

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Tuesday, 25<sup>th</sup> February, 2014

*Eleventh Parliament - Second Session - First Sitting*

*(The Senate met at the County Hall,  
Parliament Buildings, at 2.30 p.m.)*

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

### PRAYERS

#### QUORUM CALL AT COMMENCEMENT OF SITTING

**The Speaker** (Hon. Ethuro): Order, hon. Senators. We need to determine if we have a quorum.

**The Clerk-at-the-Table** (Mr. Ruge): Mr. Speaker, Sir, there are ten Senators in the House. So, there is no quorum.

*(Several Senators walked into the Chamber)*

Mr. Speaker, Sir, we now have 15 Senators. We have a quorum.

**The Speaker** (Hon. Ethuro): Let us commence business.

### NOTICE OF MOTION

#### APPOINTMENT OF MEMBERS OF THE RULES AND BUSINESS COMMITTEE

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

THAT, pursuant to Standing Order 174 (1) (d), the Senate approves the following Senators to be Members of the Rules and Business Committee:-

1. Sen. David Ekwee Ethuro - Speaker of the Senate - Chairperson
2. Sen. (Prof.) Kithure Kindiki - Senate Majority Leader
3. Sen. Moses Masika Wetangula - Senate Minority Leader
4. Sen. Beatrice Elachi - Senate Majority Whip
5. Sen. Johnson Nduya Muthama - Senate Minority Whip
6. Sen. Beth Mugo

7. Sen. Charles Keter
8. Sen. Kiraitu Murungi
9. Sen. (Prof.) Lonyangapuo
10. Sen. James Orengo
11. Sen. Janet Ong'era
12. Sen. (Dr.) Agnes Zani

**The Speaker** (Hon. Ethuro): Next Order!

**The Clerk-at-the-Table:** Order No. 7: Statements.

**Sen. Mwakulegwa:** Mr. Speaker, Sir, I want to respond to a Statement which was sought on 3<sup>rd</sup> December, 2013 by Sen. Mutula Kilonzo Jnr., regarding the Makutano-Kikima-Tawa Road.

Mr. Speaker, Sir, the question was---

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. I know that every Senator is expected to be in the House when a Sitting is going on, but I do notice---

*(Sen. Wetangula spotted Sen. Mutula  
Kilonzo Junior in the Chamber)*

I am sorry. I thought that he was not in the Chamber, since he normally sits here. I was going to ask for the Statement to be made when Sen. Mutula Kilonzo Junior is in the Chamber, but I can see that he has shifted where he normally sits.

**Sen. Mwakulegwa:** Mr. Speaker, Sir, he has already consulted.

**The Speaker** (Hon. Ethuro): Order! Order, Sen. Mwazo! This is a new Session of the House and so, in the business of today we are going to stick to only one issue, that of constituting the Committee, which, as per Standing Order 174 (4), gives the functions of that Committee. So, we should deal with the Committee, which will then help us to prioritize this issue. So, we will ask you to wait for communication from my office.

Next Order!

## MOTION

### APPOINTMENT OF MEMBERS OF THE RULES AND BUSINESS COMMITTEE

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

THAT, pursuant to Standing Order 174 (1) (d), the Senate approves the following Senators to be Members of the Rules and Business Committee:-

1. Sen. David Ekwee Ethuro - Speaker of the Senate - Chairperson
2. Sen. (Prof.) Kithure Kindiki - Senate Majority Leader
3. Sen. Moses Masika Wetangula - Senate Minority Leader
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6. Sen. Beth Mugo

7. Sen. Charles Keter
8. Sen. Kiraitu Murungi
9. Sen. (Prof.) Lonyangapuo
10. Sen. James Orengo
11. Sen. Janet Ong'era
12. Sen. (Dr.) Agnes Zani

Mr. Speaker, Sir, as we all know, today is the first Sitting, signifying the commencement of the Second Session of the Eleventh Parliament. The Rules and Business Committee of this House as at now, requires to be constituted because it expires every Session. It is one of the Sessional Committees of this House.

Mr. Speaker, Sir, without much ado, let me emphasize that it would be critical for this House to deliberate and possibly endorse and approve the Membership of this Committee, because the House depends on it for business. It is the Committee that approves the business that comes to the Floor of this House. Therefore, it will be critical that this Committee be approved today. I want to appeal to all Members to go through the list and, perhaps, give us an approval.

Mr. Speaker, Sir, one of the things that I have noted is that actually both the Senate Minority Leader and I have actually maintained basically the same membership. This is a sign that the previous Rules and Business Committee (RBC) did a good job. We want to ask those of us who will be in this Committee to take cognizance of the fact that this Session is likely to have very heavy and serious business. We expect that during this Session, the Senate will be passing a number of substantive Bills, including amendment Bills of existing legislation. We also expect the Senate to handle a lot of reports during this Session, especially those emanating from the oversight committees and other organs of this House.

Mr. Speaker, Sir, I do not want to waste a lot of time, but just for clarity, not only has more or less the same team been maintained, but to also reiterate that the same issues of national diversity, gender requirements and all other considerations have been met in terms of the composition of this Committee.

Mr. Speaker, Sir, finally, I also want to make it clear that some of the leadership of this House are Members to this Committee. For example, Member Number One, Hon. Ekwee Ethuro, is supposed to Chair that Committee as the Speaker of this House. The Mover of this Motion is also there as the Senate Majority Leader; the same applies to my colleague, Sen. Moses Wetangula and the Whips. According to the relevant Standing Orders of this House which require that as we nominate other Members, we must ensure that each parliamentary party is represented by the Whip of that party. Having looked at all those considerations, namely gender diversity, the need for national diversity, continuity and the need to ensure that those that should be in this Committee by virtue of office are in this Committee, I beg to urge my colleagues, hon. Senators, to debate and approve this formation so that the House can start having Business immediately.

With those many remarks, I beg to move and request, as is the custom, the Senate Minority Leader, Sen. Moses Wetangula, to second.

Thank you.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I second the Motion. As you can see, the list is exactly what we presented to this House at the

beginning of the last Session. Of course, at some point, proposed Member Number Three was rudely interrupted in his continuing membership, but is now back. I want to urge the House to approve the list so that the Committee can immediately retreat to a meeting to set the agenda of Business starting tomorrow morning.

My very able deputy has pointed out to me that there is lack of diversity in terms of northern Kenya not being represented, but I have also reminded him the basic principle in law that having supported the list last time, he is stopped from opposing it now.

*(Laughter)*

I urge that we do support the list and move on to create Business for the House.

I beg to second.

*(Loud consultations)*

**The Speaker** (Hon. Ethuro): Order! Order, Senators! We must remain calm at all times!

*(Laughter)*

*(Question proposed)*

Deputy Senate Minority Leader!

**Sen. Abdirahman:** Thank you, Mr. Speaker, Sir. I stand to support this Motion. In a very low tone, I whispered to my leader the fact that Sen. (Prof.) Kithure said that there was regional diversity, and it would be very important not to set precedence that may not be very good in the future. But because this House is mainly built on consensus building; it is a House that operates not along alliances and factions, I have decided to actually support it in the interest of the Kenyans we serve.

Thank you very much.

**Sen. Haji:** Thank you, Mr. Speaker, Sir. I stand to support this Motion with a lot of reservation because this debate is being listened to by Kenyans and when the Leader of Opposition says that we have taken care of diversity---

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. I know that Sen. Haji is my senior and I have a lot of respect for him. I was just wondering whether he is properly dressed for this House. I have no problem with all the other clothes, except this thing – the shawl that is covering---

*(Laughter)*

Mr. Speaker, Sir, I do not know – I might be wrong – but is that the proper dressing for the House? I am asking with a lot of humility and not actually out of ignorance whether, really, that is the right dressing.

