

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 19<sup>th</sup> February, 2014

The House met at 2.30 p.m.

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

### PRAYERS

### PAPERS LAID

**Hon. Speaker:** Where is the Chairperson of the Constituencies Development Fund (CDF)? Who is laying on the Table the Constituencies Fund Regulations, 2014 from the Ministry of Devolution and Planning? Is it the Leader of the Majority Party?

**Hon. A.B. Duale:** Hon. Speaker, the problem is the staff of Parliament. I was to table both the one for CDF and National Construction Authority. I have the copies in my office, but they usually put it here. So, it is failure on the part of the Office of the Clerk.

**Hon. Speaker:** The Office of the Clerk is beginning to exhibit laxity because it is upon them to deliver to the Office of the Leader of Majority Party any such Papers that he would want to lay. I am aware that the Constituencies Development Fund Regulations, 2014 are urgent; so are the Regulations of National Construction Authority. So, I direct that the Regulations be made available to the Office of the Leader of Majority Party by 4.00 p.m. today for tabling in the House tomorrow.

### NOTICES OF MOTIONS

#### AMNESTY FOR KENYANS REGISTERED AS REFUGEES

**Hon. Mohamed Diriye:** Hon. Speaker, I beg to give notices of the following Motions:-

THAT, aware that it is the right of every Kenya attaining 18 years of age to register and be issued with a national identity card; further aware that a national identity card represents proof of Kenyan citizenship without which an individual cannot have access to basic services and the right to vote; cognizant of the fact that about 12,000 Kenyans living in the counties of Wajir, Garissa and Mandera have no identity cards; this House urges the Government to extend amnesty to those Kenyans living in those regions who have wrongly registered as refugees in order to restore their privileges as Kenyan citizens, including their rights to get national identity cards in order for them to be integrated into the community.

## INCREASE OF FPE ANNUAL CAPITATION GRANT

THAT, aware that since the inception and implementation of the Free Primary Education (FPE) Programme in January, 2003, enrolment in primary schools has increased from 5.9 million pupils in 2003 to 8.7 million pupils in the country, which translates to an increase of 47.46 per cent in our public primary schools; further aware that in order to reduce the cost of burden of primary education to parents, the Government established the FPE Annual Capitation Grant per child at a cost of Kshs1,020 for primary schools in 2003; taking into account the need to meet the constitutional right of every Kenyan child to free and compulsory basic education; deeply concerned that the capitation grant per child has remained constant at Kshs1,020 since 2003 despite the inflation levels having risen thus undermining the purchasing power for schools; this House urges the Government to increase the capitation grant per child from Kshs1,020 to Kshs3,060 for primary schools.

**Hon. Speaker:** Hon. Members, before we proceed to the next Order, I can see an intervention by the Leader of Minority Party. Is it a matter that you want to contribute to?

**Hon. Nyenze:** Hon. Speaker, I was only being strategic.

**Hon. Speaker:** Okay. Do not remove your request then. Let us move on to the next Order. Yes, hon. Malulu Injendi.

## REQUESTS FOR STATEMENTS

## IMPLEMENTATION STATUS OF AFFA ACT, 2013

**Hon. Injendi:** Hon. Speaker, pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Agriculture, Livestock and Cooperatives on the status of the implementation of the Agriculture, Fisheries and Food Authority (AFFA) Act and COMESA safeguards.

Hon. Speaker, the AFFA Act, as amended, creates a single body charged with the regulatory functions currently performed by various entities within the agricultural sector in the country. Additionally, on the relationships between COMESA and the AFFA Act, the Ministry of Agriculture, Livestock and Fisheries was to develop safeguard mechanisms to regulate the importation of sugar into the country through the allocation of special quotas for local sugar.

The process began in March, 2012 and is supposed to end in February, 2013. The process is targeted at making locally produced sugar more competitive. However, there have been no attempts by the Ministry towards the development of a regulatory and legislative framework to operationalise the AFFA Act.

Hon. Speaker, in the Statement, the Chair person should inquire into and report on the following:-

(i) the status of the operationalisation of the AFFA Act, 2013 and whether the timelines are still adequate for the implementation of the same; and

(ii) whether the process of developing safeguard mechanisms to regulate the importation of sugar into the country as well as sugar production with regard to COMESA is still on course.

Thank you, hon. Speaker.

**Hon. Speaker:** Could I have the Chairperson of the Departmental Committee on Agriculture, Livestock and Cooperatives or any other member of the Committee making an undertaking? Hon. Ben Washiali. I can see hon. Nooru strolling into the Chamber. He wants to do the biometrics first. Maybe, you can deal with the matter.

**Hon. Washiali:** Thank you, hon. Speaker. I am a senior Member of this Committee. I have also been following what has been happening.

In terms of operationalisation, the AFFA Act, 2013 was partly operationalised on 17<sup>th</sup> January, 2004 because we could not collapse the State corporations under the AFFA Act since the Crops Act had not been operationalised. The two Acts are inter-related.

The COMESA safeguards are due to be removed by 28<sup>th</sup> February, 2014. It is not for us to operationalise the COMESA Act. This is an international treaty that was signed by the Government of Kenya. Therefore, they will automatically be operationalised. However, I am aware that His Excellency the President is appealing to COMESA to extend the safeguards that are in place, so that the country can privatise its companies internally so that they can compete with other COMESA sugar producing companies.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Injendi, you were seeking a Statement. It looks like hon. Washiali has ably answered you. Are you satisfied? He said that he is a senior Member of the Committee. I hope you followed the issue with regard to the operationalisation of the AFFA Act, 2013 and that of the COMESA safeguards.

**Hon. Injendi:** Thank you, hon. Speaker. In fact, I am surprised that hon. Washiali has all this information. For example, when it comes to the COMESA issue, he knows very well that we were supposed to privatise all our sugar companies, but that has not happened. So, he is saying that this will take effect on 28<sup>th</sup> February, 2014. How will it take effect on that date and yet, the Ministry has not done what it is supposed to do?

Secondly, he knows what is happening in Western Kenya region when it comes to matters of sugar production. The sector is actually facing an eminent collapse. I actually placed this Statement request in September last year. It collapsed with the First Session of this Parliament. So, I urge the Committee to request the State to negotiate such that we can have the extension to save our sugar industry.

Thank you, hon. Speaker.

**Hon. Speaker:** Of course, with regard to the COMESA safeguards measures, I am sure that it is a matter that must be at the heart of many Kenyans because, as hon. Washiali has said, it is a fact that unless Kenya gets an extension, the last extension granted is to expire on 28<sup>th</sup> February, 2014.

Therefore, hon. Injendi, this is, perhaps, a matter in respect of which you need to appear before the Committee, in the presence of the Cabinet Secretary, to see whether there are any indications as to whether there is going to be an extension. As you rightly said, it has far reaching implications to farmers and their children in sugar-cane growing areas. This is a matter that must be of national importance.

Hon. Washiali, now that hon. Nooru has arrived – I could see you briefing him – could you give us an indication as to whether you can respond particularly to the issue of the COMESA safeguards? It is very important that the country knows that, even though we have not privatised our sugar factories as required. This extension has been running for between eight and ten years. So, we need to know. If the safeguards are going to expire, our farmers must be prepared both psychologically and economically in terms of the alternatives available to them.

Part of the reasons as to why those safeguards have been there is to protect our farmers. So, hon. Nooru, perhaps you may wish to make a statement on this matter.

**Hon. Nooru:** Thank you, hon. Speaker. As you have rightly put it, the issue of the COMESA extension is not in our hands. It is in the hands of the member States. We have been asking for the extension. According to the international trade law, the extensions are over. We have had our final league. Whether the member States will sympathise with us and give an extension again, it depends on them.

On the Statement that the hon. Member asked last time, it is true that it lapsed. We had an answer but he had not renewed the request until today. It is the first time that he is asking for the Statement. So, we can give the answer even tomorrow, if the programme of this House allows us.

**Hon. Speaker:** Did you say tomorrow, hon. Nooru?

**Hon. Nooru:** Yes, hon. Speaker.

**Hon. Speaker:** It is absolutely important that you give the response because there are very many hon. Members here who represent sugar-cane growing areas. Hon. Injendi, is tomorrow okay?

**Hon. Injendi:** Hon. Speaker, it is okay but, maybe, the Committee members should know that this is not a matter on which they should resign to fate because it is a matter of life and death. When we operationalise the COMESA Protocol on this sector, sugar production in the country will die.

**Hon. Speaker:** Very well! Let us wait for the Statement that shall come from the Committee tomorrow so that then we can allow because I know there will be many hon. Members who will want to discuss it to know what really is going to happen. It is a matter that I believe the whole country will be willing to know; whether Kenya is getting extension or not. It is a matter in the public domain; a matter that can now be said to have assumed public notoriety of sorts. That Kenya is still trying to sweet talk fellow COMESA countries to see whether they can get a further extension. But whether it gets or not, let that Statement be made here in the House so that as many hon. Members as possible and Kenyans know where it is that we are headed.

**Hon. Nooru:** Hon. Speaker, the original Statement sought by the hon. Member talks about ALFA. The answer that I have and I intend to give tomorrow is about ALFA but he is now talking about the COMESA. The COMESA issue, it is a fact that we, as farmers, have to get prepared because it is not going to be voted forever for extensions. So, the answer that I am preparing is about ALFA which the hon. Member sought and not about the COMESA issue.

**Hon. A. B. Duale:** Hon. Speaker, there is nothing called ALFA; it is called AFFA because I had the privilege to serve in the last Parliament and we, hon. Members, from

the pastoral community removed the livestock aspect. So, the Chair should talk about AFFA and not ALFA because livestock is not part of this. We must make that correction.

**Hon. Speaker:** Well, I think that is just the acronym; it is Agriculture, Fisheries and Food Authority Act (AFFA).

**Hon. Speaker:** We will now have hon. (Ms.) Nyamunga but she is absent and not desiring to be present. Therefore, her request for the Statement is dropped.

*(Statement dropped)*

#### ISSUANCE OF TITLES TO MOCHONGOI SETTLEMENT SCHEME

**Hon. (Ms.) Kipchoim:** Hon. Speaker, pursuant to Standing Order No.44(2)(c) I rise to request for a Statement from the Departmental Committee on Lands regarding allocation of titles to Kenyans living on various settlement schemes, especially those living in Mochongoi Settlement Scheme.

Those who were previously squatting in various parts were settled by the Government in Mochongoi Settlement Scheme in 1988. However, to date, these people have not received any ownership document to their land. In addition, the settlement scheme has not been gazetted to allow for this required sub-division. In this Statement, the Chairperson should inquire into and report on when the Government will do the gazetting of Mochongoi Settlement Scheme and plans by the Government to issue titles to the residents of Mochongoi Settlement Scheme in Blocks 1, 2 and 3 and to other residents of settlement scheme in the country.

**Hon. Mwiru:** Hon. Speaker, this is a matter which is very important even to the nation because most Kenyans now have become desperate in trying to acquire these documents for ownership of their pieces of land. Sometimes some of these settlement schemes have been done haphazardly and that encourages even further squatting than the Government had planned. Therefore, it is a matter that I need to dig deep, more so because I know about Mochongoi Settlement Scheme which is in Baringo. With the indulgence of the hon. Member, I can give the answer in three weeks' time.

**Hon. (Ms.) Kipchoim:** Hon. Speaker, I agree.

#### FATE OF WORKERS IN KARUTURI FARM

**Hon. Kihagi:** Hon. Speaker, pursuant to Standing Order No.44(2)(c) I rise to request for a Statement from the Departmental Committee on Labour and Social Welfare regarding the fate of workers in Karuturi Farm in Naivasha.

Karuturi Farm is the largest flower farm in Kenya with over 3,000 employees and a capacity to produce over two million stems of rose flowers per day. The farm has experienced financial hardships and has been placed under receivership. The fate of the workers in relation to their unpaid salaries, SACCO contributions and compensation for years worked is currently unknown. The Chairperson should inquire into and report to the House the following:-

(i) the actual number of workers in the farm who have worked in the farm from June 2013 and are currently working there as at the time of receivership;

(ii) the amount of money owed to the workers in the form of salaries, arrears, non-remittance to their union and co-operative and their terminal benefits;

(iii) the measures the Government has put in place to ensure that the workers' interest is taken into consideration by the receiver manager; and

(iv) the measures the Government is taking to provide relief and emergency aid to children, workers and the vulnerable people living in that farm.

**Hon. Speaker:** The Chairperson, hon. Were or any Member of the Committee. Is there nobody here who belongs to that Committee? Hon. Kihagi, it looks like we may have to send your Statement to the Director of Committees for onward transmission to that Committee since neither the Chair nor the vice nor Members of that Committee are present apparently. Of course, it also just shows the futility of this process. There is urgent need for us to bring the actual people who should respond to these issues to the plenary. Do you want to say something?

**Hon. Kihagi:** Hon. Speaker, this question expired with the last Session. I had requested for this Statement in early October and in spite of following it up with the Committee Chair and other Members, I have not been able to get any response from them. I can see hon. Gichigi is here and he can bear witness that I have really pursued their Committee on this matter. So, I would kindly request that we put this matter before a special Committee given that the farm workers were sent on compulsory leave last week.

**Hon. Speaker:** I can assure you that we are not going to send it to a--- We cannot set up a special committee to deal with a question. A Departmental Committee should deal with it. You have just said that hon. Gichigi is a Member of the Committee, but as you can see he is relaxing comfortably and he is not willing to make any commitment.

**Hon. Gichigi:** I can comment, but unfortunately I have forgotten my card.

**Hon. Speaker:** Use hon. Njoroge Baiya's card!

**Hon. Gichigi:** Thank you, hon. Speaker. Yes, indeed the Departmental Committee on Labour and Social Welfare is aware of the Karuturi issue and we had raised it with the Ministry who had indicated that they had sent officers there so that they can come and report on that particular issue. It is unfortunate that the answer that was prepared by our Committee has not been brought to this House. Can I commit myself on that? Since we are meeting later in the afternoon as a Committee, by next week Wednesday we should have an answer on that issue.

**Hon. Speaker:** Hon. Kihagi, is that okay?

**Hon. Kihagi:** That is okay, hon. Speaker.

**Hon. Speaker:** Very well. The hon. Omondi Anyanga.

#### GOVERNMENT PROGRAMMES ON PROVISION OF SPORTS CENTRES OF EXCELLENCE

**Hon. P.E.O. Anyanga:** Hon. Speaker, I am here. Thank you, hon. Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Labour and Social Welfare on the Government programmes on provision of sports centres of excellence throughout the country and particularly in Nyatike District.

Hon. Speaker, in the Statement the Chairperson should report the following:-

(i) the status of Government programme on provision of sports centres of excellence in the constituencies as one way of tapping and improving sporting talents of our youths;

(ii) the plan the Government is taking to ensure the sports centres are established in the constituencies and lastly,

(iii) state of the budgetary allocation for this project per constituency and timelines when this project will be implemented.

Thank you, hon. Speaker.

**Hon. Speaker:** Anybody from the Departmental Committee on Labour and Social Welfare? Hon. Gichigi, are you willing to comment again? Did you get the gist of the Statement being sought?

**Hon. Gichigi:** Sorry, hon. Speaker. I was engaged with my colleague here. I did not understand what he was saying.

**Hon. Speaker:** I must express my surprise at the fact that several Chairs of committees appear to be conspicuously absent at a time when they know their colleagues are listed. The Order Paper came out; it was there in the morning. They know that their colleagues are going to seek Statements. So, would you like hon. Anyanga to repeat?

**Hon. Gichigi:** Yes.

**Hon. Speaker:** Hon. Anyanga, repeat for the benefit of a member of that Committee.

**Hon. P.E.O. Anyanga:** Hon. Speaker it is quite painful to learn that the members of that Committee do not pay attention. I expected them to be more keen because this is something that is touching on our youths knowing very well that they are the majority. Let me repeat.

Hon. Speaker, pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Labour and Social Welfare on the Government programmes on provision of sports centres of excellence throughout the country and particularly in Nyatike District.

