

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 16th December, 2020

Special Sitting

*(Convened via Kenya Gazette Notice
No.10309 of 9th December, 2020)*

*The House met at the Senate Chamber,
Parliament Buildings, at 9.00 a.m.*

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

PRAYER

COMMUNICATIONS FROM THE CHAIR

PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF NAIROBI CITY COUNTY

The Speaker (Hon. Lusaka): Hon. Senators, I take this opportunity to welcome you back for this Special Sitting of the Senate. We shall today, Wednesday, 16th December, 2020 and tomorrow, Thursday, 17th December, 2020, hold special sittings as per Gazette Notice No.218 of 10th December, 2020, to investigate the matter of the proposed removal from office, by impeachment, of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County.

Hon. Senators, you will recall that during the special sitting held on Wednesday, 9th December, 2020, I communicated to the Senate the resolution of the Nairobi City County Assembly made on Thursday, 3rd December, 2020 for the removal from office, by impeachment, of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County.

Pursuant to Section 33(3)(b) of the County Governments Act and Standing Order No.75(1)(a) of the Senate, I also read the charges against Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County.

In the Order Paper for that special sitting, a Notice of Motion and Motion for the establishment of a Special Committee to hear the charges against the Governor of Nairobi City County was listed pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order No.75(1)(b)(i). However, you will recall that during the sitting,

the Notice of Motion was withdrawn pursuant to Standing Order No.56(1). Therefore, the Motion could not be proceeded with.

I, therefore, ruled that a resolution is required only if the Senate seeks to proceed by way of a Special Committee. Otherwise, the default is the plenary for which Standing Order No.75 does not require a resolution. The Majority Leader, having withdrawn the Notice of Motion, therefore, the route of the Committee was, therefore, abandoned. That means that the Senate will investigate this matter in plenary.

Hon. Senators, as is the tradition, we will hold a closed preparatory or briefing session to discuss the management of the investigation that will be held in plenary in the next two sitting days. This is aimed at ensuring that the investigation process is conducted seamlessly and timeously.

Consequently, immediately following this brief Communication, I will direct that all members of the public, including the media, withdraw from the galleries and any form of broadcast from the Chamber will therefore cease.

The open session and hearing will commence at 11.00 a.m, as per the programme appended to the Order Paper.

I thank you.

(Applause)

DEMISE OF SEN. (DR.) BONIFACE MUTINDA KABAKA,
SENATOR FOR MACHAKOS COUNTY

My second Communication is on the Demise of Sen. (Dr.) Boniface Mutinda Kabaka, MP, and Senator for Machakos County.

Hon. Senators, today we mourn the death of a colleague and friend, Sen.(Dr.) Boniface Mutinda Kabaka, MP, the Senator for Machakos County, which occurred on Friday, 11th December, 2020, while he was undergoing treatment at the Nairobi Hospital.

The late Sen. (Dr.) Kabaka was, indeed, a great leader, an astute and articulate debater, a principled legislator and a distinguished man who passionately served, not just the people of Machakos County, but Kenya in general.

Hon. Senators, the late Sen. (Dr.) Kabaka was born on 1st January, 1966 in Kabaa, Mwala Location, Machakos County. His passion for academic excellence was evident at a very early stage in his life and demonstrated by the illustrious awards he received while pursuing degree programmes at the University of Nairobi. These include a Bachelor's degree in Law (1990), Diploma in Law from the Kenya School of Law (KSL) (1992), Master of Business Administration (2009), Master of Laws (2009), Master of Arts in Diplomacy (2011) and a PhD (Doctor of Philosophy) in Finance Law, which the Senator was pursuing at the University of Nairobi from 2015.

Hon. Senators, Sen. (Dr.) Kabaka was an advocate of the High Court of Kenya and Senior Partner at Kabaka and Associates Advocates. He begun his career in 1993 as a Legal Officer at the Kenya Railways Training Institute (KRTI), rising to the position of Assistant Corporation Secretary, by the time he withdrew from the service in 2001 to start his own private legal practice.

(Several Senators entered the Chamber)

Owing to his love for education, the Senator worked as a part-time lecturer at the Catholic University of Eastern Africa (CUEA) between 2010 and 2013, as well as a consulting editor for the *Lawyer Kenya Magazine*.

The Senator served as a legal consultant to the Governor of Machakos County between 2014 and 2017 and after vying for the position of Senator in the ensuing general elections in 2017, he was elected to the Office of the Senator for Machakos County.

Hon. Senators, the late Sen. (Dr.) Kabaka relentlessly advocated for the needs of his constituents and actively participated in community projects aimed at improving the lives and livelihoods of the people of Machakos.

(Loud consultations)

Order, Senators! This is about your colleague.

He will be fondly remembered as a steadfast leader, an ardent defender of devolution and upholding the rule of law and constitutionalism, who put the country before self, as witnessed during the deliberations on the Third Generation Revenue Sharing Formula which was concluded recently on 17th September, 2020.

In committees, he served as the Vice-Chairperson of the Sessional Committee on Delegated Legislation, a member of the Standing Committee on Agriculture, Livestock and Fisheries and a Member of the Standing Committee on Devolution and Inter-governmental Relations.

Hon. Senators, on behalf of all Senators and the staff of the Senate, and, indeed, on my own behalf, I take this opportunity to condole with the family of the late Sen. (Dr.) Boniface Mutinda Kabaka, MP, the people of Machakos County, and all his friends in this most difficult time. The Parliament of Kenya has, indeed, lost a diligent and visionary leader.

In honour of our departed colleague, I request that in the usual tradition, we all stand and observe a minute of silence.

(Hon. Senators stood up in their places and observed a minute of silence)

May his soul rest in eternal peace.

I thank you.

I will, therefore, allow a few contributions. This is a Special Sitting and we have a specific programme ahead of us.

Proceed, Sen. Wetangula.

Sen. Wetangula: Thank you, Mr. Speaker, Sir. I join you and the entire House in sending my condolences, that of my family, my party and all people of good will to the family of our friend and distinguished colleague, Sen. (Dr.) Kabaka.

As a first-timer, Sen. (Dr.) Kabaka has definitely performed beyond expectations. He was a very active, articulate, committed, principled debater and Senator in this House.

He has been a friend to everybody. He has had a smile for each one of us. He sought advice where it was necessary, and gave way where he found he had not said something that could carry the way, the way he wanted.

Mr. Speaker, Sir, I remember when I went to address my Assembly in Bungoma, with one day's notice, the late Senator dropped everything and joined other Members who came along. He spoke very passionately about devolution to the County Assembly of Bungoma. His sudden demise is definitely a terrible loss to his family, the people of Machakos, this Senate in general and above all, all of us who were his close friends.

We live in times when death is knocking on every door without us noticing. As we mourn the passing on of Sen. (Dr.) Kabaka, allow me to once again also send a message of condolence to the family of my Member of Parliament, the late Hon. James Lusweti Mukwe, who also passed on about the same time and whose burial is set for this Saturday.

May God rest our colleagues' souls in eternal peace. Amen.

The Speaker (Hon. Lusaka): Proceed, Sen. Cherargei.

Sen. Cherargei: Thank you, Mr. Speaker, Sir. From the onset, on behalf of the people of Nandi County and my family, I take this opportunity to condole with the family of my brother, my learned senior, the late Sen. (Dr.) Boniface Mutinda Kabaka.

He was a great man. I remember when we were in Senate Mashinani, with your permission, you allowed us to go and address Nandi County Assembly. He was a sharp brilliant legal mind, a man who was always smiling, generous at heart and engagement. He was somebody who would not look down on people. I want to extend our deepest condolences to the people of Machakos and the nation at large.

It is a lesson that all of us are sojourners on earth and we should be ready any time. He was a great defender of devolution. I had the privilege of serving with him under the Chairmanship of Sen. Kinyua in the Committee on Devolution and Intergovernmental Relations then.

