

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Tuesday, 16<sup>th</sup> July, 2019

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

*[The Deputy Speaker (Sen. (Prof.) Kindiki) in the Chair]*

### PRAYER

**Sen. Olekina:** Mr. Deputy Speaker Sir, I am confused and perplexed because we have a Government that now seems to be speaking from the two sides of their mouth. Earlier on, we reduced the taxes which were being paid by these betting companies. However, all of a sudden, without following any due process of the law, an entity comes up and says they are not paying taxes. You give yourself powers that you do not have.

*(Loud consultations)*

**The Deputy Speaker** Sen. (Prof.) Kindiki: Order, Senators! Sen. Cherargei you are very restless today. Sen. Omanga, I do not know what you are canvassing. Order, Senators. Let us remain dignified. Leader of Majority, you are now leading the minority.

*(Laughter)*

Proceed, Sen. Olekina. I will give you two minutes.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. I rise to support this Statement by Sen. Malalah. It is imperative that, in this country which is governed by the rule of law, we follow that law and not become selective in how we apply the rule of law. If we make a law that reduces the taxes which are being paid by these betting companies, we cannot then turn around and come and say that now we are going to shut down all of them.

We need order, and this order can only be brought by this Parliament. This issue where Cabinet Secretaries have so much power will take this country back to dictatorship. We have got to balance. This is a country where many of our youth are unemployed. In this country, the youth make up about 80 per cent of the population. If there is any good in what these companies are doing, we have to balance it.

I am aware that these betting companies are contributing a lot to social entrepreneurship. They are helping. We need to develop regulations that can encourage these betting companies to offer counseling and support services to the gamblers. When I lived in the USA, I noted that there are states that survive only because of gambling. So, I

am not going to stand here and say it is an evil in the society yet other people are benefitting from it.

We have to balance and make sure that if we pass a law in this Parliament, we abide by it. It is ridiculous for us to pass laws and then tomorrow, an entity or Cabinet Secretary comes and says I have cancelled the licenses of these companies. How are we going to encourage technology which is now moving faster than the speed with which we are able to come up with laws? In a nutshell, I support this Statement. I would request that before coming up with certain ridiculous moves, the Cabinet Secretary should sit down with all stakeholders and agree on how they cope with that.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Please, conclude.

**Sen. Olekina:** Finally, Mr. Deputy Speaker, Sir, I request the Committee that will handle this matter to interrogate it before coming up with a conclusion.

I thank you.

*(Interruption of Debate on the Statement)*

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATIONS FROM VARIOUS SCHOOLS

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I would like to recognise more visitors who are with us today in the Public Gallery.

We have visiting delegations of students and teachers from the following schools-

1. Olbutyo Girls Secondary School in Bomet County.

2. Ndunduni Secondary School in Makueni County.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and on behalf of the Senate and on my own behalf wish them a fruitful visit.

I thank you.

*(Applause)*

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is your point of order, Sen. Olekina?

**Sen. Olekina:** Bw. Naibu Spika, Kiswahili si lugha yangu ya mama lakini dadangu, Sen. (Dr.) Musuruve amekuita 'Bw. Mnenaji'. Je, anaweza kufafanua alichomaanisha?

*(Laughter)*

**Sen. Olekina:** On a point of information, Mr. Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I hope you have noted, Chairperson. Whom are you informing? She has finished. Can we hear it?

**Sen. Olekina:** Mr. Deputy Speaker, Sir, it is important for the House to know that the reason why we in the Committee call for a meeting between the Auditor-General and the Controller of Budget is because we found the report which was tabled a little bit too general.

We can interrogate the information that the distinguished Senator is asking, so that we know how these pending bills were accumulated. This is because getting just two pages where you are told that in county x, the money went from point x to this and that. We want to get details on how money was spent so that we come up with a summary of what transpired. We do not want this general information from the Auditor-General which was tabled in this House.

**Sen. Olekina:** Thank you, Mr. Temporary Speaker, Sir. I rise to support the Public Finance Management (Amendment) Bill (Senate Bills No.3 of 2019).

From the onset, I want to congratulate Sen. (Dr.) Zani for coming up with a very timely amendment to the PFM Act. I am one of those people who believe that the PFM Act should be entirely overhauled, so that it falls into devolution. This is because when the PFM Act was enacted, it was pre-devolution and there are so many things that are happening now in terms of technology, which we must take into consideration.

We have had a big issue regarding counties collecting own source revenue. In fact, from our last meeting with CRA, the CRA was trying to come up with avenues to reward counties that collect more money through fiscal responsibility. This Bill in essence tries to deal with that issue and encourages counties to be prudent in their revenue collection. One of the biggest problems that we find is that in many of these counties, either there is a lot of capacity challenges in terms of the accounting officers or just pure corruption.

Mr. Temporary Speaker, Sir, when we were looking at the accounts of Kiambu County, we were shocked to see that counties were merely using templates from the national Government - whether it is true or not - to account for or prepare their budgets. Some of those templates also include the issues to do with revenue collection. If you ask many of the counties to provide you with a chart of accounts showing all their revenue streams, you will be surprised that not all counties can accurately give you all their charts of accounts.

I challenge my colleagues to look at the financial statements presented by various county governments, and they will be surprised. If you compare 2016/2017 and 2017/2018 financial years, or any that you choose to, the figures will be different. You will see that in this account it is zero but in the previous year, it had about Kshs40 million. These are fixed assets; they are revenue streams.

