

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Monday, 15th June, 2015

Special Sitting

*(Convened via Kenya Gazette Notice
No.4347 of 9th June, 2015)*

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

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

PRAYERS

MOTION

CONSIDERATION OF BUDGET RE-ALLOCATIONS BY THE NATIONAL ASSEMBLY OF MONIES INTENDED FOR KEY CONSTITUTIONAL ORGANS AND INSTITUTIONS

THAT:

WHEREAS on 27th May, 2015, the Mediation Committee on the Division of

Revenue Bill, 2015, appointed by the Speakers of the Senate and the National Assembly by letters dated 28th April, 2015 and 27th April, 2015, respectively, concluded its Report on the Division of Revenue Bill, which was subsequently adopted by the Senate at a Sitting held on the same day, 27th May, 2015, and by the National Assembly at a Special Sitting of 3rd June, 2015;

AND WHEREAS the Mediation Committee in its Report proposed an increase in the allocation to the Counties by a total of Kshs3.3025 billion, as follows-

(a) Shareable Revenue – Kshs1.767 billion; and,

(b) Allocation for Level 5 Hospitals – Kshs1.536 billion;

AND FURTHER WHEREAS at its Sitting of 3rd June, 2015, the National Assembly considered the Report of the Budget and Appropriations Committee on the Estimates of Revenue and Expenditure for the Financial Year 2015/2016 and

resolved to re-allocate various monies intended for key constitutional organs and institutions, including-

- (a) Capital Allocations for the Judiciary – a reduction of Kshs800 million;
- (b) Recurrent Allocations for the Salaries and Remuneration Commission – a reduction of Kshs200 million;
- (c) Allocations for the Integrated Financial Management System – a reduction of 325 million; and
- (d) Monies intended for monitoring and evaluation of national revenue allocated to the County Governments – a reduction of Kshs1 billion;

NOTING that from their express pronouncements as broadcast on live national television and as appears in the Official Report (HANSARD) of the proceedings of the National Assembly of that day, Members of the National Assembly were clear that their decisions on the re-allocations were motivated by bad faith and by a desire for revenge or punishment of the affected constitutional organs and institutions for actions or decisions taken by those organs and institutions in accordance with the Constitution and the law;

AND NOTING in particular, that in the case of the Judiciary, and despite the existence of formal and established channels to challenge decisions of the Courts, reference was made to the decision of the Courts in the Constituencies Development Fund matter as well as the Division of Revenue matter with aspersions being cast on the decisions delivered by the court in those matters and on the independence of the Judiciary in the preparation and delivery of its rulings and judgments generally;

AND FURTHER NOTING that some of the reductions, particularly those directed at the Integrated Financial Management System and the Senate Oversight Kitty, targeted key oversight functions at both the national and county levels of Government;

AND NOTING that despite the express provisions of Article 218 of the Constitution and the Advisory Opinion of the Supreme Court in Supreme Court Reference No. 2 of 2013 on the processing of a Division of Revenue Bill, concern was raised by the National Assembly on the role of the Senate in the consideration and passage of a Division of Revenue Bill with erroneous arguments being made that the consideration of a Division of Revenue Bill is a function that resides solely with the National Assembly and that the Senate ought not to participate at all in the consideration and passage of such a Bill;

CONCERNED that the reductions as made are a threat to the independence and impartiality of the affected constitutional organs and institutions in the execution of their respective mandates;

FURTHER CONCERNED that going forward, as a result of these reductions and the basis on which they were made, constitutional organs and institutions may be compromised in their independence and impartiality in a bid to safeguard the allocation of monies made to them in subsequent financial years;

COGNIZANT that pursuant to Article 3 of the Constitution every person has an obligation to respect, uphold and defend the Constitution;

FURTHER COGNIZANT that pursuant to Article 221 of the Constitution, the National Assembly has the mandate of considering and approving the estimates of revenue and expenditure of the national Government for each financial year, which mandate is to be executed in accordance with Article 10 of the Constitution which provides for national values and principles of governance which, amongst others, include “patriotism”, “the rule of law” and “good governance”;

OBSERVING FURTHER that the mandate of the National Assembly under Article 221 should be executed within the confines of Article 259(1) of the Constitution which requires that the Constitution be interpreted in a manner that “promotes its purposes”, “advances the rule of law”, “permits the development of the law” and “contributes to good governance”;

NOW THEREFORE THE SENATE-

REITERATES AND RE-AFFIRMS the commitment of the Senate in terms of Article 3 of the Constitution, to respect, uphold and defend the Constitution;

FURTHER REITERATES AND RE-AFFIRMS the commitment of the Senate, despite the re-allocations effected and the adverse effects that the re-allocations are calculated to have on its operations, to zealously continue to discharge its mandate under Articles 94 and 96 of the Constitution and, in particular, to protect the interests of the counties and their Governments and to exercise oversight over the national government and the counties and their governments in the manner set out in the Constitution;

REITERATES AND RE-ASSURES the national government and the counties and their governments that the Senate shall never waver in the discharge of its role under Article 96 of the Constitution and shall always, in good faith, steadfastly, diligently and robustly prosecute that role and in so doing shall resist any overt or covert measures or actions calculated to undermine, subvert or repudiate the Senate’s constitutional role and devolution as a whole;

CALLS UPON all constitutional organs and institutions adversely affected by the re-allocations to steadfastly continue to discharge their constitutional functions without fear or favour;

REITERATES AND AFFIRMS that in accordance with Article 160 of the Constitution, in the execution of its functions, the Judiciary is subject only to the Constitution and the law and shall not be subject to the control or direction of any person or authority, including the Legislature;

REITERATES the critical role of constitutional Commissions in our democracy and further reiterates that such Commissions are, in terms of Article 249 of the Constitution, independent and are not subject to the direction or control of any person or authority, including the Legislature;

CALLS UPON all constitutional organs and institutions to execute their respective constitutional mandates in utmost good faith and without vendetta, ill-will or bias and in accordance with the national values and principles set out in Article 10 of the Constitution, while observing Article 259(1) of the Constitution;

FURTHER CALLS UPON all organs and institutions, the National Assembly in particular, and the people of Kenya at large, to abide by the Constitution and by its values and principles and to always respect, uphold and defend the Constitution;

AND resolves to establish a Select Committee to inquire into these matters within three months and to recommend to the Senate such constitutional, legal or institutional changes that it may consider appropriate.

(Sen. Murkomen on 15.6.2015- Morning Sitting)

*(Resumption of Debate interrupted on
15.6.2015 - Morning Sitting)*

The Speaker (Hon. Ethuro): Who was on the Floor? Sen. Mutula Kilonzo Jnr. you have a balance of 11 minutes.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, before we broke for lunch, I was saying that I witnessed a very sad episode when the Senate Majority Leader was given a dress down by His Excellency the President regarding the reduction of the funds to these bodies. This begs the question whether or not, whilst the President was saying that the Members of Parliament are quarreling while people need services, he understood the concept that the capital allocation to the Judiciary is supposed to serve Kenyans; that the allocation to Integrated Financial Management Information System (IFMIS) is supposed to ensure that Kenyans receive financial prudence as per Article 227 of the Constitution.

I have counted as many as six to seven Articles of the Constitution that were violated by the act of reducing funds of these bodies. What we have is a very serious issue. This is where you have one arm of Government bullying other arms of Government by wrongfully exercising their legislative power and even worse, without giving the legislative organs of state or Government a fair hearing as to whether or not they need the money that has been reduced, for instance, in the case of the Judiciary.

The counties of Makueni, Machakos and Kitui are served by one High Court. The Judiciary had intended to have a court in Makueni and Machakos. This will not happen courtesy of the National Assembly. This case goes on and on in many other counties. When Jubilee came into power, one of the things they told us, I remember reading carefully, was that they intended to have 47 High Courts all over the Republic. How will that happen when the same Government is witnessing – the majority of whom are from that wing of Government – reducing the allocations given to this very important organ?

It is a contradiction to have passed the Fair Administrative Action Bill under Article 47 by concurrence of the Senate and National Assembly without amendments and, at the same time, reduce the money that is supposed to ensure that the Fair Administrative Action Bill is implemented. It is a contradiction to have a prayer breakfast of all Members of Parliament and after the prayers, Members of the National Assembly go behind our backs to do what is called “malice aforethought” against us.

The malice aforethought which in law we call *actus reus* was contemplated. You could see that this was something that they had planned. It was planned very well and it

was choreographed. It was headed by a priest, in my case, a reverend, who was, in fact, my pastor at the Nairobi Baptist Church. I am embarrassed to say that I am a member of a church where Rev. Musyimi used to preach for very long. When you tell the country that you must punish the Judiciary and the Senate for Advisory Opinion No.2, that becomes “revenge” in biblical terms. Rev. Musyimi knows this very well.

The Bible says, “vengeance is mine, says the Lord.” This man needs to confess. We need to pray for this man. We need to exorcise the ghosts that exist in the National Assembly. If the person leading them in the Budget and Appropriations Committee has the qualifications of a priest, then we are in a lot of problems.

When somebody violates the provisions of Articles 249 and 250, you are left not knowing what to do with the people who do not understand the Constitution that put them in the National Assembly. In fact, this matter is very serious. The Majority Leader of the National Assembly was in K24 for an interview. When he was asked about this Bill, his view was as follows. He said that the view of the National Assembly and that of his Speaker correlated to the view of Justice Mutunga which was the minority view in Advisory Opinion No.2. He said, in fact, that the reading of the Constitution is that they are the only ones who can deal with the Division of Revenue.

Many people have quoted the Bible. I will quote the Bible too and say. “The writing is on the wall----

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. The correct position, if I am not wrong, the minority opinion was that of Justice Njoki Ndung’u and not that of Justice Mutunga.

The Speaker (Hon. Ethuro): Order, Sen. Murkomen! You also need to get the correct citation. You should begin with; “is it in order---.”

Sen. Murkomen: Mr. Speaker, Sir, probably at this point this should be a point of information. I have seen my colleague nodding. I just wanted to inform him that it was hon. Justice Njoki Ndung’u who dissented in that opinion.

The Speaker (Hon. Ethuro): Order, Sen. Murkomen! Again, if this is a point of information, he must allow you.

Sen. Murkomen: He nodded.

The Speaker (Sen. Ethuro): Sen. Mutula Kilonzo Jnr., did you allow him to inform you?

Sen. Mutula Kilonzo Jnr.: I want to agree that I do not know how I missed that. It was Justice Njoki Ndung’u who in her view thought that the Senate did not have a role. I think she was misdirected because probably she did not read the Constitution well. The fact is that---

The Speaker (Hon. Ethuro): Order, Senator! It is also fair, especially under the circumstances, to say that she gave that opinion as a minority opinion. She also said that she abides by the majority opinion. It is the majority opinion which was the opinion of the court.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, the person I need to tell that is the Majority Leader of the National Assembly. He needs to know that the majority opinion is the one which carried the day even if he agreed with the minority opinion. In fact, she

was supposed to say; “I agree with my brothers and have nothing useful to add.” That is what honourable judges do. But that is for another day.

The disappointing part of this Budget, other than the CDF, which most of the Senators have alluded to, is that everything in the Budget increased. The spending of Ministries increased. Domestic borrowing increased. Foreign borrowing increased. Recurrent Expenditure of the National Government also increased. The spending by parastatals increased by Kshs518 billion. In fact, they did not specify how they would spend the money. The people they thought they would punish for asking for Kshs1 billion was the Senate. The other organ they thought they could punish was the Judiciary.

The only thing we can do is what Sen. Murkomen has said. I am glad that Sen. Murkomen has agreed to become Paul. The Constitution, by referendum, must be amended so that we do not continue with this sibling rivalry at the expense of Kenyans. We will not do this to teach the Members of the National Assembly a lesson because Kenyans will teach them a lesson sooner rather than later. They must ensure that this will not happen again and that the Majority Leader of this Senate will not receive a dress down from His Excellency the President in public for defending the law. He was defending the law and not himself.

In supporting this Motion, we should not belabour too much. We want to ask ourselves when the President was signing this Bill a few hours after it was passed, if somebody advised him accordingly. Maybe he was misadvised. I say so because I have seen a memorandum from His Excellency the President on the Public Audit Bill. That has not come here yet. The fact is that it appears that on some issues concerning legislation, the President has been properly advised. However, on this one, where the National Assembly in one afternoon - maybe it was too hot in that room – violated the Constitution in so many words. The President appended his signature without wondering whether the courts he was demanding to expedite 8,000 cases, how they would do it. The persons he is counting upon to have financial prudence in counties, how are they supposed to do it without IFMIS?

We need more than the National Prayer Breakfast where we spend money. I saw you there, Mr. Speaker. I did not attend because I did not think we were very genuine. I am glad I did not attend it. I prayed in the confines of my office. I am glad that I was praying for the National Assembly because all of us must pray for those people, including my own Reverend that I trusted to deliver my soul to heaven.

(Laughter)

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I rise to support this Motion. In support, there are two things that are in my mind. I will, therefore, keep my contribution very brief. My first one is that for a very long time, since we came to this House, we have managed to convince ourselves and the public that we are the House of reason. However, thousands of kilometres away from this country, in a war zone, I had reason to believe that beyond being the House of reason, we can borrow something from Poland. In Poland, the Senate is the House of reflection. So, in my mind, my contribution

today is to tell Kenyans that we have come here not only as a House of reason, but to reflect on where we are and where we are going.

My second point is based on the teachings of one of the most famous Luhya musicians, Jacob Luseno, who was a close cousin of Sen. George Khaniri. Jacob Luseno sang to us about the philosophy of a reverend who committed adultery. In his song, Jacob Luseno said;

“Our brother has ceased being the right reverend. By virtue of committing adultery, he is today, the wrong reverend.”

Mr. Temporary Speaker, Sir, I am very saddened that the National Assembly, knowing very well that the Constitution was deliberately set to create checks and balances where different constitutional institutions and organs were checking and balancing power---. If we change the Constitution because we were against an all powerful imperial presidency because we feared dictatorship by the executive, we should also remind our junior colleagues in the “Lower House” that dictatorship by the National Assembly cannot, therefore, be acceptable.

It is time Kenyans reflected on the following; that the same National Assembly that has perpetuated what has offended just about all Kenyans, is the same institution, through the committee in charge of security that messed up the report on Westgate. It is the same institution, through the committee in charge of agriculture; the investigations into the sugar industry scandal were messed up. This led to Mumias going down on its knees. It is the same institution that had the scandal in the Public Accounts Committee (PAC). In two of those scandals, it is by coincidence that my junior brothers from my community were involved. They ended up losing their positions as chairs of those committees.

This is a House of shame. This is a House that believes in cutting deals to the extent that Dr. Monica Juma lost her job or an opportunity to serve in the new position, not because of being found to be inept---

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. If someone would come and read Sen. (Dr.) Khalwale speech or listen to it, will think that when he said “this is a House of shame” they will think it means the Senate. It is better he says “that is a House of shame”. Is it in order for him to say so?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I always give in to lawyers and I do not how many times I can remind them. We, as scientists, are not in the business of being good at the English language. Our business is to be good at equations that change lives. You are supposed to be good in English to give fun and flavor o life.

Mr. Speaker, Sir, I meant the National Assembly. That is the House that has become the city of cutting deals. Therefore, it is so sad that far away as I was, I had the opportunity to tweet immediately when they threw out Dr. Monica Juma. Within five minutes of tweeting, I had already received 67 tweets. I had said that much as I was not dying for Juma to take the job, because Jubilee business does not concern me, unless it is hurting Kenyans, but since it hurts Kenyans all the time, their business concerns me all the time.

(Laughter)

Mr. Speaker, Sir, while tweeting, I said that it is so unfortunate that she is being punished for disallowing dirty deals from being perpetuated in her office. That is the House where they completed altered the budget-making process. I do not want to repeat what the Senator for Bungoma and Senate Minority Leader said. However, it is true the Committee on Budget and Appropriations in the National Assembly, and we learnt from the media, that it took none other than His Excellency the President to summon them to State House and told them to remove that allocation. Every time I look at our President, I am starting to think that he is not the same President who made his first speech in Kasarani where I was present. He has started seeing that something is wrong in his own platoon of Members of Parliament and, probably, the Executive.

Mr. Speaker, Sir, those of us who are fighting will be remembered as the ones who truly defended the presidency of Uhuru Kenyatta. If these are the guys Uhuru hopes to go to elections with and face Sen. Mutula Kilonzo Jnr. or Sen. Hassan Omar Hassan, then we will defeat Jubilee as early as 9.00 a.m. to 10.00 a.m.

