

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 24<sup>th</sup> September, 2015

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

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

### PRAYERS

### STATEMENTS

**The Temporary Speaker** (Sen. (Dr.) Machage): We have several statements lined up for delivery to the House today. The first one is from the Chairperson of the Standing Committee on Health.

#### HEALTH STATUS OF CHILDREN MISHANDLED BY MEDICAL STAFF IN BUSIA COUNTY

**Sen. (Prof.) Lesan:** Thank you, Mr. Temporary Speaker, Sir. Yesterday I was directed by the Speaker to give this Statement this afternoon but this is a supplementary question that you had requested. I have just received information that the Statement to the supplementary question is not available as the Cabinet Secretary and all the substantial staff in the Ministry of Health are in New York in a conference and although the Statement is ready, it has not been signed by either the Cabinet Secretary or any of the officers.

Mr. Temporary Speaker, Sir, we do not have this Statement and I ask your indulgence that we give it out as soon as it is signed by the officer, hopefully sometimes next week.

Thank you.

**The Temporary Speaker** (Sen. (Dr.) Machage: Very well! Since the Questioner is on the Chair, I do not want to execute that more. The next one is by the Chairperson on Agriculture, Livestock and Fisheries. Any Member here?

**Sen. Okong'o:** On a point of order Mr. Temporary Speaker, Sir. Although you had ruled on the issue of the first respondent on the question you had raised, did you hear the representative of the Chair say that every Government official is in New York? Does it mean business does not operate when Government officials have left the country?

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, I am sure that I did not say every official in the Ministry of Health but the officials who are substantially senior

enough to sign this Statement. These are the Cabinet Secretary himself and the Principal Secretary in the Ministry of Health. These are the two officers who are legally entitled to sign this Statement which is acceptable to Senate and these are the officers who are not available to do so. I am sure as I said, there is no hindrance, they will be able to sign this Statement as soon as they come back and it will be made available to the House.

Thank you.

**The Temporary Speaker** (Sen. (Dr.) Machage): Actually, even Statements by the Principal Secretaries can be rejected by this House. The Constitution is very clear on this. It is only the Cabinet Secretary who has the mandate to give answers to this House and, indeed, the Ministries should be completely discouraged and even stopped not to send to this House Statements signed by somebody other than the Cabinet Secretary. That is the law.

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, I thought the Government recently committed itself that there is no money to increase salaries for teachers? The Chairperson is confiding in this House that the Government sent a huge delegation to the United States of America. They did not go on foot. The United States of America is not anywhere near Kenya and, therefore, a substantial amount of money must have been spent.

Is the Sen. (Prof.) Lesan in order to tell us what he told us at this time, when we want to save every coin for the sake of the kitty of teachers and other civil servants?

**The Temporary Speaker** (Sen. (Dr.) Machage): Actually it is you who is out of order. The Chairperson just shared information he was privy to. He has no part to play in the dissemination of the activities of the Jubilee Government. I do not think he is aware of any delegation to the United States of America. However, I think you have been overtaken by events because we have a Statement sought by a Member of this House, Sen. (Dr.) Khalwale, which is more detailed than you have put it, on the same issue. Let us wait for that Statement.

Where is the Chairperson of the Committee on Agriculture, Livestock and Fisheries? Did we get a reply to this Statement?

Proceed, Sen. M. Kajwang, you are Member of this Committee.

#### COST OF FERTILIZER FOR TEA FARMERS

**Sen. M. Kajwang:** Mr. Speaker, Sir, the Statement on this matter is not ready. However, I undertake to follow it up and have it issued in the next two weeks.

**The Temporary Speaker** (Sen. (Dr.) Machage): Since precedence has already been set, where Sen. (Prof.) Lesan was ordered by the Chairperson to bring the Statement himself other than the substantive Chairperson and Vice Chairperson, I order you to bring the Statement in seven days.

Where is the Chairperson of the Standing Committee on Legal Affairs and Human Rights?

Proceed, Sen. Mutula Kilonzo Jnr.

STATUS OF PREPAREDNESS OF IEBC  
FOR THE NEXT GENERAL ELECTION

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, Statement No.3 has been put on the Order Paper by mistake. We agreed yesterday that the Standing Committee on Legal Affairs and Human Rights will endeavour to deliver the response on Tuesday. The Independent Electoral and Boundaries Commission (IEBC) gave us several statements in one document. We requested them to separate them. We have requested for that Statement to be delivered on Tuesday.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well, it is so ordered.

Where is the Chairperson of the Standing Committee on Labour and Social Welfare? Is there any Member of that Committee in the House?

Where is the Senate Majority Leader?

**Hon. Senators:** He is in New York!

**The Temporary Speaker** (Sen. (Dr.) Machage): Is he in New York also?

I am disturbed because the Majority side has very few Members. So, who is acting on his behalf? The House must function. If there is nobody acting, Serjeant-at-Arms, look for the Senate Majority Leader and bring him to the House wherever he maybe or somebody to act in that capacity because the House must function. We will go back to that later.

What is it, Sen. M. Kajwang?

**Sen. M. Kajwang:** On a point of order, Mr. Temporary Speaker, Sir. In the English language, there is a word called "absconding" which refers to a situation where a leader or someone gives up a job that they have been given to do. Would I be in order, in light of the fact that the Senate Majority Leader is not here and the President is also not in the country to say that the Jubilee Government has abdicated and absconded duty?

**The Temporary Speaker** (Sen. (Dr.) Machage): Well, I cannot interfere with your opinion. The Chair is not privy to the fact that the President is out of the country neither is he privy to the information that the Senate Majority Leader has absconded. However, let us wait. I have given an order. In a few minutes we will know the truth, but maybe you have a point.

Where is the Chairperson of the Standing Committee on National Security and Foreign Relations? Is any Member of the Committee in the House?

What is it, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Temporary Speaker, Sir. I do not know whether you have noticed that in the Statement being sought, which you have just called out, there is reference to "affected by *boda boda* crime." in my view---

**The Temporary Speaker** (Sen. (Dr.) Machage): Which statement are you referring to?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I am referring to statement (e). It says: "to issue a statement on raising insecurity in Nandi County and other counties affected by *boda boda* crime."

We are the ones under you who arbitrate on national issues, is it right for this statement which attempts to profile our youth who are engaged in a decent way of earning a living by way of riding *boda bodas*; is it right to call it *boda boda* crime? Is there such a thing as *boda boda* crime?

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

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, as much as I may agree with the sentiments of my friend, are we in order to discuss the question even before it has been answered?

**The Temporary Speaker** (Sen. (Dr.) Machage): These are words put to us by the questioner, Sen. Sang. Maybe, as Sen. Kagwe has said, we wait for the answer, listen to how the answer has been framed and see whether the meaning of “*boda boda* crime” really stands to your comment, then we question why it is so.

What is it, Sen. Musila?

**Sen. Musila:** On a point of order, Mr. Temporary Speaker, Sir. I am assuming that you have completed Statement (e). Mine concerns two issues about cash transfers to the elderly, the youth and the disabled. First, you will recall that the Acting Cabinet Secretary for Labour and Social Welfare came here and promised to come back. That was before we went on recess. When we resumed, I asked when the Cabinet Secretary will come here. I was promised that I will be given a date this week.

Secondly, there was the issue of security in Kitui-Tana River border whereby before we went on recess, the Chair ruled that the Cabinet Secretary for Interior and Coordination of National Government would be coming here to meet the Committee of the Whole House to discuss the issues that had been raised since the Chairperson could not give us a satisfactory answer. I am requesting that I get the dates when the Cabinet Secretary for Interior and Coordination of National Government and the Cabinet Secretary for Labour and Social Welfare will also come.

These are very serious matters. The moment this House continues to leave matters like these pending for too long, they will have no meaning because my people at the border have continued to be harassed yet I am not getting any answer.

The House should rise to the occasion and ensure that the Cabinet Secretaries concerned come here and address these issues.

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

**Sen. Obure:** On a point of order, Mr. Temporary Speaker, Sir. It is a follow up on what my colleague, Sen. Musila has said. Five Statements were scheduled to be issued today. Not a single one has been issued. You can also see that the mood in this House is somewhat dull. I do not think that this is the way we will go on transacting our business. Perhaps time has come when, as the leader of this House, you should categorically direct, particularly the committees to do their work.

If there are Cabinet Secretaries or Ministries which are not up to the task, they should come here so that they can face us and we tell them exactly how business should be conducted. I want to register my position that the way we have been this weeks is very unsatisfactory.

**The Temporary Speaker** (Sen. (Dr.) Machage): Your concerns are legitimate. If you listened carefully, the Chair raised this concern, of a House, actually in process without even representation of the Senate Majority Leader. That is a situation that should not be entertained and accepted at all. It is a failure on the part of the concerned persons.

However, I so direct as you prayed. I also direct that the secretariat looks at the HANSARD and gives us the answer to the concerns of Sen. Musila. He should get his communication by Wednesday next week.

What is it, Sen. Kagwe?

**PERSONAL STATEMENT**APPRECIATION TO PARLIAMENT AND  
FRIENDS FOR SUPPORT ON BEREAVEMENT

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, I rise on a point of order in accordance to Standing Order No. 46 to make a short Personal Statement.

On behalf of myself and my family, I want to record my appreciations, deep-felt thanks to Parliament and many friends who came to be with us and condole with us during the funeral of my late father, Kagwe Mutahi.

Mr. Temporary Speaker, Sir, I want to record that the family appreciated the financial support from this House, the moral support of the visit to my house by some Senators here, and for those who personally attended the funeral in Nyeri and by the many prayers that were said for our family by Members of this House in a bi-partisan manner. Indeed, the Speaker himself was at the function and played a role in some of the Master of Ceremony (MC) work that was done. Therefore, we are grateful. The person that I lost was not just my father but also my friend and a lot of friends stood with us. I want to tell this House that we are grateful.

**The Temporary Speaker** (Sen. (Dr.) Machage): I see the Chair of the Standing Committee on Labour and Social Welfare in the House.

*(Sen. Madzayo consulted Sen. M. Kajwang)*

Sen. Madzayo, could you reduce the rituals and listen to me? Look at the last page of your Order Paper titled, appendix and go to number (d). You are required to answer that Statement now.

**STATEMENTS**ACCESS TO FINANCES BY THE YOUTH, WOMEN  
AND PWDS TO EXECUTE TENDERS WON

**Sen. Madzayo:** Mr. Temporary Speaker, Sir, I have the answers ready with me.

**The Temporary Speaker** (Sen. (Dr.) Machage): The questioner, Sen. Chelule is in, so you could go ahead.

**Sen. Madzayo:** This is a Statement sought by the distinguished Sen. Chelule who wanted to know the status of finances to the youth, women and persons with disabilities to execute tenders won. In particular, the Senator sought to be informed on the following two issues:-

(1) Whether the Government is aware that youth, women and persons with disabilities face challenges in executing Government tenders that are won due to lack of collateral required by financial institutions to secure loans.

(2) Provide a comprehensive report on the youth, women and persons with disability who have benefited from *Uwezo* Fund in all the sub-counties.

Mr. Temporary Speaker, Sir, the Committee appreciates the pertinent issues that the Senator raised in the Statement. We are committed to addressing issues raised on

vulnerable groups before the House. We know the extensive nature of the issues that the Senator raised and we have been working closely with the Ministry of Devolution and planning to ensure that a comprehensive response is generated on the matters raised.

However, the issues raised require an integral cooperation to develop a comprehensive response on behalf of the Standing Committee. I kindly request the House to give the Committee two weeks to prepare a comprehensive Statement on the issues raised.

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Madzayo, you said so little with so many words. Actually, you gave the Members of the House expectations of an answer. I am not impressed.

What is the time frame?

**Sen. Madzayo:** Mr. Temporary Speaker, Sir, I have requested for two weeks.

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Chelule, when was this Statement sought?

**Sen. Chelule:** Mr. Temporary Speaker, Sir, I requested for this Statement before we went for our last recess. When we came back on Tuesday, I was promised by one of the Members of that Committee that the report will be ready in one week. It seems like there is a lot of confusion in this Committee because the Chairman is stating that it will be ready in two weeks but on Tuesday I was promised by one of the Members in that Committee that it will be ready in one week.

Since the Statement that I requested needs time because it is a comprehensive report of what he has mentioned about the people who have benefited from *Uwezo* Fund, both the rural and the urban, I think it is reasonable for me to give them time. We need to have that comprehensive report. I will give him the two weeks that he has requested for.

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Machage): What is it Sen. (Prof.) Lonyangapuo?

**Sen. (Prof.) Lonyangapuo:** Mr. Temporary Speaker, Sir, now that the Chairman has given himself more time than what you gave last time, am I not in order to tell him to list the beneficiaries of those categories per county?

**The Temporary Speaker** (Sen. (Dr.) Machage): Wait for the answer and if it will be deficient on your expectations, you will then rise with a question.

Chair, from the HANSARD records that I have, the Statement was sought on 30th July. This is two months but since the questioner does not mind, and she has stated on the HANSARD that you get two weeks, then, make sure that in two weeks' time, the answer is delivered.

**Sen. Omondi:** On a point of order, Mr. Temporary Speaker, Sir. I want to register my disappointment on the way the issues of Statements sought on behalf of the marginalized groups are taken. The matter is very grave and as we take long to respond to these issues, we are not putting into consideration financial and budgeting period. Marginalized groups---

*(Sen. Sang walked in to the Chamber and consulted Sen. Mutula Kilonzo Jnr.)*

**Sen. Omondi:** Mr. Temporary Speaker, Sir, there is a lot of noise. I would like your protection from Sen. Sang.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order Sen. Sang, you have just walked in. We do not make noise here.

**Sen. Omondi:** Mr. Temporary Speaker, Sir, there was loud consultation. I was registering my disappointment in saying that the category of people with disabilities, women and youth are the ones losing on what the Constitution has provided for them. Two weeks adding to two months is too long. I want to register my disappointment because I am not comfortable with the way this Statement---

I want to agree that even if we wait for so long, the manner in which these answers are given to Statements sought, is not---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! I have already ruled on this and so, you should have been careful not to make it a debate.

**Sen. Nabwala:** Mr. Temporary Speaker, Sir, I agree with you and want your direction. My concern is about duration and the way the Statement is going is going to be answered.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. I have noted the concerns of Sen. Godliver and it is right in the HANSARD.

Let me give some guidance. I see a lot of requests here. Sen. Nabwala, are you on a point of order or you want to contribute? What do you want to contribute on?

**Sen. Nabwala:** Mr. Temporary Speaker, Sir, I want to contribute on both.

**The Temporary Speaker** (Sen. (Dr.) Machage): You cannot contribute on both, because there is nothing yet to contribute on.

**Sen. Nabwala:** I am on a point of order, Mr. Temporary Speaker, Sir.

**The Temporary Speaker** (Sen. (Dr.) Machage): What is your point of order? Next time press the right button.

**Sen. Nabwala:** On a point of order, Mr. Temporary Speaker, Sir. Since the Jubilee Government is a digital Government, we do not need to have a delay of six months for us to be able to get the information, unless the chairpersons of these committees are not working. In that case, we should declare a vote of no confidence in them.

*(Applause)*

**The Temporary Speaker** (Sen. (Dr.) Machage): Sen. Lesan, what is your point of Order? Please, press the right button next time.

**Sen. (Prof.) Lesan:** Mr. Temporary Speaker, Sir, I just wanted to emphasize the significance and the importance of getting the answer from the Ministry of Labour, Social Security and Services as urgently as possible, as a consequence of the lots of money that President Obama brought when he came to this country. The youths are currently going through elections to put their officials in place, so that they can access these funds. Therefore, the significance of this answer is very critical, so that we can get the youths to access the funds from the banks.

