

PARLIAMENT OF KENYA**THE SENATE****THE HANSARD****Thursday, 25th July, 2013**

*The Senate met at the Kenyatta International
Conference Centre at 2.30 p.m.*

[The Deputy Speaker (Sen. Kembi-Gitura) in the Chair]

PRAYERS**QUORUM CALL AT COMMENCEMENT OF SITTING**

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, do we have a quorum?

Hon. Senators: Yes!

*(The Deputy Speaker (Sen. Kembi-Gitura)
consulted the Clerk-at-the-Table)*

The Deputy Speaker (Sen. Kembi-Gitura): Yes, we have a quorum, so we can go to the business of the day.

MESSAGE**REFERRAL OF THE MARRIAGE BILL
TO THE SENATE**

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I rise under Standing Order No.40(1), (2) and (4) regarding Messages. As you are aware, this Standing Order allows the Speaker to tell us what is happening in the other House. I have been approached by many couples from my county, including a Catholic Priest who are concerned about---

The Deputy Speaker (Sen. Kembi-Gitura): A Catholic Priest cannot be a couple!

Sen. (Dr.) Khalwale: That is including and amongst others. They are concerned about a Bill that appeared in the Lower House called the Marriage Bill. I would like you to confirm that there has been a communication from the Lower House to you in anticipation of the fact that the Bill will eventually find its way here. The concern of the people in the county is that in this House, we have a good mix of Senators; the elderly, the married, those who are not married, grand-parents and so on. These are the people who can rise and articulate this sensitive matter. They want assurance that this Bill will come to the Senate for discussion.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Khalwale and hon. Members, as you are aware, the Marriage Bill is going on in the National Assembly

and you know as well as I do because we have deliberated on this issue at the Senate level, that is not the only Bill going on there, but there are about eight or so Bills going on and have not been consented to by the Senate as required by Article 110 of the Constitution where the Speakers of both Houses have to agree on whether a Bill touches on matters to do with the county or not.

What I can say as I stand here before you, is that the Bill has not been referred to us yet and I am sure it forms one of the issues that we had raised as a question in the Supreme Court to determine whether or not the Speaker of the National Assembly has proceeded correctly in having these Bills debated in the National Assembly when they have not sat, him and the Speaker of the Senate, and agreed under Article 110 on whether or not they touch on counties. If they do, then they must also come to the Senate for debate after the National Assembly which is the originator of the Bills has had its say on them.

At the moment we need to be a little bit patient and realize that the Supreme Court's answer to our question on this and other issues is still pending and it is only after that shall I be able to give a comprehensive answer to the very important issue that Sen. (Dr.) Khalwale has raised this afternoon. I hope that satisfies you for the time being.

Sen. Wako: Mr. Deputy Speaker, Sir, I agree with your direction completely and I would add that when that time comes for you to give a comprehensive consideration to this matter, also take into account the fact that this Senate can also, in my view, debate and form an opinion on matters or Bills which do not necessarily concern the counties because the Senate as Parliament, under Article 94, is also the protector of the Constitution which also contains the Bill of Rights and other issues. So, there may be a Bill which may not necessarily concern the counties per se but which touches on other aspects of the Constitution. Therefore, we as Senate, have the right, if not to enact, but at least to pass a resolution on our viewpoint on that Bill.

I would like that to be taken into account when the time comes as you consider to give a comprehensive opinion on the matter.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Wako. The only assurance I can give you is that at the Senate level, we shall always act correctly and according to the law in dealing with Bills and all other matters that come before us. I have taken note of what you have said and I appreciate what you have said under Article 94 and we shall proceed accordingly.

Next Order!

PETITIONS

REVERSAL OF TRANSFER OF NURSES' PERSONNEL EMOLUMENT TO COUNTY GOVERNMENTS

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I have been approached by the registered nurses of the Republic of Kenya to present the following petition where they allege as follows:-

THAT they are citizens of the Republic of Kenya, they are duly registered as voters, they are tax-payers and they give nursing care and that they have authorized me to state the following:-

That I draw the attention of the Senate---

The Deputy Speaker (Sen. Kembi-Gitura): Let me get it right, Sen. (Dr.) Khalwale. On the petitions in the appendix, that is, (a) and (b), which one are you dealing with right now?

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I am now dealing with (b); about nurses. The one of yesterday has been put on the Order Paper because you had directed that today Senators be allowed to ventilate on it and that is (a). I am just presenting (b).

They have asked me to draw the attention of the Senate to the following:-

1. That they are aware that the President has issued an executive directive that devolution should take place with effect from 1st July, 2013. While they support devolution, they oppose the rushed process of transferring to the county governments the personnel emoluments of nurses.

2. Whereas they support devolution of certain functions in the health sector which may be ready for devolution such as utilization for infrastructure development, procurement of equipment and supplies, utilization of funds raised through cost-sharing and certain human resource functions such as staffing, internal transfer of nurses within the county and settlement of disciplinary cases that may affect nurses working within the county; that they presented this case on 4th July, 2013 to the Cabinet Secretary responsible for the department of health through a memorandum in a meeting which was held between them and the Cabinet Secretary on the same day, but they regret that up to now, they have received no response. They are further alerting us that this issue is not pending before any court of law, constitutional or any other legal body.

Therefore, they humbly pray as follows:-

THAT, the Senate intervenes to facilitate the reversal of the said transfer of personnel emoluments to county governments until such a time when the county governments shall be capable to take this function from the national government and until county governments fulfill the requirements of the County Government Act of 2012 and the Transition to Devolved Government Act, 2012.

Thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Senator.

Next Order!

Before the next Order, yesterday Sen. (Dr.) Khalwale did present a petition and I directed that we could ventilate on it for 30 minutes. Sen. (Dr.) Khalwale, do you want us to proceed with ventilation on your petition of yesterday now since I can see you are busy consulting Sen. Wetangula?

REVERSAL OF TRANSFER OF CLINICAL OFFICERS' PERSONNEL
EMOLUMENT TO COUNTY GOVERNMENTS

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, indeed under the Standing Orders, the onus of that particular intervention now falls upon the Members. So, they are free, if they are ready, to make their comments.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Members, yesterday Sen. (Dr.) Khalwale placed a petition before us and I directed under the relevant Standing Order that I would allow 30 minutes during statements, for Members to talk about it, ventilate or seek direction on it. So, I direct that the Floor is now open for the next 30 minutes until 3.10 p.m.

Sen. Keter: Mr. Deputy Speaker, Sir, I just want to clarify because you have said when we get to Statements is when you will give us the 30 minutes, but we are not on Statements but on Papers.

The Deputy Speaker (Sen. Kembi-Gitura): That was a Petition. I meant Petitions. I made a mistake with Statements and I withdraw. It was on petitions; Sen. (Dr.) Khalwale put a petition before this House yesterday.

Now the Floor is open for the next 30 minutes and it is going to be five minutes for each and depending on the interest that Members show, we will graduate it downwards.

Sen. Murkomen.

Sen. Murkomen: Mr. Deputy Speaker, Sir, thank you for the opportunity. I would like to recognize this petition and say that it is a very serious petition. It has profound impact on devolution. When you see clinical officers talking about their personal emoluments, where they say that they do not want to be paid by the county governments, it worries me. It worries me because it is increasingly showing that the persons who are expected to go and serve in the county governments have no faith in the institution, structures, abilities and potential of county governments. I have a problem with this petition because first of all, it is not constitutional and it is not legal. The Constitution in the Sixth Schedule, paragraph 15, provides that devolution can be done or phased out to a maximum of three years. That means that it can be done even in one day. It is very important for us to notice that.

The Transition to County Government Act is very clear as to how functions are going to be devolved to the counties. It is very clear in Sections 24, 25, 26 up to 27 that for any function to be transferred to the counties, we must be able to assess the capacity of the counties to deal with those functions. The Transition Authority will take the lead in terms of auditing of the capabilities and abilities to take that function. Thereafter, they will advise which functions are going to the counties immediately; which ones will be devolved immediately and which ones will be devolved after a year, two years or three years, maximum.

Mr. Deputy Speaker, Sir, I have a problem with this petition because it does not distinguish which county has the capacity, and this is important, to deal with emoluments and which one does not. We cannot receive a petition that has a generalization that all counties are unable to pay salaries. In fact, if this petition has to be within the law, the petitioners must distinguish themselves, county by county, to say that we come from county X or county Y, but as you see---

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Is the Senator for Elgeyo-Marakwet in order to mislead the House when, in fact, on the nurses' and clinical officers' petitions, they have attached their signatures and indicated their names, staff enrolment number and the county from which they work? Is he in order?

