

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 27th November, 2013

*The Senate met at the Kenyatta International
Conference Centre at 2.30 p.m.*

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

PRAYERS

QUORUM CALL AT COMMENCEMENT OF SITTING

The Speaker (Hon. Ethuro): Hon. Senators, let us determine if we have quorum.

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

Hon. Senators, I am informed that we have quorum. Therefore, we may commence our business.

MESSAGE FROM THE NATIONAL ASSEMBLY

PUBLIC FINANCE MANAGEMENT (*UWEZO* FUND) REGULATIONS, 2013

I wish to bring to the attention of the Senate that pursuant to Standing Order No.40 (2) and (3) the Clerk received and delivered to me today, Wednesday, 27th November, 2013 the following Message from the National Assembly regarding the Public Finance Management (*Uwezo* Fund) Regulations, 2013: That the National Assembly by resolution passed on Wednesday, November, 2013 and pursuant to Section 24 (4) and Section 205 of the Public Finance Management Act, 2012, approved the Public Finance Management (*Uwezo* Fund) Regulations, 2013, with amendments.

Hon. Senators in accordance with Standing Order No.40(4) I hereby report the above message to the Senate and, consequently, in accordance with Standing Order No.40(6) refer the Message to the relevant Committee, that is, the Standing Committee on Finance, Commerce and Economic Affairs for its consideration.

Thank you.

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

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

Sen. Billow: Mr. Speaker, Sir, I would request that and maybe I wanted to seek your guidance whether it would also not involve the Committee on Delegated Legislation?

The Speaker (Hon. Ethuro): I think you are right. We commit it to both Committees. You can handle it.

STATEMENTS

Sen. Orengo: Mr. Speaker, Sir, I have two Statements which are pending from the Committee on Legal Affairs and Human Rights which should have been issued yesterday. I spoke with Sen. Wako, who is the Chair of that Committee and he said he would give some indications this afternoon but I do not see him. I do not know whether Sen. Sang has instructions. There were two Statements: One regarding the IEBC and the other one regarding witness coaching.

The Speaker (Hon. Ethuro): Sen. Sang, in the absence of Sen. Wako, what do you have to say?

Sen. Sang: Mr. Speaker, Sir, I do not have specific communication from the chair although I am sure he should be in the House. I cannot tell but he did not communicate to me any information with regard to the two issues. I suspect that he has some communication to make in regard to the same.

The Speaker (Hon. Ethuro): You were with him in the same meeting with Sen. Orengo just a half an hour ago.

Sen. Sang: Mr. Speaker, Sir, I request that you defer the matter in the next five or so minutes.

The Speaker (Hon. Ethuro): This House does not work at the convenience of Sen. Wako.

Sen. Obure: On a point of order, Mr. Speaker, Sir. I was also expecting to get the Statement from the Chair of---

The Speaker (Hon. Ethuro): Order, Sen. Sang. I thought even as you are asking for the patience from the House, what are you doing to deliver Sen. Wako?

Sen. Obure.

Sen. Obure: Mr. Speaker, Sir, I was also expecting to receive a Statement from Sen. Haji in respect of the Statement that I requested and which has been pending. I spoke to him yesterday and he assured me that he was ready with the Statement. I am just inquiring if any of the Committee Members is ready to issue that Statement here.

The Speaker (Hon. Ethuro): Is Sen. Haji not here? What about the able Vice Chair? Any Member of the Committee?

Sen. Mbuvi: Mr. Speaker, Sir, we will respond to that in two weeks from today.

The Speaker (Hon. Ethuro): Order! Order, Sen. Sonko! There are two issues you must put into consideration. I have not talked to Sen. Haji so you should move in your original intention. First, I do not know where Sen. Mike Mbuvi Sonko came from. You came from the left of the Chair. Senators usually sit in front of the Chair. Secondly, this was a reminder that the Chairman had actually promised the Senator to produce the Statement today. So, you cannot come and ask for another two weeks without telling us why.

(Loud consultations)

Order! I am directing my queries to Sen. Sonko.

Sen. Mbuvi: Mr. Speaker, Sir, first I apologise. I think there was a communication breakdown because I was in the cube there answering to an important call. I am glad my Chair is in the House. I think he will take over from here.

The Speaker (Hon. Ethuro): Chairman.

Sen. Haji: Mr. Speaker, Sir, I want to defend Sen. Sonko. This Statement was ready yesterday but unfortunately the Questioner was not available and we agreed that I would answer this afternoon and here I am to answer it, with your permission.

CIRCUMSTANCES SURROUNDING THE DEATH
OF MR. HENRY NYABUTO OMWANGE

Mr. Speaker, Sir, this is a Statement from the Ministry of Internal Security on the circumstances surrounding the death of Henry Nyabuto Omwange.

On 5th November, 2013, Sen. Obure requested for a Statement on the circumstances surrounding the death of Henry Nyabuto Omwange, a civil servant, who until his death was working with the Forest Department in Ogembo District headquarters. The hon. Senator particularly sought information on the following:-

(i) Whether the Cabinet Secretary, Interior and Coordination of National Government was aware that on the evening of 20th August, 2013 at around 7.00 p.m. the late officer received a telephone call asking him to go back to Ogembo town for a short meeting.

(ii) Whether the Cabinet Secretary is aware that at about 9.00 p.m. on the same evening the late Omwange contacted his family, informing them he was being held by people and he might not come back alive.

(iv) Whether the Cabinet Secretary is aware that the distressed family immediately reported the matter to Ogembo Police Station, asking for assistance to rescue the late Omwange and the action taken by police.

(v) Whether the Cabinet Secretary could confirm if there have been other previous cases in which officers working in the Forest Department in Ogembo Town have lost their lives and measures the Government had put in place to contain increasing incidents of security violations in the area.

Mr. Speaker, Sir, I wish to state as follows:-

On 20th August, 2013 at about 7.30 p.m., Mr. Henry Nyabuto Omwange, aged 50 years, an employee of Kenya Forest Service, left his home at Samata near Ogembo Town without informing his family where he was going to. When Mr. Omwange failed to return home early, his son Alex Nyabuto and wife Jane Kwamboka decided to call him on his cell-phone, according to the wife, as revealed during police investigations. The deceased is alleged to have informed his wife that he had been kidnapped and feared for his life. The wife and son made a report of the missing person to Ogembo Police Station vide OB No.31 of 21 August, 2013. In their reporting, the family never revealed information of the deceased having been kidnapped and therefore nothing could have made the police to launch a rescue operation.

On 22nd August, 2013, the body of the late Henry Nyabuto Omwange was discovered along River Gucha behind public works offices. Police visited the scene and the body was moved to Christa Marian Hospital Mortuary. Investigations were commenced immediately vide Ogembo Police Station inquest number 19/2013 which is still pending under police investigation.

On 30th August, 2013, a post-mortem was performed on the body and the cause of death was found to be blunt force trauma to the head caused by a blunt object and drowning. In the course of investigation, critical investigation pertaining to telephone communication by the deceased has been obtained and the same is being used by the investigating officer and so disclosing such information at this stage is likely to jeopardize investigation.