Hon. Speaker, in the Statement the Chairperson should report the following:-

(i) the status of Government programme on provision of sports centres of excellence in the constituencies as one way of tapping and improving sporting talents of our youths;

(ii) the plan the Government is taking to ensure the sports centres are established in the constituencies and lastly,

(iii) state the budgetary allocation for this project per constituency and timelines when this project will be implemented.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Gichigi.

**Hon. Gichigi:** Thank you, hon. Speaker. As you know this function of sports has mostly been devolved and I think if we are going to give a comprehensive answer, we might have to get our Ministry to also liaise with the programmes that the counties are implementing.

I will seek one month's duration to give that answer.

**Hon. Speaker:** Hon. Anyanga.

**Hon. P.E.O Anyanga:** Thank you, hon. Speaker. Since the Member has promised to give a more comprehensive answer, I am in agreement. Thank you.

**Hon. Speaker:** Very well. The next Statement is deferred. Hon. Jared Odhiambo Opiyo.

#### ILLEGAL IMPORTATION OF SUGAR INTO THE COUNTRY

**Hon. Opiyo:** Thank you, hon. Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Agriculture, Livestock and Cooperatives on the excess and illegal importation of sugar into the country and the stock piles that are currently responsible for the lax in the sales of local products and the attendant delay in payment of farmers.

Hon. Speaker, there have been reports of thousands of bags of contraband sugar worth hundreds of millions of shillings that have been impounded from supermarkets and godowns across the country by the Kenya Sugar Board (KSB) and there are reports that duty has not been paid on this sugar. In the Statement the Chairperson should inquire into and report on:-

(i) how this excess sugar got into the country causing a major stock pile and if duty was ever paid on the same;

(ii) whether the KSB, Kenya Revenue Authority (KRA) and Kenya Bureau of Standards (KEBS) approved of these importations and if so, he could table before this House the relevant documents;

(iii) if the Chairperson is aware that some unscrupulous sugar importers used dubious means to bring into the country the commodity under tax remission only to repackage it and release it into the market as local sugar and, lastly,

(iv) what the Government is doing to address this anomaly by way of intervention to cushion the innocent farmers and the local industry from the adverse effects of this illegal importation.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Nooru.

**Hon. Nooru:** Here I am hon. Speaker. Thank you. I am very sorry. The issue of sugar in this country is one that is known to every Kenyan because earlier there used to be some kind of quota for COMESA countries to supplement their shortage of production in their countries but it is just about 200,000 metric tonnes. We are aware of the excess sugar in the country and even millers cannot sell it in the market. That affects the farmers as well. However, we shall report the same to the Ministry and give the answer within the next two weeks.

**Hon. Opiyo:** Thank you, hon. Speaker. I think even though the matter is very grave, we are aware that actually the Chairman must go out and actually find this piece of information from other quarters. I recognise that you had indicated that it is high time we looked into the ways these Statements are given and probably come up with ways of even asking the Ministers themselves to present themselves in Parliament to give these answers because these issues are really grave. I think I will wait for the two weeks. Thank you.



**Hon. Washiali:** On a point of order, hon. Speaker. I rise on a point of order to ask what the Committee is supposed to do in the event that they finish their quota, because we have a petition which we have not given an answer to because the Committee does not have enough money to go round the country and seek for the information that is required. I am asking this because this question by hon. Opiyo will also require the Committee to move around and possibly go to Mombasa to find out what is exactly happening. Even us, as hon. Members of this Committee, have had issues because we represent sugarcane farmers. We are limited by the kind of funding that we get from Parliament so that we can address this.

**Hon. Speaker:** Well, hon. Musyimi should hear that because he is the one who should be coming with--- If he does not want Committees to work for the rest of the year, he will present to you and you, as hon. Members have a right to agree or disagree with him. You are the people with the power. My business will be to ensure that you do it with some decorum so that nobody hurts the other, both physically and politically. So, you do it in an atmosphere of comradeship and in accordance with our rules and traditions. So, I am sure that hon. Musyimi, who is sitting behind you, has heard that as a Committee you cannot even move around the country to fact find. I know that it is a matter which complaints have been raised by several other Committees, that they have exhausted their budgets and that the Budget and Appropriations Committee is seized of this matter. I do not know whether hon. Mbadi wants to give money to that Committee immediately.

**Hon. Ng'ongo:** On a point of order, hon. Speaker. It is true that really we are currently working on Supplementary Budget and this is one way through which Committees can get more funding. Of course, without anticipating debate, I am aware that there is request to increase the funding to Committees but we also need to caution or advise Committee Chairmen to be prudent in financial management in their Committees and to avoid unnecessary trips out of Nairobi to an extent that when it is now necessary, you cannot move but when it was unnecessary you moved to other places and exhausted your budget. So, it is two-way because we have to also apply austerity measures in Parliament as we do to other Government departments and Ministries.

**Hon. Speaker:** Well spoken! I could not agree with you further. Even Committees have a responsibility because what hon. Mbadi has said is true. I have seen Committees that have approved – you know what you have approved for your Members – to travel and do nothing related to the work of your Committees. Nevertheless, you have approved and so hon. Mbadi and the Committee chaired by hon. Musyimi also have a point. So when you go to them, just like they say, I am sure hon. (Ms.) Kajuju will find this music to her ears just like hon. Aluoch that when you go to equity, you must go with clean hands. So your hands must be very clean as Committees of the House so that hon. Musyimi, you know he is a clean man, if your hands are not clean, he is unlikely to look at you with favour.

**Hon. A.B. Duale:** Hon. Speaker, I am standing on a point of order to raise a matter that is very important to this House or to Parliament and to the country. There are three arms of government; the Executive, Legislature and Judiciary. In this Constitution, there are separate chapters on how they should run those independent arms of government. The Legislature is in Chapter Eight---

**Hon. Speaker:** Hon. Duale (*inadible*) by the Deputy Speaker but it was not brought to my attention that hon. Musyimi was to make a Statement relating to the issues that have just been alluded to a while ago.

#### BUDGET POLICY STATEMENT 2014/2015

**Hon. Musyimi:** Hon. Speaker, I would like to make a Statement concerning the Budget Policy Statement for the next Financial Year, 2014/2015. The Budget Policy Statement otherwise known as the BPS is, all hon. Members know, prepared by the National Treasury in line with Section 25 of the Public Financial Management Act, 2012. The BPS sets out the broad strategic macroeconomic issues and fiscal framework, priorities and policy course that will guide the national Government and county governments in preparing their budgets both for the following financial year and over the medium term. The BPS also guides public debate on economic and developmental matters. Section 25(1) requires of the PFM Act that the National Treasury submits the BPS to Cabinet for approval. Upon approval, Section 25(2) of the same Act requires that the National Treasury submits the BPS to Parliament by 15<sup>th</sup> February. In this regard the BPS 2014/2015 was submitted on 14<sup>th</sup> February, 2014. May I highlight the steps in processing the BPS.

The BPS 2014/2015, the medium term as I have said, was submitted to the National Assembly on 14<sup>th</sup> February, 2014. This implies that the National Assembly, Parliament, has up to 28<sup>th</sup> February, 2014 to adopt the BPS 2014/2015. This is based on the PFM Act, Section 25(2) and Standing Orders of the National Assembly No.232(1). Pursuant to Standing Order No.232(4), the Leader of the Majority Party laid the BPS before this House, yesterday Tuesday, 18<sup>th</sup> February, 2014. Upon being laid, the BPS was committed to the Budget and Appropriations Committee and deemed to have been committed to the respective Departmental Committees of this House. Each Departmental Committee is expected to deliberate and make recommendations regarding the broad policy issues they would like to see in the Budget 2014/2015. Thereafter, they are required to make recommendations to my Committee. It is expected that the Departmental Committees shall finalize their exercise by 21<sup>st</sup> February, 2014 and that is also guided by our Standing Orders.

Article 201 of the Constitution demands that there shall be public participation in all financial matters. In this respect, there will be need for my Committee to facilitate a stakeholder consultation which we hope will be held by 24<sup>th</sup> February, 2014.

The report-writing by my Committee will commence thereafter pursuant to Paragraphs 7 and 8. We shall include a schedule of ceilings of resources recommended for the national Government, the Judiciary and Parliament. That is in line with Standing Order 232 (6). If need be, my Committee may invite the Cabinet Secretary, National Treasury, Commission on Revenue Allocation and other stakeholders on 27<sup>th</sup> February this year, before finalizing the report. The approval of the report by the House will be done by a Motion and this we must, as I have already said, be done by 28<sup>th</sup> February this year. It will, of course, constitute the resolution of this House on that very important instrument.

Hon. Members, just by way of clarifying on the link between the Budget and Appropriations Committee, the Budget Policy Statement (BPS), Division of Revenue, County Allocation and Revenue Bill and also the 2014/2015 Estimates, I may just indicate the following; that the Report of my Committee on Budget Policy Statement will recommend to this House – and this is important to note - the ceiling for the Judiciary, the ceiling for Parliament - both Chambers - and the rest of the National Government. It will, therefore, set the vertical division of revenue. This is important because thereby, it will be making a very critical input to the Division of Revenue Bill and, ultimately, the County Allocation of Revenue Bill as is expected of us by Public Financial Management (PFM) Act, Article 25(7) and the Standing Orders 232 (7).

Finally, hon. Speaker, and you spoke with noticeable displeasure yesterday, my Committee is not amused by the pressures that we have been put under by the Treasury. The time constraints that have been put on us to consider the Supplementary Estimates and BPS at the same time, I think is unfortunate and we fully support your sentiments. We hope that the Treasury will behave differently next year. There was an indication from the Treasury that there might be another Supplementary Estimate. Our view is that, really, we do not need more than one Supplementary Estimate per one financial year. It is just too much work and it raises expectations that we cannot always meet, which does not help relationships within a working chemistry. I had actually hoped, were it not for the current pressures on BPS, to actually table my Report on the Supplementary Estimates tomorrow. I am afraid that may not be possible. We have been meeting all day today, we met yesterday and it would appear now that I may have to table that Report on Tuesday. Can I just say that, as the Committees gave their submissions to us, I thank the Chairs for the tremendous work that they have done. Please try and save some money, so that we can then use the savings to deal with some of the challenges that we have, especially challenges brought to us by the Parliamentary Service Commission (PSC). We were very keen not to be seen to favour ourselves, when we were approving the Estimates for 2013/ 2014 and so, there is a deficit, I know that once we make those recommendations and the numbers on PSC goes up, it will raise quite a bit of interest out there. But that is okay because we must deal with a deficit that we actually created ourselves. So, there will obviously be consideration for the request made by PSC. It will get priority attention by the Committee indeed, as we look at other committees. We are particularly concerned about the anti-graft organs and I do not want to go there because I will have the opportunity to make my case next week. I have in mind the Office of the Auditor General, the Ethics and Anti-Corruption Commission and the Controller of Budget. Those are the people who will help us deal with the problems at the counties. That is because there are problems.

As I sit - and this has not made me very popular with my Committee - when I hear Committee members saying that they have exhausted their funds, I find it a bit interesting. Can I tell you hon. Speaker, up to now, we have not travelled at all out of this country. That is because we wanted to make sure that we had enough money to do the work that has been given to us. We have made a sacrifice and I think that is what is expected of us in the public service because travelling overseas cannot be a priority when there is work to be done here for our people. I really would like to plead with other Committee Chairs that, before we undertake the trips, let us make sure that we have

sufficient money for local travel for investigations and for the work that is a priority for us here as Members of this National Assembly.

With those few remarks, I thank you. I look forward very much to tabling the Supplementary Estimates on Tuesday next week.

**Hon. Speaker:** Very well. I believe everybody has keenly listened and, of course, I know most Departmental Committees are still sitting. The rest of the country may not know. They just look at the Chamber and think that Members have boycotted the Chamber. I have allowed concurrently that the plenary sits while some of the Committees sit to interrogate departments of Government and Ministries, with regard to the proposals in the Supplementary Estimates as well as what is contained in the BPS. I know that there are some Committees which are meeting even as we are sitting in plenary because of the constraint that has been brought about by the late submission of various documents by the Treasury. We hope, as you say, that Treasury heeds and does not subject Parliament – and specifically the National Assembly - to this kind of a situation going forward.

Very well. Leader of the Majority Party.

**Hon. A.B. Duale:** Thank hon. Speaker. I was on my feet saying that there was a matter of great national importance. You lead one arm of the Government with your colleague, hon. Ekwee Ethuro, the Speaker of the Senate. The President runs one arm of the Government as the Executive and my good friend, the Chief Justice, runs the other arm of Government. In the last six months, there has been a situation where--- The three arms of the Government have their functions well documented in various chapters of this Constitution. Chapter Eight is for the Legislature, Chapter Nine is for the Executive and Chapter Ten is for the Judiciary.

On the outset, I want to say that this House and these Members of Parliament believe in the rule of law and we support that court orders must be respected. But the matter I am raising is above that. Article I of the Constitution is where this House or Parliament draws its mandate: “All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.” It goes on to say in (3) “Sovereign power under this Constitution is delegated to the following State organs, which shall perform their functions in accordance with this Constitution;-

(a) Parliament and the legislative assemblies in the county governments;

(b) the national executive and the executive structures in the county governments;  
and and,

(c) the Judiciary and independent tribunals.

So, the Constitution has given both these three arms their roles in terms of powers derived from the people. If you go to Chapter Eight on the Legislature, Article 94 which has a sub-heading “ESTABLISHMENT AND ROLE OF PARLIAMENT”, it reads:-

“The legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament.”

That has been stated very, very clearly. Again, that Article gives the powers of Parliament. It goes on to say in Article 94(2):-

“Parliament manifests the diversity of the nation, represents the will of the people, and exercises their sovereignty.” Article 95 is where these hon. Members draw their powers to represent, on oversight and legislate. It is Parliament – that is both Houses –

that has the powers to make, undo and amend laws. That power is not given to anybody else in this country. It is in the Constitution. It is same for our colleagues in the House of the Senate. Article 96 gives them those powers. If you, the leaders of Parliament, the leaders of the Executive and the leaders of the Judiciary do not sit, the end result will be a constitutional crisis or coup where every arm of the Government will decide to do whatever they decide. This will lead to a serious constitutional crisis. It is a matter that is very serious. Why do I say this? This House dealt with a petition in the last Session to set the process of investigating that Commission that will end up in the formation of a tribunal.

Parliament, under the Constitution, did what was to be done through the process. A Member of the public brings a petition, a Committee of this House looks at it, a report is tabled and Parliament forwards that resolution to the Executive and the President is obliged by the Constitution to form a tribunal. That tribunal is yet to be formed or has been formed but it cannot be sworn in because of the issues that I am raising.

Hon. Speaker, Article 125, and this is the crux of the matter of today--- Today, nine governors went to court because they have decided that they can continue with the culture of impunity and that they can defy the Auditor-General and the Director of Budget which are independent offices.

Under the Public Finance Chapter, the creation of the Auditor-General's office is well expounded. If these governors or any Kenyan is summoned by a Committee of Parliament, he decides to go to court, that Kenyan will get an order not to appear before the Committee of the House. Article 125 on the power to call for evidence says:-

“(1) Either House of Parliament, and any of its committees, has power to summon any person to appear before it for the purpose of giving evidence or providing information.”

Why did Amos Kimunya appear before the PIC the other day? Why should Cabinet Secretaries appear before House Committees? Cabinet Ministers will say that they will not appear before Hon. Mutava Musymi for the Budget's scrutiny. The Cabinet Secretary for the National Treasury can say that he will not table the Budget Policy document by 15<sup>th</sup> February and instead of bringing the documents here he will walk to court, get an order and nothing happens.

Hon. Speaker, Article 125 says:-

“(2) For the purposes of clause (1), a House of Parliament and any of its committees has the same powers as the High Court.”

Hon. Speaker, it is very ridiculous. It is a contradiction. If a Committee of this House or the Senate has the same powers of the High Court and a High Court is now giving orders to disregard the summons of that Committee, I do not know where we are heading to.

