

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 8<sup>th</sup> January, 2013

The House met at 9.00 a.m.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### COMMITTEE OF SUPPLY

#### APPROVAL OF SUPPLEMENTARY ESTIMATES 2012/2013

THAT, in accordance with the provisions of Section 223 of the Constitution of Kenya, this House approves the withdrawal from the Consolidated Fund of a sum of Kenya Shillings 58,848,761,483 representing the total net estimates of Recurrent and Development Expenditure made up of the following:

(i) A sum not exceeding Kshs. 56,745,830,182 be granted from the Consolidated Fund to meet expenditure during the year ending 30th June, 2013, in respect of Supplementary Estimates of 2012/13 Financial Year (Recurrent) having regard to the proposed reduction of Kshs. 6,005,491,759 therein appearing.

(ii) A sum not exceeding Kshs. 16,030,931,343 be granted from the Consolidated Fund to meet expenditure during the year ending 30th June, 2013, in respect of Supplementary Estimates of 2012/13 Financial Year (Development) having regard to the proposed reduction of Kshs. 7,922,508,283 therein appearing.

*(H. E. the President has given his consent to this Motion)*

*(The Minister for Finance on 3.1.2013)*

*(Resumption of Debate interrupted on 3.1.2013)*

**The Minister for Finance** (Mr. Githae): Mr. Deputy Speaker, Sir, I had actually moved this Motion and it had been seconded.

**Mr. Deputy Speaker:** Yes, I can see that. We will now proceed. Prof. Anyang'-Nyong'o was on the Floor. In his absence, we assume that he has exhausted his contributions. We will now pick anybody else.

Mr. Gitobu Imanyara, please, proceed!

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, I recall that the Minister had moved and had this Motion seconded. You recall the circumstances under which we adjourned after that

acrimonious morning session. Before we proceed, perhaps, the Minister should tell us whether he has addressed those concerns. If he assures us that the concerns raised by hon. Members have been addressed, we will be able to transact business much more smoothly and quickly.

Mr. Deputy Speaker, Sir, I would urge you to urge the Minister to set the record straight so that we can go straight to the point and have this business transacted quickly.

**Mr. Deputy Speaker:** Mr. Minister, it is the presumption of the Chair - given the delicate situation we are in - that you have done the needful to allow us to move forward and conclude this Motion.

Proceed!

**The Minister for Finance** (Mr. Githae): Yes, indeed, Mr. Deputy Speaker, Sir. You will recall that the only issue that was in contention was that Members wanted the County Bills published first so that they can have a look at them before approving the Supplementary Estimates. That was the only issue. Indeed, late that evening, those concerns were actually addressed and the Bills have been published. They have been with us now for---

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, today, we are in the mood of really helping the Minister. Let him tell us whether he has complied with our request that the monies due for the counties are spelt out in the three Bills and that he will be complying with the provision of the Constitution with regard to the minimum 15 per cent disbursement. That is the issue we would like you to address rather than tell us that you have now published the Bills.

**Mr. Deputy Speaker:** What is your point of order, Mr. Duale?

**Mr. Duale:** Mr. Deputy Speaker, Sir, I want your indulgence and I want you to make the records straight. Article 205 of the Constitution - which I want to quote - requires the Commission on Revenue Allocation (CRA) to act as follows:- I want the Minister to hear me out. Article 205 (1) reads:-

“(1) When a Bill that includes provisions dealing with the sharing of revenue, or any financial matter concerning county governments is published, the Commission on Revenue Allocation shall consider those provisions and may make recommendations to the National Assembly and the Senate.

(2) Any recommendations made by the Commission shall be tabled in Parliament, and each House shall consider the recommendations before voting on the Bill”.

This Minister is contravening that provision in Article 205. I want to say how he is contravening Article 205 of the Constitution.

One, the Bills the Minister has tabled in this House do not use the formula approved by the National Assembly, the formula by which county governments will share the resources of this country. So, even the Bills that he has put on the Table, the Bills that this House will discuss later in the day, are against the constitutional provision in Article 205.