Mr. Speaker, Sir, it is true that previously, another incident involving an employee of the Kenya Forest Service occurred on 28th June, 2012, where the body of a forest officer, Moses Onyango Ouma, was found lying along Kisii-Ogembo Road with injuries on the head. The deceased employee was based in Mbita Kenya Forest Service, Homa Bay County. Consequently, investigations were commenced vide Ogembo Police Station, criminal case number 691/182/2012 and is currently pending under police investigations.

Mr. Speaker, Sir, these isolated incidents are currently under investigation. However, appropriate measures including intensified patrols and random raids on suspected criminal hideouts within Gucha District have been put place to ensure security for all.

Thank you, Sir.

Sen. Obure: Mr. Speaker, Sir, first of all, I want to start by appreciating the efforts made by the Chairman of the Committee, Sen. Haji. I also know that he has gone through a lot of frustrations in trying to get this Statement. I appreciate that at last he has been able to issue the Statement to this House. As much as I appreciate this effort, the information provided in the Statement is far from being correct. I want to state that the wife and son of Mr. Omwange, according to this Statement, reported a missing person at Ogembo Police Station. That information is not correct. As a matter of fact, the first report was made at Ogembo Police Station at 10.00 p.m. on 20th August, 2013. The second report was made the following morning at 6.00 a.m. on 21st August, 2013. Again they were asked to go back at 12.00 p.m. on the same day. Eventually they were asked to record a Statement at 2.00 p.m. Is the Chairman sure that the information he has been given to issue to this House is correct when in fact there is evidence that the family of the deceased reported three times before they finally wrote a statement?

Sen. Haji: Mr. Speaker, Sir, as I said earlier, the deceased left his home without telling his wife or his family where he was going but when he failed to turn up, the family went to the police to report. As I said earlier, a good progress is being made because the telephone communication of the deceased with other people is already under investigation and, hopefully, the police will be able to catch up with these criminals and deal with them according to the law.

Sen. Obure: On a point of order, Mr. Speaker, Sir. The issue here is that the police are claiming that the report the family made was of a missing person and yet the information available even at the police station is that the family reported this case of kidnapping in the evening, just an hour or two after the kidnapping took place. However,

that is something I would like to request the Chair to investigate through the Ministry concerned.

The issue I am raising here is that the Chair has admitted that all the information is available including telephone conversations. Presumably, they will know the people who he was dealing with. This incident happened in August and we are now heading to the end of November. There is a similar case where the Chair has admitted took place a year earlier in June, 2012 when another forest officer, Moses Onyango Ouma was killed in the same area. Even on this case, investigations have gone on but no information is available. No leads have been established. Is the Chair convinced that the police concerned have the capacity to investigate these cases or should he not go ahead and appoint another team of investigators to establish the cause of these escalating violations of the law?

Sen. Haji: Mr. Speaker, Sir, I am torn between believing my colleague and brother, Sen. Obure, and these written facts. All the same, I will pursue it further and find out whether we can be given a copy of the OB to confirm what he is saying.

Mr. Speaker, Sir, I have another Statement to issue.

The Speaker (Hon. Ethuro): Just resume your seat. We will defer that Statement to Tuesday so that you establish the basic facts. So, Tuesday you will respond to that Statement.

COMMUNICATION FROM THE CHAIR

CHANGE IN ORDER OF BUSINESS BEFORE THE HOUSE

Hon. Senators, we have established by practice and tradition that on Wednesday afternoon, we do the voting. Since I am seeing more impressive numbers before me, it is only fair that we proceed to the voting and then we can proceed with the rest of the business after we have done so.

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

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

Sen. Wako: Thank you, Mr. Speaker, Sir. First of all, I want to apologize because Sen. Orengo had asked a Question, I have received an answer and I was told about it. And like Sen. Sonko, I was where he was at that time; some cubicle somewhere.

The Speaker (Hon. Ethuro): Order! Order, Sen. Wako! Order! Assume your seat!

(Laughter)

(Sen. Wako took his seat)

First, I have just given a directive to suspend that business momentarily. So, obviously, you were not listening. Secondly, I can confirm that you were not in the same cubicle that Sen. Sonko was; because Sen. Sonko came from that cubicle to respond, and you never emerged from the same cubicle to respond.

Sen. Wako: Thank you, Mr. Speaker, Sir. I had to do it after him.

(Laughter)

The Speaker (Hon. Ethuro): Order!

I will take the votes and then resume the rest of the Statements.

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

Order, hon. Senators! I hope everybody has a copy of the Order Paper. We are voting on Orders No.8, 9, 10 and 11. But we will do Orders No.8, 9 and 10 with one Division Bell, and then we will do Order No.11 on its own. So, be guided.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. We thought Order No.11 was not coming for voting since it is a Motion which we have not yet discussed.

The Speaker (Hon. Ethuro): Yeah; we are not having a Division; but the Division is for purposes of voting. We do not have to vote on Order No.11 today. We might need the same numbers, anyway. So, that was the point. But you are right; in terms of the Division, we will do Orders No.8, 9 and 10.

So, may the Division Bell be rung; and as the bell is being rung, we need the names of the tellers.

(The Division Bell was rung)

Order! Order, Senators! Order! The Division Bell has been rung and the names of the tellers are as follows. For the Ayes, Sen. Paul Njoroge Ben; and for the Noes; Sen. Judith Sijeny. I, therefore, order the door to be locked and that we proceed with the Division. I wanted to bring to your attention about the quorum during Division as per Standing Order No.77(1), which states:-

“No Senator shall be obliged to vote in a division, but those present and not voting shall either- (a) in the case of an electronic vote, press the “**Abstain**” button; or

(b) in the case of a roll call vote, record their abstention with the Clerk.”

And this is a roll call vote.

(2) It shall be disorderly conduct for a Senator to fail to record his or her abstention in a division.

And part (4), because I realized that when the Division Bell was ringing, Senators were all over the place; but I later realized that nobody was disorderly.

(Laughter)

But just in case you might think that is the norm, part (4) states thus:-

“During division, Senators shall maintain order in the Senate and shall be in their designated seats and shall remain seated until the result is announced.”

That is Standing Order No.77(4).

Let us proceed with Order No.8.

Order, hon. Senators! I therefore wish to put the Question; and before I do so, to remind you that on that Order No.8, voting is by county delegation.

BILL

Second Reading

THE NATIONAL FLAG, EMBLEMS AND NAMES (AMENDMENT) BILL

(Sen. (Dr.) Boni Khalwale on 6.11.2013)

(Resumption of debate interrupted on 12.11.2013)

DIVISION

ROLL CALL VOTING

*(Question put and the Senate proceeded
to vote by County Delegations)*

AYES: Sen. Adan, Isiolo County; Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County, Sen. Kajwang', Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. (Prof) Kindiki, Tharaka-Nithi County; Sen.(Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. Murungi, Meru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County, Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr. Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County and Sen. Wako, Busia County.

Teller of the Ayes: Sen. Njoroge.

Noes: Nil.

Teller of the Noes: Sen. Sijeny.

The Speaker (Hon. Ethuro): Hon. Senators, I wish to announce the results as follows.

