

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 8th November, 2017

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

[The Deputy Speaker (Sen. (Prof.) Kindiki) in the Chair]

PRAYER

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF STAFF FROM LAIKIPIA COUNTY ASSEMBLY

The Deputy Speaker (Sen. (Prof.) Kindiki): Hon. Senators, I would like to acknowledge the presence in the Speaker's Gallery this afternoon of a delegation from Laikipia County Assembly. The County Assembly officers are visiting the Senate on a one day bench marking tour on Committee operations.

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

1. Ms. Ann Wambui, Committee Clerk
2. Mr. Edward Kirega, Committee Clerk

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.

(Applause)

Next Order.

PAPERS LAID

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I beg to lay the following Papers on the Table of the Senate today, Wednesday 8th November, 2017.

COB BUDGET IMPLEMENTATION REPORTS

The Controller of Budget Annual National Government Budget Implementation Review Report 2016/2017 FY

The Controller of Budget Annual County Governments Budget Implementation Review report 2016/2017 FY

FINANCIAL STATEMENTS OF NWSC

Report of the Auditor-General on the financial Statements of Nairobi Water and Sewerage Company

REPORTS OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENTS OF VARIOUS COUNTY GOVERNMENTS

Report of the Auditor-General on the Marsabit County Executive Committee Members Car Loan Scheme Fund for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Marsabit County Executive for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Marsabit County Assembly for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Garrissa County Executive for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Garrisa County Assembly for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Embu County Executive for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Embu County Assembly for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Tharaka-Nithi County Executive for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Tharaka-Nithi County Assembly for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Wajir County Executive for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Wajir County Assembly for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Bungoma County Executive for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Bungoma County Assembly for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Isiolo County Executive for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Isiolo County Assembly for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Meru County Executive for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Meru County Assembly for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Kitui County Executive for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Kitui County Assembly for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Kiambu County Executive for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Kiambu County Assembly for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Narok County Executive for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Narok County Assembly for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Bomet County Executive for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Bomet County Assembly for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Kisumu County Executive for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Kisumu County Assembly for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Kirinyaga County Executive for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Kirinyaga County Assembly for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Laikipia County Executive for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Laikipia County Assembly for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Kisii County Executive for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Kisii County Assembly for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Nyandarua County Executive for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Nyandarua County Assembly for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Nyeri County Assembly for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Murang'a County Assembly for the year ended 30 June, 2016.

Report of the Auditor-General on the financial statements of the Mandera County Assembly for the year ended 30 June, 2016.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Deputy Speaker, Sir. Allow me to congratulate you on your first presiding over of the business of this House. The Senate Majority Leader has not laid the papers that he has read so well.

The Deputy Speaker (Sen. (Prof.) Kindiki): I heard him read, but did not see him laying the papers. Maybe the papers are bulky.

I call upon the Senate Majority Leader to lay the papers.

(Sen. Murkomen laid the documents on the Table)

Thank you, Sen. Mutula Kilonzo Jnr.

Next order.

NOTICE OF MOTION

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Dullo, you have a Notice of Motion.

Sen. Dullo: Mr. Deputy Speaker, Sir, I wish to give notice of the following Motion:-

THAT, aware the primary role of the Senate is to protect the interest of the counties---

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Dullo, you are giving notice of the wrong Motion. You have two Notices of Motion today. The one you are moving is not the correct one.

(Sen. Cheruyiot and Sen. Khaniri consulted loudly)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators for Kericho and Vihiga!

IMPLEMENTATION OF THE NATIONAL DROUGHT MANAGEMENT AUTHORITY ACT, 2016

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

AWARE that the right to adequate food is affirmed under Article 25 of the 1948 Universal Declaration of Human Rights, and Article 11 of the 1966 International Covenant on Economic, Social and Cultural Rights as part of the right to an adequate standard of living;

FURTHER AWARE THAT Article 43 (1)(c) and (d) of the Constitution of Kenya provides for economic and social rights for every person and in particular the right to be free from hunger, to have adequate food of acceptable quality, and to have clean and safe water in adequate quantities;

CONCERNED that this fundamental right is under threat as various Counties battle severe drought occasioned by successive failure in rainfall;

CONCERNED that over 3.4 million people including over 370,000 children are acutely malnourished and in urgent need of emergency

assistance while millions of livestock have perished and the remaining are in extremely poor body conditions as a result of the drought;

FURTHER CONCERNED that the situation in drought ravaged parts of the country poses a serious threat to Human dignity, peace, security and stability following loss of livelihoods leading to scramble for scarce resources by the affected communities;

NOTING that Parliament enacted the National Drought Management Bill which was assented to on 1st April, 2016 and which seeks to comprehensively address the matter of persistent droughts in the country;

NOW THEREFORE, the Senate calls upon the Ministry of Interior and Coordination of National Government and relevant State agencies responsible including the National Drought Management Authority to-

1. Expeditiously implement the National Drought Management Authority Act, 2016 and set up the necessary infrastructure to mitigate against persistent droughts; and

2. Come up with efficient drought response strategies aimed at saving lives of both people and livestock.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Sen. Fatuma Dullo.

Hon. Senators, I now request you to switch to the Supplementary Order Paper. Is it what you have, Sen. Khaniri?

Sen. Khaniri: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): We will proceed to the next Order on the Supplementary Order Paper.

STATEMENTS

The Deputy Speaker (Sen. (Prof.) Kindiki): Let us first start with the Statements to be requested; do we have any request for Statements?

Proceed, Senator for Makeni County.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Deputy Speaker, Sir. Please allow me to make the three requests simultaneously. I have three Statements to request.

The Deputy Speaker (Sen. (Prof.) Kindiki): Make all the requests consecutively.

COMPENSATION FOR PERSONS AFFECTED BY THWAKE MULTI-PURPOSE DAM PROJECT

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, first, I would like to request for a Statement on the compensation for persons affected by the Thwake Multi-Purpose Dam Project.

Mr. Deputy Speaker, Sir, I rise to seek a Statement under Standing Order No. 46(2)(b) from the Senate Majority Leader, on the Thwake Multi-purpose Dam Project. The Senate Majority Leader should in the Statement state:-

(a) The number of people who have been moved to pave way for the project;

- (b) Indicate the number persons compensated so far;
- (c) Explain the reason(s) why the affected persons are being paid in installments contrary to the provisions of Section 8 of the Land Acquisition Act; and;
- (d) Explain the status of the funding of the project by the African Development Bank.

Mr. Deputy Speaker, Sir, secondly, I rise to seek a Statement under Standing Order No. 46(2)(b) from the Senate Majority Leader---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jnr. I would rather we get responses from the Senate Majority Leader on each of them so that he can process the requests.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, you gave me the approval!

The Deputy Speaker (Sen. (Prof.) Kindiki): I told you to do it consecutively; one by one; *seriatim*.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I am ready to get the answer for Sen. Mutula Kilonzo Jnr. I can assure you that I am not resisting.

(Laughter)

I will do so, if it is permitted in the---

The Deputy Speaker (Sen. (Prof.) Kindiki): The Senate Majority Leader, that is a vague term. I hope it is not misconstrued.

The Senate Majority Leader (Sen. Murkomen): I will do so in two weeks, Mr. Deputy Speaker, Sir.

Sen. Mutula Kilonzo Jnr.: I was constrained, but I will not resist.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): So, the resistance is mutual or lack thereof. Two weeks; it is so ordered.

Proceed with the second Statement.

DELAYED COMPENSATION FOR PERSONS DISPLACED BY MULIMA DAM PROJECT

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I rise to seek a Statement on the delayed compensation for displaced persons during the construction of the Mulima Dam Project in Mbooni Constituency, Makeni County.

