



THIRTEENTH PARLIAMENT
THE SENATE
OFFICIAL REPORT



Fifth Session

Tuesday, 9th June, 2026 at 2.30 p.m.

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 9th June, 2026

*The House met at the Senate Chamber,
Parliament Buildings, at 2.33 p.m.*

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

The Speaker (Hon. Kingi): Clerk, do we have quorum?

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

Serjeant-at-Arms, kindly, ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

(Several hon. Senators remained standing in their places)

Hon. Senators, kindly take your seats, Senator for Kilifi County and your colleagues. I have been informed that we now have quorum. We will proceed with the day's business. Clerk, kindly call the first Order.

We are at request for Statements pursuant to Standing Order No.53(1). Senator for Mombasa County, the Hon. Mohamed Mwinyihaji Faki, proceed.

QUESTIONS AND STATEMENTS

STATEMENTS

KUTOSAFIRI UGHAIBUNI BAADA YA MKOPO WA
MAENDELEO YA BIAHARA ZA VIJANA

The statement is dropped.

(Statement dropped)

Senator for Trans Nzoia County, the Hon. Allan Chesang.

BUDGETING AND ACCOUNTING MALPRACTICES IN
TRANS NZOIA COUNTY

The statement is deferred.

(Statement deferred)

Senator for Samburu County, the Hon. (Dr.) Lelegwe Ltumbesi.

WORKING CONDITIONS OF NPRs IN SAMBURU
AND OTHER PASTORALIST COUNTIES

That statement is dropped.

(Statement dropped)

Senator for Samburu County again, Dr. Lelegwe Ltumbesi.

IRREGULAR ENGAGEMENT OF WORKERS ON CASUAL
BASIS BY SAMBURU COUNTY GOVERNMENT

Equally, that statement is dropped.

(Statement dropped)

Senator for Murang'a County, the Hon. John Nyutu.

DUMPING OF UNTREATED WASTE BY AVOCADO
PROCESSING FACTORIES IN MURANG'A COUNTY

That statement is dropped.

(Statement dropped)

The Speaker (Hon. Kingi): Next Order. Hon. Members, allow me, pursuant to Standing Order No.45(2), to rearrange today's Order Paper. We will move to Order No. 25.

Clerk, you may proceed to call that Order.

(The Speaker consulted with the Clerks-at-the-Table)

Hon. Members, we will start with Order No. 23. Clerk, proceed to call that Order.

MOTION

ADOPTION OF MEDIATION COMMITTEE REPORT ON THE FOOD AND FEED SAFETY CONTROL CO-ORDINATION BILL (NATIONAL ASSEMBLY BILLS NO.21 OF 2023))

The Speaker (Hon. Kingi): The Co-Chair, Mediation Committee to move the Motion.

Sen. Wakoli: Thank you, Mr. Speaker, Sir. I beg to move the following Motion- THAT, the Senate adopts the Report of the Mediation Committee on the Food and Safety Control Coordination Bill (National Assembly Bills No.21 of 2023) laid on the table of the Senate on Tuesday, 28th April, 2026, and that pursuant to Article 113(2) of the Constitution and Standing Order No.167(3) of the Senate, approves the amended version of the Bill.

This report contains the proceedings of the Mediation Committee on the Food and Safety Control Coordination Bill (National Assembly No.21 of 2023). The National Assembly considered the Bill, passed it with amendments on 23rd August, 2023. It subsequently transmitted its amendments to the Senate for consideration. The Senate considered and passed the Bill with amendments on Thursday, 21st March, 2024 and transmitted the amendments to the National Assembly seeking concurrence on 25th March, 2024.

The National Assembly approved the Motion on the report of the Committee of the Whole House on the consideration of the Senate amendments to the Food and Feed Safety Control Coordination Bill, (National Assembly Bills No.21 of 2023) on 18th October, 2024. The committee rejected some of the Senate amendments to the Bill warranting committal of the Bill to the Mediation Committee pursuant to Article 112(2)(b) of the Constitution.

The Speaker of the National Assembly appointed Members to the Mediation Committee on 22nd July, 2025 as required by Standing Order No.149(2) of the National Assembly Standing Orders, while the Speaker of the Senate appointed Senators to the committee on 20th May, 2025 under provisions of Standing Order No.116(2) of the Senate Standing Orders. The committee held one meeting to consider clauses of the Bill that were under mediation and subsequently developed an agreed version of the Bill in the meeting. It thereafter adopted this Report in the same sitting.

The committee is grateful to the office of the Speakers and Clerks of both Houses of Parliament for the logistical and technical support accorded to it in the execution of its mandate.

Finally, we express our appreciation to Members of the Committee and the committee secretariat for their patience, sacrifice, endurance and commitment to the assignment, which enabled the committee to complete the task within the stipulated period.

It is now a pleasant privilege and honour to commend this report to the House for approval on behalf of the Mediation Committee pursuant to Article 113(2) of the Constitution, Standing Order No.150(1) of the National Assembly Standing Orders and Standing Order No.161(1) of the Senate Standing Orders.

As I have just taken Members through, this Bill has been a thorn in the flesh of this House and the Government at large. The stakeholders gave their best for us to understand what the Bill talks about, value chains, storage and how Kenyans can benefit from it. Therefore, I want to request hon. Members, as we proceed to adopt this Motion, this Bill is going to turn tables in line with the Government's Bottom up Agenda to ensure the aggregation parks are valid and running, and that we open up the international market for our people and business people. So, this Bill is a vision that time has come for Kenyans to really harvest and enjoy the fruits of this country.

I want to stop at that and request, my good sister, who was a Member of the Mediation Committee, Sen. Beatrice Ogola, to second.

Sen. Ogola: Mr. Speaker, Sir, as I second the report of the Mediation Committee on the Bill that has been presented by none other than the Chairperson of the Committee on Agriculture, Livestock and Fisheries, I want to remind all of us that agriculture is key to this Republic. Through agriculture, we are able to be food secure. With food, we become not only a productive country, but also a healthy country.

I second.

(Question proposed)

The Speaker (Hon. Kingi): Now the Floor is open for debate.

Proceed, Senator for Nandi.

Sen. Cherarkey: Thank you Mr. Speaker, Sir. As I support this mediated version of the Bill, I want to congratulate the Chairperson of the Committee on Agriculture, Livestock and Fisheries and the Chief Whip of the House. I do not know why whenever we go for the mediated version of our Bill, Senators always become the Vice-Chairpersons. I saw it even in the Mediation Committee on the Division of Revenue Bill where Sen. Capt. Ali Roba was referred to as the Vice-Chairperson.

Under Article 113, Kenyans should understand that when we have different sets of amendments to a Bill, it is normally referred to the Mediation Committee. Therefore, this is a mediated version of the Food and Feed Safety Control Coordination Bill, (National Assembly Bills No.21 of 2023). The aspect of this Bill is very critical and important.

When you look at the schedule that was amended, the argument of the National Assembly in the First Schedule, as passed on the competent authorities, including the Ministry of Agriculture, Livestock and Fisheries, the Agriculture and Food Authority (AFA), the Kenya Dairy Board (KDB), the Kenya Plant Health Inspectorate Service (KEPHIS), the Pest Control Products Board (PCPB), The Fertilizer and Animal Foodstuffs Board of Kenya (FAFB), the National Biosafety Authority (NBA), the Kenya Bureau of Standards (KeBS) and Veterinary and Medicine Directorate (VMD), is that most of these directorates, have an internationally recognised character. Therefore,

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looking at the agreement or the proposal between the National Assembly and the Senate on these internationally acclaimed bodies is critical because they are internationally recognised. However, it should not be lost on us that agriculture is fully devolved.

In fact, on the standards and policies of running of agriculture, just like health, the Senate or the county governments must have a bigger role. I agree with the wisdom of the Senate that the counties must and should be given an opportunity on the issue on food and feed safety control.

I will be brief. I have looked at the Pest Control Products Board. I am happy to see Sen. Onyonka. I still pass our condolences, but we have duly appointed him as the Chairperson of the Men's Conference in the next session of 2027 for showing that you can have as many children as you can. So, we are proud of what he did as a service to humanity.

Farmers who come from Uasin Gishu, Nandi, Nyamira, Kisii, where Sen. Onyonka comes from and many other areas across the country have a challenge. The pesticides which were banned in the United States of America (USA) are still being sold. Therefore, when you go to our regions and across the country, there are higher cases of cancer attributed to pesticides and acaricides that we use in livestock and crops in the country. So, I am happy to see the introduction of the Pest Control Products Board in the Fifth Schedule of the amended version of the Bill. I hope that they will ban substances that have been banned in the USA. There used to be a problem in Lake Victoria, especially in the fishing community, where algae were floating and stifling--- It is still there and it affects the quality of the fish. When you come from Sen. Ogola and Sen. M. Kajwang's area, you eat fish.

So, we must agree on the issue of National Biosafety Authority (NBA). Do you remember when we said there were arguments in signing biosafety agreements between USA and Kenya? This issue of bio-safety included here is another security threat. We are moving from military hardware to bio-safety.

Another issue that I agree with the Senate and the National Assembly on the Mediated Version of the Fifth Schedule is the KeBS and the Veterinary Medicine Directorate. These are some of the proposals in dealing with the matters of health and culture in the list of competitive authorities. It should not be lost to us that the Agriculture and Food Authority (AFA), the Kenya Dairy Board (KDB), the Kenya Pest Control Board (KPCB) and others should have representation from counties. As a Senate, our role under Article 96 is to protect counties and promote their interests. In agriculture and the AFA, I am happy that now we are creating the sugar and coffee boards. Sen. Wakoli, the Chairperson of the Committee on Agriculture, Livestock and Fisheries pushed us and ensured that the Sugar Act was taken seriously.

Mr. Speaker, Sir, our role as a law-making House should not be lost on us. Yesterday, I watched Hon. Lady Justice (Dr.) Freda Mugambi-Githiru at the High Court during the impeachment proceedings of the former Deputy President. Hon. Lady Justice (Dr.) Freda Mugambi-Githiru is the only lecturer I recognise. She taught me law of succession; all the others are always pretending that they taught me. She made a very critical statement that the only law-making body in this country is Parliament. She said

that the role of the High Court or the Judiciary in this country is to only make recommendations and enrich the role of Parliament.

As a House, it should not be lost to us that we are the law-making House and we have the powers to enact laws as they come. Members of the Senate should be very keen in any decision making whether it includes passing this mediated version of the Bill, a Statement or a Motion because whatever we do here in the law-making process, will be subjected to a tooth comb process in another forum. That is why today as we speak, the Senate is supposed to pay Kshs50 million. I happy that we are going to appeal that decision of the High Court on the issue of fairness.

If it comes to us that Kshs50 million needs to be paid to the impeached Deputy President, I will request Sen. Sifuna Edwin Wetenya to be the chief guest, assisted by my brother, Sen. Richard Onyonka, so that we can raise that Kshs50 million. If you go to the parking lot of the Senate, we only drive the Toyota Land Cruiser Prado 120 that cost up to Kshs3 million. So, even if they were to attach our cars, they will need to take all the 40 Prados to pay the impeached Deputy President the Kshs50 million that he needs. I hope Sen. Sifuna will avail himself to be the chief guest even though he is busy with Linda Mwananchi matters. We can use this Chamber to raise the Kshs50 million plus, to pay what we have been asked to.

Mr. Speaker, Sir, the point I am trying to make is that as a Senate, we must take our work seriously. If we become lax and do not take our matters seriously, even in our committees, we will be subjected to another process that we will not enjoy as a country.

On this issue of food safety and public health, it is also a role of the counties. So, when we see a rise of diarrhea and other diseases that are as a result of contaminated food, especially food that is sold on the streets, we must be very careful because of the danger. Somebody who is a medic told me that on the aspect on food, especially in Nairobi City County and major towns such as Kisii, Kapsabet, Eldoret, Homa Bay, Bungoma, and many other places---

People like street food. In fact, I like eating *chapati madondo* in the streets because the food is always fresh unlike in Kempinski and other big hotels where their food has been in the fridge. When you want to eat fresh fish, go to Homa Bay town or Turkana and you will eat fresh fish. When you go to some of these hotels, most of their food has overstayed in the fridge and they cause food poisoning. Therefore, we must agree that on the concern of public health by the county governments, under this mediated version of the Food Safety Control Coordination Bill, we must ensure---

It is good that the Senator for Garissa County is here. I was worried when I saw that in Garissa---

The Speaker (Hon. Kingi): What is your point of order, Senator for Uasin Gishu County?

Sen. Mandago: Thank you very much, Mr. Speaker, Sir. I rise under Standing Order No.105, not to interrupt the Senator for Nandi County, but to ask if really he is in order to make sweeping statements that fish in Kempinski is kept in the fridge, that it is not fresh? Is the Senator for Nandi County not interfering with someone's business without proof that the fish in that hotel stays in the fridge and that it is not fresh?

The Speaker (Hon. Kingi): Senator for Nandi County, are you in a position to back those allegations? If not, then withdraw and proceed.

Sen. Cherarkey: Mr. Speaker, Sir, the Senator for Uasin Gishu County should know the use of similes and English semantics. He must listen to those of us who went to a school that has produced two presidents. I said “like”, I did not say “as” and I did not even complete the sentence. Why is he imagining that I mentioned the hotel he is mentioning? He should listen carefully.

The Speaker (Hon. Kingi): Just conclude your thoughts and abandon that line.

Sen. Cherarkey: I have graciously and religiously abandoned that line.

Let me finish. I was talking about public health in this very critical Bill. In Garissa, I saw patients suffering from the Dengue Fever sitting on the floor in a hospital. I am happy that Sen. Haji is in the House. I saw the governor throwing some Kshs1,000 to a patient saying that the Social Health Authority (SHA) was not working in the hospital. We must be careful on the issue of public health, so that we are not subjecting people---

I hope the people of Garissa County can see the sort of governor they have. How do you allow patients to sit on the floor at the Garissa Referral Hospital then just dismiss them without any accountability yet the issue of public health, including the quality of food that we take in hospital, is very important? Public health is a devolved function and counties must provide quality food to our people because food is very important.

