

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 14th November, 2018

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

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

PRAYER

Sen. Olekina: Mr. Speaker, Sir, I am a sad man today because we, as leaders and parents in this country, have failed tremendously. Literally we should all be punished for letting down our young girls. We are here because we are preparing to bequeath the future of this world to them.

I tried my level best in my early years to address this issue of teenage pregnancy and child marriages. I rescued over 25,000 girls who had dropped out of schools and were forcefully being married off in Narok County. I hoped this would have been carried forward by other leaders to curb this menace.

Mr. Speaker, Sir, these statistics, which the distinguished Senator for Isiolo County alluded to, were not provided by our own Government entities, but by the United Nations Population Fund (UNPF). It is very sad. It appears as if we have completely given up on our roles as parents, teachers and leaders. It is the foreigners who are pinpointing to us what is ailing us, as a society.

What is it that we can do to mitigate against this problem in our society? We know the risks involved. We all know being a teenager itself is not easy. Carrying a pregnancy to its maturity and preparing to become a young mother is not a joke. We may never be able to pay for what we are subjecting our children to by not teaching them about these things. We need to put more money into mentoring programmes. I thank Sen. Khaniri for bringing this issue before this House so that we can talk about it and not just read about it in the newspapers.

Narok County has been given here as one with the highest rate. I am trying to understand all these issues because the Maasai population is low. What is causing all these issues? Is it the food people are eating nowadays? Is it the churches where people go to at night that create conducive environment for these things to happen? Are we dealing with some people who are completely sick that they think that the only way they can increase their population is by attacking their children?

The distinguished Senator of Isiolo County talked about parents lusting at their children in school uniforms. Sadly enough, there are some people who are sick to do so.

It is annoying that some of these children are even impregnated by their parents. It is a fact that we cannot run away from.

These statistics show Narok has 40 per cent, Homa Bay has 33 per cent, West Pokot with 29 per cent, Tana River has 28 per cent, Nyamira also has 28 per cent and Samburu has 26 per cent. What is common among all these counties? The prevalence of poverty is high. The gap between the rich and the poor is so wide.

When we were rescuing young girls from forced marriages, we were told by one elder that the son-in-law to be was to give him over 40 cows as dowry. To me, these animals would change his life. He believed he would live a little longer life and provide for his family. He asked us what we wanted him to do, but we were adamant that he could not do so because he was destroying the future of that particular child.

Mr. Speaker, Sir, we ought to legally address this problem, so that it does not happen. We need to come up with tough laws that will deter anyone from even imagining of sleeping with a minor. For example, we can jail them without an option of a fine.

Secondly---

The Speaker (Hon. Lusaka): You need to wind up so that I give other leaders a chance to contribute.

Sen. Olekina: Mr. Speaker, Sir, secondly, there is need for us to talk to our colleagues in the National Assembly when preparing for the national Budget to cater for mentoring programmes in schools. Each school should be allocated some money for mentorship. We need to mentor our children and prepare them for tomorrow. It is time we walked our talk by coming up with restrictive laws that will deter others from involving themselves in these things. If we do not do so, Narok County will continue being ranked here and other counties will follow suit.

Mr. Speaker, Sir, I hope that both the Ministry of Health and the Ministry of Devolution and ASAL will investigate the high rates of early pregnancy in the aforementioned counties and come up with in-house programmes that will encourage a bi-cultural approach. The biggest problem as alluded to by the distinguished Senator from Isiolo is cultural. Some of the punishments here are as a result of culture. So, if we approached it from a bi-cultural approach, we will be able to convince our people that some traditions are out-dated and we need to discourage them. By so doing, we might have a permanent solution to this problem.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Proceed, Sen. Ndwiga.

Sen. Olekina: Thank you, Madam Temporary Speaker, for giving me an opportunity to comment on this important Bill which I hope and wish that a majority of Kenyans are keen to listen to what it is about to do.

I have not had enough time to look at the amendments that are being proposed but I have been able to skim through. From the onset, I have to first of all correct my dear brother, the Chairperson of CPIAC, in referring to Article 61 of the Constitution. The Constitution is very clear that-

‘All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals.’

I do not think that there is anything wrong with a particular individual owning a lot of land. The process of acquiring that particular land is what we need to be discussing here.

I have looked at this Bill and the proposed amendments and some of them worry me quite a lot. The intention appears as if it is good but what is questionable is the way of making sure that the issue of land is dealt with accordingly. I do not have a problem with setting up a tribunal but I have a problem when this Bill tries to clip powers from the land court. We have a lot of people in this country who have got land but have not paid rates because of the economic challenges. Sometimes, it is very difficult for one to even pay for their fuel. We might have someone who probably has a lot of land that was bequeathed to him by his grandfather or his forefather and all of a sudden he cannot pay the rates. This Bill is proposing in Clause 4 that:-

‘Despite subsection (3), if the land is required for a public purpose, the court may not grant relief against forfeiture even if the licensee makes good the default.’

How many people default in paying their loans? How many people make good of that? If you take away the powers of the court to give people relief, then where are we going? I think that it is important that when we compulsorily acquire land for the good of the public, we first of all consider the rights of the owner of that land. Article 40 of the Constitution is very clear that everybody has a right to own property and every person has a right either individually or in association with others to acquire and own property.