The last time we had an engagement; it was with the sugar farmers when we had a matter concerning the State owned sugar companies in the Nyando Sugar Belt. He was very instrumental in ensuring that justice for the farmers must be looked at, over and above everything else.

Finally, Mr. Speaker, Sir, even as the country goes through the challenges of the COVID-19 pandemic, I had the privilege of receiving a Petition from the Kenya National Union of Nurses (KNUN) and the Kenya Union of Clinical Officers (KUCO) the other day. Even as we struggle with this pandemic and mourn our colleague, it is important that we fix the public healthcare system in this country. I also think that it is very important that every Kenyan should access healthcare wherever they are in the over 14,000 public health facilities that we have across the nation.

Even as the nurses, clinical officers and other health workers are on strike or industrial action, we call upon the Government and the CoG to step in to ensure that their issues and grievances, including the release of Personal Protective Equipment (PPEs), insurance cover and many others such as the universal health cover are dealt with. We want the National Hospital Insurance Fund (NHIF) to cover all Kenyans so that when

someone is sick, they have an opportunity of being treated. The health workers do not have PPEs. Those are challenges that we must fix in our healthcare system.

May the soul of our colleague rest in peace. We wish the family and the great people of Machakos County God's fortitude to bear this loss. We are praying for them in this time of mourning.

Since you put me in the Committee on the issue of the late MP of Kabuchai Constituency, Hon. Lusweti, allow me to also extend my condolences to the family in Kabuchai and Bungoma, to you and the Senator for Bungoma. I wish you and the family well and the fortitude to bear the loss.

Thank you, Mr. Speaker, Sir.

Sen. Kwamboka: Thank you, Mr. Speaker, Sir. I take this opportunity to pass my condolences to the family of the late Sen. (Dr.) Kabaka and to the people of Machakos County. Indeed, we have lost a champion in this House.

The late Sen. (Dr.) Kabaka was a very active and jovial Member of this House. We are, indeed, going to miss him. We will miss his participation in this House. May his soul rest in peace.

Sen. Kihika: Thank you, Mr. Speaker, Sir. I also rise to give my condolences to the family of our colleague, Sen. (Dr.) Kabaka, the great people of Machakos County, his friends and to all colleagues as well.

I actually remember him as a very knowledgeable Senator. Many a times when he would speak to contribute to a Motion or any other business before the House, he really had a good grasp and you could tell that he had done a lot of research on all the subjects that he spoke of.

His memory also seemed to be out of this world as well. He would sometimes talk about things that happened in the early 1980s or 1990s, which seemed foreign to me a little bit. However, I would always wonder and marvel at how good his memory was.

He will really be missed. It is sad and I cannot believe that we are now sitting here having lost a Member, but we pray that God will comfort his family, friends and the people of Machakos.

Perhaps just to point out to us, as colleagues, how temporal our life is and that we should make every day count, as we never know that tomorrow is never guaranteed.

May our colleague rest in peace.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): I can see that there is a lot of interest and because of time, I will allow the Leaders of the Majority and Minority to conclude. I know all of us would have wanted to say something, but we are really constrained by time.

Sen. Mutula Kilonzo Jr.: On a point of order, Mr. Speaker, Sir. I am a little disconcerted because I do not think that it is correct that we rush the question of the late Sen. (Dr.) Boniface Kabaka.

(Applause)

I think that every Member should be given an opportunity at the appropriate time to condole with the family of the late Sen. (Dr.) Kabaka. I say this with tremendous

respect because I hope that this Senate will collect the HANSARD of our tributes and give it to the family when we are laying him to rest.

The idea of rushing and everybody speaking in a hurry is not correct. It is not correct that Sen. Kihika is swallowing her words. I thought that we had agreed, perhaps I am wrong, that we will do this on Monday when we will meet over the Tea Bill. This is so that everybody gets an opportunity to speak at the very least, for five minutes, to the pleasure we had with the late Sen. (Dr.) Kabaka. I am not happy.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Okay, hon. Senators. I made the Communication today, but I want to agree that we are having a Special Sitting on Monday. At that sitting, we will use the occasion to give everybody an opportunity to mourn our colleague. I also feel it. The late Sen. (Dr.) Kabaka was a friend to all of us and everybody will have an opportunity to mourn him in a proper way.

This was just a Communication because this is the first time we are meeting after his demise. I thought that I could give a few Members the opportunity then we will continue on Monday.

(Loud consultations)

Order, Sen. Linturi.

Like I communicated, I now direct that all cameras and coverage be withdrawn. We are going into a closed session; a preparatory Session up to 11.00 a.m. It is after 11.00 a.m. that the proceedings will be open to the public. It is so directed.

*(All members of the public and the media
Withdrew from the galleries)*

(The House went into camera)

(End of in-camera session)

(The House resumed at 11.00 a.m.)

The Speaker (Hon. Lusaka): Hon. Senators, please, take your seats. I will soon be on my feet.

HEARING AND DETERMINATION OF THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT OF HON. MIKE MBUVI SONKO, GOVERNOR OF NAIROBI CITY COUNTY

RECITAL OF THE MANDATE OF THE SENATE, RULES OF PROCEDURE AND HEARING PROGRAMME

Hon. Senators, ladies and gentlemen, having dispensed with the pre-hearing meeting of Senators, which was a closed session, it is now time to commence the

proceedings of the Proposed Removal from Office, by Impeachment, of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County.

Hon. Senators, ladies and gentlemen, by a letter, Ref: *NCCA/SPK/12/2020(1)*, dated Friday, 4th December, the Speaker of the Nairobi City County Assembly informed the Speaker of the Senate that at a sitting of the Nairobi City County Assembly held on Thursday, 3rd December, 2020, the Nairobi City County Assembly had approved a Motion for the removal from office, by impeachment, of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County.

The Speaker of the County Assembly also forwarded copies of the following documents-

(a) The Order Paper of the Nairobi City County Assembly for the sitting of the County Assembly held on Thursday, 3rd December, 2020;

(b) A Notice of Motion by Hon. Michael Okumu Ogada, MCA, dated 25th November, 2020 on the proposed removal from office, by impeachment, of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County;

(c) A list of names and signatures of Members of the Nairobi City County Assembly in support of the removal from office, by impeachment, of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County; and,

(d) The Votes and Proceedings of the sitting of the Nairobi City County Assembly held on Thursday, 3rd December, 2020.

(Several Senators stood at the entrance of the Chamber)

Take your seats.

(The Senators walked into the Chamber and took their seats)

Pursuant to Section 33(3)(a) of the County Governments Act, 2012 and Standing Order 75(1)(a) of the Senate Standing Orders, on Wednesday, 9th December, 2020, a Special Sitting of the Senate to hear the charges against the Governor of Nairobi City County was held.

Thereafter, on the request of the Senate Majority Leader and with the support of the requisite number of Senators, I appointed today, Wednesday, 16th and tomorrow Thursday, 17th December, 2020, as days for Special Sittings of the Senate to investigate, in Plenary, the matter of the proposed removal from office, by impeachment, of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County.

Honourable Senators, ladies and gentlemen, allow me to remind you of the mandate of the Senate in so far as it relates to the removal of a governor from office as provided for under Article 181 of the Constitution, as read together with Section 33 of the County Governments Act, 2012 and Standing Order 75 of the Senate Standing Orders. In particular, Article 181 of the Constitution provides as follows-

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

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

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

(c) abuse of office or gross misconduct; or,

(d) physical or mental incapacity to perform the functions of office of county governor.

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

Section 33 of the County Government Acts, 2012, Standing Order No. 75 of the Senate Standing Orders and the Fifth Schedule to the Senate Standing Orders provide for the procedure to be followed in the hearing and determination of the proposed removal from office, by impeachment, of a governor.