During our budget policy statement here, we were not doing it arbitrarily, figures and facts were presented. We were told that Kshs6.5 billion which Sen. Mutula Kilonzo and I, contested, was meant for the National Youth Service (NYS). Clandestinely, after mediation, hon. Mutava Musyimi, the “wrong” reverend according to Jacob Luseno, has changed it from Kshs6.5 billion to Kshs25 billion. We are not idiots. We are not fools. This is money meant to construct a stadium. Who does not know that there is a Ministry responsible for sports? What has that poor Somali, the Cabinet Secretary in charge of sports done wrong? Has he failed the Government so that they should take away the money meant for his ministry to give to one, Anne Waiguru? If they really wanted money to build a stadium, let the right officer do so. We are not against it.

Mr. Speaker, Sir, the money is supposed to do dams, drill boreholes and construct roads. All these are devolved functions. Why are billions being allocated for devolved functions when county governments are there? We call upon the President to think hard and long. He should realize that he is walking the wrong path. You will find that Kshs59 billion in this Budget has been given to health. Who does not know that health is one of the most problematic departments being presided over by governors? Why? They do not have enough resources.

In a fully devolved function like health, they have held Kshs59 billion at the top. What do they want this money to do? If that is the reason Macharia was appointed as the Cabinet Secretary for Health, then time has come when the new look National Assembly and the current Senate should demand that a devolved function like health and water should not have a substantive Cabinet Secretary. If anything, they should all be under one Cabinet Secretary in charge of the department on devolved functions.

I am saying this knowing that my younger brother, hon. Wamalwa was one of those people who were lucky and was appointed. With all due respect to hon. Eugene Wamalwa, I have nothing against him, but, Chair, allow me to say it in Kiswahili language. “*Hiyo ni kazi ya karani, endelea na kazi ya karani*, you are on the wrong track. You will one day look for us so that we can show you why Michael Kijana Wamalwa---

The Speaker (Hon. Ethuro): Order! You know your Standing Orders. You cannot combine languages.

Sen. Sang: On a point of order, Mr. Speaker, Sir. How can the Senator for Kakamega, Sen. (Dr.) Khalwale, reduce a whole Cabinet Secretary's position in charge of water and irrigation to a clerical work? This is a serious Ministry with two Principal Secretaries. It has a good budget allocation. How can it be a secretarial job? The appointment was appreciated by members from the western region.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. Is it in order for Sen. (Dr.) Khalwale---- When it comes to hon. Wamalwa, he becomes angry as if it is a personal issue. Is it political competition? Is it not also a contradiction that we have been saying that we are the sober House and every job that is given to us, we will do it with humility? We will do it because we believe in service. We should not call names those who are willing to take even a smaller job like that of a clerk; there will be no CDF without the concurrence of the Senate.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, once again, I apologise for my failure to use the right words. I limited myself to understanding Mathematics, Physics, and Chemistry and so on. I was not too keen on English. This is why I fail you.

Let me move from there and go to another line as my Chairman is watching me. When we were negotiating hard in mediation, we were told in print that only Kshs12 billion had been set aside for national irrigation. In the Budget which the National Assembly passed, it has now been given Kshs13.5 billion. My question is: If money for health held at the top has gone up to Kshs59 billion, money for National Youth Service (NYS) has gone up from Kshs6.5 billion to Kshs25 billion and irrigation from Kshs12 to Kshs13.5 billion, is the document that the President appended his signature the same one that passed through this House and we debated it? Is it the same document that the Mediation Committee discussed? The answer is no.

Therefore, I want my good lawyer, Sen. Sang and my friend, the "Duke of Makueni", Sen. Mutula Kilonzo Jnr., to guide me that it is in keeping with the provisions of the law and, therefore, the Constitution that a document that has figures that were never discussed in this House or before the Mediation Committee has now been signed into law by the President. Has something not been breached? If so, do we not have room even just for purposes of making a statement to approach the courts and ask them to tell the President, "No"?

Finally, it looks like some people think that we are here as Senators because we are weak. We are not. If they think this is a House of weak politicians, let them approach the Senate. We will face them as Members of the National Assembly or governors. Let us see who will defeat me in Kakamega County.

(Laughter)

Sen. Billow: Thank you, Mr. Speaker, Sir. I rise to support this Motion. Let me start from Chapter 6 of the Constitution which is very interesting because it actually lays out the conduct required of State officers, which includes MPs. Listen to what it says on leadership and integrity, specifically with regard to authority and power that is given to

such officers: That it is a public trust and it must be exercised in a manner that demonstrates respect for people and institutions. The second part says; in a manner that brings honour and dignity to the offices that they hold. It also says; in a manner that promotes public confidence in the integrity of that office.

When you look at those three points in Chapter 6, you ask yourself if the National Assembly exercises that public trust that they have been given in a manner that has been defined or described in this Chapter. The answer will be, no. If anything, they have brought disrepute, disrespect and indignity to the office. I do not think they can claim in any way to have promoted public confidence in the manner in which they allocated resources in this Budget.

Mr. Speaker, Sir, the same Constitution also says that the guiding principles of leadership and integrity among other things, in exercising their power, they are required to have objectivity and impartiality in decision making. This is the most interesting part of that provision. Those decisions are not influenced by, among other things, improper motives or corrupt practices. Is there anyone in this House or country who doubts that the decision making process on that matter of policy making of the Budget by the National Assembly was actually influenced by improper motives with regard to the Judiciary, the JRC and the Senate? In their debate, as captured in the HANSARD, they were very clear that they were punishing these institutions for disobeying them. In other words, it was malicious, vengeful and clearly an improper motive.

That is also in total disregard of Article 10 about the national values. In any enactment of a law or policy making action like this one of the Budget, a State officer like Members of Parliament must make decisions in accordance with the national values. What comes out very clearly is that these Members of Parliament in allocating resources in the Budget, they were in breach of the provisions of Chapter 6 because of the fact that their decision making was influenced by improper motive. This amounts to abuse of power and authority. In the Ethics and Anti-Corruption Act, that abuse of power and authority is defined as corruption. Therefore, I want to call upon the Ethics and Anti Corruption Commission (EACC) to investigate the Members of the National Assembly with regard to the process of budgetary allocation.

Mr. Speaker, Sir, there is another reason I want them investigated. Three weeks ago, there was a major story in a section of the media which has not been disputed by the National Assembly to date. This was a headline story. They said that in the process of budget making, the Budget and Appropriations Committee of the National Assembly, there was high stakes lobbying; “Secret deal cutting”, intensive politics with a shade of Executive pressure. They concluded: “The whole process was prone to bribery or extortion”.

I want to ask the EACC who I know are already investigating the National Assembly Committee on Legal Affairs and the Committee on Agriculture. What stops them from investigating the Budget and Appropriations Committee that is influenced through secret deal cutting by suppliers, contractors and businessmen who are chasing big time Government contracts? Resource allocation has been converted into a gravy train where money is allocated on the basis of where there is likely to be a deal. This was reported and it has not been disputed to date by our colleagues.

We know that parliaments have sovereignty in making laws. They have the freedom to enact whatever they want. However, that is subject to the Constitution. The process that they use must be subject to the Constitution. The Constitution defines the values that will guide them. Those are the values that we have just read in Chapter Six. Therefore, our colleagues should not have done what they did. Without any fear of contradiction, I am convinced that they engaged in an act of malice in terms of determining how much resources are allocated to the Senate. None of these institutions, the Senate, the SRC or the Judiciary has been accused of misusing resources. They are simply dealing with oversight. There is no report whatsoever that they are taking this action because the Judiciary failed to utilize money or the Judiciary was involved in the misuse of resources. They did not cite any of these reasons. The reasons cited are that let us punish these people because they passed a ruling that CDF is illegal.

Mr. Temporary Speaker, Sir, I want to turn to the Executive; in particular, to the Treasury. With all due respect, this is a big let down. I belong to the ruling party, but I want to go on record that I think Treasury is a total disappointment. This is because Treasury has abdicated its mandate of making budgets. I want to refer to a ruling by hon. Marende in 2011 when he gave a ruling that Treasury can decline the Budget Committee or the House's recommendation in budgetary allocation. In other words, they are not compelled to implement. Where do we see a Treasury that simply gives the budget responsibility to some committee Members of a House who sit down and determine where money goes and yet they are the executive in power? The committee can recommend, but Treasury is not compelled.

The reason I am really concerned is that in recent years, budget making process has been taken over by this Committee. They have literally abdicated their responsibility. Treasury should explain on the basis of what is their priority. This is why sectors in this country that actually deserve priority financing are today suffering. The Government's own flagship projects that should have been funded years ago, today some of them have not kicked off. This is because resources are not being given on priority basis to those areas of national development that Kenyans have identified as priorities. Resources are being allocated on the basis of political patronage and influence.

I thought we left those things when we got the new Constitution. Really, we thought this thing about political patronage had gone. I want to know, for example, some of these Members of National Assembly come from my area, but they need to find out in that Budget, that apart from the Kshs258 billion which goes to the counties, do they ever sit down to find out whether there is equitable distribution of that national budget resources across the counties? That is one of the mandates they are supposed to look at.

Mr. Speaker, Sir, for the last two years I have been in this House, I cannot tell you how much money has gone into Mandera County from the national Government, except the salaries of police, Administration Police officers (APs), the army and the teachers. As I speak, the teachers are not being paid. All the untrained teachers are hired and paid by my county Government. It is a pity that somebody can sit in that House and approve a national budget of Kshs2.1 trillion without auditing to see whether the areas of national priority have been properly funded and whether there is equitable distribution of that budget. The only thing he looks at is who has undermined their influence.

This is not the way to make the Budget. It is unacceptable. I think our Members were penny wise and pound foolish. This means that you are worried about the little pennies you give to the Senators and you ignore the Kshs283 billion you have given to the Governors that needs to be examined. It is a pity.

I want to urge my friend the Speaker of the National that this is his legacy that is on trial. He needs to check the excesses in some of these institutions like the the Budget and Appropriations Committee and the other committees because we run a risk. If today the media can report what is going on in committees and already in his House two of the most important committees are being investigated by the EACC, it is an indictment of the performance of that institution and he needs to do something.

Mr. Temporary Speaker, Sir, with regard to the Executive, we cannot allow circumvention or subversion of the Constitution. For example, the Public Audit Bill was passed by the National Assembly, it was sent to this House, we made amendments, they rejected and we went to the Mediation Committee. After the Mediation, that Bill has now been returned back to the National Assembly by the Executive with some amendments. To make the matter worse, Treasury has sat down and proposed a whole lot of fresh amendments. It is like writing the Bill afresh. The financial powers and the functional independence of the Auditor-General has literally been taken away to the 1963 level in the proposed amendment.

The reason I am saying that it is subversion of the Constitution is because it will be sent to the National Assembly. Since they cannot raise the two-thirds to reject the President's Memorandum, it will automatically be approved. In other words, the Executive is now making the law. This House which has the power in the Constitution, which represents the sovereignty of the people of Kenya, will not be making laws. Before even that story happened it was carried in the media when the Mediation Committee was sitting. It was carried extensively in the media because it was debated in the House of the National Assembly; that what they will do is to allow whatever the Senate wants, let it go there and come back and when it comes back, it will now pass without any amendments. This is not acceptable.

What shall we be doing here if the Executive can make laws? Why are these Houses created by the Constitution? We need to appreciate the role of every institution. We must entrench constitutionalism and allow this county to be governed properly because lack of good governance is what made this country collapse for many years and made us be behind so many countries all these years. It is important that we do so.

With those few remarks, I support.

Sen. (Dr.) Zani: Mr. Speaker, Sir, bicameralism has been adopted very successfully in various parts of the world in developing and developed countries. We have had an example from Sen. (Dr.) Khalwale of Poland. In the United States of America (USA), there is a House of Representatives and a House of Commons. They have devised ways of working and they have worked very effectively. Even on budgeting matters, there is no situation where only one committee of either House works on the budget alone. They get together as a joint committee. Moving forward, that is one of the recommendations I would want to give. I know that a committee will be put into place. That is one of the options that we need to begin looking at. How do we ensure, moving

forward, that both the Senate and the National Assembly are part and parcel of a process to ensure a step by step budgeting process? That is very critical and important for us.

Closer home in another jurisdiction, for example, Rwanda, both Houses have been able to work together. So, it is not impossible to work together. One thing that will help us where we have not worked together is the mediation committee. The mediation committee has been made in such a way that we can come together and have a consensus. I just want to look at the provisions of the Mediation Committee. If we followed them properly, then we would not be in the situation that we are in. For example, one of the products of the Mediation Committee was that both Houses will pass the mediated version of the Bill knowing exactly what the Bill is saying.

In this case, we had both manifest and latent aspects of the Bill. It was very clear that there was an amount that was to be allocated, but was reduced from Kshs7 billion to Kshs3.3 billion. However, what was not very clear was where the money should come from. It is not as though that aspect had not been discussed. It had been discussed at various points. The office of the Director of Budget gave proposals for the amount and how much should be used. They gave proposals of where the money was to come from.

Mr. Speaker, Sir, the second thing is that our own committee; the Committee on Finance, Commerce and Budget---

(Loud consultations)

Mr. Speaker, Sir, I request that you intervene because there are a lot loud consultations going on. I would like to be heard because I have also listened to others.

The Speaker (Hon. Ethuro): Order, hon. Senators! Sen. (Dr.) Zani shall be heard.

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir.

Our own committee made various suggestions about where initially the Kshs7.7 billion would come from. That was a report that was given by the Committee on 9th April, 2015. The Committee went into details in this particular Report. For example, it suggested that Kshs2.5 billion would be reduced from national irrigation and fertiliser clearance. That would mean that we would end up with about Kshs10 billion only. Another reduction of Kshs2.5 billion would be done from Contingencies Fund. That would give Kshs2.5 billion left for that. The last suggestion was that Kshs2.7 billion would come from a balance of what would have gone to the national Government as its Fund. That would leave the Fund with Kshs193.5 billion. All these proposals were very clear.

It is not as though no option had been given. Therefore, it was wrong for the National Assembly to settle on the option of slashing money from very key aspects that are very necessary. Even if it would be punitive, who do you want to punish? When amounts are taken from the Judiciary, we should begin to think about quantifying what that means for Kenyans, let alone just for the National Assembly or the Senate, for that matter. Therefore, the reduction of Kshs800 million means a lot for Kenyans; it means pending and backlog of cases that the Judiciary has been dealing with.

The SRC's budget was also slashed by Kshs200 million. That was completely unnecessary. Then, there is a third area where funds were slashed yet it is very critical

and necessary for oversight. One critical thing for us Senators is to play our oversight role effectively. This is not something that we are asking for from nowhere. It is entrenched in Article 96 of the Constitution. It is something that we should do.

Provisions have been made and directions given on how that money should be utilised. Detailed regulations were put into place. So, it was not to be a Fund of monies without us having clarity about what was to happen with the money. As much as both Houses passed the mediated version of the Bill, the element of the figures and finally the shocker defeats the whole process of mediation in the first place. If we will have a mediation process that is not open and does not lead through from one aspect to another very clearly, then, obviously, we have a law that will be put in place that both Houses are not happy with. That is exactly what we are avoiding.

Moving forward, that is the aspect that needs to be tightened so that as we move into mediation and make suggestions about the figures, there is clarity. We should not wait until the last minute where a change has happened. That creates a lot of confusion and takes us back to the drawing board; like this situation that we found ourselves in.

Mr. Speaker, Sir, there is a report that has been done over time by the Auditor-General's Office. It gives an audit of the Constitution one year later. The report goes on to indicate areas where we have done well and where we have not done well. I pose that the areas where we have not done well are areas where oversight roles have not been played effectively. Those are the areas where we need to delve into on a more serious note. We are not yet at 50 per cent execution of devolution. We do not want this country to reach a point where we feel that devolution is not succeeding.

However, there will always be loopholes for us long as oversight is not played. It is one thing to receive money and another thing to account for the money. We have already said that in this House, especially regarding the county assembly level. It has been very difficult for us to do maximum oversight on the counties and the county governments. Therefore, at the Senate level, it becomes more critical for us to move into oversight at a higher gear. It is very difficult to do that at a higher gear without the necessary funds.

Mr. Speaker, Sir, when it comes to the key areas of security that we have talked about, many times, finding solutions for this is also a question of money. Leadership goes with accountability. How do we make leaders accountable for the monies that they receive? Accountability will require us to put up structures and offices at county level so that we can ask the questions that Sen. Wetangula was talking about earlier. We can go to hospitals and ask what is happening there.