In the Statement, the Senate Majority Leader should:-

(a) State the number of people whose land was acquired to pave way for the project.

(b) Indicate the number of persons compensated so far, if any.

(c) Explain the reasons for the delayed compensation for those not yet compensated.

(d) State whether the Ministry of Land and Natural Resources will allocate the affected persons land in a different settlement scheme apart from the Nguu Ranch.

Thank you, Mr. Deputy Speaker, Sir.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, the two questions are similar and they are directed to the same Ministry. So, I request for the same two weeks.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Mutula Kilonzo Jnr., are you okay with the two weeks?

Sen. Mutula Kilonzo Jnr.: No problem.

The Deputy Speaker (Sen. (Prof.) Kindiki): Proceed, to the last Statement.

STATUS OF THE *INUA JAMII* CASH PROGRAMME

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I rise to seek a Statement on the *Inua Jamii* Programme.

In the Statement, the Senate Majority Leader should:-

(a) Clarify the difference between the *Inua Jamii* Cash Programme and the Old Person's Cash Transfer Programme;

(b) State whether there is any budget for the above programme and, if so, of how much money;

(c) State the criteria used to identify and register members or beneficiaries of the programme in Makueni County;

(d) State the persons who will be managing the programme and payment structure, and;

(e) State the mode of payment used to pay the beneficiaries.

Thank you, Mr. Deputy Speaker, Sir.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, this one looks more complicated and, so, I am requesting for three weeks.

The Deputy Speaker (Sen. (Prof.) Kindiki): Are you happy with the three weeks, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: No objection.

The Deputy Speaker (Sen. (Prof.) Kindiki): No objection; no resistance!

(Laughter)

We now move to the Statements to be issued. I will start with the Senate Majority Leader.

STATUS OF KAREBE GOLD MINE COMPANY LTD IN NANDI COUNTY

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I have just received the Statement on the Status of Karebe Mining Company Limited. The Senator for Nandi has not had the opportunity to read it. It is a comprehensive Statement

which might need a day or so to read and comprehensively ask follow up questions, if need be. I have consulted him and we have agreed---

The Deputy Speaker (Sen. (Prof.) Kindiki): I was wondering why you are deciding for him how much time he requires to read the Statement. But if you have consulted, it is okay.

The Senate Majority Leader (Sen. Murkomen): Yes, we have. I can issue it tomorrow, but the Statement is there.

The Deputy Speaker (Sen. (Prof.) Kindiki): No problem. Is there any other Statement?

CONTINUED STRIKE BY NURSES IN PUBLIC HOSPITALS
IN THE COUNTRY

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, regarding the Statement request by Sen. Petronila Were on the on-going nurses' strike, you can see that it is very voluminous. This is no longer an on-going strike because it has been resolved. However, I have the answer to the Statement plus the attachments, salaries and so forth.

Sen. Petronila is not here and it is the tradition of this House that the Senator should have time to peruse the Statement and be available in the House. However, if you can be magnanimous with the discretion of powers bestowed on your office, we can give time to the Senator to be available so that we can issue it.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Petronila is not here. The tradition of the House is that it is good for the Senator to be present to peruse through the Statement, because she is the one who requested for it. We will therefore keep it in abeyance. May be, it should be in tomorrow's Order Paper.

Proceed, Senate Majority Leader.

USE OF EXCESSIVE FORCE / POLICE BRUTALITY DURING
PEACEFUL DEMONSTRATIONS BY UON STUDENTS

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, the Statement by Sen. Ledama Olekina, on the alleged use of force and police brutality at the University of Nairobi (UON) is not ready.

(Sen. Wetangula spoke off record)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senate Minority Leader!

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I am not allowed to correct you and so I withdraw whatever I would have said.

(Laughter)

(Loud consultations)

Mr. Deputy Speaker, Sir, I am happy that the former Senate Minority Leader is here and he is not 'resisting'. We are all happy to be here!

So, the Statement sought by Sen. Olekina is not ready.

ALLEGED DUMPING OF ASBESTOS IN NGULU-KIKUMBULYU,
MAKUENI COUNTY

The Senate Majority Leader (Sen. Murkomen): The statement sought by Sen. Mutula Kilonzo Jnr., was sent to the wrong Ministry and it has been re-directed to the right Ministry. Having had consultations with him, we will avail it in another one week.

The Deputy Speaker (Sen. (Prof.) Kindiki): Is that okay, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: No objection.

The Deputy Speaker (Sen. (Prof.) Kindiki): It is so ordered.

We will now proceed to the next Statement 2(b), the one we deferred. The Senator for Narok County is here now. Would you want to revisit the issue?

USE OF EXCESSIVE FORCE / POLICE BRUTALITY DURING
PEACEFUL DEMONSTRATIONS BY UON STUDENTS

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, maybe, you did not get me; this Statement is not yet available.

Sen. Olekina: Thank you, Mr. Deputy Speaker, Sir. I have nothing to say. The Senate Majority Leader should make sure that it is here on time. We have been waiting for this Statement for quite some time now.

The Deputy Speaker (Sen. (Prof.) Kindiki): Senator, please raise your voice a little louder.

Sen. OleKina: Mr. Deputy Speaker, Sir, we have been waiting for this Statement for quite some time. The Senate Majority Leader should push for it. If he can give us an indication on when this Statement would be ready, that would help us.

The Deputy Speaker (Sen. (Prof.) Kindiki): Senate Majority Leader, when can we have this Statement in the House?

The Senate Majority Leader (Sen. Murkomen): I think another one week would do. The Statement can be ready maybe on Thursday, next week.

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. OleKina, do you agree?

Sen. OleKina: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): It is so ordered.

We are now done with Statements. Let us move to the next Order.

PROCEDURAL MOTIONREDUCTION OF PUBLICATION PERIOD FOR COUNTY
ALLOCATION OF REVENUE (AMENDMENT) BILL, 2017

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, Pursuant to Standing Order No. 128, this House resolves to reduce the publication period of the County Allocation of Revenue (Amendment) Bill (Senate Bill No.9 of 2017) from Seven (7) days to One (1) day.

Mr. Deputy Speaker, Sir, the reason behind this, as I indicated yesterday, is that there is an urgency that we must pass the amendments that are in the County Allocation of Revenue Bill that corrects certain anomalies that existed in the Bill as passed by this House in the Eleventh Parliament. If we do not do so quickly, our counties will continue to suffer. Although the Cabinet Secretary (CS) in a statement read in this House yesterday indicated that the counties still have money in their Central Bank of Kenya accounts, that will not last for long.

Considering that the long recess is coming soon, it is important that this House takes the shortest time possible to correct the errors that were in the Bill, so that counties can receive resources. This is a straightforward thing. We are not negotiating about how much money will go to the counties or how much is allocated to which county. The question here is to basically ensure that corrections are made.

(Loud consultations)

Mr. Deputy Speaker, Sir, if you could bring the House to some order?

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator for Narok County! You appear to be the ring leader.

(Sen. Wetangula spoke off record)

Ring leader; not leader.

The Senate Majority Leader (Sen. Murkomen): Thank you, Mr. Temporary Speaker, Sir. This being a straightforward Motion, I beg to move and request Sen. Mutula Kilonzo Jnr. to second.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, I support the Motion by the Senate Majority Leader. However, I must mention that he has not mentioned the reasons he wanted me to support it. Since it is a procedural Motion, I see no harm in supporting the same.

(Question proposed)

(Question put and agreed to)

BILL*First Reading*

THE COUNTY ALLOCATION OF REVENUE
(AMENDMENT) BILL (SENATE BILL NO.9 OF 2017)

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

The Deputy Speaker (Sen. (Prof.) Kindiki): Having dispensed with that Procedural Motion, I will at this juncture allow the Senate Majority Leader to give notice of a Motion.