Those of us who are maize farmers and come from Uasin Gishu County where Sen. Mandago comes from must ensure that maize is well stored, so that our people do not consume maize that has aflatoxins. The National Biosafety Authority (NBA) and the KEBS should and must be alert, so that Kenyans who continue to eat food---

I am happy Sen. Chute brought a statement on the issue of edible oils. When we inspected the edible oils, which were worth close to Kshs40 billion, we found that almost three quarters of the oils were spoilt. I appeal to the KeBS, the ones that protect the quality of food because any Kenyan who sees the mark of KeBS always has confidence that all is well, to make sure we adhere to approved standards.

I send my quick recovery notes to a Member of County Assembly (MCA) who was attacked in Kisii over his political differences. We wish him quick recovery.

The quality of services we receive from food kiosks, big hotels, the meat we consume and the maize we consume must be subjected to a proper testing process. I challenge the KeBS to ensure that if we see the KeBS mark anywhere in this country, it represents a mark of quality and integrity and that it guarantees that we receive proper food or any service bearing the mark.

Mr. Speaker, Sir, to allow my colleagues also to give their input on this mediated version of the Bill, I want to congratulate the committee led by the Senate Majority Whip, who is the chairperson, for a well-done job. I also congratulate the House for the mediated version of the Division of Revenue Bill, where we got Kshs454 billion set to go to the counties. Again, it is what the National Assembly is proposing, Kshs420 billion to counties, in the mediated version, that they should borrow notes from *Omwami*, Sen. Wafula Wakoli, so that they can understand how to negotiate better. We won and

counties will now get Kshs454 billion. We do not want to see people stealing from the Kshs454 billion going to counties.

Recently, one of the members of staff of the Nairobi City County was found with Kshs65 million in his house while the Ethics and Anti-Corruption Commission (EACC) is sleeping. I know other counties, including Nandi County, are in a worse state. The fact that we fight for resources to go to counties is not a license for people to steal, plunder, commit larceny, loot or rip off counties. We cannot allow that to go on. When I saw Kshs65 million being taken from the Syokimau home, I was ashamed of what the Kenyans think of us.

The EACC must be taken to task. If the CEO of the EACC cannot arrest these people--- The last time some Senators wanted to arrest the Governor for Samburu County, although he appeared today, we were led by Sen. Sifuna. If the EACC cannot arrest the corrupt, we can give that job to Sen. Sifuna because you saw he used 159 when he wanted to arrest the governor. That matter has since been resolved.

Mr. Speaker, Sir, we must protect the resources of our counties. We must ensure accountability and transparency on all our resources. With that spirited and emotional comment on this fact, I beg to support the mediated version of this Bill. I hope that, as a House, we pass it within seven days and His Excellency the President will append his signature, so that it becomes the law of the Republic of Kenya.

Mr. Speaker, Sir, I yield back.

The Speaker (Hon. Kingi): Hon. Senators, before we proceed with the debate, allow me to make the following communication.

(Interruption of debate on Motion)

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION OF TEACHERS AND STUDENTS FROM CONSOLATA SCHOOL IN NAIROBI COUNTY

Hon. Senators, I would like to acknowledge the presence in the public gallery this afternoon of a visiting delegation of three teachers and 63 students from Consolata School in Nairobi County. The delegation is visiting the Senate for an academic exposition.

On behalf of the Senate and on my own behalf, I extend a warm welcome to the delegation and wish them a fruitful visit.

VISITING DELEGATION OF OFFICERS FROM VARIOUS COUNTY ASSEMBLIES, INSTITUTIONS AND STATE DEPARTMENTS

I also wish to acknowledge the presence in the public gallery this afternoon of a visiting delegation of officers from various county assemblies, institutions and state departments. The delegation comprises 27 officers who are in the Senate to undertake

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training in protocol, etiquette and event management at the Centre for Parliamentary Studies and Training (CPST).

Hon. Senators, the programme has brought together the officers from the following institutions: The County Assembly of Mandera, the County Assembly of Siaya, the Malindi Constituency Office, the State Department for Blue Economy and Fisheries, the State Department for Broadcasting and Telecommunication, the State Department for Irrigation, the Ministry of Defence and officers from the Parliamentary Service Commission (PSC). On behalf of the Senate and on my behalf, I extend a warm welcome to the delegation and wish them a fruitful visit.

I will call upon the Senator for Nairobi City County to extend a word of welcome to the delegation from Consolata School and thereafter the Senate Minority Leader to extend a word of welcome to the delegation drawn from various counties and state departments in that order.

Sen. Sifuna: With your indulgence, Mr. Speaker, Sir, I wanted to request that you change the order of the welcome, so that I can take the contributions to the Bill after the Senate Minority Leader is done.

The Speaker (Hon. Kingi): Sure. Senate Minority Leader, you may proceed.

The Senate Minority Leader (Sen. Madzayo): Asante sana, Bw. Spika kwa kunipa fursa hii kujiunga na wewe pamoja na Maseneta wengine kwa kuwakaribisha wanafunzi kutoka Consolata School hapa Nairobi na vile walimu walioambatana nao. Karibuni sana.

Hapa ndipo mahali ambapo Seneti inajihusisha sana kwa kufanya kazi yake. Kitu muhimu zaidi ambacho Seneti huwa inafanya ni kuona kwamba pesa za kuleta maendeleo mashinani zinapatikana na sheria zingine. Vile vile, katika hawa wanafunzi wa Consolata School ambao wamekuja hapa, nina mtoto wangu wa kike ambaye anaitwa Tiffany Mongo Shimwaga.

(Applause)

Ninataka kumwambia mtoto wangu ya kwamba, iwapo babako yuko hapa, pia wewe unaweza kuja hapa ukawa Seneta kama yeye. Bora tu ufanye bidii sana. Wengine wanasema dynasty, lakini uongozi ni kama huo. Huyu anayesema dynasty ni yule anajulikana kwa jina la Sen. Sifuna na huyo Sen. Sifuna mwenyewe, babake alikuwa papa hapa na kwa hivyo mambo hayo ya dynasty imemlenga yeye.

Na kama mtoto wangu, Tiffany, itakulenga pia ninakutakia kila la heri katika masomo yako na juhudi zako zote na pia wale wote waliokuja pamoja na wewe na walimu wenu, ninawatakia kila la heri katika usomi wenu. Ninataka nyote mfaulu katika maisha yenu.

Asanteni sana.

The Speaker (Hon. Kingi): Sen. Moses Kajwang, you may proceed, then Sen. Sifuna will follow.

Sen. M. Kajwang': Mr. Speaker, Sir, I know my colleagues are wondering why a Senator representing a village county would be welcoming students from Consolata School, a school right in the middle of the city. I have been a parent at Consolata School.

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My son was at Consolata School from pre-primary all the way and about four or five years ago, I was a chief guest at the school's prize-giving day.

I want to encourage the students from Consolata School to keep up the good work. *Sapienta et Grâce*. I think that is what their motto is. Consolata School is a school that teaches strong values. It is a school where the teachers are fully committed and I want to congratulate them. Before that, we had Fr. Karoli, then Fr. Ochieng, Mr. Ongwae Bernard and Mrs. Grace, who have been leading the school. I want the children to emulate the humility, patience and the grace of their leadership; teachers and administration.

Mr. Speaker, Sir, I am extremely proud that, whereas other schools have been shut down because the students have become agitated and want to go home, in Consolata School, learning is still going on. I just want to encourage the students and the parents at Consolata School that ultimately, you cannot blame the government for everything. You cannot blame the school administration for everything.

Our schools will thrive when parents take responsibility. Parents should not confuse parenthood with education. You can get education in any school, but parenting is the responsibility of us, parents, which cannot be delegated to the teachers, the government or the authorities.

Consolata School keeps shining. It is a lovely school. If I were to go back to primary school, I would not go back to Rabai Road Primary School in Jericho, where I went to. I would go to Consolata School. Unfortunately, at that point, I was a poor man and as you know, poor men have no choices.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Sen. Sifuna, you may proceed.

Sen. Sifuna: Mr. Speaker, Sir, now that everyone is doing it, let me start by declaring that I do not have a student at Consolata School. However, because I am the Senator for Nairobi City County, all of these students who are here today are our students and as the area Senator, I am responsible for their welfare.

I want to take this opportunity to welcome you to the Senate this afternoon because I will take my remarks on the Bill that is before this House. You follow a bit and then we will have a conversation out there if you have any follow-up questions that you can ask for your experience this afternoon in the Senate.

Listening to some of the contributions here---

(Loud consultations)

The Speaker (Hon. Kingi): Proceed, Sen. Sifuna. May the Senator be heard in silence, please? He is merely welcoming the students.

Sen. Sifuna: You know, she might surprise me and tell me I have a child there that I am not aware of. So, I am a bit worried of taking that point of information. I know that for the students and the visitors who have visited us this afternoon, listening to some of the contributions on the Floor, you would not even know what we are discussing. This is because although we have rules in this Senate about staying relevant to the

conversation that is on the Floor, people really like to digress. I am not going to mention anyone because you have been here and you have heard.

(Resumption of debate on Bill)

What is actually before debate this afternoon is a mediated version of the Food and Feed Safety Control Coordination Bill. Everything else that you have heard has no relevance whatsoever to the conversation, including these unwarranted invitations for me to be a guest of honour at some fundraiser. I am sure you are as confused as I was about what that has anything to do with food and feed control.

So, a mediated version of the Bill for the benefit of the students who are here basically means that it is legislation that both Houses have to pass. First, it can either originate in the National Assembly or in the Senate, and then when it comes to the other House, the other House can make amendments.

In this particular instance, it actually originated from the National Assembly. The purpose of the Bill is stated to be to provide for coordination of the public institutions in the control of food and feed safety. We, in the Senate, felt that the county governments have a role to play in the control of food and feed safety. What we did is that we inserted a clause in that particular Bill that also defined county governments and county departments as competent authorities to be able to do this job. However, if you look at Article 96 of the Constitution, our primary responsibility is to take care of the interests of counties and their governments.

So, because we introduced a new clause, we had to go to what we call mediation, which basically means a committee. A set of Senators from this House go to sit down with a set of Members of the National Assembly and discuss and agree which final version of the Bill is going to be adopted.

Some of the people who are contributing here, you noticed, were very quick to congratulate the team that we sent from the Senate. I want you and the House to know, that, in fact, at that particular mediation, and this is quite interesting in the context of the other mediations that are happening, there was only one sitting of this mediation committee, and it was to agree that we drop the Senate amendments.

Personally, I would not be quick to congratulate my brother, the Senator from Bungoma, Sen. Wakoli, because all we did was to send a group of Senators there to agree that the Senate amendment was unnecessary in this Bill. So, whereas others will give Sen. Wakoli his flowers, I personally will not do that. This is because we send the teams from the Senate to put our foot down in these mediations with the National Assembly. I wish one of these fine days we publish a list of the scores. How many of our Senate amendments actually find favour in the National Assembly? There are very few. How are we always the ones expected to back down?

In the current mediation, for instance, of the Division of Revenue Bill, it was a promise that was made a long time ago that in the last financial year, we would add the monies that go to the counties to Kshs450 billion. How is it possible that two years down the line, the National Assembly is refusing to agree to that position that was settled between, of course, people do not like me talking about the expired MoU, although I am

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the one who wrote it, between UDA and ODM. One of the clauses there was that we would get to Kshs450 billion in the last financial year? Two years down the line, why are we fighting with the National Treasury and the National Assembly on the Kshs450 billion?

How is it not possible for a change that the mediated version of the Division of Revenue Bill is arrived at in one meeting, where they just go and accept the Senate position? Whereas we are always giving concessions to the National Assembly proposals, we do not get the same courtesy. They do not extend us the same favour because they feel that we, as a House, do not have the sort of powers that they have.

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

[The Temporary Speaker (Sen. Veronica Maina) in the Chair]

Madam Temporary Speaker, I feel that we, as a Senate, should also sometimes put our foot down because there was proper thinking that went into that amendment to involve the county governments and their departments in the control of food safety. If you look at the licensing regime, just to open that *kiosk* that somebody says they go to eat *madondo* and *chapatti*, it requires licensing by the county governments. When there is an outbreak of disease here, it is expected that our county governments are the ones to coordinate efforts to ensure that people receive treatment. I do not agree with the proposal that somehow county governments do not have a role to play in the control of food safety.

The Members of the committee, led by Sen. Wakoli, maybe will give us the context as to why the National Assembly felt that county governments are not competent authorities in terms of the Feed and Food Safety Control Coordination Bill, to help in the prevention of those issues.

I want to stop there. We want to listen to Members of the committee. It is a very brief report. They just dropped the Senate amendment and we want to understand why.

The Temporary Speaker (Sen. Veronica Maina): Sen. Sifuna, would you like to be informed by our intelligent Sen. Beatrice?

Sen. Sifuna: Since she is insisting and she is from my political party, and she is a lady, I do not want to appear like I am not a gentleman. Let us hear what she has to say.

The Temporary Speaker (Sen. Veronica Maina): Sen. Beatrice, you may proceed.

Sen. Ogola: Thank you, Madam Temporary Speaker and thank you, Sen. Sifuna, for allowing me to give this information. Sen. Sifuna, I wanted to give this based on the welcoming remarks you are giving to the delegation from Consolata School.

This is a school that has very good values that we must celebrate as they visit Parliament today. Sen. Sifuna, you need to remind the school and we need to celebrate their traditions. This is the only school that allowed the children of our late party leader, one Raila Amollo Odinga, when the wife was chased away from the Ministry of Education then and her children would not be allowed to be admitted into any school; it is only the Consolata School, after Dr. Ida Betty Odinga insisted and parked in the

principal's office for more than three days. No school would take Raila's children in. They were chased away from all schools, and it is only the Consolata School that admitted Rosemary Odinga and Junior Odinga. We must celebrate them because they came out as a school that practised inclusivity; that did not discriminate any Kenyan.

That is why I had to give that information. I am a Catholic too, so keep to those values. We are proud of you. The whole nation is proud of you and the school will forever remain in the history books of this country.

Thank you, Hon. Speaker.

The Temporary Speaker (Sen. Veronica Maina): Sen. Sifuna, now you have the benefit of that information.

Sen. Sifuna: The students from Consolata will determine the value of that information, but it is helpful to know because I thought the information she was giving was with regards to the Bill or areas to do with the reason why our amendments were dropped, but it is fine.

The Temporary Speaker (Sen. Veronica Maina): Sen. Sifuna, information is information, and you have been accorded that important information.

