

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Thursday, 2<sup>nd</sup> April, 2015

*The House met at the Senate Chamber, Parliament Buildings, at 9.00 a.m.*

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

### PRAYERS

**The Deputy Speaker** (Sen. Kembi-Gitura): I note there was supposed to be a Notice of Motion by the Standing Committee in the appendix. However, the Chairperson is not here.

Let us go on.

### STATEMENTS

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

**Sen. Adan:** Mr. Deputy Speaker, Sir, I request to give Statements from the Committee on National Security and Foreign Relations that I have.

**The Deputy Speaker** (Sen. Kembi-Gitura): You rose but your name was not on the screen. Neither is it now.

**Sen. Adan:** Mr. Deputy Speaker, Sir, I have a problem with my card.

**The Deputy Speaker** (Sen. Kembi-Gitura): You have a statement on what?

**Sen. Adan:** Mr. Deputy Speaker, Sir, I have a Statement by Sen. Kagwe for the Committee on National Security and Foreign Relations although he is not here.

**The Deputy Speaker** (Sen. Kembi-Gitura): Since he is not here, could you give it after the recess?

**Sen. Adan:** Mr. Deputy Speaker, Sir, that should be after the recess although it will have expired by then unless he---

**The Deputy Speaker** (Sen. Kembi-Gitura): He is not here. The tradition is that we give statements when Senators are here.

**Sen. Adan:** Mr. Deputy Speaker, Sir, can I proceed, Mr. Deputy Speaker, Sir?

**The Deputy Speaker** (Sen. Kembi-Gitura): No, you are not allowed to give a statement when Sen. Kagwe is not here. Is the Statement coming for the first time?

**Sen. Adan:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Just hold it on. Maybe, you might give it in the afternoon, if that is possible.

SUSPENSION OF RADIO THERAPY TREATMENT AT KENYATTA  
NATIONAL HOSPITAL ON 16<sup>TH</sup> MARCH, 2015

**Sen. Adan:** Mr. Deputy Speaker, Sir, about two weeks ago, I made a request about Kenyatta National Hospital.

IMPLEMENTATION OF MALKA DAKA IRRIGATION  
PROJECT IN GARBATULA

Mr. Deputy Speaker, Sir, I also requested for a Statement on Implementation of Malka Daka Irrigation Project in Garbatula. They have not been given up to now.

**The Deputy Speaker** (Sen. Kembi-Gitura): Do you have another Statement to issue?

**Sen. Adan:** No, Mr. Deputy Speaker, Sir. I had just made a request for a Statement from the Committee on Agriculture, Livestock and Fisheries and the Vice Chairperson is here. I also made another request about Kenyatta National Hospital and you ordered that it be given this Tuesday week.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Ndiema, do you have the Statement?

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, I seek your indulgence. The Statement is not ready. I request that I issue it immediately after recess.

**The Deputy Speaker** (Sen. Kembi-Gitura): How long has it been outstanding? When was it sought?

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, I may not recall. Maybe, the Senator could be of assistance.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Adan, when was the Statement sought?

*(Sen. Adan spoke off record)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Ndiema, why is it taking so long? Has your Committee not been able to meet?

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, we communicated to the Ministry. Unfortunately, they have not written back.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Adan, that will have to be after recess. Is it okay with you?

**Sen. Adan:** That will be okay, Mr. Deputy Speaker, Sir.

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

SUPPLY OF DI-AMMONIUM PHOSPHATE (DAP) FERTILIZER  
BY THE GOVERNMENT

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, I sought a Statement from my own Committee on the issue of fertilisers for Trans Nzoia County. An answer is ready

although the Chairperson of the Committee is not here. We are now in the planting season. With your indulgence, I request if this could be handled before we go for recess.

**The Deputy Speaker** (Sen. Kembi-Gitura): You are the Vice Chairperson of the Committee. Could you tell us why the Statement has not been given?

