

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 11th November, 2014

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

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

PRAYERS

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF OFFICERS FROM THE SENATE OF THE STATE OF WISCONSIN, USA

The Speaker (Hon. Ethuro): Hon. Senators, I wish to acknowledge the presence of two distinguished guests who are seated at the Speaker's gallery namely, Mr. Donald (Don) J. Schneider and Ms. Lucinda (Cindy) L. Ashley.

Hon. Senators, Mr. Donald J. Schneider is a distinguished legislative veteran who served as the Chief Administrative Officer/Chief Clerk of the Senate of the State of Wisconsin, United States of America (USA) from 1977 through to 2003. After that, Mr. Schneider served as a parliamentarian and an advisor to the Senate leaders on administrative matters.

Mr. Schneider has an equally impressive international background, having provided technical assistance to not less than 25 overseas Parliaments. His areas of expertise include legislative processes, parliamentary procedures, internal management, capacity building, and record-keeping. He is also a leading specialist on the application of information technologies to legislative institutions.

Hon. Senators, Ms. Lucinda (Cindy) L. Ashley is a Senior Leadership Legislative Staff veteran who served as the Chief of Staff for the President of the Wisconsin State Senate, USA, for most of her legislative career spanning 1976 to 2003. Her areas of expertise include leadership and staff operations, Senate and Assembly relations, legislative and executive relations, and legislative issues development, legislative committee coordination, training of new legislative staff, constituent relations, local government relations, press relations, campaign coordination and development.

The two distinguished persons are in the country at the invitation of the Senate to assist in building capacity of our staff on the workings of a legislature in a bicameral

system. In the past, they have organized visits for our Senators and staff to various USA State legislatures and are very good friends of the Kenyan Senate.

On behalf of the Senate and on my own behalf, I extend a warm welcome to them on your behalf and wish them a happy stay in Kenya. I hope that they will find time to sample the rich hospitality of the Kenyan people and the beautiful landscape.

Thank you.

Hon. Senators, can we applause them in our traditional manner?

(Applause)

PAPERS LAID

REPORT OF THE TEACHERS SERVICE COMMISSION FOR THE YEAR 2012-2013

Sen. Karaba: Thank you very much, Mr. Speaker, Sir. I beg to lay the following Paper on the Table:-

Report of the annual Teachers Service Commission (TSC) for the year 2012-2013.

(Sen. Karaba laid the document on the Table)

REPORT OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE ON THE NATIONAL YOUTH SERVICE (AMENDMENT) BILL

Sen. Madzayo: Mr. Speaker, Sir, I beg to lay the following Papers on the Table:-
Report of the Standing Committee on Labour and Social Welfare on the National Youth Service (Amendment) Bill, (Senate Bill No. 26 of 2014).

REPORT OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE ON THE PERSONS WITH DISABILITIES (AMENDMENT) BILL

Report of the Standing Committee on Labor and Social Welfare on the Persons with Disabilities (Amendment) Bill, (Senate Bill No. 24 of 2014).

(Sen. Madzayo laid the documents on the Table)

STATEMENTS

The Speaker (Hon. Ethuro): Let us take the requests first and then we can get the responses.

Sen. (Prof.) Lesan.

STATUS OF BONUS PAYMENT TO SMALL-SCALE
TEA FARMERS UNDER KTDA

Sen. (Prof.) Lesan: Mr. Speaker, Sir, six weeks ago, I requested for a statement from the Chairperson of the Committee on Agriculture regarding the status of the tea industry in Kenya. I notice that the Chairperson had organised a symposium or seminar. I am sure by now the results of the report should be back in the House so that we can deliberate on it.

The Speaker (Hon. Ethuro): Sen. (Prof.) Lesan, I thought you were looking at me and I imagined you must also be listening. I said that we should get the requests first and then do responses. You are requesting for a response. That should have come at the time when we are asking for the responses.

Sen. (Prof.) Lesan: Sorry, Mr. Speaker, Sir. I, probably, misunderstood the instructions that you gave, but I am willing to oblige.

Proceed, Sen. Gwendu.

Sen. Gwendu: Mr. Speaker, Sir, I will wait for the time to request for a response.

The Speaker (Hon. Ethuro): Then let us move on to the responses.

Sen. (Prof.) Lesan, your question was requested to the Chairperson of the Committee of Agriculture or any other Member of that committee.

Proceed, Sen. Mositet.

Sen. Mositet: Mr. Speaker, Sir, just as what the hon. Sen. (Prof.) Lesan had said, after he requested the statement, the Committee was able to organize for the symposium. After that we deliberated and our report will find its way to the House this week.

The Speaker (Hon. Ethuro): Order, Senator! That is not being helpful to us. There was a specific request on the statement. Of course, the conference must have dealt with the matter. Bringing the report to the House this week will not help us. When will you respond to Sen. (Prof.) Lesan's statement?

Sen. Mositet: Mr. Speaker, Sir, it was deliberated very well---

The Speaker (Hon. Ethuro): Order! I just need a date.

Sen. Mositet: Mr. Speaker, Sir, tomorrow afternoon.

PLIGHT OF TEA FARMERS IN KIGUMO, KANDARA AND
GATANGA IN MURANG'A COUNTY

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir. On the issue of tea - it is important to emphasize this - there were several statements sought. However, in my case for Murang'a County, a petition was brought. You will recall that we had a stakeholders meeting on 10th October, 2014, which we appreciate. It was very well attended. However, the Standing Orders require that once a petition is brought to the Floor of the House, an answer must be given within 60 days, so that the petitioners may know the outcome of the deliberations of the relevant committee.

It is not just about an answer being given or a statement being issued, there is still the issue of the outstanding petitions from Murang'a, Nyamira and Kisii. I would like to know the fate of those petitions.

The Speaker (Hon. Ethuro): Sen. Mositet, you may respond.

Sen. Mositet: Mr. Speaker, Sir, I promise I will try to bring all the statements tomorrow afternoon.

The Speaker (Hon. Ethuro): All of them?

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

The Speaker (Hon. Ethuro): I remember, when they were being sought, the Chairman said he would do so after that particular meeting.

Sen. Mositet: That is okay, Mr. Speaker, Sir.

RECRUITMENT OF THE VICE CHANCELLOR
OF THE UNIVERSITY OF NAIROBI

Sen. Karaba: Mr. Speaker, Sir, I rise to issue a statement from the Ministry of Education, Science and Technology as regards the appointment of the Vice Chancellor of Nairobi University---

An hon. Senator: It is the University of Nairobi.

Sen. Karaba: I am sorry, Mr. Speaker, Sir. It is the University of Nairobi.

Pursuant to Senate Standing Order No.45(2), the Senator for Murang'a County, Sen. Kembi-Gitura requested for a statement from the Chairperson of the Standing Committee on Education regarding the recruitment of the Vice-Chancellor, University of Nairobi.

In the statement, the Chairperson was expected to report on the following:-

(a) Whether he is satisfied that the Council of the University of Nairobi acted correctly in conducting the interviews itself instead of having an independent body conduct the same as has been the norm in the past? Did the Council have the capacity to interview for such a high position? If so, why has there been so much acrimony?

(b) Whether he is satisfied, the foregoing notwithstanding that the interviews were conducted fairly and that all the candidates were treated equally and that there was no conflict of interest from among the Council Members?

(c) How crucial information on the interviews leaked before it reached the candidates and the Cabinet Secretary? If the leakage was from the Council itself and whether he is satisfied that the Council has the moral authority to continue being in place?

(d) Whether the whole process should be annulled and the position advertised anew to allow for a fair and transparent process leading to the appointment of the Vice Chancellor.

Mr. Speaker, Sir, I wish to respond to the issues raised as follows:-

(a) According to the University Act 2012, Section 35(i)(a)(1), one of the functions of Councils for Universities is to employ staff. Further, in Section 35(i)(a)(v), the University Council shall recommend for the appointment of the Vice Chancellor to the Cabinet Secretary. Therefore, the Council of the University of Nairobi acted within the law.

Mr. Speaker, Sir, it is not true that it has been a norm in the past to have an independent body conduct an interview for the Vice-Chancellor and other senior

management. As to whether the Council had the capacity to interview such crucial position, the answer is “yes” and they were doing what was within their mandate.

With regard as to why there was much acrimony, no one knows the exact reason because this was treated as confidence. Whatever else happened, nobody knows.

(b) All the Council Members signed a confidentiality and conflict of interest agreement. This was done both before the short listing and during the interview process. All the four candidates who had been shortlisted were treated equally. For example, at the end of the interview, they were asked to state whether the Council had given them a fair chance during the interview process. They all affirmed fair play. After the interview, they were requested to ask the Council any question that they would wish to be clarified. In the circumstances, I am satisfied that the interviews were conducted fairly.

(c) No one knows how the candidates’ marks and ranking were leaked and the persons responsible. Consequently, the entire Council cannot be judged to have no authority to continue being in place unless and until there is proven evidence that the Council was involved in the said leakage.

(d) Since the whole process was transparent and was done in accordance with the University Act 2012 Section 35(1)(a)(v) which provides for a competitive process of recruitment, there is no justification for annulling the whole process and advertising anew.

Thank you, Mr. Speaker, Sir.

Sen. Kembi-Gitura: Mr. Speaker, Sir, with a lot of respect to the Chairman of the Committee, this is by far the weakest statement that I have heard issued in this House since we started last year.

First, I want to assume the Cabinet Secretary did not even read the statement that I had sought. If you look at what he has said, he starts by telling us that it has not been the norm for the Vice Chancellor of the University of Nairobi to be selected using a body other than the Council itself. The appointment of Dr. Magoha was done by a private firm of KPMG or PriceWaterHouseCoopers. So, what he is saying is not true.

Secondly, I find this dismissive, arrogant and condescending as to why there is so much acrimony. He says that: “No one knows the exact answer or reason. It is, probably, traceable to individual and community interests.” He tells us that these people signed a confidentiality and conflict of interest document before they commenced the interviews. He has told us that no one knows how the candidates’ marks and rankings were leaked. So, he admits that the rankings and markings were leaked to the media long before the Cabinet Secretary knew about it. He says: “Consequently---

The Speaker (Hon. Ethuro): Order, Senator! You are supposed to seek clarification.

Sen. Kembi-Gitura: I am, Mr. Speaker, Sir. This matter is of such great importance---

The Speaker (Hon. Ethuro): But you are making another submission altogether.

Sen. Kembi-Gitura: With your indulgence, Mr. Speaker, Sir, he says that the whole Council cannot be judged to have no authority. I did not ask about authority. I talked about moral authority to continue as a Council.

Section 39 of the Universities Act 2012 provides very clearly the job description of the Council when it comes to the interviewing of the Vice-Chancellor. Can the Chairman tell us why in the interviewing panel there were people other than the members of the Council sitting in that interviewing panel? Can he tell us why Prof. Walter Mwanda, who is not a member of the Council, was sitting there? He is a member of the Senate. Why was Prof. Japheth Kiptoon, who is neither a Member of the Council nor a member of the Senate sitting in the interviewing panel? Why even today, there has been no appointment if the Cabinet Secretary is satisfied that the interviews were free and that every candidate got a fair chance?

The point I am making is that I am not satisfied. I hope that the Chairman is not satisfied and that he will go back to the Cabinet Secretary or summon him---

The Speaker (Hon. Ethuro): Order, Senator! You have put your issues. Let us hear the Chairman first.

Sen. Kembi-Gitura: Mr. Speaker, Sir, there are so many issues. I hope you will give me another chance to come back on this issue because we are talking about equity, fairness and individuals who have cultivated their careers which can be destroyed at the stroke of a pen because people have partisan interests in this position.

