

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 4th August, 2021

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

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

PRAYER

Sen. Olekina: Madam Temporary Speaker, I rise to make a few comments on this Report, which has been tabled by the Committee on Tourism, Trade and Industrialization on MUSCO.

The reason why I decided to speak on this matter is to go back on the issue as to why SASRA did away with the license that they had handed over to MUSCO. There is a thin line between respecting the rule of law and operating the way you used to.

I have no objection when it comes to the recommendation given by the Committee but I believe that just like any one is given the right to petition this Parliament and the fact that we do not have an Implementation Committee, the only way that the vast majority of the members of MUSCO would be able to benefit is if the Committee on Tourism, Trade and Industrialization followed each of their recommendations to ensure that they are actually implemented.

The recommendations are very good and we normally get a lot of petitions in this House. However, since we do not have an Implementation Committee, it makes it very difficult for the petitioners even to have faith in this House.

I would like to urge the Committee on Tourism, Trade and Industrialization to make sure that they go back and look at their recommendations. If recommendation one is to say the Commissioner of Co-operatives in consultation with SASRA and the county government of Uasin Gishu, the Co-operative Bank and the Inter-Governmental Relations Technical Committee reinstate MUSCO's certificate within 90 days, they should do so but they should also ensure that MUSCO adheres to the rule of law. If you look at the reason as to why the decision was taken which the Committee observed was done overnight, it is because SASRA violated Section 27(1)(b) of the Sacco Societies Act, Regulation 2010 and the conditions imposed by SASRA in 2017.

We pass laws here in this House, we want them to be followed to the letter. When an individual or a society decides not to follow, they petition the Senate; we pass recommendations that they should be reinstated, this should be done following the rule of law. That is the only way we can correct the mistake.

Transferring a wrong from one place to another is not solving the problem. Since we do not have an Implementation Committee, I would like to urge this Committee to invite this society. They should sit down, discuss with them and ensure that they follow the law.

Sen. Olekina: Madam Temporary Speaker, let me begin by condemning, with the strongest word possible, the killing of a world-renowned environmentalist who was trying to preserve mother earth for our future generation. I did not have the privilege of getting to know this lady in person, but her work is quite evident.

After giving the directive that her murder should be investigated, the President should have gone further and gazetted the entire forest and barred any developer from going near Kiambu Forest. We know the biggest motivation is the price of land in this country. An acre of land in Nairobi City County right now is about US\$4 million to US\$5 million. When you think about that, anyone would have an interest in running in on anyone who comes their way, whether they are trying to preserve the environment for a future generation, they will be done away with.

Again, I thank Sen. Halake. Sometimes when it comes to environmental issues, I become so emotive such that even names disappear from your head. My good friend and neighbour, the Senator for Bomet County, will attest to this. That, after all those activities in the Mau Forest, they are living in a good environment and it rains daily.

Madam Temporary Speaker, we have to ask ourselves whether where the forest is the only place where people can live. This country is vast. We need to start creating other cities, hiking the prices of land in other cities and zero rating the prices of land in Nairobi City County so that people stop getting congested in Nairobi City County and end up killing someone who is fighting to preserve the environment.

The effects of global warming are real. This year, Kenya was colder than the United States of America (USA), where I lived for 20 years. It even stopped me from wearing my traditional clothes because of global warming. So now, when we kill the people who are trying to preserve the environment, what are we doing? It is shameful.

I hope that this Petition will not just be presented in this House, recommendations come out and no implementation. I beseech my friend, the Director of Public Prosecutions (DPP), Mr. Kinoti, to move expeditiously and ensure that the people who plotted the murder of this environmentalist are brought to book. When this happened, all around the world, if you read the Guardian and the New York Times, they all talked about a world environmentalist being killed outside an animal park in Nairobi City County because we are trying to preserve it.

I would like to thank the close to 20 conservation organizations that have come together to stand with Kenyans and through Sen. Halake, to ensure that this matter does not rest. We have to keep on talking. In fact, we will treat this matter like the Cable News Network (CNN). Whenever you watch something on CNN, it is repeated and they keep on reminding you. We need to keep on reminding people that we will not let this go. Those pictures are haunting us. When you see a lady sitting on an excavator trying to protect the environment, you ask yourself if some people think they are immortal. This is a wakeup call.