AYES: 29

NOES: Nil

ABSENTIONS: Nil

(Question carried by 29 votes to nil)

*(The Bill was read a Second Time
and committed to a Committee of the
Whole Tomorrow)*

The Speaker (Hon. Ethuro): Hon. Senators, in order to improve the period in which we will do this, I will order that we call that order, we take the vote, it will be tallied and I will not announce. We move to the next order, they will tally and then I will announce the results at the same time. That should save you a few minutes. Voting must be on every Motion on its own merit.

MOTION

MEASURES TO ASSIST COUNTY GOVERNMENTS DEVELOP CAPACITY IN PRE-PRIMARY EDUCATION

THAT, noting that Article 6 (2) of the Constitution recognizes that the National and county governments are distinct and inter-dependent; aware that devolution is an important principle in the new structure of governance; recognizing the fundamental role of education world-wide in fostering economic and social transformation prompting governments to create specialized agencies to among other functions, regulate the training, registration, recruitment and deployment of teachers; aware that the function of pre-primary education is vested in the county governments pursuant to the Fourth Schedule to the Constitution; noting with concern that one of the main obstacles to the efficient and effective operation of county governments is inadequacy of appropriate capacity; cognizant that Section 15 (2) of the Sixth Schedule to the Constitution requires the national government to assist county governments in building capacity to govern effectively and provide services for which they are responsible; the Senate calls on the national Government to take measures to assist county governments to develop capacity in the training, recruitment and deployment of teachers for pre-primary education.

(Sen. Karaba on 6.11.2013)

(Resumption of debate interrupted on 6.11. 2013)

DIVISION

ROLL CALL VOTING

*(Question put and the Senate
proceeded to vote by County Delegations)*

AYES: Sen. Adan, Isiolo County; Sen. Abdirahman, Wajir County; Sen. Billow, Mandera County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County, Sen. Kajwang', Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. (Prof) Kindiki, Tharaka-Nithi County; Sen.(Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. Murungi, Meru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County, Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr. Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County and Sen. Wako, Busia County.

Teller of the Ayes: Sen. Njoroge.

Noes: Nil.

Teller of the Noes: Sen. Sijeny.

The Speaker (Hon. Ethuro): Hon. Senators, I wish to announce the results as follows.

AYES: 29

NOES: Nil

ABSENTIONS: Nil

(Question carried by 29 votes to nil)

The Speaker (Hon. Ethuro): Next Order!

BILL

Second Reading

THE COUNTY GOVERNMENTS (AMENDMENT) (NO.2) BILL

(Sen. Sang on 20.11.2013)

*(Resumption of Debate interrupted
on 26.11.2013)*

DIVISION

ROLL CALL VOTING

*(Question put and the Senate proceeded
to vote by County Delegations)*

AYES: Sen. Abdirahman, Wajir County; Sen. Adan, Isiolo County; Sen. Billow, Mandera County; Sen. Haji, Garissa County; Sen. Hargura, Marsabit County; Sen.

Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. (Prof) Kindiki, Tharaka-Nithi County; Sen.(Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Dr.) Machage, Migori County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County and Sen. Wako, Busia County.

Teller of the Ayes: Sen. Njoroge.

NOES: Nil.

Teller of the Noes: Sen. Sijeny.

The Speaker (Hon. Ethuro): Hon. Senators, I wish to announce the results of the Division on Order No.10. They are as follows:-

AYES: 29

NOES: Nil

ABSENTIONS: Nil

(Question carried by 29 votes to nil)

(The Bill was read a Second Time and committed to a Committee of the Whole tomorrow)

The Speaker (Hon. Ethuro): The Division is over and you can now open the doors.

(The doors were opened)

Hon. Senators, before we move to the next Order, I want to rule that for Order No.10, we will have the Committee of the Whole tomorrow. For Order No.8, we will have the Committee of the Whole on Tuesday, because Sen. Khalwale is away on official Senate business. Order No.9 is done.

Sen. Wako: On a point order, Mr. Speaker, Sir. Arising out of your directive that we do the Committee of the Whole on Order No.10, the County Governments (Amendment) (No.2) Bill tomorrow, I want to take this opportunity to convene a meeting of the Committee on Legal Affairs and Human Rights immediately after this, so that we can agree and make sure that amendments are in order for tomorrow. I would also want to use this opportunity to ask the Clerk's Office to make arrangements immediately for us to be able to meet.

The Speaker (Hon. Ethuro): Sen. Wako, I am sure that you wanted to take advantage of the Chair's ruling, but you did not have to overdo it by also requesting the Clerk's Office to make arrangement for a meeting. That is your job. Once the Chair indulges you, the rest follows. We are doing it for purposes of ensuring that it goes to the other House before we all go on recess.

Sen. Kipchumba!

Sen. Murkomen: Mr. Speaker, Sir, regarding Order No.8, I was wondering whether it is completely impossible for Sen. Khalwale to designate somebody to deal with the Bill, so that we can finish with the two Bills and they go together to the Lower House.

The Speaker (Hon. Ethuro): It is, definitely, not impossible. But now who speaks for Sen. (Dr.) Khalwale?

Sen. Abdirahman, are you the official spokesperson?

The Acting Senate Minority Leader (Sen. Abdirahman): Mr. Speaker, Sir, I am close to Sen. Khalwale in many ways; as a colleague and also a member of the Amani Alliance; we keep on sharing a lot of information.

Mr. Speaker, Sir, I share what Sen. Murkomen has put forward; that we could actually discuss the Bill, because there are not many amendments on it. So, I would plead that we attempt to handle both Bills tomorrow, instead of pushing it to Tuesday.

Sen. Kajwang: On a point of order, Mr. Speaker, Sir. I did not want to disturb the House but, unfortunately, the Committee on Energy, Roads and Transportation has been invited to Mombasa, to attend the launch of the standard gauge railway line. That will take about six of us away from voting tomorrow and might hurt these very good Bills. I do not know how I can bend the Speaker's ruling. I see the urgency on the side, but if the Members are not sufficient, we might hurt the whole thing. Since I can see my Vice-Chairman there, maybe he can add one or two words. Maybe we can decide not to go.

The Speaker (Hon. Ethuro): Order, Sen. Kajwang! You started by saying that you are not disturbing, but you have actually disturbed, because you have not given us a proposal.

(Laughter)

Sen. Kajwang: Mr. Speaker, Sir, I have my Vice-Chairman, Sen. Mwazo here. Can you say something?

Sen. Billow: On a point of order, Mr. Speaker, Sir. With regards to the point of order that the Senator for Homa Bay has raised, there is a culture that is creeping into Parliament that we must stop.

Hon. Senators: Yes! Yes!

Sen. Billow: This culture of gracing every Executive function by parliamentarians is not acceptable!

(Applause)

It is not the responsibility of parliamentarians to keep attending every Executive function and meeting as if they are part of the Executive. How can you hold the Executive to account if you have to attend such functions?

(Applause)

And they are being summoned through Short Message Services (SMSs), asking us to attend this or that function. I think, With all due respect, it is more important for the Members of Parliament to attend to their core function, which is to sit here and legislate, rather than to go and attend a railway launching function!

(Laughter and applause)

Sen. Kajwang: Mr. Speaker, Sir, can I respond?