Sen. Sifuna: I accept and acknowledge. I just want to conclude by saying that whereas the conversation even within the public now is what is going on with our schools, I visited a school in Makadara called Our Lady of Mercy. The things I learnt is that we also need to listen to these students. It is very interesting the perspectives they have about the environment in the schools. When I was there at "Our" as they call themselves, after listening to all the presentations from the teachers about the need for a new house for the principal, a bakery machine and so on and so forth, those young girls just pulled me to the side and told me to come and tell the Senate that they want their hair to be plaited.

You may think that is a small issue. However, during these events, I have increasingly heard girls from other schools saying they want to be allowed to plait their hair. When we enter this debate, let us learn to listen to these young people. They may give us a perspective we have not considered, which can help us resolve this crisis.

I thank you, Madam Temporary Speaker. Allow me to do my duty as the Senator for Nairobi City County by engaging these young ladies outside. There are unique matters concerning our children here in Nairobi that the Senator from Homa Bay might not know.

The Temporary Speaker (Sen. Veronica Maina): Thank you. You may also invite Sen. M. Kajwang' to learn about the students and schools in Nairobi.

Sen. Mungatana, proceed.

Sen. (Dr.) Mungatana, MGH: I thank you, Madam Temporary Speaker, for giving me the opportunity to share my opinions on the mediated version of the Bill. I want to pick up from where Sen. Sifuna left off.

The only amendment that the Senate proposed was that each county government department dealing with matters relating to agriculture and health be included as part of the food and biosafety control authorities. The competent authorities listed are 11 in number. If you examine them, they are all from the national government. You will see the Kenya Bureau of Standards (KeBS), the Veterinary Medicines Directorate (VMD), the

Fertiliser and Animal Foodstuffs Board (FAFB), the Pest Control Products Board (PCPB), the Kenya Plant Health Inspectorate Service (KEPHIS), the Kenya Dairy Board (KDB) and others.

The Senate wanted the relevant county departments included as competent authorities. This one amendment that we proposed to assert the presence of the Senate was dropped by our mediation team. I would be very interested to hear the reasons. I have tried to engage our Chairperson, Hon. David Wakoli, but I have not received his explanation.

Madam Temporary Speaker, let me give a very practical example. I went to primary school in Mombasa for part of my education. In those years, we completed primary school in class seven. I did standard five, six and seven in a boarding school in Tana River, at my village school called Arap Moi Primary School, Ngao. It is a very old school started by missionaries when they came to bring Christianity to that part of the world.

When we were in primary school, we noticed a strange smell of kerosene in the food we consumed. That kerosene was always in the beans. We later learnt there were hidden reasons why it was being put in those beans. Apparently, it was to control the boys. That is food safety concern right there in my village in Tana River County. Will the National Biosafety Authority reach Tana River County? They are not there. Do the authorities listed, including the Agriculture and Food Authority (AFA), have presence in Tana River County? They do not. Does the Kenya Plant Health Inspectorate Service (KEPHIS), which provides seed testing, certification and phytosanitary services, have presence in Tana River County? No. Except now, with the Bura Irrigation Scheme, you can get a small office there.

Food safety for all our boarding schools requires inspections. County officers can conduct impromptu checks in boarding schools without warning. Can the National Biosafety Authority from Nairobi come all the way to Tana River County to check? They cannot. They do not have presence. Does the Fertiliser and Animal Foodstuffs Board, the Kenya Bureau of Standards and the Veterinary Medicines Directorate, have presence in the county? No. Is agriculture devolved? Yes. Is health devolved? Yes. Public health is a function of the counties.

Are these national institutions able to go down to the county and ensure that what is consumed in our boarding schools and villages is safe? Are the kiosks selling food in our villages in Tana River County safe? Obviously not, because these authorities are not there. Is the county government able to do it? Yes, even if it means conducting impromptu checks, they can visit the markets to see if food safety standards are being adhered to.

I am disappointed that the Senate team we sent for mediation dropped the requirement that county authorities should be involved in food safety. Counties must be empowered to check food products, so that we have safety in what we consume. I do not expect KeBS to come all the way to Tana River County or most of these counties. They only have presence in Mombasa because there is a port there. Otherwise, they will not check food standards or other products in the counties.

What was wrong with including county authorities in this Bill? I feel we should have put our foot down. I am persuaded that this was not done, as only one meeting took place in the Mediation Committee and everything was unanimously agreed, as I have read in the report. At least, we should have had a divergent opinion on the matter.

I do not believe there is a good reason why county authorities should not be involved. The rationale given was that international organisations do not recognise county authorities. Therefore, they said the amendment from the Senate should be dropped. However, these other authorities were already listed. What was wrong with adding county authorities for the sake of food safety in our counties? I am not persuaded, as the Senator for Tana River County that all these authorities are present in Tana River County and they will ensure food security there. I believe county authorities should have been invited to be part and parcel of maintaining food safety standards.

Madam Temporary Speaker, I do not support this report. It has left me bewildered. Unless we are given a very good reason, I believe this was rushed. If people went into one meeting and accepted everything, it means it was rushed and not proper. At the very minimum, they should have said let all these national bodies have presence in the counties, so that we ensure food safety, but that was not secured. People just dropped that amendment and they have come back with this report to say let us approve it, so that it goes to the President for signing, yet we know that it will not be effective at the county level.

Personally, I will vote against this. I think the Committee did not do a good job. They had only one meeting and did not have a divergent opinion. They went and dropped the Senate amendments, but did not give us a good reason. The rationale that county authorities are not recognised does not hold because national authorities are there.

In addition to that, for safety of food for our people in Tana River, other counties and in our villages, we should have included county authorities, so that they have checks and balances or even impromptu checks. I do not expect the National Biosafety Authority (NBA) to go all the way to my village shop to check because they will not. However, I know county authorities can visit at least top towns in the villages to check if the food we are consuming is safe. They can visit boarding schools and check if the food is good, but not the NBA or these authorities that have been listed here.

Therefore, Madam Temporary Speaker, I feel this mediated version of the Bill was rushed. Personally, I have not seen any good explanation in the report. Therefore, I oppose this mediated version.

I thank you.

The Temporary Speaker (Sen. Veronica Maina): Thank you, Sen. Mungatana. Proceed, Sen. M. Kajwang’.

Sen. M. Kajwang’: Madam Temporary Speaker, I also rise to comment on the report of the Committee on Agriculture, Livestock and Fisheries on the mediated version of the Food and Feed Safety Control Coordination Bill. It must be noted that when this Bill came from the National Assembly, having been sponsored by the Majority Leader, Hon. Kimani Ichung’wah in May, 2023, it was transmitted to the Senate in March, 2024 and the Senate made a decision on it in 2024.

The Senate proposed its amendments and the first one was to amend clauses 22 and 25 and the First Schedule. What was contentious was the amendment to the First Schedule, which listed county governments as competent authorities. Competent authorities under the Bill are supposed to support, assist and work with the newly created office of Food Safety Controller. Therefore, competent authorities are supposed to work with the Food Safety Controller to ensure that the provisions of the Bill are implemented and enforced.

The Senate in its wisdom felt that county governments, because they are already involved in the food and safety space, would also be competent authorities. Today, if Mama Onyango wanted to sell fish somewhere in Kayole, there are at least three licenses that the county government must provide. There is the single business permit. Mama Onyango will also have a food handler's certificate issued by the county government. Mama Onyango's stall must also have a food hygiene license. Therefore, county governments are already in that space.

I believe that is the wisdom that the Senate had in amending the First Schedule and listing county governments as competent authorities. In the wisdom of the Mediation Committee, they concluded that Clause 16 of the Bill already gives detailed functions to county governments in relation to food and feed safety. That is not in dispute. What I find a bit uncomfortable is the framing of the mediated position that says that designating county governments as competent authorities is redundant and structurally inconsistent. That is strong wording for county governments.

The Temporary Speaker (Sen. Veronica Maina): Sen. M. Kajwang', sorry to interfere with you when you are on your feet. Please, move to the Dispatch Box because your microphone is not working well.

(Sen. M. Kajwang' moved to the Dispatch Box)

Sen. M. Kajwang': Should I start from the beginning?

The Temporary Speaker (Sen. Veronica Maina): No, just continue from where you had reached.

Sen. M. Kajwang': Madam Temporary Speaker, I was saying that in the wisdom of the Senate, we felt it was important to amend the First Schedule to make county governments competent authorities. Competent authorities are supposed to help the Food Safety Controller to implement and enforce the provisions of the Bill.

Whereas I agree that county governments have already been given detailed functions in the Bill under Clause 16, sometimes the wording of the consensus can be a bit dangerous because the mediation committee says that designating county governments as competent authorities is redundant and structurally inconsistent. It goes ahead to say that county governments lack international recognition and are administratively subordinate to national institutions.

The wording of that consensus is a bit dangerous. We must ask ourselves about the role of public participation in mediation. Where we have provided a clear role to be a function for county governments, but the other House opposes and says that that role is redundant or structurally inconsistent and that county governments are administratively

subordinate to national institutions, should we not consult and talk to county governments? Our job is to defend and protect interests of the counties and their governments.

There is a missing link when it comes to mediation. Sometimes we do things which are just elite consensus. Even right now on the Division of Revenue Bill where mediation is ongoing, I saw the latest report that the National Assembly had offered Kshs5 billion more to add on Kshs425 billion while the Senate had reduced our figure by Kshs14 billion, so that we are at Kshs440 billion. Sometimes you ask yourself; what is the scientific basis? Is there any algorithm that guides us in mediation or it is just a consensus among elites?

We need to review our Standing Orders, now that it has been a subject of litigation, including yesterday in the High Court. We saw our Standing Orders being questioned. We need to ask ourselves this. If there is a significant matter that requires mediation between the two Houses, is it that the two Houses are competent to cobble up deals without calling other parties into the picture? What if today the Senate was to agree that counties should get Kshs420 billion, for example? What implication does it have on the operations of counties?

My only concern is that for us to make that radical recommendation that county governments are administratively subordinate to national institutions, some of which are established by statute yet county governments are established under the Constitution, it can form a dangerous precedent. How I wish that the mediation committee perhaps retreated. I have seen cases where we have serious mediation on the Division of Revenue Bill, sometimes we retreat and call stakeholders in that space and tell them the situation in the mediation and what we are proposing and ask how it is going to affect them.

Nonetheless, Bills are also taking too long. Even though I am saying that perhaps it should take longer in mediation by doing public participation, this particular Bill was sponsored in 2023. It is a Government Bill sponsored by the Leader of Majority in the National Assembly. If a Government Bill can take three years, you can imagine how long it will take for a Private Member's Bill. We must also look at some of these timelines to ensure that we fast-track processing of Bills.

I cannot fault the committee because when we send our Members to mediation, we select our best. If we sent the Chairperson of the Committee on Agriculture, Livestock and Fisheries, we believe there could be a basis for that climbing down. It must also be noted that the National Assembly agreed with two of the Senate amendments. I hope we could temper the language by not calling county governments redundant, structurally inconsistent and administratively subordinate to national institutions. How I wish we had received written submissions from the Council of Governors (CoG).

Madam Temporary Speaker, it must be made clear that this House does not represent the interests of governors, but of counties and their governments. There is a clear distinction between that and the interests of individual governors.

There could be errant governors out there who are doing all sorts of bad things, including saying bad things about the Senate. However, this Senate must always stand up and advocate for the interests of counties and their governments. I assure the CoG that we

will not accept legislation or amendments that make county governments subservient or make county governments appear to be subordinate to national institutions.

Madam Temporary Speaker, unlike my colleagues, I support it because I believe a lot of thought was put into this. I also urge that when regulations come, they must clearly allow county governments to continue doing what they need to do. Part of the rationale behind this Bill was to harmonise the food safety space. As I indicated, Mama Onyango, who is selling fish, needs at least three licenses: The single business permit, the food handler certificate and another one called the food hygiene license. We must unify these things. We must collapse them, so that Mama Onyango, with one single business permit, can continue selling her fish by the roadside, instead of making compliance expensive and making compliance look like something that you have to have a PhD to achieve. That was the original intention of the Bill. I hope that you can speedily enact it, so that those of us or our people in the food handling space, can have a much more unified and smooth terrain for operation.

I support.

Sen. Okenyuri. Madam Speaker, thank you for the opportunity. I support the intention of this Bill because the major essence is trying to make it easier for our friends and family who are in the food and feed space. It will be cheaper for them. Rather than having to incur license fees in different categories, it will make the process shorter for them. I want to note what Sen. M. Kajwang' just mentioned. The wording was so strong that we actually lose the reason we had our colleagues represent us in that mediation committee.

Madam Temporary Speaker, counties have a primary role in the issue of food and feed safety. So, we cannot agree unanimously that the position of the National Assembly prevails and leaves out the role of county governments. County governments are primarily the ones conducting inspection.

We have slaughterhouses that are coming up and people opening kiosks that prepare food, yet county governments are looking at all these vendors running these businesses. I feel like we dropped our guard on that by agreeing that the county departments of health and agriculture are not recognised internationally. That should never have been a reason we dropped our position.

We should have probably figured out how best this can be worded, so that the role of counties who are the primary competent authorities--- I wish to support the intention of this Bill, but express my dissatisfaction that the role of county governments is not well captured in this. The wording of this report does not show a reconciliatory or mediated version.

It goes ahead to state the rationale why this position was dropped is that county departments of health and agriculture are not recognised internationally and these departments report to competent authorities. I have already expressed my dissatisfaction with the same. I hope that this Bill will address many of those gaps that we have, to ensure that our people consume safe products and producers are producing at an affordable cost that will not make it very difficult for consumers.

Thank you.

(Interruption of debate on the Motion)

COMMUNICATION FROM THE CHAIR

VISITING TEACHERS AND STUDENTS FROM
ARNESENS HIGH SCHOOL, UASIN GISHU COUNTY

The Temporary Speaker (Sen. Veronica Maina): Hon. Senators, I would like to acknowledge the presence in the public gallery this afternoon of a visiting delegation of 10 teachers and 77 students from Arnesens High School, Uasin Gishu County. The delegation is visiting the Senate for an academic exposition.

On behalf of the Senate and on my behalf, I extend a warm welcome to the delegation and wish them a fruitful visit.

Thank you.

Sen. Mandago from Uasin Gishu will welcome the delegation.

Sen. Mandago: Thank you very much for the opportunity. Madam Temporary Speaker, I wish to join you and take this opportunity, on behalf of my colleagues, to welcome the teachers and the students of Arnesens Secondary School in Ainabkoi Constituency. It is one of our old schools that has produced luminaries in our country.

