

**PARLIAMENT OF KENYA****THE SENATE****THE HANSARD****Friday, 6<sup>th</sup> November, 2015****Special Sitting**

*(Convened via Kenya Gazette Notice  
No.8229 of 5<sup>th</sup> November, 2015)*

*The House met at the Senate Chamber,  
Parliament Buildings, at 3.00 p.m.*

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

**PRAYERS****COMMUNICATION FROM THE CHAIR****SUSPENSION OF SITTING TO ALLOW THE SPECIAL  
COMMITTEE ON IMPEACHMENT OF MURANG'A  
GOVERNOR TO CONCLUDE ITS REPORT**

**The Speaker** (Hon. Ethuro): Order, hon. Senators. As you may be aware, we are assembled here today pursuant to Standing Order No.29(1) on the request of the Senate Majority Leader with the support of the requisite number of Senators to receive and consider the report from the Special Committee on the proposed removal from office of the Governor of Murang'a County.

Let me start by commending all of you for attending this Special Sitting to consider this very important matter. However, I am informed by the Special Committee that they have not concluded work on the report and the same will not be ready for tabling until 6.00 p.m. Under the circumstances, and using the powers granted to me by Standing Order No.1, I hereby suspend this sitting until 6.30 p.m.

*(Several hon. Senators stood up in their places)*

Order, Members, I have not finished. I would urge all hon. Senators to reconvene here in the Chamber at 6.30 p.m.

I thank you.

*(The Senate adjourned temporarily at 3.05 p.m.)*

*(The Senate resumed at 6.30 p.m.)*

PRAYERS

*(Consultations)*

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. As you know from your long experience in Parliament, what we are seeing now is unprecedented. It is expected that upon you resuming your Chair, business should commence immediately. If there is any other reason why business has not commenced, the House must forever be guided by none other than the Speaker. Today is a solemn occasion and indeed Kenyans who are watching would be forgiven if they thought that we are not taking today's occasion seriously.

Mr. Speaker, Sir, I seek your indulgence so that you tell us what is going on.

*(Applause)*

*(Loud consultations)*

*(Sen. Hassan spoke off record)*

**The Speaker** (Hon. Ethuro): Order, Senators! I thank Sen. (Dr.) Khalwale for breaking the ice and giving us something to do. You know that we were starting at 3.00 p.m. but our team was not ready. They are now ready but still on their way to the Chamber. I know that is the only business that we have, Sen. (Dr.) Khalwale. So, we cannot just do any other thing apart from that one.

It is truly unprecedented but I guess you must also appreciate that when this matter was brought to the House, there was a divided opinion as to whether the sitting should be held on Saturday or Friday. The Saturday sitting was guided by the Committee in terms of their working. Since we are the ones who wanted Friday, it becomes inevitable. So, with a bit of patience, I think they should be here in the next 15 minutes.

**Sen. Hassan:** On a point of order, Mr. Speaker, Sir. Despite the fact that the team is on its way, I have to commend the young Senator, Sen. Moses Kajwang, who has found his way here. That is what it takes when you are versatile. Sen. M. Kajwang has a *boda boda*, and I am told that he gave a lift to Sen. (Prof.) Lonyangapuo. The two Senators come from hardship areas and we have to realize that the Chairman of the Special Committee, who is also the Chairman of Wiper Party, will be on his way. In the circumstances then, for us to not to appear to be just talking, could we adjourn the House for about 15 or 20 minutes? We can retreat to the Senators' Lounge and when Sen. Musila signals us that he is nearby, we can resume. Since he is the Chairman of Wiper Party, we could easily send him a chopper. As you know, we are also capable of having choppers.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order! Order, Sen. Hassan! If the Wiper Party had that capacity, it could have put it to good use.

**Sen. Keter:** On a point of order, Mr. Speaker, Sir. I want to second what Sen. Hassan has just suggested that we adjourn for about 20 minutes and then resume at 7.00 p.m. We are determined to clear this, but I am not seconding the other issues that he mentioned.

**Sen. Orenko:** Mr. Speaker, Sir, following from the Deputy Majority Leader, I also fully agree that even when the Committee is ready to present their report, we do not know whether they have enough copies. There may be administrative requirements to make the report available to every Member of the Senate. But more importantly, the Senate should never be seen to be idle. If there is business, we proceed. If there is no business, we retire. That is how it works. I ask and request that we retire for 15 or 20 minutes until there is business.

**Sen. Haji:** Mr. Speaker, Sir, I beg to differ with my colleagues. It is we who demanded that we should have a sitting today. Through the wisdom of the Speaker and other colleagues, we were supposed to have sat on Saturday. Having a bit of patience will not do us any harm. There is no point for us to adjourn.

*(Loud consultations)*

You do not have to answer me.

**The Speaker** (Hon. Ethuro): Order, Senators! Let us listen to Sen. Haji.

**Sen. Haji:** Order! I am a PC and Minister!

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, Sen. Haji. Senators can only speak through the Chair.

**Sen. Ongoro:** Mr. Speaker, Sir, I just want to clarify to Sen. Haji that we are not adjourning, but just retiring for 15 minutes, because it is better than sitting here without business before us. Let us have a 15 minutes adjournment to allow the team to present whatever they are bringing and then we proceed.

**The Speaker** (Hon. Ethuro): Order, Senator! Thank you for those interventions which I agree with, except to say the following. I think it is even more untidy when we retire and then resurrect, because we might have to do it quite repeatedly for the rest of the evening.

Secondly, I cannot determine the time for retiring. I have asked my officers to talk to the Committee, so that if we will retire, we will have a reasonable estimated time for retiring. Already you have the options of 15 minutes, 30 minutes, one hour or not at all. In fact, my option is that we should not retire. I want to believe that they will be here within the 15 minutes. If they do not come, then we will consider maybe to retire at that point. In the meantime, we can deal with the procedures, so that when they come it will be easier to dispose of their matter.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. According to the traditions of Parliament, if a Committee sits and then after 30 minutes the Committee, for

whatever reasons, is unable to transact business, that Committee stands suspended. I seek your indulgence to guide the House that since it is 6.49 p.m., and you have given us 15 minutes--- Since the Sitting began at 6.30 p.m., you need to guide this House on what will happen upon the expiry of the 30 minutes. This is because what we are having today is a “Committee of the Whole.” Could you guide us whether it will be still legal for this House to sit beyond 7.00 p.m.?

I would like you to take this point of order very seriously, because as evidenced by the Wambora case, the matter ended here. They went on and sought refuge in the Judiciary. If we do not do everything according to procedure, this might very well be the reason whatever decision we make today, will be declared null and void by the Judiciary.

**Sen. Wangari:** On a point of order, Mr. Speaker, Sir. I want to join my colleague on the other side, Sen. (Dr.) Khalwale, in asking for guidance from the Chair. This is quite unusual because as a House of procedure, we are guided by the Order Paper for everyday’s business. I am quite confused on what we should do right now as we wait for the Committee. Again, maybe, Sen. Moses Kajwang, can shed the light on why he and Sen. (Prof.) Lonyangapuo are here and the rest of the Members of that Committee are not. If the business was done, then I do not understand how they can be here and the report is not here. There is some confusion, but I support my colleagues; that if we are not ready, we would rather adjourn. I am not sure exactly what we are doing here.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I rise on Standing Order No.110(1) (i) on disorderly conduct.

“The conduct is grossly disorderly if the Senator concerned acts in any other way to the serious detriment or dignity or orderly procedure of the Senate.”

The Committee we bestowed authority to give us a report has acted in a way described under Standing Order No.110. Therefore, could you rule them disorderly and take appropriate action?

*(Applause)*

**Sen. Okong’o:** Mr. Speaker, Sir, if you recall, the General Elections of 2007, the late Electoral Commission of Kenya (ECK) Chairman, Mr. Kivuitu alluded to the fact that transmissions of votes from far-flung places were taking time to reach his office and, probably, some people were messing up with them. Therefore, going by our history, these issues are very serious. When you consider we have two Members of the Senate Select Committee present in the House and the rest are elsewhere, my concern is whether the same report which was adopted will be the same report which will be brought to this House.

**Sen. Ongoro:** Mr. Speaker, Sir, I want to add my voice to this concern that has been raised by Sen. Okong’o. This idea of extended suspense with a group of Senators who are supposed to be here - since two Members of the same Committee have made their way to the House, I am worried where this other group is hiding. My worry is that the content of the report could be altered or not the same report that was adopted will find its way here. Could you allow us to proceed in any way or adjourn for 15 minutes?

**Sen. Elachi:** Mr. Speaker, Sir, we are here for a very serious matter. We are talking about the impeachment of the Governor of Murang’a County and the people of Murang’a are watching us. It is very unfortunate to keep them in anxiety wondering, the

Senate has just adjourned, we are back and we are about to adjourn again. It is important that you give a ruling. Indeed, the people of Murang'a want to see justice done to them. Kenyans are eagerly waiting for the outcome of this Motion. It is important to give them that assurance that, indeed, we are waiting for a report. I hope the team that is coming with the report has an escort from the police because there is a lot of traffic at the moment.

**Sen. Hassan:** On a point of order, Mr. Speaker, Sir. I have been able to communicate with one of the Members of the Committee who is still at the venue. He is a judge. He tells me reliably that the ruling is now being typed and estimates it to take a minimum of 30 minutes. Therefore, unless we want just to share our life experiences, say, where I was before I came to the Senate which I could do, in order to at least inspire some of you. However, if we are to go by anything that the judge has said in this text, then 30 minutes sitting here might be more reasonable if we sat somewhere else.

