

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

**Tuesday, 12<sup>th</sup> November, 2024**

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

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

#### PRAYER

#### DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

**The Speaker** (Hon. Kingi): Clerk, do we have quorum? Serjeant-at-Arms, kindly ring the Quorum Bell for 10 minutes.

*(The Quorum Bell was rung)*

Order, hon. Senators. We do have quorum now. So, let us get to work. Rev. Sen. Murgor, kindly take your seat.

Clerk, you may proceed to call the first Order.

#### COMMUNICATION FROM THE CHAIR

#### WELCOMING HON. SENATORS TO PART IV, REGULAR SITTINGS

Hon. Senators, I take this opportunity to welcome hon. Senators back from the short recess. In accordance with the Calendar of the Senate for the Regular Sittings, Part IV begins today, Tuesday, 12<sup>th</sup> November, 2024 and we conclude at the rise of the Senate on Thursday, 5<sup>th</sup> December, 2024.

Hon. Senators, you will observe that this will be the last segment of the Senate Calendar, Regular Sessions of the Senate in 2024. It will be a short one before the Senate undertakes the December/January Recess.

The resumption of the regular sittings in this last part brings with it a certain degree of urgency to conclude the legislative agenda of the Senate. It is in this context

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that I, therefore, urge that we redouble our collective efforts in a bid to conclude the business of the Senate by the close of the Session in December, 2024.

I also urge the offices of the Senate Majority Leader, the Senate Minority Leader and Committee Chairpersons to do all that is necessary within the Standing Orders to expedite pending legislative business.

Hon. Senators, I wish you fruitful deliberations and wish all hon. Senators, the very best in this part. I thank you.

I also have another communication to make.

#### VISITING DELEGATION OF HANSARD OFFICERS FROM THE PARLIAMENT OF UGANDA

I would like to acknowledge the presence in the Speaker's Gallery this afternoon of a visiting delegation of Hansard officers from the Parliament of Uganda. The delegation is undertaking a capacity building programme in the Senate.

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

- (1) Mr. Julius Aboko, Senior Assistant Editor
- (2) Ms. Lavinia Tuhimbise, Assistant Editor
- (3) Ms. Sherlene Mukite, Assistant Editor
- (4) Mr. Isaac Musimenta, Assistant Editor
- (5) Mr. Jorem Echodu, Technician
- (6) Miss Ketty Akello, Assistant Secretary

Hon. Senators, in our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to the delegation. On behalf of the Senate and on my own behalf, wish them a fruitful visit.

I will allow the Senator for Kitui County to extend a warm welcome to the delegation under one minute.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir. On my own behalf and on behalf of my colleagues in the Senate of the Republic of Kenya, I take this opportunity to welcome the visiting delegation from the Parliament of Uganda. We take cognizance of the fact that Uganda remains a friendly neighbour; the biggest bilateral trading partner with Kenya.

I ask the visiting delegation to feel at home wherever they go and may their visit be fruitful as they undertake their benchmarking. Thank you.

**The Speaker** (Hon. Kingi): Next Order.

### QUESTIONS AND STATEMENTS

#### STATEMENTS

**The Speaker** (Hon. Kingi): Statement pursuant to Standing Order No.56(1)(a).

The Chairperson Standing Committee on Health, proceed to read your Statement. Is there a Member of that Committee in the House? Sen. Nyutu, you may proceed to present that Statement.

CURRENT STATE OF THE NATION REGARDING  
IMPLEMENTATION OF SHA

**Sen. Joe Nyutu:** Mr. Speaker, Sir, I stand in for Sen. Mandago, the Chairperson of the Committee on Health, where I am a Member. This is a Statement relating to the activities of the Standing Committee on Health, pursuant to Standing Order No.56(1)(a).

I rise pursuant to Standing Order No.56(1)(a) to make a Statement relating to a matter for which the Committee is responsible, namely the current state of the nation.

As you are aware, the Senate passed a Motion on the current state of the nation on 24<sup>th</sup> July, 2024. In the resolution, the Senate directed the Committee on Health to urgently engage the relevant stakeholders in order to-

(a) Expedite and facilitate public participation in the re-enactment of the Social Health Insurance Act, the Digital Health Act and the Primary Health Care Act, in compliance with the judgment of the High Court Petition No. E-473 of 2023.

(b) Engage with the Cabinet Secretary for Health and the Council of Governors (CoGs) with a view to standardize human resource policy for health workers across all counties.

Mr. Speaker, Sir, the Petition No. E-473 of 2023 was filed by Mr. Joseph Aura, on his behalf and on behalf of Kenyan citizens, challenging the constitutionality of the Social Health Insurance Act, the Primary Health Act and the Digital Health Act.

The respondents to the Petition included the Cabinet Secretary for Ministry of Health, the Social Health Authority (SHA), the National Assembly, the Senate, the CoG, the Attorney General, amongst others.

The petitioner argued that Sections 26(5), 27(1)(a), 27(4), 38 and 47(3) of the Social Health Insurance Fund Act, 2023 are inconsistent with the Constitution, therefore, null and void.

He further argued that in purporting to confer upon unlicensed, unqualified and arbitrarily appointed community health promoters, the critical responsibility of grassroots primary health care across Kenya's counties, the Primary Health Act, 2023 sabotages the realization by Kenyans of quality health care, pursuant to Article 43(1)(a) of the Constitution of Kenya.

The petitioner further argued that the enactment of the Social Health Insurance Act, 2023, the Primary Health Act, 2023 and the Digital Health Act, 2023, were in contravention of the national Government's role in health matters as prescribed in the Fourth Schedule to the Constitution.

He added that the entire Social Health Insurance Act, 2023, the entire Digital Health Act, 2023, and the entire Primary Health Act, 2023 are all invalid for lack of effective, tangible, and mandatory public participation as prescribed and required under Article 10(2)(b) and 118(b) of the Constitution of Kenya and are all, therefore, null and void.

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Mr. Speaker, Sir, the High Court considered the Petition and by a judgment delivered on 12<sup>th</sup> July, 2024, determined that the Petition was meritorious and made the following orders-

(a) That Parliament undertakes sensitisation, adequate, reasonable, sufficient and inclusive public participation in accordance with the Constitution before enacting the said Act and amend the constitutional provisions in terms of this judgment;

(b) Compliance with (a) above be undertaken within 120 days of the date of this judgment;

(c) Within that period, the Act shall remain suspended;

(d) In default of (a) and (b) above, on 10<sup>th</sup> November, 2024, the following relief shall take effect forthwith-

A declaration is hereby issued that the entire Social Health Insurance Act, 2023, the entire Digital Health Act, 2023 and the entire Primary Health Act, 2023 are all unconstitutional for the reasons set out in this judgment, therefore, invalid, null and void.

Mr. Speaker, Sir, the respondent applied for stay of judgment to allow them to file an appeal to the Court of Appeal. The High Court subsequently granted a stay of the decision for a period of 45 days but held that the stay would not affect the suspension of Section 26(5) and 27(4) of the Social Health Insurance Act in light of the finding that they were unconstitutional.

The Cabinet Secretary, Ministry of Health, being dissatisfied and aggrieved with the judgment of the High Court, lodged a Notice of Appeal dated 23<sup>rd</sup> July, 2024, evincing her intention to challenge the decision on appeal. The petitioner, Mr. Joseph Enoch Aura, being satisfied with the substantial judgment, decree and orders of the High Court, urged the Court of Appeal to uphold the said judgment and decree and being dissatisfied with only a part of the said judgment, cross-appealed to the Court of Appeal against-

(a) the determination that Section 26(5) and 27(4) of the Social Health Fund Act were rational limitations of the rights of Kenyans envisaged under Article 24 of the Constitution; and,

(b) the suspension of the High Court decision for 120 days and the stay of execution of the High Court decision for 45 days.

The Cabinet Secretary for Ministry of Health filed an application dated 26<sup>th</sup> July, 2024, seeking an order for stay of execution and of implementation of the judgment of the High Court pending the hearing and determination of the appeal under the provisions of Rules 1(2) and 5(2)(b) of the Court of Appeal Rules.

The Cabinet Secretary contended that it is not feasible to enact Statutes that are already enacted and that the High Court has adjudged a standard of public participation that is not within the contemplation of Articles 10 and 118 of the Constitution of Kenya.

The Cabinet Secretary further argued that the sensitization of the public, which has been decreed to apply prior to public participation, is akin to civil education which exercise is appropriate in the conduct of a referendum.

Mr. Speaker, Sir, the Court of Appeal considered the principles upon which it grants stay, whether the intended appeal must, in the first place, be arguable and a demonstration that the appeal would be rendered nugatory if stay is not granted. The

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Court further considered the public interest element of whether or not it is in the public interest for the stay to be granted.

The Court of Appeal considered that the Statutes have been in operation for nine months and that to allow the framework under which the health sector is operating to revert to the old framework with the possibility of it returning back to the current framework, in the event of the appeal succeeding, would put the health sector in a state of flux and uncertainty.

The Court of Appeal subsequently granted the stay of judgment of the High Court pending the hearing and determination of the appeal and directed that the file be immediately placed before the President of the Court for directions as to an urgent hearing.

To date, no directions have been issued on the hearing and determination of the appeal. The Committee resolved to await the determination of the appeal as the three Acts are currently in effect and are being implemented.

Mr. Speaker, Sir, in regard to the second resolution; the standardization of human resources policy for health workers across all counties, the Committee is scheduled to hold a retreat with the Ministry of Health, the Council of Governors (CoG) and the representatives from the medical practitioners, regulatory bodies and unions in order to deliberate on the challenges, if any, facing the implementation of this resolution.

The Committee will prepare its report which will be tabled in the House for consideration.

Thank you.

**The Speaker** (Hon. Kingi): Next Order.

## BILL

### *Second Reading*

#### THE RICE BILL (SENATE BILLS NO.19 OF 2023)

**The Speaker** (Hon. Kingi): Proceed, Sen. (Dr.) James Murango.

**Sen. (Dr.) Murango:** Asante sana Bw. Spika. Kulingana na Kanuni ya Kudumu ya 159(1) ya Bunge la Seneti, naomba kuondoa katika Ratiba, The Rice Bill (Senate Bills No.19 of 2023).

Sababu kuu ni ili tushauriane na wahusika wakuu wakiwemo wakulima na wote wanaohusika ili kuwasilisa huu Mswada katika Seneti kwa safari moja.

Asante sana.

**The Speaker** (Hon. Kingi): It is so withdrawn.

*(Bill withdrawn)*

Next Order.

**BILL***Second Reading*

THE COUNTY GOVERNMENTS ELECTION LAWS  
(AMENDMENT) BILL (SENATE BILLS NO.2 OF 2024)

*(Sen. Crystal Asige on 23.10.2024)*

*(Resumption of debate interrupted on 29.10.2024  
– Afternoon Sitting)*

*(Division)*

**The Speaker** (Hon. Kingi): That Order is deferred for now.

*(Bill deferred)*

Next Order.

**BILL***Second Reading*

THE COUNTY PUBLIC FINANCE LAWS (AMENDMENT)  
BILL (SENATE BILLS NO.39 OF 2023)

*(Sen. Cheruiyot on 29.10.2024)*

*(Resumption of debate interrupted on 30.10.2024  
– Afternoon Sitting)*

**The Speaker** (Hon. Kingi): When debate was interrupted, Sen. Veronica Maina had the Floor and she had a balance of 14 minutes. She is not in the House. Therefore, the Floor is open, hon. Senators. My screen has issues.

Clerk, just speak so that I can be able to pick on hon. Senators wishing to contribute.

**Sen. Osotsi:** Thank you, Mr. Speaker, Sir. I would like to start by saying that I fully support these long overdue amendments to the county public finance laws that will give the county assemblies autonomy. County assemblies play a very important role in primary oversight. Currently, they are experiencing a lot of challenges in performing their mandate due to lack of financial autonomy.

This Bill by the Deputy Speaker, who is also the Senator for Meru County, is timely because our county assemblies will have some level of financial independence.

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Currently, they depend on the county executive for their funding yet there are multiple delays. The first is occasioned by the National Treasury which delays to release funds to the counties. The county executive further creates a delay which hampers the performance of the county assemblies.

Mr. Speaker, Sir, if there are elected people in this country who suffer a lot then it is the MCAs. They stay in the villages with the people, wake up in the morning with the people and go to sleep with them. We are lucky, as Senators and Members of the National Assembly, because we are in Nairobi most of the time and only go home over the weekend. The MCAs are at home all the time which means that there is more pressure on them, especially financial pressure. That challenge is further enhanced by lack of autonomy which means delays in the payment of their salaries.

This Bill is timely because it will create a new fund called the County Assembly Fund which will now be administered by the respective county assembly. To a large extent, this will resolve the delays that have been experienced at the county assemblies.

This Bill under Clause 6 empowers the clerk of the county assembly to be the administrator of this Fund. This will further enhance the independence of the county assembly because at the moment, the clerk has no powers on matters to do with finances at the county executive. This Bill will now give the clerk the powers and he is answerable to the County Assembly Service Board (CASB).

Clause 6(7) talks about the role of administrator in seeking approvals from the Controller of Budget (COB) before withdrawing money from the county assembly's fund under the authority. I know that last time when Members were contributing on this Motion, they had issues with inefficiencies and further delays at the office of the CoB.

Mr. Speaker, Sir something has to be done at the Office of the Controller of the Budget (CoB). I agree with the Members who said it is a high time that (CoB) is devolved properly to the counties so that we do not have a situation where people come to stay in Nairobi for weeks looking for approvals from the CoB and therefore this opens another channel for corruption. We hear that people have to greet others very well for them to receive their approvals. We therefore need to do something. In fact, this whole process of CoB should be automated.

I do not understand why in these modern days, people are still moving around with documents from counties to come to the CoB for the documents to be reviewed before the approval for the expenditure is done. This process can be automated so that we do not have a scenario where counties are delayed to access their money because of waiting for approvals at the Office of the CoB.

I have also noticed that under Clause 6 (10), there is a proposal that-

“Any unutilised balances in the County Assembly Fund shall not lapse at the end of the financial year but shall be retained for the purposes for which it was established.”

Mr. Speaker, Sir, this is very progressive because the current scenario is that when county assemblies are unable to spend the money, it is swept back to the County Revenue Fund (CRF). However, in this case, the funds will be there to be rolled to the next financial year. This further enhances the financial position of our county assemblies.

I do not know whether the proposer of this Bill has checked on Clause 11, which says-

“Financial reports shall be submitted to the Commission on Revenue Allocation with a copy to the Controller of Budget.”

Maybe it wanted to refer to the office of the Auditor-General (OAG) because I do not see the role of the Commission on Revenue Allocation (CRA) in this case. Matters of financial reports are handled by the OAG. Maybe, the Deputy Speaker, you can look at that. That, to me, seems to be an error.

If we go to the issue of disbursement contained in Subsection 109E (1) it says-

“The County Treasury shall, at the beginning of every month, and in any event not later than the fifteenth day from the commencement of the month, disburse monies to the County Assembly Fund for the expenditure of the following month.

I heard colleagues had an issue with this particular provision. However, this is in line with the Public Finance Management (PFM) Act. Where I have a problem, is the subsection 2 of that Clause which says-

“The disbursement referred to in subsection (1) shall be done in accordance with a schedule prepared by the County Treasury and submitted to the County Assembly for approval together with the County Appropriation Bill under section 129(7)”.

This needs to be looked at so that we do not bog down county assemblies on matters of disbursement schedule which is never adhered to. Even here in this House, we pass this Schedule, but no one bothers to follow it. Our counties, for example, are currently running without the disbursement for August, September and October. So, we need to enhance this issue of disbursement so that it should be disbursed strictly in compliance with the schedule that has been passed. Otherwise, there would be no need of passing this Schedule.

Clause 7, Section 119A says-

“The Controller of Budget shall have viewer rights access to all bank accounts maintained by the county executive, the county assembly and all other county government entities.”

This is very progressive. How I wish that the same can be done to the PFM Act so that the CoB does not just approve expenditure, but he or she has access to the expenditures as indicated in the bank accounts. What counties do is seeking approval, make requisitions and then once approval has been given, they pay other things. That is what is called diversion of funds.

