

REPUBLIC OF KENYA

COUNTY ASSEMBLY OF KILIFI

THE HANSARD

Monday, 5th December, 2016

*The House met at the County Assembly Chamber,
Malindi Town, at 2:30 p.m.*

ARRIVAL OF KILIFI COUNTY SENATOR

(The Kilifi County Senator hon. (Rt.) Stewart Madzayo escorted by the Speaker of County Assembly of Kilifi (hon. Kahindi) entered the Chamber at thirty minutes past two o'clock accompanied by the mace)

[The Speaker (Hon. Kahindi) in the Chair]

(The Kilifi County Senator (hon. (Rt.) Stewart Madzayo) took the designated chair)

(The mace was placed on the Table)

PRAYERS

COMMUNICATION FROM THE CHAIR

WELCOME TO THE KILIFI COUNTY SENATOR HON. (RTD.) JUSTICE STEWARD MADZAYO

The Speaker (Hon. Kahindi): Hon. Members, today we are privileged to have the hon. Senator of the County of Kilifi hon. Stewart Madzayo who will be presenting his speech. On the same note, I want to invoke Standing Order No. 1, to allow a Report which is urgent to be tabled before the House. Yes hon. Mwambire.

PAPER LAID

DISORDERLY CONDUCT BY THE COUNTY SECRETARY AND CHIEF OFFICER FINANCE

Hon. Mwambire: Thank you very much, Mr. Speaker. On behalf of the Committee on General Oversight and pursuant to Standing Order No. 180, it is my pleasant duty to lay on the Table the second Report of the Committee on General Oversight on the conduct of the County

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Secretary and the Chief Officer Finance at the County Assembly Chamber on Thursday, 24th November, 2016 and on Tuesday, 29th November, 2016.

CONDUCT OF CHIEF OFFICER FINANCE; MR. BENJAMIN CHILUMO KAI

The Committee on general Oversight invited the Chief Officer in charge of Finance together with the County Secretary, Director in charge of revenue and the County Executive Committee Member in charge of Finance and Economic Planning via a letter date on 21st November, 2016, and reference No. CAK/ADM/3/VOL.11/56, to answer the following questions raised by the Leader of Minority, hon. Pascal Thuva Jacob, on Thursday, 24th November, 2016 at the County Assembly Chamber starting at 10:00 a.m.:-

One; provide the total revenue in summary that was collected by the defunct local authorities within the County before the inception of the County Government of Kilifi, that is 2008 to 2013.

Two; how much local revenue the County allocated in the financial year 2013/2014, 2014/2015 and 2015/2016?

Three; why the County Government has not been able to meet its revenue projections even after privatizing revenue collection?

Four; provide comprehensive details on the contract agreement between the County Government of Kilifi and the private revenue collection company that is Rain Drops limited.

Five; whether there are casuals engaged in the Department of Finance and Economic Planning handling revenue collection and what are their terms of engagement?

Six; provide the professional and academic qualifications of the senior officers serving in the County Treasury.

Seven; how much revenue the County Government has collected in the financial year 2016/2017 as at 20th October, 2016 vis-à-vis its local revenue projection of Kshs 1.4 billion?

Eight; whether the Department of Finance and Economic Planning or County Treasury has a Service Charter?

Nine; whether the Department of Finance and Economic Planning or County Treasury has put in place adequate controls and measures to ensure there is no lose of public funds or revenue?

Ten; whether the Department of Finance and Economic Planning or County Treasury is aware that the Kilifi County contractors face bureaucratic challenges and lose of documents at the hands of alleged corrupt County officers to delay payments. If yes, what measures has the County Government taken to address this issue that has contributed to under-performance of the County Government and rendered many projects to be re-voted every financial year?

The Chief Officer Finance appeared before the Committee on the Thursday, 24th November, 2016 and submitted the revenues for the defunct local authorities for only the Financial Year 2011/2012 and 2012/2013 contrary to the question raised that required him to provide the total revenue collection in summary that was collected by the defunct local authorities within the County before the inception of the County Government of Kilifi, that is 2008 to 2013.

