

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Wednesday, 29<sup>th</sup> January, 2020

#### Special Sitting

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No. 380 of 22<sup>nd</sup> January, 2020)*

*The House met at the Senate Chamber,  
Parliament Buildings, at 2.00 p.m.*

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

#### HEARING AND DETERMINATION OF THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF KIAMBU COUNTY

**The Speaker** (Hon. Lusaka): Hon. Senators and parties present, let me welcome you back to this afternoon session. When we took a break for lunch, the counsels for the Governor were on the Floor of the House, and they had a balance of two hours and ten minutes. If there is anything they want to add, they can use that time and then conclude.

#### PRESENTATION OF THE CASE OF THE KIAMBU COUNTY GOVERNOR

**Mr. Peter Wanyama:** Good afternoon, Mr. Speaker Sir. May I proceed?

**The Speaker** (Hon. Lusaka): Proceed.

**Mr. Peter Wanyama:** Mr. Speaker Sir, in my earlier submissions, I emphasized a provision in the Constitution and, therefore, I want to give it a different angle this time round so that I do not repeat myself.

The principle in the Constitution is equality before the law. Paragraph 1 of Article 27 of the Constitution presumes that every independent human being must be treated equally under the law and in the eyes of the law. Therefore, there is another issue which I need to bring to the attention of the Senators.

Today morning, the Senate made, in my view, a very fundamental decision rejecting the evidence which had been filed by the Governor out of time. Out of time here means that the Governor filed this defense late by one day. Therefore, the presumption of that decision is that the Senate has strictly enforced the Standing Orders and the rules governing these impeachment proceedings.

Therefore, we are again calling the Senate, in similar vein along the same thinking

and paradigm, to strictly enforce rule No. 19 of the Fifth Schedule to the Standing Orders when you retire to make your decision. It reads as follows:-

“In presenting its evidence, the Assembly shall---“

And it uses a mandatory phraseology.

“In presenting its evidence, the Assembly shall not introduce any new evidence that was not a part of the allegations against the Governor by the County Assembly as forwarded by the Speaker of the County Assembly to the Speaker of the Senate.”

This clause is very significant and we insist that it should be strictly enforced against the county assembly so that we are also equal. That way, will see that we have done justice to both the County Assembly and to the County Executive in terms of complying with the rules governing impeachment.

During the cross-examination of the first witness of the county assembly in yesterday's proceedings, the following issues transpired, and it is there in the Hansard. I want to repeat it for the record so that my points are seen in context. There are certain documents which were not given to the Governor, and they were not part of the allegations which the Mover of the Motion introduced in the County Assembly.

These documents were later introduced, as they were not part of the package of the complaint which was given to the Governor at the County Assembly. They were introduced later on in the Senate as an afterthought to package and reframe a case which is definitely weak in terms of want of documents and the consistency of the content of the documentation. These are the documents which were not given to the Governor, and remember that the right of the Governor to appear in the County Assembly is so sacrosanct, that it cannot be taken away.

In these impeachment proceedings, the Senate has to be bold enough and make a decision that breach of such a right in the County Assembly is in itself reason enough to invalidate the entire proceedings of the County Assembly. The Senate, therefore, cannot consider these proceedings, because it then sets a dangerous precedent. This precedent is that a county assembly can ride roughshod, undertake impeachment in a casual manner outside the provisions of its own Standing Orders, disregarding Article 50 of the Constitution; disregarding the provisions of the Fair Administrative Action Act; and submit these impeachment proceedings to the Senate and then hope that the Senate will clean up that mess.

We must push for the strict compliance of the Constitution and the law. This is therefore, the problem. Standing Order No. 90 of the County Assembly of Kiambu Standing Orders; in the morning, they submitted that there is no such clause in the Standing Orders. I submit that there is an express provision in the Standing Orders – Standing Order No. 90 – which provides for documents to be given to the Governor.

When a person is facing removal proceedings, the Standing Orders provides that he must be given adequate notification of the allegations against him. Therefore, the Governor, in extension, must be given Notice of the Motion. In that Notice of Motion which has been given by the Mover of the notice, attached to that notice of Motion are documentations because they form a package. It is this complaint which is given to the County Assembly to make a decision on.

This complaint serves as sufficient notice to the Governor so that he understands his rights, and then he can prepare adequately to push his defence through. If these

documents have been given to the Governor and a decision has been made by the County Assembly, we can equate that to a principle in law known as the *functus officio*. Then the County Assembly decision is final. It is that decision in terms of documentation which the Senate then proceeds on.

Therefore, it is important then that the County Assembly cannot introduce additional documentation. Why are we submitting that the County Assembly cannot submit additional documentation? It is because they will be doing what we call a fishing expedition. Introducing new evidence then prejudices the case of the Governor, given the manner in which Section 33 of the County Government Act has been coached and the manner in which the Standing Orders have been crafted. It heavily prejudices the rights of the Governor.

Therefore, in submission, the following documents were not given to the Governor, and the burden is on the County Assembly to prove. Lucky for us, they made an express, clear and unequivocal admission in page No.1 of the County Assembly, where they have admitted that this document was not given to the Governor. Page 2 of the County Assembly bundle, page 3 of the County Assembly bundle – the report of the Auditor-General – was not given to the Governor. Even though it is a report which is easily available in the website, it was not given to the Governor as part of that sequence of complaints by the County Assembly in their allegations, so that the Governor can be adequately notified of these allegations and prepare a response accordingly.

On page 37 of the County Assembly bundle, there is an admission on record, it was not given to the Governor. From page 50 all the way to page 64, these documents were not part of the complaints or allegations against the Governor in the County Assembly.

Page 76 is a document which goes all the way to page 125, one single document which was not given to the Governor. All the documents from page 125 onwards to the tail end of the County Assembly bundle were not given to the Governor as part of the allegations.

Our interpretation of Standing Order No.19 is that there are allegations which the Senate's Standing Orders is express about; the complete package of documentation at the County Assembly. Therefore, as we speak, the rights of the Governor which are guaranteed by Article 51 of the Constitution, which supplants the Standing Orders--- It says that every person has the right to a dispute that can be resolved through the application of law, decided in a fair and public hearing before a court or if appropriate, another independent and impartial tribunal or body. Such that what transpired in the County Assembly, the impeachment proceedings in the County Assembly are *quasi-judicial* proceedings – removal proceedings. Therefore, the provisions of Article 51 definitely apply.

Therefore, the implication is that Article 51 has been breached and the entire provisions of the Fair Administrative Action have also been breached. Therefore, it is on that basis that I submit that when you retire to make your decision, it is a solemn duty. These are your Standing Orders, and Standing Order No.1(2) provides that decisions which have been made in this House are guided by the Constitution, Statute law, usages, forms, precedence, customs, procedures, traditions and traditions of Parliament.

The question that we are posing to the Senate is a technical legal question; can the Senate proceed to make a decision on impeachment proceedings, a decision on a Motion

whose content and procedure has been tainted with breach of fundamental rules of natural justice? That is the legal question, and for us from the Governor's side, we are prepared to dig into that issue all the way so that we get the real answer in terms of how we deal with that question.

We are persuading you to rule in our favour in this play before the Senate, because it cannot be wished away. Remember, impeachment proceedings are political proceedings, but they are also governed by the law.

The second question which is tied to that question of documentation is the right to be heard. Evidence was submitted yesterday before the Senate and it is on the HANSARD, that the Governor was served with the documentation and he chose to send his legal counsel, according to the Standing Orders. He did not appear in person as he chose to send his legal counsel. However, the County Assembly conducted the proceedings in a very cavalier manner, in total disregard of the fact that the proceedings were *quasi-judicial* in nature and, therefore, the County Governor deserved to be heard to make a commentary.

According to Standing Order No.90 of the County Assembly of Kiambu, the Governor had a right to be heard at least for two hours before a decision of the County Assembly was made. Again, it is on record that the Governor was not heard by the County Assembly. The counsel who were sent to represent the Governor were not heard.

Therefore, is that breach of the right to be heard and the right to be represented in such a manner such significant that it triggers a decision by this Senate in the negative against the County Assembly? I submit, yes. It is something that you cannot ignore. It must be in your decision because the entire proceedings then have been tainted in that manner.

Therefore, we are submitting that everyone is equal before the law. The same standard which was used to deny the County Governor documents in the morning must be used to gauge the applicability of the Standing Order No.19, so that we are seen to be equal before the law and that decisions are not made with express discrimination or implied discrimination. This is because questions regarding equality, fairness and justice will then come in time for consideration.

I submit that when you make that decision, you need to be devoid of any other consideration in your mind. You need to only look at the Constitution, law and the Standing Orders. Political considerations aside, you need to make decisions like you are going to deliver justice for the Governor; like you are standing at Armageddon and battling for the Lord, the Lord of justice. Article 7 of the Universal Declaration of Human Rights contains that sacrosanct right of the right to be heard; and equality before the law. We need to be fair to the Governor.

Notwithstanding the political considerations that cloud this impeachment, you will be the one on the Governor's seat tomorrow, and he will be here defending you, as a Senator, when you become governor regarding the allegations. This is because the Constitution is what we follow. Therefore, we insist that we do not take on board political considerations, but only legal considerations so that we make a decision which is conceptually satisfying; a decision which serves future generations, and a decision which is informed by this House's precedence.

In yesterdays' testimony, we were making a commentary on the County Assembly case. Mr. Nani Mungai, who is a fairly senior lawyer in this country, when he

stood up to make the introduction regarding the County Assembly case, he made an opening statement which seemed to create the impression that the house is on fire. If you are coming to this universe for the first time, you would be so alarmed by the statement that he made in his initial opening remarks. However, what evidence was submitted to buttress the heavy opening statement which he made?

By the way, Mr. Speaker, Sir, out of record, Mr. Nani Mungai is a very senior lawyer. I do not think the County Assembly can afford his legal fees.

*(Laughter)*

However, that is not the point. This is the evidence that was submitted before the County Assembly. I want to link this to the question of threshold.

In summary, the County Assembly submitted a 154 page document. In my submission, I have explained that more than 75 per cent of the documents in this County Assembly bundle are supposed to be expunged. When you retire to consider, please consider those submissions. However, are the documentations which they submitted strong enough to meet the constitutional threshold for the impeachment of the Governor? Did the testimony which was adduced by the County Assembly in terms of threshold through their key witness – the first witness – because that is the star witness, meet the threshold which has been set by the court of appeal and this House in terms of the threshold for removal of a governor who enjoys the right to hold office under Article 38 of the Constitution?

Mr. Speaker, Sir, this is what transpired, and we have a duty to say this. In cross-examination of the star witness, counsel for the governor, my colleague Mr. Ng'ang'a Mbugua asked the County Assembly star witness 49 questions regarding the completeness of this documentation. Out of those questions, the County Assembly star witness admitted 47 times that the documents which would have been needed to beef up these allegations against the Governor were not in this bundle, but were elsewhere. What does that tell you in terms of the quality of the presentation and the threshold for impeachment in terms of Article 181 of the Constitution? This is the only logical inference you can make from that.

The Senate being a House of record, you cannot proceed on assumptions, what-ifs and suppositions. You must proceed on the documents which are before the House. It must be documents which have been submitted by the County Assembly. For evidential purposes, even though you are not governed by the rules of evidence strictly, the rules of evidence require that you can only be persuaded by documents which have been submitted before you and not elsewhere.

Of course the exception will be if those documents have been produced by someone who has been summoned by this Senate in its inquiry power, to give evidence before the Senate. For instance, if the Auditor-General had been summoned regarding the quality of his statement with respect to the pending bills. So, the inference which can be made from that kind of evidence, which is not complete, there is no testimony of the Auditor-General in terms of detailed analysis to explain how these pending bills occurred and there is no financial statement from the County Government proving these allegations. There is also no procurement plan which was submitted by the County Assembly before this House for you to make an inference that the procurement which

was done by the County Government, as complained about from page 59 onwards of the County Assembly documents, was not done properly.

Mr. Speaker, Sir, there is no approved budget before this Senate for this House to make an inference as to whether the quantity of work procured *vis-à-vis* the budget has a variance, as it were. There is no documentation to that effect.

There are no tender documents which were submitted before this Senate. What we hear are political statements outside there. There is no single tender document or letter of award. The Acting Procurement Director, who was supposed to be the third witness of the County Assembly, parachuted. We were waiting to ask him those questions, but he declined to testify. Since he is the person in charge of procurement, we wanted to ask him how he could make these heavy allegations against the Governor without documentation. Where are these documents so that the Senate can subpoena and get these documents before the House for scrutiny and to ascertain the serious allegations which have been made against the Governor?

Mr. Speaker, Sir, on what basis then are we going to make a determination of those questions regarding culpability of the Governor without documents, and where the key witness who are supposed to testify before the House have not testified?

That leads to only one conclusion; that the evidence by the County Assembly is weak. It looks like they hurried these proceedings and the impeachment was done in a hurry maybe as a result of political motivation as opposed to a genuine legal concern regarding the state of affairs in Kiambu County. The evidence is not complete as it is.

We have appeared before this House in many instances where every document which has been produced before the House, analysis has been done, Senators have asked questions and responses have been made. I am submitting that this is not the document that can be used to impeach the Governor.

There is nothing here in terms of content that meets the constitutional threshold in Article 181 of the Constitution, which talks about gross violation of the Constitution. In terms of the Court of Appeal decision in the Wambora case, the decision in Mwangi Wa Iria and Prof. Chepkwony's, the meaning of the word "gross" is that we are supposed to make an inference from the facts submitted before the House and show nexus with the Governor, that he is directly attributed to these complaints before the House. That in the complaint before the House, you can see the footprints of the Governor; that you can see these tenders. Remember these tenders were not given to us. When you examine the tenders, you can see the nexus between them and the Governor.

You will need testimony from the Director of Procurement, since he is the person in charge. If you look at the independent mechanism in each county public finance management works and county procurement, you will need the evidence of a procurement officer or director of procurement to tell us the status of procurement in Kiambu County, and how it is done and influenced. Without that evidence, how can you make a conclusion that the Governor breached the provisions of the PFM Act?

In addition there are other adequate mechanisms. If you look at the Public Finance and Management Act, the Governor is only mentioned three times. There is a complete regime for public finance management, where the ultimate accountability and responsibility lies with the Chief Officer, Finance and the County Executive Committee Member for Finance.

Mr. Speaker, Sir, if you look at the provisions of the PFM Act, they have the express statutory obligation regarding management of public funds. The Governor is the only a political head. If you look at Article 185(3) of the Constitution, the County Assembly has powers to do oversight over the County Executive. We could see from the testimony of the star witness, who was witness No.1, that there appears to be no engagement between the County Assembly of Kiambu and the County Executive regarding the status of public finance management in the county.

Whose failure is that in terms of oversight when there is failure of oversight by the County Assembly? In terms of oversight, why can they not oversight first and ask questions? Where are these summonses which they send pursuant to the provisions of the Constitution? Remember, a county assembly has full powers under the sun to summon anyone to appear before it to answer questions on county public finance management. Where is this evidence that they have attempted to undertake these investigations and have made recommendations which have been ignored by the County Executive and, therefore, they can now proceed to undertake the precipitate action of impeachment?

Mr. Speaker, Sir, to me impeachment is a precipitate action as opposed, in this case, to a kneejerk reaction. It is a precipitate action which requires a methodical presentation of issues. You must satisfy this Senate that you have attempted to do what you can do, and you have hit the dead end as the County Assembly.

Therefore, you are left with no option but to impeach the political figurehead, who is the County Executive.

Mr. Speaker, Sir, I submit that we have a problem regarding the documentation. We have a very big problem regarding the quality of documents submitted before this House because they do not meet the constitutional threshold. There is no nexus between the Governor and the allegations. What we are seeing are complaints; market place allegations. They are allegations which cannot be verified and require further review of documents for you to make a conclusion in your mind that there is a problem which warrants impeachment.

For instance, if you have said that the Governor has influenced a tender and awarded a tender to a relative; there must be evidence of that. It cannot be a marketplace allegation. You have seen that most of the time, even the Directorate of Public Prosecutions (DPP) issue statements in public media to ramp up public feelings and portray the Governor as a bad person. At the end of the day, when it comes to the prosecution of the case, when you are looking at the evidence which they submit, it is all but hot air. There is no content in this documentation.

Mr. Speaker, Sir, it is the same approach here. The county assembly is hyping the case against the Governor, but when you look at it, there is no content that meets the constitutional threshold. All you see is politics. Indeed, the legal advisor to the Deputy Governor was here yesterday; he was sworn and submitted his statement before the House. What will shock you is that the legal advisor to the Deputy Governor was himself illegally appointed by the Deputy Governor. He confirmed that he was appointed by the Deputy Governor. He was illegally employed. A person who is illegally employed by your political opponent, the one who is pushing you out, then comes to the Senate to testify that certain conduct is impeachable.

You must look at the context really, so that you understand that this impeachment is being motivated. As I said, motive is very important. What is the motive of this

impeachment? The motive of this impeachment is to get the Governor out by all means necessary, including coming up with a faulty impeachment process--- A governor who has been elected under Article 38 of the Constitution has a right to hold office. It was some kind of a coup; there is no content here. The testimony of the second witness, the lawyer, is heavily tainted by motive. It is heavily tainted and cannot be relied upon.

Does this second witness know that there are mechanisms for dealing with complaints regarding individuals, where there is an allegation of criminality in place? These are mechanisms that exist. But out of his own volition, as the legal advisor to the Deputy Governor, he wrote a letter to the Commission on Administrative Justice (CAJ). We do not know the context in which he wrote this letter. This letter was not submitted to the County Assembly; it was submitted to the Senate as an afterthought, as part of the documentation which we are rejecting now. As we are saying, what motivated him? Clearly, you can see beyond this impeachment horizon that there is a huge political motivation to get Gov. Waititu out. You must consider that when you are making your decision, because that should not be the motivating factor for impeachment. Instead, there must be a genuine grievance, which meets the constitutional threshold for removal from office.

Mr. Speaker, Sir, as we speak, these impeachment proceedings are extremely frivolous in terms of content and they do not meet the threshold at all. The only inference you can make is that the allegations have not been substantiated at all. The threshold for impeachment, to be specific, has been laid down in law. As I said, our response was rejected, and so we have to read this in the HANSARD as part of our oral submissions in commentary to the case for the county assembly.

In the Supreme Court of Nigeria, which really forms the bedrock of legal decisions in Africa regarding impeachment, in the case of *Muyiwa Inakoju and Others*; Supreme Court of Nigeria 272 [2016]. This is what the Supreme Court said:-

“A governor, as a human being, cannot always be right; and he cannot claim to be always right.”

That explains why Section 188 talks about gross violation, the equivalent of Article 181 of the Constitution on gross violations. Accordingly, where misconduct is not gross, then Section 188 weapon of removal is not available to the House of assembly.

Mr. Speaker, Sir, in the same vein, we submit that if you find in these documentations that there are certain misconducts by the Governor and this misconduct exists, you must check whether it meets the constitutional threshold of gross. As I submitted, not every allegation or violation of the Constitution attracts an impeachment. Not every violation of the law meets the constitutional threshold for impeachment. Indeed, this is what the Senate said in the report of the Special Committee of this House concerning the impeachment of Gov. Mwangi wa Iria and Gov. Chepkwony, which was confirmed.

The issue of the threshold for impeachment is complex and does not contain a simple mathematical formula. We agree entirely. You must consider all relevant facts, motive of impeachment--- The Deputy Governor sends one of his legal advisors to swear a testimony against the Governor and clearly, he is the one who wants to take over the Governor's seat. That is motive – very important. We are not applying a mathematical formula. A very important witness, the Director of Procurement in the County



Government of Kiambu, comes to the Senate, and then when he listens to our presentations, he disappears and does not testify.

Thirdly, a key witness – the mover of the motion – makes 47 admissions out of 49 questions which were asked by him, stating expressly and clearly that these documents are outside there. That he was given time he could have done a better job. That is the context in which we are looking at these issues, and they must be considered.

Therefore, this is the threshold which this House adopted, and it is precedent which binds this House in this decision making. The allegations must be serious, substantial and weighty. As I submitted, where the documentation is incomplete, you require further analysis or investigations for you to make a conclusion, then you have to halt further proceedings. The violation must be flagrant and glaring. Again, that is very critical. There is no witness from the County Public Service Board (CPSB). As I said, the only instance in these impeachment proceedings where the County Assembly attempted to cast some level of violation on the Governor was when they accused him of having appointing staff illegally. That was the only instance where they came close.

It left us with one question; what really happened regarding this impeachment? Where is this testimony from the CPSB to complete the narrative? Is this testimony not available as we speak now? Does Kiambu CPSB not have board members who can be subpoenaed to come before the Senate to assist this House to make a decision? That was the closest they can get, but there is nothing in terms of content. They did not complete the narrative. In essence, they never discharged their burden. As I said, these are *quasi-judicial* proceedings, but the County Assembly still has a burden to discharge when they are prosecuting the case against the Governor.

It is not the Governor to discharge his own burden by calling the CPSB to come and testify; it is the County Assembly. You are the one in control of the impeachment, and, therefore, you are entitled lawfully and constitutionally to bring that evidence here so that the House can make a conclusion on what really transpired. Remember that some of the officers who the County Assembly accuses the Governor of having illegally appointed are advisors in the Governor's Office.