**The Speaker** (Hon. Ethuro): Order, Sen. Hassan! I do not know who appointed you to speak for the Committee. I said our team is communicating with the Committee so that when we adjourn, I can give you some reasonable timings. You do not have to give one opinion. In any case, the official spokesman of the Committee is the Chairperson, not your neighbour.

**Sen. Murkomen:** Mr. Speaker, Sir, as the Vice Chairman of the first impeachment Committee in the Senate, I would like to sympathise with the situation of the Committee because of the timelines under the Act. It will be unfair to tell the nation that we are delayed because of traffic jam. That is the most tired and misused excuse in Nairobi. Every time one plans for themselves, they will always be wherever they want to be on time.

Those of us who were in that Committee, we were in Kiambu. We were facilitated by the Senate and the Government to be here on time by clearing the traffic and so on. So, that is not really the reason. The possible reason, having served before is the timelines that are very narrow. Perhaps, the report was very weighty. However, as a matter of conduct and behaviour, I would like you to find in future, that it cannot be possible that two Members of the Committee can precede the report. Usually, when the report is ready, Members sign, agree and pray, and then, they come and deliver, as the practice was. The work we are doing here is not a simple job. It is about accountability and management of a very serious entity; a county Government. So, we must act solemnly and be seen to be serious.

Most likely we are being covered live by media houses. In Murang'a and Kenya as a whole, Kenyans are sitting in hotels and their houses waiting for the decision of the Senate. As I speak, I have seen some of the Members trooping in one by one. Perhaps, Sen. Sang' can apprise us that we are ready to proceed.

**The Speaker** (Hon. Ethuro): Order, Members! You want me to give directions. However, you also want to make interventions. So, let us proceed in the interventions way.

**Sen. Muthama:** Mr. Speaker, Sir, this House appointed 11 Members of this Committee, but we have three Members inside the House. We are being told that the report is being typed, screened and finalized. The same report has to come to you. How are we going to trust a report by eight Members instead of 11 Members of this Committee? Are we going to go back to the debate with some of them claiming they did

not see the final report or that they left when it was being done? The whole country is watching us. There is no other business that is being watched through the televisions. Kenyans want to see what will happen with Governor Wa Iria and the Senate. Can we be told what the three Members are doing here when the other eight are outside there dealing with the report?

**The Speaker** (Hon. Ethuro): Order, Members. The rate at which we are going, the interventions are losing meaning. You cannot make your interventions to impute improper motive on other Members. Our Standing Orders are very clear.

Sen. Okong'o, you are completely out of order. These Members of the Committee are not bussed in one bus. They travelled in their own vehicles. Just because Sen. Hassan dramatized the *boda boda* issue and raising other issues, should not be a basis for us to comment.

I was very clear that the only spokesperson of the Committee is the Chair. That is the person we have been consulting. We want to hear from him. The Members should appreciate that there is a difference between signing and producing documents. Before a document is tabled, there must be sufficient copies for each Member. That in itself is a process. The young Members do not have to wait for it to be completed once they know they have already appended their signatures. That is my understanding.

I propose that I read to you the instructions and then we will adjourn until 7.30 p.m. It is less than 30 minutes and by then, my adjournment might be less than 30 minutes. I might take another 5 minutes after that particular time. I seek for your indulgence. We have come here for this matter and the timelines are tight. The Committee concluded the public hearings yesterday, so you can imagine they had only this morning to try and compile the Report and make decisions. They are trying to be your servants because you ordered this afternoon. Let us just bear with them. The fact that you see Members streaming in, it means the job is done. The rest is just photocopying.

### COMMUNICATION FROM THE CHAIR

#### PROCEDURE FOR CONSIDERATION OF THE REPORT OF THE SPECIAL COMMITTEE ON THE PROPOSED REMOVAL FROM OFFICE OF THE GOVERNOR OF MURANG'A COUNTY

**The Speaker** (Hon. Ethuro): Hon. Senators, this is a Communication on the procedure for consideration of the Report of the Special Committee on the proposed removal from office of the Governor of Murang'a County.

As you are aware, we are assembled here pursuant to Standing Order No. 21 (1) on the request of the Senate Majority Leader, with the support of the requisite number of Senators to receive and consider the Report from the Special Committee on the proposed removal from office of the Governor of Murang'a County.

You will also recall that this is not the first time the Senate is conducting business of this nature. We shall, therefore, proceed alongside similar lines as we have done in the past when the Senate received a similar report from a Special Committee. As in earlier case, the Chairperson of the Special Committee will first lay the Report of the Special

Committee when Order No.2 for Papers is read. I believe we are still on the Order No. 1 on the Communication from the Chair.

Subsequently, traditionally, we have been giving you time to read the Report. This time I wish to vary a bit. The Chairman will tell us what is in his Report so that we shall determine which way because there are two ways of proceeding. We shall, therefore, proceed with the Report to be laid. It will then be known to the House except the Committee Members that already know it. We have two procedures provided for by Section 33 (6) of the County Governments Act and our Standing Order No. 68 (4) which will apply. The contents of the Report will determine which of the two procedures we will follow.

Hon. Senators, both Section 33 (6) of the County Governments Act and Standing Order No. 68 (4) provide as follows:-

“If the Special Committee reports that the particulars of any allegation against the Governor:

(a) have not been substantiated, further proceedings shall not be taken under this section in respect of that particular allegation or

(b) have been substantiated, the Senate shall, after according the Governor an opportunity to be heard, vote on the charges.”

I will after the Report has been tabled, therefore, guide the House accordingly.

*(The Senate temporarily adjourned at 7.10 p.m.)*

*(The Senate resumed at 8.00 p.m.)*

## PRAYERS

## PAPER LAID

REPORT OF THE SENATE SPECIAL COMMITTEE INVESTIGATING  
THE PROPOSED REMOVAL FROM OFFICE BY IMPEACHMENT OF  
THE GOVERNOR OF MURANG’A COUNTY, HON. MWANGI WA IRIA

**Sen. Musila:** Mr. Speaker, Sir, I wish to lay on the Table of the Senate the following Paper:-

Report of the Senate Special Committee Investigating the Proposed Removal from Office by Impeachment of the Governor of Murang’a County, Hon. Mwangi wa Iria.

*(Sen. Musila laid the document on the Table)*

**The Speaker** (Hon. Ethuro): Order, Sen. Musila, you may resume your seat.

*(Sen. Musila resumed his seat)*

Order, Senators. I had indicated that usually, we have an hour or so to look at the Report. However, given that we have already spent a number of hours from 3.00 p.m. to

8.00 p.m. I direct that the Chair can help the House by explaining the findings of the Committee.

Proceed, Chair.

## STATEMENT

### FINDINGS OF THE SPECIAL COMMITTEE ON THE CHARGES BROUGHT AGAINST GOVERNOR MWANGI WA IRIA

**Sen. Musila:** Mr. Speaker, Sir, before I make my remarks, first and foremost, I apologise to the House for the delay that this Report has caused. You will appreciate that the Special Committee was given the mandate by this House last week on Friday. As we proceeded, the parties to the dispute went to the High Court. The judge did not give his determination until Tuesday. Therefore, we had very limited time to consider all the allegations that had been made against the Governor by the County Assembly of Murang'a.

Mr. Speaker, Sir, hon. Senators will recall that at the sitting of the Senate held on 28<sup>th</sup> October, 2015, the hon. Speaker of the Senate, by way of a Communication from the Chair, informed the Senate that he had received correspondence from the Speaker of the County Assembly of Murang'a; communicating the approval of a Motion by the County Assembly of Murang'a, to remove from office by impeachment the Governor of Murang'a County.

Mr. Speaker, Sir, the Senate Majority Leader gave notice of a Motion on 28<sup>th</sup> October, 2015, and moved the Motion on 28<sup>th</sup> October, 2015:

“THAT, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order No.68(1)(b), the Senate resolves to establish a Special Committee comprising the following Senators:-

- (1) Hon. Sen. David Musila;
- (2) Hon. Sen. Billow Kerrow;
- (3) Hon. Sen. Stephen Sang;
- (4) Hon. Sen. Abu Chiaba;
- (5) Hon. Sen. Fatuma Dullo;
- (6) Hon. Sen. (Eng.) Muriuki Karue;
- (7) Hon. Sen. (Prof.) Lonyangapuo;
- (8) Hon. Sen. Stewart Madzayo;
- (9) Hon. Sen. Janet Ong'era;
- (10) Hon. Sen. Catherine Mukiite; and,
- (11) Hon. Sen. Moses Kajwang;

to investigate the proposed removal from office of the Governor of Murang'a County and report to the Senate, within 10 days of its appointment, on whether it finds the particulars of the allegations to have been substantiated.”

Mr. Speaker, Sir, following deliberations on the Motion, the Senate resolved to establish the Special Committee. Section 33(4) of the County Governments Act, 2012 and Standing Order No.68(2) of the Senate Standing Orders mandated the Special Committee to investigate the matter and report to the Senate within 10 days on whether it finds the particulars of the allegations against the Governor to have been substantiated.



The Committee, in the execution of its mandate, was guided by these provisions, the Act and the Standing Orders of the Senate.

The Special Committee held its first meeting on the afternoon of Wednesday, 30<sup>th</sup> October, 2015. Pursuant to Standing Order No.183, at a meeting, the Committee conducted election of its Chairperson and Vice Chairperson. I am pleased to say that I was elected unopposed to the position of Chairman, while Sen. Adan was elected unopposed to the position of Vice Chairperson.

