

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 21st February, 2019

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

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

PRAYER

Sen. Olekina: Thank you, Mr. Speaker, Sir. I worry that the direction that we are taking as a country is one which is dictatorial; where a CS gives herself powers which she does not have. These are people who are suffering from what the good Sen. (Eng.) Maina would refer to as poverty related syndrome. You are poor and are being punished for being poor. You went to school and finished and a CS now comes to say that she is the law unto herself. This is the most ridiculous thing that I have ever heard from a CS. You cannot go out there and order the police. There is something that we call; the due process of law. Sen. (Eng.) Maina refers to this loan as a civil debt and if it is a civil debt, let them go to court and get a court order.

However, this points to a bigger problem that we have in this country. When we go to the villages, the communities tell us; ‘you keep telling us to send our kids to school. We send them to school and you give them bursaries but what next? They graduate from school then we start looking at each other’. Instead of saying, ‘go and arrest those defaulters’, we need to start asking ourselves serious questions.

What is it that we are doing? There are so many young people out there who are educated and unemployed. How do you expect those people to pay the loan? During the high moments of our political campaigns, I have heard every party say that, ‘we will waive your Agricultural Finance Corporation (AFC) loans and coffee loans’. Why not look into the issues of these students? They are young people who are not even farmers.

The CS ought to first know that what she did is illegal. That is why I keep on saying that we need an opposition in this country. We cannot allow people to keep on running up and down and deciding what they should do. Powers given to cabinet secretaries in this country are ridiculous.

Mr. Speaker, Sir, we, as Parliament, need to sit down together and decide what should be done. For example, it will not be a crime to waive these loans. We can treat them as a bad debt. We are all businessmen in one way or another. Sometimes we negotiate with the banks on how to service our loans. A bad debt is a bad debt. Therefore, we need to waive it.

We should think of prudent management of our resources so that we can create job opportunities for our youth. Once they are employed, they can start paying their

loans. Maybe when Sen. Mutula Kilonzo Jnr., was going to university he took a loan from HELB. I am sure it took him many years to repay it. We have lawyers who are yet to repay their loans they took from the HELB. Some of them have never started paying theirs because they have never been employed.

We need to be sober and create job opportunities for our youth if we want them to pay HELB loans. How can we bequeath this country to them when we want them to be arrested because they are not paying HELB loans?

Sen. Olekina: Yes, Mr. Temporary Speaker, Sir. I cannot resist but comment on this. Yesterday, I was in a heated argument where someone showed me the Chief Justice in a public rally and I told him that it was a photo shop, because I could not believe. However, the issue is very clear: What we need to do is to ask ourselves whether that was really the Chief Justice or it was a photo shop. I am still not believing it.

(Loud consultations)

Sen. Olekina: Madam Temporary Speaker, I will restrict my comments to supporting the Motion of amending the Report in order to expand the scope of responsibility. At first, when I was listening to Senior Counsel Orengo, I was not too sure whether to support or oppose the amendment. Ordinarily, I would oppose anything that is an afterthought in terms of responsibility. But as I specifically look at the Gazette Notice, which I want to refer to, I think the people who ought to take responsibility on this matter extend further even to the Presidency.

I will be seeking direction, because I have looked at the recommendations that were made by the Committee – I believe the distinguished Senators did a good job – and they went ahead and really interrogated this issue. I am sure that my very good friend, *Mzee* Silas Rotich Rono from Kibomet in Kitale, who currently has over 20,000 bags of maize in his store, would be happy to see this issue of maize resolved.

I have looked at the recommendations that have been moved and I was baffled. This is because when I go back and read the Gazette Notice, I think that for the Minister of Treasury to issue it, he must have done so following certain laid out steps or conditions. However, reading the Gazette Notice, I am not sure whether it was just for issuing or for notification; people will have to tell us the difference. I wish the Vice Chairperson was here to notify me on the difference between issuing a Gazette Notice and notifying the public. If I can refer back to this particular Gazette Notice, which we are now blaming for the flooding of our markets, it is not even under the Kenyan laws *per se*. It is under the East African Community Customs Management Act of 2004.

If I can read the Gazette Notice and this Act to go specifically to the exemption part, it says: –

“It is notified for the general information of the public that in pursuit of powers conferred on the Cabinet Secretary under Section 114(2) of the East African Community Customs Management Act of 2004, and in consequence of the declaration by the President and Commander-in-Chief of the Kenya Defence

Forces of a national disaster, through Executive Order 1 of 2017, duty shall not be charged for the importation of items set out in the Schedule here into.”