**The Temporary Speaker** (Sen. (Dr.) Machage): I request the House to observe procedure, although the comments are very important. Since you rose on a point of order, what is not in order? You have to execute your comments properly.

**Sen. Chelule:** On a point of order, Mr. Temporary Speaker, Sir. I mind about this Statement very much. Since I am very much interested in the answers, patience is

important. I hope that the Chairman is taking this matter very seriously. I want him to understand that I am requesting for this Statement for the third time now. I hope that he will deliver the Statement in two weeks' times as he has promised.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. I have already made a ruling on that and so, I do not expect any further comments.

Sen. Leshore, is it on the same issue?

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

**Temporary Speaker** (Sen. (Dr.) Machage): I have already made a ruling.

**Sen. Leshore:** Mr. Temporary Speaker, Sir, you have ruled but I am not against your ruling. I just want to support Sen. Chelule because I know she minds a lot about the young people, the disabled and women. I would like to urge the Chairman and the Ministry of Labour, Social Security and Services to come up quickly with the methods and processes that the youths and people with disabilities can follow to access this money. This is because we get messages and letters from all over especially, from my county Samburu. How are they going to access the money that President Obama brought to Kenya?

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION OF STUDENTS AND TEACHERS FROM KARATINA D.E.B PRIMARY SCHOOL, NYERI COUNTY

**The Temporary Speaker** (Sen. (Dr.) Machage): Hon. Senators, I wish to recognize the presence of students and teachers From Karatina D.E.B primary school from Nyeri County, who are seated in the Public Gallery. In our tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

Thank you.

*(Applause)*

**Sen. Kagwe:** Mr. Temporary Speaker, Sir, first I want to thank you for recognizing the young ladies from my county, specifically from Karatina. We are very happy that you did that. The girls on your left above you are some of the most brilliant Kenyans, waiting to take over the leadership of this country at the appropriate time.

Thank you.

*(Applause)*

**Temporary Speaker** (Sen. (Dr.) Machage): I will give a second chance on the Statements. Where is the Chairperson of the Committee of Agriculture, Livestock and Fisheries? What about the Chairperson of the Standing Committee on Legal Affairs and Human Rights? Where is the Chairperson of the Standing Committee on National Security?

The Deputy Majority Leader, give us some guidance on Statement (e).



## RISING INSECURITY IN COUNTIES

**Sen. Keter:** Thank you Mr. Temporary Speaker, Sir. I do not know where the Chair is. Yesterday, I was told he was out of the country. He must have gone for the prayers. Where is the Vice-Chair? She was here but I do not know---

**Temporary Speaker** (Sen. (Dr.) Machage): Order! I expected you to do better

**Sen. Keter:** Mr. Temporary Speaker, Sir, let me find out from any of the Committee Members and from the Clerks, so that we can answer this question next week.

**Temporary Speaker** (Sen. (Dr.) Machage): Very well. Maybe, what we may have forgotten is that today is *Eid Al-Adha*. As we appreciate the absence of the Committee Chair, we would also want to pass our best wishes. We know he is a devoted Muslim and so is the Vice-Chair. Let us also congratulate them for the special occasion today.

**Sen. Sang:** Mr. Temporary Speaker, Sir, as I agree with you on this particular one, of course, I would have appreciated if the leadership of the Committee would have delegated the same responsibility to a Member of the Committee. This is a Statement that I sought and it has two components. One of the components is the rising insecurity within Kapsabet Town and Mosoriot Trading Center and I would have appreciated a response.

**The Temporary Speaker** (Sen. (Dr.) Machage): Order, Sen. Sang! Whereas I appreciate your concerns, this holiday was communicated to the House yesterday and, therefore, we may not appreciate your comment now. You may do it on Tuesday because your argument does not hold any water. We have already made a comment and it is so ordered. We have even congratulated the two Members in absentia as they celebrate their important holiday. We are not really doing justice. Please, hold your guns until an appropriate time for the same.

*(Sen. Sang stood in his place)*

Do you have another point of order? It should not be on the same subject.

**Sen. Sang:** Mr. Temporary Speaker, Sir, not really on the same subject.

**The Temporary Speaker** (Sen. (Dr.) Machage): I will rule you out of order if it will have any association with the same subject.

**Sen. Sang:** Mr. Temporary Speaker, Sir, after I requested this Statement, an incident occurred in my county in the same town. Thugs broke into the county government offices and stole computers, laptops and gas cylinders. As part of the Statement that I sought, one of the components was the alleged laxity of security officers. You will appreciate that a county Government is manned 24 hours by police officers. However, this is happening in the face of allegations by the public that some police officers are colluding with criminals.

Would I be in order to request that the Deputy Senate Majority Leader, the Senator for Kericho County, gives an undertaking that the Inspector-General (IG) will ensure that there is enhanced security within Kapsabet Town and the affected areas, so that even as we wait for Tuesday, we can be guaranteed of security within Kapsabet Town for the four days before we get to Tuesday?

**Sen. Keter:** Mr. Speaker, Sir, I think it is the duty of the police to provide security for all Kenyans. I do not need to remind the Inspector-General (IG) that there is a special

consideration for Kapsabet Town. It is supposed to be done everywhere in the country. I will undertake to do that.

However, your question was on the rising insecurity and not the laxity of the security officers there. So, ---

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! That was an addendum to his concerns so, it is legitimate.

**Sen. Obure:** On a point of order, Mr. Temporary Speaker, Sir. A Member of this House, in this case, Sen. Sang, has risen to raise very specific concerns about insecurity in his county. He has requested that special attention be given because from what he said, this is apparently a regular menace. He asked that in the intervening period between now and the time that this question will be answered, the Inspector-General (IG) give special attention to the security challenges in that area.

The Deputy Senate Majority Leader is being very casual about it. He has said that it is the work of the police and we expect them to do that. Is he in order?

**The Temporary Speaker** (Sen. (Dr.) Machage): He is completely out of order. The House did not appreciate the casualness with which the Deputy Senate Majority Leader took the issue as raised by Sen. Sang. We know him and his expressions very well. I think we can say that this House has authority to describe his behaviour.

*(Laughter)*

Whereas he may have done that, I think he is a serious man and I think he has listened carefully to what Sen. Obure has said.

Deputy Senate Majority Leader, could you assure the House that you were not casual?

**Sen. Keter:** Mr. Temporary Speaker, Sir, the HANSARD will bail me out.

**The Temporary Speaker** (Sen. (Dr.) Machage): Unfortunately the HANSARD has no eyes.

**Sen. Keter:** Mr. Temporary Speaker, Sir, I said very well that it is the duty of security officers to provide security everywhere in the country. He is particular about Nandi County and other counties. Then, I said: "However, I will endeavour to make sure that the area that he has mentioned will be given consideration." I did not mention but I gave a general overview of what the security officers are supposed to do. Otherwise, everybody will be asking a question about a problem here and there. It is the duty of police officers to do that. I have taken it seriously. You know me very well.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. There is nothing wrong completely, if every Senator here rose on an issue of security.

I want to hear requests for Statements.

#### STATE OF FUNDING FOR SPECIAL NEEDS SCHOOLS

**Sen. Nabwala:** Thank you, Mr. Temporary Speaker, Sir. On 12<sup>th</sup> March, 2015, I sought a Statement from the Chairperson of the Committee on Education on the status of funding for special needs schools. Could the Chairperson tell us – although I cannot see him in the House – the status of funding to these schools?

**The Temporary Speaker** (Sen. (Dr.) Machage): Where is the Chairperson of the Committee on Education or any Member of that Committee?

**Sen. Keter:** Thank you, Mr. Temporary Speaker, Sir. I saw the Chairperson around but he seems not to be here. I will pass the information. I request Sen. Nabwala to bear with us. We will respond to it on Tuesday next week, if it is okay.

**The Temporary Speaker** (Sen. (Dr.) Machage): It is so ordered.

#### MISUSE OF GOVERNMENT VEHICLES

**Sen. (Prof.) Lonyangapuo:** Thank you, Mr. Speaker, Sir. Just before we went on recess, I had requested for a Statement regarding use of Government vehicles at odd hours, particularly in the counties. They said that I would be given a response before the start of the recess but we have now spilled over to the new setting. I am not sure if it was the Committee on Devolution but I am still waiting for the answer.

**The Temporary Speaker** (Sen. (Dr.) Machage): One, it could not have been ordered that it should be given before the start of the recess because that would have meant giving the Statement during the recess, which is not practical. However, I am concerned and the Committee should avail that answer. Which Committee was that?

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, it must be the Committee on Devolution because I saw Sen. Murkomen standing. It was about misuse of Government vehicles beyond working hours.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well. Let the relevant Committee respond to that Statement in seven days.

#### POOR STATE OF MAGADI ROAD

**Sen. Mositet:** Thank you, Mr. Temporary Speaker, Sir. I rise under Standing Order No. 45(2) (a), to request for a Statement on some issues affecting my county. We have a road called C58 as per the classifications, which goes from Nyayo Stadium all the way to Magadi. This road has really been of great concern to the county, because it serves quite a number of people and particularly those of Magadi soda. Quite a number of people have lost their lives and businesses because of the status of the road. The same road has really caused even the people of Nairobi who have been enjoying their *nyama choma* in Olepolos Country Club not to go there.

There are quite some deep valleys where quite a number of vehicles have rolled and I have tried as much as possible to reach the Ministry concerned, and right now the concern of the people is that *El-Nino* rain is just about to fall and because of that, I rise to request through you to direct the Ministry concerned to attend to it so that at least when *El-Nino* comes, our people will not be found in the status they are in.

#### SILTING OF LAKE MAGADI

Still on the same, Lake Magadi is under threat because of what is happening in Mau Forest and also in some parts of Suswa. Whenever it rains, the water run-off just finds itself all the way to Lake Magadi.

Currently, almost an eighth of the lake is silted, and if that continues and particularly with the way it has been said that we are going to have a severe *El-Nino*, then the Lake Magadi we know and its contribution to the economy of this country, the many people who benefit out of that, will be history. I also request the Chair to direct the Ministry of Environment and Natural Resources and the Ministry of Water and Irrigation to take the necessary steps, if possible, to make sure that the run-off will not continue interfering with Lake Magadi.

Thank you.

**The Temporary Speaker** (Sen. (Dr.) Machage): You rose under which Standing Order?

**Sen. Mositet:** Mr. Temporary Speaker, Sir, under Standing Order No. 45 (2) (a). Protect me from the Leader of the Majority. He should be concerned about the sufferings of my people.

**The Temporary Speaker** (Sen. (Dr.) Machage): I thought you were making a statement on Standing Order No. 46 that is why I did not insist on the one hour notice. I want Members to read carefully Standing Order No. 45 and note that requirement. Remember when you make a personal statement like is prescribed by Standing Order Nos. 45 and 46, you are limited also to your prayers because it cannot be like a demand for a Chairperson's statement because there is no discussion. Once you finish, that will be the end of it. It will not be revisited at all. I would request that may be you come back to the House and make a request from the Chairperson a Statement on the same so that you have better answers to the questions you have raised.

**Sen Mositet:** Thank you Mr. Speaker, Sir. In the mean time, because the Senate Leader of Majority is in the House and he heard, he will assist me also to sort that out.

**The Temporary Speaker** (Sen. (Dr.) Machage): No, I will order that the Senate Leader of Majority completely observes the Standing Order. So you are doomed.

BUSINESS FOR THE WEEK COMMENCING  
TUESDAY, 29<sup>TH</sup> SEPTEMBER 2015

**Sen. Keter:** Thank you Mr. Speaker, Sir, I would wish to give a Statement on behalf of the Senate Majority Leader regarding the Business of the Senate for the week commencing 29<sup>th</sup> September, 2015, pursuant to the provisions of Standing Order No. 45.

Hon. Senators, pursuant to the provisions of Standing Order No, 45, this is to present the Senate Business for the coming week.

The Rules and Business Committee (RBC) will meet on Tuesday 29<sup>th</sup> September, 2015 at noon to schedule business of the Senate for the week. Subject to further directions by the Rules and Business Committee, the Senate will continue with business that will not be concluded in today's Order Paper focusing on debates on Bills at the Second Reading and Committee of the Whole stages.

On Wednesday, 30<sup>th</sup> September, 2015, the Senate will continue with business not concluded during Tuesday's sitting and consider the following at the Committee of the Whole;

1. The County Assemblies Services Bill ( Senate Bill No. 27 of 2014),
2. The Universities (Amendment Bill) ( Senate Bill No. 31 of 2014),
3. The Parliamentary Powers and Privileges Bill ( Senate Bill No. 15 of 2014), and;

4. The Tobacco Control Regulations 2014.

The Senate will consider any other business scheduled by the Rules and Business Committee. On Thursday 1<sup>st</sup> October, 2015, the Senate will deliberate on pending Motions and other businesses scheduled by the Rules and Business Committee. Let me take this opportunity to thank senators for their continued support in disposing businesses pending before the Senate, especially Bills.

I hereby lay the Statement at the Table, today, 24<sup>th</sup> September, 2015.

Thank you.

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

**Sen. (Dr.) Khalwale:** On a point of order. Mr. Temporary Speaker, Sir. Listening to the Deputy Leader of Majority, he is outlining the business of the coming week in a “business as usual” manner, and yet he knows that in the minds of all Kenyans especially parents, teachers and children, the closure of schools remains the most important unresolved national issue.

Could he tell the country what the government is going to do in the coming week to unlock this stalemate?

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Sen. (Dr.) Khalwale! You know, sometimes, being too old as a legislator teaches you some behaviors that are not acceptable. He knows how to bend the Standing Orders to fit his situation, but the Chair has noticed that mischief. You know the procedure if you want that subject to be discussed in this House; you know what to do. I do not have to teach you, you are a seasoned legislator in this Parliament. Do it.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I never engage in an altercation with you but all that I was doing, like it is the tradition of this House, we are free to call for certain business to get consideration in the Rules and Business Committee. This is all I was doing.

**The Temporary Speaker** (Sen. (Dr.) Machage): Very well, do it at the right place, at the right time, in the right way, in the right manner and using the right Standing Order. That is all I am trying to tell you.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Speaker, Sir, *hawa wakora watoto wao wako kwa shule---*

**The Temporary Speaker** (Sen. (Dr.) Machage): Order! Sen. (Dr.) Khalwale! Can you withdraw that? Who are you referring to as a *mkora*, and what is the meaning of a *mkora* anyway?

**Sen. (Dr.) Khalwale:** Bwana Spika, naomba msamaha na ningependa kutoa matamshi yangu kwa rekodi ya Seneti.

**The Temporary Speaker** (Sen. (Dr.) Machage): For those who might never know, a *mkora* means a cunning thief.

Next Order!

**BILL***First Reading*

THE COUNTY OUTDOOR ADVERTISING BILL  
(SENATE BILL NO. 11 OF 2015)

*(Order for First Reading Read – Read the First  
Time and ordered to be referred to the  
relevant Committee)*

**The Temporary Speaker** (Sen. (Dr.) Machage: Hon. Senators, This is Parliament week and therefore some Members who were bestowed with some responsibilities are participating in the exercise. For that reason, I defer Order Nos. 9, 10, 11,12,13,14 and 15.

Next order!