I remember when I was in Kwale County, I went to Msambweni Hospital. I discovered that there were patients who had to pay for their medicines. There were people who had to pay so that they could have their patients taken care of. It is the relatives to patients who made the requests. These are things that we need to get rid of immediately and ask about the money that has been allocated. Why is the medicine not available? Why do people still have to pay for treatment? This will ensure that we have a continuous form of evaluation and monitoring at various points. We can avoid the kind of situations where we have to wait till the end to do evaluation.

Mr. Speaker, Sir, civic education and participation is very important. Public participation is the overall oversight. We need to capacity build civilians so that they can effectively play their role in terms of public participation. That needs money, education and manuals to be put across so that people become more effective. At the end of the day, if county assemblies or the Senate have made their struggles, but the general populace – especially at the county level – is not aware of what public participation means, that means that governors and county governments will always be held to account at the first call so that budgets are shared at that level and people can understand what is going on.

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

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

Mr. Temporary Speaker, Sir, we have made various efforts directed exactly in that direction. Our efforts of ensuring that we put county boards into place have hit a snag; efforts to make sure that we evaluate projects in the counties, identify what needs to be done and pull together to ensure that that happens also needs to be done. So, overall oversight becomes very critical.

There is absolutely no way we can run away from that particular responsibility. That sort of awareness and knowledge is very important. I remember sitting in the Speakers Gallery of the National Assembly that afternoon. A member who was sitting next to me asked me: “Is this what happens in the National Assembly? Is this how business is conducted in the National Assembly?” Right across on the other side of the Gallery we had students who were visiting. I cannot imagine the sort of shock they must have had at the process and the way things were going on. In fact, there was a fear that at any moment the whole Assembly would break into song, to actually push their agenda. So, it was a very unfortunate afternoon that we had Dr. Monica Juma who had the credentials and qualification not getting the position that she was seeking. It is that sad that the general ambience and way of processing issues is very disturbing.

It is even more disturbing for me when I listen to Sen. (Dr.) Khalwale saying that maybe even the figures that might have been assented to by the President, might not actually be the figures that have been presented to this House. That means that we need to go back again and have both the Committees sit and look at the figures that were initially presented and those that are now there, and actually find out what is happening.

We must begin to talk to Kenyans very loudly and clearly. This is a freedom that we have fought for too long. There are people who enjoy freedom and others who are suffering and want to see a change in the way things are done in this country and devolution can be made to work. This will ensure people can also breathe and get health facilities like other Kenyans without having to beg for those specific facilities.

It is for that reason that the Senate was put into place. We must fight for that space no matter what it takes and be a united Senate. We must begin to identify what the issues are in this Senate that we need to pursue fearlessly as one united Senate. If we are able to put it together in that way, then we will be able to move forward to the next level and make things that we did not project to happen.

We need also to give ideas to this Committee about the way forward. We must find ways of doing oversight. Are we going to try to ensure that a supplementary budget, for example, will include the Kshs1 billion that was talked about the Senate, so that we can actually proceed with the work that needs to be done or what is going to happen? We have learnt this morning that for the case of Tana River, the county government has been able to allocate funds to the particular Senator, so that, that important role of oversight can be done. Is that the direction to go? Can that be a way out? That Committee should be able to give us a way forward about exactly how we grapple with each of our issues on a step by step format and find a lasting solution that we can be happy with and does not put us into the situation that we are in.

It is very unfortunate when you have the sort of greed that is exhibited. We are talking about Kshs1 billion sought by the Senators against Kshs35.2 billion in the CDF for the Members of the National Assembly. Somebody spoke about taking the only goat. I think this is the real case of that one goat being taken away. We have to oversight the Kshs297 that will go to the counties. So, the setting up of the logistics and offices is completely critical. As long as there is no proper oversight, funds will not get utilized properly within the counties. We have had cases of counties where money has been returned back to Treasury instead of being used. We are going to have ideas about how to improve the county assemblies and county governments. Those ideas will not be implemented in the long run.

Therefore, it is really for the Committee to streamline the approach. One clear direction would be to ensure that in future it will not just be a Committee of one House that will be purely responsible for budget making. We should have joint committees of the two Houses, even as the important process of budgeting is going on, so that we do not find ourselves in such a situation. We should look for ways and means of ensuring that bicameralism works.

Contrary to the wishes of the National Assembly, we cannot wish away the Senate and bicameralism. At the moment, the Senate is here to remain for a very long time. Let us learn to live with each other because other jurisdictions have done it very successfully. Sen. Billow Kerrow has talked about a Bill that is sent back to the National Assembly. If that happened, it would have had a chance of being vetted and looked at by the Senate.

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

Sen. Sang: Thank you, Mr. Temporary Speaker, Sir. I rise to support this Motion and thank the leadership of the Senate that has given us the opportunity to discuss and share our minds on these issues.

As earlier said by a number of the Members who have contributed, it came to us as a shock that Members of the National Assembly would completely act contrary to the Constitution, legislation and good faith. The process of enacting the Division of Revenue Bill is clearly stipulated within the Constitution. We had challenges in the first year and had to go to court. The Supreme Court gave a clear advisory.

It is important to note, because we continue to get this indication from the Members of the National Assembly, that they still believe that the Division of Revenue Bill process should only be exclusively handled by the National Assembly. In a country

governed by constitutional principles, once people have issues with interpretation of the provisions of the Constitution, the only last resort is for them to go to the courts. That is why, in the wisdom of the Senate, we proceeded to the Supreme Court. That matter was settled, once and for all.

It is now clear that regarding the Division of Revenue Bill, the National Assembly and the Senate contribution must be adhered to. To see Members of the National Assembly and an entire institution going in the direction of disregarding the opinion of the Supreme Court and even taking it further to the level of attempting to appear as if they are punishing or competing with the Supreme Court, is really unfortunate.

Mr. Temporary Speaker, Sir, Chapter Six of the Constitution on leadership and integrity can be read together with Article 73 of the Constitution which relates to the responsibilities of leadership. It talks about the authority assigned to a state officer. This is important because you will remember that Members of the National Assembly once drafted a constitutional amendment that attempted towards exempting them from being State officers. I know that, that is a tall order. As I speak, Members of the National Assembly and ourselves are State officers.

Article 73 (1) (a) (iv) of the Constitution says:-

“Authority assigned to a State officer is a public trust to be exercised in a manner that promotes public confidence in the integrity of the office.”

Mr. Temporary Speaker, Sir, the process and manner in which the Members of the National Assembly dealt with the Division of Revenue Bill is unfortunate. It has brought the entire institution of the National Assembly under sharp focus by Kenyans. We have raised issues relating to the manner in which the National Assembly has conducted its business. For a long time, people thought that the arrays of issues that we raised against the National Assembly were treated as if we were engaging in a supremacy battle.

However, this Division of Revenue Bill and the manner in which they handled it clearly showed all Kenyans who the Members of the National Assembly are. When we went through the mediation process and an agreement was reached, just like the Senate Minority Leader pointed out, one of the Members of the National Assembly, hon. T.J. Kajwang actually stood with the position of the Senate. They agreed to raise the resources going to the counties by Kshs3.3 billion. That settled the matter.

Mr. Temporary Speaker, Sir, I want to appreciate the National Assembly for recognizing the fact that, that was the position. Once the Mediation Committee agreed on that particular matter, that was sorted. Therefore, for them to punish the various institutions was not fair. For example, the Judiciary was cited as one of the institutions that needed to be punished because of two things: One, was because of the High Court declaring the CDF unconstitutional. Second, was because of the Supreme Court giving the advisory that the Division of Revenue Bill has to be handled by both Houses.

Mr. Temporary Speaker, Sir, it is unfortunate that one institution, one arm of Government, would think that they have this big hammer or a huge knife that they can discipline any other arm of Government when they disagree with them. We are not telling the Judiciary that in the process of finalizing the appeal by the Members of the National Assembly, to rule in a particular manner with regard to the CDF. I know that the Judiciary will pronounce itself focusing on the law and looking at the existence of

devolution right now in this country. They will give us a clear indication as to whether the CDF will be managed by county governments or national Government. It will also give guidelines on the oversight role of the Members of the National Assembly, the Senators and, indeed, the Members of the County Assemblies (MCAs). It is unfortunate that the Senate's budget that was slashed were monies meant for oversight. The money was meant to enable this Senate to oversight and carry out our core mandate within this Constitution.

Mr. Temporary Speaker, Sir, we do not want to lament, but it is important to point out to Kenyans that the reason we fought for a new constitutional dispensation was to reorganize the administration of governance in this country. That led us to reducing the powers within the presidency and sharing it among other institutions as provided for in the Constitution. We, as a country, thought it wise to have a second Chamber. We needed an "Upper House" to tame the otherwise all powerful "rogue" National Assembly that we have had in this country. I know that it will take time for certain individuals, mostly Members in the "Lower House" to appreciate that we now have a bicameral Parliament. We have a Senate which is the "Upper House" and the National Assembly which is the "Lower House". That is not reversible. We cannot reverse the gains that Kenyans have made through the new constitutional dispensation.

We now realise that maybe we do not have proper checks and balances on the National Assembly. If you look at the institutions of the Presidency and the Judiciary, there seems to be adequate checks and balances. However, the National Assembly in the exercise of its mandate on the two institutions has shown clearly that it is unable to stick to the law.

Mr. Temporary Speaker, Sir, in the budget making process, the National Assembly had its mandate. In the process of making the Budget, they have decided to intimidate other independent institutions; the Judiciary, the SRC and the Senate. Of late, we have seen the Members of the National Assembly attacking the Judiciary and the SRC. Over the weekend, Members of the same House were threatening the Chairman of the Commission for the Implementation of the Constitution (CIC), Mr. Charles Nyachae for raising valid concerns and issues touching on their conduct.

Mr. Temporary Speaker, Sir, on several occasions, the Members of the National Assembly have spent a whole afternoon discussing county governments, governors and county assemblies in derogatory terms and in a manner to suggest that some of these institutions should be wound up. The Senate has not been spared the same wrath by Members of the National Assembly.

It is time for this House and Kenyans in general to ask ourselves; whereas we have created checks and balances against the presidency, the Judiciary and other institutions, what are the checks and balances against Members of the National Assembly? This is something that we should address. If it requires any legislative framework, let us move on and do it. If it requires constitutional amendment, we should not shy away. We should engage in ensuring that we put in place the checks and balances.

Mr. Temporary Speaker, Sir, Members of the National Assembly must be willing to take responsibility for their actions. One element of leadership is taking responsibility

for your actions. If you meet Members of the National Assembly right now, everybody is running away from the very decision they made in the House. Each of our Members of the National Assembly is telling us “you know, we supported the Senate, we do not know what happened.” Who will explain what happened other than themselves?

It is important to note that when they made the decision to take away Kshs1 billion, they were focused on their individual Senator. They had their Senators in mind; they were not looking at the Senate as an institution. Those coming from Nandi had Sen. Sang, Sen. Wetangula for those coming from Bungoma County and Sen. Okong’o for those coming Nyamira County and so on. We ask them to be honourable enough and take responsibility for their actions.

Mr. Temporary Speaker, Sir, when they messed up the vetting process of Dr. Monica Juma, you meet all Members of the National Assembly and they are saying that they were not the ones responsible. We know that this was a bipartisan decision by Members of the National Assembly. It had nothing to do with the Jubilee coalition or the Coalition for Reforms and Democracy (CORD). All of them sat down and agreed. When the consequences are now being visited on them, they are running away and starting to blame one another. I do not know who they want to blame. They must be honourable enough and be accountable for the decisions that they made.

Mr. Temporary Speaker, Sir, the corruption that we have witnessed within the budgeting process has led to monies within the national budget being allocated to sectors that do not need those huge amounts of resources while denying the actual and critical sectors in this country the resources they need.

I come from an agricultural sector. If you look at the budget that was allocated to it, it is very meager. It was only allocated Kshs1.5 billion. The money that was allocated to buy maize from farmers in the last financial year was not adequate. We faced challenges within our regions. They allocated a paltry Kshs3.5 billion yet they went on to allocate huge amounts of resources on many sectors that are already devolved or others of national priority and critical importance to this country.

Now, it is emerging that the budgeting process was marred with a lot of deal cutting and bribery. We call upon the National Assembly to recognise that this is an honourable House. Kenyans have a lot of hope in the National Assembly to steer this country towards prosperity but the kind of leaders and the kind of engagement the Members of the National Assembly are engaged in will take this country down the drain.

Therefore, I call upon the Senate, that for a very long time, we have been the sober House and we intend to remain so but we must think and put our act together. The Senate is being undermined from all corners and if we are not careful, we will go home five years down the line and the legacy that we will leave behind is that we presided over and watched the process of winding up of the Senate without taking concrete actions. If it means constitutional amendment, let us sit down and look at it.

I appreciate the attempts by the Members of the CORD Coalition to bring up the *Okoa Kenya Bill*. Unfortunately, the Bill does not contain the provisions needed to address those issues.

The Temporary Speaker (Sen. Mositet): Order, Senator. Your time is over.

Sen. Ongoro: Mr. Temporary Speaker, Sir, I have been listening keenly to all Members of the Senate ventilating and you can see the frustrations from every Member. What we are witnessing here is representation of what all Kenyans are going through.

This morning, I witnessed something very interesting, my car broke down as I was coming to town and I took alternative means. As I was approaching town, there was one young man seated under a tree and he looked like somebody who is jobless. He was having on him a T-shirt written *najivunia kuwa mkenya*. I came to town and I bought whatever I wanted to ensure that my car was in order. When I was going back, he was still seated under that same tree but he was removing his T-shirt and I was quite shocked because I did not know what he was up to. He had a marker pen in his hand. So, I went back for my car and I passed through the same street. This time round the same man in about 45 minutes had replaced the word *najivunia* with *navumilia kuwa Mkenya*. I do not know where we are heading to.

I just want us to relook at the provisions of the Constitution, the Bill of Rights and the spirit of the Constitution from the first chapter to the last. The central theme when you read the Constitution is devolution, decentralization of power and oversight of institutions. In fact, the creation of the numerous commissions was to ensure that one Commission oversees another. Therefore, we avoid grand corruption.

Mr. Temporary Speaker, Sir, the Senate is a victim of its own mandate, the creation of the Senate as the “Upper House” was informed by this school of thought; that we should create an Upper House called the Senate with express mandate to oversee both the national Government and the county governments. When we had those votes and allocations to facilitate that oversight function, it was not for the enjoyment of Senators. It was actually a very gross underfunding to the Senate but we accepted to take the Kshs1 billion to facilitate, if not for anything, to at least put in place some basic oversight process.

I want us to look at these institutions that have been targeted and ask ourselves who is putting in place a scheme of grand corruption in this country. How can we state that we are denying the Judiciary a whopping Kshs800 million? That is the same Judiciary that we expect to prosecute offenders and those who are plundering our public funds yet even the meager resources allocated to them were not enough and we are now withdrawing from them Kshs800 million and expect them to still prosecute the more than 600 cases that are pending.

Who is this trying to kill the Judiciary or to punish the Salaries and Remuneration Commission (SRC)? Are they being punished for being strict and denying some institutions or individuals a lot of allocations? Who is this insisting that we should not now fund the Integrated Financial Management System (IFMS)? This is a system that was well thought out and helps us to ensure that our own funds are well utilized. We now have a system without funding, in essence, we are creating loopholes for people who are used to plundering public funds to continue doing so because we cannot have a system without funding and that means we cannot operate.

Who is this who does not want the Senate to exercise its oversight functions when it is the same system that will ensure that all the allocations to county governments and other public institutions are well utilized? In my opinion, this is the biggest corruption

scheme that is being established in this country. In fact, I believe that another generation will study and look at this political dispensation as the dispensations that ensued and put into place the biggest most entrenched public corruption scheme in this country. I speak with a lot of heaviness in my heart because I do not think it is just the Senate as an institution or the Senators that are being targeted.

Is the National Assembly in essence acting without being controlled remotely by some system, institutions, a group of people or an office? It is not possible. In fact, this other side show and scandal about Dr. Juma is well schemed to withdraw our attention from the main thing, so that most Kenyans are talking about Dr. Juma. That was also really vile without any reason at all, just to allow this system to go through.

It is really sad that a budgetary process that we started last year in June, that has been interrogated by institutions upon institutions, passed in Parliament, brought here and taken back, we now have it passed when some allocations have been bloated by a whopping Kshs19 billion. Who is doing this? If you have an allocation which was Kshs6.5 billion and now it is Kshs25 billion and nobody has seen--- We are not talking about Kshs1.5 billion but Kshs19 billion. It was first introduced in the National Assembly and then brought to the Senate, taken back and then somebody just blew it up to Kshs19 billion on one allocation and then it was assented to in one day.

