

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 5th August, 2021

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

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

PRAYER

Sen. Olekina: Thank you, Mr. Temporary Speaker, Sir, for allowing me to make a few comments. I will slightly differ with my colleagues. Everyone has a right to Petition this House and we should accept every form of Petition. When we look at the Petition, we will be able to understand where the problem is.

I have had the opportunity to look at the Petition that was sent to the Clerk of this Senate. From it, I can attest that the petitioner is a frustrated investigator. In fact, he says that the investigation agencies in Kenya are frustrated because of the freedom that is given to the accused people. He has said that the victims are never considered.

I will be brief because my colleagues have almost given the direction in which this Petition should take. I want to appeal to the Committee on Justice, Legal Affairs and Human Rights to look at the Petitioner's written Petition, look at what makes it difficult for the criminal investigators to perform their duties and ways in which we can correct them. I agree with the petitioner that we, as a Parliament, need to review the Penal Code. The Penal Code violates the Bill of Rights.

We should not condemn the petitioner or make certain insinuations. We should not ask to throw out the Petition. Instead, we should look at the salient issues and go deeper into them. We should assist where we can and tell him of the areas that we cannot assist. We will all defend the right of an accused person to be brought before a court of law within 24 hours. However, we also need to figure out what happens in the process. The petitioner is arguing that very many people who commit offences and are out on bail continue committing offences because of the duration of time that it takes for a matter to be concluded. Once a matter is dismissed in a lower court, there is an appeal process and that process goes all the way to the Supreme Court.

Let us look at the issue that the petitioner is raising. Let us put ourselves in his shoes. As an investigator, he is finding it difficult to carry out his tasks. I hope that the Committee on Justice, Legal Affairs and Human Rights will take time to look at the Petition. They should get copies of the Petition and look at the legislation that he wants to be amended.

As Sen. Mutula Kilonzo Jnr. said, a Petition should be disqualified based on what the Petitioner is seeking. One cannot seek to amend the Constitution without a

referendum. A person seeking to amend the Constitution should collect a million signatures the same way the proponents of the Building Bridges Initiative (BBI) and *Punguza Mzigo* did.

On this Petition, I request that we listen to the investigator. We should put ourselves in the shoes of the Directorate of Criminal Investigation (DCI) and listen to the challenges that they go through. Some of the challenges that the DCI face are brought about by us, the politicians, depending on which side of political divide we are in. If you are in the Government, you make it very difficult for an accused person.

We politicians are also arrested and detained. They work hard to arrest us on a Friday. We need to address some of those issues. This Petition gives us an opportunity to address those issues.

Mr. Temporary Speaker, Sir, I hope that we will have justice and not condemn every petition that is brought before this House.

I thank you.

Sen. Olekina: Madam Temporary Speaker, I rise pursuant to Standing Order No. 31(3) (a).

I beg to move that the House resolve to extend its sitting today, Thursday 5th August, 2021 until conclusion of business appearing on the Order Paper

I request Sen. Sakaja to second.

Sen. Olekina: Madam Temporary Speaker, I begin by expressing my condolences to the family of the poor young Kenyans who were killed by police who were supposed to be protecting them.

Police unleashing a torrent of violence in Kenya is not new. It is not only unlawful but also counter-productive in the fight against the spread of Covid-19.

I have listened to my colleagues talk about how the President should have spoken on this matter. If I can remind us, 10 days after the beginning of curfew, there were about six people who were killed. The President apologized but he did not go to the extent of asking the police to stop their brutality. That is where we went wrong.

From the onset, the President should have not only apologized but taken immediate action to ensure that those police officers who unleashed the torrent of violence on Kenyans are brought to book.

Madam Temporary Speaker, unless this House stands with the people of Embu and of Kenya, the young boys whom you hope to be future leaders tomorrow will not be there because the issue of police brutality will continue.

I do not expect the CS Matiang'i to speak on this matter. He should not wait to be reminded by this House that this is wrong. How do you say that you are protecting people from a virus yet you are shooting and killing them?