Sen. Murkomen: Mr. Deputy Speaker, Sir, I have noticed that their names are indicated and also counties but this petition does not say whether Elgeyo-Marakwet County is unable to deal with emoluments.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murkomen, you started by saying that it is against the law and against the Constitution. Is that what you said?

Sen. Murkomen: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Maybe, I will be interested to know in what way it is against the Constitution. I just want a clarification from you.

Sen. Murkomen: Yes, Mr. Deputy Speaker, Sir. First of all, the Constitution provides for phased out transfer of functions and that is the Sixth Schedule, paragraph

15, which also requires that you assess the capacity of the counties based on their capacity. Now, there is no indication here that the counties have no capacity. The institution which has been given the responsibility to assess that capacity is the Transition Authority. If you read Article 23 up to Article 27, they will tell you the things that need to be done in terms of assessment of capacity of counties and the advice the Transition Authority will give in terms of gazetting.

In fact, the Transition Authority is supposed to gazette the functions that will go to which county based on assessment of capacity. The only time that such a petition under the Transition to County Government Act will find its way to this House is when a particular county has been given a function and one thinks that they have no capacity to do that function or where a county believes that they have capacity to do the function but the Transition Authority has denied them that function. So, I think it would be unfair and unfortunate for this House to be told to make determination of such a petition when it is not provided for or structured within the law. We are unable to say here that, for sure, Garissa is unable to pay salaries or unable to hire even more staff and pay them. My only concern with this petition is that it is not contextualized in the law.

Lastly, I do not think the President issued this executive directive that is purported to be written here because executive directives must be in writing and must be tabled in this House. So, it is important for Sen. (Dr.) Khalwale to have advised the clinical officers that; if they have to make an assertion that there is a direction that the President has issued, the so-called, executive order, it should come in writing. I have already informed this House that what the President did was that; he expressed the willingness of the national government to support an immediate devolution of all functions to counties. That does not negate the responsibility of the Transition Authority to do what the law requires in terms of assessing functions, capabilities of the counties, dealing with county governments and thereafter making a decision as to whether all the functions in health, roads or any other sector will go to county governments.

Sen. (Dr.) Machage: On a point of order!

Sen. Murkomen (*off record*)

The Deputy Speaker (Sen. Kembi-Gitura): I said it is five minutes per Senator. So, I hope your time is not finished.

Sen. Murkomen, you must learn to have faith with the Chair and not to contend on anything the Chair says. I said I will hold your time so that you can continue from where you left; or would you rather that your time is taken up by the point of order? Then you must not always contend with what the Chair says, please.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, is Sen. Murkomen in order to mislead this House, whereas it is very explicitly put in the HANSARD of the last discussions on the same matter where he was challenged to table to this House the Statement that he has again repeated – that the President made a remark – that he wishes to be skewed to what he thinks? He could not table that document and he withdrew. Is he in order?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murkomen.

Sen. Murkomen: Mr. Deputy Speaker, Sir, what I mean from my statement today – and I want to repeat – is that we do not have an executive order or an executive direction from the President as purported by this Petition. That is the basic statement I want to make today. Therefore, we cannot rely on a Statement that we are not seized of as a House. That is the basis of my arguments this afternoon. As we continue considering this issue, as I have said, it has profound implications on matters

devolution because only some counties are listed here. I do not see my county listed here. It, therefore, means that if we have to go with what Sen. (Dr.) Khalwale was talking about and take it to mean that the names provided here as to where these people come from.

Yeah, I have noticed there is one person from my county. This is an individual, in my own opinion--- one clinical officer who signed this petition without clearly indicating whether they sat down as a county, deliberated on this matter and came up with the conclusion that my county has no capacity to handle this matter; I do not think this document provides sufficient information for us to make the decision of whether or not to listen. But as I have said, the law is very clear. The Transition to County Government Act is very clear; Paragraph 15 in the Sixth Schedule of the Constitution is very clear, and I would rather that these clinical officers follow the law, deal with the Transitional Authority (TA) and county governments before they come to us. They should also give us clear indications as to whether the counties have capacity or not.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembu-Gitura): Before Sen. Wetangula, who I am going to call next comes forward, let me point this out to hon. Senators.

I would like to refer you to the relevant Standing Order because, maybe, you have not quite referred to it. This Petition is brought under Standing Order No.219 and we are now discussing it pursuant to Standing Order No.223 – Comments on Petitions. The Petition is properly before the House in the first instance; that is quite clear. It is signed and it has come to the House in the proper manner; the Clerk has certified it and it is on our Order Paper for today. After you finish discussing it at whatever level and whatever you discuss about it, then you go to Standing Order No.224 where it will be committed to the relevant Committee and, maybe, that is the point at which you can raise the issue of the legalities or otherwise that Sen. Murkomen is talking about.

But for us, we will discuss it and we will finish the discussion because the petition is properly before us. It is the Committee that shall then decide on what to do with it under Standing Order No.224, once that moment comes. I hope that is clear.

Proceed, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, thank you for that clarification and for giving me the opportunity; I will be very brief.

The Deputy Speaker (Sen. Kembu-Gitura): Not more than five minutes.

The Senate Minority Leader (Sen. Wetangula): Yes, Mr. Deputy Speaker, Sir. First of all, paragraph one of the Petition to which our attention is being drawn says that the President issued an executive directive that devolution should take effect on 1st July. Article 135 of the Constitution states that:-

“A decision of the President in the performance of any function of the President under this Constitution shall be in writing and shall bear the seal and signature of the President.”

Mr. Deputy Speaker, Sir, we are not aware of any such decision bearing a signature or the seal of State, and any roadside pronouncements or pronouncements made to please delegations that visit any leader have no force of law; or have no force under the Constitution that we can deal with.

Consequently, Mr. Deputy Speaker, Sir, while the nurses are legitimately right in presenting this Petition, this Petition is not founded on anything because there is no such decision to contest in the first place. If the decision was delivered and executed as provided for under the Constitution, then it becomes a decision worth the contest.

Secondly, Mr. Deputy Speaker, Sir, I want to encourage –as a House that protects devolution – that if you look at the Fourth Schedule – health Services are a devolved function. I am sure Dr. Khalwale brought this Petition in utmost good faith, but it will be a dangerous avenue to take if nationals of this country start deciding whether what they do can be devolved or not, regardless of what the Constitution says. Because if your service is devolved, then this Senate has a duty, where there are hitches, to legislate in order to make it easier to operate and function.

So, I want to encourage my brother, Sen. (Dr.) Boni Khalwale, that the way the Petition is presented, it is even difficult to decide which portion of health services can be devolved and which portion cannot. It is important that if you have devolved services, then you have devolved them in totality. If they are not devolved, then they remain with the national Government.

So, Mr. Deputy Speaker, Sir, yes, the Petition is rightly and properly before the House; but the content therein is founded on a void. And being founded on a void – namely, no decision – then considering and pursuing this Petition is, in fact, an exercise in futility in this House.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Billow Kerrow.

Sen. Billow: Thank you very much, Mr. Deputy Speaker, Sir. In addition to the points that have been raised by The Senate Minority Leader, I want to also say that this Petition flies in the face of our constitutional mandate as the Senate, which is to protect the counties and their governments.

Mr. Deputy Speaker, Sir, if you look at this Petition, it says:-

“Whereas they support devolution of certain functions in the health sector which may be ready---”

It goes on to say:-

“such as utilization for infrastructure development---”

They say there is no problem in terms of what it says about devolution in terms of infrastructure development; it is ready.

It goes on to say:-

“procurement of equipment and supplies, utilization of funds raised through cost-sharing and certain human resource functions such as staffing, internal transfer of nurses within the county and settlement of disciplinary cases---”

In other words, what this Petition is saying is that, even in terms of the human resources, you can do staffing. What does staffing mean? It means that you can recruit staff; staffing means that you have to set their emoluments and you have to pay them. In addition, it is talking about the fact that you can do transfers and disciplining. Then you say that, in terms of salaries, we should leave it to Nairobi. It does not make sense! I mean, it does not make sense!

The second point, Mr. Deputy Speaker, Sir, it says in the Petition:-

“THAT, the Senate intervenes to facilitate the reversal of the said transfer of personnel emolument to county governments until such a time when the county government shall be capable to take this function from the national government and until county governments fulfill the requirements of the County Government Act of 2012 and the Transition to Devolved Government Act, 2012.”

Who determines when that county government will be capable? Who determines that? That responsibility is the work of the Transition Authority (TA). If the TA has so determined that your county can handle that function, and that function

has been given to the county, there is no way an employee or staff can say "Sorry, we are not ready." I think, really, this is not acceptable and we cannot detach payment of emoluments from staffing, discipline, transfers and all other aspects of human resource.