If I acquire land and I own it, this Bill is saying that the value of that land should remain stagnant in two years’ time and if the Government wants to acquire that land to develop something huge that will incidentally increase the value of that land, that should not be considered. I do not think that Kenyans are listening.

It is a high time that I remind Kenyans that it is imperative that they read the text. When the Committee on Lands, Environment and Natural Resources was holding public hearing of these amendments, those halls should have been flooded by Kenyans reading the text because if they do not, they will be holding demonstrations tomorrow, which will not help them.

The Constitution is very clear that when the Government intends to acquire land compulsorily, compensation should be done immediately. Where do you expect people to go and live if you say that they will be paid within 12 months or within a reasonable time of the taking of possession of the land by the commission? Or what happens when they have a written undertaking indicating the appointment dates not being more than one year from the date of the undertaking when compensation is to be made. That is wrong. If you want to acquire my piece of land and make it public and put up a road, then compensate me promptly. This is why Kenyans should read the text, contribute and help us to understand their needs because we could rush when we are.

Madam Temporary Speaker, earlier today, I was listening to the Majority Leader in The National Assembly on YouTube castigating the Senate for delaying Bills. I want to correct him that we are not delaying the Bills, we are reading the texts. We want to understand the changes that they want to bring in that will affect the future generations.

Madam Temporary Speaker, about three weeks ago, a gentleman from Narok called me and told me that his house is being demolished to pave way for the Standard Gauge Railway (SGR). He was told that the land will be acquired forcefully and he will

be given Kshs1 million to look for somewhere else. That gentleman used to work in the Mara Serena Safari Lodge in Narok and built a house worth Kshs20 million. However, he is now being told that he will be compensated within 12 months. Where is he expected to live? He has raised his children to live and expect certain things which he should rightfully provide for them. However, all of a sudden, their lives have changed.

Madam Temporary Speaker, therefore, we need to think about the future generations. Any law that we draft and amend, we must do so knowing that we are bequeathing everything to the future generation. It should not only take care of our own immediate interests. I love development and I have no problem with it. However, let us develop while informing the public why it is important to acquire the land.

Madam Temporary Speaker, I am concerned about the delays. I sit in the Committee on Energy and in most cases, this country is losing a lot of money particularly on the Lake Turkana Wind Power Project because of issues of compensation.

Today, I spoke to a young lady who also raised concerns that she has been told that they will be compensated. However, it is funny that every time the valuation of the land is done, the value never goes up, it keeps going down. Who will protect the land owners?

People in Kajiado and Narok are still waiting to be compensated for the SGR land. The people in Turkana have caused the entire public to lose over a billion shilling a month because of the Kenya Electricity Transmission Company Limited (KETRACO) line 5 which is not completed. However, we can only bring the balance if we consult widely, engage the people and show them the need as to why we must compulsorily acquire their land but also promptly and immediately pay them.

Madam Temporary Speaker, if you look at Clause 6, it requires that the Land Act be amended by insertion of a new Section 107A to No.6 of 2012 on criteria for assessing value for compulsorily acquired freehold land. One of the things that concerns me the most is that when you read the Clause it says that the following issues will not be taken into consideration, one, in the event a person has acquired land and made some improvements in it, it should be made within two years prior to the date of publication in the gazette of the notice of the intention to acquire the land unless it is proved that the improvement was not made *bona fide* and not in contemplation of proceedings for the acquisition of the land.

When I buy land, the value does not remain the same because I may improve it. It is wrong to state that the improvement cannot be considered within two years. We should encourage people to buy land and hope that the value will go up. If they choose to sell it and go somewhere else, they should not be punished for that.

One thing I like about the Bill is that it will make it difficult for those who work in different Government Departments to leak out information to people who may just want to make a quick buck, or speculators if you like, from acquiring land and selling it to make more money.

In my view, the Mover should consider increasing the penalty because Kshs500,000 or three months imprisonment or both is very lenient. If someone informs me that a new city will be built by the Government then I rush to buy land there and the next day the Government wants to buy the land and I sell it and make over Kshs1 billion, what is Kshs500,000? The penalty ought to be increased so that it makes it difficult for people to take advantage of communities like the Maasai.

There are many people who bought land along the road to Suswa from Kimuka. There are those who bought land in Duka Moja going all the way along the Standard Gauge Railway (SGR). Today, in Suswa Town where most lands do not have title deeds, where one acre used to be at about Kshs70,000, with Kshs5 million, you cannot get a plot because of the SGR. Since some people leaked out the information, many people came from the neighbouring counties and bought a lot of land. Now, they are the ones to be compensated because of the construction of the SGR. That Mover should consider increasing the penalty.

One of the key issues that ought to be changed is the powers that the Tribunal will have. I believe in the separation of powers of the Judiciary, Parliament and the Executive. When you take powers that have been given by the Constitution to the courts and give them to a tribunal---

There is a further amendment to Clause 18 in the proposed new Section 133A which provides as follows-

“Clause 18 of the Bill be amended

(a) in the proposed new section 133A

(i) by deleting sub-section (1) and substituting therefor the following new sub-section—

(1) There is established a Tribunal to be known as the Land Acquisition Tribunal which shall consist of five persons appointed by the Cabinet Secretary through a notice in the Gazette.

