

**PARLIAMENT OF KENYA****THE SENATE****THE HANSARD****Tuesday, 15<sup>th</sup> April, 2014**

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

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

**PRAYERS****COMMUNICATIONS FROM THE CHAIR****INVITATION TO UON CONSTITUTION MAKING  
DOCUMENTARY BREAKFAST MEETING**

**The Speaker** (Hon. Ethuro): Hon. Senators, I have a communication to make.

The University of Nairobi, in conjunction with the Ford Foundation, has organized a round table breakfast meeting for all Senators on a documentary dubbed University of Nairobi contribution to Constitution making. The documentary is part of the University of Nairobi project whose theme is action-oriented research on knowledge societies and the Constitution of Kenya 2010. This is a project that is geared towards engaging in dialogue with all institutions that are tasked with the implementation of the Constitution and how universities can build capacities of the said institutions and individuals for a more robust implementation process.

Hon. Senators, the round table breakfast meeting has, therefore, been organized so that the project team can listen to the views of Senators before their outreach programmes to the counties. The event will take place at the Intercontinental Hotel on Wednesday, 16<sup>th</sup> April, 2014 from 7.00 am to 10.00 am. Individualised invitations and the programmes have already been sent to all of you.

All the Senators are, therefore, kindly requested to attend and participate in this important event.

Thank you.

**INVITATION TO PRESENTATION ON LIFESTYLE  
MODIFICATIONS BY THE KAREN HOSPITAL**

Hon. Senators, I have a second communication. I would like to inform you that the office of the Speaker of the Senate, in conjunction with the Karen Hospital Nairobi, has organized a presentation on lifestyle modifications. This discussion is scheduled for

Thursday 17<sup>th</sup> April, 2014 at the Senate Chamber, County Hall, Parliament Buildings, starting at 11.00 am.

This is, therefore, to invite all honourable Senators to the lifestyle modifications discussion that will be facilitated by Dr. Dan Gikonyo.

### PAPERS LAID

#### REPORTS OF THE AUDITOR-GENERAL ON THE FINANCIAL OPERATIONS OF COUNTY GOVERNMENTS

**Sen. Hassan:** Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the House today, Tuesday, 15<sup>th</sup> April, 2014.

Report of the Auditor-General on the Financial Operations of the County Government of Laikipia and its defunct Local Authorities for the period of 1<sup>st</sup> January, to 30<sup>th</sup> June, 2013.

Report of the Auditor-General on the Financial Operations of the County Government of Bomet and its defunct Local Authorities for the period 1<sup>st</sup> January to 30<sup>th</sup> June, 2013.

Report of the Auditor-General on the Financial Operations of the County Government of Lamu and its defunct Local Authorities for the period 1<sup>st</sup> January to 30<sup>th</sup> June, 2013.

Report of the Auditor-General on the Financial Operations of the County Government of Kilifi and its defunct Local Authorities for the period 1<sup>st</sup> January to 30<sup>th</sup> June, 2013.

Report of the Auditor-General on the Financial Operations of the County Government of Busia and its defunct Local Authorities for the period 1<sup>st</sup> January to 30<sup>th</sup> June, 2013.

Report of the Auditor-General on the Financial Operations of the County Government of Kiambu and its defunct Local Authorities for the period 1<sup>st</sup> January to 30<sup>th</sup> June, 2013.

Report of the Auditor-General on the Financial Operations of the County Government of Kisumu and its defunct Local Authorities for the period 1<sup>st</sup> January to 30<sup>th</sup> June 2013.

Report of the Auditor-General on the Financial Operations of the County Government of Murang'a and its defunct Local Authorities for the period 1<sup>st</sup> January to 30<sup>th</sup> June, 2013.

Report of the Auditor-General on the Financial Operations of the County Government of Samburu and its defunct Local Authorities for the period 1<sup>st</sup> January to 30<sup>th</sup> June 2013.

Report of the Auditor-General on the Financial Operations of the County Government of Nyamira and its defunct Local Authorities for the period 1<sup>st</sup> January to 30<sup>th</sup> June 2013.

Report of the Auditor-General on the Financial Operations of the County Government of Taita-Taveta and its defunct Local Authorities for the period 1<sup>st</sup> January to 30<sup>th</sup> June 2013.

Report of the Auditor-General on the Financial Operations of the County Government of Kwale and its defunct Local Authorities for the period 1<sup>st</sup> January to 30<sup>th</sup> June 2013.

Report of the Auditor-General on the Financial Operations of the County Government of Uasin Gishu and its defunct Local Authorities for the period 1<sup>st</sup> January to 30<sup>th</sup> June 2013.

Report of the Auditor-General on the Financial Operations of the County Government of Siaya and its defunct Local Authorities for the period 1<sup>st</sup> January to 30<sup>th</sup> June 2013.

Report of the Auditor-General on the Financial Operations of the County Government of Tharaka-Nithi and its defunct Local Authorities for the period 1<sup>st</sup> January to 30<sup>th</sup> June 2013.

Report of the Auditor-General on the Financial Operations of the County Government of Nandi and its defunct Local Authorities for the period 1<sup>st</sup> January to 30<sup>th</sup> June 2013.

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

## NOTICE OF MOTION

### APPROVAL OF DEPLOYMENT OF KENYA DEFENCE FORCES IN SOUTH SUDAN

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

THAT, pursuant to Article 240(8)(a) of the Constitution and section 18 of the Kenya Defence Forces Act (No. 25 of 2012), the Senate approves the deployment of the Kenya Defence Forces in South Sudan for the purpose of regional peace support operations.

## STATEMENTS

### ALLOCATION OF LAND TO SQUATTERS IN PHASE II OF KIPCHOINA SETTLEMENT SCHEME

**Sen. Nabwala:** Mr. Speaker, Sir, pursuant to Standing Order No.45(b), I would like to seek a statement from the Chairperson of the Departmental Committee on Land and Natural Resources on the criteria used in the allocation of land to squatters in Kipchoina Settlement Scheme Phase II in Trans Nzoia County.

The issue of squatters has been a challenge in the county over a long time. The purpose of Kipchoina Settlement Scheme Phase II was to address this problem so as to benefit the poor and landless squatters in the country.

In the statement, the Chairperson should also;

- (a) Table the list of beneficiaries of the allocation;
- (b) explain under what circumstances poor and landless squatters were not allocated land;

(c) confirm if there were any foreigners from neighbouring countries who were allocated land and the impact of this on security in Trans Nzoia County; and,

(d) give the state of landlessness in the country as per counties.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, further to the statement sought by Sen. Mukite, the Chairperson should also tell us whether Phase I which was allocated in the early 1990s stands or the list was amended.

Secondly, we need to get a list of the people we hear are foreigners from neighbouring countries that are purported to have been settled in this land. Lastly, he should tell us which officers have colluded to spoil the name of the said department.

**The Senate Minority Leader (Sen. Wetangula):** Mr. Speaker, Sir, in his statement, I would like to request the Chairperson of the Committee to tell the House whether the criteria for allocation of land in this country, which has always been favouring the poor and landless, has changed. In that statement, I would like the Chairperson to tell this House how many public servants, including District Commissioners, District Officers, Lands Officers and other gainfully employed officers in the Government of this country benefited from the allocation and whether a person who earns a salary can be classified as poor and landless.

**Sen. Khaniri:** Thank you Mr. Speaker, Sir. You will agree with me that the issues raised by the hon. Senators are very weighty and some of them require information to be directed to the entire Republic, for instance, the state of landlessness in the whole country. I, therefore, request for a period of one month or four weeks to come up with a statement on this.

**The Speaker (Hon. Ethuro):** Order! Sen. Khaniri, we are not asking you to go and generate the data. You are supposed to avail it from some depository.

**Sen. Khaniri:** Mr. Speaker, Sir, I thought we should give ourselves four weeks given the rate at which we get information from the Ministries. Considering the issues raised are many, I plead with you to allow us to respond to this statement in four weeks.

**The Speaker (Hon. Ethuro):** In four weeks' time.

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

**The Speaker (Hon. Ethuro):** Any responses?

#### PAYMENT OF DUES OWED TO BUSINESSMEN FROM WEST POKOT COUNTY BY KMC

**Sen. Ndiema:** Thank you, Mr. Speaker, Sir. This is a response to the question on KMC. There were clarifications sought and confirmation as to whether---

**The Speaker (Hon. Ethuro):** Mr. Chairman, concentrate on the clarifications only.

**Sen. Ndiema:** Mr. Speaker, Sir, the issue is whether the funds that were supposed to be paid to businessmen in West Pokot had been factored in the revised estimates.

The funds were not factored in the revised estimates because the revised estimates were completed in December. However, the Ministry sought reallocation pursuant to Section 43 of the Public Finance Management Act. They have received a response from the Ministry of Finance, Treasury, that it was not possible to reallocate Kshs31,856,760.

The other issue was on what arrangements are being made to turn around the company. The question was whether this had been factored in the Budget for next year. I would like to confirm that the Ministry has included this in its proposals for 2014/2015 Financial Year.

The other issue was whether interest would be paid. The response we have got from the Ministry is that the businessmen will be paid a principal owed without interest.

Thank you, Mr. Speaker, Sir.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I want to thank the Senator for giving supplementary answers to the questions sought. In his answer, he is not clearly telling us when the business men will be paid. He has referred us to a letter that was written to the Treasury for reallocation of funds which totals Kshs31 million. We were seeking for payment of about Kshs8 million.

Let me read the response from the Treasury which is attached. It says---

**The Speaker** (Hon. Ethuro): Order! Sen. (Prof.) Lonyangapuo, you are not discussing, just ask your clarification.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, he is not telling us when the money will be paid. He is only telling us that they sought reallocation of Kshs31 million, which has been rejected with a very interesting answer that we were asking for money for construction. We needed money for payment of the services offered and not for construction of warehouses as indicated here.

**The Speaker** (Hon. Ethuro): Sen. Mositet, do you need to seek another clarification?

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

**The Speaker** (Hon. Ethuro): On the issue of the Kenya Meat Commission (KMC)?

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

**The Speaker** (Hon. Ethuro): Okay, proceed.

**Sen. Mositet:** Mr. Speaker, Sir, the Vice Chairperson has indicated how the Government is willing to make sure that the KMC continues operating and that some amount of money has been set aside for 2014/2015 Financial Year. We have a slaughter house by the name Halal which is situated in Ngong, Kajiado County. This slaughter house was built in 1973 on land which was donated in the 1960s to the Veterinary Department by the Kekonyokie Community. After that---

**The Speaker** (Hon. Ethuro): Order, Sen. Mositet! This is clarification time.

**Sen. Mositet:** Mr. Speaker, Sir, I wish the Vice Chairperson to clarify, even if he does this later, on what the Government intends to do with this issue.

**The Speaker** (Hon. Ethuro): Order, Senator! That is completely outside the statement before the House. Vice Chairperson, deal with the clarifications sought by Sen. (Prof.) Lonyangapuo. Sen. Mositet, you should be at liberty to seek your own statement.

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

**Sen. Ndiema:** Mr. Speaker, Sir, it may be possible that I have not given a definite answer. However, the Ministry is trying to get funds to ensure that businessmen are paid. The attempts to get Kshs31 million have not borne fruits, but they are still trying.

**The Speaker** (Hon. Ethuro): Well, I think the Ministry has submitted proposals. Until the budget is approved by Parliament, I suppose that is the only time they can give

you a definite timetable. So, let us take it in good faith. Hon. Senators, you will pursue it in other ways.

Sen. Kembi-Gitura.

#### IMPLEMENTATION OF THE POWER OF MERCY ACT

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, on 5<sup>th</sup> March, 2014, I sought a statement from the Committee on National Security and Foreign Relations, but it has been outstanding. Every time I ask about it, we are given reasons that it is not ready and they have no answer. You gave the Committee up to today to come up with an answer. Since I can see the Chairperson is here, I hope that--

**The Speaker** (Hon. Ethuro): Order, Sen. Kembi-Gitura! All you needed was to ask for your statement then wait for the response. Chairperson, Committee on National Security and Foreign Relations, what is your response?

**Sen. Haji:** Mr. Speaker, Sir, when this statement was sought, the Clerk to my Committee wrote a letter to the Minister for Interior and Coordination of National Government. They replied to say that they are not the ones dealing with this issue. In accordance to that reply, a letter was written on 18<sup>th</sup> March, 2014 to the Attorney-General. The Attorney-General referred the matter to the Committee which is dealing with the Power of Mercy Act. On 14<sup>th</sup> April, 2014, which is yesterday, we received a letter from the State Counsel, who is the Personal Assistant to the Attorney-General. It talks about the above matter and the previous conversation, with the undersigned on "The Subject Matters Refers. It says:-

"This matter has been referred to the vice chairperson of the committee whose office has largely been in charge of the operations of the committee. The delay is highly regretted. We wish to assure you the matter is receiving our most urgent attention. By this letter, we undertake to revert to you in due course with a substantive response."

Mr. Speaker, Sir, that is the only thing that we can say about this statement.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, the only problem is that I cannot get into a quarrel with my chairperson because I happen to be in that committee. I know that the committee has done its best in this regard. But you will agree with me that the letter is saying nothing. It is meaningless to say "in due course". This matter has been outstanding for more than five weeks now and I had asked that question for a purpose.

I believe that the Chair needs to give a direction on this issue and many others. I become very nostalgic of the days when a Minister would stand before the House and respond to questions because he or she would not give us the reasons that are being given. They would be censured, be made to answer the questions and there would be no ambiguity about these things.

The power of mercy has not been exercised since 2012. I want to believe that there are lists that have been recommended for this purpose. It is unfortunate that we continue getting the same answer from a chairperson who is doing his best, but who cannot do better than that, however, how much he tries. This is a way of frustrating me and other Members into a situation where I forget this question. I do not intend to do so. Since we are asking Cabinet Secretaries to appear before some of these committees and they are not coming--- Since we do not seem to have a way out of this situation, it is time

that a Cabinet Secretary, like this one, was summoned to come before a Committee of the Whole to answer these questions and be interrogated.

We do not want to have faceless Cabinet Secretaries because they are faceless at the moment. When the Senator gives that answer, he is doing it on behalf of somebody who is absolutely faceless. This is somebody we have no idea of seeing how they are reacting to this issue, contrary to the previous situation where a Minister would come here and we would gaze at him, eye to eye, and he would give an answer and we would know what he is saying. It is high time that this House asserted itself and made it clear that questions sought in this House must be answered and given their due respect. I am sure I speak for a lot of my colleagues because this is not the only time that this issue has arisen.

*(Applause)*

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

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

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I rise to ask whether it is in order for the Chairperson of the Committee on National Security and Foreign Relations to read a statement allegedly from a state counsel and which, in my view, is absolutely contemptuous to this House, by trying to say the common things that lazy Government officials say such as: "We are looking at this thing and in due course we shall revert to you." This is a House of Parliament. In fact, I ask this with due respect to the Chairperson. But is that the kind of statement that can be read on the Floor of this House? It is absolutely contemptuous! Is he in order?

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

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

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, in support of what the Senate Majority Leader has said, this morning in a committee where I was sitting, a statement came from a Ministry signed by an officer other than the Cabinet Secretary. We, as a Committee, declined to entertain it because statements are sought to come from the Cabinet Secretaries who have a constitutional responsibility to this House. What startled me is that an officer from the Clerk's office attempted to convince the Committee - and we will need a ruling from the Chair on this - that anybody from the Ministry can write a statement, sign it and send it to any committee to come and parrot it on the Floor of this House.

Last week but one, I rose and I expected a ruling which I enjoin the distinguished Deputy Speaker and the Senate Majority Leader to implore you on. Your brother in the Lower House made a ruling that went public; that Cabinet Secretaries shall be expected and be demanded to appear before the National Assembly to answer questions when they are raised and to take full responsibility, including surcharge and prosecution, if they lie, as the Constitution and the law requires.