On behalf of Members of the Special Committee, I thank my colleagues, hon. Senators, for the confidence and trust they expressed in each of us by letting us to serve in this Committee. I also thank you for providing us with clear guidelines, in respect to the task ahead of us, in your Communication from the Chair on 28<sup>th</sup> October, 2015. The Committee further extends its appreciation to the parties to the matter; namely, the County Assembly of Murang'a and its advocates and the Governor of Murang'a County and his advocates for their well-researched and eloquent submissions in this matter.

The Committee also appreciates the media for the coverage of its proceedings during the course of its investigations. It further acknowledges the number of the members of the public who expressed great interest in the proceedings; sitting through the hearings as they keenly followed the proceedings in the matter.

Mr. Speaker, Sir, allow me, first, to address the matter of the threshold of impeachment. The Committee, after hearing all the evidence tendered before it and taking all matters into consideration, needed to decide whether it is constitutional, lawful, pragmatic and in the interest of the Murang'a County for the Governor to be removed from office.

Mr. Speaker, Sir, allow me to cite the jurisprudence that has emanated from the Senate. During the Senate's consideration of the report of the Special Committee investigating the removal of the Governor for Kericho County on 3<sup>rd</sup> June, 2014, the Senate adopted the Committee's recommendation that the threshold for impeachment should take into account the following considerations:-

- (1)The allegations must be serious, substantial and weighty.
- (2)The violation must be flagrant and glaring.
- (3)There must be a nexus between the violation and the governor.
- (4)The violation must have led to harm, loss or damage to society.
- (5)The violation must have led to a loss of dignity in the office held and loss of confidence or trust in the person holding office to carry out the functions of that office with integrity and accountability.

Mr. Speaker, Sir, three charges against the Governor for Murang'a County were forwarded to your office by the Speaker of the County Assembly of Murang'a, 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 national law.
- (3) Abuse of office and gross misconduct.

The findings of the Committee were as follows:-

Regarding charge (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; the allegation was lack of accountability for

the management and use of the county resources by incurring unsustainable debts to the tune of Kshs2.5 billion which was not disclosed in the Debt Management Paper, 2015 and the County Fiscal Strategy Paper, 2015 thus violating Article 201(e) of the Constitution of Kenya, 2010, Sections 123 and 107(2)(e) of the Public Finance Management Act, 2012.

Further scrutiny of the debt owing, reports submitted by the County Executive Committee Member for Finance and Information Technology, Planning and as at 14<sup>th</sup> August, 2015, indicated violation of Article 226(5) of the Constitution of Kenya since some programmes in the debt's report already had an appropriation in the budget for the year 2014/2015 only to reappear in the said debts; a clear indication of misappropriation of funds for the projects, for instance, Gakoigo Stadium under the Department of Youth and Sports was allocated Kshs30 million in the Financial Year 2014/2015 yet it had incurred a total debt of Kshs59 million and no monies had been paid. This positions the county in a very precarious situation which may lead to auctioning of the county assets. That was the allegation.

Mr. Speaker, Sir, after calling all the witnesses, including, the Auditor-General and the Controller of Budget, the Committee unanimously found that the allegation was not proved and, therefore, was not substantiated.

On allegation 2, regarding Violation of Article 201(a) and (d) of the Constitution of Kenya, 2010 that stipulates principles of public finance and Sections 5 and 131(b) of the Public Management Act, 2012, the County Governor, according to the allegation, allowed misappropriation of county funds by spending public funds in private commercial entities. The report of the Auditor-General on the Financial Operations of Murang'a County Executive for the period of 1<sup>st</sup> July, 2013 to 30<sup>th</sup> June, 2014, page five, shows that the County Executive contributed a total of Kshs28,498,800 to Murang'a Investments Cooperative Society commonly known locally as *Shilingi kwa Shilingi*. The expenditure was incurred in respect of advertisements to promote the cooperative society and invite the general public to purchase shares in the cooperative.

Mr. Speaker, Sir, further details of the same are contained in the Report of the County Assembly on the Murang'a Investments Cooperative Society, as I said, *inaitwa Shilingi kwa Shilingi*. The society is registered under the Cooperative Societies Act, Cap 490; Section 6(3) of the laws of Kenya. The society is an autonomous body independent of the County Executive and according to the Auditor-General's report, it was not clear, therefore, the circumstances under which the County Executive was funding it. This was in contravention of Section 5 of the Public Finance Management Act, 2012 as the society was not declared a county corporation.

*(Sen. Haji gave Sen. Musila a bottle of water)*

Thank you, Mr. Haji, my former and current colleague.

*(Laughter)*

Mr. Speaker, Sir, the Committee unanimously found that there was violation of the law but the violation did not rise to the level of gross violation and, was therefore, not substantiated.

Allegation 3 regards violation of the Constitution of Kenya, 2010, Article 201(a)(d) and (e) on Principles of Public Finance and Article 226(5) on Audit of Public Entities, Article 227(1) on procurement of goods and services and the Public Procurement and Disposal Act, 2005 by failing to adhere to the principles of public finance management and procurement of public goods and services. In the Financial Year, 2014/2015 as stated in the County Government's Budget Implementation Review Reports of the Controller of Budget, the County Executive, under the stewardship of the County Governor, incurred advertisement expenditure amounting to Kshs247 million against an approved budget of Kshs7 million as at 31<sup>st</sup> March, the third quarter. That was the allegation.

Mr. Speaker, Sir, the Committee found, after getting the report of the Controller of Budget - she assured us in evidence and under oath that, that was not the case. The allegation was not proved and, therefore, not substantiated.

Allegation 4: Violation of Article 183(2) (3) of the Constitution of Kenya, 2010 and Section 33(b) of the County Governments Act---

**The Speaker** (Hon. Ethuro): What is it, Sen. (Dr.) Khalwale?

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. I thank you for allowing me to rise on this point of order. My concern is that this is not the first time that we are interrogating a process like the one we are doing this evening. We had such cases in Embu, Kericho and Machakos counties. When you guided us under Standing Order No.1, our understanding was that you were helping us to move away from the practice that we have since established which this House knows. As soon as the report comes, it is tabled, we retreat, read and then we come to debate.

Mr. Speaker, Sir, listening to the Chairman of the Committee, he is actually leading us in debate. He is moving his Motion. It leaves me at a disadvantage as *Mtetezi wa wanyonge*, because I have not read his report. I was expecting, and if I am wrong, guide me, that the Chairman would then come and say, it has not been substantiated or it has been substantiated. If it has been substantiated, it would have given us an opportunity to then retreat and read to come and participate in debate. So, to allow him to move his report is leaving me at a disadvantage and Mueni, Wanjiku, Khasiala, Achieng and Khadija have no representative.

I beg you, this is a very serious issue. We have fought against corruption in this country and, therefore, the charges that were read right now, you can see I am restless. I have gone to the Clerk because I do not have a copy of what he is reading. How now am I expected to represent the poor just like my colleagues?

Mr. Speaker, Sir, I beg that you rule that he tells us their conclusion, then if their conclusion demands that we then meet subsequently to debate, we will do so. If it does not, you move according to the Standing Orders. We are very tense.

I thank you.

**The Speaker** (Hon. Ekwere Ethuro): Order Sen. (Dr.) Khalwale. When you talk of being tense, I suppose you are speaking for yourself and therefore, the use of the plural word "we".

**An hon. Senator:** We are also tense!

**The Speaker** (Hon. Ekwere Ethuro): Order! The point of order was addressed to me and I am trying to address it. I want to agree with Sen. (Dr.) Khalwale in the sense that my directive was that the Chair gives us the findings. Then from there, since we have

two procedures depending on the findings, we will know which way to move. But I saw the Chairman going the long route of giving a finding per charge. So, that was the way he understood it. You and I understand it in terms of summary. Do not be tense, Sen. (Dr.) Khalwale, especially given that you are a medical doctor and you know the function of adrenaline.

Proceed, Chair, and just summarize.

**Sen. Musila:** Thank you, Mr. Speaker, Sir. I did initially apologise to the House because the Committee has taken two days and, therefore, the Report that I have here, we adopted it just this evening and, therefore, it is up to the Secretariat to photocopy it and make it available to all Members as it is the case. But when we discuss, I think you ruled that since there was no time for that and Members had been sitting for a long time, we just summarize. Our understanding was that in the public interest, there was need to say charge by charge but if you rule that we give the findings of the Committee, I want to read just one paragraph as follows:-

**The Speaker** (Hon. Ekwere Ethuro): Order, Chair. How many charges do you have?

**Sen. Musila:** Mr. Chairman, Sir, actually I was in the process of finishing but if it is in the interest of the House, and they want just the conclusion, there were three charges but every charge has---

**The Speaker** (Hon. Ekwere Ethuro): And you had done two?

**Sen. Musila:** Mr. Speaker, Sir, every charge has many sub-charges. So, what is your ruling?

**Sen. Murkomen:** On a point of order Mr. Speaker, Sir. I suppose that what Sen. (Dr.) Khalwale is referring to are the three charges and they have paragraphs or certain sub-charges, if there is anything like that in law. Although I know there is nothing like a sub-charge, if they are three, they remain so. What this House wants is to say, for example, Charge No. 1 was this violation and the Committee found that it was substantiated or not. The details of the reasons is what Members are saying, perhaps, it may not be necessary for now until we are sure whether we will go ahead to debate.

**The Speaker** (Hon. Ekwere Ethuro): I think, Chair, that is the guidance we are asking you in terms of summary. What was the charge, what was the violation and what was your finding? That should not take you a minute each and you have already done two, go to the third one and you are done. Then go to the summary.

*(Loud consultations)*

Order, Members! I think the issue was how to proceed, and I think we have agreed.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, let us be guided by Part (v) of the Standing Order No. 68, the first sentence reads:-

“If the Special Committee reports that the particulars of any allegations.”