The Committee sought a comprehensive response on the questions raised and the Chief Officer Finance requested for three days to be able to lay before the Committee a comprehensive

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response. The Committee after many deliberations, resolved to grant the Chief Officer Finance the three days as requested and agreed to meet on Tuesday, 29th November, 2016.

The request by the Chief Officer led to the County Assembly deliberating and adopting a Motion on Monday, 28th November, 2016 to adjourn the plenary sitting of Tuesday, 29th November, 2016 so as to deliberate on the ten issues raised.

On Tuesday, 29th November, 2016 the Chief Officer Finance together with the County Secretary and the Director in charge of revenue appeared before the Committee on General Oversight at the County Assembly Chamber. When he was asked to provide the total local revenue in summary that was collected by the defunct local authorities within the County before the inception of the County Government of Kilifi, that is 2008 to 2013, the Chief Officer Finance declined to give the information and questioned why he was being asked that question yet he is not the County Executive Member in charge of Finance and Economic Planning. The Committee reminded the Chief Officer Finance on the request for the three days he had sought during the previous meeting but he was adamant that he would not give any information before the Committee.

THE CONDUCT OF THE COUNTY SECRETARY; MR. OWEN YAA BAYA

The Committee on General Oversight invited the County Secretary alongside the Chief Officer in charge Finance, Director in charge of revenue and the County Executive Member in charge of Finance and Economic Planning by a letter dated 21st November, 2016 Ref. No. CAK/ADM/3/VOL.11/56 to answer the following questions raised by the Leader of Minority, hon. Pascal Thuva Jacob on Thursday, 24th November, 2016 at the County Assembly Chamber starting on 10:00 a.m.:-

One; provide comprehensive details on the contract agreement between the County Government of Kilifi and the private revenue collection company Rain Drops Limited. The County Secretary did not appear before the General Oversight Committee on Thursday, 24th November, 2016 and sent an apology that he was unable to honor the invitation for reasons beyond his control because he had to attend to grave matters in Mombasa.

On Tuesday, 29th November, 2016 the County Secretary appeared with the Chief Officer Finance and Director in charge of Revenue before the Committee on General Oversight at the County Assembly Chamber. The County Secretary first attempted to decline to be examined on Oath or affirmation citing that he would only take the Oath if he is allowed to make a personal preliminary statement. The County Secretary declined to give any information and went further to put into question the powers of the Committee to invite him before it.

DISORDERLY CONDUCT BY THE COUNTY SECRETARY AND THE CHIEF OFFICER FINANCE

The County Secretary and the Chief Officer Finance are officers serving within the Executive arm of the County Government of Kilifi. By invitation sent on the 21st day of November, 2016, the two officers were invited to appear before the County Assembly Committee on General Oversight on the 24th November, 2016 for purposes of providing information on matters raised on the invitation. The Chief Finance Officer honoured the

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invitation while the County Secretary sent an apology that he was unable to honor the invitation for reasons beyond his control because he has to attend to grave matters in Mombasa.

The two officers did honour the invitation and appeared before the Committee on the 29th day of November, 2016. They however declined to provide the information sought and questioned the power and authority of the Committee on General Oversight to invite them. Their conduct before the committee was therefore one to demean the authority of the County Assembly, that of the hon. Chairperson to the Committee, and the individual hon. Members of the Committee.

The County Assembly has powers to summon witnesses. The power of County Assemblies to summon witnesses to appear before it is Constitutional. The same is provided for under Article 195(1) of the Constitution which provides as follows:-

“195. (1) A county assembly or any of its committees has power to summon any person to appear before it for the purpose of giving evidence or providing information.

(2) For the purposes of Clause (1), an assembly has the same powers as the High Court to—

(a) Enforce the attendance of witnesses and examining them on oath, affirmation or otherwise;

(b) Compel the production of documents; and

(c) Issue a commission or request to examine witnesses abroad.”

In giving effect to the foregoing Constitutional provision, the Constitution in Article 196 vests responsibility on Parliament to come up with legislation providing for powers, privileges and immunities of County Assemblies. The Article provides as follows;

“196. (3) Parliament shall enact legislation providing for the powers, privileges and immunities of county assemblies, their committees and members.”