I want to urge that we extend the same level and degree of responsibility on the Executive to answer to this august House that represents, protects and defends the interests of counties, where all Kenyans live.

**Sen. (Eng.) Muriuki:** On a point of order, Mr. Speaker, Sir. My point of order is on another issue.

**Hon. Senators:** No! No!

**Sen. (Eng.) Muriuki:** It is different, but related.

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

#### RESETTLEMENT OF IDPs IN NYANDARUA COUNTY

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, on 27<sup>th</sup> February, 2014, I sought a statement regarding the status of the IDPs in Nyandarua County from the Committee on National Security and Foreign Relations. This has gone on in circles. It was supposed to come in a weeks' time, then two weeks' time. Last time you ruled that it should come to the House in two weeks' time. Even that two weeks' period is over. Perhaps I should ask the status of that statement and when we should get it on behalf of the people of Nyandarua County.

#### POINT OF ORDER

##### FACILITATION OF COMMITTEE CHAIRS TO ACCESS INFORMATION FROM THE EXECUTIVE

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

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

**Sen. Abdirahman:** Mr. Speaker, Sir, we were following this matter closely and we would not want anybody to create any diversion or dilute it for that matter. This is a matter that deserves your attention and ruling in effect. I say this because this is not the first time that this, particular Ministry has failed to deliver. We do not have to crucify Sen. Haji, for instance, for reading a statement. It is not his mistake. We know this. I am glad that it is coming from both sides; it is not about a Government or Opposition side. We want to protect the interests of our people in the counties. Cabinet Secretaries must be held accountable. It is important that you find a way in which they can appear before this House, so that we get adequate answers or responses for statements or questions that are sought. We also need to interrogate them properly.

**Sen. Haji:** Mr. Speaker, Sir, with due respect, I want to totally disagree with Sen. (Prof.) Kindiki. I think he is out of order. The letter I read is not an answer to the statement. I was just narrating the process through which a statement is going through. I think there is nothing wrong with me doing that. So, I want him to withdraw and apologise.

*(Laughter)*

Secondly, I think Sen. (Eng.) Karue is behind time. He should know that the Speaker ruled that this matter will be answered by the Committee on Devolved Government. So, it is no longer in the hands of this Chairperson. He should be seeking the statement from the Chairperson of the Committee on Devolved Government.



Thirdly, I agree that because of the new dispensation in this country there is confusion about which Cabinet Secretary is handling what. As a former Provincial Commissioner, I knew that power of mercy was being handled by the Office of the President. It was the President himself who after getting the report would decide: "I know I got you out of the hook. Many people are supposed to have been hanged." But this time it is a committee which is dealing with this problem. Therefore, we wrote a letter to the Attorney-General when we came to know that it is not the Office of the President which is dealing with this matter. The Attorney-General's office has sought the statement from the chairperson of the committee. They have given an assurance that they will come back to us. We will follow them up very closely starting from tomorrow. We will see how we can fast track this statement. We are doing everything possible.

Generally, I know the Liaison Committee has decided to write to these Ministries to be more responsive than they are now. Therefore, we should be waiting for the outcome of that letter.

**Sen. (Eng.) Muriuki:** Mr. Speaker, Sir, I need to add my voice on this issue and the other similar issues with the sentiments and requests by Sen. Wetangula and Sen. Kembi-Gitura. The point is the first time when the Senate convened last year, there was quite a bit of different ways of thinking such as: "Let the Executive stay where it is and let the Legislature do its job." But now that there is a consensus of thought, it is about time that Parliament revisited the issue of how to call the Cabinet Secretaries to the Senate and the National Assembly to the extent that, if it is the Standing Orders that we need to amend to accommodate this particular issue, we do so. Maybe, by way of suggestion, we can allow, perhaps, two hours from 10.00 a.m. to 12 noon on a Wednesday morning where the House is converted into a Committee of the Whole and the Cabinet Secretaries come in as scheduled. In my view, it is not enough that the Cabinet Secretary would come to a Committee because once an issue comes before the House every Member would either wish to hear, contribute or participate to it. To that extent, let us have a communication from you with regard to this issue.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, you note the interest that this issue has generated, not because of itself *per se*, but it is a common undercurrent in the Senate, and I am sure, in the National Assembly too. That is why I sincerely believe that the current dispensation cannot go on like this. Unlike what Sen. (Eng.) Muriuki has said, I was not proposing that the Cabinet Secretary comes to the Committee. They will continue coming to the committees because they have to come before the committees. However, I was talking about a Committee of the Whole where they come and give answers to various questions. We look at them, they give answers, we are able to interrogate them and ask them clarifications on those answers because they are responsible for them.

Of course, I do not blame my colleague Sen. Haji, at all because I understand where he is coming from. He is the Chairperson of my Committee. I know that he has and always does his best. But even his best cannot go beyond a certain point. When a state counsel writes a letter on an issue half as important as this and says "in due course", you will note that Sen. Haji has not told me---

**The Speaker** (Hon. Ethuro): Order, Sen. Kembi-Gitura! You are repeating yourself. I allowed you to raise all manner of issues----

*(There was a technical hitch)*

*(The Speaker spoke off the record)*

It seems there is a problem with the microphone.

This is a challenge we need to look at in greater details. We want to use the opportunity of the recess to discuss with the other House, so that we can both agree as a Parliament on the appropriate way of engaging Cabinet Secretaries. We will take into account all the issues you have raised.

In the meantime, issues will not wait for that engagement. I want to agree with Sen. Haji completely that Sen. (Prof.) Kindiki was a bit unkind to the chairperson. I say so given that he also has a responsibility towards the way chairs get facilitated in getting this information. He has assured this House that his office will always facilitate. Sen. Haji did not read that statement as a statement to the House. He read it to explain the frustration that he had gone through as a chairperson of the committee. That is the context in which that statement was made. I am sure Sen. (Prof.) Kindiki, being the professor that he is, must have since discovered that was the context.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I withdraw and apologise.

**The Speaker** (Hon. Ethuro): In the meantime, Sen. Haji, just because the Professor has withdrawn, it is not an opportunity for you to celebrate. There is no party here!

*(Laughter)*

Sen. Haji, you need to issue summons to the Cabinet Secretary to appear before you latest Thursday morning on this matter, so that on Thursday afternoon, we get our report. That is the direction from the Chair. Make it absolutely clear that failure to do so, this House has many ways of dealing with Cabinet Secretaries.

*(Applause)*

**Sen. Haji:** The point is taken, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Those are the issues that we need to discuss a framework on. They are fundamental issues touching on how we relate as Parliament and the Executive. I do not want to rush into that for now. That is one of the issues that I said we will take advantage of the recess to discuss how we can do more formal engagements.

Sen. Kembi-Gitura.

#### ESCALATING BANK INTEREST RATES

**Sen. Kembi-Gitura:** Thank you, Mr. Speaker, Sir, for that ruling. I had sought a statement from the Committee on Finance, Commerce and Budget, chaired by Sen. Billow, on the issue of interest rates *vis-à-vis* the profits being made by the banks. He was supposed to give an answer today.

**Sen. Mositet:** Mr. Speaker, Sir, Sen. Kembi-Gitura, who is the Deputy Speaker, has risen when I was just about to issue the status of that statement.

The Cabinet Secretary, Treasury and the Principal Secretary have not been in the country. They are attending to some Government business in New York. We are expecting them on 17<sup>th</sup>. As a result of that, I would like to request the Senator to be a bit patient and give us one more week, if possible.

STATUS OF THE ECONOMIC STIMULUS  
PROGRAMME

If the Senator is satisfied with that, there was also another question we had been asked by Sen. (Prof.) Lonyangapuo concerning the Constituency Industrial Development Centres established by the Government of Kenya in 2009.

The response we got from the Ministry did not come from the Cabinet Secretary. That is the one Sen. Wetangula was talking about. We talked about it and disposed of the issue and found that we could not give that statement on the Floor in this House. We, as a Committee, agreed that we have to summon the Cabinet Secretary to appear before that committee on Thursday, so that he can come and shed more light on what has been given out. The answer did not come from the Cabinet Secretary; it was from the Principal Secretary. As a result of that, we talked with the Senator who had requested the statement and he was in agreement with us, that we get more time. By Thursday, we will be having the Cabinet Secretary if he agrees to come so that we can interrogate this issue and get the correct answer.

**The Speaker** (Hon. Ethuro): On the last one, Vice Chairperson, it is not about “if the Cabinet Secretary agrees.” He or she must come. Failure to appear before you must have consequences. So, we take it that you will hold that meeting on Thursday.

**Sen. Mositet:** Mr. Speaker, Sir, the Clerk to the Committee was hesitant that maybe the Clerk to the Senate may hesitate to call the Cabinet Secretary to appear within a day. With your directive, I believe that will happen.

**The Speaker** (Hon. Ethuro): What about the statement by Sen. Kembi-Gitura?

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, I do not think there is much that I can do. But, of course, one week will find us on a recess. That means they have another 46 working days to give the answer. I hope that by the time we resume he will have an answer.

I am happy you have given that direction because, at least, we can now hope that some answers will be forthcoming from the Cabinet Secretaries. But as a conclusion, it is not fair to be told both the Cabinet Secretary and the Principal Secretary are out of the country. Offices do not travel.

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

**Sen. Kembi-Gitura:** But I am on a point of order.

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

**Sen. Khaniri:** Mr. Speaker, Sir, did you hear the Deputy Speaker say that in one week we will have broken for recess? I think that he is anticipating debate and that is against the Standing Orders of this House.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, we have a calendar now unlike the previous days when it was read by the Senate Leader of Majority. He told us unless, of course, things have changed since I have been away, that, that is the calendar that we have. But having said that, I understand where my colleague is coming from.

**Sen. Khaniri:** On a point of order, Mr. Speaker, Sir. I know that we have got a calendar, but the recess is subject to a Motion, to be approved by this House. Since the House has not approved the Motion, therefore, he is anticipating debate.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, if he wishes that I withdraw, I will do so. But he has not asked for it though.

**The Speaker** (Hon. Ethuro): Order! When you are challenged, Sen. Kembi-Gitura, you should not be the first one to yield ground. You had put an agreement which the Chair agrees with completely. Since the calendar was presented to the House and it is gazetted, it is really there. So, the Motion can only negate it, but in terms of recognition that, that debate is on. That is the reality. So, Sen. Khaniri, I think that you are the one who needs to withdraw.

**Sen. Khaniri:** Mr. Speaker, Sir, I stand guided.

**Sen. Kembi-Gitura:** Thank you, Mr. Speaker, Sir. But that is not the same as withdrawing and apologizing.

**The Speaker** (Hon. Ethuro): It was not offensive.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, having said that, I understand where my friend and colleague is coming from. I will abide with what my colleague has said and wait for the answer.

**Sen. Haji:** Mr. Speaker, Sir, I have another Statement to make. Sen. (Dr.) Boni Khalwale asked the Chairperson of the Committee on Road and Transport, but it was referred to my Committee, whether the Government is aware---

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Did I hear the Chairperson say that it was requested by Sen. (Dr.) Khalwale? Since Sen. (Dr.) Khalwale is not here and we know that he has a good record of attendance--- Having not attended today, there could be a good reason. Being the Questioner, it is only fair that we give him time to be here to interrogate further the answer being given by the Chairperson of the Committee. I request that you put it aside for tomorrow or thereafter, so that Sen. (Dr.) Khalwale can benefit from the answer being given to his request.

**Sen. Haji:** Mr. Speaker, Sir, if the Chairperson fails to give a Statement on time he is accused, but the Senators can get away by not being in the House and asking that the Statement should not be read. I personally appeal that I should read the Statement, so that I am not accused of not giving Statements in time.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. The Chairperson of my Committee should be the last to complain in the manner that he has done. He is the biggest offender in not giving Statements to this House and the House has been very magnanimous to him.

**The Speaker** (Hon. Ethuro): You need to extend magnanimity, Mr. Chairperson.

*(Laughter)*

Order, Senators! Sen. Haji, there are many reasons Members may not be in the House. Sen. (Dr.) Khalwale is out of the country on the Senate business approved by the Speaker. Now, that cannot be his fault for sure, and you cannot use it against him. So, the Chair needs to be very understanding. You will give that Statement when Sen. (Dr.) Khalwale is back. Particularly for you, Mr. Chairman, I want to agree with Sen.

Wetangula. I think that the House most of the time has been very understanding of your situation. So, the minimum that the House will expect from you is to extend the same magnanimity to Members.

*(Applause)*

**Sen. Haji:** Mr. Speaker, Sir, while I oblige, I want to categorically deny that I am here at the sympathy of the House. This is because all the Chairpersons have the same problems. It is also understood that I get more requests for Statements than the Chairpersons of other Committees.

Mr. Speaker, Sir, I oblige.

**Sen. (Dr.) Machage:** On a point of order, Mr. Speaker, Sir. Whereas I appreciate your ruling on this matter, you will remember that in the last Parliament, where you also served as a Member of the Speaker's Panel, it was a rule that the Questioner always made himself or herself available or absent with reasons that are known to the Speaker. In case the Questioner was not available, the Question so desired was thrown away. I am not referring to Sen. (Dr.) Khalwale, because he is out on official duty and with your permission. But I am referring to other cases of questioners who sometimes I think make a habit of not appearing when their statements are ready. Could we consider maybe amending our Standing Orders, to address this issue of absenteeism where one has asked a question to be answered in a Statement form?

**The Speaker** (Hon. Ethuro): Order! Sen. (Dr.) Machage, you are completely out of order. It is so irrelevant to the issue at hand. The issue is a Member who is absent for a reason. Why are you anticipating others? Wait for that opportunity and raise the matter, if you are so inclined.

Next Order!

## BILLS

### *Second Reading*

#### THE KENYA MEDICAL SUPPLIES AUTHORITY (AMENDMENT) BILL, 2014

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move that The Kenya Medical Supplies Authority (Amendment) Bill, 2014 be now read a Second Time.

Mr. Speaker, Sir, the new Constitution of Kenya creates two levels of Government; the national Government and county governments. Those two levels of Government, according to Article 6 (2) of the Constitution, are supposed to be interdependent and distinct from each other. But at the same time, the two levels of Government are supposed to conduct their mutual relations on the basis of consultation and co-operation.

Mr. Speaker, Sir, Article 10 of the Constitution goes on to entrench devolution as one of the national values of our Constitution and democracy. It is in this connection that the Constitution goes on in Article 187 to provide an avenue for co-operation between the

two levels of Government, especially in connection with functions that fall either exclusively on one level of Government or functions that are concurrent with the two levels of Government.

Mr. Speaker, Sir, the Kenya Medical Supplies Authority (Amendment) Bill, 2014, is an amendment Bill to create a framework of co-operation and working together between the national Government and the county governments, in the specific area of procurement and warehousing of medical supplies. At the moment, the Kenya Medical Supplies Authority (KEMSA) is a national entity that is established under the KEMSA Act. It is this Act that is being amended by the present Bill, as proposed.

Mr. Speaker, Sir, as I have already outlined, the legal foundation for creating an arrangement of co-operation between the two levels of Government is already anchored in Article 6 (2), but specifically the modality of going about it is provided for in Article 187 of the Constitution. Medical supplies and the health function, in particular, falls within what one would call concurrent functions within our Constitution. Concurrent functions as distinguished from exclusive functions such as national security, which is exclusive to one level of Government and residue functions--- Residue functions are functions that may not be in the Constitution, in which case, the Constitution says that if there are such functions that have been left out in Schedule IV, then they reside in the national Government automatically. So, this health function is not a residue or exclusive function, but a concurrent function. It is a function where county governments, up to a certain level, have jurisdiction over health and provision of health services, while the national and referral hospitals and health policy reside in the national Government. It is within this background that this Bill tries, therefore, to provide a legal framework for an already existing arrangement.