They are advisors in the Governor's Office and help the Governor to execute a political and a legal mandate. Therefore, they are directly appointed by the Governor. If you see the signature of the Governor, then it means that person has been appointed directly by the Governor under the pleasure doctrine, which is applicable in our constitutional dispensation. This is where, as the head of the executive at the county level, elected in a presidential system of Government that we have now, you are entitled to form your own advisors and directly appoint them. So, you cannot be faulted. Where is this narrative? Where is this completeness?

Secondly, Article 179(4) of the Constitution provides that the Governor is the Chief Executive Officer (CEO) of the county. Now, this begs the questions, what are the powers of a CEO of a county government? Can the CEO sign an appointment letter? This is a legal question.

Our submission is that as the CEO of a county government, the Governor has all powers under the sun to sign documentation. If evidence of wrong doing is not brought by the County Assembly regarding those appointments, it leaves no doubt that the County Assembly has not given us the complete story and narrative so that we can make our own

conclusion and determine whether there was wrong doing or not. So, we respectively submit that the evidence by the County Assembly, in summary, is not complete.

We also submit that you do not consider the documentation that was submitted by the County Assembly because they never gave it to the Governor. This is because the Governors' side will be heavily prejudiced. This Senate has an obligation to uphold the Constitution. There should not be violation of the Constitution during these impeachment proceedings. So, we submit that you exercise your obligation to defend, respect and uphold the Constitution. We are highlighting Article 3 of the Constitution, because it is important.

In summary, we submit that the Governor was not given a fair trial at that County Assembly, and the Senate cannot turn a blind eye on this fact. If the Senate sets such a dangerous precedence in the application of law in this country in terms of impeachment, we will lay a basis where there is frivolous impeachment of governors at the instigation of their opponents.

So, the county assemblies must be told that impeachment proceedings must be done strictly according to the Constitution, the County Governments Act and their Standing Orders. If something is not clear or they have deleted a clause in the Standing Orders, it is important to emphasise that the Standing Orders rank third in time in terms of the hierarchy of legal norms. The Constitution ranks first. So, if the Standing Orders do not provide for the right to be heard, it should not be enforced. Instead, the Constitution and the provisions of County Governments Act and Fair Administrative Action Act, which provides for fairness, equality and justice, should be enforced. This is because the Governor is here to get justice.

Lastly, we submit that the threshold for impeachment has not been met. You have seen the evidence for yourself. The express admission is on record, and the nature and character of the issues which have been put before this House for consideration.

Our submission is that the documentation is inherently opened textured. There are so many gaps and many things which are required to fill it. You cannot make a conclusion. In penultimate, at the end of the day, you will be required to uphold the law and the Constitution. So, we urge that you refrain from political consideration and make a decision that is just and not convenient. This is because we are setting this decision for posterity of devolution, so that we have a system that works for the benefit of the people of Kiambu.

**The Speaker** (Hon. Lusaka): I suspect that is all.

**Mr. Peter Wanyama:** Mr. Speaker, Sir, my colleague would like to make one point in one minute.

**Mr. Charles Njenga:** Mr. Speaker, Sir, and hon. Members, it is one of you who said that we have been instructed and paid to do a job, so we wish to finish. That statement was not made to begrudge us on that. I promise that I will make one point that was supposed to be submitted by Counsel Wanyama, but he forgot on the itch of the emotion of submission. He submits passionately about issues of devolution.

Article 50(1) provides that:-

“Every person has a right to have a dispute that can be resolved by application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body”

For purposes of Section 33 of the County Governments Act, the Senate is the body anticipated under Article 50(1). The question is, hon. Senators, are we independent in considering this matter? Are we guided only by the facts and the law, as it relates and regards the issues in this matter? It is not a question that the Governor asks of you; it is the law and the oath that you took, to be independent in consideration of all matters that call for your determination. Are you independent and impartial in this matter?

Article 50(1) requires the Senate, sitting as a *quasi* judicial body considering a matter of removal of a governor, to be impartial. Are we being motivated in our consideration by an independent and objectivity of mind as to arrive at a decision that can be empirically verified by any other sole or such independent arbitral tribunal or body? Are we impartial? That is a standard required of you by your oath and the Constitution.

I say this in consideration of the proceedings as relate to Gov. Waititu. The evidence, testimony and facts that have been discussed shows the following; without a doubt there was manifest violation of the Standing Orders of the County Assembly in passing this resolution. Their Standing Orders says 14 days for a special Motion. However, for Gov. Waititu, there was no need to comply, so they did 19 days because they will come to the Senate and nobody will ask.

The Standing Orders say that any person facing a removal should be given documents, but it was okay not to give Gov. Waititu the documents. He was given a letter which said that he can appear on 19<sup>th</sup> September, 2019, personally or by counsel. He obliged and sent two advocates who wrote a letter and the Speaker acknowledged on HANSARD that there were two counsels representing the Governor. However, because they were Gov. Waititu's advocates, they were not heard. They were sent to the Gallery to watch. They were not supposed to say anything regarding the facts or evidence. That is what transpired. They transmitted to the Senate to condemn the Governor. The question is, are we impartial and independent?

When we came here on a simple matter of documents, we were directed by the Speaker on how the County Assembly case shall be done. There was no issue. However today, a simple application for documents invites a one hour deliberation and a vote for the Governor. This is a different standard for statutory timeliness.

**The Speaker** (Hon. Lusaka): Order! I will not allow you to challenge my ruling.

**Mr. Charles Njenga**: Mr. Speaker, Sir, I am not challenging your ruling; I am commenting on it.

**The Speaker** (Hon. Lusaka): I am also intelligent. I have gone to good schools and good universities for that matter.

**Mr. Charles Njenga**: Mr. Speaker, Sir, I retract that.

Can I proceed?

**The Speaker** (Hon. Lusaka): Proceed.

**Mr. Charles Njenga**: Mr. Speaker, Sir, a fundamental question was raised on whether there is a proper resolution before the House.

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Murkomen?

**The Senate Majority Leader** (Sen. Murkomen): On a point of order, Mr. Speaker, Sir. I have listened to the counsel and respectfully disagree with those who say that he cannot express his dissatisfaction with our ruling. This is a House of record. The record of this House might be subject of further scrutiny outside this House.

Respectfully, we must allow the counsel to disagree with our ruling for the record, then you will take up the matter elsewhere. That will not reverse your ruling. The truth of the matter is that your ruling is final. However, his disagreement with your ruling must be allowed to go on record.

**The Speaker** (Hon. Lusaka): Kindly proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Mr. Speaker, Sir. The counsel has a right to disagreement. It is the manner in which my dear friend had treated these hon. Members. He said that we sat on a simple matter for an hour, and then came up with a casual deliberation. I object to that because it is casting aspersions on the Members of this House. The counsel can disagree with you in a manner that fits decorum a little bit. We are just helping him to say that he is dissatisfied with us without painting us black.

**The Speaker** (Hon. Lusaka): I have made a ruling on that.

Kindly proceed, Mr. Njenga.

**Mr. Charles Njenga:** Mr. Speaker, Sir, I am guided. I was just making a point on the different manner in which two applications of a similar nature were treated.

Mr. Speaker, Sir, we raised an important issue about the integrity of the vote that culminated in the resolution. We have made the point that threshold, as required by statute, was not attained. It is our hope that as we submit on behalf of the Governor, that it is a matter that the Senate will take up in its investigative mandate with the seriousness it deserves, and ensure that the truth and nothing but the truth of those proceedings is finally demonstrated and shown for all and sundry to see and comment on.

In the course of our submissions, we have also shown that the grounds on which the charges are premised against Gov. Waititu are those that have been not really been litigated but canvassed previously before this House with certain determinable conclusions that have been consistently applied in over seven previous proceedings.

Mr. Speaker, Sir, Article 50(1) states that:-

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”

Fairness, in its simplicity, says that what is good for the goose is good for the gander. What is good for seven other Governors should be good for Gov. Waititu, as a standard. That is our simple play and submission request.

Mr. Speaker, Sir, with regard to the question of refusal to admit certain documents, it is fair enough that the decision is final. However, as my colleague, Mr. Wanyama, has demonstrated, there was an addition, in the open, by the County Assembly that they have filed additional documents outside the Standing Orders. There was an admission by the witnesses that the document was not available in the County Assembly, and that they were bringing them here for the first time against the Standing Orders. Those documents have been considered and appropriated in the proceedings; they were not expunged. However, our application for additional documents was refused. We do not contest the finality of the ruling by the House. However, we submit that those circumstances are not fair to the Governor.

Mr. Speaker, Sir, we close our case with that submission. The Constitution of this country which establishes all our offices, including the office of the senator, requires for observance in all respects. Article 51 of the Constitution requires that the Governor receives a fair hearing before this House; an independent and impartial House. Our

passionate plea is that the Senate, without any doubt or equivocation, will rise to the occasion and resolve this matter in an independent and impartial manner that favours facts as they lie in these proceedings.

I thank you for your time.

Mr. Speaker, Sir, we have closed our case at this point, but the Governor himself shall make a closing statement on his own behalf when our time comes.

Thank you for your audience. It is always a pleasure to appear before the Senate.

**The Speaker** (Hon. Lusaka): Thank you so much, parties, for the submissions.

I now call upon the County Assembly to come and make their closing statement. They have 60 minutes, but they do not have to utilize all that time.

**Mr. Nani Mungai:** Mr. Speaker, Sir, we would like to get direction from you. The Governor has handled two elements. They started with their submissions on their preliminary objection, and we wanted to deal with that before we come to the closing. The preliminary objection dealt largely with legal issues; so I believe that we should be allowed a little more. However, I believe that we should be able to cover all that within that period. My learned senior will open briefly, before I come to deal with the preliminary objection and the closing statements.

**Mr. Mbuti Gathenji:** Mr. Speaker, Sir, Members of the Senate, I---

**The Speaker** (Hon. Lusaka): Order, Mr. Gathenji.

What is your point of order, Sen. Orengo?

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, my understanding, according to the directions you had given, it is that once the Governor's case is closed, the County Assembly will proceed to make their closing statement. They cannot now respond to a case which was being put forward by the Governor. The case that we have just heard from the Governor was in response to their case. In all fairness, we should go to the closing statements. The County Assembly should go first, followed by the Governor. The only direction that you need to make is whether the County Assembly has a right of reply after the Governor has made his case. That is the most orderly fashion of dealing with this matter.

**The Speaker** (Hon. Lusaka): My instructions are that you make your closing statement. That is the direction I have given.

CLOSING STATEMENT ON BEHALF OF THE KIAMBU  
COUNTY ASSEMBLY

**Mr. Mbuti Gathenji:** Hon. Speaker and the Senators, my name is Mbuti Gathenji. I will give brief introductory remarks and then my learned friend, who is also a senior counsel like me, will deal with the rest in detail.

The first thing I would like to confirm is the matter that has been raised over and over again. I think my clarification here---

**The Senate Minority Leader** (Sen. Orengo): On a point of order, Mr. Speaker, Sir. Mr. Gathenji should not put on record something false and inaccurate. Mr. Gathenji is not a senior counsel. We have only three senior counsels in this Chamber, and they are on this side of the House.

*(Laughter)*

**Sen. (Dr.) Kabaka:** On a point of order, Mr. Speaker, Sir. Perhaps my senior colleague, Mr. Mbuti Gathenji, is referring to the pending and controversial list of senior counsels which is before the court.

*(Laughter)*

**The Speaker** (Hon. Lusaka): I think we also need some light moments when handling such weighty matters.

So, proceed,

**Mr. Mbuti Gathenji:** Mr. Speaker, Sir, I would like to say, with a light touch, that senior counsel Sen. Orengo was my classmate. The father of Sen. Mutula Kilonzo Jnr., who is seated next to Sen. Orengo, was actually my classmate in Dar es Salaam. So, we have 45 years of practice, and I am obliged to appear before you.

If I may go to the matter in question, I said that I was going to clarify something that is important. When the counsel for the Governor rose at the very beginning and talked about the Preliminary Objection (PO), he did indicate something very important; that the PO cannot be argued without the evidence. Later after the challenge, they accepted that the document which was filed as a PO will take the place of the answer. The first clarification I would like to make is that they can only rely on this document and argue the four points. They cannot go outside the four points that are constituted in this document called the PO.

I have heard my learned friend talk about expunging other documents referred to, but not part of this document. When you retire at the end of this address, you must confine yourself to this document which constitutes their answer and particulars in response of the allegations. That is a clarification that is essential.

Let me explain something. When they came with this document which requires a foundation of evidence, they shut themselves from adducing any evidence. The only approach they can take, which is very risky, is to criticise the affirmative evidence that has been given. That is the evidence of the County Assembly. What you have been treated to here is criticism of the evidence. Otherwise, there is no evidence whatsoever from the Governor.

I indicated at the earliest stage possible that this Senate was magnanimous to the Governor, who is seated here, because it allowed him a lot of time. However, he never offered any evidence himself. So, as you proceed to look at the submissions of our noble colleagues, you must ask yourselves where the evidence from the Governor is.

They are riding on the weaknesses of the witnesses that we called. Some of those witnesses produced documents of admissions by the Governor admitting unlawful employment and issues that we had put in the affirmative. Therefore, the key scenario here is just trying to poke holes and concentrate on gaps in the evidence of the County Assembly. You should look for positive evidence from the Governor.

The other issue that is becoming apparent is that towards the end of the submission by my learned colleague, he had misinterpretation of who the parties are. The parties here, in accordance with the Constitution and the County Governments Act, are the Governor and the County Assembly. This House is not on trial. Aspersions against the House are misplaced. Whether you grant or deny us the orders we are seeking, you will never be a party to the quarrel between the Governor and the County Assembly.

I have made my own observation that this House is full of hon. Members. We have senior counsels, like my learned friends, and people who have served in the administration and institutions. I will not, despite my seniority in the profession, make an attempt to make judgment that you will not be fair. That is my position and the position of the County Assembly.

We also came here to seek justice, and we believe that justice will come from the documents that we have produced. Justice will also come from the evidence in examination-in-chief and cross-examination and re-examination. Short of that, we respect this House.

The other thing is that there are general statements that have been made by my learned friends, which you should dispel as you proceed to consider the evidence before you. First, there is no general presumption in law that if 47 counties have pending bills, they will be exonerated by practice. There is no general practice, rule of law or such presumption. It is equivalent to saying that we have all sinned before the eyes of God but will be hung separately.

The other presumption that they seem to say is the rule of precedent. They would like this House to believe that all cases that come, you are bound by decisions that are made by other preceding Houses, they are wrong. Every case should be determined on its own merit. There is no general rule, at all. In fact, the circumstances under which all those cases are decided will also take into account the general feelings and also the development in law. You are in the era of zero tolerance to corruption. This is the prevailing best practice. You should make a decision that accords with that particular principle that you are here to uphold; not only justice, but to endorse zero tolerance.

The evidence that we have adduced, my learned friend; I will refrain from calling him senior, otherwise, I will be asked to produce evidence, but he is a competent lawyer, will go through in details all the aspects of the evidence that was adduced. The evidence that we are supposed to look at is evidence that was excluded. The evidence that was excluded was the evidence that was not brought in time within the Rules and a ruling has been made by the Speaker. We do not want to revisit that issue.

Looking at the evidence in examination-in-chief and re-examination, it must be not only an analytical problem; it is a question of weight. For you to place weight in the documentary evidence, you must be satisfied of the authenticity of that document. All the documents that we have produced have not been challenged at all.

Before I sit down and allow my colleague to continue from where I am, I would like to also state as a fact, and I do not know the status of the opening statement by the Governor. He made an opening statement, he expressed his views, he is asking for justice; our position is that, justice is mutual. The people he represents are the people of Kiambu, they are the voters and residents and their justice must come from this House. He is our servant; he is a servant of the people. This is the time that judgment must be delivered.

I will ask my colleague to take over so that he can proceed and examine in detail the evidence produced.

**Mr. Njoroge Nani Mungai:** Mr. Speaker, Sir, hon. Members, it was the Governor's case that the resolution that was passed by the County Assembly was not passed with required quorum. We do not contest the fact that the resolution requires to be

passed by two-thirds majority. However, you were told from the podium that they were 57 instead of 62 votes. That is also in the preliminary objection. That is a bare allegation; there are no facts in support of it.

You were also told that after the preliminary objection was filed, it was incumbent on the County Assembly to file evidence to counter that allegation in the preliminary objection. The sequence of filing documents is set out in the Standing Orders, Fifth Schedule. It is not in dispute that the preliminary objection was filed on the Monday, 27<sup>th</sup> January, 2020.

The requirement under the Rules are that, when the County Assembly receives the invitation from the Clerk - I am referring here to Rule No.7, where the county assembly chooses to appear before the Senate - the assembly will be required within 3 days of the invitation under Rule 4 (b) on a day to be specified to file the required documents there. The timeline that was set after the invitation under Rule 4 (b) was that the County Assembly had to file all its documents by Saturday, the 25<sup>th</sup> January, 5.00pm.

The Governor was similarly required under Rule 6 to have presented his documents by the same time. There would have been absolutely no opportunity for the County Assembly to file documents in response to the preliminary objections because it came long after the time that was required for filing. So, that argument does not fly.

Now, the documents that the County Assembly is required to file when a resolution is passed at the County Assembly are set out in Section 33 of the County Governments Act and what is required is that the Speaker of the County Assembly is required to notify; to give notice to the Speaker of the Senate of the passing of the resolution. My learned friend, Mr. Njenga said that the notice that came to the Senate was accompanied by the Notice of Motion as well as documentation; that is correct. He then asked, where was the list of the Members? There is no requirement in law, in the Standing Orders or in the rules to provide a list of the Members who voted and he did not cite any such requirement.

He then went on to give analogies and said that when you have elections, certain elections require thresholds. What I was waiting for him to say is to cite for us any instance in any of the elective offices in this country where the list of voters is required. If you are electing the President, do you have a list of all the voters sent by the Independent Electoral and Boundaries Commission (IEBC)? It is not the case, you do not send the list and so, there is no such requirement.

The question then arises, are you required to satisfy yourself that there was a proper resolution? In my humble submission, the only requirement is for you to receive a notification from the Speaker and the only time you would be required to inquire into the impropriety is if there had been evidence filed on time that would cast doubts as to what was in the resolution and there is no such evidence.

When it comes to the question of the quorum, as I had submitted earlier and I wish to repeat, the Standing Orders of Kiambu County make a provision to ensure that if there is any doubt as to whether there are enough Members; whether the Members' votes were correctly recorded, there is a procedure under the Standing Orders for specifically that purpose and the procedure is set out in Rules 98 and 99.

Rule 98 refers to an error that is noticed when the County Assembly is on the Floor. It says:-



“In the case of confusion or an error occurring in the cause of a roll call concerning the number or names recorded which cannot otherwise be corrected, the Speaker shall direct the assembly to proceed to another roll call.”

The anticipation is that if you think they are not enough Members as per the threshold or whether it is quorum or threshold, then you should raise that point. If it is not possible from a tally looking at what the tellers have brought to determine that question, there would be a second vote. That is during the occurrence.

The second opportunity given to correct any error in the roll call vote is under Rule 99 which applies after the proceedings are over. It says:

“If after a roll call vote has been made it is discovered that a number had been inaccurately recorded or that an error had occurred in the names of the Division list, the facts shall be reported to the Assembly and the Speaker shall direct that the necessary corrections be made.”

These figures we are seeing in the preliminary objection, the Governor had an opportunity to write to the County Assembly and say the resolution that was passed was not supported by the requisite numbers and because it was not I would like them to be corrected. That would be the foundation upon which this House would then be invited to ask the question whether the process was followed. Absence of those two interventions – or unless a party comes and say I did try and I was denied, you would not be required to do so.

When Mr. Mbugua was submitting he made a scurrilous comment about the County Assembly. He used a disparaging word to suggest that the proceedings there cannot be trusted. We need as a country to respect institutions that we create under the Constitution. The Kenyan people, in their wisdom, created the county assemblies and created a structure and processes that they are supposed to undertake. It is not up to this House to keep second guessing communications from the speaker of the county assembly, unless there is a factual foundation to do so.

You cannot say that, “those are county assemblies, so every time they come before we can check whether the Bill that you passed is correct can we see the tallies? Can we see how many people voted?” Even the Communications from this House when you have votes do not require you to send a list of members who voted. Communication from the Speaker about the passage of a Motion or a Bill is adequate. I would urge the Senate to disregard the allegation that there was no quorum at the county assembly. There has been no foundation in evidence to support that allegation. Therefore, no justification for you to interrogate the process.

The second matter that the Governor raised in his case was that this House should not be sitting and has no jurisdiction on account of the fact that the Speaker called the special session that we are in 28 days after the time prescribed by Section 33 of the County Governments Act. The learned counsel for the Governor asked good questions, but did not provide appropriate answers. The first question he asked is, “is there any statute that allows you to extend time?” I think that he had jumped ahead of himself. The question for me is not whether you are out of time. It is our submission, first, that these proceedings are well within the prescribed time. Further, that if you find you are out of time, there is law that enables you to extend time after.