The Speaker (Hon. Ethuro): Let us hear, Sen. (Prof.) Lesan.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, this is a serious issue. Apart from what the Chairman has told us I would like to know whether it is true that Prof. Walter Mwanda and Prof. Japheth Kiptoon are not members of the University Council of Nairobi. If, indeed, they are not members of the Council, then it raises a more fundamental issue as to how the recruitment of the Vice Chancellor was done, if it has already been done. Is it also possible that members of university councils other than the University of Nairobi can sit in another council and be able to deliberate on an interview of a candidate for the university, either by a constitutional right or by invitation to attend to that interview of the Council of the University of Nairobi? I would like that clarified as part of the supplementary question.

The Speaker (Hon. Ethuro): Mr. Chairman, you may respond now.

Sen. Karaba: Mr. Speaker, Sir, it is my hope that---

The Speaker (Hon. Ethuro): Order, Mr. Chairman! Members should help the Chair on requests for those seeking statements or asking for responses. When the rest of you want to participate in a particular response, let us have you under interventions. That helps me to make the distinction.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, from the clarifications sought and to the best of my knowledge, I do not think the Vice Chancellor has been appointed or has he? If he has not, when will he be appointed?

Secondly, we are seeing a trend going on at Jogoo House where the Minister is abusing his discretion by appointing persons who have not been listed as the top interviewees. This happened recently in the case of the Wasanga successor where he jumped the line and appointed somebody who was not number one. We have had a very strange statement from the Chairman that interviewees were made to sign that the interview was fair. Which interviewee would not sign that? In fact, that is an intimidation. You cannot be interviewed by a panel and be asked to sign that you were

interviewed fairly. You are looking for a job; you must supplicate yourself them. Is he satisfied that this is the right process of recruiting---

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir.

The Senate Minority Leader (Sen. Wetangula): I am on an intervention and also on a point of order.

The Speaker (Hon. Ethuro): Order! What is your point of order, Sen. (Prof.) Kindiki?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, is the Senate Minority Leader in order to mislead Kenyans that once a list is taken for appointment, the person who appears first must be appointed? The Education Act in question and many other similarly situated legislation require the appointing authority to appoint any person from the three names. This is to allow other factors, including diversity, to be taken into consideration. If it was the first person, then the law would have required that you submit only number one. Is he, therefore, in order to mislead this House yet he is a well experienced lawyer?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I have not mislead the House or anybody. In fact, a list of three is sent. I have been an appointing authority in that capacity before. On that list, unless there are extraneous factors compelling you to jump number one, you are given an order of priority. This is our number one, number two and number three. Why go for number three when number one is there? People have been using this to subvert the nation thinking that by withdrawing to tribal cocoons to appoint their relatives, friends and so on. This is something that this Country must move away from. If you interview people and you rank number one to number three, the normal order of things is that you appoint number one. If number one declines, you appoint number two. If number two declines, then you appoint number three.

The Speaker (Hon. Ethuro): Order, Senator! These were clarifications, not a debate. From my point of view, both of you are right. Even as it appears, you are very opposed.

(Laughter)

Sen. Mositet: Mr. Speaker, Sir, I expected the statement to be very open. However, from what the Chairperson has read, we can draw some conclusion that it is not open. The information is not come out clearly. For example, we should have been told how many people had applied for the job. Those who were interviewed and how they scored. They should have been more generous with information. Now that the Cabinet Secretary is very much satisfied, this raises a lot of concern. May be there is guarded information which members of public are not supposed to know. Therefore, the Chairperson needs to come up with a statement that will answer our concerns.

The Speaker (Hon. Ethuro): What is your point of order, Sen. Obure?

Sen. Obure: On a point of order, Mr. Speaker, Sir. You just made a pronouncement that both the Senate Majority Leader and the Senate Minority Leader were correct. I was just wondering where do we move from there?

The Speaker (Hon. Ethuro): Order, Sen. Obure!

(Laughter)

What is it, Sen. (Dr.) Machage?

Sen. (Dr.) Machage: Mr. Speaker, Sir, from the information we have, we have been told some other considerations might have been used to pick the third option as the best candidate. Would I, therefore, be in order to demand that these considerations are told to this House so that we know what considerations were considered?

Sen. Wako: Mr. Speaker, Sir, we are talking about a very important issue which relates to appointment to public offices. We know from various reports the National Cohesion and Integration Commission (NCIC) and others that there is a lot of dissatisfaction in appointments to public offices whereby if somebody is from one particular ethnic group, they make sure that the entire, a large proportion of people in that particular institution, come from that ethnic group. This is a loophole that is being used. That is why it is important that the question that has just been raised, that, what was the criteria of departing from the person who had been number one in the interview to number three. The issues that are being raised cannot just be answered in this question and answer. I can see my colleague, Sen. Karaba, in problems because he does not have answers to this. He does not have answers to satisfy this House that the criterion to divert from the normal was there.

Therefore, I would urge that Sen. Karaba's Committee summon the Cabinet Secretary for Education, Science and Technology to come and appear before them to answer these very serious questions. In so summoning, they should permit it to be an open-ended, so that any Senator who wants to attend and ask questions concerning this issue be allowed to do so. It cannot just be done the way we are doing.

Thank you.

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

Sen. Karaba: Mr. Speaker, Sir, what most of the Senators are saying could be in order. However, what is important is that there is the Council of the University of Nairobi which sat. As they sat, there must have been their own conditions that each candidate was to fulfill for one to be nominated as the best candidate. In this case, I believe the best candidate must have won. I am not trying to tell you that there is somebody who has already qualified. Shortlisting was done by the Council for them to forward the three names to the Senate. That has not taken place. Therefore, let us wait until the final candidate is named. If there is any problem, we can go ahead and summon the CS for Education, Science and Technology to the Committee on Education for him to answer.

Sen. Kembi-Gitura: On a point of order, Mr. Speaker, Sir. I am actually quite disappointed by the way the Chairman of this Committee is handling this issue. First of all, the five issues I have raised have not been answered. The answer given in "c" the Cabinet Secretary starts by admitting there was leakage of what the council had done,

never mind that they had signed a confidentiality oath or document before they went to this.

He says very casually that no one knows how the candidates' marks and rankings were leaked and the persons responsible. Consequently, the entire council cannot be judged to have no authority. I had not talked about authority. I talked about moral authority of them continuing as a council. He says, the entire council cannot be judged to have no moral authority to continue being in place unless and until there is proven evidence that the Council was involved in the said leakage. Who else was involved in the leakage if not the Council because they are the only ones who did this interview and they are jointly and severally responsible?

Mr. Speaker, Sir, if anybody cares to recall this issue, the interviews were conducted on 15th of October. The same evening, the results were trending in social places in Nairobi and in the social media. A person from Students Organisation of Nairobi University (SONU), the students council, wrote on his blog that, "No so and so, no University of Nairobi." He quoted the way the marks had been ranked. The Cabinet Secretary admits that there was a leakage of the result even after oath of confidentiality. If he can agree that this matter has generated a lot of heat, on what basis can the Chairman tell us he is satisfied and he is not going to summon him? On what basis can we say that the council has moral authority to continue? How are we going to protect our institutions in these kind of situations where the Chairman is telling us he is satisfied when nothing has been said at all in the answer? What are we supposed to do?

Mr. Speaker, Sir, with your permission, Prof. Magoha served the university diligently for ten years and he brought the university to normalcy. We are now being told that we are going to have a partisan appointment to satisfy certain partisan interests because the university student's organization have been galvanized into believing that unless so and so is the Vice Chancellor, then the university will burn. How are we going to build institutions if we go that way? My request is that the Chairman goes back to the drawing board and summons the Cabinet Secretary to tell us how these matters will be dealt with to avoid uncertainty in all the people who are interested.

The Speaker (Hon. Ethuro): We will have Sen. Wetangula, then Sen. (Prof.) Kindiki. I want Members to note that this is not a debate.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, it is not a debate, but this is an important matter. We are talking about the oldest and biggest university in the Republic of Kenya. This is the University of Nairobi which yours truly is an alumni. I do not know whether the Chair has looked at this answer. It has very curious statements---

The Speaker (Hon. Ethuro): Order! You are saying "yours truly". Who is "yours truly"?

The Senate Minority Leader (Sen. Wetangula): "Yours truly" in common English means the person speaking.

The Speaker (Hon. Ethuro): Then you are also making a determination that others who are not speaking may not be belonging to where you belong?

The Senate Minority Leader (Sen. Wetangula): I can only speak for myself, but I know many of these distinguished Senators went to the University of Nairobi.

The Speaker (Hon. Ethuro): That is better.

The Senate Minority Leader (Sen. Wetangula): This Statement has three curious statements. In the first one, the Chairman says that it is with regard to why there was much acrimony and no one knows the exact answer. It is, probably, traceable to individual and community interests given the importance and seniority of the position that was being interviewed. So, individual and community interest have crept into the interview for the appointment of the Vice Chancellor of the top university in the country. Then he goes on to say that no one knows how the candidates' marks and rankings were leaked and who the persons responsible are. That notwithstanding, he says that he appointment should be done.

Furthermore, he says that all the four candidates who had been shortlisted were treated equally. The contradiction is that, at the end of the interview, they were asked to state where the council had given them a fair chance. If you have treated them equally and fairly, why do you ask if they feel they have been treated fairly?

The Speaker (Hon. Ethuro): Order, Sen. Wetangula! You are being repetitive.

The Senate Minority Leader (Sen. Wetangula): I want to invite you to direct that the Chairman, whom we have tremendous respect for, because he has been doing a very good job in this House, retracts this clumsy response and goes back to even carry out an inquiry by summoning the Minister and those involved to tell us the truth as to what exactly happened at the number one university in the country.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, my worry is that two things have happened which I find out of order. First, Sen. Kembi-Gitura's questions were very clear and very precise. However, in the process of receiving answers from the Chairman of the Committee on Education, some of the Senators here have hijacked Sen. Kembi-Gitura's questions to ask and answer their own questions. When Sen. Wako and Sen. (Dr.) Machage, for example, demand to know the criteria used to jump number one and pick number three, are they telling us that an appointment of number three has already taken place?

Secondly---

Sen. Wako: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order, Sen. Wako, Sen. (Prof.) Kindiki is on a point of order.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I have all the respect for Sen. Kembi-Gitura and I would be the last person to impute improper motives on the Senator for Murang'a. However, would I be in order to ask him to declare his interest in this matter because he seems to be having information that we do not have? The answer that Sen. Karaba is very clear that the council conducted interviews, ranked three people, presented the three names and the law says that "any of the three". The reason the law says that is because there could be other factors like ethnic diversity, gender and so on.

The Speaker (Hon. Ethuro): Order! You had already mentioned those issues.

First and foremost, there is nothing for a Member being asked to declare his interest. It is provided for. So, Sen. Kembi-Gitura, you have been challenged.

Sen. Kembi-Gitura: Mr. Speaker, Sir, short of also demanding that the Leader of Majority apologises and withdraws, I am challenging him, since he seems to know things I do not know, to stand at the Dispatch Box and say what interest I have.

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Senators! I was told a long time ago that a question is not answered by a question. I take it that Sen. Kembi-Gitura has no other interest in the matter apart from the obvious responsibilities he has to the country. I also want to take it that Sen. (Prof.) Kindiki has no any other matter to express his own confusion in terms of why should number three be number one or number one be number three. Both of you are right in the sense that Sen. Wetangula said you expect number one, but you are given three names. However, you are at liberty to choose from any when you consider other parameters.

Under some other circumstances, Sen. Wetangula admitted that there could be that case. If there is a consistent pattern that you always seem not to be taking number one, then you have a problem. That is why I was saying that both are right. This matter is very important, especially when you invoke issues of national cohesion and integration. Every time they rear their ugly heads, they must be nipped in the bud.