Mr. Deputy Speaker, Sir, the concern here is emoluments. This Senate has the responsibility of ensuring that counties have adequate finance to pay for salaries. In discussing the Division of Revenue Bill and the County Allocation of Revenue Bill here, our primary responsibility was to ensure that there is money for the functions that have been devolved. There is no way we can allow any county government to carry out a function if there are no commensurate resources. Therefore, it does not make sense that somebody says that you can transfer functions, but because there is no money and those institutions cannot pay my salary, my salary should remain with Nairobi. That decision is ours; we are already making the relevant Bills to ensure that resources for all those functions are made available.

Lastly, Mr. Deputy Speaker, Sir, I want to say that it is going to set a precedent if we allow employees of any particular Ministry or department to say "We are not ready to be paid by county governments; we want to be paid by the national Government." That is not acceptable!

Mr. Deputy Speaker, Sir, I want to add, again, that indeed, there is an institution called the Summit, that brings together the Executive and the county governors. To the best of my knowledge, that institution has an arrangement worked out where county governments themselves requested that in terms of the payroll, the national Government continues handling it for a period of time. I think these things can be debated and discussed by the respective county governments in accordance with the Constitution that allowed inter-governmental relations. So, I find this Petition is something that flies in the face of our mandate, which is to protect the county governments and to ensure that devolution is entrenched. So, I think I will not support it.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Eng.) Karue.

Sen. (Eng.) Muriuki: Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to also take part in ventilating a little bit on this issue.

Mr. Deputy Speaker, Sir, unlike few other speakers, personally I find that there is a certain amount of merit in this Petition because we are debating or discussing this, as it were, without full information. As the Chair ruled or directed earlier, after we ventilate for a while, this matter should be committed to the relevant Committee – and I presume this is the Committee on Devolution

I think that is the correct way to go because nurses, clinical officers and other personnel in the health sector at the moment are all under the national Government and the bulk of them came before devolution came. So, without details like; how their retirement or other systems are done--- For example, once somebody is transferred or posted to county "x," can they then go to another county? Can there be cross county transfers either through some national system or through, maybe, personal requests, and so on?

So, Mr. Deputy Speaker, Sir, this Petition is rightly before us. Let the Committee on Devolution sit with it so that the officers who signed the Petition can come before us and explain what they had in mind and what problems it is that they have. If we do this, by the time we, as a Senate, give a decision or direction on which way to go, then it would have been digested properly.

That is all I have to say, Mr. Deputy Speaker, Sir. Thank you.

The Deputy Speaker (Sen. Kembu-Gitura): Thank you, Sen. (Eng.) Karue. Sen. (Dr.) Machage.

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, we begin to see teething problems in the implementation of the new Constitution. We are likely to see a lot of this, and this is because of the hurried way in which the Constitution was passed without listening to dissenting voices, which requested that amendments were necessary on the draft before the Constitution was passed. Since it was passed, it must be accepted the way it is, unless an amendment is moved on the same Constitution. Always listen to Sen. (Dr.) Machage when he is talking to the nation; I said this and nobody listened!

(Applause)

It is true and we are happy that the clinical officers and nurses have faith in the Senate; we thank them for that thought and we will always be on their side to protect their welfare. However, we are also bound by the same Constitution that they helped to pass, and they must swallow the bitter pill. There is no way implementation of transfer of functions can be done without transferring the salaries of staff. Once these functions are devolved and, as effectively put by Sen. Wetangula, once this is gazetted as per the Constitution, you are tied. I can only pass my sympathies to the clinical officers and nurses, but we will not accept their prayer because our hands are also tied. But we have noted---

(Sen. Wetangula spoke off record)

And I am told by eminent lawyers that there is no sympathy when it comes to law!

(Laughter)

There is totally no sympathy at all!

I am afraid that despite being a professional in the medical field, I will oppose this Petition.

The Deputy Speaker (Sen. Kembu-Gitura): Sen. Wako, I think you will be the last person to ventilate on this.

Sen. Wako: Mr. Deputy Speaker, Sir, I agree with those who have said that the President's decision must be in writing. The executive order that this petition refers to in Paragraph 1 does not exist. There is nothing attached to show that the President has made this decision in writing.

Mr. Deputy Speaker, Sir, there are also a number of factors which clearly show that this is contrary to our Constitution; not just in respect of the decision made but, also, they state that this should revert until the county governments fulfill the requirements of the County Governments Act 2012 and the Transition to Devolved Government Act, 2012. Although it is stated there, we do not have any facts on which we can form the basis of that opinion. The only thing that is giving me a little bit of a problem on this is really something that is almost null and void, *ab initio*. But it is now really up to you to decide whether it is a matter that can automatically go to the Committee concerned.

When I look at it, Mr. Deputy Speaker, Sir, we will have to decide on it, and it does appear to me that when it is about a Motion to be brought, then we have to

consider whether the contents of that Motion are in accordance with the Constitution in terms of Standing Order No.45(3), which states:-

“If the Speaker is of the opinion that any proposed Motion-

(a) is one which infringes, or the debate on which is likely to infringe, any of these Standing Orders;

(b) is contrary to the Constitution or an Act of Parliament, without expressly proposing appropriate amendment to the Constitution or the Act of Parliament;”

Now, it is quite clear that this Petition is, in a sense, contrary to the Constitution. In other words, we do not have the decision of the President himself on this matter. Yet when I look at the Standing Order which relates to Petitions, it appears that the Chair made the correct decision because it was not for you to address yourself on the constitutionality of this particular Petition. When you are to decide whether or not to admit this petition, there is no requirement under Standing Order No. 220 which requires you to consider whether or not this Petition is constitutional.

So, this Petition, although unconstitutional, is properly before us, in accordance with our Standing Orders. Therefore, it does appear to me that although I think it is unconstitutional, you might have no alternative but to refer it to the relevant Standing Committee which, in its report to us and having considered all the facts, will now come and say this was unconstitutional. That is what I wanted to contribute on this matter.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembu-Gitura): Thank you.

Order, hon. Members! That brings us to the end of thirty minutes. Thank you very much for those comments and ventilations. So that we can all understand where we are coming from and why the Petition is before us, I would like to take you back, particularly Sen. Wako, to Standing Order No. 219, which is very clear. It says that:-

“A Senator shall give to the Clerk two sitting days’ notice of intention to present a Petition and the Clerk shall examine such Petition and ensure that the Petition is presented in the manner, form and content required by these Standing Orders.”

Now, the manner, form and content is found in Schedule Three. If you go now to where we are, which is Standing Order No.223, we are just ventilating and commenting on the Petition as presented by those petitioners through Sen. (Dr.) Khalwale. That is all we are supposed to do. So, I really have nothing to do with this situation; the Petition has been brought and I have to put it before the House, if the House wants to debate it or to comment on it.

That, then, takes us to Standing Order No.224, which is very, very clear on the face of it. It says:-

“(1) Every petition presented or reported pursuant to this Part, shall stand committed to the relevant Standing Committee.”

So, I have no alternative; I have no discretion.

Now that you have discussed and ventilated on this Petition, it shall now stand committed to the Standing Committee on Health, Labour and Social Welfare for reconsideration. I am directing, under Standing Order No.224(2) that, that Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner. So, they must sit, consider the Petition and make a response to the petitioner and then lay that report on the Table of the Senate so that we can, again, if need be, discuss it very briefly for not more than twenty minutes.

It is so directed. Thank you very much.

Next Order.

REVERSAL OF TRANSFER OF NURSES' PERSONNEL
EMOLUMENTS TO COUNTY GOVERNMENTS

The Deputy Speaker (Sen. Kembi-Gitura): Now, Sen. (Dr.) Khalwale, you have placed another Petition before us, which is now in the Appendix A; is it not? The one you have just placed before us; is it "b" that you were putting before us?

Sen. (Dr.) Khalwale (*Speaks off record*)

The Deputy Speaker (Sen. Kembi-Gitura): And everything else applies. Is it the same? It is a different Petition; is it not?

(Loud consultations)

Now, this is different and, Sen. (Dr.) Khalwale, if you wish again that there should be a discussion on it, it is not in my place to curtail debate in this House. So, would you like to have it ventilated on, or are you satisfied with what the hon. Members have said? Because, again, whether or not we discuss it, it shall stand committed to the relevant Committee, which is the same Committee. What would you like us to do about that, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: Indeed, Mr. Deputy Speaker, Sir, apart from the fact that the first Petition was in respect of clinical officers, the prayers are the same from the nurses. So, I believe that the points that have been canvassed by hon. Members in the last thirty minutes still apply to that other Petition. But this is a good opportunity for us to give Kenyans the impression that the Senate is prepared to listen to their petitions, accommodate all their thoughts and then walk them through the Constitution and provisions of the other Statute books.