**Sen. Ndiema:** The answer is ready. However, the Statement has not been listed for discussion.

**The Deputy Speaker** (Sen. Kembi-Gitura): Where is the Chairperson of the Committee to give it?

**Sen. Ndiema:** He could give it this afternoon.

**The Deputy Speaker** (Sen. Kembi-Gitura): You cannot answer your own question, can you?

**Sen. Ndiema:** Mr. Deputy Speaker, Sir, I cannot answer. That means the Chairperson has to do it himself. We agreed that the Chairperson would handle it.

**The Deputy Speaker** (Sen. Kembi-Gitura): We shall see whether the Statement can be dealt with in the afternoon. If it is ready then, make sure that the Chairman is here.

**Sen. Ndiema:** Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Adan, was your other Statement for the Committee on Health?

**Sen. Adan:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Was it due today?

**Sen. Adan:** It was due on Tuesday this week. However, because of the Bills, we pushed it to another day.

**The Deputy Speaker** (Sen. Kembi-Gitura): I can see the Chairman is not here, neither is the Senate Majority Leader. So, I cannot be of much help to you. You have to raise the issue again in the afternoon. Is that okay with you?

**Sen. Adan:** That is okay, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Thank you.  
Next Order!

## MOTION

### ADOPTION OF FINANCE COMMITTEE REPORT ON THE MATTER OF CEILINGS ON RECURRENT EXPENDITURE FOR COUNTY GOVERNMENTS FOR FY 2014/2015

THAT, this House adopts the Report of the Standing Committee on Finance, Commerce and Budget on the matter of Budget ceilings on recurrent expenditure for County Governments for the Financial Year 2014/15, laid on the Table of the Senate on Thursday, 19th March, 2015.

*(By Sen. Billow on 1.4.2015 – Afternoon Sitting)*

*(Resumption of Debate interrupted on 1.4.2015  
– Afternoon Sitting)*

**The Deputy Speaker** (Sen. Kembi-Gitura): We are resuming debate on this Motion.

Sen. Ndiema, you have seven minutes.

**Sen. Ndiema:** Thank you, Mr. Deputy Speaker, Sir. Once again, I want to thank the Committee for coming up with the recommendations on ceilings. As I said, ceilings are necessary at all levels of Government. We cannot operate without ceilings, especially in the counties, in view of the fact that the structures that we are dealing with are new and there is need for guidance to the county assemblies and executive.

Mr. Deputy Speaker, Sir, yesterday, we agreed that it is necessary to have the ceilings for county assemblies. But we also noted that the ceilings for the executive are not being complied with, because the executive, instead of using its ceiling for the new structures, is also invading or using the funds that are allocated to the devolved functions that have been existing.

The office of the County Executive Committee (CEC) member in charge of finance is controlling finances that belong to Ministries and departments. It is necessary that funds that are allocated to departments be managed by the CECs in charge of those departments. Although some Ministries have been allocated funds in the budget, the CECs are diverting this money for other purposes. Even in hospitals, particularly in my county, the Ministry of Health is not able to access all that it requires because the funds are controlled and available to other departments.

Mr. Deputy Speaker, Sir, I also mentioned that funds in the counties are managed without necessary consultation. It is true that when the budget is being prepared consultations are done. But, unfortunately, midway, counties are reallocating funds, to a large extent, to disrupt the whole budget. It has become necessary, therefore, that a limit as to how much a county can reallocate within a year be set in terms of percentage. I would even suggest that as the Bill comes, the ceilings for reallocation be set at not more than 10 percent. This means that they cannot reallocate their funds from one item to the other to a level which is more than 10 per cent.

This will ensure that the projects which are envisaged are implemented. I am saying this because in counties, midway, new projects which were not envisaged somehow come in. These projects are likely to be pushed for the purpose of embezzling public funds. In the process, all funds allocated to justifiable reasons are diverted, sometimes, to one major project.