I wish them a fruitful and a successful trip in their study and quest to undertake benchmarking in the Senate. I also encourage the students that today you sit in the gallery, you work hard, you are disciplined and make sure you are not among those who intend to burn schools; you will be one of the Senators sitting here or probably the Speaker sitting where the Temporary Speaker is sitting today.

The Temporary Speaker (Sen. Veronica Maina): Thank you very much. I now invite Sen. Onyonka to take the mic.

(Resumption of debate on the Motion)

Sen. Onyonka: Madam Temporary Speaker, first of all, I thank you so much for giving me this opportunity. I would like to contribute to this very important discussion.

I have listened carefully to the contributions, which have been made by my colleague Hon. Mungatana. I have also listened to Hon. M. Kajwang' raise the same issue. To be honest with you, this is a very weighty matter. This issue has been plaguing the country for about 10 years, when there was a question about what to do in terms of standardising food security and treatment of this food *vis-à-vis* its management. I have not looked at all the details of the Bill, the preamble and the discussions which have taken place. Honestly, we have an issue with our food.

Number one, from the harvesting of the food, whether you are looking at the cereals, the products which are being consumed, wheat or sugar, the responsibility of the packaging and management of this food is normally by the Kenya Bureau of Standards (KeBS), with whom we have always had challenges. Many people have always criticised what KeBS does and how they handle the food. Severally, we have found that food not inspected is brought into the country. We have had cases where individuals are found to

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be holding sugar that has come to the country without any inspection. Right now, we have several county governments that are processing milk and supplying this milk to our primary school children. We are told that some of this milk is coming in as powder, and that some of it is fake. Nobody responds to these things.

We have issues about Kenya's involvement with the Genetically Modified Organism (GMO) foods, yet the Plant Safety Agency and all the other agencies have never come out to issue statements, correct or talk about what is being done that is right or wrong. Of course, when we come to the goods which are being imported into the country, whether these foods are eggs, sugarcane or meat, in my opinion, this House must take responsibility.

The Chairperson, who is my brother and friend, has made his presentation. However, I am worried about how we package our food. As a young child, I grew up seeing meat being hung on a wall, in a place where there are flies and animals, and that would be normal. In this Bill, and this mediated discussion that has come up, I have not seen anywhere where it is being discussed on the way we handle meat. We are handling our meat through abattoirs. The abattoirs are the places where the meat is being cleaned. If you go to some, you will find that even running water does not exist.

So, in my opinion, how I wish that we would have spent more time as the Senate, even some of us who are not in your committee, so that we can begin to seriously look at what we do with our food. The fear I have is, with the way we are managing our food, we just need to have a calamity like Ebola, which is food-based. Then, once the disease has killed 200,000 people, that is when we will say, let us sit down and discuss what to do with this.

Therefore, I would like to say, yes, we understand the challenges. We know what needs to be done. Some of us understand because most of us are from this sector, and we have studied most of these things. We now need to look at what role the Senate can perform in terms of packaging of food, management, treatment and growing of food. Are we using GMO seeds? What are the effects? What is the research? Do we have stakeholders to come and tell us how we are managing this food or are we just managing our food industry as a sector, where we just need to make money and where many of us have an interest and we are not interested at all in making sure that our poor people are protected because they are vulnerable?

On some of the imports we are getting, government agencies such as the Kenya Plant Health Inspectorate Service (KEPHIS), the Agriculture and Food Authority (AFA) and the Kenya Agricultural and Livestock Research Organization (KALRO) have a responsibility to make sure that they provide the services the Kenyan public deserves, yet, we constantly fail our country.

Finally, I want to say that I am uncomfortable because most of our food processing plants and abattoirs are county-based. If you go to where we are slaughtering our cows from, a place called Suneka and Daraja Mbili in Kisii Town, the only person you are going to see is the veterinary officer. Right now, many of the food is packaged in pick-ups and thrown in a box system. Even putting meat into a cooling plant or a cooling vehicle so that it is transported at the highest hygiene standard does not matter. I remember when I was growing up, we used to have meat inspectors on the highways.

Right now, I do not think there is any of us in this House who can stand up and say whether they know the meat they ate last night was from donkey, zebra or cow. These are things we, as leadership, have to be concerned about.

I hope that my team members in this House are going to look at this issue seriously and come up with interventions and mitigations that are going to make sure that food consumption and utilisation of food services in our country are standardised, so that if somebody comes to this country, whether they have come from Europe or wherever, they should at least be sure that our food is sanitised, served well, clean and has no other issues which would injure the health of our people.

With those remarks, I will support, but I hope that the committee will be able to do much more than you have done so far.

Thank you.

The Speaker (Hon. Kingi): Hon. Senators, before I allow further debate on this Motion, allow me to make the following Communication.

(Interruption of debate on Motion)

COMMUNICATION FROM THE CHAIR

JUDGEMENT OF THE HIGH COURT ON PETITION NO.E/565/2024 REGARDING IMPEACHMENT OF HON. RIGATHI GACHAGUA

Hon. Senators, I have the following communication to make, which relates to the judgement of the High Court, Constitutional and Human Rights Division at Nairobi, Constitutional Petition No. E/565/2024, the Honourable His Excellency Rigathi Gachagua and 57 others versus the Speaker of the National Assembly, the National Assembly of Kenya, the Speaker of the Senate, the Senate of Kenya, and 23 others, delivered yesterday, 8th June, 2026, and extensively covered in the print and electronic media since then.

Hon. Senators, it is noted from the onset that the Speaker of the Senate and the Senate of Kenya were listed as the third and fourth respondents to this Petition. To this end, the Senate was represented and participated fully in the conduct of the Petition, culminating in the delivery of the judgement yesterday as a facade. From listening to the judgement and the media summary of the judgement issued by the court yesterday, 8th June, 2026, it is clear that certain findings and final orders of the court, with respect to the conduct by the Senate of the impeachment proceedings with respect to His Excellency Rigathi Gachagua, have been faulted in that judgement.

Hon. Senators, following the delivery of the judgement, we have been advised by counsel for the Senate, that among the findings of the High Court in the lengthy judgement delivered yesterday include the following finding-

“The right to a fair trial under Articles 47 and 50: We find that His Excellency Gachagua's rights were infringed when the Senate declined to allow an adjournment. The violation constitutes both a vindication of his rights and a recognition of the constitutional infirmity in the process, but does not undo the

impeachment itself, given the finality of Article 145(7) and the constitutional absurdity that would arise from dual incumbency.”

Secondly, in its final orders, we have been advised that the High Court has made the following orders-

“A declaratory order is hereby issued that His Excellency Gachagua's fair trial rights were infringed when the Senate declined to allow an adjournment in the impeachment proceeding despite his absence. The courts award constitutional damages of Kshs50 million to His Excellency Gachagua, payable by the Senate to vindicate the Constitution, restore the dignity of the affected party, and deter future violations.”

Hon. Senators, we have instructed our counsel to apply for certified copies of the proceedings and file a Notice of Appeal immediately. Even as we prepare for the appellate process, it is appropriate that certain matters be put on record to calm a restive public, which is concerned about a judgement that portrays the Senate as an institution which, sitting as a quasi-judicial body, failed to grant the former Deputy President a fair hearing.

The court faults the Senate as having infringed on the rights of the former Deputy President, by declining to allow an adjournment without considering the circumstances and the context in which that determination was made.

Although the court cited the HANSARD of that day, it has not taken into account the series of events. The impeachment process had proceeded without incident and in the presence of the former Deputy President until the last day when the Senate adjourned for lunch. The National Assembly had concluded, including evidence-in-chief, cross-examination and re-examination.

The former Deputy President and his counsel were made aware that His Excellency Gachagua will take the stand on resumption after lunch. Upon resumption, Senior Counsel Paul Muite, for the former Deputy President, first began by informing the Senate that he was not aware of his client's whereabouts, forcing the Senate to temporarily suspend the proceedings to allow Senior Counsel Paul Muite to establish the whereabouts of his client.

Upon resumption, and that is after a long wait, Counsel stated that he had learned that his client had been taken ill. Notably, Counsel did not make any effort, even when requested by the Senate to provide any evidence to support his claim. However, the court determines that the Senate should nevertheless have allowed the adjournment request. In essence, the High Court is telling this Senate that it had to allow an adjournment request that was not backed by any evidence to support a claim of illness or other reason for the unavailability of the former Deputy President.

This finding is even more troubling when the court itself first admitted a belated affidavit of Dr. Gikonyo submitted two years after the impeachment and then dismissed it as being of no consequence to the proceedings and wondered why this evidence was not presented in the Senate two years ago when the application for an adjournment was being made.

The court cites the speeches of some Senators on the Floor in debate as an acknowledgement by the Senate itself that the former Deputy President was indeed ill,

but ignores entirely the speeches of those in debate who contended that to exercise the discretion to allow the adjournment, the Senate, as the impeachment court, had to be satisfied on evidence that the application was meritorious and was not merely a tool to frustrate, delay or altogether stop the impeachment process. As is well known, the speeches of individual Senators in debate on the Floor do not constitute decisions or determinations by the Senate.

Now, honourable Senators, the High Court fails to recognise that the Senate did not determine that an adjournment could not be granted. Indeed, the vote on the Motion on the request for an adjournment was precisely on whether to grant the adjournment or not. The Senate, as the impeachment court, decided not to grant the adjournment request in these particular circumstances of the day because of the absence of evidence or good cause presented to it.

This is standard practice for any judicial or quasi-judicial body. The Senate, like any other judicial or quasi-judicial body, including for that matter the High Court itself, only grants adjournment on good reasons. The discretion to grant an adjournment is not automatic. It must be exercised judiciously, balancing the right to a fair trial with the constitutional mandate, to avoid unnecessary delays and dispose of cases judiciously.

In the matter at hand, it is probably true to say that no court in the circumstances the Senate found itself in with an application for an adjournment, entirely devoid of any supporting evidence on its merits, would have granted an adjournment. An applicant for an adjournment must provide cogent, credible and convincing reasons why a trial should not proceed.

The court gravely misdirects itself on the import of the rights of an accused person under Article 50 of the Constitution by failing to recognise the right to be present is a right of the accused person and not an obligation. An accused person who, having had the evidence adduced against him and had an opportunity to challenge it in person, or by advocate on cross-examination, chooses without a good cause shown to absent himself from further proceedings, whether with the aim of paralysing proceedings or otherwise for any other reason, cannot benefit from the provisions of Article 50. No court properly interpreting the Constitution should find that the right to a fair trial has been violated because an accused person has chosen to absent themselves from his trial or any part of it without providing sound reasons or evidence for that cause of conduct. For these reasons, a key part of the appeal to be proffered by the Senate will center on this plainly erroneous finding of the High Court.

Honorable Senators, having reached the foregoing erroneous finding, the court then proceeds to issue orders that I have recited above, which the Senate will, among other matters of fact and law, also be challenging in the Court of Appeal. The order for constitutional damages of Kshs50 million to His Excellency Gachagua being predicated on erroneous findings and the directory orders of the court will similarly be challenged.

Honorable Senators, the Senate is fast to pledge fidelity to the supremacy of the Constitution and all the inbuilt principles of the rule of law and separation of powers. In similar vein, the Senate will robustly stand in defense of the Constitution from derogation and violation from any quarter, not least the courts of law. The Senate must do this not

for its own sake, but because it is the duty of every person and Article 3 of the Constitution to respect, uphold and defend the Constitution.

I thank you.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I thank you for your communication. I feel that it is extremely important what you have set on record because I went to bed a very worried man last night. As a leader in the House, and more so a servant of the people, I felt that my very authority and fidelity to the rule of law was being challenged.

There are many things that citizens can say about Parliament, but you will agree with me that one of the things that this House is most celebrated for is how we conduct impeachment trials in the chambers of this House. Over the years, as I have been a member of this House and those that have been here long enough, know that at the conclusion of every impeachment trial, notwithstanding how the impeachment ends, this House has always been commended for how it carries out its duty and it is celebrated for that.

I felt that the judges yesterday night almost swept our work and wanted to throw us under the bus, erroneously so. It need not be lost to those particular judges, like you have correctly cited, that on that particular afternoon when we resumed, this House was ready to present the opportunity to be heard to the client that was before us. Unfortunately, first of all, his advocate, if I recall very well, and I indeed do, told us, as a House, to our shock that, “as the advocate on record, I can tell you I do not know where my client is.”

Mr. Speaker, Sir, you granted the opportunity that advocate Paul Muite goes to search for his client. Thirty minutes later, he returned to this House empty-handed, and said, “I am now informed that actually my client has been taken ill.”

This House requested, as any constitutional organ would, for at least some form of evidence to support that. All Mr. Muite needed to do was to inform the House to give him a few minutes. Karen Hospital where his client is supposed to have been admitted is barely 20 to 30 minutes from here if he had physically to go there. Given the magnitude of the matter that was before us, he could have asked for an email from that hospital, confirming what was happening.

Therefore, to wrongly accuse this House, Mr. Speaker, that we denied Deputy President Rigathi Gachagua an opportunity for a fair trial, I felt, should not go without challenge. I am happy that you have put it on record, that as a Senate of this Republic, we shall be challenging that finding because we completely disagree with it. We did our work with utmost good faith.

Lastly, on this item of fair trial, maybe I could say this: Listening to the judges yesterday, as I have always argued on many occasions, there is a clear struggle by members of our bench in this country, to understand the procedures of this House. Either they humble themselves and have an invitation or a sort of understanding between us, as the Legislature and them, as a Judiciary, so that they understand our procedures better, as opposed to them trying to invent and guide us on how we do some of these procedures.

I listened with utmost shock one of the judges argue that it was faulty for us to elect to trial an impeachment by way of Committee of the Whole, and that we were only supposed to do it by a 10-man committee. I could not believe that was from a judge of the High Court of the Republic. These are the obvious errors which I see judges continue to make on the work of Parliament. It is my hope that one day, you shall organise a colloquium between you, as the Speaker, and the Chief Justice, where we can educate each other on the procedures of both Houses, as opposed to one party appearing to guide the other on procedures of the other arm of Government, and doing it so wrongly.