The National Assembly (Powers and Privileges) Act Chapter 6 (Revised Edition, 2012) provides for the power of the National Assembly and its committees in inviting and summoning persons to attend before it. Section 14 of the Act provides power to order attendance of witnesses:-

“ (1) The Assembly or any standing committee thereof may, subject to the provisions of Sections 18 and 20, order any person to attend before it and to give evidence or to produce any paper, book, record or document in the possession or under the control of that person.

(2) The powers conferred by subsection (1) on a Standing Committee may be exercised by any other committee which is specially authorized by a resolution of the assembly to exercise those powers in respect of any matter or question specified in the resolution.”

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While it may be argued that the foregoing provisions in strictly in relation to powers, privileges and immunity of the Members of the National Assembly and their committees that the County Assembly is misguided in placing reliance on it. We wish to rely on provisions of the County Government Act, 2012 on Section 17 which provides: -

“The national law regulating the powers and privileges of Parliament shall, with the necessary modifications, apply to a county assembly.”

The County Government Act, 2012 also provides on Section 8 (2):-

“(2) If a county assembly fails to enact any particular legislation required to give further effect to any provision of this Act, a corresponding national legislation, if any, shall with necessary modifications apply to the matter in question until the county assembly enacts the required legislation.”

The County Government Act, 2012 further provides for accountability of Members of the Executive Committee. Section 39 (2) provides as follows:-

“(2) A committee of the county assembly may require a member of the executive committee to—
(a) attend or appear before the committee; and
(b) answer any question relating to the member’s responsibilities.”

Mr. Speaker, Sir, the Committee made the following findings; The Constitution has placed a responsibility on Governments to be accountable to the people by carrying out their operations in open, transparent and democratic manner. The Members of County Assembly of Kilifi are the democratically elected representatives of the people of Kilifi and any attempt to conceal information from the County Assembly can be construed as an attempt to conceal that information from the people of Kilifi yet all sovereign power belongs to them as clearly stipulated in the Constitution.

In declining to produce the Government documents/records, the officers were in direct violation of Article 35 (Access to information) of the Constitution of Kenya, 2010. It is therefore against the supreme law of the Republic of Kenya for the County Secretary to allude that the Committee on General Oversight acted irregularly and contrary to the law in inviting him to appear before the Committee.

The County Assembly of Kilifi through its Committee on General Oversight in inviting the County Secretary and the Chief Officer Finance to appear before it to answer to questions relating to revenue collection within the County Government of Kilifi was clearly proceeding within powers clearly conferred to it by the Constitution of Kenya and various Acts of Parliament.

The County Secretary and the Chief Officer Finance are public officers and the Constitution has placed a responsibility on them to produce information held by them by virtue of their offices should that information be requested for.

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Mr. Speaker, Sir; further, the conduct of the two officers in questioning the power of the Committee to invite them to appear before it amounted to questioning the authority of the Assembly, a very central organ of the County Government of Kilifi properly created by the Constitution of Kenya, 2010.

The casual treatment of Constitutional provisions and offices properly established by the Constitution can be interpreted properly so that the said officers have no respect whatsoever for the supreme law of the Constitution of Kenya 2010, yet the offices they hold would not have seen the light of day had this Constitution not come to being.

It is not in doubt that the two officer's conduct went against the letter and spirit of the Constitution when they declined to produce information held by them by virtue of the offices they hold which information had been properly sought. Their conduct went against the letter and the spirit of the Constitution when they set out to demean and bring into disrepute the County Assembly of Kilifi, an Arm of the same Government that they serve in.

The two officers by their conduct cannot therefore be said to be worth holding public offices and the relevant authorities should undertake disciplinary action against them promptly.

Mr. Speaker, Sir; The Committee on General Oversight recommended the following;

- 1) That, the County Secretary (Mr. Owen Yaa Baya) and the Chief Officer, Finance and Economic Planning (Mr. Benjamin Chilumo Kai) should step aside immediately to pave way for thorough investigations touching directly on their conduct and the respective offices they hold.
- 2) That, upon stepping aside, H.E, the Governor, must ensure the officers hand over their offices and all instruments of power to ensure smooth running of Kilifi County Government operations.

Mr. Speaker, Sir, those are the recommendations that the Committee had made. Thank you very much for giving me a chance to Table this Report.