You want to tell me that we are not witnessing something that it is actually selling the birth rights of this nation. This is beyond party and regional politics. This is about the welfare of our children and their children. Everything that is being planted today will surely germinate and bear fruits and our children will be forced to partake. Therefore, we cannot sit down and remain silent, we cannot attempt to please any politician, any system or any regime, and this is about our own welfare.

Given the impunity with which the National Assembly is trying to conduct its business, we must state here and now that the supremacy of the Constitution cannot be negotiated. They are negating everything that is contained in the Constitution, the Bill of Rights, the Fair Administrative Action Bill and they are negating and violating the provisions of Chapter Six of the Constitution.

In my opinion, the National Assembly should be dissolved because they are the problem that this country is now dealing with. They are being used by enemies of progress and of this country to rubberstamp in a record few minutes every time anybody wants to have anything that is not good for this county. I will not belabour to repeat what has been stated but the entire nation must come together on this issue.

We cannot have institutions that are not funded and are going to die naturally. We cannot have good brains and politicians whose political careers are going to be stopped abruptly because somebody somewhere wants to fill their pockets or kill this economy.

Mr. Temporary Speaker, Sir, with that, I beg to support this Motion.

Sen. Ndiema: Thank you, Mr. Temporary Speaker, Sir. From the outset, I support this Motion that seeks to do something about the unconstitutional manner in which the National Assembly has handled the budgeting process.

I will start with the function of the Senate. I know that we are all aware of our mandate, but it is better to remind ourselves. The key function of the Senate is to represent counties. We exist to represent the counties. In my case, I represent a county

with five constituencies. We also exist to protect the interests of the counties and their county governments. The other function is legislation and more importantly, oversight, which we are unfortunately now not going to perform to expectation, because we do not have funds to do that.

Mr. Temporary Speaker, Sir, on the issue of representation of the counties, it is important to note that when the Constitution says that we represent counties, it does not limit us as to the areas that we have to represent. It does not say that we represent counties only on devolved functions stipulated under the Schedule. We represent counties on everything. Therefore, it is contradictory in my view that the same Constitution that grants us the powers to represent counties seeks to limit us in areas of representation; that the same Constitution says that we cannot be involved in money Bills like this budget.

It is very unfortunate that as representatives of the counties, we cannot today say how much money should go to which sector. There is no Kenyan nation without counties. I think that the first issue to tackle when you look at the Constitution – because I have heard many Senators agree that we need to go back and look at the Constitution – is to ensure that the Senate is involved in all Bills including the so-called money Bills. This is because that contradiction in the Constitution will have been removed.

Mr. Temporary Speaker, Sir, on the issue of protecting the counties, it would appear that while the Senate has the responsibility of protecting the counties – and what we have done in this budget is to protect the counties by saying that they must get adequate resources. That is why we went to mediation to ensure that counties get their rightful share - unfortunately, as we seek to protect the counties, it would appear that there is nobody to protect the protector. There seems to be nobody willing to protect the Senate. However, we should be gratified that at least the Constitution guarantees the survival of the Senate. Let nobody be cheated that the Senate will work according to the wishes of one institution or several individuals. This time round, the Senate is there to stay.

Mr. Temporary Speaker, Sir, the decision of the National Assembly to allocate funds and deny the Senate its rightful share and the other constitutional bodies; the Judiciary and the Salaries and Remuneration Commission (SRC), is unconstitutional. This is because the same Constitution says that there must be public participation. Somebody said that the Senate's allocation for oversight was slashed. It was not slashed, but obliterated completely. There is not a cent left. Was there public participation that said that the Senate should not perform the oversight role, which is indeed in the Constitution? The answer is no. Therefore, the decision by the National Assembly is quite unconstitutional.

Mr. Temporary Speaker, Sir, there have been calls in the past that the Senate need not be there and that it should be scrapped. Let me assure you that it will be there. On the oversight role; in my reading of English, somebody who does oversight is an overseer, “nyapara” in Kiswahili. An overseer is somebody who has to be there from the beginning to the end of a process, whether it is a budgeting process or project implementation. An overseer, as the Senate is under the Constitution, should be involved from project planning, budgeting and implementation. The Senate cannot be equated to an auditor who

comes to check where wrongs have been committed. It is a continuous process that requires funding.

The public may have been misled to believe that the Kshs1 billion was going to remunerate the Senators and be part of their salaries. We want to make it clear that it was never meant for Senators as individuals or to add to their salaries. It was meant to strengthen the office of the Senator, so that the office of the Senator in the counties and the Senate itself here has adequate resources including personnel to assist in ensuring oversight. The stories that we hear now from the counties, and even the Governors themselves agree, are that there are certain things that are happening that are not correct.

There is rampant misallocation of funds, wastage and outright theft. The Senators as well as some Governors have lamented against their county executive members and many others. The county assemblies are expecting the Senate--- I, as the Senator for Trans-Nzoia County, is expected to get involved in what is happening in the hospitals where drugs and facilities are not adequate. I must be able to find out what is happening and explain to the people. The people expect that because they know that I do oversight. However, the resources that I am supposed to use are not there.

Mr. Temporary Speaker, Sir, we also wanted to be involved in the county affairs by way of county development, but that route was also blocked. As you are aware, Senators cannot call a meeting to discuss development in the county. We have an injunction from the court and therefore, we cannot perform that function. The Senate is under attack. The Senate has been very patient and abided by the rule of law and respected other institutions. Even as we were elected, everybody knew that the Senate was the “Upper House” and that the Senator was elected by more people than any other Member of the National Assembly.

The Senate represents a wider area. Even in a school, the headmaster cannot be equated to an ordinary teacher; at least he even gets a responsibility allowance, and Sen. Karaba knows that.

However, we were all made equal; the Senator and the Members of the National Assembly. Perhaps, that is what has led them to believe that after all, we do not matter anywhere. However, we were patient in the spirit of patriotism to say that we came here to serve and we did not push the Salaries and Remuneration Commission (SRC). I believe that the SRC has noticed that there are people who are not for equity and justice.

Mr. Temporary Speaker, Sir, regarding the issue of the courts, we impeached a Governor and we have the other case in court on the county development boards but we have been patient because we respect institutions and we have not attacked the Judiciary merely because they have not done what we wished and in the time we wanted them to.

On the issue of Constituencies Development Fund (CDF), there was a time that the National Assembly believed that we, as the Senate, were against it. There were also talks that we were part in the CDF case. However, the Senate was restrained and we never went to court. It is other parties which went to court and the final decision by the court was not a decision made by the Senate. We were not party to it because we recognized CDF in a way as a system in the constituency although with devolution, there was a question mark. However, since the courts have now decided that CDF is

unconstitutional and it must be aligned to the Constitution, there is no option because that is the right route.

I have been one of the supporters of the CDF. I did not want it to go but today, I am beginning to question why it should be there. This is because, when I heard the speech that the CDF will now exist in the counties only for national functions; when you look at the functional functions, it is perhaps only education and the police yet these are departments which are fully-fledged and can run on their own. I wonder why a district education officer or a county education officer cannot be allocated those resources to administer them without the Member of Parliament. The CDF initially covered all projects; health, water, roads and many others. Since those other functions have been devolved and funds must follow functions, then the CDF should have been reduced accordingly to follow those functions that are allocated to the county governments. Unfortunately, it was increased.

Mr. Temporary Speaker, Sir, the reason as to why I think the CDF should be looked at again, is because it is the carrot that is used to compromise and divert attention of the Members of the National Assembly from the real issues, compromise them in order not to look at other things and in order to buy them to oppose issues and programmes that are of benefit to this country. As you can see, the CDF has been increased. It is untouched although functions have been devolved.

The Senator for Nandi County has said that there are sectors that have been given too much money in this Budget and the Members of the National Assembly have not said it. I do not know what those from Rift Valley will go to say at home because that is an agricultural area. Allocations for fertilizer inputs and purchase of grains have been reduced while those of other sectors have been increased. This year, we had a problem procuring and getting fertilizer to the people yet the Government spent not less than Kshs4 billion. The amount in this current Budget has been reduced to Kshs2 billion. Money allocated for the purchase of maize has also been reduced.

Mr. Temporary Speaker, Sir, the President, during the agricultural show, said that allocations for agriculture would be increased to not less than 10 per cent of the national budget according to the Maputo Declaration. However, I do not see that policy statement reflected anywhere in the budget. I call upon my brothers and sisters in the National Assembly that beyond CDF, let them also go back and relook at the Budget. As we are forming the committee to look at the Budget, the proposed Select Committee will not look at only the reductions but at the whole budget and tell Kenyans what is really at stake and what the issues are. The same Committee as well as other Committees of this House will oversight how that money will be utilized to the end of the financial year. This is because---

The Temporary Speaker (Sen. Mositet): Order Senator! Your time is over.

Please proceed Sen. (Prof.) Lesan.

Sen. (Prof.) Lesan: Mr. Temporary Speaker, Sir, first and foremost, I want to state that I support the Motion and I agree with the speakers who have spoken before me on what they have all said because it is all factual and looking at it, easy to understand yet we do not see the National Assembly having seen these very simple and straight forward facts of information.

Mr. Temporary Speaker, Sir, Rudyard Kipling, one of those wise fellows who discussed and described the Seven Wonders of the World, once stated that you cannot continue doing the same thing all the time and expect to get different results. In the first Division of Revenue Bill, we had a contestation with the National Assembly, we went to court and we came back to the House and had a Special Sitting. In the second Division of Revenue Bill, we had a Special Sitting, we had arbitration, and we went to court, came back and had another Special Sitting again and discussed all the time arriving at the same thing. This time again, we went for arbitration as regards to the Division of Revenue Bill. It will be very unfortunate if we continue to do the same thing because we will continue getting the same results. In fact, we will not go anywhere.

Mr. Temporary Speaker, Sir, I would like to congratulate the Senate for standing very firm and arbitrating honestly and moving the figures allocated to the counties by Kshs3.3 billion. This is a positive mark and it was a good effort. However, what we got in return from the other House is vengeance, acrimony and distrust even on arbitration because I expected that we would not abuse the principle of arbitration by altering what was agreed on in arbitration. I just wonder what would have happened if before that, we had not had Kshs1 billion assigned to the Senate, where would the National Assembly get the Kshs1 billion to move to the counties. I think that the action of the National Assembly is very unbecoming for a House that represents the people and full of many people who had the opportunity to discuss each and every aspect of the Budget in detail.

What the National Assembly did has serious implications. Increasing the amount of money that goes to the counties without enhancing supervision is actually setting this House to fail. If we are going to increase the amount of money that goes to the counties, it is only fair that we also enhance the systems in which we are going to have accountability. We already have two years down the line and we have a very sad story to tell as to the usage of monies that went to the counties. It was only befitting that the only thing that we can do after two years, if we learnt any lesson was to enhance the capacity and the oversight roles of the Senators over these funds so that they can be used in a manner that will not only support the people but the process which this country has chosen to follow; that is, devolution and that we should have done that by enhancing oversight.

Secondly, by increasing the money which goes to counties without increasing supervision, we are just creating discontent between Senators and Governors. We know that the amount of wastage will be much higher and will definitely be a concern to us a bit more than before. Questioning that aspect of wastage will probably bring discontent between Senators and Governors and that does not augur very well for devolution that we are striving to achieve. We are aware that even with the little money that we have had, there have been very sad situations where it has gone down the drain. I am aware of the Governor of my county who uses close to Kshs20,000 to transport a special chair for him to sit on in meetings under trees or wherever. This is equivalent to school fees for one boy or girl for a whole year. Remember the sittings are weekly or daily.

We spend quite a colossal amount of money on wasteful activities like these ones which are done in the counties without the superior role of a Senator to oversight and

critique some of those activities. We are simply pouring into the drain this money which we are increasing to the counties and this is very unfortunate.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. Is the distinguished Senator for Bomet County in order to mention only the Governor for Bomet County when, in fact, he is not alone in the league? He is joined by the Governor of Kakamega County, Mr. Oparanya, the Governor for Nyamira, Mr. Nyagarama, the governor for *Hehehe* and the governor for *Hehehe*.

(Laughter)

Sen. (Prof.) Lesan: Thank you Mr. Temporary Speaker, Sir. As I sympathize for myself with regard to my governor, I now realise I am not alone in this. I am joined by my colleagues and I am sure I am also joined by many other Senators with Governors who do other activities which are not commensurate with assisting the public. This is exactly why we desire that we supervise the usage of these funds that we send to the counties in a more thorough manner than we are doing at the moment.

We hold political offices which, of course, emanate from the public who cast their vote to put us in office. This amount of wastage of funds right in front of the eyes of the public is not auguring very well with those who are supposed to supervise and stop the pilferage of these funds. Since these are political offices, we stand to lose seriously if we are unable to curtail the wastage of this money as our role has been curtailed and reduced by what the other House did.

I support this House as it looks around to see another way of reacting to this issue other than the ones we have acted upon, before. One of the ways to do this is to strictly ask that the governance of this country is done according to what is stipulated in the Constitution. In other words, the three arms of Government must stand out and each of them must perform its role. We are not making it very clear in this country that the three arms of Government operate on their own.

Mr. Temporary Speaker, Sir, one example of an activity which is not commensurate with the three arms of Government is CDF which is not oversighted. Nobody oversights the CDF money in this country except when it has been utilized and the Auditor-General looks at the figures and by then, the money is gone. The other supposed oversight of CDF money is a small committee that has been formed by the same persons who are oversighting the funds. Therefore, CDF is not oversighted properly. I think it can only be oversighted properly if it goes to the right arm of Government which is the Executive.

I think there will be many more – 349 or actually 490 persons including Senators who are willing to be oversighting this money. That way, we shall be a lot more in number doing the right functions oversighting the usage of funds. With this unfortunate situation where we have to answer on the revenues of the counties to make ourselves relevant for survival, I think it is a just course and a good battle that we have to fight through because this is for the good of the public.

With that, I wish to support the Motion and I will support the action and activity for the formation of the Select Committee to drive this process further forward so that we achieve a different result than the one we have done before.

Sen. M. Kajwang: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to this Motion. We started this debate on a very divine note. I wish that the Mover of the Motion, Sen. Murkomen, was here because I would have referred him to the book of Daniel Chapter 4 where the story of Nebuchadnezzar is found. I wish and I hope that we will send a message to those who are in positions of power the kind of message that God sent to Nebuchadnezzar.

God reminded him that the position of influence, wealth and everything else that he had was of the Lord. Unfortunately, he never heeded to the dream that God sent him. For seven years, he was driven insane and fed on grass. That is the message I would have wished the Mover of this Motion to take to the people out there, some who do not realise that the positions they hold are a reward and a gift from God.

I also wish to congratulate those we sent to mediate on our behalf with the National Assembly. We provided three key persons and so did the National Assembly. We know from media reports that there was a stalemate. In fact, we would be in a bigger crisis than we are in today had both parties failed to cede ground. I would wish to congratulate the Member for Ruaraka who defied a hardline position which the Members of the National Assembly had been drilled into and received calls. It was short of intimidation that they were not supposed to cede any ground to the Senate. It is because of that patriotism that we have averted a national crisis.

Mr. Temporary Speaker, Sir, the issue here is neither legal nor technical. I will leave the legal dissection to the legal experts because the Supreme Court has pronounced itself in an advisory manner. The Commission on the Implementation of the Constitution has also given its views. We could be entitled to our own opinions but no institution can be entitled to manufacture its own facts. So, we cannot continue having a legal discussion on this, yet important institutions have already pronounced themselves.

The issue here is political. I was in my home county for the past two weekends. Senators have been telling the people that our role is to get funds from Nairobi so that these funds can go to the grassroots to spur development. It is now becoming clear to the population that the Senate does not really have a role to play when it comes to the allocation of resources. When it comes to Division of Revenue, we have seen what we have been treated to by the National Assembly. When it comes to the disbursement of those funds among the 47 counties, this House was given a mechanical formula by the Commission on Revenue Allocation (CRA) and it is good that we rejected it until we got to a position where there was input from this House.

Mr. Temporary Speaker, Sir, the Senate could lose its relevance. If we are not involved in the distribution of resources, I do not think anyone is going to take us seriously. We keep referring to ourselves as the “Upper House”, but I have looked at that Constitution and I have failed to find a single instance where this House is referred to as the Upper House. It probably is a matter that is in our heads and that is why I support the establishment of a select committee to look into ways of strengthening the role of the Senate.