This particular provision, if implemented, it will enhance accountabilities of the monies that have been sent to our county assemblies. However, the PFM Act should also be amended so that the CoB has access to the bank accounts of these counties so that it can know how monies are being used. We will be able to know whether there is any diversion of funds to other things, which is a common practise in our counties.

This Bill is very progressive. This Bill is long overdue, and I thank the Deputy Speaker for sponsoring it. We cannot continue seeing our Members of County Assemblies (MCAs) suffering. When we go to the village, we see these leaders living in

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abject poverty and we are doing nothing about it. However, this time, Senate has done something about this. Even as we pass this Bill---

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

**The Speaker** (Hon. Kingi): What is your point of order, Senator Boni?

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I was giving my younger brother time to come to his conclusion, but he has raised a very important point.

Under Standing Order No.105, you know that this House has raised the bar for accountability by impeaching the Deputy President. Can you substantiate who are these people at the office of the CoB who must be given money in order to approve requests?

We want to really help Madam (Dr.) Margaret Nyakang'o to be in charge of this very important institution. Could you help us with their names?

**Sen. Osotsi:** Mr. Speaker, Sir, I think my good friend and my neighbour did not listen to me carefully. I never used the word 'money'. I said 'greetings'. I talked about greetings. Greetings does not necessarily mean money. Greetings can be shaking your hand. That does not mean that I have given you money.

**The Speaker** (Hon. Kingi): So, who are those that must be greeted? I think that is the point of order that has been raised.

**Sen. Osotsi:** Mr. Speaker, Sir, I do not mean to suggest that there is an exchange of money at that office.

**The Speaker** (Hon. Kingi): Proceed, Senator.

**Sen. Osotsi:** Yes, I just meant that --- but I understand Dr. Khalwale knows what I mean. So, Mr. Speaker ---

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

**The Speaker** (Hon. Kingi): Yes, the Senate Majority Leader?

**The Senate Majority Leader** (Sen. Cheruiyot): I wanted to support Sen. Osotsi. He should not agree to be intimidated by the Majority Whip. What he is saying is factual.

None other than the Senate Majority Leader in this House has stated that this habit of County Executive Committee Members (CECM) for Finance and Economic Planning travelling all the way from as far as Moyale, Tana River, Kericho and Kilifi, to come and meet with officers from the CoB to get their budget approvals is a practice that this House must bring to an end. The man who is responsible for that practice is none other than this Whip, because he sits in the Committee on Budget and Finance.

Therefore, I expect the Whip to tell Sen. Osotsi when they are likely to invite Madam Margaret, so that together with CBK, they can inform the Senate when this very archaic practice will stop.

Therefore, Sen. Osotsi is right.

**The Speaker** (Hon. Kingi): Sen. Osotsi, proceed to conclude your remarks.

**Sen. Osotsi:** Thank you, Mr. Speaker, Sir. The Senate Majority Leader has been here for three terms. Therefore, he understands these things. Sen. (Dr.) Khalwale also knows this but I do not want to dwell much on that.

I was saying that this Bill will help our leaders at the grassroots called MCAs to be effective in terms of offering primary oversight in our counties. We keep on blaming our MCAs but we must also look at their conditions of working.

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If they have challenges in meeting their financial needs, they cannot perform primary oversight effectively. We have even seen in some counties MCAs becoming people who just move around with governors and defending them because they have no choice. They depend on handouts from the governors. We want to have a situation where our MCAs are independent of the county executives. That way, they will be able to perform their roles effectively and independently. This Bill by the Deputy Speaker guarantees that.

We pass many Bills in this House but when they go to the National Assembly, they stay there without being acted on and eventually they lapse. I hope Members of the National Assembly are listening to us and are also sympathetic to the situation of our MCAs. I urge them to pass this Bill in record time, so that it becomes an Act of Parliament. That will help us to solve this long-standing problem affecting our important leaders at the grassroots and these are our MCAs.

I support.

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

**Sen. Kathuri:** Mr. Speaker, Sir. Sen. Osotsi has raised an important point this afternoon, which has always been supported by the Senate Majority Leader.

Sen. Osotsi, are you in any manner likely to bring another amendment so that the system can be automated, such that the Control of Budget (CoB) approves monies to the counties online without them coming to Nairobi to queue and bring greetings to Nairobi? Since there is a provision, you can as well amend this Bill. I will be glad if you do that.

**The Speaker** (Hon. Kingi): Sen. Osotsi, you may bring an amendment in that regard. Sen. Chimera, you have the Floor.

**Sen. Chimera:** Asante, Bw. Spika, kwa fursa hii. Naunga mkono Mswada huu. Kama kuna Mswada katika muda ambao nimekuwa katika Bunge hili ambao ni muhimu na unafaa kupewa kipaumbele ni huu ambao umeletwa hapa na Naibu Spika, Sen. Kathuri, kutoka Kaunti ya Meru.

Ni jambo la kushangaza kwamba mabunge ya kaunti ambayo kisheria yanafaa kuwa mstari wa mbele kuhakiki magavana ama utendakazi wa serikali za kaunti yanakosa fedha. Tunayanyima mabunge ya kaunti fedha za kuendesha shughuli na biashara zao ilhali pesa hizo wanapewa magavana.

Kwa kweli, ugatuzi uko katika hatari kubwa kwa kuwa kuna ubadhirifu wa fedha katika kaunti zetu kwa sababu mabunge ya kaunti. Hali hiyo inafanya wao kutoweza kufanya kazi yao. Tukiwapa Wawakilishi wa Wadi pesa, wataweza kufanya mikutano na kuhakikisha kwamba iwapo gavana au waziri wa kaunti hafanyi kazi yake anaitwa na kukosolewa ili kazi ifanywe sawa sawa.

Wawakilishi wa Kaunti vile vile wana majukumu mengi. Lazima makatibu wa mabunge ya kaunti wanyenyekee kwa magavana na Mawaziri wa Fedha katika kaunti. Hali hiyo inafanya tunapoteza maana yote ya ugatuzi.

Nampongeza Naibu Spika. Yeye mwenyewe aliona kwamba ipo haja ya kuhakikisha kwamba mabunge yetu ya kaunti yanawezeshwa ili waweze kufanya *oversight role* yao. Sisi Maseneta lazima tuwe mstari wa mbele kuhakikisha kwamba MCAs wanapata fursa. Wanafaa kupata mafunzo na kupewa pesa za kuwawezesha kufanya kazi yao.

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Gavana yeyote mbadhirifu na anayeshindwa kufanya kazi yake hafai kutumia ukosefu wa fedha kama sababu ya kutokuwa na huduma katika kaunti yake.

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

*[The Deputy Speaker (Sen. Kathuri) in the Chair]*

Bw. Naibu Spika, ukiangalia kaunti yangu ya Kwale, kumekuwa na kelele na hatihati kuhusu hali ya utendakazi hususan katika Idara ya Afya. Mimi kama Mwanakamati wa Kamati ya Afya, nilikuwa na mkutano na MCAs wa Kamati ya Afya ya Bunge la Kaunti ya Kwale. Walinieleza kuwa tatizo kubwa ambalo linawasibu ni kwamba hawana hata fedha za kufanya kikao na waziri wao. Hawawezi kufanya mkutano na kutathmini hali ya afya katika kaunti hiyo. Hiyo ndio taswira katika kaunti nyingi. Si vizuri kiongozi kukosa sauti kwa sababu hana fedha.

Nakuunga mkono. Kama kuna Seneta ambaye anafahamu kazi yake basi ni wewe kupitia Mswada huu. Nina imani kwamba Bunge hili limeona umuhimu wa kuhakikisha kwamba tunaunga mkono Mswada huu. Naomba sote tuunge mkono na kuupitisha haraka iwezekanavyo ili uwe sheria. Hiyo itawawezesha MCAs kufanya kazi yao pasipo kunyenyekea kwa magavana. Pesa zinapotolewa na Wizara ya Fedha ziende moja kwa moja kwa Makatibu wa Kaunti.

Bw. Naibu Spika, nampongeza Sen. Osotsi na pia Kiongozi wa Wengi kwa kauli yao. Kuna maafisa ambao wamezoea kuleta nyokonyoko kwamba fedha haziwezi kuwafikia bila kuweka asimilia yao. Nafikiri hiyo si sawa kisheria. Ipo haja ya Sen. Osotsi kuleta marekebisho ili kuhakikisha kwamba fedha zikitoka katika Wiraza ya Fedha zinakwenda moja kwa moja kwa mabunge ya kaunti bila vikwazo vyovyote ili tuwape fursa MCAs kufanya kazi yao.

Bw. Naibu Spika, kwa hayo mengi au machache, naunga mkono Mswada huu. Asante.

**The Deputy Speaker** (Sen. Kathuri): Asante sana. The next one is Sen. Maanzo Daniel, the Senator for Makueni County.

**Sen. Maanzo:** Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to contribute to this important Bill. First of all, I thank you for having been thoughtful. For those who may not know, I have been with you in this Parliament for 12 years. Therefore, I am very much aware that you are one person who has been a solution finder for many people of Kenya.

In the Committee on Agriculture, Livestock and Fisheries, and many other times, you have solved problems related to the people of Kenya. I congratulate and thank you for this thoughtful solution on devolution.

This law is important. Devolution in this country has been stuck for the past 12 years because of very simple reasons. In your own introduction, you have said “independence and separation of power”, so that there is independence of the county assemblies.

In the country, for the last 12 years, many county assemblies have been tied to the governor in many ways. In order for them to receive development in their respective

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wards, they had to heavily rely on the governors and be submissive to them, yet, they are supposed to impeach the governor where there are reasons to and to make sure that oversight is applicable and strict. That would not have happened without the independence of the assemblies.

Mr. Deputy Speaker, Sir, for many counties, before the assembly makes any move, they have to look for the governor or the systems of the governor to get their monies released and there has been delays. However, with this law, the county assemblies will be independent, monitor their own budget, make their own plans and oversight the governors very well.

Many of the Members of County Assemblies (MCAs) in the country have been reduced to beggars. They are with the people on the ground. Most of them spend their nights at the village. Very early in the morning, every matter that happened during the night has to be taken to the MCA who then has to contact the Senator. It goes on like that and by the time they get to the Member of Parliament (MP) or the governor, the first point of contact of the Kenyan people is the MCA.

Senators have been very supportive to MCAs so far. I personally have been supportive to the MCAs of Makueni. Right now, I am very supportive to this law, because I know it will free the MCAs from bondage. It will make the MCAs more effective, strengthened, powerful and able to deliver services to the people. Hence, this is a law which is like revolution. It is going to change devolution and make it better.

I believe everybody in this House will support this law. When it goes to the National Assembly as we have many contacts there and we are familiar with how the place works, then this is a law that we want to go express so that, as soon as possible, it is put into practise and assemblies are empowered.

The clerk of the county assembly is a very crucial person in this law. Most clerks are very well trained, qualified and experienced. They are the people who will make sure that this money is well spent. They are going to be the accounting officers of this money, answerable to this Senate.

Every other time we call the county assemblies here, there are so many missing gaps when we want them to account. Therefore, with this law, the delays will no longer be there and they will be directly responsible to the people and the National Treasury. Consequently, there will be every need to make sure that this happens.

The good news about this law is that, the County Public Finance Law, which is an Amendment Bill of the main Act, that is the Public Finance Management Act, will now have a branch which deals with the counties directly.

That amendment is very crucial, because when it comes to the national Government, then the Act applies. When it comes to the counties, then the new branch of laws applies. Everybody will be held to account and all the monies for the purposes of the movement and the operations of the county assemblies will be made very important.

I want to agree with the Sen. Osotsi and I will support his amendment, so that the Act could flow. If you look at the County Public Finance Laws (Amendment) Bill (Senate Bills No.39 of 2023) Clause109B(c), it states that-

“administrative expenses as may be incurred by the Fund under this Act or under any other purpose provided in the Constitution or any other written law.”

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Meaning, this Act is not independent of other laws. It is subject to the Constitution, statutes and other Acts of Parliament, which will work together with this to make it stronger. Thus, it is not in conflict of any other written law. It is in consonance with it and at times, that becomes a point of litigation when there are parallel laws applying on one thing. Nonetheless, this is so specific, carefully thought and solving a problem which has been bedevilling the counties for some time.

If you generally look at all those provisions and even Section 136 of the County Public Finance Laws (Amendment) Bill (Senate Bills No.39 of 2023), which is now being amended by deleting Section 2 and substituting thereof with the conclusion of this Act, if at the end of the financial year, a county government entity is holding appropriated money that was withdrawn from the county exchequer account or at the County Assembly Fund Account but has not been spent, it shall continue to be used. Again, it means that money will not be returned. Let me not read the whole of it.

The monies will not be returned to the National Treasury, as has been the case during the closure of the financial year. It means, from the closure of financial year, the activities of the county assembly will run from June, July, August up to about September when the new financial year begins. Thus, the activities of the county assembly and the county government will not stall. The oversight function will not go unchecked for some days.

I hope the county assemblies, county governments and the national Government will welcome this important law so that we can serve this country better. The Senate, which is the senior House, continues to make sure that devolution works and the common Kenyan or *mwananchi*, is served at the grassroots. The whole idea of devolution is taking development to the grassroots level and making sure that agriculture, health, water and land are fully devolved and we are able to serve the people of Kenya.

I support.

**The Deputy Speaker** (Sen. Kathuri): Next is Sen. Kisang.

**Sen. Kisang:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute and support this Motion that you have come up with.

If you remember, I think after the Sixth Parliament, the National Assembly then was an arm of the Office of the President. I am told - as I was not there - that every Thursday, the MPs used to go and collect their allowances from the Office of the President. Basically, there was no independence of the National Assembly then. This is the same problem that our county assemblies are facing but this law is going to liberate them. They will be independent from the county executives.

Mr. Deputy Speaker, Sir, I believe this is one of the reasons why there are conflicts between the executives, especially the governors, County Executive Committee Members (CECMs) of Finance and the county assemblies. Perhaps, this is because of the tactful delays of release of funds to the county assemblies, to curtail their oversight role.

About three weeks ago, we were in Wajir with Sen. Abass and we met the Committee on Energy of Wajir County Assembly. One of the things they complained about was the release of resources by the county treasuries to help them to do proper public participation and oversight. This law is going to liberate and assist them to deliver on their mandate of legislation, oversight and representation.

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Mr. Deputy Speaker, Sir, it is also important to note that you were in the ‘Lower House’ together with Sen. Osotsi, Sen. Maanzo and I for close to 10 years.

I believe you and Sen. Maanzo will look for a Member of the National Assembly to co-sponsor the Bill so that as soon as the Bill is passed in this House, you have someone who will champion it in the National Assembly. When you are in the National Assembly, you do not appreciate what the Senate does until you arrive here. It is important that we start engaging our colleagues. Let us look for someone who will champion the Bill in the National Assembly.

We also urge our Members of the County Assemblies (MCAs) across the country to lobby by talking to their Members of National Assembly to support this Bill so that they are liberated. I believe the MCAs are now watching. We have told them that as soon as the Bill leaves the Senate, they should talk to their Members of the National Assembly so that they all support the Bill unanimously. If there are any amendments, let them enrich the Bill and not water it down.

Mr. Deputy Speaker, Sir, as my colleague, Sen. Osotsi, has said, there are challenges at the Controller of Budget (CoB). Sometimes when the CoB approves money to be sent to the counties or payments to be done at the counties, there are diversions of resources and money is taken elsewhere. That is why you see accrued pending bills across all our counties. There are business people who have died and others in depression or hospital because the counties are not paying them.

It is important that we ensure the CoB puts in a proper system. This will ensure that if resources are approved on an item, the county treasury will not be able to divert and pay others. Sometimes, they overstate their own source revenue at the counties and advertise many tenders.

Instead of having pending bills on their own source of revenue projects, they decide to divert funds and pay their friends using their sharable revenue. It is important that the CoB put in place a watertight system and liaise with the National Treasury on the Integrated Financial Management Information System (IFMIS) so that anything that has already been approved in IFMIS is not diverted.

Mr. Deputy Speaker, Sir, Clause 109C states that all receipts, savings and accruals to and the balance of the County Assembly Fund at the end of each financial year shall be retained in the County Assembly Fund and applied in accordance with the Constitution and the Act. We are going on accrual accounting. It means, come 30<sup>th</sup> June every financial year, if there is still money in the account, the money is rolled over to the next financial year. The county assemblies will have to re-budget the resources that have remained as a balance in the accounts so that they do not have to send money to the County Revenue Fund (CRF).