I think the Chairman is quite in order to enumerate those particulars.

**Sen. Wamatangi:** Thank you, Mr. Speaker, Sir. Unless we are deviating from the norm of this House, our norm has been that when the report has been prepared, it is brought to the House, served upon the Members, the Members read it, understand it and then as the charges are read, Members are also able to contribute. Owing to the challenge

of time that we have all admitted, I think the Chair is very much in order because what he is doing is what we should have done after reading that Report.

So, the Chair should proceed so that we understand precisely, and if we are going to get that Report later, we should be able to know and if we are going to make any contributions, it should be on the basis of the information that the Chair tells us. I believe he should proceed the way he is doing.

**The Speaker** (Hon. Ethuro): Order, Members. I think the last two interventions are helpful to the Chair. You can now summarize the third charge and the summary.

**Sen. Musila:** Mr. Speaker, Sir, I now want to read the third charge which is abuse of office and gross misconduct. I am just about to finish.

The allegation was that the County Governor of Murang'a exhibited gross misconduct and abuse of his office in the following ways:-

1. He violated Article 75 (1) of the Constitution of Kenya 2010, on conduct of state officers and section 13 of the Leadership and Integrity Act. Abusing public funds to brand his name.

Mr. Speaker, Sir, this is evident in the enormous advertisement in a vernacular radio station and billboards, erected along the roads at Ihura Stadium gate. The Governor has continued to misappropriate funds for personal branding in every advertisement made in the county. For instance, the allegation goes on to say that the front page of the printed examinations cited Murang'a County post-mock examinations for 2014 and bearing the name of the governor insinuating that he is the sole sponsor of the programme and not the County Government.

The Special Committee unanimously found that although there was a violation of the law, it did not rise to the level of gross violation and was, therefore, not substantiated. However, the Committee recommended that all billboards and other advertisements bearing the image of the governor be removed, and in future no billboards or other advertisement concerning the county government should bear the image. The Committee further recommended that this practice should cease in all counties with immediate effect. In future, the governor who contravenes this should be reported and dealt with by the Senate.

The other allegation was pretentious re-alignment of departments and programmes within departments that had exhausted their budgets, hence disregarding avenues that have been provided for by law.

**Sen. Hassan:** On a point of order, Mr. Speaker, Sir. With due respect to my Chairman also out of this Senate, you asked that he gives us a summary of the findings. When he does that, the Standing Orders are very clear that you either substantiate a charge or do not substantiate a charge. By recommending that governors should remove billboards, is this not an excess of their mandate? We want to know whether or not the charges were substantiated. We do not want to be told that Governor Mwangi wa Iria should remove the billboards. If they were not substantiated, let him, in fact, add more billboards.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Proceed, Chairman.  
What is it Sen. Wangari?

**Sen. Wangari:** On a point of order, Mr. Speaker, Sir. I want to pick up from where Sen. Hassan has stopped. I am reading Standing Order No. 68 (4) which states:-

“If the special committee reports that the particulars of any allegation against the governor—

(a) have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation; or

(b) have been substantiated, the Senate shall, after according the governor an opportunity to be heard, vote on the charges.”

I am confused by the recommendations by the Committee in terms of a way forward on a charge that has not been substantiated. How do we proceed?

**The Speaker** (Hon. Ethuro): Order, Senators. The Chair cannot help a Member when the Member has decided to confuse himself or herself. Sen. (Dr.) Machage read the same Standing Order and reached a different conclusion. The operating words were “particulars of any particular charge.” The Chairman went the long process of dealing with a charge and what he has also been called “sub-charges,” and he has been told that a charge is a charge. Since the Chairman is about to conclude the third charge, let him do so. The issue of further proceedings is after the Chair has finished. That is when those other orders apply.

Proceed, Chair.

**Sen. Musila:** Mr. Speaker, Sir, I need to be guided further because it looks like---

*(Sen. Murungi stood in his place)*

**The Speaker** (Hon. Ethuro): Order, Sen. Murungi. I looked at you very sympathetically, but you decided to stand without permission. You will sit down and seek your point of order in the normal way.

Proceed, Chair.

**Sen. Murungi:** On a point of order, Mr. Speaker, Sir. I am on a very serious point of order. When the Senate sits on impeachment proceedings, it does so like a court. These are quasi-judicial proceedings. We vote like judges in court. Each of us will be making a judgement. The challenges I see today is because we have not had the opportunity to read the report. I do not know on what basis we will exercise the crucial vote on this matter.

**An hon. Senator:** There is no vote!

**Sen. Murungi:** I know that once the Committee makes a finding that the charges have not been substantiated, that closes the matter. But we would like to know the basis on which the Committee came to that kind of conclusion. I am pleading with you not to rush the Chairman, so that he can give us the basis on which the Committee arrived at the conclusion, which the Members are trying to pressurize him to come to. We will then know whether the Committee really looked at this matter in the depth and the seriousness with which we sent them to look at it.

I know it is late in the night, but let us give the Chairman time, so that we can have a proper basis on which this decision can be made.

**The Speaker** (Hon. Ethuro): Order, Senators! This matter is straightforward. We are balancing the demand for information that led to particular findings vis-à-vis the procedure of creating proceedings where there could be none. Ordinarily, we would have taken a rest for a defined period of time and come back for the Chair to read the

summary. But we wanted a middle ground where the Chair can tell us what the charges and findings were. Chair, you could have helped the House if you were specific. We could have concluded this matter without allowing many interventions.

Hon. Members, let us be patient and allow the Chair to finish.

**Sen. Musila:** Mr. Speaker, Sir, to answer Sen. Murungi, this is the report. In order for you to know what made us to reach the decisions that we reached and the witness we called, you have to read—

**The Speaker** (Hon. Ethuro): Order, Chair! I am now directing you to proceed. That was a point of order to the Speaker and I have responded.

**Sen. Musila:** Mr. Speaker, Sir, you will bear with me and I also ask the hon. Senators to bear with me because it was agreed that I read the charges. You may not like the charge and the verdict but these are the findings of the Committee. The allegations—

**Hon. Senators:** Point of Order! Point of Order!

**The Speaker** (Hon. Ethuro): Not entertained! Proceed, Chair.

**Sen. Musila:** Mr. Speaker, Sir, on allegation number four, the use of personal portraits--- Sorry, I had already read that one. |You will notice that because of many interruptions, I may repeat myself.

Allegation number five, on the loss of personal funds through payment of 80 ghost workers and lack of precise inventory of the staff establishment as indicated in the report of the Auditor-General of 2012/2014 contrary to Article 226 (5) of the Constitution of Kenya; we asked the Controller of Budget and Auditor-General to give us their findings and evidence on this matter. The Committee found out that the allegation was not proved and was not substantiated.

Mr. Speaker, Sir, allegation number six, on the failure to appoint a substantive chairperson of the County Public Service Board and allowing the vice chairperson to occupy the said office for an undefined period contrary to Section 64(2) of the County Governments Act; the Committee unanimously found that although there was violation of the law, it did not rise to the level of gross violation and was, therefore, not substantiated. The Committee, however, recommended that the Governor undertakes the recruitment process in accordance with the law and nominates a successful bidder in 60 days.

*(Loud consultations)*

**The Speaker** (Hon. Ethuro): Order, Hon. Senators! Let the Chairman conclude. I will allow other points of order afterwards.

**Sen. Musila:** Mr. Speaker, Sir, I now read the final paragraph in view of the contention. The findings of the Committee are as follows; - The Committee, having investigated the matter, in accordance with its mandate, under Section 33(4) of the County Governments Act and Standing Order No.68 (2) of the Senate, reports to the Senates that although the Governor breached some provisions of the Constitution and the law, the particulars of the allegations against the Governor were, in terms of the Standing Order No.68(2)(b), found not to be substantiated. Therefore, the Committee did not recommend the impeachment of the Governor of Murang'a County.

**The Speaker** (Hon. Ethuro): What is it, Sen. Murkomen?

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. I did not want to raise this issue when you made your communication, but now that the Chair has finally

pronounced the verdict of the Committee, if you read Section 33(6) of the County Governments Act, it says that if the Special Committee reports that the particulars of the allegation against the governor have not been substantiated, further proceedings shall not be undertaken under this section in respect of that allegation.

Mr. Speaker, Sir, my reading of that section is that once an allegation has not been substantiated, the Governor is off the hook. However, it does not mean that is the end of debate on the report of the Committee. Let me make this clear because this is the first time this will be done in this House. In the Kericho impeachment, something of a similar nature was done and we ended the case. The case of Kiala of Machakos County was different because the verdict of the Committee was that he should be impeached. There ensued a debate that finally led to a split and we let him go.

Mr. Speaker, Sir, it is with a lot of respect to you that I say that since this is just proceedings in relation to the Governor as a person, he has now been let off from the charges because all the charges have not been substantiated. However, there have been very weighty policy decisions on matters related to the allegations being substantiated, but they are not gross violation or with recommendations to do this or that. I request your office that because of the seriousness of the issues that emanated from the Chepkwony's impeachment Motion, and now similar proceedings are occurring in as far as the Governor of Murang'a County is concerned, that you appoint a day when a proper Motion will be brought and this House will debate the report; not whether the Governor should be impeached or not, because that is over. Let us debate the report so that we understand the issue of precedence was set on threshold in a certain impeachment or that a Committee can recommend to a certain level. We, as a House, need to pronounce ourselves and guide future possible impeachments on whether this kind of recommendation should be given and how.

I beg to request you to appoint a day when the Senate Majority Leader or the same Chairperson of that Committee will move a Motion to allow us and give us an opportunity to ventilate on the substance of this report even if we know for sure that the Governor is off the hook.

