

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 2nd June, 2021

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

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

PRAYER

Sen. Olekina: Thank you, Madam Temporary Speaker. I rise to support this timely Bill, the amendment to an existing Act, which is the Wildlife Conservation and Management (Amendment) Bill (Senate Bills No. 30 of 2020) by Sen. Mwaruma.

Madam Temporary Speaker, this is a matter which is very personal to me because when I was growing up in Narok, my father who was a farmer lodged a lot of complaints to the KWS when his crops were decimated by buffalos and elephants. I was a young boy in school but until today when I am the Senator in the Republic of Kenya representing the people of Narok where most of the wild animals live, he has never been compensated.

I was hoping that my good friend would bring this amendment and consider the people who have never been compensated. I do not know whether it can be retrospective but, I think it is important to be able to understand the cause of all this.

Madam Temporary Speaker, we, human beings, are the cause of all these problems. As we seek to be compensated, we also must take responsibility. During the big debate on the Building Bridges Initiative (BBI), some of us saw an opportunity to try and bring in certain proposals on how we can minimise the human-wildlife conflict.

Worldwide, people have discussed this and we were borrowing while discussing this issue of BBI. If you look at the International Journal of Science and Research, you will see a lot of research which has been carried out on how we can solve this problem of human-wildlife conflict.

We have encroached into the land which was predominantly occupied by wildlife. We have also continued to benefit immensely by the tourism activities when tourists come to visit this country. We benefit a lot from Maasai Mara Game Reserve, Tsavo National Park and in Samburu, but the problem is that we, and the Executive, has never been eager to ensure that they protect the population.

Madam Temporary Speaker, actions by the Ministry of Tourism and Wildlife have continued to impoverish populations because of ignoring the plight of people whose crops are destroyed. Human-wildlife conflict does not only revolve around a human being attacked by an animal. Destruction of property is also considered as part of the conflicts. I am happy that it has been addressed in this Bill.

One of the things that really baffled me when I saw this is the time of compensation. I request my good friend to reconsider it. Hypothetically, if I am taking care of my cows, as most farmers and pastoralists would do in areas where there is wildlife, there are two dangers there.

The wildebeests carry very dangerous viruses. Once they come into contact with our domestic animals, they cause a lot of problem like the east coast fever and other diseases. In our culture, we call them *ingatii*, because you cannot get a solution to them. This goes for buffaloes as well, and other grazing wild animals.

I hope Sen. Mwaruma considers further amending his proposed amendment to reduce the time of compensation to immediately. Hypothetically, if I am taking care of my cows and I am maimed and become disabled, does that mean that my family will stay hungry for twelve months for them to be compensated? These are things we must be serious about.

Madam Temporary Speaker, I support the sentiments of Sen. Wetangula and Sen. Mutula Kilonzo Jnr. on the issue of the management of these reserves. I do not know why Tsavo National Park or Amboseli National Park should be national government entities. In fact, this Senate can do the best job now. If we are not able to bring it into the Building Bridges Initiative (BBI) or any other constitutional amendment, we should revert those national parks back to the county governments. The people of Kajiado would benefit immensely if they had Amboseli National Park back. Makueni County would get a share of it.

When you try to reason with the current Cabinet Secretary of Tourism and Wildlife, the only thing he knows is privatization of the parks and coming up with regulations on how to manage them. At some point, he even ventures into issues that he does not have the mandate over.

I remember when he was raising hell over the issue of regulations in Narok County. The Maasai Mara National Reserve belonged to the people of Narok because they are the ones who donated it. I strongly believe that even Tsavo National Park belongs to the people of Taita Taveta and Makueni while Amboseli National Park belongs to the people of Kajiado and Makueni.

These are the amendments we ought to bring here during this time that we are all fighting to increase own source revenue from the counties. We should consider those as part of the own source revenue. Sen. Mwaruma, saying that a small percentage from the national Government should go back to the county government is not the solution. We ought to be pushing for taking these assets back to the counties.

Madam Temporary Speaker, we are lucky that 19 per cent of the money that is collected in Narok County supports the communities to deal with the issue of compensation. That 19 per cent is not enough. We are talking of a small percentage of 5 per cent of the revenue collected from Tsavo National Park to go back to the communities. If 19 per cent is not enough, what about 5 per cent? The argument we should be having on the Floor of this House is how to revert the management of national assets back to the people.

One of the things that really annoys me is that we are hungry to get land. We encroach into the parks, but when we propose to have a buffer zone---

For instance, in the case of Maasai Mara, there is no reason we should not have a 10-kilometre radius buffer zone as a migration corridor, so that we limit human-wildlife

conflict. Instead of the Cabinet Secretary thinking about that and trying to create public participation, he is talking about privatization. How are we going to help that?