The other very important thing in this Bill is the need to open the County Assembly Fund account at the Central Bank of Kenya (CBK). In the recent past, the county executives have opened several accounts in commercial banks. The Public Finance Management Act is very clear that all county accounts must be opened at the CBK. It is also good to remind them by putting it in law.

Mr. Deputy Speaker, Sir, this is a very progressive law that will liberate our MCAs. They will now will be able to do their work properly without going to beg at the

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governor's office. I hope this will also reduce the impeachment of the governors because everybody will be independent and do their own jobs because that has been a source of conflict.

I thank you. I support the Bill.

**The Deputy Speaker** (Sen. Kathuri): Thank you. Sen. Orwoba Magoma Gloria, proceed.

**Sen. Orwoba:** Thank you, Mr. Deputy Speaker, Sir. First, I congratulate you for being the sponsor of this Bill, because it is also in line with the spirit of the Kenya Kwanza Government. Do you remember in our manifesto to deliver to the people, we were pushing for financial independence of institutions like the National Police Service (NPS) and the Judiciary? In the same spirit, when I read through this Bill, I can see that we are also pushing for the financial independence of the county assemblies, which is the independence of devolved functions.

I do not want to belabor the point that you have MCAs who are supposed to oversight the county government, but the county government is running their payroll. So, there is always a fear of being victimized and being at the beck and call of the county government. That is the first win for the MCAs that they can at least do their jobs knowing that they still have a salary and are not going to be punished for playing their oversight role. That way, they are going to make sure that they keep the county governments accountable for the funds that they have.

It is in that same spirit that the Kenya Kwanza Government was talking about separation of powers of these institutions in the first month we took office. What we are legislating is very important. I remember there was a time we had a Chief Justice who had to beg for finances that were being controlled at the Executive in order for the judicial services to be independent.

That is the exact situation with MCAs. They have to beg governors and County Executive Committee Members (CECMs) for their salaries and allowances, and at the same time, they are required to tell the executive that they are misusing funds. It cannot work. You cannot have that independence when someone is holding you hostage with that financial card they have.

Mr. Deputy Speaker, Sir, the Judiciary Fund Act was passed in 2016, but it took so long to operationalise. It is the President, His Excellency Dr. William Samoei Ruto, who ensured that that the Judiciary had financial independence to support the operational autonomy that they needed to have. In the same spirit, this Bill is suggesting that it is not fair for the MCAs to be held hostage by the governors.

I want to speak about the Ward Fund as I contribute to this County Public Finance Laws (Amendment) Bill (Senate Bills No.39 of 2023). We always assume that it is only the National Assembly that requires the National Government-Constituencies Development Fund (NG-CDF) or the Senate that requires an oversight fund. However, the MCAs are at the grassroots and are the level of leadership that deals directly with the people. In order for us to test that devolution is working, we have to start from MCAs.

In the same spirit, I hope that somebody from this House will come up with an amendment to ensure that we get the Ward Fund for the MCAs approved. It is one of the

ways that we will empower the leaders down there, that apart from their oversight role, they can also ensure that development gets down to the grassroots.

Mr. Deputy Speaker, Sir, having said that, I support this Bill. I remind this House that indeed, it is the Kenya Kwanza Government that has been pushing for this independence of institutions. I am glad and congratulate you for having brought an amendment Bill that is in line with what we are saying; that devolved institutions have to be given operational autonomy. That means that you cannot hold people hostage or institutions hostage by running their payroll or budgets and claim to be supporting operational autonomy. I support this Bill and hope that we get a fierce co-sponsor in the National Assembly.

As Sen. Kisang has said, most of the time, we pass Bills even though they are not rejected in the National Assembly. They stall because you do not have someone who is passionate enough in the National Assembly to pass them. Sometimes, we pass Bills here, they go to the National Assembly, they have a different view, and maybe they drop it. Then, we go to the mediation committee, which takes forever.

I hope that both Houses can see that this is a Bill that needs 100 per cent support from both Houses so that our county assemblies can be held accountable; and the Members of the County Assembly (MCAs) may perform their functions without fear and without having to bend over backwards to please the same people and institutions that they are oversighting.

Thank you.

**The Deputy Speaker** (Sen. Kathuri): Sen. Okiya Omtatah, proceed.

**Sen. Okiya Omtatah:** Mr. Deputy Speaker, Sir, thank you for the opportunity to contribute to this important amendment. The County Public Finance Laws Amendment Bill of 2023, as summarised in the Memorandum of Objects and Reasons, is a Bill that need not have been there because this shows that when the National Assembly was enacting the Public Finance Management Act and other laws that govern county governments, it paid scant attention to the issues of how the county governments have to be operating.

The county assembly is micromanaged by the governor, and as such, it becomes very difficult for the assembly to have a voice of its own. Because at the end of the day, it needs to go back to the governor for this or that much as the law says, a certain percentage should go this way. However, if the money leaves Nairobi when it has been put in the various funds, then the assemblies will have their autonomy. The Public Finance Management Act needs serious attention by this House.

A lot of issues in that Act are against devolution. This particular House needs to pay attention to that Act and make sure that all amendments were made to that Act after 2013 because the Act was made when the National Assembly was the only Chamber of Parliament. After that, the Senate came into being and then mischief began playing its part.

Many amendments were made without coming to this House, including amendments such as the one that allows proceeds of foreign loans to be kept in foreign accounts, contrary to Article 206 of the Constitution, were made. You have got something that is happening now whereby a lot of money is being stolen

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through procurement, through what they call a specially permitted procurement procedure.

The specially permitted procurement procedure that is being used to initiate a lot of procurements that are not proper was insured through a Finance Act of 2017, which never came to this House and is wreaking havoc.

A lot of things like the Adanis and all these things have come around, if you look at it, as a result of the mischief that was done by the National Assembly alone after 2013 to the Public Finance Management Act. They introduced a lot of changes. So, this particular intervention that we are looking at, the Public Finance Management Act, to try and ferry out the issues that keep counties dysfunctional is important.

I congratulate the Deputy Speaker for having the presence of mind to come up with this Bill so that we can begin the journey to ensure that we have got counties that, from design, are meant to work. When you look at this particular section of the Act, it is like, I come to your home, I am from a village, right deep in the village somewhere, I want to answer the call of nature, it is raining, and I ask you: How I can get an umbrella? You tell me that I do not have to go out and could answer the call of nature within the house. You have got a self-contained house. Then I utilise it. When I finish, I say that when I go to my village, I will set up a similar house and put a toilet in that house.

However, to ensure that all the villagers know that I have a toilet in my house, I will put the toilet in the living room, which messes up the design. That toilet cannot be used and becomes dysfunctional. This is what we have here. We have a design problem in the counties. The design is faulty, and then you end up with things that cannot work.

To me, this is an opening shot. We need to visit all the legislation that governs counties and ensure that we get the design right so that we can properly set up something that can function before we test it.

What we have in the counties right now, in many cases, cannot function because the design is wrong. The design of having money leave Nairobi into the kitty of the governor, then from there the county is served, is not acceptable. We must get the design right. I really congratulate you on this because you fixed a problem here. You got the design right, and once the design is right, things will flow. When the design is wrong, however hard you try, you will never succeed. That is why we say the egg, the way it is designed, can lift a chicken with a curve, but the other side cannot lift the weight of a chicken.

Let us get the design right and work on this Bill. I pray that the National Assembly will see the value we have seen in this Bill and make sure that we create two autonomous institutions at the county level, whereby the assembly is independent. If the executive branch is independent, then the question of oversight can become possible. Otherwise, it is like asking your children to oversight their father in his compound. They cannot.

The governor remains the big man, the governor remains the boss, and he cannot be oversighted by these people. I really pray that we will find a way of getting it through the National Assembly. I want to support what Sen. Kisang said that we may need to identify a partner in the Assembly who can help us see this Bill come through.

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As I conclude, it is also important to note that primary oversight is a function of the county assembly. Primary oversight, whereby the county budget is held against the implementation of projects in the county, is really a function that MCAs should do because they live in those wards, they pass those budgets, they know what goes to their counties, and they should see if the money is being applied lawfully, using the budget as the marking scheme, and also whether the money is being used effectively.

Right now, to wait until the point whereby you get an Auditor General's report to interrogate, sometimes it is too late. You find a lot of things are missing in that report, a lot of issues have been missed, and even if you are to intervene at that time, most of the time, the horse has already bolted, and closing the gate does not achieve much.

Mr. Deputy Speaker, Sir, I congratulate you for coming up with this Bill. I support this Bill, and pray that this Bill sees the light of day, but going forward as a House, we need to revisit the Public Finance Management Act. It even takes away the power of our clerk. When there was an amendment by the National Assembly that created two heads for the Parliamentary Service Commission, it took away the power of the Clerk of this House as the Secretary of the Parliamentary Service Commission.

He is basically a figurehead. The powers of the Chairman remain intact; the powers of the Clerk are taken away by being split into three centres.

We need to revisit those kinds of things and make sure that the stature of this House is not undermined through legislation. Fidelity to the Constitution and whatever we do, we do it with the Constitution as our North Star.

Mr. Deputy Speaker, Sir, with those few remarks, I support the Bill. I thank you.

**The Deputy Speaker** (Sen. Kathuri): Sen. Gataya Mo Fire, proceed.

**Sen. Gataya Mo Fire:** Thank you, Mr. Deputy Speaker, Sir. From the outset, I want to---

**The Deputy Speaker** (Sen. Kathuri): Sen. Gataya Mo Fire, I beg your pardon, but has your voice changed in a certain manner?

**Sen. Gataya Mo Fire:** Mr. Deputy Speaker, Sir, I do not think so. I have not listened to myself, but this is the way I speak.

From the outset, I want to sincerely thank the sponsor of this Bill. He will go down in history as the Messiah and saviour for the legislative arm of the county government. I am standing here as a true witness and victim of the level of manipulation, arm-twisting, submissiveness and atrocities committed by the Executive towards the county assemblies.

I recall when I used to serve as a Member of County Assembly (MCA). I served for a decade, which is two terms and I think I have the necessary information that is supposed to guide this Bill. In very many instances, the so-called County Executive Committee Members (CECMs) are demigods in their own right when it comes to dispensation and making sure that the assemblies get money that is allocated to them from the Exchequer.

Mr. Deputy Speaker, Sir, to make sure that we strengthen oversight and check on malpractices and excesses of the county government and governor, the county assembly ought to be independent and autonomous in its operations. This autonomy is very

critical. I am even wondering why this Bill did not find its way to this House 12 years ago at the inception of devolution.

We cannot be talking about oversight and the effectiveness of the county assembly and its government without strengthening the very arm of oversight; which is the legislative arm of the county assembly. It is common knowledge that you cannot effectively oversight somebody who is feeding you at will. Even some of the Impeachment Motions that we have seen before this House are generated from the defiant MCAs who have decided to oversight those governors. In quite a number of counties, most of the county assemblies are very submissive. They are subdued and coerced into singing the song of the relevant governor.

Mr. Deputy Speaker, Sir, you notice that county assemblies are just replicas of the National Assembly and the Senate which draws money from the Exchequer's directly. Having this County Assembly Fund is one way of making sure that we guarantee autonomy, strengthen devolution and the legislative work of the government. I am happy because I have gone through this broad Bill. It has captured quite a number of aspects. The Bill dictates that the Clerk of the county assembly shall be the head of the County Assembly Fund. In this current format, he is the accounting officer.

The head of the fund shall ensure that the earnings and accruals of the fund are retained in the fund and spent only for the purposes for which the fund is intended. The Bill has created a lot of safeguards and protection. The whole exercise contained in this Bill is to make sure that there is a serious element of accountability, so that we do not have those county assemblies going over. It is a very noble idea.

Mr. Deputy Speaker, Sir, I sincerely thank you because you are the sponsor of this Bill. I am happy that county assemblies across the country, including Meru where you come from and Tharaka Nithi will write your name in history as the person who created some elements of autonomy and independence to make sure that the legislative arm of the county government is strengthened.

I strongly support this arrangement. I thank you.

**The Deputy Speaker** (Sen. Kathuri): Thank you, Senator. Next is Sen. Faki.

**Sen. Faki:** Asante, Bw. Naibu Spika, kwa kunipa fursa hii ili kuchangia Mswada wa Marekebisho wa Sheria ya Fedha 2023. Najiunga na maseneta wenzagu kukupongeza kwa Mswada huu ambao umekuja kujaribu kuwapa uhuru baraza za kaunti zetu ambazo ziko kwenye minyororo ya magavana wa kaunti zote 47.

Nachukua fursa hii pia kutoa rambirambi zangu kwa mwendazake, Bw. Peter Oloo Aringo ambaye alileta Mswada wa kuidhibiti Bunge yani Parliamentary Service Commission (PSC) kwa mara ya kwanza. Alikuwa pia mwenyekiti wa kwanza wa Tume ya Bunge hili. Tume hii imeweza kuipa Bunge ule uhuru ambao hivi sasa kama Maseneta na Wabunge tunafurahia.

Mswada huu unajaribu kuipa fursa Bunge za Kaunti kudhibiti na kupata hazina zao kivyao. Kwa sasa, fedha za Mabunge ya kaunti zinapitia kwenye Executive; yani hazina kuu ya kaunti na mwenye kusema pale ni gavana na waziri wa fedha. Mswada huu utawapa fursa Wabunge wa Bunge zetu za ugatuzi kuhakikisha wanafanya mambo yao kwa uhuru.

Mara nyingi wanapotaka kusafiri ni lazima wasubiri pesa zitoke kwenye hazina kuu. Wakitaki pia kufanya miradi yao vile vile ni lazima wasubiri pesa. Hili linachangia pakubwa mara nyingi wao kufungia macho zile dhambi zinazofanywa na Executive katika kaunti hizi. Malamiko mengi katika kaunti ni kuwa Bunge hizo hazifanyi kazi kikamilifu.

Hili limesababishwa na ule uoga waliyona kwamba iwapo wataweza kufanya kazi yao kikamilifu, basi magavana na wengine wengi watakuwa katika shida kubwa ya utekelezaji wa miradi ambayo inafanyika katika kaunti hizo.

Jambo lingine nilikuwa nikitaka kugusia ni kuwa kwa sasa, ijapokuwa kuna uwiano, yani *mediation* unaoendelea kati ya Bunge hili na Bunge la Kitaifa kwa masuala ya ugavi wa fedha, kaunti zetu kwa muda wa miezi minne hazijapata fedha. Tumeona magavana wengi ‘wakipiga kelele na kulia’, kwa sababu mapato ambayo wanaokota katika kaunti zao hayawezi kulipa mishahara, kutekeleza huduma wala kununua madawa katika zahanati na hospitali.

Iko haja ya kuiambia Serikali itumie kipengee cha sheria kinachosema kwamba wanaweza kupeleka asilimia 50 ya pesa walizopeleka mwaka jana.

Kwa mfano, mwaka jana walipeleka shilingi bilioni 355 kwa kaunti zetu badala ya shilingi ya shilingi bilioni 385. Ukizingatia asilimi mia 50, basi wapeleke kiwango cha chini shilingi bilioni 150 ili kaunti zetu zisilemae kwa sababu ya ukosefu wa fedha za kufanya ile miradi ambayo imekusudiwa kufanyika.

Bw. Naibu Spika, la mwisho ni, ijapokuwa tunajaribu kuzisaidia mabunge yetu ya kaunti ili yaweze kuwa na uhuru, mara nyingi, uhuru unatokana na wabunge wa kaunti zetu. Ikiwa watajiweka rahisi na saa zote kufuata vile ambavyo gavana ama mawaziri wanafanya katika kaunti, kazi ya uangalizi itakuwa ni shida sana katika kaunti zetu.

Mara nyingi, unyonge uko kwa Wabunge wa kaunti. Sio kwamba sheria haiwalindi. Lakini tukiangalia, kazi kubwa wanayofanya kama vile kupitsha bajeti, hawawezi kulazimishwa kupitisha bajeti katika mabunge yao. Lakini mara nyingi huwa wanautepetevu na ukosefu wa uhuru ambao unawafanya wao kukubali yale ambayo yanafanyaika bila kutoa nafasi ya kuhakikisha ya kwamba wanaangalia maslahi ya umma na wananchi katika kaunti zao.