On that Schedule, maize is one of those items. I am, therefore, completely baffled when I look at the recommendations that have been made by this *ad hoc* Committee, that clearly say that the CS of the National Treasury and Planning should take responsibility. It is important for us to look at the Gazette Notice.

In the same annexure of Gazette Notices which have been laid on the Table of this House by the Committee, there is a similar Gazette Notice, which is probably from the Chief Justice. It says:-

“In exercise of the powers conferred by Section 10 of the Community Service Order Act---”

This is specific to Kenya. Therefore, when I look at the Gazette Notice which was published under the directive of the CS, Treasury and Planning, there was a consequence and an Executive order. I am, therefore, not sure who should take responsibility here; should it be the President of the Republic of Kenya?

Madam Temporary Speaker, you may want to give us direction on whether the Committee should have asked the President to appear before it and ask him under what circumstances he issued Executive Order No.1 of 2017. This is because Mr. Rotich proceeded by notifying the general public that there was the East African Community Customs Management Act, which provides that you can go ahead and open a window when there is a crisis. At that time, the President of the Republic of Kenya under Executive Order No.1 of 2017, went ahead and said that there was a crisis in Kenya, and that we had to solve the problem.

I am not sure whether we should be blaming the CS for the National Treasury and Planning, who went ahead and notified the public, having looked at the East African Community Customs Management Act. I am sure that the Co-Chair of the *ad hoc* Committee knows very well that those to deal with on this issue of operationalizing of the East African Community Customs Management Act are all Ministers of the East African Community (EAC). So, they are guided by certain legislation.

I fully support the amendments to this Report. However, I would like to ask a very simple question, which this House could resolve, on the reconstitution of the Committee or maybe expansion of its mandate. I would like to know whether the President could be called to state under what circumstances he issued Executive Order No.1 of 2017.

The issues to deal with here are broad. One of the things of concern is the laxity in implementing the rule of law at the border point. If the CS notified the general public that people could import X amount of maize into this country because there was a shortage, who allowed for the over importation of maize which the CS had not authorised? That is the question I want us to ask after we have determined the issue of whether or not to pass the amendments, because those are the people who should be held culpable.

There are amendments calling for the Inter-Ministerial Committee on Food and Security to take full responsibility. They are the ones to give us an answer as to why Mr. Silas in Kitale is not able to sell his maize to anybody because of the flooding of the market. If they are the ones who will respond to the question as to why they allowed the over importation, then I will support this Report by all means. When it comes to holding only the CS for the national Treasury responsible, yet the gazette notice is very clear

under what circumstances the general public should be notified, then we will be missing the point.

Madam Temporary Speaker, we have crises in this country. We have a lot of issues that affect the farmers. I will be missing the point if I do not mention the issue of sugarcane farmers. Right now in Narok County, there is group of people protesting because Trans Mara Sugar Company has decided to drop the price of sugarcane because the market is flooded. The reason is that they can no longer compete with the illegally imported sugar, which is actually smuggled. These are issues that we must prosecute. We need to carry extensive due diligence, and those people who should carry their crosses should do so.

Sometimes I get disappointed when we go out to interrogate matters. We take time to read and look at issues but at the end, we come back and throw out everything that we have done. This time round, I have to commend the Committee. However, I am still wondering; why is it that it took them so long to realise that the responsibility was not with the CS for the national Treasury? We need to look into that so that we can be fair. If something is wrong, you should say it is wrong; and if it is good, you should say so. The thing here is that the committee has a perfect opportunity to deal with the cartels. There are various issues that we will discuss after looking at the Report. I have seen other gazette notices by the CS for the national Treasury.

Last year, we were dealing with the issue of wheat and I was concerned, as a Senator who comes from one of the bread baskets of this nation, particularly when it comes to wheat production in Narok. If the millers do not mop all the local wheat, then wheat farmers will suffer. In that gazette notice, it was very clear because it listed every single miller and stated the maximum amount to be imported.

I believe that when we will be looking at substantive issues in the Report, we will clearly see that miller A was told they can import up to X amount; and so on, and so forth. If I were the judge then, for every amount of maize imported over the allowed threshold, I would issue the maximum penalty. This is because the amount of pain that our farmers have gone through in this country cannot be repaid by mere payment of taxes to the Kenya Revenue Authority (KRA).

Therefore, Madam Temporary Speaker, I fully support these amendments. I hope that you will give us a way forward in terms of looking at the initial gazette notice and who should be held fully responsible.

With these few remarks, I beg to support.