Mr. Temporary Speaker, Sir, wananchi are with us. Two weeks ago, we visited Nakuru County with the Committee on Roads and Transportation and we moved all the way through Kibunja to Olenguruone up to Kiptagich. When we made stopovers by the roadside, we could find common people telling us that they had been on radio in the morning saying that the Senate needs to be strengthened and given funds for oversight. That is a practical case. I was with Sen. Obure and that is on record.

The common *mwananchi* is with us and it is for certain reasons that this House is devoid of the tyranny that we see in the National Assembly. This House is devoid of corruption. I sit in three committees and at no point have I seen the kind of activities and allegations that we have seen featuring in the other House when it comes to influencing committee discussions. This House is free of absurdity. You will have to do something extremely grave for me to decide to pour water on you or to hurl books at you. We do not have that kind of drama. This House is devoid of partisanship.

When I listened to the contributions from my colleagues who by accident found themselves on the Jubilee side, I feel tempted to ask the leader of CORD to organize an event so that they can formally defect because I can see on certain issues, we are not partisan. That is why the population still has a lot of hope in this House.

Mr. Temporary Speaker, Sir, it is my view that somebody wants to kill institutions in this country. I remember a presentation by the Senator for Bomet when he said that civilizations eventually crumble when you start killing institutions. If you look at Kenya, we are killing the Ethics and Anti-Corruption Commission. In fact, we have effectively killed it. We are just trying to revive it now. There has been talk of killing the DPP because he is not doing things that are favourable to certain quarters; there has been talk of killing political parties. We have heard Members of political parties complaining that they are being carried around like potatoes in bags. We have seen a situation where now the National Assembly and the Senate are fighting and there are talks to disband the Senate on grounds that the Senate has lost its relevance. We must protect our institutions; otherwise our civilization is going to die.

The Senate is a real constellation of political stars. I keep saying that I feel humbled and privileged to be in the presence of people whose combined experience – I have done some little mathematics – is more than 1,000 years, if you put together the number of years that the Members have been in leadership and in political life. That is a real constellation of stars. I am sure that someone is keen on dimming the shine and allure of this House. I want to call upon my colleagues that as we debate these matters and as we go into this discussion of the relationship between the National Assembly and the Senate, there seems to be a trap somewhere.

I foresee a situation where somebody somewhere would be happy when these two Houses fight. When the National Assembly and the Senate fight, it means that people can get away with corruption. It means that insecurity can spiral and there will be nobody to talk about it. It means that absurdity will be common place.

Mr. Temporary Speaker, Sir, it is unfortunate that we called a special session to discuss this particular matter and yet just last week there was a Budget. We probably should have been addressing the issues that Sen. (Dr.) Khalwale has brought up where what was contained in the Budget changed very drastically at the end of the day. If we

continue fighting as institutions of Parliament, then we see a situation where even bad governance and a creeping sense of authoritarianism that we are witnessing in the country, there will be no other institution to check it. When we bring the Judiciary in the mix, there will be nobody awake to police and to watch over the Executive. I, therefore, call for soberness amongst my colleagues. I have some very strong comments coming up.

A fight with a mad man never ends well especially for the sane party because at the end of it, it is very difficult to tell who is mad and who is not mad. I do not want us to get into a situation where we characterize the National Assembly as a House of mad men. There are men and women of good stature and there are men and women who mean very well for this country in that National Assembly. I, therefore, pray that even the report that is going to come out of this House will not be a report where Senators declare war but a report that talks about the Senate seeking ground so that it can play its constitutional mandate.

Mr. Temporary Speaker, Sir, a lot has been said about the Reverend who chairs the Budget and Appropriations Committee of the National Assembly to the effect where he has been called the “Wrong” Reverend rather than the Right Reverend. Growing up in the 1990s and about ten years ago, we had hope that as a leader of the National Council of Churches of Kenya (NCCCK), this would be a prime candidate for the presidency to rule this nation. It is surprising what power does to straight and good meaning people. Power corrupts. I do not know whether being in the Jubilee Government also destroys because the person that we see today is not the person that we idolized when we were student leaders back in the years. There are many other good men and women in the National Assembly and we should not throw them out as we talk about some of these things that are coming up.

The establishment of a Select Committee is long overdue. In my view, we have allowed the CORD Coalition and the Council of Governors to proceed with their “*Okoa Kenya*” and the *Pesa Mashinani* initiatives because of the inaction of this Senate. They say that he who feels it, knows it. The Senate knows the frustration that we go through in executing our mandate or being the defenders and protectors of devolution. I would have expected that by now, the Senate would have come up with solid recommendations on how to strengthen this institution. Therefore, this is long overdue and I support it. I only urge that this Select Committee will come up with actionable recommendations.

The question would be that if the select committee comes up with the report, then what next? I also expect that we will be very clear on the perimeter of their mandate. Is this Select Committee going to get back the Kshs1 billion that we lost? Is it going to ensure that the Judiciary also gets the money they lost and that the SRC also gets the money they lost? Is this Select Committee going to review the entire budget making process to come up with recommendations on how the Senate can be an effective partner and have a constitutional role in it? Is it going to look at the role of the Senate as stated in Article 96 in totality or is it going to look at the entire Constitution and come up with recommendations for constitutional and legislative amendments? That needs to be very clear as we set up this Select Committee.

We also need to manage perceptions of selfishness. There are those who feel that had we not been denied the Kshs1 billion, we would not be here but out in the field

celebrating the windfall that would be coming. It has been argued before me that this was not a windfall but money that was meant to facilitate the constitutional role and mandate of Senators. So, we need to fight the perception that we are only doing this simply because we lost the Kshs1 billion. I like the fact that we are sticking our necks out and fighting for the Judiciary and the other institutions that were denied funds. Let it be said that when Kenya was in crisis, when institutions were being dismantled systematically, it is Senate that climbed down and provided leadership that got us out of crisis and pointed the clear way forward for this country.

With those many remarks, I support.

Sen. Njoroge: Asante sana, Bw. Spika wa Muda, kwa kunipa nafasi ya kujiunga na wenzangu kuunga mkono Mjadala huu ambao uko mbele ya Seneti. Kwanza, Katiba ndiyo ilituleta – mimi na dadangu Sen. Omondi – katika Bunge hili la Seneti. Itakumbukwa kwamba Katiba ilitumika wakati tulipokuwa tumesukumwa nje; wakati ilikuwa inachapishwa katika *Kenya Gazette*. Tulipoenda mahakamani kwa kutumia Katiba, tulifaidika kwa kuingia katika Bunge hili ili kujenga taifa na kuunda sheria pamoja na Maseneta wengine.

Bw. Spika wa Muda, lilikuwa jambo la kuhuzunisha kuona *Independent Electoral and Boundaries Commission (IEBC)*, wakati huo, ikikiuka Katiba yetu ya Kenya na kuleta watu ambao hawakustahili kuwa katika Jumba hili. Ilichapisha majina yao katika *the Kenya Gazette* ili wawe miongoni mwa Wabunge wa Bunge hili. Kwa hivyo, ninaheshimu Katiba kwa sababu kama sio Katiba, ingekuwa vigumu sana mimi kuwahutubia kama Seneta anayewakilisha walemavu katika Seneti hii.

Bunge la Taifa limeanza kupuuza Katiba kulingana na vile Wakenya walivyotaka. Wakenya waliamua kwamba kuwe na Bunge mara mbili; moja iwe Bunge la Taifa na nyingine iwe Seneti. Walitaka Seneti iangalie na kuhakikisha kwamba pesa ambazo zinatengewa kaunti zinatumiwa vilivyo.

[The Temporary Speaker (Sen. Mositot) left the Chair]

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

Ni kutokana na mahitaji ya Katiba ambapo tuliteuliwe kutoka vyama tofauti ili kuwakilisha baadhi ya watu kama vile walemavu, vijana na akina mama. Sisi pia tuna majukumu ambayo tunahitajika kutekeleza kule mashinani. Tulikuwa tumeona mwanga kwamba tutaweza kufikia wale ambao tulikuja kuwakilisha kule mashinani ili tuweze kuangalia jinsi wanavyohudumiwa endapo tungetengewa fedha. Hata hivyo, ndoto hizo zilitupiliwa mbali na Bunge la Taifa. Bunge la Taifa lilitupilia mbali matarajio yetu na kuona kuwa hatufai kabisa, kama Seneti, kuenda kule mashinani ili kuokoa uporaji wa fedha za wananchi wanaolipa kodi ambao umekuwa ukiendelea.

Kwa hivyo, kamati inayotarajiwa kuundwa katika Seneti hii ni kamati ambayo imekuja wakati unaofaa hata kama imechelewa. Ni vizuri tuchukue mwelekeo ambao utaeleweka. Kama alivyosema Seneta mwanzangu hapa, tunasema kitu kimoja kila siku kunapotokea mvurutano kama huu. Ni vizuri turejeele Katiba, tuifungue na kuiangalia ili

tuitishe *referendum*. Ni vizuri kuwafikia wananchi ili tubadilishe ama turekekebishe Katiba ili Seneti ipate nguvu ya kutosha.

Tunafaa kutojihusisha na Bunge la Taifa kama vile kutokuwa na *Parliamentary Service Commission (PSC)* inayohusisha Bunge la Taifa na Seneti ili Seneti iweze kujisimamia kwa sababu Bunge la Taifa halina heshima hata kidogo. Sijui linafuata Katiba gani. Madharau ambayo Wabunge wa Bunge la Taifa wameonyesha kwa Bunge la Seneti ni jambo la kusikitisha sana. Ikiwa tutaendelea kushirikiana pamoja katika *PSC*, hii Seneti haitasonga popote. Hii itawafanya waseme kuwa haina haja kuwa na Seneti katika nchi hii.

Kwa hivyo, Bi. Spika wa Muda, maoni yangu ni kwamba wakati umefika sasa. Ukisukumwa kwa ukuta mara nyingine, inabidi uanze kupigana ukielekea upande wa mbele. Hakuna lingine ila kurejelea Katiba na kuangalia vipengele ambavyo vinafaa kubadilishwa. Ni lazima vipengele vinavyofaa kubadilishwa vipelekwe kwa wananchi ili viweze kubadilishwa kulingana na vile Katiba yenyewe inasema.

Wakati umewadia ambapo Rais na Naibu wake wanafaa kufikiria mara mbili wanaposhuriwa na washauri wao kuhusiana na mambo ya kisheria. Hii ni kwa sababu ni mara nyingi sana tumeona Rais akipewa ushauri ambao hauambatani na vile Katiba inavyosema. Mara nyingi amepitisha mambo ambayo ni kinyume na vile Katiba inavyosema. Kwa hivyo, ni vibaya sana Rais kukaa na watu wanaoitwa *sycophants*; watu ambao wanamwambia kile ambacho wanasikia lakini wanakosa kumwaambia ukweli kwa sababu ukweli lazima uambatane na vile Katiba inavyosema.

Kulingana na wajibu ulionileta katika hii Seneti na kazi ambayo nimepewa katika Kipengele cha 96 kwenye Katiba, inaonyesha wazi ya kwamba kama Rais mwenyewe hatakuwa mwangalifu – kupitia kwa wale wanaomshauri – itakuwa vigumu sana yeye mwenyewe kutekeleza majukumu yake na kuiacha Seneti ifanye kazi yake kulingana na vile Katiba inavyosema.

Nimesema hayo na ninataka kueleza kwa sababu mara nyingi watu hukimbia kwenda kumwambia Rais kwamba Sen. Njoroge alikuwa anasema hivi. Nasema wazi nikiwa hapa mbele ya Bunge hili. Ni lazima Rais mwenyewe pamoja na Naibu wake wajepushe na watu wanaowapotosha kwa sababu sisi sote tulitumika katika kuomba kura na kuwaingiza katika nyadhifa mbalimbali, haswa watu kutoka mrongo ambao mimi niko. Sikutarajia ya kwamba wakati kama huu utafika. Hii ni kwa sababu nilipopewa wadhifa huu haswa na chama ambacho kinatawala, nilifikiria ya kwamba tufanye kazi kulingana na vile Katiba inavyosema.

Hata hivyo, naunga mkono kwamba kamati inayotakiwa kuundwa iundwe. Asante sana, Bi. Spika wa Muda.

The Temporary Speaker (Sen. Ongoro): Asante sana.

Sen. Madzayo: Asante, Bi. Spika wa Muda, kwa kunipatia muda huu ili niunge mkono hii Hoja.

Ugawaji wa pesa katika kaunti uko katika Kipengele cha 96 (3) cha Katiba. Kipengele hicho kinasema kwamba Seneti ndio itahusika katika ugawaji wa pesa kwa kaunti kutoka kwa Serikali kuu. Vile vile, Seneti iko na uwezo wa kuangalia matumizi ya pesa hizo katika kaunti ama serikali za kaunti. Pesa hizi ambazo tulisema zipelekwe mashinani zilikuwa za kuwasaidia akina mama, wazee, watoto na watu wote kwa jumla

katika Kenya. Lakini hivi sasa ijapokuwa pesa hizi zitapelekwa katika kaunti, watu fulani, haswa Seneti hii, wameadhibiwa kwa sababu ya kuchangia katika kupitishwa kwa pesa hizo. Ugawaji wa pesa hizi si makosa. Tulisema pesa hizi ziende mashinani ili ziweze kuinua hali ya hospitali zetu. Hasa katika Kaunti ya Kilifi hatuna hospitali ya Level 5. Kwa hivyo, tulipitisha pesa hizi ziende kule ili zisaidie kuinua hali ya hospitali ili akina mama wetu wanaotoka pande mbalimbali wapate matibabu mema.

Lakini hivi, sasa uamuzi wetu umeleta tetesi. Juzi, nilikuwa katika hospitali ya Mariakani na niliona jambo la kusikitisha. Kuna mama ambaye alikuwa na mtoto mgongoni. Kule kwetu huwa tunatumia majembe madogo madogo kulima. Wakati alikuwa akilima mahali ambapo kulikuwa na nyasi, hakujua kuwa kule ndani kulikuwa na shimo. Hatimaye alipokuwa akishika zile nyasi aliumwa na nyoka. Baada ya kuumwa na nyoka alihisi kama mwili wake wote haumfai. Kwa bahati nzuri mama mkwe alimkimbiza hospitalini ambayo haiko mbali na shamba lao. Baada ya kufika Mariakani alipata matibabu na hali yake ikawa nafuu. Lakini wakati huo mkono ambao uliumwa ulikuwa tayari umegeuka na kuwa rangi nyeusi. Ripoti inayonifikia hivi sasa ni kwamba aliupoteza mkono ule.

Hii inamaanisha kwamba pesa hizi zingewasaidia akina mama kama wale. Pia, zitawasaidia akina mama, watoto na Wakenya wote kwa jumla. Hii ndio maana Seneti imesema kwamba pesa lazima ziende kule mashinani. Waswahili kusema kwamba heshima si utumwa. Sisi tunahitaji heshima kutoka kwa wenzetu ambao ni Wabunge.

Jambo ambalo nataka kulitia mkazo zaidi ni: Je, korti zetu za Kenya zilifanya makosa gani? Sheria katika Katiba inasema kwamba hauwezi kumpata na hatia hakimumu ama jaji kwa uamuzi alioufanya kulingana na kesi iliyo mbele yake. Seneti ilienda mahakamani na kudai kwamba sheria ilikuwa haizingatiwi. Mahakama iliamua kwamba Seneti ilikuwa inasema ukweli. Kwa hivyo, Seneti na mahakama hazikufanya makosa. Lakini Wabunge walichukua hatua ya kuvunja sheria kwa kuadhibu mahakama kwa kuondoa Kshs800 milioni katika Bajeti yake. Korti zetu ni lazima zitapakae kila mahali mashinani.

Katika Kilifi, watu hutembea kwa kilomita 50 ili wafike kortini. Hata yule ameshitakiwa kwa wizi wa kuku, kesi ambayo inaweza kumalizika mara moja, inabidi alipe nauli katika bas, matatu au boda boda ili kuhudhuria kesi yake kortini. Pesa ambazo zilikuwa zimepitishwa zilikuwa za ujenzi wa mahakama ili wananchi wapate huduma karibu kule mashinani. Je, mahakama ilifanya makosa gani iliposema kwamba Bunge likitaka kupitisha pesa za kaunti ni lazima mambo hayo yaende kwa Seneti? Mahakama haikufanya makosa yoyote.