**The Speaker** (Hon. Ethuro): Order! Sen. Haji, would you like to respond to that?

**Sen. Haji:** Mr. Speaker, Sir, I think the response would be yours. I would like to continue with my debate. I want to advise Sen. Murkomen that he can also come with the Kalenjin skin next time if he wants, and I am sure the Speaker will accept it.

*(Laughter)*

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. It is unfortunate that while you were trying to give us a bit of time to ventilate so as to make a proper decision, the hon. Senator has chosen to reduce it to an ethnic matter. This is about the decency, integrity and the seriousness placed on the Senate of the Republic of Kenya.

With all due respect, even the Luhya have their traditional regalia and if we choose to bring here traditional regalia, there are even those who might choose to come here half naked, and the Standing Orders insist that we must cover our bodies to a particular degree.

Mr. Speaker, Sir, even in beach hotels, if you cover yourself the way he is covering himself, you will not be allowed into the dining hall.

*(Several hon. Senators stood up in their places)*

**The Speaker** (Hon. Ethuro): Order! Sen. Yusuf Haji, just relax a bit; let us allow one intervention from Sen. Abdirahman Hassan.

**Sen. Abdirahman:** Mr. Speaker, Sir, it is always good for hon. Members to understand the difference between traditional regalia and a mode of dress that befits the standard of this House, like the one Sen. Haji has put on. In fact, for the interest of the hon. Members, those two go together – the turban you see right on Sen. Haji’s shoulder and the *kanzu*. In fact, he has left the *kofia* behind, save for the *rungu* or the *bakora*, which is not accepted in the House. They go together in terms of the standard procedures and forms in which he is supposed to dress. I think you ruled the last time – when I had put on the *kanzu* and *kofia* myself – and it is very clear. So, this is going to be very important for us to understand.

Thank you.

*(Several hon. Senators stood up in their places)*

**Sen. Haji:** Mr. Speaker, Sir, I should be protected. I was on the Floor. I was just going to conclude---

**The Speaker** (Hon. Ethuro): Order, Sen. Haji! You will be protected.

**Sen. Haji:** Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): However, we cannot protect you from certain interventions, especially when the Chair gave you the opportunity maybe to describe the circumstances in which you are dressed the way you are, so that you could help the Chair. So, let others maybe help the Chair to see how we can dispose of your matter.

Sen. (Dr.) Machage!

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I hope you heard the point of order from Sen. (Dr.) Khalwale, where he--- Is he in order to suggest that traditional regalia is indecent in any way?

**The Speaker** (Hon. Ethuro): Sen. Zipporah Kittony!

**Sen. Kittony:** Mr. Speaker, Sir, I was also tempted to rise on a point of order when I saw him putting on the shawl, because this is what we normally wear, but I did not know how to bring it up. This is what women wear in the evening when it is cold.

*(Laughter)*

Really, I think the House needs to be properly guided; if it is the official attire, then we have to understand. I nearly asked him to lend it to me because this is normally what we use in the evening.

*(Laughter)*

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

**The Speaker** (Hon. Ethuro): Order, Sen. Haji! Let us get the last one from Sen. Ongera, and then I will give you an opportunity to give your own assessment.

**Sen. Ongera:** Thank you, Mr. Speaker, Sir. Sen. Haji is very smart.

**Sen. (Dr.) Khalwale:** Is he?

**Sen. Ongera:** In fact, I hope and beseech the Chair to make a ruling that many of our male Senators could take a cue from Sen. Haji.

*(Laughter)*

Personally, Mr. Speaker, Sir, I think he is very well dressed and it is something---

**The Speaker** (Hon. Ethuro): Order! Order! You are now arguing for his case instead of raising your point of order.

What is it, Sen. (Prof.) Anyang'-Nyong'o?

**Sen. (Prof.) Anyang'-Nyong'o:** In his reply to how he is dressed, can Sen. Haji assure us of what lies under that *kanzu*?

*(Laughter)*

**The Speaker** (Hon. Ethuro): Sen. Haji!

**Sen. Haji:** Mr. Speaker, Sir, with a lot of respect, I think Sen. (Dr.) Khalwale is completely out of order because what we are addressing is not tribalism; we are addressing what has been stated in the House and we have a duty to correct it now, because the Committee does not reflect county representation.

Mr. Speaker, Sir, secondly, as my friend, Olof, said, I think there is precedence. You have been a Member of Parliament for many years---

**The Speaker** (Hon. Ethuro): Order, Sen. Haji! Who is your friend, Olof?

**Sen. Haji:** Mr. Speaker, Sir, it is the Senator for Wajir County. I think in the Eighth Parliament, the Speaker ruled that we can wear our traditional dress. It came as a result of people wearing *kanzus*, and it was accepted.

Secondly, Mr. Speaker, Sir---

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

**Sen. Haji:** Can you, please, just allow me to finish?

**The Speaker** (Hon. Ethuro): Respond to some of them and then I will allow the Senate Minority Leader.

**Sen. Haji:** Mr. Speaker, Sir, I cannot help Sen. (Dr.) Khalwale; if they do not have a dress, he can stay naked the way he wants to be.

*(Laughter)*

Sen. Zipporah, you can check me tonight to see whether I am a man or I am like you. You can check it!

*(Laughter)*

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

**The Speaker** (Hon. Ethuro): What is it, Sen. Wetangula?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, this is a House of rules and we are guided strictly by the rules that we make. It is irrelevant and immaterial whether Sen. Haji is very smart according to my very able Deputy Whip here or he is looking very smart like he is, but what is very important is the observance of the rules.

The Speaker's Rules promulgated at the beginning of this Senate, Rule No.5 (2) says the following:-

“Senators are required not to enter the Chamber, lounge or dining room without being properly dressed.”

This means that the Senator shall be dressed in a coat, which he is not, collar shirt, which he is not, tie, which he is not, long trousers, which I do not know, socks, which I do not know, shoes---

*(Laughter)*

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Can we inspect!

**The Speaker** (Hon. Ethuro): Order, Sen. (Prof.) Kindiki.

**The Senate Minority Leader** (Sen. Wetangula): Shoes, service uniform or decent national dress for men and an equivalent standard for women.

Mr. Speaker, Sir, Sen. Murkomen is definitely right. Senator Yusuf Haji, the distinguished Senator for Garissa is dressed in a manner that does not fit in the description set out and allowed by the rules promulgated by the Speaker.

Mr. Speaker, Sir, I want to encourage that if we have to be serious, then we must observe our rules. It is not a question of coming here smart. Tomorrow the distinguished Senator for Nandi will come here wearing a Colobus monkey skin on his head and we will say that he is smart looking, so I urge that you enforce the rules strictly and rule that the distinguished Senator for Garissa is actually not properly dressed for this Sitting.

**Sen. Abdirahman:** On a point of order, Mr. Speaker, Sir. I completely differ with my leader in the interpretation of Rule No.5. What Sen. Haji has put on is not only a national dress but an international dress.

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

**Sen. Abirahman:** Allow me to finish. I am on a point of order.

**The Speaker (Hon. Ethuro):** Proceed, Sen. Abdirahman.

**Sen. Abdirahman:** Thank you, Mr. Speaker, Sir. We cannot be crafting new rules this morning. Precedence has been set in successive parliaments including this current Senate. You can confirm from the HANSARD that Sen. Kittony raised this issue when I had put on a *kanzu*, although it is true I had a coat, on top of the *kanzu*. The *kanzu* goes along with a trouser - for those who may not understand - and it goes with the shawl. The shawl is the turban. If one is ignorant about the form of dressing, it is important for others to educate them and I think we will offer free lessons to those who will not be able to understand. At this stage, I plead for your considered opinion on this matter as it is going to affect even the future. We will not even ask you to rule today but kindly give us a considered opinion on this matter to avoid certain aspersions that are being cast against senior leaders, especially the Sultans, like my brother Sen. Haji.