**The Speaker** (Hon. Ethuro): Hon. Senators, if you would like to rise on a point of order, you press the intervention button.

**Sen. Ongoro:** Mr. Speaker, Sir, this is a sad day; not because the Governor has been let off the hook, but because of the casual manner, in my opinion, that we have presented and presided over this matter. The allegations leveled against the Governor touched on Chapter Six of the Constitution which is very weighty on leadership and integrity matters, particularly Article 73(1) and (2).

Mr. Speaker, Sir, it is very sad that while considering four very weighty allegations, the Committee accepted that they started sitting and listening to witness on Tuesday. In my opinion, that is not enough time for thorough interrogation and conclusion of such a weighty matter. As I sit here, it is very sad that Senators, Kenyans of this calibre, can actually sit and listen to the report without having an opportunity to go through it. As an individual, I feel that my right under the Bill of Rights has been violated. I have a right to access information and make informed decisions. Even as I listened to the Committee report, I have a right to internalize everything that they are presenting, having read the report and coming to a conclusion on my own behalf and that of the constituency of women that I represent.



Mr. Speaker, Sir, in my opinion, we are setting very serious traditions in the Senate. I am not sad that he has been let off the hook, but I am sad that I do not feel satisfied that I interrogated this weighty matter and gave it the in-depth analysis befitting it.

**The Speaker** (Hon. Ethuro): You are on a point of order Senator.

**Sen. Ongoro:** Mr. Speaker, Sir, I still want to state that we, as a Senate, have not done ourselves justice; neither are we doing Kenyans justice. We have always talked against corruption yet there is a weighty matter before us and the verdict that we are giving is not commensurate with the matter.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Ethuro): Members, I am following the list.

**Sen. Khaniri:** Mr. Speaker, Sir, I want to join the Gracious Senator in saying that indeed it is a very sad day. I have two or three issues to raise in my point of order. I want to raise an issue regarding Standing Order No.68 (4) (a) and (b), which Sen. Murkomen has alluded to. It states that:-

(a) If the allegations have not been substantiated; further proceedings shall not be taken under this section in respect of that allegation.

(b) If it has been substantiated, the Senate shall, after according the governor an opportunity to be heard, vote on the charges.

It does not talk about debate. I want to agree and at the same time differ a little bit with Sen. Murkomen, because he says, we set a day when we can debate this. This is the day, we do not need any other Motion to debate this, because in Standing Order No.68 (4) (b), it does not say debate. It says vote but, we have always debated before we voted. Even if the Standing orders 68(4) (a) says that no further proceedings shall be undertaken, it does not bar us from having a debate on the report of the Committee.

Mr. Speaker, Sir, my second point is in regard to Article 181 of the Constitution which forms the basis of our sitting today, and Article 181(2) states that:-

“Parliament shall enact legislation for procedure of removal of a county governor on any of the grounds.”

Therefore, the rules we follow that are established in our Standing orders and please, guide me if I am wrong. I have two issues, number one, is the issue of the Select Committee that we appointed when we appointed this Committee. I remember Sen. Keter Moved the Motion on behalf of the Leader of Majority and I seconded because our party leader was not around. I want to rise under Standing Order No.68 (1) (b) that the Senate by resolution may appoint a Special Committee. The word is “may”. Do we have to appoint Committees if Committees will take us the way we see Committees taking us? I want you to interpret this Standing Order for us because we could deal with this matter as a plenary or as a Senate instead of appointing Committees that come here and some of us do not agree with. It is a contradiction.

You cannot tell us that the allegations were substantiated but they were not grave. If they were substantiated, then they were substantiated. Do we have to appoint a Committee? I want you to make a ruling on Standing Order No.68 (1) (b) that we “may” appoint. When we say “may”, then there must be another alternative; it is optional. We may or may not deal with the situation ourselves, sitting as plenary.

The second one, is Standing Order No.68 (2) (b), on the issue of timelines, because there is no other law. The only thing that I think I know of and, Mr. Speaker, Sir, you may guide us---

**The Speaker** (Hon. Ethuro): Order, Senator. Can you conclude your point of order?

**Sen. Khaniri:** Mr. Speaker, Sir, it is on the issue of timelines, so that you can rule this one at once. The timelines we give ourselves in Standing Order No.68 (2) (b) of 10 days and even the six days---

*(Mr. Speaker consulted with Sen. Sang)*

Mr. Speaker, Sir I really need your ear on this because I am looking forward to your ruling on this, unless the senior counsel, Sen. Orengo, corrects me.

Issues to do with removal from office through impeachment are serious issues that touch on lives of many people and careers of other people. I do not think we are doing this process justice by giving the Committee 10 days. We did not put into consideration matters of the court because there could be a court injunction like what happened in this particular case. They could not start their proceedings until the court had made its pronouncement on the same.

Mr. Speaker, Sir, the issue of 10 and six days – which I think it is just in our Standing Orders and not in the Constitution - I want you to make a ruling on that one, so that if need be, we can review it in order to have ample time for people to look into these matters.

Thank you.

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. I rise on this point of order---

**The Speaker** (Hon. Ethuro): Let us be mindful that others are equally interested to raise some points of order. So, do not exhaust all of them.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I rise on this point of order to raise a constitutional issue in so far as these proceedings are concerned. Article 73(1)(a) of the Constitution provides that:-

Authority assigned to a State officer is a public trust to be exercised in a manner that-

- (i) Is consistent with the purposes and objects of this Constitution.-
- (ii) Demonstrates respect for the people
- (iii) Brings honour to the nation and dignity to the office

Mr. Speaker, Sir, read with Article 181(a) of the Constitution, which provides that:-

“A county governor may be removed from office on any of the following grounds:

- (a) Gross violation of the Constitution or any other law

The Chairman of this Committee has told us that in their finding, the charge that the governor put up his portrait, giving the impression in Murang'a County that this was his private and personal industry actually took place. The Committee then went on and did something very strange; they made recommendations that there is no problem with this because all we want is for Mr. Governor to pull down those billboards.

I would like the Chair for the sake of posterity, to make a determination whether this Committee was within its mandate to pretend that it had been asked to go and cure a situation. It is now on HANSARD that this Committee has proven the charge of the billboards; that these billboards were actually put in the governor's personal name. Therefore, the Constitution in Article 73 was breached. Because the Constitution is above our Standing orders and above our own belief, for this reason, I would like it to be found and with tremendous respect that this Committee failed in its mandate.

*(Applause)*

Mr. Speaker, Sir, who told them to go and start curing the problem in Murang'a? Therefore, they should have, by virtue of that statement, returned the verdict that this particular charge of abuse of office and breaching the Constitution had been proved.

I conclude by addressing the people of Murang'a. According to our Standing Orders, Standing Order No. 68 (6) provides that, when a matter like this is before this House, it can still be brought back after three months. I would like you to be on record so that we are not seen to be used to sanitize corruption in Murang'a County. However, we urge the County Assembly of Murang'a to bring back this matter in three months. When the matter comes, it is my submission that it should not be committed to any Committee. We want it to be handled in plenary, so that each and every one of us can fight corruption.

How can we, as a Senate, pretend to sit on the high moral ground, asking President Uhuru to sack the Cabinet Secretary for Devolution and Planning, Mrs. Anne Waiguru, and then when somebody who is corrupt like this one comes here, we ask them to pull down the billboards? We are joking! We must fight corruption. Money that is being lost in Murang'a does not belong to an individual; it is taxpayers' money.

**The Speaker** (Hon. Ethuro): Sen. (Dr.) Khalwale, you have plenty of opportunities to fight corruption. That is why this House made you the Chairman of the County Public Accounts and Investment Committee.

Sen. Hassan Omar, be very brief. I will not allow more than one minute for contribution.

**Sen. Hassan:** Mr. Speaker, Sir, Sen. (Dr.) Khalwale has pre-empted some of the issues that I wanted to raise. However, since these rules are made by Parliament, we must continue with how Parliament operates in tradition so that we can overturn the report of any Committee. This House must have the final say on any report of any Committee. This is the first time I do not agree with the findings of the Committee. This tells us that we must look for a way with immediate effect to amend our Standing Orders and the County Governments Act so that whatever report a Committee brings to this House, this House can still speak to it and decide to throw it out in whatever manner that we deem necessary.

**Sen. Orenge:** Mr. Speaker, Sir, I wanted to speak to this matter from the beginning. Unfortunately, I pressed the wrong button. I thought we would talk on this matter substantially.

**The Speaker** (Hon. Ethuro): I agree with you, Senator. You were actually at the very beginning. That should add you another two minutes.

**Sen. Orengo:** Mr. Speaker, Sir, I want to remind the Senate that power to impeach by the Senate is not constitutional; it is statutory. Therefore, if we do not exercise it appropriately and in a manner that will instill confidence in the people of Kenya, these powers may go to another institution altogether. This is an example where the people may see the Senate as not using its powers correctly in accordance with our own Standing Orders.

This Committee has usurped the role of the Senate. It has gone beyond its mandate. Standing Order No.68 (1) (a) says:-

“The Speaker of the Senate shall convene a meeting of the Senate to hear charges against the governor.”

That is a responsibility of the Senate. It is not a responsibility of any Committee. If you do not believe me, read Standing Order No.68 (1)(b). It says:-

“The Senate, by resolution, may appoint a special committee comprising of eleven of its members to investigate the matter.”

Therefore, their role is to investigate. It is not to make a finding of guilt or otherwise. Going forward, Standing Order No.68 (2) says:-

- “A Special Committee appointed under this subsection (2) shall-
- (a) investigate the matter; and
  - (b) report to the Senate within ten days on whether it finds the particulars of the allegations against the governor to have been substantiated.”

