

**PARLIAMENT OF KENYA****THE SENATE****THE HANSARD****Thursday, 2<sup>nd</sup> October, 2014**

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

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

**PRAYERS****NOTICES OF MOTION**

**ALTERATION OF THE SENATE CALENDAR (REGULAR SESSIONS) TO  
ALLOW FOR INTERVENTION IN THE RECONCILIATION PROCESS  
IN MAKUENI AND ISIOLO COUNTIES**

**Sen. Elachi:** Mr. Speaker, Sir, pursuant to Standing Orders No.28 (4) and 53(b) of the Senate Standing Orders and following the challenges in the management and operations in Makueni and Isiolo counties, the Senate resolves to alter its calendar regular sessions for an adjournment commencing today, Thursday, 2<sup>nd</sup> October, 2014, to resume on Tuesday, 21<sup>st</sup> October, 2014 to allow the Senate intervene in the reconciliation process in the two counties.

**STATEMENTS**

**STATUS OF ELDERLY PERSONS CASH  
TRANSFER PROGRAMME**

**Sen. Madzayo:** Mr. Speaker, Sir, pursuant to the Senate Standing Order No.45(2)(b), Sen. Nabwala and Sen. Njoroge requested for Statements on the status of elderly persons and persons with disability on the Cash Transfer Programme. Sen. Nabwala is in, and with your kind permission, I beg to issue the Statement.

**The Speaker** (Hon. Ethuro): Proceed.

**Sen. Madzayo:** Mr. Speaker, Sir, the first request by Sen. Nabwala was to state the number of beneficiaries per county and the amount of money given to each elderly person. The Chairperson was to provide the data per county and to explain the criteria used by the relevant government departments to allocate funds since it is being done selectively.

The Chairperson should also explain why some poor elderly people whose names have been approved and submitted have not received any funds at all even after His Excellency the President increased the funding by Kshs470 million.

The Chairperson should also state the monitoring and evaluation mechanism put in place to report on the feedback and success of the initiative on the lives of the elderly Kenyans.

He should further explain why the amounts that were dispensed were not sufficient and uniform across the counties. Some elderly people received some amounts ranging between Kshs1,000 and Kshs2,000, but the question is whether the amounts were sufficient.

Lastly, the Chairperson should state to the House the actual budget for the poor elderly people through this programme and whether it is consistent with the national Budget.

Mr. Speaker, Sir, the Ministry of Labour, Social Security and Services implements four cash transfer programmes amongst them the older persons and persons with severe disabilities cash transfer programmes. This is part of the overall social protection programme through a non-contributory social assistance for most of the vulnerable citizens as envisaged in Article 43(3) of the Constitution of Kenya.

Mr. Speaker, Sir, the Older Persons Cash Transfer Programme started on a pilot basis in three districts of Thika, Nyando and Busia in the Financial Year 2007/2008 with an allocation of Kshs2.4 billion and targeted 300 households with each receiving Kshs1,000 a month. This was scaled in Financial Year 2009/2010 when the Government allocated Kshs530 million which helped to cover 44 districts with 33,000 households receiving Kshs1,500 a month. In 2010/2011 Financial Year, the programme received the same amount of funding. In Financial Year 2011/2012, the programme was allocated Kshs1 billion which benefitted 36,000 households each receiving a monthly transfer of Kshs2,000.

Mr. Speaker, Sir, in the Financial Year 2012/2013, the number rose to 59,000 in all the counties and sub-counties. As a result of enhanced allocation of Kshs1.5 billion in the Financial Year 2013/2014, the programme was allocated Kshs2.47 billion which facilitated up-scaling of the programme by 105,000 new beneficiaries reaching a cumulative current total of 164,000 beneficiaries in all the 290 constituencies in the 47 counties.

Mr. Speaker, Sir, the numbers of beneficiaries per county are indicated in Table 1, which I have attached, totaling to 164,000 in the 290 constituencies. The allocation of the funds is based on the number of beneficiaries enrolled after a thorough targeting process. Currently, a ratio of 30 per cent and 70 per cent is applied whereby 30 per cent of the potential beneficiaries are distributed equally in the 290 constituencies. However, the 70 per cent is distributed on the basis of poverty index across the country as guided by the indexes from the Kenya National Bureau of Statistics (KNBS) report. So, both the 30 per cent and 70 per cent distributions have to adhere to the pre-determined eligibility criteria which includes the following:-

- (i) that the potential beneficiary is 65 years old and above;
- (ii) poor of the poor;
- (iii) not a pensioner;
- (iv) has been a resident in that targeted area for a minimum of 12 months; and,

(v) is not registered as a beneficiary in any of the other cash transfer programmes.

Mr. Speaker, Sir, these minimum criteria are enforced by a detailed targeting tool which is administered to the potential beneficiaries. This programme is not universal, but targeted as there are more deserving Kenyans than the amount of funds allocated.

Monitoring and evaluation is currently being conducted both by the national and county officers. The team at the sub-county office is supported by the constituency social assistance committee. Normally spot checks are conducted during the payment period to affirm whether the beneficiaries are receiving the stipend from the payment service provider.

Mr. Speaker, Sir, thereafter, monitoring is conducted involving home visits to the beneficiaries to witness first-hand how they are applying the stipend to improve their socio-economic status. The Ministry's periodical documents show the best practices and lessons learnt from the monitoring and evaluation visits by way of knowledge, sharing and continuously improving the programme implementation. Each beneficiary is entitled to a monthly stipend of Kshs2,000 that is normally paid monthly. This amount is uniform to all the beneficiaries. Even when payments are delayed, they are paid in arrears during subsequent payment circles.

Mr. Speaker, Sir, we are aware this amount is not sufficient, but given the large number of beneficiaries who require to be assisted, it would be appropriate to increase the allocation to the programme in order to reach more other deserving beneficiaries and hopefully and gradually move to universal coverage.

Lastly, the actual budget in 2014/2015 Financial Year is Kshs5.4 billion. This amount is adequate for 2,010 beneficiaries. This means up-scaling in Financial Year 2014/2015 will be to 46,000 new beneficiaries. Currently, there are Kshs1,503 beneficiaries who are either being re-verified because their records are shared or are waiting to be replaced for they have passed on.

**Sen. Nabwala:** Mr. Speaker, Sir, I would like to thank the Chairperson of the Standing Committee on Labour and Social Welfare for the submission of the Statement on the Floor of this House. When I look at his responses, particularly the second one, the ratio they are using is 30 per cent and 70 per cent, respectively. It means that 30 per cent of the potential beneficiaries are distributed equally in 290 constituencies while the 70 per cent is distributed on the basis of poverty index. If this is the ratio they are using, I would expect counties like Turkana and other Arid and Semi-Arid Lands (ASAL) to receive more money. However, according to this table, Turkana is getting Kshs3.5 million and Kakamega gets Kshs7 million respectively. He also says that they have identified 1.4 million Kenyans who are above 65 years---

**The Speaker** (Hon. Ethuro): Order, Sen. Nabwala! We heard what was said. Just seek your clarification.

**Sen. Nabwala:** Mr. Speaker, Sir, if at the moment they are catering for 700,000 old people, what about the remaining 700,000? According to the Constitution, Article 57, it is the responsibility of the national Government to look after the aged people.

*(Sen. Ndiema stood in his place)*

**The Speaker** (Hon. Ethuro): Sen. Ndiema, are you on a point of order or seeking clarification?

**Sen. Ndiema:** Mr. Speaker, Sir, I am seeking clarification.

**The Speaker** (Hon. Ethuro): Then you need to progress to where you seek clarification from. Others were already ahead of you.

Sen. (Prof.) Lonyangapuo!

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I heard the Chairperson give a detailed answer, but I thought last time we asked that every Senator be furnished with a detailed distribution per county. I have not been given my copy.

The second clarification is; he has talked about 30 per cent going to every constituency. I am surprised to hear that because I have evidence here of a ward called Seker which has 300 elderly people, but only 10 have received the stipend, I think that response is not truly right. The Chairperson should go back and come with a detailed response so that it can show the details per constituency or per ward.

**The Speaker** (Hon. Ethuro): You may have been right, Sen. (Prof.) Lonyangapuo, because judging from the requests, the interest is quite high.

Sen. (Dr.) Machage and Sen. Okong'o seek one clarification.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, the demographic statistics show that the life expectancy of Kenyans is actually at 55 years. Some areas have a life expectancy of 45 years, especially so, for people in the marginalized regions. What led to the decision to pick 65 years as the cut-out point of the elderly because the elderly in other regions would be as low as 50 years? If you see somebody from around Lake Turkana who is 40 years old, he would look like a 70 year old person from the former Central Province.

Mr. Speaker, Sir, Article 57 of the Constitution, clearly says that the State shall take measures to ensure the rights of older people and pursue their personal development. So, is Kshs2,000 enough?

**Sen. Okong'o:** Mr. Speaker, Sir, I am also surprised by the answer given by the Chairman. The Constitution is very clear about issues of discrimination. Nobody should be discriminated against any ground. However, the Chairman has clearly told this House that the Government is discriminating against the citizens of this Country. It is important that they come up with a very comprehensive report on every criteria used for those 30 per cent beneficiaries. That is my intervention.

**Sen. (Dr.) Khalwale:** Mr. Speaker Sir, the biggest challenge faced by these elderly people is medicare. Could the Chairman tell us whether the Jubilee Government has any plans to roll out universal free medicare for people aged between 70 years and above?

**Sen. Billow:** Thank you, Mr. Speaker, Sir. I would like the Chairman to clarify the objective of this Fund. Is it to help the elderly poor or elderly across the border? What is the rationale for creating a 30 per cent across the border, if, for example, the intention is to target the elderly poor or the disadvantaged in that sense?

**Sen. Leshore:** Thank you, Mr. Speaker, Sir. When this programme was rolled out by the former President Kibaki, we thought that within five years, this programme would cover the entire population of people who are 65 years and above. First, I would like to congratulate the former President for launching this programme. It is now about seven years or nine years since then. When will the Jubilee Government roll out this programme, so that each and every person in Turkana, Samburu, Mandera, Mombasa and other counties can benefit? As the Senator for Kuria said, a 40 year old man from

Turkana would look like a 70 year old man from Kuria. We would like to know when the programme will be rolled out so as to cater for everybody who is over 55 years old.

**Sen. (Prof) Lonyangapuo:** On a point of Order, Mr. Speaker, Sir. Did you hear Sen. Leshore say that Sen. (Dr.) Machage is the Senator for Kuria? There is no county in this Country called Kuria.

**An hon. Senator:** Withdraw and apologize.

**Sen. Leshore:** Mr. Speaker, Sir, I withdraw the word “Kuria” and replace it with the word “Migori.”

**The Speaker** (Hon. Ethuro): Order, Senators! I also thought that Sen. Lonyangapuo would also tell us if somebody from his county would look like the Senator for Migori, then what would be the rightful age of the Senator of Migori by now.

Proceed, Sen. Ndiema.

*(Laughter)*

**Sen. Ndiema:** Thank you, Mr. Speaker, Sir. I was wondering whether the Senator for Samburu is older than he looks.

When this programme was started, we understood that it was a pilot project. Normally in a pilot project, you would want to experience and rectify or correct some anomalies that come in. It is unfortunate that nothing from the Statement says what problems have been encountered and what has been corrected. The Constitution talks of non-discrimination. Even among the elderly, there are those who are older than the others. Therefore, to be told that there are some old men who are left out while others are favoured by being given this support is really unconstitutional.

**The Speaker** (Hon. Ethuro) Order! Sen. Ndiema, you have put your case.

**Sen. Ndiema:** I want to put another one, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Order! I said only one. Actually, if you had done it as is expected, you would have done even three, within the same time you used.

Finally, Sen. (Prof.) Kithure Kindiki.

**The Senate Majority Leader** (Sen. (Prof) Kindiki): Thank you, Mr. Speaker, Sir. I want to deliver a very brief Statement under Standing Order 45.

**The Speaker** (Hon. Ethuro); Order! Chairman of the Committee, please, proceed.

**Sen. Madzayo:** Thank you, Mr. Speaker Sir. This matter has derived a lot of interest from the Members. I would request to be given at least 21 days to be in a position to give a response. But quickly, the distinguished Senator for-----

**The Speaker** (Hon. Ethuro) Order! You either respond to it in its entirety or request for additional time so that you can bring all the information. You cannot do both.

**Sen. Madzayo:** Thank you, Mr. Speaker, Sir. I request for 21 days to do that.

**The Speaker** (Hon. Ethuro) Order! Sen. Madzayo, 21 days is too long. This is already a matter that you are handling. As you can see, it has also generated a lot of interest from the Members. I think it should be ready in two 2 weeks.

**Sen. Madzayo:** Mr. Speaker, Sir, it will be ready in two weeks.

*(Sen. Madzayo remained standing in his place)*

**The Speaker** (Hon. Ethuro): Order, Sen. Madzayo! What have you not finished? Is it the same Statement or a different Statement? Nothing stops you from coming again.

**Sen. Madzayo:** A different one, Mr. Speaker, Sir.  
Prof. Kindiki continue.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY 7<sup>TH</sup> OCTOBER, 2014

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir, I would like to give a short Statement under Standing Order 45. Pursuant to Standing Order 45, if you look at the Order Paper for today, there is among other things a Motion for Adjournment of the Senate until 21<sup>st</sup> October 2014, which I will be moving later in the course of today's business.

This Motion has been necessitated by a number of recent developments in the counties that require the full attention and quick action by this Senate. Notably, the situation in Makueni, which is mutating every day, requires early intervention by the relevant arms and committees of this House, as well as the situation that has been prevailing for several months in Isiolo County, where there is a total paralysis and the absence of an assembly for three months now.

The Senate as the protector of counties and the protector of county governments, and as mandated by the Constitution, should address this issues immediately with a view to making appropriate recommendations emanating from early action. I do not want to speak to the merits of this Motion because I do not want to pre-empt debate. I will give further and detailed reasons when I will be moving the Motion.

Hon. Senators, if the Motion of Adjournment is carried, any business that would be outstanding at the close of business today, would be prioritized by the Rules and Business Committee and scheduled for consideration when the Senate resumes as per the Motion.

Thank you.

**The Speaker** (Hon. Ethuro): Sen. Murkomen.

**Sen. Murkomen:** Thank you, Mr. Speaker, Sir. I am sorry because there was a paper to be laid in the House which was delayed in transmission from one office to the other and I have spoken to you about it.

**The Speaker** (Hon. Ethuro): Proceed.

**PAPERS LAID**

QUARTERLY REPORTS OF THE TRANSITION AUTHORITY TO  
IMPLEMENTATION OF DEVOLVED SYSTEM OF GOVERNMENT

**Sen. Murkomen:** Mr. Speaker, Sir, I beg to lay the following papers on the Table:-

The quarterly report of the Transition Authority (TA) on progress in the implementation of the transition to the devolved system of government; January to March, 2014.

The quarterly report of the Transition Authority on progress in the implementation of transition to devolved system of government; April to June 2014.