NOTICE OF MOTION

ESTABLISHMENT OF *AD-HOC* COMMITTEE ON THE
COUNTY ALLOCATION OF REVENUE (AMENDMENT) BILL, 2017

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, pursuant to the Procedural Motion having been accepted, I beg to give notice of the following of Motion:-

THAT, Aware that the primary role of the Senate is to protect the interest of counties and their governments as provided for in Article 96 of the Constitution of Kenya;

APPRECIATING that the Division of Revenue Act, 2017 (No. 16 of 2017) and the County Allocation of Revenue Act, 2017 (No. 23 of 2017) respectively, provide for the sharing of revenue raised nationally between the National Government and County Governments and revenue raised nationally among county governments, for Financial Year 2017/2018;

NOTING the need for an amendment to the County Allocation of Revenue Act, 2017 (No.23 of 2017), to provide for a seamless disbursement of funds to county governments to enable them effectively implement county governments' projects and programmes;

NOW, THEREFORE, the Senate resolves:-

- (a) to establish an *Ad-hoc* Committee to be known as the *Ad-hoc* Committee on the County Allocation of Revenue (Amendment) Bill 2017, comprising not more than nine Senators, to undertake the functions of the Standing Committee on Finance and Budget, as contemplated under Standing Order No.212(3);
- (b) That, the following Senators be appointed to the Committee;
 1. Sen. Njeru Ndwiga;
 2. Sen. Charles Reubenson Kibiru;

3. Sen. Farhiya Ali Haji;
4. Sen. (Dr.) Abdullahi Ibrahim Ali;
5. Sen. Christine Zawadi Gona;
6. Sen. Mutula Kilonzo Junior;
7. Sen. George Khaniri
8. Sen. Moses Kajwang; and,
9. Sen. Judith Pareno.

(c) that, the County Allocation of Revenue (Amendment) Bill (Senate Bills No.9 of 2017) be committed to the *Ad-hoc* Committee; and,

(d) that, the *Ad-hoc* Committee considers the County Allocation of Revenue (Amendment) Bill (Senate Bills No.9 of 2017) and reports to the Senate on or before Thursday, 16th November, 2017.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. The Senate Majority Leader has given notice of a Motion listing Members to serve in an *Ad-hoc* Committee. It is the tradition and practice of this House that if you want to have a bi-partisan Committee, then proper and adequate consultations ought to take place. This side has not taken up our active participation in this House, but soon we will.

The Deputy Speaker (Sen. (Prof.) Kindiki): What is active participation?

The Senate Minority Leader (Sen. Wetangula): Well, I am sure that being a distinguished learned friend, you know what that means.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): For purposes of the House.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, we have not formulated Committees. My side has been coming to the House, but has not been actively participating in debates. However, that is not the point. You sat on the other side as the Senate Majority Leader in the previous House and I do not remember any single situation where you listed Members across the Floor without consulting the leadership. That is cardinal, basic and common sense; common courtesy.

Secondly, my Members who are listed here –at least those I have talked to – have just been informed on the Floor that they have been included in the Committee. Thirdly, they are unwilling to serve in a Committee without proper consultation with their leadership. So, it is up to the Chair and the Senate Majority Leader to proceed with a one-sided Committee. It is entirely up to him because ---

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Wetangula, do not involve me in your activities with the Senate Majority Leader.

The Senate Minority Leader (Sen. Wetangula): That is fine, Mr. Deputy Speaker, Sir. You will make a ruling, in any case, I believe. I want to advise that urgent as this matter may be, our side will submit lists of our membership to committees and then have the means of nominating our Members to *ad-hoc* Committees not beyond 20th November, 2017.

That being the case, I do not want any unnecessary raptures within the rank and file of our leadership and membership. You never know; I would probably have preferred

somebody else to Sen. Khaniri, put somebody else in place of Sen. Kajwang or another in place of Sen. Mutula Kilonzo Jnr. I know my flock. You cannot pretend to know them more than I do.

Since notice has been given, that is water under the bridge. I see the Motion is listed. I urge you to defer it to a time when we shall have agreed, and this will not be more than two weeks. That is not asking for too much because we need to move as a House. This is the only House where there is equality of counties and representation. That is why the Senator for Lamu County is equal to the Senator for Nairobi County and the Senator for Tharaka-Nithi County is equal to the Senator for Kakamega County, the population disparities notwithstanding. There is equality of representation which must be transcended to a respect for equality of opportunities and the right to choose and participate.

(Sen. Murkomen stood up)

The Deputy Speaker (Sen. (Prof.) Kindiki): Wait a minute, Senate Majority Leader because I will call upon you to respond. You need to help us because the business that we have today is to make sure that we transact some good business for the country. That is why I was warning Sen. Wetangula not to involve me, from where I seat, in his skirmishes with the Senate Majority Leader.

The other thing that I want to make clear – just a brief observation – is that we do not have Committees and the failure is on both sides of the House. We do not have Committees and that is why we are doing some things, including this Motion on the establishment of an *ad-hoc* Committee.

Part of the paralysis is coming from both sides of the House. However, the other thing which is also important is that, in fact, the situation is even worse from the minority side. The information I have is that there is even no leadership of the minority as we speak. So, it is in that context, therefore, that we must look at these things holistically, but the overall objective – as you respond, Senate Majority Leader – let us help move the business of this House forward.

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

(Sen. Murkomen walked to the Dispatch Box)

The Deputy Speaker (Sen. (Prof.) Kindiki): Senate Majority Leader, just be patient. Let us hear Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, for the record and for avoidance of any doubt, the Leader of the Minority in this House is yours truly. The only issue pending is the appointment and designation of my deputy, the whip and the whip's deputy. So, it is preposterous to hear that there is no leadership. I sit where I sit not as a trespasser but as a leader of this side. The letter to that effect is with the Speaker and the Clerk. There are no issues to that.

The Deputy Speaker (Sen. (Prof.) Kindiki): It is okay, Sen. Wetangula. We have heard you but we spoke about the leadership, not the Leader of Minority. So, the ---

(Sen. Wetangula spoke off record)

No, let us be procedural.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, first of all I respect the decision of the minority side not to participate in Committees yet. Yesterday when the Speaker issued the order that we must constitute Committees by 20th November, 2017, I made it clear that the Majority side is ready. We are just being magnanimous to wait for our colleagues to be ready.

There is a letter that came from the NASA coalition that is signed by one Norman Magaya. It came to the Senate Business Committee (SBC) yesterday. That letter requested for postponement of making of Committees and participation of NASA up to 31st November. First of all, 31st November, does not exist but pursuant to that letter, the Speaker requested that the postponement be reduced to 20th.

Secondly, there is a letter also that came to the Speaker from Sen. Wetangula, appointing himself the Minority Leader. The procedure for appointing the leadership of both sides of the House in the Eleventh and Twelfth Parliament is clear. There are minutes that come from the party. The party holds their Parliamentary Group (PG), appoints their leadership and sends the names to the House. The Majority side did so; they held their PG, appointed their leadership and sent communication to the Speaker. It is only in the Minority side that Sen. Wetangula appointed himself.

Be that as it may, the Speaker wrote back for a clear procedure to be followed. Since then, I can say without fear of contradiction that there is no leadership on the Minority side. If that position is in doubt, the Speaker should issue a ruling next week on that matter so that we are clear in our minds that there is no Minority leadership in this House.

I consulted the Speaker. That being the case, what should I do? Since there is no leadership in the Minority side, I had to be pragmatic in the sense that this House has traditions. In the past, we have had Committees that are established by Senators to come up with a Motion and prepare a Bill. Those Committees do not require consultation of the Majority or Minority leadership. It is based on that tradition and the provision that I created this *ad hoc* Committee; pursuant to that tradition by consulting individual Senators.

