

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 27<sup>th</sup> May, 2015

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

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

### PRAYERS

### COMMUNICATIONS FROM THE CHAIR

**The Speaker** (Hon. Ethuro): Hon. Senators, I have two brief communications to make. The first one is on the National Prayer Breakfast.

#### INVITATION TO THE ANNUAL NATIONAL PRAYER BREAKFAST MEETING

You may recall that on Thursday, 14<sup>th</sup> May, 2015, I informed you, through a Communication from the Chair that the Kenya Parliamentary Prayer Fellowship Group would host the Annual National Prayer Breakfast on Thursday, 28<sup>th</sup> May, 2015 at the Safari Park Hotel.

I would like to confirm that the Prayer Breakfast is still on and the D-Day is tomorrow. Necessary arrangements have been done to make the event a success. I am sure that most of you have received invitation cards. I urge those who have not received the same to inform the Serjeant-at-Arms at the entrance to the Chamber to facilitate receipt of the cards.

Hon. Senators, you may also want to contact the Senate representative in the Prayer Breakfast Planning Committee, Sen. David Musila for further details. I appeal to those who may not have made contributions towards this worthy cause to do so before the close of the day today.

APPROVAL BY THE NATIONAL ASSEMBLY OF THE SENATE AMENDMENTS TO THE PUBLIC  
PROCUREMENT AND ASSET DISPOSAL BILL, (NATIONAL ASSEMBLY BILL  
NO.40 OF 2014) AND THE FAIR ADMINISTRATIVE  
ACTION BILL, (NATIONAL ASSEMBLY BILL NO.10 OF 2015)

The Second Communication is on the approval by the National Assembly of the Senate's amendments to the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014) and the Fair Administrative Action Bill (National Assembly Bill No.10 of 2015).

Hon. Senators, I would like to report to the Senate that after the passage of the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014) and the Fair Administrative Action Bill (National Assembly Bill No.10 of 2015) with amendments by the Senate and pursuant to Article 110(4) of the Constitution and the provisions of Standing Orders No.40(2) and 149 of the Senate Standing Orders, I forwarded to the National Assembly certified copies of the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014) and the Fair Administrative Action Bill (National Assembly Bill No.10 of 2015) as amended by the Senate together with a message requesting the concurrence of the National Assembly.

Hon. Senators, pursuant to Standing Order No.40(3), the Clerk has delivered to me correspondence from the National Assembly regarding the approval by the National Assembly of all amendments by the Senate to the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2015) and the Fair Administrative Action Bill (National Assembly Bill No.10 of 2015).

I am expecting some applause.

*(Applause)*

The Bills with the Senate Amendments incorporated will be finalised and forwarded to His Excellency the President for assent.

I thank you.

### PAPERS LAID

REPORT OF THE MEDIATION COMMITTEE ON THE PUBLIC  
AUDIT BILL (NATIONAL ASSEMBLY BILL NO.38 OF 2014)

**Sen. Billow:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table:-  
Report of the Mediation Committee on the Public Audit Bill (National Assembly Bill No.38 of 2014).

*(Sen. Billow laid the document on the Table)*

## THE 2015 ECONOMIC SURVEY

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table:-

The 2015 Economic Survey

## STATISTICAL ABSTRACT 2014

I would also like to lay the following Paper on the Table:-

Statistical Abstract 2014

THE SOCIAL ECONOMIC ATLAS OF KENYA/NATIONAL  
POPULATION CENSUS BY COUNTY AND SUB LOCATION

Mr. Speaker Sir, I also have the third one which is:-

The Social Economic Atlas of Kenya depicting the National Population census by county and sub location.

*(Mr. Mutula Kalonzo Jnr. laid the documents on the Table)*

**NOTICE OF MOTION**APPROVAL OF THE MEDIATION COMMITTEE REPORT  
ON THE PUBLIC AUDIT BILL (NATIONAL  
ASSEMBLY BILL No.38 OF 2014).

**Sen. Billow:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House approves the the Report of the Mediation Committee on the Public Audit Bill (National Assembly Bill No.38 of 2014) pursuant to Standing Order No.155 laid on the Table of the House on Wednesday 27<sup>th</sup> May, 2015.

**STATEMENTS**ESTABLISHMENT OF BATTERY ASSEMBLY  
FACTORY IN NAIVASHA

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**Sen. Njoroge:** Mr. Speaker, Sir, I requested a statement which should have been addressed yesterday. I am requesting for a response from the Committee on Health regarding the multi-million factory in Naivasha.

Thank you.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, allow me, on behalf of my Chairperson and the Vice Chairperson, to deliver the Statement as requested by Sen. Njoroge.

I will give a brief background on the statement he sought regarding the opening of the multi-million shilling battery assembling factory in Naivasha, Nakuru County.

I wish to inform this House that the battery factory in question is registered as Ganesh Eco Solutions Limited. This is a recycling facility located in Naivasha, Nakuru County. The facility has been licensed to manufacture copper cables, lead acid batteries, automotive spare parts, smelting and lead recycling.

In May, 2014, the company submitted a project report for the proposed factory. After the initial review, the project was upgraded to an Environmental Impact Assessment (EIA) Study. The study report was submitted to the National Environment Management Authority (NEMA) on 13<sup>th</sup> August, 2014 for an in-depth review.

A public hearing on the project was conducted on 6<sup>th</sup> November, 2014.

*(Loud consultations)*

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

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

**Sen. Njoroge:** Mr. Speaker, Sir, it is very hard to hear what Sen. (Dr.) Machage is saying. The House is too noisy.

**The Speaker** (Hon. Ethuro): Order, Senators! Consult in low tones if you have to.

**Sen. (Dr.) Machage:** I will repeat the last sentence. The study report was submitted to NEMA on 13<sup>th</sup> August, 2014 for an in-depth review.

A public hearing on the project was conducted on 6<sup>th</sup> November, 2014.

This was followed by licensing of the facility on 27<sup>th</sup> November, 2014 to pave way for operations. On 9<sup>th</sup> April, 2015, NEMA inspectors visited the facility and realised that it was not adhering to the licence conditions in respect to pollution prevention. Consequently, on 4<sup>th</sup> May, 2015, the manager of the factory was issued with a closure order requiring him to close the factory recycling plant.

Mr. Speaker, Sir, the honourable Senator sought to know whether the risks and dangers involved have been evaluated and explained to the residents. The environmental impact assessment of the factory was conducted and it outlined the impacts associated with the activities of the factory and even went further to propose measures the company was to adapt to mitigate the adverse impact. This report was put on the NEMA website and an advert put on the newspapers for the public to read and understand the risks associated with the factory activities and give their comments before NEMA licensed the factory.

Mr. Speaker, Sir, during the Environmental Impact Assessment process, the residents were consulted in which the impacts associated with the process were outlined. The public was encouraged to give comments on how best to manage the operations with the view of minimizing the negative impacts. The EIA Report for the facility was subjected to a public hearing which was held on 6<sup>th</sup> November, 2014. The investor was given an opportunity to explain to the public about the facility including the risks associated with its activities.

The second question was whether the environmental impact assessment was exhaustively conducted. The Environmental Impact Assessment which I referred to as EIA was exhaustively done. It was subjected to all EIA steps as outlined in the Environmental Impact Assessment and Audit Regulations of 2006. This was done as follows:-

The investor initially conducted an environmental assessment and submitted a project report to NEMA on 12<sup>th</sup> May, 2014. The report was reviewed and due to the risks associated with the proposed project, the investor was advised to upgrade the assessment of the EIA study which allows for an in-depth assessment and wider public consultations.

On submission of the study report, NEMA organized a public hearing to discuss the assessment. Public hearing of the EIA process is where all stakeholders and owners of the project impact decide on the way forward concerning the proposed project. The public hearing of the establishment of Ganesh Eco Solutions was well attended with the area Member of Parliament (MP), Hon. John Karanja Kiagi, area Member of County Assembly (MCA), Hon. Samuel Waithuku and the Director of Environment, Nakuru County in attendance.

The members present resolved that NEMA should license the factory. The factory was therefore then licensed on 27<sup>th</sup> May, 2014 with clear conditions aimed at safeguarding the workers, the environment and the general public.

The third question from the Senator is whether, in view of the health hazards posed by similar factories elsewhere in the country, a new factory should be allowed to commence operations. Recycling helps to reduce the amount of waste in the environment and the risks associated with it. In the absence of recycling factories, items that have reached their end of life such as old car batteries, old computers and other recyclable waste will be left to litter the environment or be disposed of in dumpsites. This would pose a bigger threat to human beings and the environment since their contents will pollute ground water, surface water, air and the soil.

Mr. Temporary Speaker, Sir, it is in order to license new factories to recycle hazardous waste as long as they adhere to the set operation procedures and implementation of the proposed mitigation measures to minimize adverse effects on the environment and the general public or risk closure if the conditions imposed are violated. For instance, the company was issued with a closure notice on 4<sup>th</sup> May, 2015 due to non-compliance with all license conditions and standard operating procedures of all the high risk facilities of this nature.

**Sen. Njoroge:** Mr. Speaker, Sir, as much as we would like to encourage investors in Naivasha but as guided by the Committee and NEMA, I am of the view that they did

the right thing to close the factory due to the fact that the the regulations were not followed.

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

If you are not ready, let us have Sen. Khaniri.

**Sen. Sang:** Mr. Speaker, Sir, I am ready.

**The Speaker** (Hon. Ethuro): Just relax.

**Sen. Khaniri:** Mr. Speaker, Sir, sometimes back, about two and half months ago, I requested for two Statements. One was from the Committee---

*(Sen. Obure spoke off record)*

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

BOUNDARY CONFLICT BETWEEN RESIDENTS OF VIHIGA  
AND KISUMU COUNTIES IN MASENO

**Sen. Khaniri:** Mr. Speaker, Sir, one of the Statements I sought was from the Committee on Legal Affairs and Human Rights with regard Maseno boundary where there was simmering tension. That is about two and half or three months ago. No statement was brought. The situation has since escalated as you have read in the media. My people are still waiting for this Statement that we asked for from the Committee on Legal Affairs and Human Rights.

STATUS OF STRATEGIC GRAIN RESERVES

The second Statement I sought was from the Committee on Agriculture, Livestock and Fisheries. This was to do with the issue of National Cereals and Produce Board (NCPB) and the Strategic Grain Reserves. The Statement was scheduled to be delivered last week but the Chairperson told me that he talked to you so that the Statement could be delivered this week. We are coming to the end of this sitting and I am getting worried that we may close before we get these Statements. I need your guidance on this.

**The Speaker** (Hon. Ethuro): Vice-Chair, Sen. Sang, proceed on the first one.

**Sen. Sang:** Mr. Speaker, Sir, we have not received any response from the Attorney General. I am taking up the matter and request that I give some progress on the same tomorrow.

**The Speaker** (Hon. Ethuro): Is the Chairperson, Committee on Agriculture not here? Is any Member of the Committee present?

**Sen. Khaniri:** Mr. Speaker, Sir, as pertains to the Statement from the Committee on Agriculture, I know that it is ready. I have a copy and know that the Chairman was ready to deliver it last week. So, I would request that you reschedule it to come tomorrow.

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With regard to the other Statement about Maseno, I think that the Committee is not taking its work seriously. Three months down the road, the Vice-Chair comes to tell us that they have not received any response from the Attorney General, yet he knows that there is recourse to take. Why did they not explore all the avenues to get this Statement from the Attorney General? Are they really serious about their work?

**Sen. Sang:** Mr. Speaker, Sir, indeed, on behalf of the Chair and the Committee, we are serious. But I know that the practice in this House has been to invoke some of those punitive approaches, as a last resort. I know that this is not the only Statement pending from the Attorney General's Office. I made a commitment yesterday that we were going to explore some of those avenues of obtaining the Statement. I request that the Senator bears with us even though he has been patient for a whole three months. Let me give the commitment that we should be able to give some progress over the same tomorrow.

**The Speaker** (Hon. Ethuro): It is so ordered. The same applies to the Statement from the Committee on Agriculture. That Statement should be here tomorrow afternoon.

Sen. Sang, do you have another Statement?

#### PLANS TO OPEN MORE CONSULATES IN USA TO SERVE AS POLLING CENTRES

**Sen. Sang:** Mr. Speaker, Sir, I have a Statement relating to the proposed new consulates in the United States of America (USA) and their relation with polling stations. This Statement was sought by the Senate Minority Leader, Sen. Wetangula. Yesterday, I indicated to this House that I will use all means including my seniority status in the Jubilee side of the House. Sen. Orenge seemed not to believe me, but I want to make it clear that today, I have the Statement, but the Senate Minority Leader is not in the House. So, I seek your guidance whether I can deliver the Statement without the Senate Minority Leader.

**Sen. Bule:** On a point of order, Mr. Speaker, Sir. Sen. Sang says that the Senate Minority Leader is not in the House and I can see his able deputy. I think he has to give the opportunity to the Deputy Minority of Leader. Could he withdraw his remarks?

**The Speaker** (Hon. Ethuro): Order, Sen. Bule! You are completely out of order. The Statement was sought by the Senator for Bungoma not in his official capacity as the Senate Minority Leader. Of course, we may decide to proceed, but so far our practice has been that we give the opportunity when the Member is present. That is what we will do. I think the Chair has been kind enough to ensure that the Member is present. So, he is ready for further interrogation. That is my direction.

What is it, Sen. Sang?