Last week the bone of contention was on the Kshs6.8 billion by the Minister for Finance for the four months of March to June. That translates to 3.3 per cent which is far below the 15 per cent or the Kshs30.4 billion, which is supposed to be allocated to the county governments. These are the same issues we were raising last time. One, the Minister is contravening Article 205 of the Constitution. Secondly, this Minister is giving the county governments Kshs6.8 billion, which is only 3.3 per cent instead of the 15 per cent the Constitution provides which is Kshs30.4 billion.

Finally, this Minister did not prepare a Transitional Division of Revenue Bill, 2012, to cover the four months that he wants to give money for. So, the Bills that he has presented do not cover those four months. Instead, he was to bring to the House a specific Transitional Revenue

Bill, 2012 to cover the four months, that is March to June, 2013. So, the House should not rubberstamp this since this Minister is contravening the Constitution. He has given 3.3 per cent!

**Mr. Deputy Speaker:** You have made your point, Mr. Duale. It is understandable.

Mr. Githae, the Chair is in possession of a communication from the Transitional Authority which, indeed, holds the view that the Bill on revenue should be debated before the supplementary budget because the outcome of that debate might impact on the supplementary budget, especially on revenue allocation due to counties; that is the Transitional Authority.

To the best of my recollection the Commission on Revenue Allocation holds the view that it should allocate resources on a *pro rata* basis to cover for the first quota, which amounts to exactly what Mr. Duale has said, that is Kshs30 billion.

You realize that by shooting down this Motion, we will have shut down Government services in this country. It has always been the prayer of the Chair that you sort out these things between the Transitional Authority, Revenue Allocation Commission and yourself so that any further steps taken are in line with that agreement. What do you have to say? We do not seem to be in a position to go ahead with this Motion.

**The Minister for Finance (Mr. Githae):** Mr. Deputy Speaker, Sir, I do not know why Mr. Duale does not want to understand. The Kshs6.8 billion, which has been allocated for the four months, is for wages and administration expenses; it is based on actual Estimates for personnel expense for each county. For example, the number of executive committee members in each county is not uniform; it depends on the number of wards represented. Therefore, the cost of administration and total wages will differ from county to county.

Secondly, the Commission on Revenue Allocation claims that the allocation of Kshs6.8 billion is below the minimum of 15 per cent. This is actually incorrect. The total allocation to counties for the full financial year is Kshs185.6 billion, which translates to about Kshs15 billion per month. The allocations for four months would translate to about Kshs60 billion, which when compared to CRA's proposals for allocation of Kshs30 billion means that the allocation is actually 200 per cent more than the proposed formula by CRA.

Mr. Deputy Speaker, Sir, the mistake Mr. Duale is making is this: There is need to make a distinction between allocations and transfers. The constitutional provision of 15 per cent is in respect of allocations and not transfers. The CRA again is confusing the two terms. As a Minister, I am ready to stop transfer of funds to county governments for reasons of persistent breaches of the Constitution. This is in accordance with Article 225.

During the discussion with the Commission for the Implementation of the Constitution (CIC), Transition Authority, CRA, Attorney-General's office and the Treasury, it was agreed that there is no need for a division of revenue for 2012/2013 because that is already in the Budget, and that has already been approved by this House. I am saying, let us be practical. Mr. Duale, tell me: How can you purchase a quarter of a car? How can you purchase a quarter of a secretary? These allocations are already there, but they are with the Central Government. We are making a decision between transfers and allocations. If you look at the Budget that we passed, the allocations are there. The amount I have given to the counties for the four months is sufficient.

I will tell you what they are supposed to do before then. First of all, the Transitional Authority has not gazette the functions to be transferred to the county governments immediately after the final announcement of the results of the first election. Articles 203, 217 and 218 of the Constitution state the annual value--- They have said that what the CRA wanted cannot apply this year. That was their initial advice; it talked of annual division. This is because you cannot have quarter decisions. The Treasury said no, the counties must have money for four months. If

you look at what I have done for 2013/14, it is very clear. I have already published that. I published it so that hon. Members can see it. I have really explained this. Let us be practical; let us approve this. Our competitors are campaigning when we are here. We want to finalize this business so that we can go and campaign.