Mr. Deputy Speaker, Sir, I can confirm that I called Sen. Mutula Kilonzo Jnr. who accepted. I called Sen. Kajwang who accepted. I called Sen. Pareno who accepted. I did not find Sen. Khaniri because in his efforts to resist, he had migrated to a network that is barely reachable. However, when I arrived here I also talked to Sen. Khaniri. The reason why I put Sen. Khaniri in the list is that he is the one who came up with a question in this House as to why the money has not reached the counties. That question was read here. I concluded that he was so interested in the money allocated to Vihiga to reach the Vihiga County Government to assist in operation of the county, for instance the staff and hospitals, to the extent that I felt that even if I did not reach him, it was only the most reasonable thing being the only Senator in this House who thought to bring a question in regard of the same issue to be put there. I did it with a lot of pride because I know his commitment to devolution.

Mr. Deputy Speaker, Sir, we are being told that a leader who does not exist in the records of the House has stopped that consultation that took place. This is my Motion. It is not a Motion of the Majority side. Yes, I am the Majority Leader. I have introduced it in my capacity as the Majority Leader but it is a Motion that I had drafted in the knowledge that both sides do not have Committees. As you have said, the fact that there are no Committees on both sides can paralyse the House.

Also, I acted in extreme public interest. Only a mad man in the market would oppose money going to every county. In fact, all these equality arguments that Sen. Wetangula argued here would only go ahead to serve the protection – in fact I would say that if I had announced on the Floor of the House how many Senators want to serve in this Committee, there should have been a stampede. A stampede because we all care about money going to our counties. We care for Homa Bay County and Siaya County the same way we do for Elgeyo-Marakwet County and Makueni County. It would be a shame tomorrow that Senators are bickering over who is the big man to the extent that they could not form a Committee to save money going to the counties. That hospitals cannot operate because we were arguing here who is the big man, who is the small man?

I am giving a way forward. If the four Senators from the Minority side came to Floor and said they are not interested to serve in this Committee, I would be willing, in the middle of the Motion, that we draft an amendment, to remove the names but we cannot stop money going to the counties.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you, Majority Leader. Just a moment. There is a bit of interest but resume your seat Senator for Garissa.

Hon. Senators, as I said at the beginning, we have political issues which we do daily. We have a lot of opportunity to do it outside this Chamber mostly and then we have very serious legislative work like what we are discussing. So, before I allow further interventions which I would also request us to be moderated as far as possible, I would like to point out two things.

One is that the Leader of Majority has made a serious claim which should not be left either like that or without clarification. That is whether or not as we speak and as per procedure and law, we have a Leader of Minority presently. That is an issue I would want, not specifically because of this order, but going forward we would want to make that clarity. Therefore, we would want to perhaps look at the record and pronounce ourselves tomorrow. That is an issue of procedure.

You cannot appropriate powers you do not have. You cannot purport to be a whip or something else which you are not. That is why I said it is a very serious thing because if what the Majority Leader is saying is not true, then you owe Sen. Wetangula and his fraternity a big apology but if also it is true, likewise I will not hesitate to reprimand Sen. Wetangula for appropriating what he does not have yet. Instead of having the patience to wait if at all it will happen; when it happens you will enjoy it. It is a double edged sword.

As you can see I am now in a different format. I am no longer the Leader of Majority. So, I will be fair but very firm.

The Senate Minority Leader (Sen. Wetangula): On a point of order!

The Deputy Speaker (Sen. (Prof.) Kindiki): Sen. Wetangula, is it on a different issue?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, you heard those perverted polemics from the Majority Leader. The problem of appearing to know too much is that you end up looking like you know very little.

Mr. Deputy Speaker, Sir, we are not here in competition on any issue. I am not interested in competing with the Senator for Elgeyo Marakwet on any issue. I sit on this side as the leader of the House. If he cared to say what he knows, if he does, unless he is suffering from selective amnesia; there is a letter from our coalition to the two Speakers informing them that the positions of minority leadership shall be held by hon. John Mbadi in the National Assembly and he occupies that office and yours truly in the Senate and I occupy that office. When the Speaker yesterday ruled that parties should constitute committees, he made no reference to the issue because he knows the facts.

Sometimes young Murkomen gets the exuberance of reckless youth---

The Deputy Speaker (Sen. Kindiki): Order! You refer to Sen. Murkomen as either the Majority Leader or as Sen. Murkomen.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, Sen. Murkomen gets carried away with exuberance of reckless youth and starts making unhelpful statements that will only pull him away from the endearment of his colleagues. He is a very clever young man, but sometimes when you misdirect your brain, it becomes toxic. I do not want to engage in such unhelpful arguments.

The Deputy Speaker (Sen. Kindiki): So, what is your point of order?

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, the point is, and I have heard you also speak, reading between the lines, of course, we can tell what is in your mind.

The Deputy Speaker (Sen. Kindiki): You cannot read my mind.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, I did not say I read, I said I can tell.

The Deputy Speaker (Sen. Kindiki): Order, Senator! It will do you a lot of good to prosecute your issue. Leave the Chair completely out of this.

The Senate Minority Leader (Sen. Wetangula): Absolutely. You know I have tremendous respect for the Chair.

The Deputy Speaker (Sen. Kindiki): Order, Senator! We will do things differently. Prosecute your issue.

The Senate Minority Leader (Sen. Wetangula): Yes, Mr. Deputy Speaker. I have tremendous respect for the Chair. In any case, when you were the Leader of Majority, you conducted yourself differently. I do not want to drag you into that. I am sorry about that.

I just want to finish by saying; if the Majority Leader is waiting to amend the Motion, it is entirely up to him. The four Members he has listed will not serve in a Committee where they have been put, first, by a person who is not there leader and secondly, without consulting them properly. Even Sen. Mutula Kilonzo Jnr. is going to tell you that Sen. Murkomen of Elgeyo Marakwet County made a casual mention to him about a Committee. He did not tell him that he was inviting him to serve in a Committee. A casual mention is different from a consultation. Sen. Kajwang' also received a casual mention and he is going to say so. Sen. Judy Pareno is not here, but I know---

(Sen. Pareno walked into the Chamber)

Hon. Senators: Here she is! Here she is!

The Senate Minority Leader (Sen. Wetangula): Okay, she has come in. I had not seen her. I am sure she may also have received a casual mention. She is a senior Member of one of our major parties. She should be the last person to engage in any opportunistic moves because she has been given a casual mention by one Kipchumba Murkomen, the Leader of Majority.

I want to work with you in a bipartisan manner. I want to work with this House in a bipartisan manner. We want this House to defend and protect counties as we have always done. This will be done if we consult each other. This will not be done if we think we have consulted when we have not consulted and come to the floor and say we have consulted because we are speaking to the gallery and we want to look good and make others look bad. That is not how to run this House. This House will be run through consultations and respect. That is the only way. We can address the gallery and amuse ourselves, but that does not solve problems.

Mr. Deputy Speaker, Sir, I want you who has been sitting in that chair to help your colleagues who have come in on how you and I worked for five years. Even when we rubbed each other the wrong way here, it was with dignity and respect. I always said and I am very proud that in your formative years we worked together. I have always held the view that having worked with Sen. Murkomen for all that time, things can only improve not regress.

Thank you.

The Deputy Speaker (Sen. Kindiki): All right. We are making good progress. Very shortly, we will find a way out of this thing. As I said once more, we owe this nation a duty. I want to request a few more people to make their points very brief and kindly restrict yourselves to the issues under discussion.