*(Sen. Murkomen laid the documents on the Table)*

## PETITION

### MALTREATMENT OF MR. W.K. MUSA BY ICPAK

**The Speaker** (Hon. Ethuro): Order, Senators! I also have a Petition made to the Senate on behalf of Mr. Wachira Kariuki Musa.

The Petition is concerning the unfair, discriminatory and unconstitutional treatment of Mr. Wachira Kariuki Musa by the Institute of Certified Public Accountants of Kenya (ICPAK). I read as he has presented:-

I, the undersigned, Wachira Kariuki Musa, a citizen of Kenya and a resident in Nairobi's Umoja Estate, draws the attention of the Senate to the following:

- (i) that the ICPAK as a total regulator of accountants in Kenya has duly and unfairly discriminates against holders of foreign accountancy qualifications;
- (ii) that I am a holder of such qualification from the Institute of Chartered Certified Accountants of the United Kingdom;
- (iii) that as per the Accountants Act of 2008, holders of such qualifications are required to have knowledge of local tax and the law;
- (iv) that I have knowledge of local tax and the law and obtained such after attending a three year technical diploma in accountancy course at the Mombasa Polytechnic, now Technical University of Mombasa, which was examined by the Kenya National Examinations Council (KNEC); and,
- (v) that I also have practical knowledge of both local tax and law, having worked in four different external audit firms in the last 16 years.

I hereby confirm:-

- (i) that I have brought to the attention of the institute the above facts;
- (ii) that in a meeting held in September 2013 with the institute, they asked me to pay the requisite registration fee, apply for an exemption from the requirement to resit local tax and law examinations and thereafter apply for registration;
- (iii) that I did pay the requisite fees and applied for an exemption so that I can be duly registered as an accountant allowed to practice in Kenya; and,
- (iv) that they have refused to enter my name in the register of accountants in Kenya and have thus consequently denied me a constitutional right to gain economically from my academic qualifications.

I hereby confirm that the issues in respect of which the Petition is made are not pending before any court of law, constitutional or legal body. Wherefore your humble petitioner prays that the Senate:-

- (1) considers and resolves the matter and commends to the regulatory institute as a formation to enter my name into the register of accountants in Kenya, and;

(2) intervenes and resolves the matter relating to my registration as an accountant and compensation for the lost income occasioned by delay in processing my application. It is signed as Wachira Kariuki Musa of Box 19849, Nairobi.

The identification number is there and the signature.

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

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I rise on a Standing Order No. 226, to request the Speaker to clarify whether in that Petition that you have just read to us, this Kenyan has attached copies of those degrees, diplomas and the certificates that he is purporting to have. In the absence of such, one would be forgiven for thinking that we are being given insufficient information to justify the need for this honourable House to move into action.

Mr. Speaker, Sir, has he attached?

**Sen. Billow:** On a point of order Mr. Speaker, Sir. Since the matter petitioned is about professional qualification, it would be useful for the Senate to know whether the ICPAK does reject all foreign qualifications or it is only in respect of this particular individual. It is important to know so that we are either dealing with a whole class of people who are qualified or not.

**Sen. Obure:** On a point of order, Mr. Speaker, Sir. You just read that Petition to us. In my view, it is not practicable for the Senate as a whole to discuss it. I would request that you direct that it be referred to the relevant Committee so that it can establish all these issues that Members are now raising.

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

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

**Sen. Madzayo:** Mr. Speaker, Sir, in that Petition, most of the issues that have been raised are legal in nature. I was going to ask whether the petitioner has sought legal redress in court because the issues that he is canvassing before the Senate can be remedied through the courts of law instead of belabouring the Senate to determine whether it is a good case or not. I would freely advise the petitioner to go to a court of law and seek that remedy.

**The Speaker** (Hon. Ethuro): Order! Order! Let me start with the last one. Obviously, you were not following; he says that he has not gone anywhere else. I hereby confirm that the issues in respect to which the petition is made are not pending before any court of law; or constitutional or legal body. But I guess your point is that you feel that, that is where they should go. Unfortunately, the right to petition Parliament is in Article 119(1) of the Constitution, which states that:-

“Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.

On the issue raised by Sen. (Dr.) Khalwale, Standing Order No. 226 addresses the whole issue of petitions. That is where I would have allowed you to comment on this. This was just a presentation which was going the way suggested by Sen. Obure. If you look at the form of petition at Standing Order No. 223(k), which states:-

“A petition shall be on the form set out in the Third Schedule and shall-  
(k) not have any letters, affidavits or other documents annexed to it.”

This is a professional matter. Sen. Billow also raised the issue as to whether it is applicable to all. I will ask the Committee on Legal Affairs and Human Rights to look



into the Petition. They will now ask for all the kind of documentation that is required and they will make a report to the House in 30 days.

*(Applause)*

Order, Senators! I also have some communications to make. Let me start with the Members of County Assembly (MCAs) from Isiolo County Assembly.

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION FROM ISIOLO COUNTY ASSEMBLY

**The Speaker** (Hon. Ethuro): Hon. Senators, we have a visiting delegation from Isiolo County Assembly as follows: Hon. Lemantile David, hon. Nura Diba Bila, hon. Abdi Sora Bala, hon. Dekka Bonjo, hon. Fatuma Said Mahat, hon. Benjamin Joel Lepetet, hon. Dhahabu Bonaya and hon. Paul Mero.

In our usual tradition, let us welcome them.

*(Applause)*

#### VISITING DELEGATION FROM ST. BAKHITA CARON GIRLS, WEST POKOT COUNTY

**The Speaker** (Hon. Ethuro): Hon. Senators, we have a visiting delegation from Bakhita Caron Girls from West Pokot County.

*(Applause)*

#### VISITING DELEGATION FROM CARDINAL OTUNGA BOYS HIGH SCHOOL MOSOCHO, KISII COUNTY

**The Speaker** (Hon. Ethuro): Hon. Senators, we also have a visiting delegation from Cardinal Otunga Boys High School Mosoch, Kisii County.

*(Applause)*

#### VISITING DELEGATION FROM MUSENGO PRIMARY SCHOOL KITUI COUNTY

**The Speaker** (Hon. Ethuro): Hon. Senators, we also have a visiting delegation from Musengo Primary School Kitui County.

*(Applause)*

On behalf of the Senate and on my own behalf, I extend a warm welcome to the students, pupils and the honorable MCAs and wish them a happy and fruitful visit.

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

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

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, did you notice that contrary to the traditions and practices of this House, when the MCAs of Isiolo were being introduced, they were just seated? Could it be that the Clerk failed to train them on the procedure of appearing and sitting in this Senate?

**The Speaker** (Hon. Ethuro): Obviously, I did not notice because I was reading from the paper and you cannot look up and down at the same time.

*(Laughter)*

Now since I did not notice, how do I help you? Because the gist of your matter was whether I noticed; and since I did not notice, the matter does not arise. Anyway, the substance of your issue is that, yes, they are supposed to be informed that once your name is called out, you stand in order to be acknowledged. But, again, you realize that the applause you were giving was so consistent and persistent that there was no break. So, we can do that for future reference.

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

**Sen. Madzayo:** Mr. Speaker, Sir, I am seeking your guidance.

**The Speaker** (Hon. Ethuro): Except for the Statement you requested the other Statement is not here. So, why do you not leave it pending because I also notice that we have a lot of work on the Order Paper?

**Sen. Madzayo:** I am obliged, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Order, Senators! That now brings us to look at the Supplementary Order Paper.

*(Sen. Munyes was applauded as he stood up in his place)*

**Sen. Munyes:** Mr. Speaker, Sir, I want to thank my colleagues who came to see me and the whole country following what happened to me. I thank God that I am alive and ready to serve this country.

*(Applause)*

Mr. Speaker, Sir, I rise to seek a Statement from the Chairperson of the Committee on Education, which I think is ready. I hope it can be delivered today.

**Sen. Musila:** On a point of order, Mr. Speaker, Sir. I am seeking your indulgence and that of the House. This is because when my friend, Sen. Munyes stood, I thought that he was specifically going to talk about his predicament. I want to say how sorry we were. Our guards should be trained because the incident that happened to Sen. Munyes is likely to happen elsewhere. The security men that we have today appear not to have been trained. So, I want to appeal to the Inspector-General to ensure that all security guards assigned to protect us and other very important persons (VIPs) are properly trained and know their job.

Thank you.

**The Speaker** (Hon. Ethuro): Sen. Karaba, are you ready with that Statement?

**Sen. Karaba:** Yes, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Proceed.

STATUS OF STAFFING IN LOKIRIAN PRIMARY  
SCHOOL, TURKANA COUNTY

**Sen. Karaba:** Mr. Speaker, Sir, my sympathies go to Sen. Munyes for the ugly incident which took place. Nevertheless, he had asked me for this Statement before the incident took place.

The Statement is about a case where some policemen were found teaching pupils in one of the schools in Turkana County. The incident was aired by both local and international television stations.

However, I wish to respond as follows:

Mr. Speaker, Sir, the two schools where the policemen were found teaching are Lokiriama Primary School and Lokipetot Primary School in Loima Sub-County. In Lokiriama Primary School, the Administration Policemen (APs) were doubling as teachers and this was aired. The enrolment in this school is 134 girls and 94 boys. At that time, the school had three teachers, including the deputy headmaster who had just been appointed as an assistant chief. However, he continued assisting the school, but was not one of those who were aired while teaching.

At that time, the Teachers Service Commission (TSC) was in the process of deploying three more teachers who have since reported. The school now has five teachers. The staff establishment is eight teachers and the school has eight classes. The three teachers required will be provided as they become available.

Mr. Speaker, Sir, Lokipetot Primary School was opened in May, 2014. It has 58 boys and 62 girls, making a total of 125 pupils. These children are all in one class due to lack of classrooms. The school had only one teacher employed by the TSC, who was also the headteacher, but passed on, on 16<sup>th</sup> July, 2014.

Mr. Speaker, Sir, immediately after that, the assistant chief and a local AP were aired teaching. The assistant chief and the AP are trained teachers and have a passion for teaching. A new headmaster was posted to the school on 25<sup>th</sup> July, 2014. At least, two new teachers will be posted as soon as we complete the process of recruiting new teachers that is ongoing.

Thank you.

**Sen. Munyes:** Mr. Speaker, Sir, I want to thank the TSC for approving the posting of two teachers. What I am not sure of is whether there is assurance that these two teachers will report on duty. This is because Lokiriama and Lokipetot primary schools are located in very remote areas in Turkana County. The problem that we face in these areas is insecurity and poor infrastructure. Therefore, accessibility is also a problem. What assurance can you give us that these two teachers will report in Lokiriama and Lokipetot?

The Chairperson says there are eight teachers in the school, but three teachers are yet to be posted. When will these three teachers be posted?

Finally, what policy is there to address the problem of over-staffing in towns, *vis-à-vis* the under-staffing that is seen in the remote areas of our counties? Teachers tend to congregate in towns and urban areas and avoid to be posted to the remote areas. What action will the Ministry take to resolve this problem?

**Sen. Karaba:** Mr. Speaker, Sir, the TSC is the one charged with the responsibility of recruitment and posting of teachers. However, it is up to the community itself to make sure that there is tranquility and houses are provided by the community, so that the same teachers can be housed. So, if a teacher is posted to a place and finds there is none of those, there is a possibility of him or her not reporting. They will always give excuses. They require security which is mostly found in towns. That is why you will find most of them congregating in towns.

**Sen. (Prof.) Lonyagapuo:** Mr. Speaker, Sir, I want to ride on the same Statement that Sen. Munyes has sought, but to further state that Turkana County has a shortage of not less than 2,000 primary school teachers. This is similar to West Pokot County. We have a staggering shortage of not less than 2,000 teachers. Worst of all, these are the schools that are around the border of the two counties where you have one teacher teaching class one to class eight. No wonder we have this occasional cattle rustling because of lack of teachers in schools.

Could the Chairman bring a list of the schools along the border point of the two counties all the way to Samburu so that we understand this massive shortage that we are talking about in our counties? Could he give us the steps that are being taken to address this issue? Having seen the television clip that was shown of some *askaris* teaching children in class, they have quickly claimed that they have sent some teachers.

What about those schools that were not shown on television? Can we take the television crew to all those schools that are lacking teachers so that the situation can be seen? I hope that is not what they are after, but we want to make sure that the schools are fully staffed.

*(Sen. Karaba stood up in his place)*

**The Speaker** (Hon. Ethuro): Sen. Karaba, please, hold on before you respond because I can see there are two Members who are interested in this issue.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, this problem is deeper than we think. Could the Chairperson tell us what the Jubilee Government is doing to ensure that affirmative action is played, so that the Turkana and West Pokot people benefit from the children who are being churned out of teacher training colleges and get a lion's share so as to have a long term solution?

**The Speaker** (Hon. Ethuro): The interest in the matter seems to be growing. Sen. Munyes.

**Sen. Munyes:** Mr. Speaker, Sir, the Chairperson did not address the issue of over-staffing in towns. This is a fact. If you visit major towns in Turkana like Lodwar and this happens in most counties, you will find many teachers in schools compared to those in remote areas. What can we do to resolve this problem?

Secondly, the Chairperson says parents are responsible for housing teachers and providing security. Is it the mandate of the parents or it is the Government to house teachers and provide them with security?

**Sen. Haji:** Mr. Speaker, Sir, through the Chairperson of this Committee, the Ministry should admit that the shortage of teachers in remote parts of our country is as a result of not recruiting teachers from those areas who do not need any housing. They can even sleep under a tree or anywhere with their kin. But since the Government has retracted on the recruitment of teachers by---

**The Speaker** (Hon. Ethuro): Order, Sen. Haji! Just because you come from Ijara does not mean you do not need a house. The Government cannot afford to discriminate if certain public servants are being housed. Irrespective of where you come from, you are entitled to the same.

**Sen. Haji:** Mr. Speaker, Sir, what I am trying to say is that most of these upcountry teachers will use the pretext of not having a house, but if we recruit teachers from those areas, they can stay with their people. The minimum grade for recruitment of police and army officers is D plus. However, our children cannot even be trained in colleges because they have not attained Grade C plus and above. So, we should lower the grade that is required for training teachers and this problem of lack of teachers will be a thing of the past.

**Sen. Hargura:** Mr. Speaker, Sir, I just want to follow up on what Sen. Haji has said. We even have cases where the TSC recruits teachers and posts them to these areas. However, after one year, they go back again. It is not easy to sort out the issue of shortage of teachers in those areas unless the Government targets the locals to train them as teachers.

**The Speaker** (Hon. Ethuro): The last two; Sen. Lesuuda and then Sen. Musila.

**Sen. Lesuuda:** Mr. Speaker, Sir, my intervention is that the Chairperson of the Committee on Education needs to give us a comprehensive policy from the TSC on how this issue was handled and not as casually as it has been presented saying: "Two or three teachers." We need a clear policy statement on how staffing is done for the remote areas because these children have to sit for exams and are expected to excel just like children from other regions.