Mhe. Naibu Spika, naunga mkono Mswada huu.

**The Deputy Speaker** (Sen. Kathure): Sen. Boni Khalwale, the Senate Minority Whip, please proceed.

**Sen. (Dr.) Khalwale:** Thank, Mr. Deputy Speaker, Sir. Without looking like I am repeating what my colleagues have said, you deserve to be congratulated for this industry. I will tell you why in the next five minutes.

There lived a man in this country and today he is lying dead, Peter Castro Oloo Aringo. I am privileged to have been in Parliament with him and I know the difference he made in our lives when PSC saw the light of the day. I, therefore, would like to use this opportunity to send my condolences to this fallen hero, especially to the people of Siaya, who he served so well.

Mr. Deputy Speaker, Sir, I was reading about his story and how he related to the people of Siaya--- I could see an Osotsi, a man who goes home and people flock into his compound, just to ask for small favours that make a whole difference in their lives. I

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always sit in my home and when I give a woman Kshs400 - if I was to do it in Nairobi, people would think that I am crazy. However, when I give this woman Kshs400 and she buys uniform for her daughter, the daughter will march on and top at the national examination at Malinya, Shikunga, Shibuye, Lukhuna, Shimuli primary schools and all the other Primary schools. It makes a big difference.

Mr. Deputy Speaker, Sir, having said this, I would like to persuade you. What you are curing is to make the counties independent. However, in the structure of this proposal, you are making them independent from the governor because we have created a monster in this law called the administrator. In this case, they will now become slaves of the administrator called the Clerk.

Using this Act if we do not improve it, the clerk will do what he likes and our MCAs will have to dance to his tune. I beg you to read from the establishment of the Public Service Commission *vis-à-vis* the establishment of the PSC. We borrowed one from the other.

Similarly, when we established the County Assembly Public Service Board (CAPSB), we were informed by the Public Service Commission. So, when we go to the third reading, I will propose that we amend Clause 109(a)(3), (4), (5), (6), (7) and (8) for this reason-

That everywhere you have put the word ‘administrator’, I will request you, and since this is your Bill, you should agree, we replace it with ‘County Assembly Administrative Board (CAAB).

In this CAAB, which replaces the administrator. Therefore, the Speaker of the County Assembly becomes the Chairman. The clerk is the Chief Executive Officer (CEO), while the Vice-Chairperson of that board to be one of the County Assembly Members, then both the opposition and the Majority in the County Assembly will propose an equal number of people, the equivalent of our commissioners.

Mr. Deputy Speaker, Sir, can you imagine the clerk controlling billions of shillings, how powerful he will be? The clerk as an individual, talks with the Controller of the Budget (CoB). The two of them can actually withdraw anything up to, including Kshs1 billion.

Given that this is a fund; it means that money going into this account will not go back to the National Treasury. Therefore, there is a possibility that at one time, you could get billions of shillings into an account to be controlled by only one man or woman. This is not the responsibility we can put in the hands of one person unless he is Jesus Christ of Nazareth.

I say this knowing that your intention is to make MCAs stronger and independent and strengthen the oversight role. If this is the case, why then are you strengthening the clerk instead of the institution of the county assembly?

My final contribution to this important Bill as far as Clause 109 (b) is concerned where it says the fund shall be used for those given reasons; (a), (b) and (c), I propose we add (d) and say the fund will also underwrite development in counties.

If they are only doing administrative, where will the development that is required in the county assemblies come from? Are you telling me that after we have formed this fund and we want to build a new county assembly as we do in Kakamega, or do major

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renovations in the county assembly, we go back to the county executive? That will be the wrong way of enacting a law. I propose that we add 109(d) to address this.

Having said that, allow me to make one running comment on the state of counties *vis-à-vis* how our governors and MCAs are working. There has never been greater deceit in this country. There has never been an opportunity for greater connivance to steal like what is happening in some of our counties and Kakamega being one of them.

In my county, we ran a project running into billions, the so-called 10-mile-per-ward project and millions of shillings were sunk in. However, when you go to Kakamega, there is no single 10-kilometre-road project that is complete in any ward.

Our MCAs, especially in Kakamega, have been reduced to cheering squads. You go to a public function where you are sharing the platform with the governor like in the case of Vihiga where the young Osotsi has expressed interest in running for governor, they will start jeering him. If it is in a funeral, the MCAs will not even wait for Osotsi to say his name and he has come to pay his condolences, they will immediately start wailing and booing.

Like in Kakamega, some of the MCAs who are vulnerable to this kind of thing are our nominated ones. You see them getting hysterical. I got one and if I mention her name, I will be put to task. I asked her why she was doing that. She told me my brother, things are so difficult that I was given Kshs3,000. For Kshs3,000, an elected leader screams herself hoarse. I will do this for Mama Imbosa in Kakamega.

**The Deputy Speaker** (Sen. Kathuri): Do you want to be informed by Sen. Beatrice Ogola?

**Sen. (Dr.) Khalwale:** Beatrice is always very informative. I welcome her.

**Sen. Ogola:** Thank you, Mr. Deputy Speaker, Sir. I needed to inform the Senate Majority Whip and my senior, that the state of the elected leaders is even worse in the counties. This is because the elected MCAs have a duty to deliver to their wards and to their voters. They are literally lining up in the offices of the executive and following up the CECMs. They even beg them. So, if the nominated leaders are blowing vuvuzelas, the elected leaders are worse off.

That is the information that I wanted to give Sen. (Dr.) Khalwale to build up to what he is saying.

**Sen. (Dr.) Khalwale:** I thank Sen. Ogola for that information. I thought it was happening only in Vihiga and Kakamega counties; it is even happening in Homa Bay.

Mr. Deputy Speaker, Sir, I am congratulating you and vowing on this Floor that for the sake of the devolution family and as a champion of devolution, that I am doing this so as to help Mama Imbosa, nominated MCA. When she told me they were doing so to earn Kshs3,000, I felt sorry for her and I knew they are truly suffering.

I am doing this for my cousin; the elected MCA, Silas Muyeyia. I feel sorry when I see him. I am doing this for Archeadious Liyai; my MCA in Idakho Central. The person is huge and he weighs around 150-200 kilogrammes.

**The Deputy Speaker** (Sen. Kathuri): Sen. (Dr.) Khalwale must you describe or mention their names on this Floor or describe their physical appearance?

**Sen. (Dr.) Khalwale:** Mr. Deputy Speaker, Sir, I am guided.

**The Deputy Speaker** (Sen. Kathuri): You should not go that route.

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**Sen. (Dr.) Khalwale:** I am guided. However, this is so serious because they are doing so at the expense of oversight. To the extent that today, as I speak, there is no single contractor on site anywhere in the expansive Kakamega County, all the way from Matungu to Likuyani, a distance of over 200 kilometres. Therefore, I am doing it for the sake of my contractor from Mumias who last week got a stroke because of pending bills.

Mr. Deputy Speaker, Sir, if we had strong county assemblies, the pending bills would be interrogated in the county assemblies. They would not be waiting to come to the County Public Investments Committee and Special Funds (CPICSF) and County Public Accounts Committee (CPAC) here in the Senate. Let us take this Bill very seriously so that governors can stop being little kings. Some have even started to want to become kingpins.

I congratulate you and I also want to inform you that I have an idea why the voice of Senator Mo Faya has changed. It has become deeper, louder and authoritative. I did know that these things can happen by rubbing or by osmosis. Where is Sen. Mo Faya? He has left. By extension, the one of Thang'wa has become thinner and frail. I will talk to them so that they tell me why the contrast.

I thank you.

*(Laughter)*

**The Deputy Speaker (Sen. Kathuri):** Sen. Oburu Odinga.

**Sen. (Dr.) Oburu:** Thank you, Mr. Deputy Speaker, Sir, for the opportunity. I first take this opportunity to congratulate you for being very insightful and foresighted in bringing this Bill.

I am a veteran in this Parliament; I have been in this Parliament for over 30 years. I can tell you that there was one time when this Parliament was fully dependent on the Office of the President (OP). Our budget was done through the OP. We were fully dependent on them and the Treasury.

The oversight role that we were supposed to play was done through by sometimes blackmailing the Treasury in order for them to release some money for us. We would refuse to approve the budget and put all sorts of pressure on the executive, yet we were supposed to be overseeing them, but they used that budget because they held the purse. Those who hold the strings of the purse call the shots. They used it to make sure that their agenda went through.

Mr. Deputy Speaker, Sir, at that time, we were not supposed to oversight the budget. The budget would be banged on us and we could not scrutinize those huge documents.

One of my former Members of Parliament (MPs), hon. Oloo Aringo, who is now late and is still lying in state, did a great job for this country and there were many others who supported him. We all supported him and he did a lot of insightful research and came up with proposals on the way forward.

Mr. Deputy Speaker, Sir, at that time, there was a lot of resistance from the executive. It took a long time of struggle. It was not one person, but the whole Parliament. We were fighting to get our space. We then managed to get a budget

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committee which was hived from the committee I was chairing at the that time. This was the Committee on Finance.

When it was hived off, we got a budget committee and we could now scrutinize the budget before it was brought and banked. We were using colonial laws, which only allowed us to deduct Kshs20, which was one pound. That is the only thing Parliament could deduct from the budget. Therefore, Parliament was held at ransom although we were called oversight in quotes.

Mr. Deputy Speaker, Sir, you are giving the counties something which they have not struggled for long as the Parliament did to get PSC, the Budget Committee to scrutinise the budget. This Bill which you have brought will enable the MCAs to have some little bit of autonomy. However, that autonomy will not come until we also do something else. Maybe somebody else should take up this matter. I do not think I have that energy now to take up the matter. However, I am advising Sen. Osotsi to take up this matter.

The Salaries and Remuneration Commission (SRC) is actually making it very difficult for MCAs to oversight the executive. If you look at the pay slip of the MCAs, it is peanuts. Yet they are oversighting somebody who is getting over Kshs1 million in a month. They are getting something less than Kshs100,000.

I looked at the pay slip of one MCA from Nakuru who tabled it before our Committee on Devolution and Intergovernmental Relations. I said this is one way of disabling MCAs to do the oversight. You cannot do oversight when you are suffering pecuniary embarrassment. The amount of money you are getting is peanuts. We must find a way of dealing with this issue of remunerating the MCAs properly. However, this will not be part of this Bill.

I support what Sen. (Dr.) Khalwale has suggested that we carry out an amendment not to make a monster out of the clerk. If you give one individual to be the one controlling after removing it from the county executive and from the county treasury, then we will be creating another monster in the assembly. It will not do well to MCAs whom we are targeting to empower so that they can properly oversight the executive. I hope you will consider that proposal by Sen. (Dr.) Khalwale. I just stood up to support what you are doing. It is a great job. It is following some history. I hope that this is one of the cornerstones of our role of strengthening devolution and we will do more.

I saw a committee of this House negotiating with the National Assembly on the funds. That kind of ongoing negotiation is portraying that this Senate is very serious on strengthening devolution. We cannot oversight the county executives if they do not get proper allocation of money. We must first make sure that money goes there and then we follow it to see that it is properly implemented in the service of our people.

Thank you for the opportunity. I fully support this Bill with the amendments.

**The Deputy Speaker** (Sen. Kathuri): Next is Sen. Dullo Fatuma.

**Sen. Dullo:** Thank you, Mr. Deputy Speaker, Sir. Let me join my colleagues in congratulating you for having come up with this legislation. It is long overdue. I hope it will cure the challenges that we have in our counties.

I like the proposals that you have made in this particular legislation; more specifically on the way that the board should be constituted and again as far as the clerk

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being the administrator of the fund is concerned. However, in that particular one, I will have to give a rider to proposal made by Sen. (Dr.) Khalwale. We normally see a lot of fight between the clerk, MCAs and the Speaker as far as budget utilisation is concerned.

If those powers will be given to the clerk, then the MCAs will be irrelevant. Your proposal is to empower the MCAs. I believe the proposal made by Sen. (Dr.) Khalwale is valid. Wherever there is administrator, utilisation or removal of the budget for any purpose, I will propose in consultation with the board that is the only way the clerk should be able to use the money.

In that way, the clerk will be accountable to the assembly. In practise, the clerk and the Speaker are employees of the assembly. However, looking at the salary given to the Speaker and the clerk; it is nothing comparable to salary given to the MCAs.

If I can give an example of my county, you can imagine a speaker earning Kshs500,000 and the clerk Kshs400,000, respectively, while the MCAs earn Kshs200,000 plus. These are employees of the MCAs and yet they are earning more than them.

I will propose also, as a House, we must do something about the salary of the MCAs. You cannot oversight or employ somebody who is earning more than you. He will never respect you. The CECMs are all earning more than the MCAs. That is ridiculous. We must do something about the salary of the MCAs.

The other proposal that I want to make is where you indicated utilisation of the budget for emergency purposes. We have to be specific. What are those emergencies? County governments are already misusing the budget allocated to them under emergency. In this particular case, if we are not very careful, there could be duplication of the same fund for the same activities.

It has to be specific on what they should spend on as far as budget allocation is concerned. County assemblies are living in a very deplorable situation. If I may speak of my county of Isiolo, last week, some MCAs came out and condemned on certain payrolls. Can you imagine the governor colluding with the speaker and the rest of the members to remove them from all the committees of the House and to suspend them for six months, one particular member from the House?

It is ridiculous. It is unacceptable. There is no way these Members oversight if they are running after governors to give them support. These people are on the ground. They are the ones who are facing the challenges on the ground where members of public are turning to them for school fees, medical assistance and many other things, yet they are beggars running after the governors whom they should actually oversight. To some extent, the budget currently allocated to them, the governors and the speakers collude and steal the money from county assembly. This particular Bill will solve that problem if it be assented to.

I know MCAs of my county assembly have been crying about this. I hope this will be a solution to the problems, which also affect Kenyans. As Sen. (Dr.) Khalwale said that in a public baraza, the best they can do is to say that the governors are doing well even when they are doing zero on the ground.

They have really embarrassed us and members of the public. When they are supposed to carry out their oversight role, the best they do is to say that the Senate is

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doing their work. Which work are they doing apart from clapping for the governors, begging and praising them?

Mr. Deputy Speaker, Sir, I pray and urge MCAs if this will be a solution to their problem; they also come up with a solution which is gracious to this country. Let it solve the problem of embezzlement of funds in our counties.

Today in the CPAC meeting and I think this matter should also come to the House, there is a trend that has been developed by governors. They are now refusing to appear before all the committees of the House. They are taking the queue one after the other. We are becoming irrelevant because they are disrespectful.

I remember being told the day before yesterday a governor - I will be specific to the Governor of Isiolo County - when he was told that his County Executive Committee Members (CECMs) are not gender balanced, he agreed. He then went ahead to ask what was going to be done to him if he did not balance the gender of his CECMs.

That is where we have reached. People no longer care about the laws in this country. This House must wake up. We must have a solution to the challenges we face in our counties. They disregard the laws in this country. I think laws are there to regulate. However, you will find somebody saying that they do not care what the law says and do what they want.

Mr. Deputy Speaker, Sir, as I said earlier, on record, as far as I am concerned, this House is irrelevant and that is what governors believe. I hope we are going to find a solution to this problem.

I thank you.

**The Deputy Speaker** (Sen. Kathuri): Thank you. Next is Sen. Beatrice Ogola.

**Sen. Ogola:** Mr. Deputy Speaker, Sir, I want to join my colleagues in thanking you for the wisdom in the Bill that we are discussing today. I want to state from the onset that this should have happened a long time ago.

The role of the Senate is very clear in the Constitution. Under Article 96, the Senate represents the counties and serves to protect the interests of the counties and their governments. The mention of “county governments” is not only limited to the executive arms as stipulated in the Constitution. In passing this Bill, the Senate of the Republic of Kenya will have put devolution to work.

I happen to have served in a county government, specifically in the executive arm. Therefore, I join my colleague, Sen. Gataya Mo Fire who also served in a county assembly in sharing the experience that county governments have over the running of the funds.

Earlier speakers mentioned that county governments; in particular county treasuries, line up at the office of the Controller of Budget (CoB) and the National Treasury every other month to plead for approvals and for funds to be sent to the counties.

That is not just a saying. I was a CECM in the County Government of Homa Bay. Every month, the County Treasury would go to the National Treasury. This defeat the purpose for which devolution was voted for by Kenyans.