Therefore, in conclusion, while I celebrate this, I want to agree that we must enter a notice of appeal in the quickest time possible because this cannot remain unchallenged. We did our work in utmost good faith. Mark you, appearance by speaking was not the only way of trial that we could have done on this matter. Remember, there were already affidavits that were before us, sworn by the same individual, informing us of his responses to all the matters that were before us. Therefore, listening to him was just to confirm what his affidavits were telling us. Therefore, it is not fair to say that we never granted him an opportunity to be heard by this House.

I thank you and I agree with that decision.

The Senate Minority Leader (Sen. Madzayo): Asante, Bw. Spika. Kwanza, ni jambo la kusikitisha kuona ya kwamba katika uamuzi wa majaji watatu walioketi, waliweza kuona ya kwamba pengine Seneti haikumpa mshtakiwa nafasi ya kuweza kujitetea vilivyo. Lakini, kila mahali Kenya nzima waliona kwa runinga ya kwamba katika kesi hii, tulimpa nafasi mshtakiwa Mheshimiwa Gachagua, kwa nyakati zote.

Tukizingatia zaidi, tulimpa wakati asubuhi yote hadi saa saba. Aliongea zaidi ya masaa sita akiweza kuulizwa maswali ambayo yaliongozwa na wakili wake maarufu sana, anayebobea katika sheria, Paul Muite. Alimpeleka kulinganisha na vile alivyokuwa ameandika taarifa yake. Aliileta hapa na yote iko katika *record*.

Jambo la kusikitisha zaidi ni kwamba mawakili wote aliokuwa nao walipewa nafasi kuongezea na kumwongoza vizuri Mheshimiwa Rigathi Gachagua. Asubuhi yote, alikuwa sawa kabisa na pia alikuwa anajibu maswali kisawasawa. Baada ya hapo, kwa sababu ilikuwa katika sheria zetu, tuliamua ya kwamba ikiwa tutakusikiza kama Bunge lote, basi kila mtu atauliza maswali. Alikuwa amemaliza asubuhi yote. Saa saba ulipea watu dakika 40 kwenda kupumzika na kurudi kuja kumsikiza.

Ilikuwa ni wakati wake kuulizwa maswali na Bunge la Seneti. Hii ni kwa sababu alimaliza kujitetea na kusema alivyotendewa sio haki. Jambo la kushangaza ni kwamba alitoweka. Wakili wake alisema hajui mteja wake alipo.

Ni jambo la kushangaza kwa sababu wakati tulipewa nafasi ya kwenda kupumzika kwa saa moja, aliondoka na wakili wake kujadiliana maswali wanaoyotarajia Maseneta kuuliza na kumtayarisha ili aje. Jambo la kusikitisha ni kwamba, walipokwenda huko, dalili zilionyeshwa wazi kabisa kwamba asijaribu kurudi tena. Hii ni kwa sababu Bunge la Seneti lilikuwa tayari kumuuliza maswali.

Si sawa kusema ya kwamba utarudi mchana ama uagizwe na Bunge la Seneti au Spika kwamba mchana utapata nafasi ya kuweza kujibu maswali utakayoulizwa na Maseneta na ukose kurudi. Ni jambo la kusikitisha majaji walioketi kusema kwamba

hakupewa nafasi ya kujitetea na Bunge la Seneti. Hapo naona kidogo kulikuwa na mushkil kwa uamuzi wao.

Kwa hivyo, ni muhimu ikiwa Bunge la Seneti linaweza kuchukua hatua hiyo kuweza kujitetea vililvyo. Tukipewa nafasi, watakapokuwa wameenda katika korti ya rufaa, lazima Bunge la Seneti lijitetee.

(Applause)

Hakukuwa na uagizo ya kwamba alikuwa ameomba apewe ridhaa ya Shilingi milioni 50. Kwa hivyo, hatuoni ilikuwa vipi wakafika Shilingi milioni 50 ambayo atalipwa na Seneti.

Kwa hivyo, tuko na nafasi nzuri kama Bunge la Seneti kujitetea. Wananchi waliona wazi kabisa ya kwamba Bunge la Seneti halikupewa nafasi ya kumuuliza maswali kwa sababu hakuwepo wakati wa mchana.

Ilibuka baadaye kwamba alikuwa ameenda hospitali ya Karen. Baada ya miaka miwili, daktari aliandika maono ya haki akisema kwamba alikuwa mgonjwa. Lakini sisi hatukuletewa ripoti yeyote kwamba yeye ni mgonjwa. Kwa hivyo, itakuwaje tupigwe faini?

Mimi ninaona uamuzi uliotolewa na hiyo korti na hao majaji watatu ulikuwa si wa haki na unafaa utupiliwe mbali katika korti ya juu zaidi.

The Speaker (Hon. Kingi): Hon. Senators, this was just a communication not a source of debate. I will allow maybe two or more, but I will keep it under three minutes.

Proceed, Sen. (Dr.) Boni Khalwale.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I want to speak strongly on your communication. This is because there is an attempt, in this country, for certain people irrespective of their status in the society and the offices they hold, to belittle the role of institutions.

If we allow Parliament and the Senate in particular to be challenged in the manner that the judges did, we will be weakening Parliament. There might be a deliberate attempt to ensure that the powers where we sit as a trial Chamber, maybe do not please the people who practise in the courts and should be removed from the institution of Parliament, so that it remains their preserve.

I want to agree with you that we must appeal. I have heard you. I want to request that you also consider factoring in the appeal, what Hon. Justice Anthony Mrima said without being prompted by the counsel of the Senate.

Allow me to quote. He said-

“It must be emphasised that the Senate is not a mere conveyor belt for matters originating from the National Assembly or any other entity”.

He went on and added that-

“It is a revered House vested with autonomy and empowered to make decisions by way of resolution and therefore the Senate retains the discretion to determine whether to accept any motion or petition for further deliberation.”

He must be reminded that when he was thinking rationally, as I have quoted him, how was he expecting this Senate without any application from Senior Counsel Paul

Muite, that his client had fallen ill? How, without evidence, did he expect the Senate with the kind of discretion that he---

The Speaker (Hon. Kingi): One minute to conclude.

Sen. (Dr.) Khalwale: In conclusion, without that, for us to then agree with them? Are they saying that if somebody facing charges of robbery with violence flashes and dashes out of court and his lawyers say that they do not know where he is or where he is going, then the judge should immediately discontinue the proceedings? No.

Mr. Speaker, Sir, we have gone to school properly. The purpose of university education is for you to have organised thinking, critical thinking and the capacity to see the difference between right and wrong. The judges were wrong yesterday on this one.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Sen. M. Kajwang', proceed.

Sen. M. Kajwang': Mr. Speaker, Sir, in many legal systems, a jury does not have to justify the decision that it has made. A jury does not have to explain itself. So, as a House, we sat as a jury. We should not try to justify the decision that we made because the decision that we made was in line with the Constitution.

I heard some people say that yesterday was a funeral of the Republic of Kenya and the funeral of the Constitution. I want to tell them that perhaps, yesterday was the birthday of the Republic of Kenya and the birthday of the Constitution. If this matter goes to the Court of Appeal and all the way to the Supreme Court, it will help us address some things that have remained outstanding for long, such as the issue of the impeachment processes, public participation and the issue of Chapter Six.

I would be happy if the Court of Appeal or even the Supreme Court could be moved at certain points in time to expand the limitation on holding of public office on account of violation of Chapter Six, to go beyond persons who have been impeached and perhaps, include persons who have been indicted by the Auditor-General and other institutions such as the Ethics and Anti-Corruption Commission (EACC). I fully support your decision to appeal that particular matter.

If there was a problem in terms of raising the Kshs50 million, that is in case you are not successful in appeal, I inform the House that the County Public Accounts Committee (CPAC) has issued fines of Kshs500,000 to 20 governors. So, we will be able to raise at least Kshs10 million. However, I hope that we shall not get into it.

A fundamental observation that I saw yesterday in court is that Members of this House who sat as jurors and participated in the process, went to court to represent positions against the Senate. There needs to be some hygiene. We must decide whether we want to be Senators or litigants out there, challenging decisions of the Senate. Once you have sat as part of the jury in this House, it would appear to be out of order for you to go out there and say that you agree with the judges, that there was no due process and fairness in the Senate. That is a matter that must be dealt with.

The Constitution is clear on state officers taking up other paid jobs. Those are things we must look at. However, I am happy that the courts made that decision, let us allow the Court of Appeal to deal with the remaining issues. Let us also accept that no institution is infallible, and that we can make decisions and anyone aggrieved can go to

court and, anyone aggrieved at the High Court can go to the other levels. I hope that this then marks the---

The Speaker (Hon. Kingi): Sen. Mungatana, you have the Floor.

Sen. (Dr.) Mungatana, MGH: Thank you, Mr. Speaker, Sir. Senior Counsel Paul Muite was behind me here and I was seated very closely to him when he told us a ridiculous thing; that he does not know where his client has gone. In the same breath, he was telling us that he needs time and, as a Senate, we gave him time to go and look for his client. He came back and said that he did not know where his client was.

Hon. Paul Muite is a senior counsel who used to be the chairperson of the Law Society of Kenya (LSK) when we were younger and in active practice. So, we found this extremely ridiculous. There is no way that we can reward misbehaviour in court proceedings. I fully support that we should file an appeal. If you choose to run away from proceedings, whether they are quasi-judicial or proper judicial, you forfeit your rights by choice. The videos are all here. We must not create the impression amongst Kenyans that Hon. Gachagua's rights were violated. There was no violation. He chose to run away. That is a fact. He ran away, he did not tell his lawyers or anybody where he went. We must tell the truth as it is.

He knew that he was coming for cross-examination. He was okay when he was stating his case, but when he knew that we are going to ask about the family affairs and the violations that were being complained of within the family, he ran away. He ran away from this court. He should not tell Kenyans or the court should not tell us that we did not give him a chance. He simply disappeared and the court must be fair to this Senate. This Senate gave him all the opportunities.

We must appeal these decisions and Kenyans must be told the truth. Possibly, these clips must be replayed on Kenya Broadcasting Cooperation (KBC) or any other channel, so that Kenyans can know the truth. The judges were totally wrong on this one and they must be told on their faces. Even for them, if an accused person runs away from their court, they do not stop proceedings, they proceed because he chose to forfeit his right.

The Speaker (Hon. Kingi): Sen. Wambua, proceed.

Sen. Wambua: Thank you, Mr. Speaker, Sir. I walked in and my neighbor, the Senator for Tana River County, was very agitated about some allegations he is making on the Floor. I am here to just put the record straight; what is good for the goose, is equally good for the gander. We had an opportunity to process the impeachment of the former Deputy President of the Republic of Kenya and by a majority vote, the impeachment went through.

The courts were given an opportunity to exercise their constitutional duty and mandate to look into the process that this august House and the National Assembly went through and determine whether the process was fair or not fair. So, when I listen to debate across the country today and because we do not live in isolation, we live in a society, the courts have made a ruling. They have said that the constitutional right of the former Deputy President to a fair trial was breached. That is where we are today. There will be an opportunity for lawyers from both sides of the argument to appeal.

Mr. Speaker, Sir, I always speak as a layman; I am not a lawyer. In one of the forums last night, I made this note as a layman and one who is not schooled in law. I have tried to understand, but I fail to understand how a process that a court declares to have been flawed can produce a legitimate outcome. I think that is going to be a matter for the Court of Appeal if this matter goes there---

The Speaker (Hon. Kingi): Sen. Wambua, if I may assist you? Your colleagues are reacting to the communication that I have made. Are you privy to the contents of that communication?

Sen. Wambua: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Okay, then react to the communication. We are not reacting to the entire judgment, just my communication.

Sen. Wambua: Thank you, Mr. Speaker, Sir. This is what I would say about the communication. Yes, because the Senate was also a party to that matter, we will also appeal the decision---

The Speaker (Hon. Kingi): One more minute for the honourable Senator.

Sen. Wambua: Mr. Speaker, Sir, we will appeal to the Court of Appeal, and that we should because we have a right. If that appeal is upheld, then the Senate will have saved that Kshs50 million but even as we do that, this must be a constant reminder to us that whatever it is that we do, we are not the final authority. The things that we do today, 10 years, 20 years, or 30 years later, will return to us and that judgment will be passed by other people about our actions.

Mr. Speaker, Sir, I submit.

The Speaker (Hon. Kingi): Sen. Wambua, just do what Sen. Okiya Omtatah has done, get a copy of the communication, because clearly, you are not privy to the contents of that communication.

(Sen. Wambua spoke of the record)

(Laughter)

Sen. Cherarkey, you may proceed.

Sen. Cherarkey: Thank you, Mr. Speaker, Sir, for communicating on this live matter. Yesterday, we saw the judgment of the High Court. I want to agree with the House that we do appeal, because, as somebody has said, juries in any proceeding are not subject to being interrogated. The Kshs50 million is a lot for the Senate and we did our part.

I am happy. I know we raised in our submission that the doctrine of separation of powers must be respected at all times. I saw the facts and I want to advise my colleagues. There is what we call *res ipsa loquitur*, which speaks for itself. When I saw Lady Justice Mugambi, who taught me, that is why I am a serious lawyer of serious pedigree, she said very well---

(Laughter)

She said with a lot of certainty that the Senate operates on the doctrine of separation of powers, and the work we do under Article 125 of the Constitution on the work of the committees, Standing Order No.78 and Article 145 of the Constitution of the Republic of Kenya, we did our part as a Senate and we will not allow ourselves to be fined.

I do not agree with the entirety of the judgment of the High Court. I agree on the part where they agreed with us that the former Deputy President was validly impeached as the Deputy President of the Republic of Kenya.

I was shocked when the courts said that Dr. Gikonyo's affidavit did not have a probative value and they went ahead and disregarded it. How can we operate as a House when the former impeached Deputy President ran away? Does it mean we needed to stop him? He knew we wanted to grill him. He had the opportunity under our Standing Orders No.78 to either appear in person or by advocate.

Senior Counsel Paul Muite was seated here. He did not know where his client was. We know Members of this House, who I am privy to, who went and told him, "run away, because we are going to fire, grill and impeach you for violating the Constitution." I can name names. The acting DCP, SG was the one advising him to run away.

Mr. Speaker, Sir, we must stand our ground and the High Court---

The Speaker (Hon. Kingi): Senator for Nandi County, you cannot impute improper motive to your colleagues. Kindly withdraw.

Sen. Cherarkey: Mr. Speaker, Sir, I withdraw and proceed.