**Sen. Musila:** Mr. Speaker, Sir, I want to add to what Sen. Lesuuda has said. First of all, it is not just Turkana County or other counties that are considered to be remote that have this problem. The shortage of teachers affects the whole country. This afternoon, through your communication, you said there were children from Kitui County in the galleries. If you ask them, they will tell you that they have no teachers.

Could he give us a breakdown of the shortage of teachers per county so that we can see the magnitude of the problem? It is better that the APs were teaching children in Turkana County. In other areas, children are left alone because there are no teachers. He needs to give us a comprehensive list showing how many teachers are lacking per county. This way we will be able to see the magnitude of this problem.

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

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

**The Temporary Speaker** (Sen. Murkomen): Chairperson of the Committee, you may now respond.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, I wish to assure hon. Senators that this is not casual business that I am handling. I have held meetings with the Secretary to the TSC and his team. I have also had meetings with the other relevant stakeholders, including the university commission. So, we are a serious Committee. I have a very detailed report with me here. It is only that I want my friend, Sen. Munyes to get his question right.

The report details the issue of shortage of teachers, grades that a teacher should have before joining a teachers training college and why some teachers do not report to some stations once appointed.

Mr. Temporary Speaker, Sir, one thing I would like you to note is that it is imperative that a teacher, once trained, can teach anywhere in Kenya. Sometimes they are posted to the districts of their choice. However, they can teach anywhere in the Republic because they are trained teachers. However, when they are posted to certain schools and they find that there are no houses, surely, humanly, they are not comfortable to teach there. That is why I was saying the community has a role to play so that they attract teachers in those areas.

The other thing is that we need to stress on the issue of security. This is not a matter of feeling that it should be provided by the Ministry of Education, Science and Technology but a national programme. If security is maintained in those areas bordering inter territorial areas, I am sure the peace that will prevail in those areas will attract teachers to teach in the said areas.

Mr. Temporary Speaker, Sir, regarding what you have asked about recruitment of grade “C” students, that will remain under the policy of the Ministry. There are very many cases of students attaining grade “C”. Where we think the situation is worse, we should encourage students to continue learning and getting grades which are commensurate to the training of a student who has attained a grade “C.”

Once a teacher is posted to a station, the requirement and policy of the TSC has been that the teacher will not be transferred unless he has taught for five years. That is a policy. Any time there is a contradiction of that, we can contact the TSC to tell us why that is not happening.

The other issue is about this report. I want to table these papers so that anybody who wants to have details of his or her county can access all the details.

Mr. Temporary Speaker, Sir, lastly, I would like to report to this Senate that we have a shortage of 91,230 teachers in the country and to have teachers recruited, we require money. That is the money we need to get from the Senate; either today or any time soon so that teachers are recruited. This year alone, 5,000 teachers were recruited against the existing 293,060. That is the number of the existing teachers in the country.

Mr. Temporary Speaker, Sir, this year alone, we recruited 5,000 who are not enough. That is just a drop in the ocean. We have 5,000 and are struggling to fill the gap of 91,000. That gives us a very big difference. Therefore, we need money to recruit more teachers. That is the money we need to budget for in the next financial year.

I beg to lay the documents on the Table.

*(Sen. Karaba laid the documents on the Table)*

DISQUALIFICATION OF MR. B. MBEJA FROM CHIEF ENGINEER RECRUITMENTS  
AT MINISTRY OF TRANSPORT AND INFRASTRUCTURE

**Sen. Madzayo:** Thank you, Mr. Temporary Speaker, Sir. I rise to seek a Statement from the Chairperson of the Standing Committee on Roads and Transportation.

The Statement relates to the disqualification of Mr. Boniface Mbeja from the recent recruitment for a Chief Mechanical Engineer at the Ministry of Transport and Infrastructure. Following the interview process, Mr. Benjamin Mbeja emerged the top most qualified candidate. Consequently, three candidates were recommended to the Cabinet Secretary, Ministry of Transport and Infrastructure for consideration for recruitment. However, the Cabinet Secretary appointed a candidate from his ethnic community whose age borders that of retirement. This person was less qualified than Mr. Boniface Mbeja.

In this Statement, I would like the Chairperson to do the following:-

- (1) to explain the criterion used to identify the candidate for the position.
- (2) He should also state the reason for not appointing Mr. Boniface Mbeja for the position of Chief Mechanical Engineer noting that he emerged as the most qualified. Furthermore, he is young and can contribute more effectively and efficiently at the Ministry and in Kenya at large.
- (3) Is the appointment not an abuse of power and office?
- (4) The Cabinet Secretary should submit reports of the entire recruitment process, including short listing, interview scores and final report on the interviews and conclusion to the process.
- (5) What measures will the Cabinet Secretary take to compensate Mr. Boniface Mbeja and can the decision be reversed?

Thank you.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker. The matter being raised by the Senator for Kilifi County came up yesterday when we were doing consultations with the Ministry of Transport and Infrastructure. The entire Ministry officials were here yesterday.

When this matter was brought up, the Cabinet Secretary challenged Sen. Madzayo to substantiate the fact that a particular ethnic community was being favoured in that department. So as not to leave anything unclear, could that answer come with the full breakdown with the number of employees in the Ministry giving their names, county of origins and ethnicity as provided for in the Constitution of Kenya?

**The Temporary Speaker** (Sen. Murkomen): What was out of order with Sen. Madzayo?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I was not rising on a point of order because something was out of order. I was seeking your indulgence to allow the issues I have referred to, to ride on the general issues he sought clarifications for, so that we get a more comprehensive answer and settle the concerns of the Cabinet Secretary that there is no ethnic bias in his department.

**Sen. Sijeny:** Mr. Temporary Speaker, Sir, indeed, all these concerns that have been raised now were raised yesterday apart from the additional part that Sen. (Dr.) Khalwale has brought regarding the requirement of a report.

All the Senators who are here heard what the Cabinet Secretary said. We mandated the Cabinet Secretary to go and get more answers. We are supposed to have a retreat with the entire Ministry led by the Cabinet Secretary. We had agreed that all the issues should be raised there and will be answered.

Therefore, I do not know why the Senator is still insisting. Having said that, the report that is required here addresses other issues that we have been seeking answers for. I know that this will require a lot of research and, probably, should be allocated more time.

*(Sen. Haji stood at his place)*

**The Temporary Speaker** (Sen. Murkomen): Sen. Haji, I have already seen you. So, I will give you a chance at an appropriate time.

Proceed, Sen. Sijeny and make it short.

**Sen. Sijeny:** Mr. Temporary Speaker, Sir, I request that they be given, at least one month so that they come up with a comprehensive report the way it is expected since this will involve many departments.

**The Temporary Speaker** (Sen. Murkomen): How long do you want? Is two weeks sufficient?

**Sen. Sijeny:** Mr. Temporary Speaker, Sir, two weeks is short for the kind of report that they want. One month is quite reasonable unless they want me to come again and ask for more time.

**The Temporary Speaker** (Sen. Murkomen): I direct that you come with an answer in one month. If the recess works out, that will be two weeks after we come back.

**Hon. Senators:** On a point of order.

**The Temporary Speaker** (Sen. Murkomen): Let me be very clear. If you have a request that is related to these issues, then it is not relevant since we are not debating. A Senator stood and asked a question. The question is directed to a Committee. Why should we debate about the question now? We will debate once a response is brought.

Considering the fact that it was raised in yesterday's meeting, the Chairperson thinks that one month is good; four weeks. I rule that we get a response the last Thursday of October.

**The Temporary Speaker** (Sen. Murkomen): Proceed, Sen. Ndiema, as long as it is not on the same issue.

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, the Cabinet Secretary yesterday said that, that is not a question for him and that we should ask the Public Service Commission (PSC). So, it should actually involve the relevant---

*(Applause)*

*(Sen. Kittony stood up in her place)*

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. Kittony! Why are you getting so emotional? Order! Be seated; you have no intervention here. There is no procedure in the House that says you should stand in your place.

Proceed, Sen. Haji.



**Sen. Haji:** Mr. Temporary Speaker, Sir, I think Sen. Ndiema has answered my concern. I am not questioning the wisdom of the Committee, but I am wondering about the practicability of going for a retreat to interview only one person. Is that really in order?

**The Temporary Speaker** (Sen. Murkomen): You are talking about the issue of the retreat?

**Sen. Haji:** Yes, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Murkomen): If I heard the Vice Chairperson very well, she was referring to the retreat on a different issue. They had agreed yesterday that there will be a retreat with the Ministry on different issues, but not related to the one person's interview.

Yes, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, under Article 41 of the Constitution, every Kenyan has a right to labour minimums, which include remunerations and so on. I am requesting the Chairperson to consider directing - since in one of the clarifications, Sen. Madzayo would like the possibility of this young man being hired - the Cabinet Secretary not to hire this aged, under qualified man and wait until this question has been answered to our satisfaction before he concludes the hiring exercise. We do not see how a 29 year old boy can lose to a 60 year old man. He cannot.

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. (Dr.) Khalwale! You are actually defeating your own argument because you are saying that we should discriminate on the 60 year old in favour of the 29 year old. You are shooting yourself in the foot. The point is that, we want fairness and the Committee will have to be fair. The question now before us is whether that should be the Committee on Roads and Transportation or the Committee involved with the PSC issues.

But, the Vice Chairperson---

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

**The Temporary Speaker** (Sen. Murkomen): Order! Order! I am speaking. Sen. Madzayo, I do not see your intervention here. So, why should I give you the chance? Sit down.

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

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. Madzayo!

**Hon. Senators:** Sit down!

*(Laughter)*

*(Several Senators stood up in their places)*

**The Temporary Speaker** (Sen. Murkomen): Order, all of you! We have spent too much time on this issue.

Vice Chairperson of the Committee, I direct that the question remains with you. You can consult both the Ministry of Transport and Infrastructure and the Ministry of Public Service. Nothing stops a Committee from investigating from both departments. That is why we have given you 28 days. That is a long time.

This request, by the way, is not to an individual; it is to the Committee. So, it is up to the Committee to perhaps summon people from the PSC if it works for you. You can

also summon people from the Ministry of Transport and Infrastructure. It does not matter who you summon so long as you can give a comprehensive answer. You are not confined to a particular Ministry. I think that sorts out this issue.

Proceed, Sen. Kittony.

**Sen. Kittony:** Mr. Temporary Speaker, Sir, I am trying to volunteer some information---

**The Temporary Speaker** (Sen. Murkomen): It is not required at this moment. You can volunteer it to the Committee.

**Sen. Kittony:** Mr. Temporary Speaker, Sir, not to the Committee because we had a very cordial meeting yesterday with the Cabinet Secretary and the entire team. I think it is the only best way for us to handle issues. With due respect, I have for my dear son who was with us, I think if we create such cordial relations. We will develop this country in a better manner instead of challenging ourselves. It was very clear that it was not the mandate of the Ministry of Transport and Infrastructure, but it is the mandate of the PSC.

**The Temporary Speaker** (Sen. Murkomen): Okay, Sen. Kittony. Yes, Sen. Sang? I know what Sen. Sang is up to. What is it, Sen. Sang?

**Sen. Sang:** Mr. Temporary Speaker, Sir, there seems to be a stranger in this House in the name of Sen. Kittony's "son." Could we be told who this "son" is?

*(Laughter)*

**The Temporary Speaker** (Sen. Murkomen): Order! Sen. Kittony, did you address your son using the Senate, because the only language we use here to refer to each other is "Senators"?

*(Laughter)*

So, you are completely out of order. Although Sen. Madzayo is the same age as your sons and daughters, he is the Senator of a County called Kilifi.

**Sen. Kittony:** I regard him very highly.

**The Temporary Speaker** (Sen. Murkomen): Let us hear Sen. Billow and then Sen. Orengo. We should end this debate now. Why is it generating a lot of interest?

Yes, Sen. Orengo?

**Sen. Orengo:** Mr. Temporary Speaker, Sir, I just want to raise the matter in relation to what Sen. Madzayo has been saying. I know that sometimes we can have conversations in *Kamukunjis* or in informal meetings, but those are not formal proceedings of the Senate and they will never be on record anywhere. So, Sen. Madzayo cannot be stopped from raising any issue in a formal session of the Senate just because it was raised in some roadside conversations. The proper proceedings of the Senate either take place in the Committee or in the House. Otherwise, we do not have a proper record. I agree with the Temporary Speaker that sometimes we take too much time on these Statements and give very little time to the core business, which should really have more time.

Thank you.

**The Temporary Speaker** (Sen. Murkomen): Thank you. With that presentation from the Senior Counsel and Senator for Siaya, I think that is the end of that matter.

Proceed, Senate Majority Leader.

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

**The Temporary Speaker** (Sen. Murkomen): On a different issue?

**Sen. Ndiema:** Mr. Temporary Speaker, Sir, is the Senator for Siaya in order to say that the proceedings we had yesterday were roadside and informal yet it was a full Committee meeting?

**The Temporary Speaker** (Sen. Murkomen): Actually, that escaped my mind. Sen. Orenge, yesterday's meeting, for some people who may not have attended, was not informal, but it was sanctioned by the House. It was through the Committee and we have a formal record. It is part and parcel of the records of this House. So, whatever the Cabinet Secretary committed himself to yesterday is part and parcel of the commitments of this House, but I agree with you that in future, even when we have *Kamukunji* or some informal session of some sort with any Cabinet Secretary, it does not stop this House from then formalizing it through its Committee. Yesterday's sitting was a formal session.

Before the Senate Majority Leader moves the Motion, I really want to request you that the Business on Order No.9 is very critical, but also requires the majority of us to pass it. So, it is part of the reason that Order No.8 is there. So, whereas we are aware that some other Senators are on their way, we do not want to lose the rest of you in terms of being available to pass the Business that appears in Order No.9. Actually, if that is achieved, then we will be able to do Order No.10.

Proceed, Sen. (Prof.) Kindiki.

What is it, Sen. Muthama?

*(Sen. Adan crossed the Floor while the Chair was on his feet)*

**Sen. Muthama:** On a point of order, Mr. Temporary Speaker, Sir. My point of order regards obeying the rules of this House. As a Whip, I must make sure that the rules are obeyed and they work. When the Chair was on his feet, Sen. Adan crossed over and started talking to the Senator over there. We had to even shout and tell her: "Freeze, the Chair is on his feet!" Would I be in order to request the Members to try and obey the rules of the House?

**The Temporary Speaker** (Sen. Murkomen): Sen. Adan, you are completely out of order. Is it true, because the Chair did not see you do that? Could you confirm whether you did so?

**Sen. Adan:** Mr. Temporary Speaker, Sir, as far as I can remember, by the time you stood up, I had already crossed the Floor. I was with Sen. Hargura. I believe that, that is the position.

**The Temporary Speaker** (Sen. Murkomen): You are accused of two things. The first one is walking when the Chair was on his feet. The second one is crossing to the other side of the House without bowing to the Bar. It is a practice that has become common, not just to you, but a number of Senators. I rule all that you did was out of order. However, I forgive you because the business under Order No.9 might have preoccupied your mind.

*(Applause)*

The Senate Majority Leader!