It reads “allegations” and not charges. Before the Senate now are charges. Therefore, the hearings of the charges have not taken place in the Senate. If you do not agree with the reason that I am advancing, read Standing Order No.68 (5). It says:-

“If a majority of all the county delegations of the Senate vote to uphold any impeachment charge, the governor shall cease to hold office.”

So, what goes before the Committee is not charges. It is for them to look at the particulars of the charges; whether there is something there for the Senate to begin a hearing of the charges. So, my case is that this process was put in the Senate for a very particular reason. I would really hate a situation where we can convict somebody where there is no substance or evidence.

If we give the role of making findings or violations in accordance with the Constitution to committees, that will be usurping the role of the Senate sitting as a plenary. Therefore, this is something we need to look at. I do not think there is conflict in the Standing Orders. The Standing Orders are clear that it is for us to hear the charges. It makes sense because when we have a report coming before the House and once laid, we have nothing to do about it. It is talking about convictions and violations when they are limited to show that allegations have been substantiated.

This particular function was given to the Senate as part of its oversight role on the county governments and similar institutions within the counties. If people out there begin to see counties like Murang'a suffering and we are returning verdicts of this nature, then this role may as well go to the National Assembly or any other institution. Therefore, I am asking the Senate, that we are still seized of this matter. We can still proceed to hear the matter or return it to the Committee and tell them they have gone beyond their mandate. We can tell them to tell us whether the particulars of the allegations have been substantiated and then we will deal with the charges.

(Applause)

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, it is like Senior Counsel, Sen. Orengo, knew what I was going to say. I agree with him entirely. I want to bring to the attention of the House and the Chair, that even distinguished lawyers like Sen. Murungi know that he cannot go to court and be arraigned for theft of somebody's goat and be acquitted and told to return it. That is not an acquittal. This is because the moment you are found with somebody's goat, you have been convicted. What is left, is sentence.

Sen. Orengo has raised a pertinent point that I want to bring to the attention of the Senate.

Mr. Speaker, Sir, law is not static, it is dynamic. It is permanently moving. In courts of law, judges turn the wheels of the moving law. In the Senate, it is the Speaker that turns the wheel of the moving law by making decisions, setting precedents and usages that turn into an enrichment of these Standing Orders.

Mr. Speaker, Sir, Standing Order No. 68 (4) (a) states:-

“If the Special Committee reports that the particulars of any allegation against the governor have not been substantiated, further proceedings shall not be taken under this section.”

It does not mean further proceedings shall not be undertaken at all, it only says under this section. Where do you get powers to invoke other procedures? You go back to Standing Order No. 1 that gives the Speaker of the House the power of the *alpha* and *omega* for the Speaker to give direction.

Where a Report of the Committee is evidently unsatisfactory and has exceeded the mandate and the powers vested upon the Committee because the Committee needed to say, substantiated or unsubstantiated. The moment they say we have found that he is guilty but must mitigate by pulling down billboards, it automatically puts this Senate and you as the Chair into an inquiry to decide whether this matter has been dealt with properly or not.

Mr. Speaker, Sir, none of the Senators here is baying for the blood of the Governor of Murang'a County. We do not even know him personally but are dealing with a situation where there is rampant misuse of public funds, theft of public funds and corruption. Corruption at the Office of the President and at the office of the Governor is equally serious. We cannot be shouting at the top and doing nothing at the bottom. We must apply force at all levels. I can see Sen. Keter finding this amusing.

Mr. Speaker, Sir, we still have an impeachment process waiting in Makueni County only halted by a court injunction. The previous proceedings in similar matters are distinguishable from what we face today. In fact, if we were able to overturn the findings of the Committee in the Kiala case, we can also overturn the findings of the Committee in this case because we have already set a precedent. I urge you to do a research and listen to senior lawyers and not those with vested interests who can help you reach a finding. This matter does not have to end tonight. Corruption is not ending tonight and justice is not ending tonight.

This matter does not have to end tonight because the Standing Orders give you a window under Standing Order No. 1 and read together with Standing Order 68 (4) (a). It provides that proceedings cannot proceed under this section but does not say they cannot

proceed at all for you to find a way on how to proceed on the matter so that we send a loud message out there that if you take public money and misapply or misuse it, then you are culpable.

Mr. Speaker, Sir, the lawyers here know that it is no excuse in law to say that you took money and put it into a purpose that is of public good but was not authorized. It is still abuse of office. I urge you to take the point raised by Sen. Orenge and enforced by others so that you give us direction and reason for this House to stand to be counted in the war against misapplication of public funds, corruption, looting, stealing and all that goes with it.

**The Speaker** (Hon. Ethuro): While at this, Sen. Wetangula, you said I should get advice from senior lawyers and not those ones with vested interests. Are they mutually exclusive?

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, since I was not challenged to deal with that point, I prefer we let it lie where it has fallen. We let the chips lie where they have fallen.

*(Laughter)*

**The Speaker** (Hon. Ethuro): I agree; when he made reference to the senior lawyers in front of him. His was referring to Sen. Murungi.

*(Laughter)*

**Sen. Mutula Kilonzo Jr.:** Mr. Speaker, Sir, I agree with my colleagues. Fundamentally, the Committee has let us down. That Report is not intellectually stimulating, it is underwhelming and is below the standards that we have set for ourselves as Senators.

Mr. Speaker, Sir, an issue has arisen and we must make a decision. The fact of the matter is that the Committee of 11 people has made a decision on behalf of this House. It is my view that, that decision is in violation of the Constitution because although we have delegated to a sub-committee, the decision of the Senate as contained in this Constitution must follow Article 123. The contention, therefore, that we must interrogate a Report, whether it is a verdict of removal of a governor or not, holds water. We have the Kiala situation where we disagreed with the Committee. This is one Committee we must disagree with.

Where a billboard has been put up illegally or unlawfully using public funds, the solution is not to remove it using public funds. The solution lies in the Constitution where a person who has used public funds is liable for that loss. If a person can misuse public funds and that is not gross violation of the Constitution, this Committee has let us down on what gross violation of the Constitution is. A person who has stolen a chicken and another who has stolen Kshs1million before the law are both equal. They are thieves. We must express extreme disappointment in the work of this Committee.

Lastly, this Committee allowed a mistrial by allowing the parties to go to court yet there was no injunction. Who told them that they were going to allow the judge to make a decision yet we had no injunction and then come and complain that they did not

have time? Who was advising this Committee? Do we need to investigate who the legal advisers of this Committee were? There is a problem with what they have taken. How can you not have an injunction and complain that we had two days yet there is an injunction in the case of Makeni County and we have not opened those proceedings.

Mr. Speaker, Sir, we must express disappointment because we delegated the power to this Committee and it has led us down.

Thank you.

**Sen. Wamatangi:** Mr. Speaker, Sir, first, I thank you and congratulate you for allowing this space for debate in compliance with our Standing Order No. 68 (4).

**The Speaker** (Hon. Ethuro): Order Senator! There is no debate.

**Sen. Wamatangi:** Mr. Speaker, Sir, just an intervention. On the day we appointed this Special Committee, I brought to the attention of this House the possible consequences of us failing to plan well with the Committee with the restriction of the 10 days within which this Committee is supposed to submit a report to this House. I made a passionate plea that we have an arrangement with this Committee where we urge them to ensure that these Senators will have enough time to interrogate the report before coming to plenary. This is now when the chickens have come home to roost.

None of these Senators had the opportunity to read through the report by this Committee. However, I want to state to the Committee and any other subsequent committees that nowadays the world has gone paperless. If Members of the Committee were constrained of time, they would have even emailed the report to all of us. We should have had the report in our email addresses as we discuss it. Nonetheless, now that we have it and the Governor of Murang'a County is let loose, we, as the Senate, must pass a word to county governments that we know governors are plundering resources of this country. They are not prudently using the resources they are receiving from the national Government. It is important that when the Governor goes back to work with his team, he must find his ground. He must make sure that this is dealt with. If that is how this Senate will---

**The Speaker** (Hon. Ethuro): Conclude, Senator.

**Sen. Wamatangi:** We must put a stop to plunder, corruption and misuse of public funds, and that the people of Murang'a will find the justice they deserve.

Thank you, Mr. Speaker, Sir.

**Sen. Keter:** Mr. Speaker, Sir, mine is on the procedure and how we are progressing. I want to seek some clarification. I would not like to talk about the report. To me, it seems that we have gone further and we are discussing what the Chairman of the Committee has tabled here. If, in your wisdom, you will agree with Sen. Murkomen to apportion a day for us to talk about the report, then, you need to make a ruling so that we can prepare very well. The Members of the Committee will also be given a fair chance to explain themselves concerning the basis on which they made those decisions because it seems as if we are crucifying the Chairman and the Committee.

Mr. Speaker, Sir, we had the first impeachment of the Governor for Embu County and we all agreed. The second impeachment was against the Governor for Kericho County. The Committee was chaired by Sen. Obure and their verdict was that the threshold was not met. Today, we are hearing the same thing. I am surprised that Members are questioning the threshold. That is why I am requesting that we should be

given an opportunity to discuss and table all that, so that we do not appear to accuse the Committee unfairly.

There were recommendations that some of the contracts which had been entered into should be cancelled. There were also recommendations that the Governor, Members of County Assembly (MCAs) for Kericho County and I, meet and report to the Senate. That is exactly what we did. Today, I am very surprised that Members are making an about-turn.