(Applause)

The Deputy Speaker (Sen. Kembi-Gitura): Thank you very much. In which case then, the Petition that Sen. (Dr.) Khalwale has placed before the House this afternoon will also stand committed to the same Committee, the Standing Committee on Health, Labour and Social Welfare, on the same terms.

Thank you.

Next Order.

NOTICES OF MOTIONS

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Zani.

FORMULATION, MAPPING AND OPERATIONALISATION OF
DEVELOPMENT AGENDA FOR COUNTY GOVERNMENTS

Sen. (Dr.) Zani: Thank you, Mr. Deputy Speaker, Sir. I beg to give notice to the Department of Devolution and Planning, in a slightly changed version than what appears on the Order Paper as follows.

I beg to give notice of the following Motion:-

THAT, aware that the county is the main focus of devolution and that there exist multi-level structures within county governments; noting the need for counties to succeed and

improve the social, economic and political well-being of citizens and attain optimum levels of development within the said counties; appreciating that the devolved government structure envisioned in the Constitution of Kenya 2010 provides for different levels of government functions and responsibilities and that the interpretation and enforcement of these roles has been the subject of debate; concerned that there is still no county impact analysis strategy; the Senate urges the Council of Governors to take measures to require all counties to formulate, map and operationalize with measurable indicators key development agenda and deliverables for each term of the respective county governments.

Thank you, Mr. Deputy Speaker, Sir.

Hon. Senators: You have changed what is on the Order Paper.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. (Dr.) Zani, have you added the words “to formulate” or something like that in the last part?

Hon. Senators: She has added several words!

Sen. (Dr.) Zani: It now reads:-

“The Senate urges the Council of Governors to take measures to require all counties to formulate, map and operationalize with measurable indicators key development agenda and deliverables for each term of the respective county governments.”

So, in the amended version, the words “national government” have been changed to “Council of Governors.”

The Deputy Speaker (Sen. Kembi-Gitura): The word “formulate” is not in the amended version between the word “counties” and the words “to map?” It is not the one I have.

Sen. (Dr.) Zani: Yes. So---

The Deputy Speaker (Sen. Kembi-Gitura): You have put the words “to formulate.”

The Deputy Speaker (Sen. Kembi-Gitura): That is a new addition.

Sen. (Dr.) Zani: That was already there. But now, instead of saying “to formulate a County Results Framework,” it reads “to formulate, map and operationalize with measurable indicators---”

The Deputy Speaker (Sen. Kembi-Gitura): Okay; thank you.

Sen. (Dr.) Zani: Thank you.

The Deputy Speaker (Sen. Kembi-Gitura): Is there any other Notice of Motion?

Yes, Sen. Wako?

ESTABLISHMENT OF TRAINING INSTITUTE
FOR COUNTY GOVERNMENT PERSONNEL

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

THAT, noting that Article 1 (4) of the Constitution of Kenya states that the sovereign power of the people is exercised at the national and county levels; noting further that Article 6(2) of the Constitution recognizes that the two levels of Government are distinct and inter-dependent; aware that devolution is an important principle of

governance in the new structure; recognizing the important role of the civil service the world-over causing countries to establish specialized schools of Government; further noting that the Government established a training institute for civil servants in 1956 to impart relevant knowledge, skills, attitudes, leadership and management competencies that are required for efficient and effective service delivery; noting with concern that one of the main obstacles to the efficient and effective operation of County Governments is inadequate appropriate human capacity; further noting that section 15(2) of the sixth schedule to the Constitution places responsibility on the national Government to assist County Governments in building capacity to govern effectively and provide services for which they are responsible; the Senate calls on the national Government to take immediate measures to set up a training institute or college to give the necessary and appropriate training to personnel of County Governments.

Sen. Murungi: On a point of order, Mr. Deputy Speaker, Sir. I rise to seek your guidance on these Motions. I have noted that Sen. Wako took about six minutes to read the preamble to his Notice of Motion. The operational sentence of the Notice of his Motion is; “the Senate calls on the national Government to take immediate measures to set up a training institute or college to give necessary appropriate training to the personnel of county governments.” Tomorrow, we will get a Senator who will give us two pages of a preamble. Can we not have a simpler way of drafting Motions so that we save time for this Senate?

(Applause)

Sen. (Dr.) Machage: Mr. Deputy Speaker, Sir, is Sen. Murungi in order to dictate his thoughts, on how to do things, to Sen. Wako?

The Deputy Speaker (Sen. Kembi-Gitura): Well, Sen. Wako is a very senior lawyer and so is Sen. Kiraitu Murungi. However, one of the basic tenets of law that we were taught at the university was that brevity is the soul of wit. I cannot--- just as Sen. Machage has said, it is not in my place to control the nature that a Motion will take once it is approved and comes to the Floor of the House. Once it is approved, notice must be given in the form that it is in.

APPROVAL OF MEMBERS NOMINATED TO SERVE
IN THE PAN-AFRICAN PARLIAMENT

Sen. Keter: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion.

THAT, the Senate approves the nomination of the following members of Parliament to serve in the Pan- African Parliament pursuant to Article 5 of the Protocol to the Treaty establishing the African Economic Community relating to the Pan-African Parliament:-

1. Sen. Kipchumba Murkomen
2. Sen. Janet Ong’era
3. Hon. Zakayo K. Cheruiyot
4. Hon. Rachel Wambui Shebesh, and
5. Hon. Millie Grace Akoth Odhiambo-Mabona

STATEMENTS

CRITERIA FOR DETERMINING MARGINALISED COUNTIES TO
BENEFIT FROM EQUALISATION FUND

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Musila, I will start with you.

Sen. Musila: On a point of order, Mr. Deputy Speaker, Sir. I just want to draw the attention of the Chair and that of the House to the fact that on 14th May this year, I stood here and sought a statement on the issue of the Equalisation Fund.

The Chair issued a directive on that day to a Joint Committee on Finance, Commerce and Economic Affairs and the Committee on Devolved Government to inquire into the matter on how funds under the Equalisation Fund were distributed and to report back within a week. No report was brought but on 16th June, 2013, I raised the matter again and the Speaker ordered the two Chairpersons to bring a Report to the Senate.

Last month, two weeks ago, this issue also rose again. Kitui County, having been rightly classified as a marginalised county along with others was left out in the distribution of funds under the Equalisation Fund in this financial year.

Mr. Deputy Speaker, Sir, I want to plead with you to prevail upon the two Committee Chairpersons to produce a report or the statement that I asked for so that this House can have the opportunity to deliberate on the Division of the Equalisation Fund for this year.

The Deputy Speaker (Sen. Kembi-Gitura): Which Committees are you talking about?

Sen. Musila: Mr. Deputy Speaker, Sir, I am talking about a Joint Committee of Finance, Commerce and Economic Affairs and the Committee on Devolved Government that were mandated by the Speaker to look into the matter and report back to the Senate. They were directed to do that.

The Deputy Speaker (Sen. Kembi-Gitura): Do the Chairpersons have anything to say because this has taken an inordinately long time?

Sen. Billow: Mr. Deputy Speaker, Sir, it is true that the hon. Senator sought guidance on that matter. I want to respond to the hon. Senator as follows.

Indeed, the criterion that was developed by the Commission on Revenue Allocation (CRA) to determine the counties that were entitled to the Equalisation Fund was shared after this Senate came into being. However, after discussions with the CRA, we have come to an understanding that the criterion will be reviewed in the next financial year. Once reviewed there is a likelihood, a good chance, that the hon. Senator's county, Kitui, will be one of those that will benefit.

Kitui, out of the 47 counties, in terms of marginalisation, based on the CRA formula was placed at No. 15. The Commission had drawn a line at No.14. It is our understanding that next year, God-willing, when the review is done, his county will fall among the ones that will be entitled to the Equalisation Fund. So, we seek the indulgence of the hon. Senator so that he bears with us until next year.

Sen. Musila: Mr. Deputy Speaker, Sir, I appreciate the verbal report that has been given by the Chair of the Committee on Finance, Commerce and Economic Affairs. It is a practice of this House and all Houses in the world that such a report should be in writing. This gives an opportunity to other Legislators to ventilate on the matter. This was not a matter concerning Kitui. There were 21 counties that were classified as marginalised. Some of them were Homa Bay, Baringo and Kitui. We wanted the report to be brought to the House so that we discuss it.

The Chair of the Committee has just given a verbal statement that cannot be taken to the bank. I request that you order that something in writing be brought to the House so that we debate the matter.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Billow, have you now given your statement?

Sen. Billow: Mr. Deputy Speaker, Sir, a statement was given here about a month ago, by my colleague, the Chair of the Committee on Devolved Government. Based on that statement, the hon. Senator was referred to a report by the CRA which sets out clearly the criterion used for determining the marginalised counties.

