

**RECORD OF EVIDENCE TAKEN BEFORE THE SENATE SPECIAL
COMMITTEE INVESTIGATING THE PROPOSED REMOVAL FROM
OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF KIRINYAGA
COUNTY HELD ON TUESDAY, 23RD JUNE, 2020 AT COUNTY HALL,
MAIN PARLIAMENT BUILDINGS**

SENATORS PRESENT

[The Chairperson (Sen. Cleophas Malalah, MP) – Presiding]

Sen. Abshiro Halake, MP - Vice-Chairperson

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| Sen. Beatrice Kwamboka, MP | | Sen. Judith Pareno, MP |
| Sen. Paul Mwangi Githiomi, MP | | Sen. Philip Mpaayei, MP |
| Sen. Moses Kajwang' MP | | Sen. Stewart Madzayo, MP |
| Sen. (Dr.) Michael Mbito, MP | | Sen. Anwar Loitip, MP |
| Sen. Beth Mugo, MP | - | Attending the Meeting via the Zoom Online Platform |

Friend of the Committee

Sen. Charles Reubenson Kibiru, MP

IN ATTENDANCE

THE GOVERNOR'S TEAM

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|---------------------------|---|----------------------------------|
| Hon. Anne Waiguru | - | Governor, Kirinyaga County |
| Mr. Paul Nyamodi | - | Advocate |
| Mr. Kamotho Waiganjo | - | Advocate |
| Mr. Andrew Karani Muchigi | - | Advocate |
| Ms. Selah Bogonko | - | Chief of Staff, Kirinyaga County |

THE COUNTY ASSEMBLY'S TEAM

| | | |
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| Mr. Ndegwa Njiru | - | Advocate |
| Mr. Mwangi Ndegwa | - | Advocate |
| Mr. Alex Rienje | - | Advocate |

MEMBERS OF KIRINYAGA COUNTY ASSEMBLY

| | | |
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| Hon. James Murango | - | Majority Leader & MCA, Kerugoya Ward |
| Hon. David Mathenge | - | Chairperson, Budget Committee & MCA, Baragwi Ward |

Hon. Gudson Muchina - MCA, Tembere Ward

SECRETARIAT

| | | |
|----------------------|---|------------------------------|
| Mr. Njenga Njuguna | - | Director, Committee Services |
| Dr. Johnson Okello | - | Director, Legal Services |
| Mr. Peter Adika | - | Research Officer |
| Mr. Mwanate Shaban | - | Clerk Assistant |
| Mr. Humphrey Ringera | - | Research Officer |
| Mr. Moses Kenyanchui | - | Legal Counsel |
| Mr. Mitchel Otoro | - | Legal Counsel |
| Mr. Simon Muinde | - | Audio Supervisor |
| Mr. Richard Njoroge | - | Electronics Officer |
| Mr. Ian Otieno | - | Audio Officer |
| Ms. Farhiya Ali | - | Serjeant-at-Arms |
| Ms. Lucy Mwaniki | - | Serjeant-at-Arms |
| Ms. Sarah Rukwaro | - | Serjeant-at-Arms |
| Mr. John Pere | - | Serjeant-at-Arms |

(The Special Committee commenced at 10.05 a.m.)

The Chairperson (Sen. Malalah): Welcome to this meeting. We will start off with a word of prayer.

(The opening prayer was said)

We are a Special Committee that was set up to look into the proposed removal from office, of the Governor of Kirinyaga County, Hon. Anne Mumbi Waiguru.

Hon. Senators, we will start with brief introductions.

(Sen. Madzayo spoke off the record)

Be on record Sen. Madzayo. Sen. Madzayo is asking whether we have prayed.

(Laughter)

Sen. Madzayo, I want to assure you that our God has listened to us. We have already prayed and we are now going to the next step whereby we will handle the conference of parties. We will start with the introduction of Members of the Special Committee.

I would like to bring to your attention that the Senator for Kirinyaga County had made a special request to attend these Committee meetings. We were guided by Standing Order No.209 on attendance by non-member of a Select Committee.

The Standing Order states-

“A Senator may attend a meeting of any Select Committee of the Senate of

which he or she is not a member, provided that such Senator –
(a) may speak only when invited to do so by the Chairperson; and
(b) shall not vote on any matter before the Committee.”

We were guided by Standing Order No.2029 and allowed Sen. Kibiru to attend this meeting. He will be joining us shortly. In the meantime, I would like to introduce my team.

(The Chairperson (Sen. Malalah) introduced himself and other Members of the Special Committee)

I would like to also notify both parties that Sen. Beth Mugo will be joining us on the Zoom online platform.

Sen. Beth Mugo, can you hear us?

Sen. Mugo: Yes, I can hear you, Mr. Chairman, Sir. I would like to request through the Chair that everybody speaks through the microphone so that I can follow everything properly.

The Chairperson (Sen. Malalah): Thank you. We shall now proceed to the introduction of representatives of the County Assembly and their counsel, if any. You may proceed.

(The Advocate for Kirinyaga County Assembly introduced his team)

(Members of Kirinyaga County Assembly introduced themselves)

Thank you for the introductions. Hon. Senators, we shall now move on to the introductions from the Governor and the Counsel representing the Governor, if any.

(The Governor of Kirinyaga County (Hon. Ann Mumbi Waiguru) introduced herself)

(The Advocate for the Governor introduced his team)

I thank you Hon. Senators, the County Assembly of Kirinyaga and the Governor of Kirinyaga.

Hon. Senators, ladies and gentlemen, this Special Committee on the proposed removal from office of the Governor of Kirinyaga County was established on Tuesday, 16th June, 2020, by a resolution of the Senate.

The Special Committee is provided for under Section 33(3)(b) of the County Governments Act, 2012 and Standing Order No.75(1)(b)(i) of the Senate. Under Section

33(4) of the County Governments Act, 2012 and Standing Order No.75(2) of the Senate, the Special Committee is required to-

- (a) Investigate the matter; and
- (b) Report to the Senate within ten days whether it finds the particulars of the allegations against the Governor to have been substantiated.

As the Hon. Speaker of the Senate observed in his Communication to the Senate made on Tuesday, 16th June, 2020, the hearing of charges for the proposed removal from office of a Governor is one of the most important functions of the Senate under the Constitution. I, therefore, urge you all to exercise the highest level of responsibility and circumspection on this matter.

Hon. Senators, ladies and gentlemen, by way of a status update, the Clerk of the Senate issued invitation to appear to the parties on Wednesday 17th June, 2020. On Saturday, 20th June, 2020, the Office of the Clerk of the Senate received a response to the invitation to appear from the Kirinyaga County Governor stating that the Governor would appear in person and by advocates.

Similarly, on the same Saturday, 20th June, 2020, the Office of the Clerk of the Senate received a response by invitation to appear from the Speaker of the County Assembly of Kirinyaga designating three Members of the County Assembly to attend---

Designating three Members of the County Assembly to attend and appear before the Senate on behalf of the County Assembly of Kirinyaga and the advocates for the County Assembly.

It is instructive to note that by a letter dated 20th June, 2020, the Speaker of the County Assembly of Kirinyaga in further response to the invitation to appear requested the special Committee to summon the following to appear and produce documents before the Committee as efforts made by the County Assembly to procure information and documents from them had proved futile.

- (1) Mr. Patrick Mugo Ndathi - the Chief Officer, (CO) Finance and Economic planning in the County Executive of Kirinyaga County.
- (2) Mr. Kennedy Ngiabi – Chairman of the Kirinyaga County Public Service Board
- (3) Mr. Joseph Calirus Otieno - the Director, Supply Chain Management in Kirinyaga County Executive.

Hon. Senators, Ladies and Gentlemen, at its meeting held on Monday, 22nd June, 2020, pursuant to Rule 9 of Part II of the 5th Schedule of the Senate Standing Orders, the Committee resolved to issue summons as requested by the County Assembly. The summons was subsequently issued and received by Mr. Patrick Mugo Ndathi, Mr. Kennedy Ngiabi and Mr. Joseph Calirus Otieno on the same day being Monday, 22nd June, 2020.

The special Committee wishes to emphasize that it is cognizant of the gravity of the matter with which it is seized and that it has accorded all parties to the proceedings the right to be heard and shall accord the parties a fair hearing.

I urge all hon. Senators and the parties to this matter to desist from discussing it while it is still actively before the Committee and the Senate and to allow the constitutional and legal processes to take their course.

The Special Committee hereby restates its commitment to ensuring a fair and just process that is founded on the law. The special Committee in making its decision shall be guided by the law and the evidence adduced by the parties.

Hon. Senators, ladies and gentlemen, it is important to observe the strict 10-day timeline attached to the discharge of the mandate of the special Committee.

The Special Committee shall in the conduct of this hearing be guided by the rules of procedure set out in the Fifth Schedule of the Senate Standing Orders. These rules were served to all the parties to those proceeding together with the invitations to appear before this Committee.

Finally, you all aware we are living at very challenging times because of the COVID-19 pandemic. Accordingly, we urge everyone to observe the Ministry of Health (MoH) guidelines and protocols together with the Speaker's guidelines on Plenary and Committee Sittings.

I urge you to always sanitize, keep social distance of at least 1.5 metres and wear masks at all times. Further, sit only designated seats. No changing of seats is allowed for the rest of the day.

Hon. Members, I also urge that whenever you move outside you should ensure you sanitize before coming in. This Chamber can only allow a maximum of 28 Members. Every party has been designated at least five seats, but we shall have different holding centres outside there whereby you support team can retreat and sit.

We shall also be televising the proceedings of this meeting live in those holding centres. Therefore, nobody will be disadvantaged. In case you need to exchange your seat with somebody in the holding centre, your respective seats must be sanitized before the other person comes in.

I wish you a fruitful engagement.

I hereby call upon the Clerk to take us through the programme. Before that I emphasize on the issue of timing. As you have seen, I believe everyone has the programme - we were supposed to start at 10.00 a.m. We started in good time.

At exactly 10.30 a.m., we shall be reading the charges to hon. Governor Anne Mumbi Waiguru. We shall expect her to stand up and listen to the charges in silence. We shall not entertain any intervention during reading of the charges.

The Clerk will read the charges. Thereafter, at 10. 50 a.m. to 11.20 a.m. we shall have consideration of preliminary matters, if any. If not, we shall proceed directly to opening statements on behalf of the County Assembly and opening statements on behalf of the Governor which will take 40 minutes for every party.

At 12. 40 p.m. we shall have evidence by the County Assembly, evidence of witnesses, if any, cross examination and re-examination. These will take a total of three and a half hours. However, with the first presentation by the County Assembly, we shall have a lunchbreak. When we come back, we shall continue running time as allocated in the programme.

At 5.10-5.30 p.m. we shall have closing remarks for the day and way forward.

Tomorrow, we shall be sitting in the Main Senate Chamber. We shall start our programme at exactly 9.00 a.m. We shall expect all parties to keep time. We shall start with the hearing of evidence by the hon. Governor Anne Mumbi Waiguru who will present evidence of witnesses, if any. We shall have cross examination and reexamination.

At 12. 30 p.m., we shall have closing statements on behalf of the County Assembly who will be allocated only 30 minutes. We shall then break for lunch. When we resume, we shall have closing statements on behalf of the Governor for 30 minutes. We shall make concluding remarks and way forward for 30 minutes.

As a matter of clarification, when the witnesses will be giving their evidence, we shall allow hon. Members at least 10 to 15 minutes to seek clarifications. Once they are responded to, we shall move to the next witness.

I think that is it. I hereby call upon the Clerk to read the charges. Hon. Anne Waiguru, you will be required to stand in silence.

(Hon. Waiguru stood up in her place)

I thank you.

The Director, Legal Services (Dr. Okello): These are the charges against hon. Anne Waiguru as presented by the County Assembly. We are reading the charges verbatim-

A. GROSS VIOLATION OF THE CONSTITUTION OR ANY OTHER LAW

Allegation 1: Failure to Deliver the Annual State of the County Address to the County Assembly

Whereas Article 179(4) vest chief executive power on the Governor and whereas Section 30 (2) (k) of the County Government Act requires the Governor to deliver an Annual State of the County Address to the County Assembly containing such matters as maybe

specified in county legislation, the Governor has deliberately refused, failed and/or neglected to deliver the same for the Financial Year 2018/2019. The failure amounts to a gross violation of the Constitution and the County Government Act.

Mr. Chairman, Sir, by failing to deliver the annual state of the county address to the County Assembly, the Governor's conduct amounts to violation of the doctrine of the severity of the people as enshrined under Article 1(1),(2),(3)(a)(b) and 4(b) and further violating Article 2(1) and 3(1) of the Constitution of Kenya 2010 which respectively addresses the supremacy and the binding authority of the Constitution to all state organs, persons and the obligation to respect, uphold and defend the Constitution from any violations or actions that may amount to an abrogation.