Madam Temporary Speaker, I hope that the DCI followed the President's directive that this matter must be investigated. Now that it has been brought to the Senate,

we must put our foot on the ground to investigate. Further, we need to make sure that land--- In fact, this is why when some of us were talking about the issue of the Building Bridges Initiative (BBI) and saying we should put a 10-kilometre radius and make it a buffer zone, we knew what we were talking about. We should now think about creating a two-to-five-kilometre radius of buffer zone so that no one attempts to live there.

If you want to create a forest, go and plant trees. What happened to the policy of making sure we plant trees to achieve the 30 per cent forest cover or the riparian land? When you hear the environment that the deceased was protecting, she was making sure, at least, we have water. This is a sad time for our country and all the environmentalists. I pray to the living God – I know there is a God – that whoever committed this outrageous crime, may they never see any peace for the rest of their generation.

Thank you, Madam Speaker.

Sen. Olekina: Madam Temporary Speaker, with the nature of this investigation by the Committee, I support what Sen. Orengo has said. I know that you have already committed this matter, however, is it possible to set up a select Committee that can work expeditiously to deal with it because of the international interest that this matter has attracted?

I am saying this because I know that you have already committed it, but I am only beseeching you. I know that it is within your own discretion to agree or disagree. Just so that we can show how serious we are on this matter, you may want to consider a Select Committee to deal with this matter.

Sen. Olekina: Madam Temporary Speaker, I rise to support the Petition by the citizens of Kisumu County. While I do so, I think we are failing as a country. I say this with a lot of information because I am a Member of the Senate Committee on Health.

This issue of COVID-19 has become a business which is being reserved for a few. People are making money while others are dying because they do not give a hoot in hell about the lives of many people.

When we talk about the Indian variant, it really shocks me that while the Ministry of Health knows very clearly that there are different ways that COVID-19 mutates, they are restricting themselves to a particular testing method.

There is no way we are going to be able to solve this problem and help the situation in this country if we will be conservative and just focus on a particular area. We are restricting the importation of vaccines to the Government and the Government cannot handle it. So, there is no way that we will help those citizens.

Let us not kid ourselves because even if today that Petition is committed to our Committee, we will definitely do the work that is supposed to be done. We will summon the Ministry of Health. The Cabinet Secretary come and tell us that the numbers are rising, but we will not solve the problem of COVID-19.

This is what we need to do. Moving on from today, every company that has got a huge workforce must be forced to invest in COVID testing equipment. There are these rapid tests. There is another one called WAMA from Brazil which tests the S, N and E proteins which is how the COVID-19 mutates.

Madam Temporary Speaker, I know you will commit this Petition to our Committee on Health. However, unless this Senate and every single Senator who sits

here takes this matter of COVID-19 as a personal issue, there is no way we will help those people.

I really sympathize with the people of Kisumu, but unless we take certain steps to ensure that we allow even private companies to import vaccines, we will not solve this problem. We must now start thinking outside the box.

Soon you will hear the President declaring a state of emergency because of the rising COVID-19 cases.

I would like to beseech you that while committing this Petition to the Committee on Health I think you should broaden it. This is because as a Member of that Committee, I can tell you that the only thing we are going to do is that we will call the CS. He might tell us that he will not appear, or he might appear. None of us would want to travel to a place where there is the Indian variant even if we are vaccinated.

If we really care about the people of this country not only Kisumu, I think it is about time we divorced our personal interests from the interests of this nation. We can only help this nation if we are not selfish.

Whenever I hear that there are vaccines coming into this country, I wonder whether there are people already lined up to procure and redistribute them for profit. Shame on you who think that you can benefit on people who are dying.

This is a very personal matter to me because I have lost friends. I believe that the only good vaccine is the immunity in your body. We need to put in place a requirement that every company and even institutions like schools invest in testing equipment. There are schools which are being closed because children are contracting COVID-19.

Madam Temporary Speaker, we now need to start the process of investing in rapid test equipment. The Members of Parliament (MPs) should be tested on a regular basis. Otherwise, we will be sitting here not knowing that one or several of us have COVID-19. I hope that the workers of the Kibos Sugar Factory Limited in Kisumu will get the help that they deserve. You cannot close the company because people will have to stay hungry. Many would rather get sick, but at least get food. We need to rethink our approach to the COVID-19. If we do not listen, a state of emergency will have to be declared soon.

Sen. Olekina: Madam Temporary Speaker, I rise to support this Statement by Sen. Iman. Suicide is a form of mental illness. The sooner we accept that, the sooner we will be able to have a conversation that will lead us into trying to investigate further the cause of all this.

