

## **RULING OF THE SPECIAL COMMITTEE ON THE PRELIMINARY ISSUES RAISED BY BOTH PARTIES**

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1. Honourable Senators, ladies and gentlemen, this morning, Counsel for both parties raised a number of preliminary issues which the Special Committee has deliberated on and made resolutions.
2. On the issue of the letter dated 11<sup>th</sup> May, 2021, the Committee confirms that the letter was received within the stipulated timelines. The Advocates for the Governor were served with the letter during this morning and no prejudice has been suffered by the party.
3. Based on the same letter, Mr. Ahmednasir Abdullahi made a request to the Special Committee to summon the following persons pursuant to Rule 9 of Part 2 of the Fifth Schedule to the Senate Standing Orders-
  - (a) Mrs. Khaire Omar Maalim- spouse;
  - (b) Yussuf Mohamed Abdi- son;
  - (c) Farhiya Mohamed Abdi- daughter; and
  - (d) Osman Abdi Jimale- businessman.
4. The Committee takes cognisance of Rule 9, Part 2 of the Fifth Schedule to the Senate Standing Orders, which provides that *the Committee may, at the request of the County Assembly or the Governor, invite or summon any person to appear and give evidence before the Committee.*
5. These proceedings concern the Governor and the Special Committee is not persuaded that sufficient evidence has been adduced to issue the summons sought with respect to Mrs. Khaire Omar Maalim, Yussuf Mohamed Abdi and Farhiya Mohamed Abdi. In any event, the county assembly may still adduce

evidence to show a nexus between abuse of office and the Governor's family without the testimony from the witnesses sought.

6. On the request to summon Mr. Osman Abdi Jimale, the Special Committee is convinced that it should exercise its discretion under Rule 9 of Part 2 of the Fifth Schedule to the Senate Standing Orders.
7. Accordingly, summons are hereby issued for Mr. Osman Abdi Jimale to appear before this Committee and give evidence.
8. On the issue of inclusion of an annexure to the affidavit of Shueb Bare Ahmed marked as CA 7, the Committee allows the request on the basis that the wider mandate of the Committee is to exercise its oversight function and flows from the powers in Article 125 of the Constitution. In this respect, the Committee while cognizant of the rules of evidence, the protection of the right to fair hearing, remains alive to the fact that to sufficiently carry out its mandate, it may call for any information, document or person that would shed more light on the matters that have been raised.
9. On the issue of expunging the affidavits sworn by Hussein Abdirahman Dahir marked as CA1 and CA 2, the Committee does not allow the application as the information contained therein may be crucial to conduct this investigation and establish whether the allegations are substantiated or not. The Committee therefore orders that the affidavits marked as CA1 and CA2 are hereby entered into evidence.
10. On the question of whether the matters canvassed in CA4 and CA8 amount to introduction of evidence that was not adduced before the County Assembly, the Committee finds that this can only be determined after the substantive

hearing of both parties. This is because the matters raised in the Preliminary Objection are premature. This matter goes to the facts of the case and at this juncture, the Committee cannot rule on this matter and the Committee shall determine this matter when it retreats to consider the evidence. In this regard therefore, the Committee finds and holds that the documents marked CA4 and CA8 are admitted into evidence.

11. We now turn to the issue of the injunction issued by the High Court in Meru High Court Petition No. E009 of 2021; *Aden Ibrahim Mohamed & Others Vs County Assembly of Wajir & Others*. The Senate has previously been faced with similar proceedings in the past where it has been called upon to hear, investigate and vote on charges against a sitting governor. All the Governors' impeachment motions and or Resolutions have led to long drawn court battles where the Governors seek among others conservatory orders against the County Assemblies or the Senate from proceeding with the impeachment process.

12. The Supreme Court in *Petition No. 32 of 2014; Justus Kariuki Mate & Another v Martin Nyaga Wambora & Another [2017] eKLR* considered the issue of contempt of court arising from legislative proceedings where the Appellants urged that the trial Court ought to have noted the legitimate dilemma facing the Speaker of the County Assembly, who was subject to constitutional timelines, yet was faced with a Court Order stopping the process. It was urged that in this instance, the Speaker complied with the Constitution, in a context in which the question of the constitutional obligation, on the one hand, and the burden of knowledge of the Court Order on the other hand, and asked the Court to clarify to what extent parties would be in violation of legal requirement, with opposed court orders bearing upon them.

13. Any party aggrieved by removal proceedings in the County Assembly ought to appear before the Senate and raise all pertinent issues including the legality of the process in the County Assembly. In this regard, the Committee is guided by the following statement of the late Justice Onguto in the case of ***Mwangi Wa Iria & 2 others v Speaker Murang'a County Assembly & 3 Others [2015] eKLR***, to wit:

*“I take cognisance of the fact that the Senate is truly, what I may call, the Impeachment Court. The Senate is expected not only to investigate the nexus of the allegations to the 1<sup>st</sup> Petitioner. The Senate must also interrogate the entire process as it scurried through the County assembly. I have seen no law that restrains the Senate from returning a verdict that the process was not conducted as detailed under the Constitution or any law for that matter. Pray, the Senate rises to the occasion and is practical and realistic in its investigations”.*

14. The constitutional mandate to impeach a Governor is duly assigned to the County Assembly and the Senate. Article 181 defines the circumstances under which a county Governor may be removed from office. In line with the terms of Article 181(2) of the Constitution, Parliament duly enacted the County Governments Act, 2012 (Act No. 17 of 2012), which lays down the procedure for removal of a Governor in Section 33 thereof. Further, Standing Order 68 of the Senate's Standing Orders also provides for the procedure for removal of a Governor from office. These provisions provide for strict timelines to be followed by the Senate in the process of removing or otherwise, of a Governor.

15. The Committee will therefore proceed to hear and determine these removal proceedings pursuant to the Constitution, the County Governments Act and all other applicable laws.

16. Finally, on the question of the competence of the Motion, the Senate ought not to involve itself on the validity of the proceedings before another legislative body and this Special Committee must limit itself to the question of whether the allegations forming the basis of the Motion for removal by impeachment of the Governor have been substantiated.

I thank you.

**SEN. OKONG'O MOGENI, SC, MP**

**CHAIRMAN, SPECIAL COMMITTEE ON THE PROPOSED REMOVAL  
FROM OFFICE OF THE GOVERNOR OF WAJIR COUNTY.**

**12<sup>th</sup> May, 2021**