The Governor's failure to deliver an annual state of the county address to the County Assembly of Kirinyaga further amounts to the violation of the national values and principles of governance as enshrined under Article 10. More specifically, her conduct violates the constitutional principles of patriotism, the rule of law, good governance, integrity, transparency, accountability, sharing and devolution of power.

The Governor's failure to deliver an annual state of the county address to the County Assembly of Kirinyaga further violates Article 73(1)(a) as the same is inconsistent to the purpose and object of the Constitution and the Governor has failed to demonstrate respect to the people of Kirinyaga County while at the same time failing to bring honour and dignity to the Office of the Governor and to promote public confidence in the integrity of the said office.

The Governor's failure to deliver an annual state of the county address to the County Assembly of Kirinyaga further violates Article 73(2)(c) which provides that the Governor shall execute her functions through a selfless service based on public interest demonstrated by honesty in the execution of the public duty as well as accountability to the public for decisions and actions. Evidently, the said failure demonstrates the Governor's lack of discipline and commitment to the people of Kirinyaga County.

Allegation No. 2. – Undermining the Authority of the County Assembly

AWARE, that Articles 176 (1) and 185 (3) and (4) of the Constitution, as read together with Section 8 of the County Governments Act, empowers county assemblies to legislate and exercise oversight over respective county executives as well as approve county plans and policies on the development and management of the county's infrastructure and institutions.

FURTHER AWARE, that the import of Articles 179 (4) and 185(4) of the Constitution as read together with Section 30 (2) (f) and (j) of the County Governments Act mandatorily require the governor to submit county plans and policies to the county assembly for approval, and an annual report on the implementation status of the county policies and plans.

AND WHEREAS, Section 8 of the County Government Act requires the county assembly to inter alia offer oversight and approve county development planning as submitted to the Governor pursuant to Section 30 (2) (f), (j) and (k).

WHEREAS the functions read out under Section 30(2)(f), (j) and (k) can only be elucidated when the Governor addresses the county assembly.

THAT the governor's failure to comply with Section 30 (2) (f), (j) and (k) of the County Governments Act 2012, not only undermines the power and the authority of the County Assembly to exercise oversight and approve various developmental plans, but also greatly clogs the wheels of the '*Wanjikus*' oriented development in Kirinyaga County.

Allegation No. 3. – Violations under Written Law

(a) Violation of Public Procurement and Asset Disposal Act, 2015 and the Public Finance and Management Act, 2012.

The Governor has violated Section 46 of the Public Procurement and Assets Disposal Act, 2015 by usurping the powers of the accounting officer in establishing an irregular tender evaluation committee composed of the Governor's partisan staff namely; Pauline Kamau and Gichira Wayne who take instructions from the Governor and conveniently alternate as chairpersons of all major evaluation committees contrary to Article 73(1) (b) of the Constitution so as to act as a conduit to award tenders to the Governor's preferred bidders.

The Governor's said actions of interfering with the constitution of the tender evaluation committees is meant to compromise the integrity of the tendering process and the same is driven by corruption, nepotism, favoritism, improper and ulterior motives and for corrupt purposes in complete disregard of the provisions of Article 73(2)(b) and Article 73(2) (c).

The Governor has been in charge of a corrupt County tendering policy contrary the provisions of the Public Procurement and Assets Disposal Act, 2015 thereby violating the following provisions of the Constitution.

- i) Articles 201 (a), (d), (e) of the Constitution which requires that there be openness and accountability including public participation in financial matters and requires public money shall be used in a prudent and responsible way.
- ii) Article 227(1) of the Constitution which requires that when a state organ or any other public entity contracts for goods and services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost effective which principles were violated by the Governor.

The following tenders are evidence of the Governor's interference with the tendering process of the County Government of Kirinyaga.

- i) Tender No. CGK/SCM/ CTIED/OT/ 004/ 2018-2019 of Kshs19,145,740 for proposed upgrading of Kagumo market at Kagumo town, Kirinyaga County prepared on 20th December, 2018. This tender was awarded to Joames Investment Limited without following the due process. The award to Joames Investment Limited having not been cancelled, the tender was unilaterally undertaken by Master Rock Construction Company

whose bid was non-responsive thereby violating the Constitution and the Public Procurement and Assets Disposal Act, 2015 and the regulations therein.

- ii) Tender No. CGK/ MSPH&S/OT/ 023/2018-2019 for proposed indefinite quantity framework agreement for non- pharmaceutical prepared on 10th January 2019.
- iii) Tender No. CGK/TR&PW/ OT/ 016/2017-2018 for construction of Kagio Matatu Parking Phase One (1) - Lot 1 in Kiine ward prepared in March 2018. This tender was reserved for the Access to Government Procurement Opportunities (AGPO) program but the same was awarded to Jipsy Civil and Building Contractors Limited which company is not listed in the AGPO certified list of 2017-2018. Suffice to note that the evaluation committee noted that Jipsy Civil and Building Contractors Limited was not AGPO certified but they went ahead to find the bid responsive. Whereas Rowamu Holdings Limited (Bidder No. 7), which was AGPO certified, posting the lowest responsive bid of Kshs29,661,872.80, the tender committee chaired by the Governor's partisan staff, Ms. Pauline Kamau, recommended the award of tender to be given to Jipsy Civil and Building Contractors Limited at Kshs30,097,476.
- iv) Tender No. CGK/TR&PW/ OT/ 013/2017-2018 for construction of Kagio Matatu Parking Phase One (1)- Lot 3 in Mutiithi ward, prepared in March 2018. This tender was reserved for the Access to Government Procurement Opportunities (AGPO) program but the same was awarded to Taphes & Nitram Enterprises Limited which company is not listed in the AGPO certified list of 2017-2018.

Mr. Chairman, Sir, suffice to note that the Evaluation Committee noted that Taphes & Nitram Enterprises Limited was not AGPO certified, yet they went ahead to find the bid responsive. Whereas Joames Investment Limited was AGPO certified, it posted the lowest responsive bid of Kshs10,908,361.60.

However, the tender committee chaired by the Governor's partisan staff, one Ms. Pauline Kamau, recommended the award of tender to be given to Taphes & Nitram Enterprises Limited at Kshs10,841,244, yet their bid was not responsive.

- v) Tender No. CGK/MOW/OT/ 038/ 2017- 2018 for the proposed waterworks for Mwea Makina Water Project, March 2018, reserved for AGPO category. This tender was awarded to Eva Trading Agencies Limited, a company associated with the family of Mr. Mugo Ndathi, the County Chief Officer for Finance, who is a brother to Mr. Edwin Gicobi Ndathi, who holds 300 shares in the said company, in total disregard of conflict of interest and in furtherance of a corrupt and joint criminal enterprise overseen by the Governor.

Mr. Chairman, Sir, the Tender Committee chaired by the Governor's partisan staff, one Ms. Pauline Kamau, recommended the award of tender to be given to Eva Trading Agencies Limited.

- vi) Tender No. CGK/ MOW/ OT/ 039/ 2017-2018 for the proposed waterworks for Riagicheru Irrigation Water Project, March 2018, reserved for AGPO category. This tender was awarded to Eva Trading Agencies Limited, a company associated with the family of Mr. Mugo Ndathi, the County Chief Officer for Finance, who is a brother to Mr. Edwin Gicobi Ndathi, who holds 300 shares in the said company in total disregard of conflict of interest and in furtherance of a corrupt and joint criminal enterprise overseen by the Governor.

Mr. Chairman, Sir, the Tender committee chaired by the Governor's partisan staff, one Ms. Pauline Kamau recommended the award of tender to be given to the Eva Trading

Agencies Limited at Kshs9,942,022, whereas Value House Limited posted the lowest responsive bid of Kshs9,633,550.

- vii) Tender No.CGK/MOE/OT/036/2017-2018 for the proposed waterworks for South Ngariama Water Project, March 2018, reserved for AGPO category. This tender was awarded to Eva Trading Agencies Limited, a company associated with the family of Mugo Ndathi, the County Chief Officer for Finance who is a brother to Mr. Edwin Gicobi Ndathi, who holds 300 shares in the said company in total disregard of conflict of interest, and in furtherance of a corrupt and joint criminal enterprises overseen by the Governor.

Mr. Chairman, Sir, the tender committee chaired by the Governor's partisan staff, one Ms. Pauline Kamau, recommended the award of tender to be given to the Eva Trading Agencies Limited at Kshs11,943,820, whereas Tornjim Investment Limited posted the lowest responsive bid of Kshs11,615,880.

- viii) Tender No. CGK/MOW/OT/037/2017-2018 for the supply and delivery of assorted UPVC pipes for Kenera Water Project in Murinduko Ward, March 2018. The tender was not reserved for AGPO, and, therefore, the company that was given the tender ought to have been in business for at least three years before it could be considered to tender for services under the tender category. Humfel Limited was incorporated on 28th December, 2017 and awarded the tender on 26th March, 2018.

Mr. Chairman, Sir, whereas the company did not possess the National Construction Authority (NCA) certification for waterworks category, at the same time, it did not provide a performance bond, neither did it produce the financial audited accounts for the previous three years endorsed, signed and stamped by a registered external auditor. The tender documents presented did not meet the requirements for consideration and award of tender. However, the tender evaluation committee, under the auspices of the Governor's partisan staff, one Ms. Pauline Kamau, recommended that the award of the tender be given to Humfel Limited.

- ix) Tender No.CGK/MSPH&S/OT/ 023/2018-2019, proposed indefinite framework agreement for supply of non-pharmaceuticals. Two Rays General Supplies Limited was paid an amount of Ksh8 million without any supply being made, thus exposing the county to loss of public funds, contrary to the provisions of the Constitution and the Public Procurement and Disposal Act.

- x) Tender No.CGK/ICT/OT/047/2017-2018 for the design, development, installation and commissioning of integrated hospital management information system. This tender was awarded to Velocity Partners Limited, a company that did not exist as at the time the tender was advertised for tendering, thus a fictitious company.

Mr. Chairman, Sir, suffice to note that the tender for the design, development, installation and commissioning of integrated hospital management information system had been completed by the previous county government. Nevertheless, the tender was re-advertised and awarded to the Velocity Partners Limited at a cost of Kshs50,691,565, and the same was paid despite there being no work done.

The contract signed between the County Government of Kirinyaga and Velocity Partners Limited in the month of May, 2018 was for Kshs27,203,450 and the total amount paid out by the County Government of Kirinyaga amounts to Kshs50,691,565, an indication that the said contract was intended to syphon public funds through a corrupt and fraudulent scheme overseen by the Governor of Kirinyaga County.

The said Velocity Partners Limited was paid as follows:

- (i) vide invoice dated 9th August, 2018, amount invoiced totaling to Kshs30,643,575 was paid on the same day of the invoice to Velocity Partners Limited;
- (ii) vide invoice dated 11th December, 2018, amount invoiced is Kshs6 million paid on the same day of the invoice;
- (iii) vide invoice dated 22nd January, 2019, amount invoiced is Kshs8,607,300 paid on the same day of the invoice;
- (iv) vide invoice dated 24th January, 2019, amount invoiced is totaling Kshs5,440,690 paid on the same day the same was invoiced; and,
- (v) The total amount paid to Velocity Partners Limited of Kshs50,691,565 was deposited at their Bank Account No.1036020022262 held at Sidian Bank.

Mr. Chairman, Sir, the manner in which the amounts were invoiced and paid out to Velocity Partners Limited is evidence of the criminal enterprise headed by the Governor intended to defraud the county through a skewed tendering process.

- xi) Tender No.11 to procure the Governor's vehicle at a cost of Ksh15 million was irregularly awarded despite the same having been procured during the previous county government regime of His Excellency Joseph Ndathi. Moreover, this purchase was made using funds meant for contractors retention account, which action amounts to misappropriation of funds and imprudent use of public resources and in furtherance of the corrupt practices.

Further, the purchase was made using funds meant for Contractors Retention Account which action amounts to misappropriation of funds and imprudent use of public resources in furtherance of the corrupt practices. The Assembly's attempt to oversight this matter through inquiry has yielded no results as letters to the County Executive have gone unanswered.

B. ABUSE OF OFFICE AND GROSS MISCONDUCT

The second charge is abuse of office and gross misconduct.