Mr. Temporary Speaker, Sir, I hope that we will take these amendments seriously and the National Treasury will look at them, so that they can start being proactive thinking. We have got 47 different county governments and each of them should have certain revenue streams. For example, in Narok County, we have revenue that comes from the Maasai Mara Game Reserve, parking services and cess collection. What I like about the first amendment is that it calls for consultation between the county treasury and the National Treasury.

The National Treasury will be able to see the revenue streams and define them as general revenue collection system, but be specific. In this manner, later on, we will not

come up with excuses and say that they were given a template by the Integrated Financial Management Information System (IFMIS) or IFMIS was not working properly.

This will not only help counties to generate more revenue or own source revenue, but also help the country in general to be able to say County 'X' is doing well here; let us learn from them, so that we can improve.

Mr. Temporary Speaker, Sir, when you travel particularly to Gatwick Airport in the United Kingdom (UK), you will see a big screen, which tells you that in Scotland the amount of money that the country has collected from tourism is 'X' amount. I would like to encourage Sen. (Dr.) Zani to think about incorporating an aspect of using technology to show competition amongst county governments. For example, if Nairobi City County Government has 'X' amount of money through parking services, everyone in Kenya should know.

Mr. Temporary Speaker, Sir, it is wishful thinking, but something that is tenable. This country has been a first in many. All these multinationals that come to this country chose to become cashless. If you go to Carrefour right now, you will not pay with Kenya shillings; you use electronic wallet. It would be good if at one given time, the entire country is cashless. We should sit down and take an application to see how the 47 county governments collect their revenue. This will also help the CRA to come up with proper avenues of how to reward those counties on fiscal responsibilities.

The other thing that I find attractive in this amendment is that it will encourage competition. If CRA looks at how much a particular county has generated in terms of their online platform and reward them for doing that, it will help counties to set up realistic budgets and goals in terms of their Own Source Revenue (OSR), and not come up with figures to inflate their budgets which they never achieve.

One of my biggest pet peeves is where a county government that only collects a Kshs100 million receives Kshs5 billion from the sharable revenue, and comes up with a budget of about Kshs10 billion. Where will they collect the other revenue?

I am happy to note that the Senator has thought about transparency. If you look at all county governments, as I speak right now, there are many loopholes on OSR. The Judiciary is not helping. This House will be shocked to learn that there is a ruling from the Judiciary that says that this House has no business looking at OSR.

The best we can do is to come up with legislation that will circumvent that decision. We are tasked by the Constitution to defend, oversight and ensure that the laws that we come up with protect county governments. Right now, most counties have one revenue stream. Everybody knows that it is where money comes from and they do not look at the other issues. That is why, in most cases, we complain and say that in some of our counties, we only rely on one revenue stream and forget the rest. For example, in Narok County, we heavily rely on Maasai Mara Game Reserve. Samburu County heavily relies on tourism and the same applies for Isiolo County, yet we say that there is a lot of economic growth. It is no wonder many people are suggest that these counties should fall because they are not collecting any revenue. It is time to use technology wisely.

I will be happy if Sen. (Dr.) Zani adds another amendment to this Public Finance Management Act in terms of the rewards that looks at the use of technology more broadly, to identify all revenue streams.

If you go to Narok County, you might find that we have about 10,000 plots, which is one revenue stream. However, if you compare the amount of money collected from

plot rents, it is not commensurate to the amount of the plots that we have. Narok County produces almost 70 per cent of all the wheat that is consumed in this country. However, the amount of cess, which is taxes charged on vehicles that transport wheat, is not equal to the amount of wheat that we contribute. Therefore, this Bill will not only help ensure transparency, but also help counties become innovative on how they can identify all their revenue streams.

Mr. Temporary Speaker, Sir, these amendments that are introduced by Sen. (Dr.) Zani will also help the national Government to become more realistic. It will help in our fight to have more money sent to county governments. If we have one central location that shows the amount of money which is generated locally, it will ease the work of the Auditor-General in terms of looking at all these. It will end this constant excuse given by county governments that the Integrated Financial Management Information Systems (IFMIS) was down. There is no way it will be down because we will know that Nairobi City County, for example, collected a billion shillings from parking services. So, there is no way counties will tell us that the system was down.

I agree with the previous speaker, my colleague, Sen. Farhiya, that we may need to consider how to encourage young companies that are into the revenue collection system to fit in. Sen. (Dr.) Zani should propose an amendment to Section 160A, which will give companies that have invested heavily in a revenue collection system an avenue to consult. If the capacity of a particular county is still below average, yet there is a company that is doing business there, and has a good revenue system, we should include other revenue collection companies that can offer the same services.

The KRA collects revenue for all businesses in Kenya, be it Government entities or private bodies. When you pay Value Added Tax (VAT), they still retain a certain amount of about 6 per cent. I am not sure how we will address the issue of the taxes which are paid to the national Government. This is because in the Finance Act there was an amendment that requires each county government to charge an extra 15 per cent on the licences and fees that becomes money that is owed to the KRA. So, we may want to look at that and say whether this amendment will help KRA to increase its collection. If each county is in the automated system, once they charge the 15 per cent---

For instance, if a licence fee is about Kshs6,000 the law, as it is right now, requires each and every county to charge an additional 15 per cent, which is money that will be submitted to the national Government. So, we may want to find a way which might help or also deter many counties from utilizing this system because the national Government will be able to tell how much they collect from their licence fees.

With those many remarks, Mr. Temporary Speaker, Sir, I fully support this amendment Bill. Once again, I thank Sen. (Dr.) Zani for thinking about the issue of own source revenue.

I thank you.