

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 21st November, 2019

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

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

PRAYER

The Speaker (Hon. Lusaka): Okay, Sen. Cheruiyot. Since Sen. Cherargei is not here to comment on this matter, we will finally listen to Sen. Olekina.

Sen. Olekina: Mr. Speaker, Sir, I rise to support this Statement by Sen. Sakaja. I was listening to him when I walked into the Chamber. Earlier on, I also had an opportunity to watch him, with the entire leadership of Nairobi, bringing up these issues. I must congratulate him for caring about the future of the people of Nairobi, who include us, who live here. Since we work here, we also have homes here.

Mr. Speaker, Sir, this House passed a piece of legislation which was sponsored by the Senator from Kiambu, The Assumption of the Office of County Governor Bill. The Bill was supposed to solve certain problems, which Sen. Sakaja has brought to light in his Statement.

Last week, I brought a Motion to try and give deputy governors more powers in the event that we do not have substantive governors in place, because we have a crisis in this country. If we do not rise up to the occasion, the situation in Nairobi will worsen. There are allegations of cartels left, right and centre. If you talk to Gov. Sonko, he will tell you that the cartels are out to destroy him. The Statement by Sen. Sakaja also points out to cartels.

Hypothetically, if the cartels succeeded in removing the current Governor of Nairobi, who is going to take over? The current Speaker of Nairobi County Assembly should do so, but there are still issues regarding her. Therefore, there will be no one to take over. It is time that we took this matter seriously.

If that piece of legislation was enacted into law, a substantive deputy governor would have been appointed. If the Ethics and Anti-Corruption Commission (EACC) or a court order bars the governor from accessing the office, the people of Nairobi should not continue suffering. Nairobi is the Capital City of Kenya and, I dare say, of East Africa.

Mr. Speaker, Sir, as of two days ago, which is 18th November, 2019, the current eligible pending Bills of Nairobi, were Kshs21 billion. These are pending bills that were re-audited by the Auditor-General. I hope that we will come up with a substantive Motion

next week to direct the national Treasury not to release more money to the counties until those pending bills are paid. It should be on a first-in, first-out basis.

When you move around Nairobi, you will be surprised by the level of operational misappropriation of funds in this county. I would like every Member of this House to be observant. Every week, grass is uprooted at the roundabouts, and new grass is planted. What kind of operations are we running?

In our County Public Accounts and Investments Committee (CPAIC), we have raised concerns regarding JamboPay in Nairobi. I remember that we sat for long hours to see where that money goes. We know that the contract for JamboPay was terminated, but another company has been appointed to collect revenue on behalf of Nairobi. We need to think seriously about the way forward.

Mr. Speaker, Sir, I will summarise by saying the following. I believe that this is not a matter of setting up a select committee. All the 47 county governors will have to sit with us here, including the nominated Senators, so that we discuss this issue for the interest of the people of Nairobi. We should be objective about the future of Nairobi as a county government or part of the national Government, whichever way it will go.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Hon. Senators, I think the matter has been well spoken to. This is a weighty matter that has been raised by the Senator for Nairobi. I know that it is not supposed to go to any Committee, but because of the weight of the matter, I will use my discretion under Standing Order 47(3), to direct it to the Committee on Devolution and Intergovernmental Relations. They should look at the issues and advice---

An hon. Senator: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): You are out of order!

Members of the Committee will then come back and advise this House on the way forward, because the issues that have been raised could still be happening.

Hon. Senators, we must be careful about how we approach some of the issues. Let us not come up with solutions that are not practical. You should remember that all Committees sit on behalf of the Senate. If one Committee is embarrassed or belittled, like the other time when the Governor allegedly lectured Senators, it is the whole Senate that is in disrepute. We must, therefore, be careful and come up with practical solutions that will not embarrass this House. That is why the Committee on Devolution and Intergovernmental Relations must put its foot down and come up with a way forward, which should be reported to this House.

Let us listen to Sen. Mutula Kilonzo Jnr.

POINT OF ORDER

PENDING BILLS IN COUNTIES

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I rise on a point of order to seek your direction on something that Sen. Olekina has alluded to. As the leader of this House, and as a matter of national concern, this is a matter that needs your communication.