**Mr. Abdikadir:** Mr. Deputy Speaker, Sir, we do appreciate the difficult situation that these new structures present to the Treasury. But I serve on the Budget Committee and we got communication today from the Chair of the Budget Committee that these matters have not been resolved. The Chair of the Budget Committee called a meeting at 10.00 a.m. today to discuss these matters with the Minister for Finance, the CRA and the Transitional Authority. The Chairman did communicate to us and I am bringing that communication to the attention of the Chair.

**Mr. Deputy Speaker:** So, what is your proposal?

**Mr. Abdikadir:** My proposal is that, that meeting should take place before we conclude this, because it is a requirement of the Constitution.

**Mr. Deputy Speaker:** If I got the Minister right – I can see quite a bit of a sense in it – as for the functions to be performed by the county governments, there is sufficient allocation; it is in excess of the constitutional threshold; this is already in the budget. Essentially what they are now transferring is the cash that they need to run the offices; as far as the programmes and projects are concerned, the funds are already there. I think there is quite a bit of sense in that. Under those circumstances, maybe it is fair we conclude this business.

We will probably not use unorthodox methods of validating this Motion today; if we were to follow the rules strictly, we would, probably, not pass this Motion today and we would have a shut-down of the Government. So, it is important that we look at the other bits and pieces of information that we need to take cognisance of, as leaders who are in their final days in this House.

Proceed, Mr. Mututho.

**Mr. Mututho:** Mr. Deputy Speaker, Sir, first and foremost, Article 205 uses the words “may make recommendations for the National Assembly and the Senate.” Therefore, (2) does not apply. This is because in the likely event that the Commission on Revenue Authority (CRA) refuses or does not comply with (1), then there will be no reason or rationale to proceed and block this debate on the basis of Article 205.

Mr. Deputy Speaker, Sir, secondly, looking closely at county governments---

**Mr. Deputy Speaker:** Did you say Article 205 or Article 225?

**Mr. Mututho:** Mr. Deputy Speaker, Sir, it is Article 205. Could I read the whole sentence?

**Mr. Deputy Speaker:** Just proceed with the debate.

**Mr. Mututho:** Mr. Deputy Speaker, Sir, I sit in the Budget Committee as John Mututho, the Member for Naivasha. I am also the Chairman of the Committee on Agriculture, Livestock and Co-operatives. I have had a close look at the provisions of the county governments, their functions and powers. Even by going with what we have now in the books, we have to be conscious. If we are to carry all those functions which will be continuous because the Government does not shut down after March, I find that the amount of money which is already voted, in excess of Kshs30 billion. If the Budget Committee in which I sit and this honourable House could refer back to the bigger volumes and extract that data, then we should have no difficulties. There will be no contentious issues here. This is because with over Kshs6 billion, we will have enough money to hire the personnel and renovate offices. After all, we know that if

we do our elections on 4<sup>th</sup> March, by the time the governors take their offices and put their people in place, it will be towards the end of March. We will then start in April and May. So, in all fairness and looking at all logics, having served in the civil service for over 11 years and sat in these Committees for the last five years, I believe that the action---

**Mr. Abdikadir:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Hon. Mututho, I am making the assumption that you have concluded.

**Mr. Mututho:** Yes, Mr. Deputy Speaker, Sir.

**Mr. Abdikadir:** Mr. Deputy Speaker, Sir, just to inform the honourable Chair that, indeed, the Commission on Revenue Allocation (CRA) did, through a letter to the Chair of the Budget Committee, give its recommendations to the Parliamentary Budget Committee. So, the proposal has already come to the Budget Committee. It is not that we disagree with the Minister. The issue is that there has to be that consultation following the proposals from the CRA and Transition Authority. If he has gone beyond the requirement, we will be very happy. But these are critical constitutional institutions and they must be part of the process.

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, the reason I asked the Minister to explain to us whether he had taken the concerns of the hon. Members into account before today's Order Paper is because I am aware that this Motion merely lays the foundation for the real debate. The real debate is contained quite appropriately and he has considered as much in the business under Order Nos.9, 10, 11 and 12. I took sometime to look at these Estimates. On the face of it, they do actually comply. Our biggest fear last week was this omnibus clause that he wanted us to pass and then leave it to him to determine whether or not he complies with the Constitution. I would suggest that we conclude this business now, because there is really no substantial disagreement--

**Mr. Deputy Speaker:** The Chair firmly agrees with you on this. I was on the Chair and the fear, at that time, was that we would have a constitutional issue. But I think that the Minister has clarified that very well. But the devil is in the details. The details are going to come out in the subsequent Bills.