The hon. Senator then sought the guidance of the Speaker on the case of his county, No.15, and what could be done. That is what I have responded to. We have agreed - even in discussions with the CRA - that even if this issue will be reviewed after every three years, then parameters for determining the County Allocation of Revenue and the ones for determining marginalised areas should also be reviewed by the Senate next year because this year, that is not practicable.

Next year, when that is reviewed, there is a good chance that his county will be included. Yes, that should be put in writing but, really, it is the position. My co-Chair of the Committee on Devolved Government would like to add something in that respect.

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, listening to the Chair of the Committee on Finance, Commerce and Economic Affairs, I get the impression that next year, he will do a favour to the counties that were left out.

The Constitution does not give discretion. The Constitution does not say that this money is available to some of the marginalised counties. It only talks about money to the marginalised counties. So, it is important that he brings a statement to persuade us to agree with him that there is merit in what he is saying.

They need to lay a statement on the Table so as to persuade the House that there is merit in some of the counties being left out. Otherwise, we would be failing as a Senate if we sanctioned a move that leaves out some marginalised regions without proper reason.

Sen. Wako: On a point of order, Mr. Speaker, Sir. Although I was prepared to accept that 15 counties had been identified as marginalised areas, the Chancellor of the Exchequer referred to the fact that next year, we will still have marginalised counties.

I want to bring to the attention of the Chancellor and this Senate that in this Constitution there is nothing like marginalised "counties". What has to be identified are marginalised "areas". Marginalised areas are not synonymous with marginalised counties. In other words, there may be some areas in Busia County which by using a natural yardstick would be considered marginalised. So, when we are looking at implementing the sections of the Constitution that refer to marginalised areas, I would wish that we think out of the box. All the areas in Kenya should be looked at so that we know which ones are marginalised. We may very well find out that---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Wako, is that a point of order or are you debating? I am sorry but I will rule you out of order.

What is your point of order?

Sen. Wako: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for us to keep on referring to marginalised counties when the Constitution talks about marginalised areas?

The Deputy Speaker (Sen. Kembi-Gitura): That is a different issue altogether.

(Sen. Murkomen stood up in his place)

Sen. Murkomen, are you on a point of order?

Sen. Murkomen: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): While at it, I would like you to tell the House whether the statement that you gave, which Sen. Billow referred to, was in writing.

Sen. Murkomen: Mr. Deputy Speaker, Sir, the statement I gave, initially, was not in writing. You will remember that those were the days when we just used to answer before there was a directive that all statements must be signed by the relevant Cabinet Secretary.

The Deputy Speaker (Sen. Kembi-Gitura): Did you give a written statement?

Sen. Murkomen: No, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): So, the statement by Sen. Billow is not absolutely correct?

Has there not been a statement?

Sen. Murkomen: Mr. Deputy Speaker, Sir, I gave a verbal statement.

We will lay this statement on the Table on Tuesday. However, it is more important to note that this issue was raised way before we had a public hearing on the Division of Revenue Bill. It was subjected to that debate when the Chair of the CRA came to the Committee meeting. So, the answer to that question, which is more appropriate, is contained in the report of the two Committees which was done after we dealt with the Division of Revenue Bill. We will table the report on Tuesday.

Secondly, when the CRA came before the Committee, they came with a document that explained why they decided to have 14 counties for now. What has been referred to here by the Chairperson of the Committee on Finance, Commerce and Economic Affairs is explained there and is important.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Murkomen, there is one thing I want to understand, if you allow me.

Sen. Musila has sought a statement. You gave a verbal statement. Now, Sen. Billow has tried to clarify the statement that you gave. However, as far as I can see, you are continuing to give another statement.

I want to know whether or not Sen. Musila should expect a written statement on a very important issue that he has raised. He is not talking about Kitui. He is talking about the provisions of the law; the Constitution and the law and how we should proceed with the 14 marginalised areas.

He wants to know, if I got him right, what happens to Kitui which was cut off. Did it stop being a marginalised area because it fell on No.15 and the line was at No.14? I think, with a lot of respect to you and the Joint Committee that you and Sen. Billow are supposed to report on this issue. It is good practice, as the Speaker ruled, to have it in writing so that this House has ownership and gets to know what it is interrogating.

I would like to ask you, Chairpersons of a Joint Committee, whether you are ready to give a written statement to Sen. Musila on the issue that he raised. I will not allow you, since you are not on a point of order, to continue to give a further statement on what Sen. Billow has given without a written document. I do not want any of you coming back to say that what the other Chair gave as a statement is not what they meant. You are co-Chairs and each one of you has to take responsibility.

I would like to see a situation where this issue and future statements are in writing so that we interrogate the people responsible for the statements. My direction is that Sen. Musila has not got his statement. I want you to give us an indication of when the statement will be given to him in writing.

Sen. Murkomen: Mr. Deputy Speaker, Sir, with all due respect, I would like to know if a Report done by the CRA explaining the same issue or a Report by our Committee can be laid on the Table as an answer.

The Deputy Speaker (Sen. Kembi-Gitura): Give a statement. If this means that you have to lay a document on the Table, lay the document. However, have the statement signed so that we all take responsibility for.

Sen. Murkomen: Mr. Deputy Speaker, Sir, we will lay the report on the Table on Tuesday afternoon.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you very much. Is that satisfactory, Sen. Musila?

Sen. Musila: Mr. Deputy Speaker, Sir, Sen. Billow said that they already have a report on the County Allocation of Revenue Bill. I want to specify that I stood here on a point of order to seek the Committees to inquire into how the Commission on Revenue Allocation allocated the Equalisation Fund.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Musila, they have said that they will give you a Statement on Tuesday afternoon. Is that satisfactory?

Sen. Musila: Mr. Deputy Speaker, Sir, it will be satisfactory, as long as it is specifically on the Equalisation Fund.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Senator.

Hon. Senators, if you look at the appendix, there is a Statement by the Senate Majority Leader.

Go on!

BUSINESS FOR THE WEEK COMMENCING
TUESDAY 30TH JULY, 2013

Sen. Keter: Mr. Deputy Speaker, Sir, pursuant to the provisions of Standing Order 43 (2), I wish to present the Senate Business for the coming week.

On Tuesday, 30th July, 2013, the Rules and Business Committee will meet at 12.00 p.m. to schedule business of the Senate for the week commencing Tuesday 30th July, 2013. The Senate will continue with the business in today's Order Paper that will not be concluded. The Senate will also consider the County Allocation of Revenue Bill, 2013 (Senate Bill No.1 of 2013) clause by clause in the Committee of the Whole.

In addition, the Senate will consider Motions by:

(a) The Senate Majority Leader on approval of Members to serve in the Pan-African Parliament.

(b) Sen. Catherine Mukiite, concerning rising cases of patient mistreatment, negligence, professional malpractice by medical personnel in public and private health institutions in Kenya.

(c) Sen. (Prof.) Anyang'-Nyong'o, on the development of a policy paper to restructure the Provincial Administration.

Mr. Deputy Speaker, Sir, on Wednesday 31st July, 2013, morning Sitting, the Senate will continue with business not concluded on Tuesday 30th July, 2013. The Senate will also commence debate on a Motion by Sen. Agnes Zani, to require

counties to formulate and operationalize development agenda for respective county governments.

Mr. Deputy Speaker, Sir, on Wednesday 31st July, 2013, afternoon Sitting, the Senate will continue with the business not concluded on Tuesday and Wednesday morning. The Senate will also commence debate on the Motion by Sen. (Prof.) Anyang' Nyong'o, calling upon the Registrar of Political Parties to release funds to political parties.

Mr. Deputy Speaker, Sir, on Thursday 1st August, 2013, the Senate will continue with the business not concluded on Wednesday afternoon. The Senate will also consider a Motion for adjournment of the Senate to a day other than the next normal Sitting Day, in accordance with the Senate calendar. The Senate will consider any other business scheduled by the Rules and Business Committee.

Mr. Deputy Speaker, Sir, I, hereby, lay the Statement on the Table.

(Sen. Keter laid the Statement on the Table)

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Senator. Sen. Sonko!

DEMOLITION OF BUILDINGS AND OTHER STRUCTURES
ALONG THE SOUTHERN BYPASS

Sen. Mbuvi: Mr. Deputy Speaker, Sir, I rise to seek a Statement from the Chairman of the standing Committee on Energy, Roads and Transportation, regarding the demolition of residential buildings, schools, churches and other structures in Lang'ata Estate along the Southern Bypass, as well as planned demolitions in Syokimau Estate, by the Cabinet Secretary for Transport and Infrastructure.