(Laughter)

Mr. Speaker, Sir, we gave an opportunity. In fact, our Standing Orders, so that Kenyans can understand, you can either appear---

The Speaker (Hon. Kingi): Sen. Wakili Sigei, you may proceed.

Sen. Wakili Sigei: Mr. Speaker, Sir, I want to most sincerely thank you for the communication you have made this afternoon and for all the work that you have done. The facts ought to be made clear, because it is a bit absurd for the judges to say, on one hand, this House is independent in terms of procedure on how it deals with matters before it and on the other hand, it went ahead to pronounce itself that our Standing Orders are also constitutional, and confirmed that, indeed, we were working within certain constitutional timelines and we are in charge of our programme.

It does not then make sense for the same judges to say that having complied with what they said, our independence, mandate and constitutional timelines, that having a client who runs away from the House, constitutes an unfair hearing.

I am happy that you have made the communication that we, as a House, must appeal that decision. As has already been submitted by the rest of the Senators here, it is absurd for them to say that the client who disappeared, whose lawyer could not even tell where he was, was not allowed to be heard. Therefore, as a House, having made that decision, I believe that we should be allowed to do it.

Mr. Speaker, Sir, granting that adjournment, acting as a quasi-judicial institution, is the discretion of this House. Let us forget for a moment even that we did not have to

comply with the Standing Orders or the constitutional dictates, which, of course, we could not. It is the discretion of this House, and therefore, we were in our right place and footing to decide as to how to proceed and prosecute the impeachment proceedings that were before this House.

Therefore, I fail to understand the basis upon which a grant of damages worth Kshs50 million, which was not asked for by the client, could be slapped on this House. Even though we agree in part with the judgment, this particular finding on the fair hearing cannot stand. I am happy that the House will proceed to defend the position that it took.

I thank you.

The Speaker (Hon. Kingi): Sen. (Dr.) Oburu, you have the Floor.

Sen. (Dr.) Oburu: Thank you, Mr. Speaker, Sir, for the opportunity. I am equally surprised by the court decision to impose a fine of Ksh50 million on the Senate, when, on the other hand, the same court said the Senate was right and the Senate rightly impeached Hon. Rigathi Gachagua according to the Constitution. We followed the Constitution and we impeached him according to the Constitution.

All of us were here when the lawyer told us that he did not know where his client was. Now, if he did not know, then how could we know as a Senate? How could we know? We also did not know. We did not know where he was. Now, whatever was brought later on, that he was in the hospital, was an afterthought, and that afterthought cannot be used to impose a fine on us when we acted constitutionally and the court has said so, and they have impeached him.

(Applause)

To me, this is a contradiction. How could you agree that the Senate rightly impeached somebody for having breached the Constitution, on one hand, and on the other hand, impose a big fine?

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

[The Temporary Speaker (Sen. Wakili Sigei) in the Chair]

Mr. Temporary Speaker, Sir, I urge you to appeal and ensure that the Senate does not pay the Kshs50 million. Where do we get Kshs50 million when we are struggling in our steering committee of Parliament, to get money to travel locally? Where do we get Kshs50 million? We are poor. If it was with the National Assembly, perhaps, they would pay. For us, we are not going to pay, and we are also right not to pay. We are going to appeal. We follow the law. I hope that these kinds of judgments will not continue in our country.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Okiya Omtatah, please proceed.

Sen. Okiya Omtatah: Thank you for the opportunity to speak to this important issue. First of all, I also thank the Speaker for having given this communication for us to

discuss this issue. From where I sit, I think it is an issue that does not call for a knee-jerk reaction. It is an issue that calls for reflection and meditation. This is because impeachment is a constitutional process. In the Constitution, Article 150 deals with the removal of the Deputy President. When you look at Article 150(2), it says the provisions of Article 144, that is removal on the basis of health, and Article 145, the impeachment, relating to the removal of the President, shall apply with necessary modifications to the removal of the Deputy President.

I would like us to take lessons from the judgement instead of condemning it. This is because when I look at it, and I am still convinced even from the day this impeachment came here, that this House was not prepared for the impeachment of a Deputy President. I say so because we did not have a law that would modify the impeachment of the President to apply to the Deputy President. That for me, trying somebody without a law, amounts to a violation of their rights. I do not even find a contradiction in the finding of the court that there was a violation of the rights given the court's own reasoning, which our Speaker aptly captures here, where it says that, it is like when somebody has been executed, and you determine that the person was wrongfully executed. That may not restore the person back to life. That is the argument I am seeing the court say present here.

This particular quotation that, “we find that His Excellency Gachagua’s rights were infringed when the Senate declined to allow an adjournment,” is a violation that constitutes both a vindication of his rights, and a recognition of the constitutional infirmity, in the process that does not undo the impeachment itself given the finality of Article 145, Law 7.

I strongly believe that the rules of procedure should benefit an accused person. Given that this gentleman, His Excellency Mr. Gachagua, had requested for an adjournment, this House had the capacity to grant an adjournment.

(Sen. Okiya Omtatah’s microphone was switched off)

The Temporary Speaker (Sen. Wakili Sigei): Your time is up, Sen. Omtatah. Sen. Beatrice Ogola, please proceed.

Sen. Ogola: I rise to support the communication you have just read this afternoon, that this House must appeal. Even with a lay mind, as my leader, Sen. Wambua stated, that he is lay to the law, which I accept, he, however, has eyes and ears.

From where I was seated, I was able to see Senior Counsel Paul Muite, where he was seated on that day. A number of you, maybe, had their back turned to him. I listened and watched as Senior Counsel, representing the former Deputy President, said that he did not know where his client was. So, as a Senate, how would we have known where his client was?

In basic absence in schools by pupils and students that are seated here, when they absent themselves from school and say they went to the hostels, the administration always expects them to take their books from the hostels where they were. I remember in our long history in schools, we would take exercise books as evidence that we were in hostels. If that can be done in schools and in other institutions, why was it difficult for the

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representative of the former Deputy President to bring evidence to this House that he was unwell?

We are paid by Kenyans to sit here. We do not sit here for free. We earn a living from the taxpayers. Even the Kshs50 million that we are expected to use to pay the former Deputy President is taxpayers' money. Kenyans cannot be taxed twice by paying Senators listening to the Deputy President---

(Sen. Cherarkey spoke off record)

Sen. Ogola: Yes, I accept.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Beatrice, the Speaker has not granted Sen. Cherarkey the opportunity to inform you. Proceed to conclude because your time is running out. Sen. Cherarkey just hold your information.

Sen. Ogola: Hon. Speaker, what I am saying is that Kenyans cannot be taxed twice to pay for a criminal who ran away from Parliament. As Senators, we were seated here listening to him. We are paid for that work. Then the same Kenyans money will be used to pay him the cost of Kshs50 million. I, therefore, support your communication and I end by saying that it was right for the Senate to choose the plenary process because then it was open for everybody. Everybody saw Muite here saying---

(Sen. Ogola's microphone was switched off)

The Temporary Speaker (Sen. Wakili Sigei): Thank you, Sen. Beatrice Ogola. Sen. Wakoli, please proceed.

Sen. Wafula: Asante, Bw. Spika wa Muda, kwa nafasi hii ili nichangie jambo kuhusu mwelekeo wa korti ambao tumepewa. Tuliona hapa mawakili shupavu na waliobobea katika kutetea washukiwa sugu. Katika historia ya Kenya, tumeona mshukiwa sugu ambaye stakabadhi zake zilikuwa hapa na Wakenya tulikuwa tunabukua vitabu tukiduwaa tukishangaa. Ni mara ya kwanza kuona mshukiwa mkuu akitoweka kutoka maeneo ya kesi na mawakili wake pia kushangaa. Familia yake haijui imueleze nani. Maafisa wa polisi wanaomlinda wamezama. Nashangaa sana.

Kenya hii ni nchi ya ajabu sana. Mpaka Seneti inashtakiwa kwamba tumechochewa. Hata baada ya kumng'atua, tunaambiwa tumlipe pesa kama dawa ya brufen. Yaani, augue polepole. Ni jambo la kushangaza sana. Inadhihirika wazi kwamba makosa ya huyu mshukiwa sugu yalikuwa makubwa sana. Naomba Wakenya waangalie stakabadhi kwani ziko wazi. Kando na kudai ya kwamba hatukumpa haki, Seneti ikubali kuwapa Wakenya hizi nakala zilizoletwa hapa na madai pamoja na ushahidi. Tuwape Wakenya wachapishe kwa magazeti ili wajue hata tulikuwa na moyo wa utu. Yaani tulimfunika uchi wake na kuruhusu aende. Na wale ambao wako naye katika korti, hawajui wanatembea na nani. Yule ni mnyama mwitu aliyevaa ngozi ya kondoo. Kama Seneti, tutasimama imara.

Sen. Cherarkey: On a point of information, Mr. Speaker, Sir.

Sen. Wafula: Naomba nimruhusu ndugu yangu.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Wakoli, do you want to be informed by the Senator for Nandi County?

Sen. Wafula: Ndio, huyo ni wakili shupavu wa kupambana na wale sugu.

The Temporary Speaker (Sen. Wakili Sigei): Very well. Sen. Cherarkey, proceed.

Sen. Cherarkey: Mr. Temporary Speaker, Sir, this is a country where a Member of Parliament once abducted himself. So, when the former impeached Deputy President ran away, he was borrowing from a classic case where a sitting MP self-abducted. We are worried about such behaviour. I wish to inform my brother, Sen. Wakoli.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Wakoli, conclude.

Sen. Wafula: Mheshimiwa Spika wa Muda, ni katika Bunge la Taifa ambapo Wabunge wanajiteka nyara na katika maeneo ya utekaji nyara wa---

The Temporary Speaker (Sen. Wakili Sigei): Give him 30 seconds to conclude.

Sen. Wafula: Washukiwa wanajiteka nyara, wanaita vyombo vya habari na kutoa hotuba wakiwa msituni au hospitalini. Nashangaa sana na aliyekuwa Naibu wa Rais. Namwomba Mheshimiwa Rais afya nzuri. Aliumia sana kuongoza nchi na sugu kama huyu.

Asante sana, Mheshimiwa Spika wa Muda.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Hamida Kibwana.

Sen. Kibwana: Bwana Spika wa Muda, asante kwa kunipa nafasi hii. Hata mimi naunga mkono mawasiliano ya Bwana Spika. Kusema kweli tunaheshimu maamuzi ya mahakama, lakini hatukubali ya kuwa former Deputy President, Mheshimiwa Rigathi Gachagua, hakupewa nafasi na Seneti. Tulivumilia kwa muda mrefu na tulikuwa wangwana na kumsikiliza. Lakini nadhani aliona atafanya kipindi, kwa lugha ya mtaa wanaita, "kipindiree". Alitufanyia kipindi ili kutufanya tuwe wajinga. Sisi tulikubaliana naye na mambo yakaisha.

Leo tunashangaa kwamba baada ya sisi kuwa wangwana na wavumilivu, mambo haya yanarudi kwetu. Mahakama Kuu imethibitisha kuwa mchakato uliofanywa hapa Seneti uliidhinisha uamuzi wa Bunge la Taifa wa kumuondoa ofisini kuwa halali. Nashangaa, itakuwaje tumetupiwa tena suala la kumlipa ilhali mtu mwenyewe alifanya mambo yake?

Kwa hivyo, naunga mkono Mawasiliano ya Spika. Kama Seneti, hatufai kulipa faini kwa sababu yeye mwenyewe alifanya mambo yake. Pia, ilikuwa ni aibu kwa mawakili wake ambao walishangaa. Kama vile Sen. Cherarkey alivyosema, kuwa kama kuna watu waliomshauri, basi hawakumshauri vizuri.

Bwana Spika wa Muda, naunga mkono Mawasiliano ya Spika ya kuwa hiyo faini sio ya kwetu. Imethibitishwa kuwa chochote kilichoendelea Seneti ni cha halali. Itakuwaje halali halafu sisi tulipie haramu ya Shilingi 50,000? Tunakataa. Tuendeleo kukata rufaa ili suala hilo lisikizwe vizuri.

Asante.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Hamida, it is Kshs50 million, not Kshs50, 000.

Sen. Kibwana: Haiwezekani tulipe fidia ya Shilingi milioni 50.

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, that brings us to the end of your comments on the communication from the Chair. As directed in that communication, we shall undertake the appropriate steps to protect the dignity, sanctity and authority of this House by preferring an appeal against that decision.

Nonetheless, we will now resume with today's Order Paper. Before the communication, we were dealing with Order No.23 on the Food and Feed Safety Control Coordination Bill (National Assembly Bills No.21 of 2023).

(Resumption of debate on Motion)

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

Sen. Wakoli, just hold on, the Speaker will guide you shortly.

Very well. Senator, I see from my dashboard that there are requests to contribute to this Motion. I have Sen. Mariam, who is not in the Chamber and Sen. Beatrice Ogola.

(Sen. Ogola spoke off record)

You seconded the Motion. Very well.

Hon. Senators, there being no other Member interested in contributing to this Motion, I will call upon the mover to reply.

(Sen. Wafula was on his mobile phone)

Sen. Wakoli, do not tempt the Speaker to take action against the use of mobile phones.

Sen. Wafula: Our esteemed Speaker, thank you for your good heart of forgiveness. I hereby seek your indulgence.

Hon. Temporary Speaker, I have heard the concerns of Hon. Members. I agree that county governments are an integral part of ensuring that devolution meets the expected outcomes for our people. This Bill has room to ensure that its aspirations are met and that county governments continue to play their rightful role.

This Bill will also be referred to the Committee on Delegated Legislation that deals with rules, regulations and laws. That is where the rubber meets the road and where the fine-tuning of its various aspects will be done. Thereafter, it will be cascaded down to county governments.

At the national level, the Public Service Commission (PSC) inducted and trained the County Public Service Boards (CPSB) to continue doing professional work. In the same way, I want to encourage Members that all is not lost. This is a new practice in our country where various arms of government come together to ensure we meet an expected outcome.

Therefore, county governments will be roped in and invited. We will walk the journey with them as the Senate to ensure that this Bill speaks to their needs, expectations and demands of both the international and local labour markets.

Hon. Members should know that the Committee on Agriculture, Livestock and Fisheries has always invited the Kenya Plant Health Inspectorate Service (KEPHIS) and the Ministry of Health to inspect poisonous food, such as potatoes in Rift Valley and to address the problem of maize in Trans Nzoia County.