Mr. Deputy Speaker, Sir, you will not be surprised that counties are committing funds to the level of nearly Kshs1 billion to specific projects, yet we know that, that amount is not available. In some counties, Ministries are also over-committing themselves to projects. In my county, in the first year of implementation of devolution, a lot of commitments were made on road construction, to the level where no new contracts can possibly be entered into in the next three years. The first one year consumed all the money. Some contractors have even completed the works, and they have not been paid, because there was no control. Commitments were made and there was no money. It is very important that the Commission for Revenue Allocation (CRA) goes beyond just recommending the levels of allocation, but ensures that its mandate of ensuring proper management of funds is implemented.

Mr. Deputy Speaker, Sir, with those few remarks, I beg to support.

**The Deputy Speaker** (Sen. Kembi-Gitura): I do not have any more requests for the Floor and cannot see the Chairman of the Committee to reply.

Sen. Elachi, do you have any instructions on this or should I put the Question?

**Sen. Elachi:** Mr. Deputy Speaker, Sir, I was the seconder of the Motion. I wish to reply on behalf of the Committee.

**The Deputy Speaker** (Sen. Kembi-Gitura): Please, go ahead.

**Sen. Elachi:** Mr. Deputy Speaker, Sir, I want to thank all those who contributed on the issue of ceilings. I remember when Sen. Omar requested for a Statement on this issue, there was heated debate.

While we now agree, as the Senate, that we shall approve the new ceilings on allocations to the county assemblies, we request the CECs for finance and clerks of the county assemblies to consult and ensure no county assembly will be closed because of lack of resources. I want to plead with the CECs for finance that while they carry out their mandate, they should ensure that they also respect the Constitution and institutions that were created within the Constitution. I know that some county assemblies have mismanaged their own resources, but most of them are suffering because of lack of consultations between the different arms in the county governments.

Mr. Deputy Speaker, Sir, it is important for the MCAs to liaise closely with the CRA. I know that the CRA had to create a new mandate for itself because of the challenges that the county assemblies are bringing. The CRA had to be the mediator. In developing the recommendations on the allocation of revenue between the national Government and county governments---

I know that we had the First Reading of the Division of Revenue Bill in this House yesterday. Therefore, in the financial year 2015/2016, we must ensure that county assemblies adhere to the rules and the Public Financial Management Act. Given cases of corruption, the county assemblies should be cautious on what they do. We are not putting ceilings just for the county assemblies. We want to see also the governors and executive following the same process that we have agreed on. The monies that are saved should go to development.

I know that nominated women are also facing a lot of challenges. I just want to call on Madam Sarah Serem to look into the issues in the county assemblies, especially regarding nominated women. We do not want again to go to the 2017 general elections with women expecting to be nominated. They should be elected. If she gives the facilitation that is needed without discrimination, I think those women will come out and stand firm.

Therefore, in conclusion, I want to tell the county assemblies that they should work with the Senate. There is no need of rushing to court because of some of these issues. You went to the court but you did not find justice, now you have come back to the Senate. So, let us forge on from now onwards, as we celebrate the second year of devolution. We want to see a better relationship between the different arms of Government and especially the county assemblies and the Senate.

With those few remarks, I beg to move.

**Sen. Adan:** Mr. Deputy Speaker, Sir, I wish to join my colleagues in contributing to this particular Motion.

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Sen. Adan! Sen. Elachi has just replied because there is nobody interested in contributing to the Motion. The Motion is over, we are now going to vote. I am now going to put the Question.

**Sen. Elachi:** On a point of order, Mr. Deputy Speaker, Sir. Pursuant to our Standing Order No. 54(3), I wish to request that we defer putting the Question to another day due to lack of numbers.

**The Deputy Speaker** (Sen. Kembi-Gitura): Lack of numbers or lack of threshold?

**Sen. Elachi:** Mr. Deputy Speaker, Sir, lack of threshold.

**The Deputy Speaker** (Sen. Kembi-Gitura): The next sitting day is this afternoon. Do you want us to put the Question this afternoon?