Even with the devolving of the CoB to the counties did not make it better. From the experience and observation that I had, it looked like the devolved COB at the county

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level just joined the county executive and worked hand-in-hand with them as if they were the same thing.

As the devolution family, we have all along sympathised with the county assemblies of this Republic. Each month, when the county treasury received funds, it was time for the speaker, clerk and chairperson of the Budget Committee to line up. It was only the county treasuries led by the CECMs for Finance who had the key to unlock for county assemblies to get their monies.

It is in that regard that I support this Bill. In making county assemblies to have their funds, we will only be strengthening separation of powers. MCAs oversight the executives, play a representation role of their wards, and also do legislation. How can they accomplish these constitutional functions if they do not have and are not in control of their monies?

Even during budgeting process in the counties, county assemblies are on the receiving end. They have to negotiate with the executives on how much they will be given. It appears that county assemblies only accept what they are given by the executives. Therefore, I support that amendment.

I agree with the Senate Majority Whip. Let us not have the clerk as an administrator. These funds should be run by the board as constituted in the county assembly. I would like to add my voice on this. The clerk should be given a functional role. Precisely they should be the accounting officers of the money rather than have them as administrator.

In having the clerk as an accounting officer, we will be giving a function to the office, of course overseen by the board. The board will have a macro role in the running of the funds, but functionally, the clerk will be the accounting officer who will be answerable to the board. As the accounting officer, they will perform all the functions that have been laid down, including ensuring that the funds are not overdrawn.

Earlier on, there was a discussion about the CoB. The question I keep on asking myself, which I also used to do when I was working in the county government, is why the CoB devolved some functions. Some counties now have an officer called the County Controller of Budget. If that is the case, why do officers of the counties still travel to Nairobi to get the same approvals if the County Controller of Budget has approved?

He duly works on a day-to-day with the county treasuries and oversees the running of funds in the sectors of the county. Why then do we still have the CECM of Finance or the Chief Officer of Finance or the county accountant camping at the National Treasury or at the Office of the Controller of Budget (CoB)?

One of the laudable Clauses we have is that the county assembly having got those funds will make financial reports to be submitted to the Commission on Revenue Allocation (CRA) and, of course, you have stated that it should be copied to the CoB. I support this because these are good practises in good governance.

This means that the initial requests that the county assembly made can be compared by these constitutional commissions and ensure that the guidelines are being followed.

I also support that the clerk who should then be an accounting officer, may authorise a staff to incur expenses, following the guidelines as stated in the Bill. The

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county assemblies as any other government entity have structures. They have a finance officer, an accountant and others. So, it is well that their accounting officer may authorise some of those officers to incur expenses.

The other aspect that I support is on your mention of disbursement, “that just as county treasuries get their funds later by the 15<sup>th</sup> day from the commencement of the month, the county treasury shall in the same way also disburse the funds to the County Assembly Fund.”

Mr. Deputy Speaker, Sir, if this is adhered to, the county assemblies will run with efficiency be more effective. Many times, their activities are disrupted because of lack of funds. If they will be running their funds, they will be having their work plan to strategies for their funds and their activities will be done at the right time.

A number of times, the county assemblies are unable to perform their duties. This includes public participation, which is also spelled out in the constitution and which they must do. Sometimes they cannot work on certain county Bills, budgeting processes and even on the policies that are presented by the county executives.

I remember when I was a CECM of Energy then, I had a policy on renewable energy that took a long time even when the county executive had approved it. This is because the county assembly had no funds to run their public participation. It meant that my committee then looked up to me as the CECM, to fund their public participation.

Those are the kind of issues this Bill is trying to address. That the committees of the assembly would be autonomous and independent. It is until then that the work of the county assemblies will be beneficial to our people.

I also realised that it spelled out in the Bill, that the CoB will have access to the bank accounts of the county assembly, if their funding is independently set aside. This will not only be limited to the county assembly, but also to the county executive and any other county entity that will be running any funds. I support this because this is only helping to ensure that there will be efficiency at the county assemblies.

The main thing that we need to ensure by guaranteeing that the county assemblies have their money is autonomy and independence. I wonder if today our funding in Parliament would be controlled from elsewhere, if would we be able to run our calendars or accomplish what we are doing as Parliament yet the people expect us to represent them.

This is the kind of mess and kinds of limits that the county assemblies have had. By passing this Bill, the Senate will have entrenched devolution. The county assemblies will stand out.

I probably think that the lack of this Bill has necessitated the county assemblies to behave and operate as if they are an appendage of the county executive. How else would they operate? My colleagues have stated and even used undesirable terms some of which are demoralising to entities such as county assemblies, when we see as Parliament that county assemblies are now reduced to beggars. If you have to beg from somebody, they have to give you the terms. Therefore, let us pass this Bill and ensure that county assemblies run as envisaged in the Constitution.

As I support, I also want to add my voice to the issue of salaries of the members of the county assemblies. We all go and we appreciate that even the elected Senators here

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are always at their counties. However, let us bear with the situation of the MCAs, that they are always with the voters.

If you give them this kind of salaries - and I want to state in this House that, that was a push that was made by the SRC. Initially, at the onset of devolution, the salaries were at par.

The Speakers of the county assembly are elected by the MCAs. They have no voting block other than the MCAs in the county assembly hall. How come they are given twice the salary of elected leaders who have to represent their people and have to be at the wards every other day. This is not an acceptable situation.

The MCAs relate with the voters every other day. Just as we do, they solve all the problems from the social to economic and all kinds of problems that our people have in the wards. The SRC must reconsider the salaries and benefits that MCAs are entitled to. Let us also think about the ward funds. We have county assembly MCAs who are elected by the people, but have no funds at their disposal to serve our people.

Mr. Deputy Speaker, Sir, I applaud you. This should have been done like yesterday. This Bill will entrench the role of the Senate as stated in Article 96 of the Constitution.

As I sit down, I would like the Governor of Isiolo to take note that the issue of gender balance is a constitutional provision. It is not at his whims. He might be having powers to shout and chest thump as he does. However, the issue of gender balance is an issue that is constitutional and was spelled out by the great people of this Republic and he has no option, but to adhere to it. I call on the Senate to oversight that governor and ensure that the people of Isiolo County are served as per the Constitution.

I support the Bill.

**The Deputy Speaker** (Sen. Kathuri): Okay, good. Sen. Omogeni Erick, proceed.

**Sen. Omogeni:** Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to make my voice heard on this Bill that proposes to make the county assemblies independent. I begin by thanking you as the author of this Bill. The people of Meru County should know that your Bill will contribute a great deal to stopping the fights that we have seen from the Meru County between the governor and the hon. MCAs.

I have no doubt that once this Bill is enacted, we shall have peace in the County of Meru. I do not think there is any Senator who will be in opposition. At times MCAs do not like to be beggars. That is what brings friction between the MCAs and office of hon. governor. We thank you. This Bill will not just benefit the people of the County of Meru, but will also benefit all the 47 counties of the Republic. Our contribution will be fully to support this Bill.

Mr. Deputy Speaker, Sir, we want to see our county assemblies getting the stature that is in other countries that have devolved system of government. Last week, you saw the way the newspapers reported the election of Hon. Huldah Momanyi as a member of the State Parliament of Minnesota. It made news here. This Bill contributes to raising the stature of our MCAs in our county assemblies.

Let me also take this chance, if you allow me to pass my congratulations to Hon. Huldah Momanyi. That is a daughter of the great County of Nyamira. A migrant from

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Nyamira who went to the United States of America (USA). She has worked so hard, campaigned and got the honour of being elected to be a Member of the State Assembly of the State of Minnesota. I hope that this broad-based Government will now build for us Suneka airport. If not, the people of Nyamira are ready and willing to donate land to the national Government to build an airport for us.

This lady will rise to become a Senator and maybe the first female President of the USA, just like Obama did from our neighbouring County of Siaya. Hon. (Dr.) Khalwale, this lady will rise to become a great person in the USA. We congratulate her.

I make a special appeal to other Kenyans who have migrated to other nations like Australia, United Kingdom (UK) or Canada, to borrow from the example of this young lady. Let them go into the political space, seek for elective offices and make our country proud.

We will organize a big homecoming for our daughter the way Obama was received in Siaya. The people of Nyamira must also receive their daughter in the great County of Nyamira. I will invite the Senators when we bring her home. We will slaughter bulls, goats, chicken and matoke will be served in plenty. Before that happens, we shall send a delegation to Minnesota to go and congratulate our daughter who has done us proud.

I hope that next time, we will be celebrating a daughter from our neighbouring county, Kericho or Kakamega County. That is how we want it to be. We want Kenyans out there to shine.

Mr. Deputy Speaker, Sir, this Bill is dear to many of us. Two weeks ago, you saw the kind of chaos that we had in Nyamira County. The MCAs were trying to impeach their speaker, but it did not work. The house of an hon. MCA from Bomwagamo Ward was set on fire. A watchman guarding the premises of the County Assembly of Nyamira was attacked, beaten and doused with paraffin. He has been nursing injuries at the Nyamira Referral Hospital. This is because of the idea of a governor who wants to have MCAs to be at his mercy. That is not what devolution was meant to do. Let us borrow the structure that we have.

Our PSC is detached from the executive. We do not go begging from the executive; we appropriate our money and run our affairs. You can imagine a situation where any time MCAs want to make a payment have to go and beg at the county treasury. If you are not in good books with your governor, you will be on the queue for a long time before your bills are settled. How do you get into the bad books of a governor? By trying to oversight him and put him on toes.

There are others who will tell you that their “human hair can never be shaken” I do not know how to translate it. My governor says, “*tuki telikunyekeria*”. That means nothing can make his human hair to shake. He tells that to MCAs when they are asking why there is no medicine in hospital? It means, “my human hair cannot be shaken because people have no drugs in hospital.”

People go to hospital to get treatment, but find clinic officers on strike. He tells them that his human hair will not shake in his head. He thinks he is controlling all the money that goes to Nyamira County. That it is meant to go to his own pocket.

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If this Bill passes, there will be that separation of powers and financial independence of county assembly so that they can properly oversight the office of the governor. The other day, our farmers in Nyamira and our neighbouring counties of Kericho were paid. Sen. Cheruiyot knows this. I know in Meru, you got a good bonus. I am also a farmer. I was paid Kshs20 per kilogramme. Where do you get money to pay the person who has been tilling your land for the whole year? You also need to pay for fertilizer and school fees from that money.

From that money, our *waziris* need to wear a nice suit like the one you are wearing. Others need a nice Kaunda suit like what Sen. Onyonka is wearing. The Kshs20 is nothing. However, my governor says his human hair will not be shaken because farmers are being paid Kshs20. You can imagine that.

I hope that this Bill will get the support of our brothers from the National Assembly. Let us fast track it to ensure it is enacted as soon as possible so that we lay a basis of true independence for our MCAs. Let them receive their money, budget for it and use it to oversight our governors. This will ensure that the money that we send to our counties can have meaning to the seven basic rights of a human being.

Let our people get water and medical attention. Let them go to hospitals and get drugs. Let us have roads, good markets for our people and improve sanitary. Let us give our people the seven basic rights of a human being so that the people we represent can be happy.

I am happy that there are good accountability measures that have been proposed in this Bill through the Office of the CoB. We should not fear that our MCAs will misuse this money. Clause 119 says that the CoB shall have viewer rights access to all bank accounts maintained by the county executive, county assemblies and all other county government entities.

There are good mechanisms for ensuring that this money will be used for the intended purposes. Let us not allow these prevailing situations where MCAs are at the mercy of our governors, to continue for now.

I am happy that there would be a fund equivalent to what we have as Members of the National Assembly and Senate; this is the entity called Parliament. I fully support this Bill. I also want to support the initiative that was put in place between His Excellency the President and the former Prime Minister Raila Amollo Odinga.

This afternoon, I have seen a transmission of names for appointment to various independent constitutional offices. I am happy I have seen the names of people from the Omogusii nation. I have seen the name of Dr. Onyiego nominated to serve in the Independent Police Oversight Authority (IPOA). We want this Government to serve all the 42 ethnic communities. I am sure Sen. (Dr.) Khalwale will go through the names and see somebody from the Luhya nation.

I am sure Sen. Cheruiyot will see somebody from Kericho. I am also sure there could be a name from Meru or the bigger Mount Kenya region, and that is what we want. Let us all feel that there is a sense of belonging to this Government. I am appealing to His Excellency the President, now that we have promoted Hon. (Prof.) Kindiki to be our Deputy President, there are those two vacancies for Cabinet Secretary; with the

performance of Hon. Hulda Momanyi in the USA, Minnesota, the county of Nyamira should also be considered for a position of Cabinet Secretary.

As I speak now, imagine I do not have a Principal Secretary or a Cabinet Secretary from the County of Nyamira. Let us appreciate that the people of Nyamira have demonstrated that they have talent to serve not just in Kenya, but they can even serve in America.

We are appealing to the President not to forget the people of Nyamira. We have even produced renowned runners from the County of Nyamira. So, we are pleading with His Excellency to continue this spirit of having a broad-based Government so that when he picks his next set of cabinet secretaries, he can also remember the great people of the County of Nyamira.

With those remarks, I support.

**The Deputy Speaker** (Sen. Kathuri): Okay. Last but not least, Sen. Onyonka Richard proceed.

**Sen. Onyonka:** Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to say a few things about this Bill. I am extremely excited about the Senate as a House because we are now becoming proactive.

Many of us have been raising the issues and discussing why the county governments and the county assemblies look like they are all operating in a dysfunctional manner that is deliberately skewed to make sure that MCAs do not get a working environment that is comfortable for them and that will be responsive to the needs of the public.

Sometimes, their salaries are delayed and not because the exchequer has not released the money. It is because you find that the MCAs are beginning to plod and investigate some of the things, which many of our governors are doing pertaining to financial mismanagement or management. The scenario you have is that the governors sometimes have ended up being punitive. Where sometimes, the salaries of many of these MCAs are. Also, they delay the release of funds which the Government has issued for these MCAs to even buy cars and get mortgages for themselves.

This Bill is good and will cure one of the issues that we have been struggling with as a House. I am proud of you because as my colleagues have said, this is a well-thought-out Bill.

The only thing I have seen in the Bill is that Sen. Osotsi also raised this issue. We do not need the CoB to permit the money to be transferred into the new account that will be set up within the county assembly. That can be done electronically and you do not need somebody to leave Kisii to head to Nairobi to come and persuade the directors and the members of the CoB Office to release the money to the county assemblies. However, I believe that due diligence will be followed.

Secondly, the other law that we need to look at and that we must begin to investigate is the law about ward funds. There is opposition from the governors because they believe that ward funds should not be given to the MCAs for oversight. Why? The governors believe that once you control the money, then it is easy for you to control the MCAs so that they can deliberately start playing the games they play right now where you find there is no oversight. The governor walks around with MCAs singing and saying

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how he is doing a wonderful job and yet you find there are no medicines, no running water and roads are being done poorly.

Another matter that I want us to discuss as soon as possible is that some of our governors, like my governor, have brought in Chinese people who are cutting trees in the whole of Kisii County. The assembly has not sat to decide whether they would have authorised such an activity to take place.

As I speak, the Department of Environment has not told us what their forest cover is. You remember the President pronounced himself that we are no longer exporters of raw materials. The Chinese have come; they are cutting the trees and putting them into boxes where Sen. (Dr.) Khalwale cuts the trees into small pieces put them into something that looks like containers and takes them to China, so that they can be put into some other process of value addition. They are shipped to Europe and America as if it is African wood that has left the African continent.

Soon, we will start mitigating and discussing how Kisii County has become a desert field and how the trees have been cut. I can tell you that the information I have is that these Chinese individuals who are doing this are from Molo. They ran down to Bomet, Kericho, and Kisii counties. I am told they are moving to Homa Bay, Trans Nzoia, and Uasin Gishu counties.

You can imagine what such things mean to our country. I hope that this House will be engaged so that we can begin to look at the issues affecting Kenyans.

I persuade my colleagues in this House that we make sure we give the MCAs the responsibility of having ward funds, which are directly going to be released to their wards. The money does not need the governor's interruption for the funds to be released. So long as the County Integrated Development Plan (CIDP) has passed and the money is in the Consolidated Fund. Electronically, the sub-county accounts, the sub-county procurement officer and the sub-county county government workers can then be now happy that at least funds are coming to the local level where these funds need to be.