Amb. Ukur Yatani, who is the Acting Cabinet Secretary (CS) for the national Treasury, has issued a direction that he will not release funds to 15 counties if they do not

pay pending bills. Section 97(2) of the Public Finance Management (PFM) Act on procedures for stoppage of funds states as follows:-

“Not later than seven days after the date of the decision to stop the transfer of funds, the Cabinet Secretary shall seek approval from Parliament.”

The suggestion alluded to by Sen. Olekina is that there appears to be a discretion by the Acting CS to stop the release of funds without the approval of Parliament. Therefore, next time we have a sitting, I would like you to issue a proper communication so that it is clear to the country. The process of stoppage of funds should be followed according to this law.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Thank you, Sen. Mutula Kilonzo Jnr. Sen. Olekina, you have the Floor.

Sen. Olekina: Thank you, Mr. Speaker, Sir. This is a matter of national concern. Sen. Malalah just walked in and said that life out there is hard.

An. Hon. Senator: What?

Sen. Olekina: There is no money out there.

Mr. Speaker, Sir, we have to treat this matter as *sui generis*; something which is unique. What is happening out there? I know that the CS issued a premature circular that might not meet all the thresholds of law. It is time we took this matter seriously. This Senate is supposed to be defending devolution. Why are we sending money to county governments, yet they are not paying pending bills? As of today, there was a directive that those eligible pending bills amount to over Kshs63 billion be settled. If it is paid and circulated, the situation on the ground will be different. As you give a communication, it is important that we really think about this.

Mr. Speaker, Sir, I am thinking of bringing a Motion here so that we find a way of wriggling out of this situation. People need money. There are people who are killing themselves because they are unable to pay their bills and service their loans. We must care about them.

The Speaker (Hon. Lusaka): I will give a chance to the Chairman of the Committee on Finance and Budget and, as I do so, I think that what Sen. Mutula Kilonzo Jnr. has raised is very important. That we, as a House, must be careful not to cede our ground, because that is why we are in court. We know certain processes had not been followed, and that this House had been bypassed. As much as we agree, we must also know that we, as a House, have a role to play, and that it cannot be side stepped.

Proceed, Sen. (Eng.) Mahamud.

Sen. (Eng.) Mahamud: Thank you, Mr. Speaker, Sir. I agree with Sen. Mutula Kilonzo Jnr.; that whereas pending bills are a big issue in this country, counties must pay them to the suppliers and the contactors. We must also, in the process, respect the law. The Constitution must be adhered to and respected by all.

Last week, the national Treasury issued a lot of circulars, which shows that there is a big crisis, even in the way we do things. We would like the pending bills to be paid and, as a matter of fact, this Senate has been discussing them. We would like the national Treasury to share it with us so that we know when the approval is given; so that when counties get those releases, they pay, because everybody is suffering. The suppliers who have not been paid must be paid. Salaries must be paid. There will be a bit of confusion.

Mr. Speaker, Sir, give us proper direction, because Article 97 of the Constitution must be followed to the letter.

I beg to support.

The Speaker (Hon. Lusaka): Proceed, Sen. Malalah, before I give a ruling on this.

Sen. Malalah: Mr. Speaker, Sir, it is true that life out there is very difficult.

The Speaker (Hon. Lusaka): Is that why you have reduced weight?

(Laughter)

Sen. Malalah: Mr. Speaker, Sir, I would like to join my colleagues in saying that it is very important for us to adhere to the rule of law. At the same time, we need to remind ourselves that Article 96 of our Constitution gave us the mandate to oversight and represent our people. Article 1 of the Constitution gave us the sovereign power to represent them. It is very important to note that the suppliers who have done business with counties are our people. Therefore, it is our core mandate to protect them.

I want to join my colleague, Sen. Olekina of Narok, who suggests that counties which are unable to pay pending bills should not receive any money from the central Government. We are not saying that those counties will not operate, moving forward. We are saying that the monies that will be released to them should be conditional. Let them pay all pending bills.