*(Applause)*

I do not know where the Judiciary is heading in this country to. This is a matter of national debate. This country needs a national debate conference on how the three arms of the Government can work together.

Hon. Speaker, this is a very serious matter. This Article is giving a Committee of Parliament the same powers but the same High Court is saying “No”.

To some of us who were marginalized for 50 years in successive governments--- Our people have no water, roads and health facilities. In all the worst indicators in any report, we are number last. We chose the route of devolution because we wanted to manage ourselves.

Hon. Speaker, we have governors, and I am sure that my colleagues will agree with me. We have governors who fly choppers 24/7. We have governors in northern Kenya who have rented offices for Kshs1.5 million a month. Which building is in Wajir, Mandera or Garissa that can give you rent of Kshs2.5 million?

It is ridiculous.

When the Auditor-General, an independent office that this House respects gives his first four months score card--- Summons of a House under Article 96 of the Constitution gives powers to the Senate to oversee county and county governments. If you are saying that the Senate cannot summon governors, then it should just pack and go and we should not have it.

*(Applause)*

As per this Constitution, if the Senate cannot oversee, summon governors and ask them questions on the Auditor's reports and the Director of Budget's queries, we do not need to have the Senate. We should not have the Senate Committee on Finance. The High Court which gave the summons can as well turn into a Finance Committee of the Senate and hon. Judge Mumbi Ngugi should become the Chairman of the Senate Committee on Finance.

*(Applause)*

I mean it is a serious matter. We do not want to discuss that but we want to respect the rule of law. We want people to obey the order.

However, tomorrow, somebody will go to court and say that he challenges the calendar of Parliament which we approved last night in the House Business Committee and will be gazetted tomorrow. The courts will say that Parliament will not sit and the National Assembly cannot even discuss the Budget of the national Government; that we should not have a Budget. This is a serious matter. The leadership of the three arms of the Government---

Hon. Speaker, you have no choice. We do not want to go into a constitutional crisis. We had the best Constitution in 2010. We claim to have the best reformed Judiciary and the best Executive where this House approves the leadership of the Executive or the Cabinet Secretaries.

We have the best bicameral Parliament. Today, there is no constitutional crisis in Somalia and South Sudan but this is in a country that is respected very much. This is a matter I thought that maybe I should sit down because there are a number of my colleagues who will have their say.

The Controller of Budget under Article 228 and the Auditor-General under Article 229 have specific roles. I was shocked when I watched last night Alfred Mutua. You cannot walk with my Kshs1 million from Garissa County and say that you have paid

for a burial expense in Homa Bay, Nairobi, Kisumu or Nyeri. I say this with a lot of respect for Alfred Mutua. That is ridiculous because the money belongs to the people of Kenya. Devolution is not about burial expenses. My good friend launched 70 ambulances. I am not against him but what is inside those ambulances? Is it a full medical ambulance? I want to thank the Governor of Kitui because he did not go to court but he appeared before the Senate Committee on Finance. He has offered leadership.

*(Applause)*

I want to tell my good friends, Ken Lusaka, Isaac Ruto and Kabogo that they can be in the corridors of courts for the next three months but ultimately they have no choice other than to appear before the Finance Committee of Parliament.

*(Applause)*

Hon. Speaker, I need this to be a serious matter. I am sure that the President, the Chief Justice and the leadership of Parliament, you and hon. Ekwee Ethuro--- This country must have a serious dialogue conference. Every arm of the Government must respect the boundaries and the routes that it covers.

I am a Member of Parliament and this Constitution gives me powers to summon somebody. Nobody can deny me that. I am raising these issues because tomorrow you will see people going to court. I bet nobody will appear before Parliament in connection with some of the most controversial investigations that Parliament will be carrying out. On the most controversial probes that Parliament will carry out and Kenyans want answers, nobody will appear because they will walk to Milimani Law Courts, the courts around here or the Magistrate's court---

Hon. Speaker, I want to make it clear as I sit down that we want court orders to be respected. However, we want court orders to be given on the primacy of the Constitution and on the independence of each arm of the Government.

Hon. Speaker, I rest my case.

*(Applause)*

**Hon. Speaker:** Members, I can see so many of you want to say one or two things. Please, make it brief. Let us avoid naming individual judges because then you will be required to go through your own Standing Order No.87. Hon. Aluoch.

**Hon. Aluoch:** Thank you, hon. Speaker. I am glad that the Leader of the Majority Party has brought up this matter because it is a very serious matter. Indeed, in my view, for the last six months culminating in the orders of the court yesterday, the Judiciary is courting anarchy and very serious constitutional crisis in Kenya.

First of all, lest any of us in this House stands to think that what we are discussing goes against the rule of *sub judice*, we should understand that this is not so. This is a path that Parliament has trodden before. On 27<sup>th</sup> November, 2008, in the Tenth Parliament, when Parliament was debating a Bill to disband the then Electoral Commission of Kenya (ECK) chaired by the late Samuel Kivuitu, Mr. Kivuitu and 22

other Commissioners went to the High Court in Nairobi seeking orders to stop Parliament from debating any Bill that purported to remove them. They filed in the High Court Nairobi, Judicial Review Petition No.689 of 2008, Samuel Mutua Kivuitu and 22 others versus the Attorney-General. When the court issued an order stopping Parliament from debating that Bill, I raised the issue in the Tenth Parliament and your then predecessor, hon. Marende, took views of the Members of Parliament extensively and finally, he made a ruling. That ruling is as alive then as it is now. This is because, then the order that was issued by the High Court read as follows:-

“A conservatory order be issued to restrain the Government of Kenya from taking or commencing any executive or legislative action or process to disband the or abolish the ECK and/or remove its members from office pending the hearing and determination of this application”

This is not different from what was tabled before the Senate. Your predecessor made this ruling and referred to the Powers and Privileges Act, Section 12 that:-

“No proceedings or decisions of the Assembly or the Committee of privileges acting in accordance with this Act shall be questioned in any court”.

That law is as valid now as it was then. No action by Parliament can be questioned in any court. Our Constitution, Chapter Eight creates the Legislature and Article 94(1) and (2) are very clear in their provisions. The legislative authority of the republic is derived from the people and at the national level, it is vested in and exercised by Parliament. That is a role that cannot be taken away from Parliament. That is a role that is not replicated in the statute and in the Constitution that creates the Judiciary. This is special to Parliament and no other. Judiciary is created under Chapter Ten of the Constitution, but the terms of the creation of the Judiciary under Chapter Ten are not the same as under Chapter Eight.

Under those circumstances, I would expect that the Senate must have the teeth to bite and say: “No, we have the role to interrogate governors and to look at what goes on in our counties”. That is their role and which nobody can take from them. Indeed, I agree with the Leader of Majority Party that if the Senate agrees that it cannot perform that role, then they have no business being called the Senate.

Hon. Speaker, in view of this consistent trend by the members of the Judiciary, whom I have a lot of respect for and many of whom I know as fairly brilliant lawyers, why are they behaving like this? We must wake up now. I urge you when you give direction on this issue to have regard to what your predecessor said referring to that Motion in the last Parliament when he said:-

“Hon. Members, this House retains the right to be the sole judge of the lawfulness of its own proceedings. Accordingly, Parliament cannot be stopped or prevented from performing its legislative function. Any person or authority purporting to do so would be acting in vain. The Speaker of the National Assembly is under a duty to protect the constitutional authority and role of Parliament and as your Speaker, I will diligently perform this role and jealously guard the constitutional authority of Parliament”.

If the Judiciary does not wish to bring this country to a state of anarchy, then judges must be cautious when they exercise their authority because the moment they enter into the arena of legislation, then they are courting that anarchy. I urge you, hon.



Speaker, in your wisdom, to issue a ruling that will resound not just in this House, but will go to the extent of reaching the Judiciary, so that we can have a state of lawfulness.

I agree and I ask for your direction the way the Leader of the Majority is asking.

**Hon. Cheptumo:** Thank you, hon. Speaker, for giving me a chance to speak to this very important issue. I wish to thank the Leader of the Majority for raising this very fundamental issue. What is before the House is an issue that I believe the Kenyan people are equally concerned about just like the Members are. If you read the Oath of Office that was taken by the Judiciary; the judges of the High Court and the Judges of the Court of Appeal, it is very clear. I wish to refer to it because no judge of the High Court or the Court of Appeal is serving in that office without taking this Oath of Office.

It says that:-

“I, the Chief Justice (and names them in that order) do swear in the name of the Almighty God to diligently serve the people and the Republic of Kenya and impartially do justice in accordance---” I just want to read the relevant part. “That I will at all times and to the best of my knowledge and ability protect, administer, defend this Constitution, with a view to upholding the dignity and respect of the Judiciary”.

That affirmation was not issued in vain, just as much as we took oath of office, and we are bound by that particular oath. The members of the Judiciary, particularly the judges, are learned Kenyans who fully understand the Constitution and the laws of this country. I want to agree with my learned senior, hon. Olago and the Leader of Majority Party that what the Judiciary is purporting to do, in my considered view, is actually unconstitutional.

We are here to raise issues in this country, which we feel are not going right. The Leader of Majority Party spoke of a national dialogue. Before we think about it, we need to call upon every Kenyan, especially in the Judiciary, to respect the law. This is because we are a country that believes in the rule of law. We do not even need a national dialogue; if we go that direction, perhaps, we will actually become a country that is not able to proceed with its national issues.

Allow me to just refer to the role of the Senate, because I do not want to dwell on what my learned senior has said. Article 96(1) of the Constitution, which is very important for us states: “The Senate represents the counties, and serves to protect the interests of the counties and their governments”. Article 96(3) says: “The Senate determines the allocation of national revenue among counties, as provided in Article 217, and exercises oversight over national revenue allocated to the county governments”.

*(Applause)*

Hon. Speaker, why were the governors being invited to appear before the Senate? It is simply because of issues relating to the expenditure of the money allocated to the counties by the Senate. It will actually be shocking if the governors will not appear before the Senate. It is not a matter of choice; it is actually mandatory. The use of the word “shall” shows that they have no choice but to appear.

I want to join my colleagues here in saying that sitting where you are sitting hon. Speaker, this country and the people of Kenya would want to hear the voice of this House. What are we saying? We are not going to keep quiet when we see our people,

whom we represent here, being denied the benefit of the resources that have been given to be utilized. Our people today are suffering in so many ways and it is upon us---I wish to also thank you as you have been very firm and clear about the issues that have been arising in this country.

Hon. Speaker, I would like you, with the wisdom you have - I know your rulings have always been very sound and based on law – to exercise your mind and wisdom and give direction and a ruling that is going to show Kenyans that this House is awake to what is going on in this country.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Members, may I request that because a lot of the issues which appear to be quite touchy touch on our sister House--- I can see that several of you have placed requests. I agree with the sentiments expressed that this matter is of great importance in the country. It is only fair that we have as many views as possible. Can I request that you try as much as possible to summarize your views. I know it is not very easy, especially for those who may have researched the law.

Yes, hon. Omulele.

**Hon. Omulele:** Thank you, hon. Speaker, for giving me a chance to speak on this very important issue that is facing our nation today, and at this important time. I want to join hands with my brothers who have spoken before me. It is important for us to look at the Constitution, and exercise our roles in this great Republic with respect to it. The Constitution is clear that we have a legislature, which is the manifestation of the wishes of Kenya and which legislates for Kenyans. If we are going to cede the role of legislation to the courts in this country, we shall be courting disaster.

Having heard what your predecessor, hon. Marende said, he determined this matter in line with the common practice in the Commonwealth and worldwide. I want to add my voice and say that the courts must not hobble the business of Parliament in legislating. We must put out a very clear voice, and say that Parliament must legislate. Let the courts interpret the law that has come from these Houses, but should not legislate; that must remain for us.

My brothers have spoken to the very clear provisions of Article 95 and 96(3) of the Constitution; they give the mandate to the Senate to determine and interrogate matters concerning finances that are sent to our counties. I do not think that needs a lot of intellectual interpretation for the courts to see; these are the wishes of the people. If we move on this way, we may be forced - with respect to your directions that we should not name these judges - to come up with a particular Motion to name these judges, discuss, call them here and give them a crash course on constitutionalism and separation of powers, because we cannot go on like this.

Thank you very much for giving me this chance.

**Hon. Speaker:** Yes, hon. (Ms.) Kajuju.

**Hon. (Ms.) Kajuju:** Thank you, hon. Speaker, for giving me this opportunity to speak to this issue that I consider to be one that calls for a national intervention. I know that you have been in the Judiciary and served this country in that institution. You are aware that for an injunction to be issued there must be principles that must be followed. All of us who have practised and passed through a law school are aware of the *Giella vs Cassman Brown* ruling, which guides the courts on when an injunction should be granted.

When I was an advocate, we would persuade the courts to grant injunctions on the basis that there was a *prima facie* case that could be proved. What I am seeing today is failure to use the principles that are supposed to be looked at when one is granting an injunction. There is total interference in other arms of Government; this Constitution that we passed on 27<sup>th</sup> August, 2010, clearly sets out the principle of separation of powers.

Hon. Speaker, I have looked that the Constitution, Article 10 of the Constitution talks about national values; the core values that every State officer in this country is bound by. What we have seen today is that, much as the Constitution demands on me as a person to exercise the principles of good governance, transparency and accountability, we have this monster we created; devolution. Governors have refused to submit themselves to the principles of good governance, accountability and transparency. The question is: How then is the Senate expected to exercise its oversight role, if a State officer cannot bring themselves before the Senate for purposes of accountability?

Hon. Speaker, it is not that public funds are not being misused. They are misused left, right and centre. We are seeking that there be public participation in governance at the county level and that has been lacking. That is why I will be calling upon this House, when we come to look at the county service boards, the Bills that are brought before this House, the National Assembly passes them because we need them at that level.

Therefore, I agree that there is a problem and the sooner we confront this problem, the better for this country. This country is at cross-roads and this is being caused by none other than the Judiciary; they expect that every other arm of the Government is submissive to them. This was not the intention of the drafters and makers of the Constitution.

I rest my case.

**Hon. Ng'ongo:** Thank you, hon. Speaker. I think the matter that has been raised by the Leader of Majority Party is weighty and even from the discussion from our colleagues, you can easily notice that this is a matter that is not very simple. When Kenyans decided to separate power between the three levels of Government, it was for obvious reasons. I was looking at this Constitution and I decided to read three articles. The first one was Article 94(1) which reads as follows:-

“The legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament.”

I wanted my colleagues to take note of the wordings of this particular paragraph. It starts at the legislative authority of the Republic and is derived from the people. So, the people are donating or delegating that power to Parliament.

Hon. Speaker, if you go to Article 129 of the Constitution, it also talks about the Principles of Executive Authority. Article 129(1) states as follows:-

“Executive authority is derived from the people of Kenya and shall be exercised in accordance with this Constitution.”

Again, this is power that is donated by the people of Kenya to the Executive. Article 159 talks about the Judicial authority and the same Judicial authority is again derived from the people and vests in, and shall be exercised by the courts and tribunals. Therefore, it comes out clearly that all these powers are with the people of Kenya, but the people of Kenya decided to delegate the three powers to the three organs separately. The Executive is given its powers; the Legislature is given its power and the Judiciary is

given its power. If we have to respect the people of Kenya, the best thing to do is to respect the delegation that they decided to give to each arm of Government. That should happen to Parliament, Judiciary and the Executive.

Hon. Speaker, I think we should be very worried if the courts are issuing order to stop Parliament from transacting any business. I would have wished that the Judiciary waits for Parliament to make a decision and then they interpret the law. If they feel that Parliament has not followed or obeyed the legal or constitutional provisions; there is nothing wrong with the courts pronouncing themselves on the decisions we have made. Even a few months ago, twice or thrice we heard Judiciary comment on some of the decisions that Parliament had taken.