Sen. Karaba, definitely that statement is not satisfactory to the House. I will direct that you actively interrogate that matter as a Committee then within two weeks, bring the report to us. You have been asked specific questions like whether some members in the interviewing panel were members of the council. That is so basic. Even what Sen. Wetangula said, you are being interviewed and, at the same time, being asked to sign that the interview was very satisfactory. Of course, you will have to sign because you are looking for a job. If you do the contrary, you are almost assured of not getting the job.

Sen. Kembi-Gitura: Mr. Speaker, Sir, the work we do in this House is not playing to the gallery. We have a national job to do. You have stated correctly that I have no personal interest in this issue. I feel saddened that somebody no less than the Senate Majority Leader can stand at the Dispatch Box with impunity and seek to pontificate to me and the House and tell me to declare my personal interest. It is imperative that if he does not know any personal interest I have in the matter, he should withdraw and apologise, not just to me, but to the House. I do not want to be intimidated by the Senate Majority Leader, that he will choose the questions I ask or the statements I seek in this House. That I have to seek his approval so that they do not, as it were, have personal interest in this matter.

I am a Senator for Murang'a County. At the same time, I have a national duty to play when I stand on the Floor of this House. Whether a person comes from whatever corner of the country, it is wrong for the Senate Majority Leader to impute ill motive on me or any other Member or to purport that he can decide what a personal interest is and what is not. What statement can be or not sought in this House. I demand that he apologises and withdraws.

The Speaker (Hon. Ethuro): Order Senators! This debate does not need to arise. Sen. Kembi-Gitura, the Senator for Murang'a County, Standing Order No.93 says:-

“A Senator who wishes to speak on any matter in which the Senator has a pecuniary or proprietary interest shall first declare that interest”.

The Standing Orders have already contemplated that you can be asked. All you need to say is, “I do not have”. That is all. I helped you to say so and you have confirmed yourself. I do not think we need to subject whoever asked that question to any further apologies. Definitely, somebody might think maybe when you persist on something, you have had that thing.

When you clarify that you have no other interest, but the public good, it is okay. Let us close it. I direct in two weeks’ time, we get the report. This is an important issue.

Sen. (Dr.) Khalwale: On a point of order Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Not on this one, hon. Members.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, it is totally different.

The Speaker (Hon. Ethuro): How does it become a point of order on this matter if it is totally different? It is totally different, but related.

(Laughter)

Okay, let us hear you with one caveat; I will determine the relation or otherwise.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. This matter is so crucial for all the reasons that the Senators who have spoken to it have stated. To my mind, probably, you should guide us on what happens if the appointment is then made before the report comes to the House. Shall we have spoken in vain this afternoon? Could you direct that the appointment be stayed until after this House has pronounced itself?

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. As I appreciate the advice you gave, with the quotation of Standing Order No.93, I request that Standing Order No.94 (1) also be read. It says:-

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

(Laughter)

The Speaker (Hon. Ethuro): Sen. (Dr.) Machage, what are you seeking?

Sen. (Dr.) Machage: Mr. Speaker, Sir, I was of the view that the Deputy Speaker was right to demand substantiation from the Senate Majority Leader under Standing Order No.94(1).

The Speaker (Hon. Ethuro): Sen. (Dr.) Machage, when you read these orders, start by reading them to yourself because if you read them also very carefully, you are equally responsible for what you are asking us to do. I said that the Senate Majority Leader did not say that Senator Kembi-Gitura has some particular personal interest. He did not. He only asked him to declare whether he has some personal interest and the Senator for Murang’a County said that he has no personal interest.

I said that the basis of that declaration is provided for under Standing Order No.93. You cannot ask a Member for not invoking a particular Standing Order that

provides for that inquiry to be made. That is the way it is. If you went ahead and said that Senator Kembi-Gitura has this particular interest, then I can invoke that one. For now, the burden is still on the Senator for Murang'a to say whether there is anything or not. Nothing has been established and determined from both of them, so let us rest that matter.

Order Senators! We must make progress. We have been on this matter for far too long.

Sen. (Dr.) Khalwale, I would really love to give such orders, but I do not think I have such powers to stop the Executive from doing its work. It is expected that the Executive appreciates the concerns of a House like this one and will make sure that it will abide by your kind of request.

Secondly, even if they go ahead, depending on the report the Chair and the Committee will bring here, then we can now take more decisive recommendations which will pass as a resolution of the House and they will be duty bound to implement them.

Hon. Members, I want to invite you to look at the Supplementary Order Paper. We will put that matter in abeyance. I know there are more other interests. However, because of the other Business, we hold it there for now, so that you check on the Supplementary Order Paper, which I think you have copies.

Hon. Senators, we will take order Nos.8, 9 and 11. We will come back to your matter later.

BILLS

First Reading

THE COMMUNITY LAND BILL, (SENATE BILL NO.36 OF 2014)

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

The Speaker (Hon. Ethuro): We will now take Orders No.9, 11 and 12 together because they all require voting.

Hon. Senators, how many minutes should we take with the Division Bell?

Hon. Senators: Let us do two minutes.

The Speaker (Hon. Ethuro): Hon. Senators, we will be having three votes and the procedure will be this: I will call out one vote at a time, you vote on it. We will not announce the results. They will be assembled here then we will go to the second. You will vote on it, then we go to the third one, you vote on it. We will then announce the results after all the voting has been done.

(The Division Bell was rung)

*Third Reading*THE NATIONAL HONOURS (AMENDMENT) BILL
SENATE BILL NO.16 OF 2014*(Sen. Wako on 23. 10. 2014)**(Resumption of Debate interrupted on 6.11.2014)***DIVISION**

ELECTRONIC VOTING

*(Question, that the National Honours (Amendment) Bill,
Senate Bill No. 16 of 2014, be read a Third Time, put and
the Senate proceeded to vote by County Delegations)*

AYES: Sen. Adan, Isiolo County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G Kariuki, Laikipia County; Sen. Kembu-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Munyes, Turkana County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Njoroge, Nakuru County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County;

The Speaker (Hon. Ethuro): Hon. Senators, I wish to announce the results of the Division as follows:-

AYES: 28

NOES: 0

ABSTENTIONS: 0

So, the "Ayes" have it.

(Question carried by 28 votes to nil)

(The Bill was accordingly read the Third Time and passed)

*Second Reading*THE GOVERNMENT PROCEEDINGS AMENDMENT BILL,
SENATE BILL NO.10 OF 2014*(Sen. Mutula Kilonzo Jnr. on 28.10.2014)**(Resumption of Debate interrupted on 30.10.2014)***DIVISION**

ELECTRONIC VOTING

*(Question, that the Government Proceedings (Amendment) Bill,
Senate Bill No. 10 of 2014, be read a Second Time, put and
the Senate proceeded to vote by County Delegations)*

AYES: Sen. Adan, Isiolo County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G Kariuki, Laikipia County; Sen. Kembu-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Munyes, Turkana County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Njoroge, Nakuru County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

The Speaker (Hon. Ethuro): Hon. Senators, I wish to announce the results of the Division as follows:-

AYES: 28

NOES: 0

ABSTENTIONS: 0

So, the "Ayes" have it.

(Question carried by 28 votes to nil)

*(The Bill was read a Second Time and committed to
a Committee of the Whole tomorrow)*

*Second Reading*THE PERSONS WITH DISABILITIES (AMENDMENT) BILL
SENATE BILL NO.24 OF 2014*(Sen. Njoroge on 30.10.2014)**(Resumption of Debate interrupted on 4.11.2014)***DIVISION**

ELECTRONIC VOTING

*(Question, that the Persons with Disabilities (Amendment) Bill,
Senate Bill No. 24 of 2014, be read a Second Time, put and
the Senate proceeded to vote by County Delegations)*

AYES: Sen. Adan, Isiolo County; Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Munyes, Turkana County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Njoroge, Nakuru County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Sang, Nandi County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

The Speaker (Hon. Ethuro): Hon. Senators, I wish to announce the results of the Division as follows:-

AYES: 28

NOES: 0

ABSTENTIONS: 0

So, the "Ayes" have it.

(Question carried by 28 votes to nil)

*(The Bill was read a Second Time and committed to
a Committee of the Whole tomorrow)*

The Speaker (Hon. Ethuro): You may now open the door and draw the Bar so that we can proceed.

(The door was opened and the Bar drawn)

While still on the Supplementary Order Paper, I request to call upon The Senate Majority Leader, Sen. (Prof.) Kindiki, to give the notice of Motion, Order No.13. After that notice of Motion is given, we will move on to Order No.10 to conclude that item, then move on to the Motion itself.

The Senate Majority Leader, please, proceed.

NOTICE OF MOTION

RESOLUTION TO SEEK ADVISORY OPINION FROM THE SUPREME COURT
ON THE CONSTITUTIONAL STATUS OF ACTS OF PARLIAMENT PASSED
BY ONE HOUSE AND ASSENTED TO IN CONTRAVENTION OF
ARTICLE 110(3) OF THE CONSTITUTION

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you Mr. Speaker, Sir. I beg to give notice of the following Motion:-

THAT, WHEREAS Article 93 provides for the establishment of the Parliament of Kenya consisting of the National Assembly and the Senate;

AND WHEREAS Article 94 provides for the role of Parliament and, in particular, provides at Article 94(1) that the legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament;

AND WHEREAS Articles 95 and 96 of the Constitution provide for the specific roles of the National Assembly and the Senate;

AND WHEREAS Article 96 of the Constitution provides that the Senate represents the Counties and serves to protect the interests of the Counties and their Governments and further participates in the law-making function of Parliament by considering, debating and approving Bills concerning Counties as provided in Part 4 of Chapter Eight of the Constitution;

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

FURTHER COGNIZANT that Article 163(6) of the Constitution provides that the Supreme Court may give an advisory opinion at the request of the national Government, any State organ, or any County Government with respect to any matter concerning County Government;

RECALLING that the Supreme Court of Kenya in Supreme Court Advisory Opinion No. 2 of 2013 reaffirmed the central role of Senate in the legislative process and in particular with respect to Bills that concern County Governments and further pronounced itself on the manner in which, pursuant to Article 110(3) of the Constitution, the Speakers of the two Houses are to jointly resolve the question as to whether a Bill is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill;

AND WHEREAS despite the Supreme Court's Advisory Opinion, the National Assembly has failed to adhere to the requirements of Article 110(3) of the Constitution-

(a) in respect of forty-six (46) Bills originating in the National Assembly, by publishing and considering the Bills and where such Bills have been passed by the National Assembly, by proceeding to secure presidential assent to the Bills without seeking the concurrence of the Speaker of the Senate in terms of Article 110(3) of the Constitution; and

(b) in respect of twenty-one (21) Bills originating in the National Assembly, by proceeding to consider the Bills in circumstances where the concurrence process under Article 110(3) has been initiated but has not been concluded and in disregard of the proposals by the Speaker of the Senate, in accordance with the directions given in the Advisory Opinion of the Supreme Court, for the establishment of a Joint Committee to advise the Speakers on the nature of the Bills, and thereafter, where such Bills have been passed by the National Assembly, by proceeding to secure presidential assent to the Bills;

OBSERVING that in the case of twenty-six Bills originating in the Senate, the Speaker of the Senate has sought the concurrence of the Speaker of the National Assembly in terms of Article 110(3) of the Constitution, and the Speaker of the National Assembly has either not responded to the Speaker of the Senate or where there has been a response, has on each occasion stated that the Bills do not concern County Governments even though the Bills manifestly affect the functions and powers of the County Governments in terms of Article 110(1)(a) of the Constitution and of the Advisory Opinion of the Supreme Court;

CONCERNED that owing to the unlimited legislative mandate of the National Assembly, the National Assembly may have no incentive to observe or to reasonably engage in the concurrence process under Article 110(3) of the Constitution thus resulting in a legislative process that disregards the Senate and that is virtually unicameral;

