

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 23rd October, 2018

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

[The Temporary Speaker (Sen. Pareno) in the Chair]

PRAYER

The Temporary Speaker (Sen. Pareno): Sen. Olekina, you have two minutes.

Sen. Olekina: Thank you, Madam Temporary Speaker, for giving me the two minutes. I rise to support this Petition by my good friend Sen. Mwaura.

For a youth to seek employment he must have graduated from university. Therefore, our laws and regulations should not disadvantage our youths. We need to put them in the positions where we were before we even got an opportunity to come here.

The next question to ask is whether or not CRB determines one's eligibility or ability to work. Getting a clearance certificate from the DCIO is already assuming that an individual has committed an offence. The same applies to getting a clearance from EACC. If these documents are mandatory or prerequisite for youths to be employed, then we should avail them free of charge. The first step we, as a country, should take is to issue these certificates to our youth when they are graduating or when they are being admitted to universities. However, asking youths to pay Kshs1,050 to get a certificate from the DCIO, the CRB the EACC and HELB clearance is really overburdening them.

I congratulate the managers of the National Youth Fund (NYF). I remember on 28th May, 2018, the chairperson directed that youths will no longer be required to be subjected to all these CRB, EACC---

Sen. Olekina: Thank you, Madam Temporary Speaker. I rise to congratulate my dear friend, Sen. Kihika, who I serve with in two committees; the House Business Committee as well as the Committee on Energy. I have known Sen. Kihika as someone who is very vibrant and detailed. I congratulate her for her agility and dedication to service for the people of Kenya; and also, the world now in general, particularly in leadership. I know that it is the zeal and dedication that her colleagues saw in appointing her to become their President.

Madam Temporary Speaker, I wish to remind my friend that life is all about grabbing opportunities by the collar and squeezing them out until the very last drop. She should do the same in this new job.

The role of the Inter- Parliamentary Union (IPU) is to promote democracy and opportunities for women. It is also important that in the parliaments all over world, the voice of the women is heard, supported and given that opportunity to take that risk. Our young girls face various challenges, and with her – being a lawyer who has lived in the United States of America (USA) for many years – her election as the President and also as the first woman Senator for Nakuru County puts her in a position whereby she can grab these opportunities. If she does not squeeze them, then the people will not benefit.

Madam Temporary Speaker, I know that my colleagues have spoken; and they have said that there are so many other goodies that come with this position. If there are any such goodies, like jobs, I request her to remember some young Maasai girls so that they are given those opportunities as well, because they are also her constituents who voted for her in Nakuru County.

It is important for her to remember that one of the missions and goals of the IPU Forum of Women Parliamentarians is to ensure that they support the marginalized communities. For her, that means representing the Ogiek, Kalenjins, Kipsigis, Maasais and Kikuyus in Nakuru; some of who would argue that they have been marginalized. Therefore, any experiences that she can gain from the discussions with her colleagues will be important to help us here, in terms of developing new legislation.

Once again, Madam Temporary Speaker, I convey my sincere congratulations to Sen. Kihika upon assuming her new position, which she should squeeze hard. Let it be one that we can look forward to and say, “This really benefitted Kenyans”. She should learn everything she can, come back here and help us so that she can be the best mentor to women in this country.

We know that there is a lot of politics out there; some of them have the “me too” debate; I am sure that she is aware of that. I hope that we will not be talking about that debate here in this country. We should try to find a way to put the “me too” debate out, so that we can encourage women to fight for their rights and stand up so that we can develop this country. I congratulate her.

The Temporary Speaker (Sen. Pareno): I am happy to note that the person in

THE COUNTY PLANNING (ROADS, PAVEMENTS AND PARKING
BAYS) BILL (SENATE BILLS NO.18 OF 2018)

Sen. Olekina: Thank you, Madam Temporary Speaker. I beg to move that The County Planning (Roads, Pavements and Parking Bays) Bill (Senate Bills No.18 of 2018) be now read a Second Time.

This Bill seeks to provide a legislative framework for the planning, construction and maintenance of county roads, streets, lanes, alleys, parking bays, drainage systems and pavements in each county. It also provides for the proper planning in placement of access ways to commercial buildings along major roads within counties.

The overall objective of this Bill is to provide a framework for easy access to roads, promote road user safety, ensure easy accessibility to commercial buildings and promote the development of a well-planned environment in counties.

As you are aware, under the Fourth Schedule of the Constitution, transport is a shared function between the national Government and county governments. In particular, the county government is charged with the functions of traffic and parking. This is in

Paragraph 5(c) of Part 2 of the Fourth Schedule. Further, Article 174(f) of the Constitution of Kenya states that one of the core objects of devolution is the promotion of social and economic development and the provision of easily accessible services throughout Kenya.