The Speaker (Hon. Ethuro): The Senate Majority Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I rise because I think whereas I really appreciate the need for us to have the Business of this House continue uninterrupted; whereas it is true that legislators are not bound to unnecessarily attend Executive functions, I however take great exception to the suggestion that it is wrong for the Executive to invite legislators to their functions. With very particular reference to what my brother, the Deputy Leader of Minority has said about SMSs---

An hon. Senator: The Acting Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki): The Acting Leader of the few. I know that, partly, I am the source of the SMSs that he is referring to. But I normally send them to the side of the coalition that belongs to the ruling party; I do not send them to the Opposition. It is not mandatory and, in fact, it was on the request by the legislators – the Senators and the Members of the National Assembly from the Jubilee Side – that they need to know. But for me, the more concrete thing---

(An hon. Senator spoke off record)

No, no, no; because for us, the more concrete thing is for us to say that it is not important for the entire Committee to attend, but they can send a representative.

(Several hon. Senators stood up in their places)

The Speaker (Hon. Ethuro): What is it, Senate Minority Leader?

Order, Senators! I do not see what is exciting passions here; this is a very sober point to argue.

So, proceed.

The Acting Senate Minority Leader (Sen. Abdirahman): My point of order, Mr. Speaker, Sir, is that while I welcome the thoughts of the Senate Majority Leader, I would want to state that this House has worked harmoniously, irrespective of party or affiliate position, especially on matters of national importance. The messages he sent was received very well because it was meant to enhance the performance of this House. We have no objection; we can continue to relate, and relate very well. But I want to very categorically state that we do not have to attend Executive functions. There will be no harm in the Executive inviting individual Members of the Legislature, particularly in the areas where they represent; if it is Homa Bay, I do not mind my brother, Sen. Kajwang,

attending. But, really, a railway line being commissioned in Mombasa is of no significance as far as I think.

Thank you, Mr. Speaker, Sir.

(Loud consultations)

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

Sen. Kajwang: Mr. Speaker, Sir, we are representatives of the citizens of this country; and we are members of a committee that deals with infrastructure and transport in this country on behalf of the citizens of the Republic of this country. Whenever we have our meetings, we consult with the Cabinet Secretaries, their Principal Secretaries and their technical officers on serious---

The Speaker (Hon. Ethuro): Order, Sen. Kajwang! You are on a point of order; this is not a debate!

Sen. Kajwang: Thank you very much, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): So, what is your point of order? Be concise and brief.

Sen. Kajwang: Mr. Speaker, Sir, for my Acting Senate Leader of Minority and also for a Member of another Committee to suggest that we are not supposed to participate in a matter which actually involves us as a Committee in this House--- The development of this country belongs to us, as the representatives of this country, and I am entitled to---

The Speaker (Hon. Ethuro): Order! You have made your point.

(Several hon. Senators stood up in their places)

Order! Order, Sen. Kajwang, Sen. Wako and Sen. Sang! Even as you gesture, you must remember that there are Standing Orders. When the Speaker is on his feet, you must be nowhere to make any movements; you either freeze where you are or you resume your seat.

First, I want to confirm, as argued by the Senate Majority Leader, that there is nothing absolutely wrong in the Senators being invited to State or Executive functions. Our issue is the manner in which the invitations take place, and whether everybody should go. Two, the Senate Majority Leader sought the Acting Senate Minority Leader in the person of the Chairperson of his own side of the coalition, because the person who raised those issues was not Sen. Abdirahman Hassan; it was actually Sen. Billow Kerrow, who belongs to the Senate Majority Leader's side.

(Laughter)

So, you need to get a few basic things right.

Having said as much, what you are attempting to do today is to debate a matter that had been communicated from the Chair by your own Speaker only yesterday afternoon. Sen. Kajwang, a request, was made to the House; your Speaker considered that request and found that it was a very noble request. Because whatever we do in this House

is not in vain; whatever laws we make, whatever Motions we debate are meant for the national good, and there is no other better good, in my view, than when the Executive is implementing things that are going to fast track the economic development of the nation. As correctly observed by Sen. Kajwang, there is also no other opportunity for the Committee to actually see, first hand, the implementation of some of those things. Oversight is not a blame game; oversight is also at the very beginning. So, that is why it is necessary that when opportunity arises, for the House to participate---. But I also want to agree with the Chairperson of the Committee on Finance, Commerce and Economic Affairs, the Senator for Mandera, that it is not a requirement that we should attend each and every event, especially when it adds no value to you. The requirement is that we give parliamentary Business priority.

(Applause)

I took all that into consideration. I was even sincere and honest to you that, actually, all the Senators were invited; but I took that into consideration; that you cannot just stop the Business of the House for purposes of witnessing; all we need is a few Members to witness on our behalf. So, I directed yesterday and, also at the request of the Committee Chair – and we have emphasized the roles of the Chairpersons in this House – that we would like the entire Committee to accompany him. So, I directed yesterday that the Committee will represent us in that function. I hope I am clearer.

Thank you.

(Several hon. Senators stood up in their places)

What is it, Sen. Kipchumba?

Sen. Murkomen: Mr. Speaker, Sir, we are very much aware in this House that to get the votes we need, we usually exceed the threshold with not more than five Senators; either we are 29 or we are 30. Tomorrow, we are making a very critical decision in terms of voting for this Bill. While acknowledging your decision, is it possible, because the Members are here, to vary your decision and request that the Chairperson and the Vice Chairperson of the Committee can travel and then the rest of us can remain to vote?

The Speaker (Hon. Ethuro): Sen. Keter?

Sen. Keter: Mr. Speaker, Sir, I am a Member of the Committee, but I want to assure my colleagues that I will not be travelling to Mombasa; I will be here to vote.

(Applause)

I think Sen. Kiraitu Murungi is also going to be here. So that we avoid all this debate, some of us will be here to vote so that we move forward.

Hon. Senators: Thank you!

The Speaker (Hon. Ethuro): Sen. Wako?

Sen. Wako: Mr. Speaker, Sir, I wish to thank the Chairperson of the Committee for the steps he has taken because where there is a sort-of-conflict between our duties as a legislature, that takes priority. But can I just ask you also, maybe, to slightly amend your

directive? We have, on behalf of every Committee, nominated Members of the Senate who have no vote. The vote that will be taken tomorrow will be a county vote, which means that the heads of delegations will vote. Maybe the nominated Members of those Committees can go and represent their Committees because they will be of no value here?

Thank you, Mr. Speaker, Sir.

(Laughter and applause)

The Speaker (Hon. Ethuro): Order! Order! I missed the last words of Sen. Amos Wako.

An hon. lady Senator: He said that we have no value!

(Laughter)

(Several hon. Senators stood up in their places)

The Speaker (Hon. Ethuro): Sen. Murkomen, just clarify what Sen. Amos Wako said.

Sen. Murkomen: Mr. Speaker, Sir, Sen. Wako said that the nominated Members are of no value. Tomorrow is the Third Reading, which means we will have to debate---

The Speaker (Hon. Ethuro): Order! Order, Sen. Murkomen! Just resume your seat.

Sen. Murkomen: They have value, Mr. Speaker, Sir.

(Sen. Murkomen took his seat)

The Speaker (Hon. Ethuro): Order, Senators! That is exactly what I was trying to avoid; for you to give your own interpretations. You had a very simple and brief assignment; just to confirm what Sen. Amos Wako had said; and I thought you had finished by saying "he said they are of no value." You did not need to go beyond there.

