we need to go back to our counties because there are pertinent issues that need to be discussed. One of the issues that need our attention is that during drought, there is lack of water. Even when the drought is over, at times there are floods which sweep away the animals that are weak. Counties also need our support to plan for the eventualities of having so many school drop-outs amongst our communities so that there are proper plans in place. Therefore, I believe that this time is appropriate for this recess.

Madam Temporary Speaker, I want to plead with my fellow Senators that as they go back to their counties during this recess, some of us come from different religious backgrounds. Please reach out to your Churches, Mosques and other avenues that you need to ensure that peace is preached within this country. In some of our neighbouring communities, there are children who were born 25 years ago who have never seen peace. Therefore, I request you all, for the love of this country, to ensure that our children and our grandchildren grow up in an atmosphere that is peaceful.

Madam Temporary Speaker, I also want to congratulate you for being nominated in the Speaker's Panel. We are happy to see you on that big seat as a woman.

*(Applause)*

Politics is very important in terms of prosperity for a country. It is also equally important to pass the right legislations so that our communities can be relieved of poverty and to avoid inequalities that exist within counties. I know that we have the equalization fund and most of us are beneficiaries of this fund. In my county of Wajir, we have seen tarmac roads for the first time in fifty years within the last five years. Do you not think that, that is development within the country which needs to be applauded? We can all enjoy development only if it is sustainable and is equally distributed among our citizens.

Therefore, it is important that as we plan, some of those issues are considered in our planning. Although there is drought in my area now, I am sure that in the rest of the country, there will be areas which are flood prone. So, for those who come from those areas, this is the right time to go back and support the county government to plan ahead so that when flooding comes, it does not catch us unprepared and people lose their businesses, lives and livelihoods.

Madam Temporary Speaker, I beg to support the adjournment of the Senate and the calendar that is proposed. Thank you for giving me an opportunity to contribute.

**Sen. (Dr.) Langat:** Thank you, Madam Temporary Speaker. I take this early opportunity to congratulate you for being appointed to that position. I also want to join those who have already welcomed the delegation from Meru County and say; welcome; you will learn a lot from this particular Senate session.

I want to support the Senate calendar for this particular session based on the following grounds. First, it will be high time for all of us to go and put our heads together with the county assemblies and see their agenda for development and see how we can move on together. This is important because some of them have been calling us, requesting to find out if we can meet them so that we can put our heads together. This will be an opportunity for us to do that.

Second, Madam Temporary Speaker, we are in campaign mode for the repeat presidential election and people outside there also want to see our position; they want to hear our voices concerning the particular people we want to support. My people have been calling me, asking whether I am still supporting our President. In fact, it will be my happiest moment to call and tell them that they will hear my voice as soon we adjourn this House.

Some of us are still new and we are still trying to settle down in Nairobi. This will be a good opportunity to enable us to settle in well, especially for the new Members. This will also be the best time for us to go to the counties to inform the electorate about the funds we disbursed two weeks ago. It will be of great pride for us to go and tell them that we have already started working.

Lastly, for our friends who are participating in demonstrations – which I do not like much myself – this will be a good time for us to go and guide those particular people on how to conduct peaceful demonstrations. We are aware that there are commanders who are commanding from a distance. Therefore, this will be the best time for them to participate practically so that they protect those particular supporters from messing up some places.

So, Madam Temporary Speaker, I beg to support this Motion. Thank you very much.

**Sen. (Dr.) Milgo:** Thank you, Madam Temporary Speaker. Let me first take this opportunity to congratulate you for being appointed to that great position. Let me also join you in welcoming the delegation from Meru County Assembly and tell them that they did well in choosing to conduct their benchmarking in the Senate.

Madam Temporary Speaker, I stand to support this Motion. All of us are aware of what is happening right now after the presidential elections were nullified. Yesterday, when we had our parliamentary group meeting, we were told to go back to the counties and look for the right chief agents to ensure that processes will go well this time round. As you all know, the presidential election was nullified on the basis of not following the right procedures.

Secondly, Madam Temporary Speaker, this is the right time for us to go on recess, particularly after coming from an induction. I realise that we received so many documents and we need time to go and familiarize ourselves with them. In addition, I concur with my colleagues who talked about the recently disbursed county allocations. We need to go, sit together and look at the County Integrated Development Plan (CIDP) and give them some advice on how to go about it so that the residents can get value for their money.

A few Minutes ago, Sen. Ledama was complaining about the civil strife that is going on between the Maasais and the Kalenjins who are bordering my county. The recess will be a good time to go back and preach peace to ensure that the strife is solved before the Senate Leader of Majority outlines the reasons that caused it. Additionally, the recess will enable me to go to the county because as we speak, five schools have been set on fire. The affected students need to see their leaders comforting and directing them. Therefore, the recess is in order.

I support the Motion.

**The Temporary Speaker** (Sen. (Prof) Kamar): Thank you, Sen. Milgo. Sen. Kimani Wamatangi.

**Sen. Wamatangi:** Thank you, Madam Temporary Speaker. I rise to support the Motion on the approval of the Senate Calendar for this Session. I congratulate you, as my colleagues have done, for being appointed to the Speaker's Panel. I am sure, even though the seat has been described as a "big seat" the brains behind the person seating on the seat are bigger than the seat.

Madam Temporary Speaker, I want to note that it was in the Senate's plan in the Eleventh Parliament to deliberate as a House and see how we can accommodate the Senate sittings in the counties. It had been planned that we would visit the counties, have sittings, collect views from the counties and hear the issues that arise especially when we are interacting with the Members of the County Assemblies (MCAs) in the counties because their roles complement the Senate.

In the formulation of our calendar and as we proceed with its implementation, it will be important that we evaluate how we are going to accommodate this idea. If I can recollect, in the last Parliament, so many counties struggled to bring issues to this House that were of interest to their counties. It would be easier if this happens.

Most of the MCAs who have been elected are new. They could be struggling like other Members of Parliament (MPs) to get accustomed to the House procedures of legislating. By the time they catch up, the wheels of implementation of policies and the

use of funds by governors will be on and indeed, a lot would have passed them. We have had serious cases in counties, for example, in the last Parliament, some MCAs from western Kenya came here and asked how the Senate could help them on certain sensitive issues.

In one of the cases, a county governor was paying his wife and his running mate's wife salaries and allowances. A new MCA will have no idea how to deal with such a matter. Therefore, this House should seriously consider that we travel to such areas, invite the Members of the public and MCAs, hold sittings, listen to the people, collect their views and give direction. Such sittings will also be forums that the Senate can use to demystify itself so that people get to show the role it plays according to Article 96 of the Constitution.

If I may comment on some of the things that were said before I was given the Floor, it is indeed, a fact that the role of the Senate is not fully appreciated in the counties. It is not unheard of that once a Senator visits a county at the end of two or three years, a member of the public tells them that: I still do not understand what role you play as a Senator. We have had to battle this ourselves in the counties during campaigns.

As you can see, most of the Senators in the Eleventh Parliament did not make it back to the Twelfth Parliament. They could not be re-elected. The reason is not because they did not perform the roles of legislation, representation and oversight assigned to them as mandated by the Constitution, but it is because in the eyes and minds of the public, they juxtapose what a Senator does with what other elected leaders do.

I have been asked many times when I visit my county, Kiambu why I have not been seen commissioning construction of tarmac roads like the governor who comes here to start a new water project whereas I as Senator has no project. All these questions are relevant because they are in the minds of the people. It is the role of this House to make sure that we have visited the counties since they cannot all visit us.

Madam Temporary Speaker, one of the important issues that we should raise in this House is that, since the inception of the Senate by the 2010 Constitution, a vital stage to carry out robust civic education was missed. This would have enabled the citizenry to understand the various roles of various legislators. Because of that vacuum that was created then and the failure to fill it up to now, I can authoritatively say that if that trend persists, the Senators in the Twelfth Parliament will suffer the same fate after five years like most of the Senators of the Eleventh Parliament did.

I want to correct something, my colleague, Sen. Mwaura said that this House is idle and it is the House of *wazee*. Sometimes that is what the members of the public think. Therefore, it is the role of this House to make sure that we demystify and purge this perception and leave it by doing what this House had intended by going to the county.

Secondly, as we went through induction last week, one of the key issues that consistently came out was that most of the legislation that was proposed and debated in this House and forwarded to our sister House for concurrence never saw the light of day. It is important as we seek to approve the calendar, we recognise that it needs to be formulated, implemented and executed with a view to ensuring that there is total efficiency. When legislation is proposed in this House and debated, it should be followed up to its logical conclusion. On this issue, it is important that the administrative offices -

from the Speaker's office to the Clerk's office - ensure that as we close this session, most of the legislations that will have been proposed and debated are followed up to their conclusion in the National Assembly. That is how this House can realize effectiveness.

Lastly, Madam Temporary Speaker, I want to talk about the fact that most of the business of this House is carried out in committees. Looking at the Calendar, it is proposed that we sit three days of the week in the afternoons and that does not mean that the Senate is not working. This is in recognition of the fact this House carries out most of its work through committees. We have agreed as a House that we will constitute our committees after the presidential elections because that is an important event in our cycle as a country.

It is also important for this House to recognise that in carrying out our mandate most of the work is done through committees. Committees should be facilitated because we had serious challenges in the last session while trying to share out the revenues between the two Houses. A formula was introduced whereby most of the monies which were duly and rightly supposed to be coming into the Senate to facilitate committees to carry out their work were reduced. Eventually we had committees running out of funds to carry out their business midway. I can say with reference to my committee that way before we could execute our business, we found ourselves stuck because there were no funds to enable us carry out our functions.