(ii) by inserting the following new sub-section immediately after sub-section (1)

(1A) The members of the Tribunal shall consist of—

(a) one person appointed from among three persons nominated by the Judicial Service Commission, who shall serve as the Chairperson;

(b) two persons appointed from among five persons nominated by the Valuers Registration Board;

(c) one person appointed from among three persons nominated by the Surveyors Registration Board; and

(d) one person appointed from among two persons nominated by the Attorney-General.”

You are bringing in people who do not have a lot of legal background to protect innocent Kenyans. Take, for example, a case of a young Maasai woman whose husband died and has not even gone through the succession process to be able to have the instruments of ownership of the peace of land, and you take away the powers of a court to hear the matter in regard to any dispute relating to that land and give to a Tribunal. In that Tribunal, you have put in valuers and people who are interested in commercial activities rather than the rights of those individuals. It is completely in violation of human rights.

Madam Temporary Speaker, the Mover needs to consider giving the Tribunal certain powers, but the original jurisdiction must always fall within the courts. The courts currently have original and appellant jurisdictions to hear and determine all disputes relating to public, private and community land, and contracts. If you take this power away---

(The Amber light went on)

Madam Temporary Speaker, I thought I still had more time?

(The Temporary Speaker (Sen. Pareno) spoke off record)

Madam Temporary Speaker, I still have more time. I beg the Mover to defer the reply to another date because it is important for Kenyans to--- This is a Bill that we should not rush.

The Temporary Speaker (Sen. Pareno): Hon. Senator, you have up to 6.29 p.m.; that is just about three minutes to go.

Sen. Olekina: Madam Temporary Speaker, you took one of my minutes. Issues of land are very emotive. I am worried that we might be trying to rush through this Bill and not give people enough time to really interrogate. I would recommend that the Mover of this Bill sits down maybe even in a *Kamukunji*, so that we can go through it clause by clause; just to ensure that we do not do something today which will cause more pain. There are so many Maasais out there who do not have title deeds to their land, because they are either in a group ranch or do not know the process of getting title deeds.

This Bill sort of considers them all of them as squatters and says that they will be considered as people who have lived in the area for an undisrupted period of 12 years. If that section is there, it has to be clear. Land in Narok County is more expensive than it used to be, but there are parts where the people who live there do not even understand or know the value of that land. There are parts of Narok and Kajiado counties where speculators buy land for Kshs40,000. I am not a violent person, but yesterday I nearly punched someone when he told me that he wanted to buy my car, so that he could go and exchange it with 20 acres of land in Maasai land. We are so gullible. In our cultures we value things that do not have any meaning. It is because we do not have that knowledge.

For this Bill to support the communities and not create more poor people in this country, it is important that we---

(The red light was switched on)

Madam Temporary Speaker, is there no more time for me, please?

The Temporary Speaker (Sen. Pareno): Your time is up, please.

There are no other requests. I, therefore, now call upon the Mover to respond. Looking at the time, I will extend the Sitting by two minutes to allow you to reply.

The Senate Majority Leader (Sen. Murkomen): Thank you, Madam Temporary Speaker. First of all, I thank all the Senators for their good contributions. There is already concession from me on the question of the delimitation of the courts in so far as the three sections are concerned, and whether or not you can legislate to say that no one should go to court. That is impossible. We must delete those sections.

Secondly, I want to inform the House that establishment of tribunals is for the reasons of making delivery of justice simple, timely and expeditious. Most of the tribunals across the country are composed of persons who are non-lawyers although they are headed by lawyers. All of them are managed from the Judiciary and not the Executive because they were all moved there for purposes of expeditious dispensation of justice and proper management.

I also want to inform the House that the formation of a tribunal does not take away the constitutional duties of the courts but make it easier for them because after the tribunal has made decisions, one can then go to court. In most cases, tribunals help to dispense justice expeditiously because they are composed of experts that are otherwise not found in courts but would have been brought to court as expert witnesses.

I also want to inform the House that this is not a new Bill but just amendments to the existing Land Act. Members must read various sections which apply to leasehold, freehold, community land and traditional land held by communities like where I come from. They should now also read where I heard the Senator of Narok County talking about cases of squatters which is a response to the question of adverse possession.

Madam Temporary, Speaker With those many remarks, I beg to reply. I request the Speaker as per Standing Order No.61(3) to postpone the putting of the question to another date.

The Temporary Speaker (Sen. Pareno): Hon. Senators, this being a matter that affects counties, it is therefore, going to proceed for Division on Tuesday, noting that tomorrow is a day for Motions.

(Putting of the question on the Bill deferred)

ADJOURNMENT

The Temporary Speaker (Sen. Pareno): Hon. Senators, it is now 6.32 p.m.; time to adjourn the business of the House. The Senate, therefore, stands adjourned to Thursday, 15th November, 2018, at 2.30 p.m.

The Senate rose at 6.32 p.m.