### MOTIONS

ALTERATION OF SENATE CALENDAR (REGULAR SESSIONS)  
TO ALLOW SENATE INTERVENTION IN THE RECONCILIATION  
PROCESS IN ISIOLO AND MAKUENI COUNTIES

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

THAT, pursuant to Standing Order 28(4) and 53(b) of the Senate Standing Orders, and following the challenges in the management and operations in Makueni and Isiolo county governments, the Senate resolves to alter its calendar (Regular Sessions) for an adjournment commencing today, Thursday 2<sup>nd</sup> October, 2014, to resume on Tuesday 21<sup>st</sup> October, 2014, to allow the Senate intervene in the reconciliation process in the two counties.

Mr. Temporary Speaker, Sir, we have just come from recess. I think this is the second week after recess. Members will also note that even before we went on recess, we had to extend our previous sittings by an extra one week, to be able to deal with the situation relating to the impeachment, at that time, of the Deputy Governor of Machakos County. But no sooner have we resumed than we have been confronted with an increasing number of chaotic situations in our counties. Most recent is the situation in Makueni County which began as a misunderstanding initially between the county assembly and the county executive, but it degenerated into violent attacks and before the dust of that violence would settle, it is now more compounded.

It is taking the approach of dissolving the county government of Makueni, as some have suggested. In the alternative, we are also informed that there is even an attempt to impeach the Governor of Makueni County, as a result of the mutation of those misunderstandings.

Mr. Temporary Speaker, Sir, at the same time, for about three months now, the County Assembly of Isiolo has had serious problems. This is because it has not been able to sit. Sometime in June, the assembly moved a Motion to remove from office the Speaker of the Assembly. As a result of that move, the Speaker rushed to court, as has become the custom now, and obtained ordered reinstating him. In spite of the court order, it has been impossible to conduct the activities of the County Assembly of Isiolo for the last three months.

The situation has assumed security implications because of the various players and issues involved. What is becoming clear is that there is something fundamentally wrong that requires the full and undivided attention of the Senate, to be able to address the creeping chaos in our devolved units. When an assembly cannot meet for three months, even technically, legal issues arise. This is because as you know, an assembly cannot adjourn for more than three months.

Mr. Temporary Speaker, Sir, it is in this connection, therefore, that in spite of the efforts that our Committee on Devolved Government had put in place for Makueni – I hope even for Isiolo – it would not be enough to wait for 17<sup>th</sup> October or whenever they

want to hear the various parties in Makueni. It will require the Committee on Devolved Government and, perhaps, other offices or officials within the Senate to do whatever it can to make sure that through our Committees and the good offices of the Senate of the Republic of Kenya, especially with regard to Makueni and Isiolo, an urgent solution is found in the next two weeks. That urgent solution will not be found by us sitting in Nairobi and listening to people. It may be found, perhaps, in physical sitting if the Committee deems it fit, in those places, to even talk to residents who cannot travel to Nairobi and find out when the rain started beating us.

Mr. Temporary Speaker, Sir, these are just highlights of two counties that are facing grave challenges that have even led to violence in some cases. Even in the other case of Isiolo, there was limited violence in the Chamber, but right now because of the protracted nature of this tussle, the security situation and relationship among many players, parties and clans within Isiolo, portends a grave danger, even for the existence of that county government and the peace and stability of that county.

Mr. Temporary Speaker, Sir, I hope that through the intervention that will be put in place and the recommendation, we will look at the devolution architecture generally. We would want to see recommendations that help us intervene, not only in these two counties, but also in various other counties where chaos have broken out in one way or the other. We have the unending issue in Embu County. We also have cases where county assemblies have held some governors hostage. The only way such a county is functioning is because the governor continues to make the assembly or parts of the assembly happy.

Mr. Temporary Speaker, Sir, there is also the reverse in other counties where everyday an executive or some functionary is impeached. What has happened because of lack of time for the Senate to look at this issue comprehensively is that now the courts have become the supervisors of devolution. This poses grave danger. It is high time that this Senate took this very short recess to come up with a strategy of pre-empting situations like we are having in Makueni and Isiolo counties and come with recommendations that are generic, that can help us identify early warning signs of trouble, early intervention and action so that our devolved units function and services are rendered to the people of Kenya. We yearn to see our counties and county governments functioning.

Mr. Temporary Speaker, Sir, without much ado, I know within today's business there is a substantive Motion on the situation in Isiolo County. I will speak less about that. This Motion does not affect the business for today. So, it is to request that the Senate adjourns by the end of today's business to give that window for that work to be done and look at this issue in a more holistic and generic manner.

As I have said, during the last sittings, we ate into our recess by one week to deal with the issues of Machakos County and the County Allocation of Revenue Act. These rearrangements in the calendar are normal and dictated by factors that emerge and those which are not anticipated. If need be, when we resume, we may need to push our calendar forward to be able to accommodate whatever agenda needs to be accommodated before Christmas. I am sure this Senate will exercise its discretion, flexibility and make sure that we deliver all we have to balance the functions that we can discharge in this Chamber *vis-à-vis* other functions that require the full and undivided attention of the Senate, as a whole, or some of the committees of the Senate.

Mr. Temporary Speaker, Sir, with those remarks, I beg to move and request the Senator for Kakamega County, Sen. (Dr.) Khalwale, who is a doctor of medicine and a specialist in bull fighting to second.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I want to particularly thank the Senate Majority Leader for those accolades and recognition of the humble bull fighter of Kakamega County.

I rise to strongly second this Motion, first, in the spirit of bipartisanship that we have nurtured in this Senate when matters of grave national importance like this one crop up. Lord Acton said: "*Absolute power corrupts absolutely*"

With all due respect to the officers, MCAs, governors, their deputies and members of the CECs, power seems to be slowly going into their heads. Why all these fights? If it is not Makueni, it is Isiolo. If it is not Isiolo, it is Embu. If it is not Embu, it is Machakos. *Hee, hee---*

**An hon. Senator:** What will the record show?

**The Temporary Speaker** (Sen. Murkomen): Sen. (Dr.) Khalwale, what did you exactly say? Which language is that? Is that English?

*(Laughter)*

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, since I know many of you have gone to good schools, both locally and internationally, the word "*heeeee*" obtains more or less, in all the languages of the world.

With all due respect to MCAs, they should know that they are in the beginning of a great journey that will one day culminate in the ultimate price. If they might have known, MCAs of the Republic of Kenya should know that even President Obama started humbly like them. President Obama served in Illinois for a full term of four years. After he finished in Illinois he went to the Senate and subsequently became the most powerful man in the world, the President of the United States of America (USA). Therefore, the MCAs have reason to wait, grow and become the same story that is the Obama moment in this world.

I am saying this because it is with a lot of pain that I remember that Ronald Ngala and Martin Shikuku, speaking on the Floor of this very House, led the leadership of this country in Lancaster demanding that there be devolution. Today Ronald Ngala and Martin Shikuku are dead. I do not know whether when they were thinking about devolution, they wanted these kind of things that we are seeing taking place or it is the expanded resources that are at the disposal of these officers in counties that has gone into their heads.

The people who lost their lives lost their profession and broke limbs in the second liberation, notably, Jaromogi Oginga Odinga, Charles Rubia, Martin Shikuku, James Orenge and Kenneth Matiba, when they put their lives, professions and health on the line, it is because they wanted our people to be empowered.

Today I want to speak to the hearts of these MCAs. The culture of lawlessness, disorder, chaos, mayhem and pandemonium that we are seeing could not possibly be the meaning of devolution. This culture is steadily taking root in our country in almost all the counties.

I, therefore, wish to second this Motion so that once and for all, we root out this culture by dealing with it conclusively and to finality.

*(Question proposed)*

**Sen. Muthama:** On a point of order, Mr. Temporary Speaker, Sir. I seek the indulgence of the Chair because Motions Nos. 8 and 9, listed on the Order Paper speak about the same issue. The substantive Motion now is Motion No.9 because we have dealt with the Makueni issue in Motion No.8. The issue we need to deal with now, seriously, is Motion No.9.

My kind request is: Would it be possible for Senators to shorten debate on Motion No.8 so that we discuss and deliberate on Motion No.9 as the substantive Motion?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Speaker, Sir. I want to ride on what Sen. Muthama has said. The Motion in Order No.8 is procedural and the one on Order No.9 is a substantive Motion on issues that are already raised in Order No.8. Would I be in order to request that we first deal with Order No.8 because it is a procedural Motion and then we debate Motion in Order No.9 so that we achieve as much as possible?

I also wanted to clarify further that I see no prejudice subject to your direction in muting debate in Order No.8 because it is procedural. The substance issues there will be subsumed and discussed in Order No.9.

**Sen. Billow:** On a point of order, Mr. Temporary Speaker, Sir. Motion No.9, merely pleads with a committee of this House to look into the matter. There is not much in Order No.9.

However, in Order No.8, there are fundamental issues that we should discuss. So, we should not be limited on Order No.8. Number 9 is only referring to a Committee and does not say anything else. We are not discussing a report of a committee or an investigation on Isiolo. The Motion simply says that the Committee should look into Isiolo County.

Therefore, let us discuss No.8 because that is where we want to raise a lot of issues. Do not limit our time.

**The Temporary Speaker** (Sen. Murkomen): Definitely, you have every right. However, bear in mind that---

*(Sen. Khalwale stood up at his place)*

What is it Sen. Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, in making that ruling, in view of the contribution from the Senator for Mandera, we deliberately limited our contribution in this first Motion because we were anticipating a second Motion. So, we will be caught in a very tight situation since some of us had already conducted research on the on goings in Isiolo. We have documents that we want to table in this House concerning Isiolo.

I ask you to be clear so that some of us do not lose the opportunity of tabling the documents we have concerning Isiolo. We did this deliberately.

**The Temporary Speaker** (Sen. Murkomen): I want to rule on two things. One, the gist of the first Motion on Order No.8 is to alter the calendar, but not to discuss Makueni or Isiolo. The reason given there is Isiolo and Makueni, but the gist of that is to vote in altering the calendar.

The gist of Motion No.8 is to vote on determination of the substantive matter affecting the County of Isiolo. It will not be, in any way, wrong for anyone to refer to Makueni or any other county that could be having similar problems. I am very sympathetic to the argument by Sen. Muthama, particularly because the first one, being a procedural Motion does not affect counties.

That means that we will vote by saying either “yes” or “no.” However, since the second one affects counties and requires the usual majority to pass it, I will be more sympathetic to a cause that would require more people to vote and that is the substantive Motion.

I am the Chair and I sympathize with what Sen. Muthama said. I request all of you who have made the opposite request, if possible, to allow your issues to be moved to the substantive Motion which is the second issue. If possible, we substantively debate on this if that is okay with you.

**Sen. Orenge:** Mr. Temporary Speaker. I agree with your thoughts. Do we have to vote on this?

**The Temporary Speaker** (Sen. Murkomen): We will vote on the first one because it is procedural. However, on the second one, we will debate it and then vote on it.

**An hon. Senator:** Mr. Temporary Speaker, are you saying that we will not debate on this?

**The Temporary Speaker** (Sen. Murkomen): I have no right to say that you will not debate. I am saying that you limit debate on the first Motion. However, I can foresee, from the way people are speaking that there will be an overlap. Whatever one will say in the first one could be the same thing they will say in the second one. Since this one has already come and is procedural, we will dispose of it first.

**Sen. Orenge:** Mr. Temporary Speaker, Sir, I agree with your thoughts on this. I also thought that since Order No.8, as the Senator for Mandera said, requires the matter to be referred to a relevant committee of the House and is something that in any situation should happen as a matter of course. In fact, if he wanted to be economical with the time of the Senate, then we should vote and then go to Committee of the Whole regarding the Bills.

The arguments we are making that one is a procedural Motion while the other is a substantive Motion at the end of the day limit those who want to speak on a particular Motion. For example, the Senator for Kakamega and the Senate Majority Leader have the privilege of having spoken on Order No.8. They are the same people who are now standing to tell us what Motion is procedural and that they have a lot to say on Order No.9. They had their day on that Order. If this is on economics of time, this should equally apply on the two orders then we move on.

I really want to vote on Order No.9. So, if we will spend two hours on it, I am afraid that I may leave the Chamber at some point.

**The Temporary Speaker** (Sen. Murkomen): Let me put it this way; the Senate Majority Leader and the Senator for Kakamega had already abided by the consultation



with the Speaker by saying that they would limit the things they want to say in furtherance of the argument that they would say those things in the next Order.

Considering the request by Sen. Muthama, I said that I do not want to deny people a chance to speak on this one. Could we then limit the time to five minutes each? Is that in order?

Sen. Orengo, there are also certain symbolic things that happen in a Senate. For example, we have the Members of the County of Isiolo who have come here because of the business in Order No.9. The Senate wants to give prominence to that issue, in furtherance of the discussion that Isiolo has not featured in debate as Makueni has done. Let us now go to the main requests. We now have about six. We should limit the requests to six and each should have five minutes each. Five minutes will do.

Yes, Sen. Billow Kerrow!

**Sen. Billow:** Thank you, Mr. Temporary Speaker, Sir. I stand to support the Motion to adjourn this House effective today. But I think there are more serious issues affecting this House itself than some of the reasons that have been cited by the Senate Majority Leader in seeking the adjournment.

I appreciate that he has mentioned Makueni, Isiolo and some of the other challenges that we face, but I think we really have a more fundamental challenge for which we need even a longer adjournment so that we can find a solution. The biggest problem we have is about the Senate, more than the county assemblies and the county executives. If there is one institution today that is actually faced with a serious problem of existence – the existential and functional aspects of it – it is this House.

In the last one month, there have been court rulings – not less than four of them – that have virtually rendered this House in-operational.

*(Applause)*

We cannot carry out oversight, we cannot carry out impeachments, we cannot legislate – like what we did on the County Development Boards – you cannot even summon. For Heaven's sake, the fundamental mandates and responsibilities of this House have been brought into question by the courts and the fact that we have no work to do. This House has no work; we cannot just come to this House and discuss some funny Motions when, in fact, we have the actual mandates of carrying out oversight. If you go to Isiolo or Makueni now and make some decision, some fellow goes to court and the court throws those things into the dustbin. What is the point?

*(Applause)*

Mr. Temporary Speaker, Sir, I think we have a fundamental problem and I think we need to adjourn to discuss and find a solution. In fact, we urgently need a meeting so that we can ponder on these issues and find a solution. We are going to go into the history of this country with a bad name; history will judge us harshly that there were Senators – Sen. Orengo, Sen. Billow and others – who were Senators and the Senate died.

I respect the Council of Governors (CoGs) and I have to say this, in the one year that they have been in existence, they have fought for their space in this country. That institution today is highly recognized in this country; they fought tooth and nail. Even

before the President was sworn in, they had convinced the former President, President Kibaki, that “we want two flags, we want this and that.” We are running an institution that is slowly by slowly being eroded; its powers are being eroded. Let us take time off to discuss those issues.