First, I did not hear that and I think Sen. Amos Wako, you need to swallow those words and apologize.

Sen. Wako: Mr. Speaker, Sir, English is not our language. What I meant was that they have no vote to cast tomorrow. But I now swallow those words and I withdraw.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order! And apologize!

Sen. Wako: Mr. Speaker, Sir, I apologize most profusely to the nominated Members, a majority of whom are ladies, whom I like.

(Laughter)

(Loud consultations)

The Speaker (Hon. Ethuro): Order! Order, Senators! Order!

While the Chair appreciates the reluctant apologies from Sen. Wako, but the excuse he gave, that English is a foreign language, is not admissible to me, knowing your standing in society and knowing your former experience as the Attorney-General *Emeritus*, who was in charge of drafting legislation. I know words have meanings in law; but as long as we got what we wanted, you can be excused.

Let me just dispose of that particular matter. Every Senator is extremely useful in this House; each and every Senator – elected or nominated.

(Applause)

In any case, for you to gain nomination, it is on the basis of the party strength; which means that if the party worked so hard and got more people elected, then it is that indirect election that leads to nominations.

Secondly, of course nominated Senators can vote if they are delegated by the leader of delegation. So, it is not absolutely true that they cannot vote. They do vote, only on delegation. So, I think that is the correct position.

Then let us come to the Business of what do we do for tomorrow afternoon. First, this function is actually in the morning. So, were it not for the fact that this is Africa, and Africans are still grappling with time keeping, it is very probable that you could actually participate in the function in Mombasa and be here in the afternoon for voting. I would like to encourage those who still intend---. If you still intend to go, unlike Sen. Murungi and Sen. Keter, it is possible to do both.

That is one, but again I have qualified in the sense that we are in tropical Africa as a continent and from the practice. Secondly, some Members have already indicated to us, which I think is helpful for those ones who feared that they may not get the numbers, I think the Members of the Committee are nine and so you should be able to--- I am trying to look at what Sen. Wako was referring to so that we can maybe reduce the numbers further. Really, the decision is yours. We just wanted to expedite. I am willing to reconsider but not to reverse, to take it forward to Tuesday.

Sen. Murkomen I am talking to you because you are appealing to me to reverse my decision. My decision was made yesterday and it cannot be reversed today unless you bring a Motion and I am not willing to entertain that one, for sure. So, you can only take it forward. I want to believe that under the circumstances and with the debate we have engaged in and which I think will inform the business, we should proceed as we had agreed that the voting on that Bill will be tomorrow afternoon.

On the second matter, I am not sure whether I can really take the word of the Senate Minority Leader, but on the condition that Sen. (Dr.) Khalwale will not raise an objection. If he does so, I will hold the Senate Minority Leader personally responsible. Since I work on the basic assumption that Senators are very honourable, dignified legislators, I will take his word. Therefore, Sen. (Dr.) Khalwale's Bill can also come tomorrow afternoon.

Sen. Haji: Mr. Speaker, Sir, I support your ruling, but I have a small suggestion. For these people to come back, it will depend on various issues. If those who voted for them can be asked to make sandwich for them so that they can come back before lunch.

The Temporary Speaker (Hon. Ethuro): Sen. Haji, you are completely out of order. I would have allowed you if you do not get chances to speak. But by virtue of your Chairmanship, you are one Senator who has all the limelight. You should just relax and wait for your chance to make the Statement that you are waiting to make.

Let us proceed on the other Motion.

MOTIONS

APPROVAL OF MEMBERS NOMINATED TO SERVE IN THE PAN-AFRICAN PARLIAMENT

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

THAT, the Senate concurs with the National Assembly that the following Members of Parliament be appointed to the Pan-African Parliament:-

1. The Hon. Zakayo K. Cheruiyot, M.P;
2. The Hon. Rachael Wambui Shebesh, M.P;
3. The Hon. Millie Grace Akoth Odhiambo-Mabona, M.P;
4. The Hon. Shukran Hussein Gure, M.P; and
5. The Hon. Sen. Kipchumba Murkomen, M.P.

I request the Acting Senate Minority Leader to second the Motion.

The Speaker (Hon. Ethuro): Hon. Members, at least the Mover should make a statement that will inform the House and then the seconder can just indicate with a nod.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I comply although I have been under a lot of pressure. This House passed a list of five Members who were nominated by both Houses of Parliament to the Pan African Parliament. This message together with the list was conveyed to the National Assembly. The Lower House amended the list as passed by this House by replacing one Member of this House with another Member from the Lower House and now they have returned these names as amended by the Lower House for our concurrence. It is up to this House to decide the fate of this list.

I beg to move and request Sen. Abdirahman to second.

The Acting Senate Minority Leader (Sen. Abdirahman) seconded.

(Question proposed)

Sen. Keter: Mr. Speaker, Sir, I wish, on the onset, to oppose this Motion in the sense that we started with the five names from this House. If the National Assembly acted in good faith, they should have amended the list, returned it to us before writing a communication to the Pan African Parliament. This is just an afterthought. It is assumed that the Senate cannot do anything because we cannot think and hence we are just going to rubberstamp this list. In my view, we should reject this list and sent it to a Mediation Committee because they could have even replaced Sen. Ong'era with another Senator, but not to give that slot to a Member of the National Assembly.

I oppose the Motion.

Sen. Musila: Mr. Temporary Speaker, Sir, I rise to oppose this Motion. In doing so, I want to say that my understanding is that the leadership of the Senate and the leadership of the National Assembly agreed beforehand that there will be two Senators and three Members of the National Assembly. The Senate proceeded to nominate the two. These names having sent to the National Assembly, they went ahead with a clear understanding that the Senate had already nominated Senators, but because of that attitude that appears to be developing in the National Assembly to disregard matters of the Senate, they went ahead and substituted the name of a Senator with the name of a Member of the National Assembly.

There has been an argument that those nominated were representing different parties in this House. My party apparently is said to have nominated a Member of the National Assembly---

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

The Speaker (Hon. Ethuro): Not for now. Let Sen. Musila proceed.

Sen. Musila: Mr. Speaker, Sir, after the National Assembly gave the names, they went ahead and informed the Pan African Parliament of the names without the courtesy of reference to this House. The issue here is not the party but the Houses. The Senate had two nominees while the National Assembly had three Members. On this list there are four Members of the National Assembly and only one Senator. We must therefore reject this list and subject it to mediation.

I beg to oppose.

Sen. Murungi: On a point of order, Mr. Speaker, Sir. The subject matter of the Motion before us has elicited quite a bit of debate and emotion both in this House and outside the House. Sometimes it is good to sleep over a matter and not to deal with it when it is a bit too hot. It is my request that we move under Standing Order No.97. I would like to propose that this debate be adjourned to some future date to enable further consultations on this matter.

Mr. Speaker, Sir, we could give it a week or two, to enable us to exhaust consultations, before we can exhaustively deal with the matter before this House. So, I propose that the debate be now adjourned.

The Speaker (Hon. Ethuro): Order, Sen. Kiraitu! Have you read Standing Order No.97 in extenso? Who is your Seconder?

Sen. Murungi: Mr. Speaker, Sir, I will be seconded by no other than the *emeritus* Attorney General, Sen. Amos Wako.