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. I know my colleague was on a point of order but is it in order for any Member to insinuate that the international standards are higher than Kenyan standards because the rules speak about a national dress with Kenyan standards?

Mr. Speaker, Sir, I also think that the Deputy Minority Leader, if he so wishes to introduce amendments to the rules, should follow the usual procedure, but as it is, my reading of the rules ably guided by the Leader of the Minority, I doubt whether my senior is well dressed.

**The Speaker (Hon. Ethuro):** I have listened to the contributions by the Senators on whether the Senator for Garissa County is properly dressed. I want to agree that this House has rules and we must comply with them. The issue in contest to me will be whether this attire which Sen. Haji is putting on is acceptable, because I thought he would argue the way Sen. Abdirahman has argued for him. I am also aware of that precedence set before so I need to research a bit more so that we can make a more comprehensive ruling on whether this is admissible or not.

In the meantime, we will give you the benefit of doubt at least for the remainder of this session and until otherwise communicated, I would urge you to just deal with it the way you have always done it so that you do not invite more controversies to yourself and to the Senate.

**Sen. Haji:** Mr. Speaker, Sir, I will abide by whatever direction given but I think this is an onslaught on my religion as a Muslim. I wear a *kanzu* in weddings and I can wear any dress as a Muslim, that is, either this *kanzu* and a *kofia*. If I am going to be



banned to wear this, then I will resign as a Senator because it is an onslaught on my religion as a Muslim.

**The Speaker** (Hon. Ethuro): Order, Sen. Haji! First, I had already made a ruling which you should comply with. Secondly, all along, it has been nice especially for day one. So I do not know where the transformation took place from being the good law abiding citizen of the Republic to entertain other virtues which you know you are full of. I would urge you for the time being to take everything in good counsel and wait for the ruling to be made. If you are convinced the way you are trying to convince us and also from precedence, I do not think you have a lot to be worried about.

**Sen. Haji:** I oblige, Mr. Speaker, Sir. Even if you tell me to go out, I will go even now.

*(Several Senators stood up in their places)*

**Mr. Speaker:** Order! We cannot entertain further debate on a Member of this House. I have already made my ruling. He is, of course, inviting me to make another ruling and I will deny him that chance that he is looking for because I had already ruled that we will be happy with you. I can see the body language of Sen. Leshore and Sen. Elachi who usually do not occupy that position, which means that they may be enjoying your company too.

Sen. (Dr.) Machage!

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, as I support the list that has been tabled to us in the House, I would want to make a few observations. Yes, it is true that we have Members who, by virtue of their positions, must belong to this Committee but I have restrained my mind from venturing into the thinking that it could be an issue of bankruptcy on the ability of other Members that the same list has to be tabled on the Floor of this House or it is because of laziness that the selectors had to go to the same list of last year. I hope it is not one of the above.

The sentiments expressed by Senators that we want Members from other regions of this country also to occupy some of these positions because of the distribution of our communities in this country must be emphasized in the selection of other committees henceforth.

Otherwise, I support.

**Sen. Keter:** Mr. Speaker, Sir, thank you for giving me this opportunity. I want to urge this House to support the names that have been read out. I want to say that for continuity of the activities of the Senate, this hon. Senators have been doing a great job in the sense that they do not even miss their meetings; they are there on time to set the agenda of this House. I want to say that it is not because other Members are unable to do the job. I am a Member of this team but what I am saying is that any Member here is able to transact the business of this House.

It is for the sake of continuity that the Members have been retained. I believe that the Members who are going to be selected for respective committees will also be retained for continuity because if you keep on changing membership of committees, then we lose track of events. For example, if the names of the Members in the Committee in charge of finance are changed, definitely in one way or another, it will affect its operations.

Therefore, I want to urge my colleagues, especially Sen. (Dr.) Machage, that these Members are like you. You are able to sit in this Committee and transact business but for the sake of moving forward, let us urge this House to support this list and approve it.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, thank you for this opportunity. I want to thank the Leader of Majority along with the Leader of Minority for seeing wisdom in retaining the same list that we had last session.

Mr. Speaker, Sir, I had an opportunity to sit in the House Business Committee in the last Parliament and there were times when we could come down to the Floor of the main Chamber when we do not have business but in spite of the teething problems of a new Senate, this Committee over the last session has ensured that on every day that we met, there was business. So, there is every reason why we should return the whole Committee as it was.

As I support this particular Motion, I am touched by one thing; that God was very kind to all of us. We were never admitted in hospital and never died during the long recess and we have come back. More importantly, during our long recess, you were forced, because of the dictates of the Constitution of Kenya, to reassemble us here and we came happily to deliberate on the unprecedented issue of the Motion of impeachment. I want to thank all colleagues that we voted almost 100 per cent for the impeachment of the Governor to send a clear message across the whole country that the Senate of the Republic of Kenya does not condone corruption.

Mr. Speaker, Sir, if you may allow me, because there is a bit of room for me to go the route I want to go, as a result of that, we are now faced with almost something resembling a constitutional crisis. This is over the standoff between the Senate, the National Assembly on one hand and the Judiciary on the other hand. Maybe as this Committee goes into office, they will take deliberate steps so that we put our Judiciary under focus for them to remember all the time, that while they are seated in their high offices, just like all other arms of Government, they are also supposed to respect the rule of law.

Mr. Speaker, Sir, I was scanning the Economic Survey of Kenya, 2013 and hon. Senators should be interested to find out what is there. They are trying to assess the performance of the Judiciary since the advent of the new Constitution.

They report states as follows:-

In 2010 we had only 56 judges. They had risen to 113 in 2012. What was the result? 56 judges in 2010 decided 85,000 cases. In 2012, 113 judges decided and concluded only 21,000 cases. On a comparative basis, the analysis shows that in 2010, 1,365 cases were decided on by one magistrate. On the other hand, 1,523 cases were decided on by one judge. That is in 2010 when they were working. But now when they are busy with injunctions, one judge in 2012 dropped from deciding 1,523 cases to only 188 cases.

Mr. Speaker, Sir, the issue of pending cases has risen dramatically at 173 per cent--

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

**The Speaker** (Hon. Ethuro): What is it, Sen. (Dr.) Machage?

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, on the rule of irrelevance, is the hon. Senator in order to go that way in his presentation when we are discussing the issue of tabling names of this serious Committee of the House?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, indeed, I know the rule of relevance, but I started by begging you and the whole House, just as I congratulated them on the vote that we took, for me to make a synopsis into the performance of the Judiciary.

Mr. Speaker, Sir, I was concluding that the pending cases---

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! You will conclude. Let me just dispose of the point of order that was raised by Sen. (Dr.) Machage. That concern crossed my mind as well, but I looked at the provisions of Standing Order No.174; part (1) which is on names. Standing Order No.174 (1) (2) and in particular Part (4) which gives the functions of the Committee.

Standing Order No.174 (4)(g) says:-

“The Rules and Business Committee—

(g) shall consider such matters as may from time to time arise in connection with the business of the Senate and shall have and perform such powers and functions as are conferred on and ascribed to it by these Standing Orders or from time to time by the Senate.”