**MOTION**

ENACTMENT OF LAW TO ADDRESS  
HISTORICAL LAND INJUSTICES

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I beg to move that:-  
WHEREAS the National Land Commission was established following the enactment of the National Land Commission Act, 2012 to, among others, give effect to the objects and principles of devolved government in land management and administration;

NOTING the principles of land policy as set out in Article 60 of the Constitution including equitable access to land and encouragement of communities to settle land disputes through recognized local community initiatives consistent with the Constitution;

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

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

RECOGNIZING that land ownership and utilization is at the centre of many interpersonal and community conflicts in the country since independence;

ALSO NOTING that Section 15 of the National Land Commission Act mandates the Commission to recommend to Parliament appropriate legislation to provide for investigation and adjudication of claims arising out of historical land injustices for the purposes of Article 67 (2)(e) of the Constitution;

FURTHER NOTING with concern that the envisaged legislation has not been enacted five years after promulgation of the Constitution;

AND NOTING that historical injustices on land matters was among the main justifications for the new Constitution; This Senate urges the National Land Commission

to urgently recommend to the Senate a Bill to address historical land injustices to provide a framework to ensure that land is properly utilized for the economic benefit of the affected communities.

**The Speaker** (Hon. Ethuro): Order Senators. I have to interrupt Sen. Mutula Kilonzo Jnr. to give a Communication.

### COMMUNICATION FROM THE CHAIR

#### REPORT OF THE COMMISSION OF INQUIRY ON THE PETITION SEEKING THE SUSPENSION OF THE COUNTY GOVERNMENT OF MAKUENI COUNTY

**The Speaker** (Hon. Ethuro): I have a Communication to make on the Report of the Commission of Inquiry into the Petition seeking the suspension of the County Government of Makueni County.

You will recall that in the sitting of the Senate held on 15<sup>th</sup> September, 2015, the Senator for Makueni County, Sen. Mutula Kilonzo Jnr., rose on a point of order seeking the directions of the Chair with respect to the tabling of the report of the Commission of Inquiry on the Petition seeking to suspend the County Government of Makueni. The Senator observed that the report of the Commission of Inquiry had been presented to His Excellency the President and that although the report was in the public domain, it had not been forwarded to the Senate for tabling and consideration by the Senate.

The Senator expressed concern that apart from the recommendations of the Commission of Inquiry that the County Government be suspended, there were other recommendations in the report which require legislative intervention by the Senate. The Senator further expressed concern that the report had also raised some audit queries and other discrepancies of financial nature which require the intervention of the Senate in accordance with its oversight mandate provided for under Article 96 of the Constitution.

The Senator stated that the people of Makueni had waited for a year for a solution to the challenges besetting Makueni County and that the decision by His Excellency the President on the matter could not stop the Senate from seeking that the report be tabled in the Senate; not just for the sake of the residents of Makueni County, but also so that the rest of the country would understand the contents of the report. The Senator concluded by requesting the Speaker to give directions and ruling on the tabling of the said report.

In support of the point of order raised by Sen. Mutula Kilonzo Jnr., other Senators, namely; Sen. Billow, Sen. Wangari and Sen. (Dr.) Khalwale underscored that it was in the interest of Makueni County and the entire country that the report be tabled in the Senate so that the Senate would take appropriate action on the recommendations of the report in terms of Article 96 of the Constitution.

Hon. Senators, it is in the public knowledge that on 3<sup>rd</sup> September, 2015, the Commission of Inquiry into the petition seeking the suspension of the County Government of Makueni County submitted its report to His Excellency the President. It is also in the public domain that one of the recommendations of the commission of inquiry was that pursuant to Article 192(2) of the Constitution, the County Government of Makueni be suspended. Article 192(1) of the Constitution says:-

“The President may suspend a county Government –

- a) in an emergency arising out of internal conflict or war; or

b) in any other exceptional circumstances.”

Article 192(2) of the Constitution further provides that:-

“A county government shall not be suspended under clause (1)(b) unless an independent commission of inquiry has investigated allegations against the county government, the President is satisfied that the allegations are justified and the Senate has authorized the suspension.”

The County Governments Act Section 123 sets out the procedure relating to the suspension of a county government. Of particular interest is Section 123(7) which provides that:-

“The commission shall inquire into the matters before it expeditiously and report on the facts and make recommendations to the President”

Section 123(8) further provides that:-

“Upon receipt of the commission’s report and upon finding that justifiable grounds exist for the suspension of a county government; the President shall within seven days forward the report of the recommendations of the commission together with the petition for suspension of the county government to the Speaker of the Senate.”

Hon. Senators, it is evident from my reading of this provisions of the law that where, pursuant to Section 123(8) of the County Governments Act, the President is satisfied that justifiable grounds exist for suspension of a county government, the President is required to forward the report and recommendations of the commission of inquiry as well as the petition for suspension of the county government to the Speaker of the Senate.

Thereafter, in accordance with Section 123(9) of the County Governments Act, the Speaker would cause a Motion for the suspension of the county government to be laid before the Senate for consideration by the Senate.

It is noteworthy that while the County Governments Act sets out the process to be followed, where the President is satisfied that justifiable grounds exist for the suspension of a county government, no procedure is provided to govern scenarios where the President is not satisfied that justifiable reasons exist for the suspension of a county government.

The law as it is presently seems to require no further action on the part of the President where, as is the case with the Petition relating to the County Government of Makueni, the President is not satisfied that justifiable reasons exist for the suspension of a county government. There is no obligation under the law for the President to forward the subject report to the Senate.

Hon. Senators, for the reasons that were cited by Sen. Mutula Kilonzo Jnr. in his point of order, as well as the further reasons advanced by the other hon. Senators who spoke to the matter, this is an area that may require legislative review.

As the hon. Senators noted, the recommendations of the Commission of Inquiry, aside from stating whether or not a county government ought to be suspended, would most, probably, also make recommendations requiring legislative or other interventions by the Senate.

The recommendations may specifically relate to the subject county government, but may also apply to other or all county governments. It does not, therefore, appear logical that such recommendations will remain outside the knowledge of the Senate.



I, therefore, direct that the Standing Committee on Legal Affairs and Human Rights considers the procedure set out under Section 123 of the County Governments Act, and propose appropriate amendments that would ensure that the Senate is not fettered in the discharge of its functions under Articles 94 and 96 of the Constitution.

The Senate should, as part of its oversight mandate over the county governments, and as part of its mandate to represent the counties and to protect their interests and those of their governments, consider the report of an Independent Commission of Inquiry established under Article 192(2), whether or not, it recommends a suspension of a county government, and whether or not, the President is satisfied that justifiable grounds exist for suspension of a county government. This being a matter that is critical to the system of devolved governments, I further direct that the Committee tables its report on this matter on or before 29<sup>th</sup> October 2015.

Hon. Senators, with regard to the report of the commission of inquiry into the petition seeking the suspension of the County Government of Makueni, although in the circumstances, there is no requirement for the forwarding of the report to the Senate, all is not lost. The Speaker has contacted the Presidency and the Presidency has agreed to send the report to the House.

*(Applause)*

Our Standing Orders also provide various mechanisms through which the Senate could interrogate the issues that require legislative or oversight interventions by the Senate. For example, nothing in our Standing Orders would bar a Senator from requesting a statement from the relevant committee chairperson on this matter in terms of Standing Order No.45(2)(b). Similarly, an interested Senator may give notice of an appropriate motion on this matter for deliberation by the Senate. Standing Order No. 45(2)(a) relating to statements by a Senator on a county issue or an issue of general topical concern, may also provide an avenue by which the matter could be deliberated.

Hon. Senators, this and other options in our Standing Orders, remain available to the interested Senators.

I thank you.

*(Applause)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker Sir, thank you for your directions. That is what they call, truly, Solomonic.

*(Resumption of Debate on Motion)*

On the Motion that I had just moved, I beg your leave, if you allow, that I amend the last paragraph under Standing Order No.49, to provide a period within which the National Land Commission (NLC) will forward to the Senate the legislative framework that I have proposed in this Motion.

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

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir, I will, therefore, move the last paragraph in its amended form to read as follows;

“AND NOTING that historical injustices and land matters was among the main justifications for the new Constitution; this Senate urges the National Land Commission to urgently recommend to the Senate within 60 days a Bill to address historical land injustices to provide a framework to ensure that land is properly utilized for the economic benefit of the affected communities.”

It is curious that under Section 15(3) of the National Land Commission Act, and to Article 67, the Commission was supposed to be a linkage between county governments and institutions dealing with land.

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

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

The purpose of the NLC was to deal with public land; land that is covered by forests which hold it in trust for the people and Republic of Kenya and other natural resources in which this country takes great pride.

In terms of the functions of that commission, function 5(e) requires that the commission shall initiate investigation on its own or a complaint into present or historical land injustices and recommend appropriate address. The functions continue on and on in the said section. However, I do not need to go into the details.

Section 15 - this is the crux of the matter. The NLC was required within two years of its appointment to recommend to Parliament appropriate legislation for investigation and adjudication of claims arising out of land injustices.

Since 2012, the NLC has not forwarded or to our knowledge, given any form of legislation for discussion by Parliament on historical injustices. Why do I say so? From the list that we have seen of pending legislation, this is one of those legislations that was, in fact, not affected by the 27<sup>th</sup> August, 2015 deadline. Why is it that 5 years into this Constitution, we do not have legislation on historical injustices? One of the agendas for the committee on Land and Natural Resources that was the precursor to the Grand Coalition Government was land. This was provided for under Agenda Four. One of the things that sent this country to the precipice is historical injustices on land. The mandate of the NLC on public land cannot be effected unless we deal with historical injustices.

This simply means that nobody even now can complain about historical injustices and get justice about it. For example, a community in Makueni called *Ngukakika* Community, part of their land was annexed for the construction of the Standard Gauge Railway (SGR). The Government annexed almost 60 acres of land for SGR construction from that community. Our people were of the view when the NLC went there, the funds for compensation for that piece of land should not have been paid before the historical injustices were resolved. Their claim is that land was taken away by a company that is known to them. The company has planted sisal, committed historical injustices and violation of human rights. When the NLC was called upon to make a determination they said since there is no law on historical injustices; they will pay the claim until that time when that law will be in force. For how long will commissions that have been given a legal mandate abdicate their responsibility?

In my view, the NLC has abdicated its responsibilities to the people of Kenya. There are people in Taita Taveta and coastal Kenya who are complaining about land they

have lost. There are people everywhere in this Republic, including Rift Valley, who have claims to land where title deeds are being issued, where acquisitions are going on, where other projects are taking place, but their issues have not been addressed. It would be an abdication of responsibilities for people who represent counties to wait for the NLC to wake up to do its work that it is mandated to do under the Constitution.

Mr. Temporary Speaker, Sir, it would be abdication of duty for the Senate of this Republic, which protects the interests of counties and their governments, to allow the people of Kenya to continue suffering before their injustices are resolved. That would be an injustice and history will judge us harshly if we do not talk about this subject.

Mr. Temporary Speaker, Sir, there is a Bill that was proposed by Sen. (Dr.) Zani about sharing of natural resources. How do you ensure equal sharing of natural resources if these issues are not resolved? How will we allow people to extract oil or do whatever they are doing in Ol Kalou or Makueni, or build the SGR while our people are watching?

Land in this Republic is one of the issues that have caused sleepless nights to many people. Unfortunately, people who are affected by injustices are the ones referred to as *walala hoi* in Kiswahili language. These are people who are helpless and cannot help themselves. It reminds me of the famous statement by Karl Marx. He said the society is divided into two; the “haves” and the “have nots”. Law is made to protect the haves while the have nots continue suffering. He goes on to say that religion is the opium of the oppressed. However, we have law and a Constitution in this country. The people of this country do not have to turn to religion because they are oppressed. We have a mandate against the NLC which has slept on its job. Officers of the NLC issue title deeds even before dealing with the questions that Kenyans asked them to deal with.

Mr. Temporary Speaker, Sir, I can only imagine why the NLC or any person would not want issues of land to be dealt with. For example, standing here as a Senator and a well trained lawyer, I know there are people in this country who have grabbed land and would suffer greatly if this law is put into place. However, will we shy away from our responsibility? Shall we say that this is not our problem? All of us took oath to defend the Constitution without fear or favour. The portion of not fearing and not favouring is defending the majority citizens of this Republic who have been rendered destitute and poor because somebody somewhere who had power and was in authority took away their land. Therefore, they have been unable to find a method of dealing with that injustice.

If this country will exorcise the ghost of the Post-Election Violence (PEV) that has been a precursor, a symptom or a threat in every election, the only way to deal with it is to have legislation that will ensure it fights for the people in this country who cannot do so for themselves. That is the law that we are looking for. We need a law that will call to task people who own acres of land, which they cannot justify where they got them from, to surrender them to their rightful owners. There are people who own big chunks of land where they keep horses, snakes and buffaloes. Yet there are people who do not have a piece of land where they can bury their dead.

Mr. Temporary Speaker, Sir, in my county, there are people who bury their dead and plant a tree on the grave because there cannot be any other symbol of showing where their loved ones are buried. Why should we shy away from this issue? There is a lot of land that is capable of satisfying every person in this Republic. Therefore, there is no need of shying away from this issue. We need to get this matter properly done under

legislation so that all the people who live in squalor conditions in tents and have been evicted from their homes can stand up – as it was in the Githunguri case – and say, “*Najivunia kuwa Mkenya.*” That will only happen if they feel that there is rule of law. The rule of law means that there is equality before the law.

In this Republic, we want a person who does not have the capacity and financial wherewithal like you equalised by law. This is what I am urging this Senate to look into. I am convinced that the two years that were contemplated in this legislation was to ensure that before we got into an election, a mechanism was to be in place. This is because elections are used by us, politicians, to displace Kenyans for our own selfish ends so that we get votes and then leave people destitute.

Mr. Temporary Speaker, Sir, the other day, Sen. G.G. Kariuki asked: “What is it that will distinguish us? Why do we look like everybody else conducting business as usual?” We come into the Chamber, bow to you and then walk out. What legacy shall we leave in this Senate? Other than exorcising ghosts of Independence; that this Senate will not be disbanded like the first one, we must leave a legacy that will live way beyond all of us. That is law to deal with the landless of this Republic.

Mr. Temporary Speaker, Sir, as the Senator for Makueni County, I have confidence that this Senate – the residence of the tyranny of good brains – is capable of doing the right thing under the law. We are famous for defending the downtrodden. This Senate has spoken without fear or favour about teachers; that they should be paid. There is no reason they should not be paid because there is money to pay them. These are people who take care of the generations that will come into this Senate.

Why should we not say so when it comes to the landless, the downtrodden, people who fought for Independence and people who have lost their lives yet their children and their children’s children have never benefitted from land which is a valuable resource? Titles upon titles of rich men and women are in banks. They are developing themselves yet people of this country who have children in primary and secondary schools cannot take a loan to buy even a bicycle. The title to a land is the only thing you can give to a Kenyan for them to feel that Kenya is truly an independent nation.

Mr. Temporary Speaker, Sir, the Community Land Bill proposed in this Senate would also not be useful if we cannot deal with the question of land injustices. We must incorporate into law a mechanism of dealing with injustices so that when we give communities land and a title deed, we would have provided a method before we give them a title deed to resolve land injustices. The bulk of the injustices happen in community land where people owned land from their forefathers. Since this is a very sensitive subject, the only thing that can save this Republic is not good governance, but good laws and a good Constitution. That is the saviour for this Republic. This is because time and again, we have elected people and governments which have turned against the people who elected them.

Mr. Temporary Speaker, Sir, I move this Motion and ask Sen. Sang to second.

**The Temporary Speaker** (Sen. (Dr.) Machage): Before Sen. Sang comes, indeed, the subject is so sensitive. When the presiding Speaker now raised the issue of his injustices and discussed Sessional Paper No.3 of 2008 which described the historical injustices as those injustices that actually happened before 1895 when Kenya became a British protectorate, he was arrested. He was thrown into jail and had to case for one and a half year, not forgetting that he was demoted from his Cabinet position. That is the level

of sensitivity of the issue that you have raised - surprisingly so, when that fellow is presiding.