Hon. Speaker, we have given you a very difficult job of making a ruling on a matter that is putting the Legislature at conflict with the Judiciary. I would request that, even as you make this determination, you need to take a step as the head of the arm of Government that feels aggrieved, to reach out to your counterparts from the Judiciary, so that it is not seen as if it is a war between the Legislature and Judiciary. There is not going to be any winner or loser, it is the people of Kenya who are going lose. We would like to see a situation where we are not forcing the Judiciary to do what they do not want to do, but we are asking them that they are overstepping their mandate. If it is a matter of being excited, we ask then to please, do it to some level so that we are also allowed to operate.

Finally, even as I say that, I would also like to point out that even as the Legislature, we would also need to be a little bit more careful. For me, I would be reluctant to really condemn governors. I know this may not be very popular with my colleagues. Allow me to say it. If you look at the Public Finance Management Act, Section 24 - if I knew this matter was going to come up, I would have carried it - it is clear that in matters of accounting and explaining expenditure at the county; that responsibility is given to county treasuries. I do not know what is so difficult; why do Senators not invite heads of treasuries at the county level so that we do not have governors leaving their stations to come and sit in Nairobi to discuss issues they may not even have the technical capacity to explain? I am saying this because I am a finance person. I know the governor, just like the President may not have the capacity to explain the day-to-day running of the various departments in the counties.

Lastly, sometimes when we pick reports from auditors - with all due respect to the Auditor-General – we find that they are misinterpreted. I have no doubt in my mind that sometimes, some of the accusations that we are flying left, right and centre, may not actually be true. If we are saying that governors have stolen money, let the report be debated first. I have seen it even in Public Investments Committee (PIC). I have sat in PIC for five years. I am currently sitting in Public Accounts Committee (PAC). Sometimes you find auditors' reports coming before committees and when you interrogate them, you realize that documents for verification were there, but the auditor did not go back to the office to check.

*(Loud consultations)*

No, I am speaking from experience and please, let us tolerate each other. You may have your views about the governors, but I also have mine. I know there are excesses in as far as governors are concerned, but we should also not be very unfair to them. In this country, we are adopting this devolution. We support this devolution. We may think we are helping devolution, yet we are fighting devolution. Therefore, even as I agree that the Senate was perfectly in order because that is what is provided under Article 96; they play oversight role on the national revenue that is given to counties, I do not see why it was difficult for them to invite the relevant officers in the county to answer those questions. That is what we do in Parliament. We used to invite Permanent Secretaries and not Ministers as the accounting officers.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Members, I think it is only fair to allow everybody to state their case and hon. Mbadi is at liberty to express himself. Even if you do not agree with some of the things he says, he has a right to say them.

Hon. Baiya!

**Hon. Baiya:** Thank you, hon. Speaker, for giving me an opportunity to make a contribution. I would also wish to thank the Leader of Majority Party for raising this matter which is a sensitive one given the interest the Members have shown. However, with respect to my learned colleague, this matter did not arise within the conduct of business within this House. So, we may raise it, but I am not sure that it is available for you to make a ruling on now that it is a matter that did not arise from this House, or the Senate.

Nevertheless, the recent trend that we have witnessed about the Judiciary does, indeed, raise challenges about the process of implementing the new Constitution. This really does indicate the need, as has been foreseen all along, for the Government and the State organs to actually have a forum where they can really be communicating. As far as we are concerned, it is clearly the role of the Senate to protect devolution in this country. It is the mandate of the Senate to protect devolution in this country. If for any reason the Senate feels that the conduct of some senior State officials is posing a threat to devolution then it is clearly within their mandate to summon such officers and even pose such questions as they may really wish to those officials.

In this particular case, it is so obvious. A report was presented to the Senate from the Controller of Budget raising issues about challenges in the process of implementing the Constitution. The Controller of Budget was complaining to the Senate that the governors or those State officials, in whose capacity it is to respond to this question, cannot actually respond when asked by the Controller of Budget. If the High Court comes in and stops that process then it is laying a deep seated question: What is the contribution and the intent of the Judiciary in helping this country realize devolution?

Hon. Speaker, if you look at the Constitution, it actually grants powers to the High Court, especially in Article 165(3)(b) and (d). That is the provision that grants the High Court power to exercise constitutional interpretation in any controversy. The same Article at section (4) requires that the High Court, in exercising such power, will have to have at least an even number of judges sitting. That is a precaution to ensure that decisions are not made more or less un-procedurally but through a process where the court can actually give a very considered and cautious decision.

Within our constitutional principle, the roles of both Parliament and the High Court are very clearly separated for very obvious reasons. It is that both are creatures of the Constitution and they have independent roles to play. Obviously, it is upon each of these institutions to safeguard their own independence. To this extent, if one of the institutions is encroaching onto the territory or turf of the other, the other institution has a retaliatory right to assert its own independence.

The High Court is exposing itself to the problem where Kenyans can run from institutions asserting their own independence and then they can defy the High Court. This is actually one of the problems the High Court is bringing itself to. It is issuing orders that are not going to be obeyed and in the process ridiculing the process of respect for the law in this--- (*technical hitch*) It is allowing itself to be misused and this is very dangerous. It is a threat to the rule of law and the new constitutional dispensation.

**Hon. Aden:** Thank you, hon. Speaker for giving me this opportunity to speak to this very important matter. First, I wish to really thank the Leader of the Majority Party, hon. A.B. Duale for bringing this very important issue to our attention and for discussion this afternoon.

Much has been said about the powers given to Parliament and in particular the Senate with regard to the management of the issues of the counties. Article 96 of the Constitution has been quoted again and again. It is about the responsibility of the Senate, that it represents the counties and it serves to protect the interests of the county governments. Protecting county governments dictates that anything that is of harm to our county governments--- Devolution must succeed. Devolution must work. I believe this House is committed to that endeavor and Senate has done a noble job. This is in as far as acting on the information given to them by the Auditor-General and the Controller of Budget who represent independent commissions. They are endowed with the authority to be able to ensure that they produce reports that point to the utilization of public funds.

The Senate is doing its job. Interference by the governors or disobedience by the governors to ignore the call of the Senate is against Article 125. The first part of that Article gives this House and the Senate the power to summon anyone. I want to turn the attention of hon. Members to Article 125(2) which actually states,

“For the purposes of Clause (1), a House of Parliament and any of its committees has the same powers as that of a High Court---”

How can one committee, which has been given the powers of a High Court by this Constitution, be ignored and then you run to a High Court to get an order to stop the summoning by that particular committee? That is in total violation of this Constitution. It should come out clearly that ignoring any House of Parliament is disregarding this Constitution. Doing that is violating this Constitution and that cannot be entertained. The manner in which governors are running around is a clear indication--- It is not the Senate that produced the evidence to say that these are the issues that need to be investigated, it is the Auditor-General and Controller of Budget. Senate is doing its role and it must be respected in that regard. If what the governors are doing right now, which is to disregard Parliament, is not brought under control there is going to be anarchy. There is going to be lack of rule of law. This is the supreme law of this country and disregarding this by running away from summons given by the Senate or appearing on national television and saying that you have no regard to the summons by the Senate when the Constitution is so

clear that the order is as good as the order of the High Court, is not right. Why is the Senate being challenged for refusing to honour the order of the High Court when they themselves have been given powers under this Constitution, of the same authority as that of the High Court, yet their summons have been ignored?

In the interest of giving my colleagues the opportunity to discuss more, hon. Speaker, I want to say that the leadership of both Houses should come up with a way forward and give a substantive ruling that will end this impunity.

Hon. Speaker, I join my colleagues in calling for a ruling on this matter. Thank you very much.

**Hon. Speaker:** Hon. Members, I know that there are quite a number of you who are waiting to speak, but even as you address this matter, a lot of the issues that have been raised touch on what is happening in the other House. I take it that this is an expression of solidarity and that whatever ruling or direction that we take must be in concert with the other House. Therefore, there will be need for the Speaker of the Senate and I to sit with whoever else may be necessary, to come up with some way forward. Some of you have heard expressions to the effect that once a court order is issued, the first thing is to obey it and then you can question it later. That is the point that the Leader of Majority Party raised. This is because it has been argued that failing to obey is therefore failing to adhere to the doctrine or the principle of the rule of law.

So, the question to ask is: Should every order from courts be obeyed? If that is so, visualize this scenario. We have already embarked on the Budget making process. A while ago, hon. Mutava Musyimi indicated that they are going to do some public hearing on Monday 24<sup>th</sup>. So, a member of the public who knows that it is a requirement for public participation runs to some court, “to some court” mark my words, and on the day that hon. Mutava Musyimi is about to present his report as he has indicated on 28<sup>th</sup> of February, on 27<sup>th</sup> somebody obtains an order that says that the National Assembly should not discuss that matter because they have not been heard or if they have been heard, they think that the issues they raised have not been incorporated in the report. An order is issued that the National Assembly should not even attempt to sit and discuss until the matter is heard and determined. Is that therefore to say that the sittings of this House and of the Senate will be subject to control by the Judiciary? I am sure the Legislature is very clear that we ran away from the control of the Executive and everybody wants to operate independently, but how is this interdependence going to play out?

So, if an order of that nature were to be brought is that to say that therefore, I would say, “Ladies and gentlemen, Members of the National Assembly, I tell you you are not going to sit for the next few days until we are told when we next sit?” These are some of the things that seem to bother me. It is true that we want to respect every arm. Indeed, I think Parliament has over the years respected the other arms but you know there must be a limit. If we are told that certain things are not included in the Budget highlights, are we saying that Parliament should not sit until the matter is heard and determined? These are the so-called conservatory orders which my predecessor, the hon. Kenneth Marende, referred to in that ruling which was referred to by hon. Olago Alouch. Is it a situation in which then only the Judiciary will tell the other arms of the Government what do to, when and how?

Hon. Jimmy Angwenyi.

**Hon. Angwenyi:** Thank you hon. Speaker for giving me a chance to contribute to this Motion. We should thank you for allowing us to discuss this matter. I am not a legal person. I am a normal citizen of this country and over the years I have learnt what each branch of Government does. One thing I have learnt in my four entries on the Floor of this House is that the courts cannot injunct the Legislature. They cannot, the same way you cannot stop them from making their decisions in the courts.

Hon. Speaker, the matter before us is a matter between the Senate and the governors. The previous Parliament, I am sure maybe was asleep like I was sleeping a little while earlier, gave the governors some sense of importance beyond what they are. Two or three weeks ago one of the governors said we have got 48 equal governments in this country. That is to say that governor, who is the chairman of a council, is equal to the President of the Republic of Kenya. Do you understand? The Judiciary is trying to promote that.

Hon. Speaker, the Senate is there to oversee the devolved governments. If they fail to do that, who will do that job? This House is there to tax Kenyans so that they can provide services to Kenyans. Will we be allowed to tax Kenyans and give money to the devolved governments which have refused to work with the Senate?

Hon. Speaker, this matter has come at the right time when we are doing our supplementary estimates. I would propose that we reduce the money we gave them from 32 per cent to 15 per cent, as required by the law. They will use it well and the Auditor-General will confirm that they have used that money well before we can give them more funds.

*(Applause)*

Hon. Speaker, the Judiciary seems to act like the Executive and the Legislature. We also must bring some sense to their heads. I remember we did not reduce their last budget by a cent- I understand hon. Mutava Musyimi is not here; he has left, but pass the message to him. When he was reducing the Budget by Kshs5.4 billion he never touched a cent for that Judiciary. That is why they have assumed this kind of importance. Their budget was not touched, but we touched that one of the Executive and the Legislature.

So, hon. Speaker, we are the people's representative. We are the ones who passed that Constitution. We can even amend it even if it means we go to a referendum. The Judiciary cannot amend that Constitution. That is our product as the representatives of the people of Kenya.

So, hon. Speaker, I again thank the Leader of Majority Party in this Parliament. He is increasingly convincing me that he will be the next President after Ruto .

*(Laughter)*

With those few remarks, I beg to support.

**Hon. Ochieng:** Hon. Speaker, I want to join the rest of the House in this debate. I want to start by saying that on this issue, there must be dialogue because we are soon grinding to anarchy in the country. If the courts can decide that they will rule the way they like; Parliament decides they will work the way they like and the Executive decides



to work the way they like, then soon no one will respect the other. In that dialogue, remind the people you are going to talk to that we have a Constitution in this country. In Article 1, it is very clear; it apportions responsibility and duties to the separate organs of this country. It says that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution. It goes on to say that there shall be three arms that shall exercise power; the Executive and county governments, the Judiciary and independent tribunals and the sovereign power of the people exercised at the national level and county governments. These powers are abused by the courts, Parliament and the Judiciary. Remind them that ours is a constitutional supremacy; not Judiciary supremacy; Parliamentary supremacy or Executive supremacy. Remind them that it is constitutional supremacy; we follow the law. In this law that we have, it allows Parliament to control its work through its laws; through the Standing Orders which must comply with the Constitution. In my mind no one in this country has gone to court to challenge our Standing Orders. Our Standing Orders provide for our internal ways of doing things. It provides for internal process that this Parliament goes through when passing the law; when passing a Motion or when making whatever decision. Our Standing Orders provide so. No one – I have not seen anybody go to court to say that a part of Standing Orders is against the law. Remind them that as they discuss whatever they are discussing in courts, let them know that in Zambia, less than two years ago, a similar case occurred when they were trying to remove the immunity of the former president, Rupiah Banda. Someone ran to court saying that you cannot discuss that matter. The Speaker then – I will invite you to look at that particular precedent – said that: “I agree that the courts can make an order but on this one, the court is wrong.” So the Speaker put aside the court injunction and they proceeded. I do not support the removal of immunity of presidents who have served but the principle therein is that you must allow the courts---(*power failure*).

The doctrine of separation of power presupposes that Parliament be allowed to work, do its job and if someone thinks that something is wrong with what Parliament did, then they can go to court. I want to state this clearly that we agree that courts have a very important role to play in this country and they can actually annul whatever this Parliament decides. They can do that but the courts must wait. They must take their time. They must wait for the right time to interpret. Let them not come so fast. Let them not interfere with parliamentary processes. If a law provides that this is the way we will impeach a governor, that the MCA shall act, then it is a process provided for very well in the law. It is self propelling. It does not require courts’ intervention; it is self propelling that MCAs act, you get to the Senate, the Senate has to sit within seven days, then they must form a committee which must sit within ten days and decide. It is self propelling. Then the courts wait and then say: “Look, Parliament has sat, they have said this and that but we think that they erred in this or that place.” That is when they come in; at the end of the process. They cannot come in between.

Hon. Speaker, remind them that the laws that we have in this country were made knowing very well that there are three arms of government; we have the Executive, the Judiciary and the Legislature. We have set a precedent in this country that Parliament made a decision here recently on the Judicial Service Commission (JSC) issue, then a judge goes and decides differently and we are now seeing a case where we do not have a

JSC. If JSC had members who have question marks on their heads because Parliament has said that they should be removed, the President cannot move because the courts have said that they are superior. The laws are very clear that Parliament is the representative of the people and there is no day courts will be ahead of the people. The courts can follow the people and the people have said what they want through the Constitution, through Members of Parliament and the Senate. So who are the courts to come and start saying that they will decide for us when we should sit to discuss a matter or how we sit to discuss a matter? In this country, some cases take up to six years or ten years to conclude. So what happens on a day when the courts say that Parliament cannot discuss this issue until a judgment is made? Parliament will wait for six years to discuss an issue because the courts have said so. This Parliament has its own original jurisdiction; original, not borrowed; not given by anybody, it is original to decide on how this Parliament will act.

None other than you decided in the last Session that Parliament will act according to the law and we will not allow anybody to interfere with the way we work. What I am seeing now is like the courts are saying that Parliament is and, therefore, we must show them how to work. This is not the way it used to be. Even in those dark KANU days, courts used to respect Parliament. We must allow the courts to do their work but we cannot allow the courts to be ahead of the people.