Sen. Haji: Thank you very much, Mr. Deputy Speaker, Sir. I stand as an elder and a friend. From the argument, it looks there is a bit of confusion as to the legality of the Leader of Minority. However, he has clarified. In view of that clarification--- I also heard on the radio when I was coming that he was appointed as a leader and Hon. Mbadi, the leader on the other side. I am appealing to him, also as an elder and a brother that this issue is very important to our counties. In view of that, I am sure all these four gentlemen and lady whose names are here, if he was consulted I am sure he would have appointed them. In view of that, I want to appeal to him to let it go please for the sake of the country. He is one of the principals of National Super Alliance (NASA). I am sure he would like to see our counties operating. With those remarks, Sir, I say, please resume your---

The Deputy Speaker (Sen. Kindiki): Thank you, Sen. Haji. That is very useful. That is the spirit that should inform us, especially, when we are doing this kind of work. When we are out there politicking, we can use our various styles. However, we cannot look as if we are not serious when we are handling such a serious issue. Many counties, Hon. Senators, are almost grinding to a halt. They have no money. Thank you, Sen. Haji. That was a good input. I am sure the Leader of Minority is listening and everybody else

and even the colleagues who are involved. They are here. They are not far. Let us hear from Sen. George Khaniri, Senator for Vihiga, who is also my age mate.

Sen. Khaniri: Thank you, Mr. Deputy Speaker, Sir. I want to add my voice to the *de facto* Leader of Minority side, Sen. Wetangula. We recognise him. For Sen. Murkomen's information, we recognise Sen. Wetangula as our *de facto* leader.

This House has rules and procedures. We have practices and traditions. We do not want to create a bad precedence this early. Sen. Murkomen, the Leader of Majority is creating a very bad impression that it is this side of the House that does not want monies to go to the counties. He is missing the point. I do not mind serving in that Committee. I am very passionate about the matter and that is why I raised the issue about monies going to our counties before we broke for recess. I am very passionate. I want to serve on that Committee, but I do not want to be a product of a bad procedure that we want to set in the 12th Parliament.

We have leadership and I think Sen. Murkomen knows that. We need consultations. We are not going to run this House if that mutual respect and consultation is not going to be there. I will decline to serve until I am appointed through the right channels to this particular Committee. I will not be appointed by Sen. Murkomen. For the record, I was not consulted. He only walked up to me here and told me that he had put me on the *Ad-Hoc* Committee. That is not consultation. That is not my understanding of consultation. I, therefore, even before the Motion comes, just on the notice of the Motion, I decline and resist vehemently to serve on that particular Committee.

The Deputy Speaker (Sen. (Prof.) Kindiki): Now, I think we are getting somewhere. Since almost everybody wants to talk, I will limit the debate to one minute, specifically. I will hear Sen. Cheruiyot and then Sen. Mutula Kilonzo Jnr., then we will see how to push this agenda forward. Does Sen. Pareno want to talk? She does not want. I have not seen her.

The Senate Minority Leader (Sen. Wetangula): Sen. Pareno is right there.

The Deputy Speaker (Sen. (Prof.) Kindiki): Oh, I have seen her. That is fine. One minute each, then after that, we can find a way to prosecute this.

Sen. Cheruiyot: Mr. Deputy Speaker, Sir, forgetting all the things that have led us to this situation, will it be helpful if you would call to the Bar - now that you have been told there is a Leader of Minority - the minority side?

It appears to me that in all those many words, he is saying that he needs to be recognized as the one forwarding the names. Could you ask him if it is within his right and feeling right now to give us the names so that we move forward because I can very strongly say that the feeling on this side is that we want monies to be in the counties like yesterday?

With or without your support, unfortunately, money must go to the counties. So make up your minds. If you want to join the Committee. give us the names since the Senate Minority Leader is here. In any case, when we passed the disbursement schedule, you resisted. So, there is nothing new that you are trying to do today.

Please consult so that we do not keep having these issues in the House. It is becoming--- I lack the words to use, so let me respectful and hold back.

I 'resist' the temptation.

(Laughter)

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, Shakespeare, in the book *Romeo and Juliet*, once said that: “What is in a name? that which we call a rose By any other name would smell sweet.”

Sen. Wetangula is the Senate Minority Leader whether he is named or not. That is our position. When the Senate Majority Leader, Sen. Murkomen, called me, I appreciated the fact that you have a problem with the cash disbursement schedule. I agree that he called me and mentioned it but I told him that he should consult Sen. Wetangula who is the Senate Minority Leader. He did not inform me that he was going to form a Committee.

Mr. Deputy Speaker, Sir, I am concerned, in fact, that the Senate Majority Leader, Sen. Murkomen, should tell us why cash should not be disbursed to counties when there appears to be what would be a typographical error. I personally believe that we do not need this sort of back and forth.

The Cabinet Secretary (CS) Treasury should have been in a position to disburse funds subject to any corrections that might arise. That is a more urgent issue. However, I have said that the Senate Majority Leader, Sen. Murkomen - he is a pastor having come from such a family - consulted me and I asked him to please speak to Sen. Wetangula who I recognise as my Minority Leader whether Noah comes, whether there is hell or high water.

The Deputy Speaker(Sen. (Prof.) Kindiki): We have heard you. We will allow Sen. Pareno to speak for one minute then we shall see how to proceed.

Sen. Pareno: Mr. Deputy Speaker, Sir, I came in when one of my Principals, Sen. Wetangula was submitting. I was keen to listen because I came in when the debate was going on. I want to say that on this issue we need to consult further so that we come up with a position that is not harmful to anybody and we are able to serve procedurally in a Committee that is agreeable to all of us.

I am a bit perturbed by the sentiments of Sen. Cheruiyot when he says the monies will go to the counties whether we are there or not. I do not think that is the kind of tone that would be leading us to the right direction. That is what I understood him to say. If you can do it on your own, then why are we struggling to form this *Ad-hoc* Committee? It simply means that somebody wants to do something in a procedural manner and not in the manner the talk suggests.

I suggest that we have more consultation with our leaders and be able to present the names accordingly.

(The Senate Majority Leader (Sen. Murkomen) stood in his place)

The Deputy Speaker(Sen. (Prof.) Kindiki): You do not have to respond. You made your case very well in the two opportunities you had. In the interest of carrying everybody on board, and doing the right thing for our counties which is our core business, I would propose two options at the discretion of the sponsor of the Motion.

Option number one, which I highly recommend in order to carry everyone on board, is for the two leaders to retreat, like wise people and leaders, and talk; not now as

politicians but as leaders. This is because when I listen, nobody is disputing the fact that the county governments need money like yesterday or the fact that, lawfully, if certain legal instruments are not in place, the Treasury cannot disburse those monies.

The issue here is very simple; whether or not there was consultation, just that. So, the two gentlemen; my former counterpart, Sen. Wetangula and my successor, the Senate Leader of Majority, Sen. Murkomen, rise up to the occasion. You can have your five minutes and talk to one another. Even the Members from the minority side who have spoken are not saying that they do not want to serve in this Committee. They are just saying that their leader was not on board.

For your information, Sen. Pareno, you should clarify next time when you say your 'principal' has spoken; that it is the 'principal' of the National Super Alliance (NASA) because this House does not have Principals. We only have leaders here. However, when you say a principal of NASA we will understand because we are Kenyans. That is the first recommendation. Gentlemen, I am pleading with you to take that option for the sake of the country.

The second option is a default mechanism to make sure that the business of the House is not captured by the vagaries of partisan and personal competitive politics, is to ask the owner of the Motion to proceed with his Motion in an amended form. This is because you cannot force a Member who has said they do not want to serve if their leader is not consulted, to serve.