**Sen. Sang:** Mr. Temporary Speaker, Sir, I rise to second this Motion. When you were a Minister just before you were demoted, I was still a student in the university and I came to your office when we needed support and help for some students who were studying across the region. Due to the PEV and the challenges this country was facing then, we needed the support of the Government to ensure that those students could find their way to universities across in Tanzania, Uganda and other places. I want to confirm that you were one of the most hardworking Ministers. That demotion came because of you standing for justice. I am excited that today we are discussing this Motion as you preside over the debate in this House.

Mr. Temporary Speaker, Sir, I want to appreciate that the new Constitution that was passed in this country recognized the existence of historical injustices. Members of this House, including Sen. (Prof.) Anyang'-Nyong'o, Sen. (Dr.) Khalwale, Sen. Obure - I am not sure of Sen. Madzayo, but I am sure he supported this Constitution as a Judge. Sen. Ong'era; by that time she was the executive director of ODM and the "Yes" campaign. From the Kalenjin region, Sen. Murkomen, then a young professional and I, played a critical role in ensuring that we have a new constitutional dispensation that recognized that there were historical injustices meted against our people.

That is where we are standing. We have a progressive constitutional dispensation in this country that has recognized that historical injustices exist and must be addressed. Special recognition within the Constitution does not amount to much if we do not have the legislations needed to operationalise these constitutional provisions. The challenges that this country has faced, including the tribal clashes in Rift Valley and the coastal region, are associated with historical injustices. We, as a country, have a choice to wish away the existence of historical injustices indicating that this is a very emotive and sensitive issue. However, if we choose that we are not going to talk about it, touch or resolve it, it will forever haunt us. The other choice is that we, as leaders, make up our mind that however sensitive this matter is, we must bring it to a closure.

Mr. Temporary Speaker, Sir, we should take time and address the issues of historical injustices. I come from a county that has had challenges. Right now, if you go to Nandi County, you will see huge tracts of land under the multinational companies. The communities living around these multinational tea estates are living in abject poverty. There are huge fertile lands under the multinationals. It is sad that local people who were driven out of these lands are living like monkeys in very hilly and dangerous places. We cannot discuss what to do with these lands after the expiry of these leases without interrogating the aspect of historical injustices and the suffering that some of the communities and individuals went through to create and establish the multinationals.

Mr. Temporary Speaker, Sir, if you go to my county, we have some of the properties and lands that belonged to Agricultural Development Corporation (ADC). I took time and investigated how part of these lands found themselves in the hands of individuals. The rationale that was given is that it was being hived off to resettle the landless. If you go there, those parcels are registered in the names of who were who in the previous regimes. As I speak now, about 20 individuals own huge tracts of land and yet they were neither landless nor squatters.

When it comes to squatters about 48 families live in one parcel of land. That means that it is an average of one acre per family. Each family is made up of an average of five members. You can imagine the human population on that small piece of land. Sometimes, they even do not have a title deed to that land. Therefore, the owner will go to the court for an order to evict 48 families.

These are the historical injustices that we must address. We should ask ourselves: When this part of land was hived off, what was the original intention? Was it to resettle the landless and the squatters? If that was the reason, how come individuals who were commanders in the army, Ministers and Members of Parliament then allocated themselves the land? I want to tell those individuals that you cannot succeed by going to court. Let us sit down and negotiate to ensure that we have the interest of the country at heart.

In this country, we have had situations where the national Government has degazetted parts of forests to create human settlement. The rationale was to provide residence to the landless, but it is powerful individuals who get the land. When we engaged ourselves to reclaim the forests, the first group to be affected is the hopeless Kenyans. The other groups who are powerful managed to get title deeds.

In Nandi County, we now have evictees from Serengeti Forest displaced seven years ago. They are still living on road reserves even now. How can we talk about enhancing productivity and economic empowerment in our villages if we still have individuals who do not have a place to live in? These are the issues that we, as a country, must address.

Mr. Temporary Speaker, Sir, we are a pastoral community and also farmers, but we have individuals who went to Tanzania to look for pasture. When this country engaged in the land adjudication process, they were still in Tanzania. When they came back, their ancestral land had been allocated to other individuals. Therefore, they are landless. We, as a country, must sit down and provide a mechanism to address these issues.

This Motion could not have come at a better time. We want to ask the NLC, we know they had challenges with the Ministry of Lands. However, they should not lose sight of the very important mandate given to them of developing the necessary legislation to address historical land injustices.

I want to agree with Sen. Mutula Kilonzo Jnr. that before we get into the next election, we should have succeeded to enact a legislation that provides a framework. We may not succeed in the remaining two years to address all the issues, but we shall have started the process of enacting a legal framework. I can assure you that communities will be assured that we have already started the journey of addressing historical injustices. We will be assured of stability in our counties and the country as a whole.

As we talk of issuance of title deeds, it would serve no good to issue a title deed to an individual on a parcel of land to which we still have disputes. We, as a country, should be prepared to know that we may never find solutions to all these issues. We should go ahead and address the areas that we can. Even apologies and appreciating that a community lost land in itself will provide an opportunity to heal the challenges.

Mr. Temporary Speaker, Sir, I want to thank Sen. Mutula Kilonzo Jnr. and ask the Senate to take some of these challenges head on. If there is anything we want to be remembered for, it is providing legal frameworks to address the historical challenges that

this country has had for a long time. Let us have the courage to deal with these issues. I hope that the NLC as they continue with their fight with the Ministry of Lands, that they will not lose sight of their chore mandate of ensuring that we have a better land management in this country.

With those few remarks, I beg to second.

**The Temporary Speaker** (Sen. (Dr.) Machage: Hon. Senators, I now propose the Question:-

THAT, WHEREAS the National Land Commission was established following the enactment of the National Land Commission Act, 2012 to, among others, give effect to the objects and principles of devolved government in land management and administration;

NOTING the principles of land policy as set out in Article 60 of the Constitution including equitable access to land and encouragement of communities to settle land disputes through recognized local community initiatives consistent with the Constitution;

RECOGNIZING that land ownership and utilization is at the centre of many interpersonal and community conflicts in the country since Independence;

ALSO NOTING that section 15 of the National Land Commission Act mandates the Commission to recommend to Parliament appropriate legislation to provide for investigation and adjudication of claims arising out of historical land injustices for the purposes of Article 67 (2) (e) of the Constitution;

FURTHER NOTING with concern that the envisaged legislation has not been enacted five years after promulgation of the Constitution;

AND NOTING that historical injustices on land matters was among the main justifications for the new Constitution; this Senate urges the National Land Commission to urgently recommend to the Senate within the next 60 days, a Bill to address historical land injustices, to provide a framework to ensure that land is properly utilized for the economic benefit of the affected communities.”

*(Question proposed)*

**The Temporary Speaker** (Sen. (Dr.) Machage): The HANSARD should capture this Motion as mended.

**Sen. Ong’era:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to also support this historical Motion that has been brought to the House.

From the outset, let me congratulate Sen. Mutula Kilonzo Jnr. for seeing it fit to bring an important Motion to this House. Let me also congratulate the Seconder of this Motion, the distinguished Senator for Nandi.

Mr. Temporary Speaker, Sir, may I also express my sympathies to you for what happened to you when you raised these matters that were very historical. Indeed, you had the oversight, like a giraffe; that these matters will be serious in the Republic. Today, you have been validated by actually presiding over the House as we discuss these matters.

Mr. Temporary Speaker, Sir, this issue is, indeed, the elephant in the House. If this elephant is not slain and we do not face this monster, we will never ever resolve the issues of land in this country. Land injustices have stemmed from a very long time, right from the British colonial times when the colonial forces decided to amass and take the

prime lands of our people and occupy them. To date, quite a number of subjects, who are Kenyan citizens, are actually living in those lands. Some were given to the so-called “fat cats” in this country.

As we all know, land in this country also became a political reward; that each succeeding President decided to award fertile and the very best of prime land to their cronies, thus forcing massive eviction of many communities. I have in mind what happened to the Marakwets and the Pokots, who lost large tracts of land which were occupied by other citizens of this country. If this elephant is not clearly faced, historical injustice will continue in this country. It is the high time that the NLC actually decided to deal with its core mandate; that is to establish legislation that will clearly deal with this issue. As I indicated earlier on, we need to slay this monster, once and for all.

The NLC has bogged itself down with very mundane delays and tasks. Instead of dealing with this core issue, they have dealt with issues of approval of staff and ensuring that they have infrastructure. For the NLC to say that they have a fight with the Ministry of Lands, Housing and Urban Development is an excuse. They need to deal with this core task which does not even need an office for them to sit in, to prepare legislation which can be brought quickly to Parliament for debate and passage.

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

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

Mr. Temporary Speaker, Sir, in this country statistics have told us that only 20 so-called “fat cats” own large tracts of land. If I am right, they own close to 35 per cent of the landmass in this country. This is, indeed, theft. We need to have a solution, so that these “fat cats” can be exposed. We need to see their faces, because we cannot have 35 per cent of the landmass in Kenya being occupied by only 20 citizens, when we have a population of close to 47 million Kenyans. We must face the reality and this monster. If we do not do so, very soon this country will crumble.

I began by saying that there is an elephant in the house. If we leave it to continue growing fat and fat, soon it will break the door and the house, which is, this country where we all stay. Therefore, it is necessary that we address historical land injustices. We must mitigate and resettle all the communities that have been affected, who live in the most arid of areas in this country, while their fertile valleys are being occupied by other communities.

Mr. Temporary Speaker, Sir, with those few points, I support this Motion and hope that this legislation will come to this House very soon, before we finish our term, so that we can pass it. We will be remembered for what we have done for this country.

**Sen. (Dr.) Khalwale:** Thank you, Mr. Temporary Speaker, Sir. I rise to support the Motion; that the Senate urges the NLC to urgently and within 60 days submit to this Senate a Bill to provide that this matter be sorted out.

It is, indeed, a shame that we can pay those commissioners so well and give them such a fat sitting allowance and big four-wheel drive vehicles, and they wait until we have reminded, pushed and given them timelines for them to remember that they should do what we are saying. They should have done it long time ago. I hear that there are lawyers in that group. What kind of law do they know? Indeed, what school of law did



they go to? They are crazy. They should be ashamed of earning free salaries. This is the fundamental thing that should have driven them to get the law right.

Lest our children who are following this debate are lost in thinking that this is the only injustice in this country, may I remind them that we have a lot of injustices in this country. We hope that Sen. Mutula Kilonzo Jnr. and his Committee will also come up with Bills on the other injustices. We have injustice on land, but Kenyans should not forget that we have also the injustice that was meted on our heroes; detention without trial. You all know what hon. Njindo Matiba is going through. He was one of the first young Kenyans to become a millionaire. But because he had the dream of social justice, he has been reduced to something very close to a vegetable.

Mr. Temporary Speaker, Sir, we want to see the injustice of having some few Kenyans enjoying wealth which they acquired through unjustifiable means addressed. This is a serious injustice because they do not deserve this wealth. They are living large and big. We need to address the pain of the families of the people who went through political assassinations. We have also to fight against another emerging injustice. We now are living with an injustice in our midst of allowing only the children of the rich to be in school and the balance of the children to be at home. This is shameful. How do our colleagues on the other side want us to address it, so that they understand that the issue of children being at home is not an opposition problem, but everybody's problem? Unless those who live in State House are not people, this is a problem that concerns all of us.

It is Mark Twain who said that when you close down one school, you must be prepared to build a prison. He went on to say that what you gain at one end, you lose it at the other end. It is like cutting the tail of a dog, feeding that dog on it and expecting that you are going to fatten it. The President should stop thinking that by cutting the "tail" of teachers – their buttocks - and wanting them to feed on it, because they have nothing else, they are going to become fat. He must pay our teachers.

**The Temporary Speaker** (Sen. Mositet): Order, Senator! You must stick to the Motion.

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I am talking about historical injustices. As I move to the substance of the Motion, I cannot be proud of being a Senator in Kenya when we have closed down 20,000 primary schools and 6,000 secondary schools. We must, indeed, all of us be very foolish to think that we are moving forward.

On the issue of historical injustice on land---

**Sen. (Prof.) Lonyangapuo:** On a point of order, Mr. Temporary Speaker, Sir. Is Sen. (Dr.) Khalwale in order to keep staring at me throughout as though I am the author of his problems?

*(Laughter)*

**Sen. (Dr.) Khalwale:** I am very sorry, Mr. Temporary Speaker, Sir. I do not know that I was looking at the good professor. However, it was by the hand of the Lord, because he happens to be a professor; a man of golden letters, who should be at the forefront in reminding his side of the House to open our schools and pay our teachers.

Land as a historical injustice remains the most sensitive unresolved national issue in this country, which is a bomb in waiting. Unfortunately, as it remains a time-bomb previous and the current Government continue to perpetuate it. I do not understand why

in a modern age, members of a digital Government should not see the importance of the sanctity of a title deed.

Even with this NLC, the active Charity Ngilu, '*Mama Rainbow*' in office, they were still doing double registration of pieces of land and, therefore, setting up legal battles and physical battles amongst the various protagonists. At this time, we are witnessing State sponsored invasion of public land as we witnessed in Karen when leaders of this country invaded public property; something must truly be wrong. It was during that invasion that it was shortly followed by an attempt to annex a play ground at Langata Primary School, that we started hearing the real names of some leaders in this country.

We thought we knew their names. It is when we heard that some of them are called "*arap Mashamba*" and "*arap Singh*." We cannot accept and we should not accept this. You know that day - and the teacher I respect most in this Senate, the Senator for Kirinyaga County, is listening to my debate. I almost demanded and I wanted it be done that the Government apologises for "tear-gassing" our children at Langata Primary School, but how wrong I was. The reason they refused to apologise to those children is because the worst was yet to come, to teargas them was nothing, they were waiting to close the schools, a total shut down so they did not have to apologise for such a small thing.

Mr. Temporary Speaker, Sir, I want to speak about the issue of Internally Displaced Persons (IDPs). These IDPs are the people who left their land because of the unfortunate PEV. To some extent, they have been settled. The ones who were integrated in their families in Kisii, Luoland and in Luhyaland are being forgotten. However, the ones who went into camps, we hear they have been compensated.

The question now I want to ask the President and the Deputy President is: Where is the land that these people left? Who is this staying on somebody's land that had been originally acquired legally? In fact, we expect the NLC in this Bill, to make a provision of how we can address those people who are afraid to go back to their land and instead accepted a paltry of Kshs400,000 and yet somebody had his five acres where he had kept three grade cows and he was earning a livelihood. If we do not go and repossess that land that was left by IDPs, we are promoting impunity and thuggery.

Mr. Temporary Speaker, Sir, at this stage, I wish not to look like I am targeting only the national Government in terms of impunity. In the County Headquarters of Kakamega, we have no shortage of land; thanks to the fact that '*grabiosis*', grabbing of public land - I am coining a word which I do not know if it is there in English. '*Grabiosis*' as a disease is not highly prevalent to certain communities in this country. Public land at Kakamega County Headquarters is still available and what do you find? None other than the Office of the Governor of Kakamega County has gone in the land set aside for expansion of the former provincial general hospital, Kakamega. They have annexed and they are putting up flats.

We have complained to the NLC, but nothing is happening. The construction is going on. I want to say here and now; please, do not stop the construction of those flats. We want them to construct the flats, finish and because they are constructing on public land, using taxpayers' money, which they grabbed because of their position in the county government, we shall go, not through legal means, but physically possess those flats and move in our doctors to start residing in them. That guy will never collect rent on those

flats behind the general hospital. The people of Kakamega are watching. Let those flats be constructed. Do not interfere. Let them get finished we will repossess them and our doctors will reside in them.