Madam Temporary Speaker, as we speak now, the Treasury has already sent us a circular confirming that funds have already been disbursed to the counties. It is important that we use the upcoming recess which is included in this Calendar to go and be part of the process as county governments start to formulate policies. We should start asking what those funds have done in the counties in tandem with our mandate.

With those few remarks, I support.

**Sen. Linturi:** Madam Temporary Speaker, first, with due respect, allow me to welcome the delegation from Meru County to this Senate. I also thank my brother, Sen. Aaron Cheruiyot, who was holding brief for me before I got in here.

Madam Temporary Speaker, the Motion before the House is important. It is a Motion that deals with how we organise our diary and time. Looking at what is before the House between now and the time that we are supposed to have the first break after the general elections, I agree with the Mover of this Motion that it is necessary and important for us to agree on the timetable. I also thank him for finding it necessary to bring it at such a time. We are aware that the country is in some bit of anxiety.

Looking at the Calendar, I am happy because I will have an opportunity to leave the Senate and go back to the County of Meru. I will have some time to persuade the people of Meru during that period to get out in large numbers and reaffirm their commitment and support for our beloved President when we shall be voting on 26<sup>th</sup> October. That will also give us time to be there without being bothered so much about the business we have missed in the Senate.

Madam Temporary Speaker, I am in agreement and I support this Motion. I thank you.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you Senator. I now request the Mover to reply.

**Sen. (Eng.) Mahamud:** Madam Temporary Speaker, I beg to reply. I thank Members for their very worthy contributions. The recess will help Senators to undertake their work at the county level. I thank you.

**The Temporary Speaker** (Sen. (Prof.) Kamar): Thank you Senator. I would like to bring to the attention of Members that according to Standing Order No. 73, voting on this Motion will take recognition of the fact that this is not a matter that affects the counties. So, we shall go ahead to vote by acclamation.

*(Question put and agreed to)*

*(The Temporary Speaker (Sen. (Prof.) Kamar  
consulted with the Clerk-at-the-Table)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): Hon. Members, following discussions and consultations with the Senate Majority Leader, Order Nos. 9, 10 and 11 will be deferred because of amendments that they would like to introduce.

#### VETTING OF ALL PERSONS LIVING WITH DISABILITIES IN KENYA

AWARE that about 15% of the Kenyan population are persons living with disabilities;

APPRECIATING that the Government has taken several measures to avail certain privileges through the National Council for Persons with Disabilities to registered persons living with disabilities;

NOTING that the National Hospital Insurance Fund (NHIF) is a contributory health insurance cover and the remittance of contributions for persons living with disabilities by government for the cover, is not among the privileges extended to persons living with disabilities;

CONCERNED that most persons living with disabilities have difficulties engaging in gainful income generating activities that would enable them pay the contributions to NHIF, hence are without any medical cover;

FURTHER CONCERNED that many persons with disabilities are unable to access medical services leading to high mortality rate;

NOW THEREFORE, the Senate urges the National Government to put in place the following measures through the Ministry of Health and the Ministry of East African Community, Labour and Social Protection-

1. Undertake vetting of all persons living with disabilities in Kenya to ascertain those who are unable to afford payment of contributions to the NHIF; and
2. Set aside a special fund for remittance of contributions to NHIF for those persons who are living with disabilities and cannot afford to pay the contributions.

*(Motion deferred)*

IMPLEMENTATION OF NATIONAL SPECIAL NEEDS  
EDUCATION POLICY FRAMEWORK, 2009

AWARE that Article 43 (1) (f) of the Constitution of Kenya provides that every person has the right to education and that Article 53 (1) (b) of the Constitution provides that every child has the right to free and compulsory basic education;

COGNIZANT that Article 54 (1) (b) of the Constitution provides that a person with any disability is entitled to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;

RECOGNIZING that education in Kenya is a shared function of both the county and national governments;

CONCERNED that while significant gains have been made under the Free Primary Education Programme introduced in the year 2003, access and participation of children with special needs is generally low across the country and their needs have not been specifically addressed;

NOW THEREFORE the Senate directs the Standing Committee on Education, Information, Communication and Technology to inquire into the performance of the Ministry of Education, Science and Technology in the implementation of the policy statements and strategies made in the National Special Needs Education Policy Framework, 2009 and report back to the Senate within three months.

*(Motion deferred)*

COUNTRYWIDE AUDIT ON DISTRIBUTION OF  
TEACHERS IN ALL PUBLIC SCHOOLS

WHEREAS Article 43(1)(f) and 53(1)(b) of the Constitution guarantees every citizen a right to education and every child a right to free and compulsory basic education, respectively;

NOTING that the Teachers Service Commission is mandated to handle employment, deployment, remuneration and discipline of teachers in public schools in Kenya;

CONCERNED that there are great disparities in the distribution of teachers in public schools across the country leading to over-supply in some schools and under-supply in others and ultimately leading to major teacher shortage especially in rural and marginalized areas;

APPRECIATING efforts made by the national government to improve the teacher pupil ratio to international standards in all public schools through yearly employment of teachers;

FURTHER CONCERNED that the statistics on the number and distribution of teachers in public schools is not readily available;

NOW THEREFORE, the Senate urges the Government, to conduct a countrywide audit on the distribution of teachers in all public schools indicating the requisite establishment per school and the corresponding number of teachers who are in-post and to submit a report to the House on the matter within ninety (90) days.

*(Motion deferred)*

**The Temporary Speaker** (Sen. (Prof.) Kamar): As I mentioned earlier, I will now invite Sen. Mwaura to move his Motion for Adjournment.

### **MOTION OF ADJOURNMENT UNDER STANDING ORDER NO.34**

#### **HEIGHTENED POLITICAL TENSION IN THE COUNTRY**

**Sen. Mwaura:** Madam Temporary Speaker, I rise to move that pursuant to Standing Order No.34, the Senate do adjourn to discuss a definite matter of urgent national importance regarding the heightened political tension in the country.

Madam Temporary Speaker, Edmund Burke said; “But when the leaders choose to make themselves bidders at an auction of popularity, their talents, in the construction of the state, will be of no service. They will become flatterers instead of legislators; the instruments, not the guides, of the people.”

As we speak in this august House, our country is facing a lot of challenges because of the political environment that we find ourselves in. Our country went to the polls on 8<sup>th</sup> August this year. Thereafter as we are aware, there was a determination by the Supreme Court that nullified and voided the elections of the President, in this case, His Excellency President Uhuru Kenyatta. This is very unfamiliar territory.

*[The Temporary Speaker (Sen. (Prof.) Kamar) left the Chair]*

*[The Temporary Speaker (Sen. Kang’ata) took the Chair]*

It caught the majority off-guard because the results of the elections had clearly shown that the Jubilee Party - the party under which I am nominated to this House - actually won majority of the seats from Senators, governors, Members of the National Assembly (MPs), Members of the County Assembly (MCAs) and Women Representatives.

The Constitution anticipates a situation where there will be a fresh election within 60 days as provided for very clearly. That is just the law. I want to quote the great parliamentarian, Edmund Burke, who said:

“It is not what a lawyer tells me I may do, but what humanity, reason and justice tell me I ought to do.”

We have heard narratives and counter narratives; contestations and counter contestations in relation to the interpretation of both the majority and minority judgements that were delivered only a week or so ago. The political class has continued to create facts on the grounds that do not augur well for the proper conduct of an election as stipulated by the supreme law of the land.

We have seen situations where alarming statements have been made and broadcasted for all Kenyans to see. We have even seen the call for mass action against individuals whom our competitors on the other side of political divide have found culpable even without following the judicial process. It should be noted that the Supreme Court ruling, at no given time, indicted anyone in particular. Some of these statements border on ethnic profiling, such that you only need to look at the ethnicity of an individual to see why they may be accused of collusion or compromise.

Madam Speaker, Article 99 of the Constitution---

**The Temporary Speaker** (Sen. Kang'ata): Order, Senator! I am 'Mr. Speaker' and not 'Madam Speaker.'

**Sen. Mwaura:** I am sorry, Mr. Speaker, Sir. Congratulations for sitting in that hallowed position.

In that regard, we need to conceptualise individual liberties; that you are innocent until proven guilty. We have seen people being taken to the court of public opinion, where interested parties would want to paint certain individuals to suit their political motives. We have seen the bullying of---

**The Temporary Speaker** (Sen. Kang'ata): There is a point of order from Sen. Olekina from Narok County.

**Sen. Olekina:** A point of order, Mr. Temporary Speaker, Sir. Is the hon. Member in order to appear in this honourable House wearing a hat? That is not the right attire. I hope you will take action.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. Mwaura:** Mr. Temporary Speaker, Sir, that is not a point of order but a point of opinion. You need to be educated on some Biology so that you understand issues of albinism.

**The Temporary Speaker** (Sen. Kang'ata): The Senator for Meru County wants to comment on the same.

**Sen. Linturi:** Thank you, Mr. Temporary Speaker, Sir. It is necessary that I inform the Senator for Narok County. If he dared to listen he would get out of this Chamber more informed. With due respect, he needs to understand that Sen. Mwaura is one of our special Senators in this House, by virtue of a creature of our Constitution. He represents a very special group in this Country that in one way or another is disadvantaged by different things. It is important to understand him rather than try to rub it in.

In my view, the Senator for Narok County needs to apologise to the people of this country who suffer from such disadvantages. Kindly hold your horses. Since you are a first-time Member, try to even learn from your neighbours, so that you do not make frivolous points of Order.