**Sen. Sang:** On a point of order, Mr. Speaker, Sir. Would you be kind enough to allow Sen. Orenge to appreciate my seniority in the Jubilee Coalition, since he doubted it yesterday, now that I have delivered the Statement courtesy of that status?

**Sen. Okong'o:** On a point of order, Mr. Speaker, Sir. I wondering under which provision of our Standing Orders the purported senior member of the Jubilee Coalition rose to ask Sen. Orengo to compliment him.

**The Speaker** (Hon. Ethuro): I will respond to you after I have heard from Sen. Orengo.

**Sen. Orengo:** Mr. Speaker, Sir, the young Senator for Nandi has really tried. He has got a bright future.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Sen. Okong'o, I thought that you were in the House yesterday. When Sen. Sang failed to deliver the Statement, he was asked by Sen. Orengo whether some of his acquired status does not seem to help in the delivery of some of his assignments. So, it is as a result of that, that he just wanted Sen. Orengo to confirm that, indeed, what he had ascribed to him actually works, which I think has been confirmed. Sen. Orengo has even alluded that the future is even brighter.

Let us proceed. Sen. Elachi.

#### STATUS AND PERFORMANCE OF THE LEATHER INDUSTRY IN KENYA

**Sen. Elachi:** Mr. Speaker, Sir, I rise to seek a Statement from the Chairperson of the Standing Committee on Finance, Commerce and Budget regarding the Status and performance of the leather industry, which the Government in 2013 identified as a priority for development.

In the Statement, the Chairperson should:-

1. Explain why the country still imports over 90 per cent of its footwear requirements at a great cost in terms of foreign and employment creation.

State whether the policy in place to control dumping of footwear in the country kills local production.

2. Explain the specific measures the Government has put in place to ensure that the industry regains its glory and contributes to the economy, including creating more employment opportunities.

3. Explain what the Government is doing to ensure that local manufacturing is empowered to fully utilize the available raw hides and skins for the benefit of the country.

**The Speaker** (Hon. Ethuro): The Chairperson of the Committee on Finance, Budget and Commerce.

Please, proceed.

**Sen. Billow:** Thank you, Mr. Speaker, Sir. This is a very important area. I agree with her on the issue of the leather industry. I think that we will need a bit of time because we want to get information. There is a lot in that industry which is going on now.

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Should we go on recess, we can deal with it in the first week after we come back from recess.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): So ordered.

Order, Senators. I hope that you have received a copy of the Supplementary Order Paper.

What is it, Sen. Obure?

**Sen. Obure:** Mr. Speaker, Sir, I see that we are moving away from the Statement Hour but, (d) under Statements on the Order Paper today---

**The Speaker** (Hon. Ethuro): Order, Senator! I think I see where you are going. Two of the Bills that we forwarded to the National Assembly were passed by the other House together with all our amendments. However, some amendments were rejected on one Bill. We need to dispose of that particular matter because it has a constitutional deadline of today. I am sure that you will appreciate that constitutional deadlines are paramount.

Thank you.

The Supplementary Order Paper is being circulated. As you peruse it, let me allow one Statement.

What is it, Sen. Dullo?

**Sen. Adan:** Mr. Speaker, Sir, I have a Statement for (c) under the Statements. Can you allow me to issue it?

*(Several Senators withdrew from the Chamber)*

**The Speaker** (Hon. Ethuro): Order, Senators. I encourage you to stay because you are needed in the House this afternoon because of the business before us.

You may proceed, Sen. Dullo.

FORTHCOMING STATE VISIT BY THE PRESIDENT  
OF THE UNITED STATES, MR. BARACK OBAMA

**Sen. Adan:** Thank you, Mr. Speaker, Sir. This is a Statement on the visit by His Excellency Barack Obama, the President of the United States of America (USA). Sen. (Dr.) Khalwale, pursuant to Standing Order No. 45(2) (c) requested for a Statement from the Senate Majority Leader on 7<sup>th</sup> May, 2015 regarding the forthcoming visit to Kenya by His Excellency President Barack Obama.

The Chairperson of the Committee on National Security and Foreign Relations was requested to state what official function President Obama intends to perform during the visit. President Obama will be attending the Global Entrepreneurship Summit which was launched by him in the USA in 2009. The first summit was held in Washington DC in 2010 and has since been held in Istanbul in 2011, Dubai in 2012, Kuala Lumpur in 2013, Marrakech in 2014 and in it will be held in Nairobi, Kenya, in 2015. As is ordinarily the practice with presidential visit, it is expected that President Obama will

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hold a bilateral meeting with His Excellency the President of the Republic of Kenya on various areas of interest including trade and investment, security, energy among others.

Mr. Speaker, Sir, secondly, on how the Government intends to use the visit; first, it will be to improve the trade between USA and Kenya. The Global Entrepreneurship Summit is a pre-eminent annual gathering that provides emerging entrepreneurs with exceptional networking, insight and investment opportunities. It is one of the most powerful global platforms for connecting emerging entrepreneurs with leaders from business, international organizations and governments. It is expected that through meetings with high level official networking sessions, along with strategic workshops, Kenyan upcoming entrepreneurs will accelerate and expand their engagement with the world's most promising entrepreneurs. Ultimately, Kenyan entrepreneurs will bring about social and economic change especially through innovative initiatives, forge new collaborations across countries and significantly increase the economic opportunities including trade.

Mr. Speaker, Sir, in the short run, the Government of Kenya will undertake pre-summit activities that will include branding and communication campaigns among others aimed at promoting, positioning and branding the country as an investment destination and an economic hub in this sub-region. These campaigns will be anchored on such key pillars like entrepreneurship, innovation and tourism. During the summit, the Government intends to leverage on these opportunities by organizing tours and excursions to key areas of interest like the national parks, export processing zones, investment corridors, museums, and theatres, among others, for the delegates to experience Kenyan hospitality and story, first hand.

Secondly, the Government also intends to address the escalating threat of terrorism in Kenya. This is an important global agenda that creates great interest to both the Kenya and the USA governments. The two governments share identical views on threats posed by terrorism and work closely to combat the scourge. This is manifested through the long standing engagement that includes capacity building, sharing of intelligence and advancing the agenda at the global fora.

Mr. Speaker, Sir, Kenya is keen to advance this engagement in combating the threat of terrorism with the USA Government and the international community at large. The community of nations accepts that terrorism is a global phenomenon that requires collective and concerted response. During the visit, therefore, Kenya will continue with the discussion on the issue among other bilateral matters of mutual interest.

Thirdly, the Senator asked whether President Obama will address Parliament. Allow me to say that the programme is at the very initial stage. The train will get clearer as we progress with the engagement. So far, there is no request from the USA Government for President Obama to address Parliament. However, if Parliament expresses interest, the matter could be followed up through the usual channels.

Finally, the Senator also wanted to know whether President Obama would visit Kogelo in Siaya County. The USA Government has not informed the Ministry whether he plans a visit to Kogelo.

Thank you, Mr. Speaker, Sir.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir. The arrival of the President of the USA in Nairobi will attract a lot of interests. I would like the Chairperson to clarify to the youthful entrepreneurs of Kenya what deliberate affirmative support they will give to the youth to ensure that they benefit from this important conference.

Secondly, in this historic visit, we might be very lucky to be the only Parliament probably in the next 50 years to be addressed when a visiting President of the USA is in the country. Could the Chairman confirm that the Government is going to write to the Government of the USA to request that he addresses this House and the National Assembly?

Mr. Speaker, Sir, thirdly, when the exercise of the beatification took place in Nyeri last week, the Government engaged in a lot of upgrade of Nyeri Town. Since the programme of the President of the USA can change very abruptly, is the Government planning to start upgrading Kisumu City and Kogelo in the same measure that they did to Nyeri, so that should the President come, the visitors will also find the place just a copyright to Nyeri?

Mr. Speaker, Sir, could the Chair confirm whether the Government of Kenya is going to request the President to allow Kenya to borrow from the lessons that the United States of America (USA) learnt that necessitated them to move out of Iraq and Somalia so that Kenya can also pull out troops from Kismayu?

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale. That is like a whole new set of statements, but that is not for me to say but the Chair.

**Sen. Kagwe:** Mr. Speaker, Sir, I would also wish to congratulate the country for the visit by such an important personality, the leader of the so-called free world. Having said that, I want to clarify whether the Chair has considered telling this House what matters, indeed. The President of the USA may want to discuss with our President the possibility of heightened security support both in terms of hardware and software. As you are aware, the implementation of CCTV by Safaricom is becoming very effective but I believe with the support of the USA Government, companies such as Motorola will fast-track the connectivity of this nation in its totality in terms of CCTV and other security apparatus.

I also support that Kisumu and Kogelo be upgraded. I know that Kisumu itself is already looking very much like “London” but Kogelo is probably not looking like that. It would be nice to hear that Kogelo looks like Nyeri. Therefore, we support the notion to upgrade.

**Sen. Orengo:** On a point of order, Mr. Speaker, Sir. I know the distinguished Senator for Nyeri does not have difficulties with pronunciations. I would understand if a senator for Siaya would have called it “London” but coming from Nyeri would he have rather called it “Rondon”?

*(Laughter)*

**Sen. Kagwe:** Mr. Speaker, Sir, whether we call it “Rondon” or “London” the city is the same because a rose is a rose by any other name.

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**Sen. (Prof.) Anyang'-Nyong'o:** On a point of order, Mr. Speaker, Sir. Is it in order for the two Senators to confuse the correct name of my city which is actually called "United Kisumu"?

**Sen. Kagwe:** Mr. Speaker, Sir, you can now appreciate why I called it "London" because of the United Kingdom and the "United Kisumu". In a nutshell, it would be very nice to upgrade those places so that the image of our nation remains the same as that of Nyeri. We are happy that it be done.

We would also like to hear the Senator for Kisumu invite us to the Obama fete like I invited the Senators to Nyeri. We should see the good graces of the son of the "United Kisumu".

**Sen. Orenge:** Mr. Speaker, Sir, we appreciate the coming of President Obama to Kenya but as we all know, his tenure is coming to an end next year. Luckily, in that part of the world, people do not try to manufacture a third or fourth term like in this region. It would be very unfortunate, going by precedence that President Obama does not come to Kenya on an official state visit. I want a clarification whether the Government of Kenya has actually sought and given invitation for President Obama to come to Kenya on an official visit.

As you know, the USA has produced many presidents with Irish extraction going beyond J.F. Kennedy. One of the most memorable visits that he made was his visit to Ireland. There have been other presidents from that part of the world like Ronald Reagan and Clinton. It would have been more appropriate if we were told that the Government of Kenya has indeed taken steps to invite President Obama to come to Kenya on an official state visit so that the kind of things the Senator for Nyeri is talking about would then be possible. The way the programme is, it would appear that he may not even step in State House.

**Sen. Murkomen:** Mr. Speaker, Sir, I thank the Chair for the response but in further clarification, considering that this conference is on global entrepreneurship and considering that entrepreneurship and business is now majorly a function of county governments, Article 96 of the Constitution provides that we are the protectors and promoters of the interests of county governments, could the Chair confirm whether the Senate is involved in this conference in the context of committees being involved and which Ministry is organizing so that this House can also be involved in promoting and protecting the interest of various counties? To what extent are county governments being given tents to market their counties so that they can have an opportunity for global entrepreneurship?

Considering the position of the President of the USA, I agree with Sen. Orenge. I have always asked myself that; for a man who wrote many books about the dreams of his father, about hope and so on, what would make it difficult for him to organize himself and visit home at an appropriate time. Could the Government also consider extending dual citizenship to President Obama considering that under the new Constitution, he qualifies as a citizen of this Republic and of the USA?

**Sen. Abdirahman:** Mr. Speaker, Sir, towards the end of Senators' Statements especially saying that President Obama could address Parliament or we could ask for it, it

looks like an informal arrangement. Beyond that, I want to say that security is top of our agenda as a country today and I did not hear that very explicitly put from the Chair.

We bear the brunt of terrorists on behalf of the Horn of Africa region and even the world. It is true that the United States of America (USA) has been in Somalia and it is important for us as a country to know what global leaders want to do with regard to the fight on terrorism. Is this top on the agenda among the issues, besides broad bilateral relations? Is the Government keen on taking this as a priority during the forthcoming visit of the President of USA?

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, mine is on another matter and not that particular Statement.

**Sen. (Prof.) Anyang'-Nyong'o:** Thank you, Mr. Speaker Sir. My understanding is that the President of USA is coming to Kenya for a conference on entrepreneurship. The conference happens to be in Nairobi which also happens to be the homeland of his father. No clear statement is being made by the Government on this issue because as far as I understand it, while he is here, he will spare time to meet our President. That is the only information available. So, all these other proposals that are being made are completely flying in the face of the facts. If, indeed, Kenya wanted President Obama to come here for a much more extensive visit, it should not be prefaced on his visit for a purely international conference. I think we are missing the point.

He will go out of office next year, so we should then make a separate arrangement for his more extensive visit to this nation. However, trying to piggyback on an entrepreneurship conference in Nairobi, which is going to have the participation of many other leaders, is a little bit cheap on our part. We should be more serious. If we want a visit by the President of the most powerful nation on earth, then it should be properly arranged and not piggybacked on an international conference in Nairobi.

All these pleas that President Obama should visit here and there, to me, are completely misplaced. He has made it very clear that he is coming for a conference, he will accord the time to our President and they shall meet. Other people desiring to meet him will not do so.