It is very sad, indeed, because there are people who took loans from banks, and they are unable to pay because they did business with counties. Most of the county governors prioritize paying people who are giving back commissions to them.

An. Hon. Senator: That is true.

Sen. Malalah: Therefore, a common mwananchi who has sold his maize to get capital to do business with county governments is not paid.

Mr. Speaker, Sir, I am of the strong opinion that it is important for the pending bills to be monitored from the national Treasury. I would suggest that that money be paid directly from the national Treasury, so that the remaining amount can be disbursed to respective counties.

Mr. Speaker, Sir, Nairobi hosts the Capital City of this country. Therefore, the management of the Capital City must not be taken for granted. I have seen pertinent issues being raised here by Sen. Sakaja. I, therefore, request you to consider having the Committee of the Whole House to discuss matters to do with Nairobi. This is because Nairobi affects Kakamega, Wajir, Kericho and other counties.

The Speaker (Hon. Lusaka): Order, Sen. Malalah! You are out of order, because I already made a ruling on that matter. I hope you are not challenging my ruling.

Sen. Malalah: No, I am not challenging it, Mr. Speaker, Sir.

(Laughter)

The Speaker (Hon. Lusaka): Do not proceed along those lines, because I have already made a ruling. It will be up to the Committee to make recommendations on how we proceed.

Sen. Malalah: Mr. Speaker, Sir, I would encourage Members of this House to attend that Committee session and to contribute. We must take part in the decision making on Nairobi.

Mr. Speaker, Sir, many of us have now seen how Nairobi has deteriorated. When you walk into the streets, there is a lot lawlessness and hawkers are selling everywhere. We even do not have enough supply of water. We cannot leave this to the Senator of Nairobi only. We want to join Sen. Sakaja in the fight to restore sanity in Nairobi. I want to donate to that cause. I will walk with you, Sen. Sakaja, to ensure that we protect our Capital City. Otherwise, I want to encourage Sen. Sakaja to continue with the same spirit of oversighting Nairobi without fear. Nobody can intimidate him.

Mr. Speaker, Sir, I have seen goons walking around town, saying that if you talk about a certain governor, you will be humiliated. Sen. Sakaja, I want to ask you to put on a brave face. Handle your issues as they are provided for in the Constitution of Kenya. Nobody – be it a governor, Speaker, or an MCA – will stop Sen. Sakaja from executing his mandate.

The Speaker (Hon. Lusaka): I know that in your other life, you were a thespian; but well put.

Proceed, Sen. Cheruiyot.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir. I was wondering whether Sen. Malalah meant that Sen. Sakaja should put on a brave face or be brave. I think that he meant the latter rather than the former.

Mr. Speaker, Sir, this is a very important issue. I want to point at where the problem is. If you were to ask me about where the challenge, in terms of pending bills in counties, comes from, it is from Article 228 of our Constitution. The Office of the Controller of Budget has failed this country.

Mr. Speaker, Sir, you have been a governor and you understand how public finance in counties is managed. We cannot expense public funds unless you have a budget for that particular budget line item. How it is that county governments are able to requisition money, say to pay for a particular road, but thereafter, because of the meanderings therein, they end up paying a particular supplier, as it has been pointed out by Sen. Malalah, because that supplier is a friend to the governor?

Mr. Speaker, Sir, this is a very important issue. I request that the Committee on Finance and Budget be quickly seized of this matter. Article 228(6) of the Constitution clearly states that for every four months, the Office of the Controller of Budget shall submit to each House of Parliament a report on the implementation of budgets of national and county governments.

Sen. Olekina, the Controller of Budget needs to give you, every four months, a report showing the people what Gov. Samuel Tunai has paid in the last four months. This is the only way you can keep a track of all the people who have been paid. If you notice a particular supplier or entity that is paid repeatedly, yet you know that the young people in your county who are supplying goods and services to the county government are not paid because they do not have the high connections; then you must begin raising questions from that particular point. Those are the provisions and intention of Article 228(6).

Therefore, having a new Controller of Budget in office now, and she is about to be vetted by our colleagues in the National Assembly--- I suggest that when she takes on

the reigns of the Office of the Controller of Budget, she should be brought before this House.