Mr. Temporary Speaker, Sir, I do not know how many of you have ever driven not in a hurry to South Coast in Mombasa on your way to Kwale. You drive from Likoni Ferry. On your left, there are plots touching the ocean. They are called beach first row, second row and so on. On your right, there are the other pieces of land. The poor Digos have stayed as squatters on the right. Those tracts of land have never been adjudicated. However, the ones on the left, adjudication has been done. Why? The rich were after those beach plots and that was why adjudication was done very quickly. They have title deeds.

The shame is: When you look at those people on the left side who have title deeds, none of them is a Digo, Giriama or a coastal. You start complaining that the youth are organising themselves as Mombasa Republican Council (MRC). It is the only means they see available to seek redress. This is promotion of insecurity that can be controlled by a sensible government. Even if the Government is sleeping on the job, the NLC should not do the same. Instead, they should be the ones saving us.

Mr. Temporary Speaker, Sir, this one is a very sensitive one, but allow me to speak about it. The issue of the water towers, specifically the Mau. Rich Kenyans and former presidents of this country moved into the Mau, curved out thousands of acres of land for themselves and they have even put up tea factories in there. They have never been touched. However, when some villagers tried to go there, they were kicked, hit and chased away. Why can the Government find the power, the will and the moral justification to evict the former president who has a tea estate and a factory in Mau for us to be convinced that they want to preserve our forests? This story obtains in many other forests like Aberdares, Kakamega, among others. All of them are being abused.

Finally, but not least, I want to speak to the need for us to have a paradigm shift in land tenure in this country. What we are pursuing is not tenable. I read the other day that somebody is drafting a Bill that they want to put a ceiling on land holding.

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

**Sen. (Prof.) Anyang'-Nyong'o:** Mr. Temporary Speaker, Sir, like my colleagues, I would like to congratulate Sen. Mutula Kilonzo Jnr. for bringing this Motion to the Floor of the House and my dear friend, Sen. Sang, for ably seconding it.

Mr. Temporary Speaker, Sir, you do remember that as part of the National Accord that brought this country peace after the PEV and the bungled election, was the idea of having truth and reconciliation. We did establish the Truth, Justice and Reconciliation Commission (TJRC) under the chairmanship of Amb. (Dr.) Bethwel Kiplangat. However, we have never really debated or adopted the report of that TJRC which was riddled with crisis, but finally produced. The idea of truth, justice and reconciliation remains a work in progress in our nation. This is a work in progress which is extremely important and urgent which we cannot afford to neglect. Part of truth, justice and reconciliation is the issue of land. Injustices have ensued from unfair land practices in land ownership since this country became a colony over a century ago.

A community which has given so much to the nation generously, but from which so much has been taken unjustly are the Maasais of this nation. As a high school student at Alliance High School many years ago, we came to school by riding on the train from

Kisumu to Kikuyu. I noticed, I would say, very “romantic names” of stations as we were coming, such as Elementaita, Gilgil, Naivasha and Kariandusi.

Later on as I was reading Kenya’s history, I found out that all these names are Maasai names. However, as I stand here today, although the Maasais gave Kenya the names of stations on the railway line that I rode on as a high school student, they no longer own those lands. Interesting enough, the Maasais have never raised an issue about those lands. It must be in the Maasai culture that land is so expansive and easy to access. Therefore, as their land was taken, the Maasais moved further and further south into Tanzania.

However, finally with modernization, land becomes a scarce commodity. Therefore, the land in which historically the Maasais have had---

**The Temporary Speaker** (Sen. Mositet): What is the point of order, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** Mr. Temporary Speaker, Sir, I do not wish to interrupt my teacher in terms of political behaviour, but is he in order to speak in such a manner that can make the Chair cry?

**Sen. (Prof.) Anyang’-Nyong’o:** Mr. Temporary Speaker, Sir, that was far from my intention; to make my Temporary Speaker cry, but maybe he is crying for the beloved country.

I remember during the late President Jomo Kenyatta’s---

**The Temporary Speaker** (Sen. Mositet): Order, Sen. (Prof.) Anyang’-Nyong’o!

Sen. (Dr.) Khalwale, at what point did you see that the Temporary Speaker wanted to cry? You are completely out of order.

**Sen. (Prof.) Anyang’-Nyong’o:** Mr. Temporary Speaker, Sir, I remember during the time that the late Mzee Jomo Kenyatta was the President of this country; an issue of national importance was raised referring to a place called Kedong. There was a ranch called Kedong Ranch. I remember one day the late Mzee Jomo Kenyatta went there. As usual, the traditional dancers; *Nyakinyua* women danced very well. As a present, they were given Kedong Ranch.

Mr. Temporary Speaker, Sir, there are many such incidents in the history of this country. However, I am giving the Maasai as an example. They have been very generous to this country, but for which a lot of injustices have been committed.

Reading my history, I remember that when Lord Delamere came to this country and went to settle in the Rift Valley where his children and grand children today still are, at a place called Soysambu, he decided to establish cattle ranching in this country. We must commend him for being very adventurous. He brought some cows and a bull from New Zealand. These hybrid cattle could not do very well. So, he decided that he was going to crossbreed the bull from New Zealand; I do not know whether it was a Friesian or something like that with a Maasai cow. This bull was very big. Lord Delamere believed that it had very good semen. These were hardy Maasai cows, so he thought if he crossbred the bull and the cows, the offspring would be adaptable to the environment.

However, the bull came and it was not doing anything. So, he asked the Maasai peasants; what do I do? They said “look, in our culture, if a bull wants to mate with a cow, the bull must be able to run. That is part of the mating. If this bull cannot run, then it will not succeed in the job you want it to do.” That comment by the Maasais led Lord Delamere to invent Artificial Insemination (A.I). So, for cattle ranching in this country

we must thank the Maasais for the invention of A.I. This resulted in a crossbreed between hybrid and Maasai cows. The product was what is called Zebu cows or something like that. Up to this day, that huge ranch still belongs to the Delameres, not a bit of it has been given to the Maasais in gratitude for their contribution to cattle ranching in this country and to the wealth of the Delameres.

Before I rose to speak, other Members had talked about ranches. At one time, I also did research in the 1979/1980 when I was consulting for an American firm which was doing research on cattle ranching in Taita Taveta. I could not believe the injustices that I saw there; huge ranches were owned by individuals. As somebody has said here earlier, they must have felt very little but against Taita Taveta people existing on patches of the earth which were not extremely very productive.

These are injustices which TJRC was supposed to address in this country. We should not gloss over these issues. If we do, they may even blow up in much more violent conflicts in future; than what we have seen so far. It is very important because the population is increasing. People now know better use of land; and land productivity may be increasing and decreasing in others, like in my county, Kisumu and others.

The traditional practice of subdividing parcels of land to children and so on, until you own so little, is no longer productive. Agriculture is not viable. These are the things which we must address ourselves to. To what extent is that form of perpetual subdivision of land commensurate with productive agriculture? Or to what extent is ownership of large ranches of land which is not very productively used where there are people who can use it effectively, commensurate with modern agriculture?

We should not make the mistake of parceling out important conservancies and forests where we have flora and fauna and also our wildlife. We have to preserve our wildlife in places like Maasai Mara and other places. That is our national heritage. We must look after our animals, our flora and fauna and forests. That is important.

When it comes to the relationship between our people and the productive land that they need for survival and the manner in which this productive land had been taken from them unfairly throughout history, these are the things that Sen. Mutula Kilonzo Jnr. is asking the NLC to help us address by producing a law.

Mr. Temporary Speaker, Sir, another issue that I would like the NLC to do – Sen. Mutula has phrased it very well in the Bill, he is asking for. When there are land adjudication cases, how expeditiously should such cases be addressed? How effective should the Judiciary be in ensuring that land use and practices are properly done in a manner that ownership of land and conflict over ownership of land is sorted out in a just manner?

I like Sen. Mutula Kilonzo Jnr.'s reference to the fact that what we need is the rule of law and effective law rather than talk generally of good governance. In fact, good governance as a term in social sciences crept into the vocabulary of social science very recently. It was never there, but it was discovered by donors, the World Bank, *et cetera*, as a safe language to use. Rather than talk of democracy and social justice, you talk of good governance which is more less a technocratic term. Let us hit the nail on the head. We are talking about rights, justice and democracy in this manner.

Mr. Temporary Speaker, Sir, as I stand here today, land and environment courts in this country are not working. In these courts, you find sparse personnel in terms of judges. A case can drag on in court for 27 years. I have a case in my own County of

Kisumu which I have been following very carefully. It has been in court for 27 years and the judges are not in a hurry to settle it. I have written to the Chief Justice regarding this issue and I have not gotten a single reply to the two letters that I have written. The Land and Environment Court in Kisumu is not working and it is frustrating development and investment. These cases which are taken to court impede development.

I know of a case where an honest Kenyan wanted to use land in Maseno to build a hostel for students because students there, lack hostels. Somebody took the case to court. However, the Land and Environment Court in Kisumu has not settled this case for over three years. How can we have development and investment going on when the Land and Environment Court which is the most important court in this agricultural county where investment in land is so important, is not working? This is one of the great injustices in this nation. I hope the Chief Justice who used to be my colleague and comrade is listening. He has been given accolades for what he has done in the judicial system, but he has totally failed in making Land and Environment courts do the work they need to do in a country where land issues are so important.

Mr. Temporary Speaker, Sir, I want to add that land use in urban areas, towns and cities is very important, unless in the new land law that the NLC will pass in the context of this Constitution, Article 60 is so clear, it lays the broad principles on which that law must come. It states that:-

“Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance to the following principles-

- (a) equitable access to land;
- (b) security of land rights;”

Mr. Temporary Speaker, Sir, these two words “equity” and “security” are very important.

- (c) sustainable and productive management of land resources;
- (d) transparent and cost effective administration of land;
- (e) sound conservation and protection of ecological sensitive areas;
- (f) elimination of gender discrimination in law, customs and practices related to land and property in land; and
- (g) encouragement of communities to settle land disputes through recognized local community initiatives consistent with this Constitution”.

Mr. Temporary Speaker, Sir, the principles are all there for transparent and cost effective administration of land. Are we cost effectively administering land? Sustainable and productive management of land resources, the way the Land and Environment courts are functioning in this country is completely contravening the principle of this Constitution. They are the people who should defend and protect the Constitution. They are the people who should secure the rights of Kenyans. It defeats justice when a case can be in court for so long. They say justice delayed is justice denied. There are too many delays in the court and, therefore, too much denial of justice, and yet land is so important.

Mr. Temporary Speaker, Sir, as I finish, let us look back in this nation and ensure that the JTRC report by Amb. Bethwel Kiplagat is given to the NLC, in writing the law that my friend Sen. Mutula Kilonzo Jnr., is calling for. The Ndung’u Report should be given to the NLC in writing the law that Sen. Mutula Kilonzo Jnr., is calling for. Both Waki and Kregler reports should be given to the NLC, so that when they come up with

the law that is effective in managing land, in the context of Article 60 of the Constitution, it will be a comprehensive law that will stand the test of time.

We are not in this country for a dress rehearsal, we are in this country to live effectively. It is only in a play where there is a dress rehearsal because a play is just a play. However, life is not a dress rehearsal. Life is here today and tomorrow we are gone. If you do not live it today and hope for tomorrow, it may be too late.

The issue of land is so urgent that it should have been fulfilled as early as yesterday. The issue of having this law that Sen. Mutula Kilonzo Jnr. is calling for is so urgent that we should have had it yesterday. We must thank Sen. Mutula Kilonzo Jnr. for bringing the attention of the NLC to do its work.

Lastly, in the Constitution of Kenya as well as the County Government Act and the Urban Areas and Cities Act, it is envisaged that in every county, there should be a land management board. Where there are cities we should have a city management board. These two boards are so important because without them we cannot properly manage affairs of land in our cities, urban areas and counties.

As this law comes in, I hope somewhere in this law, the role of these boards will be clearly emphasized so that we manage our lands well.

I beg to support.

**Sen.(Prof.)Lonyangapuo:** Mr. Temporary Speaker, Sir, just like Sen.(Prof.) Anyang'-Nyong'o, I rise to recognize the role that has been played by Sen. Mutula Kilonzo Jnr. by bringing this Motion which suggests and compels the NLC to urgently prepare and bring to the Senate a Bill that addresses major historical land injustices.

This is good news to Kenyans who have been waiting for such a long time for our Government - and we have never lacked a Government since 1963 - to look back and correct some of the historical land injustices that have displaced people.

We have a community in Nandi called Talai. They were thrown out from their land by the colonialists. When we became an independent nation, that was the first item that was supposed to be restored, but to date, they are scattered all over. Some were displaced to Tanzania and some in Kericho. If they had historical land, who took it? If there is a new owner because there is no land which is empty, it means that the Government needs to compensate and pay the original land owner who now is floating because he or she has no documents so that they can feel that they are under the leadership of Africans and restoration of justice has come.

It is not only in Nandi where this happened. In the former white islands, in Kericho, there are large tracts of land which are full of tea and the owners are different from the original ones because the real owners were chased away. Many years have elapsed, but historical injustice has not changed name, it has still remained as such.

In Africa, particularly the region where I come from and those in Kericho, generations are told through stories and songs of where our land used to be and what happened to it. Every Government has to be bold enough to know how to settle those people or compensate them in the version and form that we gave IDPs from the year 2008.

In West Pokot County, the entire Pokot Community was moved physically in 1912 by white men from their prime grazing land in Trans-Nzoia. Their neighbours were the Sabaot and Marakwet. The three communities were displaced, but the Sabaot decided to hide in the forest in Mt. Elgon. The colonial Government decided to take over the

forest. They ended up being branded very interesting names. They were referred to as Sabaot, Dorobo and others. These were strange names. They thought Dorobo were experts in harvesting honey in the forest.

The Pokots were chased away from their lands, but when they wanted to resist, one man said that their prophet had warned them against resistance. He had said to them: "Do not fight back because you will be wiped out; one day you may be resettled back to your land." They were then settled down the valley where mosquitoes were breeding in thousands. In other words, it was the kingdom of mosquitoes. That is why the number of my people where I come from has remained small. There were attacks which they did not understand.

After Independence, their land they used to talk about was occupied by other Kenyans. The independent government sold their land to other Kenyans. The independent government was supposed to buy or get compensation from the British who evicted the real land owners of those days. We used to hear rumors when we were young in the 1970s, that money was paid to compensate our people who were displaced from Trans-Nzoia. To date, we are still waiting for the NLC to deal with the historical land injustices in this country. That is what is happening in West Pokot. You will find some of them still living around the hills singing in mother tongue and saying: "We were chased away and told not to fight." If there are people who have really fought for the freedom of Africans and their fellow Kenyans, it is the Pokots.

Recently this Government assisted the Mau Mau survivors to get compensation from the British Government for losing their beloved ones and land. What about other communities? The Maasai in Narok and Kajiado have never been compensated. Nairobi was referred to as "*Enkare Nyirobi*," or the place of cool water. That is why we have settled here; a place of cool water. We know who was staying where during those days.

If this Government was to compensate our people with land and recognize them with a token of appreciation in terms of money, it would go towards healing this country. If you go to Ukambani or any other part of this country, the cry is the same. The Ministry of Lands, Housing and Urban Development together with the NLC must pay attention to these problems. They should compensate our people instead fighting permanently with the Ministry. Both of them want to be in charge of issuing title deeds. At the end of the day, we become the losers. When there is such confusion a number of cartels emerge. If they are fighting today, what will happen to the historical injustices that were meted on the people?