Mr. Deputy Speaker, Sir, in the Statement the Chairman should address the following issues:-

1. Whether the Committee is aware of a directive issued by the Joint Parliamentary Committees on Administration and National Security, Lands and National Resources, Local Authorities, Public Works and Housing, chaired by hon. Mutava Musyimi in the Tenth Parliament, stopping all evictions and demolitions countrywide until further notice.

2. When the Government will implement the recommendations of the Joint Committees on Administration and National Security, Lands and National Resources, Public Works and Housing, tabled in the Tenth Parliament, which is now the Lower House.

3. Whether the Committee is aware that the demolished structures, including churches, schools and residential homes along the Southern Bypass, were far away from the road reserve; some as far as two kilometres away.

4. Why the Kenya National Highways Authority demolished Talent Academy, a private school in Lang'ata, despite a High Court order issued vide Case No.ELC879 of 2003, restraining the Authority from demolishing it.

5. Who authorized the demolitions and were the required notices given? If so, could the Chairman table copies of the notices?

Are there any plans by the Government to compensate the affected landlords, as provided for in Article 40 (4) of the Constitution?

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Senator. Who is the Chairman of the relevant Committee?

Sen. (Dr.) Zani: On a point of order, Mr. Deputy Speaker, Sir. I would like to seek further clarifications on the Statement.

The Deputy Speaker (Sen. Kembi-Gitura): Under what Standing Order? What do you want to do?

Sen. (Dr.) Zani: Mr. Deputy Speaker, Sir, in addition to the Statement that Sen. Sonko has sought, I would like to seek further clarifications on the same issue.

The Deputy Speaker (Sen. Kembi-Gitura): You cannot do that. The Statement that has been sought by Sen. Sonko was approved by the Speaker. I do not know what you want to say and I cannot take the risk of you saying something that I do not know about. You must wait until Sen. Sonko gets his answer and then you can seek clarification. But I cannot allow you to ride on his back and ask for further things on top of that. I hope that you understand where I am coming from.

Sen. (Dr.) Zani: Much obliged, Mr. Deputy Speaker, Sir. I do understand and stand guided.

Sen. Keter: Mr. Deputy Speaker, Sir, on behalf of the Chair, I promise that we will give the Statement in the next two weeks. We had a meeting today and one of the---

Sen. Mbuvi: On a point of order, Mr. Deputy Speaker, Sir. Two weeks is too long, because we have one arrogant Cabinet Secretary---

The Deputy Speaker (Sen. Kembi-Gitura): That is not a point of order. If you are saying that two weeks are not enough, then you need to let him finish.

Sen. Keter: Mr. Deputy Speaker, Sir, I was saying two weeks in the sense that we had a Committee meeting today, and the Cabinet Secretary will report to the Committee next week on Thursday. It is one of the agenda items that we will deliberate on. So, we will include the issues that the Senator has raised, so that we can bring the Statement in two weeks time.

The Deputy Speaker (Sen. Kembi-Gitura): What date do you want us to take? That will be on 8th August. Shall we not be on recess?

Sen. Keter: Mr. Deputy Speaker, Sir, the Motion for Adjournment may be opposed. The Senators may refuse to go on recess.

The Deputy Speaker (Sen. Kembi-Gitura): Is there any way that you can bring it forward, Sen. Keter? We cannot ask Sen. Keter to do the impossible because if they will have a meeting with the Cabinet Secretary, and he can only derive his answer from their meeting with him, then we might be asking him to deal with a futility.

Sen. Keter: Mr. Deputy Speaker, Sir, I am saying so because it is a serious issue, and I understand my brother, Sen. Sonko. We want to deal with it and give this House a comprehensive report.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Sonko, are you agreeable to doing it on 8th August?

Sen. Mbuvi: Mr. Deputy Speaker, Sir, I am not agreeable because we will go on recess on 1st August, unless he issues a directive on behalf of the Government, stopping all demolitions that are going on. I will repeat that the reason I am saying this is because – I am not debating but giving facts – we have one Cabinet Secretary, who is the only analogue Cabinet Secretary in our Jubilee digital Government. He is behaving as if he does not have a family. He is an arrogant Cabinet Secretary and I am sure that he is going to continue causing destruction by demolishing houses belonging to innocent landlords within my county. He is also demolishing churches and schools. He is a very useless Minister. Unless the Government issues a directive stopping all sorts of demolitions in Nairobi---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Keter, when will you give the Statement? Is it on 8th August?

Sen. Keter: Mr. Deputy Speaker, Sir, I had said two weeks, but I would also like to seek a clarification. Is “useless” parliamentary language?

The Deputy Speaker (Sen. Kembi-Gitura): No, it is very unparliamentary.

Sen. Keter: Mr. Deputy Speaker, Sir, could Sen. Sonko withdraw?

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Sonko, you are talking about a Minister of the Government. Therefore, that is very unparliamentary.

Sen. Mbuvi: Mr. Deputy Speaker, Sir, a fact is a fact. He is very arrogant. I can use the term “arrogant” instead of “useless.”

The Deputy Speaker (Sen. Kembi-Gitura): But, first of all, you have to withdraw and apologize for the first one!

Sen. Mbuvi: Mr. Deputy Speaker, Sir, I withdraw and apologize. Mr. Kamau is a very arrogant Cabinet Secretary.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Sonko, with a lot of respect, I think that we have to be careful. We are in the Senate and we do not want the words that we use to come back to haunt us.

Sen. Mbuvi: Mr. Deputy Speaker, Sir, when it comes to leadership, we must serve our people. So, we must talk the truth. He is an arrogant Minister.

The Deputy Speaker (Sen. Kembi-Gitura): That Statement will be delivered on 8th August.

Sen. (Prof.) Lonyangapuo!

POLICY ON CARE FOR ELDERLY CITIZENS IN KENYA

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, I wish to seek a Statement from the Chairperson of the standing Committee on Health, Labour and Social Welfare relating to the policy on care for elderly citizens in Kenya.

Mr. Deputy Speaker, Sir, in the Statement, I would like the Chairperson of the Committee to:-

1. Clarify when the Government will roll out countrywide the Social Protection Cash Transfer Scheme for the Elderly introduced in the year 2007 and piloted in a few districts.

2. State the areas covered by the project currently.

3. Indicate how much money has been allocated towards the scheme this financial year.

4. Explain what the Government is doing to mainstream the scheme and ensure its sustainability.

Mr. Deputy Speaker, Sir, I am still waiting for answers to three Statements that I sought from the Chairman of the Committee on Finance. It is now going to two weeks and he has not given two Statements. There is also another one that I am still waiting---

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Lonyangapuo, which Statement are you seeking? Is it the one that you have just requested for?

Sen. (Prof.) Lonyangapuo: Mr. Deputy Speaker, Sir, this is a different one. I am done with this one.

The Deputy Speaker (Sen. Kembi-Gitura): That is all you can do for now.

Where is the Chairman of the Committee on Health, Labour and Social Welfare?

Sen. Keter!

Sen. Keter: Mr. Deputy Speaker, Sir, let me take brief on behalf of the Chair and request for two weeks again.

The Deputy Speaker (Sen. Kembi-Gitura): That will make it 8th August again. It is so ordered.

Sen. Hargura!

REVENUE ALLOCATIONS TO COUNTIES

Sen. Hargura: On a point of order, Mr. Deputy Speaker, Sir. I had sought a Statement two weeks ago and the Chair of the Committee on Finance was supposed to deliver it today.

The Deputy Speaker (Sen. Kembi-Gitura): Is Sen. Billow here?

Sen. Billow: Mr. Deputy Speaker, Sir, he sought a very detailed Statement on the expenditure on roads and infrastructure for 20 years. This is very extensive work and they are working on it. I seek the indulgence of the Senator until Tuesday next week, when we should be able to give him some answer.

The Deputy Speaker (Sen. Kembi-Gitura): Is that okay, Sen. Hargura?

Sen. Hargura: It is okay, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you very much.

Sen. Ndiema!

RISING CASES OF INSECURITY IN TRANS NZOIA COUNTY

Sen. Ndiema: Mr. Deputy Speaker, Sir, last week, I sought a Statement from the Chairman of the Committee on National Security and Foreign Relations, relating to the security situation in Trans Nzoia County, and I have not received a copy of any Statement.

The Deputy Speaker (Sen. Kembi-Gitura): Was the Statement due today?

Sen. Haji!

Sen. Haji: Mr. Deputy Speaker, Sir, the Statement is not ready because on Thursday, many Statements were requested for and are being worked on. We will answer, maybe, next week.

The Deputy Speaker (Sen. Kembi-Gitura): Not "maybe." Give me an indication, please.

Sen. Haji: Thursday next week, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Ndiema, is that okay?

Sen. Ndiema: Mr. Deputy Speaker, Sir, security is of a lot of concern. People are worried about what will happen next. I wish that this matter could be taken more seriously and if possible, the Statement given much earlier.