Kwa hivyo heshima ni lazima iweko kati yetu, Maseneta, na Wabunge wa Taifa, hasa nikizingatia kwamba hata Bibilia inatuambia kwamba Yesu aliulizwa na Mafarisayo ikiwa wangezitumia pesa hizo ambazo zilikuwa na picha ya kaisari kulipa ushuru kwa serikali au wazitumie. Yesu alisimama na kuangalia picha katika pesa hizo. Aliuliza: “Je, picha hii ni ya nani?” Alipoambiwa ni ya Kaisari, aliwaambia wale Mafarisayo: “Cha kaisari mpe kaisari na cha mwenyewe mpe mwenyewe.”

Kwa hivyo, ikiwa uwezo wetu sisi ni kusema kwamba pesa zipewe serikali zetu za mashinani, hakuna ubaya. Tukisema vile vile kwamba ni vizuri ikiwa korti zetu zitakuwa na uwezo wa kupewa zile pesa na zitapakae mashinani, ili watu wasisafiri mbali

wakitafuta huduma za sheria, litakuwa jambo bora. Hata tunaambiwa vizuri sana katika Agano Takatifu kwamba: “Njooni tukae pamoja ili tuweze kuzungumza na kuelewana.” Najua kwamba hivi sasa kuna malumbano na kuamua “Nyumba kuu” kati ya Seneti na Bunge la Kitaifa ni ipi.

Lakini hayo hayatatusaidia ikiwa tutalumbana. Malumbano sio maendeleo. Hatuwezi kukubaliana lakini tufanye kazi pamoja. Sisi tuko tayari kufanya hivyo. Hatufai kuwanyoshea kidole cha lawama ndugu zetu Wabunge. Nafikiria Kamati ambayo tutaunda itatekeleza wajibu wake ili kuona ya kwamba haki imetendeka. Sheria inafaa kuundwa kuhakikisha kwamba Seneti na Bunge la Kitaifa hazihusiki katika malumbano ambayo hayana suluhu.

Asante sana, Bi. Spika wa Muda.

Sen. Karaba: Thank you very much, Madam Temporary Speaker, for giving me this chance to contribute in support of the Motion before us today. Being a Special Sitting, it tells a lot to the nation that we are discussing crucial issues and matters of national importance. This was an ugly incident which occurred in the National Assembly. It is nasty and ugly in the sense that it tries to prove who is who in the jungle. Whereas, we know that it is the lion which is the king of the jungle. It is known elsewhere that there is no way the National Assembly can be ahead of the Senate. It is there in the United States of America (USA), Britain and many countries. That is the reason why sometimes we go for benchmarking out there.

Many times, you hear that there is a group of parliamentarians going out to Japan, India, Britain and the USA for benchmarking. However, little is known when they come back. They do not put into practice whatever they learnt out there. When there is a war between two houses or *bomas* in a homestead, it is the grass which suffers. Now, what is here is as if there is a struggle between the National Assembly and the Senate. It is already manifested.

It is as if the National Assembly which by the fact that they are many in numbers - they are 349 Members of Parliament - would like to be seen like they are the ones who have the say and that whatever they say is factual whereas it is not true. Little do they know that the Senate comprising of 47 elected and 20 Nominated Members, totaling 67, comprises of very senior minds. These are the minds which have been there in the past. Some of the Members of the Senate have been there. They are the ones who are the architects of the same House. I was there when the Constituencies Development Fund (CDF) was crafted; we participated and formed the CDF as a Fund.

Some of us have been here for years but what we are seeing is that in the National Assembly there are young men and women who are calling themselves honourable Members. Some of them do not even know much about what they are saying. They are passing laws which in the end will cost this country very great loss. I am saying so because, there are some issues that sometimes need “natural thinking” when it comes to passage of laws.

Take, for example, the CDF. Even if the Supreme Court ruled out that it is unconstitutional, they went ahead to allocate themselves Kshs35 billion without knowing that there are some other very needy cases like the case of retired teachers. From 1997, the teachers have been crying to Parliament and the Senate to find out what happened to

the money that the Government promised to pay them. This totals almost to the same amount of money; Ksh30 billion to Kshs35 billion. Instead of realizing that there is a problem with payment for retired teachers, they went ahead to allocated Kshs35 billion to the CDF.

Some of us were involved in the disbursement of the CDF money; what we see in the field these days is wanting. You find that the money is not used in the right way. Some of the money is not going to stalled projects that were started long time ago by some of us. Some Members of Parliament (MPs) go ahead and give out money indiscriminately to friends. Some of them are even trying to turn that money into their re-election pledges so that they can go back again as MPs and continue perpetuating the same ugly scenes and incidents in the National Assembly.

Madam Temporary Speaker, this is bad and every other able person who is worth his or her salt should condemn it in the strongest terms possible. It is this House which sits at least, in an extraordinary sitting to lament and come up with solutions. I hope that after everything is said and done, we will flash back and see how much we have lost since the time we came to this Senate; what kind of dangers and problems the National Assembly has caused to the country in the name of punishing the Senate. This is something that we should think about. Everybody should think about it. This is unfortunate because it is coming to us when everybody thinks that we are all in what we call law making Houses.

It is ugly in the sense that whereas, we think that we should have been given that money for oversight, they went ahead and did not note that some Vote heads were overshot by billions of shillings. They overshot a vote head with Kshs16 billion and nobody would say that was an overshot. A department like the National Youth Service (NYS) was given money that they did not even ask for. Another example is the Ministry of Health and so on, and so forth. These are the Vote heads that had been discussed in both Houses. We had passed those Vote heads in the hope that nothing else would happen but the National Assembly noted very fast that the Senate had been allocated Kshs1 billion, and that was the first one to be slashed.

When that happened, surely, are we talking about people who are serious? They cannot see that there are some Vote heads in Ministries where they passed budgets for amounts of over Kshs30 billion yet they could not see that there was Kshs1 billion that they were denying a sister House which was going to oversight the devolved functions in the name of county assemblies. This is very sad.

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

The Temporary Speaker (Sen. Ongoro): Senator, do you wish to be informed?

Sen. Karaba: If it is from my friend, Sen. Wetangula, I will take it kindly.

The Senate Minority Leader (Sen. Wetangula): Thank you, Senator. I wish to inform you and the House that as they were doing that, they raised the budget of the National Youth Service (NYS) from Kshs5 billion to Kshs26 billion for undefined role and undefined projects.

Sen. Karaba: Thank you very much, Sen. Wetangula. That is what I had said earlier before you came. I had only cited that. I said that some of the Vote heads were

overshot. When they were overshooting the Vote heads, they never had time to think about down shooting or even erasing us from the memory of what we had already discussed yet we only required Kshs1 billion to oversee the projects that the money you are allocating to the NYS will be used for. So, what kind of logic would you say we are really here for, if we cannot oversee, yet that is our role?

Our role is entrenched in the Constitution. If we cannot oversee what the counties are doing including the money that we are passing in the National Assembly, then what are we here for? That is a clear indication that the National Assembly is wishing us bad luck. It is as if they are imagining that we should not even have been there after all. We are here because we are here. That is what we used to be told one time by our Vice Chancellor, Dr. Josephat Karanja of the University of Nairobi then. He would say that you are here because you are here because that was the case of the university students. So, for us, we must state our priorities right. That is what we are trying to do here.

The Kshs1 billion was removed from the Senate and we are saying that we are going to establish a Select Committee, is it going to work backwards so that we can get this money or are we going to make sure that the Select Committee is so powerful so that it can refund arrears? Are they going to make sure that whatever else that is remaining is left intact, because we have got about one year to go of active politics? The Members of the National Assembly want to make sure that they are alive to politics and come 2017, they will be asking what the Senators have done in the constituencies and the county. Of course, they know, we will not have much to say.

Madam Temporary Speaker, therefore, we are suffering because we have to be seen to be abreast with everybody else. When there is some harambee money to be raised, you have to struggle and raise as much as what the MP is raising, whereas the MPs are using the Constituencies Development Fund (CDF) to upgrade themselves whereas we have no money to do that.

We expect that the Select Committee, as soon as possible, even if it means tomorrow, will come up with a solution because without that, we are done. Let the MPs see that there is some urgent need like the employment of teachers. They only allocated Kshs2 billion for hiring of 5,000 teachers whereas they know very well that they are using the money that they have to come up with the infrastructure, yet there are no teachers to teach.

We even have the retired teachers who are now crying and some of them are dead. The Government owes them Kshs30 billion and nobody is talking about them. So, when shall we have sanity in the House and for Kenyans to know the truth? Let us not behave like that animal, which I will not mention here which did not allow the goat to eat grass. I will not mention the animal but that is bad for any other House to imagine that we do not exist, we do not say anything and we are not intelligent. Surely, can they not see the kind of debates that originate from this House?

The debates and Motions from this House are serious businesses. If by the number which they claim they are, they will not see us go through, then, that is why we can talk about that animal which did not allow the goat to eat grass? Time will tell when the institutions crumble. People will blame us but we would not have learnt from the past

mistakes made by other countries that we go to benchmark and then we come back and say we have been to Korea, Japan and Mauritius.

These countries are ahead of Kenya and we have not been able to match with them just because of the mistakes by our law makers in the way they execute their roles in the House. We are lamenting now but we hope that soon, we will come up with a solution. This solution must be a national solution affecting all counties; it should not be seen like it is a House business.

We are not lamenting because we are in the Senate, we are lamenting on behalf of the entire county governments and more so the governors who if they are not protected, then devolution is dead. That is where we are right now, we are sitting on a very terrible fence and we hope this fence will not fall with the Senate and when it falls, we should not be blamed. That is why we are raising fingers when it is too early so that people can understand that it is not our fault but this fault is coming from far through the National Assembly.

With those few remarks, I beg to support.

Sen. Obure: Madam Temporary Speaker, thank you for the opportunity. First, I want to thank the Speaker of the House for allowing this Special Sitting to discuss this very important Motion relating to the budget process. I also want to thank the Mover, Sen. Murkomen, for effectively and eloquently moving the Motion and to my leader, Sen. Wetangula, for expounding on this Motion when he seconded it and laying the basis for informed debate.

The people of Kenya adopted the Constitution of Kenya 2010 overwhelmingly because we all wanted a break from the past constitutional order which placed too much power at the centre and which placed too much power in the hands of a few individuals and the small number of institutions. Therefore, Kenyans deliberately chose to share power by spreading it across many institutions and even distribute some of that power to the counties through the establishment of county governments. The new constitutional order created new institutions including independent constitution commissions to guarantee checks and balances in the management of public affairs. A bicameral Parliament was also created with the two Chambers, the National Assembly and the Senate, each being assigned clear and specific mandates with details on how these mandates will be discharged.

Despite the good intentions of the drafters of our Constitution and the clear provisions in our Constitution itself, there is no doubt in my mind that there are people in this country, some of them in strategic positions who have put schemes in place to undermine this Senate, render it ineffective and irrelevant and they believe that in so doing, they will scatter devolution and go back to centralizing decision making.

Madam Temporary Speaker, you will recall that through the initiative of Sen. Sang of Nandi County, both Houses of Parliament passed legislation to provide for the establishment of the County Development Boards to provide a forum in each county for consultation between the various elected leaders together with key players in matters relating to development activities within the counties. You are also aware that this law, although it was ultimately assented to, has actually not seen the light of day because some governors got together and decided to frustrate the implementation of this law.

In my own county, and I am sure in a number of other counties, county governments receive money, other money will come from the national Government to finance those activities which have not been devolved. Of course, MPs also received money for maintenance of roads and also for other activities through the CDF.

Madam Temporary Speaker, there is no coordination. For example, leaders in my own county have not been able to meet even to discuss challenges which emerged as a result of this new arrangement. There is no forum whatsoever. All we can do is meet in funerals, rallies, barazas and informal meetings. There is no formal forum to discuss questions of coordination.

Today, a Member of Parliament will want to do a road leading from point A to B. The county government will also be doing the same road starting from point B with the hope of completing the road at point A. So, two authorities are working on the same road. What do you expect out of that? There will be duplication and wastage of funds. There will be nobody to be accountable for the use of funds. This is exactly what we were trying to address, but the efforts of the Senate were frustrated.

Madam Temporary Speaker, the National Assembly, despite a Supreme Court advisory, continues to hold the view that we, in the Senate, have no role in the division of revenue between the two levels of Government. I believe that this is not accidental; it is part of that scheme. The latest decision by the National Assembly to reallocate money intended for key constitutional institutions, including the Senate, is part of that scheme, in my view.

The question you ask is: What was the motive for the removal of the Kshs1 billion kitty? What instigated that removal? The Kshs1 billion that was intended for monitoring and evaluation of the funds allocated to county governments had been negotiated, discussed exhaustively and agreed upon. It was not contested at any one moment. What prompted the removal of that money? Why did the National Assembly suddenly come up with the decision to remove the money? What prompted the reduction of the money allocated to the Judiciary and other Commissions?

The Members of Parliament are today telling us that they wanted to take that action to discipline the Senators and reduce them to size for making amendments to the Division of Revenue Bill. They wanted to discipline the Senators for fighting for more funds to the counties. They wanted to discipline the Senators for fighting for more money for Level 5 hospitals. That was the motivation for the action by the National Assembly.

In reducing the allocation to the Judiciary, Members of the National Assembly were expressing their anger at the recent court decision regarding the legal status of the Constituencies Development Fund (CDF). The reduction of money to the Salaries and Remuneration Commission (SRC) was a message particularly to Madam Sarah Serem on who calls the shots. However, the effects of all these; removal of Kshs200 million from the SRC, money intended to meet recurrent expenditure of that Commission, will virtually render it ineffective. Then you can guess the impact to the country of that kind of an eventuality.

Madam Temporary Speaker, the action by the National Assembly, in my view, was ill motivated, selfish and malicious. It was intended to intimidate independent

institutions which are critical to good governance. Unfortunately, the action by the National Assembly will frustrate the activities and programmes of these institutions. If you look at the Judiciary, it may be compelled to curtail some of its activities. In other words, they will not be able to enable Kenyans access justice in a number of parts of this country and yet that is the target that we had set for the Judiciary. We will be setting the Judiciary for failure through this action.

All these are very unfortunate but I am glad that we have a Motion today with very good intentions. I think that this Senate should be committed to ensuring the full protection of the Constitution. We should stand together to ensure that constitutionalism and the current Constitution to which we are committed, is fully protected. I strongly endorse the appointment of the Select Committee as proposed to study these matters in detail and make appropriate recommendations, hopefully with the view to strengthen the Senate.

I feel very frustrated as the Senator for Kisii County because I am unable to discharge my functions as would have been expected of me, because I have not been enabled. I am unable to travel across all the nine constituencies of the county or access all the 45 wards of the county to understand the aspirations, challenges that the people are facing and how the money that we send to the counties is used. I am unable to do all that. I was hoping that this provision would have enabled me to do so and that is why I strongly support this Motion. I hope that at some point, we will be able to get somewhere if we all stick together as Senators.

Thank you, Madam Temporary Speaker.

Sen. Mositet: Asante sana, Bi. Spika wa Muda, kwa kunipa nafasi ili nichangie Hoja hii. Kwanza, nawashukuru Wakenya kwa sababu mwaka wa 2010, waliweza kuzungumza na kuona kwamba kile kilichokuwa kinaturudisha nyuma ni Katiba tuliokuwa nayo wakati huo. Kwa sababu hiyo, tulipata Katiba mpya ambayo yapendeza na inampatia mwananchi wa Kenya nguvu. Namshukuru sana Spika na viongozi wetu wa Seneti kwa kuamua kwamba siku hii ya leo ni muhimu sana kwa Seneti kuzungumzia maneno muhimu.

Ningependa pia kushukuru Kamati ya Fedha, Biashara na Bajeti inayohusika na bajeti hapa Seneti kwa sababu ilikaa chini, ikapitia Bajeti iliyopendekezwa. Waliona kwamba kulikuwa na umuhimu wa kaunti kuongezewa pesa. Kwa sababu hiyo, nashukuru na kusema kwamba hata baada ya malumbano na Kamati hiyo kuleta hoja hiyo katika Bunge la Seneti na hata tukapata Kamati ya Uwiano ya kuafikiana juu ya kiasi cha pesa ambazo zingeenda kwa kaunti zetu.

Hata kama kila upande ulishikilia msimamo wake, wanakamati waliochaguliwa na Seneti walionyesha uzalendo kwani walielewa kilichowapeleka pale. Walikubaliana pesa hizo zipunguzwe hadi Kshs3 bilioni. Nawapongeza sana kwa hayo. Ninapongeza Mbunge aliyeweza kushikana na wawakilishi kutoka Seneti kwa kuona kwamba kulikuwa na Hoja.