Remind them when you meet them again that Parliament will always work conscientiously. Parliament will always work in the interest of people and there is no day Parliament will try to kill the people of this country. We will always work to ensure that the people of this country are protected. The courts cannot purport to want to protect the people. That is not their role. Their role is to interpret the law; to arbitrate. They are discussing issues that concern our people, deciding on how this country belongs to this Parliament and that is so because of the Constitution. As a lawyer, it pains me so much that lawyers go on television to misrepresent the law. We were discussing the Law Society of Kenya (LSK) Act yesterday and today and the first objective of the LSK is to help this country in guiding how law is implemented and enforced yet a lawyer goes on television to say that the Senate cannot summon a governor. It is shameful and it becomes more painful when a chairman of a commission, the Commission for the Implementation of the Constitution (CIC) goes there to misguide the country and whip emotions. We must put our feet down as an Assembly and say that we will work regardless of what someone thinks.

**Hon. Speaker:** Hon. Members, what are we going to do?

**Hon. Waiganjo:** Hon. Speaker, there is no ambiguity in this Constitution about the roles of the three arms of Government. It is a Constitution that was passed by Kenyans but increasingly we have seen what the Judiciary has done. We have seen them make the legislative action of Parliament injunctioned before it even gets to a conclusion by way of giving holding orders to premature applications. I want to thank the Leader of Majority Party for bringing this matter to the plenary of this House. I do not want to belabour the point because most of my colleagues who have spoken before me have made eloquent submissions which should be clearly heard by the Senate and the Republic of Kenya. But I also know that there are other processes that have put this House to embarrassment. We know that a Committee of this House sat, recommended to the President to form a tribunal to remove the JSC members. The President in his wisdom

proceeded to carry out his mandate and formed that tribunal. The JSC went to the judges within the court and the tribunal was stopped. Now they have shortlisted judges and the President will not swear them because he does not recognize the legitimacy of those people who are calling themselves the JSC. So, we want to see firm action by other institutions that appear to be quiet when all this is happening. There are constitutional commissions as well. We want the Attorney-General of the Republic of Kenya to come out clearly and give a way forward as the advocate of the Government of the Republic of Kenya. We do not expect that Office to be quiet at the midst of what is going on. We also expect the Office of the Director of Public Prosecutions (DPP) to take up its role together with the Ethics and Anti-Corruption Commission (EACC) to rein in the governors. We cannot wait until constitutional processes commence or are contradicted when they have clear mandates. They can investigate those governors and bring matters to the DPP and then the DPP will charge the governors. What are we waiting for? If we sit here and lament that the orders of the Speaker are equivalent to those of the High Court, but then when you disobey a High Court Order, there are clear processes. You go for contempt of court proceedings and you are arrested and jailed. When did we ever use the contempt of orders of this Parliament? The orders of this Parliament are continuously disregarded. The orders of our Speakers are equally strong just like the orders of the High Court Judges.

I am seeing a situation where a High Court Judge gives an order and another High Court Judge overturns that order. They have to go to the Court of Appeal or to the Supreme Court. Here is a situation where orders of the High Court Judges are quickly executed. If you do not execute them, you go to jail. We need to see that happening. When a Committee of the House calls witnesses before it and they refuse to come when it summons them, we need to have a situation where they are arrested. That is because we cannot be a talk show. This is not a talking shop. I do not want to impute improper motive on the Judiciary but, clearly, when you go for that dialogue that has been recommended by Members - and I think it is very important - tell them the three arms of the Government are holding the country together. We cannot trash the orders of the court, but when they give irregular and illegal orders I urge, hon. Speaker, to give us directions to disregard them. That is because you cannot give orders in vain and expect an arm of the Government to follow them blindly.

With those few remarks, I urge you, when you go for that dialogue, do not be the underdog; be the one to show the way. I thank you.

*(Applause)*

**Hon. Speaker:** Hon. Members, even as I give hon. (Eng.) Nicholas Gumbo the Floor, I want you to sample this situation; that this House passes a law and some Kenyans, exercising their right, feel that they need to go to court and that the people among the defendants is the Speaker to go and say how that law was passed and we have the HANSARD. It will be so easy for even the Judiciary to ask for the HANSARD. How is the Speaker expected to go to court to explain how laws are passed surely, unless they call me for a workshop as a resource person? You treat summons of that nature that way. Unless they are calling you for a workshop, I mean you cannot be called because

somebody feels that a law is not good and, therefore, he must sue the Speaker. The Speaker has no vote. The Speaker does not pass laws and so, I cannot understand. So, even some of these basics need to be explained to some of our good friends in the Bench.

Hon. (Eng.) Gumbo.

**Hon. (Eng.) Gumbo:** Hon. Speaker, from the outset, I want to thank you. I want to declare very loudly that I belong to a party which believes, wholeheartedly, in devolution. I belong to a coalition which believes, wholeheartedly, in devolution and will defend, to the death, the principles of devolution.

Hon. Speaker, the purpose of devolution is not to create 47 mini-presidents and demi-gods. I also think that when we debate in this House as Members, let us not try to look like we can mislead people and get away with it. One of us said that the Public Finance Management Act only allows the summoning of financial officers at the counties. I think it is not right to go that way. The provisions of Article 125 are very clear; that, Parliament and any of its committees has the power to summon any person to appear before it, for the purpose of giving evidence or providing information. I think it is wrong to equate the summons that may be issued to governors to matters of finance. Why would they not be questioned on matters of engineering? Why would they not be questioned on matters of law or procurement? I think we will progress, as a country, if we embrace the principles of constitutionality and the rule of law.

But hon. Speaker, I am afraid that if we continue this way, we are headed for a serious constitutional lockdown. That is because we are all aware that, other than the President and his Deputy, the only people; the only arm of Government where representatives take their positions on account of the popular will of the people is this Assembly and the Senate. I think it is in that respect that in so many jurisdictions, the Legislature is called the “supreme organ”. It is not in vain.

Hon. Speaker, the work of Parliament, as we know it today, is in serious jeopardy. I do not want to go through what other people have talked about. I think we have reached a point where we must ask: When do the principles of supremacy, complementarity or subordination apply? The same way, we cannot question matters before the courts, it will be *sub judice* to discuss a matter before a court. Why then is it in order that the courts can interfere with a matter before this House? These are questions that we must ask.

Hon. Speaker, you have given very many scenarios, but I am looking at a situation where we are headed into problems. We are given powers under the law to discuss the conduct of members of the Judiciary upon moving a Substantive Motion.

Hon. Speaker, the other day you said: “Justice is as long as the judge’s foot”. Suppose this Parliament legitimately felt that it needed to discuss the conduct of a member of the Judiciary and a judge issues an injunction to this House say, for six years? Why would we then be legislating in vain? So, as you engage with the other arms of the Government, I think it needs to come out very clearly. Under what circumstances can this House be issued with an injunction by the Judiciary? We are, in fact, going to reach a point where we cannot even do our work. You have given scenarios. We have the Supplementary Budget coming before this House. We know how people have got flimsy excuses. Anybody can run to court and say he is seeking orders to direct all manner of directions!

Hon. Speaker, I have said it before here and I will say it again, we are the representatives of the people. I campaigned for this Constitution, but even as we did so, we did it with the knowledge and acceptance that there was about 20 per cent which was not entirely correct. We said: "Let us pass it and we look at those matters after we pass it." I think it is time for a sober, non-partisan national dialogue, so that we look at the issues that affect this country. If it goes on like this, we will not go anywhere. There is not going to be any progress. We are going to sit here in vain. Our work is going to be in vain.

I want to repeat what my colleagues have said, as you engage with your colleagues on the other side, you engage with them, at the very worst, at parity. Nothing less, nothing more! What is happening here is not right. We are staring anarchy in the face. We are looking at the onset of entropy. Unfortunately, this is the most visible arm of the Government. When things do not work here, people will not throw barbs at the Judiciary, they will throw barbs at this House. It is our duty, collectively, without partisan considerations, to defend the right of this House to discharge its duties as provided for under our Constitution.

Hon. Speaker, I seek your guidance.

**Hon. Speaker:** Hon. Members, I do know for a fact that hon. Chepkong'a, as the Chair of the Justice and Legal Affairs Committee, would want to say his bit on this. I wanted us to make some progress. I know we still have about 19 more requests. I am just wondering how many more of us we should allow to--- Nobody knows this better than hon. Ababu Namwamba about Article 1, that deals with sovereignty. All sovereign power is derived from the people. Indeed, Parliament represents the will of the people and exercises their sovereignty. That is Article 94 of the Constitution. Is that not so? Judicial authority is also derived from the people, but you see, the only place where the people exercise their will directly is when they are electing their representatives. Those representatives as well as the national Executive, go ahead to appoint those who also exercise those other functions. I mean I do not understand this competition. Why should there be competition? As far as I am concerned, the Legislature has allowed the Judiciary to do its work. I think it is this thing that we really need to address hon. Members. Let us look to a situation whereby the views being expressed here will be used in some dialogue at some point. This is because it cannot just be my view but it must be the views of this House. We started saying this and now it appears to be getting out of hand. The Auditor-General is performing his work as per the Constitution.

Indeed, if you look at Article 229, you will find that the Auditor-General is mandated to make reports to Parliament or to the county assemblies. Therefore, if reports have gone to the Senate, it is within their power and mandate in the Constitution to do that which is expected of them in exercise of their oversight role.

Yes, hon. Chepkong'a.

**Hon. Chepkong'a:** Hon. Speaker, I would like to thank you very much for giving me this opportunity to contribute to this very important debate.

As you know, hon. Speaker, I am the most offended party. There were purported orders that were issued against the Departmental Committee on Justice and Legal Affairs which I chair.

Hon. Speaker, it would have been a sad day if I was not recognized to contribute to this debate in which I would like to join the long list of the reasonable hon. Members who have been disgusted and flabbergasted by the attempt by the Judiciary to violate and emasculate the rights of the people. This is extremely serious matter.

We must not allow a situation that goes against the Constitution to prevail for even one second. Why am I saying so? You have invited us down the road to consider whether we should obey the Constitution or court orders. Article 3 of the Constitution is very clear. We have no divided mind on this matter. We are convinced that this is the road that we must follow. We must not as we continue to sit in this House---I want to read for the doubting Thomas what the Constitution states in Article 3.

Hon. Speaker, this was not one of the contentious articles. As some people may know I was in the “NO” campaign. We were not contending on this article at all. It says:-

“(1) Every person has an obligation to respect, uphold and defend this Constitution.”

There is nowhere in this Constitution where it states that every person has a right to uphold and defend a court order. There is none including the Judiciary itself. They have a right to defend this Constitution. They have no excuse at all not to defend this Constitution. Every arm of the Government has been apportioned powers within the Constitution. The Constitution has given powers to Parliament to do certain actions which we are continuing to do. There is no one arm of the Government that can suspend the operations of the Constitution when it comes to another arm of the Government.

Hon. Speaker, our role is under Article 95; that of the Senate is under Article 96 and Article 125 talks about summoning persons to appear before the National Assembly and the Senate. There is nowhere the Judiciary has been allocated powers to suspend the operation of the Constitution with respect to the mandate of every House of Parliament.

Indeed, it is a very sad day that someone can purport to issue orders to stop Parliament from legislating. This is a very serious matter. In fact, I would like to confirm to this House that we are now seized of this matter; that is the Departmental Committee on Justice and Legal Affairs and the CIOC. We are considering extending the mandate of the Vetting Board to apply to judges who were employed even after 2010. This is because if you have not been vetted you were just employed. We need further vetting on people who are just issuing orders in total disregard of the Constitution.

Hon. Speaker, when that Motion comes here, we expect that Members will support us because this is a very serious matter; that someone can issue an order to gag Parliament from exercising its constitutional power. You know we are a number of lawyers here. I do not think there is a bench that can be created composed of as many lawyers as those who sit in this House. If you count the number of lawyers who sit here, you will find that they are not three, including yourself being the Speaker of this House.

There is no way we can issue unconstitutional legislations here. Even if we were to do so, there is a ruling even at the House of Commons that even if Parliament itself acts illegally, it cannot be given injunctions by courts. I get very surprised what the Judiciary has done that with the requirement that they should be circumspect when it comes to issuing injunction orders. They are expected to hear both parties before issuing an adverse ruling against the other party.

We are discussing the Marriage Bill and I am just hoping that the Judiciary is not being seduced to go down the road of anarchy where you are invited to where blinkers and not see anything on the side and just see me only. That is a very serious matter. We have Chapter Six of our own laws. Sections 4 and 12 of the Parliamentary Privileges Act are very clear. There is no High Court, Court of Appeal or Supreme Court that can impugn the actions of Parliament.

*(Applause)*

I mean that law is still in our books and it has not been suspended. We have not amended it neither have we deleted it from our statute books. It is still there. So, when you do not hear both parties so that you can be told:-

“By the way Judge, there are Sections 4 and 12 of the law which state as follows and which law was, in fact, passed and amended after 2010,” it is very sad. This is an amendment which was passed in 2012. So, it is in line with the Constitution. I get very surprised that anyone can issue an order because it emanates from a judge.

I qualify to be a judge but it is just that I have chosen to be elected by the people of Ainabkoi to represent them in this House. So, they must not imagine that there is something godly about their orders. There is nothing constitutional about their orders. When we are in this world, we respect God and the Constitution and we believe in the rule of law.

We respect court orders but they must not be issued with a view to violating the rights of others. We are entitled to fair administrative action in accordance with Article 50 of the Constitution. There is no way you can issue an order in which I have not been a party to it and you expect me to comply with it. You have even served me and even if you serve me and it is unconstitutional, you do not expect me to comply and uphold that particular law.

Hon. Speaker, I do not want to be lengthy in the manner in which I am presenting this matter. I totally support the Leader of Majority Party and we respect you, hon. Speaker, as you have continued to guide this House in a very reasonable and fair way. We expect the Chief Justice to do the same thing. We are very supportive of the Judiciary and that is why my Committee gave them one Kshs1 billion extra against even the wishes of the National Treasury last year. Surely, if we were against the Judiciary, we would not have given them additional funding. According to hon. Angwenyi here, he says it was a mistake. I do not think so. This Committee does not act on mistakes. The problem that we have is that the judges have gone rogue. This is according to the words of the Chief Justice himself. When addressing the Judiciary he said, “These members of mine, whose majority are members of the bench are rogue”. This was judgment by consent and you know that it is very difficult to amend judgment by consent and even to review. So, we have accepted that whatever the Chief Justice said is that these judges are rogue and that is why they are issuing orders that violate the Constitution and the rights of others.

I invite you to consider this matter in a very serious manner because we do not want this country to go the road of anarchy. We do not want this country to be destroyed by a few people who think that they hold the law themselves. They are just given the

power to arbitrate over disputes. In fact, the order that they recently gave, I wish it was *obiter*, in the case in which we had been sued by one activist with regard to our salaries, even the judges had the audacity of declaring that the Members of Parliament have been earning over and above that which was approved by the Sarah Serem Commission. Everybody knows that, that is a lie. In fact, we have never seen a court order, which is a lie itself and this was one of it. The salary that I earn is what was approved. In fact, when I heard the court order, I quickly asked for my latest pay slip and I found that the salary still remains the same. In fact, nothing has been added. I get very surprised that courts nowadays issue orders in vain. They know very well that they are not supposed to issue orders in vain. Orders must be directed at a certain action. When you issue an order and a guy is not earning more salary than he was earning, you are just fuelling animosity between us and the members of the public, who have elected us.

Hon. Speaker, these judges come from a particular constituency. Unfortunately or fortunately for me, no judge comes from my constituency. If we had one from Ainabkoi Constituency, he would have been very sober. But if they have a problem with this House, they should approach their individual Members of Parliament who will assist them if they lack information, so that they can issue orders that are well informed. It is unfortunate that you can be misled down the road of issuing an order that is unconstitutional. In fact, this is one of the things that this House needs to consider as to whether injunctions can be issued when the other party has not been heard, particularly when it is directed towards another agency of Government. There is no urgency.

We were not going to run away from this country. In fact, one of the qualifications for us to be a Member of Parliament is that we must not hold any other citizenship. So, I have nowhere else to run to. In fact, I will need to apply for a visa. So, there is no urgency in issuing an order before hearing both parties. That is the practice and if they are having a problem with that practice, we are going to codify it. This House, as hon. Mbadi once said, if there is any law which somebody thinks it is missing, these Members who are 349, including the 67 Senators to make 416 Members, have the capacity to make laws that are both constitutional and legal.