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

**Sen. (Prof.) Anyang'-Nyong'o:** Order, where?

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, to you, Senator! Order, Sen. (Prof.) Anyang'-Nyong'o!

**Sen. (Prof.) Anyang'-Nyong'o:** Yes, Mr. Speaker, Sir. I had not finished.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, Senator! Ordinarily, I would have been harsh to you but I appreciate that sometimes professors get a bit confused especially after listening to you very keenly.

(Laughter)

It is not up to you to respond. The response will come from the Chairperson. Members have asked all those manner of issues. Your neighbour, Sen. Orenge, basically asked for a clarification whether it is a conference or an official visit. To dismiss everybody may be professorial but not for this House.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. In my entire life in Parliament, I have never heard a Member of Parliament (MP) challenge the Chair with the question: "Order, where?" This is a House of records, unless we clarify this matter, it can become our tradition that whenever you are called to order, you ask the Speaker: "Order, Where?" Could the Senator for Kisumu withdraw the words, "Order where?"

**Sen. Okong'o:** Mr. Speaker Sir, I thought you put it very clearly from where you are sitting and gave directions. I do not understand why Sen. (Dr.) Khalwale is coming back to what you have ruled on.

**The Speaker** (Hon. Ethuro): Order, Sen. Okong'o! What have I ruled on?

**Sen. Okong'o:** Mr. Speaker, Sir, you just mentioned clearly that you heard what the Senator for Kisumu mentioned. You said you would have issued some penalties had it not been that you understand that sometimes professors get confused. To that extent, I understood that you rested that case.

**Sen. Murungi:** Thank you, Mr. Speaker, Sir. I think I have a right to comment on this matter about the President of USA. As you know, President Obama was my classmate.

**The Speaker** (Hon. Ethuro): Order, Sen. Kiraitu! There is a point of order on the Floor. In any case, that particular matter had been concluded in terms of the interventions.

**Sen. Murungi:** Mr. Speaker, Sir, I had an important matter to raise on this issue.

**The Speaker** (Hon. Ethuro): Sen. Kiraitu, I have a screen before me and I know all the requests that had been put before me.

Hon. Senators, Sen. (Dr.) Khalwale has raised an important point which I was coming to. There were two issues that we were dealing with. One was just about whether Sen. (Prof.) Anyang'-Nyong'o was being relevant to the issues and the second was whether he defied or attempted to defy the Chair. That is a very serious matter. Sen. (Prof.) Anyang'-Nyong'o, you have been challenged. The Chair wants to hear from you.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker Sir, far be it for me to try and defy the most powerful Chair. Therefore, I apologise and withdraw that comment, which was actually made with a light touch.

**The Speaker** (Hon. Ethuro): For the benefit of the rest of the Senators, there is no variation on how you defy the Chair; whether on a serious note or on a light touch. The Chair is the Chair, You cannot defy the Chair. So, I accept your apologies, but be guided.

**Sen. Sang:** On a point of order, Mr. Speaker, Sir. Did you notice that Sen. (Prof.) Anyang'-Nyong'o, apologised and withdrew the same apology? The order has always been that you withdraw and, therefore, proceed to apologize. He actually apologised and

withdrew. It could mean that he withdrew the apologies. Can he clarify whether he withdrew the apologies or the statements?

*(Laughter)*

**The Speaker** (Hon. Ethuro): Sen. (Prof.) Anyang'-Nyong'o, how did you put it?

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I cannot question the Member. I think I apologised and withdrew. I withdrew what I had said. However, let me withdraw and apologise, if that makes matters much easier for the young Senator.

*(Laughter)*

**Sen. Orenge:** On a point of order, Mr. Speaker, Sir. I think the distinguished Senator for Kisumu has unconditionally apologised but I was a little worried when he initially said that he is withdrawing because of the “most powerful Chair.” I do not know whether he was withdrawing because the Chair is powerful or because he was out of order. I am concerned about this because next time I may be addressing the House and I may be intimidated on the basis that the Chair is the most powerful rather than obeying the rules of the House. May I get a clarification from the distinguished Senator?

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, power lies in the law. The distinguished lawyer and senior counsel knows that before the law, we must all kneel and obey. I was just emphasising the fact that because the law gives you the power to run this House, I will not, in any way, whatsoever make a statement that belittles that power.

**The Speaker** (Hon. Ethuro): Order, Senators. That is very clear. Sen. Orenge, I was wondering because there is nothing to intimidate. In fact, the more powerful the position is, the better for you.

*(Sen. Orenge spoke off record)*

**Sen. Orenge:** Mr. Speaker, Sir, there was once an Attorney-General called Kamere. He said that he was the most powerful person at his time in the House. Whereas other people had sleepless nights, he enjoyed his full sleep.

*(Laughter)*

Therefore, Mr. Speaker, Sir, after being described as the most powerful person, I was wondering whether you may end up like Joseph Kamere.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Let me bring that to an end. However, I would not mind engaging Sen. Orenge and Sen. (Prof.) Anyang'-Nyong'o in another forum on those kind of issues but not now.

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**Sen. Murungi:** On a point of order, Mr. Speaker, Sir. I just want to seek a clarification from you. Sen. (Prof.) Anyang'-Nyong'o has been very eloquent in his withdrawal and apology. Is it still valid to say that sometimes professors are confused?

*(Laughter)*

**The Speaker** (Hon. Ethuro): Yes, it is still valid. You know, sometimes, you make pronouncements on the basis of your rich history. I was wondering the basis on which Sen. Orenge was worried about my position being powerful when the real professor was not. If you did a bit of statistics, you must have been told about the quest of a confused professor. So, it was in that context.

Let us proceed.

**Hon. Senators:** Point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Order, order, Members. We must make progress. Look at your Supplementary Order Paper, we have a matter; that is Motion No.8.

*(Sen. Adan spoke off record)*

I am coming to that. I am also deferring your response to tomorrow. In any case, I suspect that you might need more time in order to deal with issues raised by Members more substantially. So, I will defer your response to tomorrow.

Senators, I know that we have a lot of issues. We have the numbers and the matter to be disposed. Let us dispose it.

We will move to Order No.8

## MOTION

### APPROVAL OF MEDIATION COMMITTEE REPORT ON THE PUBLIC AUDIT BILL (NATIONAL ASSEMBLY BILL NO. 38 OF 2014)

**Sen. Billow:** Mr. Speaker, Sir, I beg to move:-

THAT, this House approves the Report of the Mediation Committee on the Public Audit Bill (National Assembly Bill No. 38 of 2014) pursuant to Standing Order No.155 which was laid on the Table of the House earlier today, Wednesday, 27<sup>th</sup> May, 2015.

Mr. Speaker, Sir, the Mediation Committee on the Public Audit Bill was constituted yesterday by you, pursuant to Article 113 of the Constitution and our Standing Order No. 154. Members of the Committee from the Senate included:-

1. Sen. Billow; .
2. Sen. Sang'; and,
3. Sen. Mutula Kilonzo Jnr.

From the National Assembly, Members of the Committee were:-

1. Hon. Benjamin Langat;

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2. Hon. Johnson Sakaja; and,
3. Hon. Makali Mulu.

Mr. Speaker, Sir, we had a meeting this morning to look at issues that have been raised by Members. The National Assembly raised objections particularly to clauses No.5, 11, 19, 24, 32 and 39. That was on the Bill that was presented to the National Assembly.

Mr. Speaker, Sir, the Public Audit Bill was referred to the Senate on 26<sup>th</sup> May, 2015. We had made some amendments which I will go through briefly without taking a lot of time. I will look at the resolutions of the Mediation Committee. I want Members – if they have copies of the Report – to go to page 7 of the Report so that we are on the same page. I will get a copy of the Bill.

*(Sen. Billow picked a copy of the Bill from the Clerk)*

On page 7, we have the resolutions. Clause 5 is one of the clauses which Members of the National Assembly wanted an amendment on. The most important thing which they wanted amended is there. The next page shows that the Auditor-General should hold a degree in finance, accounting or economics from a recognised university. In our amendment, we had included a post-graduate degree.

Mr. Speaker, Sir, we looked at the provisions of the Constitution which basically require that a person should have adequate knowledge of the respective area. We looked at similar constitutional office holders and there is no actual provision for a Masters degree. That provision can be put in whenever recruitment is being done depending on the basis of the application. Therefore, we thought that somebody might have a degree in finance and accounting but have extensive experience better than somebody with a Masters degree. Therefore, we agreed with that provision; to retain a degree in finance as per the Bill.

Mr. Speaker, Sir, on Clause 11(5) on page 8, Members from the National Assembly raised concerns regarding the recommendation we had made. Clause 11(5) of the original Bill reads as follows:-

“The President shall, within fourteen days of the expiry of the period prescribed under subsection (2), constitute a selection panel comprising one representative from –

- a. the Office of the President;
  - b. the Ministry for the time being responsible for matters relating to finance;
  - c. the Office of the Attorney-General;
  - d. the Ministry for the time being responsible for matters relating to the public service;
  - e. the Institute of Certified Public Accountants of Kenya;
  - f. the Association of Professional Societies of East Africa; and,
  - g. the Law Society of Kenya.”
- of them as their chairperson.

The Members of the National Assembly suggested that instead of asking the members to select a chairman, would it not be more appropriate for the President, when he is appointing the members to also appoint the chairman rather than leave that to the members. The reason is that when you look at the Constitution, it provides that the President shall nominate a person to the office and then the person is approved by the National Assembly. We thought that that makes sense. If the Constitution empowers the President to nominate, then there is no difficulty in the President appointing a chairman and six members, because that then is better. That is the only amendment we have made. It will now read as follows:-

“That the President shall within fourteen days of the expiry of the period prescribed under Section 2 constitute a selection panel comprising a chairperson and one representative”.

The rest of it remains the same. We removed the Office of the President. We said that there is no need to have someone from the Office of the President. We agreed that we should have the chairman and then the others from the Ministry of Finance, the Attorney-General’s office, the Public Service, ICSPAK, Association of Professional Societies of East Africa and the Law Society of Kenya.

Then the other amendment which we looked at is No.19 on page 10. This is on the Budget. In the Bill, we had suggested that when the Auditor-General prepares his budget, instead of sending it to Treasury and then Treasury will review it, and after his review it goes to Parliament, in Senate, we said that that review is actually interfering with the functional independence of the Auditor-General. We suggested to delete that review and agreed that he simply forwards it to the Treasury and Treasury then forwards as it is to Parliament. That is the practice worldwide; it is Parliament that determines the budget for the Auditor-General. It does not subject him to a process where Treasury or the Ministry of Finance will have to determine and he has to negotiate with them. They did not want that review.

Mr. Speaker, Sir, we discussed and on Clause 19 (2) we retained our amendment earlier of removing the word “review” but added that they can send it with their comments. Since the Treasury looks at sector ceilings and so forth, they can just forward with their comments but they do not touch the budget as submitted by Auditor-General. That is the way it should come to the National Assembly. It will read as follows:-

“The budget estimates for revenue and expenditure referred to shall be submitted to the Cabinet Secretary responsible for finance for submission to the National Assembly with the Cabinet Secretary’s comments”. The National Assembly shall then allocate adequate funds. We were satisfied with that mediated version.

Then Clause 24 on the Audit Advisory Board; the first amendment we made on that is on Item 1 (a) – There is established an incorporated board to be known as the Audit Advisory Board which shall comprise of (a) Auditor-General”.

We said that it should be the Auditor-General or a person nominated by him or her so that if he is not available, there must be someone from his office who should be able to attend that meeting. The rest of the members – the Attorney-General and so forth - are as listed

Mr. Speaker, Sir, when you come to sub-section 3, it reads:-

“The Auditor-General shall appoint a chairperson”

What we said is that he does not have to appoint because it does not look pretty. When the Auditor-General has an advisory board and he is the one to appoint the chairman for that advisory board, it does not look good. We agreed that they will appoint one from amongst themselves to be the chairman and the only thing we amended there is that the Auditor-General may co-opt two other members with the necessary expertise. This is as it was in the amendments that we had submitted. We did not have a problem with that and so we included the following:-

“The Members of the Advisory Board shall elect a chairperson from among themselves who shall not be the Auditor-General so that any of the other members can be elected as the Chair”. We found that satisfactory.

Then Clause 33 on the next page is on the work of the internal auditor. This is not much. We said that the final report of an internal auditor of a state organ may be copied to the Auditor-General. In our amendments, we changed it to “shall be copied to the Auditor-General”, so that every state organ or Ministry, any internal audit must be copied. That is what we had said, but what the Members of the National Assembly pointed out is that in Clause 2 we had actually said that the Auditor-General shall have unhindered access to all internal audit reports. Since that provision is there, we felt that it does not have to be compulsory that every organ shall send internal audit reports. We said that “may be copied to” is adequate and he will have access to any organ if he so wishes.

On Clause 39 – Auditing of National Security Organs, we had made some amendments. We deleted 39 (1) which reads as follows:-

“In auditing national security organs, the Auditor-General or his or her representatives shall hold an inception meeting at the highest level to agree on areas which may touch on national security and consequently determine the scope of the audit coverage”.

We thought that this last sentence would be limiting the scope of the audit and this interferes with the functional independence of the Auditor-General. So, we said that this is not acceptable and we had deleted the whole clause. Now, when the Members of the National Assembly raised a concern on that, we agreed on the following which to us was very satisfactory; that in auditing national security organs, the Auditor-General and his or her representatives shall hold an inception meeting at the highest level pursuant to Section 30(1) (b) which talks about how the auditor prepares himself for specific audits. It is applicable to all of them.