So, these issues that the Senator is raising have arisen in the course of the business we have transacted in the House. It was this kind of committee that was bringing that business to the House. So, in terms of relevance, in my view, this is extremely relevant.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir. I was concluding with this particular point which I want to share with my colleagues; that according to the Economic Survey of Kenya, 2013, the number of pending cases in the Judiciary has risen dramatically by 173 per cent, from 42,000 cases to 114, 000 cases. This simply brings to mind the fact that our Judiciary, as tough and as generous as they are in dishing out injunctions, are forcing wananchi not to access justice by being influenced by busy bodies, some of them who are the same names that we see in every injunction.

In fact, one of the lawyers had the audacity to call some of the elected Members of the Senate and the National Assembly “test tube politicians”; the same one who could not even win an election of a professional body, he dares challenge men and women who won elections from hundreds of thousands of voters.

*(Applause)*

It is important that we send a clear message to some members of the Law Society of Kenya (LSK) that the Senate is an institution established under the Constitution. It is an organ of this Constitution. The Law Society of Kenya (LSK), the Kenya Medical Practitioners and Dentists Board (KMPDB), the Nurses Association of Kenya (NAK), the Association of Cooks of Kenya, the Watchmen’s Association of Kenya are not constitutional bodies. So, they should humble themselves the way the Association of Cooks of Kenya have humbled themselves when it comes to matters of the decision by the Senate.

*(Applause)*

Mr. Speaker, Sir, I wish to conclude by supporting and finding that we will be led in the same way to build a greater Kenya.

I thank you.

**Sen. Billow:** Thank you, Mr. Speaker, Sir. I also rise to support the Motion. I am confident that the distinguished hon. Senators whose names are listed here will be able to run the business of this House very well. Even as we start this year, it is becoming very clear that the role of the Senate is in fact, far much wider than we had thought when this House was inaugurated in March, 2013. What has become very clear is that in addition to oversight of the national responsibilities, the Senate has a wider responsibility when you look at the 47 county governments.

So, in determining the business of this House, this Committee needs to address itself to the emerging challenges in the counties. These counties are new and there are many challenges in terms of management, administration of resources and setting up of appropriate legal databases within the county assemblies. So, there is a lot of work to be done. The nation is looking up to this House to build the capacity of the county assemblies and county governments, to ensure that devolution succeeds.

Mr. Speaker, Sir, particularly in the area of making laws, we have seen recently when we were on recess the issues of revenue raising measures that came up. A countless number of counties in this country came up with many pieces of legislation in the name of Finance Acts that created wide disparities between the fees, rates and taxes that are being charged across this country yet clearly in the Public Finance Management Act, they are not empowered to enact any law on revenue raising measures before they get them reviewed by the Commission on Revenue Allocation (CRS) and the Treasury. This is why there was a lot of disparity and outcry all over the country. It is up to our House to ensure that we give some overall framework to all these laws that are being made so that county governments can use them when they are legislating on various issues such as health, finance, education and so on. As we go forward, this is very important. Those are some of the businesses they need to take into account.

Mr. Speaker, Sir, another business that this Committee needs to take into account is the visits to the counties. Some of our committees have not visited many counties. For example, the Committee on Finance, Commerce and Economic Affairs has only been to about three or four counties. Going forward, it will be necessary, from what we have seen in the media and the reports, that it is vital that the committees of this House visit the counties so that we are on top of the situation. What is happening is that our colleagues who are in the assemblies in the counties may not be very well conversant with the way legislators can play their oversight role. They may not have the capacity to interrogate the reports and the plans that are submitted by the county governments. What we have seen clearly in the reports is that there is need for us to engage with the county assemblies at the county level and even at the level of the House so that we have those institutions carry out as much of their responsibilities as possible.

Mr. Speaker, Sir, the other thing which the Members of this Committee need to appreciate is that as the first year comes to an end, since the county governments were established, the institutions which are charged with reporting, like the Controller of Budget and the Auditor-General, the Ethics and Anti-Corruption Commission, are

beginning to churn out reports. All these reports procedurally have to come to the various committees for discussions. They then have to find their way to the plenary for whatever recommendations the committees give. For example, we are aware that already the Auditor-General has concluded financial audits of some of the counties. They have already submitted the reports to the Senate. Our committee from tomorrow at mid day will be reviewing some of those audit reports.

We have received about six reports of about six counties. Other reports will be brought later. As we finish with them, we will be inviting the governors to respond to the queries from the Auditor-General. It is important that we make this point to our colleagues who are managing the counties that ours is not an adversarial relationship. We are supposed to work together with the county governors so that devolution succeeds. When we get these reports, for example, on the report from the Auditor-General, the Constitution says that within three months we should be able to debate them, make recommendations and give whatever actions we think are necessary. That is the law. So, we will be sending all those reports to the House after our committee looks at them.

Mr. Speaker, Sir, arising from that, definitely there are a lot of issues that will come up because the challenge that we have is that the expectations of Kenyans at the county level is that those counties are not being run. But for ourselves as the Senate, we need to look at certain procedures. We will not merely go by the assumptions that: *Huyu ni corrupt, ni mbaya*. We need to look at the reports from the Auditor-General and based on that, we interrogate and then we bring the reports here. So, there will be all those reports that will be coming in from all the committees.

Mr. Speaker, Sir, lastly, this House last year in the first year of its operations came up with many Motions. I would imagine the committee in charge of implementation will, in due course, favour us with a report on the progress of implementation of those Motions. We do not pass Motions in vain. Where a particular Motion requires a Ministry or a Government agency to undertake some activity, we need a report from the Committee to tell us how far this has gone so that if there is need for subsequent legislation to be made to give effect to that Motion, then we can come up with those legislations. So, this Committee has a big task ahead of it. They need to advise us in what particular areas they expect us to legislate or where our focus should be especially in terms of Motions and resolutions so that committees can also focus on specific areas.

With those remarks, I support the names of these distinguished ladies and gentlemen.

**The Speaker** (Hon. Ethuro): Hon. Senators, let us try to be brief because these are really procedural matters.

Let us hear Sen. Wako.

**Sen. Wako:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I will be brief. From the outset, I support the proposal that we appoint these Members. They performed very well last year, having been our first year. They ensured that we had business at hand to be handled. If I can remember, they also undertook a very comprehensive review of the Standing Orders. Generally, they deserve another appointment.

Mr. Speaker, Sir, going forward, I believe that towards the end of the session there should be some changes. I am saying this because there is a difference between a

Standing Committee which is appointed for five years and a Sessional Committee; a Committee such as this one which is renewable yearly. I believe that was put there to ensure that there is some measure of changes in the Membership of the committee, so that as many Members of the Senate as possible should become Members of those committees and benefit from them.

Mr. Speaker, Sir, as I support the reappointment of this Committee on the grounds that I have stated, that they have performed well, but maybe, on the other grounds, that we being the pioneers, we are now setting the precedents and traditions, committees should remain as they are for one or two years so that those precedents are set. However, looking into the future, there should be a way in which one or two Sessional Committees should retire and new ones appointed. This happens nowadays in many body corporate and committees both nationally and internationally. There is always a change over for continuity sake, but also to allow fresh blood to come in.

Mr. Speaker, Sir, most of the appointments, of course, are by virtue of office. On the Membership of the Committee, of course, I must support the appointment of Sen. Keter and Sen. Ong'era. There appears to have been some traditions that are forming, that deputies should also be Members of this Committee. The only deputy who is not a Member of this Committee is the Senate Deputy Minority Leader who happens to come from the north. In future, two to three years from now, such issues should be considered.

Speaking about the work of the Committees very briefly, I would like to commend the Committee on Education, Information and Technology. They have gone round this country. They have gone to the counties visiting and so on. Considering availability of finances or time organization, we should consider undertaking joint visits in some counties. The Committee on Devolved Government and the Committee on Legal Affairs and Human Rights have undertaken joint visits. The counties should not, all the time, be spending a lot of money entertaining various committees that are visiting them.