Madam Temporary Speaker, allow me to give a brief overview of the Bill. Clause 2 of this Bill contains various definitions of terms relevant to the Bill. These definitions are necessary for avoidance of doubts and consider the various jurisdictions of the national Government and county government as concerns roads.

Clause 3 of the Bill concerns the object and purpose of the Bill. These objectives are as follows-

(a) provide a framework of the planning and construction of access ways from major roads in each county in a manner that ensures the safety of road users;

(b) provide a framework for the planning of commercial buildings along major roads in a manner that ensures that the buildings are accessible and do not lose their commercial viability; and,

(c) promote the development of a well-planned environment in counties in order to achieve unhindered and adequate access to buildings for major roads by members of the public.

Clause 4 of the Bill outlines the application of this Bill; that is, to county roads and all commercial buildings constructed along major roads.

Clause 5 of this Bill places a set of duties on the County Executive Committee (CEC) Member responsible for matters relating to roads. Those duties are as follows-

(a) formulate a comprehensive plan for the construction of maintenance of county roads within the respective county;

(b) facilitate the design, development and maintenance of drainage systems along the roads;

(c) ensure access ways to buildings constructed along national and county roads;

(d) make provision for and ensure the construction of adequate parking bays in the respective counties;

(e) ensure the maintenance of county roads; and,

(f) facilitate regular inspections of all the buildings, roads, streets, lanes, alleys, parking bays and pavements, to ensure that they adhere to the prescribed building codes and standards as set out in this Act and any other written law.

Clauses 6, 7 and 8 of the Bill contain provisions that obligate each county government to construct and maintain streets, lanes, alleys, parking bays and pavements.

Clause 9 of the Bill states that the County Executive Committee Member for transport shall designate areas for use by pedestrians for the purposes of crossing a major road in the county in a manner that does not interfere with the flow of traffic. This clause requires the Chief Executive Committee (CEC) member in charge of transport to ensure the construction of footbridges or any other convenience for use by pedestrians to cross a major road.

Clause 10 of the Bill contains provisions on access ways to commercial buildings. In this clause, the owners of commercial buildings situated along a major road, shall ensure access ways are present near major roads.

[The Temporary Speaker (Sen. Pareno) left the Chair)]

[The Temporary Speaker (Sen. (Prof.) Kamar) in the Chair)]

Madam Temporary Speaker, Clauses 11 and 12 contain provisions on the construction and maintenance of pavements and parking bays by owners of commercial buildings while Clause 13 of this Bill contains provisions on the use of payments. This clause states that a pavement shall only be used by pedestrians in a manner that the County Executive Committee Member may prescribe. Driving, parking and erecting of structures of hawking are forbidden under this clause and the offender shall be liable on conviction to a fine not exceeding Kshs100,000 or to imprisonment for a term not exceeding three months.

Clause 14 contains provisions on the parking of motor vehicles. The clause states that a motor vehicle shall not be parked in any area other than that, which is designated as a parking bay. The driver of a motor vehicle shall not use a parking bay other than for the purpose of parking his or her motor vehicle and in accordance with the conditions set out by the County Executive Committee Member. Contravention of this provision shall result in the offender being liable on conviction to a fine not exceeding Kshs50,000 or to imprisonment for a term not exceeding three months or both. The county may also seize the offending motor vehicle, and the vehicle shall only be released upon payment of the required fine and charges.

Madam Temporary Speaker, Clause 15 contains provisions on designated parking. It states that the County Executive Committee Member shall designate parking bays for the exclusive parking of petroleum tankers and the parking of other heavy commercial vehicles in accordance with Section 99 of the Energy and Petroleum Act. The clause also states that those vehicles may park outside these designated areas for the purpose of loading or offloading goods where;

- (a) the loading or offloading process is continuous;
- (b) the goods are such weighty that they cannot be reasonably conveyed otherwise by the means of a vehicle;
- (c) the vehicle that is parked is near as possible, to the loading or offloading site; and,
- (d) the loading or offloading activity is carried out promptly.

Madam Temporary Speaker, a person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding Kshs200,000 or to imprisonment for a term not exceeding one year or both.

Clause 16 of this Bill empowers the County Executive Committee Member to make regulations for the better carrying out of the Act. This regulation shall be on prescription of standards for constructions and the use of street lanes, alleys, parking bays, pavement, drainage systems and other structures prescribed by this Act. In addition, as well as prescriptions of the procedure for the application of any approval provided in this Act.

Madam Temporary Speaker, the reason that made me come up with this Bill is because of the constant road accidents that we see along Nairobi's Waiyaki Way, particularly in a place where people have to cross from one side of the road to the other

and where you see a lot of hawking and illegal market activities being carried out along the road. Kangemi is a good example.