It is evident that unless these Government agencies such as the Ministry of Health, the Ministry of Agriculture and Livestock Development and the Ministry of Trade, Investments and Industry come together to synergise and polish legislation, we will always limp and run in the dark. Therefore, this Bill provides an opportunity for all the agencies to come together, polish their act and make it practicable to the people, so that people do not subscribe and get permits from everywhere.

I understand that some governors are overtaking our people. The so-called *kanjos* are everywhere collecting money, but people do not see the value. Once organised properly, this institution will have its replicas at the county level, but their mother body will always guide and ensure that as devolution is strengthened and empowered, the institutions will equally do the same.

Mr. Temporary Speaker, Sir, pursuant to Standing Order No.63, I request that putting of the question be deferred.

The Temporary Speaker (Sen. Wakili Sigei): Sen. Wakoli, it is Standing Order No.66(3). If I heard you right, you said 63.

Hon. Senators pursuant to the provisions of Standing Order No.66(3), putting of the question is hereby deferred to the next sitting.

(Putting of the question on the Motion deferred)

Hon. Senators, before we move to the next Order, I will rearrange the Order Paper for the convenience of the business of the House today. We will go to Order No.30.

Clerk, please, call Order No.30.

MOTION

ADOPTION OF REPORT ON INQUIRY INTO SHORTAGE SMART ENERGY METERS

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, this is by the Chairperson of the Standing Committee on Energy.

Sen. Kisang, proceed to move the Motion.

Sen. Kisang: Mr. Temporary Speaker, Sir, I beg to move-

THAT, the Senate adopts Report of the Standing Committee on Energy on inquiry into the shortage of smart energy meters in Kenya and the potential for their local manufacturing, laid on the Table of the Senate on Wednesday, 11th June, 2025.

Mr. Temporary Speaker, Sir, pursuant to its mandate under Standing Order No.228(3) to investigate, inquire into and report on all matters relating to the mandate, management, activities, administration and operations of its assigned Ministries and

Departments, the Standing Committee on Energy, at its sitting held in October, 2023, resolved to initiate an inquiry into the ongoing shortage of smart energy meters in Kenya and the feasibility of promoting local manufacturing of these devices. This decision followed serious concerns raised by the Public Procurement Regulatory Authority (PPRA) regarding alleged irregularities in the award of a Kshs2.9 billion smart meter tender to M/S Harley Berry Limited, which had been recommended by the State Department for Energy, raising questions on transparency, competitiveness and adherence to the Public Procurement and Asset Disposal Act, 2015.

The committee also took note of structural challenges in the metering sector, including the absence of clear standards and regulatory frameworks for smart meters, high borrowing costs for potential local manufacturers and the proliferation of counterfeit meters in the market, all of which undermine reliability, consumer protection and the country's broader energy sector reform agenda. Additionally, the committee was concerned about use of framework agreements under Section 114 of the Public Procurement and Asset Disposal Act, which if not properly designed and implemented, may be used in a manner that weakens competitive procurement and reduces transparency in large scale meter acquisitions which can lead to corruption.

In this regard, the inquiry was guided by four key issues-

- (i) to interrogate the procurement process surrounding the award of the smart meter tender to M/S Harley Berry Limited;
- (ii) to assess compliance with the Public Procurement and Asset Disposal Act;
- (iii) to examine the feasibility and viability of promoting local manufacturing of smart energy meters to help in creation of employment opportunities for our youth; and,
- (iv) to propose strategic policy measures to reform the Kenya Power procurement systems and strengthen regulatory oversight for transparency, accountability and efficiency in the energy sector.

Accordingly, the committee held sittings with key stakeholders, including the Principal Secretary responsible for Public Works through the Supplies Branch. They cited the Supplies Branch, which was awarded the tender to supply smart energy meters without going through the procurement process using an old law of 1952. The committee also met with Kenya Power, the Africa Smart Meters Association (ASMA) and the Kenya Association of Manufacturers (KAM) and further received written submissions from Dedan Kimathi University of Technology (DeKUT).

The committee further noted that a framework agreement was adopted for a tender valued at approximately Kshs2.9 billion, implemented through call off orders, with unit prices of Kshs9,150 for single-phase meters and Kshs15,890 for three-phase meters, culminating in the supply of over 320,000 meters between October, 2023 and February, 2024.

On the question of local manufacturing, the committee observed that Kenya stands at a strategic inflection point. While there is emerging assembly capacity and strong interest from local industry, there is absence of a comprehensive regulatory framework and approved technical standards by the Energy and Petroleum Regulatory Authority (EPRA). There are some gaps in terms of setting up standards to assist local

manufacturers to manufacture. It would be of benefit if we used local manufacturers to supply smart energy meters to the Kenya Power.

The committee also noted that the high capital costs associated with end-to-end smart meter manufacturing coupled with elevated borrowing costs have made it difficult for local firms to compete with imported products, thereby limiting technology transfer, local value addition and job creation in the energy technology value chain.

In view of these findings, the committee has made far-reaching recommendations aimed at restoring integrity to smart meter procurement and catalysing a viable local manufacturing ecosystem. These include requiring the Kenya Power to revert smart meter procurement to its internal Procurement and Supply Chain Department in strict compliance with the law and mandating EPRA to establish and publish a robust prequalification framework for smart meter suppliers anchored on quality, technical capacity and local content.

The committee further recommends that the Kenya Power should transition towards a decentralised smart meter acquisition model, allowing customers to procure meters from EPRA approved suppliers.

What we are saying is that when you put up a house and have wiring done by an electrician certified by Kenya Power, as you buy electrical appliances from a hardware or shop, you can also buy an energy meter. You do not have to wait for an expensive meter from Kenya Power because it takes time. Sometimes customers wait for ages. When the Rural Electrification and Renewable Energy Corporation (REREC) does last mile connectivity in our rural constituencies, they wait even for a whole year before power is supplied because of lack of energy meters. However, if this one is decentralised and liberalised, it will be easy for consumers to buy meters from any shop, so long as the standards have been set and certified by EPRA.

The committee also further recommends that Kenya Power should transition, as I had said, to a decentralised meter acquisition model, allowing customers to procure meters from EPRA-approved suppliers with installation by licensed technicians and verification by Kenya Power, therefore promoting competition, widening market participation, reducing single-buyer's risk and also eventually reducing the cost, because if there is competition, basically prices will come down.

In support of local manufacturing and industrial development, the committee proposes that the Ministry of Energy and Petroleum and the National Treasury put in place clear national standards, targeted initiatives and financing instruments to move the country from meter assembly to full-scale manufacturing in partnership with universities and technical institutions as centres of research, innovation and skills development.

Mr. Temporary Speaker, Sir, we visited several firms that were doing assembly of smart pixels. These particular companies were basically importing almost everything from China and Europe and then they just come to assemble. Basically, there is no manufacturing that takes place. They put these things together and sell. We need to support them, so that the raw materials can be manufactured here in Kenya. It will reduce prices, create a lot of employment for youth, and then eventually spark the economic growth of this country.

In conclusion, this report provides a timely roadmap to address the immediate smart meter shortage, correct weaknesses in procurement practice and lay the foundation for a competitive, locally anchored smart meter industry that supports Kenya's energy transition and digital economy.

This is very important and timely because with the affordable houses that are coming up, we will need so many meters. We need to energize and supply power to very many homes. This will not be possible if we do not encourage locally manufactured smart meters. This will also help Kenya Power. They will not have to go to their homes to read the meters. They will be able to disconnect automatically from the offices, reconnect automatically when the customers pay or use tokens, where you basically buy units just like airtime that we buy from our phones.

I beg to move and request my colleague, able Sen. Beatrice Ogola, to second the Motion.

Sen. Ogola: Mr. Temporary Speaker, Sir, I wish to second this Motion on the report of the Standing Committee on Energy on the inquiry into the shortage of smart energy meters.

All of us in our communities deal with the issue of shortage of meters which has led to a number of harassment of members of the public. I frequently see a number of small businesses people running here and there because of shortage of meters. One would wonder what happens because some time, a number of people are arrested by the Kenya Power policing unit because they have meters that do not belong to them. A number of these people have no knowledge of how to fix some of these meters or where they got them from. Therefore, we have a lot of fraud cases.

I was at home last week when a young man came running to me saying they had been arrested on issues involving meters. A number of recommendations that have been given in this report are a cure to a number of those challenges that I have just referred to. As I second this Motion, I lay emphasis on what the Mover has indicated on local manufacturing.

In this country, we used to have something called Agenda Four. Manufacturing was critical to Agenda Four in this republic. Coupled with housing, that His Excellency the President, Dr. William Samoei Ruto, is moving to another level. Kenyans, including the doubting Kenyans, can see the houses physically. Soon, if organised properly, Kenyans will be living in dignity, including a number of job seekers who may not have enough money to rent houses when they leave college.

The issue of local manufacturing and industry development has been excessively discussed in this report. The only thing that we have to look at, and of course, which has been mentioned, is the issue of putting into place clear standards. When we promote local manufacturing, there must be standards that must be met. We also have to put incentives that will motivate our people into the manufacturing space. Of course, there has been a mention of financing mechanisms.

This report addresses the issue of integrity too. Of course, the report deals with a procurement issue that was there. This was a procurement of a tender to the tune of Kshs2.9 billion. By this committee coming up with this report, they are addressing key

issues of transparency, competitiveness and doing due diligence according to the procurement laws.

I second this report as I also indicate that EPRA seems to have a very huge mandate in this country. Therefore, we must also find a way of enhancing EPRA which should also enhance itself by broadening its strategies so as to reach the whole nation.

Mr. Temporary Speaker, Sir, I second.

(Sen. Kisang stood in his place)

The Temporary Speaker (Sen. Wakili Sigei): Sen. Kisang, take your seat or the nearest seat next to you.

(Question proposed)

Hon. Members, this Motion and report is therefore available for debate. I call upon Sen. Samson Cherarkey to make his contributions to the Motion.

Sen. Cherarkey: Mr. Temporary Speaker, Sir, I rise to make a comment. You have said rightly on this report on the inquiry into the shortage of smart energy meters and the possibility of local manufacturing. While I commend the Vice-Chairperson of the Committee on Energy and the membership, they have done well on the second question, but they have not given us headway on the first aspect. The issue was to give us the aspect of shortage, the legality and viability on whether there was violation of the law in terms of public procurement processes.

On part two, I agree with them that as a country, we must look at local manufacturing. The committee has hesitated to address the award of a tender worth Kshs2.9 billion to a company called Harley Berry Limited, for the supply of smart meters. From the reports and the interactions of minutes and meetings that have been done by the committee, it appears like this was a direct procurement, contrary to the law. The reasoning of the stakeholders who appeared before the committee was that Harley Berry Limited was awarded the Kshs2.9 billion smart meter tender because they had it in their warehouse.

Mr. Temporary Speaker, Sir, the reading of Article 227(1) of the Constitution is clear on procurement of public goods and services. It states-

“When a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.”

It does not say, “when they have availability”. This is a classic case of corruption because the work of awarding of smart meter tenders was done by the Ministry, through their supply chains department, instead of being done by the Kenya Power. It was done by the State Department for Energy and Petroleum. Remember there were issues of procurement irregularities and corruption. In fact, this was a clear case of corruption. Instead of Kenya Power doing the award of the tender, it went ahead and used the State Department of Energy to procure, which is a clear violation of the law.

Article 227(1) of the Constitution is clear that it must be transparent and cost effective. Looking at the committee proceedings, the award of the tender to Harley Berry Limited is not clear. It looks like a case of corruption. When you read the report that was generated after the Kenya Power appeared, they justified that it was because they wanted to open and decentralise the award of smart meters in the country to be single-phase or three-phase, and so, they must now allow other people to do it. That is how corruption is done. This is because, the Kenya Power did not award as per the law. However, the State Department of Energy went ahead to give out without any legal recourse. This is a clear violation of Article 227(1) of the Constitution and the Public Procurement and Disposal Act, as provided by the law.

I would like to request the committee, through the Vice-Chairperson, although he is technically the Chairperson, Sen. Kisang', to further investigate this Kshs2.9 billion worth tender. To me, if it walks, quacks smiles or crackles like a duck, that is a duck. For us, that is corruption. I would like to thank the committee because they provided information on how various companies had been awarded tenders to supply smart meters in this report. They have gone ahead and indicated the number of meters that have been given. They have highlighted a number of them in their report. So, there is no justification of direct procurement or award of the Kshs2.9 billion tender under the State Department for Energy instead of Kenya Power, which usually awards tenders. That is on page 15.

When you look at page 15, you will see the summary of four firms for tender supply of 7,111,740 meters with a contract of two-year period of single phase. This amounts to 7,011,740 smart meters. Smart Meter Technology Limited was given 314,440; Magnate Ventures Limited was given 164,500; Inhemeter Africa Company Limited, 128,000 while Yoshin Group Limited was given 104,800. The report has gone ahead to justify that there were companies that were competitively awarded. However, we do not know what is special about Harley Berry Limited, that it was given a tender of Kshs2.9 billion.

Mr. Temporary Speaker, Sir, this does not look right. While I agree with the recommendations of the Committee on the other aspects, they must tell us--- If you do not follow the law, yet you are a senior practitioner of the law, you cannot regularise an irregularity without following the duress of the law. Even if the State Department for Energy would say it was cost effective and did not lose any money, the fact that there was an irregular process of acquiring public goods, contrary to Article 227(1), some of us would think otherwise. Therefore, I would like to appeal to Sen. Kisang, the Mover and the Vice-Chairperson of that Committee, to still relook into this aspect of Kshs2.9 billion that was specifically awarded to this company, yet he had indicated that there were other four firm companies that had been indicated.

Mr. Temporary Speaker, Sir, this is a fairly short report. The committee has raised a number of procurement processes. I have previously touched on that. I agree there could be quality and quantity issues that were assessed in Harley Berry Limited in their warehouse. However, we do not know the process and how it was awarded.

Mr. Temporary Speaker, Sir, still, with regard to Kenya Power, a few years ago, there was a scandal of smart meters. There were allegations that smart meters of the

Kenya Power and even water companies had an aspect of doctoring or tampering with meters and that there would be illegal connections of electricity in some places. This has caused a lot of loss and non-performance at Kenya Power. While we say Kenya Power has a lot of challenges, perhaps Bomet County is a bit better. I went to a place in Kipsamoite where Kenya Power brought a transformer. However, for the past four years, they have never replaced or made it functional.