Article 124 (1) of the Constitution gives each House of Parliament the power to make Standing Orders for the orderly conduct of this proceedings. Pursuant to that

provision this House has made its Standing Orders. There are two specific Standing Orders that are relevant. The first is Standing Order No.28 and Standing Order No.30. Under Standing Order No.28, the time for the regular sitting of this House is from the second Tuesday of February to the first Thursday of December. For purposes of these proceedings this means that this House adjourned from its regular sittings on the 6<sup>th</sup> December 2019. The county assembly proceedings were on the 19<sup>th</sup> December 2019. The House was not supposed to resume for its regular sitting until the 11 of February. From the 6<sup>th</sup> of December to the 11<sup>th</sup> of February this House was not supposed to be in regular sitting. What does that mean?

Section 57(c) of the Interpretation and General Provisions Act Cap 2 provides that:-

“where an Act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day the act of proceedings shall be considered done on the next day following.”

The word there is ‘excluded.’ The Act itself does not define what excluded means and we have very able lawyers here will tell you that when it comes to statutory interpretation, if the definition is not provided in statute then you take its ordinary English meaning and excluded has been defined by the dictionary to mean--- It is my submission that time does not run for the Senate between the 6<sup>th</sup> of December and the 11<sup>th</sup> of February.

There is a proviso when it comes to the calendar of this House. The proviso is in Standing Order 30 which provides that there can be special sittings of the Senate. Specifically Standing Order 30 (5) provides:-

“Whenever the Senate meets for a special sitting under paragraph (1), the Speaker shall specify the business to be transacted on the day or days appointed and the business specified shall be the only business before the Senate during the special sitting, following which the Senate shall stand adjourned until the day appointed in the Senate calendar.”

The proviso is that time will stop, but it can be restarted by the Speaker calling a special sitting. The question is not whether there are 28 days. Time runs only within the dates that the Speaker picks for the special sitting. That is what the Standing Orders states. Once you have designated a date that is when time starts to run. When you look at that you will find that the county assembly notice to the Senate could not be acted upon.

The County Assembly’s Notice to the Senate could not have been acted upon until there was a special sitting. It is, therefore, my humble submission that these proceedings are actually well within time. Before I go to that, the question of time not running is not unusual. The High Court is usually on vacation from the 21<sup>st</sup> of December until the 6<sup>th</sup> of January. During that period, time does not run; so, this is not an unusual provision. However, if this House is to find that, indeed, you are out of time, the question will be whether you have power to extend.

Again, Section 59 of the same Cap 2 provides that:-

“Where in a written law, a time is prescribed for doing an act or taking proceedings and the power is given to a court or other authority to extend time, then unless a contrary interpretation appears, the power may be exercised by that court or authority, although the application for extension of time has not been made until after the expiry of the time.”

Therefore, the question then becomes if there are statutes that empowers you to extend time.

Section 57 of the same Act which I had read, but now Subsection 57(d) says”-

“When an Act or proceeding is redirected or allowed to be done or taken within anytime, not exceeding six days---

I am sorry, it is 57(b). It says:-

“In competing time for the purposes of a written law, unless a contrary intention appears, if the last days of a period is Sunday, a Public Holiday or all other non-official working days, which day is also in this Section referred to as excluded day, the period shall include the next following day.”

That is where I was looking for non-working days. I was saying that when you are in a regular sitting, this is a non-working day. I will get back to the section that gives the Senate the power to extend time. However, the submission is that, one, you are not out of time; and, two, even if you are out of time, Section 59 gives the Senate the power to extend time.

Let us now come to the allegations that the County Assembly was also out of time. You were referred to the County Assembly Standing Order No. 82(2)(b), which says:-

“A Special Motion shall be disposed of by the assembly within 14 calendar days.”

What was not read is the beginning of Standing Order No. 82(2), which says”

“Unless the Constitution, any written law or these Standing Orders specify a lesser or further period---

Now, with regard to the Motion, there is a specific Standing Order that provides a different time from the 14 days; that is Standing Order No. 84(5) of the Kiambu County Assembly. It provides that the first step is that there is a notice that must be given. It then says:-

“Upon the expiry of the seven days after notice is given, the Motion shall be placed on the Order Paper and shall be disposed of within 14 days.”

Therefore, you have two timelines; the first is that you give a notice, and you cannot take any action until the expiry of seven days from that notice. Then after the expiry of the seven days, the proceedings must then be concluded within 14 days. If you look at the timelines that were set out in terms of what happened in the County Assembly, the notice was given on the 3<sup>rd</sup> of December, 2019, under Standing Order No. 84(5). Therefore, from the 3<sup>rd</sup> of December, the seven days lapsed on the 10<sup>th</sup> of December, 2019. Therefore, the seven days were from 3<sup>rd</sup> to the 10<sup>th</sup>. December, 2019.

Therefore, you had to hear those proceedings within 14 days from the 10<sup>th</sup> of December, 2019. The proceedings were conducted on the 19<sup>th</sup> of December, 2019, which was nine days. So, these proceedings were not carried out outside of that time. Therefore, that allegation that the proceedings in the County Assembly were out of time is not correct.

There was a further allegation that there was lack public participation. Now, again, the question of public participation would have arisen if that had been brought out in the pleadings of the end evidence of the County Governor. The question of public participation was not taken up. It is correct that the Standing Orders of the County Assembly do require public participation, and it was done. However, there is no

requirement, in submitting the resolution to the House, for the County Assembly to submit details of all the processes that preceded it.

Public participation is a process that is done before. Therefore, if the issue had been raised, it ought to have been raised during the hearing in the County Assembly. If it had, then that would be part of the evidence that would be put here. Therefore, for those reasons, I would submit that the issues that were raised as a preliminary objection do not stand.

Now coming to the substantive allegations, because I can see I have very limited time, I will not go into great detail on them. First, we want to confirm that we agree with the Counsel for the Governor in terms of the threshold, nexus and weight. It is our submission that, in fact, the evidence before you is indeed weighty.

Counsel suggested that the bundle that we submitted before this House was submitted out of time, and contained materials that should not be heard. That is not true. The County Assembly is required, under the rules, to submit its evidence within three days of being served with an invitation. If you look at the wording of Rule 7, it says:-

“Where the County Assembly chooses to appear before the Senate, the Senate shall be required within three days of the invitation on the date specified to provide the Clerk with documentation, designating members, indicating the mode of appearance, the names and persons if any, and a statement of each such witness and specifying any other evidence to be relied on.”

So, there is express provision that allows one to put in witness statements. Remember that the County Assembly proceedings are by a way of Notice of Motion, and may or may not have had witness statements. So, you are entitled to produce witness statements.

The second thing that you are supposed to do is that you are allowed to bring any other evidence to be relied on. The only limitation that is put on the County Assembly is the limitation in Rule 19 which says that:-

“In presenting its evidence, the Assembly shall not introduce any new evidence that was not a part of the allegations against the Governor by the County Assembly as forwarded by the Speaker of the County Assembly to the Speaker of the Senate.”

The evidence being addressed up there is the one provided for in Rule 7. The question is not whether you bring new evidence, but you should not bring any new evidence of new allegations.

The Counsel for the Governor was conflating two things. There is a big difference between allegations and evidence. There can be additional evidence provided it comes within that three days period. The counsel submitted that there was an admission that documents were filed out of time. That is not true. We did not file anything out of time. The documentation that has been presented has been done within time. If you look at that evidence, the additional evidence that has been presented, it is still on the same allegations, except in one or two instances such as the Auditor General’s Report where there was evidence of the various documents that had been submitted. They are part of the bundle that was sent to the Senate. Therefore, there is no breach in terms of the documentation that has been presented.

I will quickly deal with the question of the adequacy of that evidence. I want to broadly state that in our view, the evidence is completely adequate. I will start with the

one that has the shortest element for me to move quickly and that is the evidence on crimes of a national nature; the Commission on Administrative Justice (CAJ) report. We were told by the counsel that the CAJ report is equivalent to a newspaper report and that is not correct. The CAJ report is not equivalent to a newspaper report. The CAJ is a constitutional commission and a statutory body.

Section 8(b) of the Commission of Administrative Justice Act gives the CAJ the power to investigate abuse of office and the power to issue reports on its investigations. The reports of the CAJ are statutory reports. Secondly, there has been a determination by the court as to the binding effect of the CAJ reports. In *Commission of Administration of Justice vs Vision 2030 Delivery Board and three others*, civil appeal No. 141 of 2015, the Court of Appeal found that the findings of the CAJ are binding. Therefore, the allegation that the CAJ report is not weighty does not arise.

You were also told that when it comes to a crime then you must have a conviction. It is my humble submission that it is not the law. Article 181(1)(b) of the Constitution states that:-

‘(1) A county governor may be removed from office on any of the following grounds—

(b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;’

The key words there are ‘serious reasons for believing’ and not that there is conviction.

The Constitution has a separate provision for removing a Governor for conviction which is Article 182(1)(d) which states that:-

‘(1) The office of the county governor shall become vacant if the holder of the office—

(d) is convicted of an offence punishable by imprisonment for at least twelve months;’

The framers of the Constitution could not have anticipated that those are the same. The only requirement under Article 181 is that there are serious reasons for believing. The threshold for that, which you were told by them, is that there should be evidence that is more than on a balance of a probability but not beyond reasonable doubt. We are submitting that the binding findings of the CAJ do provide serious grounds for believing that a crime was committed. In fact, the CAJ in its recommendations went further and recommended that the Director of Public Prosecutions (DPP) prosecute. That is how serious the CAJ deemed that fact.

When you retire, you will also see that the CAJ process was meticulous and rigorous. The Governor was given an opportunity to be heard, he was summoned, interviewed and he confessed in the CAJ Report to have irregularly obtained that parcel of land on behalf of his wife and they agreed that he would return it. I am not making allegations from the air. The Governor was interviewed and you will get that on page 61. On page 59 and 62, the Governor makes the coercion and forces the widow to transfer. On page 72, we have the copy of the green card which shows that the property was transferred from the widow to the Governor’s wife, which corroborates the report.

Page 72 is where you have the green card, has the wife’s name and her identity card number. We were told by the counsel that ‘these people may have the same names’. Here, you have a person and her identity card number. You have a finding of a constitutional body. The very least the Governor should have done is to get his wife to

put in an affidavit saying that “yes I am Esther Wamuyu Nyatu, but I am not that Esther and this is my identity card number and it is different.”

On that particular allegation, there is no rebuttal. It is material and you need to recognise that the Governor was here and he had an opportunity, under your Standing Orders, to take the stand on matters that he could avert to, but he chose not to. There is a reason as to why there has been a concerted attempt to attack these proceedings on procedural matters. That is because he cannot answer to any of the substantive allegations.

On the question of the employment, you were told that there is absolutely no evidence that the Governor’s employment was irregular and that all you have are letters. That is not true. We have the letters from page 129 to 138. However, what is on page 123 is a memo from the County Secretary and Head of Public Service. It says; “the following officers were appointed by His Excellency the Governor and issued with appointment letters signed by him.”

That is contrary to the laid down procedures. Therefore, you have a designated officer who is the right person who should know whether these appointments were proper or not, and who says whether they were proper or not. The Governor had this evidence, but he did not put any responses to it. On the allegation on employment, we have solid evidence about the improprieties.

On the last question on procurement, the County Assembly’s case of procurement is at two levels. The first level is that there was a systematic and consistent weakening of the controls put in place by the law to protect public finance. It is those that you saw highlighted in terms of over-budgeting, pending bills as well as the irregular procurements.

The case for the County Assembly is not that you failed to do all those things. We are aware that this House has held that some of those irregularities are inevitable. It is the purpose for which those weaknesses were introduced that we have an issue with. You must look at the infringements on weakening the procurement safeguards alongside the evidence that the Governor then brought his entire family to benefit from the procurement.

It is that combination that is impeachable. We are clear that counties have challenges in streamlining their operations, but in this particular case - unlike in the ones that have been cited - there was a method to the madness. The method was that the beneficiaries of that chaos were his family.

When you look at the evidence of hon. Solomon Kinuthia Wambui, he listed all the contracts that had been awarded to members of Gov. Waititu’s family. The Counsel for the Governor stood up and the only attempt to challenge that list was when he asked Mr. Kinuthia how he knew that this lady, Susan Wangari Ndung’u, was a wife.

The first rule of cross-examination is you do not ask a question whose answer you do not already know. He was not aware that the witness had actually attended the *ngurario*, the actual wedding ceremony. You have before you the testimony of a person who attended the wedding and knows the family. Therefore, there is no question as to whether the people listed are Gov. Waititu’s daughters and wife.

In our humble submission, the County Assembly has been able to demonstrate to the required standard that Gov. Waititu does not deserve to be a governor. He has abused his office for his own personal benefit. The evidence meets the standards set under

Article 181 of the Constitution. We, therefore, urge that this House rules that he is not suitable to be a governor. I am going to cede my last few minutes to Mr. Muriuki who will address the Executive on---

The issue we want to raise with regards to the procurement is that the governors all received Executive Order No.2. Executive Order No. 2, which this House is also familiar with, made a specific provision and requirement that counties were to have a portal in which they were to upload all details, all contracts, all procurements, and the beneficiaries of those.

In breaching those requirements, there was a reason. The reason why Gov. Waititu's county did not have that portal is because if he did, then the people of Kiambu would be up in arms when they saw his family providing everything. In fact, when you look at the list of procurements that his family benefited from - which is in paragraph 29 of hon. Solomon Kinuthia Wambui's list--- when you read this and you realize that this is one family, you would think that this is a conglomerate that is well known. This is because they are doing construction, supplying tires, supplying garbage skips, supplying first aid kits, water supply, garbage collection, and protective equipment.

Before Gov. Waititu became the Governor, we should have heard about this big family business. Nobody had ever heard about it. The failure to provide that portal is because if they did, it would be very clear that the Governor was misusing public finances to benefit his family.

For those reasons, we wish to urge that you find that the County Assembly has made its case. On behalf of the County Assembly and my colleagues here, I wish to thank the Senate and the Speaker for their patience.

**The Speaker** (Hon. Lusaka): Thank you for your submission. I now invite Gov. Waititu to make his closing statement.

CLOSING STATEMENT ON BEHALF OF  
KIAMBU COUNTY GOVERNOR

**Mr. Ng'ang'a Mbugua:** Mr. Speaker Sir, as much as we had indicated that Gov. Waititu would be the last to go, I feel that that would not be doing justice to his case if certain comments that have been made by the Counsel for the County Assembly are not answered.

I notice that we also had an hour to make a closing statement. We had not anticipated that some of those issues would arise. So, I urge that I take a few minutes – of course, not the one hour – to clarify a few things as part of our closing statement, then Gov. Waititu will address the Senate.

Mr. Speaker, Sir, when Mr. Mbuthi Gathenji was addressing this Senate, he adverted to the fact that appeal cannot be the basis of contesting the question of numbers or rather, in the absence of an answer, there cannot be any basis upon which we can argue the issues that are raised on our Preliminary Objections (PO). Even without referring to the technical nature of appeal, it is a pleading that the Governor filed. It contested the issue of numbers. The moment that PO was filed and admittedly served on the Assembly, it behooves the Assembly to lead evidence on the issue of numbers.

I am glad that Mr. Njoroge Nani Mungai has said that there should have been some intervention in form of a letter. In fact, he has gone ahead to say that the only time

this Senate can investigate numbers is if a letter was written. A letter was written way back on 23<sup>rd</sup> of December to the Speaker of this Senate on the unprocedural nature of the impeachment that was conducted by the County Assembly of Kiambu. It was received – this is a matter of fact - by the Senate on the 23<sup>rd</sup> of December, 2019. It raised issues of improprieties that were committed.

In fact, it says:-

“With respect to the captioned matter and procedural impeachment of Hon. Governor of Kiambu, we noted the following improprieties:”

Therefore, this letter is there. It details how the voting was done and the numbers that were present. The Governor through his Advocate, Ndegwa and Ndegwa Associates, was bringing this matter to the attention of the Senate.

This letter is before the Senate, it was served and it has a stamp. That was before this impeachment commenced. It is not entirely correct that this issue has never been raised.

Let me just add this, because you have been told that you cannot investigate or rather the only time you can investigate is if that question is contested. First, we have shown that it has always been contested. However, what is the purview under Section 33? At the risk of belabouring this point, Section 33(3)(b) says once the Senate is seized of this matter, the Senate shall investigate. It does not say it shall investigate only in certain situations.

Mr. Speaker, Sir, your investigative powers while sitting as an impeachment court is not limited to matters that we can bring before you as the litigants, you can delve. We have participated in impeachments where the Office of the Controller of Budget (CoB) has been summoned to shed light. The CoB was never a party. The Office of the Auditor General has been summoned yet that office was not a party. However, that is because this Senate, in its wisdom, wanted to get to the root of materials relevant to the impeachment question before it.

Therefore, it cannot lie in the mouth of the Assembly to limit your scope and say: “Do not go beyond this because this question is not contested.” It has always been contested and we have demonstrated that way back in December, 2019. That issue was raised.

Mr. Speaker, Sir, on the issue of burden of proof, you were told that in the absence of evidence by the Governor, I heard Mr. Mbuthi Gathenji say that in the absence of evidence then, their case is uncontroverted. Even when the Governor does not adduce any evidence, it still behoves the Assembly to discharge their burden of proof to the required standard. This is so that let it not be said that if we do not tender evidence like what happened when our request was declined, with due respect, it cannot be that then any case presented by the Assembly, even in the absence of evidence of the Governor must prevail. The standard, threshold, nexus and all the requirements must be complied with and be discharged by the Assembly.

We did not criticise the Senate. We respect this Senate because it comprises of noble men and women of character. An expression of dissatisfaction with a determination is not out of disrespect. We respect this Senate. We know, trust and have confidence that it will be able to consider this matter objectively and arrive at a just determination.



Mr. Speaker, Sir, the other issue that I would like to deal with is on evidence. We are all in agreement about threshold and nexus. However, you have been told that since there is a report which is binding. Yes, we agree it is binding, but I am glad that Mr. Nani Mungai read a recommendation that the office of DPP was being requested to prosecute.

Perhaps a question needs to be asked: Why was there no prosecution? Could it be that further investigations were conducted and it was found that there was no basis upon which those that had been adversely mentioned in the report would have been prosecuted? That is a question that this Senate needs to grapple with. In our humble submission, it may very well be that lack of that prosecution is indicative of the fact that there was no reasonable basis upon which charges would have been pressed against the Governor.

Mr. Speaker, Sir, on crimes, again, under Article 181, yes, we agree. It is reason to believe that a crime has been committed. However, can we then say that in a situation where no prosecution was commenced, even after recommendation was made, constitutes sufficient basis to believe? Our humble submission is that it does not and that is why it does then not rise to the threshold required in terms of Article 181 of the Constitution.

Mr. Speaker, Sir, you were told about evidence of kinship. It is important to point out that those documents about CR12 and family members is to demonstrate or to prove an alleged charge of conflict of interest. First, we raised an issue of *sub judice* which is a very important legal principle. Does this Senate want to wade into a matter that is currently the basis of active prosecution?

Number two, you are now told that merely because somebody said that he attended a *ngurario* that he did not even have pictures to show that he was actually in attendance, should now be taken to be the truth of that statement; that, in fact, there is evidence of kinship. That cannot be true. There has to be a higher standard. Not simply a CR12 allegedly that bears one name that resembles the name of the Governor.

On the issue of employment, you have been told that because there is a letter from the office of the County Secretary alluding to the fact that---

**Sen. Cheruiyot:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Cheruiyot?

**Sen. Cheruiyot:** Mr. Speaker, Sir, I hate to interrupt what is being presented. There is a word that has continually been used both by the Assembly and now by the Executive which does not fall under the purview of either English or Swahili, which are the languages of instruction in the Senate. Perhaps, we need your determination if it is okay for them to continue to use it and for those of us who do not understand that language to be given a---

**The Speaker** (Hon. Lusaka): Which word? You are also being vague.

**Sen. Cheruiyot:** Something like "*ngurario*". We do not understand what it is?

**The Speaker** (Hon. Lusaka): Counsel, proceed.

**Mr. Ng'ang'a Mbugua:** Thank you. Mr. Speaker. Counsel Nani Mungai---

**Sen. (Eng.) Maina:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): There is another point of order.

**Sen. (Eng.) Maina:** On a point of order, Mr. Speaker, Sir. This is not a matter to prolong. However, as you know, these learned friends are capable and continually quote some Latin quotations.

(Laughter)

Mr. Speaker, Sir, *ngurario* has no other interpretation in any other language. It is something that denotes a process; it denotes the weight of the ceremony and it has to be termed that way. In the event anybody may wish some small explanation, it could be provided by text.

(Laughter)

**Sen. (Dr.) Kabaka:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Sen. (Dr.) Kabaka, what is your point of intervention?

**Sen. (Dr.) Kabaka:** Thank you, Mr. Speaker, Sir. Maybe for those who are lawyers here, in the usual university courses, there is a paper known as Family Law. There is a landmark case known as *Case vs. Ruguru* where the issue of capacity was called in question where a white man who did not have capacity travelled to Kenya and married a Kikuyu lady. The issue was that they were nullifying the marriage. The court thought that the process of *ruracio* was not followed.