As I listened to Sen. Iman's Statement, I nearly cried because I know most young girls from rural areas cannot afford sanitary pads. For a teacher to make fun of a young girl because she stained her clothes during her menstrual period is really a form of inhumanity.

As leaders, I encourage that we serve the people who elected us because that is our job. It is about time we looked back and thought of why we are called servants. When it comes to servant leadership, we must have this conversation and talk about solutions so that we can help out people.

Yesterday, I had this conversation with my brother, Sen. Wetangula, where a man killed his wife and then himself. This has nothing to do with wealth because that person is wealthy. In most cases, this COVID-19 pandemic has made suicide cases to skyrocket.

There are more people killing themselves now because they cannot afford a meal. I do not think I am the only one here who receives text messages from people asking for even Kshs200 just to buy *unga* for that day because they cannot survive. Before you realise, the messages increase and soon those people stop sending them. If you investigate further, they ended up committing suicide.

As a country – I want to speak to the Executive – it is about time that we now seriously think about why we were elected as leaders. The other day, I read that this Senate will go to Makueni County for the Devolution Conference and that it is a Presidential function which we must attend. Must we attend yet people are dying? We stop other functions from taking place, but when it comes to a Presidential function, we attend. Why not take that money and use it to invest more in Mathari Mental Hospital or develop mental health facilities in each county? We can use that money to even create a counselling centre that talks about suicide. It pained me to hear the suicide numbers in Narok County.

Madam Temporary Speaker, when I speak about suicide, just know it could be knocking at our doors. Soon you will be telling stories like all those people who tell theirs, saying they will never see their brother or sister again because they ended their life. This is a matter which all of us must not only legislate on, but follow to ensure we at least have solutions to help our people. Losing a life is not easy and neither is it something that is enjoyable.

Madam Temporary Speaker, because of time, as I conclude, I hope and pray that as leaders we will play our role in helping people discuss the issue of suicide. It is a form of mental illness. Whenever we find someone who has mental illness, we should take action to help them. As we send money to county governments, we hope that they will set aside a small portion of their budget and dedicate it to counselling and dealing with suicide.

Otherwise, I thank you Madam Temporary Speaker.

Sen. Olekina: Madam Temporary Speaker, let me begin by thanking Sen. Sakaja for thinking about these low income young traders. However, I think the problem is really us. It is not even the Commissioner-General of taxes but it is the House that makes the laws.

I want to advise my good friend Sen. Sakaja, you should look for a friend in the National Assembly and try to push this agenda so that both Houses can be talking about the same thing because you know very well that the Government needs to make some money. I feel sad for these people because the county government, the KRA and COVID-19 will be after them.

Madam Temporary Speaker, I would like to beseech that you commit this Statement to the relevant committee, but we also have to now think outside the box. We can invite the Commissioner-General of taxes and have a conversation with him on how we can be able to suspend the implementation of the Act because when we make laws, those laws must be enforced. There is a thin line between the enforcement of the laws and dealing with the current situation.

Sen. Sakaja: On a point of information, Madam Temporary Speaker. Just to inform you two things. One, we are working with the National Assembly. Hon. Yusuf

Hassan visited me with the entire Eastleigh business community and the Nyamakima people. Two, this is not our law; it is not a law passed in the National Assembly. It is an East African tariff and as such we do not need to suspend it because the other countries are not implementing it.

The shoes are even coming in through Tanzania and Uganda. They are importing them and then bringing them Kenya. Our traders are the ones who are suffering out of the five East African States. It is not an amendment to be done in the National Assembly or anything. In fact, it is the President who can just suspend the implementation of that tariff because all the other countries are not implementing it.

The traders just want to be charged either Kshs2 million for the container or be told to pay per pair, but you cannot ask them to do both.

Sen. Olekina: I thank Sen. Sakaja for that very good information. I am happy that you are now telling me that you are working with a colleague in the National Assembly. The reason why I was telling you to get in touch with the National Assembly is because we can be able as a country to suspend taxes that we pass in this House. We leave what we have no control over.

You are right, the President can suspend this because it is not being implemented in the other two countries, but this is the same scenario like the one we had with the petroleum VAT when we had to bring it down to eight per cent. We have got to look at what is there because why then are we passing laws in this House?

The Nairobi City County Assembly can determine that this is punitive and suspend the taxes that they charge these low income traders. The National Assembly can also initiate the process of waiving the VAT. So, let us deal with what we can control.