I thank you, hon. Speaker and I support the Leader of the Majority Party.

**Hon. Speaker:** Hon. Ababu Namwamba, I know you have been busy out in the field, but welcome back to the House. Also you know that there is one of your colleagues, hon. Mutinda Mule, the Member for Matungulu, who lost his election through a court petition. He tried to apply for stay of execution of that court order, but it was denied. He went on to appeal, in the meantime, the IEBC went on to arrange the by-election and hon. Mutinda Mule recaptured his seat. He came back here, was sworn and began serving his people. The case recently was adjudicated by the Court of Appeal which ruled that, in fact, he had won the initial elections. He did not have to have been invalidated, but hon. Mule is still serving his first term. He is not doing a second term, but had to go through two elections, both of which have been held to have been valid. Those are some of the issues that are coming out. This reformed Judiciary is treating us to a lot of interesting scenarios.

Hon. Ababu!

**Hon. Ababu:** Thank you, hon. Speaker. Let me start first of all by saying that as an officer of the High Court, I have the highest regard for the Judiciary and in fact, I



believe that the very essence of the rule of law and organized society is anchored on respect for judicial orders. Let me also say that I am unequivocally a believer in devolution and I believe that all of us have to do everything within our powers to protect devolution.

But at the same time, I know that you can use different terms to define or describe devolution. I know that the other name for devolution is not governor. The other name for devolution is not impunity. The other name for devolution is not opulent uncontrolled expenditure. Those are not synonyms of devolution. I know that devolution goes hand in hand with accountable, responsible and accessible services to the people. That is why we all went to great lengths to support devolution.

Therefore, I was surprised to hear one of my honourable colleagues give the impression that if we are exercising or if the Senate is exercising oversight authority over governors, then it amounts to risking devolution or putting devolution at risk. Let it be known that in fact, the greatest risk to devolution today is the conduct of governors. That is the greatest risk to devolution. It is a risk in the sense that very soon, Kenyans are starting to doubt whether devolution was a good thing at all as governors start throwing around all sorts of incredible ludicrous taxes to the expense that chicken are taxed in the land of Omulembe, the dead are taxed in Kiambu and very soon even the air that we breathe, could be subject to taxation. All these practices in the counties are making people wonder whether this is really the reason why we desired devolution so much.

However, I just wanted to make one point with regard to the issues that have been canvassed here so eloquently. Let me start by reiterating and reminding us of the supremacy of the Constitution. Article 2 of the Constitution is very clear that:-

“This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government”.

What is under siege here; what is being assaulted here is not merely the two Houses of Parliament. What is under assault here is this Constitution of the Republic of Kenya. While I know those who love to sensationalize matters and especially the media may want to paint this as some kind of contest between Parliament and the Judiciary, that is not the case. What the Judiciary is doing is to assault the Constitution of the Republic of Kenya. The Constitution is very clear in terms of the authority of the Judiciary. When you look at Article 159, the Constitution vests authority in the Judiciary, it then also provides principles upon which the Judiciary must operate. Look at Article 159(2)(e) it states:

“(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles –

(e) the purpose and principles of this Constitution shall be protected and promoted”.

The same Constitution is very clear that the Judiciary in the exercise of its authority must be subject to the authority of this Constitution. The Judiciary cannot conduct its affairs as if it is an authority unto itself and in a vacuum of constitutional provision. What the Judiciary is telling us is that we cannot undertake our mandate as granted to Parliament by the Constitution. I have no doubt that in the exercise of the three basic and primary roles of Parliament; we are not subject to any control.

In the exercise of our responsibility in legislation, the process of enacting laws for the management of the affairs of this country, we are subject to no control. The only limitation on our legislative authority is for the Judiciary to wait until we have legislated and then they can pronounce themselves upon that legislation. In the exercise of our responsibility as an oversight institution, overseeing other arms of Government, we are subject to no control. We exercise that oversight not as an administrative action, but as a constitutional responsibility.

That is why Article 125 is very clear in saying that this House, and any committee of this House, is given powers similar to the powers of the High Court to summon witness, to take evidence and actions in furtherance of our responsibility in overseeing other arms of Government. That is why this House can summon the Chief Executive Officer (CEO) of the Judiciary. The Justice and Legal Affairs Committee, chaired by my brother hon. Chepkonga--- During the last term of this House, I chaired this committee. I know this committee has the mandate to oversee the Judiciary. The Judiciary cannot challenge that oversight responsibility of this House over the Judiciary.

Therefore, either House of Parliament, whether the National Assembly or the Senate, is exercising that oversight responsibility, the Judiciary cannot restrict it. Of course, the other responsibility that we have is representation. The Judiciary cannot purport to restrict our representative authority. Therefore for me, to answer the fundamental question you have posed to us on whether we should obey or disobey orders of the courts in this respect, my answer is so simple and may even sound simplistic. It is that no citizen of any country under a constitutional order can obey an unconstitutional order.

What the Judiciary is attempting to do is to throw around unconstitutional orders. We are not challenging the authority of the Judiciary, but we are challenging the authority of the Judiciary to act unconstitutionally. In so far as the Judiciary will attempt to restrict the exercise of our three primary responsibilities, from the position of original jurisdictions, neither the Judiciary nor the Executive has given us this mandate. That mandate is granted to us by the Constitution itself. The courts cannot limit us in the exercise of those three primary responsibilities.

*(Applause)*

So, I am very comfortable; in fact, when I look at you, you are a supreme court unto yourself. In fact, throughout the course of history, institutions that represent the people, such as this one and the Senate, have always had judicial responsibilities. That is why, when you go to the United Kingdom (UK) that gave us the Westminster model of governance, the House of Lords, which essentially is an institution of representation, they exercise supreme judicial responsibilities. When the Senate of the United States of America (USA) sits to consider the impeachment of the president, it sits as a judicial institution.

When the Senate in this country sits in consideration of impeachment proceedings, it has the same authority as a judicial institution. So there is nothing peculiarly special about the Judiciary exercising judicial responsibilities. What is important is the whole constitutional concept of separation of powers; it is not merely

meant for the benefit of Judiciary. It is meant for the benefit of all the three arms of Government. So, it is improper that the Judiciary will always argue separation of powers when it comes to the exercise of their mandate, but when it comes to the exercise of our legislative mandate, then separation of powers, with regard to our authority, becomes secondary to that of the Judiciary.

Hon. Speaker, I want to urge you that as you go to consider this matter, you should be very comfortable that the Constitution is your shield and defender in this matter. The Judiciary is subject to the Constitution in accordance with Article 161 of the Constitution, and they cannot purport to act as if there is no Constitution. I express solidarity with our sister House, the Senate, and urge them to know that if they back down in this matter, then there will be no limit as to how far the Judiciary will push us in the exercise of our legislative responsibilities.

Let us hold ground; I know that the media and activists--- We made a mistake by allowing too much activism in our new constitutional dispensation.

*(Applause)*

Maybe we are just paying the price for excessive activism. Very soon a soldier in Embakasi barracks or Langata will run to court to challenge an order given by his generals in the barracks on the basis of some activist thinking. This is something that is not a joke. Hon. Members, as I conclude we should not shy away from taking the bull by the horns and commencing a process to revise the very framework of this Constitution. We passed this Constitution in a rush and because we had been doing it for so long; there are certain things which we should not be shy about.

The American people's Constitution that we always celebrate--- The American people started revising their Constitution even before it had been ratified by all the 13 colonies. So, there is nothing wrong for us to start thinking of refining this Constitution to get rid of a lot of these dangerous tendencies that are starting to seep into our national site.

Hon. Speaker, go well; you have the support of this House and I believe above all else, you have the backing of the Constitution of the Republic of Kenya. I support, hon. Speaker.

**Hon. Speaker:** I will give everybody who has indicated a chance; there are 14 requests remaining. Hon. Members, Parliament discusses and resolves issues of concern to the people. Indeed, you represent the people in the constituencies and other special interests. This is not in vain, hon. Members, because, I firmly believe that it is fair for us to discuss this matter which is, indeed, of great concern to many Kenyans. The requests have increased. Yes, hon. Kamama.

**Hon. Abongotum:** Thank you very much, hon. Speaker. I want to join my colleagues in thanking our Leader of Majority Party for actually giving that Statement. Quite a number of leaders have spoken on this issue, especially the lawyers in this House.

Hon. Speaker, sometimes back District Commissioners (DCs) and District Officers (DOs) had magisterial powers. Therefore, we are quite literate in matters of administrative law.

Hon. Speaker, the sentiments you have expressed are quite valid. I want to say that this House must stand with the sister House, that is the Senate, to actually deal and quash this unconstitutional order that was given against the Senate.

I want to tell hon. Members that recently when I was moving the National Police Service (Amendment) Bill, I told hon. Members that this country is almost drifting to anarchy if we are not careful. As we speak, I want to remind my good friend and the Member of my Committee, hon. Ababu Namwamba, that as we speak some police officers have actually taken their bosses to court. If we reach a situation where officers disobey lawful orders, then we are inviting anarchy to the country. When we get these orders from the top Judicial Office, then we are in for a cause.

Hon. Speaker, for that court to really purport to even prevent the Senate from summoning the governors to investigate matters of finance, then it is one way of telling the governors, “please you have a blank cheque; you can do whatever you want. Run amok like a rogue bull in a Chinese shop.” This has to be dealt with now and not tomorrow.

Hon. Speaker, we all know that our governors are living in opulence. Some of them started by having chase cars, but there is a law that we are coming up with that will cure that problem of chase cars. Even in remote counties like Lamu, Marsabit, Turkana, Migori and Taita Taveta, why do you need a chase car? Why do you need a sniffer dog in some place in western Kenya to take care of your security before you can address a rally in some place? We need to get into this business.

Hon. Speaker, when you hear that a governor has bought a house for Kshs140 million in some remote county and the governor is a resident of that place; if these people are really interested in serving *wananchi*, why can they not operate from their houses until they even address the issue of poverty among the youth? People are living in deep penury in some places, but somebody has the audacity to actually buy a house like the one that is the official residence of the Deputy President. It is really unfortunate and we want to have this thing done as suggested, so that we can deal with unconstitutional orders.

Hon. Speaker, in America you cannot inject the congress. Sorry, but in this country you can procure court orders at a price. We are headed back to the dark days when hon. Members of Parliament would actually be arraigned in court at around 8.00 p.m. at night when people are having their dinner. Really, this is ridiculous! We want to support you and you should not operate at *pari passu*; you should be above that because this is a House that was actually elevated by Kenyans. All these leaders here do not represent themselves; they represent constituencies. I will give you an example of my friend and colleague, hon. (Ms.) Shebesh. If you go to places like Cape Verde or The Gambia, a President is elected by fewer votes than hon. Shebesh got. I want to accept that we need to deal with the Judiciary at this point in time, the time is now and it is not tomorrow.

Thank you, hon. Speaker.

**Hon. Oyugi:** Thank you, hon. Speaker. I would like to support you in making a ruling that courts of law are out of order when they issue injunctions against Houses of Parliament.

I would like to make a couple of preliminary remarks before giving you, perhaps, my line of thought on this matter. One, I am not sure if we can extrapolate Article 96(1) of the Constitution. I know my hon. colleagues are showing solidarity with the House of Senate. Our oversight role is very express, as the National Assembly. This is because Article 95(3) does create our oversight role is very express terms; it says that the National Assembly exercises oversight over national revenue and its expenditure. I am not so sure if the same could be said of Article 96(1) of the Constitution with regard to the Senate to extrapolate that in a manner that says that the Senate could have an oversight role.

The other thing I would like to speak on is Article 125 of the Constitution. Of course, and indeed, it is true that either House of Parliament does have powers to summon individuals, but I am also sure again that, that power to summon arises when it is on issues to do with oversight, which are not expressly given by the Constitution.

Having made those preliminary remarks, let me speak about these things. First, the principle of separation of powers does give the Judiciary, Parliament and the Executive a chance of checking each other. Those checks and balances do not mean that one either gags the other or stops the work of the other. For the Judiciary to move in the manner that it has once or twice done in the case of the National Assembly to stop us from debating serious Bills or other activities--- That is not what checks are envisaged for by either law or the doctrine of separation of powers.

Hon. Speaker, a check on the Senate or the National Assembly in a matter--- For example, if they were summoning the county governors, that will be as a matter of review. This is because it is true that we cannot be stopped from doing whatever we want to do. Article 1(2), which of course you referred to earlier, does give the exercise of sovereign power directly and democratically to elected representatives. It is true that the only people who have the mandate to exercise sovereign power are the National Assembly and the Senate.

Hon. Speaker, for the Judiciary, therefore, to purport that it can gag Parliament when we try to exercise our sovereignty I think is outrightly wrong. The Judiciary can, indeed, check on the National Assembly and the Senate. However, it does that by either saying that the laws that we pass are unconstitutional or reviewing the various laws that we have made. In the case of the Senate, if the Judiciary wanted to check the Senate, it ought to have waited for the Senate to proceed on the acts it was doing, find that they are *ultra vires* or unlawful, or unconstitutional and then review them. This is why I would like to speak to the second limb, which is: When are injunctions issued or when would conservatory orders be issued?

The principles of law are very clear. You can only issue a conservatory order or an injunction when there is necessity. The second bit is that you can issue an injunction or a conservatory order when there is irreparable injury to the rights of a person. You have already spoken very well to the issue of the hon. Member for Matungulu. At that particular point, the Judiciary was under obligation to issue an injunction. This is because at that point there was no harm that could not have been repaired by the court issuing an injunction. However, they failed in that case; they did not issue an injunction.

We have also noticed that an hon. Member of Parliament came in here – thanks to the court’s ruling that he had won by four votes or something like that. At that point there was no right that would have been hurt. So, in those circumstances the courts did not

even issue injunctions, whereas it was apparent that irreparable damage would have been done. The third point at which courts issue injunctions is whenever there is irreparable hurt that cannot be cured by damages or pecuniary compensation.

So, in all these instances where the courts have purported to issue injunctions, I think they are moments when the principles of law did not anticipate that injunctions shall issue. So, yes, it is true that it is pointless to have a Constitution without the principles of constitutionalism. We must be people who believe and appreciate the Constitution. We can, therefore, not quote purposes of the Constitution in terms of judicial independence to, therefore, give writs or issue injunctions that in effect amount to what hon. Ababu called “illegal conservatory orders”.

Whereas, as the people of Kenya and the National Assembly we would like to respect the principle of the rule of law and the various checks and balances of the various arms of the Executive, I think it is out of order and the courts will be acting *ultra vires* to purport to issue injunctions before an act is done. In this matter, in my opinion, they ought to give reviews or give orders that will then be exercising legitimization of various rights. There is no right of the governors that has been threatened, and there is nothing that can be done to the governors that the courts cannot repair. I think they should have let the Senate proceed, however much I contend that, perhaps, the Senate might not have so much authority under Article 96. To purport to stop the Senate from doing its work, I think the courts are out of order. This is because, one, that is not what the spirit of checks and balances anticipates and two, that is not the point at which to issue conservatory orders and injunctions.

Hon. Speaker, I hope those things will help you make your ruling. I support the Leader of Majority Party.

**Hon. (Eng.) Mahamud:** Hon. Speaker, let me also thank the Leader of the Majority Party for bringing up this very important matter. The people of Kenya got the new Constitution in 2010. This Constitution, among other things, pronounces a clear separation of powers between the three arms of Government, that is the Executive, the Legislature and the Judiciary. It behoves everybody to respect the law and uphold the Constitution.

The Constitution also gives us two levels of Government, that is the national Government and the county government. All these things in the Constitution are for the good of our people. The legal issues and the articles have been articulated very well by my colleagues, who have spoken before me.