If you look at the newspapers from March, 2020, when the dusk to dawn curfew was introduced, the police were treating Kenyans as if we live in a military State.

My colleagues also mention that this a police force yet it is supposed to be a police service. No wonder my colleagues are calling it a police force. It is a service but they have forgotten that they are supposed to serve people. So, it is good for them to be sacked.

We cannot allow this. I do not want them in Narok. Let them not attempt to come to Narok because if they do, we will deal with them properly. We cannot allow this nonsense to continue.

Sen. Olekina: Madam Temporary Speaker, I rise pursuant to Standing Order No.47(1) to make a Statement on an issue of great topical concern namely; the compulsory public service employees insurance benefits scheme in compliance to the Public Service Superannuation Scheme Act 8 of 2012 and Human Resource Policies and Procedures Manual for the Public Service of May, 2016.

Madam Temporary Speaker, the Public Service Superannuation Scheme Act No.8 of 2012 which has been in operation since 1st of January, 2021, is geared towards provision of retirement benefits to persons employed in the Public Service and for connected services.

The Act on the interpretation defines disciplinary services as the National Police Service, the Prisons Service and the National Youth Service. Public Service means the employment in the service of the Government for example, the Public Service Commission the Teachers Service Commission, the National Police Service Commission and any other service that the Minister determines to be in public service for the purpose of this Act.

In addition to the contribution specified in Sub-sections 1 and 2 of the Act, the Act further provides that:

“Government shall take out and maintain a life insurance policy that has a disability benefit in favour of every member of the scheme for a minimum of five times (which is five years) the member’s annual pension emolument.

The interpretation of this section means that a public servant who is a contributor to the above scheme must be insured for life insurance against death and disability for a maximum of five years of their basic salary.

It is worth noting that the Act as it is structured compliments the Public Service employment manual as noted below.

The Public Service Commission Human Resource Policies and Procedures Manual for the Public Service of May, 2016 on the mandatory public service employees benefit insurance policies that the employer has promised its employees who are public servants. It provides for medical insurance benefits that is found in page 58; group life and disability cover for five years basic salary, that is found on page 75; group personal accident which is a five year basic salary on page 102, 103 and Work Injury Benefit Act, eight years gross pay which is found on page 102 and 103.

Madam Temporary Speaker, the implementation of the PSSS Act 8 of 2012 means that effective 1st January, 2021, when the Public Service Pension Scheme became operational the next of kin of any employee who has died while in service is entitled to a death and disability benefit equivalent to her five years’ pensionable emolument.

For example, in the recent KDF helicopter tragedy in Kajiado County where 17 officers perished, the employees are entitled to the benefits defined in the PSSS Act No.8 of 2012 as well as benefits defined in the human resource and procedures manual for the Public Service.

Where the Government has not provided for such insurance policies, the Trustees of the Public Service Superannuation Scheme and/or the Sponsor of the Scheme, The

National Treasury or the Minister in Charge of the Public Service Youth and Gender and the Public Service Commission, must be held accountable. They must be held responsible and be required to offer the payment to the next of kin where such omissions occur.

To safeguard the rights of each public servant in line with the Constitution of Kenya and the employment contract which is in line with the Kenyan labour laws that govern the relationship between the employers and the employees, the Government, through the Ministry of Public Service, Youth and Gender and the National Treasury, must fully enforce compliance of the Public Service Superannuation Scheme (PSSS) Act No. 8 of 2012 and the Human Resource and Procedures Manual of May, 2016.

The Senate, therefore, and by extension the National Assembly, must oversight the Government and ensure that the above is implemented. It is important to note that noncompliance to the above requirement exposes the Government to financial losses as the Government will have to look for ways to settle the claims from its exchequer.

Due to the grave nature of the issues above, I request that you refer this matter to the Standing Committee on Labour and Social Welfare to intervene and get responses on the following issues -

1. The possibility of the Senate issuing a comprehensive statement on the need to comply on the above to ensure that the Government is cushioned.