**The Temporary Speaker** (Sen. Kang'ata): Thank you, Sen. Linturi.  
Yes, Sen. Madzayo.

**Sen. Madzayo:** Thank you, Mr. Temporary Speaker, Sir. I would like to express my shock regarding what my colleague on the other side has stated; that my colleague here should apologise. I believe that our Standing Orders provide for the attire that every Member should wear. I am wondering whether that hat is part of the medical requirement or the attire that a Member should wear in this House. Unless it is supported by medical evidence, I do not think that there should be special attire that the Standing Orders do not provide for in the House. Is the Member in order to address the House while wearing a hat that is not medically provided for?

**The Temporary Speaker** (Sen. Kang'ata): Hon. Senators, I refer you to the Speaker's Rules published on August 2017. In particular, I refer you to Part 1 which is titled "Conduct of Senators within the precincts of Parliament." Rule 5 provides as follows:-

"Senators are required not to enter the Chamber, lounge or dining room without being properly dressed. This means that a male Senator shall be dressed in coat, collar, tie, long trousers, socks and shoes or service uniform, religious attire or such other decent dressing as maybe approved by the Speaker from time to time. An equivalent standard shall apply in respect to women Senators."

Hon. Senators, the effect of this Rule basically is that one should come to the Chamber or these stated precincts while dressed well. I hereby rule that the hon. Senator is dressed properly taking into account the constituency he represents. However, this ruling only applies to him in so far as the question of the hat is concerned.

*(Applause)*

*(Sen. Madzayo spoke off record)*

**The Temporary Speaker** (Sen. Kang'ata): Sen. Madzayo, you cannot challenge the ruling of the Chair. As to whether he ought to have produced a medical document, I think it goes without saying that the said Senator represents a certain constituency. From where I sit, we need to be a bit humanitarian when it comes to considering persons who are representing that constituency. To the best of my knowledge, it is important for people suffering from such a condition to wear hats so as to protect themselves from direct rays of the sun. I, therefore, took cognizant of that when I made that ruling.

Proceed, Sen. Mwaura.

**Sen. Mwaura:** Thank you, Mr. Temporary Speaker, Sir. I would want to ask the Senators to be aware of such cases; though that is the reason as to why we have such representation.

I seek your indulgence. A lot of time was taken to canvass that point of order. Could you add me some time so as to allow me to finish my submission?

**The Temporary Speaker** (Sen. Kang'ata): Senator, you have five more minutes.

Sen. Madzayo, in case you want to make some formal intervention, I request you to put your card and press the intervention button.

Proceed. You have five more minutes.

**Sen. Mwaura:** Thank you Mr. Temporary Speaker, Sir. For clarity of thought, allow me to reiterate Edmund Burke's quotation. He says that: 'It is not what a lawyer

tells me I may do, but what humanity, reason and justice tell me I ought to do'. This country is guided by the rule of law. We, therefore, ought to respect the public institutions and the Kenyan citizens who volunteer or commit themselves to working in those institutions.

We have seen the call for mass action that is aimed at removing certain individuals from public office. This in itself has caused tension. There were skirmishes and running battles yesterday between members of the public and our security personnel when they went to demonstrate at the Independent Electoral and Boundaries Commission (IEBC) premises at Anniversary Towers. This also happened in various pockets across the country. I thank God because these so-called demonstrations were not successful. It was just a handful of individuals who were demonstrating.

There comes a time when we have to ask ourselves hard questions. As a country, we are losing a lot. During our retreat in Naivasha, we were told by the leaders of the business community; KEPSA, that billions of shillings are being lost because of the current political situation. We have heard casual labourers being told not to report to work the next day until they are asked to do so because the situation is not predictable. We have heard our political leaders say that there will be no election.

We swore to defend the Constitution. It is the Constitution that provides legal mechanism on how to deal with someone if they have been found to have conducted any criminal activity. We know that somebody has gone to court to seek that the person against whom demonstrations are being called for be charged yet that is not enough. Today, the IEBC had called for a bipartisan meeting from both sides of the political divide to discuss whatever hampers the process.

As a country, we are being held at ransom. We are being forced to accede to the demands of certain individuals. This country is bigger than any one individual. We cannot predicate our future on the basis of the ambitions of certain individuals to the detriment of all of us. We are in a situation where we have postponed our election from 17<sup>th</sup> to 26<sup>th</sup> October, 2017. This has affected the exam calendar.

When preparing for an exam, one requires a conducive environment to prepare well and pass the exams. We have a situation where our children who are in boarding schools are being forced to contend with the heightened political tension. We are now seeing people, who call themselves the business community, want to come out and protect their property. We are setting---

*(Sen. Mwaura's microphone went off)*

**The Temporary Speaker** (Sen. Kang'ata): Sen. Mwaura, you may use your final one minute.

**Sen. Mwaura:** Mr. Temporary Speaker, Sir, we are setting our country for chaos. I would want to invite this august House to ventilate on this matter. The contest is between President Uhuru Kenyatta and one Raila Amolo Odinga. I would want to imagine that in the best interest of this country, we would want to move it forward. We shall be judged as a House and, indeed, as leaders who stood up to be counted rather than those who tried to risk the lives of others to acquire political power for the sake of it.

I beg to move and request my good friend, the Senator for Laikipia, Sen. Kinyua, to second.

**Sen. Kinyua:** Thank you, Mr. Temporary Speaker, Sir. I stand to second.

This is the lowest moment in my political career. When I came to the Senate, I thought that I would get to see the old politicians such as Sen. Orengo, Sen. Wetangula and Sen. Wako, who would be sitting here and guiding us on how to do things in the Senate. To my amazement, they are not available. They are busy in the streets, organizing *maandamano*. I am one worried person because they are going to an extent of saying that there will be election if---

**Sen. Madzayo:** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Kang'ata): What is your point of order, Sen. Madzayo?

**Sen. Madzayo:** On a point of order Mr. Temporary Speaker, Sir. As much as I would not want to interject my colleague, I think it is prudent for a colleague to avoid mentioning another colleague if he is not in the House. That can only happen if that colleague was in the House and has participated in that particular issue. I think that it is in bad faith and it does not show any form of deference when a colleague decides to mention Sen. Wako and others in the House. He is alleging that these Senators are out there trying to organize demonstrations. Is he in order? Is he sure that they are organizing what he is trying to imagine?

It is totally unfair. It does not matter whether you are on that side or this one. I want to tell my colleague that being on that side is not permanent. One day, he may find himself on this side.

**The Temporary Speaker** (Sen. Kang'ata): Thank you, Sen. Madzayo. May I differ the ruling for now and give him some few minutes to converse further? Thereafter, I will make a substantive ruling on his point of order.

**Sen. Kinyua:** Mr. Temporary Speaker, Sir, he did not get me right. I said I respect them. I am the one to choose the people to respect even if he claims it is wrong to do so.

There is an allegation by some Senators on that side and the presidential candidate for NASA that there will be no election. However, the Constitution is very clear on this matter. Article 138(1) says:

“If only one candidate for President is nominated, that candidate shall be declared elected”.

Mr. Temporary Speaker, Sir, if they continue to say there will be no election and fail to nominate their candidate, then IEBC will declare hon. Uhuru Muigai Kenyatta as the President of the Republic of Kenya.

Article 33 of the Constitution provides for the freedom of expression. However, it does not give room for hate speech. It is unfortunate that a colleague from the National Assembly was quoted abusing the President. That is uncalled for and unacceptable. I want to put it very clear and it must be noted that when anybody abuses any institution in this country, it is not in good faith. We must respect the institution of the presidency because it is a unifying symbol of this country. Any person who abuses it should face the full force of law.

I am disappointed to hear that hon. Kalonzo Musyoka and hon Raila Amolo Odinga's security has been withdrawn. It is the most shocking thing because what has happened is their security has been scaled down. They are complaining that security officers attached to them have been reduced. There are some police posts in Laikipia without police officers. I am worried if the common mwananchi is not protected.

**Sen. Mazayo:** On a point of order, Mr. Temporary Speaker, Sir!

**The Temporary Speaker** (Sen. Kang'ata): Order, Sen. Madzayo! Before you raise your second point of order, allow me to make a determination on your first point of order. Allow Sen. Kinyua to reply to the issues you raised in your first point of order.

**Sen. Kinyua:** Which one had you raised? He had raised many issues.

**The Temporary Speaker** (Sen. Kang'ata): The point of order was that you had mentioned a certain Senator who is not present with us here when you raised your point of order. He wanted to know whether you were in order to do so.

**Sen. Kinyua:** Mr. Temporary Speaker, Sir, it is in public domain that they are organizing "Maandamano" on Tuesday, next week Tuesday. Consequently, they have put it very clear that they will be organizing "maandamano" every Tuesday. It was said that their principals are the generals and that they will be leading from behind. To me, they are not generals because generals lead from the front. They are cowards.

**The Temporary Speaker** (Sen. Kang'ata): You can sit down. I rule you out of order. That was not a fair comment. We should be encouraging healthy debates in this Chamber.

What was your second point of Order, Sen. Madzayo?

**Sen. Madzayo:** Mr. Temporary Speaker, Sir, I wanted to inform him of what Article 138(2) of the Constitution states. It says:

"If two or more candidates for President are nominated, an election shall be held in each Constituency."

That is the point I wanted to make very clear to him. It is not that only one person will be nominated and elected.