Mr. Speaker, Sir, as I speak, KEMSA, which is a national agency for medical supplies, is actually working with counties across the country to assist in, at least, two areas. The first area is procurement of drugs; buying or purchasing drugs in bulk from overseas, which is normally a very expensive affair. What help countries get discount are economies of scale. So, already counties are actually buying their drugs from KEMSA because it has the capacity for bulk purchases and counties may not have that arrangement. But it is happening without a legal framework in place.

Mr. Speaker, Sir, the other area of co-operation which is ongoing is warehousing not only of drugs, but other sensitive medical supplies, such as vaccines. Most of the counties at the moment do not have adequate capacity to be able to store vaccines and other sensitive medicines that require specialized storage. It is in this connection, therefore, that counties are already working with KEMSA to ensure that, that is done. But as I have said, they are doing that outside the law.

Mr. Speaker, Sir, Article 187 allows for the transfer of functions that reside in one level of government to another level of government, subject to an intergovernmental agreement negotiated and signed by the two levels of government. It is in that connection you will see Section 4 which is the principal section in the amendment Bill. It is suggesting that whatever arrangements that have to be in place, must be subjected to an intergovernmental agreement in accordance with Article 187 of the Constitution. The transfer, therefore, is allowed from one level to another level of government. It is negotiated and agreed on. If that is not done, then, of course, that transfer has no legal effect.

This transfer as negotiated is also allowed subject to four conditions:-

(i) It must be demonstrated that the reason for the transfer is for a more efficient performance of that function. In other words, the two levels of government must agree, for example, that the issue of bulk purchases and storage or warehousing of sensitive medicine and vaccines is better handled at the national level. The level of Government to which the transfer is taking place must show some kind of efficiency or capacity.

(ii) It must be demonstrated as I have already demonstrated even before drafting this Bill that the transfer is not prohibited by any legislation. I am not aware of any legislation that prohibits this kind of transfer.

(iii) The Constitution demands that the issue of resources – it is a general principle in our devolution architecture that when there is a transfer of functions that accrue any revenues, then that revenue will go to the level of government that is performing the service or function.

(iv) The Constitution is clear that even when the transfer of functions takes place under Article 187 of the Constitution as well as Sections 25 and 24 of the Intergovernmental Relations Act, the constitutional responsibility for that function still remains with the level of government to which that function is assigned. In other words, in simpler terms, we are saying that even if counties are willing to negotiate an intergovernmental arrangement so that KEMSA provides some of the services as will be defined in the agreement, the responsibility for health services will still remain with the County Government in accordance with Schedule 4 of the Constitution.

Mr. Speaker, Sir, these are the four conditions which I have established and which are provided for in Article 187. The other thing I wanted to say is that you will see that Section 4 as I have said is the main provision. We are amending the current Section 4 of the KEMSA Act through this Bill to insert a new Clause 4 (a) to provide for the intergovernmental negotiations and agreements that I have already identified.

The second provision of the Constitution which allows this kind of arrangement is Article 190 of the Constitution. Part I of Article 190 of the Constitution says that Parliament shall by legislation ensure that county governments have adequate support to enable them to perform their functions. In other words, where there are capacity gaps, the national Government can step in, subject to the law and provide that support to ensure that county governments perform their functions.

Mr. Speaker, Sir, Section 4 (a) sub-section 2 has taken care of all the four conditions I have highlighted above. Section 6 of this Bill recognizes the role of the Council of Governors which is the organ for processing and concluding intergovernmental relations on behalf of the counties. The Council of Governors is established under the Intergovernmental Relations Act, 2012, and the Council of Governors is the body recognized in law to negotiate, conclude and represent county governments in their relations with the national Government. Section 6, therefore, of this Bill provides that the Council of Governors must be represented in the KEMSA. Over and above the agreement to be negotiated, this Bill intends to require that the KEMSA Board be reconstituted so that the Council of Governors can nominate two Board members to sit in the KEMSA Board in line with the constitutional requirements. This Bill suggests that one of the nominees of the Council of Governors must be a man and the second nominee must be a woman.

Other than the reconstitution of the KEMSA Board and the intergovernmental agreement to be entered into, this Bill has one other final thing that it does. It is an amendment Bill. It says that the Cabinet Secretary who is in charge of health may make regulations on the furtherance of this Act. But that power to the Cabinet Secretary is subjected to the consultation of the Council of Governors. In other words, the regulations would ordinarily be made in consultation or on recommendation by the Council of Governors. In other words, the Council of Governors must be consulted before the regulations are gazetted by the Cabinet Secretary.

This is a straightforward Bill. It has few things. One, it provides for the immediate negotiations and conclusion of an agreement between counties and the national Government so that the issue, especially of procurement of drugs, bulk purchases and warehousing can be done on behalf of counties and counties are actually not really obligated but they have that facility. Counties that want to buy their drugs even overseas can still do it because it is not mandatory. But then the legal arrangement needs to be there to provide counties with drawing rights. Those that want to buy their drugs from KEMSA can do so under the law.

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

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

Mr. Deputy Speaker, Sir, eventually, the solution to the capacity issue by counties, in this issue of medical supplies lies in building the capacity of each county especially in the area of drug warehousing so that in every county, you can have adequate infrastructure for the storage and warehousing of drugs as a long term measure even as we grapple with how to manage and make sure that devolution functions. That is the first thing.

The second thing it does is to provide for the representation of counties in the Board of KEMSA and finally to provide that the counties must be consulted for any subsidiary legislation that may be made in the furtherance of any matter that falls within this amendment Bill. That is the Bill before this House and I would want to urge my colleagues to support it and pass it.

With those many remarks, I beg to move and request John Lonyangapuo, the Senator for West Pokot County, to second. Thank you.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, I am correcting my colleague Senator, Prof. Kindiki that he is supposed to refer to me as Sen. (Prof.) Lonyangapuo John. He is not paying attention to me.

**The Deputy Speaker (Sen. Kembi-Gitura):** I did not understand the correction you were trying to make.

**Sen. (Prof.) Lonyangapuo:** He referred to me as John instead of Sen. (Prof.) John---

**The Deputy Speaker (Sen. Kembi-Gitura):** What exactly is the correct sequence so that it can go on HANSARD?

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, it should go to the HANSARD as Sen. (Prof.) John Lonyangapuo.



**The Deputy Speaker** (Sen. Kembi-Gitura): Where does Krop come in the set up?

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, if I introduce it, it will now be a whole sentence.

**Sen. (Dr.) Machage:** On a point of order, Mr. Deputy Speaker, Sir. Many Senators in this House have very many titles behind their names. Some are even Kings and princesses and what have you, depending on the communities they come from. Is Sen. (Prof.) Lonyangapuo in order to insist that we must insert those names whereas Professor just means teacher as far as I am concerned? The title Senator is more important and powerful than the others. They are not fundamentally necessary. Is he in order?

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, I am very much in order. You can see from the list of the names that that title is in brackets just as Sen. (Dr.) Machage's is in brackets. That is how it is written.

**The Deputy Speaker** (Sen. Kembi-Gitura): So, you are just taking your right seriously?

**Sen. (Prof.) Lonyangapuo:** So seriously that it is also important to walk with your rights.

**The Deputy Speaker** (Sen. Kembi-Gitura): Proceed.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, I rise to second the Kenya Medical Supplies Authority (Amendment) Bill, Bill No.2014. As was presented by the Mover of the Bill, this is an amendment to the KEMSA Act, 2013, which is referred to as the principal Act. What has happened here is that the Mover has said that we should amend it by inserting the words; "The Authority shall serve both the national Government and the county governments". This is essential especially now that we have operationalized the new Constitution by having the two distinct governments; the national Government and the county governments.

In Schedule 4 of the Constitution, the national Government function No.28 talks about the health policy while the County Governments function talks about the county health services which include the county health facilities and pharmacies. This Bill essentially comes in to make sure that the lives of the people of Kenya and the standards of the medicine that we take to our people in the counties, we know the source. There are some medical supplies that will never be found in this country and it is not prudent that every county will be moving around to source theirs from outside the country. The KEMSA, as indicated here, has for a long time been the surest source of medical equipment. These include the laboratory supplies to the agents. They have been able to get dental materials, hospital consumables, medical appliances and materials.

If this Bill goes through, we will be sure that materials that are required for consumption by human beings for medical purposes are guaranteed because we know where they come from. If we allow the counties to do the procurement, some quack suppliers will parade themselves, pretending that they know where they can get some of these medical supplies from. It is the duty of this House to create laws that are in harmony where the security of our people is guaranteed.

Mr. Deputy Speaker, Sir, like it was mentioned here earlier, Article 176 of the Constitution allows that the functions of the devolved governments be established, and so they have been established. This Bill also proposes that while the Kenya Medical Supplies Agency (KEMSA) has the main role of procuring these medical supplies. They

need to work in consultation with the Council of Governors (CoGs), which is a formal unit recognized by law, in order to ensure that all the needs of every county are submitted properly. This Bill also stipulates somewhere down here that every county needs to have a strategic reserve stock of the prescribed medical supplies of at least six months, so that KEMSA knows the list of all that has been supplied to all counties.

This is unlike today when you walk to some of our villages and our counties; you will get a very miserable state of affairs because sometimes they do not have drugs. Last week, some people called me from my county and told me that they were unable to get some drugs in Kapenguria County Hospital because they are still waiting for the supplies which they ordered sometimes back. If this idea of a strategic reserve stock had already been implemented, we would not be in the state where our people are being asked to go to the pharmacies even at very odd hours at night to buy drugs – and there is none that is open at that time.

Mr. Deputy Speaker, Sir, like what has been mentioned in new Clause 4 (a) that:-

“Subject to Article 186 of the Constitution, section 24 and 25 of the Inter-Governmental Relations Act----.”

It encourages the national Government that for any good reason, it must work in harmony with the county governments. We must work on this Bill and ensure that it is passed at least for the better health of our people. We should know where the medicine we get is coming from.

The Bill also proposes that we should have two people sitting in the KEMSA Board by law, and these people will be identified together with the CoGs. This is essential so that the two levels of government work hand in hand. You are aware that there are still some functions which we will require, and the Senate is still going to discuss so that some of the functions that can be transferred from the county Governments to the national Government or *vice versa*. We cannot afford not to discuss this issue because of the very important reason that it touches on the people of Kenya.

Mr. Deputy Speaker, Sir, I am particularly impressed that this Bill proposes to even have warehouses in every county in the years to come. This is for the sole purpose that KEMSA can have its own small outlets where they can store this medicine for the strategic reserve in every county; and because they know the types of warehouses that are designed for the storage of medical supplies and equipment. Not anybody can just wake up and start constructing any building in the name of storing medicine. Then when it comes to distribution, it will now be very easy for us to follow and track the movement of the drugs.

Mr. Deputy Speaker, Sir, it is also not going to be the prerogative of the Cabinet Secretary (CS) alone, together with KEMSA, to just sit here in Nairobi and not know how the health policy is being implemented on the ground by the county governments.

Mr. Deputy Speaker, Sir, I find this Bill very straightforward and essential for us because it proposes that we need to now give a law that can enable KEMSA and the county governments to work in unity together, rather than having some running up and down, ending up getting sub-standard equipment or medical supplies to the people of Kenya.

Mr. Deputy Speaker, Sir, I beg to second this Bill.

*(Question proposed)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Senate Leader of Minority.

**The Senate Leader of Minority** (Sen. Wetangula): Mr. Deputy Speaker, Sir, this Bill has a very good idea and it would have been better brought in a bipartisan approach that would help counties. This Senate is the defender, protector and acts in the best interest of counties. I have listened very carefully to my distinguished learned junior and I have seen his line of argument. I have seen the line of argument by the Seconder, but what this House is not being told is; one, has the CoGs requested for this kind of engagement? There is no such information available to the House or in the Memorandum to the Bill.

Mr. Deputy Speaker, Sir, Article 187(1)(a) of the Constitution says:-

“A function or power of government at one level may be transferred to a government at the other level by agreement between the governments if—

(a) the function or power would be more effectively performed or exercised by the receiving government;

There is no evidence that this function will be more effectively performed at the national level than at the county level.

Mr. Deputy Speaker, Sir, in devolution, we have devolved almost 80 per cent of the health services to the counties. What we are trying to do now is to micromanage the counties and tell them: “We have given you health services to run, but we will arm-twist you in a very clever way to sign an agreement with us and surrender back to us at the centre the power and the authority to procure medicine.”

Mr. Deputy Speaker, Sir, it should not be lost – and I am addressing my colleagues across the Floor – that we all mean well for devolution; and we also represent counties. Unless you do not live in this country, everybody knows about the cartels at KEMSA; everybody knows the corruption at KEMSA.

*(Applause)*

This is a matter of public knowledge and what lawyers would say “take judicial notice of the rot at KEMSA.”

Mr. Deputy Speaker, Sir, I want to urge this House that, one, let us act on a request from the CoGs, who will tell us that “Look, we cannot procure; help us to procure.” They have not asked for that. Number two, we want a situation---

*(Sen. (Prof.) Kindiki stood up in his place)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Senator (Prof.) Kindiki?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I have a lot of respect for Sen. Wetangula. But he is misleading this House, in my view. Why do I say so? Because to purport that a House of Parliament cannot bring legislation until it is requested by any person is not only misleading, but goes against the constitutional space that has been given to this House.

So, Mr. Deputy Speaker, Sir, is the Senate Minority Leader in order to mislead this House by purporting that we cannot bring in any legislation on devolution until the CoGs has come and asked us to do so? Again, this is not to pre-empt the public

participation process whereby immediately the Bill is out there, the CoGs can come and give their views---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Kindiki, is that not a point of argument or debate?

**The Senate Leader of Minority** (Sen. Wetangula): Absolutely, Mr. Deputy Speaker, Sir!

Mr. Deputy Speaker, Sir, I never said that the CoGs must request or approve any legislation that comes to this House. We are a House of original jurisdiction and we can do what we can within the Constitution; that is basic!

*(Applause)*

What I am saying, Mr. Deputy Speaker, Sir, is that we have devolved health services and allowed the national Government to deal with only national referral hospitals and policy. Why would we want to let the national Government continue micro-managing and procuring for the county governments?

*(Applause)*

Mr. Deputy Speaker, Sir, it is in cases like this that you will find KEMSA and the national Government delivering huge chunks of anti-malaria drugs to Nandi and Nyahururu, when such drugs are needed in Kisumu and Siaya; you will also find KEMSA delivering huge consignments of drugs in a place where there are no reported cases of snake bites and leaving areas where cases of snake bites are the order of the day, because it is business!

Mr. Deputy Speaker, Sir, what one would expect us to do – if we really want to help both the national and county governments – one would have remotely expected that KEMSA – which has been procuring drugs in bulk and distributing to the whole country – can remain as a body that can act as an agent of the counties as and when it is necessary. The counties could, then, where they cannot procure drugs on their own, get these drugs from KEMSA at cost because KEMSA is not a trader.

Mr. Deputy Speaker, Sir, there are many drugs which are imported, but there are as many drugs that are local. What is so difficult about the County Government of Kajiado procuring malaria drugs that are manufactured in Industrial Area? Why should they go through the bureaucracy of KEMSA? What is so difficult about the County Government of Murang'a procuring condoms that are manufactured in Nairobi instead of asking KEMSA to import them from Germany; and so on, and so forth?

*(Laughter)*

Mr. Speaker, Sir, unless we are trying to create business cartels that are already such a weight on the economy of this country, this Bill does not meet the threshold of the anticipated transfer of functions under Article 187 of the Constitution. There is no evidence, or facts, no insinuation and no implication that this function will be performed better by the national Government. In any case, we can only start doing what we are trying to do after observing over a period of time and concluding reasonably, factually

and legally that indeed the county governments are unable to perform this function. We have no evidence to reach such a conclusion.

