

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Tuesday, 15<sup>th</sup> October, 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:** Thank you, Mr. Deputy Speaker, Sir. I rise to support the Statement by Sen. Khaniri. The issue of land is very emotive. This House ought to come up with a better way of ensuring that Kenyans, whenever they live, do not suffer.

Mr. Deputy Speaker, Sir, the challenge of title deeds is something which we know very well within the Maasai community. We live in very big chunks of land, which we later on come to realize that it is registered to other people.

Mr. Deputy Speaker, Sir, the Ministry of Lands and the NLC should move away from this business of compensation, and look at the issue of true ownership of land. Buying land through co-operatives, where you are just assigned a number, is very dangerous. I hope that this Statement can be tasked to the Committee on Lands, Environment and Natural Resources to investigate the circumstances that led to Government machinery being used to evict people through a private court order.

Mr. Deputy Speaker, Sir, this is a country where when you have money, you can buy the entire Government. As I sit here and listen to Sen. Khaniri talking about Government bulldozers being used, if I go to court and seek orders, I do not think the Government will give me their own bulldozers for me to evict people who have encroached into my land. This is a matter which the NLC, the Ministry of Lands and also the Judiciary have got to investigate. From what I hear, this matter had been dealt with by a different court. The matter was lost in that court, and it was then taken to another court. I do not know how the facts changed in the next court and, all of a sudden, new orders were given.

Mr. Deputy Speaker, Sir, this issue of forum shopping will destroy this country completely. Therefore, in the interest of the people of Kenya in general, this House should now rise to the occasion and address this issue of land properly. This should be in such a way that Kenyans who buy land can be taken through the entire due process of the law before they are actually allowed to occupy that parcel of land. In an issue where grandchildren come in and the title deeds were never transferred to the people who supposedly bought those pieces of land, it becomes very challenging.

Mr. Deputy Speaker, Sir, I am finalizing. I see a situation whereby we have people who have encroached into to our land. They say that they bought the land, but

they never got the title deeds. Then, all of a sudden, a court grants them ownership of the land, and yet these people have lived there for 40 years.

Mr. Deputy Speaker, Sir, I would plead that you assign this matter to the Committee on Lands, Environment and Natural Resources. When they will be looking at it, this House should think about either pronouncing itself through a Motion, or coming up with legislation that can look into these matters. Otherwise, Kenyans will continue suffering.

I beg to support.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Olekina?

**Sen. Olekina:** Mr. Deputy Speaker, Sir, this is a House of records. Is it, therefore, in order for the Senate Majority Leader to refer to a provincial commissioner as ‘somebody called Natembeya’?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is the Standing Order which has been breached?

**Sen. Olekina:** Mr. Deputy Speaker, Sir, we have Government officials who are given titles. Therefore, it is in order to refer to them with their titles, just like in the Senate, when you refer to a Senator, you have to refer to him or her as “Senator so and so.”

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Olekina? After that, Sen. Murkomen, you will wind up.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, I am lost for words. Does this matter have to do with Sen. Olekina or the people who have been evicted, and are suffering? There is no point for us to digress.

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

**Sen. Olekina:** Mr. Deputy Speaker, Sir, I urge the distinguished Senator to deal with the matter, and not turn it into a personal attack on my character.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Proceed, Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. I rise to second the Report tabled by my good Chairperson.

The issue of fiduciary responsibility is an important matter. Having spent a lot of time interrogating the Auditor-General’s report, we find that there are so many challenges in terms of administration in county governments. Many county administrators in the county treasuries have no idea about the correlation between the law and how they spend money. They have three pieces of legislation, which I hope every county government can use as a Bible. One of them is the Public Finance Management (PFM) Act.

Mr. Deputy Speaker, Sir, we did not spend a lot of time looking at the reports for the 2013/2014 Financial Year, because these are reports which had been considered by the previous Committee, although we adopted them. When we looked at the violation of the PFM Act by most county governments, it really shocked us.

Mr. Deputy Speaker, Sir, the second piece of legislation which was being heavily violated is the Public Audit Act. During the audit process, you will find that most Governors have no clue on how to go through the audit process. The Chairperson

mentioned here about Governors coming in and bringing a lot of documents to the Senate, while Section 31 of the Public Audit Act is very clear on the process of the audit.