**The Temporary Speaker** (Sen. Kang'ata): Yes, Sen. Linturi; with regard to the point of order that has been raised.

**Sen. Linturi:** Mr. Speaker, Sir, I ask you to use your discretion at times when you are seated in that Chair and excuse some of us. There is something called selective amnesia. With all due respect, we may also as well excuse people for having not heard properly either by design or they may have serious issues with their ears due to advanced age or any other ailment.

I heard the hon. Senator from Laikipia County very well. To me, Sen. Madzayo is reading the Constitution selectively and in a manner that is meant to mislead this country and we cannot allow him to get away with it. I invite him specifically to look at the provisions of Article 138 (1). It is about the procedure of a Presidential election. Article 138 (1) says:-

"If only one candidate for President is nominated the candidate shall be declared elected."

This means that whoever you engage or whether you will not participate on the 26<sup>th</sup> of October, 2017 in the presidential elections and as long as the IEBC has opened up a space for people to apply for candidates for presidency, it does not matter whether you

take your nominations papers or not. If you do not and the only candidate that particular day will be President Uhuru Kenyatta then he will be declared President of the Republic of Kenya. This is something that you should have said from the proceedings of this Chamber during the election. Sorry; not in this Chamber, those were proceedings in another county assembly which I attended during the election of the Deputy Speaker.

Sen. Madzayo, with all due respect, kindly do not read the Constitution, selectively. Let us benefit from your wealth of experience as a Judge of the High Court. You have a duty to guide this House because you have a lot of knowledge which we can benefit from.

**The Temporary Speaker** (Sen. Kang'ata): Thank you. That was a point of argument. Therefore, I rule that the original submission was okay. Allow me to give an opportunity to Sen. Olekina from Narok County to raise his point of order.

Proceed, Senator.

**Sen. Olekina:** On a point of order, Mr. Temporary Speaker, Sir. Kenyans out there are watching. When I listen to Sen. Linturi trying to interpret the Constitution wrongly, I get shocked. He stood and interpreted Article 138 selectively. I remind the Senator that sometimes age does not only affect one person. It can affect two or three. In this case, it is affecting him. If you were keen, you would have realised that there would be no nomination in a repeat election after a presidential election has been nullified. It is only limited to two candidates. You can interpret the decision of the Supreme Court even in the 2013 election. The Constitution is also very clear in the Supreme Court ruling in that case.

On another note, it is important and prudent that we respect each Member's constitutional right. The Senator for Laikipia County alluded to the fact that other Senators who are not present in this House are out there acting as generals. He said that this is in public domain. I remind the Senator that it is within their constitutional right to picket if they so desire.

So, let us behave in a manner that people out there will respect this House and know that the right to protest and demonstrate is not a right set aside for a few.

**The Temporary Speaker** (Sen. Kang'ata): The provisions of Article 138 of the Constitution are very clear. Therefore, there is nothing that I can rule on. I urge the Seconder to proceed and finalise his oral submissions.

**Sen. Kinyua:** Mr. Temporary Speaker, Sir, Article 37 states that there is the right to picket and demonstrate but it cannot be done by people who are armed. We have witnessed people carrying stones. They have forgotten that they were defeated. We are setting a very bad precedent in this country, for example, what happened in 2007. Some people keep on changing goal posts. First, it is alleged that the Independent Electoral and Boundaries Commission (IEBC) did not perform very well. Now, it is about Safaricom.

However, elections have to be done on 26<sup>th</sup> October, 2017 because even the Supreme Court judgement stipulated that fresh elections be held within 60 days as provided for by the Constitution. It is not bad for my colleagues to be on the other side as they plan to come to this side. This side is good because you can see many people here. This will be demonstrated well on 26<sup>th</sup> October, 2017. We will vote for President Uhuru Muigai Kenyatta as we did before. Even if your irreducible minimum is attained, we will still beat you because votes will be counted.

*(An hon. Senator spoke off record)*

He is not harassing me. He is just cheering me on. Elections will be conducted on 26<sup>th</sup> October, 2017 so that this country can go back to where it belongs; a country of peace and prosperity.

Mr. Temporary Speaker, Sir, with those remarks, I beg to second.

*(Question proposed)*

**Sen. Okello:** Mr. Temporary Speaker, Sir, what we are referring to as tension in the country is not tension. We have a conflict. Conflicts are always there. They are healthy and ever with us even in our households where we have couples. The only problem is how we resolve conflicts. This conflict is political. It arose as a result of our failure to follow the political process to the letter. That is why NASA went to court. The ruling of the Supreme Court is now history. We are set for elections on 26<sup>th</sup> October, 2017.

When conflicts are resolved through constitutional means, it is very healthy. There should be no problem when we follow the Constitution in resolving our conflicts. So, NASA did a commendable thing by going to court. Those who went to demonstrate yesterday were also right. Article 37 of the Constitution states clearly that picketing and demonstrations are allowed. These are democratic and constitutional means of expressing ourselves as Kenyans. So far, so good. We are on the right path.

What hon. Raila said, that there will be no elections on 26<sup>th</sup> October, 2017, should not be taken as such. It should be taken under the context which he said it. Hon. Raila is asking for free, fair and verifiable elections for the future of this nation. He is talking about elections where the winner greets the loser and the country moves on. That is not only necessary this year. It was not only necessary in 2013 or 2007 but it is necessary forever in Kenya. Those who are pursuing this line are doing a good job.

So, my friend Sen. Mwaura should not fear. He should join demonstrators and ask for his right so that we can have a peaceful and stable country where elections do not make us fight each other.

**The Temporary Speaker** (Sen. Kang'ata): What is your point of order, Sen. Mwaura?

**Sen. Mwaura:** On a point of order, Mr. Temporary Speaker, Sir. Unfortunately my colleague has just sat down. Is the Senator in order to invite me to anarchy and demonstrations to make this country ungovernable? Is he inviting me to join him in sabotaging the Government of President Uhuru Kenyatta?

**The Temporary Speaker** (Sen. Kang'ata): What is your comment, Senator for Migori?

**Sen. Okello:** Mr. Temporary Speaker, Sir, I explained it very clearly. You can refer to Article 37 of our Constitution. Demonstrations are allowed in this country. There are ways of expressing our feelings. That is why I am inviting my good friend to join us in demonstrations so that we can make this country better.

**The Temporary Speaker** (Sen. Kang'ata): Sen. Mwaura, I rule you out of order. His argument is not legally defective.

At this juncture may I give the opportunity to nominated Senator, Waqo Naomi Jilo.

**Sen. (Rev.) Waqo:** Thank you, Mr. Temporary Speaker, Sir. First, I am excited about this agenda that we are discussing now simply because I have a lot of concerns for our nation. From 8<sup>th</sup> August, 2017, every new day has had a new issue for us to deal with. As a woman, a lot of fear has been created in us. As a mother who has children who go to school and other family members going to work, you wonder whether they will be safe on the road. All that has created a lot of fear for us and, I believe, even for any common *mwananchi*.

So, it is important for us to discuss these issues now and also tell our colleagues on the other side. Yes, when we decided to deal with the former Independent Electoral and Boundaries Commission (IEBC) team, they succeeded by demonstrating every Tuesday. A lot of destruction took place even at that time and, at the end of the day, they succeeded. As one of the legislators today, I think that is where we failed and we gave in. For this IEBC team, it is unfortunate that they are going through the same threat that their predecessors went through now.

It is upon us to protect our institutions and also say that we want a peaceful Kenya. We need to respect the independence of IEBC and their autonomy. We must ensure that we respect each one of them and give them enough of our support. We also need to know that the IEBC members who were forced out of office have families and children who are going to school. As I watched what happened yesterday last night, I said if I have my family members there, what will be my reaction. Our colleagues on the other side need to know that they expect some votes even from some IEBC members. What they have done is destroying their own future. We have families that we need to take care of.

When the Supreme Court nullified the presidential elections, they did not say that IEBC have done anything wrong. They said it is our system; they faulted the system. So, I do not see any reason why we should bring this city to a standstill just because we want to force out of office innocent people doing their daily work and who are obedient to Kenya and to their call.

We also need to be concerned about the security of the IEBC Commissioners and staff, putting into consideration what happened before the elections and even after the 8<sup>th</sup> of August, 2017. There is a lot of fear and their lives are also in danger. So, my concern is beyond the individual members of staff and I think we should also give them a lot of security.

Mr. Temporary Speaker, Sir, I am also concerned about this situation that we are in, because it has affected our businesses. Many of our business partners are not busy doing their work and investors are running away from our country. Our economy is hugely affected. If God has put us in this position, there is need for us to be concerned and see what we can do.

It is of paramount importance to make sure that we provide all the necessary support to all the institutions. I am saying this because our colleagues are saying that there will be no elections; and they are saying this confidently. I am wondering what is

giving them that confidence and hope. If there is any facilitation that our institution needs from us, we need to give them so that we cannot have any vacuum. We need peaceful coexistence.

**The Temporary Speaker** (Sen. Kanga'ta): Thank you, Sen. (Rev.) Waqo. Proceed, Sen. Seneta.

**Sen. Seneta:** Thank you, Mr. Temporary Speaker, Sir, for giving me a chance to also contribute to this important Motion. Bearing in mind what we are going through as a country, it is important to discuss and raise our concerns as the leadership of this country. I am happy that our colleague, Sen. Mwaura, brought this Motion to be discussed this afternoon in this House. As the leadership of this country, we need to highlight our stand and also raise our concerns on what Kenyans are going through.