Mr. Speaker, Sir, I do not want to cast any aspersions on my learned friend but in other jurisdictions, you have heard cases of cartels engineering legislation to meet their demands. We have also had situations where Members of the House have always asked questions on hire. I am not casting aspersions on the distinguished Senator, the Majority Leader, but I do not want this Senate to create an impression that we are bidding for the Kenya Medical Supplies Agency (KEMSA) because this institution is incapable of standing out there and convincing anybody that it is the right organ and outfit to import drugs for anybody in this country and counties in particular.

More importantly, Sen. (Prof.) Lonyangapuo, the distinguished Senator for West Pokot said something very bizarre. He said that by importing drugs through KEMSA, there will be quality control. KEMSA does not control quality of anything. All the quality control of everything coming into this country is done by the Kenya Bureau of Standards (KEBS) and not KEMSA. Anybody who wants to bring anything in this country, you bring a sample, you take to KEBS who will look at it, analyze, go to comparable jurisdictions, go to source and approve that the product is fit for the market of Kenya. So, it is not right for us to mislead ourselves in the terms and language that is startling from the Senator for West Pokot that KEMSA---

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Deputy Speaker, Sir. The distinguished Senator of Bungoma needs to know that I was once a Permanent Secretary in charge of KEBS and I know very well that nothing ever is bought by KEMSA or any other body unless it is tested. Is he in order to imply or to imagine that I do not know what I was talking about?

**The Senate Minority Leader (Sen. Wetangula):** Exactly, Mr. Deputy Speaker, Sir. That vindicates me that we are perhaps acting on behalf of cartels. I know the distinguished Senator is very knowledgeable. I know him very well and the HANSARD will bear me witness.

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

**The Deputy Speaker (Sen. Kembi-Gitura):** Before that, Sen. Wetangula, have you responded to Sen. (Prof.) Lonyangapuo's point of order?

**The Senate Minority Leader (Sen. Wetangula):** Yes, Mr. Deputy Speaker, Sir, I was coming to that. The HANSARD will bear me out and I saw you listening very attentively when he was speaking. He said that by importing drugs through KEMSA, we will be able to control standards. I did not question his knowledge of this, I questioned the veracity, the accuracy and the good intention of a statement of a bizarre nature like that because it is not based on any intellectual finding, is not based on facts, is not based on known practice, is not based on any reason and it is not based on anything. That is all that I was challenging.

**The Deputy Speaker (Sen. Kembi-Gitura):** Sen. (Prof.) Lonyangapuo, are those the words you used? All these points of orders are depended on the words that you used. Is it not so? Maybe you can clarify that.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, we have so many agencies in this country and all of them work hand in hand. When you talk about KEMSA, this is a body that brings and supplies certified goods that are required for consumption by the people of Kenya and they work hand in hand with every agency. That is why I was

saying that in order to sustain the standards, it is good to work with the agency that already exists rather than having another agency that has just been created in the village or in the counties and we even do not know where they buy their goods from. That is what we are putting in this Bill. Details will be found when they start writing a memorandum of how they want to work together.

**Sen. Ong'era:** On a point of order, Mr. Deputy Speaker, Sir.

**Sen. Murkomen:** On a point of order first, Mr. Deputy Speaker, Sir. I just said first because it was initially in the issue. Is it in order for my colleague to be standing when I am on a point of order?

*(Sen. Ong'era stood up in her place)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Actually, none of you is in order. I have not given the Floor to any of you.

**Sen. Murkomen:** You looked at me, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): None of you is in order. Sen. Murkomen, you have the Floor.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, did you hear the Minority Leader consistently juxtapose the name KEMSA and cartels? He is attempting to link the distinguished Senator and my neighbour of West Pokot and the Senator Majority Leader to cartels. KEMSA is a Government institution that is currently procuring medicine for both counties and national Government. In fact, I was in a meeting that agreed that for the time being, KEMSA can continue procuring for the counties. If we juxtapose that institution with cartels in this House, I think we are not behaving in a manner expected of Senate decorum particularly from the top five ranking leaders in this House, that is, the Senate Minority Leader.

**Sen. Ong'era:** On a point of order, Mr. Deputy Speaker, Sir. Did you hear the distinguished Senator from West Pokot, Sen. (Prof.) Lonyangapuo, call county governments village bureaus? When did county governments become village bureaus?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Lonyangapuo, did you use that word?

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, I said that some employment bureaus or some purchasing bureaus.

**The Deputy Speaker** (Sen. Kembi-Gitura): Did you say "village bureaus"?

**Sen. (Prof.) Lonyangapuo:** No. I did not say that.

**The Deputy Speaker** (Sen. Kembi-Gitura): We can always interrogate the HANSARD but I did not hear him specifically call county governments "village bureaus".

**Sen. Ong'era:** He called them "village bureaus" and I would ask that we interrogate the HANSARD.

**The Deputy Speaker** (Sen. Kembi-Gitura): What is your point of order?

**Sen. Ong'era:** I asked the question whether he is in order.

**The Deputy Speaker** (Sen. Kembi-Gitura): He would not be in order to call county governments village bureaus, for sure. He could be out of order completely but he is saying he did not say so.

**Sen. (Prof.) Lonyangapuo:** Mr. Deputy Speaker, Sir, I did not say that. I said that some County Executive Committees (CECs) in the county governments and some procurement bureaus in the villages and it has nothing to do with counties. So, we should distinguish the two.

**The Senate Minority Leader (Sen. Wetangula):** Mr. Deputy Speaker, Sir, I want you to protect me so that my arguments can flow.

**The Deputy Speaker (Sen. Kembu-Gitura):** Sen. Wetangula before I protect you, you have not responded to Sen. Murkomen's position.

**The Senate Minority Leader (Sen. Wetangula):** Mr. Deputy Speaker, Sir, first of all, the distinguished Senator for Elgeyo-Marakwet was not listening to me carefully because when I was addressing the House, he and the distinguished Senator for Nandi were busy chatting and giggling. I was looking at them and I think they missed the point.

What I said is that it is common knowledge and even in the last Government, the Minister for Health then, hon. Charity Ngilu, attempted to disband KEMSA on allegations of cartels and corruption. Sen. Orenko can bear witness to this; we were in the Cabinet together. This is not something I am inventing. This is not a problem of the Jubilee Government. It is a problem that has run through all the governments of this country with cartels at KEMSA. You know the case when hon. Ngilu raided KEMSA and found drugs worth billions of shillings in stores that had expired. They had been kept there and yet they had been paid for.

It is not right for my brother from West Pokot to say that county governments cannot procure drugs because of standards. The law does not exempt county governments from their obedience of the requirements under the KEBS. The standards remain the same. We are not talking about standards; we are talking about who will handle the shillings and cents to go and buy the drugs. You know we have a tiff with our donors. There are some who have publicly said they will not give us money until we control corruption. The money we are giving to the county governments, we want to follow it with the same stinking corruption to the counties and say that KEMSA will procure drugs.

I want to assure this House that this is like the story of the camel, the man and the tent. Give the national Government an opportunity to put the nose and the ears in this tent of procurement through KEMSA and the next day, the county governments would be out of the tent. They will take over completely and they will procure. The cartels will continue and will decide to give drugs to counties that are politically correct. This is something that we must protect. That is why we are here. That is why even as you feel ensconced on that Chair as the Deputy Speaker of this House, at the end of the day, you are the distinguished Senator for Murang'a and you must defend the interest of Murang'a including the right of the County Government of Murang'a to spend the money allocated to them properly in their interests.

Mr. Deputy Speaker, Sir, I want this House to remember that when we will allocate money to the County Government of Nandi, part of devolution is to generate and create local capacity and local wealth. The people of Nandi who have capacity will, on behalf of the County Government of Nandi, tender competitively, get the tender, procure the drugs, subject to the KEBS recommendations, deliver and generate wealth. What we are saying now is that deny the people of Nandi this opportunity that devolution has brought to them and keep it in Nairobi in the command system that devolution is

supposed to remove and let those who have been benefitting from the largesse of a command system continue with what they have been doing. This is not right. This is not defending devolution.

I want to urge my colleagues that this is not about Jubilee and CORD. This is about your counties which sent you here. This is about the devolution of resources, the devolution of authority, the devolution of capacity and the devolution of the ability for the people of counties to manage their affairs in the most convenient way. You cannot say today---

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

**The Senate Minority Leader** (Sen. Wetangula): Inform me.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, I really appreciate the line of thought that the Minority Leader is taking but I wanted to inform him that even those very good arguments he is making are negated by the Act itself as it is. The amendments that the Majority Leader has brought just supplements. I wanted to tell the Minority Leader while making those arguments, he should do it with a view of amending the original Act, perhaps the opposite of what the Majority Leader was doing because those arguments are the content of the Act as it is. If anything, the Majority Leader was just making it a little bit more stronger in terms of involving the counties but the Bill is doing what he is saying it should not be doing.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, my brother cannot be so far from the truth. The current KEMSA Act does not obligate the county governments to procure medicine and drugs through it. It does not. What we are trying to do now is to tie the hands of the county governments and walk them like a lamb to a slaughter house and hand them over to the cartels at KEMSA. This is what we are saying should not happen. I remember that my brother here would have done a very good job if he had approached this Bill in a bi-partisan manner. We have great men here like Sen. (Dr.) Machage, who has not only been an Assistant Minister in Health but who is also a medical doctor. He can add immense value to legislation such as this.

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Speaker, Sir. Is it in order for the distinguished Senator to keep on referring to cartels? Could he bring his list and table it in this House? He seems to know the people who have been fleecing Kenyans through Kenya Medical Supplies Agency (KEMSA).

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, you can go on with your line of argument. The only thing you cannot do, since KEMSA is not represented here, is to take a line that will malign either KEMSA or its administration since they have no chance of defending themselves on the Floor. You need to draw that line and tread on it very carefully, indeed.

**The Senate Majority Leader** (Sen. Wetangula): Mr. Speaker, Sir, from your ruling, I have no doubt that you have understood me. I was saying and I want to repeat – I believe that I am saying this on behalf of others – that if the Senate Majority Leader means well, he has an opportunity to withdraw this Bill and have a bipartisan approach. We will have to seek information from our counties. I will go to my county and ask them whether they want KEMSA to procure drugs for them.

I am sure every Senator here is inclined to do that including the distinguished Senator for Tharaka-Nithi. He has a duty because he was not elected as a Majority Leader



in this House. He was elected as the Senator for Tharaka-Nithi County. That cannot offend you.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki: Mr. Deputy Speaker, Sir, I am not offended. This is just for record. This is a House of records. I know my responsibility as the Senator for Tharaka-Nithi County. I have consulted on this particular Bill. I want to go on record because this is a House of records. The insinuation that my brother, the leader of few people is trying to make is that I am just a Majority Leader who does not consult his county and that is very detrimental for my re-election. Is that in order?

**The Senate Majority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, the distinguished Senator for Tharaka-Nithi County was a last minute convertee to Jubilee. If he chooses to retrace his steps, we will go there and campaign for him to be reelected.

As I end, I want to urge this House to be the last institution to undermine devolution and to tie ropes around or fetter counties in their activities. I want this House to be the last institution to reverse the wheel of progress in devolution and drive us back to centralized command.

The Fourth Schedule is very clear and my brother, the distinguished Senator for Laikipia knows that this schedule transferred 80 per cent of health services to the counties. Why would you give counties health services when the Constitution says that you cannot transfer a responsibility without corresponding budgetary allocation?

You cannot say that Bomet County will take care of its health services; give it money and say that the money will only be used by KEMSA in Nairobi to buy the county what it needs. That is a complete antithesis of devolution. I urge, as I oppose this Bill, that the distinguished Senator for Tharaka-Nithi who is the Senate Majority Leader will see the sense in withdrawing the Bill, rescinding, going back to the drawing board and seeking wider consultations to see whether, in fact, this Bill like any other Bill that we bring here adds value to devolution or reduces value to devolution. This one reduces value.

I beg to oppose.

**Sen. Obure:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute.

I have read this Bill and I think it is loaded with mischief. This Bill is a good attempt to manage county governments on a collective basis. Through this Bill, the Cabinet Secretary for Health is being given powers to control the key function of the county governments which should, rightly, belong to the county governments.

The objective of devolution was to run away from centralized arrangements so that devolved units could be given the opportunity to look for innovative ways to do business and deliver services; ways which would take into consideration the unique and peculiar circumstances prevailing in each county. These are ways that are efficient, cost effective and which would help counties to deliver services better. That was the objective of devolution and precisely why it was overwhelmingly embraced.

In deciding to adopt devolution as a way of life, it was envisaged that certain national institutions and functions would be transferred to the county governments since they would have become irrelevant and moribund. I expected KEMSA to be one such institution but this Bill today wants to take us to the days prior to devolution. It is seeking a place and a role for KEMSA.

We all know about the poor performance of KEMSA. We know about the history and the inefficiencies associated with that organization, evidently, through perennial shortages of drugs in medical facilities throughout the country like in public hospitals. That shortage is a familiar feature of what we have gone through; associated with poor distribution of these essential and human saving ingredients. The KEMSA has been associated with very punitive cost of drugs in all our medical institutions throughout the country.

Mr. Deputy Speaker, Sir, I am very surprised that a non-performing institution which would rather be scrapped is being given more responsibilities. Section 6 of the Bill is proposing that KEMSA consults with the Council of Governors so that they procure, warehouse and distribute essential medicines and other medical supplies to the county governments. I find this completely outrageous and objectionable. First of all, an institution which is directly under the control and direction of the Cabinet Secretary for Health should not be given powers to consult the Council of Governors on its execution of duties.

The term “consultation” has not been defined and we know that it is very controversial in this country. We know the political problems that we have faced under the term “consultations.” There is no framework for such consultations and, indeed, there are no terms of reference for such consultations. One wonders what will happen if these consultations are not mutually agreed upon and successfully concluded.

We are all trying to create, in my view, room for unnecessary conflict between county governments and institutions of the national Government. Second, there is the issue of Council of Governors. The Council of Governors, as we all know, was created purely to provide a forum for consultations between the Governors themselves and between the Governors and the national Government or other institutions. This Bill wants to give the Council of Governors powers to usurp the powers of county governments. County governments have been elected and put in place by the people themselves and the governments are accountable to those people who elected them. You cannot, therefore, shift the responsibility of managing the affairs of the county governments to the Council of Governors and the Cabinet Secretary for Health. This will be contrary to the spirit of the Constitution.

Clearly, this Bill wants to convert the Council of Governors into an organ to supervise and manage counties from a central position which again undermines the spirit of the Constitution. The current procurement law allows county governments to source and buy drugs and other essential medical supplies directly from any competitive source. I think this is a good thing. It is good because it generates healthy competition regarding the issue of prices, quality and distribution.

We all know that competition in this aspect will produce value. This same competition will also go a long way to help us deal with shortages and the high costs which we have experienced in the past. Furthermore, if the County Government of Kisii is buying medicine at a certain price and our neighbours, Kericho County, is buying the same medicine at lower prices, once the people of Kisii get to know that, they will certainly put the Governor to account. At the end of the day, I am convinced that if county governments were allowed to source these products from wherever they are, the prices would be competitive and the public would benefit. This Bill, therefore, raises a very pertinent question. That is the question I have been asking and have not been able to

get an answer. Why does the national Government today want to hang on to procurement of medical supplies, through KEMSA, when other medical services have been transferred to the county governments? Why does it want to hang on to this multi-billion business? Why can it not pass it over to the county governments?

Mr. Deputy Speaker, Sir, the choice of seeking or not seeking KEMSA services should be left entirely to the individual county governments. In this way, they will be able to explain and justify their reasons to the people who elected them. That way, we will also become accountable and explain our position.

Mr. Deputy Speaker, Sir, finally, in my view, it will be a very sad day if this Senate were to approve this Bill as it is. Therefore, I oppose it.