I believe that this House has carried itself with the dignity it requires to the level where Kenyans are willing to give us the support to make sure that we keep changing the law effectively. We close out the loopholes that, for example, have made the Public Finance Management (PFM) Act nearly obsolete.

Remember, we rely on the Integrated Financial Management System (IFMIS) as our financial platform. There are also challenges with that. We are experiencing a shortfall in exchequer releases from the National Treasury. We need to sort out that issue. If the funds are not released from the National Treasury, we should ask what we should do about it.

With those few remarks, I thank you and support this Bill. I think it will cure what many of us have been asking for.

**The Deputy Speaker** (Sen. Kathuri): At this juncture, I will call the Mover to reply. There is no other Senator interested to debate on this Bill.

Senate Majority Leader proceed.

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, and jointly the sponsor of this very important Bill, I celebrate your work. I did this only because I felt the need to actually assist you, having done the heavier task of bringing the

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Bill together and initially moving the House to debate. A record 28 Senators have spoken---

**The Deputy Speaker** (Sen. Kathuri): Senate Majority Leader, you did not do anything wrong. I know you are also very passionate about this Bill. Therefore, I can also decide to call you a co-sponsor if you talk to me nicely so that the Bill can also bear your name.

**The Senate Majority Leader** (Sen. Cheruiyot): Thank you. Mr. Deputy Speaker, Sir, you were not here but in my moving notes, I said that this is justice to the county assemblies.

In 2016, at the Pride Inn Paradise Beach Resort and Spa, if I am not wrong, we had the inaugural Legislative Summit, which brings together Members of County Assembly (MCAs) and the Senate. Part of the takeaways from that Summit, Sen. Onyonka, was that we were going to do this for our county assemblies. It has taken us a freaking eight years to do this for them.

It is completely unfair. I really hope that we can conclude on this, preferably tomorrow. I did not see any of the whips of the Minority side, but I see Sen. (Dr.) Khalwale is here. I am sure they have their own caucus of whips of the Senate. If they can, they should rally numbers, so that tomorrow afternoon, we put this to a vote alongside other Bills. We should conclude on it by putting together the amendments that are needed and before we break for recess, have the National Assembly begin to consider it.

At least, if there is any chance that our colleagues in the National Assembly can equally be pushed, and I will personally take the initiative to prioritize on this Bill; it will be extremely important so that at the very worst, this be the last financial year that MCAs have to withstand this very embarrassing scenario that has been described here. This is not the devolution that the late Dr. Chrispin Odhiambo Mbai envisioned for this country.

I am sure when they sat down as a technical committee that worked on the chapter of devolution in our Constitution, they expected better. This is not what they expected of our county assemblies. I know there is a lot more given that they did not expect on the Executive side. While we fix the Executive, we must also aid our county assemblies to perform their duties without any hindrance.

Therefore, I thank you and all the 28 Senators that have spoken to this Bill. I believe that their contribution has not been in vain. When all is said and done, we will all look back with pride when we write our exit report of the 13<sup>th</sup> Parliament as Members of the Fourth Senate, and proudly put this as one of the hallmarks of our legislative work.

I do not know why we have not had any legislative conferences with our MCAs so far, but I believe when we resume, we will be proud of this job that we will have done by then. Thank you, Mr. Deputy Speaker, Sir, and all the colleagues that have spoken to this. I appreciate it.

With those very many remarks, I beg to reply.

Finally, in accordance with Standing Order No.66(3), I request that the putting of the question be deferred until a later date.

I thank you.

**The Deputy Speaker** (Sen. Kathuri): Thank you, Senate Majority Leader. Clerk, let us move to the next Order.

*(The Clerk-at-the-Table consulted the Chair)*

**The Deputy Speaker** (Sen. Kathuri): We are deferring the putting of the question on this Bill possibly until tomorrow.

*(Putting of the Question on the Bill deferred)*

Next Order.

## **BILL**

### *Second Reading*

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

**The Deputy Speaker** (Sen. Kathuri): I am advised and aware that the Senator for Garissa County, Sen. Abdul Haji, requested this Bill to be deferred until the next sitting or another time that it is allocated for debate.

*(Bill deferred)*

Let us go to the next Order.

## **MOTION**

#### ADOPTION OF MEDIATION COMMITTEE REPORT ON THE WATER (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO.33 OF 2023)

THAT, the Senate adopts the Report of the Mediation Committee on the Water (Amendment) Bill (National Assembly Bills No. 33 of 2023), laid on the table of the Senate on Tuesday, 22<sup>nd</sup> October, 2024, and further that pursuant to Article 113 (2) of the Constitution and Standing Order 167 (3) of the Senate, approves the mediated version of the Bill.

*(Sen. Cheruiyot on 30.11.2023)*

*(Resumption of debate interrupted on 24.10.2024)*

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**The Deputy Speaker** (Sen. Kathuri): I can see there are no Senators interested to debate. I will call the mover, if he is around, to reply. This is the Report of the Mediation Committee on the Water Amendment Bill.

Yes, proceed and reply if you are ready, Senate Majority Leader.

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, I am aware that at the time of going on recess, quite a good number of colleagues had spoken on this amendment and the various considerations that are being proposed. It is my hope that, that captures the gist. Many of the colleagues who spoke to this Report of the Mediation Committee, were in support of the proposed amendments. Therefore, I appreciate them too for the time that they took to speak on this particular Report.

With those many remarks, I beg to reply. I request that in accordance with Standing Order No.66(3), the putting of the question be deferred until a later date.

I thank you.

**The Deputy Speaker** (Sen. Kathuri): Yes, the putting of the question has been deferred until the next meeting possibly.

*(Putting of the Question on the Motion deferred)*

Next Order.

## MOTION

### ADOPTION OF REPORT ON CONSIDERATION OF AUDIT REPORTS OF VARIOUS WATER SERVICE PROVIDERS

THAT, the Senate adopts the Reports of the Select Committee on County Public Investments and Special Funds on its consideration of the Audit Reports for the year ended, 30<sup>th</sup> June, 2019, 30<sup>th</sup> June, 2020 and 30<sup>th</sup> June, 2021 of the following Water Service Providers-

- i.) Amatsi Water Services Company Limited - Vihiga County;
  - ii.) Bomet Water Company Limited – Bomet County;
  - iii.) Gusii Water and Sanitation Company Limited – Kisii/Nyamira Counties;
  - iv.) Kisumu Water and Sanitation Company Limited –Kisumu County;
  - v.) Kwale Water and Sewerage Company Limited – Kwale County; and
  - vi.) Nyeri Water and Sanitation Company Limited – Nyeri County;
- Audit Report of the Wajir Water and Sewerage Company Limited for the year ended 30<sup>th</sup> June, 2021, laid on the Table of the Senate on Thursday, 23<sup>rd</sup> November, 2023.

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*(Sen. Osotsi on 23.10.2023)*

*(Resumption of debate interrupted on 23.10.2024 - Morning Sitting)*

**The Deputy Speaker** (Sen. Kathuri): Also, on this Motion, there is no Senator willing to debate. So, I request the Chairperson Committee on County Public Investments and Special Funds to reply.

*(Motion deferred)*

*(The Clerk-at-the-Table consulted the Chair)*

He will reply during the next available time. Therefore, Hon. Senators, using Standing Order No.45(2), we defer Order No.14 and then go to Order No.15.

## MOTION

### CONSOLIDATION OF BURSARY FUNDS FOR EQUITABLE ACCESS TO EDUCATION

THAT AWARE THAT, Pursuant to Article 53 of the Constitution, every child in Kenya is entitled to free and compulsory basic education, and the Basic Education Act provides that, basic education should be guided by principles such as equitable access to all youth and equal access to education or institutions;

FURTHER AWARE THAT, many students in secondary schools and higher education institutions come from financially disadvantaged backgrounds, making it difficult for them to afford school fees and access education opportunities;

NOTING THAT, over the years, various interventions have been made, including the issuance of bursaries through the National Government Constituency Development Fund (NG-CDF), National Government Affirmative Action Fund (NGAAF), the Ministry of Education and county governments through various county bursary funds;

CONCERNED THAT, despite these efforts, schools' fees remain unaffordable for many parents and the allocation of bursaries has been plagued by nepotism, favoritism, and political manipulation, lack of transparency and accountability;

FURTHER CONCERNED THAT public learning institutions are primarily funded by the Government through the Ministry of Education, and in the financial year 2024/25, approximately Kshs656 billion was allocated to the education sector, making it difficult to ascertain the specific funds granted to each student and that the lack of transparency in the disbursement of bursaries from various agencies makes it difficult to

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determine the total amount allocated in a financial year, thus hindering efforts to ensure equitable access to education for financially disadvantaged students;

NOW THEREFORE, the Senate urges the Ministry of Education, to:

1) audit the funds allocated to bursaries by both the National Government and county governments;

2) consolidate the funds distributed by various government entities and agencies, with the aim of directing these funds directly to schools as supplementary capitation to facilitate the achievement of free secondary education; and

3) calculate the cost of education per learner and make this information public for primary, secondary, and tertiary institutions, including a detailed breakdown of the annual financial requirements for each student across the country.

*(Sen. Thang'wa on 18.09.2023)*

*(Resumption of debate interrupted on 31.10.2024)*

*(Motion deferred)*

## MOTION

### ADOPTION OF REPORT OF THE MEDIATION COMMITTEE ON THE NATIONAL RATING BILL (NATIONAL ASSEMBLY BILLS No.55 OF 2022)

**The Deputy Speaker** (Sen. Kathuri): The Vice Chairperson of the Mediation Committee or any other Member who has been assigned the responsibility.

Sen. Ogola, you may proceed.

**Sen. Ogola:** Mr. Deputy Speaker, Sir, I was a member of the Mediation Committee. Thank you for giving me the opportunity to move the Motion. This is a report of the Mediation Committee on the National Rating Bill (National Assembly Bills No. 55 of 2022). I beg to move-

THAT the Senate adopts the report of the Mediation Committee on the National Rating Bill (National Assembly Bill No. 55 of 2022) laid on the table of the Senate on Wednesday, 30<sup>th</sup> October 2024 and

FURTHER, that pursuant to Article 113(2) of the Constitution and the Standing Order No.167(3) of the Senate, approves the mediated version of the Bill.

**The Deputy Speaker** (Sen. Kathuri): You can say something on the Bill, because you are a member and you know its contents.

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**Sen. Ogola:** Mr. Deputy Speaker, Sir, as I said in my opening remarks, the Report contains the Mediation Committee on the National Rating Bill. The Committee held four meetings to consider the Clauses of the Bill that were under mediation and we arrived at a mediated version of the Bill.

As I move this Motion, I would like to also applaud the objectivity that was observed in our meetings. The Committee is grateful to the Office of the Speaker, the Speakers and Clerks of both Houses of Parliament for the logistical and technical support that was accorded in the execution of its mandate.

I would like to express my appreciation to Members of the Committee as constituted by the two Speakers, the Speaker of the National Assembly and the Hon. Speaker of the Senate, and the Committee Secretariat for their patience, sacrifice, endurance, and commitment to the assignment that we had, which enabled the Committee to complete this task within the stipulated time.

*[The Deputy Speaker (Sen. Kathuri) left the Chair]*

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

Hon. Temporary Speaker, Sir, we derived the mandate of the Committee from the provisions of the Article. We had four committee meetings to deliberate on the National Rating Bill. During the first meeting, as is procedural, the Committee elected the Hon. Joash Nyamache Nyamoko, HSC, MP, as the Chairperson and Sen. John Methu Muhia, the current Chairperson of the Lands Committee, to be the Vice-Chairperson, respectively, pursuant to Standing Order 166(4) of the Senate Standing Orders and Standing Orders 149 of the National Assembly Standing Orders.

Mr. Temporary Speaker, Sir, I present to the House the clauses that were under mediation. The following Clauses of the National Rating Bill, National Assembly Bill No.55 of 2022 were considered by the Mediation Committee.

In the Senate Amendment, Clause 2, the term ‘occupier’ as inserted means, in relation to rateable property, ‘a person who is in physical possession of premises or a person who has control over the premises.’

Mr. Temporary Speaker, Sir, I would like to give a short background of this Bill. The issue of valuation has been a challenging area, especially in the county governments. There have been inconsistencies in counties over how rating is done when valuation for property or land is done across the counties. That, you would have a property evaluated differently, but generally over just the same sphere in another county.

For example, a piece of land would be valued at thousands of shillings, while in another county there is a different figure, yet environmentally there is no difference. So, we had areas that, after the Bill went in the Senate, the National Assembly was not in line with us.

On Clause 2 and over the definition of ‘occupier’, the Mediation Committee considered the definition and after deliberation, we resolved not to adopt the proposal that was from the Senate.

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Hon. Temporary Speaker, Sir, mediation is a give and take. The basis of this was that the Clause of the Bill already clarified the definition of a rateable owner, making it unnecessary, after our discussion, to provide additional clarification within the definition of 'an occupier'.

Hon. Temporary Speaker, Sir, the other contested issue was the valuation roll. However, after deliberation, we adopted the proposal as was submitted by the Senate. On the same Clause, the National Assembly was not consistent with the Senate on the definition of 'the Chief Government Valuer'.

However, after deliberation, what the Senate had proposed took precedent because we felt that in valuation and in order to have a harmony across the counties, we needed to create an office that is professionally backed up to ensure that all the valuation activities of the counties are harmonized across the country. That is why we had proposed as a Senate Committee, that we have the Chief Government Valuer, and the Mediation Committee agreed with that.

The second Clause that we considered was Clause 12. The Mediation Committee deliberated and resolved to adopt the proposal as submitted by the Senate by inserting the words 'the Council of Governors' immediately after the words, 'National Land Commission.'

Hon. Temporary Speaker, Sir, the Senate Committee, following up on the Constitutional spirit on consultation, felt that we had to insert 'the Council of County Governors' to be consulted across all the Clauses. So, we have in Sub-Clause 4, 'in consultation with the Council of County Governors' immediately after the words, 'the Cabinet Secretary'.

So, the Cabinet Secretary must consult with the Council of County Governors in making decisions of valuation, whether in setting guidelines or regulations, because it is until then that the interest of the counties would be taken in. The Mediation Committee deliberated and resolved to adopt the proposal as submitted from the Senate with the following modifications, that is, inserting the words, 'the Council of Governors'.

Mr. Temporary Speaker, Sir, I will then go to Clause 20. It is still following the spirit of consultation that I have referred to earlier. So, the Mediation Committee deliberated and resolved to adopt that proposal as submitted from the Senate with the following modification-

Earlier, Members of the National Assembly were hesitant for us to have the Council of Governors consulted at all levels. They felt that the Cabinet Secretary would just make decisions on their own. However, as the Senate Committee, we felt that valuation or rating is a shared function. Therefore, in sharing the function, the Cabinet Secretary must consult with the Council of Governors. We brought the Council of Governors because of the fact that there is no other way in which counties would be consulted one by one.

However, we felt that the umbrella body of the Council of Governors would be a rallying point for consultation with our county government.

Mr. Temporary Speaker, Sir, on that, the Committee considered the proposal from the Senate to remove the requirement for the Cabinet Secretary of Land to review claims for contribution in lieu of rates and resolved not to adopt it. However, the Committee

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recommended and resolved on an amendment to the existing sub-clause, to clarify the role of the Cabinet Secretary for Lands, as indicated.

On Sub-clause 6, there was reference that after valuation was done by county governments, there was a supposed reference that county governments having finished their valuation, they would submit these reports to the Cabinet Secretary, Ministry of Lands; who would then further review before submission. We felt that review would imply that the Cabinet Secretary was going to be given powers to even alter some of those rates.

Therefore, after mediation, we agreed that the only role of the Cabinet Secretary after the counties had done their ratings, was not to review before submission, but to transmit that to the Treasury for payment.

Mr. Temporary Speaker, Sir, there is Clause 50(30) of the Mediation Bill. The Committee deliberated and resolved to adopt the proposal from the Senate as proposed with a modification to delete sub-clause 3 of Clause 30 and insert the sub-clause 3 as a sub-clause under the proposed new Clause 30A as indicated.