The amendment that we brought was by deleting the words “determining the scope of audit coverage” and instead we said insert the words “determine the appropriate audit approach that shall ensure confidentiality of information” in place thereof. The main concern here was to keep certain information on certain aspects of the audit confidential. So, they will just agree on that during the process of audit when they are discussing at the inception. We found that agreeable. The second item; 39 (2) was retained the way we suggested.

We had deleted Clause 3 and they had said that they wanted us to retain it. This is about the vetting of the auditors. The argument is that the practice worldwide is that if

you are auditing security installations, you must be subjected to some form of vetting so that you will be a person who is reliable in terms of coming and you do not go around doing other things later. Our main concern when we rejected it was that in the original version, it was written in a way which we did not like. This is how it read:-

“All staff of the Auditor-General carrying out audit under this section shall undergo a vetting process to be carried out by the appropriate security agencies”.

We felt that that appropriate security agency could be construed to mean even that particular agency you are auditing, so that, for example, if you went to audit the KDF, they would want to vet you. It was on those grounds that we rejected it. However, we have now made it clearer.

We have agreed that all staff of the Auditor-General carrying out audit, under this Section, shall be vetted by the authorized Government vetting agency. From time to time either the Criminal Investigations Department (CID) or the National Intelligence Service (NIS) normally determine---

**An hon. Senator:** Which one is that?

**Sen. Billow:** It is No. 39, on page 12.

*(Loud consultations)*

Please, allow me to explain.

When you audit any security establishment, the practice in most countries is that the staff of the Auditor-General is vetted so that the people who go there are reliable and can be trusted to carry out those audits because you are dealing with audits that involve ammunition, weapons and so on. We were worried with the way it was worded earlier that the wording could be construed to mean that the vetting will be done by that particular security agency that is being audited, so that if you went to audit the police, then the police would vet them or if you went to audit the Kenya Defence Forces. That is the way the wording was. We changed it and put in new wording which means that vetting will only be done by the authorized vetting agency so that when---

*(Loud consultations)*

Order, Chairman. I think I am being---

**The Speaker** (Hon. Ethuro): Order, Members. You are the one responding. As long issues do not come through the Speaker, ignore them.

**Sen. Billow:** Mr. Speaker, Sir, from time to time, the Government appoints a particular security agency to vet. Most of the time, to the best of my knowledge, it is the NIS that does vetting but from time to time. I think that there is that kind of arrangement and that authorized vetting agency will be the one doing it. It should not be the particular one that you are auditing. In that case, it is acceptable to us.

Mr. Speaker, Sir, those are the amendments. Both Mediation Committees have agreed on them. There are no fundamental changes. All the other amendments that we had made had been agreed upon by the National Assembly.

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Thank you.

**The Speaker** (Hon. Ethuro): Order, Senator! This is a Motion.

**Sen. Billow:** I am sorry, Mr. Speaker, Sir. I beg to move the Motion and it will be seconded by the Senator for Makueni who is a Member of the Mediation Committee and also a Member of the Committee.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I rise to second although I did not attend the meeting principally because there was a problem with the notice. I have read the report on the mediated version---

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

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. This Mediation Report has just been given to us and I have been going through it. I have just noticed that it is not even signed. Are we in order to discuss a report that is not signed by the Chairman and the Vice Chairman? The copy that has been circulated to us is not signed.

**The Speaker** (Hon. Ethuro): Sen. Khaniri, please, check page 4.

Proceed, Sen. Mutula Kilonzo Jnr.

What is it, Sen. Okong'o?

**Sen. Okong'o:** On a point of order Mr. Speaker, Sir. I want to be guided whether it is in order for a Member who has not appended his signature and was not in the meeting of the said Committee to second this Motion?

**The Speaker** (Hon. Ethuro): Sen. Okong'o, at that rate, you will also disqualify yourself from contributing to the Motion.

*(Laughter)*

It is perfectly in order for any Member to second. What is it, Sen. Muthama?

**Sen. Muthama:** On a point of order, Mr. Speaker, Sir. He just stood on a point of order and you overruled him. I am not challenging the Chair but he did not make any contribution.

**The Speaker** (Hon. Ethuro): Sen. Muthama, what did you say?

*(Laughter)*

**Sen. Muthama:** Mr. Speaker, Sir, I said that Sen. Okong'o just stood on a point of order and asked whether it is in order for a person who did not append his signature, although he was a Committee Member, to second it. I am just making his statement clear.

**The Speaker** (Hon. Ethuro): What was my response?

**Sen. Muthama:** Mr. Speaker, Sir, you said that he may not even have the chance to contribute on the same report.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I am impressed by Sen. Muthama's recollection. It is a good answer. I want to emphasize the value of having the Senate and the National Assembly agree on matters of legislation. Instead of throwing tantrums as if we are quarrelling over something, we have a version which we have debated and agreed on. In a day, we have had a report and there has been nobody who has come out of that room unscathed, lost their skin or teeth.

On Clause 5, I agree that although we were very ambitious in attempting to say that the Auditor-General should be a post-graduate degree holder, the Constitution does not give such a minimum or maximum. Therefore, that is in order.

Clause 19 is very important for the Senators because it appeared as if the Cabinet Secretary (CS) in charge of Treasury was being given a blank cheque to audit the proposed estimates of the Auditor-General which was in violation of Article 229 of the Constitution in terms of the independence of this office. The part where the Cabinet Secretary can give comments is a very good way of resolving the disputes that we have had with the National Assembly on the question of Clause 19.

Mr. Speaker, Sir, Clause 24 is very important and an interesting thought that the Auditor-General cannot sit in chairmanship of himself as an independent office. Therefore, in our amendment where we had proposed that he would be the Chairman, it appears untidy for him to chair an Audit Advisory Committee which ideally would be advising his office. In terms of Clause 24, we have come to an intelligent compromise which will guide the office of the Auditor-General. Similarly, on the appointment of the chairperson, it is in conformity with the Constitution in terms of appointment of the chairperson.

Clause 32 did not have much of a problem in terms of what we wanted done in terms of the reporting so that the word "shall" which is in Part II of Clause 32 has resolved the problems we have had.

Mr. Speaker, Sir, although I am seconding this Motion, Clause 39 will give me some element of sleepless nights because it still does not augur well in terms of how this will be done. Although this is a mediated version, I want to say on record that we have left this portion, particularly the one on vetting, a little untidy. It appears as if there is discretion, as if it is not clear and as if somebody else will have to make another determination because there should have been either a "for" or the authorized Government agency should have been mentioned specifically.

Mr. Speaker, Sir, on Clause 39 (1), although the Committee says that they will agree on the areas that may touch on the national audit, the only portion – and I want to say so, so that when the Senators are voting and contributing can note – is the one of agreement, because there is no provision in the event that there is no agreement. This then leaves the Auditor-General with a little problem; either he agrees or disagrees with them. On Clause 39, I beg that this House reconsiders that mediated version, because that portion still appears a little ambiguous.

For purposes of legislation, I would rather that we have a clearer section on what agreement would be arrived at and if there is a disagreement, how that disagreement

would be resolved. Further, if it is the National Intelligence Service, this Senate should state clearly that it will be the National Intelligence Service.

Mr. Speaker, Sir, I beg to second.

*(Question proposed)*

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I rise to support this Motion but I would just like to point out a small mistake somewhere, which is important. I hope that the Chair can consider it.

*(Sen. Billow consulted with Sen. Muthama)*

Can you look at page 11 of the Report? Under "24", it says:-

"There is established an unincorporated board to be known as the Audit Advisory Board which shall comprise of"

That is not good English. You either say "shall consist of" or "shall comprise." Can you correct that? Sen. Mutula Kilonzo Jnr., I am sure you can do that; the Chairman is too busy pursuing *Al Shabaab*.

**Sen. Adan:** On a point of order, Mr. Speaker, Sir. Is the Senator for Kisumu in order to say that the Chairman of the Committee on Finance, Commerce and Budget is busy pursuing *Al Shabaab*?

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I was just trying to wake up the Chair, because I was talking on an important issue and he was not paying attention.

*(Sen. Billow spoke off record)*

**The Speaker** (Hon. Ethuro): Order! Order! Let us hear from the Professor.

Sen. Billow, I have given you the Floor.

**Sen. Billow:** Mr. Speaker, Sir, this Professor has made it a habit. Last time he told me in this House: "The Senator who we do not know where he comes from." Now he is telling me: "I am busy pursuing *Al Shabaab*." You cannot joke about some things in this world. The *Al Shabaab* are people who are murdering thousands of Kenyans everyday. If he is a terrorist, he should not call other people terrorists. Is he in order? I want this matter to be taken seriously because this is the second time he has used derogatory words against me. I am consulting a Member, and I am allowed by the Standing Orders to do so. If we are terrorists, what am I doing in this House? Why do you sit here and waste my time, if I am a terrorist? He must withdraw and apologize. We cannot allow this.

**Sen. Muthama:** On a point of order, Mr. Speaker, Sir. The sentiments that were expressed by Sen. Anyang'-Nyong'o were also directed to me, because I was the one who was consulting with the Chair. But by saying "pursuing *Al Shabaab*," does it mean that I am a Member of *Al Shabaab* and we are making arrangements on how to pursue *Al Shabaab*? That is a very serious remark. *Al Shabaab* is feared even in someone's dreams when sleeping. How can it be possible that we are pursuing *Al Shabaab* here?

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**An. hon. Senator:** But pursuing them is a good thing.

**Sen. Muthama:** Mr. Speaker, Sir, I am not a security agent to plan how to arrest or pursue *Al Shabaab*. There are people who are assigned that business and I am not one of them.

**Sen. (Prof.) Lesan:** Mr. Speaker, Sir, this afternoon, you ruled that professors are strange people and sometimes, they behave strangely and say strange things. I think we should excuse Professor this afternoon because this is one such occasion where he has behaved a bit strangely and mentioned some strange things. We will give him a chance to apologise to the House.

**The Speaker** (Hon. Ethuro): Lastly, Sen. Machage. This is a fairly straightforward matter.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, it is just a few hours ago that Kenyans heard the news of an *Al Shabaab* attack in an area called Yumbis in this country. Indeed, every Kenyan and patriot that loves this country should be pursuing the *Al Shabaab*. At this time to be told that you are pursuing the *Al Shabaab* either in your thoughts, dreams or plans is noble. It is unfortunate that maybe this has been taken out of context, but you tell me that I am pursuing the *Al Shabaab*, and we do not fear them. We will fight.

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Speaker, Sir, I must apologize to my dear friend, Sen. Billow Kerrow. I quite do not remember when I said that we do not know where he comes from. But on this occasion, I was just trying to draw his attention to what I was saying. But if it upset him, I am sorry. I withdraw and apologize. I think that is the order. I hope that my Chairman will not take it too unkindly. I hope we can resume our friendship.

Mr. Speaker, Sir, I was just pointing out that small mistake which I hope can be corrected. But more than that, I really wanted to congratulate the Mediation Committee for a job very well done and a very clear Report that sets out issues that were debated and amended in this House. I think that the compromise that they have reached with the National Assembly is satisfactory to most of us. There is no more that we can add, but to thank them for the job that they have done.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Please, proceed Sen. Orengo.

Since this is a mediated version, please, proceed along the line of Sen. (Prof.) Anyang'-Nyong'o

**Sen. Orengo:** Thank you, Mr. Speaker, Sir. I also want to thank the Mediation Committee for a job well done, particularly from the point of view that they had very little time to consider this matter with the various provisions which were in contention. They came up with a very well considered report. I think this is also customary of Sen. Billow. He tends to handle a lot of his work with commitment and dedication.

Mr. Speaker, Sir, having said that, I am also a little bit uncomfortable with the mediated version in Clause 39. It says that all staff of the Auditor-General carrying out audit under this section shall be vetted by the authorized vetting agency. It is known the world over that a lot of mischief and fraud happens in the security sector. Looking at the whole problem about Anglo Leasing, a lot of those contracts were around security

procurements. My comfort is only on the fact that the words “authorized Government vetting agency”. I will presume that the word “authorized” will mean “authorized by law” and not by some Executive fiat or Government State organ sitting down and giving itself that authority.

This is also important from the point of view that reading the Constitution, in particular the provision that deals with the Office of the Auditor-General, it gives him power and authority to audit the accounts of the national Government and all funds and authorities of the national and county governments. If we are not very careful this particular provision can be used to compromise that independence of the Office of the Auditor-General. I hope that at some point in the future, either by making regulations---

*(Sen. Muthama consulted loudly)*

Mr. Speaker, Sir, you can see that when Sen. Muthama was on the other side, he was causing problems. Now when I am talking behind him, I do not know what he is pursuing now.

*(Laughter)*

I think that I know what he is pursuing this time. However, I hope that he will not end up with another letter being written to the Speaker.

Mr. Speaker, Sir, I hope that some regulations made under this Act may come out very clearly on this matter, so that the Office of the Auditor-General is not compromised through legislation which is subsidiary to the Constitution.

Mr. Speaker, Sir, I thank you.

