

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 31ST July, 2024

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

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

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

(The Quorum Bell was rung)

Hon. Senators, kindly take your seats. We do have quorum now. So, we can proceed with the afternoon's business.

Clerk, you may proceed to call the first Order.

(Sen. Ali Roba consulted Sen. Cheruiyot)

Sen. Roba, take your seat, please.

COMMUNICATION FROM THE CHAIR

MOTION BY COMMITTEE ON DELEGATED LEGISLATION ON CONSIDERATION OF REGULATIONS

Hon. Senators, I have a Communication to make concerning the Motion by the Select Committee on Delegated Legislation on the consideration of the Valuers (Forms and Fees) (Amendment) Rules, 2024 (Legal Notice No.69 of 2024, the Survey (Amendment) Regulations, 2024 (Legal Notice No.71 of 2024) and the Land Adjudication (Amendment) Regulations, 2024 (Legal Notice No.76 of 2024).

Hon. Senators, you will recall that at the sitting of the Senate held on Thursday, 2nd May, 2024, the following Regulations were tabled by the Senates' Majority Leader;

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

(1) The Valuers (Forms and Fees) (Amendment) Rules, Legal Notice No.69 of 2024.

(2) The Survey (Amendment) Regulations, Legal Notice No.71 of 2024.

(3) The Land Adjudication (Amendment) Regulations, Legal Notice No.76 of 2024.

In accordance with Section 12 of the Statutory Instruments Act, the Regulations were referred to the Select Committee on Delegated Legislation. Section 15(2) of the Statutory Instruments Act states—

“Where the Committee does not make the report referred to in subsection (1) within twenty-eight sitting days after the date of referral of the statutory instrument to the Committee under Section 12, or such other period as the House may, by resolution approve, the statutory instrument shall be deemed to have fully met the relevant considerations referred to in Section 13.”

The committee was required to review and scrutinize the Regulations within a period of 28 sitting days. The time allowed for the committee to consider the Regulations was scheduled to lapse on Tuesday, 30th July, 2024. That was yesterday.

Hon. Senators, you will recall that at the sitting of the Senate held yesterday, Tuesday, 30th July, 2024, pursuant to Section 15(3) of the Statutory Instruments Act, the Chairperson of the Select Committee on Delegated Legislation gave a Notice of Motion seeking an extension of time for consideration of the aforementioned Regulations for a further period of 21 days in order to enable the committee to conclusively consider them.

The substantive Motion for debate and approval, was scheduled in the Order Paper for Tuesday, 30th July, 2024, at Order No.28. The Speaker reorganized the sequence of business, pursuant to Standing Order No.45(2), after the divisions, to give this Motion priority.

However, at the conclusion of the debate and in the absence of the requisite quorum for the question to be put, the Mover requested for the question to be deferred to a later date pursuant to Standing Order No.66(3).

Hon. Senators, Section 15(1) of the Statutory Instruments Act requires a committee to which a statutory instrument has been referred, to table a report to Parliament, containing only a resolution that the Statutory Instrument that stands permanently referred to the committee be revoked.

As earlier highlighted, Section 15(2) states that in the event that the committee does not table a report within 21 days, or such other period as the House may resolve, the Statutory Instrument shall be deemed to have been approved.

The Motion before the Senate was seeking an extension for consideration of the Regulations and the failure to approve the Motion during the sitting of the Senate, held yesterday, Tuesday, 30th July, 2024, takes us back to the provisions of Section 15(2) of the Statutory Instruments Act.

Hon. Senators, this being the case, the Valuers (Forms and Fees) (Amendment) Rules, Legal Notice No.69 of 2024; the Survey (Amendment) Regulations, Legal Notice No.71 of 2024; and the Land Adjudication (Amendment) Regulations, Legal Notice No.76

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

of 2024, are deemed to have met the requirements set out at Section 13 of the Act and are further deemed to have been approved by the Senate. Kindly, be guided.

Hon. Senators, you may walk in and take your seats.

(Several Senators walked into the Chamber)

I have got another Communication to make.

SENATE NOMINEE, ON BEHALF OF COUNTY
GOVERNMENTS, TO SRC

Hon. Senators, as you may recall, at the sitting of the Senate held on Wednesday, 24th July, 2024, the Senator for Kakamega County, Sen. (Dr.) Boni Khalwale, MP, was called upon to move the Motion for consideration of the report of the Standing Committee on Finance and Budget on the Senate nominee, on behalf of the county governments, to the position of member of the Salaries and Remuneration Commission (SRC).

Before the Senator could proceed to move the Motion, he sought the intervention of the Chair, through a point of order, on the grounds that new information that had been presented to the committee relating to one of the interviewed candidates for the position. The Senator stated that the new information was received after the committee concluded its report and tabled it in the Senate.

In the point of order, Sen. (Dr.) Boni Khalwale, MP, informed the Senate that on 24th July, 2024, the committee received correspondence from the University of Nairobi (UoN), indicating that one of the candidates, Hon. Abdirahman Ali Hassan, was conferred with a Bachelor's Degree in Arts (Gender and Development Studies) on 19th December, 2008, and that the candidate was a student at the said university between 2005 and 2008.

The Senator further informed the Senate that the contents of the letter received on 24th July, 2024, contradicted an earlier letter received on 22nd July, 2024, from the same university which indicated that the certificate submitted for verification by Hon. Abdirahman Ali Hassan was not genuine and that it was not issued by the UoN.

Sen. (Dr.) Khalwale also informed the Senate that during the interview, Hon. Abdirahman Ali Hassan was ranked first, but following receipt of a letter from the said university on 22nd July, 2024, the committee dropped him from the recommended list of candidates.

From the foregoing, the Senator sought the directions of the Speaker on how to proceed with the Motion, stating that—

“I would like you to guide us because if then the certificate is genuine, it means we have no grounds to knock out that candidate from the list. Therefore, his name should be before the House.”

Hon. Senators who rose in support of the point of order by Sen. (Dr.) Khalwale, MP, including Sen. Danson Mungatana, MP, Sen. Richard Onyonka, MP, Sen. Enoch

Wambua, MP and Sen. William Kisang', MP, expressed concern on the authenticity of the two letters from the same institution and urged that the Senate exercises caution.

Hon. Senators, given the circumstances, I directed Sen. (Dr.) Boni Khalwale, MP, to table the letter received on 24th July, 2024, from the UoN and thereafter undertook to give a ruling on Tuesday, 30th July, 2024, after examining the matter. Consequently, the Motion of the Standing Committee on Finance and Budget on the Senate nominee to the SRC was deferred pending the ruling, which I now proceed to make.

Hon. Senators, as a way of background and to put the matter into context, at the sitting of the Senate held on Tuesday, 11th June, 2024, I issued a communication relating to a vacancy arising in the membership of the SRC.

In the Communication, I stated that *vide* letter Ref. EOP/CAB.26/4A/VOL.III/(175), dated 23rd May, 2024, the Office of the Clerk received notification from the Chief of Staff and Head of the Public Service, that the tenure of six members of the SRC was scheduled to lapse on 10th September, 2024. This included the nominee of the Senate on behalf of county governments, pursuant to Article 230(2)(b)(vii) of the Constitution.

In the notification letter to the Senate, the Chief of Staff and Head of the Public Service requested each nominating body to forward the names of two persons of either gender to the Cabinet Secretary for the National Treasury and Economic Planning for transmission to His Excellency the President for appointment.

Pursuant to Standing Order No.77(1) of the Senate, I referred the matter to the Standing Committee on Finance and Budget for consideration. The committee was required to undertake the following-

(1) Advertise the position by notice published in the Gazette, a newspaper of nationwide circulation and the Senate website inviting applications from suitable candidates.

(2) Longlist the applicants and cause the list to be published.

(3) Shortlist the candidates that meet the set criteria and cause the list to be published.

(4) Facilitate public participation on the suitability of the shortlisted candidates.

(5) Conduct interviews of the shortlisted candidates.

(6) Table a report for consideration by the Senate.

I thereafter directed the committee to observe the timelines highlighted in the notification letter from the Chief of Staff and Head of the Public Service for the Senate to make a determination on the nominees on or before 31st July, 2024.

Hon. Senators, pursuant to Section 7(2) of the Salaries and Remuneration Commission (SRC) Act, the Standing Committee on Finance and Budget published an advertisement for the position nominee of the Senate on behalf of county governments to the SRC on 12th June, 2024. In the advertisement, candidates were requested to submit their applications by 3rd July, 2024 at 5.00 p.m.

The committee embarked on the interview exercise on the 19th July, 2024 after long listing and shortlisting the candidates and subsequently prepared a report which was tabled on Tuesday, 23rd July 2024. The tabling of the Committee report was pivotal as it was the

first time that the committee was making available its findings to the Senate, and in so doing, making the report available for public information and scrutiny.

Following the tabling of the Standing Committee report, the Chairperson, as is a standard procedure on such undertaking, gave Notice of Motion pursuant to Standing Order No.60 of the Senate, during the morning sitting of Wednesday, 24th July, 2024.

In the Notice of Motion, the Standing Committee recommended two candidates for consideration for nomination to the position of members of the SRC pursuant to Article 232 (b) (7) of the Constitution and Section 7(2) of the SRC Act.

Hon. Senators, appreciating the timelines given for submission of the names of the two nominees from the Senate, the substantive Motion for consideration of the committee report was scheduled in the Order Paper for the afternoon sitting of Wednesday, 24th July, 2024.

It was at this point that Sen. (Dr.) Boni Khalwale, MP raised the point of order highlighted above. The point of order was a legitimate concern as it brought to light two letters from the same institution that gave contradicting information to the Senate.

I, therefore, find the point of order merits consideration as the information contained in the correspondence from the UoN would in either case, positively or negatively, impact the nomination of the candidates.

Hon. Senators, the matter which required the Speaker's intervention arising from the point of order by Sen. (Dr.) Khalwale, MP was twofold -

(i) Admissibility of the letter received on 24th July, 2024; and,

(ii) If the answer to (i) is in the affirmative, the procedure to be followed in examining the letter in the context of the Motion already before the Senate and the evidence adduced for the committee to arrive at the recommendations made.

To address the first concern, I have previously ruled that in undertaking an assessment of documents tabled in the Senate as evidence, one must be satisfied that the evidence tabled is from a source, which by parliamentary practices is official and verifiable.

After reviewing the letter received on 24th July, 2024, I established the following -

(a) The letter reference UON/AA/ CEC/1/ 2022 /1 is dated 22nd July, 2024 and that the letter is ostensibly signed by an individual by the name Mr. Emmanuel Mumba for the Registrar of Academics and that the letter is on the letterhead of the Deputy Vice Chancellor Academic Affairs of the UoN.

In this respect, I find that the letter meets the admissibility criteria mentioned above.

The next question that required my determination was the procedure to be followed in addressing the letter in the context of the Motion already before the Senate. This process requires authentication.

This is an undertaking that the Speaker in the present context is ill-equipped to perform. From my perspective, the organ of the Senate that has an intricate understanding of the matter at hand is the organ that undertook the interview process.

It is for this and other reasons that the Constitution and Article 124 (1) gave power to either House of Parliament to establish Committees. Select committees, as agents of the Senate, are tasked with functions that would otherwise be cumbersome or difficult for the entire Senate, sitting in plenary to perform.

Besides, the nomination of candidates to an institution as important as the SRC, cannot be brought to disrepute on account of lack of due diligence on the part of the Senate.

As you are all aware, the matter of academic credentials of public officers is a matter that has been in the limelight in the recent past, thus necessitating the Senate to thoroughly scrutinize certificates and other testimonials presented by candidates for appointment to public offices.

Hon. Senators, I, therefore, direct that this matter be referred back to the Standing Committee on Finance and Budget for consideration. The task before the committee will be limited and I repeat, the task before the Committee will be limited to consideration of the two letters from the UoN in respect of the candidate in question, Hon. Abdirahman Ali Hassan, and to establish the correct position.

The committee will in no way reopen the interview process. Again, I repeat. The committee will in no way reopen the interview process. I further direct the Standing Committee to table a report on or before Tuesday, 6th August, 2024.

In terms of the way forward, depending on the outcome of the report of the Standing Committee to be tabled on 6th August, 2024, the Standing Order No.71 states as follows –

“After the question has been proposed on a Motion, the Motion shall be deemed to be in the Senate, and such Motion shall not be withdrawn without the leave of the Senate.”

For the avoidance of doubt, I wish to point out to all Hon. Senators, that the Motion on the Senate nominee to SRC is not yet in the position of the Senate as it has neither been moved nor seconded and hence no question has been proposed.

Standing Order No. 61(1) and (2) states as follows –

“(1) A notice of Motion may be withdrawn by a Senator who gave the notice.

(2) A notice of Motion withdrawn under Paragraph (1) may be given again, either by the same or by any other Senator.”

Upon tabling of the report on the candidate in question, the Committee will, therefore, have these options -

(i) Proceed to move the Motion for which the Notice was given on Wednesday, 24th July, 2024; or

(ii) Withdraw the Notice of Motion given on Wednesday, 24th July, 2024, so as to facilitate giving another Notice of Motion.

The Senate is accordingly guided. Thank you.

What is your point of intervention, Senate Majority Leader?

(Several Senators stood in their places)

Order, Hon. Senators! Proceed to take your seats, please. Take your seats. Senate Majority Leader, you have the Floor.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I thank you for your very wise decision. The House stands guided, but maybe just a few points of concern on procedure and also guidance on your part.

This is a very intricate matter in which the Senate is interested. We are undertaking this exercise on behalf of county governments and the people that you represent in this House.