There is Clause 32 of the Bill. We agreed that we would be deleting the word “tabling”, appearing immediately after the words “county assembly for” and inserting, the word “approval”. Therefore, the main role of the county assembly is not only limited to tabling, but to also approve it.

Mr. Temporary Speaker, Sir, in sub-clause 6, we inserted the word “for consideration” appearing immediately after the word “tabling”. This is to mean that the county assembly and once the rating has been done by the county executive and it is tabled for approval in the county assembly, then the county assembly shall, within 60 days of submission under sub-section 6; and by a resolution, approve or reject the draft revolution roll or the draft supplementary valuation roll.

Where the county assembly fails to make a resolution within the period, the draft valuation roll or the draft supplementary valuation shall have been deemed to have been approved. The Committee saw in conclusion in that clause and deliberated. We, therefore, resolved to adopt the proposal as submitted from the Senate.

We also have Clause 34 and it still refers to words of “county government”. The Committee deliberated and resolved to not adopt the proposal from the Senate in its current form. However, the Committee resolved to redraft the sub-clause 6 of the Bill to introduce a new provision that establishes procedures for handling objections after the valuer has received them.

This Clause gives the comfort where an objection would be raised on a valuation. We might have a situation where there is an objection after valuers have done their work. We needed to get a way in which this would be treated. So, a valuer who receives an objection under that sub-clause 5 shall review the objection and submit a response to the CECM within 60 days. It then spells out that the CECM shall upon the receipt of that response of the valuer, constitute a County Valuation Board (CVB) and submit a response to objection to the board for determination.

We agreed that we would not have a standing committee that would be drawing benefits. The CECM would create an ad hoc CVB when a need arises and a time frame is given upon which that can be reported back to the CECM. This board, referred to as a

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CVB, is established under Clause 6A and it shall hear and determine the objections, communicate the decision of the board in writing to the objector, the ratable owner, the CECM and the valuer. There is a provision that where a person is not then satisfied, under sub-clause 6(c)(b), an appeal may then be made before the tribunal as established in that Bill.

There is the Senate amendment on Clause 56. The Committee deliberated and resolved to adopt the proposal from the Senate with the modifications on sub-clause one by deleting the word ‘may’ appearing immediately after the words, ‘the Cabinet Secretary shall in consultation with the Council of Governors (CoG).’

The National Assembly, as I had said earlier, was uncomfortable with the Senate introduction of the consultative spirit with the Cabinet Secretary. However, after long deliberations, we agreed, as a Mediation Committee, that we would have consultation with the CoG done by the Cabinet Secretary in all areas where the Cabinet Secretary has functions attributed to, as in the Bill.

The Committee deliberated and resolved to adopt the proposal from the Senate as proposed with the following modification. That follows again in sub-clause two. It only emphasises that spirit of consultation that we have referred to.

I bring you to Clause 24A where there is reference of the Chief Government Valuer. The Committee deliberated and resolved to adopt the proposal from the Senate as proposed within the following modification. The reference is made of a Chief Government Valuer, that there shall be a Chief Government Valuer who shall be the principal advisor to the national Government and county governments on all matters relating to valuation.

Mr. Temporary Speaker, Sir, as I had stated earlier, we needed to have harmony in the way valuation is done and rates applied.

The Chief Government Valuer should not only serve the national Government. It should be like the National Land Commission (NLC) that was created to serve both two levels of government.

The Chief Government Valuer will be appointed by the Public Service Commission through a competitive recruitment process. We went ahead to indicate the qualifications. Some of them are not just limited to academics. Of course, the Chief Government Valuer must be a citizen of Kenya and must have a minimum bachelor’s degree from a university recognised in Kenya, either in land economics, real estate, or any other related field.

As the Mediation Committee, we agreed that this is an apex in the profession of valuation. So, we indicated not only the years of experience. I want to convince my colleagues that the years of experience came about because of the years spent in the hierarchical growth in the profession. For you to be a Chief Government Valuer, you must have been a Head of Department (HoD) in that skilled area, must have held some positions in a county, or must have served as a director.

This is basically aimed at protecting the profession, so that the two levels of government can get the best Kenyan who will give direction on areas of valuation and rating. That will ensure harmony across the 47 county governments with the one at the

national Government to ensure that Kenyans get the right services from this top officer who will be serving both levels of government.

We also added that the person must be a full member of the Institution of Surveyors of Kenya (ISK) and in good standing. We have had officers holding high positions in this country, but they are not in good standing with their professional bodies. We felt as the Mediation Committee that we need a professional who has good records from their professional bodies.

Lastly, Mr. Temporary Speaker, Sir, we need the Chief Government Valuer to be an officer who meets the requirements of Chapter Six of the Constitution. This is a constitutional requirement. If you are going to oversee valuation and rating in this Republic, county governments are going to look up to you for guidelines. Of course, these are guidelines that the Chief Government Valuer will not make by themselves, but in consultation with county governments and all the professional bodies.

The officer must meet the requirements of Chapter Six of the Constitution. We do not want to end up with an officer who will abuse the rights of Kenyans. So, we thought this must be part of the qualifications.

In Clause 24A, we established the Office of the Chief Government Valuer, who, as I have said, will be recruited competitively by the Public Service Commission through a competitive process. He or she will be the principal advisor on issues of valuation and rating.

Mr. Temporary Speaker, Sir, I have indicated in this House that I happen to have worked in the County Government of Homa Bay.

My first posting was as a County Executive Committee Member (CECM) in charge of Lands, Housing, Physical Planning and Urban Development. I dealt with the complex issues initially of the houses that were transferred from the defunct local authorities. Specifically, in Homa Bay, that was housing from the southern Nyanza, of course, now in Homa Bay, the then Homa Bay County Council.

Mr. Temporary Speaker, Sir, we had houses as big as two to three-bedroomed houses, on their own plots. Nevertheless, it was a pity that some of those houses were being charged Kshs1,000. Therefore, how are the counties going to raise revenue to sustain even the servicing of these houses?

Our actions were limited to the fact that valuation had not been done for a long time. You could not even review those charges without a valuation being done. We had houses for the national Government and for the county Government, and that is uniform in all the other county municipalities. This Bill will deal with some of those challenges.

County governments have also dealt with the challenge of getting a valuer to value pieces of land when they are going to acquire land. The example I will give is of a county where I come from. We had one government valuer who was servicing the whole of Kisii County, Nyamira County, Homa Bay County and Migori County.

Mr. Temporary Speaker, Sir, you had to chase him all over the place and yet, we have valuers graduating from the university. Consequently, even when county governments have employed these valuers, there are certain responsibilities they cannot take because of lack of harmonisation of rating. Hence, this chief government valuer, is going to set guidelines that will be rolled down and undertaken by county governments.

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There is the New Clause 30A. This refers to the supplementary valuation roll that

“the county government shall, in preparing a valuation roll, rely on data or information that was used in the preparation of the valuation roll to assign values to be adopted as the properties contained in the supplementary valuation roll.”

The Committee deliberated on this and where the county government has reason to believe that a supplementary valuation roll needs to be prepared, the county government shall cause a supplementary valuation roll to be prepared where necessary.

Chapter 3 refers to recommendations that the Committee have made. There is Clause 34 and Clause 36. As I move this Motion and request the Majority Whip to second it, I want to say that the Mediation Committee was seamless, and we listened to every Committee Member. We were led well by the Chairperson and the Vice-Chairperson, and because of the objectivity, we agreed on a number of the Clauses.

I move this Motion and request the Majority Whip to second. This is a Motion on the National Rating Bill (National Assembly Bills No.55 of 2022), that will help us to solve a number of challenges that Kenyans and particularly county governments have undergone.

**The Temporary Speaker** (Sen. Wakili Sigei): Thank you, Sen. Ogola. Proceed, Sen. (Dr.) Khalwale.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. I rise to second the Motion on the Report of the Mediation Committee on the National Rating Bill (National Assembly Bill. No.55 of 2022) as moved by the Chairperson of this Committee, Sen. Beatrice Ogola.

Allow me to congratulate the Committee of this House together with the Committee of the National Assembly. When they came together in a Mediation Committee, led by the Hon. Joash Nyamoko and deputised by our colleague, Sen. John Methu Muhia, they have done a very good job.

Allow me to also congratulate the Nominated Senator for Homa Bay County for ably moving this Motion. Listening to the young lady, it forces me to congratulate her party, the Orange Democratic Movement (ODM). Seeing her ability in this discourse is a case for other political parties to always use a very high standard in giving special elected seats to members. Listening to Sen. Beatrice, you clearly see that she adds value to business in this House and definitely by extension, I hope back at home in Homa Bay.

As I second this Motion, I always think back on how members of the public in this area have forever remained vulnerable. Ordinarily, when you want to exchange property and are relying on a valuer, you have no idea the criteria they use to rate your property or premises. However, this law is moving into that direction. We are protecting members of the public more and more.

Whereas we are trying to standardise rating across counties, I am alive to the fact that, Sen. Beatrice Ogola, even when you go to Homa Bay County, you can move from one sublocation to the other within the county and a property which is comparable is given totally different values and you are always left at loss. Probably, you wanted to use the rating to access a loan and someone from a certain sublocation has a better rating than you who comes from the other sublocation, yet you come from the same county.

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I, therefore, thank this industry. Since Sen. Beatrice Ogola has taken the House through this Report by speaking to clause by clause as discussed in the Committee, I am not going to belabor it. However, I use this opportunity to urge my government to ensure that we employ more valuers. It is very difficult to access services of valuers for members of the public.

In a big county like Kakamega, for example, you have to queue for a very long time to see Mr. Edwin Odor, our valuer. At the time he was doing it, he would also go to our neighbours in Kisumu to do some work there. Since our university keeps on churning out graduates, we should give these young people an opportunity to get employment, so that members of the public have access to this critical service.

Mr. Temporary Speaker, Sir, I second the Motion.

*(Question proposed)*

**The Temporary Speaker** (Sen. Wakili Sigei): Now, hon. Members, I will, for those who are interested in contributing to this particular Motion, allow your contributions. I will start with the Senator for Nandi, Sen. Samson Cherarkey.

**Sen. Cherarkey:** Thank you, Mr. Temporary Speaker, Sir, for this opportunity and also to welcome you back. I am aware you were on an official parliamentary tour monitoring the U.S. elections. I want to take this opportunity to thank and congratulate the people of the United States of America. Specifically, we want to applaud the election of the 45th and 47th President of the United States of America, Donald Trump and wish him well as he serves. I hope he will give policies that will be of help to Kenya and across the world, specifically, our Haiti mission that we have to assist.

We have several agreements that President William Ruto went to the United States to engage. I hope that engagement between the U.S. Government and the Kenyan Government will continue to benefit us.

In fact, as His Excellency Donald Trump was being elected to office, there was a hashtag suggesting that the current U.S. envoy, Meg Whitman, should leave the country. Nonetheless, to be fair to her, she has been supportive of the Kenyan Government. She is one of the ambassadors who have marketed Kenya more than any other special envoy or high commissioner to this country.

I request Kenyans to give her a break; she is doing a lot. There is a misnomer in this country that when you are an ambassador, you must work with the opposition of the Government. That is not true. Any ambassador to this country must work closely with all Kenyans, both Government and opposition.

So, the people who want to start hashtags, *Twitter*, or *X* against a U.S. ambassador are being unfair. Therefore, there is a song on the street that says, “*waende wasikie vibaya na huko kwao*”,

I saw women demonstrate. They were disappointed that Kamala Harris could not succeed as President of the U.S. At least, she gave it a trial. We are proud of women. We hope they will be inspired.

I always knew Donald Trump would win because I have been to America on several occasions, and I know the ‘ground’, *huwa anasikiza ground*’.

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I will do this in quick succession because I will take two minutes to support this Motion. I want to congratulate Sen. Beatrice Ogola for moving this mediated version of the National Rating Bill.

I am privileged to serve on the County Public Accounts Committee. The Senator for Kakamega should note that as we talk today, the County Government of Kakamega, Lamu, Nandi, and many other county governments, including Bomet, do not have a complete asset register that gives rise to valuation role.

The definition of a valuation role is for local taxation to value property where you are using rating to value those properties. Many counties do not meet the Own Source Revenue targets because they do not have a complete asset register and a valuation role to allow the valuation to be done on those properties and allow the county governments to levy either local taxation or charges or fees.

Therefore, I would also request this Committee to recommend that the Transitional Authority by Kinuthia Wamwangi in 2013, an Intergovernmental Relations Technical Committee, fast-track the transfer of assets and liabilities to county governments to allow them to have a complete asset register and, therefore, to give them rights to do the valuation role.

It has been a challenge. I am happy the Standing Committee on Finance and Budget of the Senate refused to reduce the allocation to the counties. As a Senate, we are proposing through Division of Revenue Act (DORA), which we passed overwhelmingly, to have it at Kshs402 billion. The amended DORA that came back from the National Assembly had been slashed to Kshs380 billion, which was way below Kshs385 billion that we suggested last financial year.

The only hope is in fiscal discipline and responsibility in counties. We have already encouraged them to do Own-Source Revenue (OSR). The only way to ensure counties maximize OSR is passing the mediated version of the National Rating Bill (National Assembly Bills No.55 of 2022) and through the Intergovernmental Relations Technical Committee (IGTRC), get them a valuation role, so that they can rate and evaluate their property in order to rise up to the OSR. The IGTRC should also come on board.

I want to pass my deepest condolences to the parents who lost a child at Longisa Hospital; it is heartbreaking. I would have expected my friend, the Governor of Bomet County, to have taken decisive action. I expected that the Committee led by Sen. Mandago would be on site at Longisa Hospital to find out.

I have seen my lecturer of Law, Sen. (Prof.) Tom Ojienda Odhiambo, SC, is one of the chief campaigners of Rt. Hon. Raila Odinga. I was surprised to see him in the African Union (AU) the other day. He taught me that there is responsibility of emergency medical care, where you do not need to pay. That child died writhing in pain at Longisa Referral Hospital.

In fact, that hospital should not be called referral. It should be closed. It is so tragic that a baby is dying because parents cannot afford to pay money. I would have expected the County Executive Committee Member (CECM) for Health, Chief Executive Officer (CEO) and any other person who is in charge of that hospital to resign out of good faith and morality. The Governor should have fired them like yesterday.

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Mr. Temporary Speaker, Sir, I am happy you led the Members of Parliament (MP) from Bomet County there. If it is possible that they fail to take action, we can support the parents. The Standing Committee on Health of the Senate can visit Longisa Hospital and cross-check. They can even write to Kenya Medical Practitioners Pharmacists and Dentist Union (KMPDU) for action against those officers who did not do their job.

I agree with Sen. Ogola. Let us talk about professionalism. In fact, those nurses who allowed that child to die should have their licenses cancelled by Kenya National Union of Nurses to show seriousness. Even in Senate, we have said that the Institute of Certified Public Accountants of Kenya (ICPAK) members who give us adverse opinions when they are doing the auditing must be punished by being struck off from the ICPAK list.

The nurses at Longisa Hospital who were on duty, including the chief nurse, should lose their license of practice for not giving that medical attention. Our prayers and thoughts are with the family, and you can convey our deepest condolences.

Mr. Temporary Speaker, Sir, on the issue of valuation role---

**The Temporary Speaker** (Sen. Wakili Sigei): What is your point of order, Sen. Ogola? Allow Sen. Ogola to give her intervention.

**Sen. Ogola:** Mr. Temporary Speaker, Sir, on a point of order. Why would the Senator of Nandi County, a student of Sen. (Prof.) Tom Ojienda Odhiambo, SC, be surprised when Professor is in Addis Ababa accompanying 'Baba' himself? Professor is an outstanding member and a Senator of Kisumu County. In the spirit of broad-based government, why would you limit him?

**The Temporary Speaker** (Sen. Wakili Sigei): Sen. Ogola, you have made your point and that is not a point of order. It is actually a point of information, which I believe Sen. Cherarkey has noted and taken up the information as to why the hon. Professor was part of the delegation in Addis Ababa.

Proceed.

**Sen. Cherarkey:** Thank you, Mr. Temporary Speaker, Sir, as I conclude.

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

**The Temporary Speaker** (Sen. Wakili Sigei): Sen. (Dr.) Khalwale, proceed.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. In the rule of relevance, could the Senator for Nandi County help me understand the relevance of what took place in Longisa Hospital, very unfortunate, to the matter at hand, National Rating? Could he help me?