I empathize and I hope that we can find a solution, but as we speak about this, let us have a conversation with the Commissioner-General because their job is to follow the law. If Tanzania and Uganda are not implementing it, that does not mean that Kenya should follow that. Kenya should do it, but let us do it the right way.

Thank you, Madam Temporary Speaker.

Sen. Olekina: Mr. Temporary Speaker, Sir, today I am happy to be a Senator because of the kind of issues we are discussing. I thank Sen. Sakaja for bringing these issues, which are very important.

A year ago, precisely on 7th August, 2020, Ahmednasir, a renowned lawyer in this country, was awarded Kshs750,000 by a court because his car, a Bentley Bentayga was damaged by a chip on the road. Today, Sen. Sakaja is talking about kids who are being killed while crossing the road.

To be honest with you my dear brother, Sen. Sakaja, this issue calls for a public interest litigation. I am happy that my dear friend, Sen. Omogeni, Senior Counsel, has spoken about that and also brought in the issue of Chapter Six of the Constitution.

If you heard or read that judgment, you would see that the judges wanted to push for accountability on people manning public utilities. It is time Sen. Sakaja called for public interest litigation. We need to have a class lawsuit because there is no point as to why Parliament should be allocating so much money to the Department of Transport yet that money is not being used to help people.

Earlier this year, all the leadership of Narok went to Naivasha with security operators to discuss on how they can ensure safety on the road from Mai Mahiu to Mulot because of constant roadblocks by the people because their cows were being killed.

It took the intervention of the Ministry of Interior and Coordination of National Government for the Maasais to stop blocking the roads and push the Kenya National Highways Authority (KeNHA) to put up signage of animal crossings.

If it will take a class lawsuit to action or this Senate to ensure that the people of Nairobi and those who live in other parts of this country are protected when they use the road, then it is time we took those steps. There is no reason as to why we should care about people who can defend themselves.

I dare say that if it was just another Kenyan, a hustler or a *mama mboga*, who can afford a small vehicle and their windscreen was broken, there is no way they would have been compensated. However, because lawyer Ahmednasir knows his rights, he took that Government agency to task.

Mr. Temporary Speaker, Sir, as you commit this Statement to the Committee on Roads and Transportation, Sen. Sakaja needs to think deeper and make it broad. He should not only focus on Nairobi but look at the entire road users in Kenya especially pedestrians.

If you wake up early at around 4 a.m., in the morning, you will find Kenyans walking from Kikuyu going all the way to Industrial Area so that they can get food for their families. They do not care when they cross the road. If it is raining, some of us who drive splash water on them.

On a daily basis, I think the number of people who are knocked down by vehicles or people who end up in hospitals because of something having entered into their eyes are quite high.

Mr. Temporary Speaker, Sir, I would like to thank Sen. Sakaja again. This is a very important Statement, which we must follow through.

I request that whenever that committee sits, the Chair of that committee should invite all Senators. They should invite us so that we make the KeNHA to understand the seriousness of this matter.

A simple zebra crossing should not take a lot of money. However, you will find a lot of bureaucracy in putting up a zebra crossing. It is like driving all the way from Narok to Mombasa and back for you to get any solution.

I thank you for giving me this chance.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Olekina, proceed.

Sen. Olekina: Thank you, Mr. Temporary Speaker, Sir, for allowing me to briefly comment on this. I also thank Sen. Cherargei for bringing this Statement again. I am a firm believer that the best vaccine is the one in our body. As I stand here, I am among the few people who were vaccinated with the Sputnik V vaccine. I was able to get both doses. It is good to do full disclosure.

One of my biggest problems is that the Ministry of Health believes only vaccines given a greenlight by the World Health Organisation (WHO) will be good for your body. I tell them the best vaccine for you, is the one in your body. Although I consider this Statement not timely, it is still relevant because it still raises debate on vaccination in this country.

If I can inform my dear brother, Sen. Cherargei, Kenya exported to Guyana around 70,000 doses of vaccines that were not utilised and the people of Guyana were able to use the vaccines that were rejected by the Ministry of Health.

When I see Sen. Cherargei asking questions on the approval process, it brings out a lot of tension between the Poisons and Pharmacy Board (PPB), the Ministry of Health, and the task force that has to deal with the approval process.

Mr. Temporary Speaker, Sir, because of my experience going through this issue, I do not believe that we will give this Statement the justice that it deserves because of the vested interests. There is a hidden agenda when it comes to the issue of vaccines in this country.