**Sen. Kajwang:** Mr. Deputy Speaker, Sir, this is an attempt to bring back centralization of power. This is the power that we have always wanted to devolve and disperse. It is the power that actually we decided at the Bomas of Kenya to give to the counties deliberately. We decided that health services are best served at the county level, because of experience.

Mr. Deputy Speaker, Sir, the people who gathered at Bomas of Kenya for many months had an experience that they wanted to run away from. They had an experience of shortage of drugs, corruption at the national level, lack of supervision and transparency. They said: "Let us take this duty to the county governments." The KEMSA must just die, because that was the intention. If the counties want to form their own KEMSAs, they can as well do so. Homa Bay County is larger than most countries in the world and since it has health services and needs, it can then form its own KEMSA to procure drugs.

Mr. Deputy Speaker, Sir, first, let me deal with the technical bit of this Bill, and I want the Professor to listen carefully. Professor, I just want you to listen to this because you are a technical person in matters of law. I want to ask a very pertinent question which you will deal with. Why do you want to make a law for people to enter into agreement? If Homa Bay County wants to enter into an agreement with KEMSA, why do we make a law? The Long Title reads:-

"The Medical Supplies Authority Act, 2013 in this Act referred to as the principal Act, is amended by inserting the words "As an authority serving both national Governments and county governments immediately after the words Kenya Medical Supplies Authority."

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of information, Mr. Deputy Speaker, Sir.

**Sen. Kajwang:** You did not have to respond to me immediately. You will have your time to respond, but I can pose these questions.

**The Deputy Speaker** (Sen. Kembi-Gitura): He wants to inform you. Do you want to be informed?

**Sen. Kajwang:** It is okay, Mr. Deputy Speaker, Sir.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I just wanted to inform the distinguished Senator for Homa Bay County that the reason you make a law is because the law requires that you make a law to provide for that. That is basically the reason. As I speak, that activity is ongoing, but without a legal framework.

Finally, as part of information, the language of this Bill is not mandatory. It is just a shop where you can buy within the law and elsewhere – other shops.

**Sen. Kajwang:** Now I hear you.

Mr. Deputy Speaker, Sir, in fact, if Homa Bay County can buy from KEMSA, if they want – and they may not want to buy from KEMSA if they do not want – then why should we make a law for the agreements between Homa Bay County and KEMSA? They can enter into a more detailed agreement than this Bill if they want. So, we do not have to make a Bill for you and me to enter into any agreement, because agreements are between two parties; whether they are entities, governments or other bodies. They are willing parties. So, when they make those agreements – whatever they are – so long as they do not breach any law, those agreements are binding. So, you do not need to make a law to force people to enter into agreements in a certain way, because then that is not an agreement.

Mr. Deputy Speaker, Sir, look at Clause 4 (a) - Subject to Article 186 of the Constitution and Sections 24 and 25 of the Inter-governmental Relations Act, the National Government and county governments shall enter into intergovernmental agreement. Now, Homa Bay County may want to buy drugs from a country – India, for example - that manufactures generic drugs. Another county may want to buy those drugs, especially the generic ones, which are as good as any other from Philippines, for example. What will now determine where we go is the prices of these drugs and the favourable agreements that these people may provide.

But now, KEMSA does not need this Senate to pass a law for its survival. If KEMSA does not have a job to do, you simply wither away. In fact, KEMSA is facing the same guillotine that the Kenya Urban Roads Authority (KURA) and the Kenya Rural Roads Authority (KeRRA) are going to face. This is because they have no jobs immediately after the county governments start managing their own roads. In fact, they become moribund. Probably you might want to use some very technical people at that level, but I do not see any need for them.

Mr. Deputy Speaker, Sir, most of the national organizations which were surviving because there were not county governments will not exist immediately after we transfer medical services and roads to the county governments. I suppose that Professor is not going to come very soon with another Bill like this one on KURA; that now Homa Bay County can enter into an agreement with KURA or KeRRA to maintain its roads. If we continue this way, then we are not devolving anything. So, either we want or do not want to devolve. This is a halfhearted measure of taking us back where we are running away from. The only reason we can go back there--- I do not have any evidence, but having been in politics for a while and known some of these interests, I can tell you that the brokers in the medical supplies chain are the ones driving this thing. Those who buy drugs in bulk from expensive destinations with---

*(Sen. (Prof.) Kindiki consulted loudly with  
other Senators while standing)*

**Sen. Muthama:** On a point of order, Mr. Deputy Speaker, Sir. There is a very serious contribution being made by Sen. Kajwang and the Senate Majority Leader and his team has even decided to stand. The Standing Orders say that when a Member is contributing, we should not have another Member or other Members standing. It looks like a market place. They can consult in low tones.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Muthama, I have heard you. The Standing Orders are very clear; that you can consult at anytime and anywhere, but not when you are standing on the aisle of the Senate. I hope that, that is noted.

Sen. Kajwang, go on!

**Sen. Kajwang:** Mr. Deputy Speaker, Sir, I just wanted to mention to the Senate Majority Leader that if he has a good Bill, he does not have to campaign too hard; we will support you. But when you start campaigning too hard, then you know that it is a bad law, and we are not going to help you pass it.

Mr. Deputy Speaker, Sir, in fact, the only reason we went for devolution was to devolve power. We have devolved that power on health services, so that we can govern our own health services. Provision of medicine could be almost 70 per cent or 80 per cent of what people go to hospital for, because buildings and equipment are already there. So, really, people go to hospital for medicine. So, if you take away medicine and tie it to KEMSA, it is another baron. So, what will remain for my Medical Officer of Health (MOH) to do at Homa Bay?

In fact, recently, we were discussing this with my Governor and his technical people. I told them that we do not need these expensive drugs. India provides very cheap medical services because of cheap drugs. What we buy here for a dollar, they buy there for a cent. I have been wondering how India affords this. Whenever we take our relatives to India and see the prices of medicine, we wonder whether it is for free or it was bought. In fact, when you take that same patient to Nairobi Hospital and look at the cost of drugs, you may collapse. This has been facilitated by KEMSA; the people who came into this business not to help Kenyans but make money. We will not give them this opportunity to continue making money as our people suffer and die from expensive drugs.

Mr. Deputy Speaker, Sir, in fact, just take a short list of the drugs that we buy from India for some of the diseases that we live with, like high blood pressure, tuberculosis and malaria. They are so cheap that you wonder how India afforded this. Now, instead of going to India and buying them, KEMSA goes to Britain, Germany and America to buy "original" drugs, and imposes on Kenyans a big burden that the poor cannot afford and yet, the drugs are just as good as any other.

Mr. Deputy Speaker, Sir, I want to oppose and say just one more sentence; that we are not going to provide a market for KEMSA in the counties by this Bill. If KEMSA wants to get their market, let them pursue the counties that they can give these services competitively, and they will buy from them. But if you force us by law, we will not accept it. In fact, even if you pass this law, Kenyans will not accept it, because it is becoming too expensive for them to buy these drugs through KEMSA, as our experience has been.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Dr.) Machage!

**Sen. (Dr.) Machage:** Thank you, Mr. Deputy Speaker, Sir, I beg that the Secunder of this Bill listens to my contribution.

**The Deputy Speaker** (Sen. Kembi-Gitura): You cannot force a Member to listen to you.

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, I was begging. But even if he does not listen to me, the walls will.

This Bill that has been presented to us has mischief on nearly every clause. If you look at the definition, the title; the change of the name of the title and the powers that will come with that change of the name--- Clause 2 states:-

“The long title of KEMSA referred to as the principal Act is amended by inserting the words; “as an authority serving both national and county governments”.

In Section 2, he proposes to amend the definitions. If you look at Part (C), it states:-

“Essential medicines and medical supplies mean the medicines and supplies that satisfy the priority healthcare needs of the people as may be prescribed by the Authority”.

In my own view, essential medicine can only be defined by the primary ground. You cannot force a certain county to take your prescribed list of medicines as their priority hence the power of the county government to decide which medicines are necessary for that county. This power has been taken away and given to that so-called “Authority”.

On Clause 4, he adds sub-clause (a) which states:-

“In consultation with the council to procure, warehouse and distribute essential medicine and medical supplies to the county governments”

He removes that consultation by adding two members to the Authority who cannot be vetoed by the Governors.

*(Sen. (Prof) Kindiki stood up in his place)*

**Sen. Orenge:** On a point of order, Mr. Deputy Speaker, Sir. The Senate Leader of Majority is constantly on his feet. That is grossly out of order.

**The Deputy Speaker** (Sen. Kembi-Gitura): I agree with you, Sen. Orenge, and I had made a ruling on that matter earlier on; that you can consult, but within and under the rules of the House.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Much obliged, Mr. Deputy Speaker, Sir.

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, after creating KEMSA as a powerful authority that decides on the essential drugs for the county governments, he goes ahead to increase the Cabinet Secretary’s powers on that Authority.

On Clause 6, the Bill proposes to amend Section 5 of the Act in order to extend the membership of the Board of Directors of the Authority by including two members required by the Council and appointed by the Cabinet Secretary. He will appoint his proxies into that Authority to give it power because that Authority will decide on the essential drugs for every county. So, they will decide on a wide range of drugs to be pushed forcefully to the counties. This is because every county will need what we call “essential drugs”.

Mr. Deputy Speaker, Sir, I am imagining that the Mover of this Bill had good intentions about medical supplies and treatment at the county level, but having worked with KEMSA as an Assistant Minister for Medical Services, I will not remove the word “cartel”, although you had ruled so, but Standing Order No.90 does not preclude Authorities from being referred to with such words. I beg to be corrected. So, there are cartels.

**The Deputy Speaker** (Sen. Kembi-Gitura): Did you say that despite my ruling, you defy it and still do what you want to do?

**Sen. (Dr.) Machage:** No, no. Mr. Deputy Speaker, Sir, I said that you quoted a section of the Standing Orders which I believe is No.90 that defines our way of discussing issues in this House but the personalities that are quoted that can only be described or discussed with a substantive Motion do not include parastatals or Authorities---

**The Deputy Speaker** (Sen. Kembi-Gitura): Since you want us to have an argument on this, could you first start by quoting to me the particular Standing Order?

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, Standing Order No.90.

**The Deputy Speaker** (Sen. Kembi-Gitura): Can you please read it to me?

**Sen. (Dr.) Machage:** It reads as follows:-

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

This list does not include parastatals, Authorities---

**The Deputy Speaker** (Sen. Kembi-Gitura): I think you missed the point.

**Sen. (Dr.) Machage:** I stand to be corrected.

**The Deputy Speaker** (Sen. Kembi-Gitura): You completely missed the point. The point I made which I will repeat and which I also told Sen. Wetangula and he understood is that, for example, if you called somebody a thief and named him here, it is either you substantiate or withdraw because that person does not have the capacity to defend himself in the House. So, because this is a House of decorum, you cannot just say anything that you want to say. If you heard me correctly, I did not make any ruling against what Sen. Wetangula had said. I just asked him to be very careful on how he was treading on that issue because KEMSA is not in the House to defend itself. So when you use the word “cartel” and KEMSA in the same breadth, try not to cross a certain line. That is what I said. So, it is up to you to defy that order or not.

**The Senate Minority Leader** (Sen. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. My rejoinder was that looking at the body language and demeanor of the Chair, I saw that the Chair appreciated what I was saying and the Chair just smiled but I went on.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, I made a ruling on that issue and I think it would be in nobody’s interest to reopen it. So, could you proceed, Sen. (Dr.) Machage?

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, I hope you will give me a few more minutes. It is not in my interest to step where the Chair has already made a ruling. However, the history of KEMSA is known in this country. About four months ago, the Senate Committee on Health toured about four districts and one of the areas of their mandate was to inspect their drug procurement systems and supplies. They looked at some of the pharmacies in those hospitals and what they found out was abhorring. There were cases where medicine had been procured from KEMSA with only two months remaining for it to expire. You procure medicine and after one month, you have a whole

lot of expired drugs in the store. Iken Hospital is one of the hospitals where this was discovered. Money has been spent and you cannot return those goods to the seller. Now this Bill forcefully wants to do it in the county governments. This is not acceptable. I think we have to relook at this Bill---

**Sen. Kajwang:** On a point of information, Mr. Deputy Speaker, Sir.

**Sen. (Dr.) Machage:** I will take the information.

**Sen. Kajwang:** Mr. Deputy Speaker, Sir, I want to know what “essential medicines” actually means. Does it also mean that those essential medicines for Nyanza to cure malaria---

**The Deputy Speaker** (Sen. Kembi-Gitura): That cannot be a point of information. Can it? Who are you posing that question to?

**Sen. Kajwang:** Mr. Deputy Speaker, Sir, I am framing the information. Could it really mean that essential medicines for Nyanza---

**The Deputy Speaker** (Sen. Kembi-Gitura): Order Sen. Kajwang. You have only two options here. You have already debated and so you are not going to debate again. If you are going to give information, just do that. Giving information is not the same as seeking or asking a question.

**Sen. Kajwang:** Mr. Deputy Speaker, Sir, the information I wanted to give my brother is that, in Nyanza, one of the most essential drugs are for malaria. In northern Kenya, sometimes malaria is not quite a problem but you will find that in most of those pharmacies, there are a lot of drugs for malaria in northern Kenya where they are not required and sometimes the drugs that we do not require in Homa Bay are the ones that are there.

**Sen. Haji:** On a point of order, Mr. Deputy Speaker, Sir. I want to inform the House that north eastern part of Kenya is where malaria is bred.

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, the fact is that essential drugs in one area are not necessarily the same drugs that are essential in another area. At the coast, we have elephantiasis but we do not have that in the central part of Kenya. In the Rift Valley, we have alcazar but we do not have the medicine for that in the Rift Valley. The drugs that they need for these diseases are completely different and irrelevant if supplied to another area. A determinant on who is to supply these drugs is not really credible. KEMSA has been known not to be credible on that matter.

Mr. Deputy Speaker, Sir, KEMSA should be left to look for its position in terms of commerce and business. If KEMSA thinks that it is important, then it should market itself to the county governments. They should show that they can actually supply within their own agreements and the county governments. In any case, let us not forget our principal duty in this House. Section 96 of the Constitution gives us authority to defend the county governments. Today, we stand in this House and begin unnecessarily removing functions from the county governments to the national government. This is an abuse and insult to our mandate as prescribed by the Constitution. We must not forget our mandate.

One of those issues that we must defend is drug procurement at the county level. We have complete departments built by the county governments for that purpose including executive secretaries in charge of health at the county government level. In this Bill, they are not going to be consulted; it is just a matter of consulting a few Governors who we know- a few are already lined up to appear before our Committees for



misappropriation of funds and yet we are giving them a multi-billion industry to control in cohort with the Cabinet Secretary for Health. That is not accepted. It is totally not acceptable.

I find it really painful to oppose a Bill that could have been built to defend the medical status of county governments and their populations. But this one – take it from me as a professional – we will be doomed if county governments have to rely on the Kenya Medical Supplies Authority (KEMSA) to decide on their essential medicine. We know the time it takes for medicine to move from KEMSA to emergency areas; by the time the drugs reach those areas, that crisis or epidemic is gone! We cannot allow that to happen. Let the county governments use their business equity to get drugs, not only at appropriate prices, but also better drugs. With the removal of patent issues on many drugs now, county governments can get very cheap drugs – that were hitherto patented but which are now out of the patent group – in affordable and easily available modes so long as their standards are checked. We have the Kenya Bureau of Standards (KEBS) to do that; we have the National Pharmacy Board to do that; we have the Kenya Medical Practitioners and Dentists Board to look at some of these issues. We have enough levels of inspection to make sure that county governments do not give sub-standard drugs to their people at that level.