Hon. Speaker, what the Senate did was within the constitutional powers given to it by the Constitution. The Senate did what is right and so we should stand with it. The question that needs to be asked here is this: Do the courts have the right to stop Parliament from functioning? The answer is no. If you allow that to happen, this Parliament will be gagged and nothing will work in this country. Our colleagues and friends the governors were summoned to answer simple questions that were asked by the Auditor-General and the Controller of Budget. What was wrong in them appearing before the Senate and answering, if they are clean? What is being hidden? Does it mean that we leave the people who are running the counties to do what they want and they stress our people? No, hon. Speaker! This country enacted this Constitution for the benefit of Kenyans, and all of us are supposed to work for the benefit of our people. There is no

person who is above the law. The courts should not be used to hide defects of certain people. We should stand by the Senate. We should give them support. At your level, as my colleagues have said, let us let you engage with the other arms of the Government and bring sanity to this country.

I think Parliament is being ridiculed by none other than our courts. Everybody is taking Parliament like a court and we should not allow this. As one hon. Member said the Senate, which is supposed to look at the interests of the counties--- What interest is more important than the financial interest? Everything we discuss about the counties is about money. This is because we have devolved functions and these functions are actually funded. What we are saying is that this money should not be misused; it must be properly checked.

Hon. Speaker, I request that the question to be asked is: Do the courts have the right to gag Parliament? The answer is no.

I thank you.

**Hon. Kaluma:** Thank you, hon. Speaker, for giving me the opportunity to talk to this very important Motion. I am personally a very sad Member of Parliament who is also an officer of the court; this is a court we have been struggling, as Parliament, to facilitate to be reformed and stable so that it can work better. Remember when we undertook the national Budget process for this financial year even the budget for this very Parliament was reduced by hon. Members here seated. The budget which was proposed for the Judiciary was increased on our insistence. We were doing that for very many reasons. Some of us are not here as politicians. Some of us made a decision to come to this House to expedite the reform process in the Judiciary, and, if possible, later go back there. I am very saddened that the image of the current parliamentarian is the image of that person who was stuffed in the middle of his body with nothing up there – it saddens me.

I came to this Parliament, possibly, not knowing the kind of people the people of Kenya elected to this House, but the depth of intellect I found here amazes me every time. It really confounds. You hear hon. Members speak representing the people who elected them and you cannot believe it. I wanted to be clear on a few things, because I want to take time to answer the questions that the Chairman and, indeed, hon. Members are asking.

The Constitution under Article 1 says that Kenya is a sovereign republic. That sovereignty, at Sub-article (2) is exercised either by people directly or through their democratically elected representative. Of course those democratically elected representatives are the President, Deputy President by dint of the provisions of the Constitution and, of course, the Members of Parliament. Do I find any doubt in the mind of the Judiciary that they exercise the sovereignty of the people of Kenya? In fact, I would request hon. Members, at their own time, to look at the provisions of Article 94(2). This is what it states: “Parliament manifests the diversity of the nation, represents the will of the people and exercises their sovereignty”. For avoidance of doubt I wanted to indicate that not the Executive and not the Judiciary exercises the sovereignty of the people of Kenya. That is why at times you hear us say that this is the assembly of the nation. The reason Parliament exists is that the people of Kenya cannot sit in one single stadium and speak on every single issue. They choose people to speak for them, including everybody else.

Hon. Speaker, what we are seeing is what a good professor and a person we respected very early in the legal profession called Professor H.W. Okoth Ogendo said before he died that: “The African continent is a beautiful continent with beautiful constitutions but without constitutionalism.” I said I am sad because the very body which should be leading the other organs of the Government in upholding constitutionalism is the very body that seems to be ignoring this.

It appears, and I have been watching debates in the media and everywhere, that people appear to confuse the rule of law with the rule of court orders. It amazes me when you hear even senior advocates talking during television shows, and saying that the rule of law today means the rule of court orders and the rule of law today means you wait for every judge somewhere to decide what that rule of law would be, if it is the rule of court orders.

Hon. Speaker, I need to confirm that we are in a rule of law country. The law has not changed. Hon. Members, we were taught the rule of law and I taught at a university before I came to this House; we practised it in the courts. It means three things but the most fundamental one is the supremacy of the law and the Constitution being number one, and equality of all, including State organs before the law. So, a judge should not sit somewhere and begin imagining that you can make an order which is unconstitutional and which is contrary to Article 159, setting out the principles within which a court process should be undertaken, and you imagine it should be obeyed.

Hon. Speaker, I wanted to give the answer to what the Chair was asking. I mean what do we do about this order? I remember when the Senate went to court seeking advisory opinion on these clear provisions of the Constitution, I was asking: What are they doing? The Judiciary now knows that the Senate cannot read the Constitution and interpret it on their own. The Judiciary is today stopping the Senate from doing what they should do and we regretted it.

Hon. Speaker, the answer is in Article 2(4) of the Constitution. What do we do with a court order which, on the face of it, and without much thinking or genius of interpretation, is unconstitutional? The Constitution answers it and what it says at Article 2(4) is this hon. Members:

“Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.”

Hon. Speaker, that act includes a judicial officer purporting to make an order that is inconsistent with the Constitution. So, essentially we are saying that when an act, be it the act of making a purported court order or a court decision flies in the face of the Constitution, it is a nullity at law. It is null and void and in public law we know when a matter is null and void, it has no legal effect. It is as good as it does not exist.

So, we urge the hon. Speaker that really the time has come. People are crying that: “What do we do as National Assembly? What do we do as Parliament in this situation?” You know, I look at our public law courts and I mourn the departure of Justice Nyamu from the Public Law Division. He is a judge who built the administrative law of this country from scratch to everything you would love to read. I mourn the departure of Justice Ringera from the Judiciary. Whatever was the situation, you knew those great jurists would not sit to make such orders. They knew the doctrine of separation of



powers. They understood the parameters of the rule of law. They understood the need for space between the various organs of Government.

Hon. Speaker, I want to confirm that I mourn the ascendancy of Prof. J.B. Ojwang to the Supreme Court, because what has become of our Public Law Division is a total loss to the jurisprudence of the great jurists of this country on the Bench, and the great lawyers of this country took a lot of time to develop it. I mean I have read so many cases. No organ of Government interferes in the internal workings or proceedings of the other. The court has said that. The Court of Appeal and the Supreme Court have said that several times before. Today a judge sits and purports to stop Parliament from debating. Is there a set principle of law?

Hon. Speaker, you served in this legal system. You are one of the best minds in it. When was an injunction issued against a Government? Whether you want to represent it as a conservatory order or whatsoever, when did anybody purport to injunct the people of Kenya? This is because that is what we are seeing.

Hon. Speaker, I want to give another answer because hon. Members have already said that, that order is a nullity. It is null and void. It does not exist. It is of no legal effect and I want to urge the Senate never to go hobnobbing over things they can read in the Constitution. They ignore this order and proceed with their oversight.

Hon. Speaker, it is not that we have no remedy. In fact, let me tell the people of Kenya that we have exercised a lot of restraint, particularly as the National Assembly. I wanted to read the provisions of Article 95(5)(a) and (b). Hon. Members this is what it says:-

“The National Assembly –

(a) reviews the conduct in office of the President, the Deputy President and other State officers and initiates the process of removing them from office; and

(b) exercises oversight over State organs.”

I wanted to say two things. One, no organ of the State exercises oversight over others other than the National Assembly. So, the Judiciary cannot purport to oversee the National Assembly or the Senate. The Executive cannot oversee us. It is the National Assembly that exercises oversight. In the conduct of this matter the second thing I wanted to address is that if you read Article 260 of the Constitution you know judges and magistrates are State officers and remember the Constitution says that we can review their conduct in office and initiate the process of removing them from office. The time has come when we should not be crying about whether we need a vetting board to vet some of these judges. The time has come for us to remind the nation that really we passed a Constitution for good reasons.

We have exercised a lot of restraint particularly in the Departmental Committee on Justice and Legal Affairs, but I wanted to tell hon. Members that by dint of the provision I have read out, there is nothing stopping this Assembly of the nation from summoning these judges issuing orders casually and dealing with them. In fact, we can discipline them. This is the power to discipline. I think we should not be crying so much. We want to say: “Hon. Speaker, proceed.” I think this is a matter that now requires a bit of leadership of the various arms of Government. Proceed for this meeting. If it is not there insist on it because we also do not want a situation where people do not take seriously what the other arms of Government are doing.

Hon. Speaker, I think if this National Assembly is keen to still be constrained or restrained in exercising this power, I will personally move this House that really we begin thinking about reviewing the conduct of some of these judicial officers because they are an embarrassment. We cannot be put in a situation where, as an organ of Government, we appear to be quarrelling with another organ of Government as if the Constitution does not state clearly what we should be doing.

Hon. Speaker, go there firmly. In any event I think the Kenyan people ought to understand that we have nothing against the Judiciary. We want the Judiciary to function. In fact, we would have intervened a lot. We are doing a lot in the legal sector. We make sacrifices for everything. We do not want courts to issue vain orders. A writer was referring to the situation where we find ourselves in, in an article that I read with my brother, hon. Ngeno. He talked of judicialization of politics - a situation where politics leaves the national platform and is played on the forum of the Judiciary. There is a good decision. You want to choose to be on the Bench where you should be reserved; think through issues and be judicious, or you want to play politics. My fear is that if this situation continues, and I am speaking of this fear as a lawyer, there is no court that is going to be there in a short while. In a battle between any arm of the Government with the people of Kenya seated here or anywhere else, the people of Kenya, duly elected to represent those people, that arm of the Government will lose. Why do we have the power to summon the President of this Republic and he comes? We summon the Deputy President and he comes. We summon Cabinet Secretaries, appointed as top leadership of the Executive, and they come. The Attorney-General of the Republic comes. You are saying that now devolution means a governor can do what they want to do?

In my constituency, our people do not know what this County Government Fund is all about. They know the CDF and we took billions of shillings there. A person is saying that contrary to the provisions of Chapter 6, there is another organ of the Government somewhere which can give us refuge. You go and rest there when you are to be interrogated.

Really, let me end by reiterating that we will not at any given time call a judicial officer to tell them the decisions they are making be made in any direction. It will be contrary to the principles of separation of power. But the Judiciary should also not intervene in the internal proceedings and workings of Parliament. Those are non-existent orders. Of course in the minds of the public who do not understand well, it is like we are fighting with the Judiciary, which we cannot.

Hon. Speaker, I urge that you insist on a meeting involving the three arms of the Government. By the way, I believe you should chair that meeting for obviously this is the face of the people of Kenya and get a solution if there is a problem. For the sake of the people of Kenya, we need to exercise our power of discipline under Article 95(5).

I support.

**Hon. ole Kenta:** Thank you, hon. Speaker, for giving me the opportunity to add my voice to what my colleagues have already said. In fact, Kenya is at cross roads, and the problem that we are facing at the moment is created by activists who have taken over the running of this country. When you look at these orders, which I will very comfortably say are unconstitutional, the same are given by people who were acting in a populist and

legally unsound manner. I will not repeat what has been stated in law, but there is no law that the doctrine of separation of power can be disregarded.

What is happening is that our brothers, the governors themselves, have decided that they are the representatives of the people alone, and that we sit here and appropriate finances to assist our people and they use it for their selfish ends, and it does not benefit their people and our people at that. You cannot obey an unconstitutional order because if you do so, you are perpetuating unconstitutional behaviour. When you see the Chief Justice of this country constituting a bench on a Saturday, what does it tell you? It tells you that there is collusion with the people who are breaking the law instead of supporting the ones who are defending the law, and that is the Senate.

All that we can tell the court is that they are creating a gridlock in this country. The other day, we said that the Judicial Service Commission should not act, but they proceeded to act when they were not supposed to act and passed names of judges to the President. This is the same President we are saying should not constitute a commission to question them. They are causing a gridlock which will resonate for years to come. I am urging them to respect separation of powers, and let the Senate do its job. We are saying that we shall stand with the Senate, because if we back down on this one, then we better all pack and go home because we will be doing nothing for our people.

The thing that they should understand is that we are here because of our people and not for anybody else. These pretenders to the throne, the so-called paper kings, who are the governors, should not benefit from the corruption cartels that are in place in their counties. So, I wish to join my colleagues to say that the orders given by the activist judges in the Judiciary should be disregarded because they are null and void, as hon. Kaluma has said. They are null and void. It is just a decision on paper; it is not hinged on any constitutional basis. We are asking the Senate not to back down. Let them do the worst. Let them take each of the Senators to court for contempt. Let them take us to court for contempt.

Lastly, if we are going to give funds, billions of shillings, to the governors and they are not used for their purpose--- We should stop any disbursement of funds to the counties. If it does not reach our people, then what is it for? Are we also going to be party to corruption? Let the Senate stand firm. We are with the Senate and we are within the law.

**Hon. Nuh:** Thank you, hon. Speaker, for giving me this opportunity to contribute. The matter brought by the Leader of the Majority Party is very weighty. It cuts across and it is a very important matter for this country. The excesses of the county governments and governors cannot be over-emphasized. It is something that has been seen by all Kenyans. It is very clear that the governors have decided not to use the public resources as they were meant to be. These are people who are creating their own kingdoms and fiefdoms; it is very important that public funds are safeguarded. Public funds must be audited and everyone who is using public funds must be made to account for them.

Having said that, we got a new Constitution in 2010. It clearly puts in place three arms of Government, namely the Judiciary, the Legislature and the Executive. Those three arms of Government must work in complementarity and must help each other to run this country. They must not be seen, at any one time, colliding against one another. That will be against the public good of this country. I urge every arm of Government to respect

the other arms of Government. I do not think it will be fair. I can say that it will be insane for any court to issue a court order barring Parliament from conducting its business, otherwise, Parliament will be rendered useless and will have to close down. If somebody goes to court, gets an order saying that Parliament cannot conduct this and that business, that will be utmost impunity in this country.

One thing that I wanted to say is that the issue of the Senate auditing the county funds, as long as they are part of Parliament--- If you look at Article 95, the issue of oversight by the National Assembly is expressly stated in the Constitution, that the National Assembly has the mandate to audit the national Government revenues. The role of the Senate is that it represents the counties and serves to protect the interests of the counties and their governments. So, it is not expressly written in the Constitution that they have the express mandate to summon anyone and their summons are like the High Court summons, but they are Members of Parliament also. It is not expressly written in the Constitution that they have the mandate to check on county funds because there are also county assemblies, who also have the mandate of the people at the county level. So, there is that confusion and all what is happening now is part of the implementation of the Constitution. For that reason, someone might go to court and look for a constitutional interpretation on which role is whose and when to play it; it should show whether the Senate has the role to oversee the counties.

**Hon. Speaker:** For avoidance of doubt, Article 96(3) says:-

“The Senate determines the allocation of national revenue among counties, as provided in Article 217, and exercises oversight over national revenue allocated to the county governments.”

**Hon. Nuh:** Most obliged, hon. Speaker.

**Hon. Speaker:** It is only fair that when we read one Article we must make sure that we read everything.

**Hon. Nuh:** I stand guided, hon. Speaker. Most obliged. I was also bringing out the issue that people go to the Constitutional Court to seek interpretation of certain laws or Articles of the Constitution. However, that does not mean that the court should act in vain. The court must act in a way that makes things possible or work out.

The courts must exercise restraint to make sure that other arms of the Government also function. It must act in consultation as much as there is separation of powers. Consultation between the three arms of the Government is very important.

As part of the implementation of the new Constitution, there are many gray areas that people have not yet understood how they are supposed to be done or implemented. That is why you are seeing many cases being filed at the Constitutional Court. They do this to seek the interpretation of the Constitution.

Hon. Speaker, with those few remarks, I thank you very much.

**Hon. (Ms.) A.W. Ng'ang'a:** Thank you, hon. Speaker. I would like to say that we are here because the people Kenya chose us to be here and they know the mandate and work they gave us. They also know that we represent them and we oversee all the institutions.

First, I would like to say that when we devolved the Government, we meant that we were devolving resources closer to the citizens of Kenya. We came to this House last year and passed the Budget of Kshs210 billion and left the national Government with no

money. If we can be told that we cannot play our oversight role on that money that went to the counties, then we have no work here. This is because we are here to make sure that the money that we passed in this Parliament; both at the National Assembly and the Senate is utilized in the right manner.