Bi. Spika wa Muda, hata kama Bunge la Kitaifa lilipunguza pesa hizo kutoka kwa Bajeti ya kitaifa kwa zile pesa ambazo Seneti na korti ingefaa kutumia, ni wazi kwamba pesa ziliweza kuongezeka kwenda kwa kaunti. Hongera kwa Seneti kwa sababu pale mbeleni wale Wabunge wa kitaifa hawakutaka kaunti ziongezewe hata ndururu. Hata

kama walisema Seneti isije ikafanya chochote tena, lakini nataka kupongeza Seneti kwa sababu ilionyesha uhodari na ukweli kwamba serikali za kaunti zinahitaji pesa kwa sababu ya hospitali na shida nyingi ambazo ziko huko na angalau hiyo Ksh3 billioni zilipatikana zitaenda kwa kaunti zetu.

Bi. Spika wa Muda, Katiba yetu ni nzuri sana na inaweza kuendesha Kenya iende mbele kabisa ili tufikie mataifa ambayo yako mbele kimaendeleo. Ugonjwa wetu mkubwa ni ufisadi. Nikiangalie vile Bunge la Kitaifa lilifanya kwa kupunguza kiwango cha pesa kwa asasi mbali mbali za Serikali na Seneti, hii ni kusema kwamba Wabunge wa Kitaifa wanataka ufisadi uendelee. Kwa nini nasema hivyo? Huu mtambo wa IFMIS ambapo tunasema kaunti zote ziunganishwe na kauti ndiyo malipo ya pesa yawe tu ya kupitia kwa makaratasi ili tumalize ufisadi. Ili bunge za kaunti ziweze kujisimamia na kutumiwa pesa bila kupitia kwa magavana ambao wanaweza kutumia pesa hizo kwa miradi mingine, lakini Bunge la Kitaifa lilipunguza pesa hizo ili ule mtambo usiweze kufikia wale.

Jambo lingine ni kuhusu korti zetu ambazo tunatumia kwa wavunja sheria ambao wamenaswa kama kuiba mali ya umma lakini pesa zao zilipunguzwa. Hii ni kuhimiza ufisadi. Itakuw shida kubwa kwa Maseneta e ambao kwa miaka miwili wamejaribu kupigana na ufisadi kule mashinani kwa sababu wanahitaji nguvu ili waweze kufika pale. Hiyo nguvu ilikuwa ile Kshs1 billioni lakini ambayo iliondolewa na Bunge la Kitaifa. Ni nani atalinda na kutetea matumizi ya Kshs290 bilioni ambazo zimetumwa kule mashinani? Hiyo ni kama kusema ufisadi uendelee. Taifa limefika mahali ambapo maombi yanatakikana.

Tarehe 28 tulikuwa na maombi ya kitaifa na baada ya hiyo, ile hekima tuliona Wabunge wa kitaifa wamepewa ni ile walienda kutenda pale. Juzi, tuliona vile walimtendea Dkt. Juma. Aliambiwa kuwa ana shahada na ujuzi wote lakini kwa sababu aliwakataza Wabunge kufika kwa ofisi yake, na sio Wabunge tu wa kitaifa pia Wabunge wa Seneti, ilikuwa ni shida. Sisi kama Bunge la Seneti hatujapiga kelele, hatujasikia Mbunge yeyote wa Seneti akisema kwamba kwenda kwa Dkt. Juma ni makosa, ama ile barua ambayo iliandikwa tukaona yale waliyoyapata.

Mimi kama mmoja anayemwamini Mungu sana, wale ndugu zetu sijui ni wingi unaowasumbua na kama ni wingi unawasumbua, ningeomba wakati Miswada ambayo inaguza taifa nzima kupelekwa na kwenda kushambuliwa kwa njia ambayo haifai, na ambayo haina hekima kwa wale viongozi ambao wananchi waliwapigia kura wakijua watalichukua taifa na kulipeleka mbele, imefika mahali na tuseme kwamba roho mtakatifu aweze kurudi kwao. Watafute maombi mengine kama ni Wakristu wapakwe mafuta na kama ni Waislamu waende kuhiji ndio wakirudi waweze kupata hekima.

Nasema hivi kwa sababu hekima ni kitu cha maana kwa kiongozi. Kiongozi anayependa taifa lake ni yule anajishusha kama vile Seneti haikuona inahitaji zaidi ya Kshs1billion au malumbano ya hiki na kile. Tuliona tukijishusha chini mwaka wa 2013/2014, 2014/2015 na hata wakati huu bado tunajishusha, wale pia wanafaa kujishusha ili tuweze kuhudumia taifa hili kwa njia inayofaa.

Bi. Spika wa Muda, kama nikuonyeshana nguvu za kila mmoja basi taifa hili haliwezi likasonga mbele. Sisi sote tumeenda shule na vyuo vikuu na tunajua tuna waalimu ambao wanasomesha pale, na wana uwezo wa kuangalia mitihani ili tuweze

kupita, hatujawahi kusikia siku moja kwamba wanatumia nguvu zao kuwakataza watu haki zao. Ningeomba baadhi ya Wabunge, kwa maana sio wote lakini kuna wengi wao - Sijui ni wingi wao kwa sababu wako 290 inawasumbua?

Heri kabla Hoja hizo kupelekwa, waweze kuziangualia na kuzipitisha, wawe wanapata nafasi katika vikao vya Kamukunji na wawasikilize wataalamu ili waweze kuelewa Hoja ambayo iko mbele yao, ili wasije wakachukua ule mwenendo kwamba wamesema jambo bila kulifuatilia. Ukikuta watu wanakimbia na wewe unakimbia bila kuelewa wanakimbia kwa sababu gani, baadaye ndio unasema mimi ndiye ningesaidia hii na kwa nini ilifanyika halafu hasara inaingilia taifa. Hii inafanya wananchi wetu kujiuliza walichagua viongozi wa aina gani. Hekima iliwapotea ikaenda wapi na kila Jumapili tuko kanisani?

Tofauti yetu na Wabunge wa kitaifa ni kwamba mimi kama Seneta ninataka pesa ziende kwa Kauti ya Kajiado, na ningeulizwa ningesema ziwe nyingi kabisa. Seneta Wetangula wa Bungoma pia anataka vile vile. Kwa hivyo, tunakubaliana pesa ziende kule mashinani, lakini wale wanataka mradi wa kwao tu. Mimi najiuliza ndio ili taifa liwe taifa, viongozi walipigana na Uhuru ukapatikana. Ndio tupate ukombozi wa katiba wengine walifanya vile vile. Katika taifa ili ugonjwa mkubwa ni ufasidi. Mambo mengi yamesemwa kuhusu Wabunge wa Kitaifa na bado wanaendelea na ule mwenendo. Jameni, walio na hekima katika Bunge lili, tafadhali wasimame na wengine na waonyeshe njia kwa sababu tumepotea na tunapaswa kwenda kwa ile njia ambayo hekima inatuonyesha ya kwamba taifa ili litainuka tukifanya hili.

Bi. Spika wa Muda, nikichangia upande wa Bajeti ambayo ilipitia hapa, kweli kabisa tuliona hakuna pesa zingine ambazo zinahitajika kupelekwa kwa kaunti. Pesa za unyunyizaji mimea maji ni shughuli ya kaunti. Zile pesa zingefaa kwa kila kaunti. Zikienda pale, ni wachache watakaopata. Kama kila kaunti ingepata, wangehakikisha usawa upo kwa vile kila wodi ingekuza mimmea.

Tuangualie pesa zilizotengewa NYS. Ninavyozungumza sasa, lori zao zinachukua mawe kutoka Kaunti yangu, zinapitia upande wa Ongata Rongai na zimeharibu barabara. Hata wakiambiwa wamwage mawe lori tano katika hiyo barabara wanayopitia ndio aghalabu iwe sawa, hawajali. Barabara nyingine inayotumika ni ile inayotoka Kitengela hadi Ongata Rongai ilhali kaunti yangu hailipwi hata ndururu.

Bi. Spika wa Muda, mimi ninaonelea umefika wakati Wabunge wa Bunge la Kitaifa wajaribu kuangualia usawa na ugawaji wa pesa uko namna gani. Hata kama ni CDF, Katiba ni wazi na hatufai kujidanganya kwa kusema kuwa tunaweza kuieweka Katiba kando. Katiba inasema wazi wazi pesa ziwe kwa kaunti na pia katika Serikali ya kitaifa. Iwapo wanataka kurekebisha CDF Act ndipo miradi iwe ya kitaifa hasa ya upande wa elimu, pesa hizo basi ziende kwa Prof. Kaimenyi. Hakuna njia nyingine. Ule Mswada lazima upitie kwenye Seneti na itakapofanya hivyo, hekima itupate na tuhakikishe kwamba pesa hizo zimetumika vizuri.

Ninaunga mkono.

Sen. Hargura: Thank you, Madam Temporary Speaker. From the outset, I would like to support this Motion. I also thank the leadership of the Senate for calling this Special Sitting and coming up with this particular Motion. We are going through very difficult times as a country where the public has agreed on the way forward.

We voted for a new Constitution in 2010 and now it is leaders who are trying to resist what the public voted for. In the new Constitution, the National Assembly has been given the powers to consider and approve the revenue and expenditure estimates as per Article 221. We are getting to this because, initially, the Executive would prepare the Budget and read it on the Budget day. Things would have already been done and we would just be given a very bulky printed estimates book to check whether we have anything in it or not.

The reason why they have been given the opportunity to consider and approve the estimates is to make sure that from the beginning, elected leaders and people's representatives are involved to ensure that there is fair distribution of national resources to various parts of this country and sectors.

Madam Temporary, Speaker, I would also like to take an issue with the National Assembly who are zealous in doing that particular responsibility. Article 221(2)(a) states that these estimates should also include estimates of the Equalisation Fund. We are now on the third year since we had these new institutions but at no time have we seen it, neither have I heard any Member of the National Assembly questioning where the Fund is. The particular Article that they are using to check these estimates has a requirement that it has to be part of that estimate. So, they are not even checking very well what their responsibility is. That is why we do not see it whenever we have considered the Budget.

There is also a requirement that we make sure that there is equitable development because initially, those who made the estimates have done it in a skewed manner that resulted in marginalization and political patronage. We voted for this Constitution to cure that. Unfortunately, that is the same Article which the National Assembly is using to now bully other institutions created by the same Constitution.

Madam Temporary Speaker, in using authority invested in any individual or office under this Constitution as quoted earlier, Chapter 6 clearly states that authority is a public trust which has to be exercised in a manner which is consistent with the purpose and objective of the Constitution. I understand that to mean that the main issue which Kenyans voted for is devolution which will guarantee equitable sharing of resources and separation of powers of various arms of the Government to make sure that Kenyans get their rights. That could be the main purpose and duty of this Constitution.

One also has to demonstrate respect for the people of Kenya which we do not see at all in the acts of Members of the National Assembly. In the separation of powers, one of the things which we pushed for was an independent Judiciary. This is because we had had a history of our Judiciary being manipulated by the Executive, cases taking forever and a lot of backlogs. That is why we voted for an independent Judiciary which I think the Judicial Service Commission (JSC) has tried to achieve. They have tried to devolve services as much as possible and employ more staff. Of late in my own county, I have seen mobile courts.

I represent the largest county in this country where we even have centres which are over 500 kilometres from the county headquarters where the law courts are based. Of late, the Judiciary has tried to make life easy for Kenyans by having mobile courts in the district headquarters some of which are even 300 kilometres from the county headquarters.

Madam Temporary, Speaker, by denying the Judiciary money for capital allocation, it means that rolling out and bringing services closer to the people and efficiency in clearing the backlog of cases will not be attained. We are having a National Assembly which is making sure Kenyans do not get what they voted for. So, they are not actually discharging their duties in line with what Chapter 6 says to which some Members already alluded; that they are abusing office and that needs to be checked.

In terms of devolution, which is the main gain that Kenyans expected from this Constitution, we have a Kshs2 trillion Budget out of which we proposed that Kshs280 billion be allocated to counties. When we checked, we realized there was need to add something to take care of the health sector. It has been said before that money is still kept at the national Government while the sector is fully devolved but it has now become the business of the National Assembly to ask where the extra Kshs7 billion will be gotten from.

My understanding is that it is the Treasury which is supposed to have that headache; where to get the extra Kshs7 billion because they are the ones who came up with the Budget Estimates, but now the National Assembly is giving itself the duty of looking for the money. That is being insincere. If the need was genuine, then it would have been the business of the Treasury to come up with that money but not the National Assembly trying to look for where to get the Kshs3 billion. Basically they are not working in the interests of this Constitution.

Madam Temporary Speaker, Sir, with regard to IFMIS, what we have is a system where we have lost track of our expenditure because everybody is using paper. Budget estimates are changed left, right and centre, but if you capture it through IFMIS right from the beginning, then it will be easy to control how that budget is spent. It will also be easy for the Controller of Budget and the Treasury to quickly release money to the counties. We have been having a problem with absorption in the previous system because these systems were not being used and, therefore, efficiency was lacking.

If the National Assembly feels that in the case of IFMIS there is no need of rolling it out, then we are saying that we should operate in the old system where we can easily hide our misdeeds where it cannot be easily reflected in the system. We also have the issue of the county assemblies which have not yet been connected. When we had a meeting with the County Assembly Speakers, that is one of the issues we discussed; that we want to have a separate accounting system from the county governments'. One of the issues was to be directly connected to the IFMIS. If IFMIS is curtailed through budgetary cuts, then we do not expect the system to work.

We have leaders in the National Assembly who are trying to make sure that this Government does not move and the country's Constitution is not implemented. They have even gone very far to make sure that they make as much money as possible from the Government system using these powers. The other day it was reported in the Press that some of them went to State House and told the President that with regard to the issue of Monica Juma, he had to open the State coffers to soften the ground. If you can go to the extent of telling the President to bribe you in order to approve your appointees, then what can you not do? As Kenyans, we have to think of the calibre of the people we are electing because this is our own making.

Madam Temporary Speaker, I would like to support the formation of the Select Committee. As it has been said, that is a step forward in the right direction. Instead of us just talking, we should take action and let that Committee be formed with clear terms of reference. They should come up with very concrete action points to ensure that the spirit and intent of this new Constitution is attained by Kenyans. Their terms of reference should ensure that devolution is protected because that is what Kenyans voted for. The Constitution intended to ensure that there is equitable distribution of resources; movement from the centre and that has to be protected because that is what we had been fighting for.

Institutions should also be strengthened. Even though those who came up with the Constitution did not want a strong, Senate we are now seeing the need for a strong Senate to defend devolution because the National Assembly is not for it. The Judiciary should be as independent as possible because this is where some of these issues will end up. Much as we may not like how independent commissions are working, that is the responsibility they have been given and they are Kenyans performing duties for this country. They are not foreigners. One should not feel that he is more Kenyan than the other. The issue of separation of powers has to come out very clearly because that is the main issue.

Madam Temporary Speaker, the Members of National Assembly will not like to part ways with CDF, but they have not realized that the powers they have are as a result of separation of powers. You cannot be the ones making the Estimates and then following them down there and then implementing. They should not have anything to do with implementation. The CDF should just die a natural death because that is what the Constitution requires. Legislators should do legislation and oversight and not implementation.

Unfortunately, there was a time a legislator said that the Senate should be disbanded. The reason he gave was that Senators do not have any funds to implement projects. If that is the mentality of our legislators in the National Assembly; that they are there because they have funds to implement projects, then that person should be somewhere in the Executive. He should look for a job as a Principal Secretary or a Cabinet Secretary and not in the legislature where estimates are brought for approval to make sure that there is fairness.

When they follow the same funding, that is the reason why they fight officers. The only reason they give is that the officers do not listen to their demands. The demands range from asking for projects or asking the particular officer to misuse his or her powers to punish somebody because that legislator does not get the support he wants from that public officer on the ground. We are told that the CDF will be limited to national Government functions and the national Government has a presence on the ground. It has its own officers in virtually all sectors, be it education, roads or security and the Member of Parliament has no business being the implementer of any project on the ground.

Madam Temporary Speaker, this committee should be formed quickly; but it must be given a very clear mandate and terms of reference. If changes in the Constitution are required in order to strengthen this Senate, we have to check who to work with even if it means working with the Council of Governors.

I support.

Sen. Melly: Madam Temporary Speaker, I also want to take this opportunity to thank the leadership of the Senate led by the Senate Majority Leader and the Senate Minority Leader for giving us this chance to come together and chart the way forward of what happened the last few weeks as far as issues of Budget are concerned.

At the outset, I must say that from the time we started debating this Motion, we all appreciate that we now must be united as the Senate of this country. It is not about which party you come from; the matter before us calls for all Senators irrespective of the party they come from to come together, reason together and protect the institution of the Senate that was established to deal with issues of the counties.