I will just take one final point of order and then we proceed with the Motion and conclude it.

**Mr. Duale:** Mr. Deputy Speaker, Sir, I also agree that I will raise my issues in The Transition County Appropriation Bill, 2012 which will come this afternoon.

**Mr. Deputy Speaker:** The Chair is satisfied that this matter has been put to rest. Could we now proceed and debate the actual Motion itself?

Hon. Ndeti, it is my presumption that you want to debate the Motion.

**The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti):** Mr. Deputy Speaker, Sir, I think we should conclude this because we need the country to be in operation.

**Mr. Deputy Speaker:** Order! That is not your business. That is the Chair's business! I now wish to put the Question.

*(Question put and agreed to)*

## **BILL**

### *Second Reading*

THE TRANSITION COUNTY  
ALLOCATION OF REVENUE BILL

**The Minister for Finance** (Mr. Githae): Mr. Deputy Speaker, Sir, I sincerely thank the House for approving the Supplementary Budget that will enable us now to proceed to the other Bills.

Mr. Deputy Speaker, Sir, I beg to move that The Transition County Allocation of Revenue Bill---

**Mr. Ogindo:** Mr. Deputy Speaker, Sir, I rise on a point of order to seek your guidance as to whether Order No.9 is procedural. Indeed, it is the requirement of the Constitution that there be a Division of Revenue Bill and, subsequently, a County Allocation of Revenue Bill. Everybody in this Republic knows that Kenya is under a new Constitutional dispensation. This is a financial year that has two systems of Government. The first nine months will have a Central Government. The last three months will have two levels of Government that is, the National Government and County Government. When the county government sets in place, it is a constitutional requirement that it gets its funding by the manner prescribed by law and in the Constitution. There shall be a Revenue Division Bill which should then be followed by a Revenue Allocation Bill. What the Minister is moving is a Revenue Allocation Bill which ordinarily should be preceded by a Revenue Division Bill. You cannot purport to allocate revenue that you have not determined or divided. As such, I want to find that this Bill is unprocedural to the extent that it is not founded on the Revenue Division Bill.

Mr. Deputy Speaker, Sir, I seek for your guidance that you find this Bill unprocedurally and ask the Minister to get back to the foundations and bring it back procedurally?

**Mr. Deputy Speaker:** Mr. Minister, as much as there are no hard and fast rules on this, and as much as the Chair has certain discretion to rearrange certain Bills in the manner they are transacted on the Floor of the House, it is only fair that you arrange these things in a manner that essentially is consequential. This is because you cannot allocate what you have not divided. So, The Division of Revenue Bill under normal circumstances should have preceded the one of The Transition County Allocation of Revenue Bill.

What is your take on this, hon. Githae?

**The Minister for Finance** (Mr. Githae): Mr. Deputy Speaker, Sir, again, I will repeat what I have said. When we were preparing the Budget for this financial year, the county governments were not in existence. In fact, the Treasury had indicated that they wanted to allocate the money right from the beginning. However, we received information from the Attorney-General, the Commission on Revenue Allocation (CRA) and the Commission on the Implementation of the Constitution (CIC) that this could not be done. That is why The Division of Revenue Bill is in the 2013/2014 Financial Year. If you look at what is provided for in the Act, you will find that it talks about "annual." If you look at Article 203---

**Mr. Deputy Speaker:** Order, Mr. Minister! I think we are going on a tangent. The issue is the rearrangement of the business on the Order Paper which the Chair has an absolute discretion. Under the circumstances, I think we will start with Business No.10, go to Business No.11 and then come back to Business No.9. Business no.12 will stay the way it is. There is too much ado over nothing here. It is just a question of---