We have heard that the governors have opened private accounts outside and inside this country. We also know that when we used to have local governments, at least, we had mechanisms and structures of collecting levies and revenue. Even as we speak here, we do not know how much money these counties collect and where this money goes. That is apart from the Kshs210 billion that we gave them last year and yet they are saying that nobody should question them. This is the case and yet we know that as the National Assembly, we have the CDF money. When you spend Kshs1,000 you have to explain what it has gone to do. At the end of the year, we must account for every shilling that we spend at the grassroots.

To be told that we, either the National Assembly or the Senate, are not supposed to summon governors to come and answer a few questions here and there is unfair. The guilty ones are always afraid. If they are not guilty, what are they hiding? They should go, listen to what the Senators are saying and if they are not guilty, they go back and resume their duties. But if they are fighting and going to court and saying that the Senate cannot summon them, then it means that there is something they are hiding.

As the National Assembly and the Senate, we should come out very strong and find out what these governors are hiding. If it is money they have misappropriated, and I tell the National Assembly, even if it is Kshs1 million, that is a lot of money. This is the case when you talk about *mwananchi* at the grassroots who never ate last night or the roads that have not yet been fixed since last year.

Hon. Speaker, the Law Society of Kenya (LSK) has come out very strongly and told us to obey the court order and yet we know that the LSK should, first, put its house in order. We know all those witnesses who are going to The Hague to ridicule us and stand in front of judges having no words to say what has been collected by the LSK to go and testify at The Hague. This is the case and yet they give conflicting information.

Finally, when they are cornered they say that they were paid to go and say this and that. Why can the LSK, first, not put its house in order? Everybody should take his or her responsibility seriously. The LSK should stay away from our matters. We know the work we were given and we are executing our duties. They should also do the same and not bribe witnesses to go to The Hague. They should stop collecting witnesses every day and taking them to The Hague.

Hon. Speaker, we all know that the orders they are telling us to obey are unconstitutional. We know which orders we should obey. The county assemblies were given responsibility by the Constitution to impeach governors. There is no way we can wake up tomorrow on Thursday, we come to the House to transact our business and then we are told that there is a court order restraining us from conducting that business. We cannot allow that. We are telling the Judiciary that they better stick to their work that they were given.

By the way, we should not be seated here arguing over what we should do next. They are unconstitutional orders and we are panicking and wondering what should happen to who? Every time an order is given and we have executed our duty, our lives

hang around the judges. All Kenyans know that those orders were unconstitutional because that day, the county assembly woke up, they went and exercised their mandate, they finished their duty and handed over the matter to the Senate which has done the same. We hear that they have rushed to court to get court orders. They have run to the court to stop who from doing which business?

Hon. Speaker, if they reinstate Governor Wambora, he would better go and sit with them because the county assembly of Embu spoke the day they impeached him and the Senate ruled so the other day. So, we will stick to whatever we have either in the National Assembly or at the Senate.

Hon. Speaker, I will finish by saying that if all of us rush to courts to get court orders even when we are told that we have to come and account how we have spent money, it means that we are losing it. It also means that we do not have targets to achieve. Hon. Speaker, if you are proceeding there and they do not want to meet you, we also do not want to meet them.

Thank you, hon. Speaker.

**Hon. Nassir:** Thank you very much, hon. Speaker. I just have a small numerical calculation. The figure 99 multiplied by 0 is always 0. That means that no matter how many of these court orders they come up with, as long as the orders are unconstitutional, there is no way they will add value.

I would like to say that this House does not represent 349 people but it represents the thunderous voice of over 30 million Kenyans. We are the ones who have the right jurisdiction to be the voice of the people of this country. It is true that there are some governors who have done the right things and they have upheld this Constitution. Those governors have realized the dream of devolution. However, this House needs to act unanimously.

The Constitution allows us to ensure that at least 15 per cent of the national Budget is distributed to the counties but this House approved an allocation that was in excess of 20 per cent of the national Budget for the county governments. This is a case of loving a baby so much that you end up over-feeding it. After over-feeding the baby, you realise that it is suffering from constipation. This House needs to put things in order not for any other reason but for purposes of safeguarding the interests of this country's 40 million Kenyans.

I am proposing that during the coming Budget, we ensure that we give what is due to the counties – 15 per cent – contrary to what my friend here said. In actual fact, the Constituencies Development Fund (CDF) has actually been seen to be doing more devolution than what has been done by some county governments. With respect to other devolution funds, we have the women county representatives who might as well be able to do quite a bit with those funds on the ground. There is nothing wrong in the CDFs building more institutions and putting in place more structures.

Hon. Speaker, before the financial year lapses, we need to enact laws to ensure that governors or any other public officers who are supposed to be accountable to Parliament are held accountable. When held to account, some of them rush to court and the courts, in disregard of the Constitution, give judgements in favour of such public officers, who do not wish to be audited. This House needs to enact laws to bar such people from holding any public office whatsoever.

I would like to conclude by urging that we put our emotions aside and think straight because this House represents the interests of Kenyans, who elected us to ensure that we safeguard their interests. When we go out, we do not go out as hon. Nassir or hon. Kaluma or any other hon. Member. We go out on behalf of the 40 million Kenyans who have given us the power to ensure that the Constitution is safeguarded.

Thank you very much.

**Hon. Speaker:** Yes, hon. M'Meruaki.

**Hon. M'Muthari:** Thank you, hon. Speaker. What is in front of us is very important for this country because as a country, we have reached a level where we are almost getting to a state of anarchy. When we reach a point where the levels of the Government are not respecting each other, it is really an abuse of the principle of separation of powers. Looking at the Constitution, as highlighted by many hon. Members, the mandates of each of the arms of the Government are very clear. Our mandate is very clear. So, as we discuss whatever we are discussing here, we are in defence of the Constitution as we appended our signatures to defend it. When the Judiciary purports to deny the Legislature its role of offering oversight, it becomes very serious.

As it has also been highlighted, this is also the time for us, as the National Assembly, to reflect on the Constitution because it was made when Kenyans were very tired. They were fatigued and it was directed mostly by the activists. So, there is a lot of activism in the Constitution. To a large extent, this is what has brought the problem. Even some of the members of the Judiciary have been activists. So, they are also exercising their activism in the way they give orders. This is very dangerous for this country because we are about to reach a level where people will not respect the rule of law or reduce the rule of law to court orders. When Kenyans disobey such court orders in the process, the majority of Kenyans may not know what is right and what is wrong.

Hon. Speaker, when wrong court orders are given and are defied, it may appear as if Parliament – both the Senate and the National Assembly – are disobeying. So, majority of the people may say that there is disobedience but it is this kind of activism that is fuelling this kind of discontent. This is really a big problem. As I said, if you look at the Constitution right from Article 1, which is on sovereignty, it is very clear. That is what we are exercising. If you look at Article 2 of the Constitution, it is very clear as far as the mandates are concerned and who should exercise the law.

Under Sub-article 4 of Article 2 of the Constitution, it is clear that nobody should go against the Constitution. The Judiciary is going against the Constitution by giving inappropriate court orders. That is why their orders cannot be respected. As I said, when court orders are not respected, there is the risk of the citizens feeling as if we are disobeying the court orders. Article 3 is on the defence of the Constitution. When the Judiciary gives orders that contravene the Constitution, they are courting anarchy in the Republic. That is bad for us as a country.

Hon. Speaker, there are other relevant provisions of the Constitution that have been highlighted by hon. Members. If you look at the role of Parliament, under Articles 94, 95 and 96, it is very clear who can summon who and why people should respect the summonses. We are now in a situation where some people imagine that we are 48 governments. It is because of that fallacy that we have the problem that we have today. The county chiefs think that they are no longer subject to questioning by anybody. They

think that we can give them to spend the way they want, without being asked to be accountable.

On that one, I would like to thank hon. Duale for bringing this matter forward. We also rely on your guidance. You are a wise lawyer. You have guided this House before. I am sure that, in your wisdom, you may also bring other leaders in the other two Arms of the Government, together with you. Please, this is a critical time in the Republic as we implement the Constitution. This is the time when leadership is called for. I have no doubt in my mind, you are a leader who has been tested. You have guided this House before.

You are also in a particular moment in history where you are also called to be the first Speaker in the process of implementation of the new Constitution, with a new Parliament. In that role, you have a great responsibility to this Republic – to provide leadership so that our country does not slide into anarchy as what is happening at the moment signals the danger that people can do what they want. The Judiciary purports to give people powers they do not have. They misinterpret the Constitution as if they do not know how to read it.

**Hon. Speaker:** Yes, hon. Manson Nyamweya.

**Hon. Nyamweya:** Thank you, hon. Speaker, for giving me a chance to support what my colleagues have said. I am not a lawyer but the big challenge that we have is that judges make decisions as if Parliament works like the courts. A judge presides over a case where two parties are arguing over an issue. On the basis of evidence raised, a judge makes a ruling. In Parliament, Members of Parliament, who are elected by Kenyans, make a case. We argue for or against. We then vote. When we do so, we carry the will of the people of Kenya. We do not carry the will of anybody. If anybody is here to challenge the decision of Parliament, then that person should serve all the hon. Members. It is not the Speaker because he does not make any decision; he presides over what we discuss here. Therefore, from where I sit I do not understand what Parliament is. Parliament is not the Speaker, but Parliament comprises hon. Members of the National Assembly and the Senate. We sit and debate on a matter and through a vote, we agree. If anybody is challenging that decision then he should serve all the hon. Members, not the Speaker in this case.

Hon. Speaker, you preside over our discussions, you do not come in to make a ruling. There is nowhere where you make a ruling on what we decide here and we are doing so for Kenyans. We are not doing it for ourselves. This House is divided; we have got the Leader of Majority Party and the Leader of Minority Party. We have got the Government side and the Opposition side. Therefore, whenever we reach a decision, that decision is for the people of Kenya. We do not make a decision to favour any particular person. That is the first point; even lawyers who argue in court should see that because it is common sense.

Another point that I would like to say is that, it has come a time for this House to come out very clearly and support devolution. The issues we are having here is about the governors. If you look at the statements from the Treasury Secretary, billions of money is laying idle in Central Bank of Kenya. They have not spent the money! We are saying that we are poor; we can be poor because there is money which has not been withdrawn from the Exchequer. But they have used the money to travel around the country and to go



oversea for trips and they have been very wasteful. The next question you will ask, these people were elected to bring development at the county level, constituency level and at the village level, is that happening? When you look around, that is not what is happening. Therefore, we have got a Judiciary which is taking us back where we have come from. We have got a Judiciary which makes decisions and thinks that we behave and act like they do, when they are court.

Hon. Speaker, you cannot stop a court from sitting and if you cannot stop a court from sitting, how then can you stop Parliament from sitting? You cannot do it.

Supposing we are doing the Budget and somebody comes up with an injunction to stop us from debating the Budget, will we stop? Will we stop it because somebody has gone to court? Our responsibility and mandate is the people of Kenya. So long as we are keeping that mandate for the people of Kenya, it is immaterial what any judicial officer or any court can make. As we sit here today, the courts are making their decisions, and as Parliament we should make our own decisions for the welfare of the people of Kenya. That is basically the point I wanted to bring out so that other hon. Members can contribute, but this country needs us more than any other time to come up straight.

We can come here in majority and even do constitutional amendment for this country because we cannot be taken back to where we are coming from.

With those few remarks, I support the sentiments of other hon. Members.

**Hon. (Ms.) Shebesh:** Thank you, hon. Speaker. Excuse me for my voice, but because there is a microphone, I am sure I will be heard.

Hon. Speaker, the country is aware that governors think they are presidents. It is obvious from the way they act; either it is because of the title we gave them or the money that we devolved to the counties. But what shocks me – because theirs is an attitude problem – is the way the Judiciary is now acting. I think when we talked about reform of the Judiciary; we gave too much clout to the Judiciary to the point where we made them look like they would never sin. What they are doing now is what Kenyans fought for many years in terms of reforms of the Judiciary. I am glad I am not a lawyer, but I listened to hon. Kaluma and the other lawyers, and I said, these are the arguments of court. The arguments on this Floor, which Kenyans will understand, are that the Judiciary is back where it used to be. It is to the highest bidder that the court order goes. I have no qualms in saying that because Nairobi is the heart beat of court orders.

Hon. Speaker, I want to give examples, if you will allow me, so that people do not think that we are fighting the Judiciary. Recently, there has been public debate about the differences between the Governor of Nairobi and myself. The court is actually the one that interfered with the process that would have been more judicial. A Nairobi voter was represented in court by a lawyer who also happens to be an executive member of the County Assembly of Nairobi. To me, when you come in front of a court, it is like the Minister of the Government going to represent the Government in court. I am not a lawyer or an expert of the Constitution, but I am 100 per cent sure that something is wrong there. Using that argument from that already flawed process, the court ordered us to continue with negotiations which we had not begun. I am saying that a ruling was given to continue a process that had never begun, on the basis of one side of an argument. Where we have reached in the Judiciary, we may think that we have the best judicial

minds, and we think that we get rich judgments, but that is not the case. That did not only shock me, but also the people of Nairobi.

Let me give another example, we have over 20,000 people who were removed from a piece of land where the National Council of Churches of Kenya (NCCCK) was a trustee. What did the NCCCK do? As trustees, they sold land that belonged to *Jua Kali* traders. What did the owner of that land which was sold do? He went and collected a court order and as we are speaking, he is in the process of building a multimillion mall. By the time the court decides that this court order is illegal, he will now be fighting with an investor on how to bring down that mall and how to bring back the 20,000 *Jua Kali* traders. What I am saying is that court orders are now to the highest bidder. Let us tell Kenyans the truth.

Hon. Speaker, I watched the Governor of Embu, the day that the Senate was discussing his case and I was shocked at his calm demeanor. I told myself:

“This man has already gone to buy something ahead.”

It is proven today because he has been given a stay. In short, all the Senate was doing and the Embu County Assembly did, was an exercise in futility. To me, they have been treated by the Judiciary like trash. We cannot allow it. We have confidence in this House. I was elected into this House. The Chief Magistrate in Nairobi Court was appointed. I do not expect at any point that the people of Nairobi will not listen to me but will listen to the Chief Magistrate. Let us do our duty and tell Kenyans the truth. The Judiciary has become the rot it was before and it must be cleaned up. The same way we are asked to be accountable, let the Judiciary also be accountable. We support the Senate. What is the point of having the Senate now, if their work is rubbished?

Hon. Speaker, if we cannot summon Ministers here, will there be a point for this Parliament? Then what is the Senate? What is the Judiciary saying; that the Senate should go home or what? Surely, this Judiciary should give us a break. We support and we want you Chair, together with the leaderships in the various arms to give Kenyans a way forward and direction.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Members, before we adjourn, I want to make this point clear. As you all know, Article 10 of the Constitution talks about national values and principles of governance that allow every State officer, State organ, public officer and any other person to apply those principles whenever enacting laws, but more importantly in interpreting the Constitution. It is, therefore, not the exclusive domain of the Judiciary to interpret the Constitution in terms of Article 10.

Therefore, hon. Members let me say that this is not an exercise in futility. As you have expressed yourselves, we will look for an opportunity to sit down and go through these contributions with the other two arms of Government. They must know the views coming from this House.

*(Applause)*

Unless people want to work in vain from time to time, unless they want to be caricature, it is fair that they be forewarned that the voice of the people is represented in Parliament. Indeed, do I need to repeat that the voice of the people is the voice of God?

So, we are not just talking about what is in the Constitution; we are even saying that unless somebody somewhere has an agenda which is not to implement the Constitution, they must be available to discuss and listen to the views coming from the peoples representatives. That I can promise it is going to happen.

### ADJOURNMENT

**Hon. Speaker:** Hon. Members, it is now time to interrupt the business of the day. This House, therefore, stands adjourned until tomorrow, Thursday, 20<sup>th</sup> February, at 2.30 p.m.

House rose at 6.30 p.m.