Hon. Senators, ladies and gentlemen, by way of a status update, pursuant to Rules 4(a) and 6 of Part 1 of the Fifth Schedule to the Senate Standing Orders, the Senate invited the Governor to appear and be represented before the Senate during its investigation. The Senate further invited the Governor, if he chose to appear before the Senate, to file an answer to the charges with the Office of the Clerk of the Senate by 4.00 p.m. on Tuesday, 15th December, 2020 setting out –

(a) the Governor’s response to the particulars of allegations;

(b) the mode of appearance before the Senate; whether in person, by advocate or in person and by advocate;

(c) the names and addresses of the persons to be called as witnesses, if any, and witness statements containing a summary of the evidence to be presented by such witnesses before the Senate; and,

(d) any other evidence to be relied on.

Pursuant to Rules 4(b) and 7 of Part 1 of the Fifth Schedule to the Senate Standing Orders, the Senate notified the County Assembly of the date for the commencement of the investigation and invited the County Assembly to designate Members of the County Assembly, being not more than three Members, if any, who shall appear before the Senate to represent the County Assembly during the investigation. The County Assembly was further invited, if it chose to appear before the Senate, to file with the Office of the Clerk of the Senate by 4.00 p.m. on Tuesday, 15th December, 2020, documentation –

(a) designating the Members of the County Assembly, being not more than three Members, if any, who shall attend and represent the Assembly in the proceedings before the Senate;

(b) indicating the mode of appearance before the Senate; whether in person, by Advocate, or in person and by Advocate;

(c) indicating the names and addresses of the persons to be called as witnesses, if any, and witness statements containing a summary of the evidence to be presented by such witnesses before the Senate; and,

(d) specifying any other evidence to be relied on.

Hon. Senators, ladies and gentlemen, on Tuesday, 15th December, 2020, the Office of the Clerk of the Senate received a response to the Invitation to Appear issued to the Governor from M/s J. Harrison Kinyanjui & Co. Advocates, who indicated that the Governor had appointed the firm to represent him in the proceedings before the Senate,

and that the Governor would appear in person and by advocate. To the response were attached various documents, including a Notice of Preliminary Objection.

The Office of the Clerk of the Senate also received a response to the Invitation to Appear, issued to the Governor from M/s Nyamu & Nyamu Company Advocates setting out a response to the Particulars of Allegations and providing evidence to be relied on.

Hon. Senators, ladies and gentlemen, on Monday, 14th December, 2020 and Tuesday, 15th December, 2020, the Office of the Clerk of the Senate received a response to the Invitation to Appear issued to the County Assembly from Hon. Benson Mutura, MCA, the Speaker, Nairobi City County Assembly, which provided-

(a) the names of three Members of the County Assembly designated to attend and represent the County Assembly in the proceedings before the Senate and also stated that the County Assembly would appear in person and by a team of Advocates led by Mr. Ndegwa Njiru, Mr. Duncan Okatch and Mr. Ashioya Biko Brian, to be assisted by four other Advocates;

(b) list of three witnesses;

(c) a list of eleven persons whom the County Assembly requested the Senate to summon to appear; and,

(d) further evidence to be relied on.

Pursuant to Rule 8 of Part 1 of the Fifth Schedule to the Senate Standing Orders, on Tuesday, 15th December, 2020, the Clerk of the Senate furnished each party with the documentation filed by the other party.

Hon. Senators, ladies and gentlemen, the Hearing Programme that has been circulated details the various activities in the hearing and determination of the matter and the time allocated to each activity. It will be crucial that all the parties comply with the time allocated. The parties will be notified of the balance of time on each activity through the Clerks at the Table.

In summary, the Programme states that today, Wednesday, 16th December, 2020, after we have dispensed with preliminary matters, the Charges against the Governor, as submitted by the County Assembly, shall be read to the Governor. This will be followed by an Opening Statement to be made on behalf of the County Assembly. Thereafter, an Opening Statement shall be made on behalf of the Governor. After the conclusion of the Opening Statements, the presentation of the case of the County Assembly shall commence and should take us up to the end of today's Sitting.

At the Sitting scheduled for tomorrow, Thursday, 17th December, 2020, the Governor will have an opportunity to present his case before the Senate. This will be followed by a Closing Statement on behalf of the County Assembly and a Closing Statement on behalf of the Governor.

The Senate shall then proceed to a Closed Session for deliberations prior to voting on each of the Charges. In accordance with Section 33(7) of the County Governments Act, 2012 and Standing Order 75(6) of the Senate Standing Orders, the voting shall be by county delegations. The Governor shall cease to hold office if a majority of all county delegations of the Senate vote to uphold any impeachment charge. If, however, the vote in the Senate fails to result in the removal of the Governor, pursuant to Standing Order

75(7), the Speaker of the Senate shall notify the Speaker of the Nairobi City County Assembly accordingly.

Honourable Senators, ladies and gentlemen, this hearing is being conducted at a very challenging time when the COVID-19 pandemic is with us. As has been the practice in the sittings of the Senate since the start of the pandemic, the sittings shall be conducted in strict compliance with the COVID-19 guidelines issued by the Ministry of Health and in various Communications from the Chair.

I, therefore, implore you, hon. Senators, ladies and gentleman, to observe and abide by the COVID-19 guidelines throughout the sittings. As I conclude, I would like to assure you all that the Senate is cognizant of the gravity of the matter with which it is seized, and that it shall accord the parties a fair hearing.

Honourable Senators, ladies and gentlemen, I now invite Counsel for the Nairobi City County Assembly to introduce the legal team of the County Assembly and the Members of the Nairobi City County Assembly representing the County Assembly, by stating the full name and designation of each person.

Yes, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, before we commence, I will begin with your last paragraph. The Coronavirus Disease (COVID-19) has not spared the Senate. The way we are seated today is in violation of all the rules. As we sit here, people are coughing, others are sneezing and your Gallery is full. How do we give anybody assurance here that we have complied, yet people are sitting neck to neck on the other side? People are still walking into your Gallery. This is the worst Chamber to have a Sitting with people seated in. We told you that we did not want a crowded Plenary. We do not want to sit in a death trap.

If we cannot sit somewhere else, we should be told so that we go for a virtual sitting because this is a death trap as it is and it is not worth it at all. We have lost colleagues to the COVID-19 pandemic, and have somebody in the mortuary.

The Speaker (Hon. Lusaka): Hon. Senators, in the other Chamber, we will allow the numbers that are sitting there, but inside here, we have to rearrange. This cannot be allowed to continue because it is dangerous.

I agree with Sen. Mutula Kilonzo Jnr. that we, as the Senate, have also been affected by the COVID-19 pandemic. Whatever is before us is not bigger than our health. Let us rearrange ourselves so that we sit according to how the seats have been designated. If you are sitting on a seat that has not been written "Sit here," please go to the other Chamber.

In any case, we will be listening more than talking. So, let us respect that rule. If you are sitting in a place that has not been designated to sit on, please, relocate.

The Senate Minority Leader (Sen. Orengo): On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Yes, Sen. Orengo.

The Senate Minority Leader (Sen. Orengo): I think that asking Members to relocate is also very difficult while you are sitting on the Chair and the Mace is where it is. This means that we are formally in session. I suggest that we have a break of five or

10 minutes and hon. Senators be allowed in, in strict compliance with the regulations. Even the example we are sending out to the country is not proper.

The Speaker (Hon. Lusaka): That is okay.

Hon. Senators, in that case, I suspend the sitting for 10 minutes.

(The House adjourned temporarily at 11.27 a.m.)

(The House resumed at 11.46 a.m.)

The Speaker (Hon. Lusaka): I will just read what I said last before we broke, that I will now invite counsel for the Nairobi City County Assembly to introduce the legal team of the County Assembly and the members of the Nairobi City County Assembly representing the County Assembly, by stating the full name and designation of each person.