**Mr. Ogindo:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Is it on the same thing that the Chair has ruled on?

**Mr. Ogindo:** Yes, Mr. Deputy Speaker, Sir. For the information of the Chair, Order No.9 on The Transition County Allocation Revenue Bill is about the 2012/2013 Financial Year while Order No.10 is about the 2013/2014 Financial Year. So, the argument is still on the 2012/2013 Financial Year. For the information of the House, let us separate the two because we also have issues with Orders Nos.10 and 11. Orders Nos.10 and 11 are sequentially arranged procedurally and the same should have applied to Order No.9. It should have been preceded by The County Division of Revenue Bill. The Minister has set off by trying to explain that this was not possible on the advice of the CIC and the Attorney-General. He needs to bring out the actual difficulties which must be legal and constitutional. It is against that background that I request that the Chair finds this Motion unprocedural. The Minister needs to go and get it back on track.

**The Minister for Finance (Mr. Githae):** Mr. Deputy Speaker, Sir, what I was explaining are the practical difficulties on how we proceeded on this basis where there is no Division of Revenue Bill for this year. The reason is that at the time we made the Budget, the counties were not in existence nor were they legal bodies.

**Mr. Deputy Speaker:** They are still not in existence, but they are provided for in the Constitution. There was need for you to anticipate their legality and existence at some point in future.

**The Minister for Finance (Mr. Githae):** Mr. Deputy Speaker, Sir, that would have meant setting aside idle funds for the whole year waiting for the last four months. In my view, that would not have been very prudent management of scarce financial resources. Initially, the CRA was very clear in its mind that it had to do this on an annual basis. There is no quarterly or half yearly allocation. That is the point I was making because it talks of annual allocations. I will give you the practical difficulties. How do you purchase a quarter of a car for the last four months and say that three-quarters was for the previous year and this quarter is now for the last four months? That is not practical. What I have explained and I hope Members will see it, is that we need to be practical and move on with the business. The money that we are allocating each county is adequate for the four months. Why am I saying this? What will be done? The counties will start preparing themselves. The most important thing will be the budget.

Secondly, we have to be practical. This money is already in the Budget because it was allocated to the Ministries which have already entered into certain contracts. Are you telling us that we stop development projects or what are you saying? I am explaining the purpose of this money which is sufficient and adequate for the four months. Going by the law, this Article talks about annual allocation and not quarterly, half-yearly or three-quarter allocation. It is the Treasury which says that counties must have money for the last four months.

**Mr. Ethuro:** On a point of order, Mr. Deputy Speaker, Sir. I rise to request you to ask the Minister to desist from saying that we should be practical. The points we are raising are very fundamental in terms of the constitutional implementation. Just because the word “annual”, in his view, does not consist quarterly or half-yearly--- Why is he bringing a supplementary budget if he is talking about annual? This means that he can provide for any period. Our concern is the commitment of this Government to devolution. That is all. We have no quarrel with him. He must follow the Constitution and go by its timelines.

**The Assistant Minister, Office of the Prime Minister (Mr. Mbadi):** Mr. Deputy Speaker, Sir, I just wanted to advise my colleague, the Minister for Finance---

**Mr. Deputy Speaker:** No! No!

**The Assistant Minister, Office of the Prime Minister (Mr. Mbadi):** Mr. Deputy Speaker, Sir, it is like giving him information.

**Mr. Deputy Speaker:** You cannot advise him from the Floor. You can go and sit next to him and advise him. You are in the same Government! You cannot have a position contrary to what the Minister has, even if that is based on knowledge---

**The Assistant Minister, Office of the Prime Minister** (Mr. Mbadi): Mr. Deputy Speaker, Sir, I am not giving a contrary opinion. I am just offering advice. I am enriching his contribution.

**Mr. Deputy Speaker:** Order! Order! Mr. Mbadi, yes, it is the presumption of the Chair that Government always consults. That is a fact. However, you do not do that on the Floor of the House. Go and sit next to him and tell him what he needs to know.

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. I think the Minister is not kind to us. In the first place, he refused to appear before the Committee on Budget. Secondly, he keeps on talking about having a vehicle, knowing very well that he has associated for very long with the “Bus Party” which has been buying everything in the vehicle. Surely, the Minister owes this House an apology because this should have been dealt with at the Committee level rather than waste the time of this House.

Mr. Deputy Speaker, Sir, we do not have much time. This thing would have been just a formality and we would have settled it in the relevant Committee.