- 1) The Governor has violated Section 46 of the Public Procurement and Asset Disposal Act, 2015 by usurping the powers of the Accounting Officer in establishing an irregular Tender Evaluation Committee composed of the governors' partisan staff namely; Pauline Kamau and Gichira Wayne who directly take instructions from the Governor and conveniently alternate as chairpersons of all major Tender Evaluation Committees, contrary to Article 73(1)(b) of the Constitution so as to act as a conduit to award tenders to the Governor's preferred bidders. The Governor's said actions of interfering with the Constitution of the Tender Evaluation Committee is meant to compromise the integrity of the tendering process and the same is driven by corruption, nepotism, favoritism, improper and ulterior motives and for corrupt purposes, in complete disregard of the provisions of Article 73(1) (b) of the Constitution and the Article 73(2) (c) of the Constitution.

By usurpation of the power of the Accounting Officer under Section 46 of the Public Procurement and Asset Disposal Act, 2015, the Governor has violated –

- i. Article 201 (a), (d), (e) of the Constitution of Kenya which requires openness and accountability, including public participation in financial matters and requires that public money shall be used in a prudent and responsible way.

ii. Article 227(1) which requires that when a State organ or any other public entity contracts for goods and services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost effective, which principles were violated by the Governor.

Under Charge 2,

- 2) The governor used her office to improperly confer a benefit to herself when she was irregularly paid travel allowances by way of imprest amounting to Kshs10,634, 614, yet she did not travel. The payments were made as follows:
 - 1) On the 18th June, 2018, the Governor invoiced the county for Kshs165,375 which was paid out the same day.
 - 2) On 6th September, 2019, the Governor invoiced the county for Kshs300,000 which was paid out the same day.
 - 3) On the 29th October, 2019, the Governor invoiced the county for Kshs43,800 which was paid out the same day.
 - 4) On 8th January, 2020, the Governor invoiced the county for Kshs943,700 which was paid out the same day.
 - 5) On 23rd October, 2018, the Governor invoiced the county for Kshs1,107,364 which was paid out the same day.
 - 6) On 15th January, 2020, the Governor invoiced the county for Kshs300,000 which was paid out the same day.
 - 7) On 25th February, 2020, the Governor invoiced the county for Kshs1,125,440 which was paid out the same day.
 - 8) On 23rd August, 2019, the Governor invoiced the county for Kshs1,001,910 which was paid out the same day.
 - 9) On 30th June, 2019, the Governor invoiced the county for Kshs2, 600, 297 which was paid out the same day.
 - 10) On 14th June, 2019, the Governor invoiced the county for Kshs455,000 which was paid out the same day.
 - 11) On 18th February, 2019, the Governor invoiced the county for Kshs989,961 which was paid out the same day.
 - 12) On 18th June, 2018, the Governor invoiced the county for Kshs1,601,767 which was paid out the same day.
 - 13) Kshs10,634, 614 was paid to the Governor's personal account in the name of Anne Mumbi Waiguru, account No. 180290174860 at Equity Bank.

Allegation number three (3)

- 3) under that charge- That there was established the Kirinyaga Investment Development Authority by the County Assembly, *vide* Kirinyaga Investment Development Authority Act, which enacted the Board to chair the said authority. However, the County Public Service Board directed that the said Board members should not be paid until their salaries had been approved by the Salaries and Remuneration Commission *via* a circular. However, the Governor did not take the said recommendation and has continued to have the Board of KIDA paid outside IFMIS and County Government Payroll, which action amounts to an abuse of office and the same has contravened the provisions of the Public Finance Management Act and the Salaries and Remuneration Commission Act.

Further, imprest amounting to more than Kshs14 million was paid out to a Mr. Francis Muriithi Kariuki on instructions of the Governor, which imprest is yet to be accounted for.

Allegation No. 4

- 4) under this charge, is violation of the right to health of the people of Kirinyaga County. The Governor by her conduct, either through omission or commission, has caused the health sector in Kirinyaga County to run into disarray and deplorable state that has compromised and undermined the realization of the right to highest attainable health standards for the people of Kirinyaga as enshrined under Article 43(1) of the Constitution.

Thank you.

The Chairperson (Sen. Malalah): Thank you, Director. Governor, you may sit.

Hon. Members, it is at this juncture that this Committee is ready to hear any preliminary matters if any from either sides. Do we have any preliminary matters from the County Assembly?

The Advocate for the County Assembly (Mr. Njiru): Yes, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Will we be having any preliminary matters from Governor Waiguru's side?

The Advocate for the Governor (Mr. Nyamodi): Yes, Mr. Chairman, Sir. We have three issues that we wish to take up with you.

The Chairperson (Sen. Malalah): We have 30 minutes to consider all preliminary matters. I request that you be brief. We shall start with the County Assembly of Kirinyaga.

The Advocate for the County Assembly (Mr. Njiru): Thank you, Mr. Chairman, Sir. With your permission, allow me to bring two preliminary issues regarding the documents that were filed and served upon us.

The Vice-Chairperson (Sen. Halake): Can we see it or can that file be---
Thank you.

The Advocate for the County Assembly (Mr. Njiru): We were served with a file that contains the travel documents relating to the charges that have just been read.

My application for this preliminary issue is premised on Article 50 of the Constitution that requires all parties to be granted a fair hearing. It is again premised on Article 47 that provides that parties or an individual shall be accorded an expeditious, fair and reasonable administrative process.

We are raising an evidential issue regarding the evidence that has been provided to us relating to the travel of the Governor. It has become difficult for the Members of the County Assembly to respond substantively by the granting and the provisions of the documents that have been provided unto us. I am referring to an extract of the Governor's passport that appears as Annexure B in that particular file.

The Chairperson (Sen. Malalah): Director, do we have the files here?
Hon. Members, you will be served with the files in a short while. So, you may proceed.

The Advocate for the County Assembly (Mr. Njiru): Thank you, Mr. Chairman, Sir. That document which serves to demonstrate some of the travel in question relates to a travel that was undertaken by the Governor to the United States of America (USA), then to something cancelled, to France. That document is not clear to us, as it is not able to clearly indicate the entries and the exits in respect to those particular countries in issue.

Mr. Chairman, Sir, we also wish to be supplied with clear original copies of her diplomatic and personal ordinary passport, so that we are able to discern these particular travels. Further, in our charges, there is clear and concise particulars of the charge that the Governor drew some imprest. In their response, they have given us a receipt dated 17th April 2020. The said receipt is not clear. It is an indication of a particular payment to a particular bank, and as such, the same compromises and prejudices the case for the County Assembly of Kirinyaga, in so far as the same is not clear.

The Chairperson (Sen. Malalah): It is not clear in which way?

The Advocate for the County Assembly (Mr. Njiru): It is not readable. We are not able to deduce the content, the purpose of the payment, the bank that the same was paid to, so that we are able to have a rigorous repose to the same.

Mr. Chairman, Sir, I think those are the preliminary issues that I would wish to raise at the moment. I seek your direction.

The Chairperson (Sen. Malalah): I will give the Lead Counsel from Hon. Waiguru's side to respond.

The Advocate for the Governor (Mr. Nyamondi): Thank you very much for the opportunity to respond to the issue that has been taken up by my good and learned friend for the County Assembly. As an initial response---

The Chairperson (Sen. Malalah): You may move closer to the microphone.

The Advocate for the Governor (Mr. Nyamondi): Is that any better, Mr. Chairman, Sir?

The Chairperson (Sen. Malalah): Yes.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, as an initial response to the issue that is taken up by my learned and good friend from the County Assembly, I want to put it on record that the Governor has no issue to prove in this matter. It is for the Assembly, who are the Governor's accusers, to prove the allegations. The Governor, at the invitation of the County Assembly cannot become an accomplice in the process of proof against her.

It is the Assembly that framed charges against the Governor. It is the Assembly that in its wisdom chose to frame the charge that the Governor had not travelled. I pose this question in response, what was their evidence that the Governor had not travelled? The Governor's responses cannot become evidence for the Assembly.

Having said that, we are able, within a reasonable timeframe, and in the interest of justice, to provide clear and legible copies of whatever documents my good and learned friend from the Assembly is unable to discern or deduce. I forget the word that he used. If we can be given the particulars of those documents through the Chair or the clerk to this Committee, we can share with the Committee within a reasonable time.

I am most grateful, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Thank you. I think this is how we will move on. We will listen to the preliminary objections raised by Governor Waiguru's side, we shall have a response from the County Assembly, and then this Committee will retire to make a ruling on preliminary matters that have been raised by both parties.

The Advocate for the Governor (Mr. Nyamodi): Thank you very much, Mr. Chairman, Sir. I have three preliminary issues and perhaps two housekeeping issues which I will take up during this time, with your permission.

The Chairperson (Sen. Malalah): That is okay.

The Advocate for the Governor (Mr. Nyamodi): I will start with the housekeeping issues. You will note that the response to the allegations that have been made against the Governor are contained in several documents. Some of the documents cause my good and learned friend discomfort.

These documents are bulky, and noting that you had directed that you would wish this matter to proceed expeditiously, and noting the peculiar circumstances in which the world finds itself, and the restriction to the number of people who are allowed in this Chamber, on behalf of the Governor, I wish to request a special dispensation for the attendance of one extra person on our side for the purposes of assisting with the documents.

Our task today is to test evidence by way of cross examination of the evidence that will be lead on behalf of the Assembly. For us to do that, and for the Governor to access her right to a fair trial, which you guaranteed that she would enjoy, we request for a special dispensation of just one additional person.

The second housekeeping issue that I wish to take up with the Committee, is that we note that from the summons issued by the Committee that there is one Mr. Joseph Carillus Otieno who has been summoned at the request of the Assembly. You referred to those summons in your opening speech. Mr. Joseph Carillus Otieno is a witness who has written a statement and has produced many documents on behalf of the Governor.

My request is that for good order, instead of having him testify today for the Assembly and tomorrow for the Governor, since he had initially been produced as the Governor's witness, the Committee allow him to testify tomorrow for the Governor, and any issues that the Assembly wish to elicit through him as evidence can be taken up as cross examination.

The third issue that I wish to take up is an objection that we have. I urge my objection by stating that it is our sincere belief that our objection is well founded not just in the Standing Orders of this House, but also in the Constitution of this Republic.

Pursuant to Rule 4 of Part II of the Fifth Schedule to the Standing Orders of the Senate, on 17th March this year, the Governor received an invitation from the Speaker of the Senate to participate in these proceedings. Together with the invitation, the Speaker supplied the Governor with copies of the communication that he had received from the Speaker of the Kirinyaga County Assembly.

In that document other than the communication from the Speaker of Kirinyaga County Assembly to the Speaker of this House, were the charges that the Director for Legal Services has just read out, evidence in support of those allegations. I will emphasize at this point that what was supplied were the allegations of the charges and the evidence in support.

Mr. Chairman, Sir, with your permission, I will take a little of this Committee's time and just put on record of this Committee, the evidence. That is because it is important for our objection, the evidence that was supplied by the Speaker of this House to her Excellency the Governor. Other than the Motion by David Kinyua Wangui, the following documents were supplied. There were evaluation reports and in the interest of time, I will only cite the tender numbers in respect of which the evaluation reports were supplied.

Tender number CGK/SMC/CITED/OD/004-2018/2019 was the first document that was supplied. The second evaluation document that was supplied was in respect to tender number CGK/MSPH@S/OT/023/2018/2019. The third document that was supplied was an evaluation report in respect of tender number CGK/TR&PW/OT/016/2017/2018. The next document that was supplied as evidence in support of the charges was tender number CGK/TR&PW/OT/013/2017/2018. The next one was an evaluation report in respect of tender number CGK/TR&PW/OT/016/2017/2018. The next document that was supplied is tender number CGK/MOW/OT/038/2017/2018. The next one was tender number CGK/MOW/OT/039/2017/2018. The next one was an internal memo on the professional opinion for tender number CGK/MSPH&S/OT/23/2018/2019. The last document that

was supplied was a contract between the County Government of Kirinyaga and Velocity Partners Limited in respect of tender number CGK/ICT/OT/047/2017/2018.

At the risk of sounding like a broken record, I will state that they were the only evidence that were supplied in the invitation to appear that her Excellency the Governor received from the Speaker of this House.

In compliance with Rule Six of Part Two of the Fifth Schedule of the Standing Orders of this House, her Excellency the Governor responded to the allegations contained in this document on the 20th June, 2020.

On 20th June, 2020, pursuant to Rule Seven of Part Two of the Fifth Schedule of the Standing Orders, and wrongfully so as I will establish in a moment, the County Assembly served on her Excellency the Governor this unintelligible mass of documents. I say that they are unintelligible because it is a combination of statements, evidence, it is not indexed and neither is it paginated. We have struggled to make sense of these unintelligible mass of documents.