Two, Mr. Temporary Speaker, Sir, even the executive – look at the Treasury – today in Sen. (Dr.) Khalwale’s Committee--- A resolution was passed in this House more than two months ago but it has been thrown into the dustbin, yet the law says that when the Cabinet Secretary, Treasury, receives resolutions from this House regarding stoppage of funds, within seven days, the Controller of Budget should investigate and submit a report to him.

**An hon. Senator:** Shame!

**Sen. Billow:** Mr. Temporary Speaker, Sir, where are we going if the Executive and the Judiciary are openly undermining this institution and we sit here? What are you going to supervise in devolution? Today, there was a court ruling that ordered an assembly not to discuss or debate a mandate of that assembly. So, I think we have a serious problem and I think it is important that we adjourn.

*(Applause)*

Mr. Temporary Speaker, Sir, last month before we adjourned, you remember the courts gave orders even on the budget before even the budgets could be passed by the Controller of Budget! So, we have more fundamental problems and we need to adjourn to discuss those issues. We have problems, not just in devolution at the county level, but even this institution itself has a problem.

So, Mr. Temporary Speaker, Sir, with those few remarks, I beg to support. We need to adjourn quickly and find the solution to this matter.

*(Applause)*

**The Temporary Speaker** (Sen. Murkomen): Sen. Musila.

**Sen. Musila:** Thank you, Mr. Temporary Speaker, Sir. I support the Motion for the Senate to adjourn. In the case of Makueni, some of us have been very embarrassed by the situation that is prevailing in that county. I want to inform this Senate that Sen. Muthama, Sen. Mutula Kilonzo Jnr. and myself have, since the day of the incident, been trying to see how we can resolve the differences that are prevailing in that county. Unfortunately, we have not been able to make headway simply because the two sides are so much apart. But we have not given up; we are still continuing with our efforts.

Mr. Temporary Speaker, Sir, the issue of assemblies all over the country and this word “impeachment;” it is like it has gone into their minds that when you disagree with somebody somewhere, you go on to impeach. County Assemblies are impeaching Speakers and they are impeaching officers to render it impossible for governors to perform. We are not saying that it is only the assemblies that are wrong; indeed, that is why we need to go in depth and investigate what is ailing our county governments from both sides – the governors and the assemblies.

I just want to point out that this Motion, as much as I support it, it does not specify what is going to happen. The other day, your Committee said that they will probe

Makueni from the 14<sup>th</sup> of October, 2014. We were preparing the ground, hoping that by that time, we will give you good results so that, perhaps, there will be no need for that; but we are not asking for that. What is surprising me is that you want to adjourn a whole Senate to probe Isiolo and Makueni and we do not know the role of individual Senators. We know that there is a Committee on Devolved Government, but now when we adjourn, I go through that door and I go and tell my children that we have adjourned to go and probe Makueni, what would be my role there? What will be the role of the Senate?

**The Temporary Speaker** (Sen. Murkomen): Yes, what is it, Sen. (Prof.) Kindiki?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, it is a point of information, if the Senator wishes to be informed.

**The Temporary Speaker** (Sen. Murkomen): Sen. Musila, are you willing to be informed?

**Sen. Musila:** I agree. This is my very good neighbour.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, Sen. Musila.

Mr. Temporary Speaker, Sir, I just wanted to inform Sen. Musila that we are aware that there is a calendar of doing things, especially in Makueni; maybe not in Isiolo. But as late as today, this problem is mutating into something different. So, if we wait for 16<sup>th</sup>, we might be overtaken by events. As we speak, a Motion to impeach the Governor is already on the Floor of the Assembly and it is very much related to the disagreement. As he has ably put it, it has even become so easy that when two parties disagree, they resort to impeachment.

Mr. Temporary Speaker, Sir, my information is that some of the decisions we have taken is because of the complexity of the matter and, in fact, the pressure is beyond Makueni and Isiolo. Perhaps if the adjournment goes through, we will definitely need to have a *Kamukunji* and a multi-pronged strategy that is beyond one or two committees. There are many issues around budget, including the experience that the Sen. (Dr.) Khalwale Committee had this morning.

**The Temporary Speaker** (Sen. Murkomen): You had remained with 37 seconds.

**Sen. Musila:** Mr. Temporary Speaker, Sir, I got the information, although he prolonged it too much but I thank him, anyway.

But, Mr. Temporary Speaker, Sir, we should have had an informal meeting so that we agree that A, B, and C will go and deal with Isiolo; C and D will deal with Makueni and then we will converge when we resume with reports. I think there is something amiss here; whether it is budget, whether it is Makueni or Isiolo, we must be very clear when we are adjourning what role these Senators who are adjourning to go and resolve these problems are going to play. I support but I think there is something amiss. It is not clear in my mind what we are going to do when we adjourn.

Thank you, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. Murkomen): Sen. (Dr.) Gisuka Wilfred Machage.

**Sen. (Dr.) Machage:** Asante, Bw. Spika wa Muda. Je, tumlaumu nani kwa matatizo yanayotokea kushoto na kulia? Je, tunafaa kulaumu mahakama au Seneti hii? Tutayaita mambo yanayotokea Isiolo, Makueni, Kakamega na kila mahali kukurukakara? Mambo haya yanatokea kwa sababu ya udhaifu wa Katiba yetu. Ni lazima tuseme ukweli. Katiba haina vielelezo kamili vya kuleta watu pamoja wakati wa janga kama hili.

Kwa hivyo, tunapoenda kutatua haya matatizo, ninatumai kwamba Ofisi ya Spika imemtegea kila Seneta jukumu lake na kazi atakayoitekeleza kwa wakati huo. Tunajua kwamba kuna Kamati ambazo zinahusika, lakini kuna kazi za ziada ambazo wengine wetu katika Seneti hii tutapewa kutekeleza. Palipo wazee hapaharibiki jambo.

Kipengele cha 19 cha Katiba kinaeleza kinagaubaga kwamba iwapo matatizo kama yale ya Makueni yataendelea, basi tume itaundwa na Rais wa nchi. Tume hiyo itaangalia matatizo hayo kisha Rais anaweza kuivunja serikali hiyo ya kaunti ambayo imeshindwa kutekeleza wajibu wake na uchaguzi ufuata baada ya siku 90. Sisi kama Seneti hatutaki kwenda kuwazuia Wabunge wa kaunti hizo kutekeleza wajibu wao. Wanawajibu wa kufanya *impeachment*. Hilo silo jukumu letu. Hata kama kaunti zote 47 zitajitokeza na kuleta maombi ya kuvunja serikali zao, huo sio wajibu wetu. Tutasikiliza na kuamua. Lakini iwapo sasa maisha ya binadamu yako hatarini na watu wanatumia bunduki kushoto na kulia, nafikiri kuwa tunajukumu kama viongozi wa nchi hii na Seneti la kwenda mashinani ili kusuluhisha matatizo, kuleta uwiano na labda kupunguza uhasama na kupotea kwa pesa za serikali hizo. Kazi ya serikali hizo sasa ni kwenda kortini na kutumia pesa.

Bw. Spika wa Muda, tukiwa na wajibu huo tuna shida moja ambayo ni mahakama. Je, tutafanya nini? Tukienda kule mashinani tutakuja na uamuzi na stakabadhi ambazo tutawasilisha kwa Seneti hii. Lakini mahakama imekuwa janga na chuma katika ubongo wa Seneti. Wameamua kuharibu serikali za kaunti. Wanataka kuvunja ugatuzi. Seneti inafaa kupeleka kilio chao kuhusu mahakama kwa wananchi wote. Mahakama zimevunja ugatuzi. Wananchi wamenusa maendeleo kwa sababu pesa zimepelekwa hadi mashinani kupitia ugatuzi. Hata hivyo mahakama imeharibu jambo hili. Je, wanamtendea kazi nani? Je, wanamtukuza nani na lengo lao ni nini? Je, sababu zao za kufanya hivyo ni nini na watapata faida gani? Maswali haya ni lazima yajibiwe, kwa sababu nafikiri kwamba mizizi ni mirefu. Sisi tunaona matawi tu. Je, mizizi yake iko wapi?

Bw. Spika wa Muda, naunga mkono.

**Sen. Njoroge:** Thank you, Mr. Temporary Speaker, Sir. I support this Motion for adjournment.

It high time that we really addressed the issues and problems that face this House. First, we have a Constitution which has not gotten a proper interpretation in Parliament and the Judiciary. I think that this is the right time to adjourn and face the Judiciary. Maybe we need to go to the Supreme Court, which is responsible for interpreting the Constitution, so that the Court can interpret for us what Articles 96 and 125 mean. I think that we really need both Parliament and the Judiciary to come to an agreement, after proper interpretation of the Constitution by the Supreme Court. I think what is coming from our courts is as a result of the officers of the courts, including the judges, being so busy that probably they have never taken time to properly read this Constitution. We might be blaming the Judiciary wrongly because their calendar does not have even time for them to go and make any observations or read the Constitution. We could be blaming the wrong people or institution. I think this is the right time to bring our heads together and make an appeal to the Supreme Court to do a proper interpretation of the Constitution, so that even judges can understand the Senate is here to stay and at the same time, we have a mandate which they need to observe and respect.

Thank you, Mr. Temporary Speaker, Sir.

**Sen. Muthama:** Bw. Spika wa Muda, naunga mkono Hoja hii ili tuweze kwenda nje na kutafuta suluhu katika Kaunti za Makueni na Isiolo.

Tulipokuwa na utata katika Kaunti ya Machakos, Korti pale Machakos ilitoa uamuzi wa kusimamisha Bunge la kaunti hiyo kufanya kazi yake. Ilitoa uamuzi kwamba kazi ingefanyika kulingana na sheria na Katiba ya nchi hii. Baadaye tuliunda Kamati Maalum ambayo ilikaa na kufanya kazi kulingana na Katiba. Licha ya kuwa Kamati yetu ilikubaliana na Bunge la Kaunti ya Machakos, Seneti hii ilitumia Katiba hiyo hiyo kuamua kwamba maneno hayo hayakuwa sawa. Kwa kauli moja, tulikubaliana na maneno hayo yakakoma.

Bw. Spika wa Muda, kuhusu mambo ya Kaunti ya Embu, mahakama iliingilia mambo haya kutoka mwanzo. Katiba inaruhusu Bunge la Kaunti ya Embu kuzungumzia Hoja kuhusu Gavana wa Embu. Katiba pia inasema kwamba uamuzi wa mwisho kuhusu jambo hili si wa bunge la kaunti wala ni wa Seneti. Korti tena ilitoa uamuzi mambo yasifanyike. Tulikuwa huku hatukuwa na habari, tulikuwa tunafanya kazi yetu halafu tukaona maamuzi ya korti yakija yakisema kuwa Bunge La Seneti limedharau mahakama, limeendelea na kazi ya kumshugulikia Gavana wa Embu. Hoja ilirudishwa mara ya pili lakini mahakama tena ikaingilia mambo haya, ikaleta sarakasi na kasheshe. Mpaka wa leo, ukamilifu wa mambo ya Gavana wa Embu hayajulikani kama ni Korti, Seneti, Bunge ya kaunti ya Embu ama ni wananchi walio na mwisho wa mambo haya.

Bw. Spika wa Muda ningetaka kujulisha Seneti hii kwamba katika mkutano wetu wa Kamati ya *Rules and Business* unaofanyika Jumanne, Mhesihimiwa Spika aligusia kwamba tarehe 23, 24 na 25 Oktoba, tutafanya mkutano wa faragha na kuweza kuzungumza yanayohusu Bunge hili na mahakama. Ni dhahiri kwamba Seneti ikubaliwe ifanye kazi yake kulingana na Katiba au ifutiliwe mbali, tuwache kufanya kazi ya bure. Kuna haja gani sisi kukaa hapa na kufanya kazi masaa mane or sita, kama ile kazi tulifanya ya kupitisha Hoja iliyoletwa hapa kuhusu Kaunti ya Embu na mwishowe tunaanza mlolongo wa maneno mpaka mwisho haujulikani.

Ukiangalia mambo yanayohusu Kaunti ya Makueni, na tumejaribu kama vile ndugu yangu Seneta Musila amesema, shida ya Makueni ni uongozi na tama ya pesa pekee yake. Hakuna mambo mengine. Gavana ana simama na kusema: “Sheria inasema tutumie pesa mpaka hapa.” Wengine wanasema: “Hapana, Kaunti za Nakuru, Machakos na Meru zinatimia pesa hivi ama vile.” Ningetaka ndugu zangu hapa wajue mambo haya. Vita sio baina ya watu wawili. Waliopigwa risasi kule Makueni ni wa upande mmoja, wale ni watu wa Gavana. Hakuna risasi iliyotoka upande wa Gavana kumpiga mwingine wa upande ule mwingine. Kwa hivyo, wanao hamaki kwa roho zao na mambo haya ni wale ambo wanasingizia mambo ambayo Seneti inakataa.

Bw. Spika wa Muda, tunahitaji muda kuangalia mambo haya. Kwa hayo, machache, ninaunga Hoja hii mkono.

**Sen. Elachi:** Mr. Temporary Speaker, Sir, I also rise to support this Motion. As we seek to adjourn, it is important to note that governors have decided to work together. That is why they push their agenda and it sails through. Whilst we know that we have challenges, they have money and that is why the courts and the lawyers have decided to be their friends because there is a lot of public wastage of funds that can be paid to every individual who wants to stand for them.

The issue of Isiolo County is very critical. As much as I know there is a substantive Motion that is before this House, but as we adjourn, we need to ensure that

we see how to resolve issues in this county. We cannot leave the County Assembly of Isiolo in limbo just because of issues that were done within the Assembly. Although they are in court, a judge asked the Speaker and the Majority Leader to step aside. In other words, the courts are supporting the agenda of a governor doing the work alone without going through the county assemblies. I know today we are not discussing the courts, but it is important for Kenyans to note these issues. I heard in the radio this afternoon that the Governor of Makueni is still insisting that the county needs to be dissolved. This is a very worrying trend. If the governors can win in that, next time we will have many governors deciding that the county assemblies should be dissolved. We must stand firm on this issue.

This Senate is supposed to take Article 96 seriously and perform its role. This is the time that we must prove that we are there to defend the counties and their governments. It is also important for the Senate to have a serious retreat with the different warring groups like the governors. We also need to have a meeting with the Chief Justice so that we can understand why we are finding ourselves in conflict while the Constitution when Kenyans knew they will have a legislative chamber and the courts to assist the chamber to interpret the laws. But if the interpretation will be returning Governor Wambora to work and for them deciding on the work that the chamber would have done, and especially the High Court which has become – I do not want to use a derogative word – but the High Court is not doing service to Kenyans anymore. It has decided to work for the governors. Most of the time, we have to move to the Supreme Court to get things working. This is a disservice to the Judiciary itself. It is up to the Supreme Court to always solve the stalemates that we have. I do not think this is right for the courts. We wanted a Supreme Court that will help us interpret this new Constitution. Therefore, the High Court and the Court of Appeal should respect what Kenyans felt will be the spirit and letter of this Constitution.

