

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 3rd April, 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: Mr. Speaker, Sir, thank you for this opportunity to congratulate my good friend, the Chairperson of the Committee on Budget and Finance.

I confirm that I have been in touch with the coordinator from the Controller of Budget's office on the ground and he has been able to give me that information. Recently when we travelled to Samburu County, we were told the Controller of Budget had withheld over Kshs6 billion that belongs to the County Government of Samburu. We know the governor now is in trouble. We could not believe that amount was withheld by the Controller of Budget.

This information is very important because it allows us to be able to demystify how budgets are prepared in county governments. There is a huge misconception that so long as you have overestimated your local revenue collection, then the Controller of Budget owes you that money. This is not the case.

Getting this information for us in a timely manner will help us to be able, not only to carry out our oversight role, but also build the capacity of the MCAs. We are moving in the right direction.

Recently I was impressed by the Auditor General for publishing a list of stalled projects in every county. It is a high time that we looked at these projects and engaged budget coordinators to know what happened. Were these projects budgeted for and were funds released?

When you look at the way the current Government operates, it is mostly on a cash base. However, most counties operate with accrued accounting standards. I would really want to challenge all Senators to compare each county to see whether we can deal with this issue of supplementary budget year in, year out.

Mr. Speaker, Sir, the reason why we have a lot of stalled projects is because there is a huge misconception that so long as you have a big budget which you cannot fund either from your own source, sharable revenue, or even the equalization fund, then somehow you continue having those programmes on paper.

Finally, this information will help us to advise the Controller of Budget on our priorities. Instead of a county overestimating its budget, it must ask itself how much they have been collecting as local revenue collection on a yearly basis. How much has been

allocated to these counties so that they can come up with realistic budgets that can help them to stay away from these stalled projects?

Sen. Olekina: Mr. Speaker, Sir, the crisis in Samburu reminds me of the crisis in Northern Ireland where they have no government but they do have civil servants who are tasked with the daily running of the operations. It is time that we in this House came up with legislation that will ensure that whether or not we politicians are in office, or whether people who are appointed by politicians remain in office, county governments will remain operating.

I support Sen. Mutula Kilonzo Jnr. on the issue of having a lacuna in law in terms of state and public officers stepping aside when they are charged. My biggest concern though is that in the case of Migori County, for instance, although the Governor was charged with murder, when he was freed, he went back and he is now running the county. We now have another situation whereby the governor of Samburu County has been given a cash bail of about Kshs100 million. In the event that that governor pays that money, the case will remain in court but he will go back and continue running the county because nothing stops him from doing so.

There was a case in Nakuru where a court decided that a governor could not fire a County Executive Committee (CEC) member. The situation in Nairobi City County is very awkward because everybody is in an acting capacity. It is time that we in this House rose to the occasion because we are the defenders of devolution and county governments.

The reason why some people worship governors as if they are everything is because of the power of money. We were in Samburu County and we could see that some people were afraid of talking when the governor was there. However, when the Governor was not there, they gave us more information but the moment the Governor appeared, they retracted everything that they had said. We should take this opportunity and try to come up with legislation that we can expedite.

I think the people who drafted the Constitution failed Kenya because they failed to give this House, which is the defender of counties, original jurisdiction on legislation. We do not have a say even on legislation that affects counties yet we are the defenders of counties. We have to send our legislative proposals to the National Assembly before they can be assented into law. It is about time that we broaden the conversation that we are having. We need to amend the Constitution so that the Senate can have the original jurisdiction on legislation. This is the only way that we can progress.

I also know that this Constitution gives opportunity to the national and county governments to share functions. Where certain functions cannot be delivered by the national Government, with proper arrangements, they can be shared with the county governments. However, with the current situation, I hold a different view and I do not subscribe to the school of thought that a county government can be suspended because that will bring a lot of crises.

I do not believe that whatever is happening right now in Samburu meets the threshold of “exceptional circumstances”. When you read the Constitution, it says that the speaker can take over in the event that there is a vacancy and there is no deputy governor pending an election. I do not think there is anything that stops the current speaker from making sure that every operation in the county continues.

In conclusion, I would like to urge the investigating agencies and also plead with the courts to expedite this. I am a firm believer that by the time such a case is taken to court, a lot of time should not be wasted on it. I urge the courts and investigating agencies such as the Director of Public Prosecutions (DPP) to run this prosecution quickly so that the people of Samburu County get justice.

I thank you.

who has been accused of perpetrating the same bad things to the community that he is supposed to have protected.

Slowly, I think we should read the mood in this country. The mood is that all these looters should be behind bars. The mood is that whoever you are, you cannot steal from the people. However, I want to make a plea to our courts; that they cannot release Gov. Obado on a very small bond and then ask Gov. Kasaine to raise a bond Kshs150 million before he is released. Why do we have these kinds of disparities when it comes to bond terms? Surely, can we raise it so high that anybody who will loot in this county shall feel it? When you make it so low, then it also beats the purpose. When you also make it too high, then it also looks like there is something behind these decisions.

Mr. Speaker, Sir, my plea is that if we could have a way to go about it, let us save Samburu County from suffering ---

Sen. Olekina: Madam Temporary Speaker, I am honoured.

The Temporary Speaker (Sen. Nyamunga): You are honored?

Sen. Olekina: I am, Madam Temporary Speaker.

The Temporary Speaker (Sen. Nyamunga): Okay.

Sen. Olekina: Madam Temporary Speaker, there were about 11 Senators who contributed to this Bill and I want to thank all of them. That shows how important this Bill is in terms of us fulfilling our mandate. I want to promise Sen. Sakaja, Sen. Pareno, Sen. Mutula Kilonzo Jnr., Sen. (Dr.) Langat, Sen. M. Kajwang', Sen. (Prof.) Onger, Sen. (Prof.) Kamar, Sen. (Dr.) Kabaka, Sen. Seneta and Sen. (Dr.) Musurue that I will look at their contributions in the HANSARD and put them into consideration. I will ensure that we amend the clauses that were pointed out by my colleagues who sit with me in the Committee on County Public Accounts and Investment (CPAIC), so as to have this Bill see the light of day.

I beg to reply.

The Temporary Speaker (Sen. Nyamunga): Senator, you need to---

Sen. Olekina: Madam Temporary Speaker, pursuant to Standing Order No.61(3), I request that the putting of the question be deferred to a later date.