Mr. Speaker, Sir nobody should support corruption in the national or county governments if we want to move forward. However, more importantly, the Senate needs to be above this for us to be strong and respected. Therefore, you should make a decision on whether to allow us to have another day to discuss the report because the law is very clear. If the Committee found that there should be no impeachment, the case ends. That is why there were no discussions for the case of Kericho. The Chairman went through the report and tabled it and we all left. Today, you have allowed Members to talk. We need to apply the law fairly to everybody.

Mr. Speaker, Sir, I beg that you make a decision, so that if at all we should contribute, then we will make notes and contribute. Otherwise, we will go out of this House---

**The Speaker** (Hon. Ethuro): Conclude, Senator.

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

**The Speaker** (Hon. Ethuro): I will take the last four; Sen. (Dr.) Machage, Sen. Murungi, Sen. Kembi-Gitura and, finally, the Chairman of the Committee.

**Sen. (Dr.) Machage:** Mr. Speaker, Sir, I thank you for allowing the House to ventilate and express views on their own personal understanding of a document that we had not looked at hitherto. I do not know where they got all that information from. All the same, our Standing Orders tie you completely. I would like us to look at the definition of the word "proceedings." Its synonyms are events, activities, happenings or goings-on. In law, you would talk of litigation, reports or accounts. Therefore, I would define it a series of activities or events.

For that reason, I would be in order to remind you that after the report was tabled and presented to us by the Chairman, you should have stopped this debate. Anyway, you are also obligated to look at the Article 123(4) of the Constitution. The question is: What is superior? Is it our Standing Orders or the constitutional provision? Do we begin discussing a committee that was elected by this House without a substantive Motion? We are going against our own Standing Orders. Is it, therefore, in order to request you to order that this Sitting is stopped and the House adjourns?

**Sen. Murungi:** Mr. Speaker, Sir, the Senate Minority challenged some senior counsel to speak to this matter and I want to step into that space.

Mr. Speaker, Sir, in legal theory and jurisprudence, there are two types of law. There is the law as it is now which you might like or dislike, and also the law as it ought to be. You could refer to it as positivist law and there is also natural law. However, what my colleagues from the other side have done is to be very creative because we are dealing with a fairly bad law. According to the Standing Orders, which we had occasion to amend, but we did not, the fact of the matter is that the Committee of 11 Members makes the decision on behalf of the Senate without any debate in the Senate on this very serious matter. That is the law. The Committee has let the Governor of Murang'a County off the



hook. We, as the Senate, there is nothing we can do now. We may complain that the law is not good or that the Committee did not do a good job, but the Governor is off the hook.

Mr. Speaker, Sir, I want to suggest and give legal advice. The best thing we can do now is to be consistent. Sen. Obure and I were among the team which handled the proceedings of the proposed impeachment of the Governor of Kericho. Our Committee made a similar recommendation to this House. We found some of the charges which were made against the Governor to have been substantiated, but we did not find them to be gross violations of the Constitution. I think it would be some stretch of imagination to find somebody's picture on bill boards to be a gross violation of the Constitution. Even in law, it would be a misdemeanor; it would not be a heinous crime or a felony.

Mr. Speaker, Sir, I understand the disappointments that the Senators have with the rules that we have. Indeed, I will be happy if, in future, we could amend our Standing Orders so that a report of a Committee like that is debated in the House and the final decision is made through a vote by all the Senators in the House.

However, for now, we should make notes of this precedent and allow the Governor for Murang'a County to go. We should also make notes that other agencies of the law such as the Ethics and Anti-Corruption Commission (EACC) or the Director of Public Prosecution (DPP) can deal with the issues that the Senate has not dealt with.

It is time we amend our Standing Orders, so that the report of this Committee, like other Committees, is brought before the Senate for debate and the resolution is made through the usual manner by a vote.

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, as you are aware, I am the Senator for Murang'a County. I have heard what the Committee has said. It is important that they have said what they have to say. I reckon that, maybe, we now have to go back and do what we have to do in Murang'a.

The Senate is entrusted with issues like the one we are dealing with today and issues of oversight under Article 96 of our Constitution. These are extremely important positions of trust that have been granted to us, as Senators, as an institution. By taking our work under Article 96, we are the guardians of devolution. If devolution fails, then Senate fails and all that was fought for in the new Constitution to include Article 96, was then for nothing.

These are issues that we must take very seriously because this is not the last time that we will get a proceeding like the one that we are having today. Maybe, some other counties will bring their proceedings here in a manner like the one it has come here today. I know that there are constraints of time because 10 days reckoned ending tomorrow which is a Saturday is, indeed, a very short period.

Mr. Speaker, Sir, the Committee that we appointed, as a Senate, has finished its work, at least for now. The answers that we are seeking, and which I seek from you, amongst others are these:-

Article 181 talks about gross violation of the Constitution. It is pursuant to that, that then these proceedings follow. If you look at the report because I have taken a cursory glance at it, there are two kinds of recommendations that have been made in this report. There are those that say; for instance, that the Committee unanimously found that although, there was violation of the law; the violation did not rise to the level of gross violation.

Mr. Speaker, Sir, when I go to Murang'a tomorrow, and the people ask me; "what happened in the Senate?" I will tell them that a threshold was said not to have been attained. The question that must be answered by this Senate tonight, as an answer to the people of Murang'a County, is this: Under Article 181 of the Constitution, who has the mandate to deal with threshold? Is it the Committee or is it the plenary of the Senate?

Mr. Speaker, Sir, I want to say this for posterity. Once we get a finding that a law has been violated – and I am the Senator for Murang'a County, tomorrow when they ask me, what then, shall be the restitution? What will happen? These are questions that must be answered. The question that we must answer here is this: Is it for the Committee that we selected to give those answers or is it the plenary of this Senate? Standing Order No.68(2)(4)(d) does not talk about threshold; neither Section 33 of the County Governments Act nor Article 181 of the Constitution talks about threshold.

Therefore, it begs the question; if the Committee comes and tells us that a certain law has been breached, does their role end there and leave it to the Senate or will they also make recommendations? Who will pursue those recommendations so that the people of Murang'a can know where they stand regarding the budgets, finances and wealth in Murang'a? These are important questions that need to be answered. Tonight, they have not been answered. The Committee has not even attempted to answer those questions.

The problem I had and that is why I thought it is imperative that I speak about those issues because if I keep quiet here in the Senate, I cannot go to a public function and discuss them. I talk about them because devolution is important and I believe in it. I talk about them because I know that there is a solution for this country and that lies in devolution.

Mr. Speaker, Sir, when the Committee finds, like it has found in more than 10 occasions in this report, that an unlawful act was committed, and nobody asked them, under Article 181, Section 33 of the County Governments Act and our Standing Orders No.68; when they make a finding of an unlawful act, are they bound by that statement then let the Senate deal with threshold or is that it? This is because it cannot be in vain that those statutes, including the Constitution are there. My request to you is that you must pronounce yourself as our Speaker. You must tell us whether this matter is over---

**Sen. (Dr.) Khalwale:** It is not!

**Sen. Khaniri:** It cannot be!

**Sen. Kembi-Gitura:** Mr. Speaker, Sir, if you allow me; you must protect me from Sen. (Dr.) Khalwale and Sen. Khaniri so that I can finish what I am saying because I ask this in good faith. I am finishing.

**The Speaker** (Hon. Ethuro): Sen. Kembi-Gitura, you can only be protected if you will be hurt. These ones are supporting you!

*(Laughter)*

**Sen. Kembi-Gitura:** I know that, but they are interrupting my train of thought.

Mr. Speaker, Sir, this is an issue that I feel whether for this one or posterity, that you must pronounce yourself and this House must pronounce itself whether having been told that an illegality has been committed, we rest. Or whether having heard that, then the debate is open to the Senate because Standing Order No.68 requires that if nothing is substantiated, then we must go home without debate.

**The Speaker** (Hon. Ethuro): Conclude, I have not allowed debate.

**Sen. Kembi-Gitura:** The fact that you have allowed debate on this issue then says that there are still grey areas that need to be canvassed. If I have to go and tell the people of Murang'a County that then now we must work together because the Senate has found this – and this has been my wish and still is - that we work together as a people of Murang'a County. If I will tell them, let us work together, this thing is behind us now. They must be satisfied when I tell them it is over because nothing was found, no culpability was apportioned and, therefore, this is the position that we must take.

It is important for Murang'a County and each of the 47 counties that are represented here you pronounce yourself on this issue because devolution is sacrosanct and we sought to protect devolution.

**An hon. Senator:** Point of Information!

**The Speaker** (Hon. Ethuro): Order, Members! We are on a point of order. You know better, you can only inform somebody if he is making a submission. Everybody else here has been on a point of order. There is no information arising there. Conclude Senator, and by the way, you have really exceeded more than anybody else.

**Sen. Kembi-Gitura:** I thank you, Mr. Speaker, Sir. I started by reminding you that I represent Murang'a County. As I conclude, may I make the request through you, tonight this Senate pronounces itself and tells us whether a Select Committee has gone beyond its mandate by finding illegalities and unlawful acts, and yet going on to say that a threshold of gross violation has not been attained? Could the Chairman tell us what part of the statute, including our Standing Orders, gives them *vis-a-vis* the plenary of Senate to talk about threshold?

I thank you.

**Sen. Musila:** Thank you, Mr. Speaker, Sir. First and foremost, I want to thank the honourable Senators for the contributions they have made. I think it is rather---

*(Sen. (Prof.) Anyang'-Nyong'o spoke off-record)*

**The Speaker** (Hon. Ethuro): Order, Sen. (Prof.) Anyang'-Nyong'o! You have been here all along and I made a statement about the last four. He is the last one. Do not argue with the Chair.

