

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

**Tuesday, 16<sup>th</sup> June, 2020**

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

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

### PRAYER

**Sen. Olekina:** On a point of order.

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Olekina?

**Sen. Olekina:** Mr. Speaker, Sir, I rise on a point order in reaction to your Communication.

I have listened to the charges which you have read out. I want to refer you to Article 179 of the Constitution of Kenya. This is a matter which is quite weighty. Article 179(1) states:

“The executive authority of the county is vested in, and exercised by, a county executive committee.”

(2) The county executive committee consists of-

- a) The county governor and the deputy county governor;  
and
- b) Members appointed by the county governor, with the approval of the assembly, from among persons who are not members of the assembly.”

Mr. Speaker, Sir, this is a matter that I would like you to give a ruling on. This is because when you read the charges against the Governor, I did not hear the other executive committee members being referred to in the charges that have been forwarded by the County Government of Kirinyaga.

The reason why I rose on a point of order is because this is a matter that the Constitution has spelt out clearly in the issue that concerns me.

**The Speaker** (Hon. Lusaka): Hon. Senator, I think it is a bit premature. It is premature because the notice has not been given. This is just a Communication from the Chair.

**Sen. Olekina:** Mr. Speaker, Sir, just allow me to prosecute my issue. It has to do with your Communication and its content. This is because you said that if we go further and raise issues, they will be out of order.

I have listened to your Communication very clearly. Before we get to that length, can we look at your Communication and the letters that were sent to you?

Proceed, Sen. Olekina.

**Sen. Olekina:** Mr. Speaker, Sir, thank you for protecting me.

The issue of COVID-19 has really disrupted many things. I am sure that the Ministry of Lands and Physical Planning is aware of complaints by lawyers about closure of land registries in the country. However, the Ministry is also grappling just like the Judiciary with the issue of opening---

*(Loud Consultations)*

**The Speaker** (Hon. Lusaka): Order, Members. Consult in low tones.

**Sen. Olekina:** Mr. Speaker, Sir, in order to make it easier for us to transact our business, maybe the Senate can consider renting the Bomas of Kenya. We can just measure one metre and you allow all Senators to sit there and prosecute their matters instead of this issue of who is sitting where. We are here dealing with an issue of a Petition on the closure of the Lands Office in the country and nobody is listening.

As we prosecute this issue of lands records, I would like the Committee that will be seized of it to work with any other Government department because I do not believe that it is only the lands office which can competently deal with this issue. Even here in this Senate, we are having problems of measuring one metre distance as recommended by the Ministry of Health. It is becoming problematic.

Mr. Speaker, due to the challenges of the COVID-19, this issue of land should be looked into carefully. Maybe the Committee should consult the Ministry as well so that we are seen to be doing our work. We are not able to do our work here. So, the Committee should expand its mandate further and involve other Government departments.

Finally, As I said, the Senate should consider renting the Bomas of Kenya so that we can continue working for Kenya.

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

**The Speaker** (Hon. Lusaka): Sen. Olekina, he is on a point of order.

**The Speaker** (Hon. Lusaka): Sen. Olekina.

**Sen. Olekina:** Mr. Speaker, Sir, a wise man said that only a fool does not change his mind.

**The Speaker** (Hon. Lusaka): Sen. Olekina, wear your mask.

*(Sen. Olekina wore his mask)*

**Sen. Olekina:** It just came out. My head is too big, but it is okay.

Mr. Speaker, Sir, let me repeat this; a wise man said that only a fool does not change his mind. I have listened to Sen. Linturi trying to point out how Sen. Malalah is out of order, yet we are not discussing the substance of the matter.

I think he can either support or oppose when we are discussing the Motion. Currently, he is only seconding the Motion. Therefore, can you please allow Sen. Malalah to finish seconding the Motion? When the Motion has been properly moved, we can then support or oppose by giving the reasons that Sen. Linturi is giving.

Thank you.

**Sen. Olekina:** It is past.

**The Speaker** (Hon. Lusaka): Is it a point of order or point of information?

**Sen. Olekina:** Mr. Speaker, Sir, when everything is written in black and white, there is no point in trying to assume that some people are blind. These are very weighty matters. Article 179 says that authority is vested in the executive committee.