Sen. Wako: Mr. Speaker, Sir, I beg to second this request, really on the basis that we would want as much as possible, through consultation, to try and resolve this matter amicably. The opportunity should be given for that and I think that a week or two will suffice. It may very well be that this is a matter that can be resolved very amicably and we move forward. We have an image at the Pan-African Parliament to keep and so, if we can resolve this matter amicably, we will be able to restore the respect that, that Parliament has for the Parliament for Kenya.

I beg to second.

The Speaker (Hon. Ethuro): Order, Senators! Standing Order No. 97(3) reads:-

“If the Speaker is of the opinion that a dilatory Motion is an abuse of the proceedings of the Senate, the Speaker may forthwith put the question thereon or decline to propose it.”

I am satisfied that we have always maintained sobriety as a House. I think that there is no harm in allowing a bit more time in order to do more consultations. If those consultations fail, this House is still available to you to proceed with the Motion.

Since this is not a matter affecting counties, I will, therefore, put the Question.

*(Question, that the Debate be
now adjourned, put and agreed to)*

(Debate on the Motion was adjourned)

ADOPTION OF REPORT ON FAMILIARIZATION
TOUR OF GEOTHERMAL POWER PLANTS IN
OLKARIA AND NAIVASHA

THAT, this House adopts the Report of the Standing Committee on Energy, Roads and Transportation on the Familiarization Tour of Geothermal Power Plants in Olkaria – Naivasha, Nakuru County on 12th August, 2013 laid on the Table of the House on Tuesday, November 26, 2013.

(Sen. Obure on 27.11.2013 – Morning Sitting)

*(Resumption of Debate interrupted on
27.11.2013 – Morning Sitting)*

The Speaker (Hon. Ethuro): The Vice-Chairman of the Committee on Energy, Roads and Transportation Committee was still moving the Motion. Is he not here?

Sen. Obure!

Sen. Obure: Thank you very much, Mr. Speaker, Sir.

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

The Speaker (Hon. Ethuro): Order! Order, Sen. Obure and Sen. Orengo! I have my suspicions on what Sen. Orengo may wish to request. We had suspended the Order on Statements pending the voting. So, we should, therefore, resume that particular Order before we move to Order No.12.

Also since the Mover had not completed moving, I am just wondering, in terms of moving it, whether it can be terminated midway before he has actually moved to allow the Seconder to do so. So, assuming that we had reached even that stage, we will not take that Motion, until the Mover comes to conclude moving it.

(Motion deferred)

The Speaker (Hon. Ethuro): Motion No.13, in the spirit of Motion No.11 is also deferred. We will take the remaining Statements and then go to Motion No.14. It is so ordered!

NOTING OF SUPREME COURT ADVISORY OPINION
REFERENCE NO. 2 OF 2013

THAT, the Senate notes the Advisory Opinion by the Supreme Court of Kenya in Advisory Opinion Reference No. 2 of 2013 delivered on 1st November, 2013.

(Motion deferred)

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

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

(Consideration of Statements resumed)

STATEMENTS

ALLEGED INVOLVEMENT OF PUBLIC OFFICERS IN COACHING ICC WITNESSES

Sen. Wako: Mr. Temporary Speaker, Sir, Sen. Orengo had asked for a Statement on the alleged involvement of public officers in coaching of the International Criminal Court (ICC) witnesses against the Deputy President.

Mr. Temporary Speaker, Sir, I received the answer from the Office of the Attorney General yesterday morning, although it is dated 21st November, 2013. The answer requires certain clarifications and I talked to Sen. James Orengo and requested that I be given time to seek those clarifications, so that when I give the answer in this House, it will be a solid answer. I would, therefore, kindly request that the matter be put off to Wednesday next week, if that is convenient.

Sen. Orengo: Mr. Temporary Speaker, Sir, we had actually discussed this matter with the Chairman of the Committee on Legal Affairs and Human Rights and I am in a position to accommodate him. So, the Statement can actually come next week, on Wednesday afternoon.

The Temporary Speaker (Sen. Murkomen): It is so ordered!

THE GOVERNMENT'S POSITION ON THE INTEGRITY OF IEBC

Sen. Wako: Mr. Temporary Speaker, Sir, I was not here, but I understand that the hon. Senator had also asked a question on the Independent Electoral and Boundaries Commission (IEBC). A letter was dispatched to the ministry, asking for the relevant information, but the answers have not yet arrived. So, I would suggest again that we put it off to Wednesday and I will, in the meantime, take the problem of trying to get the answers from the relevant Ministry.

Sen. Orengo: Mr. Temporary Speaker, Sir, I will not mind if it can come on Wednesday or even Thursday, if the former Attorney General feels that having these two Statements on the same day may not be quite appropriate. So, it can come on Thursday next week.

The Temporary Speaker (Sen. Murkomen): It is so ordered!

Sen. Orengo: Mr. Temporary Speaker, Sir, I had a Statement pending and the Chairman of the Committee on National Security and Foreign Relations was on his feet to deliver it, but that Order was suspended. Since the Chairman is here, could he be allowed to give the Statement, regarding the withdrawal of bodyguards of Sen. Muthama?

The Temporary Speaker (Sen. Murkomen): Sen. Haji, you may proceed.

WITHDRAWAL OF SEN. MUTHAMA'S
SECURITY DETAIL

Sen. Haji: Mr. Temporary Speaker, Sir, on 12th November, 2013, Sen. Orengo requested for a Statement on the withdrawal of Sen. Johnston Muthama's security detail. In his request, he sought the following:-

1. The reason for and/or the circumstances surrounding and leading to the withdrawal of security personnel and bodyguards attached to the Senator.
2. Whether the Government is satisfied that the security and safety of the Senator will not be compromised or adversely affected by the withdrawal.
3. Whether the Government could deny or confirm that the decision to withdraw the security detail is largely based on the political stand that he has taken on various issues.
4. Whether the Government will reverse the decision and have the officers returned immediately.
5. Whether the Government is committed to the freedom of expression, principle of open and good governance, transparency and accountability, as provided for in the Constitution.
6. The policy and practice of the Jubilee administration with regard to provision of security to Members of Parliament and circumstances in which security can be withdrawn.

Mr. Temporary Speaker, Sir, I wish to respond as follows: The Cabinet Secretary is not aware that the security detail of Sen. Johnston Muthama has been withdrawn.

However, the matter will be investigated and appropriate action taken. Already, the security of Sen. Muthama has been restored.

Mr. Temporary Speaker, Sir, I wish also to state further that the Government is committed to the freedom of expression, the principle of open governance, transparency and accountability, as provided for in the Constitution.

Mr. Temporary Speaker, Sir, on the Government policy and practice on the provision of security to Members of Parliament, every Member is entitled to one security officer, to serve as bodyguard. However, in the event of the following circumstances, the security detail of a Member of Parliament or any other V.I.P may be withdrawn:-

If the Member:

- (a) is convicted of a criminal offence;
- (b) commits an offence under Section 103 of the National Police Service Act, 2011;
- (c) commits a breach of peace;
- (d) abuses the privilege of being accorded V.I.P protection; and,
- (e) relocates to another country.

Thank you, Mr. Temporary Speaker, Sir.