(Hon. Mwambire laid the document on the table)

The Speaker (Hon. Kahindi): Thank you. Hon. Members, that Report is now duly before this House. The debate of this Report will be taking place tomorrow in the morning.

Now, I want us to revert to the normal business which has been slated and remember the tabling of the Report has been done pursuant to the supplementary Order Paper which has been made with the approval of the Speaker.

Now hon. Members, I want to call upon the Right hon. Senator Madzayo to make his speech to this House. Thank you very much.

ADDRESS BY VISITING DIGNITARY

ADDRESS BY THE KILIFI COUNTY SENATOR HON. (RTD.) STEWART MADZAYO

Sen. Madzayo: Hon. Speaker and hon. Members of the County Assembly, good afternoon. With your kind permission Mr. Speaker, Sir, allow me to state that under the Provision of Article 1 (1), (2) and (3) provides as follows:-

“1. (1) All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.

(2) The people may exercise their sovereign power either directly or through their democratically elected representatives.

(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
- (c) The Judiciary and independent tribunals.

(4) The sovereign power of the people is exercised at:-

- (a) The national level; and
- (b) the county level.

6. (2) The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.”

Hon. Members, Mr. Speaker, Sir; you cautioned me last time that I should not use the word *Akois*. So I have refrained myself from using that word.

Hon. Members, as you are aware the Constitution of Kenya under Article 96 (1), (2), (3) and (4) clearly states or gives the role of the Senate:-

“96. (1) The Senate represents the counties, and serves to protect the interests of the counties and their governments.

(2) The Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided in Articles 109 to 113.

(3) 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.

(4) The Senate participates in the oversight of State officers by considering and determining

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any resolution to remove the President or Deputy President from office in accordance with Article 145.”

Hon. Members, I want to clarify for your information, you are aware that Article 96(3) deals with National revenue allocation among counties that the Senate at its level tried its best. First, we moved a Bill in the Senate; if you recall it was called County Development Fund where we intended to engage all the stakeholders to ensure that the County Governments will do everything that pertains to the County Development Fund as approved. You are aware that the Governors’ went to court and obtained orders which decided to challenge us as the Senate and it went to the Supreme Court. The Supreme Court in its wisdom advised basically it is like an adviser; in its advisory opinion, it stated that the Senate did not have the power and or the mandate to oversight the Governors. We again attempted in 2016 to bring another Bill that would enable the Senators to have a fund allocated to oversight the counties but again as you are aware, the National Assembly very recently, I think last two weeks again, that Bill was again shot down and therefore the Senate was not provided with funds to oversight the Counties.

Hon. Members, first and foremost, I want to thank you and commend you and the Speaker in this County Assembly; you have complied with the Standing Order No. 153 to form a Committee on General Oversight. I want you to interrogate all the remaining County Executive Committee Members pursuant to Section 39(2) (b) of the County Government Act, 2012. I want to re-emphasize that this is your Constitutional mandate and role that must be performed.

Hon. Speaker and Members of this County Assembly, you are aware that education in Kilifi County still remains a greater challenge to all of us. The recent results by the Cabinet Secretary for Education announced last week speak for themselves. We must accept that we performed poorly; what can we do about it? We need to ask ourselves why are we performing badly where education is concerned in our schools?

My humble opinion will be we must ensure that we award more bursaries to bright students coming from poor homes but who perform better. We must also employ more teachers to the Early Childhood Education Centres and improve the standards of our polytechnics throughout the County.

Hon. Members, we are aware of the devastating drought which has engulfed the whole County. Whereas I commend the Governor for taking serious steps of looking for food donations for helping the people of Kilifi, he cannot do it alone. I want to urge the National Government being held by His Excellency President Uhuru Kenyatta and his Deputy William Ruto, that it is their responsibility as provided for in the Constitution that no life is lost because of hunger.

Hon. Members, I want now to come back home and I want to touch on the activities of the County Assembly. First, I want to congratulate the leadership of the County Assembly for coming up with grand plans which were started I think some months ago and recently they were launched by His Excellency the Governor; your recreational facilities. You will be having the Speaker’s office, the Deputy Speaker’s office and quite a number of offices including you hon. Members. Each one of you having your own offices, I think that is a milestone in development and I am very proud of being part of the Kilifi County Assembly success.