Yes, I agree with him that we are setting a precedence. Remember that before we start any proceedings in this House, we begin with a prayer---

**Sen. Cherargei:** On a point of order, Mr. Speaker, Sir. I would not want to interrupt my brother, Sen. Olekina, but let me do so. I want to invite him to read Article 181 on the removal of a governor. It does not talk about removal of county executive. Let him not read the Constitution in a selective way. He should try to read it harmoniously so that he gets the framework, decision, substance, spirit and the letter of the Constitution.

**Sen. Olekina:** Mr. Speaker, Sir, some people read the Constitution upside down. I said this Constitution itself is ambiguous. If you look at Article 179 and Article 181 referred to by the distinguished Senator for Nandi, there are issues that are not clear.

We have agreed here that we are setting a precedent. If we are, indeed, setting precedence, then we are the only people who can sit down as a committee and adduce evidence presented to us by the county assembly.

Article 179 says that the executive authority is vested and exercised by an executive committee. Unless this Committee, which is being prosecuted in this House looks at the evidence, the work or the charges and be able to present a report to this House, there is really no way that we will be doing justice to the people of Kenya.

*(Loud consultations)*

Mr. Speaker, Sir, can you protect me from the distinguished Members? When they were contributing, I was silent and listening to them.

**The Speaker** (Hon. Lusaka): Let us consult in low tones.

**Sen. Olekina:** Mr. Speaker, Sir, if I am a threat because I am reading the Constitution properly, then so be it.

In my support for this Motion, I feel like we can serve this country well. We should always be guided by the rule of law and the Constitution. This House does not interpret the Constitution but makes laws. Where there is ambiguity, it does not hurt to give it to our respectable Members. I have listened to the conversation of the distinguished Members and respected lawyers who can take time and guide this country.

Article 96 of the Constitution is very clear that this Senate protects the interests of the counties and their governments. If we are clear and sincere to the oath of office that we took and to the prayer you read every single day when we enter the chambers, then the only way to be objective is to allow a Committee to guide us and look at the voluminous documents which will be presented. The last time when we were prosecuting the matter of Governor Waititu I felt like there were things we did not do right. The only thing that consoled me was the fact that in line with Article 179 of the Constitution, the Deputy Governor had bolted from the word go.

Article 179(7) clearly says that when we exercise the provision of Article 181 the Committee Members will also lose their offices. The only reason why I was consoled and

said it was fair to proceed the plenary way that time is because in the executive committee there was a Member who was not part of that government although he was elected and he was also appointed to be the deputy governor.

Mr. Speaker, Sir, because of the interest on this matter I want to summarise as follows; only a Committee will give the people of Kirinyaga justice. Only a Committee will guide us for all future impeachments. So that when we are punishing somebody let us not be selective but objective. The last time I checked a governor does not sit in tender Committee. A governor does not write checks or go to the bank to give out money.

**The Speaker** (Hon. Lusaka): You are getting into the substance of---

**Sen. Olekina:** In conclusion, I fully support the distinguished Members appointed by the House Business Committee to represent this House in doing the hard work. Our work will be so simple; that is, to read the report. If we find that the Governor of Kirinyaga has a case to answer, then we follow the law. If she does not, then we give the people of Kirinyaga justice.

I support.

**The Speaker** (Hon. Lusaka): Sen. Wambua, proceed.

**Sen. Olekina:** God! My mask!

*(Sen. Olekina wore his mask)*

*(Laughter)*

You are not complaining of other people's masks, only mine.

I would like to request you to be a bit clear on your directive for this reason: If a report is tabled in this House, nothing stops a Member from this House to request you to give a detailed ruling.

*(Loud Consultations)*

Mr. Speaker, Sir, on your Communication, we invite you to give us a ruling on a point of order. There are precedents in this Parliament. So, let us be clear. When we are informing the Member who was speaking, let us not lie to the public that we do not have the power to raise issues on that report.

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Murkomen?