Mr. Speaker Sir, you recall that at the beginning of this 12th Parliament, we brought Ms. Agnes Odhiambo here, and we raised the issue of pending bills. Unfortunately, she has left office without having sufficiently addressed this issue. The audit that was carried out by the Office of the Auditor-General unraveled things that many of us did not know---

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

The Speaker (Hon. Lusaka): What is your point of intervention, Sen. Mwaruma?

Sen. Mwaruma: I am Sorry, Mr. Speaker Sir. I got lost along the way. We were dealing with Sen. Sakaja's issue and then, suddenly, we are discussing pending bills. I do not know where we are, because I want to contribute. I really want to know where we are. Is it a Statement or a Motion? Where are we?

The Speaker (Hon. Lusaka): I think it was a point of order. There were two issues. I already made a ruling on the issue raised by Sen. Sakaja. After that, Sen. Mutula Kilonzo Jnr. raised the issue of pending bills. That is what I am concluding now, because I want to give direction.

Sen. Cheruiyot: Mr. Speaker Sir, you need to guide Sen. Mwaruma. The next time he is lost, he should consult the Clerk-at-the-Table. He should find out from them what is happening and not interrupt Members who are speaking.

I was saying that the Government should facilitate business, and not come up with unilateral decisions that affect the livelihoods of Kenyans without any reference to what Constitution says. For example, I have just seen that today, the CS for Environment and Forestry extended the period on the moratorium on the ban of logging in our forests for another six months.

Mr. Speaker Sir, you remember that the issue of how the decision was made, it was strongly criticized when we were in Naivasha meeting with the Kenya Private Sector Alliance (KEPSA). It points out to the issue that Sen. Mutula Kilonzo Jnr. raised; the fact that the Government unilaterally makes decisions without regard to the Constitution and how it affects the lives of Kenyans.

Mr. Speaker, Sir, when giving direction on this issue, I suggest that the Committee you will task to look into it comes back with a report and direction from the Senate on what it is that we shall do. They should give firm policy direction so that we deal with the issue of pending bills in counties and in the national Government once and for all. This is because the national Government is equally as guilty as the counties.

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

The Speaker (Hon. Lusaka): Sen. Olekina, what clarification do you want to give?

Sen. Olekina: Thank you, Mr. Speaker, Sir. On this issue of pending bills, I want to inform the House that a team made up of a few Members of the Committee on Finance and Budget and other Senators met with the CS of the national Treasury yesterday.

The CPAIC has committed to bring a Motion on Tuesday that will direct the CS on the issue of pending bills. The information that we received yesterday is that the governors in the Intergovernmental Budget and Economic Council (IBEC) had earlier on agreed that the money that will be released – which is about kshs60 billion – would be

able to pay all the bills. The money that was released in that quarter was around Kshs83 billion, but the governors did not pay. That is what led to the circular that the CS issued.

Mr. Speaker Sir, I would like to commit to this House that on Tuesday, we will bring a Motion that will put an end to this issue of pending bills.

The Speaker (Hon. Lusaka): Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker Sir, the reason I raised this issue is because the circular is already three days old. By Tuesday, next week, the seven days applicable will already apply. Although Sen. Olekina insists that they will bring a Motion, it will not help the cause. This is because the idea is that there must be a process for the stoppage of funds.

For the benefit of our colleagues, we had this issue in the last Senate. We applied for four counties not to receive funds, and the CS said that we did not follow the due process. Now, it is the reverse; he has issued a direction and, therefore, there must be a process so that we guide the country accordingly. This is because there is a danger that there could be a county, like Makueni, which owes, for example, Kshs200 million. They then do not get Ksh400 million, because they owe Kshs200 million. Therefore, it must be clear.

The Speaker (Hon. Lusaka): Hon. Senators, we appreciate the efforts by CPAIC, but I want to direct the Chairperson of the Committee on Finance and Budget to meet the CS on Tuesday and present a report to this House on the issue of pending bills.

Next Statement by Sen. Faki.