2. The Ministry of Public Service and Gender on behalf of the Public Service Commission to write a circular to all public institutions on the mandatory requirement of the PSSS Act No. 8 of 2012 and the Human Resource and Procedures Manual of May, 2016.

3. The Ministry of Public Service Youth and Gender in collaboration with the National Treasury and in compliance with Section F.15 (1) (2) Page 101 of the Booklet, Subsection - Source of Compensation Funds, on the Human Resource and Procedure Manual of May 2016, to set aside all budgetary allocation under each procurement plan for each public Institution, and avail it to the National Hospital Insurance Fund (NHIF) in line with approvals by the National Treasury Gazette notice no 27 of 20th March 2020, Gazette notice no 3105 of 17th April, 2020, & 4240 of 16th June, 2020, where NHIF was allowed to operate as a fully-fledged licensed Insurance Company to insure the governments and all its affiliated personnel.

4. The Circulars to direct all the Public Institutions to provide their staff data to the National Hospital Insurance Fund, to facilitate provision of the cited covers with premiums having been paid by the Government through the National Treasury. The classes of Insurance as per the Act and the HRM Manual are; -

- i. Medical Insurance Benefit - Page 58 D.4 (1) & (2);
- ii. Group Life & disability cover - 5 years Basic Salary on Page 75 Item D.38 (2);
- iii. Group Personal Accident – 5 years Basic Salary on Page 102/103 Item F.17; and
- iv. Work Injury Benefit Act – 8 years gross Pay on Page 102/103 Item F.17.

5. Compel Treasury to enforce that accounting officers, plan and provide adequate funds to pay work injury benefit and transfer the said benefit to NHIF.

Sen. Olekina: Thank you, Madam Temporary Speaker. I rise pursuant to Standing Order No. 48(1) to seek a Statement from the Standing Committee on Energy regarding the status of the National Oil Cooperation of Kenya (NOC).

In the Statement, the Committee should-

(1) State the current financial status of the NOC and list its creditors as well as indicating their respective debt portfolio;

(2) State the number of oil marketers that NOC has engaged indicating the amount of refined oil products in metric tonnes that each has supplied in importing oil since 2010 in compliance with Legal Notice No. 96 of 2010 which mandated NOC to import 30 per cent of refined oil products to the country;

(3) Explain why MS Prisko Petroleum Network Limited, which was paid Kshs9.23 billion in 2011 by the National Treasury on behalf of NOC to import refined oil products never delivered the product and whether the funds were refunded;

(4) Explain why the Ministry of Petroleum and Mining has removed the 30 per cent importation quota of finished petroleum products from NOC;

(5) Indicate the amount allocated to NOC by the National Treasury to import refined oil products since gazettment of Legal Notice No. 96 of 2010;

(6) State the amount of oil products held by different oil marketers at strategic reserves of petroleum product for the country.

Sen. Olekina: Thank you, Madam Temporary Speaker. I rise to support the Motion for the adjournment of the Senate for a short recess.

As Senators, we do our job. I am quite pleased that our Committees have been working. During this Session, we, as Senators, have raised very fundamental issues that need to be addressed by our Committees. Like the Senate Majority Leader said in his Statement, I encourage all Committee Chairpersons to take their time during this recess to ensure Kenyans can get answers to some of the issues we raised on their behalf.

I believe as Senators, we are the ombudspersons for the citizens out there. We are their voice and servants. When we sit up to the wee hours of the night when we are supposed to be resting, it is because we believe we have been sent here to represent our people. Many people believe Senators are supposed to provide roads, bursaries and contribute to funds drives. The truth is that Senators only come here to pass laws and ensure they raise issues on behalf of mwananchi. I am pleased that during this short recess, we will be able to meet our constituencies and share with them some of the work we have been doing.

Madam Temporary Speaker, I would like to talk about the scheduled Devolution Conference. However, with the COVID-19 pandemic ravaging, I would like to beseech the planners of this conference to think about having it virtually. Having a conference in Makueni County where you bring in over 1,000 people – some vaccinated and others not – is teasing the COVID-19 pandemic. We know very well how dangerous it is and how it has killed our people.