INTRODUCTION BY THE NAIROBI CITY
COUNTY ASSEMBLY TEAM

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiru): May it please you Hon. Speaker, Members of the Senate. My name is Ndegwa Njiru---

The Speaker (Hon. Lusaka): All of you have your masks on all the time.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiru): I am the lead Counsel in these proceedings. With me, I have Mr. Milimo who is going to do the entire introduction of the team taking the proceedings. Much obliged.

The Counsel for the County Assembly (Mr. Benson Milimo): Mr. Speaker, Sir, Hon. Members of the Senate, my name is Benson Milimo. I am here to introduce the team from the Nairobi City County Assembly starting with the Members-

(1) Hon. Michael Ogada the Leader of Minority and Member of County assembly (MCA) representing Embakasi Ward.

(2) Paul Kiguathi, Majority Whip, MCA for Mihang'o Ward.

(3) Hon. Peter Imwatok AKA Jateso, Minority Whip and MCA representing Makongeni Ward.

(4) Hon. Moses Ogeto, Deputy Minority Whip, MCA Kilimani Ward

I also have with me my learned colleagues starting with Mr. Michael Osundwa, Advocate of the High Court of Kenya; Mr. Duncan Okatch, Advocate of the High Court of Kenya; Mr. Ndegwa Njiru, Advocate of the High Court of Kenya; Mr. Ndegwa Mwangi, Advocate of the High Court of Kenya; Mr. Kevin Kokebe, Advocate of the High Court of Kenya; Mr. Biko Ashioya, Advocate of the High Court of Kenya; Mr. Gabriel Chesoro, Advocate of the High Court of Kenya; Ms. Cynthia Shiunda, Advocate of the High Court of Kenya and Mr. Angira Dennis, Advocate of the High Court of Kenya.

Mr. Speaker, Sir, that is the team from the Nairobi City County.

I thank you.

The Speaker (Hon. Lusaka): Thank you very much. I now similarly invite counsel for the Governor to introduce the legal team representing the Governor and the Governor by stating the full name and designation of each person.

INTRODUCTION OF THE NAIROBI CITY
COUNTY GOVERNOR'S TEAM

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Good morning, Mr. Speaker, Sir, Hon. Members of the Senate, ladies and gentlemen. My name is Harrison Kinyanjui. I appear on behalf of His Excellency the Governor. I am an advocate of the High Court of Kenya, Court of Appeal and the Supreme Court and all subordinate courts in the Republic of Kenya.

With me to represent His Excellency the Governor, I have Mr. Wifred Nyamu, an advocate of the High Court of Kenya; Mr. Kwanga Mboya, advocate of the High Court of Kenya; Hon. Maanzo, a Member of Parliament, and MCAs of the Nairobi City County Assembly who, because of time, I will not enumerate all of them although they have been named in the deposition of His Excellency the Governor in response.

We also have over 57 of the said Hon. MCAs of the Nairobi City County Assembly, some of whom are seated in the Gallery.

Mr. Speaker, Sir, allow me before I sit down, that I invoke your rules in Part 1 of the Fifth Schedule which designates and delineates the procedure to be followed in Plenary. Hon. Members we raised a notice of preliminary objection---

The Speaker (Hon. Lusaka): Order. We are yet to get there. You are supposed to introduce your members. Just do what we have directed you to do.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Very well.

The Speaker (Hon. Lusaka): Hon. Senators, on behalf of the Senate I welcome the County Assembly team, the Governors team, Members of the public and the media to the Senate and to these proceedings.

I now invite the Clerk of the Senate to read the charges against Hon. Michael Mbuvi Sonko the Governor of Nairobi City County.

READING OF THE CHARGES

The Clerk of the Senate (Mr. Nyegenye): The Hon. Mike Mbuvi Sonko, the Governor, Nairobi City County, the charges against you are as follows-

(1) Gross violation of the Constitution; The County Governments Act, 2012; The Public Procurement and Disposal Act, 2015; and the Public Finance Management Act, 2012.)

(a) The Governor of the Nairobi City County has violated Articles 201 (a), (d), (e) of the Constitution of Kenya on principles of public finance management and Section 154 of the Public Finance Management Act, 2012, the County Allocation of Revenue Act, 2015 on the use of conditional grants from the National Government, by the diversion or negligently causing to be diverted Conditional Funds, for instance in the use of the road

levy and bursary funds to pay for garbage collection contractors and lawyers, contrary to the Bursary Fund Regulations and the approved budget.

While the Governor requested Kshs297 million for Bursary from the Controller of Budget, these funds were illegally used to pay garbage contractors and lawyers.

(b) The Governor of the Nairobi City County has violated Article 10, Article 201 (b) and (d) of the Constitution by failing, refusing and/or neglecting to comply with the provisions of Regulation 20 of the Public Finance Management (County Governments) Regulations, 2015, which failure, refusal and/or negligence has compromised the provision of services envisioned under Part II of the 4th Schedule to the Constitution 2010, *inter alia* most crucial provision of health services during the raging pandemic;

(c) The Governor of the Nairobi City County has violated Article 187(2)(a) of the Constitution and Article 5.2 of the Deed of Transfer, by his continued willful refusal to execute the statutory warrants essential to the release of funds from the County Revenue Fund, which has grounded the provision of services of not only the county executive, but of the Nairobi Metropolitan Service (NMS) and its exercise of the transferred functions.

This action violates the provisions of Article 187(2)(a) of the Constitution and Article 5.2 of the Deed of Transfer, whence the County Assembly duly adopted the Budget for the Financial Year 2020/2021 and enacted the Nairobi City County Appropriations Bill, 2020.

(d) The Governor has violated the provisions of Article 183 of the Constitution as read together with Standing Order No. 193 and Section 123 of the Public Finance Management Act, 2012 by undermining the authority of the County Assembly, whence the Governor has refused and or failed to implement resolutions of the County Assembly or forward a report detailing his inability to do so in line with Article 183 of the Constitution as read together with Standing Order number 193, with respect to County public debt and debt management under the provisions of Section 123 of the Public Finance Management Act, 2012. Failure of which, the county has been unable to control and manage county public debt. The result is unmitigated accrual of debt which has ballooned the county's overall debt to unmanageable levels rising from Kshs56 billion when he assumed office in 2017 to Kshs76.794 billion as at 31st December, 2019 hence further violating the provisions of Article 201 of the Constitution.

(e) The Governor has violated Article 227 (1) of the Constitution on procurement of goods and services as read together with provisions of the Public Procurement and Disposal Act, 2015 by flouting the principles of public finance management in as far as public procurement of goods and services is concerned. The Public Procurement Regulatory Authority (PPRA) faulted the procurement process for the construction of the Dandora Stadium.

The Authority flagged irregularities in the award of the tender, alteration of contract specifications, suspected irregular payments and forgery of documents. Despite technical evaluators questioning the quality of work, the PPRA indicted the county government for paying Kshs196.87 million to the contractor.

(f) The Governor violated Section 35 (4) and Section 45 (1) of the County Government Act, 2012 as read together with Section 104 and Section 148 of the Public Finance Management Act, whence between 2018 and early 2019.

Contrary to the law, the Office of the County Executive Committee Member (CEC) for Finance and that of the Chief Officer for Finance, were held by the same person, one Ms. Winfred Gathagu, which situation occasioned confusion and inefficiencies at the County Treasury, hence failing to promote good governance and compromising the doctrine of transparency and accountability within the county government.

(g) The Governor has violated the provisions of Section 104 of the Public Finance Management Act, on the responsibilities and powers of a County Treasury, whence through inaction, action, omissions and commissions, he continues to preside over a broken public finance management system, whence the county treasury remains ineffective.