As far as our functions in Nairobi are concerned, for instance, the Committee on Finance, Commerce and Economic Affairs is very busy with regard to exchequer matters. Sen. Billow Kerrow is doing very well. However, we all know that most of their activities touch on very fundamental legal issues and so on. I think joint committee meetings here in Nairobi, save for Finance Commerce and Economic Affairs Committee when touching on these issues and the Legal Affairs Committee which deals with interpretation of the Constitution and legal matters would do. As much as we had a Kamukunji today, we were more so discussing the legal issues arising from the Finance, Commerce and Economic Affairs Committee. The legal issues that were taken to court and so on would have been very helpful in some of these meetings if the Committee on Legal Affairs was involved. This is just an example and there are many other examples that I can give.

On the issue of generating legislation, I would like to take this opportunity to say this so that we do not have a lot of work to do. Committees should focus on legislation. Generate legislation in the areas that are part of your mandate on all issues or else we may be drawn back to a situation where we are in the same problems we were in. This year, being the second year; we should hit the ground running.

I am very pleased and it appears that our relationship with the National Assembly is improving. Let it also improve in the area of legislation. Let us have the legislation that they have done. Let them also consider, as we agreed this morning, to pass quickly the

legislation that has gone to them so that we finalise. I support that the Rules and Business Committee be appointed the way it has been recommended.

**Sen. Elachi:** Mr. Speaker, Sir, I also rise to support the list with the names of the Committee Members. This Committee has a team that has worked very closely to ensure that business within the Senate is generated and taken care of. As we move on, one of the things we will have to work on is to ensure that more Bills come to the House. I am sure that this team will ensure that this House will have serious business, and not just Motions, as we move on. We will also have to ensure that we complete our duty of revising the Standing Orders so that we do not get into the conflict we experienced this afternoon. Within our Standing Orders, I do not see an article that takes care of that.

As we move on as a team, we want to urge other Committees that wanted to bring business in this House but were unable, just as Sen. Wako has said, to consider bringing in other Members so that they work as a team and they help one another. We want people to go into Committees where they can contribute what they have, what they believe in and what they understand. You may find somebody in a Committee where he or she is unable to perform just because that is not part of his or her background. I wish Members would come out and say what Committees they are better of working in and where they can dedicate their full energies. They should say where they are unable to work because of capacity or lack of understanding.

The other thing is that we need, as a team, to look at how we can come up with more joint committees. The Finance, Commerce and Economic Affairs, the Devolved Government Committee and the Committee on Legal Affairs need to work together in a joint Committee most of the time so as to agree on certain issues that are affecting counties and our way of working in legislation.

Lastly, I want to thank the team because I know that we started the foundation of the Senate. I hope that we will continue to work together. I know that at times we are very busy. However, we have ensured that we have a quorum as we move on.

As we move on, I would like to bring in the issue of the new Standing Orders and the Committees that we are bringing in. I request Members and I hope that as a House, once someone is already a Member of three committees, he or she will not ask to join another one. We are already strained in terms of numbers and raising a quorum when it is needed. As we move on, let us look at the new committees that are coming up and ensure that those who only have one Committee are the ones that will join.

**Sen. Khaniri:** Thank you, Mr. Speaker, Sir. I just came in and found the mood in the House was that Members were supporting the reappointment of this Committee. I had, earlier on, planned to take a different dimension. Those Members who must sit there by virtue of the provisions of the Standing Orders, for instance, the Speaker, the Senate Majority Leader, the Senate Minority Leader and the Whips, the first five, should be renewed. However, the next seven should have been changed so that other Members can also get an opportunity to serve in this Committee. The reason for renewing the first five, of course, is for the institutional memory. However, at the end of the five years, we need as many Members as possible to have served in this important Committee.

I, therefore, take the angle that my brother, Sen. Wako, the Senator for Busia, has taken, that in future, we should not just renew. We should give other Members an opportunity to serve in this Committee. However, since the mood is that we are

supporting the renewal, I will join my colleagues. Let us give them support. They did a good job in the First Session that we had. It was a very challenging session; the inaugural one, they were the pioneers, charting the path and they did their work very well. There is no single day that we went without business.

We had a very stimulating session and they came up with very good business for this House. The only quarrel I had with that Committee is that I brought two Motions that were rejected. I had a Motion where I wanted the Senate to form a Commission to inquire into the feuding tension between my county and Kisumu County, the Maseno Boundary. I wanted this matter to be resolved once and for all. I wanted the Senate to pass a Motion so that we have a Commission to look into this. I am sure that there are many other cases. I can hear Sen. Munyes saying that there are cases between the boundaries of Turkana and the Pokot. They should not shy away from approving such volatile Motions. It is our responsibility to resolve these matters as the House of Senate. We should take the bull by the horns and approve these Motions. Let us discuss them and see if we can come up with long lasting solutions to some of the problems affecting our people.

Mr. Speaker, Sir, we wish them well and we will give them the support that they need. We want them to give priority to the messages that will be coming from our partners in the name of the County Assemblies. They have a huge responsibility in the counties to oversight the County Executives. A good example is the case of Embu. We want you to give them priority whenever they come up with these messages. Where we have rogue Governors, let these matters be given priority because we want to be seen to be fighting corruption in our Republic.

Thank you Mr. Speaker, Sir. I wish the Committee well.

**The Speaker** (Hon. Ethuro): Hon Senators, it would be ideal if we concluded this by 4.00 pm. Therefore, I will give this chance to Sen. Murkomen. I hope the only two standing Members, Sen. Karaba and Sen. (Eng.) Karue Muriuki, will contribute.

**Sen. Murkomen:** Thank you, Mr. Speaker, Sir. First, I rise to support this Motion. The reason behind the support for this Motion is that the men and women we have here are people of integrity. They have demonstrated their capabilities and abilities to lead this House under your leadership.

Last year was very challenging. You had to make very difficult rulings. We had to take very difficult options including going for an advisory opinion in the Supreme Court. When we went for the advisory opinion, we had to be wise enough to ensure that our constitutional space, as Parliament, is not constricted. That is why under your leadership, we did not ask for an injunction or invalidation of legislations that were subject to discussion at that time.

Mr. Speaker, Sir, you demonstrated very good leadership and this year, I would like to challenge the team. Your position is leadership. Setting business of the House is also leadership. I would like the Rules and Business Committee to encourage introduction of more Bills; whether Private Members' Bills or through working with the Speaker of the National Assembly to ensure that the Bills are processed in a manner that the Constitution anticipates so that the two Houses dispose of legislation as required.

It would also be good if the Rules and Business Committee can get an incentive for Members who work on Private Members' Bills. Sometimes, take them somewhere



where it is conducive where they can be locked in for about three or four days, working on the legislation so that this House has good business to carry forward.

I want to commend Sen. (Dr.) Khalwale and Sen. Sang for the very good job that they did last year. I would also like to thank Sen. (Dr.) Zani for her ongoing work and others, including myself, who are still in the drafting stage for working on certain legislation that made this House to be what it was last year. I believe that this year, we will delve into legislation related to roads, agriculture, veterinary services and health so that we strengthen and deepen devolution.

I also want to commend this group because leadership includes legal leadership especially at this formative stage. This team is composed of distinguished legal scholars and practitioners led by the Senior Counsel, Sen. Orengo, Sen. (Prof.) Kindiki, the Senate Majority Leader and Sen. Wetangula, Sen. Ong'era and Sen. Murungi. The team is composed of the finest legal minds in the country. I am saying this with a lot of humility knowing that I am a young lawyer. I have only practiced for less than seven years. In the legal profession, there is something we call "Senior Counsel" which Sen. James Orengo is.