Our comprehension of what these documents contain is as follows: These documents contain four witness statements. The first one is a witness statement by one David Kinyua Wangui. The second one is a witness statement by Dr. Gor Godi Kirit Kumar. The third witness statement is by a lady called Wanjiru Njeru and the fourth witness statement is by a lady called Agnes Gachoki. The objection that I wish to urge before this Committee this morning is that, those witness statements and this unintelligible mass of documents contain new evidence. I submit and I will turn to Rule 19 of Part Two of the Fifth Schedule of the Standing Orders in a moment. These documents are new evidence within the meaning of Rule 19 of Part Two of the Fifth Schedule of the Standing Orders of this House.

I wish to demonstrate what I mean by new evidence and I will ask you, if you are able to make sense of these documents, to walk with me through these documents as I demonstrate why we do believe that these documents contain new evidence.

The Chairperson (Sen. Malalah): Counsel, in the interest of time, I give you five more minutes.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, I will endeavor to demonstrate my point in five minutes.

I wish to refer you to paragraph six of the witness statement of David Kinyua Wangui. In paragraph six, he has made an allegation against her Excellency the Governor that she has never given an Annual State of the County Address. That is the allegation in the witness statement.

I wish to refer you to the document though it is not paginated so it will be difficult to point it out. On the sixth page, on the first paragraph under the heading; Gross Violation

of the Constitution and under paragraph one it says, failing to deliver the Annual State of the County Address to the County Assembly. The allegation in the last sentence says that the Governor has deliberately refused, failed and/or neglected to deliver the same for the financial year 2018/2019. Never is not the same as 2018/2019.

What the Governor has responded to is that she did not do it for the year 2018/2019. Never as contained in this statement is an improvement and it is an improvement that is contrary to Rule 19 of Part Two of the Fifth Schedule of the Standing Orders that I pointed out. I will demonstrate in a moment that the rule is very well founded in Article 50(2) (b) of the Constitution of this Republic.

In paragraph eight of the witness statement, there is the allegation that the Governor has been flaunting her statutory role and procedure by failing to assent to bills.

Sen. M. Kajwang': On a point of order, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Yes, Sen. M. Kajwang'.

Sen. M. Kajwang': Mr. Chairman, Sir, it is important that we are on the same page. When the counsel refers to a specific page or statement, you could help us to be there. This is because for all the two cases he has cited, personally I am fairly lost. We should be pointed to the specific document that he is referring to.

The Chairperson (Sen. Malalah): Do we have the file? I think it is in this file.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, my file looks like this. It seems you did not bind yours. Since I do not have a bound copy, I do not know which page it appears. That is why I identified it by the name of the statement maker.

The Chairperson (Sen. Malalah): I request the Secretariat to help hon. Members identify the specific document the counsel is referring to. The Secretariat, you may help the Members.

Hon. Members, look at page 3 of the document. We have the Witness Statement by one David Kinyua.

You may proceed, counsel.

The Advocate for the Governor (Mr. Nyamodi): I am grateful, Mr. Chairman, Sir. I was stating that in Paragraph 8 of that Witness Statement, there is the allegation that the Governor has undermined the authority of Kirinyaga County Assembly by failing to assent to Bills.

You will note that, that allegation does not appear in the Motion. The particulars in the Motion is that the Governor undermined the authority of Kirinyaga County Assembly by failing to deposit with the County Assembly policies and plans for the County

Assembly's approval. The point I want to make is that in the Motion that the Governor has responded to, the evidence in the documents that were served on 20th June, 2020, to the Governor seem to seek to improve those allegations to the Governor's detriment.

Whereas the Governor may have responses, I state on her behalf that she does, indeed, have responses to those allegations, those responses are not before this Committee because she had no notice as she is entitled to by Article 50(2) of the Constitution of this Republic.

Mr. Chairman, Sir, I just want to cite two more examples to demonstrate that the additional information is introduced to the Governor's detriment if she is unable to respond. There are letters that are contained in this unintelligible mass of documents but I do not know where they are in your bundles. So, I will identify them by date, author and subject.

The first letter is from the Office of the Controller of Budget (CoB) addressed to Her Excellency the Governor. It is in respect of comments on Kirinyaga County Budget for the FY 2020/2021. Of importance, this letter is dated 10th June this year. I say it is important because Kirinyaga County Assembly impeached Her Excellency the Governor, my client, on 9th June. It is clear that in presenting these additional documents, Kirinyaga County Assembly seeks to improve the quality of evidence against the Governor.

The second letter that is produced in that unintelligible mass is a letter from the County Public Service Board (CPSB) to the Sectoral Committee for Public Service, Kirinyaga County Assembly. Again, of importance, this letter is dated 15th June, 2020. The Governor was impeached on 9th June, 2020.

Mr. Chairman, Sir, as I wind up my objection, I wish to just re-emphasise the provisions of what Rule 19 of the Second Part of the Fifth Schedule of the Standing Orders of this House provides. I emphasise the word "evidence" because that is why we are here today. It is provided that in presenting its evidence, the Assembly shall not introduce any new evidence that was not part of the allegations against the Governor by the County Assembly, as forwarded by the Speaker of the County Assembly to the Speaker of the Senate.

Mr. Chairman, Sir, this is the Motion against the Governor and this is what the Governor has responded to. This is what Kirinyaga County Assembly used to impeach the Governor. This unintelligible mass is not properly before this Committee.

I urge that you direct that it be struck out and that the Motion, as it was prosecuted before the County Assembly and forwarded by the Speaker of the County Assembly to the Speaker of this House, and forwarded by the Speaker of this House to Her Excellency, is what is before you. That is what we have responded to and that is what we shall proceed on.

Mr. Chairman, Sir, unless you have any questions you wish me to answer, that is the extent of my objection.

The Chairperson (Sen. Malalah): Thank you. I will invite Mr. Ndegwa to do a response. I will encourage you to be brief.

The Advocate for the Governor (Mr. Njiru): Thank you Chair, I will be brief.

Mr. Chairman, Sir, you have been invited to look at the documents my senior learned friend is calling unintelligible. The County Assembly wishes to distance itself with the contempt held by our senior for one reason. My senior has actually noted the same; that we have well-bounded documents, quite legible and clear to direct this distinguished Committee to the evidence that we shall be adducing.

You have been asked to look into the Statement by a witness who happens to have been the Mover of the Motion. He further goes to look at the content and particulars of the charges against the Governor. To him, the Governor chose to look at the Motion as a piece of evidence. The Motion, as filed, is merely illustrative of the charges that the Governor faces. This Motion is akin to a charge sheet in a criminal procedure.

I am alive to the fact that in the case of Gov. Wambora, Civil Appeal No.24 of 2014, the Court of Appeal did mention that governors' impeachment proceedings are *sui generis* in nature in the sense that rules in civil and criminal procedure are not so static in these processes, because it is a fact finding mission. As such, I find the objection unfounded on the point that the Governor cannot choose to look at the particulars against the evidence.

In any trial, this is a quasi-judicial trial, there are always the particulars of charges framed in a manner that is precise, clear and concise for the person being charged to understand. He cannot then take the Motion and juxtapose the same against the evidence.

When we were invited by the Senate *vide* a letter dated--- Sorry, I am trying to find out the date.

When we were invited by the Senate *vide* a letter dated 17th June, 2020, this Committee was alive to the fact that the Motion must be supported by evidence, and as such evidence was then called thereto.

The statement being impugned or put under trial is that of the mover. He has adduced evidence towards a charge of the Governor undermining the authority of the Assembly. Unless the Governor wants to convince this Committee that the motion itself is a full House, full contained with the particulars of evidence, then that would suffice.

However, it would be in violation of Article 50 of the Constitution for him to choose to look at it from that perspective. Article 50, which is overriding and binding to these proceedings, has created an avenue for parties to adduce evidence so as to prove their case.

Mr. Chairman, Sir, as I sum up, you have been invited to look at our evidence as additional evidence. The evidence before you in that bound document is the one that was used to prosecute the Governor at the County Assembly of Kirinyaga. Suffice to note that despite or in spite of an invitation being extended to the Governor, she never responded. She never wrote a letter back to the County Assembly saying: "I am not able to attend to the trial." This is an afterthought that the Governor has brought up. She is clinging on very weak grass.

We urge the Committee to apply the oxygen principle which provides that in a Committee of this nature which is *quasi*-judicial, the oxygen principle shall be applicable. The oxygen principle calls upon the Committee to look at the delivery, execution and adjudication of substantive justice. The oxygen principle has been incorporated in our Constitution under Article 157 that provides the question of procedural technicalities. Even in our normal court practices, the courts have moved away from looking at the document from a technical perspective.

The courts are currently concentrating at the question of delivery of substantive justice. The statements by the other three witnesses, that is Dr. Argor, Ms. Wanjiru, are documents or evidence that will adduce evidence towards the allegations of the Governor running down the institution of health.

I know what is giving them probably some issues is how to defend that evidence. We urge the Committee to allow the documents and look at them as documents that facilitate the delivery of due process of the law; to look at the documents as the ones that will facilitate the Committee to arrive at a just position. We are all here before the Committee looking and seeking for justice. The Governor needs justice, the people of Kirinyaga whom the County Assembly represents and who when they voted as core of 23 in an Assembly of 33, are here seeking for justice.

We urge the Committee to overrule the objection and allow us to proceed to the cracks of the matter. They will be granted an opportunity to test the evidence. We shall call the witnesses as guided by the Senate and we confirm that there is no new evidence that has been provided. The Governor has not produced any document where she acknowledges receipt of the evidence as served by the County Assembly at the time of the service. Much obliged we seek your guidance.

The Advocate for the Governor (Mr. Nyamondi): Mr. Chairman, Sir, just a brief response.

The Chairperson (Sen. Malalah): One minute.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, the submissions by my learned and good friend put Dr. Okello, sitting next to you, in an awkward position because he is my witness. I only agreed to take this unintelligible mass of documents because Dr. Okello gave me his assurance that these were the documents as he had received them from my good and learned friend. He gave me a further assurance that no additional documents - because you can do anything with a bunch of documents like this-

that the documents to come before this Committee would be the documents as presented. My witness as to the state in which I received these documents is sitting to your left-hand side.

The right that the Governor asserts is in Article 50 (2) (b) – the right to know the case against her. You cannot confront her here. That is the right that we assert. This is a truth finding exercise, we do not deny that. It is not a fishing expedition. The evidence cannot increase with every passing day. We wish to assert the provisions of Rule No.19, it is additional evidence and nothing has been spoken in respect of that.

The oxygen principle does not apply to Rule No.19 because it is not a technicality, but substantive because it seeks to ensure and protect an impeached governor's right under Article 50 (2) (b). I am most grateful and I hope I did not exceed 60 seconds.

The Chairperson (Sen. Malalah): Thank you Hon. Members, ladies and gentlemen. At this juncture the Committee shall retreat and consider the matters raised by both parties. We shall come up with a concrete determination in form of a ruling and communicate to this honourable gathering in 30 minutes.

On the first issue that you raised wanting us to allow us one extra person, I will use my discretion as the Chair to direct the Sergeant-at-Arms to look into the protocol issues and find ways in which you can allow that very important person who will help in the documentation as requested by the Lead Counsel.

Hon. Senators, we shall retreat into our Committee room to make a determination of this matter and we shall be back in 30minutes. Thank you.

(The Committee adjourned temporarily at 10.35 a.m.)

(The Committee resumed at 12.00 noon)

The Chairperson (Sen. Malalah): Ladies and gentlemen, this morning when considering preliminary matters, both parties raised preliminary issues for consideration by the Committee. The county assembly requested for clear copies of the following documents already filed by the Governor in a response before the Committee.

Hon. Senators, the documents are-

- (1) The relevant pages of the Governor's ordinary and diplomatic passport.
- (2) The bank receipt for payments on 17th April, 2020.

The Governor's lead counsel raised three preliminary issues as follows-

- (a) That the county assembly filed unintelligible bundle of documents that are difficult to follow;
- (b) That Mr. Carilus Otieno, who has been summoned to appear before the Committee by the county assembly be allowed to appear tomorrow. This is because he is also a witness on behalf of the Governor; and

- (c) They raised a preliminary objection by the County Assembly of Kirinyaga has filed several documentations that constitutes new evidence, which was not in the evidence that the Governor received from the Speaker of the Senate.

The Committee response to each of the following issues here under-

On the issue of availing clear copies of the county assembly, the Committee hereby directs that the Governor provides clear copies of the said documents by the end of today, on 23rd June, 2020, serve the assembly's lawyers via email and copied to the Clerk of the Senate.

Secondly, on the Governor's request that Mr. Carilus Otieno, who has been summoned by the Committee be allowed to appear tomorrow as a witness and be cross examined by the Committee. The Committee is hereby convinced that the request is reasonable and will not prejudice the assembly's case.

The Committee, therefore, directs that Mr. Carilus Otieno, shall appear tomorrow, 24th June, 2022 and the county assembly shall be at liberty to cross examine the witness on the issues raised in the summons during cross examination.