On the other hand, we do not have the luxury of time. I can assure you as we talk here this afternoon, that the entire country is watching us and listening. Let us therefore not trivialize what is happening here. Those are the two options at the discretion of the sponsor of the Motion. Either you consult if your brother is willing to listen to you and try and develop some camaraderie. I want to encourage this, especially inside here.

I want to encourage the Senate Majority Leader, Sen. Murkomen and the Leader of the Minority, with a lot of respect that the fights can be out there, but when we come here, let us only fight when maybe the business is partisan. I am not sure this one is.

Those are the two options. I will give the owner of the Motion thirty seconds to either tell me whether you want to consult or to proceed with the Motion in an amended form.

The Senate Majority Leader(Sen. Murkomen): Mr. Deputy Speaker, Sir, I am willing to consult. Part of the thirty seconds can be put into consultation. We can have five minutes. Meanwhile, in my suggestion, the Motion for Sen. Dullo can be started and then we come back here to proceed.

You heard the very strong terms used by Sen. Wetangula on me. However, I did not raise any point of orders because you know he is the age of my father. He likes reminding me all the time that his son is my age and I have no shame. My father should be very proud, Sen. Wetangula, for this purpose that his son is sitting with him in the Senate, not for a first term, but a second term.

Mr. Deputy Speaker, Sir, with that in mind, I am more than willing to consult with him as soon as possible to take the business of this House forward. I appreciate the statements by the Senators who are in the Committee; they remained generally closer to the truth.

The Deputy Speaker (Sen. (Prof.) Kindiki): The Senate Minority Leader, would you want to say something? Do you want time out because we have to proceed?

The Senate Minority Leader (Sen. Wetangula): I ceded my position to Sen. Wako. I wanted to say something---

The Deputy Speaker (Sen. (Prof.) Kindiki): No! No! We have not opened the Floor. The Floor is only open to the Senate Majority Leader and yourself to help us forge a way forward.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, you know very well as a consummate diplomat in this country, you do not negotiate with people you like. You talk to anybody and everybody. I am available.

(Laughter)

The Deputy Speaker (Sen. (Prof.) Kindiki): The Senate Majority Leader, I will give you two or three minutes.

The Senate Minority Leader (Sen. Wetangula): Give us a little more!

The Deputy Speaker (Sen. (Prof.) Kindiki): Approach the Chair.

(Sen. Wetangula and Sen. Murkomen approached the Chair and consulted the Deputy Speaker)

(Loud Consultations)

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senators! We are making good progress. I want to thank the two leaders for helping us in this regard. So, Sen. Murkomen and Sen. Wetangula, we do appreciate.

Given the urgency and the gravity of this matter, we have to dispose of this agenda. Therefore we will grant the two leaders about ten minutes to consult and one of them should make a formal request so that we can be able to suspend the business of the House for a few minutes to allow the two leaders to consult then we resume and dispense with this matter.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, pursuant to your earlier ruling and in the best interest of the country and the business of the House this afternoon, I want to request you to suspend the House for ten minutes to facilitate consultations, not only between the two of us, but where necessary for the Senate Minority Leader to also consult his Members, then we can come back after ten minutes.

The Deputy Speaker (Sen. (Prof.) Kindiki): The Senate Minority Leader, anything to add? Shall we say 20 minutes or 30 minutes? Can we have consensus? The spirit this afternoon is a spirit of consensus. Is it 4.30 p.m? That is too far. Can we make it 4.20 p.m? That is half an hour from now. We will resume at 4:20 p.m. Therefore, today's sitting stands suspended until 4:20 p.m.

(The Senate adjourned temporarily at 3.50 p.m.)

(The Senate resumed at 4.20 p.m.)

The Deputy Speaker (Sen. Prof. Kindiki): The Leader of Majority, the floor is yours.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, there is white smoke in figurative terms. The consultations of the Leader of Minority and his team have borne fruits. If you may allow me, the leader of Minority can report to the House the details of what they have agreed upon, which he has notified me. Considering seniority, he should report as it is, verbatim, without my reporting.

The Deputy Speaker (Sen. Prof. Kindiki): The Leader of Minority, please, take the floor.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, there is always a risk of Sen. Murkomen convoluting everything. So, let me put this on the floor of the House - that is on a light touch.

My side has consulted and I am happy to report to the House that we will allow our Members to serve on the *Ad Hoc* Committee, The Members that I propose to serve in that Committee – which should help the Leader of Majority move the motion in an amended form by substituting the names that he had unilaterally put there - are as follows: Sen. Mohamed Faki of Mombasa County, Nominated Sen. (Dr.) Gertrude Musuruve, Sen. (Prof) Malaki Ekal of Turkana County and Nominated Sen. Naomi Shionga. Those four Senators will represent our side in the Committee. I will now pass on the list to the Clerks-at-the Table to pass on to the distinguished Senator for Elgeyo Marakwet, who was lucky to escape the wrath of the former Inspector-General of police, “*Sieke*” so that he can move the Motion in an amended form.

Thank you, Mr. Speaker, Sir for your magnanimity in giving us time to consult. In any case, I did not expect anything less from you because of your positive exhibition of wisdom from time to time.

(Laughter)

The Deputy Speaker (Sen. Prof. Kindiki): Leader of Minority, be careful, times have changed. Now that you are talking about time, times have changed. Thank you.

Hon. Senators, I am gratified and happy that we are able to proceed. Once more, I commend the Leaders of Majority and Minority; that is what leadership entails. Good job.

So, we will now have the Leader of Majority move the Motion in an amended form. Do you want to do it right away? We are not on that order yet; okay ---Just a minute.

(The clerk-at-the Table consulted with the Deputy Speaker.)

Instead of repeating the Notice of the Motion, the order can be called out then he moves the Motion, but he has to state that it is in amended form.

Next Order.

MOTION**ESTABLISHMENT OF AD-HOC COMMITTEE ON THE
COUNTY ALLOCATION OF REVENUE (AMENDMENT) BILL, 2017**

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, you allowed the Leader of Minority get away with a lot of things that would have otherwise attracted points of order. Since I escaped the wrath of “Sieke”, does he know that I beat “Sieke?” I had 85 per cent of the votes while he had only 13 per cent. I came to this House as one of the Senators with the highest approval rating including yourself, but Mr. Speaker ---

*(Sen. Khaniri spoke off record as he
withdrew from the chamber)*

No, for Orengo there was no election!

The Deputy Speaker (Sen. Prof. Kindiki): The Leader of Minority, address the Chair. Sen. Khaniri, exit in peace.

The Senate Minority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I also want to request, before I move the Motion, that both sides make it brief because the substance of this Motion is the Bill itself, which we must dispose of by tomorrow. I will be brief. Instead of the 60 minutes that I have been allocated, I will use three minutes so that all of us can speak on this and allow the Committee to prepare for the Bill. I am requesting this so that all of us can move forward a little bit faster.

Therefore, I beg to move the Motion in an amended form. I sympathise with those who would have served and now they have no opportunity to serve in this Committee ---

The Deputy Speaker (Sen. Prof. Kindiki): The Leader of Majority, can you move the Motion?