What we are experiencing as a country at the moment is what followed after the ruling of the Supreme Court. However, what we should concern ourselves with is actually respect for institutions. These constitutional institutions were formed as a requirement by the new Constitution that we passed. Many of us, our leaders and party principals also took part in passing this constitution. We formed these institutions which, when they do their work and come up with decisions, though at times they may not favour us, we should respect them.

I want to applaud our President, His Excellency Uhuru Muigai Kenyatta, when he said that he was not happy with the Supreme Court ruling, but he respects it although it did not favour him. I wish we could all go by that; that whatever ruling is made either by the IEBC or by the Supreme Court, we should also respect it. Looking at the situation prevailing in the country, there is abuse of democracy. Many of our people are taking advantage of democracy and freedom, therefore abusing that freedom. When you have the freedom to demonstrate, you should also know that, that freedom has a limit. It should not go to the extent that it is prejudicing the freedom of other citizens.

In the last one or two months, we have seen people talking. Yes, there is freedom of expression. However, this freedom, according to Article 33, does not extend to a situation where you are also abusing the freedom of the other person, where you are inciting a community, abusing other people or propagating for war. Therefore, we should not abuse either freedom or democracy.

There is also a situation in our country whereby, whenever an institution has made a certain decision, we are angered to an extent of demonizing the personalities working in those institutions and we even do not care about their dignity. We ignore the criteria or legal process of removing these personalities from office and we end up demonizing everyone. With this trend, it might be very difficult for people to work in the IEBC, the Ethics and Anti-corruption Commission (EACC) or even in the Supreme Court because whenever you are working there, anybody can abuse and demonize you just because of executing your legal mandate in that institution.

**Sen. Wamatangi:** Mr. Speaker, Sir, I rise to support the Motion on the Floor, specifically discussing the situation that we find ourselves in as a country. My thoughts are that as a country, I think it is time for us to take stock. We started on a journey from 1992 onwards when we held our first democratic elections under the repealed law - Section 2(a) - when we could not have elections under a multiparty democratic system.

Onwards until the year 2010 when we gave ourselves the new Constitution, the question that should be ringing in our minds is whether the expanded democratic space that we have realised translated into useful, gainful values for our lifestyles, people, children, families, mothers and so on. We have had elections in 1992, 1997, 2002, and 2007-2008 then became the crescendo of what democracy will look like when turned into blood in the elections we held in 2013.

Politics and politicians must take responsibility not only for their role but also the requirements and responsibilities bestowed upon an elected political leader by our Constitution. I say so because as we discuss this afternoon, this Motion affects the whole country; not only those that are discussing it here but also the children who are supposed to be going to school, sitting for examinations, our business people and mothers.

Across this Floor, you will see the deliberate absence of Members of the National Super Alliance Coalition (NASA) who are the subject and reason we find ourselves in this situation. One would want to ask the question whether that is acting responsibly of elected Members of this House.

Mr. Speaker, Sir, I want to say without fear of contradiction that history will judge Members of this House across the Floor on the NASA divide very harshly because it is not only abdication but it is intended to hurt the very electorate who have gone to the ballot box, cast their votes and given them the mandate to come and express themselves in this House.

This country has eventually got to deal firmly with the question of whether we are doing ourselves right by creating a culture where one can intentionally and deliberately cause harm and loss to other Kenyans continuously over a cycle and continue to get away with it. Are we doing it right as a country with all our freedom, if at every given time one can go and own to up to situations?

I want to say in black and white that the current leader of the NASA brigade, the Rt. Hon. Raila Odinga, is on record as having written a book and owning up that he was instrumental in leading the attempted coup that led to the loss of many lives in 1982. It is a documented record of ownership of an act that is not only criminal but one that caused the loss of lives of Kenyans.

We must ask ourselves---

*(Sen. Wamatangi's microphone went off)*

**The Temporary Speaker** (Sen. Kang'ata): You can add him one minute.

**Sen. Wamatangi:** Mr. Speaker, Sir, I did not realise that time was moving so fast. I wanted to pose the question whether we can say that; as leaders who are given that opportunity to chart the way forward for this country in this new democratic found freedom, we have done right to those that have elected us by failing to hold to account those who have even owned up to it.

If we look at the events of 2007-2008 more than 1,300 Kenyans not only lost their lives but even many more lost their property while others were maimed and crippled while the same actors and players continue to replay. Fast forward to today, we have heard talks that there will be no election. We are not told whether it is because there will be violence or people will be hindered from going to the election yet we have a court

ruling that is clear; that we must have an election according to our Constitution in 60 days.

Current Legislators, the regime and leaders must face the question of what will happen if we continue to feed a monster that eventually threatens to tear and eat up the country. At the end of the day, they have to be held to account and one decision made; that we are all equal in the eyes of the law and that justice cannot be meted out selectively. None of us is bigger than the other and so when it comes to deciding, everyone must carry their own cross.

Finally, in the current political scenario we have had losses and we might even lose more which is potentially dangerous to Kenyans. It is important that we firmly say that those that are agitating and instrumental for it must be finally held to account and the law must come to ring true to those that have meted these. Kenyans are waiting to go to the elections and ensure that we have a government that is moving.

**Sen. (Prof.) Kamar:** Mr. Speaker, Sir, I thank Sen. Mwaura for this Motion to discuss the current political situation in the country.

The sovereign power belongs to the people of Kenya and the only way to exercise it is through the Constitution that we have. It is one which all of us were involved in developing. It took a very long time and at the end of it, in 2010, we delivered a Constitution that we were all satisfied will govern our conduct and the way we do things in this country.

The sovereign power under this Constitution is delegated to the different organs. One is delegated to the parliamentarians, another to the Executive and to the Judiciary. If you look at the situation we are in the country, Kenyans are asking themselves where our parliamentarians, the executive and the judiciary are. The kind of tension we are experiencing in the country, unfortunately, has not been caused by the rural Kenyan or the Kenyan *per se* but by a situation that is controlled by the leadership.

I was asked many questions by people when I was in Eldoret. They wanted to know why leaders are not speaking up and the Senate is quiet about the situation. I was asked that question in church. They would like to hear our leaders speak because this is a situation they do not want. The reason Kenyans are not interested in this kind of situation is because they are not enjoying what is outlined in Article 20 of the Constitution on the application of the Bill of Rights. Citizens have the right to peaceful co-existence, peaceful development and an environment where they can develop and the economy can grow. Those are the fears that are coming up. Businessmen have told us that the situation in the country now has stalled the growth of the economy. We must ask ourselves as leaders: Did we have to reach here? If we have reached here, are we handling the situation properly?

Mr. Temporary Speaker, Sir, I want to appeal to this Senate that we have a contribution to make as Senators and as Parliament that has delegated part of the sovereign power of the people to be exercised on their behalf. We need to give direction and talk to ourselves. It will not help us and this country if leaders are not careful about some issues. If leaders are not careful about their utterances, they will drown the country into chaos. We need to control ourselves and advocate for peace during elections. The people have a right to decide who the next President will be on 26<sup>th</sup> October, 2017. My

appeal is that as leaders, even as we go for a short recess from tomorrow, we must show leadership. The different parties must talk to their party leaders so that we have calm campaigns.

We will campaign for our presidential candidates, but it will not help if---

*(Sen. (Prof.) Kamar's microphone went off)*

**The Temporary Speaker** (Sen. Kang'ata): You have one more minute.

**Sen. (Prof.) Kamar:** Thank you, Mr. Temporary Speaker, Sir. It is my appeal that we need to seriously consider how we carry ourselves as leaders. I appeal to both sides of the House that we must carry ourselves in a manner that will be able to build not only peace, but also bridges with those who are hurting and respect the institutions that we have; the Supreme Court being one of them. More so, we need to ask ourselves how we will ensure that the people will express their free will. Their free will can only be expressed in the numbers during voting, and the numbers are with the people.

Mr. Temporary Speaker, Sir, I thank the President and the Deputy President for accepting the ruling of the Supreme Court. Therefore, we should move fast and actually campaign peacefully and ensure that Kenyans get the leader they want.

Mr. Temporary Speaker, Sir, I beg to support.

**The Temporary Speaker** (Sen. Kang'ata): Thank you, Senators. I can see that we have sufficient interest on this subject. We have Sen. Cheruiyot, and Sen. (Dr.) Langat and Sen. Pareno. Allow me to skip the two and allow Sen. Pareno to speak. To the best of my knowledge, this should be your Maiden speech.

Sen. (Eng.) Mahamud, since you had logged out, we shall have Sen. Cheruiyot, Sen. (Dr.) Langat and then you. If another Member has an issue with logging like Sen. (Eng.) Mahamud, you need to approach the Chair.

**The Nominated Senator** (Sen. Pareno Judith Ramaita): Thank you, Mr. Temporary Speaker, Sir. I am happy to make my Maiden speech today to talk about what I found on the Floor of the House, which is the discussion on the political situation in this country.

I am happy that my fellow colleagues who have spoken before me actually spoke passionately. I am happy that they are now feeling the heat of what it means to love this country. As we sit here we all know that this country belongs and is important to all of us. Therefore, the heat that I have been feeling out there is the same heat you are feeling for this country.

We should respect institutions like the Supreme Court, which is the highest court of the land. I am a lawyer by profession with over 20 years' experience. If we can dare attack our Supreme Court, then we must all sober up and respect institutions. You cannot on one hand call for the respect of the Independent Electoral and Boundaries Commission (IEBC) and on the other hand attack the highest court of the land. This institution came about from our new Constitution that we passed in 2010. It came into place after several years of soul-searching as a country and coming up with a robust Constitution that protects the interests of each one of us.