Mr. Speaker, Sir, would it be in order if I request that in future -

(1) So, as to keenly follow your flow of thought in arriving at such a crucial decision such as this, immediately you arise to give your ruling, can we either be furnished with the same by a hard copy, which will be difficult because it will be difficult for Serjeant-at-Arms to move around as you speak or at least a soft copy.

It is difficult to follow through such a lengthy statement while listening to you. It would be nice to follow through so that we are guided and appreciate the thoughts that have gone into arriving at that decision.

(2) Secondly, is the guidance that you have given to the committee that they undertake the exercise, but that in no way means that they redo the interview in its entirety.

I hope in the amended version of the Motion, should they choose to pursue the second option as you have guided, then they will inform the House because this is for the record.

There are many other times that such a matter may appear before the Senate. History will be used to guide the House on how to make such decisions based on what will have informed their decision and the process they will have followed.

Mr. Speaker, Sir, I know for a fact that the letter that was tabled by Sen. (Dr.) Khalwale is purportedly from this candidate. Therefore, it will be important that they inform the House what procedures they have followed as a committee to establish that, indeed, the letter comes from the UoN because there was another letter.

For clearance of doubt, as we make a vote on that decision, we humbly request that they guide the House to appreciate the measures they will undertake to establish which of the two letters is authentic and the proper position with regards to the qualifications of this gentleman.

I thank you.

The Speaker (Hon. Kingi): Sen. (Dr.) Khalwale, proceed.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I have heard you. Like the Senate Majority Leader/Senate Minority Leader/the Leader of Broad-Based---

(Laughter)

Going forward, you might have to guide the House that, if for purposes of this kind of exercise, a candidate is supposed to utter such a testimonial, he should come with authenticated copies so that it saves Parliament the trouble of becoming a policeman.

I thank you.

Sen. M. Kajwang': On a point of Order, Mr. Speaker, Sir.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

The Speaker (Hon. Kingi): Yes, Sen. M. Kajwang', what is your intervention?

Sen. M. Kajwang': Mr. Speaker, Sir, I rise pursuant to Standing Order No.227 that talks about engagement of experts. I listened to the long communication that you have made, you have also admitted as the Speaker that the verification of authenticity of records and signatures, is a matter that you are ill prepared to deal with. I want to point to the committee, which you have committed this task, to not be shy from asking the Clerk to get experts with the skills, expertise and subject matter knowledge, to allow the verification of the letters that are in contention.

Ultimately, this is the Senate nominee to the SRC. That is perhaps the person who will be looking at the interest of not just the Senate, but of devolved governments. This is a very important role.

I know that in the past, we have always favoured a former Member to be the Senate's nominee. I am not saying it is automatic, but it has always been desirable. However, ultimately it depends on the persons who applied and how they performed at the interview. We would not want a situation where a letter is brought in that alters the rules of the game to look like there was a preferred candidate that the committee had in mind.

Mr. Speaker, Sir, when Sen. (Dr.) Khalwale was talking about the committee being reduced to policemen, I want to advise him that we have the power to engage experts. I believe that some of those experts are State or public resources, which can be called upon to do authentication without occasioning additional expenditure.

I thank you.

The Speaker (Hon. Kingi): Thank you. Let us leave it at that. Chairman of the Committee, Sen. Ali Roba, you have heard the concerns of your colleagues. As you retire to look at those letters, kindly address those concerns so that we have a very comprehensive report that is addressing the concerns that have been raised by your colleagues.

Next Order. Proceed, Sen. (Dr.) Khalwale.

PAPERS LAID

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I never knew that the County Assembly of Kakamega can have a better Personal Assistant (PA) than the Senate.

On behalf of the Senate Majority Leader, I beg to lay the following Papers on the Table of Senate, Today, 31st July, 2024-

LEGAL NOTICES FOR VARIOUS REGULATIONS ON PEST CONTROL PRODUCTS

The Pest Control Products (Labelling, Advertising and Packaging) Regulations, Legal Notice No.99 of 2024.

The Pest Control Products (Inspection and Certification) Regulations, Legal Notice No.100 of 2024.

The Pest Control Products (Importation and Exportation) Regulations, Legal Notice No.101 of 2024.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

The Pest Control Products (Fees and other Charges) Regulations, Legal Notice No.102 of 2024.

The Pest Control Products (Disposal) Regulations, Legal Notice No.103 of 2024.

I thank you.

(Sen. (Dr.) Khalwale laid the documents on the Table)

The Speaker (Hon. Kingi): Proceed, Chairperson, Standing Committee on Finance and Budget.

REPORT ON CONSIDERATION OF THE NATIONAL ASSEMBLY
AMENDMENTS TO THE EQUALIZATION FUND APPROPRIATION
(NO.2) BILL (SENATE BILLS NO.30 OF 2023)

Sen. Ali Roba: Thank you, Mr. Speaker, Sir. I beg to lay the following Paper on the Table of Senate, Today, 31st July, 2024-

Report of the Standing Committee on Finance and Budget on its consideration of the National Assembly amendments to the Equalization Fund Appropriation (No. 2) Bill (Senate Bills No. 30 of 2023).

(Sen. Ali Roba laid the document on the Table)

The Speaker (Hon. Kingi): Next Order. Sen. Lomenen, proceed.

QUESTIONS AND STATEMENTS

STATEMENTS

REHABILITATION AND GRADING OF MURRAM ROADS
IN BANDITRY-PRONE AREAS IN TURKANA COUNTY

Sen. Lomenen: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53 (1) to seek a statement from the Standing Committee on Roads Transportation and Housing regarding the rehabilitation and grading of murrum roads in banditry prone areas in Turkana East, Turkana South and Loima Constituency in Turkana County.

Roads in the banditry prone areas in Turkana East, Turkana South and Loima sub-counties in Turkana County have for a long time remained nearly impassable. This has stalled economic development in these areas and severely undermined effort to combat banditry as the dilapidated nature of the roads hinders the mobility of security personnel.

There is a critical need to rehabilitate and grade roads in the said areas to ensure the safety of residents and the enhancement of development initiatives. I, therefore, request the committee to-

(1) Outline any plans by the Government to rehabilitate and grade the following murrum roads-

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

- (i) Turkana East Constituency (Suguta Sub-County)
 - a) Kamurio-Kapedo Road.
 - b) Kamurio-Lomelo-Napeitom Road.
 - c) Amaler-Kallosia-Lokwamosing Road.
 - (ii) Turkana South Constituency (Aroo Sub-County)
 - a) Napeitom-Lomelo-Tot Road.
 - b) Juluk-Kalomwae-Nariwomoru-Kasei Road.
 - c) Kainuk-Lotongot-Lochwaakula-Amaler Road.
 - d) Kaakongu-Narimao-Locheresekeon-Namambu-Kollosia-Amaler Road.
 - (iii) Loima Constituency (Lokiriana Sub-County).
 - a) Naipa-Lorengikipi-Lokwakipi Road.
 - b) Kalemnyang-Lorengikipi-Lokwakipi Road.
- (2) Provide timeline for completion of rehabilitation and grading works on the said roads.

I thank you.

UNAUTHORIZED OCCUPATION OF TURKANA SOUTH NATIONAL RESERVE BY PASTORALISTS FROM WEST POKOT COUNTY

Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a statement from the Standing Committee on Land, Environment and Natural Resources regarding the unauthorized occupation of Turkana South National Reserve by pastoralists from the neighbouring West Pokot County.

The presence of pastoralists and their cattle at the Turkana South National Reserve threatens biodiversity and has disrupted the ecological balance of the National Reserve.

Grazing cattle has scared and driven away wildlife to the drier and less hospitable regions of the reserve, severely affecting the natural habitat and behavior. Additionally, the pastoralists have been responsible for killing numerous wildlife.

Not only have these protected lands been encroached upon by pastoralists who disturb wildlife, but they are also infiltrated by bandits and cattle rustlers who have continually launched attacks on residents of the neighbouring Turkana East and Turkana South sub-counties in Turkana County. This has exacerbated insecurity and instability in the region.

Moreover, their occupation violates the gazettement by the Ministry of Interior and National Administration of the reserve as a disturbed, dangerous and no-settlement zone due to banditry activities.

I, therefore, request the committee to-

(1) State any immediate steps taken by the Kenya Wildlife Service (KWS) to eject all unauthorized settlers from the Turkana South National Reserve.

(2) Outline any security protocols put in place to prevent any subsequent unauthorized occupation of the Reserve, stating whether there are plans to deploy additional security personnel to monitor and patrol the Reserve.

(3) Provide details of any other initiatives by KWS to restore the integrity of wildlife at the Reserve.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

(4) Explain any long-term measures put in place by the Ministry of Interior and National Administration and the National Police Service to guarantee the safety and security of the residents of Turkana East and Turkana South sub-counties and to deter further illegal activities by bandits and cattle rustlers taking refuge in the Reserve.

I thank you.

The Speaker (Hon. Kingi): Senator for Nyandarua, Sen. John Methu.

STATUS OF INSURANCE COVER FOR NYANDARUA
COUNTY GOVERNMENT VEHICLES

Sen. Methu: Thank you, Mr. Speaker, Sir, I rise pursuant to Standing Order No. 53(1) to seek a Statement from the Standing Committee on Roads, Transportation, Housing regarding the status of insurance cover of motor vehicles belonging to the County Government of Nyandarua.

In the statement, the committee should-

(1) Specify the total number of vehicles belonging to the County Government of Nyandarua indicating how many of the vehicles are insured under the third party motor vehicle insurance cover as well as those under the comprehensive motor vehicle insurance cover.

(2) Disclose the details of insurance providers contracted by the County Government of Nyandarua to insure the said vehicles, including of the agreement between the County Government and the insurance provider or providers, and indicate the annual premiums payable by the County Government of Nyandarua.

(3) State the number of accidents involving the County Government's vehicles that have occurred since 2013 to date, clarifying on whether insurance providers repair the vehicles or pay compensation to the County Government.

(4) Explain the circumstances that have led to the abandonment at police stations across Nyandarua County of several County Government's vehicles involved in accidents, stating whether these vehicles were insured at the time of the accidents.

I thank you.

The Speaker (Hon. Kingi): Sen. Richard Onyonka.

EXPLORATION OF MINERALS IN KENYA

Sen. Onyonka: Thank you, Mr. Speaker, Sir. I hear hon. Cherarkey is extremely excited because I am told the---

The Speaker (Hon. Kingi): Sen. Onyonka, proceed with your Statement.

Sen. Onyonka: I will proceed. My apologies, Mr. Speaker, Sir.

I rise pursuant to Standing Order No. 53(1) to seek a statement from the Standing Committee on Lands, Environment and Natural Resources regarding the exploration of minerals in Kenya.

In the statement, the committee should-

(1) Provide a report on the status of exploration of all discovered minerals in the Republic known as Kenya, providing a comprehensive geological map showing the

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

locations of the minerals, the mining sites in Kenya and approximately what their values are.

(2) Provide a comprehensive list of all licensed companies in mineral exploration in the mining industry, indicating their respective contribution to the Government in terms of tax and local communities through taxes, royalties and corporate social responsibility activities.

(3) Outline any measures put into place to secure rare minerals which have been discovered in game reserves, private animal conservancies and on private land within our borders.

(4) Investigate claims of rare mineral deposits having been discovered in private animal conservancies and kept undeclared and, if substantiated, state any steps taken by the Government to curb illegal mining and smuggling of the same out of the country and to hold to account any individuals found culpable.

(5) Give us a report on who is mining soap stone in Kisii County since I have been informed that the company mining it is from China and they are exporting that soap stone to China and yet, there was a Presidential declaration that the Chinese company should set up a factory in Kisii so as to employ our people.

I thank you, Mr. Speaker, Sir, for giving me this opportunity.

The Speaker (Hon. Kingi): Sen. Mohamed Chute.

OPERATIONS OF NRT IN MARSABIT COUNTY

Sen. Chute: Thank you, Mr. Speaker, Sir. I rise pursuant to Standing Order No.53 (1) to seek a statement from the Standing Committee on Lands, Environment and Natural Resources regarding the operations of Northern Rangeland Trust in Marsabit County.

I sought a similar statement on 18th April, 2023, but I did not receive a satisfactory response since the Ministry of Environment, Climate Change and Forestry indicated that they could not provide the requested information because there existed a gap in the legal and policy framework on carbon markets.

The Climate Change Act 2016 has since been amended to provide for the regulation of carbon projects and trading in Kenya. The amendment came into force on 15th September, 2023. I, therefore, request the committee to-

(1) Provide a comprehensive report on the operations of Northern Rangeland Trust, known as NRT, in Marsabit County, indicating their areas of operation.

(2) Clarify whether NRT intends to expand and set up an operation in new locations and, if so, provide a list of respective locations.

(3) Disclose the amount of funds gained by NRT on behalf of the County Government of Marsabit for carbon credit discounting, indicating the amount that was paid to the local community.

(4) Provide a list of all organisations currently representing Marsabit County as agents in NRT.

Thank you.

The Speaker (Hon. Kingi): Next Statement.

MANAGEMENT OF OPERATIONS OF
KIBUYE MARKET IN KISUMU COUNTY

Is Sen. (Prof.) Ojienda not here? The statement is dropped.

(Statement dropped)

STATUS OF WORLD BANK FUNDED PROJECTS
IN TAITA TAVETA COUNTY

Sen. Mwaruma: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a statement from the Standing Committee on Land, Environment and Natural Resources regarding the status of the World Bank-funded project for the upgrade of the water supply and sewerage systems in Taita Taveta County.