*Ruracio* here means as the Senator for Nyeri County has said, it is a Kikuyu process of--- This is not a semantic like we said. It is a customary requirement which the parties undergo. If it was Kikamba, I would give the meaning, but it is not an issue here.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Haji.

**Sen. Haji:** Mr. Speaker, Sir, those who do not understand *ngurario* may not be texts, as my brother has said here. Those who are interested should get a lady to marry, then it will be performed and they will see how it is done.

(Laughter)

**Sen. Wambua:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Wambua?

**Sen. Wambua:** Mr. Speaker, Sir, I hear the comments by Sen. Haji. Unfortunately, there are those of us who are interested in understanding the meaning of *ngurario*, and we are already married. So, how will we get to know the meaning of this word?

**The Speaker** (Hon. Lusaka): For us to make progress, Counsel, maybe you can explain your understanding, just for benefit of the House, as you proceed.

**Mr. Ng'ang'a Mbugua:** Thank you, Mr. Speaker, Sir. I do not wish to authoritatively speak about the nature, meaning and purpose of *ngurario*, but it has to do with a ceremony, I gather, that consummates a traditional marriage. I could be right or wrong, but that is my understanding.

I was at the point where I was making reference to the allegation of failure to comply with the law regarding recruitment of employees. Mr. Nani Mungai has, in an attempt to demonstrate nexus, made reference to a memo from the County Secretary of Kiambu County, which allegedly refers to persons that were employed without compliance with the law or the laid down procedures.

This Senate, perhaps needs to ask itself why these particular County Secretary could not be summoned to come and testify, so that we can question him further on the

content of that memo. Otherwise, a memo without more, and considering that a member of the County Public Service Board (CPSB) who had been designated to come and testify did not testify, then this Senate should be careful in making a finding of impropriety in those circumstances. Had the County Secretary come and shed light on this question, we would have cross-examined him or her on it, and this Senate would have had all the full facts of these allegations touching on recruitment of these casual workers.

Mr. Speaker, Sir, on the issue of procurement - and this was sensationalised - it was alleged that in our cross-examination, we only asked questions that did not touch on this matter. In our cross-examination, one of the things that could not be demonstrated by the County Assembly is: which were these contracts that were issued and who issued them? Were they issued by the Governor? There was no evidence of that.

What I heard Mr. Nani Mungai say was that there was systematic weakening of controls. That should be a deliberate action. There should be evidence of the manner and nature in which the Governor systematically weakened the procurement process and controls within Kiambu County. You have not been shown that evidence, but now you being told to speculate and make a finding that there were, in fact, these transgressions, and they were all intended to benefit the Governor.

Mr. Speaker, Sir, you recall that the main allegation as far as this tendering is concerned was on kickbacks. We posed a direct question to their witness and no evidence was tendered that, in fact, the Governor benefited from award of these tenders that they could not even prove were issued in the first place.

As I wind up so that I can yield a minute to Mr. Njenga, there is the issue of precedent. Yes, we agree that each matter must be dealt with on the basis of its own merits. A matter rises and falls on its own merits. That we agree, but we were saying that the Senate has had occasion to deal with matters that touch on, for instance, pending bills, and it returned a certain verdict; same set of facts and circumstances. We are asking that the same stick that was deployed in that matter be deployed in this matter.

Standing Order 1(2) of the Senate Standing Orders recognizes the purpose of forms and precedents. You may not be bound by previous determinations regarding previous impeachments, but they are persuasive in great respects, especially where you have a matters that fall in all fours to those that are before this Senate.

I will yield a few minutes to Mr. Njenga, just to touch on the question of time because it was adverted to by Mr. Nani Mungai, on whether, in fact, you could have extended time to consider the resolution that was passed to the Senate by the county assembly. The Governor will then wrap it up, and that will be the closure.

**Sen. Cherargei:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): What is your point of intervention before he comes?

**Sen. Cherargei:** Standing Order No.99 says:-

“A Senator who wishes to speak on any matter in which the Senator a pecuniary or proprietary interest shall first declare that interest.”

Mr. Speaker, Sir, having crosschecked online and everywhere, I have seen that my colleague from Murang'a County, Sen. Kang'ata, is one of the partners in Muchoki, Kang'ata, Njenga and Company Advocates. I hope that when we proceed to voting on other decisions of the House, we will need a ruling on whether we can release Sen. Kang'ata from participating in the final deliberations on this matter.

*(Sen. Kang'ata rose in his place)*

**The Speaker** (Hon. Lusaka): I will make a ruling at that point. Proceed, Sen. Kang'ata.

*(Sen. Kang'ata microphone went off)*

You know how to request.

**Sen. Kang'ata:** Thank you, Mr. Speaker, Sir. Allow me to respond to that issue because it is a very weighty preliminary objection. I affirm that indeed, I, Irungu Kang'ata and Mr. Charles Njenga, have had a long pecuniary relationship in the firm of Muchoki, Kang'ata and Njenga. However, in respect to this matter, we have met, and I hereby declare that I do not have any pecuniary interest in this matter. Therefore, I will be asking you to find that, that rule does not apply to this instance.

Mr. Speaker, Sir, yesterday and the day before, we had a very long discussion with my friend, Mr. Charles Njenga, concerning this matter. I had made an effort for him to excuse himself from acting in this matter. However, we agreed that for the purposes of that rule, and because I have an obligation to the Government that is led by His Excellency Uhuru Kenyatta, which has appointed me as the Deputy Chief Whip, I need to come to this House and do my duty. I, therefore, ask that, that rule should not apply now. I do not have any pecuniary interest in this matter.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Members! First of all, this matter is not on record. It is premature. When it comes up at the right time, we will address it.

Proceed, Mr. Njenga.

**Mr. Charles Njenga:** Thank you, Mr. Speaker, Sir. I hope we shall recover the time that has been taken by the interventions. I think it was about one hour.

**The Speaker** (Hon. Lusaka): You said you were going to use less than one hour. Counsel, just try to condense what you have.

**Mr. Charles Njenga:** Mr. Speaker, Sir, I only have one point then His Excellency the Governor will address the Senate. My only response in summing up is the question of time. There has been a submission that under the Standing Orders of this House, this House can circumvent the operation of statutes. The suggestion is the Standing Orders rank higher in profile of application than the County Governments Act with regard to timelines. Far from it, it is only called sophistry, a very good argument – impressionable, but legally dishonest.

The County Governments Act does not provide any digression for the extension of time. It is very different with, for example, the Civil Procedure Act. Within itself, it says that the court can extend time on certain circumstances and then the rules at Order No.49 provide for those circumstances. That similar provision is not available in the County Governments Act. We need to be honest in our submissions, much as we want to quickly dispatch Gov. Waititu from his position.

Mr. Speaker, Sir, another better analogy would be the Elections Act. The courts have said that the courts have no discretion to extend time even for a day in the matter of elections. In fact, the Supreme Court said in Raila Odinga Petition No. 1 that even if a

tonne of evidence was to be availed on the eighth day, that petition would not be admissible because Article 40 says that seven days from declaration of elections. Section 33 says seven days after the speaker of the county assembly transmits to the Speaker of the Senate which was 23<sup>rd</sup> December, 2019. So, under which provision are we saying the Standing Orders extent to in the matter of extending time? There is no provision.

The proper reading of the law, and I am glad many speakers have adverted to the fact that the House has many senior lawyers, more senior than me; the proper reading of this particular statute shows that there is no discretion to extend time. In the Limitation of Actions Act, if you look at Section 27, it gives a leeway. It says that the court can in these circumstances. Those are distinguishable statutes from the County Governments Act.

Mr. Speaker, Sir, the other issue that was raised was public participation. It was alleged that we did not contest. We filed a preliminary objection contesting that as an issue of law and fact. Once you plead not guilty in the proceedings of this nature which are *quasi-judicial* and *quasi-criminal*, then all the material issues become issues that should be evidenced by the allegor. The person alleging is the County Assembly. So, they should have demonstrated as provided in the Standing Orders that before they brought this resolution there was a process as constitutionally provided for public participation.

On the question of the standard of proof of occurrence of a serious likelihood that a governor has committed a crime in the contemplation of Article 181, the Senate has ruled consistently that it will be opening a pandora's box to make that an impeachment issue based on mere allegations. The Senate has said on that Article then you will need to show us a conviction.

Mr. Speaker, Sir, on the question of additional evidence, there has been a splitting of hairs of semantics of allegations and evidence. Allegations can only be made by way of evidence. So, a case against a governor should not mutate, should not change in the nature and manner in the weight of evidence from the county assembly all the way to the Senate.

Therefore, that rule by itself properly construed would mean that there would be no instance of additional evidence alleging certain facts and certain things about the governor. That in the admission of the County Assembly has been violated by saying we brought in new evidence that was not before the County Assembly. That makes the entire proceedings and the entire resolution manifestly unconstitutional in the contemplation of Article 50 Rule 1.

We urge that you consider those facts and find that the case against the Governor has not been substantiated. If all other governors were held to account on the basis of the standard of the law – seven days after resolution they were brought and tried – then that should be the same standard that should be applied to Gov. Waititu.

Hon. Senators, through the Speaker, I welcome my client, His Excellency the Governor to make a final close of his case. Thank you for your time.

**Gov. Ferdinand Waititu Babayao:** Thank you, Mr. Speaker, Sir. Thank you, Mr. Charles Njenga. I want to take this opportunity first to thank the Speaker of the Senate together with the Senators for listening to us and being patient all this time.

Before I proceed, I just want to bring to the notice of the Speaker that there is a tweet that was made by one of the Senators, as if the Senate has concluded the whole matter. I wonder whether it is proper for send such tweets when the process is going on.

I have in my possession a tweet by Sen. Mwaura alleging that we have rejected Waititu to file evidence out of time as he was requesting. He has not filed in defence and he waited for all the matters to be raised for him to want to open the case afresh. The people of Kiambu and Kenyans need justice. Waititu must face the full force of the law. No *mwizi*. No thief should go unpunished.

Mr. Speaker, Sir, I think you have not concluded that I am a thief. Please, this is the spirit that has been going on in Kiambu County. This is what I said yesterday from the beginning that this hon. House, from today henceforth, must make a ruling that will change the narrative of Kiambu residents and its leaders. This is because they have made it to the level that they are professional demonstrators and professional bloggers in Kiambu – people who wake up every day to malign other people's names without any considerations of the rights of any person.

I am a married person. I am a family man who should be respected by all means. Honestly speaking, nobody should conclude that I am a thief just like that. I have a right like any other Kenyan to be respected. If I may remind you, because you have gone through the same process that I went through - numerous campaigns to be where I am.

This is something I also did when I became a councillor in this City and a deputy mayor. I became the Member of Parliament (MP) for Embakasi and Kabete constituencies and now the Governor of Kiambu County. Not mentioning; I tried to be the Governor of Nairobi City County. I am somebody who has worked hard who should be respected. I am somebody who knows what it is all about to have a seat and take care of it.

Mr. Speaker, Sir, when you make a consideration together with the hon. Senators, please, consider that I am not somebody who just sneaked to be a governor.

From the deliberations that I have heard from yesterday, my considered view is that those that bring a Motion to the Senate should be first witnesses so that they can narrate and be cross-examined on it. I have worked hard to be where I am. So, it is unfair and ungodly for me to be removed unceremoniously because I am not politically correct, yet tomorrow, I might change and be with you.

*(Laughter)*

We have been changing parties. Nobody knows what will happen tomorrow. So, you cannot judge a politician on what happened last week or yesterday because you do not know what will happen tomorrow. So, I beseech you not to judge me for what is prevailing now. You might be surprised by what will happen tomorrow and the day after. So, please, handle my case with dignity and integrity like the seven previous impeachment Motions that came before you.

Mr. Speaker, Sir, I had a lot of difficulties compiling the evidence considering that I am out office. I am one of the first Governor to be barred from office. It is also a new experience for the Judiciary to bar governors out of office. We did a lot of photocopying throughout the three days. As I said, 240 copies of the answers for all the questions have been lying in the Serjeant-at-Arms office since Monday. It was our believe that they will be admitted like before.

Mr. Speaker, Sir, Sen. Orenge said in a clip that went viral that governments of revolutionaries eat their own citizens.

*(Laughter)*

What you will do to me today will come to haunt you when you become governors. You must be just and consider that justice is for everybody.

Mr. Speaker, Sir, I was not given a chance to be heard in the County Assembly of Kiambu despite sending my lawyers and yet it is in the Standing Orders. So, what else could I have done? They arrived on time, were recognized, but they were not given a chance to be heard. That alone is a violation of their Standing Orders. I am not a lawyer, but that is wrong.

I wrote a letter to the Speaker on 23<sup>rd</sup> detailing everything. I clearly wrote on that letter that we have affidavits of 35 MCAs who did not attend the sitting. We can send for the documents for you to see them. So, which other truth is the Senate looking for to be just? This is an important House in this country. You are important people that Kenyans look up to for solutions when they are suppressed elsewhere.

It took more than 14 days for the Motion to be deliberated yet it is clearly stipulated that a special Motion must be dispensed of within 14 days. That is a great violation.

Mr. Speaker, Sir, when they were voting, there were only 57 MCAs yet the law requires that two-thirds of the Members vote 'yes'. They might not like me, but the numbers are on my side. I have been in these assemblies and I know about numbers. You are Senators because numbers were announced and you were elected. I also became a governor because of numbers. Numbers are supreme in every case and they cannot be ignored.

Mr. Speaker, Sir, I beseech this House to make a ruling that cannot be challenged in any court of law so that everybody will admire to be a Senator. I also thought that when I am done with Kiambu, I will become a Senator.

*(Laughter)*

I know I will be a Senator one day. I was in Parliament when the Constitution of Kenya, 2010 was inaugurated. However, people never thought that there will be cheating in the impeachment process. It is a new discovery. Nobody expects the basis for impeachment to be ignored.

Mr. Speaker, Sir, consider my case the way you would like yours to be considered when I will be a Senator.

*(Laughter)*

The lady who alleges that I participated in a malpractice has not made any complaint in any police station and was not called here to testify. Her affidavit that was read did not mention me; it mentioned some county officials.

Mr. Speaker, Sir, the authors of the document from the Ombudsman were not called in this Chamber to testify that the document is genuine and is from their office. They should have been called because the process of getting rid of a Governor who was elected with 800,000 votes is important. I went round 12 constituencies to be elected. They should have been here to submit their evidence. They never called me and I have

never seen them. I read about them in the newspaper. They should have been called here so that they are cross-examined.

Mr. Speaker, Sir, the gentleman who gave evidence as the second witness, that is, Mr. Eric Kiriko has been the County Public Service Board (CPSB) Member for the last six years. He was the right person to answer to questions about employment. He could have given first-hand information because he has been a member for the last six years. Right now, he is employed by the deputy governor against a court order which I have with me from Justice Makau.

Mr. Nyoro cannot employ, sack, or transfer anybody as the deputy governor. However, he has gone ahead to employ over 50 staff. Some of whom are bloggers whose daily work from morning to evening is to blog and malign my name. That is the person who was called as a main witness yet he is an illegal employee as per the order from the High Court. As per the Employment and Labour Relations Court, Petition No.172/2019. There is a very clear ruling on the orders.

Mr. Speaker, Sir, the allegations by the County Secretary that I signed letters for 26 staff members, some of whom were working in my office, is untrue. Five of the staff members were working within the headquarters. The County Secretary was not called to testify on the irregularities that he mentioned. How can you believe such a letter? He should have taken oath to testify on the irregularities. However, that was not done.

The Kiambu Public Service Board has three members presently. It does not have quorum. None of the members was called to testify on the irregularities that I made in employing the casuals. I am not part of the County Public Service Board. All the staff members were recruited by the County Public Service Board. My obligation was to just hand over the letters in a ceremony on the last day of the induction process that had been organized by the board.

I urge this House to do justice to all the governors who will ever appear before you. The documents that have been presented as evidence have been signed by different people. They were not signed by one person. The letters are signed by the County Secretary, the secretary to the County Public Service Board and I. It is, therefore, not peculiar for me to have signed those letters.

Mr. Speaker, Sir, an allegation was made that I influenced the award of tenders yet there was no evidence tabled to suggest that I was given any kickbacks. I am sure all the Members here know that when we are campaigning, we make promises to make roads for our people and that is not peculiar to Kiambu County alone. Every elected person when campaigning says what they will do in future.

If any of you has the chance to visit Kiambu County, you will see that Juja Farm Road, Gatwanyaga-Munyu Road, Kinale in Kamae, Uthiru-Gichagi 87 Road are in desperate situations and they have been in that state for many years. For those procurement staff in my county who went ahead to advertise those tenders, I would like this House to understand that those projects were not going to be done in one financial year; they were to run over a period of two or three financial years. For purposes of tendering, the whole amount is quoted but it will be in different budgets.

Mr. Speaker, Sir, I cannot be blamed for a road that was constructed for the people of Kiambu County. Allow me to repeat that for one to be elected, you have to give promises but the execution of those promises is not that easy. As a Governor, I thought the most important thing is for me to spearhead the county to achieve the development



that we had promised our people. Therefore, in the absence of the evidence that I got any kickbacks from those tenders, that allegation should be thrown out.

On the issue of budgeting, we have qualified staff members in Kiambu County, some whom have Master's Degrees and Doctorate in Philosophy (PhD) in Procurement. Those are the people who should have answered any question concerning budgeting and procurement. I am not a procurement staff. I do not belong to those committees. There are people who are entrusted to do that.

Mr. Speaker, Sir, I would like to sum up by challenging the first witness who appeared before the House to produce any document to show that he has a Master's Degree or that he is a ICPAK holder. This House must encourage leaders to say the truth. You should not entertain liars and propagandists in the Senate. People should know that this is a very respectable House with people of integrity. Whatever people say in this House must be the truth and nothing but the truth.

Just to give an example on how high the gravity of lies is in Kiambu County, my Deputy Governor has been going round saying that he is a Doctor yet he is not a Doctorate of Philosophy (PhD) holder.

*(Laughter)*

Mr. Speaker, Sir, this House must demonstrate and teach Kiambu people a lesson in telling the truth. Deceit and propaganda must be discarded. I have not been convicted. I am innocent until proven guilty. The President reminded us in church the other day that all the people who have been accused are innocent until proven otherwise. I can see that we have senior counsels in this House some of whom we read about in school and admire so much. My plea is that you do justice and follow the law so that your legacy lives on. There are people who admire some of the senior counsels here and have gone to law school to be like them.

I hope that this House will consider that I had evidence to table but the House ruled otherwise. I wrote a letter to the Speaker of the Senate immediately after the County Assembly of Kiambu did what they did and detailed everything. The letter that the legal counsel for the County Assembly talked about was written on time. I expect justice to be done to me like it has been done to the other Governors who appeared before me.

I thank you so much. May God bless you.

Mr. Speaker, Sir, for those who want to be governors ---

*(Laughter)*

Remember that the MCAs sabotage everything until you bribe them. Handling MCAs is a serious problem. The first witness who appeared before this House took our budget to court. Kiambu stalled for six months because our budget had been suspended. The first witness goes round telling people that he is learned yet he does not have any document to show for it.

*(Laughter)*

Mr. Speaker, Sir, allow me to say this to the future governors; please know that handling MCAs is a huge task. I urge you to consider that because that is what I am

handling. In Kiambu, we have propagandists and liars. You should know that there are people who believe in succeeding by whatever means without using the right means. Honestly, my case is supposed to be thrown away by the Senate. I urge you to do what you would like to be done to you under the circumstances that I am in.

I thank you.

**The Speaker** (Hon. Lusaka): On a light note, Gov. Waititu, I hear you because I have been there before.

*(Laughter)*

Hon. Senators, Gov. Waititu raised an important concern about Sen. Mwaura. I will also make a communication before we close the sessions because it is unfortunate if that happened.

I now suspend the Session for 15 minutes to allow Senators to have a short break. After that, we shall come back for discussions in a closed session. After the in-Camera Session, we will reconvene for voting.

I thank all the parties here. I also thank you Senators for your patience. I assure the parties that the Senators have heard you and they will discuss the issues based on what you have said here. Each one of them will have to make a decision at the end of it.

Thank you very much, the Session stands suspended.

*(The Senate adjourned temporarily at 4.55 p.m.)*

*(The Senate resumed at 5.10p.m.)*

*(The House went into camera)*

*(End of in-camera session)*

*(The Division Bell was rung)*

**The Speaker** (Hon. Lusaka): Take your seats hon. Members. We are now in session. The parties have been invited to come back. I refer you to the Order Paper which has been circulated.

Senate Majority Leader, kindly proceed.