**Mr. Duale:** Mr. Deputy Speaker, Sir, devolution is in the hearts of our people, especially for those of us who come from the marginalized communities. There are a number of fundamental issues that I want you to consider. One, the Minister has brought these Bills to the House without the input of the Commission on Revenue Allocation (CRA). The CRA has put it in writing to Parliament that the Minister has deliberately ignored CRA, which is a constitutionally constituted Commission on devolution financing.

Secondly, the Bills before us did not go through the relevant parliamentary committees as the Constitution provides. This Minister has avoided the Committee on Budget. These are fundamental issues and there is nothing about being practical. Even if it is the last few days of this Tenth Parliament, we want to leave a legacy that this Parliament has protected the devolved system of government in this country. That is why we are leaders and that is why our people passed the Constitution.

**Mrs. Noor:** Mr. Deputy Speaker, Sir, I rise on a point of order. Just like my colleagues who have spoken, I sit in the Budget Committee and I feel very betrayed sitting here to talk about this matter. We were supposed to have a meeting this morning. That is why I came to this House early this morning so that we could solve the pending issues. We have structures and systems in place and yet, we do not follow them. If we set out to undermine the Budget Committee of this House, it is going to be bad and it will reflect very wrongly on us.

The Commission on Revenue Allocation is a constitutional Commission. It gave recommendations. We were supposed to sit together; that is, the Minister and ourselves so that we could solve this problem. Devolved system of governance is what we have looked for, for all these years and, therefore, we cannot allow a Minister to singlehandedly hijack and undermine the devolution process. We cannot touch these Bills until they go through the right procedure.

Mr. Deputy Speaker, Sir, would I be in order to ask you to ask the Minister to take back these Bills, appear before the Budget Committee and sit even right now? We are prepared as a Committee to sit even past midnight. The other time, we left this place past midnight. We are ready. Let him take back these Bills and bring them to the Committee so that we can solve this matter.



**Mr. Imanyara:** Mr. Deputy Speaker, Sir, I appreciate the concerns of hon. Members. As I said last week, this is not a rubberstamp Parliament anymore. We have been told by a Member of the Committee, hon. Abdikadir, that, in fact, the Report has been submitted to the Committee and they will be debating it at 10.00 a.m. As it stands now, there are objections on constitutional grounds which put the matter squarely on your shoulders.

Mr. Deputy Speaker, Sir, you are guided by the provisions of Standing Order No.47, which empower you, in view of what you have been told that this matter is currently before the Committee, instead of shutting down the Government completely by throwing away this Motion now, you should go by the provisions of Standing Order No. 47(f) and require the Minister to undertake that this amendment---

**Mr. Deputy Speaker:** Which Standing Order, please?

**Mr. Imanyara:** Standing Order No.47. It states in part that the Speaker may direct either the Motion is inadmissible or that the notice of it cannot be given without such alteration as the Speaker may approve. It is really subject to you, if you were to take into account the concerns of hon. Members. The meeting is taking place at 10.00 a.m. and this Report is before the Committee now. I ask that you do direct that the Minister may move this Order, but at 10.00 a.m., the Committee will be discussing this Report. After that, you will be satisfied that it has addressed these issues and then you can put the question to vote.

Mr. Deputy Speaker, Sir, we can, therefore, make progress because these are now technical concerns before even we start the debate and yet, you have all the powers under this provision to enable us move forward taking into account all our concerns, including the concerns of the so-called marginalized. You will have taken into account concerns of all constituencies in Kenya. This is because the Constitution does not recognize that there are some constituencies which may gain more than others outside the provisions of the Constitution.

We can handle this matter. At 10.00 a.m., the Committee will be meeting. The Report has already been received there. Just utilize your discretion under Standing Order No.47 (f) and get an undertaking from the Minister that these alterations and amendments will be in the Bill before we go to the actual vote, and then we can move forward.

**Mr. Ogindo:** On a point of order, Mr. Deputy Speaker, Sir. I want to sympathize with the Minister, but I also want to suggest a practical solution. The background is this: If you look at Article 218 of the Constitution, it lays out the sequencing of these Bills and it starts with Revenue Division Bill. This is a constitutional requirement. You cannot sacrifice constitutionality at the altar of expedience.