When you are a Senior Counsel, you are a man of honour, dignity and integrity. You are supposed to show direction to the other lawyers in the manner in which you conduct yourself publicly and interpret the law. I am saying this because Sen. Orengo knows some of his colleagues whom we have watched on television and read in newspapers. They do not deserve the conferment of that honour of "Senior Counsel" under the Law Society of Kenya Act, because they interpret legislation just for the sake of their stomachs and to satisfy their immediate client, when we know very well that Senior Counsel, like Sen. James Orengo and Sen. Amos Wako are supposed to provide legal leadership that will guide and deepen devolution in this country. I want to challenge Sen. (Prof.) Kindiki, Sen. James Orengo, Sen. Moses Wetangula, who was even a magistrate at one time and Sen. Janet Ong'era, that even in that team, when it comes to legal matters, you must act beyond just the position that you are a Senator, for the best interest of the country.

I am saying this with a lot of humility and respect, because those of us who are yet to even attain the status of being a judge have been so embarrassed to see some of our colleagues - who should have been holding our hands and walking with us to show us direction and how to deepen the law - only driven by the desire to accumulate wealth; what Karl Marx used to call "primitive accumulation of wealth," and brag about what kind of suit they wear or car they drive and whether they practice in Nairobi or Iten.

Mr. Speaker, Sir, it is important that this House demonstrates that respect and relationship and that we can work and lead this House. I am saying this because I know that this year, I have various proposals that I have already drafted into legislation. One of them is that we need also to provide guidance and leadership at the county in terms of the relationship of leadership in the county. You will find that the Deputy Governor in the county is just but a bystander in the running of the affairs of the country. As you will see in a week or two, I have a legislation that proposes certain specific responsibilities of the Deputy Governor.

Mr. Speaker, Sir, we have also legislative proposals to ensure that we provide specific legislative direction on the Deputy Speakers of the county assemblies. Sen.

(Prof.) Kindiki is working on the privileges and immunities of the county assemblies. Sen. (Prof.) Kindiki, Sen. Elachi and I are working on legislation which proposes stronger devolution by ensuring that more of that money goes to development expenditure than recurrent expenditure. So, all these legislative proposals will enable this House to be seen out there as not only a House of wisdom, but also a House that is interested in deepening devolution.

Mr. Speaker, Sir, I like what my friend, the Senate Minority Leader, said the other day; that devolution is not Governors. Devolution is Senators, the people of Kenya and the interests of Kenyans. We must act this year for that benefit of this country. As the Chair of the Committee on Devolved Government – and I hope that I will remain so – I will ensure that my Committee and colleagues will work together with the other committees, to ensure that we deepen and strengthen devolution.

Mr. Speaker, Sir, I beg to support.

**Sen. (Eng.) Muriuki:** Thank you, Mr. Speaker, Sir. I would like to start by congratulating our Speaker for the very well organized *Kamukunji* this morning, which focused on the issues at hand. Let us keep up the spirit.

Mr. Speaker, Sir, there is a big challenge. Some of the issues which have happened in the last few months, not least of all the impeachment of the Governor for Embu, some of the excesses of the Governors which have been noticed here and there, I think is a challenge for the Senate. We are now seeing gaps here and there, which the Senate has to fill. To that extent, I think that the Committee on Legal Affairs and Human Rights has a special challenge, to fill in and bring to the Senate proposals, so that we can legislate on the gaps. For example, much as we went through the impeachment of Governor Wambora, there was still the issue of Embu County Assembly having brought the impeachment of both the Governor and the Deputy Governor. But when you look at the Constitution, it is not provided for. So, I think that there is need to specifically legislate for such eventualities in the future.

Mr. Speaker, Sir, coming back to the matter at hand, I support the Motion. We need to approve this list and adopt it. However, I am of the same view as that of a few other Members that Sessional Committee are sessional. I think that they were made sessional deliberately for a purpose. So, much as we are in first year and face a lot of challenges, and therefore, maybe the Rules and Business Committee should proceed, I would propose that a specific policy is made in the Senate, so that the membership of the Sessional Committees changes in each Session, so that Members have diverse experiences of matters and sectors in the society.

Mr. Speaker, Sir, lastly, there are certain issues also that we see, which, maybe, are not contained in the legislature. Maybe there is a way of containing them. For example, we have Governors who literally operate like the President. They want to move with sirens and in motorcades, maybe illegally. You will find others from upcountry coming to the city with their chase cars and sirens still blaring. I think that this is still the challenge of the Senate to ensure that some kind of rule or law is in place. If there is a meeting of Governors and all of them are invited to the city, you will find all of them coming in motorcades of ten vehicles, sirens and so on. I think that it is still the duty of the Senate to provide some kind of a legal or legislative framework on how they will operate.

Mr. Speaker, Sir, with those few words, I beg to support.

**Sen. Karaba:** Thank you, Mr. Speaker, Sir, for allowing me to contribute to this Motion. I support the Motion and also wish the Members luck in this year's calendar.

Mr. Speaker, Sir, all the same, it has been expressed by many other Senators that, much as we agree that the team is complete and worked very well, it is also good to ensure that if you have heifers and some get old, you introduce others in the herd. You can phase out two Members and introduce two new Members. In the following year, you get two more coming in. I think that, that will add more flavour to the whole situation.

Mr. Speaker, Sir, all the same, it is important that this Committee knows its mandate. I do not know whether it is only to meet and decide what happens with the business. I think that it should be given a wider mandate to include evaluating what happens to the other Committees which will also be formed. I noted that during recess, some Committee did not even do anything. They are now back waiting for another Session. They might not even do anything, yet they exist in record. I am of the opinion that the Rules and Business Committee should be given extra work. It should be supervisory and try to know who is in which Committee because some of the Members really do not do anything or even move anywhere.

That is why you hear some Members expressing some bit of concern. Members of some Committees have never attended any meeting outside Nairobi or made any overseas trip, yet other Committees go out every other weekend or month. So, we would like to know whether this is the work of the Rules and Business Committee, the Speaker or the Chairmen who are so shrewd to make sure that their Committees move everywhere everytime. It could not be the fault of the Chairman of a Committee which does not move or maybe that Chairman does not know that the Committee needs to move out. So, we need to know whether this Committee can be added a mandate to scrutinize, appraise and put on record which Committee is doing well at the end of the year, so that we can pull our socks. This is because all of us may think that we are doing well, only to realize that we have not done much.

Mr. Speaker, Sir, I was able to receive the Committee on Agriculture, Land and Natural Resources, headed by the Chairman, Sen. Kivuti, in my county. I was happy that the Members who came visited Mwea and saw the kinds of problems that had been petitioned by the farmers about. We had very fruitful discussions with Committee Members and the farmers. This is what should happen. Some of the Committees have not even moved anywhere. Some of the Committees have so many problems that they do not even care to get to the field to see what happens. I pointed out last time that a road in Kirinyaga is in a mess. It has not been repaired for almost two years, yet the contract has been given. I asked whether it was possible for the Committee to make a move but to date, I have not heard any response towards that regard.

We need to have proactive Committees which are seen to be working. I am happy that I belong to the Committee on Education, Information and Technology, where we have worked very hard. But when you belong to another Committee, you wonder what the matter is because nothing happens there. When a Committee does not move out and it has a budget, what happens to that budget when it is not used by that Committee?