## NOTICE OF MOTION

### RESOLUTION TO REMOVE FROM OFFICE, BY IMPEACHMENT, THE GOVERNOR OF KIAMBU COUNTY

**Sen. Dullo:** Mr. Speaker, Sir, I beg to give notice of the following Motion-  
THAT, WHEREAS, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 19th December, 2019, the County Assembly of Kiambu approved a Motion “to remove

from office, by impeachment,” the Hon. Ferdinand Ndung’u Waititu Babayao, the Governor of Kiambu County;

AND FURTHER, WHEREAS by letter dated 20th December, 2019 (Ref: CAK/1/19/10(24) received in the Office of the Speaker of the Senate on 23<sup>rd</sup> December, 2019, the Speaker of the County Assembly of Kiambu informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate documents in evidence of the proceedings of the Assembly;

AND WHEREAS pursuant to Article 181 of the Constitution, section 33 of the County Governments Act, 2012 and standing order No. 75, the Senate heard the County Assembly on the grounds of removal from office by impeachment of the Governor;

AND FURTHER, WHEREAS pursuant to Article 181 of the Constitution, section 33 of the County Governments Act, 2012 and standing order No. 75, the Senate also heard the Governor of Kiambu County on the grounds of removal from office by impeachment of the Governor;

NOW THEREFORE, pursuant to Article 181 of the Constitution, section 33 of the County Governments Act, 2012 and standing order No. 75, the Senate resolves to remove from office by impeachment, the Hon. Ferdinand Ndung’u Waititu Babayao, the Governor of Kiambu County on the following charges; namely:-

1. Gross Violation of the Constitution of Kenya, 2010, the County Governments Act, 2012, the Public Finance Management Act, 2012 and the Public Procurement and Disposal Act, 2005;
2. Crimes under the National Law; and
3. Abuse of Office/Gross Misconduct

**The Speaker** (Hon. Lusaka): Next Order!

### MOTION

#### RESOLUTION TO REMOVE FROM OFFICE, BY IMPEACHMENT, THE GOVERNOR OF KIAMBU COUNTY

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I beg to move the following Motion -

THAT, WHEREAS, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 19th December, 2019, the County Assembly of Kiambu approved a Motion “to remove from office, by impeachment,” the Hon. Ferdinand Ndung’u Waititu Babayao, the Governor of Kiambu County;

AND FURTHER, WHEREAS by letter dated 20th December, 2019 (Ref: CAK/1/19/10(24) received in the Office of the Speaker of the Senate on 23<sup>rd</sup> December, 2019, the Speaker of the County Assembly of Kiambu informed the Speaker of the Senate of the approval of the Motion

by the County Assembly and further forwarded to the Speaker of the Senate documents in evidence of the proceedings of the Assembly;

AND WHEREAS pursuant to Article 181 of the Constitution, section 33 of the County Governments Act, 2012 and standing order No. 75, the Senate heard the County Assembly on the grounds of removal from office by impeachment of the Governor;

AND FURTHER, WHEREAS pursuant to Article 181 of the Constitution, section 33 of the County Governments Act, 2012 and standing order No. 75, the Senate also heard the Governor of Kiambu County on the grounds of removal from office by impeachment of the Governor;

NOW THEREFORE, pursuant to Article 181 of the Constitution, section 33 of the County Governments Act, 2012 and standing order No. 75, the Senate resolves to remove from office by impeachment, the Hon. Ferdinand Ndung'u Waititu Babayao, the Governor of Kiambu County on the following charges; namely:-

1. Gross Violation of the Constitution of Kenya, 2010, the County Governments Act, 2012, the Public Finance Management Act, 2012 and the Public Procurement and Disposal Act, 2005;
2. Crimes under the National Law; and
3. Abuse of Office/Gross Misconduct.

Mr. Speaker, Sir, this is an issue that has been canvassed for the last two days. We have listened to the County Assembly of Kiambu make their case and the County Executive of Kiambu defend the Governor. The lawyers and the governor himself have defended himself in opening and closing statements. This House is being invited to impeach a governor who was elected in the County of Kiambu, the second most populous county in the Republic of Kenya.

This impeachment is predicated on allegations that range from the accusation of misappropriation of public funds to the allegations that relate to his personal conduct when dealing with private citizens, to issues related to abuse of office. Something weighty that this House cannot ignore was raised by the counsels for Gov. Waititu in relation to whether this House has jurisdiction to deal with this matter.

Mr. Speaker, Sir, the process that came from the county assembly raised the issue of threshold because two-thirds of the MCAs voted to impeach the governor. This has been canvassed. In fact, in cross-examination, it came out clearly from the MCA who moved the Motion that there was no quorum in the House to impeach the governor. On that ground alone, I will make my determination on whether or not the governor should be impeached.

Many of us who sit in this House swore to protect the Constitution. We also swore to become faithful to the Constitution in the protection of counties and county governments. Granted, our duty is to protect the country from corruption, matters of---

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Orengo?

**The Senate Minority Leader** (Sen. Orengo): On a point of Order, Mr. Speaker, Sir. This is the point that I have been trying to press. I said that the best procedure is to read the charges and proceed to voting. We cannot have a situation where somebody is

moving the Motion without urging the Motion. If the Senate Majority Leader has conflict, he should have surrendered to somebody else to move the Motion.

The Senate Majority Leader should be calling and urging the House. However, he cannot go contrary to the Motion because this is a House of decorum and integrity. Whereas I agree with everything that he is saying, it would be wrong to move the Motion and at the same time to be seen to be opposing it. It is not right.

**Sen. Mutula Kilonzo Jnr.:** On a point of Order, Mr. Speaker, Sir. The decision that we are going to make is based on the Motion. Therefore, the Mover of the Motion cannot move and unmove it. We will be contradicting ourselves. The Mover should move the Motion and reserve his comments to a later part of the debate. However, since the Standing Order states that one cannot speak twice on a Motion, the Senate Majority Leader can split this into two and some instalments, so that he moves the Motion and then contradicts it at some point. However, he cannot contradict the Motion at this point because he is putting us---

*(Sen. Murkomen walked to the Dispatch Box)*

Sen. Murkomen, I have not finished and you are already here

*(Laughter)*

**The Speaker** (Hon. Lusaka): The Senate Majority Leader, kindly take your seat.

*(Sen. Murkomen resumed his seat)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, Sen. Murkomen needs to relax a little bit.

**The Speaker** (Hon. Lusaka): Kindly proceed, Sen. Khaniri.

**Sen. Khaniri:** On a point of Order, Mr. Speaker, Sir. I had pressed before Sen. Mutula Kilonzo Jnr. took the Floor. I would like to emphasize the point that has been raised by the Senate Minority Leader and supported by the Senate Minority Whip. In my entire life in Parliament; four terms in the other Chamber and two terms in this Chamber, I have never seen anything like this.

Mr. Speaker, Sir, the Senate Majority Leader has a choice. If he does not believe in the Motion, then let him cede ground, so that somebody else moves it, then he will come and make his contribution. You cannot be given an opportunity to move a Motion and contradict it at the same time.

Mr. Speaker, Sir, I urge you to find him out of order. He should either move the Motion as it is and support it, or cede ground so that somebody else moves it.

I thank you.

**Sen. Cheruiyot:** Mr. Speaker, Sir, I listened keenly when the Senate Majority Leader was making his remarks. I was keen and wanted to know how he will approach the kind of reservations being raised. Up to the point that he was interrupted by the Senate Minority Leader, all he had said is that in making his decision, he will be guided by the determination on whether or not the county assembly had the quorum. He had not reached a point of saying how he will make that decision.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Senators!

**Sen. Cheruiyot:** The HANSARD will bear me witness.

**The Speaker** (Hon. Lusaka): Okay, proceed.

**Sen. Cheruiyot:** Mr. Speaker, Sir, the HANSARD always bears truth. If there is anybody who doubts that those are the words that he used, let them check the HANSARD. I am not sure how we will proceed after these interventions, but up to the point that he was interrupted, he had not declared. And like what we have seen in many Bills, when you are moving a Bill, you can speak on the strengths and perhaps one or two reservations that you have about the particular Bill that you are moving.

**The Speaker** (Hon. Lusaka): Hon. Senators, we agreed with the Senate Majority Leader that he will move the Motion first, because he had started delving into issues that will be discussed. We agreed that he should move it, and it has to be seconded. I will then propose the question and open the Floor for discussions. That is the guidance and direction I am giving to the Senate Majority Leader.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, in my stay in this House for two terms – they may not be as many years as Sen. Khaniri's – I have not seen anybody question any mover of a Motion on raising issues that could determine the decision to be made on that Motion.

Secondly, I have moved many Motions in this House that come from the National Assembly by virtue of my office. We do not agree with some of the Motions as a House. While moving a Motion, I make it clear that the House should make a determination at the end. So, let us not strive for debate because we have a strait jacket---

**The Speaker** (Hon. Lusaka): Order, Senate Majority Leader.

**The Senate Majority Leader** (Sen. Murkomen): Let me move the Motion.

**The Speaker** (Hon. Lusaka): Move the Motion, but stick to the rules.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I do not want to lose my cool, but want to say this. Everybody in this House will have the opportunity to vote. However, the thing that we cannot---

**Sen. Omogeni:** On a point of order, Mr. Speaker, Sir. I have tremendous respect for my learned friend, Sen. Murkomen. However, we are guided by our Standing Orders. One of the cardinal rules is that when you are on the Floor, you should not become emotional and not use unparliamentary language. Is the Senator in order to state that he is about to lose his cool?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I do not know how people listen. I said that I do not want to lose my cool.

**The Speaker** (Hon. Lusaka): You said that.

**The Senate Majority Leader** (Sen. Murkomen): I did not say that I am about to lose my cool.

**The Speaker** (Hon. Lusaka): Senate Majority Leader, to assist us to make progress, move the Motion and leave the rest of the talking to allow us time.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, based on the submissions of the county assembly, this House will vote on the three issues on an account of whether the county assembly met the constitutional threshold when they impeached the governor. If they never met that threshold, then by virtue of lacking the

relevant jurisdiction of the House, there will be no ability for us to investigate the veracity of the issues therein; whether there was gross violation of the Constitution or corruption.

Secondly, for us to put weight on the evidence and the documents submitted by the county assembly, this House will make a decision that has great implication on our procedures, standards, processes and traditions. When it comes to making a determination, we already have a litany of jurisprudence from the many cases that we have handled as a House.

Thirdly and lastly, the Senate is converting itself to a quasi-judicial institution. Whereas other decisions we make are because of political considerations, it will be important that all the decisions we make today are for posterity. This is because there are many judicial decisions related to impeachment.

I sat in the Committee that listened to the charges against Gov. Wambora and we had the question of whether the procedure was followed by the county assembly. Others came as a result of court orders that were obtained by the governors prior to coming here, which the courts have argued that we should not have ignored when determining the decision that we made.

Mr. Speaker, Sir, the stakes are high. This is a county governor, and this is about devolution. This is about the future of counties and devolution. I am happy to note that in the seven cases that have been brought in this House, some have gone towards impeachment while some have not.

I like what the counsel of the county assembly said; that the Senate is not on trial. In most cases, people have used the words 'the Senate is on trial' to intimidate Members to make decisions in one way or the other.

I urge hon. Senators that as we retreat to make the decision and determination on the matter that is before us, we should all search our conscience. We should look at the evidence and persuasive arguments on both sides and cast our votes, not just for now but posterity. In the past, this House has risen to the occasion.

Mr. Speaker, Sir, I thought this was just a mere cliché, but I saw my predecessor, Sen. (Prof.) Kindiki, use the same when he was moving a similar Motion in relation to the impeachment of the then Governor of Nyeri. He said that it is up to us, and if it does not fit, we should acquit. This is a famous quote that was made by the courts in the famous case of O.J. Simpson.

It is up to us to make a decision. If the evidence leads to the conclusion that the charges can be confirmed, we should confirm. If the charges and the evidence lead to a conclusion that we must acquit him, we will acquit him. We will not have any apology to make to anybody because we are doing this solemn duty in ultimate protection of the Constitution, and that is our duty as the Senate.

Mr. Speaker, Sir, I would like to call upon the Senate Minority Leader to second.

I thank you.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, I equally agree that we have been given is a constitutional and statutory task, both in terms of the Constitution of Kenya and the County Governments Act. Therefore, I am fully in agreement because the decision we are going to make will either affirm the elections that were held in 2017 for the position of governorship of Kiambu County Government or upset the decision that was made by the people of Kiambu. So, it is a weighty decision

because the consequence of the decision we are going to make will overturn the votes that the people of Kiambu cast in 2017.

Having said that, I want to remind the House that the county assembly is a constitutional body. It is not a statutory body; it is a constitutional body, just like the Senate. I want to add that if you look at Article 176 of the County Governments Act in relation the composition of the county government, it says that there shall be a county government of each county consisting of the county assembly and the county executive. In the hierarchy of our constitutional architecture, it is the body that represents the people that is higher.

Just like in the order of hierarchy of the Constitution, Parliament comes before the Executive and the Judiciary. So, when a constitutional body approaches another constitutional body, there is a legal principle; the principle of committee of harmonious relationship between one constitutional body and the other constitutional body.

Mr. Speaker, Sir, in relation specifically to the matters that have been brought to us; when Hon. Raila Odinga went to court in 2013 and, in effect, he was questioning the conduct of the Independent Electoral and Boundaries Commission (IEBC) and how they conducted that election, the Supreme Court had this to say. I want the Senate Majority Leader to listen to this very carefully.

You have read it, but not cited it in any court; but I have cited it many times. Paragraph 196 says:-

“This emergence from a long standing common law approach in respect of alleged irregularities in the acts of public bodies.”

We are saying that there was an irregularity in the county assembly. Now, the Supreme Court said that for the legal principle to be applied, it is the following: *omnia presumuntur rite esse acta*, which means that all acts are presumed to have been done rightly and regularly. That is the principle of legality; so that when the Senate makes a decision, before the contrary is proved, it is assumed that you have done the thing correctly, so that when the Senate enacts a law, there is a presumption of legality. This is so that when the County Assembly of Kiambu makes a decision, there is a presumption of legality. How do you interrogate that legality?

This case, again, in the Supreme Court, which some people were very happy about because their candidate won---

(Laughter)

This is what they had to say on the burden of proof. They said that the burden of proof shifts throughout a trial. That once somebody has made an allegation, then it is the other side now to provide a rebuttal. You are required to make a rebuttal.

The county assembly brought a series of allegations, which should have been rebutted. Now, I am amazed. In fact, one of the things that I have found very unfortunate – and I really wanted to be of assistance – is that however much you discount the evidence that has been brought by the county assembly, there was no rebuttal at all. You cannot invent that evidence; it cannot exist in your mind, because that would not be useful. There is a process under which the Standing Orders say that we should conduct the proceedings. When one side has presented evidence, the other side should now



present evidence to rebut. What happened in rebuttal? There was just a single document, which was a notice of preliminary objection.

Now, when you have been charged with such a serious offence, the first thing that you do when you read the charges is to collect the evidence to rebut the evidence that has been made available before you. That is why under our rules, we are required to give the other side that evidence that has been presented to the Senate. They are given the entire evidence, so that, that evidence can now be rebutted either through the hearing or in the documents that have been filed.

Mr. Speaker, Sir, I found this case to be very unfortunate because under the Standing Orders and the Constitution, each of the parties could have called for evidence. For example, if there was a procurement officer that was not called, somebody should have made an application to call that particular witness. That was not done. Let me quote it:-

“The Senate may, at the request of the county assembly or the governor, invite or summon any person to appear or give evidence before the Senate.” That is Rule No. 9 of the Fifth Schedule of the Senate Standing Orders; and it is there in the Constitution.

This is, therefore, a very unfortunate case. Even for me, sitting there, I said that Gov. Waititu has been done a little bit of dishonor, because I think in a way, he could have presented a case that would have made the threshold that is required. Just imagine that he had affidavits. He was like Hon. Raila Odinga, who was being told: “You have 960 pages, but they are not before the court.” At that time, the Majority Leader was very happy with the ruling of the Supreme Court. Now, today, he has got to sing another song.

*(Laughter)*

I know that some people can be very happy being in Mombasa and in Naivasha. We support the Building Bridges Initiative (BBI) in Mombasa and in Naivasha, you go--- Here, you have got to take a stand for posterity, and in accordance with the rules.

Mr. Speaker, Sir, what I am saying in support of this Motion, is that the Senate does not have a case to present; the Senate does not have a case to rebut. Ours is to hear the evidence that has been brought before us. I agree with Sen. Wako and Sen. Omogeni that we need to look at our Standing Orders. But if it was a presidential impeachment, the prosecution would have been the Members of Parliament, who come before the Senate with the articles of impeachment and prosecute the case. However, in this particular instance, the prosecution was being done by the county assembly and its lawyers. We are sitting here listening to their case, and the other side also presented their case. So, in terms of what has been brought before us, I would just invite the Senate to look at the individual charges and find whether that threshold has been met.

Otherwise, I beg to second the Motion. I will not blow hot and cold.

*(Question Proposed)*

**The Speaker** (Hon. Lusaka): I will give three minutes each because there is a lot of interest. Many Members would like to contribute to the Motion.

Yes, Sen. Mutula Kilonzo Jnr.

*(Sen. Malalah spoke off record)*

**The Speaker** (Hon. Lusaka): Order! Order! Unfortunately, he holds a position in the Senate. I will get back to you. He has been here longer than you, Sen. Malalah. That is the precedent.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. As Sen. Orengo has said, it is extremely unfortunate that a matter this serious appears to have been taken very casually by the people representing the governor. It is so casual that once all of us have been sitted here the whole day, we collected our documents on Monday. The lawyers of the Governor did not find it fit to even file a formal application before you to explain why they could not comply with the statutory timelines.

Mr. Speaker, Sir, even in a court of law, nobody would have allowed such an oral application. It is very casual.

Let me point out another casual issue. The Commissioner of Administrative Justice (CAJ) is a court under Section 27 of the Commission on Administrative Justice Act No.23 of 2011. The Commission on Administrative Justice issued a ruling that is adverse to the governor, which the governor ignored, again, very casually and told us that since he has not been prosecuted, we should ignore it. How are we supposed to ignore such issues?

Mr. Speaker, Sir, that finding of Hon. Florence Kajuju is unchallenged. The law does not aid the indolent; it only aids the vigilant. Proof of public participation should have come here. The lawyers of the governor were sitted in the Chamber on 19<sup>th</sup> December. What is the date they submitted? It was on 25<sup>th</sup> of January. We are not here to assist them; we are here to follow the law. They did not follow the law and, therefore, they must await their fate.

On the question of quorum, I have looked at the Standing Orders of Kiambu County. They have got a provision about how quorum is determined. Before we make a vote here, quorum is determined in advance and not at the end. So, that question cannot come here. In the ruling, in the case of Wambora in the Court of Appeal, they said that we have no liberty to go behind the County assembly to interrogate.

Under our Standing Orders, this letter that submitted this Motion that gave jurisdiction to this Senate is a letter of a Speaker. What they are saying is we impugn this letter. How do we do that without violating our own Standing Orders?

On the question of time, the Senate Majority Leader is the one who summoned us. You have already made a finding, and that matter must rest. There is one issue. For the first time since the case of the impeachment of Gov. Chepkwony, there is a direct nexus between an allegation and a person. For the first time we have done impeachment and, therefore, Gov. Waititu must await his fate.

Thank you, Mr. Speaker.

**The Speaker** (Hon. Lusaka): Sen. Cheruiyot.

**Sen. Cheruiyot:** Thank you, Mr. Speaker, Sir. I will try to be brief, but also logical and not legal. This is because there is an attempt in this House to reduce every engagement to become a legal process, so that you lock out the majority of the Members who are not lawyers and, therefore, reduce this to be a battle ground of the legal brains only.

I see I have many supporters in that regard.

*(Laughter)*

Mr. Speaker, Sir, when Speaker Ethuro made a ruling on allowing Gov. Gachagua to bring additional evidence before this House, he asked a very simple question: “Why are we here, Senators? We are here to try and establish the truth”. It is in that decision that I want to form the basis of my argument. Let us be guided by logic, and not just the law.

Secondly, we are being told that there is evidence that was placed before us. I asked a very simple but logical question: Why do we bring witnesses before the Senate? Why do we keep them under oath? The gentleman who spoke on behalf of the county assembly was asked by the lawyer for the governor: “Are you sure that the numbers in the House, because you were the mover of the motion, met the prerequisite quorum for a governor to be impeached? The HANSARD bares me witness. He said that he is sure of the numbers. What were the numbers? Is it 56? If we are being told that we cannot make a decision because evidence is not before us, then I dare ask: Why are we bringing witnesses before us? I thought witnesses come to help us understand the case better.

It is politically convenient to make the kind of arguments, the flowery ones that you are being given this afternoon. Let us be firm and consistent. I just want to ask of you, my colleagues, to be logical also. Do not dare do something because it is politically convenient for you today because, tomorrow, you do not know where you will stand.

Mr. Speaker, Sir, as a final point, we were informed, if you read the notes that have been presented on our tablets, that an impeachment process is sequential and consequential; that it follows a particular sequence. Therefore, if the sequence that was supposed to be followed at the county assembly was not followed, then the consequence of an impeachment has not been done.

**The Speaker** (Hon. Lusaka): Sen. Malalah.

**Sen. Malalah:** Thank you, Mr. Speaker, Sir. I have been here for the last two days listening to the submissions from both parties. I would not like to delve deep into the issues of the case. I would like to derive some lessons from the impeachment process. There is need for us to review the impeachment process of governors. I have been following this process keenly, just on two issues.

Mr. Speaker, Sir, the first issue is that the governor is elected on a joint ticket with his deputy, but when he is impeached, he is impeached alone. We will be making proposals to the Constitution that when you impeach a governor, since he was elected on single ticket with his deputy, then both are deemed to be impeached. I speak this because we have deputy governors who have started plotting the downfall of their governors. They have realized that the only shortcut to them ascending to governorship is by impeaching their governors. It is important that we look into this matter more deeply.