The worst thing that ever happened to us was that young educated Kenyans in this country never considered the plight of other communities. They did not assist them. The Bible says during the days of ignorance, God overlooked so many things. This means that when man knew nothing God stepped in and protected him. I expected that the days when some communities were illiterate and ignorant, the new political class of that time would have stepped in and assisted them. Even if we burry our heads in the sand like an ostrich, this historical injustice will continue to haunt us. An ostrich hides its tiny head and leaves the body exposed. We need to be bold enough to address these issues. When we raise this issue, it is not that the Government of the day is being blamed. This is what collective Kenyan leadership must do.

We were all members of the Grand Coalition Government. There was no opposition; we were all serving in that government. I would have loved to see my senior,



Prof. Anyang-Nyong'o, who was then the Minister of Planning and Development document all these things. When he says it can be done, he is not blaming anybody. He is laying it flat on the table that Kenyans need to address these historical injustices. It does not matter which government is in power. Some people were allocated land in Kanyarkwat. They call it the Settlement Fund Trustee (SFT). Some of those who were given land have never stepped there. I do not know whether they are aware of it. They only have allotment letters. This means that they have big chunks of lands somewhere else that they do not need.

When I was a Permanent Secretary (PS) I reminded a family from Kericho that they had a piece of land in our place. Unfortunately, their father had passed on. They were not interested in it because they have lot of land. There are things that we need to do. In this Bill, we expect to have a proper use of land. If you drive all the way from Nairobi through Naivasha, Nakuru, Eldoret and Kitale, you will see a lot of idle land. These are the areas where we could be growing a lot of maize.

It is a pity that land is being subdivided every day. There are no longer hundreds of acres we used to see. We now have one or two acres. What happened? Where will food come from? If the NLC does not step in and the Government of the day puts its foot down and compels the counties that we have to also follow that law, we will not have food; we will be a net importing country. Unfortunately Sen. Ndiema will tell you that the maize from Uganda is more than what we produce because they have better soil.

Mr. Temporary Speaker, Sir, some of us in West Pokot County are thinking of taking these historical land injustices to the International Criminal Court (ICC). When our land was taken by the colonial government, our people were not compensated. These people were forcefully taken to the hills. Many Marakwets are still living on the hills as squatters. What happens to those people who were thrown out like that?

Mr. Temporary Speaker, Sir, I thank Sen. Mutula Kilonzo Jnr., Sen. Sang and all Senators for contributing to this Motion soberly. Nobody in Government or outside should be blamed for all these injustices. We, as leaders, must carry the cross and address all historical injustices. We have to put right all the things which were not done right. Compensation does not mean that you pay the current price. You can give something small. Look at what happened recently when we had the post-election violence (PEV); the IDPs were given Kshs400,000. I do not know what they bought with that money. Today, most of them have a place they call home.

Mr. Temporary Speaker, Sir, who took over the land which was originally owned by these IDPs? The NLC should have taken over that land and compensated the IDPs accordingly. For example, if an IDP had 10 acres, the Government should have given him 10 acres in another area and retained what he had. If there are displaced people who underwent injustices of any kind in that county, like Uasin Gishu, the original people who were displaced must also be considered. Alternatively, Uasin Gishu County does not have a national park. So, all the land that was occupied, but people migrated from, let the Government convert it into a national park for that particular county and fully compensate the IDPs who have returned there rather than giving them Kshs400,000.

I support.

**Sen. Nabwala:** Thank you, Mr. Temporary Speaker, Sir. I would like to thank the Mover of this Motion which is very key in settling matters concerning land. The NLC was formed for the purpose of sorting out most of these land matters which is an uphill

task. This is because the majority of land is in a few hands of the rich people. Most of them are the politically-correct. They acquired the land at the expense of the poor person. The poor people are the majority in this country, but they live in slums. For example, in my area, we have a slum where somebody lives on less than a point of an acre. There is no space for him to even build a toilet or bury the dead.

This piece of legislation is very important as it will help the country to move forward and also help us to address the issue of large tracts of land which are in the hands of a few. Majority of Kenyans have no land. We have the “haves” and the “have nots”. The have nots live in abject poverty. These are the squatters I am talking about.

Mr. Temporary Speaker, Sir, in my county, we have about six or seven large tracts of land without title deeds. This land was given to people over 50 years ago. It is sad that someone has lived on that land for more than 50 years, but he does not have a title deed. This is the place where they have known to be their home. The Ministry of Lands, Housing and Urban Development has issued title deeds to the rich who in turn evict these poor people from their parcels of land. Some time, they burn their houses as they evict them.

We have had a case like that of Mengo Farm in Trans-Nzoia County, where somebody went and acquired a title deed and came in the night with a lorry full of people and tried to evict the occupants of the land. The occupants of that farm countered that eviction attempt and as a result, seven people died. That was not the first time. That is not the only farm where people are targeting the poor in Trans-Nzoia County. This is happening because I think the white settlers who lived there left in hurry; people moved into those farms and they have lived there for many years.

Mr. Temporary Speaker, Sir, when someone lives on a farm that has no title deed for more than twelve years and you have had your kids there, I think by legislation, that person should be given one or two acres. The trend that we are now witnessing is that our people are being evicted and then that chunk of land is taken by one person who has acquired it by getting the title deed from Nairobi without the people on the ground knowing anything about it. I think that should also be made very clear in this piece of legislation because Trans-Nzoia County is under threat.

We also had this incident in Chepchoina Farm where people were also allocated land and they were not issued with title deeds. After five or ten years, they were evicted. This needs to be corrected so that when someone is allocated land, you have your title deed which is your security, and you can even take it to the bank and borrow money to advance.

I also thank the Mover of the Motion because this piece of legislation will correct the iniquities which have been created between communities. Community land brings a lot of conflict. You will find people fighting over it because there are no boundaries. Someone just comes and declares that that is his or her piece of land and then communities fight and kill each other. If we have clear legislation, then nobody will interfere with somebody's piece of land.

Mr. Temporary Speaker, Sir, this is a very good legislation. It is constitutional and if implemented, we will correct many things and also bring people to be somewhere where they can also benefit from this land that people were given for free. For them, even if it is a fraction of an acre, you have to pay for it. A fraction of an acre in Kitale costs about Kshs80,000. These people do not have any land and most of them live in rented

grass thatched houses. So, when someone wants to acquire that land, you simply go to the Ministry of Land, Housing and Urban Development, corrupt officials there and come and evict these people. There are a lot of injustices in Trans-Nzoia County. When this piece of legislation is committed to our Committee, I will bring information about the land in Kitale which has problems so that the issue can be looked into.

**Sen. Ndiema:** Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute to this very important Motion, which from the outset, I support fully. In so doing, I thank Sen. Mutula Kilonzo Jnr. for bringing up this Motion which is very important. This Bill seeks to set out the framework within which historical injustices can be tackled once and for all.

Our Constitution provides under Article 67(2)(c) that the NLC has the responsibility to initiate and recommend action on historical land injustices. Unfortunately, several years have now passed and no action has been taken by the Commission, and yet they continue struggling for space, trying to get some responsibilities, while this responsibility which falls squarely within their mandate has not been touched.

Mr. Temporary Speaker, Sir, I do not know whether it is because of historical injustice that it is deemed less important, but let me say that historical injustices remain historical injustices and they are embedded in the hearts of the people and pass from generation to generation.

Historical land injustices have continued to be a source of suspicion within communities. It is also a source of lack of cohesion and at times, it manifests itself in ethnic clashes. Even cattle rustling is not just cattle rustling but the root cause is historical land injustices. This is what contributes sometimes to political polarizations. In this country, we are trying to say we are Kenyans and we want parties to represent all communities and we want to speak one language, but the issue of land remains a main factor which divides our people, and especially the historical injustices.

Mr. Temporary Speaker, Sir, even during the colonial times when the Europeans came, I would say those are the first people who grabbed land. If there is any grabbing, those are the ones who grabbed our land. Subsequent grabbing is as a result of the original grabbing, and in that grabbing, there were people and communities who were displaced. Some of them were totally displaced and their displacement has never been addressed to date. There are many communities, for example, the Masaai, Sen. (Prof.) Lonyangapuo mentioned Trans-Nzoia and named the Sabaot, sometimes referred to as Elgon Masaai, and so many other communities. The Sabaots in particular in Trans Nzoia, I would say were totally displaced and some were pushed to Uganda, some went to as far as Congo and Tanzania. They continue returning in bits but they have nowhere to settle because there is no land left for them.

Unless these historical land injustices are addressed and people resettled, there will always be suspicion. The struggle for Independence was mainly for one thing; for the communities to regain their land. The settlers left and we say we are independent but what about those communities or individuals who were deprived and never regained their land? Can they really claim that they partook of Independence? As we speak today, some communities feel they have not come out of that bondage; that they are still deprived and they are still waiting for their independence because their independence will come when land injustice will be addressed.

Mr. Temporary Speaker, Sir, when resettlement began in this country, there was a guiding principle that you could settle anywhere in Kenya. It was okay and even our Constitution currently provides that any citizen can settle anywhere. The same Constitution also provides that any historical injustice must also be addressed. Therefore, there must be a balance where the original person who was displaced and became an Internally Displaced Person (IDP) has not been compensated or settled, and then there should be due compensation. We have tried to run away from that and whenever communities have tried to raise this issue, they are considered to be tribalists and so forth. As long as we do not address this issue, that matter will not rest.

In Trans Nzoia, there are so many settlement schemes which were issued and the people were settled from all over Kenya, and I can say today, Trans Nzoia is multi-ethnic and we have no problem with that. The problem is that the indigenous communities were never considered even for one settlement scheme up to today. The only one which was considered recently called Kitalale Farm, the settlers were given two-and-a-half acres, and for almost 20 years now, even a title deed for those two-and-a-half acres has never been given.

Chebyuk Settlement Scheme is another one where you will recall the communities clashed because of landlessness. The Sabaot Community was totally rendered landless and it has remained landless as a community. Unless something is done, and we hope that through this proposed Bill, the issue of landlessness will be addressed. The Masaai also have their grievances. Sen. (Prof.) Anyang'-Nyong'o has raised the issue and he was thinking that Masaais have never raised it, whereas the Masaai have always raised that issue but nobody has ever listened to them. It is high time that this matter was addressed.

Mr. Temporary Speaker, Sir, we have recently seen positive steps to address people who had been displaced during the last clashes. As we address those issues, we should remember that since 1895, there are original IDPs who were displaced and the families are still landless. If we are to seriously address the issue of IDPs, let us start from the IDPs of 1895. These are documented. The Katalan Commission during the colonial time did agree that certain communities were displaced. The Sabaots were displaced from their land and were virtually declared in that commission that they are a dying race. Some races were deemed to have disappeared to give excuse for the Europeans to take their land. But I can confirm today that the Sabaot or the Elgon Masaai are still alive and kicking and demanding their land. Unfortunately, the British Government never compensated them. The Government of Kenya, since it took the responsibility, should ensure that they are compensated for the loss at the current market rates.

There are also other settlement schemes that were supposed to settle indigenous people. We have a place like Teldet which was community land, but because of further marginalization of the people, the Government as recently as 2012, just before elections, evicted the people and their land was gazetted as forest land through political machinations to deprive the people of settlement and the right to vote in the specific area where they live.

There is a case of Kabolet Forest where the Sengwer are settled. The land has never been finalized in terms of adjudication and titles issued. I believe these are the historical injustices that the National Lands Commission can easily address but I want once more to thank the Senator for Makueni for bringing up this Motion. I would request

that this august Senate which has now taken the bull by the horns because no other Parliament has brought up this issue of historical injustices to the level where we are now want to deal with the issue to finality. This is the first time that historical land injustices are being addressed and courtesy of the Senator for Makueni. I wish that we approached this issue in a non-partisan manner knowing that every Kenyan has a right, historical right and current right to be where he is.

Coming to the issue of land use, there is total abuse of land use. During our recent visit to China, I expected to see all the land occupied by the billion of people who inhabit that county. However, I was surprised to find out that there was expansive land for agricultural productivity. There is historical injustice being meted on us by land planners. In this country, land planners and surveyors are the ones who have been on the fore front, purporting to fight for land injustices.

Mr. Speaker, Sir, it is unfortunate that they have let us down because they are the ones surveying on riparian land which should be protected yet they are the people involved in illegal land allocation and planning roads which cannot be used by motor vehicles in this day and age because they are very narrow; the townships which are now supposed to take a majority of our people because agricultural land is no longer adequate.

We should be planning to concentrate people in settlement schemes and have many townships and promote them to grow to urban centers and municipalities and free agricultural land for agriculture, perhaps even jointly as is the case in China where even if you have 100 or two acres of land, you do not necessarily have to live on those two acres and another person's acres are amalgamated together and farmed jointly. That way, mechanization and high productivity is possible. That is the direction that we should look at as we talk about agrarian reforms. We are reforming agriculture and we have to do it, we have to look at how to plan our urban centres.

Mr. Speaker, Sir, our municipalities were well planned by the colonial Government, and I give credit to them because they planned out urban centers, however; our recent urban centres have no master-plans. I think that it is high time we looked at the Municipalities and Cities Act to ensure that we develop our urban centres well. The way the Act was enacted is that a municipality would only be a municipality after attaining so much population. However, we should be proactive in a manner that we plan a municipality from zero. For instance, we can plan Konza City as a municipality so that as it grows, those facilities come in. We do not have to wait until an area has become full of shanties before we think of establishing a municipality.

**Sen. Madzayo:** Asante, Bw. Spika wa Muda, kwa kunipa nafasi kuchangia Hoja hii. Kwanza, natoa shukrani za dhati kwa Sen. Mutula Kilonzo Jnr. Nafikiri kwamba katika maono yake, ameona kwamba sio jambo la eneo fulani bali ni Wakenya wote walioko katika janga hili la dhuluma ya mashamba. Nampongeza kwa kuleta Hoja hii. Maonevu na wizi wa mashamba ni kama ugonjwa wa saratani ambao ni ngumu kupona na lazima mtu apewe matibabu mengi sana. Sisi tuko katika historia sasa na hivyo ningependa kusema kwamba watu wanoitwa maskwota, walala hoi au maskini ambao hawajiwezi wameteswa na mabwenyenye.

Hilo ni jambo la kusikitisha kwa sababu nikitoa mfano wa Kaunti ya Kilifi, karibu kaunti yote, watu ni maskwota na ni jambo la aibu sana kwamba tangu Uhuru upatikane Kenya, watu ambao wana hati miliki za ardhi ni wachache sana. Ni maonevu ambayo ni dhambi kubwa sana hata mbele ya Mungu. Kilio cha wanyonge cha watu wa Pwani ni

kwamba mashamba yao yalichukuliwa kwa njia dhuluma. Hiyo ndio sababu katika Pwani, vijana wetu hawawezi kwenda kwenye mashamba kufanya kazi na kuchuuza bidhaa ili wapate pesa za kusaidia jamii zao, kujiendeleza kiuchumi na kimaisha. Hii ndio inasababisha kuzuka kwa makundi kama Mombasa Republican Council (MRC). Tutapiga kelele na kulaumu kundi hilo lakini ukweli wa mambo ni kwamba MRC inasema ardhi ya watu wa Pwani ilichukuliwa na mabwenyeye bila kufuata sheria. Ziko stakabadhi maarufu ambazo zinasema kwamba mashamba hayo yalikuwa ya wenyeji waliokuwa wanaishi pale lakini wakati mzungu alikuja hapa, aligawanya na kuchukua ardhi za wenyeji. Historia kama hiyo ndio imeweza kutupa shida hizi.