FURTHER CONCERNED that the continued exclusion of the Senate in the legislative process adversely impacts the Senate's ability to represent the Counties and to protect the interests of the Counties and their Governments in the legislative process in the national Parliament and that this could eventually result in the weakening and eventual dismantling of the devolved system of government which is the cornerstone of the Constitution of Kenya, 2010;

OBSERVING that this situation has continued to persist since the constitution of the two Houses of Parliament after the last General Elections;

DESIROUS that there should be a conclusive determination on the manner in which legislation should be processed between the two Houses and on the concurrence process under Article 110(3) of the Constitution, including the procedure to be observed where there is no concurrence between the two Speakers;

NOTING ALSO that the intervention of the Courts has on several occasions been sought by various parties on matters that are actively before the Senate and which are within the constitutional jurisdiction of the Senate;

OBSERVING that where such intervention has been sought, the Courts have proceeded to issue orders whose effect has been to stop the Senate from executing its constitutional mandate;

AND NOTING that similar court orders have also been sought and issued against a number of County Assemblies resulting, in some cases, in a situation where the affected

County Assemblies have been unable to hold their sittings thus affecting the execution of the functions and powers of the entire County Governments;

CONCERNED that the issuance of such Court orders has the potential of crippling the legislative arm of Government both at the national and county levels; further undermining the implementation of the devolved system of Government;

NOW THEREFORE THE SENATE RESOLVES to immediately seek an Advisory Opinion from the Supreme Court on, among others, the following matters-

- (1) the constitutional status of Acts of Parliament which have been passed by one House of Parliament and assented to in contravention of Article 110(3) of the Constitution;
- (2) the appropriate way forward when there is a lack of concurrence by the two Speakers of Parliament on any particular Bill;
- (3) the appropriate jurisdiction of the courts over the Senate and the national Parliament in general as well as over the county legislative assemblies when these are exercising the constitutional mandates;

AND CONSEQUENTLY FURTHER RESOLVES that the necessary administrative measures be put in place to ensure that the Senate is appropriately represented in this matter at the Supreme Court.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Next Order!

BILL

Third Reading

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL (SENATE BILL NO.11 OF 2014)

(By Sen. (Prof.) Kindiki on 17.7.2014)

(Resumption of debate interrupted on 6.11.2014)

The Senate Majority Leader (Sen. (Prof.) Kindiki: I beg to move that The Public Finance Management (Amendment) Bill, (Senate Bill No.11 of 2014) be now read the Third Time.

The Senate Minority Leader (Sen. Wetangula) seconded.

(Question proposed)

Order, Members! Let us have the Division Bell rung for one minute.

(The Division Bell was rung)

Order, Senators! Draw the Bar and close the door.

(The Bar was drawn and the door closed)

Hon. Senators, get ready to vote. Are you ready? You may commence voting for one minute.

(The Senators proceeded to vote)

The Speaker (Hon. Ethuro): You may now commence voting; one minute.

DIVISION

ELECTRONIC VOTING

(Question, that the Public Finance Management (Amendment) Bill Senate Bill No.11 of 2014, be now read a Third Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Adan, Isiolo County; Sen. Bule, Tana River; Sen. Chiaba, Lamu County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. Muthama, Machakos County; Sen. Mwakulegwa, Taita Taveta; Sen. Nabwala, Trans Nzoia County; Sen. Njoroge, Nakuru County; Sen. Ntutu, Narok County; Sen. Okong’o, Nyamira County; Sen. Ong’era, Kisii County; Sen. Sang, Nandi County; Sen. Sijeny, Nairobi County; Sen. Wako, Busia County; Sen. Wetangula, Bungoma County; Sen. (Dr.) Zani, Kwale County.

The Speaker (Hon. Ethuro): Hon. Senators, I wish to announce the results of the Division as follows:-

AYES: 26

NOES: 0

ABSTENTIONS: Nil

So, the “Ayes” have it.

(Question carried by 26 votes to nil)

(The Bill was accordingly read the Third Time and passed)

The Speaker (Hon. Ethuro): You may now draw the bar and open the door. We now go to Order No.13, which is Motion.

MOTION

RESOLUTION TO SEEK ADVISORY OPINION FROM THE SUPREME COURT
ON THE CONSTITUTIONAL STATUS OF ACTS OF PARLIAMENT PASSED
BY ONE HOUSE AND ASSENTED TO IN CONTRAVENTION OF
ARTICLE 110(3) OF THE CONSTITUTION

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

THAT, WHEREAS Article 93 provides for the establishment of the Parliament of Kenya consisting of the National Assembly and the Senate;

AND WHEREAS Article 94 provides for the role of Parliament and, in particular, provides at Article 94(1) that the legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament;

AND WHEREAS Articles 95 and 96 of the Constitution provide for the specific roles of the National Assembly and the Senate;

AND WHEREAS Article 96 of the Constitution provides that the Senate represents the Counties and serves to protect the interests of the Counties and their Governments and further participates in the law-making function of Parliament by considering, debating and approving Bills concerning Counties as provided in Part 4 of Chapter Eight of the Constitution;

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

FURTHER COGNIZANT that Article 163(6) of the Constitution provides that the Supreme Court may give an advisory opinion at the request of the national Government, any State organ, or any County Government with respect to any matter concerning County Government;

RECALLING that the Supreme Court of Kenya in Supreme Court Advisory Opinion No. 2 of 2013 reaffirmed the central role of the Senate in the legislative process and in particular with respect to Bills that concern County Governments and further pronounced itself on the manner in which, pursuant to Article 110(3) of the Constitution, the Speakers of the two Houses are to jointly resolve the question as to whether a Bill is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill;

AND WHEREAS despite the Supreme Court's Advisory Opinion, the National Assembly has failed to adhere to the requirements of Article 110(3) of the Constitution-

(a) in respect of forty-six (46) Bills originating in the National Assembly, by publishing and considering the Bills and where such Bills have been passed by the National Assembly, by proceeding to secure presidential assent to the Bills without seeking the concurrence of the Speaker of the Senate in terms of Article 110(3) of the Constitution; and,

(b) in respect of twenty-one (21) Bills originating in the National Assembly, by proceeding to consider the Bills in circumstances where the concurrence process under Article 110(3) has been initiated but has not been concluded and in disregard of the proposals by the Speaker of the Senate, in accordance with the directions given in the

Advisory Opinion of the Supreme Court, for the establishment of a Joint Committee to advise the Speakers on the nature of the Bills, and thereafter, where such Bills have been passed by the National Assembly, by proceeding to secure presidential assent to the Bills;

OBSERVING that in the case of twenty-six Bills originating in the Senate, the Speaker of the Senate has sought the concurrence of the Speaker of the National Assembly in terms of Article 110(3) of the Constitution, and the Speaker of the National Assembly has either not responded to the Speaker of the Senate or where there has been a response, has on each occasion stated that the Bills do not concern County Governments even though the Bills manifestly affect the functions and powers of the County Governments in terms of Article 110(1)(a) of the Constitution and of the Advisory Opinion of the Supreme Court;

CONCERNED that owing to the unlimited legislative mandate of the National Assembly, the National Assembly may have no incentive to observe or to reasonably engage in the concurrence process under Article 110(3) of the Constitution thus resulting in a legislative process that disregards the Senate and that is virtually unicameral;

FURTHER CONCERNED that the continued exclusion of the Senate in the legislative process adversely impacts the Senate's ability to represent the counties and to protect the interests of the counties and their governments in the legislative process in the national Parliament and that this could eventually result in the weakening and eventual dismantling of the devolved system of government which is the cornerstone of the Constitution of Kenya, 2010;

OBSERVING that this situation has continued to persist since the constitution of the two Houses of Parliament after the last General Elections;

DESIROUS that there should be a conclusive determination on the manner in which legislation should be processed between the two Houses and on the concurrence process under Article 110(3) of the Constitution, including the procedure to be observed where there is no concurrence between the two Speakers;

NOTING ALSO that the intervention of the courts has on several occasions been sought by various parties on matters that are actively before the Senate and which are within the constitutional jurisdiction of the Senate;

OBSERVING that where such intervention has been sought, the courts have proceeded to issue orders whose effect has been to stop the Senate from executing its constitutional mandate;

AND NOTING that similar court orders have also been sought and issued against a number of county assemblies resulting, in some cases, in a situation where the affected county assemblies have been unable to hold their sittings thus affecting the execution of the functions and powers of the entire County Governments;

CONCERNED that the issuance of such Court orders has the potential of crippling the legislative arm of Government both at the national and county levels; further undermining the implementation of the devolved system of Government;

NOW THEREFORE THE SENATE RESOLVES to immediately seek an advisory opinion from the Supreme Court on, among others, the following matters-

(4) the constitutional status of Acts of Parliament which have been passed by one House of Parliament and assented to in contravention of Article 110(3) of the Constitution;

(5) the appropriate way forward when there is a lack of concurrence by the two Speakers of Parliament on any particular Bill;

(6) the appropriate jurisdiction of the courts over the Senate and the national Parliament in general as well as over the county legislative assemblies when these are exercising the constitutional mandates;

AND CONSEQUENTLY FURTHER RESOLVES that the necessary administrative measures be put in place to ensure that the Senate is appropriately represented in this matter at the Supreme Court.

Mr. Speaker, Sir, I think I have just concluded reading one of the longest if not the longest Motion in the history of the Parliament of Kenya. I am saying that it is one of the longest because I have not had time to research on the length of all the Motions that have been moved before the Parliament of Kenya since 1963. However, I am prepared to argue unless I get contrary information that this Motion could as well be the longest, not just in Kenya, perhaps in the Commonwealth or even in the whole world.

The length of this Motion is not accidental. The length of this Motion is caused by a number of factors; first, the gravity of the issue that this Motion is confronting. Second is the history behind the matters that this Motion speaks to; and third, the comprehensive nature of the results which this Motion seeks to obtain.

The matter to which this Motion speaks has been with us for a while. I want to take this opportunity to pay tribute to the Senate of the Republic of Kenya; the side of the Majority and the side of the Minority without exception. Why do I say so? This is because the Senate could have opted to take very drastic measures very many months ago. In particular, the Opposition had a greater incentive to run away with these matters and become more dramatic. However, what has impressed me as a Member of this House – I say this with pride – is that on the issue of Article 110(3) which has been abused, defiled and subjected to great abuse, is that Senators of this country have remained sober. We have been raising issues but within the bounds of civility and sobriety.

I hope that my colleagues from the Opposition and from the Government Side will accept my complements as the Senate Majority Leader on how we have collectively handled this matter. We had all the reasons to be angry, to throw tantrums and to do all things that would have made the public wonder whether these are the men and women that they entrusted with the positions of Senators in this country. Therefore, I am grateful.

Unfortunately, our patience, sobriety, understanding and maturity has not been matched by similar conducts from those to whom this Motion seeks to address. The patience of the Senators of Kenya has been misinterpreted to mean that we are weak. The humility and sobriety of the Senators of this country has been misunderstood to mean that we are lesser politicians than the rest of the politicians that have been elected in this country.

Mr. Speaker, Sir, humility is not cowardice; the fact that somebody is patient does not mean that they have no options. As much as I applaud my colleagues for being patient all these months, I hope that it is in order for me to say that I think we have

reached an appropriate point to declare to everyone in this country; every institution, every official, every office and even to our voters, that we have run out of patience. Why do I say so? Unless we run out of patience now and today, the most important dream of the people of Kenya; the dream of realizing a devolved system that removed power, prestige and the concentration of resources in one place and scatters those privileges, powers and resources to the countryside of Kenya, that dream of a devolved system that works to correct the harsh and primitive inequalities that this country has faced since Independence, unless we speak now, that dream will be stolen, aborted, hijacked and defiled by a few selfish, inward looking, myopic and narrow minded people.