The Deputy Speaker (Sen. Kembi-Gitura): He has requested to deliver it on Thursday next week. To me, that sounds reasonable. The difference now is that the Committee Chair has to seek this information from a third party and then bring it back to us. It is not like when we used to have Ministers, who were sitting with us, giving answers. So, I think that we need to appreciate that even the Committee Chair is going to seek that information, take it through his Committee and then bring it back to us. So, I think that Thursday is reasonable.

Sen. Ndiema: Mr. Deputy Speaker, Sir, I stand advised.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you.

Sen. Khalwale!

STATE OF SUGAR INDUSTRY AND CANE FARMING
IN KENYA IN RELATION TO COMESA

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, I rise under Standing Order No.43 to request for a Statement on the state of the sugar industry and cane farming in Kenya, within the dynamics of market forces in the Common Market for Eastern and Southern Africa (COMESA).

Mr. Deputy Speaker, Sir, I would like the Chairman to include the following clarifications:-

1. Whether the Government is aware that the sugar sector is at the risk of impending lifting of COMESA safeguard measures that have been cushioning Kenyan sugar from cheap imports from COMESA member States.

2. What has the Government done to ensure that the locally produced sugar is competitive at the international market?

3. What are the specific measures taken to ensure that the sugar millers, like Mumias and Nzoia sugar companies in Kakamega County and Bungoma County respectively, who owe cane farmers millions of shillings are protected from possible collapse? What is being done to ensure that those amounts owed by these millers to the farmers are cleared immediately?

4. What is the Government doing to ensure that the formula used to determine the amount payable to farmers for cane delivered is adjusted, so as to make it commensurate to the super profits that are made by sugar millers?

5. Is the Government making any efforts to strengthen the partnership between different private sector players within and outside the COMESA region, to design programmes and projects that will mitigate this threat, in line with the COMESA initiative that is funded currently by a joint effort between the COMESA secretariat and the Ministry of Finance of the Government of Mauritius?

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. (Dr.) Khalwale. But just for the sake of good order and clarity, Sen. (Dr.) Khalwale, am I correct that, that Statement had not gone to the Speaker's Office for approval?

Sen. (Dr.) Khalwale: Indeed, for record purposes, Mr. Deputy Speaker, Sir, it came to your office at 9.00 in the morning.

The Deputy Speaker (Sen. Kembi-Gitura): Was it approved?

Sen. (Dr.) Khalwale: And it is usually two hours; so, the assumption---

The Deputy Speaker (Sen. Kembi-Gitura): I am not having an argument with you; I am just asking. Was it placed in the Speaker's Office?

Sen. (Dr.) Khalwale: Yes, Mr. Deputy Speaker, Sir, and the Clerk can confirm that.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. (Dr.) Khalwale. Next, Sen. Keter.

Sen. Keter: Mr. Deputy Speaker, Sir, the statement will be given next week. I will also include Sen. Lenny Kivuti's request may be next week again.

The Deputy Speaker (Sen. Kembi-Gitura): So, for the record, it will be given on 1st of August, 2013.

Thank you.

Sen. Haji.

KILLING OF 12 PEOPLE IN NYANYA VILLAGE,
KITUI COUNTY

Sen. Haji: Thank you, Mr. Deputy Speaker, Sir. I want to give a Statement. On the 11th of July, 2013, Sen. Musila requested for a Ministerial Statement on the killing of 12 people in Kitui County. The honorable Senator sought to be informed on the action the Government is taking to apprehend the perpetrators. I wish to state as follows.

On the 4th of July, 2013, at about 2.00 a.m., an unknown number of gangsters armed with pangas and axes attacked Malioni Village, Nyanya Sub-location, Endau Location, Waita Division, Mwingi Central District within Kitui County and killed the following:-

1. Musyoki Syongo, aged 51.
2. Kalio Musyoki, aged 33.
3. Muthumbi Musambu, aged 18.
4. Thomas Malumbe Kae, aged 30.
5. Munyoki Musyoka, aged 48.
6. Ngui Musyoka, aged 13.
7. Mwenda Munyoki, aged 16.
8. Muimu Musyoki, aged 8.
9. Kiilu Nguli Mwaniki, aged 50.
10. Dennis Kioko Mutua, aged 15.
11. Nzomo Mingi, aged 38; and,
12. Mutei Nzomo, wife to Nzomo Mingi, aged 31.

Angry members of the public carried out retaliation attacks and killed Nzioka Musyoka and Mutheki Kilonzo, aged 80 and aged 40 years old respectively; the mother and wife of the key suspect, John Kilonzo Musyoka.

Further, members of the public tracked the gangsters and killed the following suspects.

1. Timothy Makau Kivuva, a resident of Kikesa Village, Naliango Location, Kambi ya Ndege, Yatta District.
2. Akset Mbatha, a resident of Mbiuni Village, Mwala Location, Mwala Sub-district.
3. Musombi Ndaka, a resident of Uthithini Village, Kithimani Location, Yatta District; and,
4. Elijah Mbue Mwive Kita, a resident of Kaiti Sub-location, Ukia Location, Makueni District.

The following villagers also sustained injuries during the attacks and counter attacks.

1. Kasilu Musyoka, aged 16.
2. Ndanu Musyoka, aged 9.
3. Muthaka Munyoki Musyoki, aged 40; who is a brother-in-law to our prime suspect, John Kilonzo Musyoka; and,
4. Paul Nzomo, aged 17.

Mr. Deputy Speaker, Sir, the incident was reported to Mwingi Police Station vide OB No.46 of 4th July, 2013, by Mr. Samuel Maitthaka, Chief of Ndui Location. A team of police officers led by the Officer Commanding Police Division (OCPD), Mwingi Central SSP, Simon Kipkomey Birir and Divisional Criminal Investigation Officer (DCIO), S.P. Joseph Jeptoo visited the scene and commenced investigations vide Mwingi Criminal Case No.491/119/2013. Investigations have established that the attacks were led by an ex-convict, John Kilonzo Musyoka, who appears to have been on a revenge mission after he

was charged before Mwingi Court vide Mwingi Police Station Criminal File No.491/277/2012; Court File No.668/12 with the offence of creating disturbance in a manner likely to cause breach of peace, contrary to Section 95(1) of the Penal Code. The complainant in this case was Nzomo Mengi, who was among the victims who were murdered by the gangsters. The accused was released on a cash bail of Kshs1,200, but he never appeared in court during the subsequent hearing, prompting a warrant of arrest to be issued and it is still in force.

In another case, Criminal Case No.491/243/2013, Court File No.596/2012, the suspect, John Kilonzo Musyoka is the complainant in a case of assault against his brother, Munyoki Musyoka, who was also killed during the incident. This case had earlier been terminated on 12th February, 2012, under Section 204 of the Criminal Procedure Code. Later, Ms. Penina Kalumbe received threatening messages and calls from mobile number 0713369474 and after investigations, two suspects, Sammy Kioko Nzuki and John Sambuli, both from Machakos, were arrested on 15th of July from their hideout in Nairobi. They appeared before the Mwingi Court and bonded to keep peace, and were ordered to sign a bond of Kshs150,000 or serve one year in custody.

Lastly, Mr. Deputy Speaker, Sir, efforts are being made to trace and arrest the main suspect in the murder, John Kilonzo Musyoka, who is still at large. Patrols in the area have also been intensified while Mwingi Central OCPD has deployed police officers in the area to maintain peace and collect intelligence information.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Musila, do you want to seek clarification?

Sen. Musila: Mr. Deputy Speaker, Sir, I want to thank Sen. Yusuf Haji for that Statement. I really feel that knowing Sen. Haji as well as I do, having been a very able Provincial Commissioner (PC) and looking at Sen. G.G. Kariuki, having been my Minister in charge of Security, I doubt whether Sen. Haji can look at me in the eyes and tell me that is a proper Statement. I say this because 12 people were murdered by some thugs and the people themselves, after failing to get the police to assist them, went ahead and arrested those who attacked them and meted justice on them by killing them; they even killed others – altogether, they killed six people.

Mr. Deputy Speaker, Sir, does it not concern this Government that 16 people have lost their lives? There is a man who is at large and he is using mobile phones to threaten the remaining peaceful people. Three weeks along the line, the Government can still say that the man is still at large and they are in investigating. Could Sen. Haji either disown this Statement and go and tell the Cabinet Secretary who has given him that Statement to do another one and report to this Senate whether he has made arrests? If he cannot make the arrest, would I be in order to be asked to go and mobilize the people to go and look for this criminal because he is at large and he is known, since the Government that is supposed to protect them and their properties has failed?

Thank you, Mr. Deputy Speaker, Sir.