Despite various resolutions of the County Assembly urging the governor to improve efficiencies by decentralizing the finance function to sectors as required by the provisions of Section 148 of the Public Finance Management Act, 2012 the county continues to operate in contravention of the law.

(h) The governor has violated the provisions of Article 5.5 of the Deed of Transfer of Functions by his refusal to hand over the necessary documentation to enable the Kenya Revenue Authority (KRA) to undertake optimal revenue collection under the transferred functions.

For instance, by the end of June 2020, the county had collected just Kshs8.4 billion, against a projected revenue target of Kshs17.05 billion. This was partly due to failure by the county government to facilitate the KRA to hit its optimal potential as the revenue collection agent appointed pursuant to the Deed of Transfer of Functions.

(i) The governor grossly violated Article 201 of the Constitution on the prudent use of financial resources and Section 159 of the Public Finance Management Act, 2012 as read with Section 7 of the Nairobi City County Tax Waivers Administration Act, 2013 by unilaterally and arbitrarily issuing waivers in total disregard of the law.

The governor was aware that the law provides that waivers should be granted by the CECM for Finance.

(j) The Governor has violated the provisions of Article 201 (d) of the Constitution on principles that guide all aspects of public finance in the Republic and Article 227 (1) on procurement of public goods and services and the provisions of the Public Procurement and Disposal Act, 2015 by willfully interfering in the award of the tender for the construction of the Dandora Stadium as established by the Public Procurement Review Board (PPRB), leading to loss of public funds in overseeing payments despite concerns by technical officers.

(k) The Governor has violated the provisions of Article 201 of the Constitution and the Public Finance Management Act, 2012 on principles that guide all aspects of prudent use of public finance, where either intentionally or negligently, he presided over massive loss and theft of county public funds in the three years he has been in office.

This is as evidenced by the Auditor-General's Report of Financial Year 2018/2019, which raised the red flag over the city's stalled Kshs204.2 billion projects as well as failure by the county government to meet its revenue targets.

(l) The governor has violated the provisions of Article 5 of the Deed of Transfer of Functions by sabotaging the transfer of functions. The governor is yet to provide the Nairobi Metropolitan Services (NMS) with crucial information necessary in aiding the carrying out of the transferred functions.

For instance, failure to facilitate NMS with data on ongoing projects, pending bills and staff payroll details on transferred functions has greatly derailed the performance of these functions to the detriment of the public good.

2. Abuse of office

(a) The governor has abused his office by violating Article 75 of the Constitution as read with Sections 11 and 13 of the Leadership and Integrity Act, 2012 on the conduct of State officers, where the governor has persistently intimidated, harassed, molested officers of the County Executive, including blackmailing his CECs and Chief Officers with one year contracts whose renewal he has undertaken arbitrarily, leaving the officers jittery about their employment and creating a climate of fear, uncertainty and despondence.

For instance, in May 2019, the governor failed to renew the contracts of all 23 Chief Officers, instead directing that they handover to directors, greatly affecting the continuity of service delivery and accountability in the county.

(b) The Governor has abused his office by violating Article 75 of the Constitution as read with Section 16 of the Leadership and Integrity Act, 2012 by unlawfully using public funds to pay for his daughter's travel to New York, USA, to allegedly attend the County First Ladies' Conference, held during the 66nd Session of the Commission on the Status of Women, 2018.

3. Gross Misconduct

(a) The governor has violated Article 73 of the Constitution by failing to promote public confidence in the integrity in the office of the governor, following his being charged before the Anti-corruption Court, thus prejudicing and or compromising the social contract and trust bestowed upon him by the people of Nairobi County by virtue of Article 1 of the Constitution.

As a consequence, therefore, the governor has been barred from accessing his office *vide* a Court Order, thus incapable of performing his functions under Section 30 of the County Governments Act, 2012.

(b) The Governor has violated Article 73 of the Constitution and Sections 8 and 11 of the Leadership and Integrity Act, 2012 on public trust and professionalism where he is on record admitting that he was intoxicated and thus not in the right frame of mind when he signed the Deed of Transfer for the transfer of certain functions of the county to the national Government in February 2020.

In his own words, "*Hawa watu wa State House waliniconfuse na pombe kwanza. By the time I was meeting the President for the signing, I was just seeing zigzag.*"

This allegation of impropriety on the part of State House imputes improper motive on the Office of the President and brings disrepute, ridicule, hatred and contempt to the Office of the President and of the governor.

(c) The Governor has violated Article 73 of the Constitution and the Leadership and Integrity Act, 2012 on the responsibilities of leadership, by failing to professionally

perform his constitutionally sanctioned duties, owing to his constant absence from office even before he was formally restrained by the courts from accessing his office due to corruption charges, whence the governor remained constantly unreachable in person or on his phone for inordinately longer periods of time, to the huge detriment of the performance of the functions of the County Executive.

Indeed, the Governor purported to execute the functions of the County Government from his home in Mua Hills, Machakos County.

(d) The Governor has violated Article 75(1) (c) of the Constitution as read together with Section 11 of the Leadership and Integrity Act, 2012 in respect of conduct of State Officers by drawing a salary and hefty allowances and enjoying the privileges of the office he holds, while failing to diligently report to work and being perennially absent, even before he was formally restrained by the courts from accessing his Office due to corruption charges.

(e) The Governor has violated Section 8 of the Leadership and Integrity Act, 2012 on Public Trust, where he has constantly used his position to abuse public trust in the County Government, by exercising the powers of his office in a manner detrimental to prudent public service delivery, by persistent use of divisive and unbecoming language which undermines the Office he holds and the County administration.

(f) The Governor has violated Articles 73 and 75 of the Constitution on conduct of State Officers that is demeaning to the offices they hold and Section 11 of the Leadership and Integrity Act, 2012, by persistently and willfully using, publicizing and publishing abusive and unbecoming words and language, as evidenced by his social media posts and numerous rants, in which he has hurled abuses and conducted himself in a manner that undermines and demeans the Office of the Governor.

4. Crimes under National Law

There are serious reasons to believe that the Governor has committed crimes under National law, specifically the Anti-Corruption and Economic Crimes Act, which crimes he has been charged for in the Anti-corruption Court.

The Speaker (Hon. Lusaka): Hon. Senators, I will now invite the opening statement on behalf of the County Assembly of Nairobi for 30 minutes.

OPENING STATEMENT ON BEHALF OF THE NAIROBI CITY COUNTY ASSEMBLY

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiru): Probably, before we go to the opening statement, we would seek your guidance in respect to a letter dated 14th December, 2020, which was sent to you by the Speaker of the County Assembly, which sought your intervention in respect to the procurement of various witnesses. That means your assistance in respect to the issuance of summons for purposes of attendance of these witnesses.

Mr. Speaker, Sir, as it may be noted from the Motion of impeachment that has just been read before this honourable House, these witnesses are so crucial in so far as the adducing of evidence for or in favour of the County Assembly is in issue.

In this respect, we invoked the provisions of the Fifth Schedule to the Standing Orders, the same being the Schedule guiding the proceedings before you for purposes of subpoenaing these witnesses.

Mr. Speaker, Sir, just to highlight the essence of the witnesses, we are seeking your guidance as to whether or not the summons was issued, among them is Wycliffe Ogalo. Wycliffe Ogalo is the Commissioner General for Prison Services. He will be essential when we will be adducing evidence in respect to the Governor's violation---

The Speaker (Hon. Lusaka): Sorry. There is a point of intervention from Sen. Orengo.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiru): Much obliged.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, you have laid out how we are going to deal with this case. The trial will not start until the opening statements have been made. If we now go into the issue of witnesses--- He is making an application, and I think we are not there yet. We should finish with the opening statements and then move forward.

The Speaker (Hon. Lusaka): I agree with Sen. Orengo. Make your opening statement, and you have 30 minutes. We are yet to get there, just the way I gave direction on the other request.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiru): I am well guided and thank you for the benefit, with the wisdom of Sen. Orengo.