**Sen. Muthama:** Thank you, Mr. Speaker, Sir. I listened to the Chairperson and looked at Clause 39(2) on page 12 and I remembered the debate that we had last time on this Bill. It was based more on the “hot thing;” the report of the National Security Department. Subsection 3 says that all the staff of the Auditor-General carrying out the audit under this section shall be vetted by the authorized government vetting agency. I read a sinister motive in this clause because what we expect to happen is that the same National Security Department will pick the team to audit that department from a well organized group which is friendly to them.

Indeed, the vetting Government agency will come from either Parliament or this department. To leave it the way it is, means that the vetting agency can be anybody who works with the Government, whether from the department itself or any other person working for the Government. I see some difficulties if we pass this Bill with subsection 3 remaining as it is.

Mr. Speaker, Sir, thank you.

**The Speaker** (Hon. Ethuro): Order, Senators! Seemingly, there are no more requests.

*(Sen. (Dr.) Machage consulted loudly)*

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Order, Sen. (Dr.) Machage! It is not the end of the world.

**The Speaker** (Hon. Ethuro): This is definitely a matter affecting counties. So, I ask that the Bell be rung for three minutes.

**Hon. Senators:** For five minutes

**The Speaker** (Hon. Ethuro): I thought that a majority of the Senators are in the neighbourhood. Why do we not ring the Bell for three minutes? If need be, we will add time.

*(The Division Bell was rung)*

## DIVISION

### ROLL CALL VOTING

*(Question, that this House approves the Report of the Mediation Committee on the Public Audit Bill (National Assembly Bill No.38 of 2015) pursuant to Standing Order No.155 laid on the Table of this House on Wednesday 27<sup>th</sup> May, 2015, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Elachi, Nairobi County; Sen. G.G. Kariuki, Laikipia County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kittony, Trans Nzoia County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wetangula, Bungoma County and Sen. (Dr.) Zani, Kwale County.

**Teller of the Ayes:** Sen. (Prof.) Lesan

**NOES:** Nil.

**Teller of the Noes:** Sen. Mohamud

**The Speaker** (Hon. Ethuro): Hon. Senators, I have the results of the Division:-

**AYES:** 30

**NOES:** Nil

**ABSENTIONS:** Nil

*(Question carried by 30 votes to 0)*

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*(Report of the Mediation Committee on the Public Audit Bill  
(National Assembly Bill No.38 of 2014) agreed to)*

**The Speaker** (Hon. Ethuro): You may now draw the Bar and open the door.

## MOTION

### APPROVAL OF MEDIATION COMMITTEE REPORT ON THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILL NO. 11 OF 2015)

**Sen. Kagwe:** Mr. Speaker Sir, I beg to move:-

THAT, this House approves the Report of the Mediation Committee on the Division of Revenue Bill (National Assembly Bill No.11 of 2015) pursuant to Standing Order No.155, laid on the Table of the House on Wednesday 27<sup>th</sup> May, 2015.

The Mediation Committee on the Division of Revenue Bill 2015 was constituted by the Speakers of the two Houses of Parliament on 28<sup>th</sup> April, 2015 pursuant to Articles 112 and 113 of the Constitution and the Standing Orders of the Senate and the National Assembly. The Committee comprised of the following Members:

1. Hon. Mutava Musyimi, MP
2. Hon. Mutahi Kagwe, Senator
3. Hon. Mary Emase, MP
4. Hon. Beatrice Elachi CBS, Senator
5. Hon. (Dr.) Boni Khalwale, Senator
6. Hon. Tom Joseph Kajwang', MP

The Mediation Committee derives its mandate from the provisions of Articles 112 and 113 of the Constitution and Standing Order No.149 of the National Assembly and Standing Order No.154 of the Senate which outlines the functions of the Committee as follows:

1. To consider Bills where the Houses do not agree to all or any of the amendments made by either House.
2. To consider Bills where either House rejects a Motion that a Bill which originated in the other House be read a Second or a Third Time.
3. To attempt to develop a version of the Bill that both Houses will pass.

Mr. Speaker, Sir, the Committee held a total of five sittings to deliberate on the Division of Revenue, 2015, in accordance with the Constitution and relevant provisions of Standing Orders of the Senate and the National Assembly. During the first sitting of the Committee, the Committee conducted an election of the Chairperson and the Vice-Chairperson where Hon. Mutava Musyimi, MP, and Sen. Mutahi Kagwe, MP, were

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elected as Chairman and Vice-Chairman, respectively. This was on the understanding that the Chairperson would be from the House that the Bill originates from as a tradition.

Mr. Speaker, Sir, the Committee commenced its work by holding a meeting with the Principal Secretary of the National Treasury who gave the Committee a brief summary of the Division of Revenue Bill, 2015, highlighting key issues requiring the Committee's consideration.

The Committee then proceeded by developing statements of issues concerned raised by the Senate that has necessitated the amendment of the Division of Revenue Bill, 2015, followed by an examination of concerns raised by the National Assembly that had led to the rejection of the Senate amendments.

The Committee had substantive discussions on the various options available to the Committee and the impact of any decision that it would take. Following lengthy consultations with each House putting forward its position on the Division of Revenue Bill, 2015, the Committee agreed to a version of the Bill for consideration by both Houses. A version of the agreed Bill is appended to this Report.

Mr. Speaker, Sir, I wish to state on behalf of the Committee, that I sincerely thank the Offices of the Speakers and the Clerks of the two Houses of Parliament for necessary support extended to it in execution of its mandate. The Chairperson and I, also thank Members of the Committee for their patience, sacrifice, endurance and commitment to their assigned responsibilities which took tight schedules to enable the Committee to complete its task.

Finally, Mr. Speaker, Sir, I also wish to reiterate my thanks to particularly two persons in this House; Sen. Elachi and Sen. (Dr.) Khalwale for their great effort and team spirit with which we negotiated this decision. It is my pleasant duty and privilege, on behalf of the Mediation Committee on the Division of Revenue Bill, 2015, to present and commend this Report, including the agreed version of the Bill to the House for the approval pursuant to Article 132(2) of the Constitution and Standing Order No.155(3) of the Senate Bill.

Mr. Speaker, Sir, in a nutshell and to save time, the position that we had taken originally was that there were three areas that we wanted revised. One of them has to do with emergency funds. The second one has to do with salaries that were recommended by the Salaries and Remuneration Commission (SRC). The final one was on Level 5 hospitals.

Mr. Speaker, Sir, the Mediation Committee, therefore, recommends that a new Bill be prepared incorporating the following changes:-

1. The deletion of our proposed allocation of Emergency Funds as it contravenes Section 110 of the Public Finance Management (PFM) Act, 2012, which provides that each Emergency Fund shall be set up by the county executive committee of finance with the approval of the respective county assembly.

- (1) Parliament to provide the requested allocation for –
  - (a) The Sharable Revenue of Kshs1.767 billion.
  - (b) Allocation of Level 5 hospitals to a tune of Kshs1.536 billion.

Mr. Speaker, Sir, the Committee also proposed that the two Houses of Parliament approve this Report of the Mediation Committee on the Division of Revenue Bill, 2015, and the appendix thereof.

Mr. Speaker, Sir, the impact of this agreement, therefore, is to raise the revenue allocated to counties by Kshs3.3 billion over and above the amount that the National Assembly had proposed.

Mr. Speaker, Sir, I wish to state from the outset that this process has been extremely difficult. I was in the previous mediation process and it was easier and more accommodating than this particular one. My two colleagues will agree with me that this took a lot of effort on our part and the whole team, including the staff of the two Houses. When we were negotiating this agreement, we recommended that, in future, the process of determining the Division of Revenue between the two levels of government must be different from the one that we have used this year.

Mr. Speaker, Sir, we should not wait until the published document is with us before we start negotiating. Rather we should engage the two Houses before publishing of estimates.

Mr. Speaker, Sir, to give opportunity to other Members, I wish to, once again, thank each and every person involved. Some of the people were involved behind the scenes to talk and lobby so that we get this process done.

Mr. Speaker, Sir, with those few remarks, I invite Sen. (Dr.) Khalwale to second the Motion.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I rise to second the Motion that the House approves of the Report of the Mediation Committee on the Division of Revenue Bill, 2015, pursuant to Standing Order No.155 laid on the Table of this House today, 27<sup>th</sup> May, 2015.

Mr. Speaker, Sir, as I second the Motion, allow me to thank the people of Ruaraka Constituency for having voted in a Kenyan; a patriotic Member of the National Assembly who stood because we could not agree during consensus building. However, when we went for the vote, he joined Kenyans in ensuring that more funds are made available to our counties.

*(Applause)*

Mr. Speaker, Sir, it is, therefore, my pleasure to tell Kenyans that when we voted, the win for more funds was by a whopping 67.7 per cent.

Mr. Speaker, Sir, I beg to second.

*(Applause)*

*(Question proposed)*

**Sen. Murkomen:** Mr. Speaker, Sir, I would like to use this moment to thank the Mediation Committee Members from this House led by Sen. Kagwe who was elected the

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Vice-Chairman, my friend the “bull fighter”, Senator for Kakamega County, Sen. (Dr.) Khalwale, Sen. Elachi and the whole mediation team for doing a very good job.

Mr. Speaker, Sir, the nation must be told in no uncertain terms that when we voted for the Constitution of Kenya, 2010, we created a Bicameral Legislature. By virtue of Article 6, there is emphasis on consultation and cooperation that runs through the Constitution. What we are running in this nation is what is called “negotiated democracy.”

Mr. Speaker, Sir, it will never be possible in the present and future or at any other moment in this country for one institution, one individual and one entity to dictate to another entity of governance. It must be a situation of give and take. We must sit down as a people to negotiate and agree as to how best we can fund national and county functions.

The role of Parliament as a whole has changed to be an institution that must sit down and interrogate proposals from the Executive and the people of Kenya and ensure that they make a decision for the better of this country. Therefore, I commend this Mediation Committee for coming up with a solution. I thank them from moving up from our initial proposal of Kshs7 billion to Kshs3.3 billion. It is also a show of leadership.

Mr. Speaker, Sir, in support of this team, I want to tell the nation that I believe our sister House; the National Assembly shall follow suit and all Bills and decisions of this country shall be based on leaders of this country, the two Chambers of Parliament sitting together and making decisions that are for the best interests of the country.

I would like to tell the people of Elgeyo-Marakwet that this year we are getting an extra amount of money that will make a difference in our county and which will still serve the people of Kenya. They must know that we, as a Senate, are doing everything possible to ensure that our counties get adequate funding for purposes of serving the people of Kenya and not the stomachs of those who are governing those resources at the county level.

I support.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir. I salute the three distinguished Senators that we sent to this mediation; Sen. Kagwe, Sen. Elachi and Sen. (Dr.) Khalwale. I can tell the House without any fear of contradiction that they stood the ground, negotiated without fear and they did not fear to negotiate. They did the very best for this House. True to the spirit of the Senate, they reported back to the parent Committee on Finance, Commerce and Budget the progress as they moved on.

Mr. Speaker, Sir, we stand here this afternoon to assure Kenyans that this Senate will live to its billing as the defender and protector of counties and their governments. This Senate will fight for resources to go to the counties so that we can have faster development.

More importantly, if you look at the Constitution, Article 216 and 217 and all Articles in relation to CRA, the CRA do not seal anything, they only make recommendations and those recommendations must come to the two Houses for approval. Our team went to negotiate and they lived to our advice that do not go and negotiate from a fixed position. They were able to agree. We want to urge the National Assembly that in a negotiated outcome, there are no winners and losers. Everybody is a winner. We want

to encourage them that this afternoon they should follow suit, given the decision that we are going to make this afternoon as the upper House; they should endorse, approve and overwhelmingly vote for the outcome of this negotiated process.

Mr. Speaker, Sir, as our democracy grows, we will come to understand and appreciate why the drafters of this Constitution put mediation so that one House cannot lord over the other and neither can one House run away dejected because the other House feels it is superior. At the end of the day when we go to mediation, it is 50 to 50 and resolutions of whichever House is by a vote. I salute the single Member from the “Lower” House who voted with our Members to give the majority vote to this negotiation. Since this is a negotiated and agreed report, I want to encourage that we quickly pass it, vote on it and move on to the other business of the day.

I support.

**Sen. Murungi:** Mr. Speaker, Sir, I also want to add my voice to our colleagues who have profusely thanked out Mediation Committee Members; Sen. Kagwe, Sen. Elachi and the “bull fighter”, for doing a superb job doing this Mediation Committee exercise.

It would be a great mistake if a mediation exercise is mistaken to be a theatre of conflict between the National Assembly and the Senate. Members of the National Assembly and Senators are all servants of the people. We are in these Houses to represent the people who are in the counties. The winner or the loser of a mediation exercise will be the people themselves. It will not be the Senate and not the National Assembly. Our team did a great job in arriving at this Solomonic decision today to give and let others take so that instead of the Kshs7 billion that we had proposed for the counties, we accommodated other interests and allowed the amount to be reduced to Kshs3 billion.

Mr. Speaker, Sir, we expect a similar attitude and gesture from our brothers in the National Assembly. This contest for manhood or who is greater than the other is completely misplaced.

*(Laughter)*

I want to urge our colleagues to support the recommendations of the Mediation Committee and urge those centralists; those people who do not believe in devolution, those people who do not want any resources to go to the counties to know that their days are numbered. The country has changed, the Constitution has changed and any person living in the past has no place in a Mediation Committee like this. This is a committee where reasonable people go and look at the issues, give and take and arrive at a reasonable decision.

I beg to support.