In the statement, the committee should-

(1) Provide a status upgrade of the World Bank-funded project for the upgrade of the water supply and sewerage systems in Taita Taveta County, whose scope includes the construction of an integrated water supply system in Voi, Taveta and Wundanyi towns, as well as modern sewerage and treatment systems in Voi, Taveta and Mwatate towns.

(2) Disclose details regarding the tender opening and evaluation processes for all tenders floated relating to the project, stating the names of the contractors that submitted bids, the winning bid, the winning bid amount, as well as the contract details to include the dates of award and scope of the contract.

(3) Indicate the total cost of the project, disclosing what the World Bank has, so far, released and the pending amount.

(4) Outline any measures put in place to fast-track the completion of the project and state the projected completion date.

Mr. Speaker, Sir, I have a second statement concerning the change of user of the land in Taita Taveta County held by Voi Point Limited.

CHANGE OF USER OF LAND HELD BY VOI POINT LIMITED

Mr. Speaker, Sir, I rise to pursuant to Standing Order No.53(1) to seek a statement from the Standing Committee on Land, Environment and Natural Resources regarding the change of user from agricultural to commercial land in Taita Taveta County held by MS Voi Point Limited on leasehold tenure. In the Statement, the Committee should-

(1) Outline reasons for the change of user from agricultural to commercial of the land in Taita Taveta County held by MS Voi Point Limited on leasehold tenure.

(2) State whether public participation was undertaken before the exercise and, if so, provide a schedule of the venue, time and the attendees of the public participation meetings.

(3) Clarify whether the process of change of user complied with all other applicable legal and constitutional requirements.

(4) Indicate the status of the caveat imposed on the land by the Government as well as the status of the lease of the land in light of the change of user.

(5) State the fate of the residents of Mkamenyi Village who were to be allocated part of the land for resettlement.

I thank you.

GOVERNANCE ISSUES IN MERU COUNTY

Sen. Kathuri: Mr. Speaker, Sir, I rise pursuant to Standing Order No.53(1) to seek a statement from the Standing Committee on Justice, Legal Affairs and Human Rights regarding the governance issues in Meru County.

There have been governance issues in Meru County since the general elections of 2022, marred by an unending conflict between the governor of the county and the County Assembly of Meru. Most recently, the County Assembly attempted to impeach the governor who sought reprieve in the High Court at the Meru Law Court. The court directed the parties to attempt to resolve the matter through Alternative Dispute Resolution (ADR) mechanisms, facilitated by the Njuri Ncheke, the Supreme Council of Ameru Elders.

I am aware that the matter is still active in court and without offending the provisions of Standing Order No.101 in relation to the Hon. Judge and the orders of the court, I request the committee to-

(1) Explain the linkage between bodies outside the judicial structures and the court system, explaining the role of such bodies in facilitating the resolution of matters filed in the courts.

(2) Outline any measures put in place to ensure continuous capacity building for judicial officers on evolving cultural dynamics within the stations of the Judiciary.

(3) Explain any measures put in place to ensure that ADR mechanisms are sensitive to cultural dynamics and do not offend the right of parties to fair hearing.

Mr. Speaker, Sir, as I issue this statement, I want to confirm to Sen. (Dr.) Khalwale and the Members that I am a senior member of the Njuri Ncheke; Council of Elders.

As the---

The Speaker (Hon. Kingi): Senator for Meru County, have your seat. Do not debate your statement, please. Just take your seat.

Statements pursuant to Standing Order No. 58.

Sen Mohamed Chute?

PERSONAL STATEMENT

FALSE REPORTS ABOUT EACC OFFICERS ARRESTING SEN. CHUTE

Sen. Chute: Mr. Speaker, Sir, I rise pursuant to Standing Order No.58 to make a statement regarding the false reports of my arrest by the Ethics and Anti-Corruption Commission (EACC).

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

I would like to categorically state that I was not arrested by EACC on Thursday, 11th June, 2024, as falsely stated by the Chief Executive Officer (CEO) and the Spokesperson of the EACC.

In respect of my appearance before the EACC on the specified date, I wish to clarify that I was at the EACC offices upon invitation. I believed that the invitation arose from the several complaints I had made to them regarding the misappropriation of funds in Marsabit County.

Upon appearance at the EACC alongside my lawyer, I was informed by the investigating officer that the information required of me was related to the ongoing investigation into alleged acts of corruption by the Governor of Marsabit County and not myself.

I was asked about approximately Kshs7 million transferred by myself and my spouse to the governor in August 2017, which was before His Excellency Muhammad Ali. I were elected governor and Senator, respectively.

I explained that the transfer related to a fundraising event that was held at the Laico Regency Hotel. I was also asked about two fund transfers, as well as two vouchers of Kshs1.4 million and Kshs6.4 million paid to my company by the Marsabit County Government.

Mr. Speaker, Sir, it is quite concerning that immediately after, the CEO and the spokesperson of the EACC made a false press statement that I had been arrested and was under investigation for conflict of interest and theft of public funds to the tune of Kshs365 million as well as embezzlement of public funds to the tune of Kshs2 billion. At no point was I questioned on any of these matters.

I, therefore, challenge the CEO and the spokesperson to make public any evidence contradicting my account. In any case, the statement recorded by myself on the said date could be sufficient evidence.

Mr. Speaker, Sir, it is my considered view that the CEO's actions are retaliatory and driven by personal vendetta stemming from my remarks during the sitting of the Senate on 26th June 2024, calling for disbursement of the EACC for failing to fulfil its mandate. I will say it again and again.

I have instructed my lawyer to institute a legal suit against the CEO and the spokesperson for defamation and character assassination. In the coming days, I will also be seeking an update on the progress of investigation by the EACC into the issues raised in the complaint I submitted to the commission. These complaints date back several years, including the period before I was elected Senator.

I thank you.

The Speaker (Hon. Kingi): Hon. Senators, I will allow 30 minutes of intervention. It is now 3.32 p.m. So, we will terminate at 4.02 p.m. Proceed Sen. Maanzo.

Sen. Maanzo: Thank you, Mr. Speaker, Sir. I would like to deal with the matter of the hon. Sen. Lomenen, the Senator for Turkana County. It is 300 kilometres from Nairobi City County to Kapedo; where he was talking of a road which should be going into Turkana. Within Turkana, it is about 400 kilometres.

A recent report from *Citizen TV*, showed that particular area and Kenyans from that County, complaining of how difficult transport is. No private persons invest in transport

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

there and unless the police assist the residents of Turkana County, traveling is very difficult. Therefore, doing business in that county is very difficult owing to a very old colonial bridge.

I support his statement so that Kenyans can be served equally and serious effort is made by the Ministry of Transport, Infrastructure, Housing, and Urban Development together with devolution to make sure that - although there are no good roads everywhere - that the people of Turkana have better roads for better security.

Secondly, on the Meru County matter; this is really new jurisprudence. As much as Alternative Dispute Resolution (ADR) is advocated by the courts, and even though there is an ADR Act; this matter was within the jurisdiction of court and in the alternative also within the jurisdiction of this House.

Constitutionally this matter should be dealt by this House or the Meru County Assembly. In the event there is a suit filed, there is a likelihood-just like the hon. Senator has said that he is a member of the Njuri Ncheke to participate when the matter comes to the House.

Mr. Speaker, Sir---

The Speaker (Hon. Kingi): What is your point of order, Senate Majority Leader?

The Senate Majority Leader (Sen. Cheruiyot): Pardon me, Mr. Speaker, Sir. Apologies to my colleague for interrupting him, but it is just a concern. There is guidance you should have, perhaps given how much time you gave to each individual Senator. The allocated time is only 30 minutes. To the best of my recollection, Sen. Maanzo has already used five minutes. This leaves 25 minutes to the rest of us. You could guide us so that each Senator who rises to comment can be limited to a specific time period. My kind indulgence.

The Speaker (Hon. Kingi): Hon. Senators, the time allowable for intervention on statements is not more than 30 minutes. That is why I have given the maximum to the entire Senate. As you speak, be mindful of that fact.

I know that a Senator rising to speak has 20 minutes. However, you have to view that against the Standing Order that gives 30 minutes for intervention on statements.

If you can keep it to two minutes each, then we will hear many of those willing to speak. Sen. Maanzo, you have done only one minute. You can proceed to use your second minute.

Sen. Maanzo: Thank you, Mr. Speaker, Sir, that particular matter of the Meru County Assembly is clearly either within the jurisdiction of court or the Senate. Any other arbiter referred to it may be prejudiced in one way or another.

I support that statement. Now that the courts have referred it to the Njuri Ncheke, they should make a very quick decision and send it back so that we can be on course to sort out matters pending in Meru.

Let us bear in mind this county, has not had County Executive Committee Members (CECM)s or departments, has been operating on a half budget. It cannot be like this forever. There must be a way to settle the issue in the county, so that it operates like other counties in the country.

The Speaker (Hon. Kingi): Senate Majority Leader?

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I would just like to make a brief comment on the statement by the Senator for Meru County on this very strange ruling, that emanated from the court this week. I wish the Standing Committee on Justice, Legal Affairs and Human Rights (JLAHR) could guide us.

There has been a particular focus on Parliament and how it does its work. This is rightfully so, because we are representatives of the people. However, as a country, and that the JLAHR Committee needs to point us in that direction. We equally need a conversation on the performance of our Judiciary.

It is increasingly becoming clear that we have vested such significant authority to our judicial system, and rightfully so, but may have missed a step with regard to how they are held to account for their decisions and actions.

For example, take the case of a judge, whom on their own volition without the request of the Njuri Ncheke or the leadership chooses to refer the matter to that institution whereas this matter is properly provided for in law. The County Assembly is guided and draws its authority from the same Constitution, to oversight the actions of the Meru County Government.

If it has reached a point where the MCAs, feel that the citizens of Meru County are not getting justice in terms of services from their county government, then they are allowed to carry out their constitutional mandate in whichever way that they deem fit.

This was a strange decision. There are many such others, where a judge makes a decision and you wonder if they fully appreciate the consequences of their decisions. There are many such examples and things that we could speak about.

Lastly, just in mentioning how these decisions are increasingly becoming the norm, rather than the exception. I am a football fan and I follow what happens a lot in our football circles. For a long time, the Football Kenya Federation (FKF) has been unable to hold elections because of court cases.

We are provided with tribunals by the law. The jurists that sit in these tribunals have the technical knowledge of how some of these institutions operate. For example, we have the water, rent and sports tribunals.

You will find a judge issuing orders *ex parte*, such as the case in the FKF elections and giving the next mention date to be sometimes in October, long after the officials presently in office would have since left office.

This is in light of the fact that we are about to hold---

The Speaker (Hon. Kingi): Sen. Osotsi, proceed.

Sen. Osotsi: Thank you, Mr. Speaker, Sir. I wish to comment on the statement by Sen. Methu on the issue of management of motor vehicles insurance. This statement is timely. I encourage the committee concerned - the Standing Committee on Roads and Transportation - to take an interest on that matter because it is an issue affecting many other counties. If they can, they should extend it to include the management of motor vehicles in various garages.

We have many of the county vehicles with minor issues stalled in various garages for so long while nothing is being done. So, I would wish that that statement includes that issue.

Mr. Speaker, Sir, I also want to comment on the statement by Sen. Onyonka on exploration of minerals. Last week, we were here discussing the issue of minerals and we said that we would like to see more transparency and accountability in the process of managing mining in this country.

Exploration is a serious matter. We have companies exploring minerals without following procedures. They come and claim that they are exploring when in the real sense, they are actually mining. One of the companies is Shanta Gold Limited, which is exploring gold on the boundary between Vihiga and Siaya. However, in the true sense, they are actually mining gold and taking advantage of the people. There is no public participation, proper engagement or Cooperate Social Responsibility (CSR). This is a very serious matter.

I thank Sen. Onyonka for bringing it up. The committee concerned should dig deeper into this matter, so that such companies that exploit our people are brought to book and action is taken against them.

Mr. Speaker, Sir, I support.

The Speaker (Hon. Kingi): Sen. Cherarkey, proceed.

Sen. Cherarkey: Mr. Speaker, Sir, thank you very much. I want to comment on the statement by the Deputy Speaker, Sen. Kathuri Murungi, on the issue of the decision by the Meru High Court.

As a legal practitioner, I was shocked. When you want to do Alternative Dispute Resolution (ADR), the exception has been provided for by Article 159(3) which states-

- “Traditional dispute resolution mechanisms shall not be used in a way that;
- (a) contravenes the Bill of Rights;
 - (b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or
 - (c) is inconsistent with this Constitution or any written law.”

Mr. Speaker, Sir, under Article 181, the removal of a governor is a constitutional matter. I am happy that the Njuri Ncheke has recused themselves and written to the High Court to remove themselves from that matter.

With all due respect to that High Court Judge, I find it mischievous to refer matters that should not be entertained under ADR because this is a constitutional matter. If it was issues of marriage, succession and other matters that are of personal nature in the definition of law, then the High Court could refer. The Judiciary must be called out.

I saw in a matter of Garissa County where the Governor has appointed more than 30 chief officers. The members of the public went to seek an injunction, but the Judge at the Garissa High Court ignored and allowed the process of vetting and appointing of 30 chief officers. We have also seen the matter of FKF.

Is the Judiciary or judges a stumbling block against Kenyans seeking justice? I tend to agree so.