Some of us felt marginalised as the minority and came up with a Constitution that would protect all of us. If we do not respect this Constitution, then I am afraid that we

must discuss what is happening politically in this country. The election was conducted and the verdict of the highest court has come to be. What did it point at? It pointed at specifically what the National Super Alliance (NASA) had pointed out; that the transmission of results was not properly done. The tallying was not properly done. Who was responsible for that mess? How can we say that we are going to a repeat election without correcting the mistakes that have been pointed out by the Supreme Court that we need to respect?

Mr. Temporary Speaker, Sir, it is our right under the Constitution to picket, assemble and demonstrate. We have the freedom of speech and it is peaceful demonstration to speak in the loudest way we can in this country; that let us address our issues as a country as one, but for the betterment of everybody. This country does not belong to either side; it belongs to all of us. I have come from a meeting where, as a Maasai, I analysed the results that were transmitted from Narok County. One of the polling stations had 500 registered voters, but the presidential results showed that over 5,000 people voted. We have analysed about ten of such polling stations in Narok North Constituency. These are the anomalies we are talking about.

**The Temporary Speaker** (Sen. Kang'ata): Senator, you can take your seat for one minute because there is an intervention from Sen. Cheruiyot. Your time is up, but you can speak more because you represent a certain shade of opinion that is currently not in. Therefore, I have added you some few minutes.

*(Sen. Pareno remained standing)*

Order, Senator! Please, take your seat. There is an intervention from Sen. Cheruiyot. I will add you three minutes. You were supposed to have concluded but because you represent a shade of opinion of a group that is currently not in the House, I will give you more minutes.

Sen. Cheruiyot, what is your point of order?

**Sen. Cheruiyot:** On a point of order, Mr. Temporary Speaker, Sir. Given the grave allegations that Sen. Pareno has given on the floor of this House and this being a House of records because at some point, people who do not have the privilege of being here would want to confirm if what she has said is accurate; is she in order to make such allegations without substantiating? It would be beneficial to this House if the Senator substantiates by giving us more details, for example, the particular polling station that had 5,000 votes cast. That is a great anomaly. To the best of my knowledge, a polling station can only have a maximum of 700 registered voters. If such a thing happened, it is of interest to us that we get to know. It will be in order that she tells us the polling station she is referring to.

**The Temporary Speaker** (Sen. Kang'ata): Fair enough. Let us hear from Professor Ongeru.

**Sen. (Prof) Ongeru:** Mr. Temporary Speaker, Sir, I am just wondering whether it is a normal practice and tradition of this House to interrupt a Member when she is making her maiden speech by points of order? I, therefore, request that you rule the Sen. Cheruiyot to be out of order because this is her maiden speech.

**The Temporary Speaker** (Sen. Kang'ata): Hon. Members, it is true that indeed, this is her maiden speech. I do not want to upset the tradition of this House by allowing interruption of a maiden speech. However, the issue that has been raised, I may as well raise it *suo moto*. The Senator needs to give proof of documents to support her contention that we have a polling centre where 5,000 voters voted, notwithstanding that the maximum number of registered voters per polling station is 700. Sen. Pareno, do you have any documentary evidence that you can table.

**The Nominated Senator** (Sen. Pareno Judith Ramaita): Mr. Temporary Speaker, Sir, I was almost raising a point of order on my own account having been interrupted on my maiden speech. I know I am not supposed to be interrupted as much as I am contributing regarding what Sen. Cheruiyot thinks that needs further clarification. I have not heard your ruling on whether it is right for a Member to be interrupted on their maiden speech. Be that as it may, if that is your ruling that I should be interrupted, I will proceed. I am seeking your guidance on that.

**The Temporary Speaker** (Sen. Kang'ata): My ruling is that you ought not to be interrupted. Therefore, you will not address yourself to the point of order that has been raised. However, on my own motion I have raised the issue regarding whether you have any documentary proof regarding that assertion. That will be beneficial to the Senators and members of the public who are watching you.

**The Nominated Senator** (Sen. Pareno Judith Ramaita): Mr. Temporary Speaker, Sir, had I known I was going to make this presentation, I would have brought the document. I have a written paper with more than ten polling stations where more people voted than the registered voters. I am not able to provide them at the moment but I have them. You will see it in the news later because we have discussed it openly with the media and issued a statement that has the affected polling stations with the total registered voters and total voters who voted. I will provide the evidence if you allow me to do so.

**The Temporary Speaker** (Sen. Kang'ata): You may proceed but at your own time, you can educate the Senators more by bringing the documents.

**The Nominated Senator** (Sen. Pareno Judith Ramaita): Thank you, Mr. Temporary Speaker, Sir; that is how serious things are from my submission. We have a lot of anomalies that were committed with impunity. That is what we are talking about and we cannot keep quiet anymore, we will come out and speak about it in a peaceful way. Let those who want to stand on the right side of history do so and those who want to condone impunity do so. Some of us will come out clearly, truthfully and honestly in our demonstrations and to state in press conferences what it is that needs to be fixed. I appreciate that you have allowed this Motion of adjournment for us to discuss the political situation in the country as it is because it is serious.

Thank you, Mr. Temporary Speaker, Sir,

**The Temporary Speaker** (Sen. Kang'ata): I want to draw the attention of the House to Standing Order No. 94 that provides for responsibility of statement of fact.

“(1) A Senator shall be responsible for the accuracy of any facts that the Senator alleges to be true and may be required to substantiate any such facts instantly.

(2) If a Senator has sufficient reason to convince the Speaker that the Senator is unable to substantiate the allegations instantly, the Speaker shall require that such Senator substantiates the allegations not later than the next sitting day, failure to which the Senator shall be deemed to be disorderly within the meaning of Standing Order No.110 (Disorderly Conduct) unless the Senator withdraws the allegations and gives a suitable apology, if the Speaker so requires.”

Sen. Pareno, when are you going to bring that documentation?

**The Nominated Senator** (Sen. Pareno Judith Ramaita): I referred to several polling stations but I will be specific on the one that had 500 registered voters and yet over 5,000 voted. I will table the documents in the next sitting.

**The Temporary Speaker** (Sen. Kang’ata): Thank you, it is so ordered. In the next sitting, you will table that evidence.

We have the following Members desiring to contribute: Sen. Cheruiyot, Sen. Langat, Sen. Mahamud and Sen. Mwangi Githiomi. Sen. Mwangi, at one moment you were the first on the intervention but you withdrew your card and as a result, you are number four. You will have to follow the queue notwithstanding that at one moment you were the first one. So, all factors remaining constant you will be number four.

Proceed, Sen. Cheruiyot.

**Sen. Cheruiyot:** Thank you, Mr. Temporary Speaker, Sir, for the chance to contribute to this important Motion bearing in mind that our country is living in very interesting times. Future generations would want to refer to this particular moment and they will want to know what the leaders did to the country during that monumental time. At this moment, every Kenyan of goodwill is worried for this country. They are imagining what will happen in the next 28-29 days that may change the destiny of this country for good or for bad.

It is my prayer and sincere hope that as leaders gathered here, as we discuss these issues, we will remind ourselves how we found ourselves in this situation. I agree with the contributions of my colleagues even the last speaker. She has clearly reminded us of the place of independent institutions in the Constitution. These institutions have delegated powers that are donated from the sovereign will of the people of Kenya.

The Jubilee Party which I come from and the National Super Alliance (NASA) are the two main protagonists in this current debacle. One of the coalitions believes that when a ruling is made, you only take the part which suits you that annuls a presidential election but you are not bound by the part requiring that the election be undertaken by a constitutional mandated body. That is where all the trouble started.

Mr. Temporary Speaker, Sir, the reason we have a constitution is that when we get to such a particular point in our country where people have different feelings and ideas on which direction the country should take, the solitary document that should bring us all back together to soberness so that we save our country is this document called the Constitution. In the Constitution, it is clearly stipulated under the Bill of Rights that each individual has a right to fair trial. The doctrine of presumption of innocence until one is proven guilty applies to all Kenyans equally and “all Kenyans” means Chiloba, Chebukati, Muhati and all the officials that members of the Opposition are now going to the streets to try to force out of office using unconstitutional means.

Mr. Temporary Speaker, Sir, it is a great embarrassment and an act of hypocrisy that Hon. Raila Odinga and the likes of Sen. James Orengo who build their names as people who were defenders of human rights and democracy in this country for many years are leading others down the line trying to hound people out of office using unconstitutional means as it used to happen during those days when they were fighting the regimes of those times.

Mr. Temporary Speaker, Sir, my considered view this evening in this Senate is that it is time we leaders sobered up. We need to refer ourselves to the Constitution. We should remember that if the Supreme Court found no individual culpable, let it remain so. Let us be vigilant and raise issues that we have concerning a particular institution without trying to precipitate an electoral crisis so that we are asked by international bodies to go and negotiate. That is the route that we have taken before. We know it is costly and we are not willing to take it.

As we speak in this honourable House this afternoon, it is very clear to some of us that the NASA Coalition is not interested in the coming elections. Their end game is to have this country get to 1<sup>st</sup> November without elections having been conducted in order to have a constitutional crisis in this country and then we will be told to have a negotiated government. We are not for that and we are ready for elections in October 26.

It is my plea and humble submission to this country that let everyone who wants to vote on 26<sup>th</sup> October be allowed to do so. Those who feel that they do not want to show up for elections also have their right. It not written anywhere in the Constitution where people are forced to vote.