Mr. Speaker, Sir, secondly, as I was following this debate, I enjoyed the time the learned friends were making deliberations and making sure that everything is legally right.

We heard the defence and the county assembly making serious submissions. However, the sad bit about these submissions is that the decision the Senate will make right now is not based on the submissions that these people have made; it is based on the political inclination that we have been whipped to vote.

Therefore, I shall be making submissions to review the Constitution, so that when a matter such as the impeachment of a governor comes before this Senate, we form a *quasi-judicial* committee, which will look into the matter more logically, come up with rulings and reasons the said governor should be impeached.

*(Sen. Malalah's microphone went off)*

I am just looking at this thing.

Lastly, Mr. Speaker, Sir, just one minute, because I am a Leader---

*(Laughter)*

**The Speaker** (Hon. Lusaka): Order, Sen. Malalah! Order, Members! I must manage the time. I will not set precedent by adding anybody time. We have a lot of interest in this matter, let us hear from everyone.

Sen. (Dr.) Ali, kindly, proceed.

**Sen. (Dr.) Ali:** Mr. Speaker, Sir, I appreciate the time given, it is short. We have a problem where the learned friends or colleagues here want to take all the time. The leadership should also not be standing every time. Other Members have time, and you do not give it!

*(Laughter)*

Yes, I want to put that point.

Mr. Speaker, Sir, Standing Order 96 (5) on Contents of Speeches states-

“It shall be out of order for a Senator to criticize or call to question, the proceedings in the National Assembly, County Assembly or the Speaker’s ruling--”

When we are doing that here, and our leadership is doing that, are we doing the right thing? That is one question we want to know. Is that the way to go? How do we criticise our Standing Orders?

Mr. Speaker, Sir, if you want to change, we will change, but we do not need to criticize.

Number two is on the time lapse. The impeachment was done on 18<sup>th</sup> of December, 2019, but the governor and his team never bothered to do anything. They are telling us that this thing is out of time; we are not in the right place, and this is not the right jurisdiction. They are accusing us and hitting their chests here as if they own the Senate. The lawyers of the governor today were misbehaving. If I was the Speaker, I would have thrown some of them out. That is just a by the way.

Mr. Speaker, Sir, what happened here was not right. People had more than one-and-a-half months, but they did not do anything. Then they came here and said: “We were only given three days.” What were they doing all that time?

The other issue is that of a widow, whose land was grabbed. Because of the Ombudsman, the land was returned. If that is not an offence, I do not know what an offence is.

Number three, somebody who disclaims his own family and says: “This, is not my wife, these are not my children---” This is crazy!

*(Laughter)*

We have the pictures and the witness who was there when the wedding was going on---

**The Speaker** (Hon. Lusaka): Sen. Kinyua, what is your point of order? Order, Senators!

**Sen. Kinyua:** Asante Bw. Spika. Gavana mwenyewe alisema kuwa si bibi yake ama watoto wake. Itakuwa aje Seneta kutoka mbali ama upande ule mwengine anajua ni bibi yake?

**Sen. (Dr.) Ali:** Mr. Speaker, Sir, that is not a point of order. The governor did not talk about that. He never said: "This is not my wife or my child." However, a Member of the County Assembly (MCA) said that he attended the wedding, and we have pictures of that wedding. These are facts and we have been informed. Anybody who can disclaim his family does not need to be in that office.

Thank you, Mr. Speaker, Sir.

**Sen. M. Kajwang':** Mr. Speaker, Sir, allow me to thank and congratulate the Members of the County Assembly (MCAs) of Kiambu for bringing this matter to the Senate. You should not feel wrong or suffer a crisis of confidence for having brought this matter to the Senate. Whether the Senate supports you or does not agree with you, this is a constitutional process that nobody should punish you for undertaking. I also want to thank the Executive because they came before the Senate, even though they did not appear before the assembly.

Mr. Speaker, Sir, my view is that impeachment is more about political responsibility and accountability than criminality and culpability. Those are issues that would be settled in the competent courts; the High Court all the way to the Supreme Court.

Mr. Speaker, Sir, there is a song that teenage sons and daughters listen to today. It is a song about choices, consequences; the things we live with or the things we cannot live with. When you find time when we retire later on, please google this song. It is called '*Pombe, Sigara.*' The singer says that there are some things he can live with, but there are certain things that he cannot live without.

*(Laughter)*

Mr. Speaker, Sir, the Standing Orders do not allow me to do a rendition, otherwise, I would have told you the things he cannot live without.

Mr. Speaker, Sir, I can live with some infractions of the Public Finance Management (PFM) Act. Pending bills and the wage bill is a problem across all counties. Every governor is appointing people directly. When we sat with the Governor for Bungoma County, he had appointed many people who were called communication officers. He said that the Salaries and Remuneration Commission (SRC) had allowed them to appoint people who were personal staff. They are appointing cooks, gardeners, watchmen, drivers and advisors across the 47 counties.

Mr. Speaker, Sir, the thing I cannot live with is dispossession of a widow of her inheritance. That fits within the three corners of the ABC triangle; it is an abuse of power,

betrayal of trust and corruption. It is unconstitutional, criminal, immoral and impeachable.

Mr. Speaker, Sir, we are going to take a vote on the three charges. I believe that there are things that the governor would have been advised to do better without being impeached, but there are certain things--- The purpose of leadership is to shield the weak against the tyranny of the strong, and the governor failed in that case.

Finally, Mr. Speaker, Sir, to the people of Kiambu, the Senate or impeachment will not solve their problems. You are a rich and endowed county; you have the President and great sons and daughters. You are a great county. Please, go back to Kiambu and deal with your problems. When you call your next Building Bridges Initiative (BBI) rally, let it be---

*(Sen. M. Kajwang's microphone went off)*

**Sen. Halake:** Thank you, Mr. Speaker, Sir. I stand to support the proposed removal from office, by impeachment, of Hon. Ferdinand Ndung'u Waititu Babayao, the Governor of Kiambu County for the following reasons.

Mr. Speaker, Sir, as it has been said, an impeachment process of course is largely concerned with abuse of power. Determining whether someone has abused power can be a bit tricky because there are no straightforward standards that can be applied that can be said fit everything. Therefore, that is the reason legal judgements have not been found to be sufficient, and our Constitution framers have seen it fit to put a process of impeachment in place for checks and balance. This is to avoid a situation where everything is about criminality, but also the political responsibility is taken care of.

Mr. Speaker, Sir, I have sat and listened to the counsels of the governor and the county assembly. They have sifted through evidence, called witnesses, cross-examined them and with all this, I have very good reasons to believe that a lot of the things that the governor has been accused of are impeachable.

We live in a country where our standards have become so low that we look around and say: "This happens everywhere." The fact that it happens everywhere and in every county does not make it right or unimpeachable. Therefore, as a country, we need to raise the bar and make sure that when wrongs are done, people pay for them.

Mr. Speaker, Sir, I have watched and sat at the back of this House. I have observed raw partisanship that has slipped into the Floor of this august House. It is really saddening to see the raw partisanship that has brought a lot of emotions on the Floor of this House to the point of actually excusing something that is so impeachable; that there is no question in terms of the checks and the balances that we, as the Senate, should be guarding against.

Mr. Speaker, Sir, let me remind the House. I know we have all spoken about the oath of office. What is this oath of office that we, as Senators, that having been elected Member of the Senate, we swear in the name of God that we will bear true faith and allegiance of the people and the Republic of Kenya; that we will obey, respect, appoint, preserve, protect and defend this Constitution of the Republic of Kenya; and that we will faithfully and conscientiously discharge the duties of a Member of Parliament.

In case we forget, we should know that the duties of a Member of Parliament include oversight and we have another constitutional institution at the primary level in the name of the county assembly that has done its job.

*(Sen. Halake's microphone went off)*

**The Speaker** (Hon. Lusaka): You have run out of time.

**Sen. Wako:** Thank you, Mr. Speaker, Sir. I have three points. It was alleged by one of the counsels that this whole meeting is an illegality of the Senate. I want to clarify that it is not an illegality. As it was pointed out, when you come to the computation of time, we were not in session according to our Standing Orders in the period between the first Thursday of December to the second Tuesday of February.

We were not in session, hence the Provisions of the Interpretation and General Provisions Act Section 57(b) applies. This relates to the computation of time. I am clarifying that for the public to know that we are properly constituted. It states that if the last day of the period is Sunday or a public holiday or official non-working days--- The period between December and January, as I have stated, is a non-working day and they are deemed to be excluded days from the computation of time under any Act of law. Therefore, we are within the law.

The second point that I want to refer to is our jurisdiction. The matter that we are supposed to investigate under these proceedings is under Clause 2, which is to investigate the matter. What is it that we are supposed to investigate? Under impeachment proceedings, it is the particulars of allegations against the governor. Our jurisdiction is confined to investigating particulars of allegations against the governor and not everything as we were led to believe. It may very well be that the situation was such that there were some incidental matters to this, like the issue of jurisdiction. If you come to that---

*(Sen. Wako's microphone went off)*

**The Speaker** (Hon. Lusaka): You have run out of time.

*(Sen. Wako spoke off the record)*

**The Speaker** (Hon. Lusaka): I will not set a precedent, and I want to maintain that. You have made your point.

**Sen. Cherargei:** Thank you, Mr. Speaker, Sir. I want to raise three points. We have sat here patiently for the last two days listening to the submissions by the governor and the county assembly. It is sad that the standards set in the eight impeachment proceedings in this House do not meet the provisions of Article 181 of the Constitution. That is because most of those charges that have been preferred are not gross violations of the constitution.

Secondly, there has been no nexus that links the governor and the charges in terms of commission or omission. We should do the right thing in as much as it is said that impeachment is a tool of good governance. A decision to impeach Gov. Waititu will haunt us forever because we never gave him the opportunity to give his side of the story or provide evidence. You might want to talk of *tanga tanga*, *kieleweke*, Building Bridges Initiative (BBI), ODM or NASA, but that will not be remembered when the history of this House will be written or referred to by us or those who will come after us.

As we discuss this, we should be aware that Article 96 gives us power to protect devolution and the counties. We should not become part and process of the political machinations and propaganda that is going on in Kiambu County. We should rise beyond the partisan interests in Kiambu County. We should allow counties and devolution to function in this country. My colleagues should know that history and the HANSARD will haunt us forever.

I know that Gov. Waititu's case is an example of the Government eating its own children. I know that because Gov. Waititu is being impeached for political reasons; there is nothing else. We should stop all the stories. He is being impeached because of politics.

I oppose.

**The Speaker** (Hon. Lusaka): Order, Senator! You are out of order. Hon. Members, let us reduce our emotions.

*(Loud consultations)*

Order, Members! Remember that the whole world is watching us. A decision is yet to be taken. We do not know if he will be impeached or not. You will be given an opportunity to vote the way you want. Let us reduce the emotions for us to proceed well.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. It has been repeated here that the Governor was not given a chance to be heard, and that is not true. We should be a House of reason.

Our Standing Orders are very clear. When a governor chooses to appear before the Senate to participate in his impeachment, he is called upon to respond to every single allegation. In my view, the preliminary objection was what the former Chief Justice, Willy Mutunga, would describe as something that has been moved more as a sword than a shield. Such is not permitted as it opts to occasion an injustice to the applicant and, indeed, to the wider public interest.

Article 159(2) of this Constitution also states that justice shall be administered without undue regard to procedural and technicalities. When we talk about the issue of quorum, which has been raised in this House, the public ought to know that the issue of quorum is not an afterthought. It may be a fundamental issue for any legislative process, but it is not an afterthought.

I saw the letter by the Speaker of Kiambu County Assembly. The governor is actually questioning the office of the Speaker when he comes here and says that there was no quorum. In my view, it is a *prima facie* proof that all legal procedures have been followed. Unless it is contented and challenged as a fraud, then this House must make a determination based on what has been presented and the facts that have been submitted here by the assembly.

I want to remind you that the genius of an impeachment, as was once said by someone, lies in the fact that it could punish an individual, but not the office. We are not here to punish the office.

**The Speaker** (Hon. Lusaka): Sen. Sakaja.

**Sen. Sakaja:** Thank you very much, Mr. Speaker, Sir. Yet again, throughout this trial I have been representing Members of the House who are not learned friends but highly educated. They make a majority in the House, because we have only three Senior Counsels.



I have been a Senator for two years, 151 days and four hours. In that period, this is the first time that we have gone through such a process. I would like to commend Senators as well as the lawyers who represented both sides for sitting through it.

Going very quickly, because I have heard what my colleagues have said in many words, we need to realize one thing. There has been the argument that we are not thinking about the stakes in this case. Every side has brought its issues, and I am glad that the county assembly was represented and they brought their issues.

Mr. Speaker Sir, from my little understanding, when you file a preliminary objection even in a court of law, you accompany it with your pleadings and witness statements. This is so that in case the preliminary objection is dismissed, you quickly go into trial. I feel very strongly that the governor has been misled by his legal team, and it is his choice. However, if those issues were brought to us, we would have listened to them.

Let it go on record that Gov. Ferdinand Ndung'u Waititu Babayao has had his right to be heard by the Senate. We have actually heard him, even in his closing statements. However, the stakes in this case are not about the career of an individual. Protecting devolution is not protecting an individual. The stakes are about the lives of the millions of residents of Kiambu. The stakes are not about somebody's family, but about all of those who were either disinherited from that plot of land or depend on a country that stands against corruption.

The threshold that we have in Article 181 if the Constitution says very simply that if you have serious reasons to believe that, that crime has been committed---. The threshold is above balance of probabilities and below reasonable doubt in a criminal case, and I think that this House has been convinced.

Sen. Cheruiyot said that we should be logical, but beyond being logical, let us be ethical. We cannot say that this was not the wife because they did not bring a certificate. We all know that the First Lady of Kenya is Margaret Kenyatta; she is the wife of the President. Who has seen their wedding certificate?

*(Laughter)*

We all know that the wife of the Deputy President is Rachel. Have you seen their certificate? Let us not be legalistic, but ethical.

Sen. Cherargei said that we will regret--- Let it go down in history that the Senate of the Republic of Kenya - as you make your decision - has stood with Kenyans today and made a decision that is right.

**The Speaker** (Hon. Lusaka): Sen. (Prof.) Ongeru.

**Sen. (Prof.) Ongeru:** Thank you, Mr. Speaker, Sir. One question that we must ask ourselves is that when we queried the quorum of the Kiambu County Assembly, I expected that the governor with his team would provide an affidavit of the people who did not attend that function. I waited for it, but did not see it. Therefore, we have no business to listen to fables that there was no quorum. As Senate, we have a duty to accept the letter of transmission from the Kiambu County Assembly Speaker; that, that was the authentic quorum that brought us those materials.

Secondly, I heard the governor, on oath, say that the wife that was cited---

**An hon. Senator:** He was never sworn!

**Sen. (Prof.) Ongeri:** He was never sworn, but he gave a statement in this House that the wife who was cited in corruption with his family was not a family member. I expected him to produce an affidavit recanting that the lady cited in corruption was not his wife and the children cited in corruption were not his daughters. I would have had an opportunity to be persuaded to think that, that was possible.

Thirdly, one of the things that I find irreconcilable is when you say that we must prove beyond reasonable doubt gross misconduct. What can be more gross misconduct than depriving a widow – leave alone a married lady – her only level of subsistence by finding a way of forcing her to bring about a change of the title deed under duress? The Commission of Administrative Justice did the right thing. It is a constitutional mandate.

Mr. Speaker Sir, on those three points alone, I am fully persuaded that he needs to go home.

Thank you.

**The Speaker** (Hon. Lusaka): Sen. Kihika.

**Sen. Kihika:** Thank you, Mr. Speaker Sir. I have also been in the House for the last two days and listened very closely to the submissions by both sides. I am quite astounded when I hear Senators talk about the process not being important. What I am hearing is that we should just be rubberstamps, and we should not interrogate whatever is brought to us or question the validity of the process, but just proceed with what is before us.

I disagree with that. Even in our Standing Orders, Part 1, Rule No. 2 of the Fifth Schedule says:-

“The Senate shall in Plenary:-

(a) Investigate the matter and;

(b) Determine whether the particulars of the allegations against the Governor have been substantiated.”

From the evidence that I have heard in the last two days, first of all, I want the record to reflect that we never got any evidence as to whether---

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Senators! Let us consult in low tones.

**Sen. Kihika:** Mr. Speaker Sir, we never got any evidence brought before the House, and it is not for us nor the governor to provide as to whether the issue of quorum was ever addressed. We had the Mover of the Motion at the county assembly say that he was not sure whether the 62 members out of the 92 – which is the two thirds – were in the House.

Therefore, when a Motion is brought here and there is question as to whether the quorum was there, then I do not believe that we should have even proceeded without that having been determined. I also believe that the fact that it was ruled on today as opposed to yesterday, prejudiced the side of the governor. There was also some very serious contention that the governor’s right to be heard was taken away.

When his Counsel went to the county assembly and wanted to present the case on behalf of the Governor - from the evidence that came out here - they were told to sit in the gallery with everybody else. Therefore, it is a miscarriage of justice, and I believe that

due process must be followed. As the Senate, it is our duty to make sure that the process was proper and we interrogate the process.

Everything else that comes after that is questionable because I believe that the process was not properly handled at the county assembly level. However, regardless of the outcome of the Senate today, I am happy that we have the courts in this country that may work as the buffer at the end of the day, given the miscarriage of justice that I have just heard here.

The fact on the land issue has been brought as a very emotional issue. At the end of the day, we are not supposed to deal with emotions. We are supposed to get raw facts and evidence. They were short on that, but they really did stock our emotions. We never saw any affidavits from the widow and she was never brought forward. To me, that evidence has not been substantiated, and because of this, I would not---

*(Sen. Kihika's microphone went off)*

**The Speaker** (Hon. Lusaka): Sen. Wambua.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir, for this opportunity to also contribute to this Motion. This is a very unfortunate case. As a first term Senator, it is my first case of impeachment. Many of my colleagues have said that they fault the lawyers on the side of the governor for maybe misadvising him on the filing of evidence.

I am not very sure we can make that determination of whether the lawyers failed or the governor did not take good advice. I say this because reference has been made – not once, not twice, but three times – on bundles of evidence lying in the Office of the Chief Serjeant-at-Arms. Those documents lying there will not help the governor in any way. They will not help us in making any decision.

Those documents would have been very helpful to the Governor and this House if they had been filed in good time.

Mr. Speaker, Sir, I want to say that in view of the failure by the Governor to file his evidence at the right time, this House is left with only one case; the charges as adduced by the Assembly. The decision that will be made by this House will be a decision based on the evidence adduced by the County Assembly of Kiambu.

It is very unfortunate that the Governor, either by bad advice or by refusing to listen to good advice, did not have an opportunity to call a single witness to rebut a single charge against him. As we make a decision, it should be noted that the decision that we are going to make today is not about Governor Waititu. It is about the more than one million residents of Kiambu County. Where I come from, public opinion is very important in making decisions about people and their leaders.

Thank you.

**Sen. Linturi:** Thank you Mr. Speaker, Sir. I will be very brief.

Since most of the speakers have agreed or alluded to the fact that this being *quasi-judicial*, I want to say that in the proceedings, we were not bound by the strict rules of evidence. When we are determining this matter, what we are being called upon to do in the absence of evidence before us is that we are going to determine this matter by having failed to admit evidence on the basis of a technicality which, in my view, is a violation of Article 159(2) of the Constitution of this Republic.

Mr. Speaker, Sir, the matter that we are deciding is very weighty. The election of a governor to the office of governor and the authority under which he acts is through the donation by the people of this Republic. That being the case, one of the questions that I would beg Members of this House to think and answer by way of their conscience when voting, is whether a County Assembly composed of 57 Members and the 47 Senators, because those are delegations that have authority and power to vote on such an important Motion, is it fair, constitutional or right to oust the power of the people of Kiambu County who decided to elect Gov. Waititu as their governor; whether that authority from them can be ousted by less than 100 people.

I am persuaded to believe that recognising the prevailing circumstances under which the governor was required to collect that information and bring it before us and having explained himself by virtue of the fact that he was barred from office, in my view, the County Assembly having failed to substantiate the matters, this matter will be decided on the basis as if it is not defended, though I am not convinced that there is substantive evidence that requires or that has met the threshold of him being kicked out of office. For that matter, when there is doubt, my view is that that benefit of doubt should be to the benefit of Gov. Waititu.

Mr. Speaker, Sir, I am very reluctant and it is with a lot of pain that this is happening. It is happening and I do not want to cast aspersions on anybody but this being a political process, we cannot---

**The Speaker** (Hon. Lusaka): You have run out of time.

**Sen. Faki:** Asante, Bw. Spika, kwa kunipa fursa hii. Kwanza ningependa kuunga mkono Hoja ya kumpeleka Gavana wa Kiambu, Gavana Waititu.

Bw. Spika, swala la kwamba hakupewa nafasi ya kujitetea ni swala ambalo si la kweli. Gavana Waititu alikuwa hapa jana na leo. Jana alisema kwamba alikataa kwenda kwenye *County Assembly* ya Kiambu kwa sababu kungekuwa na mtafaruku. Hapa leo amepewa fursa ya kujitetea, lakini akatoa taarifa bila kula kiapo.