I thank the High Court judge in Eldoret. When Gov. Sang reappointed a County Executive Committee Member (CECM) without seeking recourse to the County Assembly Approval Act, they ordered him to do vetting again.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

The Speaker (Hon. Kingi): Sen. Richard Onyonka, proceed.

Sen. Onyonka: Mr. Speaker, Sir, I am just going to make a very short comment about the matter that Sen. Chute raised. I want to bring the attention---

The Speaker (Hon. Kingi): Sen. Onyonka, that Statement is not available for debate under Standing Order No.58. It is a personal Statement.

Sen. Onyonka: My apologies Mr. Speaker, Sir, I got a bit confused. I have seen that the Njuri Ncheke has actually made a withdrawal of the matter from the High Court. If there is anything that we need to do, is make sure that we protect and ring-fence our responsibilities as the Senate and other statutory bodies to make sure that our country is governed well and we maintain law and order.

Thank you.

The Speaker (Hon. Kingi): Sen. Gloria Orwoba, proceed.

Sen. Orwoba: Thank you, Mr. Speaker, Sir. I would like to make a comment on the Deputy Speaker's Statement with regard to the Meru County Government and the issues that they are having.

My sentiment to this is that it appears that other parties, including the Judiciary, feel that perhaps, the Senate does not know the work that it has been mandated to do. In that essence, I call upon the Committee on Devolution and Intergovernmental Relations because we do have a committee that is in charge of devolution. I am wondering what they have been doing throughout this time, even when we were aware that the County Government of Meru was having issues and going to court.

As Senators, I know most of us have had conversations. In the event that as a Senate, we have a common feeling that the County Government of Meru is not able to actually deliver, we can bring a petition in terms of dissolving that county. However, having outside parties telling us that they are going to sit on ADR when we are still here and in session, I think it is an insult to this institution and House.

I call upon the Committee on Devolution and Intergovernmental Relations to either persuade us, maybe through a Motion or a Petition, so that we can handle this matter as a House that is there to support and fiercely defend devolution.

Thank you.

The Speaker (Hon. Kingi): Sen. Wambua Enoch, proceed.

Sen. Wambua: Mr. Speaker, Sir, thank you for this opportunity. I just want to thank the Senator for Meru for bringing this matter up as a statement and for the opportunity for Members to ventilate on it.

Mr. Speaker, Sir, there are two things. One, what the judge did in referring this matter of impeachment to the Njuri Ncheke was a clear affront against constitutional hygiene because the matter of impeachment is a constitutional issue. In fact, the courts have a role to play at the end of the process, if a party in the impeachment is aggrieved.

For the judge to go on record and say that this is one of the most complicated and serious cases that he has ever encountered and without discussing the character of the judge, I wonder then, if this matter is so complicated to a High Court Judge, what will happen when he is confronted with serious matters?

(Laughter)

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

That was an admission on the part of the judge of serious deficit of capacity to deal with a very simple matter.

Mr. Speaker, Sir, secondly, I would like to challenge the Senator for Meru. I know this may be a bit complicated for him, but to consider that going forward requires Article 187 of the Constitution to be invoked, especially for critical functions and roles in the County Government of Meru.

Seriously speaking, the County Government of Meru is dysfunctional. There is need to consider transfer of especially critical services to another entity, so that the people of Meru can be served. I know I should not be doing this, but I would like to declare on this Floor that when that matter comes here, we must deal with it, once and for all.

Mr. Speaker, Sir, let us finish with it. If it means the entire assembly and the Governor going home, we should do that, so that the people of Meru can also get benefits of devolution. For now, it is a circus between the assembly and the Governor, and the people are suffering. Consider invoking Article 187 of the Constitution on critical services, roles and functions in the County Government of Meru.

I thank you.

The Speaker (Hon. Kingi): Proceed, Sen. John Methu.

Sen. Methu: Mr. Speaker, Sir, I also wish to comment on the statement that has been sought by the Senator for Meru. As my colleagues have said, this is new.

Mr. Speaker, Sir, we were conversing here with the Senate Majority Leader. This is a constitutional matter that was brought to the attention of the Judge of the High Court. You said that this is a serious matter that must be addressed. So, you sent it back to Njuri Ncheke.

There are two issues. Firstly, the Senator for Meru has confirmed to us that he is a member of Njuri Ncheke. How is he supposed to address this matter? If the County Assembly of Meru processes the Motion, it will come to this particular House and he will sit here as a Senator, yet he has been on that matter during the ADR mechanism.

The second question we are asking ourselves is if this jurisprudence will be carried, what if tomorrow Judges of the Supreme Court, considering a presidential petition, ask the players and parties to go for ADR, including the Kenya Conference of Catholic Bishops (KCCB) or the Supreme Council of Kenya Muslims (SUPKEM) to arbitrate over such a matter?

Finally, looking at Article 159, where traditional dispute resolution mechanisms can be used, it does not have a clear process for processing an impeachment Motion. It is processed at the county assembly before coming to the Senate; there is no other route.

I am happy that members of the Njuri Ncheke have said that they do not have the capacity to look at this matter. It then brings us to the question; if such a matter had been taken to court in another county that does not have a council of elders, what would have been the ruling on such a case? We are very disappointed.

I agree with the Senate Majority Leader that even as we give powers to the Judiciary, they must also be accountable. Whom are they accountable to? We, as a House, are accountable to the people of Kenya and are subjected to an election after every five years. Who are the judges accountable to when making such decisions?

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Like the Senator for Kitui said, on this particular matter of Meru, this time around, we, as a Senate, have to ensure that the people of Meru get justice. They are not children of a lesser god. We have to do everything we can.

The Speaker (Hon. Kingi): Sen. Methu, that matter is not before us. So, we cannot do anything. Just wait until it gets here.

Proceed, Sen. Hezena.

Sen. Lemaletian: Mr. Speaker, Sir, I rise to contribute on the statement by Sen. Chute, the Senator for Marsabit, on the operations of the NRT in Marsabit County, and obviously, the whole of Northern Kenya as far as its name is concerned.

This statement comes at a time when the President was very clear about foreign organisations meddling in the peace, stability and sovereignty of our nation. In the same breath, could the NRT disclose if they have any armory within their headquarters and if there have been any deaths in the northern part of Kenya that have been associated with them, particularly for the Samburu Community? What do they have to say about that?

Carbon credit has been the new gold in Northern Kenya. It has been a booming business, where NRT is ripping millions of dollars. It is important that they disclose their financial records and make it public, so that our people, majority of whom are illiterate, can follow through on the financial compensation they are getting from whoever they are selling carbon credit to.

Mr. Speaker, Sir, it is also important that our people are given enough information on how their land is utilised. Also, we do not see a reflection on the charities and the feedback to the community in the livelihoods of the people in the northern parts of Kenya.

I thank you.

The Speaker (Hon. Kingi): Proceed, Sen. (Dr.) Boni Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, the issue raised by the Deputy Speaker is very serious. There was no Motion, whatsoever, before that judge to give him an opportunity to make this wild order. He did it on his own volition. In so doing, he also made a pronouncement inconsistent with the Constitution.

Mr. Speaker, Sir, for that reason and in accordance with Article 168 of the Constitution, that judge has invited himself to removal from office. Therefore, to send a clear message, please, let this Senate move to the Judicial Service Commission (JSC), so that it initiates the process of removing that judge.

There are so many people who want to be judges. In fact, some of them are very young---

Sen. Faki: On a point of order, Mr. Speaker, Sir. Is the distinguished medical practitioner and the Majority Whip in the Senate in order to attempt to discuss the conduct of a Judge of the High Court without a substantive Motion before this House?

The Speaker (Hon. Kingi): Sen. Boni, you need to adhere to the Standing Orders. You should not discuss the conduct of an officer who may not get a chance to rebut what you are alleging.

Proceed.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, my second and last comment is on the matter raised by the Senator for Kisii. As mentioned by the Senator for Vihiga, Shanta

Gold Limited Company is a big joke and the Ministry of Mining, Blue Economy and Maritime Affairs must up its game.

Shanta Gold Limited Company has been in Kakamega, specifically Ikolomani, Bushiangala Village, Isulu, for 15 years in the name of exploitation. They have mined a total of 168 kilometres of a two-centimetre diameter chain that goes through the tube they use for extracting---

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

The Speaker (Hon. Kingi): What is your point of order, Sen. Gloria?

Sen. Orwoba: Mr. Speaker, Sir, I need your clarification because you made a ruling based on Standing Order No.101(1) on the contents of the speech.

Mr. Speaker, Sir, when you read that Standing Order, it says –

“Neither the personal conduct of the President, nor the conduct of the Speaker or any judge, nor the judicial conduct of any other person performing judicial function, nor any conduct of the Head of State or Government or the representative in Kenya of any friendly country or the conduct of the holder of an 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.”

Mr. Speaker, Sir, I want you to clarify because the contents of the statement that has been brought to the Floor of the House by the Deputy Speaker, seeks that a committee of this House discusses the ruling that has been made by the conduct of an individual that is on this Standing Order No.101(1). So, are we also saying that that statement is out of order?

The Speaker (Hon. Kingi): Sen. Orwoba, get hold of that statement by Sen. Kathuri. It is very far from what you are alleging.

Proceed and conclude.

(Applause)

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, Shanta Gold has been in Ikolomani for those 15 years. They are pretending and being allowed to be seen as carrying out exploration, when they are gutting away billions of shillings meant for the people of Kakamega. This must be stopped. I was running on time to come back to the Senior Counsel, Senator for Mombasa. You must differentiate between me---

The Speaker (Hon. Kingi): Address the Chair, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. The Senator for Mombasa is disappointing me. He is a Senior Counsel. He must be able to distinguish between ----

The Speaker (Hon. Kingi): Sen. (Dr.) Khalwale, I have already ruled on the point of order raised by Sen. Faki. Please, do not go there. If you are done with your intervention, I may proceed to call Sen. Oketch Gicheru. He will be informed at the Lounge.

Proceed, Sen. Eddie.

Sen. Oketch Gicheru: Thank you, Mr. Speaker, Sir. I want to make a quick comment and kindly protect me from Sen. Omogeni.

Mr. Speaker, Sir, Sen. Omogeni is heckling.

The Speaker (Hon. Kingi): Sen. Omogeni, what is your intervention? You seem not to be settled.

Have a seat, Sen. Oketch.

Sen. Omogeni: My neighbour, the Senator for Migori, should know some languages are unparliamentary, including using the word 'heckling'.

Mr. Speaker, Sir, I want to inform Sen. (Dr.) Khalwale that he should not mislead the country by referring to the Senator of Mombasa, County 001 as being one of the lawyers who have been inducted into the roll of Senior Counsel. For the record, the Senator of Mombasa, County 001, has not been inducted into the roll of Senior Counsel. Thus, you are out of order by referring to Mohamed Faki as Senior Counsel.

The Speaker (Hon. Kingi): Sen. Oketch, proceed to conclude.

Sen. Oketch Gicheru: Mr. Speaker, Sir, I have not even started yet. I am just starting.

The Speaker (Hon. Kingi): Proceed.

Sen. Oketch Gicheru: Mr. Speaker, Sir, I want to make a quick comment on a very important issue that Sen. Onyonka has raised in this House through this statement on the possibility of auditing all our minerals and being able to account for all those minerals, plus those companies that are involved in them.

This is a very serious statement that, as a country, we must start thinking critically about the minerals that we have and how we explore them. Since, in the current world order you cannot think of any better opportunity that you can have as a country than investing in rare minerals that you have in the country.

For instance, in the current world order, you cannot think about areas of investment without thinking about the raw materials that go into renewable energy. Due to the competition in the world in the area of technology, any smart technology for any smart electronic devices, you cannot have them without thinking about raw materials that are coming out of this country.

There is something called rare earth elements. Their demand in the world by the pace of growth, by 2027, will have a 14 per cent demand. If you look at China, it has got about 85 per cent control over rare earth oxide. In this country, our potential for rare earth elements is over US\$100 billion.

When you look at our current foreign policy, there is no articulation of exploration of rare earth minerals in Kenya when we are engaging with the world's superpower in terms of technological advancement like the United States of America (USA). You would have expected that if we go to the USA, we have accounts of these rare earth elements and the minerals that ensue from them. For example, in Kwale County where we have amazing rare earth elements that have been estimated by experts that could even fetch this country US\$35 billion.

The debt that we are struggling with in the country today is barely Kshs100 billion. If we invest in rare earth elements in this country, it can give us up to Kshs100 billion. It will be very important that in this new broad-based Government we have, we start thinking

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

critically about data-driven mining and decision-making in the mining sector so that we see whether we can explore our minerals to deal with the issue of critical debt stock that we have in this country.

Mr. Speaker, Sir, I want to support this statement and particularly draw the attention of this committee to look at the potential of the Kenyan economy with regard to rare earth minerals that we can explore. They can go ahead and even indicate how much money we need to inject into that sector and the potential revenues in terms of investments *vis-à-vis* the investments that we can make.

As somebody who has looked at this issue, I am sure if we pumped Kshs1.5 billion into the rare earth minerals in this country, we can make up to Kshs30 billion at any given time. That means that every annual turnover on these issues we can even make money that can guarantee us returns that can deal with debt.

I support this statement and hope that the relevant committee will look at it.

The Speaker (Hon. Kingi): Proceed, Sen. Mungatana.

Sen. Mungatana, MGH: Bw. Spika, ningependa kukushukuru kwa kunipa nafasi pia nichangie Taarifa ambayo imeletwa hapa na Seneta wa Meru.