Secondly, I want also to congratulate the recent magazine that we officially launched when we came with the hon. Speaker of the Senate hon. Ekwee Ethuro and I am the one who launched it and I believe that the information that is being given there will be utilized. I believe

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it shall be distributed equally to different Sub-counties in the whole of the County of Kilifi so that people are aware of what is happening; what Bills are being passed by the County Assembly and what future developments are being implemented by the Assembly. I want to congratulate you for that because it is going to be an eye opener and that is transparency.

Lastly, I want to praise the law enforcement agency of this Country. For once, I do not seem to praise the law enforcement agency but it is important that I commend them for arresting the Directors of the Company that stole the money of Kilifi County Government funds through IFMIS (Integrated Financial Management Information System). They have managed to produce them in court today and we hope and believe and we have confidence in our Judiciary system that action will be taken and eventually money will be returned to Kilifi. Those who will be found guilty will not only face justice and justice should not only be done, but the justice will manifestly seen to be done.

Finally, hon. Members I want to make it clear that I am with you as you walk in this interrogating process of trying to find out or playing your role on oversight. I will walk along with you all the way. I am going to stand firm in the fight against corruption; we should together slay this dragon of corruption.

Hon. Members, as we adjourn for Christmas vacation, I want to wish each and every one of you a merry Christmas and a happy new year. God bless Kilifi County Assembly Members and God bless Kilifi County. I thank you.

Mr. Speaker, I would like you to allow me now if I may to just rephrase and use Swahili language to give a brief overview of this speech. I will not go into the law but I will go straight to the material.

Waheshimiwa kwa ruhusa ya bwana Spika ninaomba ...

The Speaker (Hon. Kahindi): You know that if you start in English you must stick to English...

Sen. Madzayo: Yes.

The Speaker (Hon. Kahindi): But for all intent and purpose and for the benefit of the people of Kilifi, let us give the Senator because he is giving a summary. He is repeating what he has said and I want to believe it is for the benefit of the people who might have a challenge in the English language because this is a momentous... otherwise, the rules are very clear.

Sen. Madzayo: Precisely, I share the same sentiments with you and I am a sticker to the rules and the law. This end of the year speech goes to the people outside there; to the public, and I also wanted them to get the benefit. So with your kind permission...

The Speaker (Hon. Kahindi): Yes Proceed.

Sen. Madzayo: *Thank you, I am obliged.* Bw Spika, lile la zaidi sana katika hotuba yangu ya leo nilikuwa nasema habari ya Elimu. Nimegusia upande wa elimu nikisema kwamba kulingana na matangazo ya Waziri wa Elimu kutoka Serikali kuu, Kilifi haikufanya vizuri katika mitihani yake. Kilifi ilifanya vibaya na lazima tukubali kwamba mitihani waliofanya watoto wetu hawakufanya vizuri basi tujiulize ni kwa nini sisi hatufanyi vizuri? Kama tunaweza kujua kwa nini hatufanyi vizuri basi tujiulize ni wapi tunaweza kurekebisha kuona kwamba tunafanya vyema katika mitihani hiyo.

Mimi kwa maoni yangu nimesema kwamba watoto ambao wanatoka katika familia zisizojiweza kifedha kulipa karo, waweze kupewa *bursary*. Pia nimesema zile shule za chekechea pamoja na vyuo vyaa anuai zipewe kipaumbele na Serikali ya Kaunti.

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Waheshimiwa wenzangu, kama tunavyoelewa hivi sasa tumeshikwa na janga la njaa katika Kilifi Kaunti. Janga hili la njaa ni sisi sote tujumuike. Kwanza nasema nataka kumshukuru Gavana wetu Amason Jefwa Kingi kwa kutafuta chakula kwa bidii kufika pale alipoweza kufanya Kaunti ya Kilifi kuona watu wake wamepata chakula na hakuna atakaye kufa kwa njaa.