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, I, therefore, beg to move the Motion in an amended version:-

THAT, Aware that the primary role of the Senate is to protect the interest of counties and their governments; as provided for in Article 96 of the Constitution of Kenya;

APPRECIATING that the Division of Revenue Act, 2017 (No. 16 of 2017) and the County Allocation of Revenue Act, 2017 (No. 23 of 2017) respectively provide for the sharing of revenue raised nationally between the National Government and County Governments and revenue raised nationally among County Governments, for financial year 2017/2018;

NOTING the need for an amendment to the County Allocation of Revenue Act, 2017 (No. 23 of 2017), to provide for a seamless disbursement of funds to County Governments to enable them effectively implement County Governments projects and programmes;

NOW THEREFORE, the Senate resolves—

a) to establish an *Ad-hoc* Committee to be known as the *Ad-hoc* Committee on the County Allocation of Revenue (Amendment) Bill 2017, comprising not more than nine Senators, to undertake the functions of the Standing Committee on Finance and Budget, as contemplated under Standing Order 212(3);

b) that, the following Senators be appointed to the Committee;

1. Sen. Njeru Ndwiga;
2. Sen. Charles Reubenson Kibiru;
3. Sen. Farhiya Ali Haji;
4. Sen. (Dr.) Abdullahi Ibrahim Ali;
5. Sen. Christine Zawadi Gona;
6. Sen. Mohammed Faki;
7. Sen. (Dr.) Gertrude Musuruve;
8. Sen. (Prof) Malachy Ekal; and
9. Sen. Naomi Shionga.

c) that, the County Allocation of Revenue (Amendment) Bill (Senate Bills No. 9 of 2017) be committed to the *Ad-hoc* Committee; and

d) that, the *Ad-hoc* Committee considers the County Allocation of Revenue (Amendment) Bill (Senate Bills No. 9 of 2017) and reports to the Senate on or before Thursday, November 16, 2017.

The Deputy Speaker (Sen. Prof. Kindiki): What is your intervention, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, even in our consultation, the Leader of Minority did not mention this. But we are of the view that, in view of the urgency of this matter, that under paragraph d), there should be a further amendment so that this Committee reports to this House latest either tomorrow or the earliest sitting possible. Thursday, November 16, 2017 is too far.

The Deputy Speaker (Sen. Prof. Kindiki): The Leader of Majority, is that part covered?

The Senate Majority Leader (Sen. Murkomen): Yes, it is covered, Mr. Deputy Speaker, Sir. It states on or before Thursday of next week. On or before means---

(Hon. Members spoke of record)

Mr. Deputy Speaker, Sir, behind the scenes consultations are ongoing for us to complete the process tomorrow. We do not have to write it again. But in terms of the Motion it covers that; it can even be this afternoon. I am certain that when the Committee goes to consult, we should be able to complete this tomorrow. That is why the terms of the motion say: "and reports to the Senate on or before Thursday, November 16, 2017." It does not say that it should be on Thursday, November 16, 2017. It can be even this evening.

The Deputy Speaker (Sen. Prof. Kindiki): Sen. Mutula Kilonzo Jnr., are you satisfied with that explanation?

Sen. Mutula Kilonzo Jnr.: No! There is no reason to be ambiguous about this issue. If all of us agree that we can do this within 24 hours, it should be stated clearly so

that we know that a report will be tabled tomorrow afternoon at 2.30 p.m. That is a better way.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I still insist that if you talk about “on or before” a particular day, that includes an hour from the time we have decided. Let us not---

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senate Majority Leader. I see no difficulty in this and I do not see any big issue from both sides. I can also see that there is no difficulty for Sen. Mutula Kilonzo Jnr. because “on or before” could mean even now.

Generally, this House is committed to finishing this process tomorrow. Unless there is another reason, I do not see a big challenge there. Equally, unless the Senate Majority Leader has a different reason, if talking of tomorrow could help us move forward, I do not see any big problem unless it is something else we do not know.

(Sen. Murkomen) spoke off record)

Let us first hear the Senate Minority Leader so that you respond in totality.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, in the bi-partisan spirit and the nature of the urgency of this matter, I encourage the Senate Majority Leader to take--- If you have been here as long as myself, Sen. Haji, Sen. Orengo and Sen. Wako, then you know that there used to be a catch phrase in the old days. You could hear Poghishio telling people that the roads would be tarmacked or this and that would be done “when money was available”.

There is a saying in English that you should say what you mean and mean what you say. It does no harm if Sen. Murkomen is in a frame of urgency, like he has said, to take a cue from Sen. Mutula Kilonzo Jnr. and fix the time frame to tomorrow because we will be here and we all want to debate and pass this. When you talk of “on or before” you know how fluid that means. It is an escape route for anybody who does not want to move.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I still emphasize that we cannot. We should have flexibilities and if the committee finds that there are certain errors that must be addressed, they will not be under constraint to come back tomorrow. If they find that the amendments are correct, they must come back tomorrow.

So, the urgency in terms of concluding it is upon ourselves to act expeditiously but we cannot close it. This drafting by the legal team of this Senate was well done to accommodate 24 hours and also accommodate a situation if it cannot be done in 24 hours. We cannot close ourselves to 24 hours when we cannot imagine what the committee will come up with.

The Deputy Speaker (Sen. (Prof.) Kindiki): Senate Majority Leader, you have made your point.

Sen. Mutula Kilonzo Jnr., you may also want to consider the following. Although the House, through the committee, will be looking at correcting some errors, it is technically a new Bill which might require some form of public participation even if for a few hours and that is my understanding. That being the case and, considering that if we put it to tomorrow and then it spills over to the next day because of public participation,

given the urgency of this matter, nothing prevents this House from resolving to extend time either tomorrow night or to sit on Friday and finish with this because it will not look good to take any further recess without this Bill being passed.

So, you may have to consider that bit of public participation also because we might take a day or half a day. If you asked me, talking of “on or before” means that date is the extreme but the earliest is now.

We will listen to just one intervention from Sen. Mutula Kilonzo Jnr. I will then give a minute to Sen. Wetangula and then the Senate Majority Leader will respond.

The Senate Minority Leader (Sen. Wetangula): I do not need the Floor.

The Deputy Speaker (Sen. (Prof.) Kindiki): If you do not need the Floor, then we will listen to Sen. Mutula Kilonzo Jnr. and then Sen. Murkomen who is the sponsor of this Motion will respond. That is what we will consider but we want everybody to be on board.

Sen. Mutula Kilonzo Jnr.: Mr. Deputy Speaker, Sir, from my experience in the Committee on Finance, Commerce and Budget, we never had public participation on the Cash Disbursement Schedule or even the County Allocation of Revenue Bill.

Mr. Deputy Speaker, Sir, from the understanding of the communication from the Cabinet Secretary, there appears to be a discrepancy between the County Revenue Allocation Bill and the Cash Disbursement Schedule, which is simply getting the schedule and amending it. So, we do not need to consult the public because it could be a matter of a two or four being at the wrong place. The secretariat should have made those corrections by now. What the committee needs to do tomorrow is to sit and look at the amendments.

The Deputy Speaker (Sen. (Prof.) Kindiki): Senate Majority Leader, before you respond, as I have said, this is your Motion. Secondly, I said that we want to carry on board as many Members as possible so that we pass the Bill. Having said that, technically – this is for Sen. Mutula Kilonzo Jnr. – we cannot even talk about a further amendment without the Motion being moved and seconded and the question proposed.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, if Sen. Mutula Kilonzo Jnr. was here yesterday to listen to the answer to the question by Sen. Khaniri, he would not be taking us back. Issues of whether it was a new Bill or not were addressed yesterday.

Secondly, there is absolutely nothing else we are talking about except splitting hairs. The technical staff of this Senate advised accordingly about how the procedure will be moved. I can only urge the *Ad hoc* committee to move expeditiously but I cannot anticipate the challenges they will face in accommodating this Bill. This is a new Bill and it will have to go to the National Assembly. We want to amend the County Allocation of Revenue Act (CARA) and that is why we have this Bill here. Since the National Assembly will go on recess, they might be forced to have a special sitting to pass this Bill. If they make any amendments, it will come back to this House. Let us proceed with what we need to do.