Sen. Orenge: Mr. Temporary Speaker, Sir, I have a problem with the answer to this Statement that I had requested because, one, the Chairperson of the Committee has just dealt with the question of one bodyguard, while the Statement I requested related to the entire security personnel attached to the Senator. He has given confirmation that the bodyguard has been made available following the withdrawal.

So, Mr. Temporary Speaker, Sir, in view of the fact that this answer is not complete and, secondly, in view of the fact that the Cabinet Secretary (CS) was--- Because this Statement was requested on the 12th of November, 2013, and on the 21st of November, 2013, the Cabinet Secretary was saying he was not aware; that is nine days later and he was not aware! But now, indeed, in answer to the request for this Statement, the Chairperson has said that, actually, a bodyguard has been returned. So, there is discrepancy in this Statement as to whether the CS is in charge of the facts of this situation. It disturbs me that the CS would actually not be aware when a bodyguard is withdrawn. Even in this written Statement, the factual situation is that he is not aware; but the Chairperson has given further information that, in fact, the security detail has been returned.

So, Mr. Temporary Speaker, Sir, with your permission, I would want to request that the Chairperson comes back with a more detailed answer in response to each and every Question that was asked in this Statement. I am saying this knowing very well that the Chairperson has really helped in this situation; that he went out of the way to make sure that, at least, the bodyguard was returned to Sen. Muthama. Indeed, next time I am in a problem, I will go to Sen. Haji, because I know he will deal with it.

So, I do not know, Mr. Temporary Speaker, Sir; can some direction be given on this issue? If the Chairperson feels that this Statement is comprehensive enough, then I will proceed to ask further questions. But if he agrees with me that it is not comprehensive, then, with every humility, I would ask him to come with a more comprehensive Statement.

The Temporary Speaker (Sen. Murkomen): Sen. Haji.

Sen. Haji: Mr. Temporary Speaker, Sir, I cannot dispute the feeling of Sen. Orengo, but I think this issue was addressed very elaborately yesterday in our meeting, and we came to the understanding of the problem. Therefore, we can only presume that if the CS was not aware by the time this Statement was asked; he was made aware later and a proper action has been taken.

As to the number of security detail that we are entitled to, I think that the HANSARD of yesterday's meeting will bear me out as it was also very clearly stated. So, I want to plead with my brother, Sen. Orengo, that we should let the matter rest there and hope that in future, something like this will not happen.

Thank you very much, Mr. Temporary Speaker, Sir.

Sen. Orengo: Mr. Temporary Speaker, Sir, my only problem with that is that yesterday's meeting was a good meeting, but it is not part of the official proceedings of the House; it was not a formal sitting of this House. This House is entitled to an answer in Plenary; whereas it may mean a repetition of the answer that was given yesterday, but I think it is for purposes of having a proper record, because it may relate to Sen. Muthama, but it may affect anybody else. So, I still plead with the Chairperson that, that answer that was given yesterday, which was comprehensive, be brought before the formal sitting of the Senate.

The Temporary Speaker (Sen. Murkomen): Sen. Haji, while you are reacting, we would like to know whether a report is pending from the proceedings of yesterday's meeting; and if so, would it then be that when you are laying that report on the Table, it will come together with the answer that Sen. Orengo seeks?

Sen. Haji: Mr. Temporary Speaker, Sir, the Committee will lay that report on the Table. So, depending on the directions that you are going to give and if my brother is not feeling hard in accepting it, what I will do is to ask them to replicate what they have told us here; and that will be a double job. So, I still want to plead with him that when we present the report, all this will be taken care of.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Murkomen): Order, Sen. Haji! After how long will the report of yesterday's meeting be tabled in this House?

Sen. Haji: Mr. Temporary Speaker, Sir, as soon as possible. It will depend on the secretariat.

Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Murkomen): Let us hear Sen. Obure before I make my final comments.

Sen. Obure: Mr. Temporary Speaker, Sir, the issue before us raises some fundamental questions. On the 21st of November, 2013, the CS agreed that he was not aware. In fact, even at yesterday's meeting, we were told that even the Inspector-General (IG) of Police and his deputies were not aware of who withdrew Sen. Muthama's security detail. This, then, prompts me to raise the following question. In this report which will be tabled here following yesterday's proceedings, can it be explained who gave all this authority for the withdrawal of the security detail, subjecting Sen. Muthama to obvious risk? We would like to know so that we can attribute responsibility to the individual person who did this.

The Temporary Speaker (Sen. Murkomen): Very well. Hon. Senators, the issue before us has been canvassed for the last two weeks; it is a very serious matter concerning the security of a Senator, and it would have been any Senator in this House. Considering that we had a very good meeting yesterday, and that the report of that meeting is very critical in the answer that is sought by Sen. Orengo, I order that the Senate Committee Chairperson expedites the process of putting together the report and tables it in the House on Thursday next week with specific and comprehensive answers to the Questions as asked by Sen. Orengo, including the Supplementary Question that Sen. Obure has just added so that we can then deliberate on those issues comprehensively on Thursday next week.

Sen. Haji: Mr. Temporary Speaker, Sir, I am much obliged; I will try my best to produce that report by Thursday next week. But I decline to commit myself on the questions raised by Sen. Obure, that I mention who gave the order, because we attempted yesterday and we did not get the answer. I do not see anybody giving us that answer. So, I am sorry really.

(Several hon. Senators stood up in their places)

The Temporary Speaker (Sen. Murkomen): Order, hon. Senators!

Sen. Haji, that is a very serious issue considering that there is admission already that there was withdrawal and reinstatement. So, someone must have done the withdrawal and somebody else did the reinstatement, whichever the case. So, it should be possible for you to get an answer except that, perhaps, even the Committee will have to hold another session to procure that information from the necessary sources. It is important that such practices are put to rest because they are really archaic practices. It is important that we do this because it can happen to each one of us any day. For example, Sen. Haji might tomorrow go to Garissa and midway, somebody – a conman – withdraws your security without the knowledge of the senior security leadership. I think that answer is very necessary for this House, except that, perhaps, I would give a leeway that the Committee goes further to procure that answer.

Yes, Sen. (Dr.) Machage?

Sen. (Dr.) Machage: Mr. Temporary Speaker, Sir, I hope I am in order to raise matters that were discussed yesterday in the *Kamukunji*. I did rise and asked a direct question as to who withdrew the security to Sen. Muthama. The Chairperson himself – our own Chairperson – gagged me; he did immediately respond that I am not supposed to ask that question, which is trivial. Would I be in order to think that, maybe, it is not that the security machinery is unwilling to answer this question, but it is the Chairperson himself who is reluctant to supply the answer to this House?

The Temporary Speaker (Sen. Murkomen): Sen. Orengo.

Sen. Orengo: Mr. Temporary Speaker, Sir, I am prepared to go by your directive, that a comprehensive answer be brought when the report is tabled before the House. But just to emphasize the seriousness of this matter, in this reply, the CS has actually spelt out the circumstances under which a bodyguard may be withdrawn from a Very Important Person (VIP) or a Member of Parliament (MP) for that matter; and they range from

circumstances in which a Member is convicted of a criminal offence; or has committed an offence under Section 103 of the Police Act; and so on, and so forth.