If you look at the International Journal of Scientific and Research publications of 2014, you will see that a survey on how to resolve the issue of human-wildlife conflict was carried out. About 60 per cent of the people said that if they are not willing to compensate people, then they should put up an electric fence to let wild animals stay in the parks and people will stay in their areas but that was never done. It is time we became serious on this issue of human-wildlife conflict. We should not only prioritize the issue of compensating wildlife and not human beings.

Sometimes I am ashamed because if you go to Kajiado, Narok, and maybe Taita Taveta and Samburu, you will find people who come from abroad from the United Kingdom (UK), the Netherlands, the United States of America (USA), forming some sort of compensation committees where they raise money from their countries, so that when a human being is attacked by a lion, instead of the Maasai going to kill the lion, you are told that you will be given Kshs5 million. What is Kshs5 million?

I have also seen the figure of Kshs5 million here. It is proposed that if a human being is killed, you give them Kshs5 million as compensation. Will Kshs5 million compensate for a life for someone who you were lucky to have, but just because of negligence, that person is taken away?

Madam Temporary Speaker, I hope that my good friend will consider adding the following amendments. The first one is creating a wildlife corridor of a radius of about 10 kilometres so that you have about 10 kilometres from the gates. Let me tell you what is happening in Narok today. People – some of them are Members of this House, others are Cabinet Secretaries and other politicians – have gone to Narok to purchase land. They buy land next to the park and put electric fences all the way to the Mara River.

When a wildebeest tries to cross because it does not want to graze in a place where the grass is high and goes to a place that has been destroyed by domestic animals, it is hit by the electric fence and dies. If you traverse the County of Narok by air, you will be shocked by carcasses of dead animals, most of them killed by the electric fence. If you really want to have an electric fence, why do you have to buy land next to the park? I think certain regulations should come in place that no one should be allowed to build any house next to the park.

Earlier on, I heard Sen. Cherargei talking about a gentleman who built a camp in the migration corridor. That gentleman constructed a park in a place that was further from where the crossing happens. However, because of the degradation of our land, when it rained and we safeguarded the Mau Forest, all of a sudden, there was a lot of water. What happened is that there was no water in the place that had been destroyed, and the animals could not cross there. So, they moved up.

Since that person was at the right place, we need to look at all human activities because the more we destroy the park, the more we destroy wild animals and the more people will be attacked by them when they are looking for a place to run to. Therefore, human activities must also be taken into consideration as a way of safeguarding domestic and wild animals that we all depend on.

Finally, on the issue of compensation, I just want to reiterate as follows. Sen. Mwaruma should consider limiting the period from twelve months to immediately because that can help. Why not test the waters?

Why not bring a further amendment calling for Tsavo National Park and Amboseli National Park to go back to the county governments and do public participation as we are required in all pieces of legislation? You will find that on that particular time, and I am sure Sen. Mutula Kilonzo Jnr. will tell you in most cases in this Parliament when we do public participation, you will find that only one citizen appears.

Madam Temporary Speaker, that time there will be over 5,000 people coming. The 20 per cent of them will be saying no because they have a vested interest. However, the 80 per cent will say we also will not get this. This is because what will happen is that now more local people will get employed. If you go to Kajiado County and Tsavo National Park around that Taita Taveta, the people will tell you *hii ni kitu ya serikali, hatuna haja nayo*. This is because even the people who work there are not residents from that area. They are not locals. They are people who were imported from other parts of the country to come and man an asset for the national Government.

Madam Temporary Speaker, one thing which is even upsetting is that even though that is an asset for the national Government, it is only a few cabals that benefit from the proceeds and money which is generated from those national parks. It is not everyone. I will dare Kenya Wildlife Service (KWS) to publish their audited financial statements. Let them tell us how much they generated last year from the revenue of people who visited those parks. We want them to tell us how much of that money went back into the community. We want them to tell us what their plans in terms of ensuring that they minimize this human-wildlife conflict are.

As I wind up because I see my time is up, these attacks on human beings, livestock, and crop raiding and property damage, I would beseech my colleague to put a figure on each one of them. If your property is damaged, where are you going to sleep? Do you want to wait for 12 years while sleeping outside? If your crops are damaged and you expect to feed on them, will you continue to languish in poverty yet you did everything humanly possible to elevate yourself from that impoverishment?

Madam Temporary Speaker, I fully support this amendment. I do hope that during the Committee stage, Sen. Mwaruma will be welcoming for us to bring in amendments to test the waters. It is about time that we limit the role of the Cabinet Secretary (CS) Hon. Balala to being just another CS without a portfolio.

Thank you.

Sen. Olekina: Thank you, Mr. Temporary Speaker, Sir. I rise to support the County Allocation of Revenue Bill (Senate Bills No. 30 of 2021).