This is the cause of disorganization in this country. This Bill has got nothing to do with the Roads Bill which is currently before the Senate in the Second Reading. This Bill is not seeking to create or establish an Authority, but seeks to carry out various functions that are devolved.

Madam Temporary Speaker, when you look at the budgets of every county in this country, the first thing that you will see is that there is an estimate of how much they can generate from parking services. There is no law that guides and empowers the County Executive Committee member to designate these parking areas and say “this parking area shall be used by motorcycles, tankers or *matatus*”. One of the biggest problems we have in this country is that, sometimes certain accidents occur because of obstructions on the roads; people crossing from one side to the other. Once this Bill is passed and assented to, it will do away with that.

Secondly, this Bill will help the County Executive Committee Member in charge of transport, for instance, in Narok County, to say in Narok Town, we have 10,000 parking slots out of which, 5,000 are to be used by private vehicles and we will charge an extra amount of money per vehicle per day.

One of the biggest problems we have in this country is where we are overestimating our collections. This will ensure that even if you give a percentage of about 30 per cent of the revenue collected, you can come up with realistic figures of how much money you will be collecting.

Madam Temporary Speaker, when you go into our towns which were designed a long time ago, there is no inspection of the building codes. No one goes out there and says, for example, you have got this building and now the front of your building, we, as the county government, are the ones responsible for it. This, therefore, gives room for somebody with a big tanker to park it there and block the businesses in the building. So, even the commercial viability of each and every building is curtailed, since this blocks people from accessing the building and shopping there.

This Bill will enable anyone who is constructing a commercial building, which is facing the highway, to turn that building the other side and create streets. It is only in this country where we do not consider street ways when most buildings are being constructed. The owner of the building can only accurately say, these two shops which face the highway will give me Kshs20,000 a month in rural areas, while in the urban areas Kshs100 per square foot, but any other spaces at the back, no one is able to tell, because when I come and I want to shop, I will only do so in the first two shops because getting parking might be problematic.

Madam Temporary Speaker, one of the things that this Bill is going to help is that, the owners of those buildings will be given an opportunity by the regulations that will be developed by the County Executive Committee member in charge of transport to maintain those pavements. Then let us say, Joe will get into these issues of public private partnership, where the public is not losing any money. If anything, the owners of the building will maintain their pavements by using regulations which have been set instead of putting cabro or bitumen. If it is cabro, the entire streets in Narok town will have cabro, while if it is bitumen, then all the pavements will have bitumen.

The other important thing in this Bill is that it will help this country to reduce the number of people who are killed when riding motorcycles in an area designated for vehicles. With the passage of this Bill, the County Executive Committee Member (CEC) of each county will designate areas where people with bicycles and motorcycles can ride them there. When vehicles, motorcycles and bicycles compete in one area because there is lack of law and order, the level of accidents will increase.

I hope that the Members will support this Bill because it will encourage people in each town to see their commercial properties as equal. Instead of having illegal shanties or hawkers in front of buildings facing the highway, one will design their buildings in a way that when one walks into the building, they can enter the shop through the right or left. That will help us to reduce the number of illegal structures which are constructed on the road reserve. This will also help county governments to plan properly.

When you look at the trends worldwide, especially the United Kingdom, you will realize that there will be no vehicles using petroleum or diesel by 2030, instead, they will be using electric vehicles. I am concerned of what is going to happen in this country with the number of vehicles that we are importing that use diesel and petroleum while taking into consideration that most of the imported vehicles are more than eight years. They will all be parked in the streets.

With the passage of this Bill, no one can park any vehicle. When the world is moving towards electric cars, we will also move towards electric cars. We can have laws that will state that a county like Nakuru will have 50,000 parking spots which can only be built and used for generating income. It can also state that the petrol stations built along the road have to be built in a way that they accommodate the big tankers that will be going in to offload the petroleum products that they carry.

This Bill tries to raise income for counties in terms of parking and encourages law and order in our streets. This Bill will help our counties to designate areas such that if it is a market, it will be clearly marked as such. The problem that we have is lack of proper laws which have been put in place---

(Several Senators consulted loudly)

Madam Temporary Speaker, I request that you protect me from my colleagues who are holding a *kamukunji* at the back.

The Temporary Speaker (Sen. (Prof.) Kamar): Order, Members. Consult in low tones for us to hear our colleague.

Sen. Olekina: Madam Temporary Speaker, the Bill will bring law and order. It seeks to create a framework which will establish pavements, which very few towns have, where one can freely walk without fearing of being knocked down by a car. If you call the folks at the National Transport and Safety Authority (NTSA), the best thing that they can give you at the moment is statistics of people who have been killed in Kangemi. If you try to find out the reason as to why these people are being killed, you will realize that they get killed when crossing from one side of the road to the other. When they try to buy sugar from this canteen and find that it does not have, they know that there is another canteen on the other side which has either been constructed on the road reserve or in a shop.