STATEMENTS

KUPIGWA RISASI NA KUUAWA KWA Mwendeshaji PIKIPIKI, KATIKA KAMBI YA Jeshi LA WANAMAJI, MTONGWE

Sen. Faki: Asante, Bw. Spika.

Kuambatana na Kifungu cha 48(1) cha Kanuni za Bunge la Seneti, nasimama kuomba Taarifa kutoka kwa Kamati ya Usalama wa Taifa, Ulinzi na Maswala ya Nchi za Nje kuhusu kupigwa risasi na kuuawa kwa mwendeshaji pikipiki, Leonard Komora, na Mwanajeshi wa Jeshi la Wanamaji katika Kambi ya Jeshi la Wanamaji la Mtongwe, Kaunti ya Mombasa, jana asubuhi tarehe 20 November, 2019.

Katika Taarifa hiyo, Kamati inapaswa -

- (1) Kuelezea sababu za mwendesha *boda boda* huyo, kijana Leonard Komora, kupigwa risasi na kuuawa.
- (2) Kuelezea mbona mbinu m'badala hazikutumiwa kumthibiti kijana huyo, iwapo alikuwa tishio kwa usalama.
- (3) Kuelezea hali ya usalama baina ya raia wanaoishi karibu na kambi za kijeshi nchini kwa ujumla na wanajeshi, hasa kufuatia hali tete ya usalama baina ya wanajeshi na raia.
- (4) Kuelezea mikakati iliyowekwa na Serikali kupunguza na hata kuondoa hofu za wakazi dhidi ya wanajeshi kwa ujumla, na hususan wale wa Kambi ya Mtongwe, kwa kuwa tukio hili silo la kwanza. Hii ni kwa sababu mkaazi mwingine alipigwa risasi siku chache zilizopita.

Asante, Bw. Spika.

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

[The Temporary Speaker (Sen. (Prof.) Kamar) in the Chair]

The Temporary Speaker (Sen. (Prof.) Kamar): Proceed, Sen. Sakaja.

Sen. Sakaja: Madam Temporary Speaker, I wanted to comment on an earlier issue, but since the Member has raised this Statement on a matter of security, and I cannot see another Member of the Committee, I commit that we will bring a response in the quickest time possible.

The Temporary Speaker (Sen. (Prof.) Kamar): That is okay.
Proceed, Sen. Mwaruma.

Sen. Mwaruma: Thank you, Madam Temporary Speaker, for giving me this opportunity to support Sen. Faki on this very important Statement.

More often than not, we have heard about security agencies using excessive force to deal with the public. A case in point is where we had police officers using excessive force to deal with unrest during the strike by Jomo Kenyatta University of Science and Technology (JKUAT) students.

We have also had many cases of extrajudicial killings in Kenya. We have also had *boda boda* riders being disturbed or picked up by police officers when it is not warranted. This is a very important Statement which would give explanations as to why people who have been given guns, do not use them for the intended purpose. The soldiers are supposed to protect us from external aggression, and not use the guns to kill our people.

Madam Temporary Speaker, I support that Statement, and we will be looking forward to a very good response.

The Temporary Speaker (Sen. (Prof.) Kamar): Thank you.
Proceed, Sen. Olekina.

Sen. Olekina: Thank you, Madam Temporary Speaker. I rise to support this Statement by Sen. Faki. If you go to the Department of Defence (DoD) in Hurlingham, you will see that it has fully guarded its territory. Unless you want to be shot, there is no way you can bypass the barriers set there by the military.

When I heard about the shooting of a young Man in a *boda boda*, a lot of things came to my mind. It would be important for us to understand and get clarification from the Committee which this Statement will be committed to. One of the issues is on the security of the territory occupied by the Navy. It would be important, because someone cannot just go and drive their *boda boda* into a security area.

As I support this Statement, it will be very important for us to have an understanding of this area, and the circumstances that led to the young man being shot down by the Navy. The issue of security is not something that we can take lightly. It is just like last week, when we were talking about the issue of drones, we have to be careful so that in the event that someone ends up encroaching into someone else's territory, there are ways of following up to ensure that safety prevails.

Thank you, Madam Temporary Speaker.