For the Senate, it is time to put our feet down. The casual way we do things will affect us. We must stand seriously to ensure that outside there when we give a command, if it is to the National Treasury, for example, that money should not be remitted to Bomet County, I do not think the National Treasury should come and ask us questions. It is up to them to do that and then call us for a meeting to say: “We have done what you requested, but give us reasons why we are supposed to do this.” If we are going to address each other in the media with the National Treasury, we will have lost it completely. I wish to see the National Treasury following what the County Public Investments and Accounts Committee had recommended. The three counties have not had the respect to come to the Committee and listen to the issues. When I hear the Cabinet Secretary, National Treasury, saying that he would want the Senate to elaborate further why we have removed one county and left the other three, for me, this does not make sense. This is wrong.

With those remarks, I beg to support.

**Sen. Ong’era:** Thank you, Mr. Temporary Speaker, Sir, for giving me this chance to also make my contribution. I rise to oppose this Motion. The Mover and Seconder of the Motion have not given us justifiable reasons why the Senate should adjourn when we have just come back from recess. We know that under Standing Order No.211, the Committee on Devolved Government is established to deal with certain issues, and you, Mr. Temporary Speaker, Sir, are the Chairperson of that Committee.

Standing Order No.211 reads as follows:-

“The Sessional Committee on Devolved Government shall consider all matters related to intergovernmental and inter-county relations, governance and management of county governments, cities, towns and urban areas.”

This is the Committee that is supposed to deal with issues of counties. This Standing Order does not say that the entire Senate should start trooping to Makueni and Isiolo counties to resolve issues. This is an issue that your Committee should have gone to Isiolo to interrogate and bring some understanding. You can imagine if we have to disrupt the business of the House so that every time there is a problem, we have to disrupt business and, therefore, we become like administrators to listen to these issues unless there is another issue that we are not being told that is requiring this House to adjourn. Perhaps some Members here have thought that they want to travel somewhere to The Hague. We need to be told the truth as to why this House needs to adjourn.

*[The Temporary Speaker (Sen. Murkomen) left the Chair]*

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

I do not see any Standing Order that requires the whole Senate to become a committee to interrogate issues that have not been assigned to it.

Secondly, we know that the Committee on Devolved Government has been having discussions on Makueni and Isiolo counties. They should be tabling a report to us so that we interrogate the issues. If all of us went to Makueni and to Isiolo to look into these issues, then we would not have the benefit of foresight and insight.

**Sen. Njoroje:** On a point of order, Mr. Temporary Speaker, Sir. Is it in order, for the Member who is on the Floor to say that we are asking for an adjournment so as to go to The Hague? Did I hear well? Is it in order for her to say that we are adjourning so as to go to The Hague?

**The Temporary Speaker (Sen. (Dr.) Machage):** You heard her very well. She said exactly that and that is her opinion. Continue.

**Sen. Ong'era:** Thank you Mr. Temporary Speaker, Sir. I was stating my opinion on how I felt about this issue. When we had a very serious issue on the impeachment of the Governor for Embu, this House decided, in hindsight, to assign a committee to look into the issues. The whole House did not adjourn to look into the issue.

We have had serious issues of insecurity in this country. We had the recent unfortunate cases of Lamu, Wajir and Mandera counties. This House did not adjourn to interrogate those issues as a Senate. I think that time has come for us to become serious on how we want the public to view us in the discharge of our functions.

I oppose.

**Sen.(Prof.) Lonyangapuo:** On a point of order, Mr. Temporary Speaker, Sir. I do not know whether it is I and Janet who are not reading this issue properly. This Motion is asking the Senate to adjourn and alter the calendar of regular sessions so that we go away for 21 days to intervene in the reconciliation process in the two counties.

I do not know whether the Mover of this Motion wrote it properly. Is he saying that the Senate, as a whole, will move to Makueni, transact business in Makueni, finish and move to Isiolo, transact business and come back? We need to be very clear on what we are looking for.

These are normal disputes and we must understand that the system of devolution is new and we have not seen anything yet. There will be many more disputes that will arise. We have just started. Everybody is trying to create space for himself to establish supremacy. You have just seen how the courts are interfering with every other arm of Government. We created a law in this House, and as Parliament, and the President signed it into law but lawyers dismissed it and said; to hell with it.

We should be doing these things the other way round. We should summon the entire Makueni County leadership to this House, deal with the problem and ask them to go back. We should also summon the entire membership of Isiolo County Assembly if they are involved in the issues because we represent counties. We should deal with them here, live.

If we adjourn, that means that you will see me here on 21<sup>st</sup> October. Will we have solved this issue? We want to put meat and value into everything that is taking place. I think the Mover of this Motion should ask the Senate to stay put. We should invite the fellows who need our support to come to the Floor of the Senate. If the relevant committee cannot deal with the matter, we could dissolve it and appoint new members who can solve the problems rather than disrupt the entire process.

I do not support this. No!

**Sen. Hargura:** Thank you, Mr. Temporary Speaker, Sir. As a Senate, we are supposed to represent and protect the interests of counties and their governments. That is what we have been doing, to come with the necessary legislations and to make sure that funds are available.

If things are going wrong at the county assemblies, we should establish necessary legislation and ensure that resources are made available. However, if the counties we are supposed to protect are not moving in the right direction, as a Senate, we cannot sit down and continue putting in place enabling legislation when counties are not moving in the right direction as we are seeing now.

There is a lot of wrangling in the counties. Other counties that have not come out may also be having problems. Therefore, we must do something. My problem with this Motion is; what happens after we adjourn? Is there any framework of engagement with the county governments? If there is no framework, we will adjourn for the 21 days and come back but things will not have been sorted out.

We need to have a clear framework on how to engage the immediate counties of Isiolo and Makueni which have problems and then come up with a framework of sorting out the problems as they develop in other counties. However, if this will just be a recess without any timetable, framework and plan of who will go there, then we will not be solving any problem. We may end up in the same direction where we will appear as a House that likes to go on recess.

By the time we come back, the problems will even have gone out of hand. We should sort out these problems when we are still in session rather than when we are on recess. If anything happens, we may have to be recalled. Unless there is a framework, we may not be doing anything.

If the Motion is to be passed as it is, without a framework, I oppose.

**The Temporary Speaker** (Sen. (Dr.) Machage): Hon. Senators, in the earlier points of orders, did you did request that we have few Members discuss Order No.8. I believe the feelings of the Members are still that way. I, therefore, would want to cut



short this Motion – I think we have heard enough and we are repeating ourselves – and put the question. This is not a Motion that affects counties and everybody can vote.

*(Question put and agreed to)*

*(Applause)*

Next Order.

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

*(Loud consultations)*

Mr. Temporary Speaker, Sir, Senators are consulting a bit loudly.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Order! Order! Let us hear Sen. Dullo moving her Motion.

INQUIRY INTO THE WRANGLES OF ISIOLO COUNTY ASSEMBLY BY  
SESSIONAL COMMITTEE ON DEVOLVED GOVERNMENT

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

THAT, aware that Isiolo County is one of the forty seven (47) county governments established by the Constitution of Kenya; cognizant of the fact that a county government comprises of a county executive and a county assembly; further aware that on 4<sup>th</sup> June, 2014, the Isiolo County Assembly resolved to impeach their Speaker; noting that on 16<sup>th</sup> June, 2014, the High Court of Kenya sitting in Meru reinstated the Speaker of Isiolo County Assembly, temporarily; further noting that the Isiolo County Assembly appealed against the said decision of the High Court, an appeal which has since been declined; concerned that the working relationship between the Speaker and most Members of the County Assembly of Isiolo has deteriorated, adversely affecting the Assembly in the discharge of its statutory mandate; noting that pursuant to Article 96 (1) of the Constitution of Kenya, the Senate represents the counties, and serves to protect the interests of the counties and their governments; the Senate directs the Sessional Committee on Devolved Government to expeditiously inquire into the matter with a view to solving the wrangles in the County Assembly and report within three (3) weeks.

*(Loud consultations)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Order! Order! Sen. (Prof. Kindiki, Sen. Murkomen and the others, let us hear this gracious lady Senator move her Motion.

**Sen. Adan:** Mr. Temporary Speaker, Sir, if I could give a chronology of events, Isiolo County has 20 Members of the County Assembly (MCAs); 10 elected and 10 nominated. On 12<sup>th</sup> June, Isiolo County Assembly impeached the Speaker and

immediately after that, the Speaker ran to court and actually obtained a court order. The number of MCAs that impeached the Speaker was 15 against five, who voted no to the impeachment Motion. Clearly, that allowed the County Assembly to impeach the Speaker. One of the grounds upon which the County Assembly impeached the Speaker was that--- As far as the Standing Orders were concerned, the MCAs had complied with them and I believe that the grounds are very clear in the sense that it is as a result of incompetence of the Speaker.

On 16<sup>th</sup> June, 2014, the Speaker obtained an interim order reinstating him temporarily. The order also stopped the advertising of his position and allowed him to access the Assembly. That was actually an *ex parte* ruling. This was, in itself, not right because on such a grave matter, the court should have listened to both parties without granting those orders.

Up to now, the case in Meru High Court is at a standstill. It is still at the mentioning stage and I believe that if it is a temporary injunction, it must have a limited time within which the matter should have been determined. But, unfortunately, the interim order has been renewed and the matter is not actually moving to the hearing.

Mr. Temporary Speaker, Sir, on 23<sup>rd</sup> again, the County Assembly moved to Court of Appeal sitting in Nyeri to set aside the decision of the Meru High Court. Unfortunately, the court sitting in Nyeri referred the matter back and rejected the appeal of the County Assembly. Clearly, this shows that the court has not given ears to the County Assembly.

Mr. Temporary Speaker, Sir, what is clearly coming out of all this is that we are just running around from one court to the other but without accessing justice, yet the courts in this country are supposed to give justice to those who are aggrieved.

*(Loud consultations)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! The Senators who are seated so close to the Chair and consulting loudly; remember you are a disturbance to my ears. I need to listen. If you want to consult loudly, go out or move further from me.

Proceed, Sen. Dullo.

**Sen. Adan:** Mr. Temporary Speaker, Sir, in all this, you will see that there is a lot of money from the taxpayer's coffers that is used by both the aggrieved party and the other party for litigation. We do not have time or the money in this country to waste running around courts.

Mr. Temporary Speaker, Sir, the County Assembly appealed to the High Court in Nairobi, where they wanted the Speaker to step aside so that they can resolve their issues. Clearly, this was actually dismissed. As I speak now, the county is at a standstill and since the inauguration of the County Assembly in Isiolo, we do not have even one Bill that has been passed in that particular county. This clearly shows that there is a critical issue that we really need to deal with.

Once again, Mr. Temporary Speaker, Sir, there are petitions against individual MCAs which are actually making these MCAs even have sleepless nights. Their personal security is at stake because everybody sees them as a threat. Clearly, the position of this House is to protect county assemblies, and I think as a Senate, we are failing in this duty.

Regarding the petition against the individual MCAs, they have a right as the electorate to take MCAs to court or to petition, but this is all maliciously and unfairly done because the petition is against 11 MCAs when we have 20 MCAs. This is as a result of the sitting that has failed and the stalemate that we have.

Mr. Temporary Speaker, Sir, this is a critical moment for the people of Isiolo County because this is an area that is affected by insecurity. If we do not solve this problem, then we are going to fail in our duty. Isiolo County is crying; people are confused because there a lot of problems. As I speak here today, the MCAs are here and the whole country, I believe, is watching what is happening in Isiolo County. The Senate has a mandate to stop what is happening in all the counties, including Isiolo. If we do not do this, then we are failing in our responsibilities.

I beg to move and request Sen. Hargura to second this Motion.

**Sen. Hargura:** Mr. Temporary Speaker, Sir, I wish to Second this Motion which requires the Senate to direct the Sessional Committee on Devolved Government to expeditiously inquire into the matter concerning Isiolo County, with a view of solving the wrangles in the County Assembly and report within three weeks.

The state of affairs in this county is sad, because for a long time, some parts of this country have been left behind in terms of development. We have all been complaining of marginalization, but now we have been given the opportunity to develop our own counties. Resources are being availed to the counties, so that they can take charge of their own development and priorities. They have been crying for a long time that they have been marginalized, but now the sad state of affairs is that it is our own elected leaders who are becoming another source of marginalization to us. This is because there is no development and people are not getting services because of what is happening within various counties, particularly Isiolo County. As a Senate, we have the responsibility to make sure that these issues are sorted out, because we have the duty to protect and serve the counties and their governments and make sure that they take off. In such a situation, we have to stop and ask ourselves what is not happening. Why is it that the county is not moving forward? Why is it that the county assembly has not met for the last three months? We have even heard that if a county assembly does not meet for three months, this may have other legal implications. So, the earlier the Committee on Devolved Government moves in and brings these people together and sorts out the problem, the better.

From the chronology of events given by the Mover of this Motion, there is also the element of interference by the courts. We have talked about that several times in this House. Initially, we talked about the Senate being obstructed by the Judiciary and now it is going down to the county assemblies, and we do not know how far it will go. I do not know whether the officers in the Judiciary are part of the Kenyan dream of making sure that devolution works. This is because if we do very narrow interpretation of the Constitution, we end up having the bigger good being lost. If we try to serve the interests or rights of an individual to hold an office, when the public through its elected leaders have said that they do not want that person, then we just wonder whose interest the Judiciary is serving. If it was a temporary injunction, maybe within a month, the Judiciary should have sorted out this and come up with a permanent position on the issue. We would have sorted out the issue of Isiolo County. But, unfortunately, as the Senate, we cannot sit here and assume that nothing is wrong. We cannot sit here and pass Bills

like the County Allocation of Revenue Bill and send funds to the counties and expect them to deliver, when actually they are at a standstill.

Mr. Temporary Speaker, Sir, from the look of things, it is not only Isiolo and Makueni counties which have problems. We have seen cases where governors do not want to appear before the Senate. The question is: "What are they doing on the ground?" It will come a time when more of these cases will come out. If the governors are emboldened by the fact that they can get the kind of orders that they want from the courts, it will come a time when people will take up arms to make sure that, that a governor is thrown out of the office physically. We are heading there. If the courts will not become the grounds where people will seek justice, people will do it the mob justice way, and we do not want to go that way. So, the earlier we take it upon ourselves and move in as a Committee, the better.

Isiolo is not a very big county in terms of even the funding that they receive but it is a county which has been marginalized for long. Unfortunately, because of disagreements between the elected leaders, we have this problem. It is better that this Committee moves in and actually sits with the county executive and even the county assembly, because they may have a hand in this also. They need to sit with the Governor and the Speaker of the County Assembly and impress upon them that this wrangling is of no interest to the people of Isiolo. People want development and service delivery and not wrangling. So, the earlier we sort out this problem, the better.

Mr. Temporary Speaker, Sir, I urge the Committee on Devolved Government to take this issue serious. A while ago, we passed a Motion to go on recess because of the serious issues happening on the ground. Let us organize ourselves and even if it will require the presence of Senators from the neighbouring counties, we should sit down and sort out these issues once and for all. We know that Makueni County also has issues. We need to come up with a systematic way of sorting out these issues, even if we will have to come up with legislation out of those deliberations. This is because the issues emerging in the counties are actually derailing devolution and denying our people the services which they require.