Thirdly, on the preliminary objection to the form of the documents filed by the county assembly, the Committee notes that it would have been desirable for the county assembly to present well bound documents, properly paginated to assist the Committee and all parties in understanding and deliberating on the matter herein. Therefore, our Secretariat will also furnish the counsel representing Gov. Waiguru with a well paginated documents, if he so requires, to help him execute your matter.

Fourth, on the issue of introduction of new documents and evidence, owing to limited time available for this Committee to present its finding to the Senate, the Committee notes and encourages the parties to canvass this issue during hearing. The Committee shall proceed with the documents as filed and make appropriate determination on the veracity, admissibility and propriety of the evidence in making its final determination in accordance with Rule 19 of the Fifth Schedule of the Senate Standing Orders.

That is our ruling. I will now guide the meeting as follows; we shall allow the opening statements. Because of time, we shall listen to the opening statements from both parties, 30 minutes each and then, we shall break for lunch. When we come back, we shall now have time to start the county assembly's presentation.

Therefore, we shall start by opening statements on behalf of the County Assembly of Kirinyaga. Do you have anything?

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, just to thank you for your very clear directions and to put it on record, we will very much appreciate before we start with the afternoon session, a clear and paginated copy of these documents, so that we can follow the proceedings.

Thank you, very much.

The Chairperson (Sen. Malalah): Okay. We shall ensure that our Secretariat furnishes you with the same.

The Advocate for the County Assembly (Mr. Njiru): Much obliged, Mr. Chairman, Sir, with your kind permission, I would begin to, probably, give my opening statement. We highly appreciate the Committee's findings.

Mr. Chairman, Sir, and the Hon. Members of the Committee, today, the County Assembly is being called upon to look into the conduct of the Governor of the Kirinyaga County, in so far as the question of good governance, proper administration, accountability, transparency and abiding to the rule of law is an issue.

Mr. Chairman, Sir, this committee has congregated here pursuant to a Motion that was passed, or a resolution that was passed by my clients, the County Assembly of Kirinyaga County.

Mr. Chairman, Sir, suffice to note, that the county assembly is constituted of 33 Members. Out of 33 Members, 23 Members returned a positive verdict that it so deems, or deemed fit to have the Governor answer to these charges.

Suffice further to note, that out of the persons who attended the proceedings on that day, it is only four Members of the County Assembly (MCAs) who abstained. Abstinance does not mean a vote of "Yes" or "No."

Hon. Members, that means that the county assembly, in execution of its mandate under Article 1, where the sovereignty belongs to the people, congregated and out of the 30 wards present in Kirinyaga County, 23 wards felt that they have no confidence in the manner the county is being ran by the Governor.

Hon. Members, we shall be able to present witness and evidence to prove and to adduce evidence towards the charges facing the Governor. However, before we get to that position, I wish to invite the Committee to move with me that we are looking at a very complex case of corruption, misappropriation of public resources and mismanagement of public resources. We all understand that corruption and issues of public mismanagement of resources is a complex web.

The Committee might be then asking itself, how is Gov. Waiguru involved in the processes of the tender? Does the Governor sit in the tender committees? That might be the question that the Senate might sit to resolve at the fullness of time. However, as I said, the question of corruption and mismanagement of public resources is a complex web. We shall be calling witnesses to show and demonstrate to this country, who are the owners of the monies that county assembly is rising up to defend, that Gov. Waiguru's hands were in the cookie jar?

We have witnesses to testify that besides Gov. Waiguru not sitting in any of the procurement committee, her hands were present. What I am saying, Hon. Members? I am saying that we shall be able demonstrate nexus. The nexus between the conduct of the Governor and the person's sitting in those tender committees.

Mr. Chairman, Sir, when this House and the National Assembly sat to legislate on the Leadership and Integrity Act, they legislated an interesting Section 35. It was actually looking into or foreseeing a situation that faces us today. Which situation is that? A situation where the governor sits far away from the committees procuring or evaluating tenders, but our hands are in the cookie jars.

The National Assembly legislated Section 35, which we shall be submitting on. The Section provided that even when a governor, state of public officer moves to perpetuate the abrogation of Chapter Six, PFM Act or a governor moves to perpetuate a transgression on the Public Procurement and Disposal Act, she could be acting through the influence of others.

Mr. Chairman, Sir, we shall be able to lead evidence to demonstrate that Gov. Waiguru is not even cognizant of the provisions of Section 30 of the County Governments Act, which provides that the governor has the capacity and responsibility of offering leadership in the executive Committee and in the administration of the entire county.

We will be able to highlight what administration of the county actually means. It means that there must be a nexus; that the governor is not executing executive functions only, but must also be in charge of the administration of the county.

Hon. Members, we will walk with you in the provisions of Article 179, which designates the governor as the Chief Executive Officer (CEO). As the CEO of Kirinyaga County, it means that she must be cognizant of how the affairs of the County Government are being run.

In the absence of demonstrating leadership, is that governor conveniently capable of executing the functions bestowed on her? We will be answering that question in the affirmative that, yes, the Kirinyaga County Assembly was justified and convinced that Gov. Waiguru does not deserve to continue serving as the Governor of Kirinyaga County.

There may be arguments that this is witch-hunt. There may be argument that might be brought forth to convince this Committee to look at the question of protection of devolution as provided for under Article 96; the roles of the Senate. However, does the question of protecting the devolution include protecting inefficiency? This is the question all of us shall ponder over at the fullness of time. Does the question of protecting devolution include the protection of an individual who has exhibited clear manifestation of her inability to govern? Hon. Members, we will be walking with you towards that path.

Hon. Members, remember that the Governor of Kirinyaga County is mandated under Article 3 of the Constitution to defend the Constitution and uphold the same. What then becomes of that governor who abrogates and causes, supervises or oversees the abrogation of Article 201 of the Constitution? What is the fate of this governor who abrogates Article 227 of the Constitution? What is the fate of the governor who abrogates Article 185 of the Constitution that gives the county assembly the mandate to carry all the functions of oversight?

Article 10 of the Constitution is clear as to what is required of Gov. Waiguru. Gov. Waiguru is bound by the provisions of Article 10 (1) and (2). The provisions have no ability of a waiver. No State officer, this Senate or anybody in the Republic of Kenya can waive or immunise him or herself from the application of Article 10 of the Constitution.

The principles and values of the governors enshrined thereto provide that the same binds all State organs and officers whenever any of them is implementing or interpreting the law on any policy.

We shall be asking if Governor Waiguru was faithful to the provisions of that Article. Did she ensure accountability in the way the county is managed? Did she ensure transparency in the manner in which the tenders were issued? Did she ensure there was no nepotism, favouritism, cronyism or aspects of favouring individuals or particular companies with the award of tenders? What of those individuals who sat in those committees and have a clear connection and nexus with the Governor?

We shall be leading evidence to that effect; most importantly, evidence leading to the question of one Ms. Pauline Wairimu Kamau. Suffice to know that evidence shall be led to prove that prior to her becoming the Director of Administration besides her unqualification, the same was previously serving as the Governor's Personal Assistant (PA).

We lead evidence and are honoured and highly humbled by the summons that were issued by the Committee to the Chairperson of the County Public Service Board (CPSB), who will adduce evidence that, yes, such officers did not warrant their appointment of recruitment, had it not been for the influence or intimidation of Gov. Waiguru.

We will then be asking ourselves what the relevance, urgency and expediency that was supposed to be served by this officer. We will be leading evidence that she had not even qualified to hold a position of the Director of Administration.

To that effect, we will be seeking leave from the Transition Authority (TA) guiding manual on the persons holding the staff in the office of the Governor. We shall further lead evidence that one Mr. Wayne Gichira, who is currently designated as the Information Communication Technology (ICT) Advisor in the office of the Governor, had his hands in the cookie jar and that those hands were in one way or another the hands of Gov. Waiguru.

Hon. Members, we shall lead evidence to this Committee that this wing is even holding an officer that is not even created and prescribed by any manual. We will lead evidence that TA, through an advisory sometimes back in 2013, actually said such kind of staff cannot sit in administrative or executive functions. Then, we shall be asking ourselves whose interests these individuals were serving.

To that effect, I will be calling four witnesses, including the ones that were summoned by the Committee, to prove that Governor Waiguru does not deserve to serve as the Governor of Kirinyaga County.

Is this being done in bad faith? No, it is not being done in bad faith. It is only being done so that we can protect the public finance and resources. That single coin belongs to the people of the Republic of Kenya. That is why this Committee is sitting to represent the Republic of Kenya in this impeachment process. However, the biggest question would then be: shall we be able to demonstrate that Gov. Waiguru was in breach of her fiduciary duty to the people of Kirinyaga County? Yes, we shall. We will be calling those particular witnesses.

Hon. Members, in the fullness of time, this House will believe in our story that we are acting in good faith to protect the public funds and not just that; the 2010 Constitution that we adopted, if you look at the preamble thereto, the 2010 Constitution was adopted for this generation and our future generation. It then has a question of inter-generational equity and intra-generational equity.

The biggest question is: in terms of leadership and integrity, what are we teaching our children? What ethics are our leaders teaching our children? We will be able to prove that Governor Waiguru does not portray a good example in this generation and even for the future generation. Remember, the work that we shall do today shall go on record. This is a House of record and our future generation shall have reference to what we do today. History will judge us whether we did the correct thing to protect the Republic from fraudulent fraud and theft of national resources.

Hon. Members, this is not just a case for Kirinyaga County. It is a case for the Republic of Kenya. The person at Homa Bay, Kilifi, Lamu; the *mama mboga* at Bungoma, Kirinyaga County and all the 47 counties contributed to the penny that the Kirinyaga people are seeking to protect.

It is, therefore, incumbent upon us, and most importantly this House, to make sure that devolution is protected; not by protecting those that have questionable conduct, not by protecting individuals whose public management is in question and individuals who go rogue on the question of the application of the law, but by protecting devolution in the right manner, form and in the right context.

We will be able to demonstrate all those issues that the County Assembly has raised. Look at the conduct of Governor Waiguru when she is called upon, just to have an honor among the persons whom she was elected in office with, the County Assembly, she has an attitude that the County Assembly are not people worth of listening, are not people worth of my address even the letters written to them are not worth of any response. But does the County Assembly exist in eutopia? No.

The County Assembly exists in law. Article 176 has constituted the County Assembly and the County Executive as one organ. There is no pure separation; they are two and that

is why the Constitution has provided that there is established a county government, which shall consist of the county executive and the county assembly.

The creation of that organ without a clear distinction, as it exists in the national Government, presupposes that there is no one who is above the other, because what is the conduct of Gov. Waiguru? Gov. Waiguru has chosen to undermine the authority of the Assembly. Gov. Waiguru, for one reason or the other became drunk with power and failed to submit to the jurisdiction of the County Assembly. The biggest question that this Committee will ponder is-

1. In the event where Gov. Waiguru failed to submit to the authority of the Assembly, how will the Assembly exercise its oversight mandate?
2. Was there deliberate attempt or deliberate actions of undermining the County Assembly by design or default? Who will be answering in affirmative that the question of undermining the County Assembly was not by default, it was by design to make sure that she removes herself from the armpits of oversight by the County Assembly.

In such kind of circumstances, how can or how will the Government of Kirinyaga County continue to exist with a Governor who feels that he or she is above the County Assembly?

The question of undermining the County Assembly undermines the supremacy of the people of the people of Kirinyaga County, the sovereignty of the people of Kirinyaga County, because Gov. Waiguru is not in office by her own operation; she is in office by the operation of the law that people in 2017 cast a vote that returned in her favour.

She cannot then be seen to undermine that vote; it is now the time to teach the current and the future generations that such an action of serious transgression of the law cannot go unpunished.

These records of today will be records of tomorrow. We must make sure that we get it right from the beginning.

Hon. Members as I sum up, Gov. Waiguru does not sign any document. Therefore, from the bundles of the documents brought in today as our evidence and even the evidence from the County Executive, you will not see her hand in it. That is how clever and how these aspects of abuse of office and pondering public resources manifest themselves in our case; that the signatures were put by individuals, not voluntarily but through coercion, intimidation and forceful might of the Governor of Kirinyaga County.

Hon. Members, I cite to you three companies. One is called Velocity. I also cite in our submissions a company called Velocity. You may not be clever to have a distinction of those two companies. I will show you how it manifested itself, that a company that was incorporated in 2017 can participate in an open bid in 2018. A company that was incorporated in 2017 can be alleged to be having edited accounts for three years.

A company is awarded tenders worth millions of money. The company does not have any experience and has not met the threshold of the Public Procurement and Disposal Act, but it is let go under the auspices or watch of Gov. Waiguru's employees and Wayne Gichira, the advisor to the Governor.