Bw. Spika wa Muda, kuna sehemu zinagawanywa na zinaitwa *settlement scheme*. Utaona ya kwamba wanaopewa ardhi hizo sio wakaazi wa mahali hapo. Wakaazi wa mahali hapo wanatupwa nje, orodha zanatengenezwa na watu ambao sio wenyeji. Wanaotengeneza orodha hizo ni maafisa walioko katika nyadfa za uongozi Serikalini. Badala ya wao kutambua kwamba wale ambao wanatakiwa kupewa ardhi hiyo ni wakaazi wa eneo hilo, wanatengeneza orodha zao wenyewe.

Hivi karibuni, nitawataja maafisa walioko katika nyadhifa za juu sana Serikalini ambao wanaiba ardhi za *settlement scheme*. Watu hao wana ardhi kubwa watokako lakini anapotumwa Pwani wetu, anaanza kutafuta ardhi ya kunyakua. Tunashangaa Serikali inaleta kina nani kufanya kazi Pwani. Hata maafisa wa polisi wananyakuwa ardhi. Ukienda hata Maasaini, utaskia kuwa maafisa wakuu wa polisi katika eneo hilo pia wamenyakuwa ardhi na hilo latendeka huko Pokot na Turkana. Kumepatikana mafuta Turkana na hata ardhi hiyo sio ya wakaazi; ardhi hiyo iko katika umiliki wa Wakenya wenzetu ambao ni matajiri. Hilo ni jambo ambalo halifai.

Sisi kule Pwani, kuna mtu aliyefanya kazi huko Pwani na alinyakuwa ardhi kwenye ufuo wa bahari. Linalotushangaza ni kwamba ardhi hiyo iliwekwa hapo na Mungu kuwafaidi wakaazi wa Pwani au maafisa wafisadi ambao mmoja alinyakuwa ekari 10,000?

Ikiwa inatajikana majina ya watu yatobolewe, basi tutayatoboa hapa.

Bw. Spika, sisi husema tunajivunia kuwa Wakenya. Ndio tunaweza kujivunia na kujidai kuwa ni Wakenya. Lakini walala hoi ukweli ni kwamba wanavumilia tu kuwa Wakenya. Hii ni kwa sababu mashamba yao yamenyakuliwa na watu wengine. Babake mtu akifa, hakuna mahali pa kumzika. Kwa mfano, Shariani na Chakama wazee wengi wamekufa. Sisi sasa inabidi twende tukatafute mahali pa kuwazika wazee hawa. Ni kana kwamba mzee huyo hakuishi mahali pale. Tajiri ambaye alinunua shamba hilo tayari ameweka ua ili mtu asizikwe hapo ndani kwa sababu si kwake. Yeye hana cheti cha kumiliki shamba.

Tunashindwa hii ni sheria ya aina gani ikiwa mtu ameishi zaidi ya miaka 50 ama 90 mpaka amekufa akiwa mzee ambaye amewacha wajukuu na vitukuu na anaambiwa hapo mahali alipoishi si kwake.

Mwaka wa 1963 tukichukua Serikali kutoka kwa mkoloni, ilisemekana, ardhi ya Pwani kilomita 10 haiwezi kumilikiwa bila sahihi ya Rais. Hapo ndio maneno ilianza kukoseka katika nchi yetu na ardhi ya watu wa Pwani ikaanza kupeana kama zawadi.

Na sisi tunasema ya kwamba hata kama utapeana zawadi, iwe moja au mbili, lakini huwezi kupeana kwa watu wote. Lakini ukiangalia hivi sasa ni kwamba hayo ni makosa ambayo yalifanyika na ni lazima tuyarekebishe. Makosa haya tunayaona kule kwa Maasai, Pokot, Pwani, Turkana na kadhalika. Haya ni matatizo ambayo

yatashughulikiwa na Mahakama Kuu ya Kimataifa. Wakenya wengi ambao sasa ni walala hoi na hawana mahali wanaweza kuita nyumbani.

Mimi ni mkaaji wa Mtwapa. Ardhi yote ya Mtwapa ni ya mtu mmoja. Mtu huyo ana zaidi ekari karibu 30. Hata hiyo, watu wamejenga majumba ya biashara hapo. Hivi sasa watu wanaambiwa waondoke kwa sababu mwenyewe anataka shamba lake. Wataondoka namna gani? Na hao watu zaidi ya 40,000 wataenda wapi? Si halali kwa mtu mmoja kuwa an zaidi ya ekari 30 pekee yake. Ndio sasa tunataka donda sugu kama hilo tulitoe na sheria kama hii ipitishwe ili tuweze kujadili maonevu ya kihistoria. Mashamba haya ni lazima yamilikiwe na wenyewe.

Pia tunaona shida kule Udigoni, Wadigo uko Kwale, na Vanga - Kule Likoni, kuna shamba la Waitiki. Shamba hili ni ekari 10,000 . Kuna watu pale zaidi ya 50,000. Hivi leo, watu wale ambao wanaishi pale bila hati miliki ya shamba na watu wengine wamejenga pale. Ardhi hii ni ya Wadigo. Leo wametolewa wamepelekwa Vuga, Kinango, Kwale na Shimba Hills. Hi si haki. Haki ya mwenyewe mpe. Kama haki ni ya Mdigo, mpe Mdigo, kama haki ni ya Mrabai, mpe Mrabai, kama haki ni ya Mkenya, mpe Mkenya. Si kwamba tukiangalia Wamaasai hivi sasa, hakuna mtu anajua Wamaasai wanaishi wapi, hawana ardhi. Kajiado sasa hata Maasai ukimwona unamwona ni kama mtu anaregerega tu, sio kwao hapo. Na huu ndio ukweli wa mambo.

Tunasema makabila ya Kenya lazima yaheshimiwe, na pale watu wanaishi ni lazima dhuluma zote za ardhi ziangaliwe. Kama ulienda Umaasaini ukapata ardhi na ulipata vibaya, ukae ukijua hiyo ardhi ni ya Wamaasai na wenyewe wataitaka. Na ikiwa ulienda Kilifi ukachukua shamba uko, ukae ukijua Wagiriamama wanaoishi huko watataka kurudishiwa ardhi yao kwa sababu uliichukua kidhuluma.

*(Applause)*

Mficha uchi hazai. Sasa Serikali tunaiambia, ikiwa mnataka kuendelea na uongozi, fimbo ni hii; vua nguo uzae. Bila hivyo, Pwani haiwezekani, Jambo hili halitawezekana ikiwa sisi tunalala hoi na nyinyi mnalala unono na kula vyema. Hatuko pamoja, hata kidogo! Hatuwezi kuwa pamoja, ikiwa mimi sina mahali pa kuzika jamaa zangu na wewe huku unazika mtu wako vizuri. Hakuna faida ya kusema kwamba u Mkenya ikiwa wewe unastarehe vizuri na mimi sistarehe vizuri nalala hoi.

Kwa hivyo mmi nataka kuunga mkono huyu ndugu yangu, Sen. Mutula Kilonzo Jnr., kwa kuleta Hoja hii hapa Seneti. Amechukua jukumu sana, ijapokuwa umri wake ni mdogo lakini akili zake ni nyingi. Kwa hivyo, nataka kumshukuru kwa sababu amefungua kila mtu macho. Na Wakenya kwa ujumla wakae wakijua ya kwamba wakati umefika sasa, sisi tunataka kwamba tume hii ambayo ilichaguliwa ya kuangalia mambo ya mashamba, Tume ya Mashamba ya Kitaifa inayoongozwa na Swazuri, ndugu yangu - Bw. Swazuri sasa amemaliza miaka mitatu, angekuwa tayari amependekeza sheria hii. Kwa hivyo, mimi nawambia; hao maofisa wako wanaoketi kwa ofisi yako, hao maafisa wa kisheria, waambie watengeneze hii sheria haraka iwezekanavyo. Wailete hapa katika Seneti tujadiliane na tupitishwe ili kila Mkenya apate mahali pake pa kuishi.

Ahsante.

*(Applause)*

**Sen. (Dr.) Zani:** Mr. Temporary Speaker Sir, it is really quite a sad debate and an emotive one. I am happy Sen. Mutula Kilonzo Jnr. has brought it because we have discussed in many forums and even my brother Sen. Madzayo ended his contribution, by thanking Sen. Mutula Kilonzo Jnr. It is important maybe to make an amendment and put a deadline to when that Bill should be done. If we leave it open-ended, we will find ourselves exactly where we are.

The fact that, this Bill is not in place, I guess there is a problem somewhere. That problem is interference of the National Land Commission (NLC). That Commission has not operated independently. We saw that interference when title deeds were given out in the Coast region where I come from, and we talked about it. Why do you not look at all parcels of land and deal with them comprehensively, instead of dealing with it piecemeal? Giving land titles without checking whether that land had previous titles, it is not fair to use. Indeed. There are some people who got those title deeds and when they tried to borrow loans from banks, they were not able to. That is why the Constitution of Kenya 2010 gave birth to put NLC. Otherwise there would not have been need for that Commission if it is not able to perform. There are many commissions which were established to operate independently.

I feel sorry for my brother Swazuri because I know him from the University of Nairobi. He is a don and has dealt with land issues for a very long time, and he is very professional. It would be interesting to know what has happened within the time he has been in office. He has never been given the support to operate effectively.

It is not good especially for the people from the Coast, in a case where one of us has been put into such a position and they cannot deliver. This is because somebody will say: "We have given it to one of your own, where you have serious land issues, and nothing has happened." That is why it is very important to push and try to give teeth to this the National Land Commission (NLC), so that it does what it is meant to do.

Mr. Temporary Speaker, Sir, if we observed Article 60(1)(a) of the Constitution which advocates for equitable access to land, we, the people from the former Coast Province, could not be further from the truth. The issue of land in the former Coast Province has been there for over 50 years. All we have been doing about it is talking and talking. There has not been any action, as the Coast remains one of the most impoverished areas in this country. A lot of that impoverished state comes from lack of land, because it is on land that you can put labour, plant some crops and then sell the produce to make a profit and built hotels.

As a Committee, we have been going to the Coast and seeing what is happening there. When you inquire who the land and hotel owners are, you will find that it is not the indigenous people of the Coast. People are fond of saying that people from the Coast are lazy but that is not true. We do not want to hear such clichés being used against our people. People have to understand what the situation has been in the Coast and try to come up with comprehensive ways of ensuring that the situation changes once and for all.

With the downward trend in the tourism sector, people there cannot even survive because tourism used to support very many people, apart from those who were working in the hotels. People who worked in the hotels supported their families at home by taking them to schools and, for example, buying tomatoes and cassava which is grown in Kwale. They could do very well. They also supported the fishermen. A fisherman knew where to



take their fish. Where will the fishermen at the Coast take their fish because there are no visitors at tourist hotels?

Moving away from the issue of hotels, the indigenous people of the Coast are not the land owners even where land exists for other businesses enterprises. We should not bring the argument that they sold land. What else could they do? Unfortunately, that is the truth. Land has been sold at throwaway prices out of desperation. It is now 50 years later but there is still marginalisation because other parts of this country have moved forward, consolidated and kept their parcels of land. How many people from the Coast can be found all over in any of the other regions, yet you will find people from other regions at the Coast? If you looked at the statistics, it will make you to think about issues of land especially in the Coast.

Mr. Temporary Speaker, Sir, I happened to be a Member of the task force that had been established by the former Prime Minister to look at the historical injustices. One of the issues that we looked at was land. At that time, we were under a Coalition Government and made progress. When that office ceased to exist, we did not get any more funding. That work could not continue, although it was important and needed to be done. We needed to go through all the various counties within the former Coast Province, establish what was going on and how it could be addressed.

There is nothing as bad as dealing with a population of people who carry very many grievances. We are restricted to using either English or Kiswahili language at any given time. However, there is a Kiswahili word I would really want to use to capture the situation about what people feel. The word is “*mlipuko*”. At one point, people will explode because they have been holding that for long. If there is somebody who is decent, calm, progressive and polite, then, that person is from the Coast. If these kinds of injustices are bottled up over and over again, we will move into a situation that is not good for us. That task force, therefore, did not complete its work.

I am looking at the insight of the former Prime Minister setting up the task force *in lieu* of trying to identify and address this issue as something very important. A lot was achieved because we were in a grand Coalition Government. We are missing a lot because the input that we had on our side of the Grand Coalition is not there anymore. This would have been very critical. It would have been important for the task force that was looking at historical injustices to continue.

Mr. Temporary Speaker, Sir, I also happened to be part of another team that was working in Mariakani on digital mapping. We were identifying what area should be used for what. We were surprised about what happened after mobilising the community and telling them what our work was. We were trying to demarcate the areas as residential, commercial, industrial and cemeteries for burying the dead, areas for establishment of schools and so on. We went round doing that. We were supposed to have an aeroplane that was to pass over Mariakani to do the general mapping. We informed members of the communities there about that exercise.

You would not believe what happened. The moment the beacons were put, they were removed the following day. People in Mariakani told us: “We have been touched by land issues. We have been bitten by a snake called land issues and we are going to be alert.” We had to tell them what exactly we were doing because, obviously, they thought that somebody wanted to grab their land overnight. Therefore, matters of land grabbing are real.

Mr. Temporary Speaker, Sir, as you travel to Mombasa through Mariakani, you have seen walls around people's compounds. Most of that land was community land. You will find that somebody bought the land fraudulently from one of the brothers in a family. We were told stories of how a wall is put round that land and somebody has to exit through a spot or be closed in. That is family land that, for one reason or another, has been taken by somebody else. We need to think about all these issues and try to find ways and means of bringing them to a stop, figuring out exactly how we will do that. We will not come out of poverty without addressing these specific land issues.

When title deeds were being given and the Cabinet Secretary at the time was hon. Charity Ngilu, we wanted the issue consolidated at that particular moment. We wanted them to find out exactly what was meant to happen. We suffered a lot from the disconnect between the Ministry and the NLC. However, we should not look at it at a conflict level and leave it there. We should look at it in terms of what can be done to ensure the implementation of the agenda that Article 67 of the Constitution advocates for.

I know we have started talking about community land and creating clarity about that in the Community Land Bill that we discussed in this House. However, it is very critical to generally have a very broad agenda. It cannot just be business as usual. It has to be something that we need to put up and handle once and for all. This should never come to pass as something that we just talked about and nothing happened.

Mr. Temporary Speaker, Sir, it was shocking when we had an *ad hoc* Committee on natural resources. One of the places that we visited was Kasigau in Taita-Taveta to look at mining that was taking place there. As we drove, we saw chunks and chunks of sisal land which is not owned by the indigenous people. Therefore, who are the silent owners of those parcels of land? We were even told a story of somebody who had been killed by members of the community. Something is going on about some people who move to specific communities to utilise and exploit natural resources, be it land, gold or anything else. At the end of the day, the indigenous people do not get anything. That creates a lot of problems, divisions and insecurity.

Mr. Temporary Speaker, Sir, it has been mentioned here by other contributors before me that the same situation is obtaining in Kwale. As you go to the beach, on the left side, you will find owners of big hotels and land who are not indigenous Digo. However, because the Mdigo is quiet and cannot bring that to the fore, he will decide to just get fish and call it a day. That person has been ignored and that land has not been adjudicated. The people are just living from day to day without clear ownership of land. It is not something that is difficult to do. We should be serious about it and get it out of the way.

The Truth, Justice and Reconciliation Commission (TJRC) Report has been mentioned by Sen. (Prof.) Anyang'-Nyong'o. It is in the public domain. That becomes the first reference point for this Bill. We should get information from that Report because that has gone into details. Maybe we just need to know why that Report has not been discussed. It has been in the National Assembly for a couple of years. It needs to come to the fore. We need to discuss it and find a way forward. We can also look at it in terms of industry, what people in the coast grow and how they go about it right through the kind of industry and farming they can do.