Madam Temporary Speaker, two-and-a-half years down the line, this House has operated without any facilitation whatsoever. We have never had any budget allocation to make sure that we do our oversight job from one sub-county to the other. I want to tell the Members of the National Assembly who made a decision to deny the Senate Kshs1 billion that for those past two-and-a-half years, we were able to operate without asking for any favour. We even went to the extent of using our own resources to ensure that we are in charge and that we oversight allocations to different sectors in our counties.

Kenyans are watching this space because from the time we came to this House with very many challenges on our way, the Senate has stood the test of time. From the kind of decisions this House makes from time to time, it is very clear that this is a House of good standing and we need to appreciate that.

Madam Temporary Speaker, if you look at what happened during the vetting of Dr. Juma as the Secretary to the Cabinet, you will appreciate that in the future, we will need hon. Senators to approve Government officers. The Senate should handle issues of vetting because we believe that this is a sober House.

Madam Temporary Speaker, there is a difference between us and Members of the National Assembly as seen today by Kenyans. First, a Senator tries to push for as much resources as possible to counties in order for the counties to progress. However, Members of the National Assembly are doing the opposite. It has gone to an extent that even Members of County Assemblies (MCAs) – for counties that we visited as the Senate to find about challenges they have been facing in doing oversight – appreciate that they also have the same challenges as we do today.

Secondly, Madam Temporary Speaker, Members of the National Assembly should know very well that they are not charged with giving resources to different departments and sectors of the Government of this country. Their role is just to make the budget. A time has come whereby the National Assembly should take its time to agree and say, “Today, we will give this House this much and we shall give this institution this much.”

Madam Temporary Speaker, we appreciate the fact that we have a bicameral Parliament in this country; the Senate and the National Assembly. When the Constitution talks of Parliament, we tend to think of the National Assembly. That is why, today, we are operating in a platform completely out of what the Constitution requires of us because we believe we have a role as Senators. Any other time an issue comes to this House, Members of this House have debated it in a sober way and we made progress.

Madam Temporary Speaker, there is no other institution that is charged with oversight of county funds apart from the Senate. The Kshs1 billion denied to Senators was meant for oversight. If you compare the amount of money allocated to county governments this financial year to what the Senate had asked for to do its mandate of oversight you will find it, it is unfortunate and uncalled for. A time like now when we are doing our best as Senators to ensure that we have more resources allocated to counties so that we fight poverty, this House has been denied Kshs1 billion to oversight Kshs287 billion allocated to counties.

We are not bitter today as a Senate. We are saying that it has reached a time when Members of the National Assembly should think the way we think as Senators. We appreciate that we have young Senators in this House. However, the kind of decisions we make today, though we are young, are quality. If you compare us with Members of the National Assembly, some of who qualify to be our parents however, the kind of decisions they make do not reflect their numbers and the experience that they should have as hon. Members.

Madam Temporary Speaker, any leadership that does not appreciate criticism is not good. Today, you are criticised but tomorrow you look for a way to revenge. All the institutions whose budgets have been slashed and the Senate's Kshs1 billion being done away with is because at times, we did not agree with Members of the National Assembly. I want to inform them that budget making does not amount to cutting off budgets allocated to other institutions of Government. For example, look at the Judiciary. The Judiciary is an independent institution. It is supposed to make decisions that are not biased. However, it has lost Kshs800 million; money that was to be used to employ more staff so that justice is not delayed. That would have meant that the work of the Judiciary would be done speedily. However, this is not going to be the case with this reduced budget.

Another institution that was affected was the Salaries and Remuneration Commission (SRC). The SRC is an independent Commission. We all appreciate the role that the SRC is doing to date. The current exercise by the SRC is to ensure that remuneration that goes to Government officers is in line with the jobs they do. However, its budget was slashed. It is very clear that we will have challenges as a Senate because Kshs1 billion meant for oversight was slashed.

Madam Temporary Speaker, as I conclude, I want to say that as we contribute to this Motion today, Kenyans are seeing who the enemy of devolution is. Millions of Kenyans voted for the Constitution. One of reasons why a number of Kenyans spent their time and resources to support this Constitution was the issue of devolution. They were sure that one day and one time, places which could not access Government resources for the first could access them. We do our role as a Senate to ensure that more resources go to our counties. However, the Members of the National Assembly have made a decision to go against this.

In the first place, they are the people who are supposed to protect devolution. The Members of the National Assembly come from counties. Despite the fact that they were not elected across the counties as we were, the fact remains that they come from counties. For example, if today, they reduce the allocation which was supposed to go to every

county, they should ask themselves whether they are from the counties or they live in another planet so that when it comes to allocation of resources, they can reduce the money because, in any case, they do not belong there.

Madam Temporary Speaker, it is very clear – I want them to understand and appreciate – that this Constitution was passed by millions of Kenyans with the hope that there will be two Houses of Parliament that should respect each other and work together to ensure that this country becomes successful.

Madam Temporary Speaker, lastly, I urge Senators to put aside their interests for the time being. The interests of millions of Kenyans who passed the Constitution require us. We must sit, stand and walk together until we ensure that this country is free from people who go against the Constitution which they passed themselves. It will be very unfortunate if the billions of shillings we have allocated to counties cannot be oversighted to ensure that they are spent properly. It will be useless to allocate Kshs287 billion to counties but deny the Senate Kshs1 billion only to oversight over departments and functions of the counties where the money has been allocated.

For the first time – we all appreciate – the spirit that we have today is very clear that we are a united House. I agree with my friend, Sen. Murkomen. He said that this is the only way to make the Senate a House that is strong and a House that can make decisions. If a referendum is the only way, then it is high time we went for it because what the National Assembly did was uncalled for. Two-and-a-half years down the line, we have suffered. We are waiting to suffer another two-and-a-half years again and then most of us will be sent home. I am a young Senator and I am not ready to go home.

I will fight until the end to ensure that I remain relevant. This is because we sit here and make a decision, but tomorrow the same decision is overtaken by events. People are asking themselves why we need the Senate. We must show them that we are an honourable House and have a role to play in this country in terms of ensuring that our counties succeed. As the Senate, we should counter poverty in our counties and strive to ensure that children access education and medical facilities all over the country at no cost.

Madam Temporary Speaker, I beg to support.

The Temporary Speaker (Sen. Ongoro): There being no further requests, I call upon the Mover to reply.

Sen. Murkomen: Madam Temporary Speaker, I am extremely impressed by the manner in which this House has, again, expressed itself in a very sober manner, but in the best interest of the country. While discussions were going on in this House, I have received so many SMSs and calls from people congratulating this House and saying that they did not know the depth of expertise and knowledge that is bestowed in this House.

Madam Temporary Speaker, listening to a lot of the contributions here, I have realized the weighty nature of this matter beyond what I initially thought even when I moved this Motion. It is simple; the facts speak for themselves. One of the most unique contributions I had heard was the question of the Budget Policy Statement (BPS) which was passed by this House. That BPS provided that there is need to strengthen oversight in the counties. It went ahead to say that the Senate needs to be given resources to strengthen matters of oversight. That BPS is now hollow because it is just a statement

without action, because there is no resource mechanism for the implementation of that BPS.

Madam Temporary Speaker, Sen. Billow Kerrow provided a very good account of the manner in which the National Assembly abused their powers by telling the nation that the reason they did whatever they did was to punish the institutions. That amounts to corruption under Chapter Six of the Constitution, because they are not using their office for the interest of the nation. They are not being good stewards. A trustee is not the beneficiary. The beneficiary of this office is the people of Kenya. As trustees that have been elected by the people of Kenya, we have the responsibility to conduct ourselves in a manner that befits the trustees.

It is very sad that every time in our sister House, the National Assembly, both sides of CORD and Jubilee come together either with the interest of increasing their salary, fighting for things that are related to personal benefit or punishing other people, like in the case of Dr. Monica Juma. To implement the Constitution fully, the issue of misuse of office must be dealt with. Therefore, the Speaker of the National Assembly, hon. Justin Muturi, has a great responsibility. The Majority Leader and Minority Leader in the National Assembly must demonstrate leadership and come back to the table where negotiations, discussions and mutual respect can be done.

What I hear this House emphasizing again in the presentation of every Senator is that we are not asking that this House be sympathized with. We are asking that this House be allowed to perform its responsibility without interference. We are willing to go the extra mile to ensure that we carry out the constitutional and legal amendments, provisions of the law and put in place the necessary policy to ensure that this House will exist beyond us and be a House of posterity.

Madam Temporary Speaker, I will repeat again that the leadership of both sides of the political divide in this country, whether it is the CORD or Jubilee, have failed this House. If you look from the Jubilee, we had a great responsibility to guide this rogue National Assembly to ensure that they respect the institution of the Senate. There is no enthusiasm in our leadership and the Executive in terms of being ready to make this House as strong as it ought to be. That enthusiasm is seen when it comes to other institutions. When the National Assembly has an issue, we see that concern and enthusiasm by the Executive.

Equally, in the CORD side, there is absolutely no regard to the Senate even when the Senate is in the leadership of CORD. I looked at the draft of *Okoa Kenya* and there is no single sentence or provision on strengthening the Senate. That means that there is a political conspiracy in both sides of the political divide, not to ensure that the Senate is strong. This 15th June, 2015 is a very defining day, because it is time for us---

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Madam Temporary Speaker. Is the honourable Acting Senate Majority Leader right to say that because there was no mention of reforming the Constitution to enhance the position of the Senate and, therefore, logically that leads to a conspiracy between CORD and Jubilee to undermine the Senate, when he knows fully well that that Bill has been put in the public domain for people like him to comment and adjust with their input what is good for this nation?

Sen. Murkomen: Madam Temporary Speaker, indeed, the Senator for Kisumu has just confirmed that in the inception, thinking and formulation of CORD's referendum question, there was nothing about the Senate. That is why I said that today is a defining moment, both for those who are on the CORD and Jubilee sides, to start---

Sen. (Dr.) Zani: On a point of order, Madam Temporary Speaker. Is it in order for Sen. Murkomen to purport that he is in a better position to allude whether or not to have the referendum question for the *Okoa Kenya* Bill, when it is still going to be revised after consultation with the various stakeholders?

The Temporary Speaker (Sen. Ongoro): Senator, I think you are making your contribution and referring to a document. Just elaborate on the point that you are trying to make.

Sen. Murkomen: Madam Temporary Speaker, both Sen. (Dr.) Zani and Sen. (Prof.) Anyang'-Nyong'o are actually confirming that in the initial stage of *Okoa Kenya* provisions there was nothing about the Senate. That is the point that I am making. Let us not be defensive. I have said as much about the Jubilee Coalition.

Today, 15th June, 2015, is a defining day. Both sides of this House are saying that we are willing to move from our positions. The CORD and Jubilee sides can sit now together as Senators and determine how best we can ensure that the Senate becomes a strong institution. So many people have accused me and others that maybe we had stopped our position in terms of pushing for the strengthening of this House.

"Mr. Speaker", I want to make it abundantly clear that whereas there can be change of strategy, I have never changed my principle.

Sen. (Dr.) Zani: On a point of order, Madam Temporary Speaker. I am sorry to interrupt Sen. Murkomen, but is he in order to refer to you as "Mr. Speaker?" It is quite clear from where I sit that you are "Madam" and it should be clear to Sen. Murkomen as well.

The Temporary Speaker (Sen. Ongoro): Sen. Murkomen, actually I did not pay attention to that, but in case you attempted to refer to me as "Mr.," please, correct that, as pointed out by Sen. Zani.

Sen. Murkomen: I have lost the point I was going to make. I was challenged to clarify your position, whether you are male or female because it is assumed that you are Madam Speaker. It has not been confirmed but it is assumed.

(Laughter)

The Temporary Speaker (Sen. Ongoro): Senator, you cannot make that kind of ambiguous statement.

(Laughter)

I am either Madam Speaker or Mr. Speaker. Can you correct that and proceed?

Sen. Murkomen: Madam Temporary Speaker, now that you have confirmed, it is Madam Speaker. That is on a light note.

I have been consistent on the need to strengthen the Senate and devolution. Sometimes people confuse change of strategy from change of principle. I have been firm on the principle but I have a different strategy from my colleagues.

Time has come that we must marry the two strategies together for us to achieve a common goal. This could be a grand opportunity for each one of us on both sides of the political divide to strike a deal that will ensure that our children and grandchildren, as you said in your contribution, will benefit from both devolution and a working strong Senate.

Madam Temporary Speaker, as I almost conclude, I reiterate the intention of this House in ensuring that more money goes to the counties; we added Ksh7 billion and our intention was not for personal gain. In fact, the contradiction here is that the Majority Leader from the National Assembly, Hon. Duale, is a beneficiary of that allocation more than me because Garissa County which has a Level 5 hospital is getting money; on the other hand there is no Level 5 hospital in Elgeyo-Marakwet. It is a contradiction because the Chairperson of the Budget and Appropriations Committee of the National Assembly, Rev. Mutava Musyimi, is a beneficiary of that money because Embu County where he comes from has an allocation for the Level 5 hospital, which is not there in Elgeyo-Marakwet County.

Madam Temporary Speaker, that contradiction tells us that it is important for leaders of this great Republic to look at issues for the benefit of the people. So many people here have said that we are having a supremacy battle between us and the National Assembly; far from it. The truth is that the people who are being fought in this House are those who are having the interest of mwanachi at heart. The only punishment that we have received is that we have been sacrificed because we have the interest of mwananchi at heart. We have done so, so that the people of Garissa who are suffering from snake bites can get medicine in a Level 5 hospital in Garissa. That has now become an undoing. Those of us who do not come from places where Level 5 hospitals are situated should be punished for ensuring that those people at the local level get the resources they require.

Madam Temporary Speaker, the message that we are sending to our brothers in the National Assembly is that the Senate does not mind suffering. I reiterate what I said in the morning; what Apostle Paul said: "That it is okay that I am suffering, it is good that my suffering will lead to the salvation of many." Therefore, we may suffer for a moment but I think the salvation of Kenyans on matters devolution will be achieved if we stand firm as a House. That is why I am proud of this House. We stood firm when it comes to allocation of money, on matters of transfer of functions and on matters of oversight in the county.

In fact, let me propose this; after this Budget period, my Committee is willing to go the extra mile to audit all functions that were transferred but are still being funded at the national level. That is a very critical and important exercise that we must carry out. We must ask ourselves how many roads which are devolved are still being done by the national Government. How many hospitals are still being run at the national level? Then, we table the report in this House and say "behold in the next financial year, we do not want to see item x, y or z in the national Government budgeting because that money is supposed to go to the counties."

That is why this House is very sober. It is a House that must look at things for posterity and from the perspective that tomorrow so-and-so will not be president and so-and-so will be the president or maybe tomorrow the person who is actually fighting the Senate--- I saw a Member of Parliament from Nairobi who is so critical about allocating money to the counties; and on one side of the mouth, he is saying that more money should not be given to Nairobi City County while on the other side of the mouth, he is saying that he wants to be the Governor of Nairobi. What a contradiction!

Tomorrow those who are denying the Senate money will come to this Senate; those who are denying counties money, will want to be governors. By the time they are there, they will be saying that these counties have not received certain resources.

Madam Temporary Speaker, I am very proud of this House and I want to advise the Members of the National Assembly and to our reverend, that Jesus said it would be easy for a camel to go through an eye of a needle than a rich man to go to Heaven. Those people can focus on the riches of this world but they must ensure these riches are distributed to the people of Kenya through devolution so that when they reach Heaven, as the book of Matthew says, welcome because I was poor but you gave me money; I was sick and you gave me resources to be treated at the hospital; I was going for maternity and you did the road to ensure that my child is born in a good place.

That is the kind of system we want and the kind of nation we want to build. I want to request our colleagues that those who will be nominated or elected to this Select Committee that we have proposed, they must go back to the HANSARD, and it must be transcribed, printed and given to the Committee because wonderful provisions have been expounded here, which must be reduced to propositions from Members to policy positions, to legal positions, to constitutional amendments for posterity and for the good interest of this nation.

Madam Temporary Speaker, I beg to move.

The Temporary Speaker (Sen. Ongoro) I want to put to hon. Senators that this Motion was moved in an amended form. I also want to put it to the Senators that in my consideration, the Motion does not affect counties and a voice vote will be taken.

(Question put and agreed to)

ADJOURNMENT

The Temporary Speaker (Sen. Ongoro): Hon. Senators, we have come to the end of today's Sitting. The Senate, therefore, stands adjourned until tomorrow, Tuesday, 16th June, 2015, at 2.30 p.m.

The Senate rose at 6.30 p.m.