**Sen. Elachi:** Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): It is so ordered.  
Next Order!

*(Putting of the Question on the Motion deferred)*

It is obvious that we do not have the threshold to go the Committee of the Whole on Order No. 9. I am going to reorganize the Order Paper so that we omit Order No. 9 for now and move on to the next Order.

## BILLS

### COMMITTEE OF THE WHOLE

- (i) The Alcoholic Drinks Control (Amendment) Bill (Senate Bill No.5 of 2014).
- (ii) The Potato Produce and Marketing Bill (Senate Bill No.22 of 2014).
- (iii) The Public Fundraising Bill (Senate Bill No.28 of 2014).

*(Committee of the Whole deferred)*

### *Second Readings*

THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY APPROVAL)  
BILL (SENATE BILL NO. 20 OF 2014)

*(Sen. Sang consulted loudly)*

**The Deputy Speaker** (Sen. Kembi-Gitura): Order, Senator, you know the rules of the House or you do not?

**Sen. Sang:** Yes, I do, Sir.

**The Deputy Speaker** (Sen. Kembi-Gitura): Then follow them.  
The Mover is not here, this Bill is by----

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

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

**Sen. Adan:** Mr. Deputy Speaker, Sir, I was not standing because of that, we sorted out with the Clerks on the Alcoholic Drinks Control (Amendment) Bill (Senate Bill No. 5 of 2014).

**The Deputy Speaker** (Sen. Kembi-Gitura): What do you want to do about it?

**Sen. Adan:** Mr. Deputy Speaker, Sir, I want to move an amendment on behalf of the Committee.

**The Deputy Speaker** (Sen. Kembi-Gitura): We have already moved on and I have re-organized the Order Paper.

The Chairperson of the Standing Committee on Labour and Social Welfare is not here, so the order is dropped.

*(Bill dropped)*

Next Order!

THE PARLIAMENTARY SERVICE (AMENDMENT) BILL  
(SENATE BILL NO. 21 OF 2014)

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. Murungi is not here to move it and so again, it is dropped.

*(Bill dropped)*

THE NATIONAL GOVERNMENT COORDINATION (AMENDMENT)  
BILL (SENATE BILL NO. 30 OF 2014)

**The Deputy Speaker** (Sen. Kembi-Gitura): Sen. (Prof.) Lonyangapuo is not here and so we move to the next Order.

*(Bill dropped)*

THE UNIVERSITIES (AMENDMENT) BILL (SENATE  
BILL NO. 31 OF 2014)

**The Deputy Speaker** (Sen. Kembi-Gitura): I cannot see Sen. Mohamud and so again that is dropped.

*(Bill dropped)*

Next Order!

THE COUNTY HALL OF FAME BILL (SENATE  
BILL NO. 33 OF 2014)

**The Deputy Speaker** (Sen. Kembi-Gitura): I thought I saw Sen. Sang here. Sen. (Dr.) Machage, are you on a point of order?

**Sen. (Dr.) Machage:** On a point of order, Mr. Deputy Speaker, Sir. With all due respect, I need guidance from the Chair. When you say the order is dropped, do you mean it is deferred to another day or it will never be heard again?

**The Deputy Speaker** (Sen. Kembi-Gitura): It means it is deferred to another date subject to the Rules and Business Committee if they bring it back because this is not a Motion, so it does not die but it will come back on the Order Paper at one point or the other.

Do we understand each other?

*(Bill deferred)*

Next Order!

### ADJOURNMENT

**The Deputy Speaker** (Sen. Kembi-Gitura): Order Members, there being no other business for the House this morning, the House is, therefore, adjourned to today, Thursday, 2<sup>nd</sup> April, 2015 at 2.30 p.m.

The Senate rose at 9.30 a.m.