I beseech the Council of Governors (CoG), the Senate and people who are preparing for this inter-governmental conference to rethink and consider having this conference virtually. I know I have been invited there, but I will not risk my life to attend it physically. I am happy to go there and talk about environmental issues which are dear

to me. However, I will be negating on my duty as a Senator where I need to raise issues affecting Kenyans.

Right now, the economy is closed. Many people have been affected by the curfew. Why then do we pretend that we are safe just because it is a presidential function to go to Makueni County to attend that function? It is not safe and so, we should not go there.

Madam Temporary Speaker, regarding police brutality, I know we were given a few minutes to talk about it, but it is an important matter. During this time, many people complained. We have had issues of IPOA and their inability to deal with these issues. It is about time the Ministry of Interior and Coordination of National Government counselled these police officers who are brutalizing citizens during curfew hours.

It is a little hypocritical for them to think that they are saving Kenyans, yet they actually end up putting them in more trouble. This issue of unleashing torrents of violence on these Kenyans is not something that we should be doing.

Madam Temporary Speaker, I request that the police service rethinks their operations. They should have a conversation with these people. In fact, instead of arresting people and sending them to prisons where they are not safe, they should be escorting these people to their homes.

The other issue that is very important and personal to me is that of the security situation in Laikipia and that of the pastoralists. Earlier on, I raised a Statement on the security situation in Laikipia. Historically, the land in Laikipia belonged to the Maasai and Samburu herders.

It is wrong for us to forget that any European who came into this country never came with any land. In fact, they found that land here. Today, most of the people who own land in this country are foreigners. The native people, who were born and belong to this country, are treated as second class citizens.

Madam Temporary Speaker, I call upon the Cabinet Secretary (CS) for Interior and Coordination of National Government to seriously think about the utterances that he makes when it comes to the lives of our people. Our people depend on pasture. So, if you tell us that you are kicking us out, you already stole our land.

Most of the land there is owned by former CSs and former powerful people in this Government. Originally, our people do not believe in the concept of a title deed. When our people, who are not taking that land but just passing there to look for pasture for their cows, they are killed. It is very painful when you see some of the pictures of innocent children and herders being shot by the police when the only thing they have is a small *rungu* to take care of their cows, so that they can send their children to school and put food on the table.

Madam Temporary Speaker, I know that we have been talking about what goes around comes around. I know that this current Government is protecting all these Europeans, something that really shocks me. The current administration makes the colonial masters look more like philanthropists. They look like people who came here and gave us land because our land is being taken away from us.

I request the Ministry of Interior and Coordination of National Coordination to take back those threats. They need to bring these people together and help them. This country is vast. There are people who own thousands of acres of land while other people are poor.

The Temporary Speaker (Sen. Pareno): Sen. Olekina, you did a Statement on this and it is referred to a particular Committee, so if you debate it, there will be nothing to submit before the Committee. Kindly conclude.

Sen. Olekina: Thank you, Madam Temporary Speaker, I am guided. I just thought that because it is an adjournment Motion, I can reiterate the issues that I raised.

To summarize, I beseech the Committee on National Security, Defence and Foreign Relations to expeditiously move to summon the CS and even call the so-called land owners. There are people who own 100,000 acres. It is very sad. I am sorry that I am raising this issue over and over again, but it is something that I believe in. Our people have a right to graze their cows anywhere. It is not being an illegal herder; this is their land.

Madam Temporary Speaker, the thing that pains me is that every time when we speak about issues that are important to us, there is always some vested interest in the sense that we are gagged and cannot be open and honest enough to talk about the issues that affect our people.

I hope that the Executive is listening and that people will remember that our time on this earth is very limited. We are only passing through here. We only want to preserve this earth for future generations, not for us to take it anywhere.

Finally, as I wind up, I wish all my colleagues a happy recess.

I also take this opportunity to condole with my brother, Sen. M. Kajwang' for the loss of his father. I pray that God will grant him and his family serenity to accept the things that they cannot change and also have the courage to move on because this is a painful time. Otherwise, I thank you.