Bw. Spika, Judicial Service Commission (JSC) ni kati ya zile tume ambazo zinaweza kuangalia makosa yoyote ambayo mahakimu na majaji wanafanya katika kutoa hukumu zao. Kwa hivyo, ningependelea pia Kamati hiyo ya Justice, Legal Affairs and Human Rights (JLAHR) waangalie kama wanaweza kupeleka malalamishi kirasmi kwa JSC, kuhusu hukumu ya huyu Jaji ambaye amesema kwamba kazi ambayo Seneti ingefaa ifanye ipelekwe kwa Njuri Ncheke.

Bw. Spika, kuna hili jambo la kwamba Jaji wa Mahakama Kuu ya Kenya, anasahau ya kwamba yule aliyechaguliwa pale ambaye ni Gavana wa Meru, amechaguliwa na watu wote wanaoishi pale Meru. Mimi ninajua kuna Pokomo, Orma na Giriama wanaoishi kule Meru. Hii ni kwa sababu watu wa Meru wanatuletea miraa sehemu ya kule kwetu na kuna watu ambao wanaenda kufanya biashara kule na wamechukua kadi zao za kura kule.

Kwa hivyo, ikiwa kuna makosa ya kutatuliwa, kwa nini Jaji anafikiria wapiga kura wote wa Meru ni Wameru kwa hivyo waenda kwa Njuri Ncheke. Kuna wapiga kura pale ambao ni wa makabila tofauti.

Tuna Wakisii na Wakikuyu wanaoishi Meru. Ni makosa sana kwa Jaji kusema kuwa hawa watu wote waende kwa Njuri Ncheke ambayo ni ya kabila moja. Kwa hivyo, JSC iseme jambo kuhusu hukumu. Tunaomba Kamati yetu ya JLAHR ifikirie namna tutapeleka malalamishi rasmi kwa JSC kuhusu hukumu hii, ambayo inapotosha Wakenya na kuhujumu mamlaka ya Seneti.

Asante, Bw. Spika.

The Speaker (Hon. Kingi): Sen. Joe Nyutu, proceed.

Sen. Joe Nyutu: Thank you, Mr. Speaker, Sir. I also rise to support this statement by the Senator for Meru County, who doubles up as the Deputy Speaker of this House. The ruling by this judge was very disappointing because when the MCAs of Meru County decided that they wanted to impeach Governor Kawira Mwangaza once again, they knew very well that there was Njuri Ncheke in Meru. The Governor, hon. Kawira Mwangaza, also knew very well that there is Njuri Ncheke in Meru in place.

Whoever took the matter to court, knew very well that there was this council. Therefore, the judge was out of order. I can liken it to somebody who knows there is a chief, but goes to a District Officer (DO). Then, the DO tells them to go back to the chief. This judge abdicated his responsibility.

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

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

Mr. Deputy Speaker, Sir, when Gov. Kawira Mwangaza was brought here last time on impeachment charges, she used Njuri Ncheke as her defence. In that defence, Gov. Kawira Mwangaza convinced the Senate that her impeachment had been engineered by MCAs through the Njuri Ncheke. Therefore, the judge was out of order to have referred the matter to Njuri Ncheke, which Gov. Kawira Mwangaza had already submitted before this honourable House that it was behind her impeachment last time.

For lack of a better word, this is a judge that is irresponsible, who abdicates his responsibility. Without discussing his conduct here, the JSC should do something about this judge. The JLAHR in this House should also pursue this matter, and if possible, see whether this---

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

The Deputy Speaker (Sen. Kathuri): Sen. Omogeni, what is your point of order?

Sen. Omogeni: Mr. Deputy Speaker, Sir, I appreciate the magnanimity of the issue at hand. However, we have to be guided by our Standing Orders, especially Standing Order No.101, which prohibits us from discussing the conduct of the judge.

We should be critiquing the content of the ruling, but not bring into discussion the personal character of a judge. That is prohibited by Standing Order No.101, which obligates us to bring a substantive Motion within three days' notice. However, it is permissible to discuss how it is inappropriate for that judge to issue a ruling that directs that matter to Njuri Ncheke. It is within our realm to critique the decision, but not the person who made the decision.

Sen. Joe Nyutu: Mr. Deputy Speaker, Sir, the Senior Counsel, Sen. Omogeni, was either not listening to my submission or is directly malicious against me.

(Laughter)

The Deputy Speaker (Sen. Kathuri): Can you repeat what you said.

Sen. Joe Nyutu: I never discussed the conduct of the judge. I discussed the ruling and said the judge abdicated his responsibility by referring a matter to a council of elders, whom the Governor knew existed, but did not refer the matter to it.

(Applause)

I beseech my senior, Sen. Omogeni, to be more keen next time.

I also said that Gov. Kawira Mwangaza in her defence submitted before this honourable House that Njuri Ncheke was against her and they had schemed her impeachment. I said it was wrong to refer the matter to a body that she believes is very hostile to her. I believe that is why Gov. Kawira Mwangaza took it to the court.

The Deputy Speaker (Sen. Kathuri): Hon. Senators, I can see the time that was allocated is now over. However, let us have two more contributions, one from Sen. Mandago.

(An hon. Member spoke off the record)

No, I am winding up this thing, so that we can move on to the other Orders.

Sen. Mandago: Thank you very much, Mr. Deputy Speaker, Sir. First, I rise in support of the decision of the judge. Allow me to be the devil's advocate. Section 4(1) of the Alternative Dispute Resolution Act, 2021, which I believe was passed by Parliament states that-

“This Act shall apply to civil disputes, including a dispute to which the National Government, a county government or a State organ is a party.”

It has been argued that Meru County is not a county for Meru only. However, if you look at the definition of the people that are involved, it says-

“Community” means a social unit or groups brought together by different types of affinities, such as culture, dialect, race, family, neighbourhood, faith, business, age and common interests.”

The common interest in this matter is the issue of governance of Meru. If we look at Article 159 (2) (c) of the Constitution, it says-

“Alternative forms of dispute resolution including reconciliation, mediation, arbitration and a traditional dispute resolution mechanism shall be promoted, subject to Clause 3.”

Mr. Deputy Speaker, Sir, if you follow the Act all the way, it says that the parties may terminate the alternative dispute resolutions mechanisms at any point of their choice. Therefore, the County Government of Meru and the hon. MCAs can at any point decide they are not interested in the alternative dispute resolution mechanism and go back to court.

The reason we established alternative dispute resolutions mechanisms was to try and reduce the unnecessary workload we have in our courts on matters that can be sorted out of court through a process that this Parliament legislated and passed the law.

Sen. Wambua: On a point of information, Mr. Speaker, Sir.

The Deputy Speaker (Sen. Kathuri): There is a point of information.

Sen. Mandago: I do not want to be informed by Sen. Wambua, a person who refused to become the Attorney General of this country. If you cannot be one, you cannot purport to imagine you can inform me.

Mr. Deputy Speaker, Sir, I, therefore, want to agree with the judge in Meru.

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

The Deputy Speaker (Sen. Kathuri): Proceed, Sen. Wambua. What is your point of order? Wait a minute, Sen. Mandago.

Sen. Wambua: Mr. Deputy Speaker, Sir, I am very surprised that a man of the character of the Senator for Uasin Gishu County who is dealing with his own issues, can stand on the Floor of the Senate and connect me with a nomination for the Office of the Attorney General. I am not a lawyer. It is the same mistake of not consulting properly that they made when making the first appointment of the Attorney General.

Mr. Deputy Speaker, Sir, I want the Senator for Uasin Gishu to withdraw any connection between the Senator for Kitui and the Office of the Attorney General, unless he wants us to follow that route.

The Deputy Speaker (Sen. Kathuri): Under which Standing Order, Sen. Wambua, because you are a seasoned Member? Sen. Wambua knows exactly what I mean.

Sen. Wambua: Standing Order No.105. A Senator must be responsible for the facts that he alleges on the Floor of the Senate.

The Deputy Speaker (Sen. Kathuri): Sen. Mandago, address yourself to the point of order.

Sen. Mandago: Mr. Deputy Speaker, Sir, I wish to withdraw and apologize, but clarify that as the principal advisor of the party leader of Wiper, who is also a lawyer and was given that offer.

(Laughter)

The Deputy Speaker (Sen. Kathuri): Sen. Kisang’.

Sen. Kisang’: Thank you, Mr. Deputy Speaker, Sir. I want to comment on two of the statements. I will start with the one by Sen. Onyonka.

There are some companies that have been given licenses to explore minerals, but some have gone ahead and done mining, but they continue reporting that they are exploring. These are the companies that we need to call out, so that they can apply for licenses to mine and our communities will get the right income from these companies when they export those minerals.

My last comment is on your statement on Meru, Mr. Deputy Speaker, Sir. For the last two years, your people have not received adequate representation, especially on delivery on services because the County Assembly and the Governor have not had good working relationship. That is why in under two years, we have had four impeachments.

When I heard a judge in Meru referring this matter to the ADR, I thought that this was God sent for this two warring groups to sit down and agree to work for the people of Meru. If they cannot sit down and work for the people of Meru, I agree with what my colleague Gloria has said that, maybe, it is time we come up with a Petition to dissolve this county.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Let all the MCAs, the Governor and the Deputy Governor go home and fresh elections are held in Meru, and we get a new Governor, Deputy Governor and new MCAs, so that things can work for the people of Meru.

(Laughter)

Mr. Deputy Speaker, Sir, you can also decide to resign and run for that position, but I believe the fake fertilizer Cabinet Secretary will not run for that seat.

That is my take. Njuri Ncheke are respected. I do not know why they have run away from adjudicating and reconciling these people.

The Deputy Speaker (Sen. Kathuri): Thank you. Sen. Okong’o Omogeni.

Sen. Omogeni: Mr. Deputy Speaker, Sir, we should not hit the judge very hard. This Constitution created an Article 159 on alternative forms of dispute resolution.

I would like to inform Senators here that even people who have committed murder have been referred to mediation, reconciliation and arbitration. You cannot attack the ruling that was delivered by that judge because he was invoking an article that is in the Constitution. Hon. Senators should also read Article 159, which speaks of judicial authority and the power donated to a judge to give rulings and directions.

I would like to thank the Njuri Ncheke Council because they have seen the light. I read that they have applied to withdraw from the proceedings and they want that matter to run the full course. Under Article 181, it is us, Senators, who gave power to our MCAs to initiate an impeachment. I thank Njuri Ncheke because that is why we are here to deal with issues of impeachment.

Mr. Deputy Speaker, Sir, now that Njuri Ncheke have seen the light, they have allowed this Motion to run its full course, let it be processed by the Meru MCAs and let it come to the Senate. I can see the Senator for Nyandarua salivating. Let it come here and we deal with justice.

We must respond to the issues that are being raised by the MCAs and the residents of Meru. Now that the Njuri Ncheke have applied to have that matter run its course, let the judge allow it to be processed, bring it to the Senate and we do what we are supposed to do. No one should fear the Senators of the Republic of Kenya, including Gov. Kawira.

If I were her, I would not even bother to go to court. If she is clean, let the matter come here, we deal with it and she is acquitted. If on the other hand she has committed issues that make it undesirable for her to continue holding that office, again, she should fall on the doors of justice. So, both ways, there will be justice and there is nothing to fear.

Mr. Deputy Speaker, Sir, if she is innocent, an acquittal. If she is guilty, she should go home. That is why we have accountability in our Constitution.

I thank you.

The Deputy Speaker (Sen. Kathuri): Sen. Chute, I cannot see your request on my screen. He has a constitutional matter that he is raising, but I cannot see his request. That is the last one and then we continue with other business.

Sen. Chute: Thank you, Mr. Deputy Speaker, Sir. I want to add my voice on the issue of Meru. My friend, Sen. Mandago, quoted Article 159, which he read halfway.

Article 159(2)(c) says:

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

“There is alternative forms of dispute resolution, including, reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to Clause (3).

“(3) Traditional dispute resolution mechanisms shall not be used in a way that—

- (a) contravenes the Bill of Rights;
- (b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or
- (c) is inconsistent with this Constitution or any written law.”

Article 181 is clear. It tells us how to remove a governor and deputy governor from office.

I will give you an example of Marsabit. We do not have Njuri Ncheke in Marsabit. What will happen if the MCAs want to impeach the governor? Are they going to ask the Meru Njuri Ncheke to come and help us there? No, it is not possible. If the issue being raised has some criminality like wastage of funds and resources and misappropriation of money, that goes against Article 6 of the Constitution.

Mr. Deputy Speaker, Sir, I thank the Njuri Ncheke for referring back that issue to the courts and we are waiting for Gov. Kawira Mwangaza here before the Senate. We are ready and waiting for her to come here.

It is important for us to look at the law. This Constitution 2010 is one of the best constitutions that any country can have, especially African countries. Let us not ignore this Constitution and follow traditional ways to solve official issues.

The Deputy Speaker (Sen. Kathuri): Hon. Senators, we will proceed with the business of the House this afternoon. Under Standing Order No. 45(2), I wish to reorganize the business of the House this afternoon. So, we go to Order No.21. After we execute that, we shall resume the normal system.

Clerk, read Order No.21.

The Senate Majority Leader.

BILLS

Second Reading

THE LAND (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO.40 OF 2022)

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Deputy Speaker, Sir. I beg to move that The Land (Amendment) Bill (National Assembly Bills No.40 of 2022) be now read a Second Time.

This is an extremely important matter despite the fact that it is one of the shortest Bills that I have ever introduced in this House. However, it serves an interesting purpose,

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

where we are seeking to secure public land for public institutions and ensuring that after a search is done, we provide the legal mechanism for the titling of such land.