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

*(Applause)*

### PROCEDURAL MOTION

#### ADJOURNMENT OF DEBATE ON THE KENYA MEDICAL SUPPLIES AUTHORITY (AMENDMENT) BILL

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

**The Deputy Speaker** (Sen. Kembi-Gitura): What is it, Sen. Murkomen?

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, I have listened to the debate so far, and particularly my friend, the Senate Minority Leader, who unlike all others who have contributed, concluded by saying that it is important to have a bipartisan approach to this Bill.

Mr. Deputy Speaker, Sir, I have consulted you and pursuant to Standing Order No.99., I beg to move that the debate be now adjourned to allow for further consultations which are bipartisan.

*(Applause)*

The reason behind it, Mr. Deputy Speaker, Sir, is that since the inception of this House, on such weighty matters such as Bills, reports that are touching on counties and even on more serious matters related to the conduct of a county governor, we have acted in a bipartisan manner.

*(Applause)*

Mr. Deputy Speaker, Sir, I would like to say that this House stands to benefit immensely from the contribution of its most experienced Members on both sides of the House. You must have seen that there were extensive consultations across the Floor that sometimes it reached a stage where we were almost becoming a nuisance. But that was necessary because this House is a House of honor and decorum; it is the Upper House and it is important that at any point in time when men and women with such immense expertise propose that the Bill be relooked at again in a bipartisan manner, we should take heed.

Mr. Deputy Speaker, Sir, I think it is important at this point to note that the intentions of the Senate Majority Leader are good. He had extremely good intentions because when I asked him why he did this Bill, he said that as we speak now, the drugs--- I mean the medicines; I am sorry. I know that using the word “drugs” may not be appropriate in other countries. At one time I went to a medicine store in the United States of America (USA) and I said “I want to buy drugs;” and you should have seen the lady behind the counter; she almost called the police because the terminology we use here might be different!

*(Laughter)*

Mr. Deputy Speaker, Sir, as at now, all the counties are procuring the medicines through KEMSA, yet there is no proper legal framework. Even for the counties that have taken up all their functions, they are still relying on KEMSA. I was one of the Members of this House who were invited to a bipartisan meeting of the counties and the national Government, and they agreed – and I shall be moving the issue of transfer of functions tomorrow or the day after– and the two levels of Government agreed that KEMSA should continue procuring medicine on behalf of the counties. But even as they agreed, there is no legal framework. So, the intentions were good.

The House is questioning one thing; should we now legislate on this? Should we institutionalize it? Should we have a framework that says in law that we should maintain the same institution? Is there enough consultation with the county governments on that issue? What is the thought and the process of the county governments? Even further, is KEMSA ready? Have we even consulted them? As a national government entity at the moment, are we trying to create---? Because as I shall be explaining tomorrow, there are some institutions, going forward, that have not been provided for in the Constitution and which can be created to be intergovernmental in nature to assist both levels of governments.

But what are the basic principles? How many people should sit on its Board on behalf of the national Government? How many people should sit in the Board on behalf of the county government? What is the principle that will ensure that there is equity, if we have to create those entities? Is it necessary that all medicine be procured directly by counties? Or is it even necessary to put the legislation in place or they can do it by agreement?

So, Mr. Deputy Speaker, Sir, these things are important, but to reach that, it is important that the House, through its Committee on Health and its well experienced Senators, including former Cabinet Ministers who have spoken very eloquently, are allowed time to make contributions and to add value. No one - and this is what I want to

ask the Minority Side; it is important that as a House; you know very well the struggles of this House in generating Bills; you know very well the struggles we have gone through even with Sen. Sang and Sen. (Dr.) Khalwale's Bills; and we sometimes suffered unnecessary embarrassment in the public when brother and sister Senators in this House have gone the extra mile. So, when a Senator like Sen. (Prof.) Kindiki has thought through a particular Bill and brought it here, whatever the misgivings that might be in the Bill, we must always –as brothers and sisters – appreciate the effort that any one of us is going to put, no matter the side they are sitting on.

So any time a Member, however much you do not agree with his position, comes up with a Bill, we should not insinuate that one was acting at the behest of someone else or that someone was being used to do what or that. If we were to do that, we will lose the foundation of bipartisanship that has made this Senate admirable in Kenya, regionally and in Africa. Because every time a Senator stands, you suspect that he might have been spoken to by X, Y or Z. It will not add any important value to us. I think it is always important to keep that thin line, because tomorrow Sen. Kajwang will come with a Bill here---

**Sen. Kajwang:** On a point of order, Mr. Deputy Speaker, Sir. Listening to my brother speaking---

*(Laughter)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Kajwang, let me say this for the record again; there is no way you are going to stand and start talking. Saying “on point of order” does not give you the right to speak!

*(Applause)*

**Sen. Kajwang:** I am sorry, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Go on!

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

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

**Sen. Murkomen:** I beg to move and ask Senator---

Mr. Deputy Speaker, Sir, there is a clamor for who to second. The Chairperson of the Committee on Health wanted to second, but I want to request her to allow Sen. Orengo to do it in the bipartisan nature we have been doing it, and then she will be part of it.

Thank you, Mr. Deputy Speaker, Sir.

**Sen. Orengo:** Thank you very much, Mr. Deputy Speaker, Sir. Let me congratulate Sen. Murkomen, together with the Senate Majority Leader, because I think this is the true spirit of building a nation together. After listening to the debate so carefully, they saw the need to consult and come up with a way forward. I really want to appreciate this. In future, let us continue this way because what we want to make sure is that this Senate comes up with a good law as opposed to any law.

Mr. Deputy Speaker, Sir, even speaking as a lawyer, sometimes I know that you may have very good objectives, but when it comes to translating those objectives into law, sometimes you end up with very bad law. Sometimes you may have very bad

objectives, but you end up with a law that does not achieve those bad objectives. So, sometimes it is good to interrogate both the objectives and the law and to determine whether you are getting to the direction or goals that you need to achieve.

Mr. Deputy Speaker, Sir, one of the things that I would have said, but now the Motion is about adjourning the debate for further consultations – which I agree to entirely.

*(Applause)*

Mr. Deputy Speaker, Sir, I had a little problem with the constitutional arrangement *vis-a-vis* this Bill, because the Constitution says that the functions that are given to the national Government in respect to health is function number 23 – national referral health facilities – and the second function that relates to health is health policy. So, when I was looking at this Bill, I was having tremendous difficulty whether or not this Bill was in line with the Constitution. When I look at the functions in relations to the counties relating to health, then even the question of pharmacies and county health facilities seem to accommodate what this Bill intends to achieve. So, even on the basis of constitutional arrangements, which is the starting point, I think we were going on the wrong track. But, happily, the Mover, the Senate Majority Leader and the contributions of the Senate Minority Leader and other Members have shown us the light.

Mr. Deputy Speaker, Sir, when we adjourn to consider what to do with this Bill, I would ask the Senate Majority Leader to look at the mother statute; that is the Kenya Medical Supplies Authority Act, which we are intending to amend. Although it would appear that in this amendment, we are trying to share functions between the national Government and the county governments or, rather, that this Authority is going to help both levels of government to achieve its purposes, I found a provision that more or less negates everything that we want to do. Under Section 4(2), which says as follows:-

“The Cabinet Secretary shall, in consultation with the Authority and the appropriate county government organs, determine the requirement of drugs and medical supplies in public health facilities.”

So, while in this amendment, we are trying to say that the Authority, in consultation with the Council and the county government may consult, yet we have another provision which is not in harmony or in consonance with what we are trying to say. In this Act which remains intact, the provision there is that it is the Cabinet Secretary who shall determine the requirement of health facilities, and there is no distinction in the Act whether they are national or county health facilities. That was not going to be very good.

Mr. Deputy Speaker, Sir, there was something which Sen. Kajwang was trying to say; and I think he did not have enough time to say it; that, in law, you cannot say that “two parties shall make an agreement;” then it is not an agreement! Although he says that they may then decide on what to have in that agreement, but the operative word is that “the two parties shall make an agreement.” That would not be an agreement. We should have just said in law that this Bill provides that the provisions in relation to procurement of medical supply, this is what will happen; instead of saying “it is going to be an agreement---” In fact, we are creating more problems between the two levels of governments, because how are they going to agree? They may never agree.

Mr. Deputy Speaker, Sir, I have two points only. We shall never doubt the capacity of county governments and the people of the counties, because right now you find missionary hospitals which are doing their own procurement. Sometimes I go to Jaramogi Oginga Odinga Hospital in Kisumu and I cannot get drugs; but when I go to Maseno Mission Hospital, the drugs are there. I am talking from experience; there was one time after being beaten up by the police, I was taken to New Nyanza General Hospital, and there was no medicine. So, somebody suggested that we should go to Maseno Mission Hospital – where there are no cartels – and the medicine was available. Now, when I am talking about cartels, I am not talking about the authority; I am talking about the mission hospital!

*(Laughter)*

There are other organizations in the country – the Aga Khan and the Coptics – which do their own procurement. So, we should never ever minimize the capacities of our own people at the counties. Let us not suggest that they cannot do some of those things that we are trying to do on their behalf. In fact, this is why I was saying that we have created counties but we have started amputating their limbs. The Constitution has created the counties but slowly we are beginning to amputate and cannibalize not only the functions but the county governments themselves. So, I support this adjournment so that we discuss and I invite the Majority Leader and those in the Committee that it is better to interrogate the entire statute. In fact, this Kenya Medical Supplies Authority Act was made on the basis that the national Government was in control. If you look at it carefully through the Act and even looking at the Bill, the Board itself requires that the President appoints the chair and all others. Only two appointees are left to the council; one woman and one man.

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

I have a lot of admiration for the reasoning and eloquence of my senior, Sen. Orengo, unlike many other people who are fighting shadows, but is he in order to criticize and rubbish an Act of Parliament which he was part---

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

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): But I am on a point of order.

**Sen. Abdirahman:** But you are making very serious allegations!

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Is he in order to rubbish and challenge a Bill passed by the Lower House in 2013 in which he was a Member and yet there is no record that he dissented from that position?

**Sen. Abdirahman:** On a point of order, Mr. Deputy Speaker, Sir. With due respect to the Majority Leader, we are honourable Members of this House irrespective of our capacities, knowledge and substance in any area. I do not think anyone can take lightly the word he used, that is, “fighting shadows”. Is he in order to refer to some Members’ contributions as fighting shadows?

**The Deputy Speaker** (Sen. Kembi-Gitura): Do you want to respond?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I did not say Senators are fighting shadows. I said “others” and not Senators. If I had said that Senators are fighting shadows, then I would be required to substantiate.

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

The Majority Leader was very categorical. He said he respects Sen. Orengo and his flow of thoughts unlike others in a *justem jeneris* unlike others who are fighting shadows. That is casting aspersions and imputing improper motives on those who have spoken on this Bill.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Wetangula, is the term “fighting shadows” a term of arts? You are the one who keeps reminding us about the use of the English Language.

**The Senate Minority Leader** (Sen. Wetangula): Absolutely, but this one is laden with malice so it ceases to be a flower of language.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Orengo, could you conclude your debate?

**Sen. Orengo:** Mr. Deputy Speaker, Sir, since the point of order was made while I was on my feet and I am not very sure that the praise was on me because he said up to some point I am alright but I am beginning to fight shadows also. If you are acquainted with the writings of the famous Spanish writer, I think the Majority Leader is a little bit cheeky and I think he went overboard.

I accept the criticism and that is why through Parliament, we keep on relooking at legislation. We have relooked at the Constitution, we relook at many laws that come before us and I think it is only a fool who would not see something wrong and decide to change it. So, I take that in good stride but at the time when this Bill was being made, people were trying to get down with the job.

In conclusion, all I am saying is that let us protect and safeguard the counties. The moment we begin to take away these little responsibilities and functions, however small they are, that is the beginning of throwing away the counties. The regional assemblies which were there at the beginning in 1963, they were not fought by constitutional amendment at one time. Their powers were nipped away one by one and eventually people started saying that they are not needed. So, at the end of the day, even through a Bill like this; if people realize that they do not need the counties that will be the beginning of the end of the counties. So, let us stand for the counties. Let us believe in the counties.

**Sen. Murkomen:** On a point of order, Mr. Deputy Speaker, Sir. With all due respect to my learned senior, senior counsel, my friend and mentor, I think the spirit with which we moved to adjourn debate on the Bill was to avoid that line of discussion because we are no longer speaking to the Bill as it is. So, if my learned senior continues propagating the discussion, saying that had it not been for this or that, the spirit that we are talking about here--- it will not continue in the line in which we wanted to withdraw so that it gives room for us to work on a proper Bill and come back with it.

**The Deputy Speaker** (Sen. Kembi-Gitura): What is your point of order?

**Sen. Murkomen:** I am just wondering whether it is in order for him to continue in that line because the purpose of the withdrawal was enumerated by my terms.

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

**The Deputy Speaker** (Sen. Kembi-Gitura): Before I go to Sen. (Dr.) Machage, if you look at Standing Order No.99(1), it talks about this as a dilatory debate. Standing Order No.99(2) says that the debate on a dilatory Motion shall be confined to the matter

of the Motion. So, the question shall be whether or not we should adjourn this Motion but not to bring by any other way the debate that would otherwise have occurred, had the original Motion continued. Some Members have debated for and against the Motion. I think we should get that mind when we go to the debate itself.

Sen. (Dr.) Machage, do you still have your point of order.

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, you have just hit on what I wanted to raise.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Orenge, please bear that in mind as you conclude your debate.

**Sen. Orenge:** Mr. Deputy Speaker, Sir, all I am saying is that as a matter of record, the records of the House should show why we are adjourning debate. He said that we are adjourning because of weaknesses within the Bill and he pointed them out. I am also pointing out the weaknesses which justify an adjournment and if there is no such record, then it would mean that this is not a House that debates but just a voting machine, but I take the point.

With those remarks and in the spirit of devolution and in the spirit of protecting the counties, I support and second the Motion.

*(Question, that the debate on the  
Bill be now adjourned, proposed)*

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, today goes into the annals of history of this House that dialogue is the way to go. Indeed, silently, some of us had talked to the Majority Leader and tried to pinpoint the shortfalls on what he attempted to do with a heavy heart. Actually the Majority Leader and Members here have a will to come up with a Bill that will satisfy the country. The move that the Government side has made today to see deficiencies and common sense - although common sense has never been common but it apparently was seen today that there was a necessity to withdraw this Bill for further consultations.

We have many brains in this House, including the Committee on Health which has hitherto looked at the Bill but I think some mysterious inclusions were made that may not have actually been put to the Committee. I am a Member and I do not think we saw this Bill in the Committee. Therefore, this move is welcome and I support this Motion of Adjournment.

**Sen. Kittony:** Mr. Deputy Speaker, Sir, I was very disturbed as I was listening to debate of the House on radio in my car while on my way from a funeral in Kikuyu. I found myself wondering because I am the Vice Chairperson of the Committee on Health. Our Committee had deliberated on this issue. We visited a number of hospitals in Rift Valley, Coast and other places. We have also tabled a report in this House. When I heard the debate, unless I was not in the meeting that discussed this issue--- I am happy that we have agreed to adjourn the debate for further consultations. I would not like to be seen as opposing the Majority Leader but I think the Committee's mandate is very clear. If the Committees have been given work to do, then they should be given that respect.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): On a point of order, Mr. Deputy Speaker, Sir. I am sorry, I did not want to disrupt the flow of thought of the distinguished Senator but this is a House of record. Everything said here goes on record. I

am just wondering because the insinuation that the Senator is creating is that this Bill was not tabled before the Committee on Health. No Bill can be approved by the Speaker and by the Rules and Business Committee if it has not gone through prepublication scrutiny by the relevant Committee. So, is she in order? Even Sen. (Dr.) Machage was trying to insinuate the same thing. For purpose of record, I would want clarity because we do not want to send the wrong signals that this Bill went through a shortcut.

**Sen. Muthama:** On a point of information, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Muthama, let me say this for the good record of this House. Even if you want to give information, the person you propose to inform must accept your offer but now it is too late because he has finished his point of order.