**Sen. Orenge:** On a point of order, Mr. Speaker, Sir. I really wanted to say a lot of things on this Report, but from my experience yesterday when we wanted to vote at an appropriate time and people left, since what we wanted has been achieved, would I be in order to request that the Mover be called upon to reply so that what has been achieved is not lost because of continuous debate?

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*(Question, that the Mover be called upon to reply put and agreed to)*

**Sen. Kagwe:** Mr. Speaker, Sir, I thank everybody and beg to move.  
*(Applause)*

**The Speaker (Hon. Ethuro):** This is a matter affecting counties. Therefore, the Division Bell will be rung for one minute.

*(The Division Bell was rung)*

Order, Senators! Time is up. Let us get the names of the tellers. Do we have them? Draw the Bar and close the door. Let us vote.

*(The Door was closed and Bar drawn)*

## DIVISION

### ROLL CALL VOTING

*(Question, that this House approves the Report of the Mediation Committee on the Division of Revenue Bill (National Assembly Bill No.11 of 2015) pursuant to Standing Order No.155 laid on the Table of the House on Wednesday, 27<sup>th</sup> May, 2015, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Elachi, Nairobi County; Sen. G.G. Kariuki, Laikipia County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kittony, Trans Nzoia County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County, Sen. Wetangula, Bungoma County and Sen. (Dr.) Zani, Kwale County.

**Teller of the Ayes:** Sen. (Prof.) Lesan

**NOES:** Nil.

**Teller of the Noes:** Sen. Sijeny

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**The Speaker** (Hon. Ethuro): Order, Senators! The results of the Division are as follows:-

**AYES:** 29

**NOES:** 0

**ABSTENTIONS:** 0

The Ayes have it.

*(Question carried by 29 votes to 0)*

*(Report of the Mediation Committee on the Division of Revenue Bill (National Assembly Bill No.11 of 2015) agreed to)*

COMMENDATION TO THE MEDIATION  
COMMITTEE ON THE DIVISION OF REVENUE BILL

**Sen. Muthama:** On a point of order, Mr. Speaker, Sir. We have voted and passed the mediation report on this Bill to beat the constitutional deadline. We also know that the National Assembly was recalled from recess to deal with the same Bill. However, the information coming now is that it has adjourned without voting on the same Bill. After we have voted on the mediation report on this Bill, what are the consequences? This Bill has a constitutional deadline.

**Sen. Billow:** Mr. Speaker, Sir, I also rise to congratulate the House for adopting the Report of the Mediation Committee on the Division of Revenue Bill. This is the most important Bill for the Senate because it is about sharing revenue between the two levels of Government. It is one of the core mandates of this House. We have made our point. This House must play a role in the determination of the revenue that goes to the counties.

As much as possible, the Executive, at every level, must appreciate the role of both Houses in the process of determining how much money goes to our counties. I think that opportunity to leave matters to the two Houses to determine would have been the best way. Today, we would not have actually come this far if that opportunity was not left to the two Houses to determine. This is because the Constitution is very clear that, that revenue must be shared out by Parliament. This is a great day and I want to thank the Mediation team for the good job that they have done.

Thank you, Mr. Speaker, Sir.

**Sen. Mositet:** Mr. Speaker, Sir, I also rise to congratulate the hon. Senators for passing the Motion. More so, I would like to congratulate the Mediation team which took their time and dedicated themselves to make sure that the process is achieved. They have come out with positive results.

Mr. Speaker, Sir, it must not escape our mind that after we were elected in 2013, we had to go to the Supreme Court over the Division of Revenue Bill of 2013/2014. For the Division of Revenue Bill for the Financial Year 2014/2015 we had to go for mediation. Now again, we are from a mediation. This shows that there is someone or some people somewhere who are not willing to see the Senate working the way it should.

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I think the time has come when the whole country needs to realise that, we, as Senators, have worked and done what we are supposed to do. We have shown the country that---

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. I really do not know what Motion Sen. Mositet is contributing to. We have just passed the Mediation Committee Report. We have a lot of business on the Order Paper today. There is no Motion on the Floor. What is the hon. Senator contributing to?

**The Speaker** (Hon. Ethuro): Order, Sen. Khaniri! You are right, but there is no harm in Senators appreciating the good work that they have done. To pass constitutional Bills and the Division of Revenue Bill in record time is an achievement. So, they are on points of order.

Conclude, Sen. Mositet.

**Sen. Mositet:** Thank you, Mr. Speaker, Sir, for protecting me. I just want to let my good friend, Sen. Khaniri, know that I am not doing this in bad faith.

This House should really be respected. It should now be clear to the “lower” House that whatever the Senate did was for the interest of this nation. I thank the Senators because they never looked at the Members of the National Assembly as their juniors when they were mediating. They made sure that they mediated from the point of view that they really wanted the country to have the best. That is why they even had to give in.

It is high time we told the Members of the National Assembly that the counties belong to them. They represent particular constituencies in counties. So, when we decide that some funds need to go to those counties, it is also for their benefit. Those funds are going to serve their constituents in those counties.

Mr. Speaker, Sir, with those remarks, I would like to congratulate our Chairman who spearheaded the mediation from our House, the entire team and the Speaker’s office.

Thank you.

**The Speaker** (Hon. Ethuro): Hon. Senators, I hope you know that you need to make very brief interventions.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, this was not easy for this Committee. We are the ones who passed the amendments and have climbed down from our position. Therefore, I want to thank the Committee, through the Chair. I know the troubles that they have gone through. In fact, Sen. Mutahi Kagwe almost gave up on this mediation. However, for the sake of this country and the 47 counties, they not only stood their ground, but also negotiated on principle. This is not to say that the portion of the Kshs4.4 billion which the National Assembly Mediation team did not agree to, should not have gone to counties. For the record, that on this day, everybody knows that the Senate of the Republic of Kenya will never be ignored on the Division of Revenue Bill.

Thank you, Mr. Speaker, Sir.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, as I congratulate the team for work well done, I want to comment on the timelines. This Bill was in the “lower” House and a Gazette supplement was actually produced on 28<sup>th</sup> December, 2014. If you look at the way the Bill has proceeded, we received it in April and by 22<sup>nd</sup> we were returning it back

to the “lower” House. My concern is that this Bill was just brought in the latter days for us to consider.

I think that is subjecting this House to unnecessary pressure, maybe to push this House to make mistakes when deliberating on its mandate. This has not only happened to this Bill, but the other Bill that was also negotiated and presented to this House yesterday, the negotiations had to be done overnight for this House to consider. This was unfair and I believe that you should write a letter to the “lower” House to raise this concern.

Thank you, Mr. Speaker, Sir.

**Sen. G.G. Kariuki:** Thank you, Mr. Speaker, Sir. Being a Member of the Committee on Finance, Commerce and Budget, we have gone through this Bill and it was not an easy thing to get where we got. There were a lot of negotiations. Whether we got the majority decision or not, I think we must thank the National Assembly as well for arriving at a certain conclusion. Whatever happened during the negotiation should never be made an issue here. This is because during negotiation, there are those who agree or disagree on a position. When an agreement is reached finally, we should go by the resolution.

Mr. Speaker, Sir, following what Sen. (Dr.) Machage has just said, I think we are put into unnecessary pressure all the time. Time and again, we are told to remain here and vote on a Bill that has a constitutional deadline. Otherwise, it may become null and void the following day. I think that you and the Clerk should help us to be doing our job within the right time.

Thank you very much.

**The Speaker** (Hon. Ethuro): Please, proceed, Sen. Elachi and then Sen. Orenge will contribute lastly.

**Sen. Elachi:** Thank you, Mr. Speaker, Sir. I also want to thank the House for giving us the opportunity to be in that team. However, it is time that we also reflected and asked ourselves what clear recommendations we, as a House, would wish to have as we move forward. It would be important for the Senate to be involved in the consultation stages of amending or drafting the Bill, so that we do not have such a scenario in the future.

Mr. Speaker, Sir, I also thank the Members of the Committee from the National Assembly, particularly the Member for Ruaraka Constituency, Hon. T. J. Kajwang who really supported us in all this. He stood as a Kenyan. You can imagine when you are with your fellow Members and decide to go against them. I realized that he is a patriotic Kenyan who does not look at the party, but the issues. I, therefore, thank the entire team, including the Chair who led us and realized that democracy is the way and accepted the results.

More importantly, instead of becoming protagonists for three to four sittings, we should go for mediation as Members from a bicameral Parliament who are willing to sit down and unlock what the Houses did not agree on. In doing so, we should not go to the negotiating table with fixed mindsets because we will find it so difficult to look at the broader issues affecting Kenyans.

The issue of “the national Government” and “county government” should not be overemphasized because all the money comes from the county governments. This is where we collect revenue for the national Government, which then allocates it for projects. I wish that as we move forward as Members; both in the National Assembly and the Senate, let us look at ourselves as Members of Parliament of one country.

Mr. Speaker, Sir, I beg to support and salute the Committee for making sure that we have passed the Bill.

Thank you.

**Sen. Orenge:** Thank you, Mr. Speaker, Sir. May I also appreciate the work of the Committee and the membership for the great work they have done, particularly having tools for negotiations. Sometimes, you acquire more strength by making compromises. This strategic compromise has shown that the Senate is not just there to cause problems or be a source of conflict of legislative kind, but to do things that will make the country move forward.

I wish to add that this particular Bill is an annual Bill. Every year, we will continue to have a Division of Revenue Bill. Whichever way I have read the Constitution, either in terms of the sections that deal with what the Senate can deal with or with Chapter 12 of the Constitution that deals with the finances, if there is anything that touches on the responsibility and the mandate of the Senate, it is this particular Bill. It is a Bill which the Senate must consider if it has to meet its objectives as stipulated under Article 96 of the Constitution.

I, therefore, hope that, like a great Kenyan called Tom Mboya said, “a country is as strong as its institutions.” The moment we begin to belittle or emasculate the role or the responsibility of any one institution, then the whole framework, architecture and structure cannot work. I hope that as we move forward, somebody will take a walk to Damascus and see the proverbial light and say that the Senate has a role to play in this and that its role is not just to vote. Otherwise, for people like Sen. G.G Kariuki who have been here many years, if you are just waiting to be instructed by a Member from the “lower” House that since they have decided and we must, therefore, vote in a certain way, then, probably he is in the wrong House. I would also certainly consider myself to be in the wrong House as well.

Mr. Speaker, Sir, having said that, we have sent a good signal that in whatever circumstances we are ready to not only protect the counties and their governments - and not the counties and their Governors - but to make sure that they get adequate resources. We are also very conscious of the fact that protecting the Governor is quite different from protecting the county government.

Mr. Speaker, Sir, I also want to appreciate your leadership so far in this respect. If you did not provide positive and effective leadership, even the compromises that we have made would have become impossible. One day as we continue pushing, somebody will realize that this is not only the ‘upper’ House, but ultimately it should be listened to. I am beginning to get a little bit disappointed because we have not seen the light of making sure that the Senate is actually the one that approves appointments which are made at a

national level. There would have been some rationale and good sense prevailing. However, that is beside the point.

Mr. Speaker, Sir, with those remarks; Sen. Kagwe, Sen. Elachi and Senator the “bull fighter” well done.

**The Speaker** (Hon. Ethuro): I had said that Sen. Orengo would be the last one, but I see two other Senators interested; Sen. (Dr.) Zani and Sen. Bule. So, they will make the last contributions.

Please, proceed Sen. (Dr.) Zani.

**Sen. (Dr.) Zani:** Thank you, Mr. Speaker, Sir. I also want to add my voice to this important process because this is one of the most important Bills in the Senate. Over time, the pulling and pushing for this Bill needs to come to an end. The proposal that Sen. Kagwe has given that the budget estimates be given in advance of the publication, will get us there. However, I think that we have also moved in the sense that we have had successful mediation processes compared to last year. We are moving more towards having a Mediation Committee between the two Houses and successfully completing that process. As we move on, we are improving over time and that is very critical.

When we requested for additional Kshs7.7 billion from the Senate to go to the counties, it was because we thought that it was going to be critical for various operations within the specific counties. However, we will get Kshs3.3 billion that will go into emergencies, salaries and to Level 5 hospitals. This gives hope for people within counties. It must be noted that our mandate as a Senate is to protect the interests of county governments. We requested for more funds to improve the lives of the people in those counties.

Mr. Speaker, Sir, over the time, money allocated in various budgets to support projects are not revisited. We should find a way of monitoring and finding out whether that money can go to the counties. For example, there are various national functions that have been devolved to the counties, but are still at the national level. In other words, the money is allocated to the national government; for example, library services have not been devolved.

**The Speaker** (Hon. Ethuro): Order! Hon. Senator, restrict yourself to the process.

**Sen. (Dr.) Zani:** Mr. Speaker, Sir, it is important that as we move forward, we still look for ways and means to allocate those funds.

Let me end by thanking the mediation process and those who were in the forefront, led by Sen. Kagwe from the Senate.

**Sen. Bule:** Mr. Speaker, Sir, I rise to add my voice and also congratulate the good job done by the Committee. The Mediation Committee has done a good job and saved us. Yesterday, I did not sleep. I was worried whether the Committee will agree or disagree. This was a serious matter. We prayed hard, but I am glad they have done their job accurately, efficiently and also saved us.