Jambo hili sio la mtu mmoja ama Gavana peke yake. Jambo hili ni la kila mtu, hasa zaidi Serikali ya Kitaifa inayoongozwa na Rais wa Jamhuri ya Kenya Mheshimiwa Uhuru na Naibu wake Mheshimiwa William Ruto. Kulingana na Katiba, ni jukumu na sheria kuona Rais amelinda na kutetea kila maisha ya mkenya ili asife ama kupatwa na baa la njaa na kupoteza uhai kwa sababu amekosa chakula.

Pia vile vile, nataka kuwapatia kongole Waheshimiwa wa Bunge la Kaunti ya Kilifi na wale wanaohusika katika nyadhifa mbali za uongozi wa Kilifi Kaunti kuona ya kwamba kuna mikakati ya maendeleo tofauti tofauti hasa nikigusia upande wa jengo mliloweza kulibuni na kufunguliwa na Gavana wetu.

Ni kongole kwa sababu nyinyi Waheshimiwa afisi ni kidogo lakini mara tu jengo lile litakapokamilika kila mmoja wenu atakuwa na afisi yake pale. Kwa hivyo, hayo ni maendeleo ambayo sisi kama wana Kilifi tunajivunia kwa mipangilio yenu. Gazeti mliloanzisha la Kilifi Kaunti mtakuwa mnaeleza wananchi maendeleo gani mnafanya hapa na pia ni Miswada mingapi ambayo mmepitisha kuwa sheria zitakazotetea na kulinda rasilimali ya watu wa Kilifi. Hilo pia ni gazeti ambalo katika maisha ya mbeleni nyinyi kama waanzilishi wa watu mtaweza kuja kusoma historia nyinyi kama waanzilishi wa Serikali za ugatuzi mlikuwa na mwelekeo gani na maoni gani mpaka pale mlipofikia.

La mwisho Bw. Spika na waheshimiwa wenzangu, ningependa kuchukua nafasi hii kuwasifu wale wanaoangalia sheria. Hasa zaidi nikizungumzia hivi juzi Kaunti ya Kilifi ilipoteza pesa kupitia mitandao ya IFMIS. Ni jambo la sisi tuwe na imani kidogo. Hivi sasa hatua za kisheria zimechukuliwa na wale wakurugenzi wa Kampuni ambazo walikuwa wamechukua pesa zetu kupitia kwa mitandao ya *Treasury* na IFMIS wameshikwa na kufikishwa mahakamani hivi leo. Nina hakika na nia njema kuhusiana na utenda kazi wa mahakama yetu ya Kenya. Hawa watu watachukuliwa hatua, watashtakiwa, kesi itasikizwa na hatimaye wakipatikana na hatia watafungwa na pia vile vile zile pesa zipatikane katika zile akaunti ambazo walikuwa wamezificha ili zirudi katika mifuko ya Serikali ya Kaunti ya Kilifi.

Kumalizia Bw. Spika, nataka pia vile vile kugusia upande wa ufisadi. Kongole kwa nyinyi Waheshimiwa mmechukua hatua ambayo mimi sasa ninajidai nayo. Hatua ya kuweza kuwauliza na kuwakagua na ukakamavu kutaka kujua ni kwa nini kama mkiwaita hapa mbele yenu hawezi kuja na kama kuna pesa zimepotea ama uongozi wa aina fulani mnaweza kuhoji. Nimesema ya kwamba niko tayari, tuko pamoja, tutatembea pamoja na nyinyi Waheshimiwa wa Bunge la Kaunti ya Kilifi kupambana na vita dhidi ya ufisadi. Najua vita ni vingi na ni vikubwa lakini tutafaulu kwa nguvu za mwenyezi Mungu.

Mwisho, tunapochukua wakati huu kwenda katika mapumziko ya Krisimasi, mimi nawatakiwa Bw. Spika na Waheshimiwa wenzangu Krisimasi njema na mwaka mpya wa fanaka. Wakati munaenda kwa kura na hakika Mungu atawasaidia na mtarudi tuonane tena. Asante.

Asante Bw. Spika mwenyezi Mungu awabariki na Mungu abariki Kilifi Kaunti.
Asante sana.

(Applause)

ADJOURNMENT

The Speaker (Hon. Kahindi): Hon. Members, having concluded his speech and there being no other business, I now move to adjourn the sitting until tomorrow morning. Thank you.

The House rose at 3:30 p.m.

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