**Sen. (Dr.) Machage:** On a point of order, Mr. Deputy Speaker, Sir. Is the Senate Majority Leader in order to misunderstand what I said? I said that this Bill was tabled before the Committee on Health and I was there. However, the input of the Committee on Health was not included.

**The Speaker** (Sen. Kembi-Gitura): I thought he was on a point of order on what Sen. Kittony said and not about you.

**Sen. (Dr.) Machage:** Mr. Deputy Speaker, Sir, he mentioned me as well as Sen. Kittony who is our gracious very able Vice Chairperson of the Committee.

**Sen. Muthama:** On a point of order, Mr. Deputy Speaker, Sir. The Senate Majority Leader missed a great point when Sen. Kittony, the Vice Chairperson, made it very clear that this Report came from the Committee after deliberations. Is he in order to stand and say that she is denying that when she stated that very clear?

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Kindiki, would you like to deal with that since you are the one who raised the point of order?

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I will gladly do it. It is very simple. One; I said that because I thought that the two distinguished Senators were trying to insinuate that the Bill did not go through the Committee. However, if they did not say so, I have no problem withdrawing and apologizing profusely to the two Senators.

**Sen. Kittony:** On a point of clarity. I said that we had done our work and tabled our Report for the counties that we have visited. If this draft came before our Committee, probably, I was not there. That is exactly what I said. A number of my colleagues are Members of the Health Committee and they can bear me witness. That is what I said. I am happy that the matter has been adjourned for further consultations.

I beg to support.

**Sen. Mositet:** Thank you, Mr. Speaker, Sir. Going by the mood of the House, one thing has come out clear. This is a House of reason and no one wants, in any way, to be seen to be opposing devolution. The intention of the Senate Majority Leader has not come out clearly. He seems to have come up with a Bill to amputate the powers of the county governments.

I thank the Senate Majority Leader for having accepted that we adjourn and carry out further consultations. I believe that each and every Member of this Senate will want to be seen to protect what the ordinary *mwananchi* wants so that devolution is felt on the ground.



As I speak, the medical centres and the small dispensaries in the counties are comfortable now simply because the controls are done by Governors and their Executives.

I support and request the Chair to put the question so that we put this issue to rest.

**The Deputy Speaker** ((Sen. Kembi-Gitura): Do you want to proceed with this debate?

**Hon. Senators:** No! No!

**Sen. Ong'era:** Thank you, Mr. Deputy Speaker, Sir for giving me the opportunity to contribute to the Motion that has been brought by the Senator for Elgeyo-Marakwet.

I want to commend the Senator for bringing this Motion of Adjournment. This makes us realise that, indeed, this is the House of reason, the Upper House and where we can carry out debates by consultations, communications and negotiations and compromise.

By extension, let me commend the Senate Majority Leader. Had he not brought this Motion, we would not have arrived at that principle. Therefore, the Bill that has been tabled in the House has given us the opportunity to see reason on these very issues. By extension, let me also commend the Senate Minority Leader for highlighting very key and important issues. If we were to accept this Bill in the state it was, we would have gone against the principle of devolution of resources.

Mr. Deputy Speaker, Sir, you are aware that we are about to debate the Motion on the transfer of functions. We cannot talk about devolving resources when we have not transferred many functions that are supposed to go to the counties. In the spirit of bipartisanship, I am sure we will find a solution in terms of how we deal with the issue of procurement of medicine in this country.

We cannot allow cartels in KEMSA to continue doing business as usual. I want to support other distinguished Senators who brought that issue to this House.

**Sen. Wangari:** On a point of order, Mr. Deputy Speaker, Sir. Is the distinguished Senator in order to go back to the debate on the Motion we have already discussed? Is she not restricted to the Adjournment Motion?

**The Deputy Speaker** (Sen. Kembi-Gitura): As I said, Senator, if you refer to Standing Order 99(2) you will see that you need to confine yourself to the debate on the Motion for Adjournment. Whether or not we adjourn, I think that is the main issue.

**Sen. Ong'era:** Thank you, Mr. Speaker, Sir. I stand guided. However, if the distinguished Senator had listened carefully, she would have heard that I was commending and congratulating previous speakers who had spoken in the House.

I beg to support.

**Sen. Kajwang:** Mr. Deputy Speaker, Sir, thank you very much for recognizing me. I would like to say this. It is not even in order for us to adjourn debate on this Bill. In fact, this Bill should have been withdrawn. What are we arguing about? The gist of the Bill is to force county governments to enter into agreements with the national Government. So, what are we withdrawing to negotiate about? In fact, the Bill that should be brought here is one to repeal the KEMSA Act because it is no longer viable and does not serve the national or counties interests.

I oppose.

**Sen. Obure:** Thank you, Mr. Deputy Speaker, Sir. I am glad that we are completing this issue in a very amicable way. Something remains outstanding. I find myself unable to suppress the feelings in me.

The Senate Majority Leader is a person I respect very much. However, you also know that I am one of those people who made a contribution in opposition to this Bill. In some reference, when he was talking, he said that some people were fighting shadows. Since I am one of those people who contributed to the Motion, I felt that he could have been making reference to me.

*(Laughter)*

Now that we are coming to an amicable end to the debate, I was asking whether it would be in order to leave the matter in our records, particularly because the Senate Majority Leader and myself are very good friends?

**The Deputy Speaker** (Sen. Kembi-Gitura): I did rule on this issue of boxing or fighting shadows. I would rather we do not go back there, because I think that it was properly resolved.

Seeing that there are no other contributors to the Motion to adjourn, I now wish to put the Question. This Motion does not affect counties. So, it will be a vote by all the Senators present.

*(Question, that the debate on the Bill be now adjourned, put and agreed to)*

*(Debate on the Bill was accordingly adjourned)*

Next Order!

THE COUNTY GOVERNMENTS (AMENDMENT)  
(No.2) BILL, 2014

**Sen. Wangari:** Mr. Deputy Speaker, Sir, I beg to move that the County Governments (Amendment) (No.2) Bill, 2014, be now read a Second Time.

Mr. Deputy Speaker, Sir, it is my hope that this Bill will be able to lower the temperatures a bit, considering the mood of the House. I want to give a very direct and simplified principles and objects of this Bill, considering that we are operating under a new dispensation. If there are people who have benefited from this Constitution, they are those who are generally referred to as marginalized groups. They include women, youth and people with disabilities.

Mr. Deputy Speaker, Sir, Article 100 of the Constitution is very clear on the role of Parliament in terms of enacting legislation that is meant to promote the representation of women, persons with disabilities, youth, ethnic and other minorities and marginalized communities.

*(Sen. Murkomen crossed the Floor without bowing to the Chair)*

**Sen. Muthama:** On a point of order, Mr. Deputy Speaker, Sir. Sen. Murkomen is one of the most senior leaders in this House. However, he has been crossing the Floor without bowing to the Chair. It is like we are in a market. He has come here and talked to Sen. (Dr.) Machage and then gone back. This House has to be taken seriously.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Muthama, can you tell me the Standing Order that you are referring to? There is a Standing Order that restricts movement, but it is a structured restriction, because you cannot stop Members from moving or consulting. What a Member cannot do are two things: It is to stand in the passage ways and obstruct or stand between the person contributing and the Speaker. Those are essentially the two general areas. The rule is clear that you can consult, but not too loudly. You can move around, but obey the rules of the House. But you cannot obstruct a Member who is talking from a direct line with the Speaker. Those generally are the areas of concern. But if you tell me to stop Members from walking from point "A" to point "B", I think that I will be infringing on their rights to movement.

*(Sen. Muthama spoke off record)*

**The Deputy Speaker** (Sen. Kembi-Gitura): If he does that, that is completely and absolutely out of order because he must bow and then cross to the other side.

**Sen. Muthama:** Mr. Deputy Speaker, Sir, that is the point that I am raising.

**The Deputy Speaker** (Sen. Kembi-Gitura): Unfortunately, we are discussing somebody who is not in the House. I would have called him and asked him to do the right thing, which is, to go and bow and then come back.

**Sen. Muthama:** Mr. Deputy Speaker, Sir, I want to see the dignity of the House being maintained. That is all.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Muthama, I agree with you 100 per cent. The dignity of the House must be observed and respected at all times. You know that I stand very firmly on that. That is not an area of compromise. Thank you very much for pointing it out.

*(Sen. Murkomen walked into the Chamber,  
bowed to the Chair and proceeded to sit)*

Since Sen. Murkomen has come back and bowed, I do not know how I can now tell him, because I do not even remember which side of the House that he was in when you said that he committed the error.

**Sen. Orengo:** On a point of order, Mr. Deputy Speaker, Sir. Just out of respect, could he go back to the Bar and bow? It is just a question of decorum. As you have pointed out, if we do not stick by these rules---

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Murkomen, did you cross the Floor without bowing to the Chair?

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, I have just bowed.

**The Deputy Speaker** (Sen. Kembi-Gitura): Not now, but before you walked out.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, I do not remember. But if someone saw me do anything that is not correct, I am willing to correct it.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Muthama said that you just crisscrossed the Floor of the House. So, for the record, maybe, you can correct it.

**Sen. Murkomen:** Mr. Deputy Speaker, Sir, it might have happened; I do not know.

**The Deputy Speaker** (Sen. Kembi-Gitura): Then go on and correct it.

*(Sen. Murkomen walked to the Bar  
and bowed to the Chair)*

Thank you, Senator!

Sen. Wangari, you can proceed.

**Sen. Wangari:** Mr. Deputy Speaker, Sir, when we did our elections on 4<sup>th</sup> March, last year, we had a very interesting time. It was the first time that we had affirmative action being implemented in accordance to the Constitution. We elected Governors, Senators, the President and his Deputy. We elected 47 Governors and 47 Senators who are all men. We also elected 1,450 Members of the County Assemblies (MCAs). Out of these 1,450, only 68 are women. We have three of this, people living with disabilities. We also have a good number of young people. Article 175 of the Constitution outlines the principles of devolved governments. Specifically, Article 175 (c) says:-

“No more than two-thirds of the members of representative bodies in each county government shall be of the same gender.”

Mr. Deputy Speaker, Sir, Article 177 (1) reads:-

A county assembly consists of—

(a) members elected by the registered voters of the wards, each ward constituting a single member constituency, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year;

(b) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender;

(c) the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; and

(d) the Speaker, who is an *ex officio* member.

Mr. Deputy Speaker, Sir, what really happened after the elections is that the county assemblies - unlike the Senate where the 20 Nominated Members, which is 29 per cent of this House, were allowed to participate right from the beginning - started operation when the Independent Electoral and Boundaries Commission (IEBC) had not finished the gazetting of the Nominated Members. That means that the nominated members, who are about 700, were left out in very crucial decisions that were taken by the county assemblies. For instance, they were not able to participate in the election of the speakers or even vie for the position of deputy speaker. They were also not able to be considered in terms of the leadership of the House, that is, Majority and Minority leadership. They were not even given positions of the Majority or Minority whips and their deputies. Most importantly, they missed out on the initial composition of the committees in the House. Knowing how work is structured in this new Constitution, a lot

of work is prosecuted in the committees. By not being in the House, first of all, the county assemblies were, in my view, very unconstitutional, because the membership of Article 177 was ignored. We, therefore, had them trying to play catch-up in even the leadership of the committees.

Mr. Deputy Speaker, Sir, I want to give a scenario of, say, Nairobi County, where there are actually 44 women and a good number of nominated members with disabilities. In terms of chairpersons, Nairobi County has only one woman chairperson of a committee. The Speaker of Nairobi County is a man. The Deputy Speaker is also a man. The Majority Whip and his deputy are both men. The Majority Leader and his deputy are also men. Yet we have 44 very able women in that county assembly who were not given a chance because, first of all, they found the county assemblies already running. There was a case study which was broadcast live by *K24 Television* station in Kiambu when there was a Motion to oust the Speaker. I remember for the first time the Deputy Speaker of that county came out very clearly and did what I call partial application of the rules. He ruled that the Speaker could not be ousted because the county assembly was not duly constituted. I think that is double standards in the application of the law because after that he was impeached much later although he was able to dodge a very crucial Motion using the numbers that were not in the House.

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

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

Mr. Temporary Speaker, Sir, I know we have come a long way in terms of affirmative action. When I was growing up, I saw women struggling very hard for political leadership positions. The picture we had as young girls was that of Wangari Maathai being beaten up by the system. People went through a lot and even dared to strip naked because of their children and their husbands being subjected to very unconstitutional and tough punishments. As a young girl that time I could not aspire to get into politics because it was portrayed as very bad. Last week I happened to be speaking to a group of young girls in Mt. Laverna, a high school in Kasarani. I told them that they are living in very different times when space for women has been expanded and they can now do what men have been doing over the years.

We have come a long way because there was a time when we had only one lady Member of Parliament. Today, the number has grown. We now have 86 women Members of Parliament and over 700 women Members of the County Assemblies. Even if we do not do anything else to the girls of this country, they must be able to look at us and know that anything is doable so that they can have hope. A girl in Samburu should look up and see Hon. Leshoomo who benefited from affirmative action by way of being nominated and, later on, got elected to the National Assembly. They must look at a young lady like Sen, Naisula Lesuuda from Samburu and have hope that everything is doable. This can only be achieved if we put proper laws in place.

If you look at Article 177, it is actually a very direct implication that it would be very unfair for you to be judged in terms of performance. In the last few weeks, when we

were discussing the wage bill, we heard very strong voices saying that they could not see what the women representatives were doing in National Assembly and nominated women in county assemblies. Sometimes you may be given a shell of a position. You may be given a position, but without the tools to be able to perform like your colleagues. That is the case in the county assemblies.

Therefore, affirmative action is a corrective measure. If you look at a country like Rwanda that is doing very well in terms of affirmative action and gender parity, there must have been very deliberate measures put in place so that it was able to level the ground and terrain for women in leadership. This has happened over the last 20 years. It started with having deliberate quotas to be occupied by women and, later in 2003, when Rwanda promulgated their constitution, it got entrenched into their constitution. That is why Rwanda has become one of the best countries in the world. Elected Rwandese women form 64 per cent of their Parliament. I look at affirmative action like a football match. I know the tallest Senator is Sen. Ntutu. When I stand next to him, he is two feet taller than me. So, I need a crate of soda to stand on so that I can be level with him. Affirmative action also looks at it that way. It should be my preference to be given that empty crate of soda so that I can gain some advantage and be able to get to Sen. Ntutu's height. That is how affirmative action should be looked at.

Mr. Temporary Speaker, Sir, people with disabilities are represented in Parliament and the county assemblies. If we cannot protect these rights that have been given by this Constitution, then we will be failing as a Parliament when history is read because come 15 to 20 years, the same way we read about the initiators of affirmative action, like hon. Asiyo and Martha Karua who really worked hard so that we get the space that we are enjoying, it will be very sad to learn that we let it regress. I know this Bill has had public participation and I know one of the concerns was that it was not touching on the group that is in Parliament today because they went through that challenge in 2013. We have been able to move to where we are today with difficulties.

When we go to the next general elections in 2017, it would be very unfortunate if we have a circus or a repeat of what happened at the nominations stage. I hope that every Senator will support this County Governments (Amendment) (No.2) Bill, 2014, so that we can be able to give hope to the girls of this country and the younger version of Sen. Omondi and Sen. Njoroge who are out there and are looking forward to being given a chance to participate in decision making. That we can only do so by correcting the mistakes that have been there, so that we are able to deal with these hurdles better and so that the IEBC will have a better time than during the last elections. I hope that we will be remembered as the first Senate under the Constitution of Kenya that really protected the counties and took their interests at heart.

I beg to move and ask Sen. (Dr.) Machage to second.