Mr. Speaker, Sir, for the last 18 months, I have heard all manner of parochial, narrow explanations as to why this Senate cannot be involved the way it is supposed to be involved in matters that relate to our mandate. I have heard excuses and all manner of bragging in town of people and institutions that think that they are superior to other institutions, and today, we want to give them lesson 101 on constitutional law; Constitutional Law 101 or Constitutional Law Simplified. There were those books that were very useful in our student days and I know that my brother, the Senate Minority Leader, remembers these things because he has a very sharp and photographic memory.

There were such books as, "Electricity made Simple", "Biology made Simple", "Algebra made Simple", *et cetera*, because there are people, for example, if it is Physics and you give them that book written by Abbot, they will not understand the Bernoullis Principle. I remember there was this teacher who used to teach us in Lenana School and he would say: "You cannot understand the Bernoullis Principle unless it is taught by me". It depends on who teaches you the Bernoullis Principle and which book you read. Because I can see that some of my colleagues are floating, the Bernoullis Principle is the principle that enables aircrafts to take off. Simply put, it says that if the surface area above an object is larger, there will be less pressure and that will allow that object to take off. That explains the shape and dynamics that aircrafts are designed with. So, this country requires understanding that in terms of the Constitution, there are some people who have abrogated themselves that they know this Constitution more than any other person and they are in town, marketing half baked ideas about constitutional theory or no ideas at all.

Mr. Speaker, Sir, the crux of this matter is that there are people who believe that when you have a Bill, where that Bill goes between the National Assembly and the Senate is a matter to be determined by anybody; the Attorney-General, a Cabinet Secretary, the Speaker of the "Lower House" or the Speaker of the Senate alone but that is not the case. I said here last week that for the last 18 months, some people have broken the law. I want to tell them that through this process that is beginning today if the Senate approves this Motion, some people should start preparing themselves for the consequences of abusing and disregarding the Constitution of our country. This matter is not going to die easily. Some people think that we are just playing to the gallery. They have forgotten, first and foremost, that we are Kenyans, to start with and we have a stake in this country. Secondly, each one of us in this House is a Senator of the Republic of Kenya. We swore to defend and uphold the Constitution without fear or favour, affection

or ill will and so when we say these things, we are not just saying them as any other person in town, but Senators of Kenya. If we do not say them, who will?

For a long time, we have been trying other methods and sometimes you want to give people time to ventilate because there are people who want to be seen to be shining and so you give them time because some of us are not looking for an opportunity to shine; we have shone. Everybody here has shone before and that is why we are here. If Sen. (Dr.) Khalwale never shone in the Ninth and Tenth Parliaments, he would not be the Senator for Kakamega County. Even our nominated colleagues; if they did not have something our parties saw in them, they would not be here. My brother, Sen. Wetangula, here is not here by default; you think he has lost direction and maybe he should have been a governor, some of us are very clear in our minds that this is the place to be and we are here for a long time; we are not going anywhere. I have heard some people saying that the Senate is a weak House and that some of us should go to the "Lower House". What do we go to the "Lower House" for? From here, we can only go up and not down. We cannot even go to be governors in the countryside. I know some of us in this House have declared that they are running for the presidency. Even those who have not declared should be ambitious because the Constitution allows them to do so. We are here to stay; we are not going anywhere.

Mr. Speaker, Sir, other than the Constitution demanding the concurrence of both Speakers - I heard some of my colleagues saying that the Senate Majority Leader and the Senate Minority Leader should have done this or that – the work of concurring on Bills is not the work of the Senate Majority Leader, the Senate Minority Leader, the Speaker of the Senate, the Speaker of the National Assembly or the Attorney-General; it is the work of the two Speakers of Parliament, jointly. Where they cannot agree, the Constitution envisages that situation and says that if for whatever reason they cannot agree and, indeed, there have been many instances of lack of concurrence, then there must be a Mediation Committee. If the Committee agrees on a version, the version must be passed in both Houses and not in one of the Houses. If the Mediation Committee does not reach an agreement or one of the Houses does not pass it, the Bill dies and is buried or given the final rites.

To tell me that a Speaker of any of the Houses can decide to abrogate themselves the power to decide which Bills concern counties, which ones are Money Bills and which ones are not, is to tell me that there are people who may not have read this Constitution properly. Even on this matter of the division of functions between the national Government and county government, one of the things that I have not seen coming out in the public debate is that there are three types of functions in this Constitution. Some people just rush and read the Fourth Schedule and say that these functions are in the national Government and these ones are in the county government. That is being simplistic. You may need to look at Article 186. To paraphrase it, it looks at the possibility of three categories of functions. The first category which every Kenyan is conversant with is what we call exclusive jurisdiction, where some functions are exclusively in the national Government or exclusively in the county governments. If you want to understand that further, you have to read the three paragraphs that are in Article

186. So, what is in the Fourth Schedule is just a list of mainly the exclusive jurisdiction or functions.

Mr. Speaker, Sir, there is a second category; concurrent functions or concurrent jurisdictions. So that, for example, health policy and the national referral hospitals which is part of the health function are in the national government, but all other hospitals; the facilities and other health matters other than the health policy and national referral hospitals, are under the county governments. Both matters concern health, but some of them are in the national Government - the policy and referral hospitals - and the rest are in the county governments. That is called concurrent jurisdiction.

Mr. Speaker, Sir, there is also what we call residue jurisdiction. There are some things which are not provided for in this Constitution. The Constitution says that in such circumstances where there is a function which has been left out, that function is vested in the national Government. So, it should not be enough to just say:-

“Okay, these are functions under Part I of the Fourth Schedule and these are functions under Part II.”

But what has even worried me about this ignorance is that even where it is in black and white that a function is concurrent, I am informed that sometimes it has been difficult to concur that the matter has to do with counties and county governments. I will give an example. The Bill that has triggered this Motion and the unprecedented step by the Senate in terms of at least the comprehensiveness of the questions that we intend to ask is The Mining Bill, 2014.

Mr. Speaker, Sir, I came in a few minutes late, because as I was leaving the office, I saw the proceedings in the National Assembly and the Speaker was communicating from the Chair on the Mining Bill. I got interested to find out what it is that our brothers and sisters were saying in the National Assembly. The Communication was very short. I heard the Speaker of the National Assembly saying that the Senate is jumping the gun and the Bill has gone nowhere. In other words, he was trying to create an impression, in my understanding, that this Bill could as well come to the Senate. I found that a bit irregular because I have a record in front of me and I am ready to table it before this House. It is a letter from the National Assembly headed “concurrence on whether a Bill concerns counties.” There are many Bills written there. On page three of that letter dated 27th March, 2014 and addressed to the Speaker of the Senate, No.8 talks about The Mining Bill, 2014. Under it, it says:-

“This Bill is not a Bill concerning county governments, within the definition of Article 110 (1) of the Constitution, as it only contains matters that fall within the functions of the national Government and to the exclusion of the county governments as set out in the Fourth Schedule of the Constitution.”

That is a simplistic judgement. As I said earlier, the moment the Speaker of the National Assembly takes that position, a dispute automatically arises. Therefore, the next thing that we would have expected is a mediation committee. So, we want to know why there has not been a mediation committee up to this stage. Since there are no timelines, perhaps, that should be one of the options. Even if we are going to take other actions, we should be able to resolve not only the Mining Bill, but a raft of other Bills which have been processed in a similar cavalier and illegal manner.

Mr. Speaker, Sir, first and foremost, on this matter, because it is current affairs, it says that the Bill does not concern counties, but the functions of the national Government. I want to refer to the Fourth Schedule which talks about functions in the national Government. I know that mining falls within the national Government generally. But because of time, I want to look at just the part on the functions of the county governments. Number 10 says:-

“Implementation of specific national Government policies on natural resources and environmental conservation, including—
(a) soil and water conservation; and
(b) forestry”

But even more important is Article 66 (2) - and that is why it is important to read the Constitution as a whole and not one sentence – says:-

“Parliament shall enact legislation ensuring that investments in property benefit local communities and their economies.”

Investment in property – whether private or public – is about natural resources and property. The Constitution says that whenever there are certain investments on land and natural resources, there must be some way of ascertaining how local communities and their economies benefit. So, we are going to have investors setting up mines in counties. In the agreements, there must be a way which will deliberately show how local communities benefit. It will be very farfetched to imagine that the national Government represents local communities in a devolved system of government. It is inconceivable and not possible.

Mr. Speaker, Sir, I think the Water Bill is being read in the National Assembly. I have already read sections that show some of the functions relate to counties. I know already that a determination again has been made unilaterally; that the Water Bill also does not concern counties.

Mr. Speaker, Sir, this has to come to an end. It must stop and nobody will stop it unless we do. Those who are trying to test the metal of the Senate in terms of understanding the law and the politics of Kenya are misguided. They are going to be shocked tremendously. In this Senate, we have great lawyers including the former Attorney-General, Sen. Wako, who worked in that position for 20 years. Both sides of the divide have qualified lawyers, people who have immeasurable success. The fact that we have not been boasting in town does not mean that when push comes to shove, we will not unleash what we must for the sake of our people because power is not exercised just for the sake of power but for the sake of our people. We are actually about to bury one article of the Constitution if we are not careful. If we proceed like that, Article 110(3) will be buried in the life of this Senate. I would hate to be the Majority Leader who supervised the burial of any part of this Constitution. I would hate it a lot.

We want to find out who is about to kill Article 110, as Prof. Oscar Schacher, once upon a time, when he realized there is a provision in the United Nations Charter Article 24 on the limitations of the use of force which has been flouted from time immemorial; from 1945 to date, on the use of force by one country in another country without the approval of the Security Council. So, he wrote an article “Who killed Article 24”. In that article, clause by clause, point by point and blow by blow, he was able to

demonstrate the culprit and the murderer. Therefore, even for us as we examine the attempted murder of Article 110(3), we must, clause by clause, blow by blow establish the murderer and punish him or at least warn the attempted murderer. That murderer could be a person, an institution or a network or entities or agencies who do not believe in devolution. Whoever they are, wherever they are, they should take notice from this House; that it is not going to be business as usual going forward.

Mr. Speaker, Sir, I want to say a few other things about what this Motion requests the Senate to do. Last year, we had a problem with the Division of Revenue Bill 2013 and somebody felt it had nothing to do with the Senate. They processed it and took it for assent. We went to court, and the Supreme Court rightfully said that you cannot ignore the Senate in such a Bill. It even went on to describe how going forward we should handle that Bill and other Bills. I am happy because this year, because of the action we took last year, the Division of Revenue Bill came here effortlessly. Therefore, I believe that if we go for this advisory opinion, the law is on our side and clearly so, and we must make sure that the Senate, as the Motion requests, is properly represented by good lawyers; not every other lawyer is a good lawyer. Since in this House, I see a galaxy of prominent and successful lawyers, I would hope that some of my colleagues can even volunteer services to support that legal process. We all robe ourselves and go to the Supreme Court and confront the merchants of impunity, anarchy and those who want to fight the dream of the people of Kenya.

Mr. Speaker, Sir, I also want to clarify that 46 Bills initiated by the National Assembly without even requesting concurrence is a number too many. The 21 Bills from the National Assembly where concurrence discussions were going on but before decisions could be made, the Bills were processed and sent for assent---. Again, that is a number too many. The 26 Bills from this House where the Speaker of the Senate requested for concurrence, in the majority of those cases, no response has been forthcoming month on end or in a few cases a response that says “this Bill does not concern counties” has come again unilaterally, without invoking the default mechanism of a mediation committee. Again, this is gross abuse of the Constitution of the Republic of Kenya. It cannot be entertained, it cannot be countenanced and the Senate will be players, aiders and abettors in this heinous crime against the people of Kenya if we keep silent as this kind of behaviour goes unabated.