I will demonstrate to you, and it has been captured in the response of the Governor, that how one company associated to the Chief Finance Officer, one Mugundathi, was always favoured with tenders. Some of these tenders were classified. I will then manifest to you during our evidence that it was not in default that he became the Chief Officer.

We will be adducing evidence that it was a favour that was being returned. Whose favour was it being returned to? It was being returned to one Mr. Edwin Gicobi Ndathi, the brother to the Chief Officer.

I will show you how transgression manifested itself; that even in the midst of the clear provision that one must declare a conflict of interest, that was never done.

Hon. Members, I will demonstrate to you, or we shall demonstrate to you, how a motor vehicle worth Kshs14 million was purchased to ferry Gov. Waiguru. We will be asking ourselves whether it was necessary or whether there was expediency to purchase the same or the expediency was motivated by ulterior motives. Yes, we shall demonstrate this to the Members.

I will demonstrate to you through evidence that the processes of procuring this motor vehicle transgressed the provisions of The Public Finance and Management Act. I will show you how a governor sits in her office and decides to issue a guarantee or to apply for a guarantee without the sanctions of the national Government and the approval of the County Government. She became a law unto herself. She legislated and executed the legislation.

She did what she felt would serve her interests and not the interest of the people of Kirinyaga.

We shall further demonstrate to you how Governor Waiguru in alleged foreign travels did not even step her foot to those countries that are alleged. When she never did, she was not even as quick to refund the money advanced to her. That is Governor Waiguru for you. That is Governor Waiguru who is leading the County of Kirinyaga.

Is Governor Waiguru fit to serve? That is a question that shall be brought through our evidence.

I will show you, and witnesses will testify how during the previous Devolution Conference that was held in Kirinyaga county a demonstration was staged to mean that Kirinyaga County had opened a coffee shop in the United States of America (USA) I. I will show you through witnesses that the office of the coffee shop does not exist despite spending money towards that process.

Who suffers here? Is it only the people of Kirinyaga County? No! We are all held hostage by this rogue Governor. The country had been held hostage by the action of this Governor. We do not want to cite her previous engagements but we are only looking - and I know the Committee will be taking judicial notice of the same - that they raised issues.

As we proceed at the fullness of time we will be able to demonstrate this.
We thank the Committee.

The Chairperson (Sen. Malalah): Thank you, Mr. Ndegwa. I would like to bring to the attention of both that in the Parliamentary time management practice, I will be using these three lights to signal the time remaining. The yellow light will signify that you have 10 minutes remaining, green light 5 minutes and the red light will signify that the time has lapsed and you will no longer be heard by this hon. Committee.

The counsel representing Governor Waiguru may proceed. You have 30 minutes.

The Advocate for the Governor (Mr. Nyamodi): Unlike the Governor's accusers, the Governor is prepared to meet her accusers herself. Despite some of the strong and inappropriate language that has been used by my good learned friend for the County Assembly, we hope that he will be able to prove what he says. We will share 30 minute between ourselves as counsel and the Governor. Her Excellency will go first.

The Governor of Kirinyaga County (Hon. Waiguru): Thank you very much, hon. Chair and Senators.

Today marks an important milestone to the development of our system of devolved government. The Senate through the Committee is to play one of its most critical constitutional mandates; that of determining whether an elected governor should vacate office pursuant to an impeachment by a county assembly.

At the onset, I believe in the right of the Members of County Assemblies to carry out oversight over the executive. I believe it is their legitimate right and constitutional duty to impeach a governor if and when the circumstances exist to justify such an impeachment. Such oversight processes are essential in ensuring transparency and accountability by those of us who have been privileged to hold critical leadership roles.

However, it must be recognized that the removal of an elected official is a solemn responsibility as it overturns the democratic choice of the voters. In the case of Kirinyaga County, it seeks to substitute the will of over 159,000 citizens who voted for me on 8th August, 2017. Consequently, such a process must only be carried out in extreme circumstances.

Hon. Senators, you are no doubt alert to the reality that an impeachment is a vastly time-consuming exercise which takes away valuable time of all parties involved including the members of County Assembly, the subject governors, this House from other critical

business. That is not all. It also infects the political environment of a county so severely that very little proceeds in the county when this process is going on.

Currently in Kirinyaga County budgets are not approved. My officers are summoned daily and issued with threats that they will be removed from office or otherwise sanctioned. As a matter of fact, in the last one month, two County Executive Committee Members (CECs) and one County Officer (CO) and a County Secretary have been given a vote of no confidence by the County Assembly.

Critical state officers including CECs and members of the CPSB have not been approved by the County Assembly making it difficult to employ staff even for critical health services. Services to the people of Kirinyaga County are affected and will continue to be affected even when this process is over. Whatever its results, the negative impact of the process will linger. It is also an expensive process for all concerned with lawyers and other professionals, tons of documents, witnesses and other attendant cost.

It is, therefore, not surprising that the Constitution and the County Government act reserves the impeachment solely to circumstances in which gross and serious violation of the Constitution and the law and serious abuses of office are proved to have been committed by the governor.

The courts have several times and consistently given decisions affirming the need for those seeking impeachment to obtain a high threshold for misconduct and violations of law before they can successfully remove an elected officer from their position.

Impeachment and removal from office was never intended and should never be based on falsities, innuendos, rumors, hearsay, conjecture and certainly, not malice.

Hon. Senators, secondly, an impeachment process is required by the law to be procedurally without reproach. It must respect the rules of natural justice including the right to a fair hearing and involve the people through public participation process. That, as my lawyers will show, never occurred in this process. No form of public participation took place.

The decision to proceed with impeachment despite a subsisting court order was made on Monday. I was purportedly sent an invitation to attend the proceedings on the same Monday to appear the next day. Truth be told, the notice to appear was brought to my office at 10.00 a.m. on Tuesday when the Motion was being debated. I was not even in the county on that day.

By 3.00 p.m., the same day, the impeachment proceedings had been completed. It is to avoid this sort of possible malpractice by county assemblies and protect the integrity of the removal process that the drafters of the Constitution and the County Government Act wisely placed the Senate at the center of the impeachment process of governors.

In this process, the Senate is the pre-eminent organ that ensures that the impeachment process is fact-based, has the requisite threshold and is procedurally fair. The Senate is

also to ensure that an impeachment process is not used to achieve collateral political agenda or push personal agenda; is not calculated to scandalize, embarrass, malign or defame an individual.

Mr. Chairman, Sir, unfortunately, what is before you is in every respect false, unfounded and salacious allegations which have no place in an impeachment Motion. My lawyers will take you through the allegations that formed the basis of my impeachment. Without rehearsing that presentation, I must say that the grounds that formed the basis of my impeachment and which this Committee is tasked to superintend are an affront to the very serious process that the Constitution and the law have prescribed for the removal of a governor from office.

The grounds contain allegations that are oblivious falsities, unfounded and malicious. They relate to minor administrative issues that would have been easily clarified by a routine inquiry. How can anyone justify summoning an entire county assembly and now the Senate where the allegation asserting gross violation of the Constitution is failing to deliver a state of the county speech at the county assembly? This is a requirement that does not even exist in the Constitution, not to mention that I actually delivered two state of the county addresses in the years that I have been in office, with one scheduled towards September this year, and that will be proven.

Mr. Chairman, Sir, how does the Senate of the Republic of Kenya be called to sit in an inquiry to board members whose approval was made way back in 2014 by the Salaries and Remuneration Commission (SRC) for all boards in the country. How can this honorable House be called upon to sit in review of tenders which were never appealed by the participating bidders and there was no allegation of malpractice, non-performance or over pricing. There was no single allegation that the Governor was conferred any personal benefit or that loss was occasioned in the county.

I would like to say something about the KShs50 million tender. This Committee will be shocked to learn that there was no Kshs50 million tender given to Velocity Partners Limited and that will be proven. There was also Kshs30 million payment to Velocity Partners Limited. That is a lie made for intended purposes of ruining somebody's reputation and that will be proven by my lawyers.

Mr. Chairman, Sir, you will be shocked to find the allegations even include the purchase of the Governor's vehicle whose budget was duly approved by the same assembly. The purchase was not from a dealer, but from the manufacturers of the vehicle, Toyota Kenya, which supplies Government vehicles under a framework contract negotiated by the Ministry of Public Works. Why would the business of Kirinyaga County be stopped at the Senate?

The Senate is called upon to interrogate travel imprest. To show the extent of these falsities and the malice, the assembly knowingly added three non-existent entries to the imprest list amount to Kshs4.6 million. These monies were never paid to the Governor and they have no evidence to show that the money was paid. They were false entries to

make and malign the name of the Governor. Why else would an assembly do that? In their enthusiasm to prosecute the Governor, the assembly alleged that I did not travel on trips where the Leader of Majority in the assembly and the chief accuser in this process was present and is photographed with me in the United States of America (USA) and Italy during those two trips. There can be no higher abuse of the process of impeachment and, indeed, no higher abuse of the power of the assembly than the process before you today.

Mr. Chairman, Sir, the Senate exists to protect devolution. While that must include strengthening the oversight capacity of county assemblies, focus must shift to protecting governors and county executives from the excessive overstepping of the oversight power of the county assemblies. Most governors avoid impeachment and firing of their County Executive Committee (CEC) members only by bending over backwards to cater to the personal demands and whims of the MCAs. Budgets in the counties are only passed if allocations are aligned to the personal desires of certain individuals.

The MCAs go as far as demanding approval of payments to contractors before they are made contrary to the County Governments Act. Failure to keep the MCAs wheels sufficiently oiled can earn you an impeachment. Unfortunately, all these prejudices, service delivery and development in counties for which the governor is then held responsible. That is our unspoken reality. Unless the Senate deals with this problem with the seriousness that it deserves, not only will anyone worth their name avoid seeking county leadership. Devolution will not meet the intentions for which it was established.

Mr. Chairman, Sir, I wish to make one final point on the need to retain the integrity of the county assemblies. In the last seven years, the Senate has invested significant resources in ensuring that the profile of county assemblies is raised so that they can represent the image of effective government at the grassroots for Kenyans. This is extremely important because the county assembly is the closest representation of '*Wanjiku*' in the lowest of governing.

It has been the desire of the Senate and those who believe in strong devolved governments to erase the history of councilors in the old local governments who engaged in fisticuffs and other such unfortunate methods of handling council business and resolving disputes. It was therefore an embarrassment for us to watch my county assembly members sleeping in the assembly for a night prior to the impeachment proceeding and ruffing up fellow MCAs just for raising a point of order. These sort of conduct brings county assemblies and the entire devolutions system to disrepute and must be discouraged. While we have difference of opinions with the MCAs, Kirinyaga has never been the subject of any actions that would require people to sleep in the county assembly and convert sittings to violent confrontations.

Mr. Chairman, Sir, finally, I ask that you look into these matters dispassionately with an eye solely on evidence. I do not ask that you take my position as truth. I only ask that you ignore media tepid and senseless sensitization of tales. Listen only to the evidence that will be presented in support of the accusations and reveal the documents we have

presented in support of our rebuttal and establish the truth. You will agree that this was an unfortunate process that must never be repeated. However, I ask that if you the allegations are malicious, unfounded and that they were calculated for the mischievous purpose of harassing the Governor of Kirinyaga County, that you will declare this process to amount to abuse of office by the MCAs.

You would then be within your rights to apply appropriate sanctions which your establishing laws and Standing Orders allow you to do. / I say this because the MCAs of Kirinyaga County Assembly have made several statements that this is just one of many impeachments they have lined up to ensure that they destabilize the county totally. While you cannot stop legitimate impeachment motions, to be prosecuted, you must give sufficient guidelines which ensure that impeachments are not misused. It must not be made a tool for pursuing vendetta. The Senate must not be made an accomplice to such endeavors.

One again, I thank you for giving the opportunity to address you. I believe that the truth will prevail and as is stated in our national anthem, 'May justice be our shield and defender.' I thank you.

The Chairperson (Sen. Malalah): Before the counsel for the Governor speaks, on a light note, I would like to note that I have heard Gov. Waiguru speak so strongly against the MCAs. It is a high time you note that the Chairperson of this Committee is a former MCA.

(Laughter)

The Governor of Kirinyaga County (Hon. Waiguru): I am aware.

The Chairperson (Sen. Malalah): Kindly proceed, lead counsel.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, I thank you for giving me the opportunity to address you again. I would like to pick up from where the Gov. Waiguru finished off. I wonder how much time I have to make submission.