The Deputy Speaker (Sen. (Prof.) Kindiki): Very well, I think that has been canvassed exhaustively.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, I am aware of the importance of this Bill that we are supposed to amend. The errors that

ensued in this Bill were occasioned by the movement of the Bill from the Treasury to the Attorney-General's Office and then to this Senate. Last time when we were looking at this Bill, most people were already focused on elections. So, there was no meticulous looking at the various schedules to ensure that they are in conformity.

If you look at the Bill that is being amended, you will realise that we are deleting some parts of Section 5 and inserting new sections, thereafter, to correct the schedule. This is so critical.

If you saw the letter that came from the Treasury yesterday, they would be constrained to release any money because the quarterly release will be following the particular schedule that is provided for here. In fact, it is even worse, as the Principal Secretary (PS) answered yesterday, when it comes to donor funds because there is already a particular timeline that was agreed to in the negotiation and agreements with the national Government. The reason the resources are not being allocated seamlessly to the counties at the moment is these errors. It also goes to remind us that there is nothing too small in law.

Mr. Deputy Speaker, Sir, a number of Senators, that is, Sen. Wako, Sen. Mutula Kilonzo Jnr, Sen. Cheruiyot, who came slightly later, and Sen. Dullo were here when we fought to have a right to look at the County Allocation Revenue Bill and the Division of Revenue Bill. Therefore, we cannot take it casually. It is important for every Senator to have even this Schedule, so that every time they can find out whether their counties have received their money and monitor how they spend it.

I also want to request the *Ad-Hoc* Committee not to take this work casually. Do not just look at it as a rubberstamp. Go and sit down with the staff in Budget Office and let them take you through what was wrong and what has been corrected, so that we do not go through this process again and when it reaches the National Assembly, it is changed and returned here. It will become the normal excuse that Makueni County cannot get money because the Schedule of Makueni---

Sen. Wako is a good example. Because of errors, money meant for Busia County was posted to Bungoma County. It took a lot of negotiations – similar to the negotiations we had here – that involved the Senator for Bungoma and the Senator for Busia. Sen. Wako had to move between the Treasury and the office of the Senate Minority Leader until that issue was resolved.

Therefore, these errors can be as fatal as you can see and actually embarrass Senators. If tomorrow it appears that some money for Elgeyo-Marakwet County has been posted to Tharaka-Nithi County it can make me lose my seat. People will say that Sen. Murkomen has cut a deal with the Senator for Tharaka-Nithi County and given out the money---

The Deputy Speaker (Sen. (Prof.) Kindiki): Leave out the Senator for Tharaka-Nithi County for now.

The Senate Majority Leader (Sen. Murkomen): Mr. Deputy Speaker, Sir, that is why I am saying that it is not as simple as people think. It is such a critical schedule that determines how money goes to our counties. We do not want people to say tomorrow that we were sleeping on the job. That is why, initially, when we were forming this Committee, I really wanted---

By the way, since that is now water under the bridge, one of the reasons I wanted Sen. Mutula Kilonzo Jnr. to sit in this Committee is because he was in the previous Budget Committee. He appreciates how the Committee was working. He is one of the few Senators who served in that Committee that were re-elected.

My consideration was also on the ability of a person who has that history to assist us to ensure that that process moves forward. I am very sure that in a bipartisan manner we will do other things in future, but expertise might still be necessary on consultation basis with the *Ad-Hoc* Committee on those issues.

I beg to move and request Sen. Mutula Kilonzo Jnr. to second this Motion. I still insist on my initial request. As you realise, I have cut my time and not taken ten minutes, so that everybody can have two or three minutes. We need to dispose of this matter and allow the Committee to start working to enable us finish the work tomorrow.

Thank you, Mr. Deputy Speaker, Sir.

Sen. Mutula Kilonzo Jnr: Thank you, Mr. Deputy Speaker, Sir. I rise to support the Motion to set up this *Ad-Hoc* Committee. I need not to say much about the Members because we have agreed. I want to remind the Senate Majority Leader, Sen. Murkomen, that there is a reason the Senate Minority Leader is in this House.

I have two comments. First, given my experience in the Committee on Finance, Commerce and Budget, and having read the Bill, that this Committee should interrogate this issue. This is because even from the reading of this Bill, the Schedule that is being amended is the Schedule on conditional grants. The money that has not been disbursed is shareable revenue. The conditional grants are from the national Government, given to counties on conditions of their donor partners.

The Senate Majority Leader should have interrogated this issue, so that we understand whether in future our counties will be starved of funds because there is a discrepancy on an agreement made between the national Government and the donor. That would be violation of the constitution. I do not believe that Article 219, which requires the Cabinet Secretary (CS), Treasury, to release funds once we have passed, should also be tied to conditional grants. This was on something that I believe will be raised here on the case of KSP grants in which we did not include the Division of Revenue for the last two financial years.

With that in mind, the speed under which this Committee should act is not gainsaid, but that should be interrogated. The Committee and our technical team, that is, Mr. Masinde and others, should be able to advise us, because we do not want the CS, Treasury, to impose another condition that is not in law and the Constitution on conditional grants.

The schedule that is attached to this Bill has got no discrepancy on shareable revenue. Therefore, the money that we have agreed and passed here, in our mandate under Article 96, is not affected. The statement made by my colleagues that we have procrastinated and stopped the disbursement of shareable revenue is not correct.

With all that in mind and that said, I second.

(Question proposed)

The Deputy Speaker (Sen. (Prof.) Kindiki): Is there any interest?

Senators, this is not a Motion concerning counties, it is about formation of the Committee. The Bill that will come will be voted in the normal way.

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

I have not put the question.

(Sen. Murkomen spoke off record)

Do you wish to reply? I think that it is a straight forward thing.

(Question put and agreed to)

The Deputy Speaker (Sen. (Prof.) Kindiki): Next order.

Those who are exiting must exit in dignity and those who are remaining must also remain in dignity.

(Several Senators withdrew from the Chamber)

The Mover of Order No. 11 has requested that we defer that Order to tomorrow.

IMPLEMENTATION OF THE NATIONAL DROUGHT MANAGEMENT AUTHORITY ACT, 2016

AWARE that the right to adequate food is affirmed under Article 25 of the 1948 Universal Declaration of Human Rights, and Article 11 of the 1966 International Covenant on Economic, Social and Cultural Rights as part of the right to an adequate standard of living;

FURTHER AWARE THAT Article 43 (1) (c) and (d) of the Constitution of Kenya provides for economic and social rights for every person and in particular the right to be free from hunger, to have adequate food of acceptable quality, and to have clean and safe water in adequate quantities;

CONCERNED that this fundamental right is under threat as various Counties battle severe drought occasioned by successive failure in rainfall;

CONCERNED that over 3.4 million people including over 370,000 children are acutely malnourished and in urgent need of emergency assistance while millions of livestock have perished and the remaining are in extremely poor body condition as a result of the drought;

FURTHER CONCERNED that the situation in drought ravaged parts of the country poses a serious threat to Human dignity, peace, security and stability following loss of livelihoods leading to scramble for scarce resources by the affected communities;

NOTING that Parliament enacted the National Drought Management Bill which was assented to on 1st April, 2016 and which seeks to comprehensively address the matter of persistent droughts in the country;

NOW THEREFORE, the Senate calls upon the Ministry of Interior and Coordination of National Government and relevant state agencies responsible including the National Drought Management Authority to-

1. Expeditiously implement the National Drought Management Authority Act, 2016 and set up the necessary infrastructure to mitigate against persistent droughts; and

2. Come up with efficient drought response strategies aimed at saving lives of both people and livestock.

(Motion deferred)

ADJOURNMENT

The Deputy Speaker (Sen. (Prof.) Kindiki): That concludes the business on the Order that we had for today. There being no other business, the Senate stands adjourned until tomorrow, Thursday 9th November, 2017, at 2.30 p.m.

The Senate rose at 4.55 p.m.