That being the case, the fact that there was a withdrawal means that either Sen. Muthama committed these offences, or circumstances may have arisen which are within the four walls of the law, as stated out here. Now, if it is left out hanging like this, then one will come to the conclusion that Sen. Muthama probably committed an offence and we are glossing over the matter.

Secondly, Mr. Temporary Speaker, Sir, if you look at the request for that Statement, I was looking for the reason for, and/or the circumstances surrounding and leading to the withdrawal of the security personnel. It is a fairly broad but very demanding question that I am asking for a good cause. So that if now the Chairperson is telling me that because the bodyguard has been returned, there ends the matter, then it does not resolve or answer the issues that I had raised.

Thirdly, Mr. Temporary Speaker, Sir, I want to inform the Chairperson that, in fact, it is only the bodyguard who has been returned; the other administration police officers who were at the residence, and so on, have not been returned. So, there is no satisfactory answer to the issues that are raised. But let it not be thought that I am raising these issues for purposes of, and related to the security of the Senator or the law generally; and for that matter, that is why I am prepared to have this matter come with a report. But I am pleading with the Chairperson that there should be a comprehensive answer, and if the CS was not aware, then that itself raises a lot of questions. For 12 days, he was not aware, and the Chairperson knows the extent to which we were communicating with him in order to make the CS aware; and when he says that he was not aware, then I am truly surprised. So, I am pleading with the Chairperson that, this is not an easy matter, and a full answer should be given to the House. If it is through the Committee, I accept, but it should be a comprehensive answer.

The Temporary Speaker (Sen. Murkomen): Sen. G.G. Kariuki.

Sen. G.G. Kariuki: Mr. Temporary Speaker, Sir, since you have given some advice to the Chairman of the Committee that this matter needs to be dealt with comprehensively in a committee of which Sen. Orengo, you the Chair and I are Members, we should be given the opportunity because yesterday the Government would have come out and stated the correct position. Therefore, in our committee we will try as much as possible to get a satisfactory reply from the officers concerned.

I had an experience where I was taken to court in Mombasa from Nairobi and I reported to the court every Monday for six months only to find out that that case had been withdrawn without explanation. Even today, the reasons have never been explained to me. We are now getting out of the box and the system should also accept the reality. This reality is real and nobody can stop it. Therefore, if you sustain your earlier decision, I think we will be quite contended and we will try as much as possible to give the reply.

Mr. Haji: Mr. Temporary Speaker, Sir, I think my friend, the Senator for Migori is a very forgetful person because when he rose to speak about this issue we had already set up a programme which we wanted to work on. I wanted us to address the agenda that we had. If he can recall, at the end, this matter was discussed and I personally told the Commissioner of Police that if he is not aware, his deputies are not aware and everybody else is not aware, then that is not acceptable. Somebody should take the blame and

apologize. So my brother here should withdraw the allegation that it is the Chairman who is refusing to respond to that Statement.

Secondly, I will do what you have said; read the report and address any other issues that have been raised by Sen. Orengo. The committee will discuss all those concerns and we will be happy to know the truth of the matter.

The Temporary Speaker (Sen. Murkomen): Sen. (Dr.) Machage you have been mentioned adversely and your earlier assertion has been countered. Did you really sit to the end of the sitting? If you did not, could you apologize?

Sen. (Dr.) Machage: Mr. Temporary Speaker, Sir, there is really nothing to apologize for. If you read the HANSARD of that day, what the Chairman would have done is to confirm that he is actually not denying this House information. That is all I said.

The Temporary Speaker (Sen. Murkomen): Very well. We need to close this matter.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I want to seek for a different Statement. Do I proceed or wait?

The Temporary Speaker (Sen. Murkomen): You will have to wait. Sen. Orengo!

Sen. Orengo: Mr. Temporary Speaker, Sir, a good idea is good but a better idea is better. I like what the Sen. G.G. Kariuki has said, that this matter be referred to the Committee irrespective of whether it arose in yesterday's proceedings. It should go to the Committee so that it can be fully dealt with and then a report be made to the House.

The Temporary Speaker (Sen. Murkomen): Now that you are all Members of that Committee, do you think one week is enough for you or you need more time?

Sen. Orengo: Two weeks, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Murkomen): I therefore order that the Committee on National Security and Foreign Relations should go back and look at the questions before them together with the report of yesterday and give a comprehensive answer to the House in two weeks' time. In the meantime, I also need to remind all of us that the Committee should give notice to any other interested party, particularly Sen. Muthama if he is not a Member of the Committee, so that all these questions are completed within the Committee. I really think that that is the best opportunity to ask for comprehensive answers from the relevant officers and then table the report before the House.

STATUS OF "ONE MILLION ACRES" IRRIGATION PROGRAMME

Sen. (Prof.) Lonyangapuo: Mr. Temporary Speaker, Sir, I am rising to inquire how long the Chairman of the Departmental Committee on Agriculture, Land and Natural Resources will take to come and respond to the Statement I sought and you directed that a comprehensive and detailed answer be brought to the House. I sought for that Statement two months ago. It relates to the Statement I sought about the promised 1 million acres of land to be put aside for irrigation. I wanted to know the portion of the share that is going to every county because there is a lot of hunger in every county and if the national Government is going to do irrigation, we must divide the 1 million acres amongst the 47 counties.

If Nairobi County does not have land we can give that chance to West Pokot County or any other county so that at least 10,000 acres of land should be under irrigation in every county. We will really arrest hunger in most of these places than to ferry this proposed land to Tana River and Kilifi County. I do not know where the workers will be sourced from. I do not know whether the Chairman is here.

The Temporary Speaker (Sen. Murkomen): Is the Chairman of that Committee present or any Member of the Committee? Sen. Kittony, you look like a Member of that Committee, are you not?

Sen. Kittony: No, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Murkomen): Very well! Since the Chairman and the Vice Chairperson are not in the House---

Sen. G.G. Kariuki: On a point of order, Mr. Temporary Speaker, Sir. The Chairs of the Committees are supposed to be the Ministers in this House to give us answers of whatever questions that we ask. They are treating this House very casually. Usually, the Chairpersons of Committees are not present in the House when we seek for answers to the Statements. Right now, there is nobody who can give us an assurance as to when this Statement will be given. I think something needs to be done by the Chair to make sure that from the Senate Majority Leader downwards, all the time we must have at least four of them present in the House. If they continue treating this House the way they are doing, it appears that we are not serious.

The Temporary Speaker (Sen. Murkomen): I agree with Sen. G.G. Kariuki. It is important that both the leadership of the House, who are the Senate Majority Leader and the Senate Minority Leader have a clear time table of the business of the House and be able to track who should be where and when. I will give a comprehensive ruling on Tuesday next week as to the way forward on this matter. In the meantime, every Committee is reminded that they should take the business of the House seriously.

Before we go to the next order, as earlier ruled by the Speaker in order No.12, it was the Mover who was on the Floor and since the Mover was not present, the Motion was deferred to the next sitting. For the Motion on Order No.14 the Mover has requested that the Motion be deferred to another date.

ADJOURNMENT

Hon. Senators, there being no other business, the Senate stands adjourned until tomorrow, Thursday, 28th November, 2013, at 2.30 p.m.

The Senate rose at 5.00 p.m.