Finally, Mr. Temporary Speaker, Sir, as I submit before this honourable House this evening, it is my humble plea that as leaders, we should also be careful with the utterances we make that may to a large extent disturb peace and harmony in this country.

**Sen. (Dr.) Langat:** Mr. Temporary Speaker, Sir, thank you for giving me this chance to also contribute to this particular Motion. I also thank Sen. Mwaura for bringing it up. I wish our colleagues on the other side were present because one of them had mentioned that there is no tension in our country but just peaceful demonstrations. I do not know if he has been watching the television and seeing what has been happening. The truth of the matter is that our country is under tension. When you go to churches, you will find religious leaders asking for prayers for this particular country with a lot of emotions. I do not think it was necessary for people to conduct demonstrations because other institutions are working well. For example, the Director of Public Prosecutions (DPP) is working. Nobody should think that nothing is happening at this moment that warrants demonstrations at this time.

I would like to challenge our friends from the other side to lead from the front when it comes to demonstrations so that they show their foot soldiers that demonstrations must take place peacefully. Yesterday we saw how the “mama mbogas” were disturbed. Demonstrators were moving about eating whatever they were selling and disturbing them. We cannot say that was peaceful demonstration. I believe that although demonstrating is a constitutional right, nevertheless, it has a responsibility attached to it. These people must come out with their families and lead during the demonstrations so that they guide those particular weird demonstrators in the streets. So, I do not support demonstrations at this moment because other institutions are active.

Mr. Temporary Speaker, Sir, based on Article 138 of the Constitution, there will be elections even if our friends on the other side do not participate. I wish our friend the Senator from Narok was around. Article 138(1) of the Constitution states that if only one candidate for President is nominated, that candidate shall be declared elected.

I believe strongly that Hon. Uhuru Kenyatta and Hon. Raila Odinga are nominees of different parties. Hon. Uhuru Kenyatta is a nominee from the Jubilee Party. When the Supreme Court nullified the elections, it never nullified their nominations and so they are still nominees of different parties. In this case, if the other side is not willing and if Hon. Raila is not ready for elections on 27<sup>th</sup> October based on very many unrealistic demands, Hon. Uhuru will present himself and will be elected the president of this country. So, I would like to warn them on that particular case.

I support Sen. Cheruiyot that our friends on the other side are not ready for the elections based on their demands and engagement of other political demands that warrant this particular process.

**The Temporary Speaker** (Sen. Kang'ata): Clerks-at-the-Table, I direct that each contributor be added two minutes because five minutes is too short. So, allow each of them seven minutes.

**Sen. (Dr.) Langat:** Thank you.

Mr. Temporary Speaker, Sir, the ruling was based on the process of results and that is utilitarian. I believe that was correct but illegalities were all over. Even where I come from, the people aligned to the NASA were bribing people and giving "unga" at night prior to elections. Therefore, the Supreme Court should have looked at malpractices on both sides. The other side could be thinking that they were clean but that was not the case for all the parties.

The utterances by Hon. Babu Owino are a challenge to the courts and the world is watching how that case will be determined. If they take it lightly, it will be a demonstration that they take sides with the other side. What *Mheshimiwa* said is very clear. That was not taken kindly by this side and we demand an apology from him for having abused the mother of our President.

I will now talk about the Supreme Court judgment. Having been a lecturer in the university, I have been observing presentations by students. Based on my skills, the way one of the judges presented tells me that she was reading something that was prepared by another person. I read in the newspapers that one of the judges is a close friend of one of the Senators around. So I believe that could be the Senator who prepared that document. Therefore---

**The Temporary Speaker** (Sen. Kang'ata): Could you---

**Sen. (Dr.) Langat:** It was in the newspaper and I have the newspaper that---

**The Temporary Speaker** (Sen. Kang'ata): Senator, what did the newspaper say?

**Sen. (Dr.) Langat:** That Sen. Wako is a friend of the Deputy Chief Justice. Not Sen. Waqo the pastor around but the former Attorney-General.

It was actually written in that newspaper. I wish he was around. I asked him in a very friendly manner how many wives he has when we were in Naivasha and he told me that he has so many of them. I wish that he was around so that he could clarify because in such cases, friendship can actually overflow to an extent whereby our judgement---

**The Temporary Speaker** (Sen. Kang'ata): Order, Senator! It is true we need to encourage freedom of debate in this House. It is also true that it is a matter that was captured in the *Nairobi* newspaper. It is in public domain. We are yet to hear a rebuttal against that story mentioning a certain relationship between one of the Senators who belong to the NASA and also purportedly a certain judge.

I rule you out of order! Do not mention him because he is not here. If Sen. Wako was here probably he could tell us whether the allegations appearing in this week's *Nairobi* newspaper edition were true or not. Therefore, I rule you out of order since Sen. Wako is not here and hence kindly do not pursue that line. However, once he comes here he can give a clarification.

Proceed with your contribution. You still have a minute or so.

**Sen. (Dr.) Langat:** Thank you, Mr. Temporary Speaker, Sir. I also want to tell my friends on the other political divide that our silence of not telling our people to come out to demonstrate does not mean that we are cowards; neither does it mean that we are guilty of electoral fraud. In fact, the people from where we come from are asking us whether to engage in demonstrations, but we tell them not to and that they should relax. We urge them to conduct our campaigns peacefully. This is because we do not want to risk going back to what happened in 2007.

The world has now known the culprits who were supposed to be in The Hague in 2007. They are headed there. I want to tell the world to watch those who are inciting people to take to the streets. They should face the wrath of the ICC- so that we shall also test their ultimate 'whatever' when it comes to administering justice all over the world. *Watu wanaumia mitaani na wanapigwa pia.*

If they leave these people to continue inciting their supporters to demonstrate in the streets without providing a guide to them on how to demonstrate peacefully, they should also make them answerable for that when it comes to the climax part of it. These people should control their demonstrations in the streets. Otherwise, the whole world is watching right up to The Hague. That is what I know.

Thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Kang'ata): Thank you, hon. Senator.

Yes, Sen. (Eng.) Mahamud, Senator for Mandera County.

**Sen. (Eng.) Mahamud:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to this Motion by Sen. Mwaura. Kenya is actually at a very dangerous stage. On 8<sup>th</sup> August we went to elections and Kenyans came out in millions and voted for their preferred leaders. When elections take place, thereafter people who were aggrieved usually take their matters to court so that they can be adjudicated on. There are several petitions which are before the courts today from various quarters. These include petitions for governors, Senators, Members of National Assembly and even Members of County Assemblies (MCAs). That is the route to take.

For the presidential election, NASA went to the Supreme Court and they nullified the presidential election of 8<sup>th</sup> August, 2017. That should have been enough for Kenyans because we have a constitution which is almost the best in the world. It is a very liberal Constitution which allows people who are aggrieved to go to court to seek for redress. That was done. The presidential election is supposed to be repeated on 26<sup>th</sup> October,

2017. For any law abiding citizen, that should have been enough so that we prepare for the fresh election.

The court did nullify the election. It talked about the systemic failures within the IEBC and they hinted that those system failures must be corrected. It will be fair if all players who are neither IEBC nor the courts themselves will abide by the ruling of the Supreme Court and wait for the fresh election to be held again. Engaging in other extrajudicial means of going to the streets and creating chaos in the country is actually very dangerous.

Today, Kenyans wake up every morning worried whether they can go to Nairobi City or go about their businesses. Actually what worry people is not the question of them picketing. However, it is because the nature of Kenyans' demonstrations is very violent; people loot, destroy and burn properties and even stone cars. Even the university students when they hold their demonstrations, they are normally very violent.

When it comes to electioneering that is actually very dangerous. Therefore, leaders who are inciting Kenyans to go out to the streets to make noise and to evict people from their offices by force are living in a different century from us. This cannot be accepted. We, as leaders, must talk against it. In our tradition we say, "if you see something bad, stop it by your hand. If you cannot stop it by your hand;, meaning by fighting it, talk about it. If you cannot talk about it, hate it and walk away from it."

We are now in a stage that we must talk about it and tell them that they are wrong. Our colleagues are wrong. They are putting Kenya in a very bad position. They are trying to precipitate some crisis which I do not know whether they intend to win with. As some of my colleagues said here, maybe they want to create a crisis to enable them to come to a negotiation table with their counterparts. The era when Kenyans used to come to the table and negotiate on how to form governments is long gone. Kenyans elect their leaders and Government through the ballot. That is the only way.

I congratulate the IEBC for being brave enough for trying to put in place the fresh election on 26<sup>th</sup> October, 2017. We should support them so that that election takes place. We also do not need the help of an organisation like the United Nations Development Programme (UNDP). Kenya is not a failed State. We are not a Banana republic. We do not want the United Nations (UN) to come and supervise our elections. The call by some quarters and even the IEBC alluding to engage the UNDP in the fresh election is wrong. We want the IEBC which is actually mandated by the Constitution to do the elections. We want everybody to abide by that.

Kenyans, in their wisdom, must condemn the people who are asking them to engage in demonstrations to evict 12 IEBC officials from their offices. That is not acceptable in this day and age. We will not accept that. Kenyans must go back to election and whoever loses must accept the verdict and the will of the people. If you win, fair enough. It is important that as leaders in the Senate, the National Assembly and other leaders in this country, we must condemn any attempt by anybody to subvert the will of the people by taking us to the streets as if we are fighting for a new political dispensation or a new Constitution. We have a new Constitution. Chapter 4 of the Constitution on the Bill of Rights protects the rights of the people. We do not want to violate the peoples' rights to their properties by destroying their properties.