Mr. Speaker, Sir, allow me to change gears and touch very briefly on a matter that has also startled legal minds in this country in the last few months. I say legal minds to include advocates, both experts in national and international law, to mean judges in all the courts in this country and even other lawyers who are not serving either in the judiciary or at the bar. This has to do with the misguided, erroneous and illegal notion by some judges that they can injunct the Parliament of the Republic of Kenya. This is a new thing, it has not happened before, not in Kenya, not in the Commonwealth, not anywhere in the world and among the principal legal systems of the world. This has never happened in the common law, not in the civil law system, not even in the Islamic Sharia Law, not even in the other hybrid systems of law and not even in the Hammurabi Law. No court, including a kangaroo court, can purport to injunct Parliament.

The constitutional law 101 on this matter, there is a difference between parliamentary activities that are not related with our core function and parliamentary activities that have to do with representation, oversight and legislation because that is our core function. Any court of law is free to injunct this Senate, the National Assembly or even county assemblies, if for example there is a procurement process that has not followed due process. Any court of law can injunct this House, the National Assembly or a county assembly if, for example, there are recruitment processes or human resource issues that have not complied with the law.

Courts can declare legislation illegal and unconstitutional. They can. However, that mandate ends at declaring. They cannot even force Parliament to enact what they think is the correct law or repeal. They can strike down a law or say it is unconstitutional but they cannot say how the law should be like. What is so hard with our courts to defer legislative functions to the legislature; the same way we have concisely and in a law abiding manner deferred judicial functions to courts of law? Do they imagine that they are the superior arm of Government? This is far from it. Time will fail me to demonstrate that Parliament is the superior arm of Government because it is elected directly by the people. The other arms of Government may have legitimacy from the people. However, it is not direct but secondary.

What I see as the next case scenario is that one of these days, somebody from the streets will go to court and say that the National Assembly and the Senate are on recess, as we are going on recess soon – but will want an injunction to stop them from resuming business so that they stay at home until the case is heard and determined. Technically, that is what we are looking at. This is inconceivable. It is a coup. It is overthrowing the Constitution. We want to send a message to our colleagues, the judges, that the Judiciary is not above the Constitution. The system of checks and balances protects and empowers all the three arms of Government to check on one another. That is basic constitutional theory. There cannot be one institution that supervises everybody like little boys.

Our Constitution and, indeed, all the constitutions of democratic states are modeled on a *Doctrine of Separation of Powers* which was first initiated by a French Philosopher called Montesquieu. Montesquieu argued in *Constitutional Law made Simple* that any man or institution invested with power has the natural tendency to extend that power as far as it can go. That is how we are created naturally. If you invest power in a person or institution, the tendency would be to take that power as far as it can go. Therefore, to have harmony in society, the three arms of Government are created to act as checks and balances on one another. There is a terrain where the Judiciary cannot intrude. There is a core area in the functioning of the legislature that the Judiciary cannot intrude. This is the same way that there is a core area in the exercise of judicial functions that the legislature cannot intrude.

As I wind up, I want to illustrate a paradoxical event that took place in this country but went unnoticed by many commentators, including myself. The same Judiciary that wants to treat the National Assembly, the Senate and county assemblies as parastatal boards is the same one, through courts, saying that it can injunct us, paralyse our work and send us home until some case filed by some busybody is completed after ten years. The same court, recently, invited a number of our colleagues, commissioners in

the Judicial Service Commission, including the Chief Justice, not as the Chief Justice but in his capacity as the Chairman of an independent commission under Chapter 15. This is the same way that Charles Nyachae is Chairman of the Commission for the Implementation of the Constitution (CIC), the same way there is a Chairman of the Teachers Service Commission (TSC) and all other independent constitutional commissions.

They said that they had had procurement problems which are a function of the Judicial Service Commission. They invited the commissioners to come and shed light on the legal affairs of the National Assembly because there were questions of transparency, accountability and due process that have been raised. Curiously, the Chief Justice, all the judges and even the Commissioners who are not judges said that the Judiciary was immune, independent and cannot appear before Parliament and refused to appear before that Committee.

First and foremost, in the Judicial Service Commission, there are people who are just advocates. Others are laymen and laywomen from the streets. They are not even judges. The Judicial Service Commission is just a Commission like the Parliamentary Service Commission (PSC), the CIC and other commissions. In that capacity, that Commission is under the supervision of the Parliament of Kenya; the National Assembly and the Senate.

What is even more critical for us to understand, as a country, is that even the judges that sit in the Judicial Service Commission do not sit in the Commission as judges. They do not exercise the core functions of interpreting the law which is the core function of the Judiciary. They should and must appear before the relevant committees, not just of the National Assembly but of the Senate. However, they invoke some funny blanket immunity and yet they want us to pretend that we are happy when they intervene in our core mandate of legislation, oversight and representation. They think we will clap for them.

I do not want to create the impression that the Senate is on a war path. If anything, we have been very lenient. I do not think that any other institution would have countenanced the kind of humiliation and shabby treatment that this Senate has received from the issues I have highlighted here. I want to take this opportunity to say that those who thought that the Senate of Kenya has no teeth to bite should watch this space going forward.

I want to assure the country that we will stand firm. This is about devolution. Devolution is about the future and survival of Kenya. This is the only principle, if implemented, that can contain the kind of uprising, anger, dissent, and violence we are seeing among our people. Devolution dismantles Sessional Paper No.10 of 1965 which was brilliantly put by good people including former President Mwai Kibaki and Tom Mboya but which missed the paradigm of developing plural societies like Kenya by a wide margin. They missed it by a wide margin.

Mr. Speaker, Sir, by plural societies, I mean societies with dual or even triple identities. The only solution to keeping a plural society together is to ensure that there is dispersal of political and economic power to the margins. Kenya, today, has two countries in one. There is the Kenya of the core of Kenya and the Kenya of the

periphery. The Kenya of the periphery is for the majority of the people in this country. Unless we integrate it through devolution so that today you can hear people in Turkana have Kshs10 billion to decide how to spend it, so that we can hear that Marsabit, the largest county in Kenya has some Kshs6 billion or Kshs7 billion where they can sit down and agree on how to bring development in that area rather than relying on a functionary seated in a highrise building in Nairobi. Sessional Paper No. 10 destroyed us by simply saying that we concentrate on “high potential areas”. They defined high potential areas as areas where there is some tea, coffee and rainfall. This is missing the point by a wide margin.

Today, we are staring at the potential of the county of Turkana being the economic solution of this country in the next 50 years in terms of oil reserves, water reserves – the biggest underground lake is in that county. Counties like Marsabit are full of natural gas deposits. If we are not careful and we do not implement devolution, we are igniting a resource war in this country because of what I call the lack or the failure of the politics of solidarity. Solidarity politics is where there could be a county X in this country that does not look so productive today – that is the mistake we did by declaring the northern frontier district unproductive – but 50 years down the line, they could be the fulcrum of prospering this country.

Unless we stand with such areas today, we have no business as it is happening today now that Turkana has been declared an oil county, every Tom, Dick and Harry is running to Turkana to buy plots and to invest in that county yet for 50 years, we have ignored, demonized and humiliated those people by saying that they do not have food and are dying of hunger. Devolution seeks to change the paradigm of this country. The earlier we brought inclusivity and solidarity development in this country, the better for this country.

With those remarks, I beg to move the Motion and in the tradition of the “Upper House”, I want to ask the Senate Minority Leader, Sen. Wetangula to second. Thank you.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, allow me to congratulate Sen. (Prof.) Kindiki and tell him; well done. You have moved this Motion most ably, most efficiently and you have done justice to it.

Wole Soyinka wrote a book called “*The Man Died*” and in that book he says: “A man dies if he keeps silent in the face of injustice and tyranny”. Injustice is being meted on this Senate. This Senate must stand up in a bipartisan manner as a protector and defender of devolution. Regardless of which part of the political divide we come from, the people of Kenya voted for this Constitution because of devolution. Others were just joy riders. Devolution was the key to people voting for this Constitution. This country has come a long way and I feel very happy to see you sitting there as our Speaker coming from where you come from because in the history of this country, people from your part of the country were just part of the statistics of this country, but now you can sit here and preside over the “Upper House”, thanks to devolution and the change in the thinking of the country.

Mr. Speaker, Sir, you may recall that right from Independence, development in this country followed the railway line from Mombasa to Nairobi, Nakuru, Eldoret, the detour to Kisumu, to Malaba and then another one going up to Nanyuki. Development

was structured to follow the railway line. So counties that never had the railway line like Turkana were not part of this country. Indeed as a very young lawyer, I used to go to northern Kenya and you get people who tell you; we are leaving Mandera, going to Kenya. People used to say in Lodwar; *tunatoka Turkana, tunaenda Kenya* and yet they were in Kenya.

This new Constitution is a very complex document. Anybody who wants to approach it in a simplistic manner by reading sections and chapters in isolation will not do justice to the people of Kenya. You cannot, for example, go to the Fourth Schedule and say that you have ended dissecting what is national and what is county; you have to read the whole Constitution.

A lot of things are happening in this country since devolution came. Counties like Marsabit and Mandera, in one year have received more resources than they have ever received since Independence for 50 years, courtesy of devolution. Good things will always have challenges and defenders of the *status quo* and the interests of yesterday. When Jesus came to proclaim the good news, those who did not believe in change instantly put him to death. Those who used to stand on the street corner and declare to all and sundry how pious they were. Mohammed met the same fate. I do not know what fate Pastor Kanyari will meet.

Mr. Speaker, Sir, when you look at the Constitution – I want to emphasize the points made by Sen. (Prof.) Kindiki – in reference to the Mining Bill because like I said, this is the case; as Paul Newman in the “Verdict” would put it. If you look at Article 71, it says that a transaction is subject to ratification by Parliament if it involves the grant of a right or concession by or on behalf of any person including the national Government. This is being vested in the county governments. The county government can give concessions even to the national Government. This is about resources including mines. I am afraid Sen. Kembi-Gitura is walking away when I was just about to quote him on something that we have been discussing. When I posted Sen. Kembi-Gitura to Belgium as an Ambassador, he tells me – it is something I had heard before and I am not saying it to demean him because he knows that I did – he met the King of Belgium and the King of Belgium told him: “You come from a country that has such enormous minerals resources that are untapped. Your coming here is an eye opener for you to engage us to work together”. I believe I have quoted him correctly because he has told me this before.

I travelled with a professor of geology; an Indian who has become a citizen of Canada. He told me that from seismic data available, this country, Kenya, has more mineral wealth than the oil reserves of Saudi Arabia. These mineral resources are in the counties; in the land of our ancestors. Who can tell us that Kwale has no say in a Mining Act, when niobium and rare earth mineral in Kwale is worth nine trillion dollars? Who can tell us that Kwale will have no say in the legislation of minerals? Who can tell us that Taita-Taveta, that has made people billionaires from mining, has no say on the passage of a Bill on mining? Who can say that Turkana County cannot have a say in the Mining Bill, when all our oil reserves found today are in Turkana? Who can tell us that Murang’a County, the home of Ndakaini Dam that supplies water to Nairobi, will have no say on natural resources when it is being debated in the National Assembly?

This is hypocrisy of the worst kind, and we cannot accept this. These Senators are not in this House on invitation. They were elected to come here and defend the downtrodden; the ordinary man and woman down there, who will never find his way in Nairobi, to ask why his land in Lamu has been taken away by a man from Nairobi. These are the people who represent the real people of this country.

Mr. Speaker, Sir, we, as a Senate, have either to get it right now or never. This is because if we adopt the policy and principle of saying nothing, hearing nothing and doing nothing, we will go down in history as the most ignominious House that has ever existed in this country, spineless men and women who had no business being here and men and women who ought to be honourable and distinguished, who presided over the destruction of devolution. This is because you can see what is happening.