**Sen. Musila:** Mr. Speaker, Sir, I want to say, on behalf of my Members who incidentally worked very hard for two days and nights to make sure that this Senate receives the report in accordance with the Standing Orders. To be fair to the Committee, even before Members read the report to find out the reasoning and the witnesses that we called and their submissions, the Committee has been condemned outright which - I want to submit for record – that it is grossly unfair.

During the hearing of the matter of Governor Chepkwony of Kericho, this Senate approved the threshold for impeachment. We have it here because when they approved the report by the Committee of Sen. Obure in respect to the Governor of Kericho, there were certain recommendations made as to how and the threshold that you reach to come to a conclusion whether the accused person has reached a certain threshold in abetting the law, in order that you may impeach.

Mr. Speaker, Sir, this is a resolution of the House and it guided the Committee. Indeed, my Committee did recognize the difficulties there are in the whole process of

impeachment of governors which have been so controversial over the years. We have even in that report recommended that this Senate addresses itself to the issues of the law to make sure that it is clear as to how you proceed in the impeachment of a governor.

Mr. Speaker, Sir, one Senator raised the issue that we waited until Tuesday before we started and there was no injunction. There are processes like serving of summons which were done from Friday to Tuesday, but the parties were in court. It was crucial that the Committee awaits the decision of the High Court before starting.

Mr. Speaker, Sir, we started on Tuesday. We used the weekend for serving of summons, and to the best of our knowledge, this is my parting shot and the distinguished Members of the Special Committee, we have given this matter our thoughts and we have made the best conclusion that we could arrive at. It is strange that Senators would have been very happy if we came and said the governor should be impeached. We are shocked because that appears to be what was expected of us. However, we have laid the report and I recommend that Members read it. Even if they wish as it has been requested to open the debate on it, we will be very glad to stand by the recommendations we have made in the report.

I thank you.

**The Speaker** (Hon. Ethuro): Hon. Senators, I had said finally, but I have been challenged by Sen. (Prof.) Anyang'-Nyong'o and then there are two other Senators, Ndiema and Elachi. There is no matter before us, but I want everybody to hear, this final of the final. I will give each one of them two minutes. That makes eight minutes. We will enforce those minutes strictly since Sen. Khaniri has persuaded your case.

**Sen. (Prof.) Anyang'-Nyong'o**: Mr. Speaker, Sir, we have all been very patient this evening and I think nobody's bill of rights should be violated. One of the things that I want you to say is that new challenges require new approaches and new strategies. This particular Committee works, as the Chairman says, under the constraint of time.

Secondly, we, as Senators, did not have time to read the report. A word has been used here called "threshold", and I am glad that the Senator for Murang'a has dwelt on it. It seems, to me, as I was sitting that a concept of threshold could easily have rendered null and void certain Articles of the Constitution, particularly Articles 75, 80 and 181.

The Constitution takes precedence over any other law in this country. Even though we use the word "threshold" in establishing a certain criteria of impeachment, in the Kericho case, it does not mean whatsoever that any other case that rides over the experiences of Kericho County, should be subjected to that minimal definition of threshold, especially if you look at Articles 75, 80 and 181 of the Constitution. If I had time, I would have gone through those Articles, but I would like this House to look at them and understand the plea by these Senators, that this case should not be closed, because of the weighty issues that have been raised by the petitioners.

Therefore, it is important that this House be taken very seriously on this issue. Since we have not---

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

**Sen. Ndiema**: Mr. Speaker, Sir, I will be very brief. I want us to look at Article 181 of the Constitution which states:-

"A county governor may be removed from office on any of the following grounds-

(a) gross violation of this Constitution or any other law;

(b) where there are serious reasons for believing that the county governor has committed a crime under the national or international law;  
(c) abuse of office or gross misconduct; or  
(d) physical or mental incapacity to perform the functions of office of the county governor.”.

**The Speaker** (Hon. Ethuro): Order, Sen. Ndiema! You will run out of time. All of us have copies of the Constitution.

**Sen. Ndiema:** Mr. Speaker, Sir, this threshold is being placed on the issue of the Constitution, but abuse of office alone can lead to the impeachment of a governor. Over-concentrating on the gross violation of the Constitution is not the direction that we should be going.

Thank you, Mr. Speaker, Sir.

**Sen. Elachi:** Mr. Speaker, Sir, we have set a new precedent in our House. With the points of order that we have had, we have opened a debate. The people of Murang’a believe that the Senate has denied them the right to hear the allegations they had brought to this House. This is something that we have to cleanse in this House, or else it will haunt us forever.

**The Speaker** (Hon. Ethuro): Finally, Sen. Hargura.

**Sen. Hargura:** Mr. Speaker, Sir, this might not be the last impeachment. Anytime an impeachment comes, there is always the possibility of the person being impeached going to court. We have a Committee which decided to wait for the court to pronounce itself on this. I would like you to give us direction. In the event that there is no order or injunction, why should a Committee wait until it hears what the court decides?

**The Speaker** (Hon. Ethuro): Order, Members! If everybody speaks, tomorrow morning will find us here. We have heard everyone who wanted to be heard.

First, I want to say that there was no debate. All those Members that I allowed rose on points of order. Before I go into the specifics, allow me to re-visit the issues raised earlier by Sen. (Dr.) Khalwale. He asked what we should do in the House when we appear not to have business. I want to make the distinction that there is a difference between the plenary and the Committee. If you do not raise quorum within 30 minutes in a Committee, you should adjourn. In the plenary unless a Member raises the issue of quorum, the plenary will proceed irrespective of the numbers present. That is the law and that is the way it should be. We should not appear to create impressions. I urge Senators who think they know better, that maybe others do not know. Some of these things are said with such appearance of authority and conviction that if they are not clarified, people might think that is the case.

This is a Special Sitting and the issue before us was to receive and consider the report of the Special Committee on the proposed removal from office of the governor of Murang’a County. The grounds at Article 181 (2) states:-

“Parliament shall enact legislation providing for the procedure of removal of a county governor on any of the grounds specified in clause (1)”.

That law is the County Governments Act. We have quoted Section 33, which we have written and re-printed in our Standing Order No.68 (4). What we have been saying is:-

“If the Special Committee reports that the particulars of any allegation against the governor—

(j) have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation; or

(k) have been substantiated, the Senate shall, after according the governor an opportunity to be heard, vote on the charges”.

Mr. Speaker, Sir, our Committee which was elected and was seconded in very flowery language by none other than the Senator for Vihiga, including invoking their rich backgrounds, has come up with particular findings. The moment the Chair pronounced himself, we should not have entertained anything. This is the House and we want to respect your opinions. Sometimes, when I allow this process, do not take them to be a right. It is for us to ventilate a bit and conclude the matter. That is why I have said that we had no debate before us. In fact, if you look at your Order Paper, there is no debate. However, you have made interventions which will help us in terms of taking this thing forward. I am very sympathetic to most of them myself. The one thing that I will not allow is to revert things in their natural course.

*(Loud Consultations)*

Order Members! The Speaker is trying to be charitable with the wording. When I use strong language I hear “dictatorship;” when I use softer words, I hear that I am “soft.” I leave the rest for you to decide.

I appreciate the contribution of each Member, because all of you, in your own right, have made substantive contributions. I am sympathetic to the extent that I agree, but will we apply them now on a case that is before us, when so far, we have not done it in the cases that came before us? My reading of the law and the Constitution provides that if something was not an offence by the time it was committed, and later you make it an offence, you will not look for the person who committed the offence when it was not an offence.

Hon. Senators, you have the power. I also find it unacceptable that a Committee of the House can have a final determination on a matter. This is a Committee that we settled on as a House to help us. They are our agents. Finally, it is the House to decide. However, what is provided for currently is the law. Change the law, make it clearer and your humble servant, the Speaker, will enforce it.

When King Charles appeared before Speaker, William Lenthall in 1642, looking to arrest five Members, the Speaker knelt before the king and said that, “I have neither the eyes nor the ears. I cannot distinguish those Members for you. I do not see them.” That is when the Speaker being the subject to the rules that you have made was established.

We will observe the law as it is now. However, when you change it, we will apply it accordingly. You will now agree with me that there are no proceedings on this particular matter. The debate will be brought in the normal way and you all know how, I do not need to remind you how. Since that matter was raised by the Chairperson of the Committee on Devolved Government, I am of the idea that you are the right person because you have the ideas, office and intention. Just do it. There is nothing stopping you.

We should not only bring a Motion, but go ahead and change the law so that every report of the Committee, including when the Senate has been petitioned, is

considered in the plenary. Normally, what happens is that apart from the interventions you make that do not exceed 30 minutes, when the report is tabled it is just for the purposes of noting and then that is the end of the story. If we truly want to make the House to be the final authority, we can do it.

In our own wisdom as a House, we decided that it was better for the Committees to look into the matter because the assumption was that they would do a better job. However, if it appears now that is a route that we may not entertain, we have an immediate solution of considering the matter in plenary. However, that sounds like the French guillotine. I think that it is important that we combine---

*(Loud Consultations)*

Order, Members! We have a tendency to deal with side shows and not the real issues, especially if you are confirming that somebody is sickly. That is not something to be happy about.

This is a debate that is properly before the House and we must interrogate this matter further. I will, definitely, look into it personally to see how we can make this process neater than it is currently.

*(Loud Consultations)*

Order, Senator! We have finished that business now.

### **ADJOURNMENT**

Hon. Senators, having concluded the business of today's Special Sitting, the Senate stands adjourned until Tuesday, 10<sup>th</sup> November, 2015, at 2.30 p.m.

The Senate rose at 10.05 p.m.