**The Temporary Speaker** (Sen. Wakili Sigei): Sen. Cherarkey, please, proceed to give Sen. Boni relevance of the comments, as regards to what transpired in Longisa Hospital and the Motion that is being debated.

**Sen. Cherarkey:** Mr. Temporary Speaker, Sir, the reason I brought up the issue of Longisa Hospital is because, first, this House is sensitive and alive to other matters that happen, because we are leaders.

Secondly, I wanted to drive the point home on the role of valuers. Sen. Ogola, has highlighted the requirements of you being employed. One of them is that we must get approval from a relevant professional body. That is why I brought the relevance that the

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nurses who delegated their duty should lose their license, just like valuers or government valuers who do not do their job. That is how I was driving my point home.

Mr. Temporary Speaker, Sir, last weekend, I saw Sen. (Dr.) Khalwale hosting the President, and the prayers were being done. He did not speak anything about prayers. Instead, he spoke about building a road from Nairobi to Malaba because it is congested. That was not relevant to the event of the day, but I am happy he made his point. That is the relevance I was bringing.

On the issue of Chief Government Valuer, I would like to appeal to county governments; I do not see the reason why we should push the national Government to hire valuers. There are many young people, who are graduands of valuation and land economics. They are all over.

I am happy Prof. Tom Ojienda wrote a book called 'Principles of Conveyancing', and 'forced' us to read through. I do not know whether he wanted to sell the book or he wanted us to get the knowledge. In 'The Principles of Conveyancing,' valuation and rating of valuation of property is critical. There are many valuers. I would like to appeal to county governments on the issue of depending on the national government to give you Chief Government Valuer, and the Physical Planner.

In North Rift, for instance, we only get him in Eldoret, yet there is Nandi, Uasin Gishu and Elgeyo-Marakwet Counties. Why do the county governments not hire these professionals? Why do we not have valuers? Sen. (Dr.) Khalwale has pointed out a critical point; that, when you go to townhouses that my sister referred to, you still get some charging Kshs300 or Kshs500, and I am not saying they should charge more rent, because the last time they did rating of those houses was '19-*keti chini*,' when the exchange rate of a dollar was Kshs20 or Kshs50.

I am happy that the Public Service Commission will be the one doing the appointment of the Chief Government Valuer. The Commission, and I insist, should, as they do approval of the Chief Government Valuer, always be absorbing interns.

The Public Service Commission has started a bad culture where they get young people as interns, train them, then throw them in the streets. Since we use government resources and money, we should absorb those young interns, so that we do not experience problems with the Gen Zs. If the Government has given you an intern for six months, you have trained and given them capacity, why would you throw them back to the streets? They should start a process of absorbing them into the system.

Mr. Temporary Speaker, Sir, I am the cognizant of the fact that Prof. Tom Ojienda is an Orange Democratic Movement (ODM) Member. However, I was surprised that he is also in the technical team of African Union Commission (AUC) chairmanship bid of Raila Odinga. On a lighter note, I am yet to receive endorsement from Sen. (Dr.) Khalwale in regards to Raila Odinga's bid. Perhaps he has said in *Kiluhya*, but I hope he will say it in English and Kiswahili, on a national platform, so that we hear the bullfighter taking his bullfighting to AUC and endorse *Baba* there.

In conclusion, the issue of supplemental valuation roll is critical, especially when it comes to the Finance Bill that goes to the counties. I agree that the County Assembly must approve going into the future, so that it becomes easy.



With those remarks, this is a good mediated version of the National Rating Bill, and I hope we will pass it to allow counties and the national Government to do rating.

Mr. Temporary Speaker, Sir, when the National Assembly tried to pass the Finance Bill, 2024, I had seen a proposal of a number of taxations which did not affect the *mwananchi* in order to raise Kshs170 billion meant to fill in the deficit. Therefore, as we raise the Kshs170 billion, I request the Government to return Kshs20 billion for the allocation to counties for them to get Kshs402 billion.

Some of the taxes that were supposed to be introduced in the Finance Bill did not have any relationship with the local *mwananchi*. Some of them were carbon taxes and eco taxes, where, if you have an iPhone or a Samsung and it expires or becomes obsolete, how is it destroyed? That was why we wanted to introduce the eco tax in the Finance Bill, 2024. This tax was targeting the manufacturers of phones, cars and electronics.

We would like Kenyans to understand that, and I hope with the national rating, we can resolve some of these problems we are facing, and assist financial institutions, governments and Kenyans.

With these remarks, I congratulate the Committee that did the mediation version and I hope that when it comes to voting, we shall pass it, so that we allow counties and the national Government to do rating of properties and allow complete asset valuation roll and fiscal discipline. This will also allow county governments which we protect under Article 96 to raise and ensure that they meet targets of own-source revenue in their counties.

I beg to support and thank you.

**The Temporary Speaker** (Sen. Wakili Sigei): Thank you, Sen. Cherarkey. Before I allow Sen. (Prof.) Tom Ojienda to give his contribution, I would like to assure you that your message of goodwill and condolences to the family of the lost child from Longisa will be delivered by yours truly.

Secondly, the quick and immediate media responses and radio appearances of abuse by those who were supposed to be responsible shall not deter the leadership from getting to the root cause of this situation.

*(Applause)*

Sen. (Prof.) Tom Ojienda.

**Sen. (Prof.) Tom Odhiambo Ojienda, SC:** Thank you, Mr. Temporary Speaker, Sir. It is unfortunate that when many Kenyans see me, they see me as a politician, but they ignore the fact that I have a technical aspect as a law professor. I am also bilingual. I speak and translate French, but that is not known to many people.

I am a student of International Law and a Pan-Africanist, having served as the President of the Law Society of Kenya (LSK), President of the East African Law Society (EALS) and the Vice President of the Pan African Lawyers Union (PALU), with offices in Addis Ababa, having worked largely with the African Union on many matters.

Mr. Temporary Speaker, Sir, these are the aspects that my learned friend and Senator for Nandi, Sen. Cherarkey, did not know. We support 'Baba' from the heart and it is in the interests of this nation that 'Baba' is elected as the African Union Chairman.

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We must do all that we must within the region, with arabophobes, francophones, anglophones and the lusophones to ensure that this seat comes home.

It is our collective effort and we all know what the President is doing. The President is resolute in his support for the Rt. hon. Raila Amolo Odinga. I, therefore, encourage Sen. (Dr.) Khalwale.

I would like to speak to the National Rating Bill (National Assembly Bills No.55 of 2022) and the Mediation Report that has been submitted by the hon. Beatrice Akinyi this evening.

The Mediation Committee under Standing Orders No.149 and of the National Assembly, Standing Orders No.166 of the Senate and Articles of 112 and 113 of the Constitution did consider the various issues. I am glad to say that under the previous Rating Act, Cap.266 and the Valuation for Rating Act, Cap.267, we had a framework for valuation of property, which allowed limited time for objections.

It is true when Sen. Cherarkey says that some of the properties were valued long ago and it is because of that variance in time that many property owners have found themselves on the receiving end.

When the Rating Act and the Evaluation for Rating Act have adopted a framework that has increased taxes in certain areas up to 100 per cent, you find that in certain cities - because I know that many counties have tried to revise rates, rates have jumped from even Kshs10,000 to Kshs1 million

That is why, as I said, the time frame under the previous Cap.166 and Cap.167 have provided that the framework proposed in the National Rating Act, by appointing a central authority that will only receive approval through the Cabinet Secretary, is welcome.

Secondly, the creation of a CVC to receive objections and the 60-day period that is contemplated in the new revised law also is welcome. It will give owners of rateable property sufficient time to object and engage with the process of increasing rates. A 60-day period that is proposed is sufficient time for objections to be made and for an attempt to be made by the CECM Lands or CECM Finance for the county under the new framework and for the party objecting to appeal to the tribunal.

The tribunal also creates a framework for fair administrative justice in conformity with Article 47 of the Constitution. I wholly support the proposals by Sen. Beatrice Akinyi's Committee that was chaired by Member of Parliament (MP) Hon. Nyamoko, who chairs the Lands Committee in the National Assembly, and Sen. John Methu, who chairs the Senate Committee on Lands, Environment and Natural Resources.

The other aspect that I support, and I must state this, is that the Chief Government Valuer, as proposed, though I see the qualifications are a basic degree, I would have preferred that an additional requirement is made to the proposed Section 24(b) and not just a basic degree in land economics. I would have expected not just membership of the Institute of Surveyors of Kenya (ISK), but a higher qualification so that the 15-year experience as set out is considered in addition to other experiences or other qualifications that would ensure that the Chief Government Valuer is an individual who will deliver professionally, as has been spoken to previously.

In terms of the additional valuation role for properties that are omitted, I think this is key because what it states is that, the proposed law intends to ensure that every property, including properties that have now not been registered, are brought to the valuation matrix, so that we do not have owners of property who would then escape the valuation dragnet or the payment of taxes because their properties are not registered.

In my County, Kisumu City, for instance, I know that a new valuation process is ongoing. I know that citizens are concerned about the values that have been placed on the properties. I also know that in my other City, Nakuru, there are several objections that have been raised by owners of property pursuant to valuations that have been done under the framework of law that currently exists. What this National Rating Bill portends is a framework that will be consultative, that will give rateable landowners an opportunity to object as they should. It also increases the time frame required, but ensures that no property is left out of the valuation process.

I support.

**The Temporary Speaker** (Sen. Wakili Sigei): Thank you, Sen. (Prof.) Tom Ojienda, for your contribution. Now that we do not have any other Member interested in contributing, I will ask the Mover of the Motion to reply.

Sen. Beatrice Akinyi, you may proceed.

**Sen. Ogola:** Mr. Temporary Speaker, Sir, once more, thank you for the opportunity. Before I reply, I want to take this opportunity, on behalf of the Ndhiwa Community where I come from, in reference to presidential appointments, to congratulate one senior and outstanding officer who has been nominated by His Excellency the President. That is Major General (Rtd.) Martin Kizito Ongoyi, CBS. He has been appointed as a member of the Salaries and Remuneration Commission (SRC) as a nominee of the Defence Council. This is what Kenyans have been yearning for. I think we are moving to the right direction.

Major General (Rtd.) Ongoyi has been an outstanding officer in this Republic serving in the army. I stand here to congratulate him and state that he deserves and is equal to the task.

Mr. Temporary Speaker, Sir, in replying, I appreciate all Senators who have contributed to this Motion, which is great to Kenyans. I request that the putting of the question be deferred to a later date, pursuant to Standing Order No.66(3).

**The Temporary Speaker** (Sen. Wakili Sigei): Hon. Senators, I defer putting of the question to the next sitting of the House, pursuant to the request by Sen. Ogola, under Standing Order No.66(3).

*(Putting of the question on the Motion deferred)*

Clerk, please, call out the next Order.

## MOTION

### CONSOLIDATION OF BURSARY FUNDS FOR EQUITABLE ACCESS TO EDUCATION

THAT AWARE THAT, Pursuant to Article 53 of the Constitution, every child in Kenya is entitled to free and compulsory basic education, and the Basic Education Act provides that, basic education should be guided by principles such as equitable access to all youth and equal access to education or institutions;

FURTHER AWARE THAT, many students in secondary schools and higher education institutions come from financially disadvantaged backgrounds, making it difficult for them to afford school fees and access education opportunities;

NOTING THAT, over the years, various interventions have been made, including the issuance of bursaries through the National Government Constituency Development Fund (NCDF), National Government Affirmative Action Fund (NGAAF), the Ministry of Education and county governments through various county bursary funds;

CONCERNED THAT, despite these efforts, schools' fees remain unaffordable for many parents and the allocation of bursaries has been plagued by nepotism, favouritism, and political manipulation, lack of transparency and accountability;

FURTHER CONCERNED THAT public learning institutions are primarily funded by the Government through the Ministry of Education, and in the financial year 2024/25, approximately Kshs656 billion was allocated to the education sector, making it difficult to ascertain the specific funds granted to each student and that the lack of transparency in the disbursement of bursaries from various agencies makes it difficult to determine the total amount allocated in a financial year, thus hindering efforts to ensure equitable access to education for financially disadvantaged students;

NOW THEREFORE, the Senate urges the Ministry of Education, to-

(1) audit the funds allocated to bursaries by both the National Government and county governments;

(2) consolidate the funds distributed by various government entities and agencies, with the aim of directing these funds directly to schools as supplementary capitation to facilitate the achievement of free secondary education; and

(3) calculate the cost of education per learner and make this information public for primary, secondary, and tertiary institutions,

including a detailed breakdown of the annual financial requirements for each student across the country.

*(Sen. Thang'wa on 31.10.2024)*

*(Resumption of debate interrupted on 31.10.2024)*

**The Temporary Speaker** (Sen. Wakili Sigei): Hon. Senators, this is resumption of the debate that was interrupted on Thursday, 31<sup>st</sup> October, 2024. Sen. (Dr.) Boni Khalwale had 13 minutes remaining to conclude his contribution to the Motion.

Sen. (Dr.) Boni Khalwale, if you still have additional comments on this Motion, please, conclude within 13 minutes, which is the time you had remaining.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, before we went on recess, I was contributing to this Motion. I had not anticipated that it would come this afternoon. So, I had not recollected my thoughts, but this is an important point.

Over and above what I said before we went on recess, this issue of bursaries is promoting corruption not by the Members of Parliament (MPs) who control or governors, but people working at the bursary offices.

Corruption is done to this extent. Our women who are mothers of our children at school and old men are forced to queue in the name of collecting forms that will enable them to access bursaries.

Mr. Temporary Speaker, Sir, after waiting for a very long time a list then appears at the Constituency Bursary Office and when the old man or *mama* goes there, the name of their child is not there. They do not understand why their children are not benefiting.

When you follow it in some of the offices, the administrators of that bursary fund ask for a consideration before people benefit from this public resource. It is for this reason that many people are agreed that the billions of shillings held in the accounts of National Government Constituencies Development Fund (NG-CDF) as bursaries, in the Presidential Bursary Fund, in the Governor's Bursary Fund and all the other funds that support children, including Equity Bank, Wings to Fly and whatever view, should just be surrendered to the National Treasury and we make education free and accessible by all children.

Like many Kenyans who had to walk the steep hill to have their education financed, the first time I had peace of mind at school was when I went to the University of Nairobi and found that university education was free. The moment that happened, I quickly forgot the pain I used to go through whenever I would be sent out of class so as to go home to look for school fees, which was not there.

My home to my school, Kakamega High School, is exactly 15 kilometres. When I used to be asked to go home and come back with school fees at Kakamega High School, I would do the 15 kilometres on foot. I would get home, wait for two, three days and walk back of course, without school fees. I would pretend and dodge in school until another wave of sending children home comes and I go back.

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I truly want to thank God that on some occasions I could come back from home with Kshs25 collected after my mother who had sold *Chang'aa*. My teachers would gracefully accept the Kshs25 and allow me a few more days in school.

I was lucky at Kakamega High School, I met a gentleman called Mr. Peter Whales. Peter Whales was teaching me Chemistry at A Level. Purely because of the luck God gave me, because I was doing very well in his class, he got tired of me being sent away and then took over and educated me in the year of Form Six. Thanks to him, I made it in Chemistry, Mathematics and Biology and became a doctor.

We are killing very many brilliant young people because of asking them to pay. I want to appeal to our President to read tonight the story of the late former President Mwai Kibaki. The biggest thing that the late former President Mwai Kibaki gave our children was when he made education free. By dint of making education free, he brought one million children into school, who had just been lying idle at home.

Over the weekend, I was talking to the Governor of Nairobi, His Excellency Sakaja. Sakaja told me something amazing. He told me because of Kshs500 of free lunch that parents are supposed to pay, 1.3 million children in Nairobi have come back into school. The situation is so dire that we should never pretend. We should do everything possible to make sure that all the children of Kenya can access education for free.

Mr. Temporary Speaker, Sir, I say this with maximum respect to the fact that the system ---

**The Temporary Speaker** (Sen. Wakili Sigei): Sen. Boni, you have equally been interrupted a second time, but you still have seven minutes of your time remaining when the House resumes, to conclude on your remarks.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Wakili Sigei): Hon. Senators, it is now 6.30 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until tomorrow Wednesday, 13<sup>th</sup> November, 2024, at 9.30 a.m.

The Senate rose at 6.30p.m.