Swala lililokuwa hapa ni kwamba kulikuwa na ushahidi kwa kiapo kusema kwamba yeye amemuoa bibi anayeitwa Susan Wangui Ndung'u, mke wake wa ndoa kwa kulingana na mila za Kikuyu. Wakataja watoto wake kwamba wamehusika katika kupewa zabuni katika Kaunti ya Kiambu wakati yeye kama gavana alikuwa hukustahili kutoa zabunii kwa watu wale. Ushahidi huu wote upo katika mikono ama korti ya mwananchi. Hii ina maana kuwa ni ushahidi ambao ni wa uhakika wakuweza kumpata na hatia.

Bw. Spika, sisi hatuungi mkono upande wowote. Mashtaka yalikuwa ni dhidi ya Gavana Waititu na Bunge la Kaunti ya Kiambu. Kwa hivyo suala liloko hapa ni kwamba maamuzi yetu lazima yazingatie sheria na maswala ambayo yako mikononi mwa wananchi.

Katika mahakama ya mwananchi, mtu anapokataa kula kiapo ni kwamba hasemi ukweli kwa sababu yeyote ambaye anakula kiapo anatakikana kusema ukweli. Kwa hivyo, alipoulizwa kula kwamba yaliyofanyika siyo sawa, Gavana Waititu aliamua kutoa taarifa tu bila ya kuapa.

Kwa hivyo, yale yote ambayo yalizungumzwa kwa kiapo, ni mambo ambayo hayakupingwa na kulingana na sheria ni kwamba yale mashtaka yote matatu ambayo yamezungumziwa yamepita.

*(Loud consolations)*

**The Speaker** (Hon. Lusaka): Order Members. Let us converse in low tones.

**Sen. Faki:** Asante, Bw. Spika. Kulikuwa na ushahidi wa Tume ya Mamlaka ya Sheria; *Commission for Administrative Justice*. Uamuzi ule ulitolewa kutoka September 2019, ilhali Gavana Waititu hakuchukua fursa yoyote ya kuenda mahakamani kupinga uamuzi ule, wala hakuchukua fursa yoyote ya kuenda katika Tume ile kujitetea ili kuona kwamba jina lake limesafishwa. Kunyamaza wakati Tume kama hii ya kisheria ambayo iko katika Katiba imetoa maamuzi---

*(The red timer was switched on)*

Bw. Spika, ningeomba uniongeze dakika kwa sababu muda wangu mwingi---

**The Speaker** (Hon. Lusaka): Haitawezekana!

Order, Senator.

**Sen. Dullo:** Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Order, Members. Let us be orderly so that we move.

**Sen. Dullo:** Thank you, Mr. Speaker, Sir. I wish to support this Motion.

One, let me congratulate the County Assembly of Kiambu. Two, I think the Governor of Kiambu and his lawyers intentionally refused to defend this case. That is my position.

Three, the matter of allegation against the Governor that was brought on the Floor of this House is the matter this House has been grappling with over the years; issues of pending bills. We have said severally that corruption is hidden under pending bills.

Mr. Speaker, Sir, let me now turn to the issues of wage bill. There are matters that have been brought severally in the Auditor-General's Report. This House has discussed these matters severally. When the Government has set a ceiling of 35 per cent, some counties are at 59 per cent. Let me urge those who are going to oppose this Motion, that from today, you should not discuss issues of pending bills and audit reports. That is my position.

*(Applause)*

Finally, something that I will not forgive Governor Waititu for is the disposition of a property of a widow in that County.

I fully support this Motion and this should send a signal to all the governors because we cannot let this go. We cannot be talking about these things in this House and when governors appear before us, we say this is politics; we forget about our responsibility.

Thank you.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Madzayo.

**Sen. Madzayo:** Asante sana, Bw. Spika. Pia mimi naunga mkono Hoja hii. Wahenga walisema mwerevu hajinyoi. Hii inaamanisha---

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Members! Let us listen to what he is saying.

**Sen. Madzayo:** Bw. Spika, jambo la kwanza ni kuwa mawakili wa Gavana Waititu waliofika hapa hawakuweza kuweka wazi stakabadhi zao za utetezi wake kulingana na mashtaka ya Serikali ya Mashinani ya Kiambu.

Bw. Spika, walipoulizwa ni kwa sababu gani hawakufanya hivyo, wakasema wao walikuwa tayari kumtetea Gavana mbele ya Seneti. Walimwambia Gavana kuwa watakuja hapa na kutwaambia kupitia Preliminary Objection (PO) kuwa Seneti haina haki ya kusikiliza mashtaka au kesi ambayo imewakilishwa na Bunge la Kaunti ya Kiambu. Hapo ninaona ya kwamba walijaribu kujinyoa wenyewe na badala ya kumtumikia Gavana wao walikuwa wanatumikia nafsi zao.

Kawaida ya sheria ni kuwa mtu akileta stakabadhi za kujitetea, anaruhusiwa pia kuleta PO yake ya kujitetea. Baadaye anahitajika kuuliza PO yake isikilizwe kabla ya kesi yenyewe kusikilizwa. Hii ni kwa sababu itasaidia uhahamisisho wa kesi yake. Lakini jambo hilo halikuwezekana na Gavana Waititu. Kwa hivyo, wao walijikata miguu na hawana mtu yeyote wa kulaumu.

Bw. Spika, ninatoka katika eneo la Pwani ambalo lina matitizo mengi ya mashamba. Ni aibu kuona mtu kama Gavana ananyang'anya mama mjane shamba lake halafu baada ya kujulikana alifanya hivyo analilirejesha. Sasa sheria inasema ya kwamba si swala la kulirejesha shamba ambalo ni muhimu sana na kwamba hukufanya makosa. Sheria inaadhibu ile nia ya uhalifu.

Mimi nasisitiza ya kwamba Hoja hii ni muhimu na ni lazima iwe funzo kama vile Seneta Dullo alivyosema kwa wengi.

*(Sen. Madzayo's microphone went off)*

**The Speaker** (Hon. Lusaka): Asante sana, Seneta, kwa mchango wako.

Tupate Sen. (Dr.) Lang'at.

**Sen. (Dr.) Lang'at:** Thank you very much, Mr. Speaker, Sir, for also giving me this opportunity to make my comments. First, I must appreciate that the Senate is fully active. Some Members who have never been here up to this late and I appreciate them because they are very active today.

Secondly, this is a very important case that has been presented before this Senate. When I saw it, I said it is a great time that our governors will see the importance of this House. In as much as that one is very important, always in every theory the end and the process go together. We cannot ignore the means because more often than not, the means justifies the end.

It is also important for the MCAs in their counties to learn that it is important to follow procedures and set standards. We should not ignore the fact that the threshold of the numbers was not arrived at. The world is listening. We do not want to set a precedent where tomorrow some MCAs somewhere might sit and bring an impeachment Motion against their governor into this House. The process is very important and we do not want to ignore it.

Mr. Speaker, Sir, I am not saying this out of sympathy or any emotional aversion. However, many governors are doing their work with a lot of fear of MCAs. It is very true that in some counties, some MCAs are threatening the governors that unless they do one or two things, they will be impeached. In another way, we must make sure that we raise our standards so that whenever MCAs bring such cases before the Senate, they are also

sure that this Senate is not a rubberstamp for their unconstitutional demands in the process.

In this same case, it is also very unfortunate that the Senate might not have the capacity to question very much the witnesses who appear before it from a county assembly. As Sen. Malalah was saying, in future, we should impeach both governor and his deputy because they were elected together. The deputy was the governor's choice and they must go together.

**The Speaker** (Hon. Lusaka): Order! You are out of time.

Let us have Sen. Omogeni.

*(Loud consultations)*

**Sen. Omogeni:** Thank you, Mr. Speaker, Sir. I want to correct the impression that is being created before this House that Governor Waititu was denied an opportunity to be heard. We all know that an opportunity to be heard does not mean that we pull you into this House and force you to bring evidence, so that it can be considered by this House. Opportunity to be heard means that we accord you an opportunity to present your evidence before this House. The rules give hon. Waititu three days under Rule 6. What have we seen? We have sat here and accorded Hon. Waititu four hours; there was no evidence given on oath by him, there was not even a name of any one witness that was put forth before this Senate who could have come to give evidence to rebut what the County Assembly of Kiambu had placed before this Senate.

Mr. Speaker, Sir, we all appear in tribunals or courts of law. If you are given an opportunity to present evidence and you do not present it, it will be used against you. It has even been used against the President of this country. In the Election Petition of 2017, the President was told to avail servers. He did not do it. The Supreme Court of Kenya nullified his election.

Mr. Speaker, Sir, we must send a strong message to the governors that if you are told to come here and adduce evidence, you must do it. If you do not, we have no choice. What are expected to do? There is even Rule 9 of the Fifth Schedule which gives the governor an opportunity to make request to this House to summon any witness to appear here. That opportunity was not exercised by Gov. Waititu.

Mr. Speaker, Sir, he had colourful lawyers. However, even if you have a good case and you mess it up, how do you help this House? I submit that without rebuttal of evidence that was placed by the County Assembly of Kiambu, Gov. Waititu has himself to blame.

I rest my case.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Omanga.

**Sen. Omanga:** Mr. Speaker, Sir, it is a very sad day in this country, as I see my colleagues debate; because this is a House of record. It is a House of uniformity, consistency and, I would say, standards. I would use the case of Gov. Gachagua, the Governor of Nyeri County. This is because it is the only case, when I look back, which came to the Plenary and it was treated very differently from the way the case of Gov. Waititu of Kiambu County has been treated.

First, in the Nyeri case, when the House was taking a decision on whether we should go to the Plenary or to Committee, the vote was by county delegations. However,

on this one for Kiambu County, it was different; everyone had to vote because already people had taken their different political persuasions. In the case of Gov. Gachagua, this House was able to admit evidence after the time which was given. I, and some of us who are new legislators in this House are, therefore, asking ourselves and wondering whether it is case by case that some governors who come here, their evidence can be admitted at whatever time. However, for some other governors, because of I do not know what, their evidence cannot be admitted.

Another thing, Mr. Speaker, Sir, is the issue of quorum and the threshold. For this House to disregard the importance of threshold makes today a very sad day. Even today with the Senators who are here, does it mean that if we do not get the 24 delegations, we will still pass this Waititu's case? It will not pass because there is a threshold! But because this case---

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Khaniri?

**Sen. Khaniri:** Mr. Speaker, Sir, it will be---

*(Sen. Omanga remained standing in her place)*

**The Speaker** (Hon. Lusaka): Take your seat, Sen. Omanga.

**Sen. Khaniri:** Mr. Speaker, Sir, it will be very wrong if the statements that have been made by Sen. Omanga go unchallenged and remain in the HANSARD. She has clearly stated that this House disregarded the issue of threshold.

Mr. Speaker, Sir, it is my submission that no evidence was put on the Table here to prove to us that the County Assembly of Kiambu did not meet the threshold. Is she, therefore, in order, because she is imputing improper motives on this House?

**The Speaker** (Hon. Lusaka): Sen. Omanga, I will add you half a minute.

**Sen. Omanga:** Mr. Speaker, Sir, that is all together a debate for another day; but I would it say again. The Deputy Minority Whip of this House was on television yesterday morning anticipating debate, saying that we are sending the Governor home. I am asking you, Chair, because this is the leadership of the House. I do not see the point where the Governor was appearing in this House, because the leadership had already given direction that we are sending the Governor home.

**The Speaker** (Hon. Lusaka): Order, Sen. Omanga! Order! Order! I did give direction that I was going to give a ruling on this matter later. Why are you, therefore, becoming very emotional and sensational? We do not need that drama. Please, compose yourself and conclude your issue.

**Sen. Omanga:** Mr. Speaker, Sir, I have made my point. The ruling which you were to make is on the conflict of interest where the partner---

**The Speaker** (Hon. Lusaka): I am very clear in my mind on what I said. Proceed.

*(Laughter)*

**Sen. Omanga:** Mr. Speaker, Sir, with the precedent that this House is setting today, it means that ten MCAs will be sitting somewhere in the county assemblies and they will impeach a governor. They will then come to this House, and because most of us are arguing that we have no way of knowing whether the threshold was met, we will



continue listening to the case and debate on something. For me, literally, this Governor was not impeached.

**The Speaker** (Hon. Lusaka): Okay; your time is up. Thank you.

Proceed, Sen. Wetangula.

**Sen. Wetangula:** Thank you, Mr. Speaker, Sir. I will be very brief. As we retreat to make our decision, we must bear in mind and consider whether the distinguished governor was given a fair hearing at the County Assembly. That is a point to ponder. If that was the case, then remember the words of Kethi Kilonzo, that if the process is illegitimate, then the outcome cannot be legitimate.

(Applause)

Secondly, Mr. Speaker, Sir, I think the Office of the Senate, in cases such as these, must also be helpful to the public. When a governor and his team come to file documents, the legal team of the Senate should guide them on what documents to put in and how to file their documents for better consideration by the House.

Thirdly, the impeachment process is very exciting and emotive for all of us; we have gone through eight of them here. Most of them have ended up being what we know, especially those that we impeached, like Gov. Wambora, who we impeached twice.

Fourthly, I believe that even as the issues are as clear as we are saying, Gov. Waititu did not enjoy the benefit of a fair hearing by excluding his documents. This is not a court of law with the strictest rules of application of procedure. This is *quasi-judicial* and we should have taken his documents and looked at them.

Lastly, Mr. Speaker, Sir, I want to urge the House that if you have any doubts in your minds, do not destroy this man. If you have any doubt in your mind, cast your vote to assist the course of justice. Double jeopardy is an issue that we should not ignore, because there is another collateral process going on that will give justice to the victims of the omissions and acts of Gov. Waititu.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Mwaruma.

**Sen. Mwaruma:** Thank you, Mr. Speaker, Sir, for this opportunity you have given me to support the Motion of impeachment of Gov. Ferdinand Ndung'u Waititu alias Babayao.

For starters, I must say that in these two days, we have seen very weighty issues that have been raised by the County Assembly of Kiambu. I was a bit disappointed that despite the fact that there were very weighty issues raised against the Governor, the learned friends on his side were not able to offer rebuttals. That is very unfortunate.

Secondly, even on the side of the County Assembly, the type of evidence that we got was not quite tightly neat.

**An hon. Senator:** Yes!

**Sen. Mwaruma:** For example, if there are issues of procurement, why can you not give letters of award, tender documents, and so on?

Having said that, Mr. Speaker, Sir, I support this Motion because of three things. First, the mandate of employment is given, at the national level to the Public Service Commission; and at the county level to the County Public Service Board (CPSB). Therefore, when a governor awards, appoints or employs on his own, he is usurping powers of the CPSB, which is contrary to the law. I cannot contemplate, at the national

level, the President signing letters purporting to employ people. Therefore, that is a grievous issue. I know there is some latitude that is given to governors to employ some people, but those are advisors and not directors. Directors are public servants and they must be employed by the CPSB.

Secondly is on the role of the governor, as stipulated by Section 30(3)(f) of the County Governments Act, which says:-

“The governor shall be accountable for the management and use of the county resources;”

The action of the Governor, by not ensuring that there is a County Budget and Economic Forum (CBEF), is carelessness. It means that he is not really accountable. Also, in his own words, he has said that he allowed tenders to be given for roads construction to run for three years. How would you do that? How can you do that? It means that the governor is not keen to be accountable.

Thirdly, the Governor is purported or is alleged to have grabbed land from a widow, which is illegal and immoral. Somebody read Exodus 22, which states that you should not oppress a widow.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Members! Let us consult in low tones.

**Sen. Kinyua:** Asante, Bw. Spika, kwa kunipa fursa hii. Sauti ninazosikia hapa zinasema “tumsulubishe Gavana Waititu”. Lakini, swali ninalojiuliza ni Hoja hii ilipofika hapa kama ilitumia njia inayofaa na viwango vinavyohitajika katika kaunti zetu? Kama Mwenyekiti wa Kamati ya Ugatuzi, sheria zetu zinasema kinagaubaga na dhahiri ya kwamba kunapaswa kuwa na kiwango fulani ya Wabunge wa Kaunti. Lakini kama kulingana na wakili alivyouliza maswali, ikiwa kile kiwango hakikufikishwa, je, sisi kama Seneti tunapaswa kusikiza Hoja hii?

Itakuwa jambo la kuvunja moyo wakati swala hili litapelekwa kortini. Sisi tutaulizwa kwa nini hatukufanya vile inapaswa kuwa. Ninauoga na ninatetemeka. Ni vizuri tufuate mfano mwema. Tulipokuwa tunaongea hapa na kura ilipopigwa, tulisema ya kwamba hatutapatiana muda zaidi kwa sababu muda umekwisha lakini sisi wenyewe hatufuati sheria. Kama vile mzungu anavyosema, *what is good for the goose must be good for the gander*. Tunapaswa kutumia Hoja hii-

*(Loud consultations)*

Bw. Spika, wananichanganya. Unapaswa kunitetea.

**The Speaker** (Hon. Lusaka): Endelea.

**Sen. Kinyua:** Bw. Spika, kwa hivyo, sisemi ya kwamba Gavana Waititu asisulubiwe. Lakini, kama vile Mahakama Kuu ilisema, mpaka maafikiano na mambo yafuatwe vizuri kabla ya kufanya chochote kwa sababu matokeo yake yatategemea kama tutakuwa tumefuata sheria. Wanasema tumsulubishe lakini, ndugu zangu, ni vizuri kuangalia sheria kwa sababu mambo yote yanapaswa kulingana na mujibu wa sheria zilizowekwa katika nchi yetu ya Kenya.

**Sen. (Dr.) Kabaka:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I am disturbed as a practitioner of law for the last 28 years.

As much as a lawyer, I would have wanted to help my brother, Gov. Waititu. I am reserved on why documents were not filed within time. All the lawyers know that we have two systems of law. We have the substantive and procedural law. Substantive law deals with the positive law while procedural law, which is what we are dealing with, deals with procedure. That procedure is founded in specific Acts of Parliament, for example, civil procedure where matters civil are managed. In criminal justice, we have Criminal Procedure Act.

Mr. Speaker, Sir, we also have inimical procedures which are well specified in a specific Act. For example, in the Companies' Act, the procedure of winding up companies is found there and not in civil procedure. Matters of succession are found in the Succession Act and in matters to deal with arbitration, the procedure is found therein.

Mr. Speaker, Sir, when Parliament specifies that something has to be done within a given time, it becomes mandatory. Therefore, I am disturbed why documents were not filed within the prescribed time. What has transpired in this Senate is what lawyers called *ex parte* kind of hearing where we are just looking on one side of the matter. Therefore, evidence which has been adduced by the County Assembly is uncontroverted even though there was cross-examination.

Mr. Speaker, Sir, the High Court has what we call supervisory jurisdiction for bodies like the Senate. Therefore, judicial review will review all the matters that have been canvassed at the lower bodies, for example, a tribunal. In the absence of such important documents, for example, evidence, there will be a problem with the High Court—

*(The red timer went off)*

**The Speaker** (Hon. Lusaka): Your time is up.

**Sen. Boy:** Asante, Mheshimiwa Spika, kwa kunipa fursa hii. Sitachukua muda mwingi; nitachukua dakika mbili au moja na nusu.

Tumesikia mahojiano kutoka upande wa Gavana Waititu na Kaunti ya Kiambu.

Ninaomba kuwaambia Maseneta wenzangu kwamba kuna mambo mengine, kwa mfano, tunaposafiri katika uwanja wa ndege wa Kimataifa wa Jomo Kenyatta, Nairobi au Mombasa kama viongozi, tukifika pale tunavua saa, mkanda na viatu kwa sababu tunaheshimu sheria na ofisi zetu. Kwa hivyo, kama umepewa madaraka kama gavana au Mbunge, unafaa kufuata sheria.

Bw. Spika, ardhi ya mama mjane ilichukuliwa na mtu ambaye alikuwa kwenye madaraka ambayo ni makosa. Wewe kama mwananchi umepewa wadhifa ili ufanye kazi yako. Kwa hivyo, naunga mkono Hoja ya kumnga'tua Gavana Waititu kutoka kwa ofisi. Sio kwa sababu za kisiasa. Hoja yenyewe imeeleza wazi. Ukiangalia upande wa matumizi wa kifedha na wakuajiri watu, kuna matatizo. Kwa hivyo, katika shughuli ya leo, Kenya nzima inatungalia. Kwa hivyo, tuwe na msimamo moja ili tuamue kama Maseneta iwe funzo kwa watu wote na ionekane kwamba Seneti ya Kenya inafanya kazi na inatambua shida za wananchi.

**Sen. Seneta:** Mr. Speaker, Sir, I want to point out three observations. First, I congratulate the County Assembly of Kiambu for exercising their constitutional power. Secondly, it has been an exciting two days for those of us who have never sat through such an exercise to impeach a governor. We have learnt quite a lot.

As a House, we need to protect the Constitution, counties and devolution. We need to follow timeliness. In this process, there was a question on the timeliness both in the processing of the Motion to this House which came late. Again, there was also delay in submission of documents. Therefore, we need to encourage the county assemblies, not only Kiambu County Assembly but all over the country to follow the law. For example, submissions should be made on time.