The Chairperson (Sen. Malalah): You have 13 minutes to make your submission.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir and Members of this Committee, you have heard extensively from my good and learned friend for the County Assembly. As you embark on the task that my good and learned friend for the County Assembly this morning very correctly characterized as truth seeking, and having listened to the submissions or the opening statement for the County Assembly, for the Governor, we wish to urge that you bear one very important responsibility that this Committee has in mind.

With your permission, Mr. Chairman, Sir, an English saying comes to mind that I want to, as part of the opening statement by the Governor, put before you and your Committee. I urge that you bear it in mind as you carry out your important task. That saying is as

follows: “The proof of the pudding is in the eating”. The County Assembly must prove the allegations.

Mr. Chairman, Sir, we have heard the pontification by the learned counsel for the County Assembly. It must now be followed up with evidence. It should be nothing less than strict proof of the smoke and mirrors story that has been told on behalf of the County Assembly. We urge and have no doubt that the Chairperson and Members will listen keenly---

Sen. Mugo: Mr. Chairman, Sir, let him be on microphone, please.

The Chairperson (Sen. Malalah): Lead Counsel, you are advised to use your microphone and be more audible. You may move it close to yourself.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, should I remove my mask?

The Chairperson (Sen. Malalah): Yes, you can.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, I hope I am now a little more audible.

Sen. Mugo: Mr. Chairman, Sir, that is better.

The Chairperson (Sen. Sakaja): We also have an opportunity to now see your face.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, I was not hiding. I was just keeping safe.

It should be nothing less than strict proof of the smoke and mirror stories that have been very ably told on behalf of the Assembly. They must be strictly proved. We urge that you listen to the evidence carefully. We urge that you listen to the cross-examination carefully.

Mr. Chairman, Sir, and Members of your Committee, we have no doubt that you will apply the Constitution and the law.

Thank you, very much.

The Chairperson (Sen. Malalah): Thank you. That was well put. Hon. Members, ladies and gentlemen, I think it is now time to break for lunch. We shall have a 30 minutes break. We expect both parties to be seated by exactly 2.15 p.m. The Senate has provided lunch for all our visitors and Hon. Members. You will be served your lunch in your respective holding rooms, just to ensure that we keep time.

The meeting stands adjourned. Thank you.

(The Special Committee adjourned temporarily at 1.55 p.m.)

(The Special Committee resumed at 2.20 p.m.)

The Chairperson (Sen. Malalah): We shall go straight to the evidence by the County Assembly of Kirinyaga. They will present evidence of witness, if any. They will do cross-examination and the Counsel for Governor Waiguru will do cross-examination and reexamination.

I will now call Mr. Ndegwa to make his presentation before this Committee. We shall have witnesses who will either take oath or affirmation before we start. If you have any witnesses, they will take oath and affirmation before we start. Your witnesses can proceed.

The Advocate for the County Assembly (Mr. Njiru): Mr. Chairman, Sir, thank you for the lunch.

With your kind permission, I wish to be guided because in my practice I am accustomed to standing whether that is parliamentary. If I can be allowed to stand and lead my witness.

The Chairperson (Sen. Malalah): Yes, you are free to stand.

The Advocate for the County Assembly (Mr. Njiru): Mr. Chairman, Sir, my first witness is the Mover of the Motion. He goes by the name of Hon. David Wangui Kinyua. The witness comes from Mutira Ward.

The Chairperson (Sen. Malalah): The witness will sit opposite the Chairman, but he will first take oath or affirmation.

(Hon. David Wangui Kinyua took the oath)

The Advocate for the County Assembly (Mr. Njiru): Mr. David Kinyua Wangui, I wish to remind you that you are now on oath. The duty that you have given to this Committee is to tell the truth and nothing, but the truth.

The Chairperson (Sen. Malalah): Mr. Ndegwa, before you proceed, I want to remind you that you have three and a half hours. You will be required to use three hours to make your presentation, cross-examination and reexamination. Thirty minutes will be preserved for Hon. Members to seek clarification from your presentation.

The Advocate for County Assembly (Mr. Njiru): Mr. Chairman, Sir, we are well guided. We shall try to work within the circumstances. Where need be, we shall be making application therein.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, just one aspect of guidance. Is the three hours that you have stated for the examination-in-chief, cross-examination and reexamination? Is it possible to apportion that time so that we are not done out of an opportunity to cross-examine and there are clear time slots for examination-in-chief, cross-examination and re-examination?

The Chairperson (Sen. Malalah): We shall consult our legal team. We can proceed and then we shall communicate later.

*(The MCA, Kirinyaga County (Hon. David Wangui Kinyua)
before the Special Committee)*

The Advocate for the County Assembly (Mr. Njiru): Hon. David Wangui Kinyua, would you kindly tell these Members your full names?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I am Hon. Kinyua Wangui, Member of County Assembly (MCA) elected to represent Mutira Ward.

For avoidance of doubt, I am a second term MCA. In the previous regime, I was holding the Office of the Leader of Majority. Further, I want to confirm that us as MCAs, we are disrespected at times and disregarded. Therefore, the notion that MCAs are councilors---

Mr. Chairman, Sir, you were a MCA last term and you can attest to the same. As I proceed, I want to say that I have undergone training. Professionally, I am a chemical engineer. As we proceed, the Senate is not only mandated to protect one arm of the County Government, that is the Executive. The Senate is mandate to protect the County Assembly from the excesses of the Executive.

From the statement that was made by the Governor, it is unfortunate that the arrogance, rudeness and disrespect to the MCA could be openly be seen and confirmed.

Thank you, Mr. Chairman, Sir.

The Advocate for County Assembly (Mr. Njiru): Thank you, *Mhe.* David Kinyua Wangui. From which university did you graduate and in which year?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I confirm that I graduated from Kenyatta University in December, 2011.

The Advocate for County Assembly (Mr. Njiru): Confirm that you are the Mover of this Motion in the County Assembly.

Hon. David Kinyua Wangui: Counsel, I want to confirm that I am the Mover of this Motion. Therefore, should be accused as the chief accuser.

The Advocate for the County Assembly (Mr. Njiru): Were you elected through the Jubilee Party or which party sponsored you to the County Assembly.

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I want to confirm that I was elected as an independent candidate.

The Advocate for the County Assembly (Mr. Njiru): You are familiar with the contents of the Motion?

Hon. David Kinyua Wangui: Yes, I am.

The Advocate for the County Assembly (Mr. Njiru): You are familiar that the Governor is facing accusations of abuse of office.

Hon. David Kinyua Wangui: Yes, I am.

The Advocate for the County Assembly (Mr. Njiru): You also confirm that abuse of office manifests itself through undermining the authority and the power of the County Assembly?

Hon. David Kinyua Wangui: Yes, I am.

The Advocate for the County Assembly (Mr. Njiru): Confirm to this Committee whether the County Assembly has been able to offer effective oversight in the circumstances? Yes or no.

Hon. David Kinyua Wangui: No.

The Advocate for the County Assembly (Mr. Njiru): Would you lead us in your evidence that you filed your statement before this Committee? Would you wish to adopt it as your statement?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I adopt it as my statement.

The Advocate for the County Assembly (Mr. Njiru): You confirm that the signature appearing herein is that of Hon. David Wangui Kinyua?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I confirm.

The Advocate for the County Assembly (Mr. Njiru): It is your evidence that the Governor has been undermining the authority of the County Assembly?

Hon. David Kinyua Wangui: Yes, Mr. Chairman, Sir.

The Advocate for the County Assembly (Mr. Njiru): Do you have evidence to that effect? How has the undermining manifested itself?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I want to confirm that the Governor of Kirinyaga County has blatantly undermined the authority of the County Assembly. It is the provisions of the Standing Orders, the Constitution and the County Government Act that the Governor is supposed to table plans and address the County Assembly annually.

I want to confirm that I have been in that County Assembly since the start of this term. The Governor only appeared once during the opening of the County Assembly. That cannot be dictated or said to be an address because it was the official opening of the county assembly.

Some of us were new and it was during the swearing in. In the year 2018 and 2019, the Governor has never done any address to the County Assembly in which that address is supposed to determine and provide legislative agenda that also advises the budgeting and the planning of the county.

The County Assembly of Kirinyaga and me being the Mover, this was the last resort.

The Advocate for the County Assembly (Mr. Njiru): The Governor in her statement has annexed two (2) purported addresses; one dated 11th September 2019 and the other dated 29th November 2019. Did you witness those addresses? Were you at the county assembly at that time?

Hon. David Kinyua Wangui: I am a strict attendant to the County Assembly sessions and no such address was made to the County Assembly.

The Advocate for the County Assembly (Mr. Njiru): Why is it important for the Governor to address the Assembly?

Hon. David Kinyua Wangui: First, it is a legal provision within the standing orders and within Section 30 of the County Government Act that provides some of the responsibilities of the Governor; that he or she is supposed to the County Assembly annually.

I want to say that we can copy from the national Government to which, we at the county assembly borrow. We have seen the President addressing the joint session of the National Assembly and the Senate that has been happening annually.

In the County Assembly of Kirinyaga, that has not been the case. It is important since such addresses provide the legislative agenda for the County Assembly. Secondly, it advises budgeting and planning for the County Assembly.

Therefore, the process of budgeting and planning in the county is challenged by the fact that there has never been such addresses.

The Advocate for the County Assembly (Mr. Njiru): It seems that there is a provision in your Standing Orders that it ought to happen.

Hon. David Kinyua Wangui: Yes, it is a provision in the Standing Orders of the Kirinyaga County Assembly.

The Advocate for the County Assembly (Mr. Njiru): I want to take you through some several letters. I am referring to a letter dated 23rd, which is a request for information. It is addressed to one Gladys Kimingi, the County Executive Committee (CEC) Member for Health and Medical Services in Kirinyaga County. Do you know her?

Hon. David Kinyua Wangui: I know her. She is the recently approved CEC for Health and Medical Services after the resignation of the previous CEC.

The Advocate for the County Assembly (Mr. Njiru): The letter is emanating from the Clerk of the County Assembly. Correct?

Hon. David Kinyua Wangui: True.

The Advocate for the County Assembly (Mr. Njiru): Are you conversant and aware of the information that you are seeking in respect to the health matters?

Hon. David Kinyua Wangui: Yes.

The Advocate for the County Assembly (Mr. Njiru): Did you get a response to that letter?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I want to confirm that we did not get a response. In pursuing the same agenda of the health sector and the challenges that we are facing in Kirinyaga, we, as the Members of County Assembly (MCAs), proceeded to the county headquarters, and I want to confirm that we were tear-gassed and expelled from that area.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, with your permission, this is the bunch of correspondence that we had identified and are confronting for the first time, just to put that on record again. We will try as best as we can to deal with it during cross-examination, but I just wanted to put it on record that we are confronting this correspondence for the first time, and there may, indeed, be answers to them. It is just the opportunity to respond that we have not gotten. Thank you.

The Chairperson (Sen. Malalah): Well noted.

(Sen. Halake spoke off record)

The Chairperson (Sen. Malalah): Be on record, Senator.

The Vice-Chairperson (Sen. Halake): I cannot find it in my bundle either. Could I be guided and told where it is?

The Chairperson (Sen. Malalah): Hon. Members, if you are experiencing any difficulties identifying any documents in your files, I advise that you call one of the members of our Secretariat to help you, so that we do not interfere so much with the process.

Mr. Njiru, you may proceed.

The Advocate for the County Assembly (Mr. Njiru): Thank you, Mr. Chairman, Sir. I also want to refer you to a letter dated 4th December 2017---Sorry, not that one.

The Chairperson (Sen. Malalah): Mr. Njiru, if the letters have been marked, you can advise this Committee that the letters have been marked in a particular manner.

The Advocate for the County Assembly (Mr. Njiru): Mr. Chairman, Sir, we have just stuck them with some leaves. I do not know whether they will be able to move with me. It is a leaf indicated "Seeking intervention".

The Chairperson (Sen. Malalah): You may proceed.

The Advocate for the County Assembly (Mr. Njiru): Allow me to mark them with the dates.

The Chairperson (Sen. Malalah): Though that is a little bit cumbersome.

The Advocate for the County Assembly (Mr. Njiru): The letter is dated 19th March, 2020. Again, it is a request for information to James Kinyua Mutugi, the CEC for Education and Public Service. Correct?

Hon. David Kinyua Wangui: Through the Chairperson, it is true.

The Advocate for the County Assembly (Mr. Njiru): Did you get a response from the Office of the Governor in respect to that letter?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I want to confirm that the Committee on Education that requested for information concerning matters bursary did not receive any response to that effect.

The Advocate for the County Assembly (Mr. Njiru): What was the status of the bursaries in the county as at then?