Mr. Speaker, Sir, I will jointly make this---

The Speaker (Hon. Lusaka): There is another intervention from Sen. (Prof.) Kindiki.

Sen. (Prof.) Kindiki: Mr. Speaker, Sir, on a further point of order based on what my learned friend, Sen. Orengo, has raised.

Mr. Speaker, Sir, it will help the parties appearing before this House if you could give further guidance to ensure that we do not keep interrupting them from time to time.

These, in my view, are proceedings of the Senate; they are not court proceedings. Therefore, when the Speaker directs that do this, you do it unless the interruption by the counsel or any other party is caused by a breach of the Standing Orders of this House. On that, one must say the Standing Order that has been violated and seek redress, as opposed to making applications left, right and center and every party trying to introduce applications and things they want to do at a particular point of time.

When the Speaker directs that you this and that, you do it, unless you think there is something in the Standing Orders that has been violated and you must point it out.

Mr. Speaker, Sir, I thought that going forward for the next two days, that should be your direction.

The Speaker (Hon. Lusaka): I will be giving direction. Please, just do what I direct. Do not be in a hurry to get to a place or a certain point. Let us move systematically. There is a way we are going to arrive at all that.

Kindly, proceed to make your statement.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiru): Thank you, Mr. Speaker, Sir. I had indicated that I will be joining issues with my learned friend,

Mr. Ashioya Biko Brian, in giving the opening statement. I will only take 10 minutes and reserve the rest to him.

Mr. Speaker, Sir, and the hon. Members of the Senate, this House has gathered here today to hear the Motion on the Impeachment of the Governor of Nairobi County.

Mr. Speaker, Sir, it shall be noted that the Motion before you was moved and passed by an overwhelming majority of 88 Members of County Assembly (MCAs), representing various wards in this county.

Mr. Speaker, Sir, when the MCAs moved the Motion for this impeachment and the resolution for the impeachment of the Governor, they were not actuated with malice. They were moving to enhance the provisions of Article 10 of the Constitution in so far as the protection of the sovereignty of the people of this Republic is in issue.

Mr. Speaker, Sir, the Members of Nairobi County Assembly moved to pass a resolution to impeach the Governor having well acknowledged the provisions of Article 10 that calls for the Principles and the Values of Governance in so far as the questions of transparency, accountability, good governance and aspects of integrity are in issue. They were not lost of the fact that when somebody assumes an office and that of the status of the Governor, that person's conduct and behaviour, either in public or in private, must be beyond reproach. It must be a conduct that squares out with that of the Caesar's wife.

What are we having? We have a case of a Governor gone rogue; a Governor who fails to appreciate that he is holding a public office and there is expectation of him that has been set down by the law.

This House and the previous Houses enacted the Leadership and Integrity Act. More so, the people of Kenya enacted Chapter 6 of the Constitution that laid the bare minimum upon which a State officer or a public officer must conduct himself.

Mr. Speaker, Sir, in our proceedings, it shall marvel you when we present evidence, overwhelming evidence, to the fact that the Governor is not fit to continue holding this office. To the fact that the Governor has not only abrogated Chapter 6 and the Leadership and Integrity Act, but he has also fragrantly misconstrued and held himself in a manner that is contemptuous to the sovereignty of the people of Kenya.

We will be posing a question, in the fullness of time, upon presentation of our witnesses as to whether this is one person who is fit to continue holding this office. It shall be presented before you overwhelming evidence of how a governor has plundered the resources of this county, the resources of the Wanjiku and the resources of the "hustler nation" that is always spoken about.

Everybody must be called to account; be it the "hustler nation" or the "dynasty nation." That is what the County Assembly of Nairobi is moving to do to you this morning.

Mr. Speaker, Sir, it shall surprise you how a governor out of the frolic of his own has moved to square out and compete with the extravagance of Marie Antoinette. We are actually having a position of the French Revolution. The French Revolution was triggered by the extravagance of the Queen. The extravagance of the Queen cost the reign of King Louis XVI.

If it happened in 1679, why should it not happen in the 21st Century? If it happened then, Hon. Members, why should a governor who demonstrates extravagance

by putting his daughter in a helicopter for a tour in New York not happen to him today? There is a price for everything. The price for accountability and transparency demands that the governor vacates office.

It is not lost to this House the philosophy by Thomas Hobbes. Thomas Hobbes said that by nature, humans are greedy, cruel, selfish, and they are driven by the desire to grab and maintain power by all means. That is the person we have presented before you this morning. A person who is greedy, a person greedy for public resources should not have the mercy of this House. A selfish person who wants to amass wealth at the expense of the taxpayers deserves no mercy.

Mr. Speaker, Sir, we shall be presenting overwhelming evidence to the extent that this House shall not be left with any other option, but to agree with your brothers and sisters in the County Assembly of Nairobi. The question of good governance cannot be compromised. The question of transparency cannot be debated. The question of accountability cannot be the subject of debate. Once you hold a public office, you must be able to understand that you are accountable.

What is the responsibility of the county assembly? The responsibility of the county assembly is not to adduce evidence beyond a reasonable doubt at any given time; it is only to substantiate the charges.

Mr. Speaker, Sir, and Hon. Members, I promise you that in the fullness of time, we shall have evidence to substantiate that the Governor is not fit to continue holding public office.

What becomes of sportsmen and sportswomen? What becomes of the youths when a stadium that is supposed to be constructed of concrete is constructed of scrub metals? What becomes of our youth? Is this person conscious of the intra and extra generational equity principles recited in the Preamble to our Constitution? Is this person worthy of ushering in a promise for the youths? Can this person give hope to our youth if he is plundering what belongs to them?

We have evidence. I rest my case and call upon Mr. Biko to continue with the rest of the opening statement.

Much obliged.

The Counsel for Nairobi City County Assembly (Mr. Brian Biko Ashioya): Mr. Speaker, Sir, without wasting time, the Book of Ecclesiastes was written by the great King Solomon towards the end of his reign. It says,

"There is a time for everything. There is a season for every activity under heaven." He proceeds to enumerate those seasons and this is what he says, "There is a time to plant and a time to uproot, a time to kill and a time to heal, a time to tear down and a time to build," and then he goes on and on.

Mr. Speaker, Sir, the Governor is aware of this fact and the wisdom of the words of Solomon. That is why the Governor posted in his official Twitter handle on 16th November 2020 at 3.49 p.m. He says-

"Jail me! There is life in prison. Impeach me! there is life after politics. Kill me! There is life after death."

His Excellency cannot be far from the truth. Hon. Members, we are not going to urge you to kill the Governor, but this morning we will urge you to do one honourable

thing; to impeach the Governor of Nairobi City County for the reasons that my colleague has well enumerated. My colleague has told this House that we have evidence for the charges that have been preferred against the Governor.

Mr. Speaker, Sir, the Nairobi City County Assembly appears before you and your Hon. Members today, not by mistake, but out of necessity. It has become absolutely necessary that we have a Sitting today. Why do I say so? I say so because Hon. Mike Mbuvi Sonko has absolutely and completely refused to rise to the occasion and become the Governor of the capital city that the people of Nairobi elected him to be.

He has time without number confirmed that he lacks the mental and moral capacity and the intellectual capacity to tackle the problems affecting the people of Nairobi. We will be demonstrating that to this House. We will also demonstrate how the unending ineptitude of the Governor has resulted in the loss of taxpayers' money.

We are reminded that the Nairobi City County Assembly has nothing personal against the Governor. Nothing absolutely personal. However, as the representatives of the people of Nairobi representing the various wards, we urge this House that by the power given to them by the people that they represent, they have interrogated the behavior of the Governor, his leadership skills and styles for the last three years. They have arrived at a conclusion that he is no longer fit to hold that office. When the Motion was moved for the impeachment of Governor Mike Sonko, out of the 90 people who participated, 88 hon. Members gave it a clean bill of health, which is why we are before you.