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

*(Question proposed)*

**Sen. Wamatangi:** Mr. Temporary Speaker, Sir, I rise to support this Motion and convey my empathy with Sen. Dullo who represents Isiolo County and women in this Senate. I also sympathize and empathize with the entire country. We promulgated the new Constitution in 2010 on the platform that we were going to have a new system of devolution which we believe in as a people. The reason we voted for the Constitution is because of devolution. Let me say without fear of contradiction, that devolution has now become the theatre of the absurd. Literally speaking, devolution is headed to the ICU. If what the actors are doing in devolution is anything to go by, from the Council of Governors, the county assemblies to the Judiciary, this has become a drama that the people of this country had not envisaged.

To say the least, the scene of the real drama, the Hollywood of this drama is the county assemblies. If I remember in my childhood, and I am not a very good movie or cinema enthusiast, the last movie I saw was when I was a young boy; the ones that used

to be called, *Kaeni Chini*. For a long time, I have not watched any movie. The last movie that I saw, the reminiscent, exactly like what I saw when I was a young man sitting out in the darkness watching on a screen was played out live by men, not called John Wayne or James Bond, but men with African names and specifically Kamba names from the County of Makueni. They were shooting from the hip like it is done in the movies. If we do not act now, this scene will be replayed. It will put this country on the deathbed.

Mr. Temporary Speaker, Sir, if we look at what is happening in the county assemblies, budgets in these assemblies have not yet been passed. If what we have heard from the Senator of Isiolo County can be likened to what is happening to other counties, this is a sad scenario. The other day, in the County Assembly of Trans Nzoia, we saw and read in the newspapers when one of the officials, the Speaker, who was also going to be impeached, had rejected and refused the verdict of the county assembly. He went and locked himself in an office with the mace so that he could not be impeached. What followed was a drama that only history has been left to document. The entire County Assembly of Trans Nzoia went and forcefully broke into the Speaker's office to carry the mace and impeach him. That is how badly we have gone in this country.

When I say devolution has become the theatre of the absurd which is led by the trusted actors of devolution, we have heard in this House all the complaints, lamentations and contributions of my fellow Senators especially on what has happened in the courts of law. Suffice to say that the Council of Governors is ruling through the courts. They are having their way through the courts. Did you see today after injunctions have been issued against this House from summoning governors, now it has gone so bad, so down to the roots, that, in fact, there is an injunction which was issued today that CECs cannot be summoned by the county assemblies? That is how it is going in devolution.

We seriously need radical action. I do not want to emulate the Chief Whip of Kwale, but I say that desperate times call for desperate measures. In calling on the Senate to act as has been called by Sen. Billow, I want to remind this House that a few years ago, the late Michael Jackson sang the song: *Man in the Mirror*. I do not know if any of us has had a chance to listen to that song. He says in that song that he stood in front of the mirror and asked the man in the mirror to change his ways. In my background, as a businessman before I came to this Senate, that is precisely what I would be telling the Senate today. I will be brief on this because I am a Senator like all of us and it affects me equally.

The question I would like to ask ourselves as Senators is: Have we done enough to claim our space in a competitive arena? We came into this House and expected that the goodwill of everybody else will carry us forward. Although we have lamented and complained about the courts, I want to remind this House that when we went to find and have our way in the Supreme Court, indeed, we had. We have made our complaints and especially on the sensitive matter on the ruling and reinstatement of Governor Wambora back to his position. But we also need to be truthful to ourselves and remember that it is on record that in that matter of Governor Wambora, we did not have representation as a Senate.

If you remember the last judgment that was given, the injunction which stopped the formation of the County Development Boards, part of the ruling by the judge was the absence of representation of the Senate in those proceedings. The judge went ahead and

gave that injunction. Yes, we want to be recognized and have our powers, but we cannot be a cry baby and expect that the rest of the institutions are going to fight our battles.

What my colleague Senator Billow Kerrow said before he left is worth noting because we, as a Senate, need to sit down and strategize, determine and chart the future business of this House. For example, as he said, even before we had a sitting Government in place, Governors had already organised themselves, they had the Council of Governors and immediately started engaging the former President. What stops this House from having a Senate Council or a team of serious Senators who are going to chart our way forward and, indeed, strategise when certain needs arise? As it is said, if you do not plan, you plan to fail.

I want to challenge this House and the current leadership in this House that they have to get their act right. At one time, one of our Senators asked this question: If we keep complaining, what will that person who is outside there who expects to find solutions through this House do? When I say that our leadership needs to get their act right, I am saying they need to chart a course forward for this House. My question as I finish is: Why is the Council of Governors not complaining?

With those remarks, I beg to support.

**Sen. Muthama:** Mr. Temporary Speaker, Sir, looking at the time and the Members of the Senate who want to contribute, if we allocate 10 minutes to each, that will mean that we spend 100 minutes which we do not have. I have consulted with hon. Senators, as a Whip, and agreed with them that we contribute, each for five minutes, so that we have enough time for everyone to contribute.

**The Temporary Speaker** (Sen. (Dr.) Machage): That is legitimate. I order that the time be reduced from 10 minutes to five minutes.

**Sen. Orenge:** Thank you, Mr. Temporary Speaker, Sir, for giving me the five minutes. I support this Motion and will begin from where the Senator for Kiambu has left. If we, as a Senate, need help before we resolved these problems, then we need to seek that help first. We have postponed the issue for a long time such that the decisions that the Senate is making are being taken for granted.

There is an authority that flows from the Constitution which is not legislative. There is a mistake that people are making that the functions of the Senate and Parliament, for that matter, are legislative. In fact, if you look at Article 1 of the Constitution, you will see that it distinguishes the legislative functions of Parliament that directly flow from the sovereignty of people either directly or through their elected representatives. There are delegated functions that are given to Parliament, others given to the Executive and others which have been given to the Judiciary.

However, when it comes to Parliament with regard to those who have been elected, the Constitution says that we can exercise that power on the basis of elected representatives. I support this Motion on the basis that we have the authority and competence of the office that flows from the Constitution.

This additional power must be taken seriously. So far, on the legislative agenda, we have fought successfully and we are beginning to address most Bills that are dealt with by both Houses. However, when it comes to other functions, for example, impeachment, this is not a law making function. Impeachment is not a legislative or a lawmaking function. This is an additional function given to the Senate. Once that function is interfered with; either by the Judiciary or Executive, we begin to lose the

authority of the Senate as spelt out in the Constitution. There are other functions within the Constitution that may require us to make resolutions. For example, the question of suspending county governments is a function that is shared between the President and the Senate. Those are not legislative functions.

Therefore, the honourable Member, who is my colleague in the Committee on National Security and Foreign Relations has come with a Motion that I support fully. This happens many times, all over the world, where legislators go beyond sitting in a Chamber because of the authority of the institution they represent and the office that they hold to resolve problems that confront the nation.

I believe that this Senate, during this period that we are trying to help the County Government of Isiolo, we should find opportunity to help ourselves. Sen. Wamatangi put it very well. I do not want to be a cry baby as he said but it is time that we sat and discussed.

In an institutional arrangement like this, people fight for space. If you leave your space, someone else will occupy it. The Senate is ceding space every other day. Let us put the authority of this institution where it belongs. We have competent people who should work in a by-partisan process to resolve some of the problems that confront us.

I beg to support.

**Sen. Nabwala:** Thank you, Mr. Temporary Speaker, Sir. I am equally concerned about what is happening in Isiolo, Makueni and many counties. I think there is something terribly wrong. It appears as if someone is encroaching on the mandate of the Senate which is well defined as per the Constitution. You will find that when we pass Motions in this House, they are not taken seriously. Why does this happen?

First, we had the Wambora case. Wambora was impeached based on the Motion which was started by the county assembly. He went to court and the court listened to him without summoning the Senate to appear before it to justify our position. The Senate is an independent body. We do not work in cahoots with the courts. I am wondering about what is happening. Who is giving these courts the strength to interfere with the legislative arm of the Government? This is, indeed, very serious.

The Isiolo County Assembly went to the Meru High Court for the first time and their case was thrown out. They then went to another court in Nyeri and again the case was thrown out. So, when we say that we are retreating to find a way of how to handle the problems in the two counties, where should be our first stop? It appears as if the courts have taken sides and are supporting the speakers. When we go to the counties; what are we supposed to do first? Should we first pay a courtesy call to the judges in Meru and Nyeri so that they justify their decisions or do we go to the counties? If we go to the counties and find that the speaker has already been cleared by the court, what will we do? This is a very big challenge to devolution. Devolution is under threat.

Unless we stand firm and take the bull by the horn, we will be headed nowhere. That is my worry. We still have three-and-a-half years to go. We should come out very clearly and spell out our mandate so that the courts or whoever is handling matters devolution knows that Senators are legislators and that our additional mandate of oversight is given to us as an additional function.

Under Article 96, our responsibility is to protect the interests of counties and their governments. The interests of counties include the county assemblies and county executive. The county assemblies are crying out to us and yet we do not have timelines

and agenda of who should visit which area. That is what we need to know so that we divide ourselves into groups and plan on how we will face the lawyers in Meru and Nyeri courts.

Other Senators should join the Sessional Committee on Devolved Government to go to the ground. This Motion does not tell us the faults that the county assemblies have made and whether they have violated the laws so that we know how to go about it. When somebody violates the law, they are guilty. Even if they went to court, the court must justify the kind of ruling that it makes. Someone must stand up and support the county assemblies. If we go on this way, a lot of money will be spent on nothing and the people in Isiolo and Makueni are the ones who will suffer.

If you find that a county assembly is not functioning well, that means that the money we have allocated them is just sitting in the counties. So, we should support the Sessional Committee to go out to the two counties and others that Sen. Wamatangi mentioned. We should find out what problems they have and whether it is just a man made problem, then we will have to come back to this House---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Mositet Peter Korinko.

**Sen. Mositet:** Thank you, Mr. Temporary Speaker, Sir, for giving me this chance to also contribute to this particular Motion. I believe that all Senators must have been wondering what is really troubling us, because each and every time we do something we know is part of our constitutional mandate, we find ourselves weak; just like Sen. Wamatangi was saying.

Mr. Temporary Speaker, Sir, for devolution to work, the Senate must be seen to be working with the county governments and it must be very much involved in whatever is happening there given the fact that for the county governments to work and to continue rendering services to the citizens, what they needed most was money. This was ideally the reason we talked about devolution, so that we could make sure that resources trickle down to the counties. It is a sad situation because whenever we talk about the Division of Revenue Bill, we talk as the Senate in one voice and say that these monies are not enough and we need more money to go to the counties. But when it reaches there, this is the money which is making these people fight. This is the money which is making Makueni not to have peace; this is the money which is making Isiolo not to have peace; this is the money which is making the Council of Governors (CoGs) to meet in hotels and this is the money which is making the High Court judges to go on injuncting what the Senate says. It is very sad that all this is happening.

Some of the judges who have been used to go on injuncting this House or even the counties, most of the times dine and have occasions together with some of the lawyers who represent those people. It is a big shame that we even have the Attorney-General, who should be advising these people that it would be better if Parliament is allowed its space. If Parliament was allowed to function the way it should, we would not be having the problems we are having today.

Mr. Temporary Speaker, Sir, given the situation in Makueni and Isiolo, there is need for this House to tell the Committee on Devolved Government that it is high time we saw them working. I think it is also the right time to tell the Committee that a lot of its work should really be in the field and not in Nairobi. They need to visit our counties and the places where some heat is coming out instead of waiting until a time like this when



we now say that the County of Makueni is almost going down. Just the other day, we heard the Committee saying “no, we are not going the way the Governor wants to go” but now you want to sit with them to find out the problem. You wonder; you have already made a decision and, again, you want to go and sit with them. So, it is high time we told our Committee to wake up and make sure that, at least, the counties with those problems are visited.

On the other hand, Mr. Temporary Speaker, Sir, let us also remember why we came into this House. We seriously need---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Your time is up, Sen. Mositet.

Proceed, Sen. Hassan Abdirahman Ali.

**Sen. Abdirahman:** Thank you, Mr. Temporary Speaker, Sir, for allowing me to contribute to this very important Motion. While listening to the adjournment Motion, a number of our colleagues were getting concerned that besides the Committee on Devolved Government, they were wondering why we should adjourn. I think, looking at the standard practice in this House, Members can always join a Committee even when they are not its Members. As long as they have some interest, they can always join the committee as friends of the Committee. But besides that, I think it is important to use that opportunity to visit our counties and get to help where there are issues. Close to 60 or 70 per cent of our counties have issues, whether it is between the county executive and county assemblies, within county assemblies or even within the county executive. It is important for Senators, including myself, to get down to understand what the real issues are.

Mr. Temporary Speaker, Sir, I think that this particular Committee on Devolved Government that is going down to Makueni and Isiolo counties will actually, unlike what happens in the impeachment process, this time round more or less be doing a conflict resolution process much more than the impeachment process. That process definitely calls for more time to actually do mediation, negotiation, moving up of frameworks that are going to help establish how people can interact between the county assembly and the county executive. I think, as Sen. Wamatangi said, devolution will go to the Intensive Care Unit (ICU) or is about to be taken to the ICU if we do not put our act together as the Senate. Forget about any other group; it is the Senate that is charged with the sole responsibility of ensuring that devolution works. Let us forget about these other people. Listening to the first reaction of the CoGs when the Makueni issue came up, a number of them were supporting Governor Kibwana to say that the county government must be dissolved. That was a very quick or hasty decision which did not take care of the interests of the people of Makueni. You cannot suddenly come up and say “we must send everybody home.” It is a very unpopular decision; it is not in the interest of the ordinary citizen in Makueni or any other Kenyan. It is important for us to get to understand what the real issues are. I want to call upon the Committee on Devolved Government to actually look at the underlying causes of the problems in Makueni and Isiolo counties. There could be much more than leadership wrangles. So, it is important to look at what the real issues are in those county governments so that whatever is developed for those two can be used as a blueprint to help solve problems in the other counties which have similar problems.

My colleagues have very eloquently spoken about the Judiciary and I do not want to go so much into it; but it is important to look at it. I thought the Judiciary was going to help devolution work, but they may destroy it if they go the way they are going now. You can give injunctions; yes, because you have the authority. But people must look at the context under which we operate. We cannot afford to have cases dragging on; we cannot afford to have one group being pitted against the other. It is important for us to understand that we need to develop synergies in all the counties for us to achieve or get the dividends which we anticipated from devolution.

Mr. Temporary Speaker, Sir, in conclusion, the challenges facing us are enormous and quite weighty. We can only surmount them if we co-operate between the various players in the devolution process. I have said this repeatedly because we are yet to understand what our respective roles are. All of us must understand that county governments are not about governors alone; they are not about Senators alone; they are not about County Assembly Speakers alone; they are actually about all those people put together from the wards to constituencies and, finally, to county governments.

Mr. Temporary Speaker, Sir, I beg to support this particular Motion. We were complaining about marginalization and I want to tell the people of Isiolo this; and let them hear, it is us marginalizing ourselves.