**Sen. (Dr.) Machage:** Mr. Temporary Speaker, Sir, I would like to congratulate Sen. Wangari for the brilliance with which she has hawkedly looked at the Constitution and Acts that manage the Constitution in managing the affairs at the county government level. She has clearly spoken her mind and said that this Bill concerns county governments in terms of Article 110(a) of the Constitution, in the composition of the Membership of the county assemblies that affects the execution of the functions and powers of county governments. The execution which we are supposed to defend in this House and the powers we are supposed to defend in this House as mandated to us by

Article 96 of the Constitution. She gives clear statements and objects of this Bill and says that the principle object of this Bill is to ensure that the county assemblies respect the gender rule as espoused under Article 27(8) and Article 177 of the Constitution.

Mr. Temporary Speaker, Sir, it goes further, under the proposed new provisions, the nominated Members of the County Assembly under Article 177 as is created now have been excluded from the proper formation of Government at that level by the county assembly. Therefore, she comes up with an amendment of this Article 177 to clearly give that power of omission.

Mr. Temporary Speaker, Sir, Clause 7A(1) of the Bill says:-

“A county assembly shall not be fully and dully constituted for the first sitting after a general election unless all the members provided for under paragraphs (b) and (c) of Article 177(1) of the Constitution have been duly nominated and their names published in the Gazette.”

Mr. Temporary Speaker, Sir, that is what is done in this House. Our first sitting was not constituted before the nominated Members were with us. Indeed, our first sitting and even swearing in was done on the same day. We have had nominated Members of this House who have participated fully and have been elected to head Committees and other important organs of running this House. That has not happened at the county level where actually Nominated Members have or maybe rightfully so, been labeled as “flower girls” or “flower boys,” whatever the situation we are looking at. This is because they participate in nothing in terms of decision making in the county assemblies.

Mr. Temporary Speaker, Sir, I do not have to say much. This is a very clear Bill. It is very straightforward and it does not really need a lot of discussion. It is only that the rules of this House dictate that Members must be given a chance to speak. Otherwise, this is a Bill that should have been passed unanimously with just reading this presentation.

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

*(Question proposed)*

**Sen. Kajwang:** Thank you very much, Mr. Temporary Speaker, Sir. First, I want to thank Sen. Wangari for bringing this Bill. Definitely, there is a lacuna that needs to be closed. But I find myself between a rock and a hard place; this is my problem. There is no such a thing like nomination. This is because the intention of the Constitution is that when you are nominating your candidates, you nominate all these other people, and you give what is called a “party list” so that when the elections are over, those you nominated and those who were elected and those whom you put in your list who qualified by virtue of the seats that you have qualified to get---

If, for example, you qualify for seven nomination slots, we put a line under 7. Those are now the elected Members. In fact, they are not nominated. Nomination happens at the time you are putting them on the party list. Immediately after the elections, they now become elected Members. The only difference is that you get to know who is elected when you count how many of you were elected and how many, therefore, could go into the list. So the issue is that if the Independent Electoral and Boundaries Commission (IEBC) does its job correctly, then there is no need for this Bill. If the IEBC were to properly do their job – just as they did for the Senate, the National Assembly and the counties – there would be no problem because what the IEBC would do was merely

to strike her line. Those above the line, are elected Members. So, we would not have to force anybody to do anything else. Therefore, I really do not know where this Bill should sit. I do not know whether it should sit in the Elections Act or whether it should really sit where we want to put it, under the County Governments Act?

If, for example, we say that the county assemblies will not be fully constituted because they should all be there at once when we swear in everybody, the intention is really good. However, just assuming that they do not, this Bill is saying the county governments will, therefore, not meet until such a time that the fixed number of two thirds is met. In fact, it is equivalent to saying that if one Member of Parliament (MP) was elected, but died before the House met, then the House should not meet until there is a by election to fix that. No. This can bring most of the county governments or Parliament to a standstill. Because of that, some people will go to court and challenge these elections. It takes a long time for the issue to be determined in court. I remember that even in this Senate, there have been petitions which have been decided which changed the membership. So, you might put the county assemblies in a situation in which they will never meet. Tomorrow when you think you are meeting the threshold of two thirds, somebody has gone out to court, died or resigned---

**The Temporary Speaker** (Sen. Murkomen): Sen. Kajwang, have you applied yourself to Section No.7 (2) of the same Bill? That is just to encourage your debate.

**Sen. Kajwang:** Mr. Temporary Speaker, the political party nominating persons under subsection (1) shall ensure that the community and cultural diversity of the county is reflected in the assembly and there is adequate representation to protect minorities. That is all fine. However, what I am concerned about is---

**The Temporary Speaker** (Sen. Murkomen): I am telling you to read Section 3(2) of the proposed Bill.

**Sen. Kajwang:** I can see Sections 3 and 7(a) of the proposed Bill. It reads as follows:-

“Sub Section 1 shall not apply where the nomination of a Member of a County Assembly under Paragraph (b) and (c) of Article 177(1) of the Constitution is the subject of a court order stopping or otherwise pending the nomination of the member.” And it may be a court order; but that is only one instance. It may be a situation in which somebody is elected in that list and it says, no; it could even be a change of mind---

**Sen. Muthama:** On a point of order, Mr. Temporary Speaker, Sir. I stand concerned with time. I kindly wish to ask my colleagues here that looking at the clock, we have just about 20 minutes to the time. I wish to ask if we could do it on five minute turns and the responder to take another five minutes then we close this Business.

*(Sen. Orenge consulted the Temporary Speaker)*

**The Temporary Speaker** (Sen. Murkomen): That was important. I have benefitted from Sen. Orenge's illegal interjection. This is a Bill concerning counties, but, also, considering that it is a Bill and, hence, substantive Business of the House, it is important that Senators take their time. We have time tomorrow or the day after. After all, there is no immediate impending elections for us to expedite the process.

Proceed, Sen. Kajwang.



**Sen. Kajwang;** Thank you very much, Mr. Temporary Speaker, Sir. I may be mistaken, but if this will not stall the operations of the county governments for many reasons that may come about, for example, that there was an accident of several Members who died just before the assembly sat; and many other unforeseen circumstances, to stop the operations of the assembly so that they do not meet at all until we meet the threshold of two-thirds, sometimes can be very heavy.

What we should insist on is that the constitutional offices do their work. If it is the IEBC that is delaying in putting these names, then it must be forced to make sure that the publication of these things is done at the same time that all other publications are done so that these elected members are elected at once, and they meet at once. But, my view is that if we put this law that they must not meet until the two-thirds threshold is met for whatever reason, then probably, we might have some assemblies which will not meet for a very long time. That is my only problem. If it can be sorted out, I support.

**Sen. Orengo:** Mr. Temporary Speaker, Sir, I rise to support this Bill and I have no difficulties whatsoever in supporting it. If you look at Article 177 of the Constitution, in my view, the intent of this Bill is not about men or women, but about the membership of the county assembly. Article 177 states very clearly that the county assembly will consist of four categories of members, excluding the deputy speaker, who is normally elected together with the speaker at the time when the county assembly first convenes. In any case, the deputy speaker would already be a member of the county assembly.

The Constitution is very clear under Article 177(1). It gives four categories of members of the county assembly. That is, members elected by the registered voters in single member constituencies on the same day when the general elections are held for the Members of Parliament. The second category is the number of special seats of members necessary to ensure the gender rule. I am imagining that a time will come in Kenya like in the Scandinavian countries where you normally find in an assembly, there is a majority of women. In those circumstances, in future, we shall find men fighting harder for the implementation of this category of members. The only place that I have experience in my parliamentary life was Malawi during the last ten years of the presidency of the late Kamuzu Banda nearly 60 per cent to 80 per cent of all the parliaments was constituted by women. I went in some of those delegations. Most of them used to dance more than talk, but they had been nominated to the assembly for other reasons.

The third category which is not necessarily women is persons from marginalized groups, including persons with disability. Within counties sometimes you find groups which are minorities. Therefore, they need to be part of the assembly so that their views are also heard as they participate in governance as required by the Constitution. The question I ask myself is whether it is right if the Constitution says that this is the membership of the county assembly. When that assembly first meets and this depends on how elections have been conducted, there are some sections where you will find one or two women who are elected as Members of the County Assembly. In Siaya County Assembly, only one lady was elected as an MCA.

So, I am asking myself whether it is right if the Constitution itself - and this is not a matter of ordinary legislation - that the county assembly consists of, then it spells out the membership that more than a third in some cases. This includes people who are in the second category. You may find that more than a third of the membership of that legislature is not present. It is my view that when the assembly first sits all the members

should be present and participating in the debates or any other business of the assembly at its first sitting. If that is not made clear then the loopholes will be used for certain mischief.

I remember in the old days under the Local Government Act, the president would appoint nominated members sometimes more than a third of the membership of the county council so that the decision is made depending on who are the members of the local government assembly and who is likely to turn out as the chairman of the county council. I think the Constitution has also addressed this question to ensure and to facilitate the presence of these members who belong to the second category under Article 177; that they are there at the first sitting. The party lists are received before elections. So, what the electoral body has to decide is who in accordance with that list in terms of priority or in terms of gender is in the assembly. There should be no doubt as to who is a member of the assembly in terms of the nominations which have been done in accordance with Article 177(2) of the Constitution. This is one of the areas where it is easier to implement the constitutional requirement of having one third of the opposite gender as members of an assembly. When it came to the Senate and National Assembly there were a lot of difficulties. The matter went to the Supreme Court where it was ruled to be a progressive process.

In the near future, Parliament can come up with a legislation ensuring that the Senate and the National Assembly would have the same kind of provision as required under articles related to the institutions. We are trying to answer a very important constitutional issue on representation which is found in Chapter Seven as read with Chapter Eight. I think that it is important that already where the Constitution has these answers that we have legislation as suggested by Sen. Wangari instead of waiting for one day when we have an omnibus legislation to bring a matter like this into fruition.

I support this because women have done a wonderful thing in this country. There was a time when many men were not talking. I am saying that with a lot of conviction because the other lady called Wangari did something when everybody had ran away into their cocoons. This was towards ensuring that we have a more equal society than we have today. They are there across the board from coast to the lake, from Turkana to Vanga and so on. Women have contributed, but the way they have been oppressed, I think this is the time when through legislation we can assure that our women participate fully. Talking about my county, everything was done before women could sit in the Assembly. When they came, every position had been taken and there was something about the sitting arrangement.

I am not worried about protocol. If I were asked to sit at the back, I would. However, in my county, at one time, there was a public function and the Siaya County Assembly made sure that the nominated Members were second ranking. Therefore, I had to sit behind the rest of the membership. Most of the time, if there was a carpet; they made sure that the carpet did not extend to the areas that those Members were sitting. That brought a lot of politics which were unnecessary. I think they should be there, in the first place. We have seen, in the Senate, that some Bills and Motions have come from nominated Senators. This is amazing and it should be encouraged. For those reasons, I fully support and say that I am fully behind this Bill.

**Sen. Chelule:** Thank you, Mr. Temporary Speaker, Sir. I rise to support this Bill brought to the Floor by Sen. Wangari simply because of two reasons. I like the way Sen.

Kajwang has said that they are not supposed to be nominated because they went through an election because of the party list.

They are there to represent a particular interested group. That is very obvious. We all know that there are three main groups. These are the women, youth and people with disabilities. I am sure that these Members have the capacity to chair different Committees in their Houses. However, they do not have the opportunity.

We all know that they were brought on board late after elections were over. I think they should be given an opportunity to be Members of Committees where they can serve. I thank Sen. Wangari for bringing this Motion. We need to bring some amendments. Whether we will amend the County Governments Act or the Political Parties Act or Elections Act, there is need for an amendment. Otherwise, they will be seen to be doing nothing and yet they came in late. They could not position themselves in Committees where they can excel or give better services.

With those few remarks, I support.

**The Temporary Speaker** (Sen. Murkomen): There being no other Senator willing to contribute, we will call upon the Mover to reply.

**Sen. (Dr.) Machage:** On a point of order, Mr. Temporary Speaker, Sir. This is a county Bill. Under Standing Order 53, would I be in order to request that the reply and voting be postponed?

**The Temporary Speaker** (Sen. Murkomen): Honestly, my hands are tied considering that we have time. There are enough Senators in the House, but they are not willing to contribute. I know you are asking this in relation to voting. That will arise at some point. There is precedence in the House and we have agreed, generally, that voting would be deferred to an appropriate time on matters concerning counties.

I am very much aware about voting. However, I am also aware that even if she replies now, there is likelihood that she may not complete the reply. Technically, she can see that she does not complete it so that she completes next time.

**Sen. (Dr.) Machage:** On a point of order, Mr. Temporary Speaker, Sir. Standing Order No.30 gives you the powers to act and even to adjourn the House for the interests of the Senate.

**The Temporary Speaker** (Sen. Murkomen): What are you trying to say, Sen. (Dr.) Machage? Is your request in relation to more Members making contributions later or in relation to the reply? I have said that she has the right to reply to the Motion. I am already indicating that the voting be deferred.

Therefore, the voting will have no problem.

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

**The Temporary Speaker** (Sen. Murkomen): The Speaker had ruled earlier, that the fact you stand on a point of order does not mean that you can proceed. However, now you may proceed.

**Sen. Kajwang:** Mr. Temporary Speaker, Sir, we were used to standing when we were speaking to the Speaker. When you are speaking to the Speaker, you do not sit down. My point refers to the one you have made.

I think if she replies now, she will be closing debate completely. This is a Bill that if we have to vote by delegation, we may have to expose more Members so that they vote constructively. I was of the view that if you allowed her right now to reply then, of course, nobody will debate it anymore. That will be the end of it.

**The Temporary Speaker** (Sen. Murkomen): Order, Sen. Kajwang! That is the point. The Chair does not have powers to prop Members to contribute. There are more than five Members in the House and they chose not to contribute. So, there is nothing that indicates that if we postpone the debate more than today, we will get people to contribute. Unfortunately, even all these points of order are coming too late when I have already granted her an opportunity to reply.

Sen. Lonyangapuo!

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Temporary Speaker, Sir. For the first time I saw you moving too fast. I do not know whether you looked at our side. Unfortunately, I was sitting on a row whose system seems to be dead. I was not able to catch your eye and this light is not clear.

**Sen. (Dr.) Machage:** On a point of order, Mr. Temporary Speaker, Sir. The Standing Orders also allow Members to appeal for a change of mind on the decision of the Speaker. If you noted the eloquent reasons given to you by Sen. Kajwang, it would be prudent that this is allowed. This is because some Members actually were in the Speaker's meeting on matters of the management of this Parliament, including the Mover of this Bill, who actually narrowly arrived to move it. I am sure that there are Members who are very much interested to eloquently view what is on the ground, at the county level, on this Bill. Really, with---

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

**Sen. (Dr.) Machage:** Mr. Temporary Speaker, Sir, I have not finished my point of order.

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

**The Temporary Speaker** (Sen. Murkomen): Sen. Godliver, do you have a point of order?

**Sen. Omondi:** Yes, Mr. Temporary Speaker, Sir. I would just request that you give us time, because we really need to contribute to this amendment Bill.

**The Temporary Speaker** (Sen. Murkomen): Order, Senators! It is not true, as Sen. (Prof.) Lonyangapuo was attempting to do, that we had someone to contribute and I refused to allow them. The Chair has very sharp eyes. But I think that the point has been made by Sen. (Dr.) Machage; basically that if I have moved – which I have not – on an appeal, then Members will be given more time to make contribution.

Hon. Members, the Chair in exercising its powers of mercy, which are generally given in Standing Order No.1, orders that the debate will continue from where we left.

## ADJOURNMENT

**The Temporary Speaker** (Sen. Murkomen): Hon. Senators, it is now time to adjourn the House. The Senate stands adjourned until tomorrow, Wednesday, 16<sup>th</sup> April, 2014, at 2.30 p.m.

The Senate rose at 6.30 p.m.