As it is today, many public institutions continue to lose land that has been set aside for them because of vague provisions of the law on the titling process of such parcels of land, hence, The Land (Amendment) Bill (National Assembly Bills No.40 of 2022) was published in the Kenya Gazette Supplement No.165 of 2022 on 28th October, 2022.

This Bill was considered and passed by the National Assembly and referred to us for consideration. I have explained that the principal object of this Bill is to amend Land Act No.6 of 2012. It provides that where public land has been allocated to a public body or a public institution by the National Lands Commission (NLC), persons or even a land-buying company for public purpose, the Register of Land under the Land Registration Act of 2012, will issue the certificate of title in the name of public body, public institution or the relevant Ministry, as the case may be.

So, the keyword operating principle in this Bill is public land, public institution and for public purpose. Therefore, it is a sacred move. We all know of public institutions that up to date, continue to lose land on account of either poor titling or lack of legislative intervention on our part to ensure that after a donation, allocation or even setting aside of public land to an institution has been made, it is titled in the name of that public institution.

Kenyan's obsession with land is legendary. Therefore, there is need to ensure that our public institutions have their land firmly secured by ensuring that the title deed is registered in their name every time that land is set aside.

Many urban spaces here in Nairobi were once public land that was set aside, either for playgrounds or social amenities. However, today, they cannot be traced. In my honest estimation, 70 to 80 per cent of that land today cannot be traced for the public purpose it was meant for. I have no strong data to back that up. However, it is just based on my common knowledge of this City.

For the simple reason that we did not have this provision, it provided a ripe environment for marauding public land fraudsters to change the title deeds of those lands. They would thereafter own the land and do developments that were not meant for public good. We have many examples.

In the last Parliament, we had a petition from Nairobi Water Services and Sewerage Company (NWSC), where staff houses belonging to that institution, a contractor showed up on site with a group of young men as is normally the case, demolished them in the dead of the night and quickly within no time put up high-rise apartments.

This is part of what we were discussing a few minutes ago. Sometimes our judges also choose to be mechanical. They just ask for a title deed from that public institution. Despite the fact that there could be letters of allocation and minutes of the council's meeting that provided the setting aside of that parcel of land for public use; many times in the absence of a title deed, public institutions have lost land to fraudsters. That is what we are seeking to address in this Bill.

Currently, public land and land set aside for public purposes by land-buying companies continue to be grabbed by private persons because there are no certificates of title deed issued for that land. Therefore, this Bill seeks to provide for the registration of public land.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

You know the issues even around our primary schools, especially in areas where land is of high value, including urban towns like Nairobi and many other cities, public institutions continue to lose land because of the lack of legal provisions to do that. Therefore, the issuance of legal certificates to these public institutions will be crucial towards curbing unauthorized land grabbing and illegal occupation.

Occupation is a big issue. You remember late last year or early this year, there was an issue around Mavoko and Athi River. Many of those public lands, including that of East African Portland Cement (EAPC) and National Social Security Fund (NSSF) continue to fall victim to this kind of game, where they dedicate portions of their land knowing, in future, if they do developments, the people who live there will need public utilities like hospitals and schools. However, because the parcel of land that they set aside is not registered to any public institution, that land is grabbed and the dispute continues.

Yesterday I saw something in the news on NSSF land. They have become even more advanced to the point that they even involve the police to provide security to that particular parcel of land. They are enticed by being told to help themselves out as well. Together, they team up with fraudsters and the public loses land.

Furthermore, when you establish a system where land certificates are issued to public institutions once the land is owned, we enhance the legitimacy of land transactions involving public land.

Ultimately, the proposed Bill will not only protect the integrity of public land, but also pave the way for responsible utilization of lease lands for the benefit of society as a whole. For example, in a land that has been registered to a school, it will be impossible for somebody to cheekily register some quasi-public institution, as is normally the case.

Normally, people begin something like a church or other institutions that appear to be benefiting the public, but actually are used for private benefit.

Once you register this title in the name of a public institution, it becomes impossible for somebody to go ahead and use that particular land for any purpose other than what it was meant to achieve, hence, the importance of this Bill.

To the specifics of this Bill, Clause 1 is simply about the title of the Land (Amendment) Bill (National Assembly Bills No.40 of 2022).

Clause 2 provides for the amendment of Section 2 of the Principal Act by inserting a new definition of registrar to have the meaning assigned to it under Section 2 of the Land Registration Act, 2021, which we passed here in 2021.

Clause 3 of the Bill proposes to amend Section 12 of the principal Act by inserting the following new sub-sections immediately after sub-section (12) which is now sub-section (13) and it reads –

“a public body or institution shall apply to the Registrar for registration of public land allocated by the Commission in the prescribed form.”

Mr. Deputy Speaker, Sir, you provide the prescribed form for registering this public land in the name of the public institution either for present or future use. Many institutions such as the University of Nairobi had land disputes.

Kenyatta University had land disputes with the new Kenyatta University Teaching and Referral and Research Hospital (KUTRRH). There were allegations and counter allegations of who the intended beneficiaries of that land would be.

New Clause 14 provides that-

“The Registrar shall register the public land allocated to a public body or an institution by the Commission”.

It places the mandate on the registrar to actually do that registration.

Lastly, Clause 15 states –

“Pursuant to Section 58 and paragraph 7 of the Third Schedule to the Physical and Land Use Planning Act of 2019, the Registrar shall register the land set aside by persons or a land buying company for public purpose consequent upon proposed development.”

Mr. Deputy Speaker, Sir, it is important to specify. Clause 16 states-

“Upon the registration of land under sub-section (14) and (15) the Registrar will then issue the certificate title-

(a) in the case of an incorporated public entity the certificate shall be in the name of that entity.”

If that public entity is already registered.

(b) “in the case of an unincorporated public entity, the Cabinet Secretary for National Treasury as the trustee.”

That is very important because in many developments the setting aside of public land for future public use is normally futuristic. Out of the citizens’ goodwill, they dedicate a certain portion of land and state that in future they intend to develop it into a university, college, or a playground for young children. It is important that this is registered.

Mr. Deputy Speaker, Sir, I do not know if I am being overly creative, but I have since seen a dispute where residents of a private developments have sued the developer on account of provision for public utility during the purchase of apartments or house from the approved development plan such as a playground, hospital or nursery.

As it is often the case, that developer changes their mind once the residents move in. Ideally, since the residents have no recourse in law, and they do not own that piece of land--

(Sen. Methu spoke off record)

The Deputy Speaker (Sen. Kathuri): Pardon me, Senate Majority Leader; I am lost. Are there two Members who are moving the Bill at the same time?

The Senate Majority Leader (Sen. Cheruiyot): Why?

The Deputy Speaker (Sen. Kathuri): I can hear two voices. One is from Sen. Methu and the other from yourself. Who is moving the Bill?

Proceed, Sen. Cheruiyot.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Deputy Speaker, Sir, Nyandarua County is famous for sending very intelligent old men to the Senate. This is the first time they have sent a young man---

(An hon. Member spoke off record)

I did not intend to say that, but the young man will learn that you do not speak when the Senate Majority Leader is moving a Bill, particularly one that he is supposed to second yet he is coming in shortly.

Mr. Deputy Speaker, Sir, with the provisions of the New Clause 16, if you are a member of the public and have bought into a private development and the developer has set aside land either to dupe you, or having it set aside for use, this provision of the law can be cited. It will ensure that the private developer is actually registered for the intended good of that private development. This is not only to public institutions.

Since there is no registered resident's association, you will have the Cabinet Secretary for National Treasury as a trustee. That particular parcel of land will be set aside.

I have seen disputes where residents take up arms and question why the developer has changed his mind, yet, when they bought the development they were assured of playgrounds for the children. Unfortunately, because of the absence of this law, you find that the residents have no proper recourse in law. This will cease being the case after we enact this Bill.

In the case of a county government where land is being set aside per se for a facility such as a dispensary, it will be in the name of the county government.

Mr. Deputy Speaker, Sir, with those remarks, I beg to Move and request the very intelligent - but sometimes distracted - Senator of Nyandarua County, Sen. Methu, to second.

The Deputy Speaker (Sen. Kathuri): Sen. Methu, proceed.

Sen. Methu: Mr. Deputy Speaker, Sir, as I rise to second this Bill, allow me to, first, make an observation on two of our very senior legislators in this House; the Senator for Tana River County, Sen. Mungatana and the Senator for Kakamega County, Sen. (Dr.) Khalwale, who was a parliamentarian when I was a primary school child.

The two legislators take their legislative work very seriously. Rarely will you miss the face of Sen. (Dr.) Khalwale sitting here from 2.30 p.m. to 6.30 p.m. everyday. It is the same case for the Senator for Tana River County.

(Applause)

I see the Senator of Kiambu County is a bit excited. He wants me to include him in that list. Anyway, because I am cut from the cloth of the truthful men, I will hold back including him in that particular list. We are learning from the best.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

I understand the reason I finished primary school, went to high school and university and still found you in this House. You have not left because you take your work seriously.

(Sen. Orwoba spoke off record)

I rise to second this Bill that has been brought by the Senate Majority Leader.

I am being distracted by the Senator for Kisii County, Sen. Orwoba, who is now pushing that it is now time for the Senator for Kakamega County to serve his people in other positions such as Governor. That is up to him. He will make that choice right time. He had attempted it sometime back, but many other things happened.

The Deputy Speaker (Sen. Kathuri): Can you go ahead and second the Bill.

Sen. Methu: Thank you, Mr. Deputy Speaker, Sir, for your guidance. You are also a person we look up to since you are also serving your third term. If my calculations are right, you started serving in 2013, when I was a student. You are in that category of people who keep serving this nation.

The purpose and intent of this Bill, as has been elucidated by the Senate Majority Leader, is to ensure that all our public land is registered in the name of the institutions upon which this public land has been granted.

As the Chairman of the Standing Committee on Land, Environment and Natural Resources, I see the importance of this Bill once it is processed and passed by this House because 60 or 70 per cent of all the Petitions or Statements that are solved by members of this Senate from members of the public always have a question on an intent of grabbed land or public utility.

Mr. Deputy Speaker, Sir, this morning, we were dealing with the issue of Siany Wetland in Nyamira County, where some people have made an intention of grabbing it. If a public utility has been given ownership documents to land, it will bring a cure to the perpetual grabbing of public land.

The way public utilities are wired makes sure the leadership keeps changing. Today, the head teacher of a certain primary school will be head teacher of another. The board of management of a certain hospital will not be there tomorrow. The Governor of this county will not be there after one or two terms.

The leadership of facilities that hold public utilities keeps changing. If there is no proper documentation on the land that they own, it then breeds root to grabbing of this particular land.

Mr. Deputy Speaker, Sir, it is the case for Magomano Primary School that we are doing a petition for. Initially, the first mutation of the maps that we have had 28 acres. However, somebody else has produced ownership documents and has left the primary school with 14 acres. We are almost resigning to fate because the primary school does not have documents while the private person has the documents.

After the National Land Commission (NLC) has granted you land then, the second process and matter that should follow is processing the documentation of that particular utility.

There is something else that has been the intent of this particular Bill. I am sure the Senator for Kiambu County will be very interested in this particular conversation; the dispute that you see in the Tatu City Development structure is that; for the 5,000-acre parcel of land, there was an intention to have 406 acres of it forfeited as part of three primary schools and other utilities in that particular development.

I think, of the initial 5,000 acres, 406 acres were supposed to go for public use. However, over time and as the value of that land grows, the developer keeps reducing that land. I know the Senator for Kiambu County would have better details on this, but I hear it is now less than 100 acres.

Mr. Deputy Speaker, Sir, you can imagine a person who has developed 5,000 acres can only forfeit 100 acres. If this law had been passed then, once they took this plan to the county government for approval with the 406 acres, an ownership document would have been produced in regard to these 406 acres for public utilities.

It would have been in the name of the trustee of the Cabinet Secretary for National Treasury because that position will always be there. It was there in 2013 when that plan was designed; it is still there today and will be there every day. So, had this document been produced in this regard, then we would not have the problem that we are having now.

Finally, there is the issue of legitimacy. There is no point in a public utility to keep saying that they own a certain amount of acres of land yet they have no documents to show that it is theirs legitimately. They won it legitimately.

I think the biggest chunk of land in Kenya is owned by the Government. However, without an ownership document, where is the legitimacy that they own this particular land? So, with this and since this is a very straightforward matter, I wish to second.

The Deputy Speaker (Sen. Kathuri): Thank you. You second and sit down, you do not move on to second.

(Question proposed)

I can see several Senators are ready to contribute. We will start with Sen. Chute.

Sen. Chute: Thank you, Mr. Deputy Speaker, Sir. I want to contribute to this Amendment Bill.

If you look at clauses No.13 and 14, they speak about the same thing. Clause 13 says;

“a public body or institution shall apply to the registrar for the registration of public land allocated by the Commission in the prescribed form”.

Clause 14 is vice versa, it says;

“The registrar shall register public land allocated to a public body or institution by the Commission”.

Mr. Deputy Speaker, on many occasions, I have seen land buyers or owners subdividing plots into smaller units. However, before they get the approval, they must have a parcel of land allocated for use by a public facility.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Many years ago, in South C, for example, they left some land for public utility when they subdivided. After some years, all the title deeds were given to the land owners and while one for the public utility was left without registration; it was not registered to anybody. After some years, someone will come and claim, register and sell it or develop some units of houses.

What this Amendment Bill is trying to do is ensure that once you subdivide a particular piece of land, first, you register the piece for public utility. This will make sure that that land is preserved for the purpose it was intended for.