In the Coast, we have been very rich in the production of cashewnuts, but in Kilifi, that industry has died. We are also rich in sugar cane growing; for example,

Ramisi Sugar in Kwale, but that industry has also collapsed. In addition, there is cassava growing in the Coast. I remember as a child, we would go and find a lot of cassava, we ate and enjoyed it. Nowadays, you look for it and you do not get it. Maybe somewhere along the line, people realised that they are not getting as much from the land as they ought to get. Of course, then the national and county governments have to come out very strongly to support that subsector because this is a source of income which is very important for our people to move forward.

Many parcels of land which were mentioned by Sen. Madzayo have been sold and resold. All sorts of issues crop up, for example, you find that one family has sold the land, they have a title deed and another family has come and sold the land and they have a title deed. This leads to congestion and it becomes almost impossible. In the case of Mariakani, in areas like Sangasini, for example, which were meant to be carved out to be industrial-commercial areas, you find people settling there.

There are people who bought land in certain places in Mariakani which were meant to be rural residential but now you find next to you, there is someone who is doing some industrial activity, for instance, storage of goods and lorries. So, in the morning instead of listening to the sweet music of birds and going to milk your cow in peace, you are wondering about how much damage you are doing to your lungs and body system because you do not even know what you are smoking in a free environment. Where you are meant to be breathing in fresh air, you are smoking in all the hazardous waste that has been emitted by the industries.

There is no organization and planning. For example, the digital mapping that we put into place in Mariakani is on paper yet we handed it over. It should be with the county government. It is a question of activating it. So, it is a question of saying; what happened? Why do we want to do post-planning? Where we have already planned, can we go to that so that we address the issues that have already been addressed and sort them out in a manner that will make it possible for people to live in harmony?

We will not have peace in Kenya if we do not address these issues. As I said earlier, we need to find ways and means, even have an investigative committee. One of the Committees of this House, maybe the Committee on Land and Natural Resources needs to look for a forum where they will call members of the National Land Commission (NLC), discuss, tease out and find out from them exactly what is happening, where the bottlenecks are, how they can address those specific bottlenecks and what sort of help do they need to be put into place for them to do that; go back again to the communities; talk about the historical injustices, especially land injustices and find out how can they be rectified---

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

Proceed, Sen. Karaba.

**Sen. Karaba:** Mr. Temporary Speaker, Sir, thank you very much for allowing me to contribute in support of this Motion. The land issue is as old as history; and history is as old as the Bible. However, what we are discussing is the outcome of what we can call the initial scramble and partition of colonies in Africa. It all started in 1894. We can therefore blame the British, the Dutch and the Germans who in 1890 had to transfer Witu which was along the coast in exchange of an island called Heligoland in Germany. Germany did not have a naval base and that one was occupied by the British. They had to

come to trade in Kenya so that they could have the island exchanged with part of land in Kenya; Witu and Heligoland. It so happened.

The same British and Germans are responsible for demarcating Africa into various countries irrespective of communities which lived and even today live across the boundaries particularly the Maasais, the Kuria, the Suba and quite a number of tribes. It is the same British and Germans who saw it fit to transfer our Mt. Kilimanjaro, which that time was in Kenya, to the Germans in 1891 just because there was a queen who wanted it in Germany.

The British wanted to have a principal outlet from Mombasa. To have the railway line constructed in 1894, they had, therefore, to agree to have Kenya and Uganda become protectorates. They had to protect those ones against the Germans. That is how bad history can be and how injustice came to Kenya. Through the same process, the railway was started in 1894 and it reached Port Florence in 1901. At that time, Kisumu was called Port Florence. Since the British had already decided that even Uganda was to be protected because of the source of River Nile which took water to Egypt that relied on River Nile, in 1895, therefore, demarcation was done and Kisumu which was in Uganda at that time, had to be transferred to Kenya so that they could be in one country called the Kenya colony. So, by 1920, the Kenya colony was created. When it was created, the boundaries included and excluded some communities. Some found themselves in Uganda while others found themselves in Tanzania, Somali, Ethiopia, and Sudan. That is how Kenya was created.

In 1963, when we became independent, we had more than 40 tribes living in Kenya which occupied parcels of land, what we call community land. With the community land ownership, there were creations within the colony of provinces and districts which, today we call counties. Initially, we had eight to ten provinces. I remember that central Kenya did not include Kiambu. Southern province included only Machakos. When there was some shake-up in 1963, they created the eight provinces.

Out of that creation, many other people came into play. We had some very powerful politicians. Some powerful communities came up. To our surprise, you find that a place like Kirinyaga, at that time called Embu up to 1963, had to have its land hived out of the Kirinyaga proper because there was somebody who was more powerful that time at the Government and created southern Kirinyaga to be part of a province in eastern province which was hived off from central. This has happened and we have so many of those injustices which have happened.

So, as we contribute to this Motion, it is important to consider some of these problems and errors which were created by none other than the colonialists and our people. There is nobody else who is concerned apart from what we are doing now. We are looking into a commission which will look into all those problems; for instance, Mwea which should have been in Kirinyaga and not Mbeere, Makueni which borders Kajiado, there is a boundary problem there and so many other boundaries which came up as a result of migration of tribes which were existing until the time they found it necessary to be called sedentary communities. These are the people who settled to farming and so on.

In 1904 and 1911, the Maasai Agreement was signed by the colonialist because they wanted the Maasai reserve to be on the south and the north to be left so that the “whites” could occupy the land. When the colonialists came, they occupied the best land.

They came in after 1902 when Kisumu was transferred from Uganda to Kenya. By that time, Lord Delamere came, several other ranches were declared to be white settlers, white highlands and so many other lands were taken from the former Central Province. In the Coast, the Ten Miles' Coastal Strip was also taken by the Sultan. These are the ones we are calling injustices.

We cannot sit down to watch and read it as history. We need to see it practically. We need to make sure that those tribes who were displaced from their parcels of lands are compensated or they be facilitated to reclaim their parcels of land which were taken by the colonialists.

Mr. Temporary Speaker, Sir, you will agree with me that movement and land - particularly land - is a factor of production and if it is not considered and harnessed properly to be a factor, then we will not talk about development in any country. That is why harnessing of land is very crucial even in Europe and Asia. That is why the Dutch have to reclaim land from the sea. The same case is happening in Japan, Korea and China.

The reason why China is able to feed 1.2 billion people is because of the way they are handling the land issue. Quite a number of my colleague Senators have talked about Chinese Land Reforms. They make sure that land is a factor of production and it is used for production. They produce a lot of rice. In fact, China is the largest producer of rice and not the largest exporter because they consume most of it.

In Kenya, we should ask ourselves what we are doing with the land which is available. Is our land used to the optimum? Are we using our land productively or are we not? If we are not, we should ask ourselves why and ensure that if land was meant to be a forest, has it been maintained and remained as a forest? If not, what are we doing as a Government and what is the Senate doing to make sure that happens? If the land was meant to be a ranch or pastoral area for people who, for no reasons, have to move from one place to another looking for pasture and water, particularly the Maasai, Turkana and other tribes, we need to have their land reserved because that is also a factor of production.

Without that land being massive, we will not have land available for pastoralism. We need animals just like we need meat. That is the reason why we need to have land reserved for that purpose. In Kenya, the Arab land is 20 per cent of the total area. The 20 per cent land which is available is the one which is supporting 42 million Kenyans. We need to think about our food ratio, food security and how we to make sure that our population is fed. Therefore, we have to consider land that is available, land which was grabbed or being misused because most of the land which we have is the one which was grabbed from some sedentary tribes and it is not being put to use. You will find that we have many absentee landlords and absenteeism is prevalent in the Kenyan coast, some parts of Nyanza and the former Eastern Province.

Mr. Temporary Speaker, Sir, this Motion is asking us to come up with that Commission, and I am happy that it has been given 60 days to come up with clear cut demarcations and beacons, so that we know how to plan. Like in Kirinyaga County – I hope the people of Kirinyaga County are watching me on television and seeing that I am really doing this – we need to know where our boundary is so that we can settle for that because it is our county. Any other county which is recognised in the Constitution should also know her boundaries. That way, we can plan some areas which have water and are

useful for irrigation to be irrigated and those which should be reserved for forestry should be left for that purpose.

The tribes that occupied Arab lands were denied and deprived of land by colonial settlers. That is the historical injustice that we are talking about. Talk about the Delmonte Farm in Thika which is owned by one Italian, how many acres of land does it have? The 99 year lease which they were given has now expired and they are trying to play with it so that it can get a lease for another 99 years. We will not allow that to happen. This is something that was done before some of us were born but we understand the history now and can interpret these historical injustices.

Mr. Temporary Speaker, Sir, let us treat land as a factor of production so that those areas which can produce are used for production and those which are good for pastoralism are used for them same. That is what we call opportunity cost. If an area is not good for anything, then it can be good for tourism or mining. That is what we are going for and that what this Motion is calling for.

This Motion is also asking what will happen to those people who were displaced from their parcels of land through the force of human power, like IDPs. Why should there be IDPs in a country that has been independent for 50 years? When you talk about IDPs, how did it happen? Were they the first people to occupy those parcels of land? The first people, as I had told you earlier, were the colonialists who were given land as a reward for taking part in the First and Second World War and also to construct the railway from Mombasa to Kisumu with a branch to Nanyuki.

Out of that, the ones who were displaced from those parcels of lands are the ones now who became settlers and squatters. They are somehow being displaced now because of human force. That is why we are talking about IDPs. This is not something that should happen in the present century. Elsewhere, it has not happened and it should not be allowed to happen here in Kenya. Let us all agree that we are living in one country but let us also recognise tribal boundaries and that we need to have people settle in their respective parcels of land.

I support.

**The Temporary Speaker** (Sen. Mositet): Senator, your time is over. I can see other Senators have come and I think it is always good that any day that we are here, we should dispose some matters and not just leave things hanging. We had agreed that this Motion was to be disposed of today. Let me give two minutes to each of the remaining Senators so that, at least, you can be heard. We will then ask the Mover reply and then dispose it.

**Sen. Mbura:** Asante, Bw. Spika wa Muda kwa nafasi hii. Namshukuru Sen. Mutula Kilonzo Jnr. Naunga Hoja hii kama mmoja wa waathiriwa kutoka Pwani. Nasikitika mara nyingi katika mikutano ya kisiasa na hata hapa Bungeni kusikia swala la ardhi likizungumziwa na viongozi wengi kana kwamba hawaelewi wanachozungumzia. Viongozi wa Pwani wamekuwa wakilia kwa miaka mingi wakilalamika kwamba ardhi ya watu wa Pwani imenyakuliwa na watu wa bara na pamoja na kiongozi wa kwanza wa Jamhuri ya Kenya.

Lakini maswali mengi huibuka kwa wakaazi wa Pwani. Wakati ule watu wa bara huja na kunyakuwa ardhi za watu wa Pwani, anayewaleta ni nani? Isipokuwa ni wenyewe Wabunge, Kamau, Odipo, Njoroge, Mutula au Kamene atajuaje kuwa kuna Rea Vipingo

ikiwa si mimi Sen. Mbura, Katolo au Bw. Yusuf Kenga anayemwambia kuwa kuna ardhi inauzwa kule Pwani? Ni sisi wenyewe, watu wa Pwani,

Lakusikitisha ni kwamba siku zote twasikia tu ni mtu mmoja Kenya hii akiambiwa ndiye mnyakuzi wa ardhi lakini pia tuna ndugu zetu Pwani ambao wana ardhi kubwa sana walizonyakuwa kwa mlango wa nyuma na hao ni watu ambao hawatajwi. Ardhi zote zilizoko kwenye ufuo wa bahari zimechukuliwa na ndugu zetu wa Pwani ambao hawajatajwa mpaka leo. Jina ambalo latajwa mara kwa mara ni lile la Kenyatta. Lakini hautasikia majina kama; Hussein Dairy, Mazrui, TSS, Sen. Mbura, Sen. Madzayo na wengine wengi. Anayetajwa kila mara ni mmoja tu.

**The Temporary Speaker** (Sen. Mositet): Order Senator. Your time is up.

**Sen. Mbura:** Spika wa Muda wanikatiza na haya ndio mambo yanayotutaliza sisi kama Wapwani. Niongeze hata kama ni dakika mbili.

**The Temporary Speaker** (Sen. Mositet): We are left with only four minutes and we want to dispose this issue.

**Sen. Okong'o:** Mr. Temporary Speaker, Sir, mine is just to commend the proponent of this Motion, my brilliant learned colleague, Sen. Mutula Kilonzo Jnr. What he has addressed in this Motion is timely and should have been done within the first three years of inception of the Constitution. All in all, it is not too late for us. We need to address all these injustices up to the realm of who owns what and all the rights of the owners.

The coastal region has issues. There are also investors who have done an impressive job of investing and developing land. However, those with idle land should be dealt with in the new order as envisaged in the new law. We also have internal issues in Nyamira County, so I hope that by the enactment of the said law, we will address these issues

With those few remarks, I beg to support.

**The Temporary Speaker** (Sen. Mositet): I now call upon the Mover to reply

**Sen. Mutula Kilonzo Jnr.:** Mr. Temporary Speaker, Sir, I thank all the Senators for their lively contribution to this Motion. I have nothing useful to add to what the Senators have said and no point of reply has risen out of what most Senators have said, except to support the Motion. My only request through the Chair as I reply is that the HANSARD of the Senate together with the Motion itself, be forwarded to the National Land Commission (NLC) through the Office of the Speaker so that then they are alerted to the sentiments that we have raised as Senators here and so that this Motion does not disappear into the books of history or records of this Senate like most of the Motions which we have debated since the inception of the Senate and we have not seen any tangible results.

The anger that you have seen is that of injustice. The only way to capture the injustice is to ensure that this Motion and sentiments of all my colleagues gets to the Chairman of the National Land Commission (NLC) as soon as possible.

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

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, before I put the Question, pursuant to the provision of Standing Order No.72, I rule that the Motion does not affect counties.

I, therefore, wish to put the Question.

*(Question put and agreed to)*

I now order, as per the prayers of the Senator who moved and replied to the Motion; that the HANSARD and the Motion be forwarded to the Commission.

Next Order!

ESTABLISHMENT OF A TASKFORCE TO SURVEY AND  
FIX BEACONS FOR ALL COUNTY BOUNDARIES

GIVEN the clear provisions of Article 6 (1) and the First Schedule which establishes the 47 counties of the Republic of Kenya;

CONSIDERING the clear provisions of the Districts and Provinces Act (Cap 105 A) of 1992 which specifically delineates the geographical boundaries of each county;

NOTING the provisions of Article 188 of the Constitution, which clearly state that the boundaries of a county may be altered only by a resolution of an Independent Commission set up for that purpose by Parliament and with the support of at least two-thirds members of the National Assembly and two-thirds of the county delegations in the Senate;

FURTHER NOTING that the boundaries in counties have not been surveyed and no beacons have been fixed;

CONCERNED that failure by the National Government to mark and fix the county boundaries has led to endless and sometimes violent conflicts, in which innocent Kenyans have been killed and their property destroyed, and is generally perpetuating poverty and underdevelopment in counties;

THIS HOUSE urges the Office of the President and the Ministry of Land, Housing and Urban Development to urgently establish a Task Force to survey, mark and fix beacons for all the county boundaries and to submit a report of the said Task Force to this House on or before 31st March, 2016.

*(Motion deferred)*

**ADJOURNMENT**

**The Temporary Speaker** (Sen. Mositet): Hon. Senators, it is now time to adjourn the sitting of the Senate. Therefore, the Senate stands adjourned until Tuesday, 29<sup>th</sup> September, 2015, at 2.30 p.m.

The Senate rose at 6.30 p.m.