We have lined up three crucial witnesses and evidence that we shall present before this honorable House to illustrate the grounds that have brought Gov. Mike Mbuvi Sonko before this House.

Mr. Speaker, Sir, I will not go into the nitty-gritty because we have lined up witnesses and evidence that will bail us out. At the end of the day, we shall urge this House that there can only be one thing that should happen to Governor Mike Mbuvi Sonko as at close of business tomorrow. We shall pray that he be impeached by close of business tomorrow.

Mr. Speaker, Sir, that is all for our opening statement. I thank you.

The Speaker (Hon. Lusaka): I now invite opening statements on behalf of the Governor of Nairobi County Government. The advocates for the Governor will have 30 minutes.

OPENING STATEMENT ON BEHALF OF THE
NAIROBI CITY COUNTY GOVERNOR

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, and hon. Members of the Senate, you have the mandate to exercise your authority within the scope of your Standing Orders only - I repeat only if you are satisfied beyond peradventure that the Nairobi City County Assembly executed its mandate before the Assembly not only within the provisions of Article 181(1), but also Section 33 of the County Governments Act, as read with the relevant Standing Orders of the Nairobi City County Assembly.

If any of you were to ask the advocates or any of the witnesses of the Nairobi City County Assembly whether they furnished the Governor with the evidence that they have

tabled before this House, the answer will be fumbling. If you ask them; is it not that Standing Order 72(2) states that they should provide the Governor with the evidence at least a few days before the debate on a Motion? This honorable House will find nothing that demonstrates - not even in the HANSARD of the Nairobi City County Assembly - that the mandatory requirement was met.

Mr. Speaker, Sir, as a result, the bundle that is before you stand expressly barred which is the position of His Excellency the Governor of Nairobi City County, Gov. Mike Mbuvi Sonko, by the operation of Rule 19 of Part One of the Fifth Schedule to your Standing Orders. That is the standard against which, hon. Members will enquire, has the threshold for the evidence that the Nairobi City County Assembly presenting to us been met?

Governor Mike Mbuvi Sonko in furtherance to his objection on a preliminary way insists that you allow the expression by way of Impeachment Bill of 2018. Section 15 (1) of the Impeachment Act states that a certificate must be produced before you, Mr. Speaker Sir, by the Speaker of the County Assembly, but there was non-compliance with that.

Governor Mike Mbuvi Sonko has sworn a deposition stating that no evidence was presented before him. Pursuant to your Rule 19 of Part One of the Fifth Schedule, you will ask if that evidence is admissible. Is the evidence provided by the Nairobi City County Assembly one that can be looked into? It is barred by the express operation of your rules. This is an honorable House that is governed and regulated by its rules.

Mr. Speaker, Sir, I am happy that you have issued Solomonic rulings and directions. Governor Mike Mbuvi Sonko is humbly requesting that this House abides by the rules of the Standing Orders of this House. The accusations leveled against him were contained noting what the Speaker stated in the opening of this Session. The Speaker enumerated and said that on the 4th of December, 2020, he received a communication from the Speaker of the Nairobi City County Assembly that contained the Motion that contained the charges leveled against the Governor of Nairobi City County Government, the list of the Members who allegedly subscribed to that Motion and the HANSARD of the impeachment proceedings.

Mr. Speaker, Sir, that communication did not contain a list of the witnesses that are now sought to be introduced. Backed by your Rule 19, you cannot look at those documents containing the evidence against the Governor. The Nairobi City County Assembly has stated that they will call evidence to demonstrate, but I am afraid the Rule 19 of Part One of the Fifth Schedule to your Standing Orders expressly forbids such a move. That is the gist and thrust of our preliminary objection.

The Nairobi City County Assembly has stated that Governor Mike Mbuvi Sonko, refused to assent to the Nairobi City County Appropriations Act of 2020. However, they needed to inform you in their opening statement that is a matter pending before court. As late as yesterday, the constitutional court declared itself before the Hon. Justice Murima, Constitutional Petition No. E348 of 2020 which has another hearing date on the 18th of December, 2020.

Mr. Speaker, Sir, Standing Order 98(3) (c) forbids this House from venturing on matters before court. May I remind this House that you have deference for our courts.

The judicial authority espoused in Article 159(1) of our Constitution derives from the people, but the Nairobi City County Assembly wants you, hon. Members, to trample on that right and authority.

Governor Mike Mbuvi Sonko by means of his preliminary objection has stated that his refusal to assent to the Nairobi City County Appropriations Act of 2020, is *sub judice* and he will demonstrate in his preliminary objection which I ask the Speaker of the Senate to make a direction upon so that this honorable House in deference to the Juridical authority that is espoused in Article 159(2) defers that.

Mr. Speaker, Sir and Hon. Members, cognizance of this very fundamental aspect, the County Assembly has affirmed that very position which His Excellency the Governor will demonstrate to you in the yellow Volume I; have annexed orders of the court showing that the proceeding is alive.

His Excellency the Governor is saying there are pending proceedings implicated herein. Is it feasible for you hon. Members, to suspend and close your eyes and be an act boy – with tremendous respect – to the provisions of Stranding Order No.98(3)(c)?

His Excellency the Governor will beg the Floor on a preliminary nature. By virtue of being certain, he will move this noble House to request and urge it to make a ruling on Rule 13. Rule 13 of your standing rules and Part 1 of the Fifth Schedule, grant you half an hour for the adjudication of the preliminary objection.

Hon. Members, there is no deal now. If you are not satisfied, if you see no statement from the Speaker of Nairobi County Assembly that there was, indeed, compliance with the preliminaries of the purported impeachment, unfortunately with tremendous respect, you have to down your tools. This is expressed in Section 15 of the Impeachment Bill 2018. It has passed from you although it is pending in the National Assembly for persuasion.

Hon. Members, His Excellency the Governor will demonstrate and show that an issue that is alive and is pending before the court, freezes whatever actions that are therein contained in the pending impeachment Motion that was originally filed on 20th February, 2020 by the named third witness, Hon. Peter Imotok. His Excellency the Governor will demonstrate it has never been withdrawn by your operation of the Standing Orders of the Nairobi City County Assembly.

His Excellency the Governor says he has been subjected to an unfair process; that which violates Article 47(1) of our Constitution and can never be validated retrospectively, introspectively, or in all otherwise howsoever. It cannot; it is dead on arrival.

Hon. Members, let me rehash that on 24th September, 2020, the High Court intervened in a very crucial aspect of the existence of this House in the life of your tenure. When this honourable House as well as the National Assembly were threatened with – should I say the truncation of its current term – the High Court intervened in reference to that decision.

Mr. Speaker, Sir, in 2013 as well, you asked the Supreme Court to assert the authority of this House by judicial intervention, and was indeed, required that this honourable House has that authority that cannot be compromised by inaction or judicial ingenuity. His Excellency the governor, therefore, implores and urges you that as we

delve into this, you give him the opportunity in furtherance of Rule 13, to demonstrate to you that the issues of his alleged commission of national crimes purported in the accusation No. 1(i), that he is not able to address the same matters *sub judice*.

The issue of the alleged non-funding of the Nairobi Metropolitan Service (NMS), His Excellency the governor is not able to address you on that. He refers to your Standing Order No. 98 (3)(c) because the High Court in Petition E348 of 2020, Nairobi City County Government *versus* NMS, His Worship, Hon. Justice Mrima has stayed the operations of that Act under which, NMS has been claiming funds.

How is it then that His Excellency can be accused of failing to release funds to the NMS in all fairness? You will, therefore, see that those charges, 90 per cent of which relate to court proceedings cannot be incised, removed from or otherwise, extricated from the last paragraph 4 allegations.