Mr. Speaker, Sir, I want to be on record on this issue. I want to tell the governors, wherever they are, that they have to know that we are working hard to ensure that our counties get their dues. That is the work of Senators. We are getting challenges here and there, especially from our dear brothers and sisters in the National Assembly.

I want to tell my brothers in the National Assembly that they are here because of the people in their constituencies. Therefore, they must protect and represent the people of Kenya who are in the counties. This money is not for the governors, but for Kenyans. The governors are just chief executive officers. If an individual is corrupt, then it is just one of them, but not everyone. Even Members of Parliament have been mentioned in corruption cases. Not all people are corrupt.

Mr. Speaker, Sir, I want to congratulate the Members of this Committee and the Senate at large. The Senators have always been fighting for the interest of Kenyans. We are here to protect, legislate and represent the people of Kenya in the counties.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Order, Members. That is a good ending coming from Sen. Bule on this particular matter. If you look at the Order Paper---

*(Sen. Wetangula spoke off record)*

Order, Sen. Wetangula! You do not go back and forth. These things move in one particular lineal manner. Once you start with the Supplementary Order Paper, you keep it.

Hon. Senators, business on Order Nos.10 and No.11 will be deferred to tomorrow. On Order No.12, we have a party sponsored Motion which takes precedence. It was deferred from last week to this particular day. Therefore, I wish to call out Order No.12.

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

*[The Temporary Speaker (Sen. (Dr.) Machage) took the Chair]*

## MOTION

### ESTABLISHMENT OF SELECT COMMITTEE TO LOOK INTO THE AFFAIRS OF KENYA AIRWAYS LIMITED

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Temporary Speaker, Sir, I beg to move:-  
 THAT, aware that the Government of Kenya has a 29.8% shareholding in Kenya Airways Limited thereby being the largest single shareholder in the company;  
 COGNIZANT of the fact that Kenya Airways Limited, the National Flag carrier, has been experiencing tremendous delays and cancellation of flights;  
 AWARE that each delay and/or cancellation has led to grave losses to the airline thereby worsening the debt burden of the corporation;  
 REALIZING that the airline is now in debt to the tune of Kshs18 billion;  
 FURTHER AWARE that the current business plan of the airline does not seem to take into full account necessary measures to turn the company around;  
 CONCERNED that the situation, if left unchecked, may lead to the collapse of the company and great loss to the nation, investors and the Kenyan taxpayers;

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NOW THEREFORE, the Senate resolves to establish a select committee to conduct an inquiry into the affairs of Kenya Airways Limited and its subsidiaries, and report to the Senate within three months, taking into account the following-

- (i) The leasing and buying arrangement of aircrafts since 1996;
- (ii) The role of off-shore companies in the investment affairs of the airline;
- (iii) The identity of the share holders of these off-shore companies and their relationship with the management of Kenya Airways Limited;
- (iv) The employment policies and practices of personnel, including engineers, pilots, cabin crew and ground personnel;
- (v) The reason for delayed and cancelled flights, their frequency and the magnitude of losses attendant therein; and
- (vi) Any other matter that may shed light on the financial and management crisis currently facing the airline;

AND FURTHER that the Members of the Select Committee are:-

1. Sen. (Prof.) Anyang' Nyong'o
2. Sen. Mutahi Kagwe
3. Sen. Hassan Omar
4. Sen. Daniel Karaba
5. Sen. (Dr.) Boni Khalwale
6. Sen. (Dr.) Agnes Zani
7. Sen. Lesuuda Naisula
8. Sen. Peter Mositet
9. Sen. (Prof.) Wilfred Lesan
10. Sen. Billow Kerrow
11. Sen. James Orengo

Mr. Temporary Speaker, Sir, I must be grateful to the Business and Rules Committee (BRC) for scheduling this Motion for debate today under your chairmanship. Since I gave notice of this Motion, I have received a lot of input from Kenyans who are aggrieved with what is going on in Kenya. In fact, many of them work with Kenya Airways, retired or ordinary Kenyans. They have sent me many e-mails and papers pointing out the concerns that Kenyans have about Kenya Airways.

One of the e-mails I received today – and I want to quote from it. It says:-

“Dear Sir, a note for concern we have, Emirates, Ethiopian and Singapore Airlines are bringing in 747 planes everyday and some even twice to airlift cargo from Kenya while Kenya Airways parks four 777 planes on the tarmac at Kenya Airways for the last several weeks or even months. Their pilots are on leave due to no work. Kenya Airways has three sets of in-flight crew who have been laid off as far as 25 years ago and the cases are still in court. Where is justice? Families have lost hope and suffered in different ways because of this. Leadership is about improving and nurturing and not intimidating society”

Mr. Temporary Speaker, Sir, I have many e-mails, but I quoted from that one because this is something that affects families; men and women with children in and out of school looking for work.

Hon. Members of this House may remember that in 1996 in the National Assembly, we voted solely to give the Kenyan Government support to write off Kshs6 billion worth of debt in Kenya Airways when it was privatized; it thereby attracted a partner, Royal Dutch Airlines (KLM) and, subsequently, became a member of the Sky Team in 2000. As Members of the National Assembly then and even now, we do not regret having written off that debt for Kenya Airways because for quite some time it was doing very well. It was, indeed, the pride of Africa.

However, as things stand now and as Fareed Zacharia, the well-known Economist who writes for the *Newsweek* said recently looking at the Great Britain; he observed that Great Britain had resigned as a world power. We are also looking at the possibility of Kenya Airways resigning as the pride of Africa because of what is happening to the company.

Most of these things have come around as a result of a series of unfortunate investment decisions that both the Chief Executive Officer (CEO) and the Board have made over the last 10 years. Mr. Naikuni started very well, but towards the end of his tenure as the CEO of Kenya Airways he tremendously deteriorated. One of the reasons he deteriorated as a manager is because he was too interested in his own business which was connected with the affairs of Kenya Airways. That conflict of interest quite often makes for dire consequences to a public operation or a company, when management sidetracks their interests to personal processes of accumulation instead of concentrating on using their talents to improve the business performance of such companies.

Mr. Speaker, Sir, let me point out some of the issues that have come up. One of them is that, not only were the investment decisions of the Board and the CEO wrong, but also the Board and the management have always insisted that what needs to be done at Kenya Airways to make it run profitably is to cut costs. Cutting cost is good if, indeed, it produces efficiency. However, if it produces inefficiency and lack of performance as we are seeing in Kenya Airways, then it is not good.

One of the things that have happened is that workers are laid off rather haphazardly and for reasons that do not add up to good business practice. Further, that outsourcing some of the activities of Kenya Airways has actually led to higher cost for the airline and more opportunities for rent-seeking for both management and some of the employees. For example, if you remember from the days of the East African Airways Corporation, the Corporation owned almost everything; the planes, buildings and movable equipment on the runway. Everything belonged to the Corporation. When Kenya Airways took over from the EAAC, this is what it did; it owned what it used at the airport and employed its employees which it paid.

A couple of years ago, the management of Kenya Airways decided to outsource almost everything. They could then sell equipment like a tractor to a private farm and then lease it back to Kenya Airways. They even went further to selling aircrafts to certain companies and then leasing them back to Kenya Airways. The end result is that Kenya Airways has been paying very dearly for leased aircrafts and equipment.

The Kenya Airways Pilots Association (KAPA) has, therefore, asked us – they have sent a document to me – that there needs to be a forensic audit. The audit should be

done by a team from outside the country who are experts in aviation and can be sourced from the International Federation of Airline and Pilots Association (IFAPA). It is the same team that did the same work for the South African Airways which was more or less faced by similar problems.

This is one of the reasons the Select Committee would be important. It will look at the validity of the statements that KAPA are requesting because they are making a very rationale request. They are saying: “Yes, we have a problem, but do not take our word for the truth. Do not rely entirely on our word. Try and do some due diligence – forensic audit – to find out for yourselves what exactly is ailing Kenya Airways.”

The other thing which has been brought to my notice and which is very important for the Select Committee to look at is that KAPA says that Kenya Airways has one of the lowest Cost Per Available Seat Kilometer (CASC). In other words, if you have a passenger boarding Kenya Airways going to Kisumu, Kenya Airways will incur less cost per passenger per kilometre going to Kisumu and back. This CASC that Kenya Airways has which is lower than all other airlines means that Kenya Airways should do very well in terms of profitability. Unfortunately although Kenya Airways has one of the lowest CASCs compared to KLM, South African Airways, Emirates, Ethiopian Airlines and so on, it is not making profit. Indeed, as I speak, the debt burden of Kenya Airways stands at something like Kshs18 billion.

While Kenya Airways management has been busy focusing all their energy to costs, they have lost sight of revenue growth. Kenya Airways has outsourced its cabin crew to another company whose identity we are not quite sure of. What Kenya Airways did is that it dismissed its cabin crew and then went to this private company which then recruited the cabin crew and then hired them out to Kenya Airways. So, Kenya Airways pays this private company for the cabin crew that it uses. This creates a conflict because some cabin crew did not go through this company. We have two types of cabin crew in Kenya Airways; those hired from this company called Career Directions Limited whose identity is rather dubious and then those who are not.

The pilots and cabin crew who are not hired through Career Directions Limited are really bothered about this because it has brought in very bad industrial relations among the Kenya Airways employees. This leads to something that has been happening frequently; the flight delays and frequent cancellation of flights. Kenya Airways blames this on the pilots and the pilots say: “No, we are ready to work, but quite honestly, if some of us have been dismissed or sent on leave and we are not enough, surely we cannot work more hours than we should.” Kenya Airways should not go out and hire pilots who are less experienced from elsewhere and pay them less money, when we have experienced pilots who should be flying the new Dreamliners.

Some time ago Kenya Airways ordered nine Dreamliners. We were all very happy because this meant that our national carrier was going to be in the company of Emirates and Qatar Airways. However, it is not enough to just buy; you have to see the cost effectiveness of what you are doing. Eventually after paying for three Dreamliners, they decided that they could not get the other six to join the three. This business deal is

rather suspicious because at the same time, they have the 777 model parking on the tarmac and not being used.

Any common sense about airlines aviation economy will tell you that a plane is as good as it is in the air. When it is on the tarmac, you are either paying for parking fees or losing a lot of money because it is not flying. If you had bought the plane at a loan that means that you are paying for a non-performing loan every day it is on the tarmac.

Mr. Temporary Speaker, Sir, having 777s planes lying on the tarmac for very many weeks and months and then ordering for Dreamliners, but receiving only three in the end, means that something is wrong with the decision making mechanism of the Kenya Airways Board. I have given you an example of 777 planes.

The 477-200ERs were supposed to have been sold in 2013. At that point in time, the four aircrafts were valued at Kshs320 million. The outstanding loan on the four aircrafts was Kshs150 million. If they had been sold then, Kenya Airways would have realised a clean Kshs170 million. However, there was pilferage. The Board sat four times, but never made decisions on this because of haggling and, of course behind it, issues of rent-seeking.

Finally, when a decision was recently made to sell the airlines, they were only worth Kshs240 million. The loan was still there to be paid. Therefore, Kenya Airways was to sell the planes at US\$54 million, below what would have been realized had the planes been sold earlier.

Mr. Temporary Speaker, Sir, if you look at the document, you will find that something must be wrong in the decision making mechanisms of the Board and the Chief Executive Officer (CEO). This needs to be looked into.

There are many unanswered questions in the conduct of the transitions on the 777s. Why would the management choose to sell airline assets below market prices? Secondly, why should the Board, over a 10-year period, not have made up its mind regarding what it would do about the aircrafts, especially when it knew that the plan of buying Dreamliners was there?

Mr. Temporary Speaker, Sir, this is not a question of substituting the Dreamliners for the 777, but understanding the mix of curves that you want. If you want to fly to Guangzhou, China, where Kenya Airways has been flying – now it has stopped – you are talking about a plane that will carry a lot of load because Kenyans going to China carry money and some baskets to go and buy goods. When they come back, they are heavily loaded. So, you need an aircraft that will lift many people to China and come back with a lot of luggage. So, you must make a decision about what kind of crafts you will fly between Kenya and Guangzhou, Beijing and so on.

The same is true to West Africa. West Africans come to Kenya on the way to South Africa and Dubai. They are basically using our airport – Jomo Kenyatta International Airport – as a hub. They use Kenya Airways as carrier, not just for themselves, but also for their goods. So, the decisions you make as to which aircrafts you will buy and which destinations to fly are very important.

Mr. Temporary Speaker, Sir, as I speak today, Kenya Airways has lost tremendously the West African route to Ethiopian Airlines and now RwandAir. Rwanda

is a very small nation; a member of the East African Community (EAC) which started an airline just recently. This one is catching up with us on the West African route. RwandAir, perhaps, flies more frequently to Nairobi from Kigali than Kenya Airways is doing.

Kenya Airways has given the excuse that it cut down on its frequent flights and certain destinations because of Ebola. However, I do not think Ebola attacks people who fly on Kenya Airways only. If that is the case, Ebola can also attack people flying in RwandAir and Ethiopian Airlines. How come that in the same period that we are blaming Ebola on fortunes of our airlines, other airlines are doing very well. In any case, people who come to Nairobi do not come to stay. They pass through Nairobi on transit to other destinations.

If you look at the data from the Immigration Department at the JKIA, you will find that very few people flying from Nigeria, Benin, Ghana and other countries are transiting through the JKIA. All you need to do is do what is done to us when you arrive at the JKIA; measure your temperature to find out whether it precludes you from having Ebola. If they test people and then allow them to transit, we will be okay. I do not think we shall suffer from Ebola that much. Therefore, some of the explanations given by the Kenya Airways about why it is going down are excuses.