Mr. Temporary Speaker, Sir, let me begin by thanking the Committee for carrying out a very good job in ensuring that our counties receive money. One of the things that really impresses me this year and that I am very grateful for is that the County Allocation of Revenue Bill does not include conditional grants. Conditional grants, as you will see in the submission by the Commission on Revenue Allocation (CRA), was being used to make counties appear as if they were receiving money.

Mr. Temporary Speaker, Sir, during the debate on revenue formula, we all argued because Senate was coming up with figures and National Treasury was very clear and saying, we do not have this money. I find it a little bit ludicrous that we are pushing

National Treasury so much to send money to counties, we increase revenue allocation to counties yet counties have not received that money.

Mr. Temporary Speaker, Sir, I do not know what we are going to do to ensure that these counties have the money. When I was reading through this very good Report which that has been prepared also with the input of county assemblies, I find it very difficult to understand where National Treasury is going to get all this money and ensure that it is released on time without money being collected by the Kenya Revenue Authority.

Mr. Temporary Speaker, Sir, one of the biggest challenges that I have always had - and I have always concurred with the National Treasury on this matter - is on the issue of pending bills. There is absolutely no reason as to why counties should have pending bills. However, when you look at the submission by the CRA, they indicate that counties have a lot of pending bills. Therefore, if you have budgeted and you have received the allocation, why not spend within your means?

Mr. Temporary Speaker, Sir, I was expecting that the Committee in their recommendation would be a little bit tougher when it comes to the issues of counties spending money that they do not have. I have seen one of the recommendations by the Committee that suggests that if any money remains unspent, it should be sent to the counties, so that they can budget it for the next financial year. If that is the case, we will continue accumulating pending bills.

The proposal should be before any money is released by the National Treasury, counties should ensure that they do not have any pending bills. It is a big challenge because a lot of money which National Treasury says counties have, is money on paper but there are commitments. We need to relook at that issue.

One of the biggest challenges which will continue affecting county executives and the county assemblies is the issue of remittance.

Sen. Olekina: Mr. Temporary Speaker, Sir, I thank the Chair for clarifying that point. If that is the case, then the committee should have been a bit firm in ensuring that county assemblies have the autonomy.

Nothing stops the committee from bringing an amendment to the Constitution, which does not require a referendum, so that it gives the county assemblies the autonomy. It is difficult for the county assemblies to oversight the county executives when they have to rely on the county executives for them to receive their money. We had instances of counties such as Machakos and Makueni where the executives completely refused to release money to the county assemblies. How do you expect them to be oversighted?

Before the point was clarified, I was driving the point on the issue of remittance. Why is it that money is deducted from salaries of county assemblies' staff, MCAs and the secretariat, yet that money is not forwarded to the Pension Fund? If we are not able to send money to the Pension Fund, we should not pretend that we are deducting the money from them.

The problem is that every year, retirement funds continue accumulating penalties and interests which is a big liability to the counties. As this House pushes for money to go to the county governments, it is time, we became realistic. The first thing we must ask ourselves is, if indeed it is true that any money which is not spent by the county assemblies is spent by the county executive in the next financial year, why should we have pending bills?

One of the amendments I propose to the committee to consider, including in the CARA for 2021/2022, is that any money that is budgeted for but is not spent by a county assembly, either because the money had not been released by the county executive or was not sent by the National Treasury, should be used to offset their existing pending bills and that their budget remains.

I have met many Speakers of county assemblies lamenting that the executives do not release money to them. The only way for us to cure that is through making sure that it is in the Act of Parliament. Otherwise, we can be saying that just on paper but there is no way the county executives will comply. They will continue getting money but if the National Treasury does not release money for the county executives but do it for the assemblies, they will proceed and use that money to offset their own budgets.

These concerns should not be carried forward because we must have solutions now. We must ask ourselves tough questions if indeed they do not have money yet this House passed that money should be sent to the counties, where is it?

This County Allocation of Revenue Bill (CARB) is now dividing Kshs370 billion which sounds good but in reality, if the Government is not able to raise that money, what do we do? Of course, there is nothing we can do right now. We are barred by our Senate resolutions which is entrenched in the Constitution.

However, to be realistic, we have to become more creative. I would have hoped to see more recommendations on how counties can continue collecting more own source revenue so that in the event that the shareable revenue is not disbursed on time, they can continue paying their salaries.

Mr. Temporary Speaker, Sir, it is sad when you hear that a lot of staff in the county governments have not received their salaries. I know it happens to us as well. It happened to our staff. However, we must have solutions to these problems. We cannot be raising them up as if they are concerns and we do not do anything about it.