(Applause)

Sen. Haji: Mr. Deputy Speaker, Sir, I fully sympathise with my brother---

(Laughter)

He was also my mentor – I was his Senior District Commissioner (DC) when he was my PC – and I will have the same feeling if 12 people have been killed and arrests have not been made.

But, Mr. Deputy Speaker, Sir, the Government is really serious. This criminal must be an expert in hiding and, therefore, everything possible will be done to find him. If it will be necessary for me to put on my PCs uniform to go and lead a squad to go and find him, I will also do it.

(Laughter)

But the Government is very serious and we sympathize with the bereaved families and the honorable Senator.

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

The Deputy Speaker (Sen. Kembi-Gitura): Is it on the issue before us?

Sen. Murkomen: Mr. Deputy Speaker, Sir, is it in order for Sen. Haji to say that he keeps his PCs uniform and he could wear it anytime?

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): I am sure Sen. Haji does not need to answer to that point of order.

Is that all with Statements? Have we finished the Statements?

BUDGETARY ALLOCATION FOR BITUMINIZATION OF
MASENO-KOMBEWA-AKADO-ASEMBO BAY ROAD

Sen. (Prof.) Anyang’Nyong’o: On a point of order, Mr. Deputy Speaker, Sir. I asked for a Statement but it has not been delivered.

The Deputy Speaker (Sen. Kembi-Gitura): Senator, I did not even know you were standing. If you have a point of order, please come at the front so that you can be recorded properly, Sen. (Prof.) Anyang’Nyong’o.

Mr. Deputy Speaker, Sir,

Sen. (Prof.) Anyang’Nyong’o: Mr. Deputy Speaker, Sir, I asked for a Statement on a road that connects Kisumu and Siaya Counties and the Statement was supposed to be issued today. So, I was wondering what the status of this Statement is; if it is going to be issued on another day, whether I could be given the assurances.

The Deputy Speaker (Sen. Kembi-Gitura): Was it directed to the Chair of the Committee on roads and transport? I cannot see it on the schedule of the Statements pending.

Yes, Sen. Keter?

Sen. Keter: We can read that Statement on Thursday, next week.

The Deputy Speaker (Sen. Kembi-Gitura): I apologize, Sen. (Prof.) Anyang’Nyong’o; it is not on the schedule, but I am told it is a mistake of the secretariat. So, is Thursday next week good with you?

(Sen. (Prof.) Anyang’Nyong’o spoke off record)

Thank you.

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

The Deputy Speaker (Sen. Kembi-Gitura): On what issue?

Sen. Hassan: Mr. Deputy Speaker, Sir, pursuant to Standing Order No.97, I wish to move that this debate be now adjourned so that this House---

The Deputy Speaker (Sen. Kembi-Gitura): Which debate?

Sen. Hassan: That is the coming debate.

Mr. Deputy Speaker, Sir, the reason I move this Motion, pursuant to this Standing Order---

The Deputy Speaker (Sen. Kembi-Gitura): Just a minute, Senator! Order! Are we through with Statements? If we are then, can you call the next Order?

MOTION

PROVISION OF COMPUTERS AND ICT TRAINING TO MEMBERS OF COUNTY ASSEMBLIES

THAT, appreciating the significance of technology in the development of counties and also acknowledging the important role that Members of the County Assemblies (MCA) perform; determined to increase the efficiency of the legislative process and other parliamentary procedures and consequently save costs for counties; further recognizing that technology in Government fosters innovation and transformation, enhances performance and capacity in delivery of services and leverages support towards good governance; recognizing the important role played by the media in enhancing democracy and accountability; the Senate urges the County Governments to provide offices, computers and ICT training to Members of the County Assemblies, and to establish network infrastructure as well as a data bank for reference in all County Assemblies and to provide a specially equipped media centre in all county government headquarters.

(Sen. Kagwe on 24.7.2013 – Morning Sitting)

(Resumption of Debate interrupted on 24.7.2013 – Morning Sitting)

The Deputy Speaker (Sen. Kembi-Gitura): Now, this is the Motion by Sen. Mutahi Kagwe, which has a balance of one hour, twenty minutes and which is resupposed to resume this afternoon.

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

The Deputy Speaker (Sen. Kembi-Gitura): Are you on a point of order on that position?

MOTION FOR ADJOURNMENT UNDER STANDING ORDER NO.31

ADJOURNMENT OF THE SENATE TO ALLOW SENATORS ATTEND CIC RETREAT IN MOMBASA

Sen. Hassan: Yes, Mr. Deputy Speaker, Sir. In fact, I was to be the first one to resume this debate; I had a balance of six minutes. But I also rise on a point of order under Standing Order No.97 – that this Debate be now adjourned – for the following reasons. I think many of us travel to Mombasa at this point in time. There are those who have to leave from about 5.30 p.m. and subsequent times. There is also the trip to Diani, where you have to cross the ferry which makes it quite lengthy. I do know quite a number of Senators will be travelling to Mombasa for this retreat together with

the Council of Governors. The retreat is of a fundamental nature; it is extremely important for all the Senators and governors in terms of charting the way forward and in terms of the accountability processes and in terms of developing a framework for co-ordination and collaboration with the governors.

Therefore, Mr. Deputy Speaker, Sir, I seek that this House grants leave to its Members before we are hit by quorum hitches and other hitches so that we can be able to prepare for these travels. On account of that proposal, I request Sen. Murkomen to second my Motion.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Before Sen. Murkomen does that, are you sure you are proceeding on the correct Standing Order, if I got you right on what you are saying? Do you want us to adjourn the debate or the House?

Sen. Hassan: It is for the adjournment of the House.

The Deputy Speaker (Sen. Kembi-Gitura): Is that the correct Standing Order? Can you, please, consult and then tell me?

Sen. Hassan: Mr. Deputy Speaker, Sir. I wish to amend that. I wish to move the same Motion under Standing Order No.50(b) to seek the adjournment of the Senate so that we can be able to leave for our respective travels to Mombasa and Diani in its totality.

Therefore, Mr. Deputy Speaker, Sir, for the reasons I had foresaid, I request Sen. Murkomen to second this proposal.

Sen. Murkomen: Mr. Deputy Speaker, Sir, I rise to support this Motion. It is important, for the record, to know that the Commission for the Implementation of the Constitution (CIC) organized a conference for all Senators and all Governors, and this conference is long overdue because we should have done it the first month we were elected. But because of other programmes and the commitments of the county governments, we were not able to do it.

From tonight up to Sunday, we have a very important schedule whereby we are expected to discuss and deliberate on very weighty matters which, among others, relate to accountability measures, collaboration mechanisms relating to county governments and ensuring that we are also able to have input of Senators in what is happening within the counties. It is at that meeting that we are going to discuss various legislative amendments that will enable the various legislations to be more concrete in terms of the application to protecting and promoting devolution. We shall also discuss other matters, even those that include whatever constitutional amendments we may propose.

So, Mr. Deputy Speaker, Sir, I think it is a very important meeting and I support this Adjournment Motion to enable all of us – because it is all of us who are going to travel – and I encourage all Senators to avail themselves because this is one unique meeting that brings together all the governors and Senators.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Members, you know we are a House of rules. That is what I get all the time and, so, when Sen. Omar said he was moving that Motion under Standing Order No.97, he was not doing the correct thing. In fact, you are not moving under Standing Order No.50(b); you have been moving under Standing Order No.31 – Adjournment of the Senate – which is adjournment, because Standing Order No.50(b) just enables us to bring the Motion without notice. That is what it does. But the enabling Standing Order is No.31.

Hon. Senators, I am going to propose the question; which is, that the Senate do now adjourn to attend to the urgent and important Business between Senators and governors which is proposed to be held in Mombasa between tomorrow and Saturday.

(Question proposed)

Sen. Kajwang.

Sen. Kajwang: Thank you, Mr. Deputy Speaker, Sir. This is a weighty matter and we must be heard!

(Laughter)

Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to support this Adjournment Motion so as to attend this conference, which is actually a very important meeting. As a matter of fact, we have not had time to formally meet with our governors. Some of us have seen budgets done; we have debated their propriety or otherwise in the absence of the governors; we have not quite looked at the emerging governance issues with our counties; we meet a lot of questions and challenges from those who elected us as to whether this is the correct path. So, we have a lot of things to discuss which are, actually, in-house, and we want to do them quietly somewhere in Diani, and Diani is far. So, if we can start now, it will be very appropriate.

Mr. Deputy Speaker, Sir, I beg to support.

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, seeing that there is no more interest in the debate on this issue, I will now put the question.

(Question put and agreed to)

ADJOURNMENT

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, for the reasons that have been stated, this House will now stand adjourned until Tuesday, 30th July, 2013 at 2.30 p.m.

The Senate rose at 4.20 p.m.