**Mr. Deputy Speaker:** Except that the position of the Minister, if I got him right, is that – and there is need for us to understand - whereas the sequence is laid out, it is not applicable under the current one because the county governments are not in existence. What he has right now is an allocation done by this Parliament under the current dispensation. The other one can come in consequentially in the sense of the practicability. If the funds were allocated within the same year, then they would take the sequence you are talking about. However, because this is for this year and the sequence you are talking about is supposed to take effect from next year, then that is, probably, where the problem is. Am I right, Mr. Minister? Did I get you right?

**The Minister for Finance (Mr. Githae):** Indeed, Mr. Deputy Speaker, Sir. That is the whole point I was making. We are confusing the two issues of this financial year and the next financial year.

**Mr. Ethuro:** Do not use that word!

**The Minister for Finance** (Mr. Githae): Listen! Listen! Just be patient enough and listen. What I was saying, Mr. Deputy Speaker, Sir, is that for this year, it was not possible and practical. So, what we have done is that from the Supplementary Estimates, we have allocated money enough for the four months. I was going to mention what is required for the four months. Remember we have said that the money that is there is adequate for the purpose.

First of all, the governor will have to identify the county executive members. That will take time, at least, two weeks. After that has been done, they need to be approved by the county assemblies. That is going to take two weeks. After that, we shall have county plans being taken to the county assemblies for approval as required. That will take another two weeks. Then they will start preparation of the budget estimates based on the approved plans for the financial year 2013/2014. That will also take another two weeks. From there, we have the approval of county estimates of revenue and expenditure by the county executive committees under the chairmanship of the governors. That will take one week. We will then have adjustments as per the county executive committee approvals and submission of the budget estimates to the respective county assemblies for approval. That will take another one week. This clearly demonstrates that for those three months, what the county governments will be concerned with and they will be involved in is preparation of the Budget for the next financial year. I have followed exactly what hon. Martin Ogindo is saying. I have provided that. The first one is the revenue before we come to appropriation. I have provided that but for the following year. For this year, this august House approved the money already. It is there already. We have no revenue for this financial year because it is not possible.

Mr. Deputy Speaker, Sir, again if you look at it, it says, “annually” or every year and I am saying it is not possible to have a quarter of a Budget or a quarter of a car and that is what we are doing. We are simply giving a transfer or allocation to enable the county governments to perform the functions for the four months.

**Mr. Deputy Speaker:** Hon. Minister, just before hon. Ogindo blazes his horn, the Chair is convinced that you are making a lot of sense but the issue is there are institutions in Parliament that you need to explain to. It is just a question of explanation including to the Budget Committee itself. Yes, hon. Ogindo!

**Mr. Ogindo:** Thank you, Mr. Deputy Speaker, Sir. I think the Minister is dealing with side issues. We are getting into a different system of Government and it is incumbent on this House to get this foundation correct. We are talking about the law – the Constitution. The Minister can only navigate within the law and within the Constitution. He cannot sacrifice the Constitution and the law at the altar of expediency which is that there must be a basis and this precedent is very important. There must be a basis for the Revenue Allocation Bill and that basis is the Revenue Division Bill. If for practical purposes this cannot be set out in a Revenue Division Bill, then a calculation must be done and then a parliamentary committee - the Budget Committee - is convinced that indeed this is the allocation. Then it is on the basis of this division that we do the allocation.

Mr. Deputy Speaker, Sir it is important that this is done because Kenyans are watching and we will be judged harshly if we shall have created a precedent that will not have formed the county governments. This is a window that is going to be exploited in future that we have done it before and we can do it again and eventually we shall kill this---

**Mr. Deputy Speaker:** You have made your point.

**The Assistant Minister, Office of the Prime Minister** (Mr. Mbadi): Mr. Deputy Speaker, Sir, the argument from the Minister makes a lot of sense but I would request you that

this matter be referred to the Budget Committee as is stipulated in the law. The Constitution is very clear. The Public Finance Management Act is very clear on what we need to do. What we need is for the Minister to go and offer all these explanations to the Budget Committee so that it is presented to the House with full concurrence between Parliament and the Executive.