If you look at mosques, for example, a land owner can subdivide land for his children or other relatives. Out of it, he will demarcate some part of it for a mosque. On many occasions, after that *mzee* has gone, children will come and even claim that land. If that land is registered as a mosque, a *madrassa* or any public utility space, it will deter anybody who will come to claim that land.

Mr. Deputy Speaker, Sir, there is something very important in this Bill. Clause 15 says;

“Pursuant to Section 58, paragraph 7 of the Third Schedule to the Physical Land Use Planning, 2019, the registrar shall register land set aside by persons or a land-buying company for a public purpose, consequent upon proposed development”.

Emphasis should be put in place that before anything happens or subdivision is approved, that land should be kept aside and registered in the name of the particular organisation. Look at how it was meant to be done in Clause 16 which says:

“Upon registration of land under subsection 14 and 15, the Registrar shall issue a certificate of title”.

This is very important. In the case of an incorporated public entity, the certificate of title shall be issued in the name of the entity including mosques, churches, schools and any other institution that has been given this land.

Part (b) says;

“In the case of an incorporated public entity, the Cabinet Secretary to the National Treasury shall, as trustee, register this company under that trustee.”

This is very important, but we need to ensure that, yes, the land is registered under the National Treasury as a trustee. However, if it can be done, then we need to add another amendment and say that, that land is not for resale because it is meant for a particular purpose.

If it is meant for a hospital, it should remain for hospital. If it is meant for a school, it should remain for a school. It must be used for the purpose it was kept aside for. In the case of (c), a county government should keep the land register as a trustee.

Similarly, the issue of registering only is not important. For example, if a governor leaves office, another governor can come and make excuses to register land under other purposes. They may reallocate or subdivide and sell it to other people. I will give you a good example. There was land in Marsabit that was allocated to the Government where houses were built in early 1960s. That land was subdivided and the houses allocated to individuals. I have a statement in that regard. I am waiting for correspondence from the Committee on Land, Environment and Natural Resources. To say that it will be registered under a trustee is not enough.

Looking at this amendment, if it is under a particular trustee, such as county government or the National Treasury, they must be curtailed such that the land in question should not be used for any other purpose, except for what it was designed for.

Mr. Deputy Speaker, Sir, in this particular amendment, there must be a way in which all Government land should be registered. If it is a county government, it must be registered under the county government, so that it can be preserved not only for now, but also for posterity. After we leave this world, a new generation will come. If the purpose why land was preserved is not indicated, anybody can do whatever they want.

Finally, the issue of public and community land comes under the same issue. Today, public and community pieces of land are being grabbed. There is a delay in registering community land in Marsabit. Lake Turkana Wind Power has taken thousands of acres of community land. This matter is before the court which has given direction on how this dispute can be resolved.

The Attorney-General was given the mandate to reconcile the community and Lake Turkana Wind Power. However, Lake Turkana Wind Power is deliberately trying to delay the process. They are incorporating some Members of Parliament (MPs) and neglecting others. They are using those methods to delay the court process.

Mr. Deputy Speaker, Sir, in support of this amendment, let us keep both our public and community land under very strict regulations, so that nobody comes and do whatever they want if a certain piece of land is not registered.

I beg to support.

The Deputy Speaker (Sen. Kathuri): Thank you. Proceed, Sen. Mungatana.

Sen. Mungatana, MGH: Mr. Deputy Speaker, Sir, thank you for the opportunity to also make my contribution to this debate. From the outset, I am very happy because I have lived long enough to start seeing the implementation of the Ndung'u Land Commission Report.

This is a very important Bill. For those who lived in our times, you will remember that the Government released a report sometimes in 2004 that stated that about 200,000 land titles had been issued irregularly. It was the concept of land grabbing that was blamed for that process.

What is land grabbing? This is the alienation of public land for private entities like corporations or individuals. Land that was meant for public utilities was taken by individuals whom in those days we used to call people who are thirsty for making quick money.

People would go to the Ministry of Lands, Public Works, Housing and Urban Development to investigate areas that were free. They would then use processes within the

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Ministry to quickly get land allocated to them before selling it at a profit. Someone would be walking today, tomorrow, they are driving and they buy a mansion the next day because of land grabbing.

Mr. Deputy Speaker, Sir, land grabbing is one of the worst injustices that has occurred in this country. In the Constitution of Kenya 2010 and Sessional Paper No.3 of 2009 on National Land Policy, the Government recommended that this is one issue we need to deal with as fast as possible.

The phenomenon of land grabbing became a very serious issue during 1990s. It became very pronounced and such a thorny issue that greatly contributed to serious instabilities in the political circles and during election cycles. There were land clashes in 1992. There were equally some land clashes in 1997.

Every time people went to an election and one side or the other lost, this issue would be played out to the public because it is emotional. It is like a wound that has not healed. The same thing was being hyped in 2002, so that people become angry at the Government.

In the coast region, for example, many people feel that successive governments have not dealt with land issues as they should. Many people are bitter because they are squatting on land that was meant to be theirs.

If you are not educated on the process of alienation of land for your community or you as an individual, then somebody from Nairobi or elsewhere comes and tells you that that title is theirs. They do not come just like that, but with police, goons and whoever is available to assist them.

We have suffered a lot at the coast because of alienation of public land. People are living in communities that do not have titles. You just hear that a certain company has alienated 2,000 acres of your land.

To date, I am struggling with that problem in Hurara Area in Tana River County where many people are living, but they cannot get titles because a certain individual registered a company, hid under it and got over 3,000 acres of land near the beach. People have been living there, but they cannot register, just to discover that someone else has that land registered in the name of a company.

Mr. Deputy Speaker, Sir, going back to history, in 2022 because of the pressure and everything, the Government in response to what was happening at that time decided to set up a Land Commission to identify those people who are benefiting from illegal or irregular land allocations.

Although many people talk of Ndung'u, they do not know who Mr. Ndung'u was. Mr. Ndung'u was a very prominent and convincing lawyer in our days when we were younger. In those days, we used to know that if Mr. Ndung'u prepares a convincing document, then it must be correct.

The pick of that topnotch lawyer to Chair this Commission on land was correct. He did a fantastic job, but when the beneficiaries were named; when he recommended the legal and policy steps that should be taken to correct the situation; he was threatened and was told many things. He concluded the exercise in two years. From 2002 to June 2004. He finished that report and handed it over to the authorities.

Mr. Deputy Speaker, Sir, to date, that report has not been implemented. Some of the greatest beneficiaries of grabbing public land have been people in Government. Some

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

of them are in our league and some are even still holding public offices to date. They knew that if this report became public, then their political careers would be destroyed and they would lose some of their major properties. Why? Mr. Ndung'u recommended two very important rules as a general way to solve this problem.

Mr. Ndung'u said that we should revoke these titles where the public interest outweighs the private interest of that individual. That means, if, for example, that individual or corporation grabbed that land, but has not invested anything much and it was supposed to be, maybe, a place for a school, a stadium or a hospital, he recommended where the public interest outweighs the private development, then the title should be revoked immediately and that person loses that parcel of land.

If someone took very huge parcels of land that a college was supposed to be built and put up his own house, a few animals there and is doing some agriculture, then the public interest in that land still outweighs the private development, then that land revert to the State. This is one rule that Mr. Ndung'u recommended in his report.

The second rule is that "if the private development of the irregularly obtained land outweighs the public interest, then he should pay the market value for that property that he irregularly allocated to himself or regularly obtained."

This means, that if that individual, for example, was allocated a piece of land at almost absolutely paying nothing and it was set aside for a college, and that college was never developed, instead he irregularly acquired it, set up a beautiful hospital, that is now treating the public and the cost-benefit analysis of destroying that hospital as opposed to surrendering that plot of land is too high, then in that case, the private development outweighs public interest. He is supposed to pay to the county government or in those days to the municipality the fair value of that land.

It was not easy to implement the recommendations of Mr. Ndung'u. That is why that report has remained inside and unimplemented to date. So many years ago from 2004, we have lived through all these. It is now 20 years. He completed his report in June, 2004. It has remained unimplemented because of all the repercussions it would have.

Today, there is some form of semblance of having something being done. Although this land Amendment Bill that we are debating today is not dealing with the Ndung'u Report, it says that going forward; we will not have public land available for alienation.

On the other hand, anytime there is a development, for example, land adjudication, the private land that will be given or alienated to the people, be it for the cemetery, the stadium or places of worship, it will be issued with a title deed and nobody can alienate that piece of land.

It may not be an implementation of the Ndung'u Report, but it is some step forward. It is not calling for title revocation as the Ndung'u Report had recommended in a very radical way. However, it is saying that going forward, all developments that we will have, must have areas that are specifically set aside for the public utility.

We are now in an age where people are always talking about living a quality life and in an environment that is healthy even for our population. If an estate is being created or a development is being done, the open spaces will be registered and a title deed issued so that those people, who are living in those areas through this Land Amendment Act, will

be guaranteed that the spaces that have been created for purposes of public use will not be taken away.

We are saying that in areas such as Tana River where we are still struggling with getting title deeds, through this Land Amendment Act, people will not be crowded or forced to live in developments where it will shortly become a slum, as there are no spaces for people to live in relaxation and enjoy.

Mr. Deputy Speaker, Sir, in areas such as our place in Tana River County, this Land Amendment Act will be tremendously useful. We, for example, know that one of the things that even the officials in the Ministry of Lands, Public Works, Housing and Urban Development and this goes both to county governments and to the national Government, have always done is to target these public spaces. They will do the adjudication, but they know that place has been left as a place for the market.

Deep down their minds, they will come back and reallocate the same parcels of land for their own personal uses.

Mr. Deputy Speaker, Sir, I believe that because we are passing this law, it will be very useful, particularly to a county like mine which is still undergoing the processes of land adjudication. I need to say this, because we are debating land matters, that there has been very skewed allocations of resources towards development of some of our areas. You will find to date that the President of the Republic of Kenya would go to neighbouring counties in the coast and other places and issue title deeds.

In Tana River County, we neighbour Tharaka-Nithi, Garissa, Kilifi and Lamu counties. You will find that people are being given titles in those areas. However, Tana River County is not on the list for being given title deeds. Money is being used to purchase land for people to be settled in other areas, but this is not being done in our county.

It is not because the Governor, the Senator, the Women Representative and the Members of Parliament have not spoken about these things. We have had meetings with leaders and the National Land Commission (NLC). You will hear that resources are being allocated. However, when you come to the budget lines for Tana River County, you find it is not there. We have made proposals, for example, that our people should move to higher grounds because of the flooding.

We have made proposals that land be purchased from ranches or areas that have title deeds so that our people can be settled. That is not possible because we are told there are no funds.

It is very bad when you go to neighbouring counties and you hear they have given 50,000 title deeds to their residents. It is the same NLC and Ministry of Lands, Public Works, Housing and Urban Development that belongs to Kenya. In one county, they are giving 50,000 titles. However, in Tana River County, there are no title deeds being given.

Every time, they give us excuses. It is time that there is fairness in allocation of resources, particularly in the Ministry of Lands, Public Works, Housing and Urban Development so that land is adjudicated and allocated to the people of Tana River County.

I was listening to some presentation in the Senate Standing Committee on Energy. When electricity is passing around the land for people in Kajiado County and other areas, where people have huge tracts of land like 100 acres or 200 acres, they are paid the amount of money for wayleaves and people become very wealthy. They are enjoying because they

have title deeds. However, in our place, they are paid very minimal amounts because they do not have title deeds

Mr. Deputy Speaker, Sir, I want to use the Floor of the Senate to appeal to the new Cabinet Secretary, who will be approved by the National Assembly, that when you come there, please, consider areas that have a problem with title deeds and have traditionally been ignored in terms of resource allocation. We need fairness in this country and it begins by giving this allotment to the people who own that land.

Tana River County is enough. We are only 379,000 as per the last census, in more than 37,000 square kilometres. It is possible for every one of us to have 100 acres if this land is properly alienated so that people can decide what they want to do with their title deeds. However, the national Government and the NLC have not given us the kind of resources that is required.

If this is not done in good time, even places that we have dedicated for farming, community land, animal corridors, wildlife corridors and so on, will still be grabbed by people who come from outside because they do not live there. Therefore, they do not know that the path was dedicated for elephants or domestic animals use. When they come to grab, they put a fence around and our people end up suffering. Even land that we all know is a public utility and is supposed to be used when it is a dry season, somebody just comes and fences it off.

I am standing to support the Land (Amendment) Bill (National Assembly Bills No.40 of 2022). It is a good Bill. We should give title deeds to areas that are public land. However, I am using the Floor of the Senate to appeal to the new Cabinet Secretary and the NLC to deal with the matters that are from Tana River County. They should allocate resources to deal with the problem of lack of titling in Tana River County. They should also deal with the land injustices in Tana River County.

The NLC came to Tana River County. They listened to us and told us that they were make a decision. They came back to Nairobi and we never heard from them. They told us they were coming to Tana River County, but they did not, but went to Malindi. They did not give a decision. So, people are always left in tenterhooks. In the meantime, you will see people from upcountry or Nairobi trying to allocate land to themselves.

Mr. Deputy Speaker, Sir, I use the Floor of this Senate to appeal to the NLC and the new Cabinet Secretary for Land, Environment and Natural Resources, to be fair to the people of Tana River. Let us not be treated like second-class citizens. May justice be our shield and defender in this country. To be just is to be fair to the people of counties such as Tana River County.