My good friend, the Speaker of the National Assembly, cannot pretend. I saw him today purporting to read a Communication to the House; that the matter of the Mining Bill is not closed, when he has written to you, telling you that this Bill does not concern counties and already forwarded the Bill to the President for assent. Even the Deputy President was quoted all over saying that the Bill on mining is going to be assented to. This is called political fraud and we will not take it. This is because the interest of the people of Kenya must be protected regardless of sectarian, class or ethnic interests. This House must act as one. That is why we say that when a Kenyan is killed in Garissa, a Kenyan in Vanga feels the pain of that Kenyan killed in Garissa and *vice-versa*. That is why we stand here to say that this Motion is a turning point for this House.

If we do not stand up to be counted, we shall have no capacity to stand up again. This is because you know the famous case of the camel, the tent and the man. They have put the nose, ears, neck and now the hump is entering. As they continue entering the tent, the Senate is exiting through the back door. If you go to the counties today, the amount of resources going to the counties as we fight for more, are making a big difference. We cannot sit here as the Senate of the Republic of Kenya and rewind the clock to 1963 where people sit in Nairobi, allocate themselves land in places they have never been and carry titles in briefcases, mortgage them to banks and walk away billionaires from nothing. We cannot accept this.

Mr. Speaker, Sir, the Constitution is very clear that land in the counties is in the authority and jurisdiction of counties. It is the County Government of Garissa that will determine the concessions to be given even to the national Government to go there and extract minerals from that county. How else can we talk about devolution? Devolution is not about Nairobi sending money to the counties. In fact, the spirit of this Constitution is that after 20 years plus, there will be counties that will not require a cent from Nairobi; there will be counties that will be giving money to Nairobi. That is the spirit. But we are creating a situation where the untouchables sit in Nairobi and determine whether a man in Turkana will eat ugali, rice or nothing, or whether or not a road will be done in Moyale.

My brother here, Sen. Haji, can tell you that we went with him to Ethiopia to negotiate with Prime Minister Meles Zenawi to give Kenya electricity connection from Ethiopia to Moyale, Kenya. Given that our Gross Domestic Product (GDP) is three times that of Ethiopia, who should be asking who to connect power for whom?

Article 110 (3) is very clear. I stand here without any fear of contradiction so say that even if we do not get external lawyers, my colleagues who are practicing lawyers - Sen. Sang, Sen. Mutula Kilonzo Jnr. and others and I will put on our wigs and go to court and fight to defend the integrity of devolution and the Senate. Article 110 (3) does not give discretion to the Speaker of the National Assembly to sit on his own and write to you and tell you: "This Bill does not concern counties." It is mandatory and for avoidance of doubt and the HANSARD, I may read Article 110 (3). It reads:-

"Before either House considers a Bill, the Speakers of the National Assembly and Senate shall jointly resolve any question as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill."

There is no discretion in this. Even if it is as clear as daylight, you and your brother in the National Assembly must consider the issue. You must determine and agree whether, for example, the Bill will originate in the National Assembly and need not come here. You will have determined that on behalf of this House. What is even more disturbing is that this House goes to a Committee after a Motion, goes round the country, drafts a Bill, presents a report with the Bill and then somebody picks the Bill, plagiarises it, tables it in the National Assembly, it is debated without any shame, passed and presented for assent.

Mr. Speaker, Sir, in the intellectual property rights, we have a recourse. There is a clever man, you must have seen him on CNN called Farid Zakaria who writes brilliantly, I compare him to Prof. Ali Mazrui, but some people who are reading his publications found out that he was actually cutting and pasting other people's publications and looking very brilliant. He was dismissed from appearing and acting for CNN. He now writes letters in the Newsweek and other places but he is a clever man. You can see if the clever can do that, what about those who are just half clever?

Mr. Speaker, Sir, we salute you for standing for this House. I told you the other day when we were in Morocco that you know obviously, I did not vote for you but you have acquitted yourself and I respect you for being my Speaker because you have stood up when it is necessary to say that this cannot happen. If this Senate cannot go to the Supreme Court and challenge the constitutionality of the Bills that have been assented to -- We take issue with two people; the Speaker of the National Assembly and the Attorney-General, who advises the President to sign the Bills.

I have told the Attorney-General, who is a great friend of mine and my learned junior, that before any Bill is presented for assent because as the Attorney-General, he has to read through, he has to ask whether Article 110(3) has been complied with or not. It is as simple as that. It is the starting point. Was Article 110(3) complied with? Where is the written opinion of the Speaker of the Senate, hon. Ekwee Ethuro, to say he concurs that the Bill does not concern counties? In the absence of that, the Attorney-General becomes guilty of connivance and a co-conspirator in frustrating this House. This House shall not be frustrated. I sit here and see the sage that is Sen. G.G. Kariuki, a man who was in the first Parliament of this country, still eager to serve and still serving, and I know he is not in this Senate because he has nothing to do. He is immensely wealthy, immensely experienced and has so much to do but he comes here because he believes that devolution must work. He comes here because he believes there are people out there

for whom the clock stopped at Independence and we must now get the clock moving. That clock will only move if we are able to work together.

I always give examples of the distinguished Senator from Pokot. Their district was called a closed district. Successive governments from the colonial regime to Independence government would just close Pokot and move in the army; beat people, rape women and do everything for one month and then open it again. Devolution would not allow that to happen.

Mr. Speaker, Sir, this House must learn the lessons from 1963. This country started with the Senate. The first distinguished Senator of Nairobi was Clement Lubembe from Sen. (Dr.) Bonny Khalwale's village. We had other distinguished Senators and there are a few still living; the first Senator of Bungoma, Nathan Munoko is still living and I am sure he is listening to me because he does. That Senate kept quiet as things were happening; that Senate kept mum even as they were abolishing the Senate. People like my good old man, Lubembe, were tricked that constituencies would be created for them in Nairobi and told to go to the Lower House. If the Senate had not been abolished in 1966, this country would be different today. That is why we must remember that when Bills are passed here, they go for assent, they become the laws of the Parliament of Kenya and not the laws of the Senate of Kenya or the laws of the National Assembly of Kenya.

The drafters of the Constitution were very clear; there must be an input from inception. There must be a participatory process from both Speakers. When you just look at a Bill and say it does not concern counties, you have spoken for this Senate. You will not be speaking as Speaker Ekwee Ethuro. You will be speaking in a representative capacity.

Mr. Speaker, Sir, sometimes when you listen to our brothers and sisters in the Lower House, and as a Senate, we do not want to engage in what the media calls "turf wars"--- Sen. Haji stood to be a Senator because he did not want to go to the National Assembly. Sen. Mositet attempted to be the Member of Parliament for Kajiado North and he was no match to the Late Prof. George Saitoti, so he decided to come to the Senate. He would have gone there to fight again to go to the National Assembly but he did not. Sen. (Dr.) Khalwale was a distinguished Member of the National Assembly, chairing big committees, but he chose to come here. My brother, Sen. Chiaba, and I came to the National Assembly in 1993. These young lawyers here, Judy and my brother, Hassan Omar, left their law firms to come here. Professor here abandoned his teaching job; he was a vice chancellor and not just a teacher, of none other than former President Moi's university. No wonder he is a member of KANU. The distinguished Senator for Taita Taveta was a top executive of Coca-Cola in the whole of Africa but he is here. It is not because he had nothing to do but because--- Sen. G.G. Kariuki was the most feared Minister in this country.

Mr. Speaker, Sir, we are here for the interest of the people of this country. These good ladies are nominated here because of their passion to be what they are. That is why they are here. If this House does not stand to defend itself, those of you who know Kiswahili, you know of "*mtego wa panya unashika waliomo na wasiokuwemo*". Let none of us sit and think it does not concern him. It concerns you squarely. Old habits die hard;

the national Government will never want to release authority to the counties. That is why the Senate is there as the defender and protector of counties. We should not forget the oath we took to obey, to preserve, to protect and to defend the Constitution without fear, favour or prejudice. Those who are undermining devolution are flouting the oath they took. They are being dishonest with the oath they took.

As I said in Mombasa, if Paul Newman was to come here, he would tell you “this is the case” and it is the mining case. Let me tell you, distinguished Senators, if any of you will be convinced that mining in this country is a function of the national Government, we have lost it. Hon. Najib Balala will sit in Ardhi House or wherever he sits and give out concessions for people to go to Taita-Taveta, Turkana, Kakamega and mine as they wish without caring whether there is a government – and he has sufficient impunity to do that, you know him.

Mr. Speaker, Sir, this is the time that this Senate must stand in unison. Reading this Motion, as you read it during the Rules and Business Committee meeting, goes down to the crux of the matter. Being Senators who have sworn to obey, preserve, protect and defend the Constitution, we must follow the Constitution to sort out our issues. That is why we have encouraged you to explore Article 110(3) by talking to the Speaker of the National Assembly. You do not need to beg him. The Constitution says that you shall sit together. Sitting with him is not a privilege to him and it is not a privilege to you.

In the absence of this, this is not an assault on anybody. I want to encourage my colleagues, across the Floor, that when it comes to defending the integrity of this Senate, they should stop thinking that they belong to the Jubilee fraternity. We are all in the Senate of the Republic of Kenya. We will go to court to fight against all Bills that have been assented to that we know were taken, processed, passed and assented to without the input of the Senate.

Let me ask a rhetorical question. Who, in his right frame of mind, can say water does not concern counties? There is a Bill in the National Assembly – I do not know whether it has been passed – on water; debating the volume of water and about the rivers and aquifers in Turkana, among other things. How can anybody say that the largest underground lake in this region, based in Turkana, does not concern counties? How can one say that Ndakaini Dam does not concern counties? How can anybody say that Ewaso Nyiro, Tana River, Athi River, Nzoia and Yala Rivers do not concern counties? How conceivable can anybody imagine that one can sit in Nairobi in Maji House and determine how water will be used in Turkana and Moyale? We must challenge that Bill in the Supreme Court.

When it comes to conservation and preservation of water sources, reticulation and regulation of water use, protection of the environment, all these concern counties. Who is planting trees in Mt. Elgon? It is the County of Bungoma and not the Government in Nairobi. Who is protecting the hills of Pokot? Who is protecting the water levels of Lake Turkana? Who is protecting Lake Chile and Lake Chala? It is the Government of the counties where the resources are based.

Who is cleaning the beaches of the Indian Ocean? How can anybody pretend that water does not concern counties? Very soon, we will be told that even livestock trade does not concern counties. Very soon, we will be told that people in Nairobi will sit here

and regulate how much chicken will be eaten by Luhyas in Western. This is not acceptable. That is why as a law abiding Senate, we will go to the Supreme Court. We are not threatening anybody. We are going to the Supreme Court because we have the right to do so.

The Constitution gives us the right and we will go there; *tunyenyekkee mbele ya majaji na tuwaambie* what the law says, this is what Muturi and his team are doing and this is what we seek from you. I have no doubt that anybody reading this Constitution with clarity of mind that many of our judges have---. We will tell the Speaker of the National Assembly that he is out of order. He will be told that he is doing the wrong things.

Mr. Speaker, Sir, I want to encourage you. You may have been sponsored by a party to be a Speaker. However, nobody can remove you apart from us. You have our full confidence and we will go to court with you, leading the troops to fight for this Senate. Che Guevara said; "I would rather die standing than live on my knees." Samora Machel added; "I would rather live in dignity than die in disgrace."

Mr. Speaker, Sir, you have the choice, as the leader of this House, to either die standing or live on your knees; to either die in dignity or live in disgrace. I know you, you will die standing and we will stand with you. We have confidence in you. When the matter comes to the Supreme Court, I want to beg my brothers and sisters in the Senate, even my sister, Godliver, to be there. We will wheel you there and you will sit in the front line.

Sen. Omondi: Yes.