When this Bill becomes law, the people who are constructing new commercial buildings will take their time and work with the county governments. The biggest problem that we have right now is that the planning departments in each county do not take time to look at the building codes. They just look at the plans and approve them as long as one has taken them. This Bill will now ensure that all those issues have been considered during the approval stage for each plan to be approved and the first thing will be the pavement. They will look at what one is proposing and find out if one is proposing to leave the county government to develop the frontage of their building or they are going to incorporate public private partnership where they build, develop their frontage and use it for the parking of the shoppers who are coming to shop in their premises?

This will empower the owners of these buildings because they will know that they have been given the regulations to construct the frontage and from there, they can choose to go green. They can decide to designate an area for, say, 20 people who will come with bicycles as well as those who will come with motorcycles and private vehicles. It is sad that many people in this country have businesses that do not make profit. One might have the best designer suits or pharmacy but the fact that they do not have a parking area where one can easily park their cars, get into a shop, buy and walk away, that denies them that business.

When I was thinking about this Bill, I looked at the other jurisdictions and other countries and how they handle the issue of pavements and parking. In some states in America, the owner of the building is given a distance of about three metres that they are to maintain and the regulations. They are expected to mark the parking slots and anyone who parks there does not have to pay anything though they are in partnership with the town council. However, we still have other buildings where one still pays the town councils when they park there.

This Bill is a win-win for all of us. It is a win-win for the business community and county governments. The county governments can budget to have 50 per cent of all their parking spaces generate revenue. This is a time when we are crying and the county governments are also crying. There is a debate where people are saying that we should merge some counties because of lack of creativity. This Bill brings another creative element to support these counties to continue generating revenue.

There are so many counties that are talking of converting urban areas to municipalities without thinking further. The Act that regulates the formation of municipality is clear. You have to demonstrate that you can raise local revenue. Most of the counties in this country are not able to demonstrate that. We also know that there is a lot of money allocated for urban planning by the World Bank.

We plan for these urban centres but we do not have a law in place to clearly guide us. For instance, if the World Bank gave us Kshs300 million or more to plan Narok Town, we do not have a law that can guide us to build courts, designate parking areas or pavements. In fact, this Bill will help towns that do not have designated parking areas to negotiate with the people.

I am happy with what I am seeing in the City County of Nairobi. For example, across the Parliament Buildings, people are no longer building commercial spaces to lease out. They are investing in building parking spaces. If we do so, it will only be right if we follow the law and have clear regulations so that we also empower devolution.

Madam Temporary Speaker, many of our Bills only focus on the interests of the national Government. When will we focus on the interests of the county governments? The Constitution is clear. Earlier on, I referred to Article 174 of the Constitution that promotes the goals of devolution in social and economic development. I also looked at the Fourth Schedule in terms of the shared duties between the national Government and the county government. It is now time for this House to completely push legislations that will promote devolution.

Madam Temporary Speaker, I am from a different school of thought that believes that once the counties that we have are managed effectively, they will generate a lot of own source revenue. The only way to do that is if this House supports this Bill while taking into consideration that it not rivaling The Kenya Roads Bill.

Madam Temporary Speaker, in the history of this country, most of the legislations which have been brought into this House have been sponsored by the Government and are designed towards developing authorities. I am happy that this House is vibrant and has got men and women who take their time to say that they want to live in a good country. It is sad that we travel around the world and see the law and order on the way cars are parked.

Madam Temporary Speaker, in the United Kingdom (UK), there are parking areas which are designated for residents. People do not park for free. They pay either a subsidized rate for the whole year or on a daily basis if they are not residents. Where it is necessary, I welcome any other amendments to this Bill because I do not purport to say that I have the answers to the problem that we have.

I am sure that with the support of able Senators, we can improve and bring in other areas to ensure that it also covers specifically petrol or gas stations which are developed along our highways. I long for the time when we will have our welcome centres. The first income that we will get from people coming into our counties will be parking fees. I see this country moving forward to a point where people will be going on vacations.

I am sure when Sen. Kihika lived in the United States of America (USA), she travelled in a mini-van from one state to another. Sometimes, she would spend the night in the same mini-van because they are designed as vehicles but she paid for it. We need to think forward about these things and come up with regulations and laws that can support us.

Madam Temporary Speaker, with those few or many remarks, I beg to move.

I had earlier on requested my friend, the Senate Minority Leader, to second. However, I also asked the Senate Majority Whip to second. Therefore, I now invite my good friend, Sen. Susan Kihika, to second this Bill.