Otherwise, this is a brilliant piece of legislation. I appeal to every Member of the Senate who will speak to it to support it because of the history I have talked about and the reality of where we are going in future. We need open spaces. Otherwise, Nairobi will become a big white slum. There will be slums downhill and uphill, if we do not give certificate of land to areas that are supposed to be for public utilities.

Mr. Deputy Speaker, Sir, I support this Bill. I thank you.

(Applause)

The Deputy Speaker (Sen. Kathuri): Thank you. Sen. Thangw'a, proceed.

Sen. Thangw'a: Thank you very much, Mr. Deputy Speaker, Sir. I also rise to support the Land (Amendment) Bill (National Assembly Bills No.40 of 2022). It has been well explained by my friend, Sen. Mungatana, and for sure, it brings a lot of good things that have been missing for decades.

In the morning, we were talking about the preservation of Siany Wetland in Nyamira County. If this law was there, we could not be talking about this issue today because the County Government of Nyamira could have their title deeds. There could be no conflict between the County Government of Nyamira and the Kenya National Police or even the community when it comes to the ownership of Siany wetland.

When we talk about registration of public land, Sen. Methu mentioned the issues of Tatu City. However, I would like to tell him to leave the matters of Kiambu County to me because I understand what is happening there.

Mr. Deputy Speaker, Sir, if this law was in place when the Tatu City project began, we could not be having the problems we are having today; where people are soliciting land from Tatu City and Tatu City is refusing to give land to the county government. This problem could have been solved within the first government of devolution because this land has been there.

What has been happening is that by the time a governor gives approvals, we all know what happens. Another governor comes in, finds that the other one had approved halfway and says that for me to complete, you have to do this and that. That is why there is a problem. That is why Tatu City decided to speak because they have lost a lot of land to people purporting to assist them when it comes to registration of that city, development approvals and building approvals.

Mr. Deputy Speaker, Sir, to cure this is why we have this Bill and this amendment, so that before you get any approval, you have to surrender a certain parcel of land, pursuant to the Physical and Land Use Planning Act, 2019 and the Land Act, 2012. You have to surrender public land for public utilities, schools and stadia.

If this happened at Tatu City then, today, we would be talking about the county government developing that kind of land. However, because there is no transparency and accountability, people say, just give me one acre here and I will approve for you. Since there are no titles, the land continues being used to bribe those in power so that they can give them approvals for their buildings.

Mr. Deputy Speaker, Sir, we are in 2024. Over 2,000 years ago, in China during the Qin Dynasty, the First Emperor of China, Qin Shi Huang, came up with a plan on land subdivision. Every land was subdivided into nine plots. The outer eight plots would be given to individuals to farm and cultivate, but the middle one was used for collective responsibility. The whole community would cultivate that farm and the produce they would be taken by the lords, in today's language, the government.

If someone over 2,000 years ago had a plan on how to use land and right now, we are in 2024, but we have not reached there yet. I am happy that we have this law that will impact on how we utilize land use. As Sen. Mungatana has said, that is the implementation of the Ndung'u Report. It is also the implementation of Vision 2030.

This Vision promoted sustainable land use and management practices that are crucial to natural development. I wish I can be allowed to bring an amendment in the near future when we get to the Committee Stage. We are talking about private entities that are bringing development projects within a certain part of a county and they are supposed to surrender a certain percentage of that land to the Government. Before the approval, they are supposed to register that land and that title deed is given to the county government.

Let us do it in reverse. When the Government comes to build a road or a dam, they take private land and use it to do government projects and yet, they do not compensate those people in the first instance. I believe we should also do it here within this amendment that before the Government takes any private land, they must compensate for it.

Mr. Deputy Speaker, Sir, as I speak here, the national Government owes the people of Gatundu North and Kamenu over Kshs 1.3 billion in compensation. The Government of Kenya through the Kenya National Highways Authority (KeNHA) owe the people of Gitaru, Kabete and Wangige, hundreds of millions of shillings from the land they took when they were building a bypass. So, what is good for them should be good for us. If a private developer is giving you that land instantly and you get a title instantly, you should as well compensate them instantly whenever you take their land.

This Bill is enhancing land management, streamlining registration processes, simplifying processes and reducing bureaucracy. As we do this, I wish to urge the new Cabinet Secretary who will be taking over this docket to think about technology in doing so and block chains. This is the third time I am bringing the issue of block chains here.

When block-chains are mentioned, many people think about cryptocurrency or world coins, but think of block-chains as a technology that will enhance the registration processes. If I was to explain in layman's language, block-chains would bring transparency, automation, decentralization and accessibility.

A block-chain is like going to the supermarket today and you do shopping worth whatever amount and the cashier gives you a receipt, before you leave the supermarket, that receipt is sent to your wife, children and everybody in the village. So, by the time you leave the supermarket, everyone knows what you have bought.

A block-chain is exactly that. In Kenya, we used it without knowing. During the elections of 2022, we used block-chains though manually and without knowing. It was Form 34A. When the Presidential vote was counted, it was taped on the door of every polling station and everyone took a photo.

Mr. Deputy Speaker, Sir, you could not manufacture any other number because everyone had taken a picture, it was put in the system and downloaded. For you to manufacture a new Form 34A, you needed to collect all of them from Kenya, but you could not do that. That is block-chain.

Mr. Deputy Speaker, Sir, if you were to introduce a block-chain to the land registration processes, it would be very transparent. Right now, I would be able to know how many acres you own. Would you be worried because you bought it well and through the right channels? We would want to know how many pieces of land, plots or acreage the county governments of Kiambu, Nyamira, Meru, Taita Taveta or even Kakamega own. After we pass this legislation, we should come up with that other law that will enhance this transparency because it is long overdue.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

I just gave an example that this used to happen over 2,000 years ago in China when there was no technology. I am the Chairman of the Committee on Roads, Transportation and Housing. We have dealt with housing projects, the Affordable Housing Bill and we even have a Petition from the people of Nairobi from the various Nairobi Estates. They are about 15 of them – Jericho, Maringo, California, Kariobangi and all of them.

The Petition is on how the County Government of Nairobi has planned to re-develop these estates. They are calling it the regeneration of these estates. When the Governor of Nairobi appeared before us, we asked him whether he has the titles for all these estates. He did not have any.

It is good that the residents of these estates are agreeing that the land belongs to the county, but the county cannot produce any document to prove that. It is only that the residents of these estates are honest. They agreed that this land belonged to the county. However, as much as it belonged to the county, it even belonged to them. They were born there.

They told him: “We were born here. We should be considered. We should have some houses when you build new houses here.” I agree with them. So, this piece of legislation will give the county governments and Government institutions the power to have their piece of land that has been surrendered by any developer the moment that happened.

The communities in which this piece of land is surrendered to the Government or the county governments must always be consulted because people will be afraid. Yes, they have a posh, nice gated community, but they are afraid that the county government will take that piece of land and probably do something contrary to what they would want. I am telling them not to worry because no Government should come and build something within your area without you being consulted. You will be consulted. There will be public participation.

So, if a Government wants to build an industry in your area and you think that instead of bringing development, probably people will start complaining of smells and all that, you can say no. The Government will not do so.

So, I thank the Senate Majority Leader for bringing this Bill. I ask every other Senator to support it.

In conclusion, we should include the land with forests to also have title deeds. We are only told that is a forest and because it has many trees, you think it belongs to the Government. However, in the middle of that forest, things are happening. All forests are gazetted and known to belong to the Government. However, they should also have land titles for the Government to know that is a piece of land.

This happened even before this Bill came here. Some departments were enforcing this law in absentia. I can give you an example of the Kenya Police. If you give them land to build a police station or a police post, they cannot take that piece of land until you give them a title deed. They say we cannot put an infrastructure of a police post until you give us a land title. You might put a lot of money into development for that land, and then the person who gave you that land changes his mind.

Why did we not use that in land subdivision and counties could have just come up with this law? However, I am happy we have brought the cure. Now it is for every

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

developer to take the dosage that is prescribed by this law. Surrender the land for public utilities to the relevant county government.

Thank you, very much, Mr. Deputy Speaker, Sir. I support it.

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

The Deputy Speaker (Sen. Kathuri): Yes, Sen. (Dr.) Bonnie Khalwale?

ADJOURNMENT OF DEBATE PURSUANT TO STANDING ORDER 110(1)

Sen. (Dr.) Khalwale: Mr. Deputy Speaker, Sir, pursuant to Standing Order No. 110(1), I beg to move the debate on the Land (Amendment) Bill (National Assembly Bills No.40 of 2022) to be now adjourned. This is because we are talking about land which is important, and emotive. So far, we have attracted only three contributions, and many Members, especially those of the Minority side, are held up in a meeting, consulting. So, I would like to give them an opportunity, through your guidance, so that they can contribute to this Bill tomorrow.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kathuri): Sen. Boni, you are right because if any other Member speaks to it, the Mover must reply, and that will be the close of the debate.

(Question put and agreed to)

(The Clerk-at-the-Table consulted with the Deputy Speaker)

So, hon. Senators, looking at the Order Paper, I now defer Orders Nos.8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, and 23.

BILL

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) (NO.2) BILL
(SENATE BILLS NO.52 OF 2023)

(Division)

(Bill deferred)

MOTION**ADOPTION OF REPORT ON SENATE NOMINEES ON BEHALF OF
COUNTY GOVERNMENTS TO THE POSITION OF SRC MEMBER**

THAT, the Senate adopts the Report of the Standing Committee on Finance and Budget on the Senate nominees, on behalf of the county governments, to the position of Member of the Salaries and Remuneration Commission, laid on the Table of the Senate on Tuesday, 23rd July, 2024, and further pursuant to Article 230 (2) (b) (vii) of the Constitution and section 7 (2) of the Salaries and Remuneration Commission Act, recommends Ms. Lynette Washiali Muganda and Mr. Mohamed Aden Abdi to the Cabinet Secretary for the National Treasury and Planning for transmission to His Excellency the President for consideration for appointment to the position of Member of the Salaries and Remuneration Commission.

(Motion deferred)

COMMITTEE OF THE WHOLE

THE GAMBLING CONTROL BILL
(NATIONAL ASSEMBLY BILLS NO.70 OF 2023)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE TEA (AMENDMENT) BILL (SENATE BILLS NO.1 OF 2023)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE MATERNAL, NEWBORN AND CHILD HEALTH BILL
(SENATE BILLS NO.17 OF 2023)

(Committee of the Whole deferred)

COMMITTEE OF THE WHOLE

THE METEOROLOGY BILL (SENATE BILLS NO.45 OF 2023)

(Committee of the Whole deferred)

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

COMMITTEE OF THE WHOLE

THE NATIONAL CONSTRUCTION AUTHORITY (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS No. 59 OF 2022)

(Committee of the Whole deferred)

BILLS

Second Reading

THE LOCAL CONTENT BILL (SENATE
BILLS No.50 OF 2023)

(Bill deferred)

Second Reading

THE WILDLIFE CONSERVATION AND MANAGEMENT
(AMENDMENT) BILL (SENATE BILLS No.46 OF 2023)

(Bill deferred)

Second Reading

THE WILDLIFE CONSERVATION AND MANAGEMENT
(AMENDMENT) BILL (SENATE BILLS No.49 OF 2023)

(Bill deferred)

Second Reading

THE CO-OPERATIVE SOCIETIES (AMENDMENT) BILL
(SENATE BILLS No.53 OF 2023)

(Bill deferred)

Second Reading

THE EARLY CHILDHOOD EDUCATION (AMENDMENT) BILL
(SENATE BILLS No.54 OF 2023)

(Bill deferred)

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

*Second Reading*THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL)
(AMENDMENT) BILL (SENATE BILLS NO.1 OF 2024)*(Bill deferred)***MOTIONS**ADOPTION OF REPORT ON CONSIDERATION OF FINANCIAL
STATEMENTS OF VARIOUS COUNTY EXECUTIVES

THAT, the Senate adopts the Report of the Select Committee on County Public Accounts on its consideration of the Reports of the Auditor General on the Financial Statements of Tharaka Nithi, Homa Bay, Kakamega, Kirinyaga, Makueni, Meru, Bomet, Murang'a, Nandi, Nyamira, Nyeri, Siaya, Vihiga, Wajir and Samburu County Executives for the Financial Year 2019/2020 laid on the Table of the Senate on Tuesday, 5th March, 2024.

*(Motion deferred)*ADOPTION OF REPORT ON CONSIDERATION OF AUDIT
REPORTS OF VARIOUS WATER SERVICE COMPANIES

THAT, the Senate adopts the Reports of the Select Committee on County Public Investments and Special Funds on its consideration of the Audit Reports for the Financial Years 2018/2019 (Volume IV), 2019/2020 (Volume V) and 2020/2021 (Volume VI), for the following Water Service Companies laid on the table of the Senate on Wednesday, 29th May, 2024-

- i) Busia Water and Sewerage Services Company Limited;
- ii) Iten- Tambach Water and Sewerage Company Limited;
- iii) Kirinyaga Water and Sanitation Company Limited;
- iv) Malindi Water and Sewerage Company Limited;
- v) Mandera Water and Sewerage Company Limited;
- vi) Migori Water and Sanitation Company Limited;
- vii) Mombasa Water and Sanitation Company Limited;
- viii) Nanyuki Water and Sanitation Company Limited; and
- ix) Nithi Water and Sanitation Company Limited.

(Motion deferred)

ADJOURNMENT

The Deputy Speaker (Sen. Kathuri): Hon. Senators, the House stands adjourned until tomorrow, Thursday, 1st August, 2024 at 2.30 p.m.

The Senate rose at 5.47 p.m.