Mr. Speaker, Sir, secondly, the mandate of some of the Committees is amorphous and too wide. For example, the Committee on Agriculture, Land and Natural Resources is

in charge of agriculture which is crop husbandry, water, fisheries, livestock, mining, land and the environment. So, it is very hard for the Chairman to get answers in response to statements sought by Members. This is because he has to go to all these departments and Ministries. That is why we were asking that some of these Committees be split. When will they be split, so that we can have them well managed and in charge of a few departments? This will enable good deliberations in the Committees, House and outside the House. That is why we needed to know when they will be split. When will the new Committees be named and who becomes the Chair? That is very important.

Mr. Speaker, Sir, there is one thing I have noted with the counties; we are having so many problems because of lack of proper consultations between the governors and their teams. We need to have a Committee in charge of counties and devolution. That is why we are looking for more of these committees so that they can come up with that committee so that we do not have so many problems affecting the governors and their governments.

Mr. Speaker, Sir, I beg to support.

**The Speaker** (Hon. Ethuro): Order, hon. Senators! We had actually indicated that the last contributions would be from Sen. (Eng.) Karue and Sen. Karaba, but I see Sen. Orenge has, since then, acquired a bit of agility; and I think that effort must be recognized. So, I will give you one last chance.

**Sen. Orenge:** Thank you, Mr. Speaker, Sir. I will not take a long time. Those who practise in the courts, like the Senate Minority Leader here, Sen. Wetangula, know that judges who have been in the courts for a long time are familiar with the phrase that “Parliament is forever wise;” that Parliament, in whatever it does, it does not do it in vain; that every word that Parliament uses in legislation, every comma and every full-stop must be given full effect and force because Parliament is forever wise.

Mr. Speaker, Sir, I was just looking at two Standing Orders that actually confirm that Parliament is not just forever wise, but Parliament is forever dignified and treats the other institutions of Government with a lot of dignity. I think it is important that whereas we treat them with that dignity, they should also reciprocate. I was looking at Standing Order No.88 and I was wondering why that Standing Order is there. It says:-

“Neither the personal conduct of the President, nor the conduct of the Speaker or of any judge, nor the judicial conduct of any other person performing judicial functions, nor any conduct of the Head of State or Government or the representative in Kenya of any friendly country or the conduct of the holder of an office whose removal from such office is dependent upon a decision of the Senate shall be referred to adversely, except upon a specific substantive Motion of which at least three days’ notice has been given.”

It does not stop there; under Standing Order No.90, this Senate cannot discuss a matter which is *sub judice*; this Parliament cannot discuss something that is active in court; not only for purposes of the dignity of this House, but for purposes of the dignity of the other institutions of Government. In fact, under Standing Order No.90, it is not just protection to the Judiciary, but to some extent, protection even to the Executive when it relates to matters which are secret.

So, what am I trying to say? I am saying that the other institutions of Government including the Judiciary, when it comes to matters which are actively before Parliament,

they should stop and think before even thinking of making any orders in respect of a matter which is active in Parliament. Because what it does is that you cause prejudice to any citizen or to any processes that are ongoing, and there are a multiplicity of events taking place in various fora. So, that is why for a long time, we practiced law on the understanding that you cannot injunct Government as a whole, be it the Judiciary itself – because if a matter is active before a court of competent jurisdiction, you cannot really interfere. If you have, then the first instance where the Speaker of the Senate should know about any proceedings in court, it is not through a court order; that is treating the Speaker and the institution with tremendous indignity; it is as if Parliament does not know its functions!

*(Applause)*

So, if I was a sober judge and there was something about Parliament that goes before a particular court, just as Parliament is wise, on any matter touching on Parliament, you should even be wiser and think twice before you make those orders. Because sometimes it may require of you to read widely before you make an order, because even Parliament itself would think about an issue very widely and broadly; the Speaker would have approved the Motion or the Bill before it reaches the Floor of the House. And we are under---

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

**The Speaker** (Hon. Ethuro): Senior Counsel, Sen. Orengo, do you want to be informed by Sen. (Dr.) Khalwale?

**Sen. Orengo:** It may be about bull fighting!

*(Laughter)*

**Sen. (Dr.) Khalwale:** Thank you, Sen. Orengo, for accepting my information. This is so important that I am tempted to inform Sen. Orengo that in Uganda, where a very sensitive issue that captured the imagination of the international community – the issue that was touching on the rights of the so-called gays – the Chief Justice of Uganda completely kept quiet until now that the matter has been concluded by Parliament, is when now the Judiciary of Uganda wants to do what it was created to do – that is to interpret the decision by the Parliament of Uganda in denying the gays the rights that they have.

Thank you, Mr. Speaker, Sir.

*(Several hon. Senators stood up in their places)*

**The Speaker** (Hon. Ethuro): Order!

**The Senate Minority Leader** (Sen. Wetangula): I have been allowed, Mr. Speaker, Sir.

Mr. Speaker, Sir, I was doing some reading on comparable issues and I want to inform Sen. Orengo – although I do not recommend that we go that route – but in Papua New Guinea, there is a provision in law that any judge or judicial officer who embarks on

a misadventure and purports to injunct Parliament or officers of Parliament, risks to go to jail for seven years. I do not recommend we go that route, but it is good for them to know that in comparable jurisdictions, we have such legislation in place.

*(Laughter)*

**Sen. Orengo:** I thank colleagues for all that information and I could not more than agree with that information. But there is another thing that is more important in this new dispensation under the current Constitution; that it is not just upon the Judiciary on its own to interpret the Constitution; even this House every day when we are discussing Motions and Bills, we are grappling with the law and with the Constitution. The Constitution under Article 10 requires of us to interpret the Constitution. When I am served with a court order, I have to examine that order. I do not just accept it; I have got to examine it, look at whether it is a proper order of the court, whether it has the seal; if it is in English, whether it makes any meaning; is it enforceable? Such considerations under Article 10 are extremely important. But the worst of it all is that, actually, an order can be illegal even from the Judiciary; and the Constitution requires of you to ensure that you abide, defend, safeguard and protect the Constitution. So that if the Speaker was served with an illegal order, you know, his first business is to purge that illegal order and not to obey it. This is a new Kenya that we are trying to create, not the old Kenya. An order is not just an order; we are not--- Even policemen now, the way they are trained, you cannot go and rob somebody of his personal belongings and you are saying that you are carrying out an order from “my superiors;” you will be accountable for your actions!

But now, more importantly, Mr. Speaker, Sir – and that is why I love this Constitution – is that it says in Article 1(2), after saying “All sovereign power belongs to the people of Kenya”:-

“The people may exercise their sovereign power either directly or through their democratically elected representatives.”

*(Applause)*

The Constitution delegates other functions – judicial, legislative or even executive – but when it comes to the exercise of sovereign power, it resides in the people first and secondly to Parliament.

There has just been a revolution in Ukraine; it is Parliament which is taking care of that mess that is going on. In fact, the judges have disappeared; some of them are being hunted down for making illegal orders and jailing people who should not be in jail!

*(Applause)*

Let nobody forget that there was a time – and that is why we must be vigilant against every institution in this land – when people were being taken to courts in this country at midnight.

**Hon. Senators:** Yes!

**Sen. Orenge:** Courts were sitting at midnight. We do not want to go back there; and justice must not only be done, but it must be seen to be done!

(Applause)

Any matter that is *justiciable* means that there are two parties to the case; so that if somebody wants to injunct Parliament, I think the most reasonable thing to do is to say: “you are a citizen, you have freedom, and you have access to justice, but let us hear the other party.” Some of us go to courts many times and we are told “you cannot have that *ex parte* order.” So, the *ex parte* orders should be used in very exceptional circumstances. The right even to make war or declare war is not a function only of the Executive; Parliament must approve it too. Now, if Kenya is attacked and you are waiting to see whether the Judiciary may probably want to review it in the next hour or so, you know by the time you have given the Executive, the authority to defend the territory of the Republic of Kenya, the enemies would have been in--- In fact, the courts would be empty by the time you have resolved the issue!