Mr. Deputy Speaker, Sir, my last remark is that I hope the Minister will disregard the Treasury mandarins because the problem we have is people in the Treasury who do not want devolution. That is the problem. It is not the Minister. So, the Minister should disregard these anti-revolutionists who are in the Treasury.

**Mr. Ethuro:** On a point of order, Mr. Deputy Speaker, Sir. I do not know how much ventilation the Minister requires in order for him and the Government to realize the resolve and the determination we have on the issue of devolution and resources to the county. The Minister is confusing allocation with cash flow management. What we want are resources to be availed. If a county like Kirinyaga--- He is aspiring to be Governor there. If he does not take the two weeks to form his executive committee, he will be campaigning with the executive committee so that when he succeeds, he will form it but fundamentally, hon. Imanyara has given a proposal which I think the Chair will consider. In considering that proposal, I want the Chair to compel the Minister to appear before the Budget Committee which is sitting at 10 a.m. today. We notice that the Minister has been running away from making appearances before the Budget Committee for almost the umpteenth time but he is very eager to run to this House and he is even running alone without his troops. What does he expect to gain?

**Mr. Deputy Speaker:** Order! The Chair is clearly convinced that the issues that are here are issues of communication and the need to respect certain parliamentary institutions. Note that I want to agree that indeed what the Minister is saying makes a lot of sense but nonetheless, I would hesitate to use Standing Order No.47 which was quoted by hon. Imanyara and, therefore, call for commitment of public funds for which no provision is made in the Annual Estimates as adopted by the National Assembly. I do not think there is any close supervision. Standing Order No.47 (3) states:-

“If the Speaker is of the opinion that any proposed Motion –

(a) is one which infringes, or the debate on which is likely to infringe, any of these Standing Orders; or

(b) is contrary to the Constitution, without expressly proposing appropriate amendment of the Constitution; or

(c) is too long; or

(d) is framed in terms which are inconsistent with the dignity of the House; or,

(e) contains or implies allegations which the Speaker is not satisfied that the Mover can substantiate; or

(f) calls for the commitment of public funds for which no provision is made in the Annual Estimates as adopted by the National Assembly; the Speaker may direct either that, the Motion is inadmissible, or that notice of it cannot be given without such alternation as the Speaker may approve.”

I want to agree with hon. Imanyara that there is need for us to save the occasion and for the Chair to make a communication. I want to make a communication under Standing Order No.1 as well as the Standing Order that gives the Chair the discretion to arrange the business of the House in a manner that the Chair should see including deferring. So, I am deferring all these Bills. I am deferring the Bills that appear on Order No.9, Order No.10, Order No. 11 and Order

No.12 that are on today's Order Paper this morning. In the meantime, I am directing the Minister to sit immediately with the Budget Committee. It is just a matter of explanation. He is making a lot of sense but he needs to sit with that Budget Committee and explain to it what he has explained to the House and bring the Committee on board. As the Minister says, we do not have such structures in place here. Whereas the sequence is that division must come before appropriation or allocation but the division refers to a different financial year from the allocation we are talking about right now. My allocation of Standing Order No.9 is allocation of the six or so available resources which we have now in the current Budget but the one on Order No.10 will be for the next Budget. This is my assumption and then it consequently continues to Order No.11 and 12. It will make sense. All you need to do is to sit down with the Budget Committee. I am directing that you sit down with the Budget Committee immediately and trash out these matters and these businesses to be deferred to the afternoon session so that we can proceed in a manner that essentially takes into cognizance also the dignity of the Budget Committee itself. So, I am directing that it be done immediately.

THE TRANSITION COUNTY ALLOCATION OF REVENUE BILL

THE DIVISION OF REVENUE BILL

THE COUNTY ALLOCATION OF REVENUE BILL

THE TRANSITION COUNTY APPROPRIATION BILL

*(Bills deferred)*

## **ADJOURNMENT**

**Mr. Deputy Speaker:** Hon. Members, there being no other business on the Order Paper for this morning, the House stands adjourned until today afternoon, Tuesday, 8<sup>th</sup> January, 2013 at 2.30 p.m.

The House rose at 9.58 a.m.