Before the Auditor-General issues a management letter or the opinion, county governments are given 14 days to find out where they have gone wrong in order to mitigate. However, in the Financial Year 2013/2014, most county governments received a disclaimer of opinion, which clearly meant that there was limitation of scope. County governments were not keeping records well. Therefore, the issue of book keeping is something which the Senate, as the House which defends devolution and protects county governments, should really emphasize on, and say those county governments must improve on their record keeping.

Mr. Deputy Speaker, Sir, if you look at the issue of the Integrated Financial Management Information System (IFMIS), you will find that many transactions by these county governments were being carried out outside of the IFMIS. The other big problem is the accounting system being used by the county governments. Most county governments are using an accrued system, although they can only use a cash-based system legally.

This is why most county governments have got a lot of pending bills, which should not be there. Therefore, when we are thinking about this matter as a House, we have to figure out whether it will be proper for us to introduce a different IFMIS system or accounting system for county governments, which is different from the national Government system. We have seen a few improvements in the subsequent years, but the problem of doing postmortem is that there is really nothing we can do now.

Mr. Deputy Speaker, Sir, in the reports of the 2013/2014 Financial Year, you will find that in most cases, there are issues of the defunct county councils, records missing and different accounting systems being used. The book keeping system by county governments was based on the Local Authority Integrated Financial Operations Management System (LAIFOMS), and they are now looking at a different system on IFMIS. These were, therefore, the various challenges that these county governments were facing.

Needless to say, despite the fact that these county governments were facing these challenges, there was a clear misunderstanding of the roles of the governors. Some of them looked at themselves as mini-gods, where they could spend the money as they wished and did not have to account to anyone. In some counties, you will find that a county government will have about 20 or 30 accounts, yet, the law is very clear on those accounts. The law stipulates that all money collected must be put into the revenue account.

Mr. Deputy Speaker, Sir, as we progress, for us to improve on service delivery for county governments, this House must now come up with proper legislation and amend the PFM Act so that we can adopt an accrual system of finance to help these county governments. When we stand here and lament about mismanagement of funds in the counties, if we cannot give them solutions, we will not be doing anything.

With those few remarks, Mr. Deputy Speaker, Sir, I beg to second.

*(Question proposed)*

I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you very much.

Sen. Olekina.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. Earlier on, I was going to oppose this Motion, but after consulting with my colleague and senior, I think I am now in a position to contribute to this Motion and guide the Committee on which idea I think is best.

What I am hearing from my colleagues - particularly my colleague from Taita/Taveta - is that he is a little bit conflicted in the sense that his position here is to defend the interest of the county and its government. That is the first issue. Not the Governor, the county---

*(Laughter)*

**Sen. Olekina:** Mr. Deputy Speaker, Sir, I would like to bring to the attention of the Committee and anybody out there - which I think is the best way to proceed - that our Standing Orders are very clear. Standing Order No.75 allows us to proceed with this Motion; the issue of seven days.

Standing Order No.98 (4) is very important on the issue of *sub judice* rule. I think that this matter can end there when we restrict our thinking or guidance in looking at the Standing Orders. If I read Standing Order No.98, where the matter is *sub judice*, and I thank Sen. Orenge for pointing this out to me, maybe this would help us out. It is very clear that:

“A Senator alleging that a matter is *sub judice* shall provide evidence to show that paragraphs (2) and (3) are applicable.”

Paragraph 2 determines whether the matter is *sub judice*, but paragraph 3 (c) is very clear. It states that:

“Civil proceedings shall be deemed to be active when arrangements for hearings, such as setting down a case for trial have been made, until the proceedings are ended by judgment or discontinued”.

Mr. Deputy Speaker, Sir, the Committee which is being proposed to be established, should then be ready to receive evidence that this matter is active in court. I would suggest that if the Committee receives that evidence, that matter should cease there. There is no way we can stop Standing Order No.75. We are limited by time. For us to show that we are here to defend both the Assembly and the Executive, let us restrict our thinking to the Standing Orders and the Constitution.