Thirdly, there are other institutions that we need to be keen with when investigating the powers that they have in the counties. When I was looking at the land issue, there are institutions that deal with land transfers in the county. So, why did they take advantage of the powers of the Governor and transferred this land that belonged to the lady to the county governor? So, it would have been important for us to see the title which had been processed. Also, we should have heard from the registrar of lands on why he or she was forced to transfer the land to the governor.

Finally, there is public participation in our Constitution which needed to be followed.

Everyone has a right enshrined in the Constitution to be heard be it in the county assemblies or the Senate.

Finally, I would like to state that many of us who have enjoyed listening to our learned friends---

**The Speaker** (Hon. Lusaka): Your time is up, Sen. Seneta.

Hon. Senators, I will give opportunity to two more Senators to speak; Sen. Kang'ata and finally the Senator for Kiambu County, Sen. Wamatangi. I am giving opportunity to the Senators who have not had a chance to speak.

**Sen. Kang'ata:** Mr. Speaker, Sir, an issue has been raised concerning the argument that the Governor came to this House and was unable to submit his documents within time and therefore thinks that the trial is prejudiced against him. My advice to the Governor and the counsel, who was handling, is that they ought to have been more strategic in the sense that once you are served with documents, if they are unable to bring all the documents within the set time, they can at least serve a few documents within that time. I say that because---

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Khaniri?

**Sen. Khaniri:** On a point of Order, Mr. Speaker, Sir. I rise pursuant to the provisions of Standing Order 99 which talks about declaration of interest. We know that there is a matter that is awaiting your ruling on the pecuniary interest of the Senator for Murang'a County in this matter. We were told clearly that he is a partner in the law firm that was defending the Governor. Our Standing Orders are clear. Standing Order 99 states that;

'A Senator who wishes to speak on any matter in which the Senator has a pecuniary or proprietary interest shall first declare that interest.'

Mr. Speaker, Sir, Sen. Kang'ata has not declared his interest.

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Murkomen?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, Sen. Kang'ata and I went to the University of Nairobi, School of Law, where in his short moment of problems as a student leader, Sen. Mutula Kilonzo Jnr. represented him in court. Sen. Mutula Kilonzo Jnr. was the lawyer of students at the university.

The main issue that many Senators are attributing to their decision or support for the Motion is that the lawyers of Waititu failed the Governor. Sen. Kang'ata by his own admission has said that he has personal relationship having been partners with Njenga and George who both of us went to University of Nairobi with. Having admitted that fact on the Floor of this House, how will the country expect to vote in a situation where the main decision why the Members of his House have a problem with the ultimate decision is his own partner?

*(Sen. Kang'ata stood in his place)*

**The Speaker** (Hon. Lusaka): Order, Sen. Kang'ata! That is why I wanted you to talk last, because then, we can make progress.

There is a point of order that has been raised by Sen. Khaniri and it is so straightforward. Kindly, declare whether you have an interest in the matter. I know that he declared that the other time but we are in session now, so I want him to be on record.

**Sen. Kang'ata:** Mr. Speaker, Sir, yes, Mr. Charles Njenga was my partner between 2009 and 2018. I left the law firm of Muchoki, Kang'ata and Njenga to form my own law firm, Irungu Kang'ata, which presently does not have any association with Muchoki, Kang'ata and Njenga. Therefore, on this matter, I have no pecuniary interest at all.

**The Speaker** (Hon. Lusaka): Very well. Kindly proceed.

**Sen. Kang'ata:** Mr. Speaker, Sir, my advice to the Governor's counsel is that once they have been served with the documents, even if they are unable to bring all the documents---

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Seneta?

**Sen. Seneta:** On a point of Order, Mr. Speaker, Sir. This is a House of rules. Sen. Kang'ata has declared that he moved from the Muchoki, Kang'ata and Njenga law firm. Does he have evidence to support his statement because our learned friend yesterday predetermined the Motion? This is a very serious issue that needs not to be treated casually. How can we confirm that he moved from the law firm?

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Senators! We are all hon. Members. Hon. Kang'ata has given his version. If you have anything to the contrary, bring it to me so that I make a ruling. Otherwise let us take his word as a hon. Member in this House.

What is your point of order, Sen. Linturi?

**Sen. Linturi:** On a point of order, Mr. Speaker, Sir. For purposes of the record, it is important for Sen. Kang'ata to stop making comments on the same matter because the Standing Orders are very clear and stop us from making comments on a matter before the House outside the Senate. I alluded to this fact when I spoke but you did not give me response. Sen. Kang'ata mentioned on Citizen Television that this was the time to kick out Gov. Waititu. Was it in order for him to do that?

**The Speaker** (Hon. Lusaka): Order, Senator! You are raising a different matter. I said that I will make a ruling later on Sen. Kang'ata's and Sen. Mwaura's utterances.

Kindly, allow Sen. Kang'ata to continue.

**Sen. Kang'ata:** Mr. Speaker, Sir, my proposal is that if the counsel is unable to bring all the documents in the first instance, at least bring some documents whether a statement of defense or a list of witnesses. That would have been better rather than not being heard because of the timelines.

The Supreme Court has handled the issue of timelines and as correctly stated by other counsel who have camped here, the issue of timeliness is crucial. They are aimed at ensuring that the process is fair to each and every person. Therefore, once we provide for timeliness, file this document within certain timeliness, you ought to file them within those timelines.

Mr. Speaker, Sir, there are three issues for determination. First, do we have enough evidence to convict? So far, we know what kind of evidence exists before us. Secondly, what about the so-called issues concerning purported violations of the law at the Assembly level, for me, that has been ably discussed by my colleagues on how to respond to those issues.

Thirdly is on the issues that our country is facing. We all come from the counties. What can we do, as a Senate, to ensure we remedy problems that are currently facing our people? Remember we do not have water. Whereas we have devolved functions, we do not have roads being constructed by governors. What can we do as a Senate and what opportunities do these processes afford us?

I thank you.

**Sen. Mwaura:** Mr. Speaker, Sir, from the outset, I want to say that this process has shown us that we need proper legal mechanism for impeachment. We need to put in place measures such that if a governor is impeached on the basis of incapacity, that procedure should be properly provided for. I think there are many lacunas in law to the extent that it is not a requirement, for example, that we should look at the threshold. I think that is where people are getting confused on whether to look at the threshold or the quorum of who voted to impeach Gov. Ferdinand Waititu.

Mr. Speaker, Sir, having said that, we are here as a *quasi-judicial* process, which also means that we are *quasi-political*. Therefore, we need to make sure that we cover this well, so that we are seen to be as impartial as possible because this is also a political process.

Having noted that concern, when you look at the way the lawyers presented themselves, I think they came to stop this impeachment under the preliminary objection (PO). That is why they disadvantaged Gov. Ferdinand Waititu because when we voted in the morning, that is what Gov. Waititu alluded to. For us to have 27 against 11 votes not to admit new evidence, then there was no case because he spent many hours fumbling about four points of law; which are whether there was quorum to meet the threshold, whether we were properly constituted as the Senate and other issues to do with general evidence.

Mr. Speaker, Sir, I would like to inform this Senate that this matter is germane. Some of the roads in question were constructed but there are already potholes only two years after.

The people of Kiambu want justice because there is a quagmire in the leadership of Kiambu County. This Senate is called upon to make a determination not to save an individual but to ensure that service delivery is guaranteed to the people of Kiambu. This

is because their governor is out of office and their deputy governor does not have full powers. This is about the people.

The reason we are here is because Gov. Waititu was charged before a court of law. The charges are severe as it has been demonstrated even if we are not supposed to canvass these matters because they are before the court of law.

Mr. Speaker, Sir, I think the role of the Senate is not to sanitise governors---

*(Sen. Mwaura's microphone went off)*

**The Speaker** (Hon. Lusaka): Finally, let us listen to Sen. Wamatangi.

**Sen. Wamatangi:** Mr. Speaker, Sir, I take this opportunity first to thank you and all Members of the Senate for the patience that they have demonstrated throughout the sittings for the two days.

There are times when we have challenges of quorum in this House. It is a demonstration of commitment that even at this time on the second day of continuous running of hearings that this House is still full and Members are patiently waiting to finally ensure that they carry out their constitutional mandate.

Mr. Speaker, Sir, in the debate that we have had, although there have been arguments, I would want to paraphrase the words of Abraham Lincoln that we are friends and not enemies. In the discussions we have had, though passion may have strained, it must not break the bond of our common commitment. It was not inevitable for me as the Senator for the county concerned to sit here. Being a lover of debate, I have to follow the rules---

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Senator! Let us consult in low tones so that we hear what the Senator for Kiambu is saying.

**Sen. Wamatangi:** Thank you, Mr. Speaker, Sir. The past two days have not been the most exciting for me as a lover of debate and contributions in this House but I have to comply with the rules and precedent set in this House, so that I allow Members to dispassionately and fairly make their determination.

The people of Kiambu have consistently consulted me. For the ones I have spoken to, I have told them unequivocally that although they may see arguments across the Floor, finally the decision that this House will make is a decision that will be fair and lawful. I want to say on behalf of my people of Kiambu that the decision that this House will take will bind us. We shall honour that decision because it will be made fairly by this House.

Since our county has been in limbo, I urge that the decision be taken by voting, so that we start serving the people of Kiambu regardless of the way we will decide.

Mr. Speaker, Sir, I thank you, all the Senators, and all who have participated in this process.

**The Speaker** (Hon. Lusaka): Thank you so much, Sen. Wamatangi. Before I call upon the Mover to reply, I will give two minutes each to Sen. Kang'ata and Sen. Mwaura because allegations have been made here. You should comment on what has been said. That will enable me to make a decision.

**Sen. Kang'ata:** Mr. Speaker, Sir, the allegation that I went to a media station and issued a prejudicial statement is not true. I never went to any television or radio station to

make such prejudicial statement. What I did, and I admit, is that I put a tweet but I was careful not to put any prejudicial statement. I am aware that it could have had a negative impact on the dignity, independence and impartiality of this honourable House.

Mr. Speaker, Sir, I would like to put it on record that I am believer in the rule of law and the Senate as an independent and a strong institution whose work is to oversight the counties. Therefore, what happened was taken out of context by the actual media station which circulated it.

I strongly believe that whatever decision you are going to make will be independent, fair and impartial, and that we will deliver justice to the people of Kiambu.

I thank you.

**Sen. Mwaura:** Mr. Speaker, Sir, I was quite shocked when the Governor of Kiambu, Hon. Ferdinand Waititu, read my tweets as part of his concluding observations. I do not want to deny because I did it but I did it after we had voted not to accept his evidence. From what he submitted, it appears as if I had already judged that the case is closed but that was not the case. It was about the admissibility of evidence. At the same time, I am also on record because it is not a matter of public conjecture that I have opposed Gov. Waititu because that is the truth.

I do not agree with him in the manner in which he has been conducting himself as the Governor of Kiambu and I stand with the people of Kiambu. So, I cannot withdraw my opinion about that. However, that statement is not preemptive of the decision of this august House. In any case, we vote as a delegation and Sen. Wamatangi is here to vote. For me, that was a comment made out of a fact that we had voted but it was also a political statement.

I submit.

**The Speaker** (Hon. Lusaka): Hon. Senators, I will issue a comprehensive statement when we resume our sittings because we must have a threshold of how we conduct ourselves as honorable Senators in this House. I will be giving that comprehensive report because some things can end up embarrassing us and making us ridiculous.

I now call the Mover to reply.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, we are now at the very most critical moment and I have heard so many colleagues here. Time is a very important factor; when we started, people were so cranky and emotional because everybody was trying to defend the decisions that they have made. You can see that people are now relaxed, perhaps in the confidence that they have numbers.

The proceedings of the impeachment of the Governor of Kiambu is very important. I have been in this House; when the impeachment of Governor Samboja came late last year, the conversation was different. Our friends, particularly on the side I am facing defended the Governor viciously even before the Committee, and the HANSARD will bear me witness. However, because of the expedience of the moment, I can see, we are not blind, we can do the arithmetic, and we can see the patterns. It is only sad that the former Central Province and Mount Kenya region has produced the highest number of impeachments in this House; that is, Kiambu, Murang'a, Nyeri and Embu, where we did two impeachments including that of a deputy governor.

There is a very telling pattern that I have seen from other sources like a friend of mine, who is an honorable Member, mentioned. Is it that in these areas the governors are



more corrupt or is it possible that in other areas and other parties, the governors are shielded from being brought to this House? This is a very telling coincidence because for the eight years that I have been in this House, the pattern is that it is in a particular direction and in particular political party; but one political party has never even attempted an impeachment in a county assembly. That kind of a pattern tells us something about the politics of devolution and we cannot ignore that.

Secondly, Mr. Speaker, Sir, we are going to vote on an impeachment of a governor when I can say here without fear of contradiction; we have doubts about the procedures in the county assembly.

*(Applause)*

Mr. Speaker, Sir, you told me that I have to make my position known at the end, this is the time that I am making my position known. As the Senator of Elgeyo-Marakwet County, I have problems with the way Elgeyo-Marakwet is being managed; my Governor is under investigation and he has been to the Ethics and Anti-Corruption Commission (EACC) for all those kinds of things. Even if the same procedure is brought in this House to impeach Governor Tolgos, I will never support because I must be seen to be consistent in defending the law, the Constitution and the procedure.

I may be junior in this House in terms of law practice than the three senior counsel who are sitting on the Minority Side, however, I want history to judge me right that, eventually, when the courts of law would have made a decision about the decision we are going to make in this House, many years down the line, I want for me to walk in the streets of Nairobi and in the Republic of Kenya and say, look, I am that gentleman, who never sacrificed the truth and the law for political expediency.

*(Loud consultations)*

Therefore, I beg to reply.

I can see the mob lynching of the Governor, the politics of the day is favoring his lynching but politics change, times change. If God gives me the opportunity to be in this House again, I will be very happy when another governor, who will have been one of us will be brought to the dock. This House must follow the right procedure.

I have no doubt in my mind, notwithstanding the final decision that this House will make, and I am saying this anticipating a decision that I know because I have been in this House---

*(Laughter)*

I can see where it is going, and I know what vehicle drove people to what direction and those are from our---

*(Loud consultations)*

**The Speaker (Hon. Lusaka):** Order, Senator.

**The Senate Majority Leader (Sen. Murkomen):** That vehicle must be left for auditing---

Mr. Speaker, Sir, I beg to---

**The Speaker (Hon. Lusaka):** Order! Order, Senator! Now, you have done well until that point.

I have said that we are honorable Members.

**Hon. Members:** Yes!

**The Speaker (Hon. Lusaka):** This is a House that is held in high esteem and the whole world is watching us. It is wrong for you to impute improper motive against Members of this Senate. I know you are a leader but do not impute improper motive on your House.

*(Loud consultations)*

**The Senate Majority Leader (Sen. Murkomen):** Mr. Speaker, Sir, I respect the Speaker of this House. The Speaker has made a ruling, I want to make it abundantly clear that when it walks like a duck, looks like a duck, quacks like a duck, it is a duck.

*(Loud Consultations)*

I beg to reply.

Thank you, Mr. Speaker, Sir.

*(Loud Consultations)*

**The Speaker (Hon. Lusaka):** Order, Members!

**The Senate Minority Leader (Sen. Orengo):** On a point of order, Mr. Speaker, Sir, the Leader has finished in a very high note; when it walks like a duck, quacks like a duck and looks like a duck, it is a duck. Did you realize that at the end of his presentation, he did not move? Just that word; so, the duck---

**The Speaker (Hon. Lusaka):** I think he moved; I heard him.

**The Senate Minority Leader (Sen. Orengo):** No, no, he did not move.

**The Speaker (Hon. Lusaka):** He moved. Leader, I heard him.

**Hon. Members:** He did!

*(Loud Consultations)*

**The Speaker (Hon. Lusaka):** Order Members. I will now order that the bell be rung for 3 minutes.

Order, hon. Senators. I direct that the bars be drawn and the doors closed.

*(The bars were drawn and the doors closed)*

Hon. Senators, you may now take your seats. The hour of reckoning has come.

Hon. Senators, we shall be voting on the three charges. We will vote for each charge separately. After all the charges have been voted for, I will then announce the results of the Division.

I now put the question on the first charge which is-

THAT, the Senate resolves to remove from office by impeachment, the Hon. Ferdinand Ndung'u Waititu Baba Yao, the Governor of Kiambu County, for gross violation of the Constitution of Kenya, 2010, the County Governments Act, 2012, the Public Finance Management Act, 2012 and the Public Procurement and Disposal Act, 2005.

Hon. Senators, you can now vote. Members who need assistance, approach the Clerk-at-the-Table.

*(Hon. Senators proceeded to vote)*

**The Speaker** (Hon. Lusaka): Order, Members. I now put the question on the second charge which is-

THAT, the Senate resolves to remove from office by impeachment, Hon. Ferdinand Ndung'u Waititu Baba Yao, the Governor of Kiambu County, for crimes under national law.

Proceed and vote.

*(Hon. Senators proceeded to vote)*

Order, Senators! I will now put the Question of the third charge, which is-

THAT the Senate resolves to remove from office, by impeachment, the Hon. Ferdinand Ndung'u Waititu Babayao, the Governor of Kiambu County for abuse of office/gross misconduct.

*(Hon. Senators proceeded to vote)*

Hon Senators, as you are aware, we were voting on three charges. These are the results of the three charges-

## DIVISION

### ELECTRONIC VOTING

*(Question, that the Senate resolves to remove from office by impeachment, the Hon. Ferdinand Ndung'u Waititu Babayao, the Governor of Kiambu County, for Gross Violation of the Constitution of Kenya, 2010, the County Government's Act, 2012, the Public Finance Management Act, 2012 and the Public Procurement and Disposal Act, 2005, put and the Senate proceeded to vote by County delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Haji, Garissa County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. Kang'ata, Murang'a County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Maina, Nyeri County; Sen. Malalah, Kakamega County; Sen. Moi, Baringo County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwaruma, Taita-Taveta County; Sen. Ndwiga, Embu County ; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghishio, West Pokot County; Sen. Sakaja, Nairobi City County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and, Sen. Wambua, Kitui County.

**NOES:** Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Seneta, Kajiado County; and Sen. Wetangula, Bungoma County

**The Speaker** (Sen. Hon. Lusaka): Hon. Senators, on the first charge, the results are as follows:-

**YES:** 27

**NOES:** 12

**ABSTENTIONS:** Nil

*(Question carried by 27 votes to 12)*

## DIVISION

### ELECTRONIC VOTING

*(Question, that the Senate resolves to remove from office by impeachment, the Hon. Ferdinand Ndung'u Waititu Babayao, the Governor of Kiambu County, for crimes under the National Law, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Haji, Garissa County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Maina, Nyeri County; Sen. Malalah, Kakamega County; Sen. Moi, Baringo County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwaruma, Taita-Taveta County; Sen. Ndwiga, Embu County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisiu, West Pokot County; Sen. Sakaja, Nairobi City County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wambua, Kitui County.

**NOES:** Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. (Eng.) Hargura, Marsabit County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Seneta, Kajiado County and Sen. Wetangula, Bungoma County

**The Speaker** (Hon. Lusaka): Hon. Senators, the results of the second charge are as follows:

**YES:** 28

**NOES:** 11

**ABSTENTIONS:** Nil

*(Question carried by 28 votes to 11)*

## DIVISION

## ELECTRONIC VOTING

*(Question, that the Senate resolves to remove from office by impeachment, the Hon. Ferdinand Ndung'u Waititu Babayao, the Governor of Kiambu County, for Abuse of office/Gross misconduct, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Haji, Garissa County; Sen. (Dr.) Kabaka, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Madzayo, Kilifi County; Sen. (Eng.) Maina, Nyeri County; Sen. Malalah, Kakamega County; Sen. Moi, Baringo County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisiu, West Pokot County; Sen. Sakaja, Nairobi City County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and Sen. Wambua, Kitui County.

**NOES:** Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. (Eng.) Hargura, Marsabit County; Sen. Kihika, Nakuru County; Sen. Kinyua, Laikipia County; Sen. (Dr.) Langat, Bomet County; Sen. Linturi, Meru County; Sen. Loiptip, Lamu County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Seneta, Kajiado County; and, Sen. Wetangula, Bungoma County.

**The Speaker** (Hon. Lusaka): Hon. Senators, the results on the third charge are as follows:

**YES:** 28

**NOES:** 11

**ABSTENTIONS:** Nil

*(Question carried by 28 votes to 11)*

**The Speaker** (Hon. Lusaka): Hon. Senators, the net effect of these votes is that pursuant to Article 181 of the Constitution, Section 33 of the County Government Act and Standing Order 75 of the Senate Standing Orders, the Senate has resolved to remove from office, by impeachment, Hon. Ferdinand Ndung'u Waititu Baba Yao, the Governor of Kiambu County, and the Governor accordingly ceases to hold office.

*(Applause)*

**ADJOURNMENT**

**The Speaker** (Hon. Lusaka): Hon. Senators, there being no other business, it is now time to adjourn the House.

*(Loud consultations)*

Order, Senators.

The Senate, therefore, stands adjourned until Tuesday, 11<sup>th</sup> February, 2020 at 2.30 p.m.

The Senate rose at 9.20 p.m.