This issue of remittance is something that bothers me a lot. It is about time that one arm of government talks to another arm of government because it also affects us in this office as Senators. If we or our predecessors did not remit to the Kenya Revenue Authority (KRA), we end up collecting more penalties and interest.

Since we are having a challenge now sending money to counties, we need to amend the Income Tax Act and the Public Finance Management (PFM) Act such that there should be no more penalties that will accrue on money that has not been remitted by the county assemblies.

I would hope that it is not just their desire not to remit money, but it is because they have not received any money from Treasury. These deductions end up being good on paper but it affects people when they retire.

Mr. Temporary Speaker, Sir, when you look at the ceiling of these county assemblies, for the last two financial years they have remained constant, nothing has increased. So, there is no way you are going to tell me that if there is any annual increment in terms of salaries it will be effected, there is no money.

To make it worse, once people retire, I could see that moratorium of three years which the Committee is recommending for another two-year term, what happens? Even if we go for the next two years and we are able to rationalise the staff and the staff of the county assembly retire and that county assembly did not remit their deductions, what do you expect them to go and survive with? They will not be able to get their gratuity and

retirement benefits. So, they will just be going round in cycles. They will be traveling from Narok, Nakuru, Kirinyaga to Nairobi chasing these retirement benefits. They will be asked to go back to their counties and they never send their money.

I think it is about time that we become realistic. I hope that Sen. Kibiru who is quite diligent on this matter can hold the bull by its horn; follow through and ensure that whatever has been deducted is remitted. If it is not remitted, let them stop any further development in the county assemblies. We do not have any development fund in this Senate. We sit here, let them sit in the assemblies which are there or under the trees so that they ensure that all the money they get, if it goes to offset this deficit in the retirement benefits, they do so.

Mr. Temporary Speaker, Sir, one of the reasons why I sat here up to this time, around 7.15 p.m. is because I want to ensure that money goes to the people of Narok. I want to see that at least this County Allocation of Revenue Bill (CARB) is passed and counties can collect their own source revenue. Every single day when we meet governors in our Committees, they say, "We have not received money. It is tough. Please talk on our behalf. Please, fight for us."

This mandate of this House under Article 96 of the Constitution is to defend the interest of the counties and their governments. We are doing that today. I know it is during COVID-19, but I would hope that we will not only be about six Members here pushing for this money to go to counties. I think people in Kenya should be looking to see if their Senators are there to pass this legislation for them to get money.

As I conclude, I am happy that finally, amendments will be made. I hope eventually, the biggest amendment that will help county assemblies is when they become autonomous. I mean, when they have their money and can spend it the way they want. They will not be at the mercy of the executive for them to carry out their functions.

It is important to train these people. When county assemblies appear before our committees some of them have no clue even on basic accounting skills. In the breakdown of funds sent to county assemblies, there is a Kshs11 million figure for internal audit. There is about Kshs635 million for training and Kshs8.3 billion divided among the 47 county assemblies, for operational expenses.

If county assemblies do not receive their money, do you think they will prioritise training of their staff? Will they be able to allocate any money for audit committees? They will not. In fact, most of them will be making sure they get their salaries. Right now, they are not.

I hope this House puts its foot on the ground to ensure we protect devolution. There is no point of us clapping our hands on daily basis saying the National Government is doing very good. There are projects being launched daily, yet our own county assemblies and executives, county governments whom we represent here, are not getting the money to carry out small developments.

Mr. Temporary Speaker, Sir, finally, most people believe that the National Government is the one doing all the work. I remember in Kisumu County during the Madaraka Day celebrations, many projects were launched. The event went very well because it was funded by the national Government. They have all the money.

Suppose one day they decide to go to Narok or Samburu County and have everything there funded by those county governments? My dear sister spoke about the idiom of form follows functions, where money is supposed to follow functions. There is

no point of devolving functions and not send the money. If counties do not get even whatever money that is passed by this House to be shared equitably amongst the 47 counties, you will never run away from pending bills. We will continue getting pending bills.

The current figure of I think Kshs26 billion to the County Pension Funds (CPF), Kshs14 billion to the Local Authorities Pension (LAP) Fund will continue to accumulate, leave alone the money owed to contractors. Also, to the youth whom you say you defend for small projects they do and do not get paid. People will continue committing suicide.

I support.

Sen. Olekina: On a point of order, Mr. Temporary Speaker, Sir. I hate to interrupt my very good friend, Sen. M. Kajwang', who was the Chair of the County Public Accounts and Investments Committee (CPAIC), but there is a terminology that he has used and I am wondering whether it is in order.

I would like you to rule him out of order for saying that Governor Awiti should eat the rest of the money. Can he substantiate that? I like the idea of reserving a certain amount of money for the hospital, but the idea of eating the rest of the money may send a wrong message from this honourable House.