(Applause)

So, Mr. Speaker, Sir, I am just saying that, as a Republic, we must respect each other; we must respect our institutions; I respect the judges and I will never want any orders to be disobeyed. But everything must take place in circumstances where everybody and every particular person does not feel that he or she is being harassed by proceedings which are filed in the morning and in the afternoon, there is an order. I think because of the strong Bill of Rights Chapter in our Constitution, it can actually attract some sense of judicial activism – which I support – but I am saying before you make those orders; one has to be very careful.

I read an article this morning by Mr. Kegoro – which is a very well written article; it is good jurisprudence – that courts must keep out of politics; they must not enter the political arena; they must not get into the political thicket; that is the business of politicians, and politicians are found – when they are not out there, like sometimes I am outside there – they are either found in the Senate, in the National Assembly or in the county assemblies. So, for now, I will just hope that under the leadership of our Speaker--

Mr. Speaker, Sir, when you sit on that Chair, I feel very confident, because Parliament must fight for its space. There was once an English man who was the Speaker of the House of Commons, and the King at that time – I think this was in the 15<sup>th</sup> Century – wanted to arrest some Members of Parliament (MPs), and he visited the House of Commons. But, of course, by the rules of the House, the King cannot enter the House of Commons. So, he stood with his soldiers at the Bar and demanded that the two MPs be released to him. The Speaker told him: “Your Majesty, I do not see them.” They were in the House, but he said “I do not see them;” and the King had to recede back; and there lies the rule that when Parliament is in session, even the mightiest power is a stranger when Parliament is in debate and discussing.

(Applause)

I am saying this, Mr. Speaker, Sir, as a very senior counsel; my record is known in the Judiciary; I speak very little but I make a lot of sense.

(Laughter)

Now, I am very much aware of my functions both as counsel and a member of Law Society of Kenya (LSK) but my functions as Senator go beyond my membership of the LSK, which I recognize and really support but I am at peace with the Chairman of the Committee that confers advocates the honour of being senior counsel who is no other than the Attorney-General *emeritus*. I am sure he has heard what Sen. Murkomen has said. Please do not dish out the honours of “Senior Counsel” like *ex parte* orders. Give them to the very best of the Republic.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Order, Senators. Having no more other contributor, I will now call upon the Mover to reply.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I am grateful to all the colleagues who have spoken here in support of this Motion. Almost everybody who has spoken has supported the importance of having this Committee in place as soon as possible.

Mr. Speaker, Sir, just allow me to highlight two or three things very briefly, just for purposes of clarity without necessarily regurgitating what the others have said. The first one is that we expect to see more business. I want to give this House an assurance that during this Session, you will see a lot of business especially from the majority side. Already, there are over six or seven Bills in different stages in the process of preparation to appear on the Floor of this House. Some of them had to be republished because they were published towards the end of the last session and the law requires that they lapse and have to be republished in the new session. Therefore, I stand here to just confirm what my brother and former student, Sen. Murkomen, said that we are really working. I want to thank the private Members who worked very hard in the last session to ensure that this House has a bit of legislation.

The second thing I want to emphasize is the requirement that going forward, our business, hopefully, through the Rules and Business Committee (RBC) and your leadership, to concentrate on being firm on our dual responsibility of protecting counties on one hand and representing them but on the other hand demanding accountability. On this one, I think there is no compromise, there is no relenting, and there is no backing off. I want to register this one; my greatest thanks especially to my brother, Sen. Wetangula. For the record, in my earlier life as a junior lawyer, I worked with Moses Wetangula in his law firm and I think I must disclose that he is a man of immense intellect.

Nevertheless having said so, I want to say that I was very impressed when he and the rest of his political team joined with us last week to emphasize that on the issue of accountability for counties, it has nothing to do with parties. It is not about Jubilee, it is not about CORD but the future of our country. So, I really respect Sen. Wetangula and



his team for that position. There is a thing of trying to say let us play hide and seek so that it would look as if it is Jubilee which is trying to undermine devolution.

Mr. Speaker, Sir, the final thing that I wanted to say is that what has come out from this debate is that we expect, even as we transact business, to remain not only the House of reflection but the House of restraint. We will be restrained but in that restraint, we will not hesitate to guide this country towards not only prosperity but also the respect for institutions, the respect for law and that respect bind every organ. I want to remind the Judiciary that they are bound by the Constitution just the same way Parliament and the Executive is bound by the Judiciary. Having listened to Sen. Orengo and other great legal minds, I must also say that I became a lawyer partly because of the inspiration of people like Sen. Orengo many years ago. So, today looking back at my 13 years as an advocate, I feel very encouraged that---

**An hon. Senator:** Only!

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Yes; only. That tells you that in another ten years, we will be very far.

Mr. Speaker, Sir, I wanted to say that if we have come this far in 13 years, it means that in another ten, we will be very far. Let me emphasize this last point about where we are and in my view even as I move this Motion; the issue of Parliament, there is a big misapprehension. People, even in the legal fraternity, think that Parliament is some statutory body. They think that it is a parastatal whose decisions can be carried to the High Court. I heard my colleagues who came here mentioning that even as we discuss the issue of Wambora, we should note that our decision would be taken to the High Court for review. You cannot; I want to emphasize that you cannot. The Judiciary cannot control, manipulate or direct the substantive business of Parliament.

Two things come to mind: First, even when the Judiciary can declare a certain Act of Parliament unconstitutional, it ends there. They cannot say that this is not constitutional and we should pass this one that is constitutional. Why? Because unlike the other organs of government like the Executive, where only the President is elected to do executive functions which are administrative, unlike the Judiciary, Parliament represents the people. It is the only organ that has been directly entrusted with the sovereignty of the people of Kenya. Above Parliament, there is no other organ except the people and God. So, we normally say that since Parliament represents the people above Parliament, only the blue sky exist where God resides and he has super human powers.

Mr. Speaker, Sir, therefore we should be very firm and not subject our authority to anyone but only the people whom we should be subservient to.

With those many remarks, I want to take this opportunity once again to thank all the contributors and once again say that in terms of priority of business just for the record and I take this from the contribution by Sen. (Eng.) Muriuki Karue, some of the things that RBC might want to consider as a priority would be to have an impeachment law or an impeachment act. We can have two: Impeachment (President and Deputy President) Bill and another one; Impeachment (Governors and Deputy Governors) Bill. I am willing to also be part of the solution so that going forward, we will not have the gaps that we have seen in the last episode of impeachment of the Governor of Embu who, as I have said time and again, in my very considered view, ceased to become Governor on 14<sup>th</sup> February, 2014, shortly before midnight.

With those very many remarks, I thank you and beg to move.

*(Question put and agreed to)*

### COMMUNICATION FROM THE CHAIR

#### MEETING OF THE SENATE RULES AND BUSINESS COMMITTEE

**The Speaker** (Hon. Ethuro): Hon. Senators, first, since this is a Committee that I Chair, I also want to thank you for returning the entire membership of the Committee and for all the reasons you have stated. Secondly, the Committee will definitely take into account some of the suggestions you have made as we move forward. So, the Committee will meet at 4.45 p.m. in the Committee Room, Ground Floor, County Hall.

### ADJOURNMENT

**The Speaker** (Hon. Ethuro): Hon. Senators, since we have no other business on the Order Paper, the House, therefore stands adjourned until tomorrow Wednesday, 26<sup>th</sup> February, 2014 at 9.00 a.m.

The Senate rose at 4.25 p.m.