Hon. Members, inevitably, we have to assess the application of Rule 19 of this Honorable House, Standing Orders to the Fifth Schedule Part 1.

So that I yield the last 15 minutes to my learned friend Mr. Nyamu, so that he can demonstrate to you the position of the governor that what is masked as an impeachment process is a witch hunt because the governor has insisted on being a stickler to the law just as he is before you. They received the preliminary objection. They never filed any evidence. They filed nothing before the Assembly because nothing was tendered before you on the 4th of December.

Hon. Members would have scrutinized that and by now, you would have known. You would have seen in the HANSARD by now. You would even have seen the veracity of the said alleged evidence.

Mr. Speaker, Sir, there is one very fundamental aspect. If a person should be denied audience when faced with accusations and sentence is passed against them, is that not in violation of your Standing Order No. 75, that every person should be given a hearing?

Even in the Standing Orders of the County Assembly, the governor wants to show you that in Standing Order No. 72 1(a), there was no compliance. If a man or a woman should be told I am charging you with this, but with no evidence, no court of law would convict them.

Mr. Speaker, Sir, I, therefore, urge you to allow us as His Excellency the governor is beseeching you, that if a matter is pending before court, even the County Assembly lawyers will be aware to confirm that it is before the Hon. Justice Nduma Nderi today at 3.00 p.m. for a ruling. It is a live proceeding. Does it meet the threshold of Standing Order No.98 (3) (c)? It does. What do we do in the circumstances? We have to yield to the Standing Orders. They advise us, mark the way forward, and are the beacon light telling us that we must stay this hearing.

I invite Mr. Nyamu to conclude the opening remarks for His Excellency (H.E) the governor. At the last minute, I will come back to request for my application to be considered.

The Counsel for the Governor of Nairobi City County (Mr. Wilfred Nyamu): My it please the hon. Senate, as the Senate convenes here for the purpose of considering the Motion brought by the Nairobi City County Assembly, it is mandated to perform a

quasi-judicial role as opposed to a legislative role. This is because these proceedings relate to a matter that may affect the fundamental rights and freedoms of an individual as envisaged under Article 47 (2) of the Constitution.

We will be urging this hon. Senate to assume the role of an adjudicatory body when dealing with this matter; to have at the back of its mind that it is being asked to interfere with the fundamental rights of the governor of Nairobi, Hon. Mike Mbuvi Sonko, under Article 38 (3) of the Constitution, which is the right to be a candidate for public office and if elected, to hold office.

It is also being requested to interfere and interrogate the situation as to whether it would interfere with the democratic rights and principles of the citizens of Kenya, and more specifically, the residents of Nairobi, of whom 800,000 elected hon. Mike Mbuvi Sonko as governor of Nairobi.

Hon. Members of the Senate, in these particular proceedings, we shall be urging the House to consider that removal proceedings are initiated at the county assembly and concluded at the Senate. In that sense, it will not be tenable - we would urge this House to find so - that anything that was not initiated at the assembly be introduced in this hon. House.

We shall be referring to the letter of invitation that was served to the governor, which letter referred to particulars and evidence as forwarded to the Speaker of this House by the Speaker of the county assembly. It is on the basis of that invitation and the documents that were served upon the governor by the Clerk of this hon. House that a response was prepared.

We shall be requesting that this House bears in mind the provisions of Article 50(2) of the Constitution of Kenya, where it is provided that an accused person shall have the right to be informed of the charges with sufficient detail to answer to the same and have adequate time and opportunity to prepare a response.

In this case, as at the time of invitation and the governor was required to respond, the only material he had was the Notice of Motion and the documents that are listed in our response.

Yesterday evening, after having filed the response, we collected bundles of documents that had been introduced, which included a written Statement by the Mover of the Motion which has been amended, which was tantamount to amending the Motion as the same has annexures.

It goes without saying that by the time the Mover of the Motion was initiating that Motion, he had these documents. For that matter, he ought to have relied on them at the County Assembly.

As I finish, I urge this House to strictly consider the Standing Orders of the County Assembly as referred to in Section 14 of the County Governments Act, where the County Assembly has to be guided and bound by its Standing Orders.

That is how Standing Order Nos. 72, 73 and 67 come about, where the procedure on the documents, which provides that evidence ought to have been provided at the inception of the Motion.

We will be urging this Honourable House not to allow any additional documents, as the same would be tantamount to the amendment of the Motion, in which case this House would have no jurisdiction over.

On matters procurement, the County Assembly shall be called upon to demonstrate the nexus between what happened in procurement and the governor, who is not an accounting officer.

At this point, I urge my leaned friend, Mr. Ondieki, to conclude. I thank you, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): Hon. Members of the Senate, this is the biggest court in the Commonwealth because today as you sit, you sit as the biggest court which will perform a judicial function. That means that procedure is critical.

I urge you that the Senate has protected devolution, provided leadership and protected democracy. We urge this Senate, as you sit as a Supreme Court, that because the County Assembly is bound by Article 10 and 47, procedure must be law.

I submit that there is no proper Notice of Motion before the Senate that it will warrant an inquiry for impeachment, because the County Assembly flouted all their rules.

They flouted all their Standing Orders. They flouted the Constitution. That is why we are saying the Senate as the protector, promoter and defender of democracy, the rule of law and constitutionalism must stop this in its tracks. Let this Motion go back to the County Assembly. Once it is properly formulated and it follows the procedure then it lands back to your desk.

Mr. Speaker, Sir, I do not want to repeat but I also wish to point out that that the doctrine of separation of powers is very clear. The courts are inquiring, and the courts are independent institutions competent to inquire.

It is only fair and just within the context of Standing Order No. 98 of the Senate that there are active cases that are going on in the High Court and the lower court. It is only fair and just that this is allowed to be concluded, then these matters can be properly addressed depending on the outcome of those proceedings.

Honorable Senators, I wish to take you to Pontius Pilate when he went to sleep at night with his wife. The wife told him that that man is innocent. The following day he had a chance to release one person and there were two people, Barabbas and Jesus. When he said who do you want me to release, the people shouted Barabbas. However, you all know that Barabbas was not the innocent person. The innocent person was convicted.

Mr. Speaker, Sir, with those few remarks, I urge you to protect the rule of law and constitutionalism.

COMMUNICATION FROM THE CHAIR**APPLICATIONS MADE BY COUNSEL FOR BOTH PARTIES
ON MATTERS BEFORE THE SENATE**

The Speaker (Hon. Lusaka): Honorable Senators, having listened to the opening statements, this is what I want to say: In the course of the opening statements, both County Assembly and the governor have made certain applications.

In respect of the County Assembly, an application has been made requesting the Senate to issue summons for 11 named individuals to appear before the Senate. That application was made *vide* a letter dated 14th December 2020, but which could only be canvassed in the first instance before the Senate after the commencement of the hearing today. The letter in issue appears at Serial Number 8 in the documents before the Senate.

On behalf of the governor, an objection has been raised among other things on a preliminary basis, that certain requirements precedent to the process of impeachment at the County Assembly were not met and Rule 19 of part of the Fifth Schedule of the Standing Orders bars us from proceeding.

Hon. Senators, Rule 29 of the Rules of Procedure for this hearing in plenary provides as follows and I quote-

“Where on a particular question or matter including but not limited to questions of evidence, materiality, relevance, competence or admissibility of evidence and any questions consequential or incidental thereto no provision has been made in the Standing Orders or in these rules, the Speaker of the Senate shall rule on the question or matter and the ruling of the Speaker shall be final.”

ADJOURNMENT

The Speaker (Hon. Lusaka): Hon. Senators, pursuant to Rule No.29, I will make my determination on the applications made when the Senate resumes after the lunch break. The Senate now stands adjourned until 2.15 p.m. today.

The Senate rose at 1:05 p.m.