The students sometimes also cannot go to school and we are worried. The people travelling to Kenya from all over the world are also being issued with travel advisories, warning them of coming to Kenya. This is so unfortunate for people who are leaders, some of whom are elected.

The sovereign power of the people is exercised directly or indirectly. Those people who have been elected are actually exercising that will. Please, respect that will. You are now away from the House and you are out there trying to organise how to create confusion in the country. I urge our colleagues to come back to the House so that we build this nation and rally Kenyans behind the rule of law so that we can go to the election come 26<sup>th</sup> October and elect our leaders and move forward.

With those few remarks, I support this Motion by Sen. Mwaura.

**The Temporary Speaker** (Sen. Kang'ata): Thank you, Senator from Mandera County.

May I now give this opportunity to Sen. Mwangi, Senator for Nyandarua County. If there is any other Senator with an interest in talking please log in so that you get an opportunity to speak. Sen. Mwangi, it is now your time.

**Sen. Mwangi:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to this Motion and I would also wish to thank Sen. Mwaura for having moved this Motion.

Mr. Temporary Speaker, Sir, you know as much as I do that on 8<sup>th</sup> August, 2017, there were elections held in this country. His Excellency President Uhuru Kenyatta won the elections with a very big margin of 1.4 million votes over and above what his competitor got.

We were robbed of victory by the courts of this country. I say this because elections are about numbers. There is no evidence which has been adduced to show that we did not have the numbers that we got - the over 8 million votes – yet the ruling was that we go back and involve ourselves in another election. This is the worst thing that has happened to this country. It is imperative that when one wins an election, he is declared the winner in that election.

Mr. Temporary Speaker, Sir, some of us were in the opposition in the early 1990s. We used to say that we want a change of the Constitution and that Moi must go. Eventually and ultimately, Moi went and we changed the Constitution, yet we still continue to behave as if we did not achieve what we wanted to achieve. It is time that Kenyans voted in responsible leaders. One can say that he is a leader or he would want to be a leader, but there is no point of forcing Kenyans to vote for them.

Mr. Temporary Speaker, Sir, the idea of *nusu mkate* is one that cannot work. We can now see clearly that the opposition does not want elections; they have actually retracted; they do not want to go for the elections. The only thing they want to do is to cause chaos and mayhem in this country so that they can get their *nusu mkate*. But I would advise them that the best they can do for themselves is to look for votes. They should ask Kenyans to vote for them in the next elections. Unfortunately, Kenyans are set, now more than ever before, to vote for President Uhuru Kenyatta. This time round, Hon. Uhuru Kenyatta, the President of this country, will get more than 10 million votes. We will wait and see whether they will still go to the same Supreme Court they went to last time.

Going to the Supreme Court after the 8<sup>th</sup> August, 2017 elections was a pre-arrangement; that is the way I see it. We have to say this loudly; we are not going to be stopped from saying what we think about this country because this is our country. Kenya does not only belong to the few people who are saying that the elections were stolen. We also know that they are the ones who wanted to steal the elections and when they were stopped, they said that it is the Government which wanted to steal the elections.

Mr. Temporary Speaker, Sir, we need a responsible Judiciary. We want a Judiciary that is not partisan; we want a sober Judiciary that is going to handle cases with sobriety and follow the law. We do not want a Judiciary that can be talked to at night and they make a judgment that is against 45 million people the following morning. That is causing chaos and war in this country. As I have always said, we want peace in this country.

Whoever occupies major Government offices should be a responsible person who knows that Kenya belongs to all of us, not to him alone. We are not persuading those people who are insisting that they will not go for elections to go for elections; we are telling them “do not go for elections.” Eventually, the winner will be announced with or without them going for elections.

Mr. Temporary Speaker, Sir, it is time we held this country at heart. We do not just want to be saying that we love this nation by word of mouth. We should love and build our nation. Let the international community know that we are Kenyans and we cannot be Kenyans if we are not protecting the Constitution of this country. These people who are fighting the IEBC, if they want to be employed--- For example, if Hon. Raila Odinga wants to take Chiloba’s job at the IEBC, he should apply for that job! He is not a civil servant, why does he want to know who is employed in the civil service?

*(Sen. Mwangi’s microphone went off)*

**The Temporary Speaker** (Sen. Kang’ata): Could you add him more minutes to complete making his contribution? How many more minutes should we add you; five more minutes?

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

**The Temporary Speaker** (Sen. Kang’ata): Okay, you have five more minutes.

**Sen. Mwangi:** Mr. Temporary Speaker, Sir, I am saying that there is a code of regulations in the Civil Service and it is controlled---

*(Sen. Mwangi spoke off record)*

**The Temporary Speaker** (Sen. Kang’ata): Could you switch on his microphone?

**Sen. Mwangi:** Thank you, Mr. Temporary Speaker, Sir. I was saying that the Civil Service has a code of regulations. If Hon. Raila Odinga wants to be controlled by the code of regulations within the Civil Service, he should apply for Chiloba’s job. But he cannot have his cake and eat at the same time; he cannot be a civil servant and at the same time be the President of Kenya. He wants to be the President of Kenya by force; he wants to go to the streets to impress the international community and show them that he is popular, yet Kenyans have rejected him.

He has been rejected in the last four general elections and I do not think that he will be elected even if he tries in next six elections. I do not know what he is looking for. He does not have to be the President for this country to continue; this country can do without him. This country is bigger than any individual. I do not know why he thinks that he is the only person who is suited for the position of Presidency. There are so many Kenyans who can be elected as President. In any case, Kenyans look at the leadership skills of an individual when electing him. You waste Kenyan's time when you say that you are fit to be a President yet they do not see you as a potential President.

So, Mr. Temporary Speaker, Sir, I urge Kenyans to once again vote for Uhuru Kenyatta overwhelmingly so as to shame this person who thinks that he must be the President. They should make him stop thinking that he can bring war to this country.

I beg to support this Motion.

**The Temporary Speaker** (Sen. Kang'ata): Thank you, Sen. Mwangi Paul Githiomi, the Senator for Nyandarua County, for that good exposition. I will now give the opportunity to the Senator for Tana River, Sen. Wario Golich Juma. It appears you had spoken. I cannot recall the time so proceed.

**Sen. Wario:** Asante Bw. Spika, ningependa kuunga mkono Hoja iliyoletwa na Seneta Mwaura. Wakenya walitoa maoni yao tarehe nane mwezi wa nane na wakamchagua Rais Uhuru Muigai Kenyatta kwa wingi wa kura million moja nukta nne.

Korti imeamua turudie uchaguzi na katika hali ya kurudia, Rais wetu Uhuru Muigai Kenyatta amekubali kurudi apigiwe kura tena na sisi tunahakika na wala hatuna shaka Uhuru Muigai Kenyatta atashinda tarehe ishirini na sita na tumejitayarisha kurudi kwa uchaguzi.

Bw. Spika, unavyoona nyumba hii wapinzani wengi wako nje barabarani pamoja na wananchi wa Kenya na wameweza kuwapotosha. Mimi ningependa sana wananchi wa Kenya wasipotoshwe na hakuna njia nyingine ambayo tunaweza kuamua uongozi wa nchi ila kupitia kwa kura.

Bunge hii imepata fursa ya kurudi mashinani kufanya kampeini na kuwa tayari kufanya kampeini kwa amani. Lakini vile tunavyoona katika mji mkuu wa Nairobi, wananchi wamepotoshwa wakikimbia upande huu na ule. Mwananchi wa Kenya amepotoshwa. Hiyo sio njia ya kuamua uongozi wa nchi ya Kenya. Njia pekee ni ya kuenda kwa kura na kuchagua. Sisi hatuna shaka tukirudi kwa kura Jubilee itashinda na hatuogopi. Wale wanaogopa wamekataa mambo yote.

Bw. Spika, Mimi nimeshangaa sana kwamba wanadai hawamtaki Chiloba katika Tume ya Uchaguzi, basi wanamtaka nani? Mambo yote hawataki; hata uchaguzi hawataki. Inafaa waseme kama wanataka "mkate nusu". *Mkate nusu* haupatikani kwa sababu sisi tumeshaenda kwa mashindano na wameshindwa. Ukishindwa, tulia. Mambo ya *mkate nusu* haiko katika haki hii. Tumesema na tukaamua, mmetuvuta nyuma na tukakubali. Mara hamkutaka Tume ya Uchaguzi ya Kamishna Isaac Hassan ambaye alienda nyumbani na tukaleta Tume nyingine.

Mara hii, kila jambo hawalitaki, kama hawataki, nawasihi Wakenya wale waliopotoshwa kwamba nchi ya Kenya ni kubwa kuliko mtu binafsi. Tumefika mahali ambapo wale wanaotaka kutumia demokrasia vibaya wajue kwamba asiye kubali kushindwa si mshindani. Kama hawataki haya mambo yote, basi hawako tayari kushindana na kama hawataki kushindana sisi tayari tuko na Rais.

Bw. Spika, ninachukua fursa hii kuunga mkono Hoja ya Bw. Mwaura. Asante kwa kunipa nafasi.

**The Temporary Speaker** (Sen. Kang'ata): Senators, we do not have any other requests or interventions. I can see a request from Sen. Mwaura. However, the Standing Orders do not allow you to reply.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Kang'ata): Hon. Senators having concluded the debate on this Motion, it is now time to adjourn the House. The Senate stands adjourned until Thursday, 28<sup>th</sup> September, 2017 at 2:30 p.m.

Thank you.

The Senate rose at 5.40 p.m.