The Senate Minority Leader (Sen. Wetangula): Everybody will be there and we will tell Kenyans that no Senator is fighting for a personal ego, no Senator is fighting for a person's turf; we are fighting for the people of Kenya. Let me give you a few examples.

Since we got Independence, Mandera celebrated having two kilometers of tarmac road after devolution came into being. The County of Marsabit, last year, graded 2,000 kilometres of road. Since Independence, they had never had more than 1,000 kilometres but cattle tracks.

Hon. Senators: Shame.

The Senate Minority Leader (Sen. Wetangula): A county like Kakamega which today has been declared the poorest in Kenya in terms of household's ratings will now get money to change the lives of people. Kwale and Kilifi which are classified as the poorest counties in Kenya have been given money and work is being done. The forgotten Turkana; now everybody is cascading there. Then there is Garissa. I want the distinguished Senator for Lamu to speak a bit more about land grabbing in Lamu.

I can go, as a Kenyan, and buy land in Lamu. I have no right to go and appropriate myself land in Lamu because I am well placed in society. You cannot do that. For you who come from Turkana, you must keep vigil on Turkana, Marsabit and everywhere. They are busy drawing maps at Ardhi House and allocating themselves land. They will never get to see it but they have titles and blocs. They will sit and sell them to people in New York, Vancouver and everywhere else. You will see a *mzungu* appearing with a suitcase being guided and he will be told that he owns a certain property. This is a property that you have lived on with your ancestors for centuries. That is why we are

fighting for resources to be controlled by counties. That is why minerals must remain under the management of counties. The national Government can give policy but it has no right to determine who mines where in Taita-Taveta and in Kajiado. It cannot determine who goes to build a resort in Maasai Mara or Amboseli. That is the work of the county government and those are the resources we are talking about.

Senators, my brothers and sisters, you are here for a purpose. You are not a transient Senate. You are the first Senate after the abolition of the first Senate to come in place under the new Constitution that even 15 and 20 year olds know that Sen. Mositet is different from MP, Sakuda; *yeye ni baba wa kaunti*, ilhali Sakuda ni Mbunge.

When you go to Laikipia, Sen. G.G. Kariuki must be given the reference he deserves because he is the hunter. He comes to Nairobi to hunt and take billions of shillings to Laikipia County. You have seen what is going on in the National Assembly and we have our party Members there. The National Assembly is very preoccupied with CDF and many of us have told them that we are not interested in CDF because we have run CDF before. The work of the Senator goes beyond CDF which is only Kshs100 million per constituency while Sen. (Dr.) Khalwale is taking Kshs10 billion to Kakamega. How can he be preoccupied with CDF? We are fighting for a much larger and nobler cause to go and change the lives of people.

We are creating employment and industries if counties are well run. A tea factory only costs Kshs400 million to put up, what will stop Pokot County from putting up their own tea factory? A cement plant costs Kshs1 billion to put up, what will stop them from putting up one and growing it? A sugar factory can be put up at Kshs2 billion and it takes three years to mutate it to production. What would stop them from putting up one? That is what the Senators are doing. Nairobi is built on the sand from Makueni County, but how much does Makueni County earn from that sand? That is what the Senate is supposed to look at. That is the resource or the mine we are talking about. The mine of Makueni County is the sand in Athi River. Can anybody tell you that that is the work of the national Government? Unless you have taken leave of your senses!

Mr. Speaker, Sir, there are many more things to say, but this Motion is probably the most important debate we have had on the Floor of this House given the challenges that we have. It is the most important resolution this House is going to make given the stormy and cloudy future we are looking at. Woe unto us if we become like an ostrich that sees a raging fire coming and dips its head in the sand thinking the body is safe. It will never be. The fire will ravage and go with you. I want to urge Senators to know that the catalyst, spark or the trigger for this; *chepe* in Kiswahili, is the Mining Bill and each one of you has some resources in your county.

Mines are not about gold and uranium. The sand of Athi River is the most important mines of Makueni County. The salt in your county is the most important mine in your county. Do you want to tell me that the salt in your county is controlled from Nairobi? I would like to inform Sen. G.G. Kariuki that those salt leeks that the elephants come to leak in your county are your mines. Do you want them to be controlled from Nairobi? The caves of Mt. Elgon where elephants go in to breed are our mines. Do you want them to be controlled from Nairobi? The Senator from Taita-Taveta should know that the Mzima Springs are their mines. Do you want them to be controlled from Nairobi?

You have to stand up to be counted. I would like to inform you that the lizard that fell from the *Iroko* tree in Chinua Achebe's *Things Fall Apart* looked aside, looked everywhere and nobody was clapping for it, it clapped for itself.

(Applause)

Roll up your sleeves. Mwalimu Julius Nyerere used to say: "Do not wait for anybody to make you relevant". Make yourself relevant, grab the relevance and run with it because nobody out there seems to understand and appreciate who you are, what you stand for and what you are doing. You had better speak out. When Idi Amin was asked by a journalist why he liked blowing his own trumpet, he asked the journalist a counter question: "Who do you expect to blow it? It is mine". Blow your trumpet and tell Kenyans that this is the turning point. If I was Paul Newman in the "Verdict" I would say: "This is the case". The Mining Bill is the spine breaker between us and the National Assembly, between us and the President. If President Uhuru signs that Bill, he will go down very loud and clear as a President who does not appreciate or value devolution. He has no shortage of advisors and Jesus in the Bible says: "If the right hand causes you to sin, cut it off". If it is the left eye that is constantly looking the wrong direction and taking you aside, pluck it out.

I beg to second.

(Question proposed)

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I rise to support this Motion in its entirety.

Mr. Speaker, Sir, I do not wish to repeat what the Senate Majority Leader and Senate Minority Leader have said. Out of the questions that we will present to the Supreme Court, the answer to the question as to the constitutional status of the Acts of Parliament which have been passed without your concurrence is that the Acts of Parliament are unconstitutional.

I heard the Senate Majority Leader suggesting that, in fact, when there is no concurrence, there ought to be a mediation. The drafters of our Constitution, in Article 110 (3) assumed that the Speaker of the National Assembly and the Speaker of the Senate would act reasonably within the law and follow the law. Article 110 (3) suggests that you ought to be a very busy Speaker. This is because the words in the Constitution read:-

"Before either House considers a Bill, the Speakers of the National Assembly and Senate shall jointly resolve any question as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill."

There is nowhere in this Constitution that suggests that the Speaker of the National Assembly, hon. Justin Muturi, ought to send you a letter. There is nothing in this Constitution that suggests that you ought to write a letter to him. This Constitution suggests that you would sit in a meeting and jointly resolve that a Bill either concerns a county or not and the Bill is either a special Bill or an ordinary Bill. If the 46 Bills or Acts of Parliament do not have your decision, the Speaker of the National Assembly has

violated the Constitution. Those Acts of Parliament are unconstitutional and there are no two ways about it. The Constitution, in fact, did not envision a dispute between yourself and the Speaker of the National Assembly.

Maybe it is time that this Senate drafts a referendum question. In the Senate of the Republic of Australia, a provision for dispute is provided for. That resolution, if none exists, is very drastic and both Houses in Australia, in fact, can be dissolved where you have a dispute like the one that we have in the Republic of Kenya.

Mr. Speaker, Sir, we have waited for too long. Yesterday, I attended a forum where everybody was wondering why it is that the Senate of the Republic of Kenya has waited and issued ultimatums upon ultimatums to the National Assembly or the Speaker of the National Assembly. They were wondering whether we are that toothless or nice. What is happening reminds me of the definitions given to soccer and rugby where they say: "Soccer is a game of gentlemen played by hooligans and rugby is a game of gentlemen, watched by hooligans." This is not the same.

Mr. Speaker, we have behaved diplomatically to the detriment of this Republic. As Senators, we do not serve at the pleasure of the Speaker of the National Assembly or any other person. By waiting and not taking any action, we have, in fact, silently told the people who elected us under Article 1 that we do not want to exercise our mandate.

This is a sad time for legislative making in this Republic because we have almost abdicated our responsibilities to one man, the Speaker of the National Assembly. The decision that he makes alone is not the decision of this Senate. There is nowhere in this Constitution where either Speaker of the National Assembly or of the Senate is supposed to act arbitrarily, capriciously or in his own whims.

Mr. Speaker, Sir, I am urging you to reproduce all your letters to your counterpart at the National Assembly because other than seeking the questions to be answered, we must also ask the question whether the Speaker of the National Assembly has not abused his office. We must say so because the law protects us. The laws of this country give us the mandate to say so because if 46 Bills have not come to you for a decision jointly, I dare suggest that that decision must be in writing, what more amounts to abuse of office more than what has happened?

We were elected for a specific purpose and one of those purposes is to legislate. When we invited the Attorney General of Kenya, and I want to go on record, he said that "under no uncertain terms, the Constitution of this Republic is very clear". If laws including the ones we highlighted to him have not come for your signature, those Acts are unconstitutional.

What the law does not say, is that in Article 110(5), before the President assents to any Bill, that Bill must have a certificate confirming that you have confirmed that, that Bill does not concern counties and therefore, is not a Money Bill or a special Bill as contemplated under Article 110(3). If that has not happened, there has been a violation of this Constitution. We have waited for too long. I am happy that recently the courts made a decision that was very significant on the removal of judges. The Supreme Court has said that once judges are removed by the Sharad Rao Committee, those judges have no recourse to the High Court. Similarly, where a power is granted to us for impeachment or

otherwise, no person has the right to sanction or seek an injunction before they appear before the Senate. I have confidence that we have taken the right decision.

Mr. Speaker, Sir, I have confidence that the Supreme Court will abide by the decision that it has made concerning the judges. That decision, according to this Constitution on our advisory opinion, would be binding on every court in this Republic.

Mr. Speaker, Sir, Kenyans are watching carefully and as the Senate Minority Leader has pointed out, we have been watching as a person or persons conspiring quietly or loudly clawing on the powers of this Senate to act on behalf of the people of Kenya under Article 96.

Mr. Speaker, Sir, I am wondering whether the reason why you are defiled in this manner, because you have been defiled and we must say so clearly. Does somebody imagine that because you are not a legal professional, you do not know how to read laws? Did your counterpart imagine that simply because you are not a lawyer, you cannot make a determination under Article 123? We must ask ourselves those questions.

Mr. Speaker, Sir, in defending your position under Article 123, we are not only defending your seat but also our own position as the Senators of this Republic so that then, precedent can be set.

We have confidence that the finding that was made on the Division of Revenue Bill by the Supreme Court would apply equally to the Acts of Parliament passed by the National Assembly without your concurrence to the appropriate jurisdiction of the Senate and the National Assembly in so far as county legislatures are concerned because the chairmen of legal affairs committees of county assemblies came to us last week and they told the Committee on Legal Affairs and Human Rights that their work has been paralysed by the courts of this Republic. They said, as their big brother, the ball is in our court.

Finally, when history is written, as it was said by one famous man, the buck will stop at the door of this Senate. I want to be one of those people who is prepared to wear a robe, wear my wig, use the resources of my law firm and legal assistance and shut it down to fight for this Senate. The threat that they used last time, that they were going to surcharge us for fighting for our space, we must fight back in whatever terms possible. The time for being diplomatic is gone. The time for fighting with velvet gloves is gone. We must punch and punch hard and we must be heard everywhere like it was said in the Githunguri case. Somebody on top of Mt. Kenya should be able to proclaim and say, "There goes the Senate of the Republic of Kenya."

Mr. Speaker, Sir, I beg to support.

ADJOURNMENT

The Speaker (Hon. Ethuro): Order Members.

Hon. Senators, it is now time to interrupt the business of the House. Therefore, the House stands adjourned until tomorrow, Wednesday, 12th November, 2014, at 2.30 p. m.

The Senate rose at 6.30 p.m.