Although I support this Statement, as a Member of the Committee on Health, I wish that there was an *ad hoc* Committee dealing entirely with the COVID-19 issue. That is the only time that we will honestly deal with these issues. The interest in the health sector in terms of the COVID-19 vaccine is mind boggling. It is as if there is a bulb that dictates what will and will not come into this country.

If we are leaders and are really true to our call of leadership, as Senators who are elected and appointed to represent citizens of this country, a time has come when we must say “no” to interests and find ways to help our people. Only 1 per cent of Kenyans have been vaccinated and Kenyans want to be vaccinated.

In Maasai, we say, “*merisio irkimojik lenaika*,” these fingers are not the same. There are people who can afford and people who cannot afford. So, why deny the people who can afford an opportunity to be vaccinated? Let me be honest with you. Sometimes honesty is not a very good thing.

To be honest, I know that there are words which if I speak in Nandi that are hard to translate into Kiswahili or English. Maybe if you can allow us, that would be dangerous, unless we amend the Standing Orders so that words which cannot be translated in your mother tongue can be captured and put in apostrophes, brackets or something.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Sen. Olekina, proceed. I can confirm that he gave the right translation. However, you need to restrict yourself to the languages allowed by our Standing Orders.

Sen. Olekina: Mr. Temporary Speaker, Sir, I am guided. However, I believe that sitting down here, I have heard other distinguished Senators and senior Members of this House using phrases in their mother tongues and translating them.

In Maasai, I would say “*meenyananyuk ilooguanate oleitu*,” which means the people who have sat down and discussed issues are not similar to those who cannot discuss. That is a direct translation.

The Temporary Speaker (Sen. (Dr.) Lelegwe): Order, Sen. Olekina. Use languages that are provided for in the Standing Orders.

Sen. Olekina: Mr. Temporary Speaker, Sir, I will try. I was saying that in this country, we have people who can afford to get a vaccine, which costs 70 dollars and those who cannot afford. The gap between the rich and the poor in this country is quite wide. Why not allow those who can afford to pay for them to be vaccinated? For those who cannot afford, the Government can spend their time and taxes to help them.

This is a very emotive issue. We read about vaccination in other countries. In the United States of America (USA), for example, the Biden administration is now giving citizens 100 dollars for them to be vaccinated. They are given as a reward, yet in this country, when other people import with approval from the PPB, someone else feels like they should have consulted them first.

There is a reason for the division of labour and specialization. There is also a reason as to why services are devolved. Every single department is given their task. So, what is the point of us establishing the PPB, yet the Ministry of Health, particularly the CS wants to micromanage it?

Mr. Temporary Speaker, like I said before, I do not know whether this Statement will help because we have dealt with that issue. It is now water under the bridge. The vaccines have been shipped out of the country. It will be interesting to know whether the few hundred thousands of Kenyans who have been vaccinated have had some serious side effects. I would be happy to learn that.

I think that the biggest discussion that we must have right now is how do we allow more Kenyans to be vaccinated? It is sad that people are dying on a daily basis.

Earlier on when we dealt with the Petition from Kisumu County citizens, we talked about the different variants of COVID-19. The way it mutates, we now know that it is the S protein that causes this Delta variant. We are dealing with vaccines and we do not even know whether the current AstraZeneca or the Pfizer, which is being brought in can deal with the new COVID-19 variant. I think we are just talking for the sake of talking, not to help our people.

Mr. Temporary Speaker, Sir, as I conclude, I fully support this Statement by Sen. Cherargei and I do hope that we can get answers and not just mere talk.

Sen. Olekina: Mr. Temporary Speaker, Sir, I thank my good brother, Senior Counsel, Sen. Omogeni, for allowing me to inform him.

I sit in the Committee on Health. When we were dealing with this issue of Sputnik Vaccine, we summoned the Poisons and Pharmacy Board (PPB) and the Ministry of Health. The PPB clearly on record, and it is on the HANSARD, indicated that the person who imported the Sputnik Vaccine followed the right procedure and they were given approval by PPB.

The issue was that later on, the CS was speaking from one side and the PPB was speaking from the other side.

I remember well that I was the one chairing that session. I brought them to task and we agreed that since it was approved, it can be rolled out. However, after that, we heard statements being made by the CS that they had cancelled any private entities importing those vaccines. So, for your information, they had followed the right procedure.