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. (Prof.) Lonyangapuo.

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Temporary Speaker, Sir. I support this Motion that has been brought by Sen. Adan. I am aware that Sen. (Dr.) Kuti is out of the country, but is also aware of this Motion. This means that this is a problem that is known by all the leadership in Isiolo.

Mr. Temporary Speaker, Sir, I also do not understand when the Motion says:-

“The Senate directs the Sessional Committee on Devolved Government to expeditiously inquire into the matter.”

Are we saying that the usual procedure that was supposed to have been done by the county assembly of petitioning the Speaker of the Senate was not done? If it was done---

**The Temporary Speaker** (Sen. (Dr.) Machage): Professor, this is not a classroom.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, this was supposed to be the work of the Committee initially. We are not supposed to tell them what to do. If they fail, we will ask this House to appoint a Special Committee to deal seriously with the problem in Isiolo County.

It looks like these are the challenges that we should expect from the many other counties in the days to come. As the Senate, we need to address these issues, because it is our work. We represent the counties, as indicated here the Constitution. Article 1 (3) of the Constitution reads:-

“Sovereign power under this Constitution is delegated to the following State organs, which shall perform their functions in accordance with this Constitution—

- (a) Parliament and the legislative assemblies in the county governments;
- (b) the national executive and the executive structures in the county governments; and,

(c) the Judiciary and independent tribunals.”

This means that what each House did, including the county assembly of Isiolo, was their function. For example, if they impeached their speaker, it means that there must have been an issue in that county. So, nobody whatsoever should interfere with that business. I am saying this because the speaker is actually an employee of the County Assembly of Isiolo. The Members of the County Assembly (MCAs) of Isiolo sat down and employed a speaker out of many others, which is a ritual in all the other counties. Therefore, if an employee fails terribly in his duties, the usual procedure is what they did. When that happens, I do not understand from where the courts have obtained very new powers, including reinstating them on full salary. Normally, when there is a dispute and an employer has sacked you, you can go to court if you have an issue. You can be reinstated on a quarter or half salary, because you have an issue that is ongoing. What we are seeing in Embu County is a tragedy never seen anywhere before. This is because the Governor was sacked lawfully, including through the highest level in the land, which is the Senate. But now I hear that he is paying himself full salary and telling people that he is the star of choice. What is the Judiciary trying to tell the other three arms of Government? That they can break the law so that if, for example, you employ somebody and you think there is a malpractice, you can go out and be paid a quarter of your salary as you lodge an appeal. That is very serious.

I support this Motion, though I am not seeing the Members of this Committee in this House.

**The Temporary Speaker** (Sen. (Dr.) Machage): Your time is up.

**Sen. (Dr.) Zani:** Mr. Temporary Speaker, Sir, what we are going through are the trials and tribulations of devolution. I think these have happened in other countries as well, including African countries like Nigeria that had quite a bit of turbulence. We must look at it as a process and say: “Yes, there will be turbulence, disagreements and people might look at things from a different perspective.” We need to move a notch higher and look at the experiences of these other countries and how they were able to surmount those challenges. I look at it also as a case of having, therefore, a rationale for a niche for the Senate. This is exactly the reason why the Senate was constitutionally formed for us to be able to step in, be the guardian angels of the counties, be able to arbitrate, mediate between the county assemblies and the national government, look at the issues that are going round, address those issues, engage with those county assemblies and look at everything that is coming up so that those issues are tackled in good time.

Mr. Temporary Speaker, Sir, the case of Isiolo County is really a sad one but I think there were already triggers. It is important for us, as a Senate, as we look at the unfolding events within the county assemblies, in terms of the processes they are going through to try to identify these triggers. These triggers will be identified when we engage. As Senators attached to specific counties, we need to be in sync and really close to the goings on in the counties. We probably need to think of a mechanism where we bring these issues either to the relevant committee of this House or to the Senate to be able to discuss what is going on, so that we can forestall the situation. For most of the counties, there has been a trigger. In Makueni County, for example, there were triggers. We started seeing the disagreements between the MCAs and the Governor. For Machakos County, we also saw what was happening and this culminated into an impeachment Motion that

came to the Senate. It is important for us to look at what is happening. That way, we end up with the strategies that I have heard other Members talk about.

What strategies do we have? We need to begin to ask ourselves that question. Where do we begin to engage? What do we do if there is dispute or disharmony? How do we come in? Which mechanisms do we use? Is it only at committee or individual level? That becomes very critical for us. In fact, we might want the Senate to think about a situation where we have a forum where we give a situation analysis of the counties, probably at a certain period of time. We can decide we could have bi-annual or three-month reports. Each of us will then be able to say what is happening within our counties. We need to engage with those counties. I know in some of the counties, even the governors have tried to keep away the Senators. Some have not had very cordial relationships. This is not about cordial relationships; the Governors and the Senators each have their role to play. Each of the representatives must play their role no matter what sort of set up there is. Therefore, the Senators need to be aggressive and remember that we are the guardian angels of the counties. We are there to represent and protect the counties. We need to come up and not make apologies for the sort of engagements that we are coming up with and what we are doing within the counties. We should step in as much as possible and as quickly as possible. If we will deal with Makueni, Isiolo and Machakos, we should have a clear process; right from the beginning to ensure that at a particular time, we have an interjection.

I heard some Members saying that we need to call Members of County Assemblies (MCAs) early enough and have forums with them. These forums should target not only some form of understanding but arbitration and mediation. We should call them and ask them what is happening and even stipulate what the consequences are.

It is very unfortunate that the tenets of devolution are completely being lost. The socio-economic development that was expected in the counties is being lost and people are really disappointed. This has become an issue of leaders perpetrating themselves as vehicles through devolution and not really the product of devolution that was expected to bring development. We are talking about development for ourselves.

I support.

**Sen. G.G. Kariuki:** Mr. Temporary Speaker, Sir, I am glad that you have given me these few minutes to say something about the Motion. I just came in and did not have the Order Paper with me.

I looked at this Motion and did not wonder why it was moved. The Mover of this Motion has very good intentions. She is going through very major problems in Isiolo. She is wondering why the Senate cannot rescue Isiolo. The intentions of this Motion are very good. The Motion says that the Senate is expected to do more than what we are doing.

This is a direct deliberate challenge to the Senate. If you see Members of the Senate going out of their way to save institutions, then things have gone wrong. We were elected to protect counties and their interests. Since we came here, we have now done two years. What protection have we given to the county governments? What quarrels have we resolved?

Have we done anything in terms of offering solutions? The only thing we have done is to carry out impeachments. Is that the way to solve problems of county governments? I think time has come when people with the knowledge and experience of Sen. Orenge must ask themselves whether they are in the Senate to protect the interests of

counties or whether they are in the Senate to pass time. Something needs to be done. I kept on saying that there is a problem.

You will find Sen. (Dr.) Khawale blaming counties. However, this is because we have not created a direction of some kind. We have to be seen, by the people of this country, as leaders who are out to solve the problems of county governments.

This Motion poses a challenge to all of us. I am grateful that my dear young lady – as far I am concerned, she is young – brought this matter to the House for us to find an opportunity to talk and interrogate it. In fact, we were not supposed to talk about the Committee. She should have talked about the Senate. To resolve this matter - because there is no difference between the Committee on Devolved Government and the Senate itself - indirectly, we have to carry the burden. In fact, personally, I feel very sad that I am in an institution which does not move or dissolve. We are in a big problem. We either dissolve this business or take up the matter with us and deal with it the way it is supposed to be dealt with. This matter is very serious; the Chairman of the Committee on Devolved Government ought to have been here. This is a very serious matter but the way we are taking things and yet we appear to be very good in the Press, defending so many things here like something new has happened--- Some of us who have time to read and take time to understand things, we find ourselves in a difficult position. What can you tell your grown up children, some of whom are teachers in the university? What language do you have for them? If we are given an opportunity like this one, yet we cannot sit down and forget our political---

**The Temporary Speaker** ((Dr.) Machage): Order! Order! Sen. Kariuki, your time is up.

Sen. Muthama, you can proceed.

**Sen. Muthama:** Thank you Mr. Temporary Speaker, Sir. I want to support this Motion because I am one of the Senators who witnessed the impeachment process in my county. Unless you get to be tested within your county, sometimes you may not understand how painful and traumatizing it can turn out to be.

When the impeachment of the Deputy Governor was going on in Machakos, I received telephone calls from church leaders, elders, youths and all the interested stakeholders from Machakos County. All these people told me that I carry the solution of the problems affecting Machakos County. That is how we are being viewed within our counties but the most frustrating thing is that when all that was happening, my Governor was not reachable. He had taken a group of Members of County Assembly (MCAs), bribed them and taken the county's money that he was spending in courts and running around with the same money. On the hand, the Deputy Governor had absolutely nothing, except his little salary.

Currently, Mr. Temporary Speaker, Sir, I am going through the same experience in Makueni. Senator Musila and I are being seen within the region as the Senators who can stand and solve the problems in Makueni. The genesis of the problem in Makueni is money. The ceiling that was put by this House and the Controller of Budget has been overshot by the MCAs in Makueni. From Kshs365 million, they have made a budget of Kshs965 million and they are forcing the Governor to implement that. That is why the issues in Makueni go beyond political issues. When guns are drawn out and people are shot, that is not politics. In fact, that is robbery! They were using the backdoor to rob the

county by using the weapons that had been allocated to their bodyguards by the Government.

Mr. Temporary Speaker, Sir, this experience is very painful. The most worrying issue is that when all this is happening and the Judiciary sits - because of the powers given to it by the Constitution - trying to implement through the court; the judges actually end up suspending the same Constitution on a temporary basis, because Article 181 allows a governor to be impeached. Before even the impeachment takes place, the court sits and issues orders that the process should not take place. Is that not suspending the Constitution? Who has got powers in this country? Where is it described and shown in this Constitution, that a member of the Judiciary can suspend this Constitution? This is an exception of the people of Kenya. The people of Kenya have got the mandate to maintain, protect and defend the Constitution. No member of the Judiciary has the powers to sit down and say that impeachment should not take place or this should not happen.

The issue in Isiolo is within the county assembly. It does not even qualify to be in the Senate. It is within the Standing Orders of the county assembly. The judge gave orders to stop the county from dealing with issues that they are supposed to deal with. If we cannot impeach the Speaker in this House and have the authority to do so, what business do we have? We have been made toothless.

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

Sen. Ong'era.

**Sen. Ong'era:** Thank you, Mr. Temporary Speaker, Sir. I also support this Motion and commend my sister, Sen. Fatuma Dullo. This is a very important Motion and I am happy that the Mover has requested that the Senate directs the relevant Committee, which is the Committee on Devolved Government, to deal with this matter.

It is not only in Isiolo County where there is serious disconnect in the county assemblies. As I speak, in Kisii County, the Members of the County Assembly have serious issues with the Speaker. There is a serious disconnect that is almost paralyzing the workings of that county. I want to agree with a number of Senators who have said that as we go on recess, we should go to our respective counties and see how we can help in resolving these matters. I want to agree with a number of Senators who have said we are not only legislators in this House, but also have a greater role to play as representatives of the counties and guardian angels of the county governments.

This is the one time that it behooves upon this Senate to rise up and fight for its democratic space that is constitutionally given under Article 96. Nobody will give us that right. We must fight for it. We must not allow the Judiciary and the Executive to muzzle that right, under the doctrine of separation of powers. It is our inherent right given to us under the Constitution. We will not allow rogue judges to continue issuing orders left and right without having due care to our constitutional rights here in this House.

It saddens me to see that a man we impeached, Governor Wambora, has actually been reinstated by the court. I am wondering what the national Government is doing by continuing to disburse money illegally to this county, when we know that the Governor, as far as we are concerned, is an ex-Governor.

I want to convey a message from the Kisii Delegation, led by Sen. Obure, to the Mover of the Motion, Sen. Fatuma, and Sen. (Dr.) Kuti, that we support you in this

Motion. We stand with you and sympathise with the situation in Isiolo and Makueni counties. Therefore, we shall support this Motion as we deliberate on it.

With these few remarks I support.

**The Temporary Speaker** (Sen. (Dr.) Machage): Yes, Sen. Elachi.

**Sen. Elachi:** Mr. Speaker, Sir, I rise to support this Motion and to thank Sen. Adan.

**The Temporary Speaker** (Sen. (Dr.) Machage): I request that you take two-and-a-half minutes because Sen. (Dr.) Khalwale wants to speak.

**Sen. Elachi:** Mr. Speaker, Sir, this House must decide whether it wants to stand, support, defend and protect the interests of county governments or whether it wants to close shop and go home. The reason we are fighting and struggling with this Senate today is because most of the Members have not taken seriously the issues that brought them to the Senate. Therefore, governors have taken advantage of the way we take our politics; we play very good politics outside but we are not doing the right things inside the House.

Today, Isiolo is burning with serious issues. We must look into the issues because we know that the people of Isiolo agreed to consider clans in their issues. This is not a region like western where we, leaders, agree as Kakamega. These are counties that agree even on positions as clans. When the Speaker is told by the court that he can no longer be a leader or the Speaker of the County Assembly and yet he is from a clan that agreed to join and ensure that there is cohesion in that county, then that causes fire. Very soon, members of that clan will come up and you will see how Isiolo will change because we will start seeing warring factions. This Senate must stand and ensure that does not happen in Isiolo.

We know that we have the same challenges in Mandera. Therefore, we must be very serious when we look at issues of counties. You will remember when we were coming up with the new boundaries and how they fought for the boundaries. They could not even agree to come together and today we want to split them. When we talk about the issues of Makueni, the governors are the ones on the front line saying that Makueni County Government should be dissolved; the Senate should ask itself what its roles are.

It is not the role of the governors to tell Kenyans how a county should be dissolved and how another one should continue. It is the role of the Senate to come out clearly on the issue so that Kenyans know it is the Senate that decides. Even for the President to dissolve a county – under Article 192 – he has to wait for the Senate to approve that dissolution. However, because of all the politics we see in the media, people do not even know whether, indeed, the Senate will approve that.

As we adjourn, I hope we will not take flights to go for different meetings that I am hearing about; Inter-Parliamentary Union (IPU), Commonwealth Parliamentary Association (CPA) and The Hague. I hope we are adjourning to deal with the burning issues that are in this country. I hope that is what we are going to do. I understand that we should not adjourn for committees to do their work when we have just come back from recess. I think it is important for Kenyans to know that we are adjourning to go and deal with the issues of Makueni and Isiolo counties.

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

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Did you hear Sen. Elachi, the Chief Whip, saying that she is worried that some people will go to The Hague during this short break? Could she

substantiate which senatorial meeting will be at The Hague – which she is referring to – and the Senators who intend to go to The Hague?

*(Laughter)*

**ADJOURNMENT**

**The Temporary Speaker** (Sen. (Dr.) Machage): Order. Hon. Senators, it is now time for the interruption of business. The Senate, therefore, stands adjourned until tomorrow, Tuesday, 21<sup>st</sup> October, 2014, at 2.30 p.m.

The Senate rose at 6.30 p. m.