So, while we appreciate that Kenya Power has a lot of challenges, you will see poles, contractors and electricity being supplied. However, Kenya Power does not provide smart meters or generators in time. There are also cases of frequent blackouts. I have had a discussion with many businessmen and women in this country because the issue of smart meters boils down also to the functionality of Kenya Power. One of the biggest threats to ease of doing business in Kenya is the frequent blackouts by Kenya Power.

Mr. Temporary Speaker, Sir, in the past, when we used to have electricity rationing, it was because of the dry season, since most of our power is generated through hydro power. However, now it is raining. *El nino* is on the way. This should not be the reason that there is instability of power in this country. That is why even a few months or few weeks ago, we were pushing that we need to diversify. We need to bring the issue of solar and nuclear energy. For instance, I know there is one that is supposed to be set up in Siaya County, so that we ensure stability.

Mr. Temporary Speaker, Sir, the cost of electricity is also quite unsustainable. I would like to thank the President, through the Ministry of Energy and Petroleum. I saw they stood down an increment of cost of electricity. That was impressive. That will go a long way in terms of domestic and industrial use, so that we do not discourage the usage.

I would like to give my final comments on the procurement award of Kshs2.9 billion smart meters tender to the specific company. In my view, after reading the committee report, this is direct procurement contrary to the law, contrary to the Constitution, the Public Procurement Disposal Act and the Public Finance and Management Act of the Republic of Kenya.

I agree on the issue of local manufacturing. We have Tatu City and Konza Technopolis. The other day, we were arguing that we are even importing pencils, rubbers, match sticks and smart meters. There is Konza City. I know the vision of His Excellency the President is crystal clear even as he goes around the world to look for partners. He was in Belgium, today he in Oslo Norway. I know probably in the coming weeks, he is among the only African heads of state to attend G20 meeting hosted in France by President Macron to look for partners. I know the intention of the President is to operationalise County Industrial and Aggregation Parks (CAIPs). This will allow the aggregation, industrialisation and the cottage industries.

I agree with the committee that we must boost our---- It is embarrassing to import smart meters into this country. We can do better. In the 1990s, although I was still very young, if you read the history of this country, there was the Nyayo era manufacturing of vehicles. In the 1990s, if Kenya had gone ahead and even thought of manufacturing a vehicle called Nyayo, we would be by far the mega industry hub in East and Central Africa.

So, by 1990s, we were doing Nyayo vehicles, and now we cannot even produce smart meters for use in our electricity. This will continue to hamper even the supply of rural electricity. The last mile connectivity that His Excellency the President--- I am happy that in Nandi, for example, we got more than Kshs1.3 billion for all Nandi County to supply the last mile connectivity electricity. Every household needs those smart meters, so that we do not have cases where Kenya Power makes losses, courtesy of non-availability.

Mr. Temporary Speaker, we have universities. During the school laptop issue, I think Moi University was given the lead to manufacture the laptops. I wish that Bomet University, where you come from, should be a hub of manufacturing of smart meters, because Bomet people are technologically advanced. I am saying this with Mulot in mind. If you find people doing what they are doing in Mulot, for example, in Bomet, your county, those people are naturally smart. It is not for us to fix smart meters at Bomet University. Of course, we have more universities such as Kenyatta and the University of Nairobi. I do not see the need to import smart meters into this country.

As we manufacture smart meters, we must tie up with the issue of eco-friendliness, environmental preservation and conservation. The Energy and Petroleum Regulation Authority (EPRA) needs to up their game. In the report, EPRA lacked approved standards for smart meters. So, how can they be importing? How do we know that the smart meters meet the standards? I know EPRA is facing a lot of challenges, especially after that scandal of fuel adulteration and pricing.

Many Kenyans should know that EPRA goes beyond only regulation of prices. They have an obligation to ensure that they give us standards and also ensure evaluation and monitoring mechanisms to ensure the quality of meters that is being supplied in the market meets certain thresholds.

The distinguished Senator of Elgeyo Marakwet, I do not know whether EPRA committed to ensuring that they follow up on those issues, so that we can--- and CAIPS in counties and the President trying to look for partners across the country will ensure there are employment opportunities especially for the young people.

You and I agree that there is a population explosion. In the 1980s and 1970s, there was what we call baby boom in America. I think what we are seeing in Kenya is now what we call baby boom. Even after the family planning that happened in the early 1990s, Kenyans continue to follow the tenets of the book of Genesis, where God said, “go ye and fill the world.” I think that is what Kenyans are doing, because I was looking at the Kenya National Bureau of Statistics (KNBS), the average in my own county is four children per household.

In northern Kenya, we have six children per household. Of course, that is because of the nature of the religion of Islamic faith. You can imagine they allow for four wives. Each with six children is quite a number. Although in my culture, we do not count the number of children; that is 24 children. If you divorce and get another four, you can imagine--- We are facing a population explosion. That is why you see the young people restless. Most of them are learned, they know what should be done, but they do not get the opportunities.

As a nation, we want to thank the President because the National Youth Opportunities Towards Advancement (NYOTA) programme, the Hustler Fund and Kazi Majuu have really gone a long way in supporting the youth. In fact, in Nandi County, we are proud, and I saw somebody chiding us that most of our communities, where Mr. Temporary Speaker Sir, you and I come from, are in Australia. We do not apologise, because we value Kazi Majuu.

The naysayers who chide some of us, are they aware that the foreign exchange income from our children in Australia, from across the country, is approaching Kshs1 trillion? In fact, it has gone ahead of coffee, tea and many other things. The ones who remain, we must ensure that there is manufacturing potential to absorb our young people. Let us develop our young people, so that we can ensure that we go to process.

Corruption in this country starts through the budget and procurement. That is when corruption is organised. So, if the tendering and procurement process is tampered with, then it is corruption. I am happy that the Committee has said within three months, there should be a report on what really happened on this award of Kshs2.9 billion and the procurement process and tendering within Kenya Power, in the acquisition of smart meters. I agree with the Committee. Let us get the report. We do not have an implementation committee, but I hope the Committee on Energy can sit and do that follow-up.

On the issue of local manufacturing and industry development, in the 12 months, the National Treasury and National Industrial Training Authority (NITA) and also---

In conclusion, I know my time is fast spent. We now have Technical and Vocational Education and Training institutes (TIVETs). There is one TIVET in your county that is appearing in the national budget. It is being budgeted for. Even in Nandi, we have Lessos National Polytechnic and Kaiboi. We should transform these TIVETs as hubs of manufacturing. We should use them, so that our young people can learn from there.

I hope that Sen. Kisang', when you get the feedback report, you will tell us how the National Treasury is integrating with the Technical University of Kenya (TUK) and TIVETs. I know you have been a Member of National Assembly and you have built a number of TIVET institutions in Marakwet West Constituency. You should be able to give us the link and how.

Mr. Temporary Speaker, Sir, every constituency, including your constituency, Chepalungu, have one or two TIVET centres and they have a number of children. Why do we not transform those to be the hub of manufacturing, so that we are like China? That is how China has become a powerhouse, through manufacturing, everything.

In conclusion, I like the Chinese. In China, when you have Kshs20 or Kshs1000, the Chinese can manufacture something worth that for you. For Kenya to be a powerhouse in Africa and the world, we must go the manufacturing way.

We hope for faster implementation after the adoption of the Report. I yield back.

The Temporary Speaker (Sen. Wakili Sigei): Honourable Senators, from the dashboard here, I do not have any other Member keen on making contributions. I will call upon Sen. Kisang to reply.

Sen. Kisang: Thank you, Honourable Temporary Speaker, Sir. I beg to reply and take this opportunity to thank the Members of the committee. That is a fairly old report, close to a year now.

We went round to the local manufacturers and even those who basically do the import of raw materials and assemble. I agree with Sen. Cherarkey and Sen. Ogola. I thank them. In that particular report, we have given recommendations and timelines when the Government agencies that are supposed to report back to this House and give us what they have done. We need local manufacturing.

In the ICT sub-sector, conductors, and also the small chips are being manufactured now by Dedan Kimathi University in Nyeri. Assembly of laptops and devices is being done by Moi University through the former Rivatex. So, Kenya Power and the Energy and Petroleum and Regulatory Authority (EPRA) needs to come with this standard. Our national polytechnics and also the Technical and Vocational Education and Training (TVETs), as Sen. Cherarkey has said, need to partner and manufacture. This is because you do not need to have done serious physics to manufacture this particular smart metres. It is very easy to assemble. This is something that we used to do when we were in high school in science congress. I do not know why it has taken so long.

As soon as this report is adopted, we want the Ethics and Anti-Corruption Commission (EACC) to move with speed and investigate the Kshs2.9 billion tender that was awarded by public works by an old 1957 law. They should have done restricted or an open tender as the law provides. When we were investigating, it was very difficult to get anything out of those we spoke to. This particular company did not even locate the offices. So, basically, it is a classical corruption case that requires EACC to move with speed and put people in. It is unfair that Kenyans lost Kshs2.9 billion instead of getting proper metres at proper prices competitively. If it was an open tender, the prices would have been lower than that. A total of Ksh9 million for a single phase and Kshs15 million for a three phase should have been maybe Kshs 5 or Kshs8 million. So, I hope Kenya Power is listening.

As Members have said, there is a shortage of both smart and manual metres. Some schools and communities on the Last Mile Connectivity already have installations and transformers, but there are no metres and so they cannot energise. Otherwise, this is also an opportunity for Kenyans to connect illegally if there are no metres. So, they need to move with speed and ensure they procure smart metres *en masse*.

There are several houses that are coming up, which have no smart metres. They will not be able to enjoy. There is also a danger because for the last few years, we have not gone into power generation. Soon, there is a likelihood of load shedding because we do not have enough power. Currently, as we stand, it is about 23 or 24 megawatts. The consumption is very close. So, if there is anything small, there will be a power rationing in the country. So, we need to encourage both local and international investors to come in and generate power so that we can have sufficient power.

I am happy that, at least, Siaya County has agreed to set up and generate power using nuclear in that part of the world. Initially, Kilifi County had been earmarked to generate power using nuclear power, but there was a lot of misinformation until they resisted. They will regret later in life for losing that opportunity. Within where the

generation of power will be done, there will be many opportunities, work and economic development.

I beg to reply and request that under Standing Order No.66(3), putting of the question be deferred to the next sitting.

The Temporary Speaker (Sen. Wakili Sigei): Hon. Senators, as requested, putting of the question to this Motion is hereby deferred to the next session.

(Putting of the question on the Motion deferred)

Hon. Senators, you note that we have got a number of business in the Order Paper. In the absence of the Members who are required to move, I defer order Nos.8 to 22.

BILL

Second Reading

THE STATUTORY INSTRUMENTS (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO. NO. 3 OF 2024)

(Bill deferred)

MOTION

ADOPTION OF REPORTS ON COUNTY OVERSIGHT AND NETWORKING
ENGAGEMENTS IN KITUI, MAKUENI AND MACHAKOS COUNTIES

THAT, the Senate adopts the Reports of the Standing Committee on Health on the County Oversight and Networking Engagements in Kitui, Makueni and Machakos Counties, laid on the Table of the Senate on Thursday, 26th February, 2026; Kiambu County laid on the table of the Senate on Thursday, 19th March, 2026; Bungoma and Kakamega Counties, laid on the Table of the Senate on Tuesday, 21st April, 2026.

(Motion deferred)

BILL

Second Reading

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL)
(AMENDMENT) BILL (SENATE BILLS NO. 1 OF 2024)

(Bill Deferred)

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BILL

Second Reading

THE ENVIRONMENTAL MANAGEMENT AND COORDINATION (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO. 66 OF 2023)

(Bill Deferred)

BILL

Second Reading

THE AUTISM MANAGEMENT BILL (SENATE BILLS NO. 19 OF 2025)

(Bill Deferred)

COMMITTEE OF THE WHOLE

THE STATUTORY INSTRUMENTS (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO. 3 OF 2024)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE NUTS AND OIL CROPS DEVELOPMENT BILL
(SENATE BILLS NO. 47 OF 2023)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE HERITAGE AND MUSEUMS BILL
(SENATE BILLS NO. 8 OF 2023)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE STATUTORY INSTRUMENTS (AMENDMENT) BILL

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(SENATE BILLS NO. 10 OF 2024)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE ENVIRONMENT LAWS (AMENDMENT) BILL
(SENATE BILLS NO. 23 OF 2024)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE SPORTS (AMENDMENT) (NO. 2) BILL
(SENATE BILLS NO. 45 OF 2024)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE PUBLIC AUDIT (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO. 4 OF 2024)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE COUNTY HALL OF FAME BILL
(SENATE BILLS NO. 18 OF 2023)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE PUBLIC FUNDRAISING APPEALS BILL
(SENATE BILLS NO. 36 OF 36 OF 2024)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE COUNTY OVERSIGHT AND ACCOUNTABILITY BILL
(SENATE BILLS NO. 3 OF 2024)

(Committee of the Whole deferred)

I will equally defer Order Nos.24 to 29 to the next session of this House.

BILL

Second Reading

THE COUNTY GOVERNMENT LAWS (AMENDMENT) BILL
(SENATE BILLS NO. 52 OF 2024)

(Bill Deferred)

BILL

Second Reading

THE COUNTY GOVERNMENTS (STATE OFFICERS REMOVAL FROM OFFICE)
PROCEDURE BILL (SENATE BILLS NO. 34 OF 2024)

(Bill Deferred)

BILL

Second Reading

THE WILDLIFE CONSERVATION AND MANAGEMENT (AMENDMENT)
BILL (SENATE BILLS NO.49 OF 2023)

(Bill Deferred)

BILL

Second Reading

THE LIVESTOCK PROTECTION AND SUSTAINABILITY BILL
(SENATE BILLS NO. 32 OF 2024)

(Bill Deferred)

BILL

Second Reading

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THE COUNTY WARDS (EQUITABLE DEVELOPMENT) BILL
(SENATE BILLS NO. 20 OF 2024) THE REFERENDUM BILL
(SENATE BILLS NO. 3 OF 2026)

(Bill Deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Wakili Sigei): Shall we now rise?

(Hon. Senators stood up in their places)

Hon. Senators, there being no other business on the Order Paper, the Senate stands adjourn until tomorrow, Wednesday 10th June, 2026 at 9.30 a.m.

The Senate rose at 5.55 p.m.