Finally, Mr. Temporary Speaker, Sir, I want to speak about something which is extremely important. That is the need to have well-trained and reliable pilots. Kenya Airways has been doing very well before. We were called “the Pride of Africa” because we had well trained pilots, an aviation school and the JKIA. Indeed, JKIA has been servicing planes from other countries. In terms of engineers, pilots and cabin crew, this is not the time that Kenya Airways should be looking for pilots from elsewhere. This is not the time the Kenya Airways should be having tens and tens of its own pilots fighting it in the courts because they have been laid off for flimsy reasons.

Mr. Temporary Speaker, Sir, you will remember a pilot called Capt. Waweru. When we had an accident in Cote d’Ivoire, he became a hero because he performed heroic deeds at that point in time. I do not remember the details, but I remember that he was a hero.

From the documents I have gone through, Capt. Waweru was such an excellent pilot, an exemplary civil servant and an exemplary worker. As a senior pilot working with Kenya Airways, he started questioning certain practices by the management. This is because as pilots, they are not just interested in being paid, but taking part in the pride of Africa.

When Capt. Waweru started raising certain issues, the management started branding him as “psychologically unstable.” He has gone through many ordeals for a number of years trying to prove that he is not psychologically unstable and that he has no mental problems. Panels have been established by the Kenya Medical Practitioners and Dentists Board. Many organisations have examined Capt. Waweru. However, up to today, he does not fly planes simply because as a man of principle championing good governance and transparency, he locked horns with the management of the Kenya Airways.

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Mr. Temporary Speaker, Sir, in the same manner, 10 other pilots were retired prematurely. Their cases are also in court. The Kenya Airways management has got itself embroiled in too many court cases because of poor decisions of management and industrial relations with the people who work for it. I think we should not presume that these people are right, but there are just too many cases that I have seen of cabin crew, pilots and ground workers and so on, raising issues of industrial relations with Kenya Airways; this is a sign that something must be wrong.

If you remember Shakespeare in *Hamlet*, he said: “Something is rotten in the State of Denmark”. When you see things happening that you cannot explain, it is only scientifically wise to look into them. That is why I am requesting this House to establish this Committee to look into these affairs and help, not just the airlines, but Kenyans working for this airline for ages who are being victimized for being upright and upstanding in an organization that leaves a lot to be desired in terms of good governance, management, performance and productivity.

I do not want to go too far because I spoke last time. I beg to move the Motion and request my dear friend, Sen. Kagwe from Nyeri to second me.

**An hon. Senator:** Alias Nyeri tycoon!

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Kagwe is it proper to add alias the Nyeri tycoon?

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, I simply say, from the Senator’s mouth to God’s own ears.

Mr. Temporary Speaker, Sir, I wish to second this Motion and say that this is a Motion that is long overdue. The plight of Kenya Airways is something that is of concern, not only to Parliament, but to Kenyans as a whole. In the past, Kenya Airways has not only been the pride of Africa, but more so, the pride of Kenya. There is something synonymous with a country’s airline and the image of that country. That is why today when you think about British Airways; it symbolizes British efficiency, culture and values. Similarly, when you think about Singapore Airlines, the people of Singapore are known for efficiency, moving very fast from a third world to a first world country. Similarly, their airline moved from a small airline to one of the best airlines on earth today. In fact, it is one of the airlines which have been voted as one of the best on earth.

There are many other examples. When you think about Emirates Airlines which is an airline which was borne after Kenya Airways, if you look at its values and the beauty, you can see the difference between good management and fly-by-night management. Why is it that an airline just comes from the blues and overtakes Kenya Airways? There are others like Etihad which started operations just the other day and today *Airlineratintgs.com* has got Qantas Airlines, Emirates, Singapore, British Airways and Etihad as amongst the best in the world.

At what point did Kenya Airways become a basket case? Unless we can answer this question, then we will not be able to move forward. There is a tendency for us as a country to look at the situation Kenya Airways is in, write off some Kshs6 billion and it is business as usual. This is a big mistake. We should not forget that the Government is

not necessarily the majority shareholder, but the biggest shareholder of the airline. The Government should, therefore, take action to the tune of the amount of shareholding it has in the airline. That means that KLM and other shareholders are exposed to the tune of the Kshs18 billion that we own because the airline owes Kshs18 billion and is having serious cash flow problems.

Mr. Temporary Speaker, Sir, when nations go building fantastic airports like the one in Singapore, Schipol Airport or Dubai which is, perhaps the best, they usually have an airline to the airport's name. We are in the process of building, perhaps the best airport in Africa. Upgrading the one that we have; are we going to build an airport for Ethiopian Airlines, Emirates or Etihad and other airlines that are slowly taking away our passengers?

I recall in the Ninth Parliament when I was the Chairman of the Finance, Planning and Trade Committee of the National Assembly, I made a ruling that our Committee should not fly any other airline, except Kenya Airways in order to make sure that we support our airline and so that money stays at home. Today, as the Chairman of the Information, Communication and Technology Committee, I am afraid I cannot make a similar proposal to my Committee because I cannot tell when the airline will fly and when it will not fly because issues that are dealt with by the Committee cannot be exposed to such inefficiency.

I think the Mover of this Motion has done so at an appropriate time so that we can consider and investigate the ills that have befallen our dear airline. More importantly is to come with a bird's eye view and look from the inside and outside so that as independent observers and investigators, we can identify the problem, where it came from and what the solution may be, no matter how painful it may be. I would not want to pre-empt what we might recommend, but one of the problems we are suffering from as a nation is the inward way of looking at things where we think that national pride is equal to appointing individuals who have no business being in some of the positions we have given them.

Mr. Temporary Speaker, Sir, I am all for Kenyans taking all the local jobs, but I would want to remind this House that the Governor of the Bank of England is actually a Canadian. It is not that they cannot find a Briton to do it; on the contrary, they have looked for the most efficient person. If you look at the various coaches of the various teams across the world, no matter how much pride the nations that they come from have in them, nonetheless you look at the most efficient way of doing things.

Mr. Temporary Speaker, Sir, there is a sense in which Kenya Airways moved from a service oriented industry in a service oriented sector to a production oriented industry in a service oriented sector. There lies a big challenge because when you go on an airlines buying or leasing spree---. Forget what is happening inside the cabin, as we have experienced as Members who travel quite a bit in the country and outside. We have experienced this. For example, the "Sky team" does not travel on Kenya Airways. It travels in these small things because they--- never mind.

*(Laughter)*

It is important for us to appreciate some of the things that have been raised by the Mover, Sen. (Prof.) Anyang'-Nyong'o. The real cause of Kenya Airways' problems is management. You cannot escape from that one. Yes, there is a tourism downfall, Ebola and security threats, but the hallmark of good management is to appreciate when your organisation is faced by an environmental threat. In this case, "environmental threat" does not mean trees, water and so on. This is the circumstance within your environment that if not watched over carefully, can lead to the demise of your organisation.

Mr. Temporary Speaker, Sir, the situation today is that if we do not take any action, we are heading for the demise of Kenya Airways. When you have inventory such as planes and spare parts that you cannot dispose of instantly and you have debts to the tune of Kshs18 billion that you have to pay instantly, that situation is known as being insolvent. Basically, you should not be in business. The only way you are going to be back in business is where you dispose of the debt of Kshs18 billion. The question is: How and who will dispose of this Kshs18 billion? Where will it come from? This is the question that the Committee that has been proposed by the honourable Senator must respond to. Unless, we can answer that question, once again, we will be working and carrying out an exercise in futility.

The objectives must be: To find out, as well spelt out, what is the problem? What is the solution? Unless we can propose solutions to Kenyans then, we will just have gone for a visit to Kenya Airways and, perhaps a good flight then come back to the House to report on nothing.

Let us not under-estimate the task that this Committee has set forth for itself and the amount of work that will have to be put in by this Committee. When you are trying to decipher the kind of problems and issues that exist currently in Kenya Airways, then you will have to take a bit of time to do so; get experts as proposed by Sen. (Prof.) Anyang'-Nyong'o to advise us on the way forward.

More importantly, we must also ask ourselves where the buck will stop as far this particular circumstance is concerned. Who will take responsibility for this state of affairs? What will happen to that person or persons who will have to ultimately take responsibility for the state of affairs that our national carrier is in?

Mr. Temporary Speaker, Sir, when I look at the list, I see a set of individuals who are capable of carrying out this task. I am not talking about myself; that can be challenged at will. I am talking about the other 10 Members of the Committee as listed here. Even though we are not airline experts or necessarily investigators, we have been gifted with the ability to look at national issues and those that are specific to the corporate sector. We must come out with a good report on the way forward as far as Kenya Airways is concerned.

Finally, it is important for Parliament, as a whole and not just the Senate, and the Executive, to appreciate and follow what will be happening in this Committee. What it will be proposing, so that whatever action is taken at the Executive level will incorporate what is going to be the results of the investigation by the Senate Committee.

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

**The Temporary Speaker** (Sen. (Dr.) Machage): The Motion before us is really to establish a Select Committee to carry out a noble exercise. In my own opinion, it would have been wise to set this Committee rolling to do the business. As I propose this Question, search your souls whether, really, we need to subject this to long discussions or somebody needs to move under the Standing Orders that we vote and set this Committee rolling.

I will, therefore, propose the Question.

*(Question proposed)*

Sen. Orenge, what have you in mind?

**Sen. Orenge:** On a point of order, Mr. Temporary Speaker, Sir. Before proposing the question, you said that this is a matter in which we should vote and get the committee going. However, my view is that this is a matter that we need to justify to the public why this decision is being taken. For some people, when they see Kenya Airways, they think that everything is alright. The way the Motion has been moved; there is justification that the House, being a House of record, somebody going back to our records ten years down the line---

**The Temporary Speaker** (Sen. (Dr.) Machage): What is not in order?

**Sen. Orenge:** Mr. Temporary Speaker, Sir, what is not in order is that your directions may be seen to tamper with the freedom of expression.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order Senator! That was just an advice. Otherwise, somebody has to move a point of order to cut short the debate on the Motion. It was my advice that we need the Committee's role. If you so wish to continue discussing, that is all right with me.

Your point is noted. You can resume your seat.

**Sen. Orenge:** Mr. Temporary Speaker, Sir, it is very dangerous. It is like going to a court of law and the Judge tells you what your case is all about before you present it.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Orenge! You are moving to dangerous lines.

Please, proceed Sen. Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, before I make my contribution, I want to urge the Chair to exercise its discretion under Standing Order No.30(2) to give us some limited extension of time so that we can ventilate on this matter. In fact, if we knew, we would have moved a Motion earlier to debate this matter fully because we must lay a foundation as to why we want to look into issues of Kenya Airways.

**The Temporary Speaker** (Sen. (Dr.) Machage): Let me give my ruling on that.

I will not give additional time. We will continue tomorrow.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Temporary Speaker, Sir, I beg to support this Motion. I like the way the Motion is framed with the words; aware that, cognizant of, aware that, realizing that, further aware that, concerned that and now

therefore. Well done, Sen. (Prof.) Anyang'-Nyong'o. This is a chronology that leads us to a monumental job as a House.

Mr. Temporary Speaker, Sir, Kenya Airways is appropriately called "the Pride of Africa." You, Sen. (Prof.) Anyang'-Nyong'o and Sen. Orengo, can recall that in 1996, Parliament wrote off a debt of Kenya Airways of Kshs6 billion to facilitate the privatization – Sen. G.G Kariuki was also in the House at that time – that brought KLM on board. Thereafter, Kenya Airways phenomenally grew to the extent that at one point, it was voted ahead of South African Airline on this continent as airlines were tumbling in Nigeria. Nigeria now has no airline. West African airline, Air Afrique and Cameroon Airline that used to compete with Kenya Airways tumbled.

On the whole continent of Africa, we were left with only three airlines that you could talk about; Kenya Airways, Ethiopian Airline and South African Airline. Of course, in the Maghreb, we had the Egyptian Airline. Egypt Air that was nothing compared to Kenya Airways. Today, Kenya Airways is a pale shadow of itself. It has been bought to its knees. Kenya Airways is now limping and bleeding. It is these patriotic Kenyans sitting in this House that will unearth what has caused the airline to reach this level and to resurrect it before it dies off.

Mr. Temporary Speaker, Sir, the statistics given by Sen. (Prof.) Anyang'-Nyong'o, as he moved the Motion, and Sen. Kagwe as he seconded it, are absolutely true. Emirates, a much younger airline than Kenya Airways, as well other airlines like Etihad and Qatar airlines that started just the other day---. I am sure that you have travelled through Dubai. When you land there, you marvel at what the country in a desert has managed to do in the service industry. Our airport, JKIA, will phenomenally grow if we have a back up national airline.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order Sen. Wetangula.

I bring to your attention Standing Order No.100 which gives the Senate Minority Leader and the Majority Leader 60 minutes to make their presentations. You will, therefore, have 55 minutes on this Motion when it is brought to the Floor of the House.

### ADJOURNMENT

**The Temporary Speaker** (Sen. (Dr.) Machage): Hon. Senators, we have come to the end of today's sitting. Therefore, the Senate stands adjourned until tomorrow Thursday, 28<sup>th</sup> May, 2015, at 2.30 p.m.

The Senate rose at 6.30 p.m.