Hon. David Kinyua Wangui: Through the Chairperson, bursaries have been a challenge in Kirinyaga County. In the last two financial years, we have not been able to issue bursaries to our people, but applications have been made. However, when we do the budgeting during the supplementary budget, it has always been the priority of the Governor to suspend the bursaries and move the allocations meant for the bursary.

The Advocate for the County Assembly (Mr. Njiru): I will again refer you to a letter dated 23rd March. We shall help the Committee with one document that is properly marked. Again, it is a request for information, addressed to Jacqueline Wanjiku Njogu, the CEC for Agriculture, Livestock, Fisheries and Veterinary Services, Kirinyaga County. Are you aware of that correspondence?

Hon. David Kinyua Wangui: I am aware of that correspondence made to the CEC in charge of Agriculture.

Sen. M. Kajwang’: On a point of order, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Yes, Sen. M. Kajwang’.

Sen. M. Kajwang’: We find it extremely difficult to follow because the Assembly is proving its case, while referring to documents that we do not have. We cannot make any fair determination if we are not on the same page with the Assembly.

The Chairperson (Sen. Malalah): Hon. Senators, for the letters, you may look at the documents tagged as “Undermining the oversight authority of the Assembly”. You will find the said letters; the 19th March letter and the 23rd March letter. Are we there?

An hon. Senator: Yes.

The Chairperson (Sen. Malalah): ‘Undermining the oversight authority of the County Assembly.’

Mr. Njiru, next time you need to be more organized.

The Advocate for the County Assembly (Mr. Njiru): We were constrained of time, but we are well guided. We hope that there will be no other impeachment.

The Chairperson (Sen. Malalah): You are the owners of the impeachment, so you had enough time to make your documents right. Nevertheless, Sen. M. Kajwang’, are we on the same page?

Sen. M. Kajwang’: Mr. Chairman, Sir, I have about four different tags saying “Undermining the Assembly”. It is unfortunate because it is eating into the time that the Assembly has. We would not want to spend your time on trivialities, but we must also be on the same page with you.

The Chairperson (Sen. Malalah): I think it is the first document immediately after the former director or administration tag. The next tag after that.

The Advocate for the Governor (Mr. Waiganjo): Mr. Chairman, Sir, can I make an intervention?

The Chairperson (Sen. Malalah): Yes.

The Advocate for the Governor (Mr. Waiganjo): The matters that are being raised by Sen. M. Kajwang' are part of what we were raising in the morning. You can imagine, if the Senate has a difficulty in following this process. You can imagine the difficulty for the Governor to respond to these letters, which we are seeing for the first time.

They are said not to have responded for, but we have no opportunity to show that they were responded to or show that those things they are saying were not done. They were done, because these letters have come at the last minute. Therefore, there is abject injustice in pursuing this line of questioning. We have no problem with the production of evidence, but surely, the rules of natural justice require that you be given notice.

Finally, the matter that we are dealing with is the Impeachment Motion that was presented to the County Assembly and was voted on. What we are discussing now is a new trial before the Senate, with new information. We are not sitting on a Bill.

Instead of dealing with the Impeachment Motion, we have now moved to new evidence, and that is grossly prejudicial to the Governor. It is sensationalizing as opposed to dealing with the evidence that was presented. We have no problem with replying to this evidence, but surely, there must be time. Otherwise, it would be very unfair.

The Chairperson (Sen. Malalah): Thank you. Hon. Members, we shall try and navigate through these turbulent waters and get the documents because we are in it and must finish it.

On the issue of them prosecuting a different case, it is their case. They have the liberty on how to prosecute their case, and we shall give them an opportunity to proceed.

Proceed, Mr. Njiru.

The Advocate for the County Assembly (Mr. Njiru): Thank you. I hope the Members are with me on the letter dated 23rd March 2020. It is a letter addressed to Jaqueline Wanjiku Njogu, the CEC for Agriculture, Livestock, Fisheries and Veterinary services.

Hon. Kinyua, did you get a response to that letter?

Hon. David Kinyua Wangui: Through the Chairperson, I want to confirm that we never got a response.

The Advocate for the County Assembly (Mr. Njiru): Were these letters issued in the effort to initiate the oversight role?

Sen. Madzayo: Mr. Chairman, Sir, if I may comment.

The Chairperson (Sen. Malalah): What is it, Sen. Madzayo?

(Sen. Madzayo spoke off record)

Sen. Madzayo: I have a letter dated 22nd March, but the letter dated 23rd March is not here, followed by the letter dated I think 30th November. I am at a loss. I do not have that particular document that *Wakili* is referring to.

The Chairperson (Sen. Malalah): I think that it was an omission in your file, but the Chairperson has the letter dated 23rd addressed to one Ms. Jacqueline Wanjiku Njogu.

(An hon. Senator spoke off record)

Yes, you will be served. Members, Kindly approach the Secretariat if you have any shortcoming with your file. The Secretariat will address the issue. The interjections will disadvantage the Members of the County Assembly who are trying to prosecute their case. Can we listen to them as they prosecute their case without many interruptions?

The Advocate for the County Assembly (Mr. Njiru): Well guided, Mr. Chairman, Sir. Allow me to ask the Members to move with me to a tag written CPSB. It is a letter dated 4th March. The letter has a tag and it comes from the County Public Service Board. Witness, confirm the receipt of this letter. Was this letter received by the County Assembly?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I want to confirm that the letter was received by the County Assembly of Kirinyaga.

The Advocate for the County Assembly (Mr. Njiru): Where did the letter originate from?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, the letter originated from the chairperson, County Public Service Board of Kirinyaga.

The Advocate for the County Assembly (Mr. Njiru): Are you privy to the content of the said letter?

Hon. David Kinyua Wangui: Yes, Mr. Chairman, Sir. I am privy to the content of the said letter. The chairperson of the County Public Service Board was seeking for the intervention of the County Assembly committee on public service on matters recruitment in the County Government of Kirinyaga where the chairperson and the committee were receiving undue influence and coercion from her Excellency the Governor on who to recruit and who not to recruit. That was in full disregard to merit and qualification.

The Advocate for the County Assembly (Mr. Njiru): In that specific letter, who was the subject?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, the subject was one Pauline Kamau.

The Advocate for the County Assembly (Mr. Njiru): Was she eventually recruited in that position?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I want to confirm that Pauline was recruited in that position; Director of Administration to the County. She had previously served as a personal assistant to her Excellency the Governor. Before that, there was an existing Director of Administration who was more qualified and had a letter of appointment thus there was no vacancy.

The Advocate for the County Assembly (Mr. Njiru): You speak to the qualifications of Pauline. Why do you use the words ‘more qualified’?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I used the words ‘more qualified’ because there is an advisory from the Transition Authority that advises on the qualification for the position of a director. The director is required to have at least a minimum of an undergraduate degree. In this case, based on her file, Pauline Kamau did not produce even a diploma certificate. A re-advertisement was done for a vacancy that did not exist for the recruitment to be done in favour of Pauline Kamau for other interests.

The Advocate for the County Assembly (Mr. Njiru): Were you able to act upon the request of the County Public Service Board chairman?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I am a member of the committee on public service and we reacted to it. We summoned the County Public Service Board chairman and he gave information that confirmed that there was coercion.

The Advocate for the County Assembly (Mr. Njiru): Mr. Chairman, Sir, I request that the Members move with me to another letter dated 4th December, 2017, which is also from the chairman.

Are you conversant with that letter? It is titled ‘request for intervention’?

Hon. David Kinyua Wangui: Yes, Mr. Chairman, Sir. I am conversant with the letter.

The Advocate for the County Assembly (Mr. Njiru): What was the content of that letter?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, the letter was on matters coercion by her Excellency the Governor and giving unnecessary and undue influence to recruitment in the County Government of Kirinyaga in favour of the persons of her interest.

The Advocate for the County Assembly (Mr. Njiru): I want to move with you to a file that was filed by the Governor. It is tender number CGK/ICT/OT/046. It is contained in the files filed by the Governor.

(The hon. Senators consulted)

The Chairperson (Sen. Malalah): Mr. Ndegwa, the Hon. Members are unable to follow your presentation because your bundle of documents have not been bound chronologically, thus they cannot get the documents in time. I direct that whenever you suggest or bring forth a document, you should bring it to the Table of the Clerk for us to share it with Members because we are completely unable to follow your presentation. Can we give you five minutes to plan yourself then we continue?

The Advocate the County Assembly (Mr. Njiru): That is possible, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Kindly do that.

*(The advocate for Kirinyaga County Assembly
(Mr. Njiru) organized his documents)*

The Chairperson (Sen. Malalah): Order, hon. Members! We may begin. It is now confirmed that the Kirinyaga County Assembly Counsel is now well organised and ready to present his matter before this Committee. However, before we begin, I would like to communicate to both parties as follows: That we have allocated time in the following manner.

For every witness, we shall have the examination-in-chief taking 15 minutes. Then we shall have cross-examination for 10 times and then re-examination for five minutes. So, we shall have a total of 150 minutes; which amounts to two and a half hours. For the remaining one hour, we shall have hon. Members raise supplementary issues that have been noted in the submission.

On this particular witness, for the benefit of the Committee to understand the matter more deeply, I request that Mr. Ndegwa starts again so that we can follow the documents as he presents. There was also a request by the lead counsel representing Governor Anne Waiguru to have more time to cross-examine this particular witness considering that he was the Mover of the Motion. That request has been granted. I will give them 25 minutes instead of 15 minutes.

The Advocate for the Governor (Mr. Nyamodi): Thank you very much, Mr. Chairman, Sir. We note your directions.

The Chairperson (Sen. Malalah): Mr. Ndegwa, you may start your presentation again.

The Advocate for the County Assembly (Mr. Njiru): Thank you, Mr. Chairman, Sir, for the indulgence and apologies for the small lapse.

The Chairperson (Sen. Malalah): We have agreed that whenever you refer to a document, you submit it to the Chair.

The Advocate for the County Assembly (Mr. Njiru): Well guided.

The Chairperson (Sen. Malalah): Thank you.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, if he could submit to us also so that we can follow his argument.

The Chairperson (Sen. Malalah): Your documents have already been tagged. Mr. Ndegwa you may proceed. We are starting your presentation now.

The Advocate for the County Assembly (Mr. Njiru): So, witness, it is your evidence that the governor has been undermining the County Assembly of Kirinyaga County?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I want to confirm that the Governor has been undermining the Authority of Kirinyaga County Assembly.

The Advocate for the County Assembly (Mr. Njiru): Is it true that you have a litany of letters seeking for information that was never answered to?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I want to confirm that being the Chairperson of the Committee on Implementation that oversees the operationalization of resolutions of the County Assembly by the executive, several letters, documents, reports are annexed to confirm that the executive led by the governor has undermined the authority of Kirinyaga County Assembly.

The Advocate for the County Assembly (Mr. Njiru): Among those documents is a letter dated 25th February, 2020?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I confirm.

The Advocate for the County Assembly (Mr. Njiru): It is a request for information for the Financial Year 2019/2020?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I confirm.

The Advocate for the County Assembly (Mr. Njiru): Did you get a response on that letter?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, in regard to matters finances, the Committee on Budget wrote to the County Executive Committee Member (CECM) and we did not receive a response to that respect.

The Advocate for the County Assembly (Mr. Njiru): I would like to table or produce the document.

Hon. David Kinyua Wangui: Proceed.

The Advocate for the County Assembly (Mr. Njiru): In demonstration of the governor undermining the authority of the County Assembly to oversight her office did a letter dated 23rd March, 2020, correct?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, we did a letter to the executive on the same and no response was done to the County Assembly.

The Advocate for the County Assembly (Mr. Njiru): Would you wish to produce the same?

Hon. David Kinyua Wangui: I wish to.

The Advocate for the County Assembly (Mr. Njiru): In that effect I just want you to comment on a letter dated 4th January, 2018 from the Chair of the County Public Service Board. You said you sit in that Committee?

Hon. David Kinyua Wangui: I want to confirm that we received a letter from the Chairperson County Public Service Board on the coercion seeking the intervention of the Committee on the alleged issue.

The Advocate for the County Assembly (Mr. Njiru): Who was the subject on that letter?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, the subject of that letter is Pauline Kamau who the Board was being coerced by the governor to give an appointment letter as the Director Administration. As per the County Public Service Board she had not met the requirements and her designation previously was Personal Assistant to the Governor.

The Board felt that there was conflict of interest which is against the requirements for recruitment as a Director Administration in the county. At the same time, there was no vacancy but there was a substantive Director Administration.

The Advocate for the County Assembly (Mr. Njiru): Mr. Chairman, Sir, allow me to move from the letters and go to the governor's bundle of documents contained in a file labeled as CGKSCM/DP/001/2019/20 in this white file, the governor's document. It relates to a purchase of a motor vehicle.

The Chairperson (Sen. Malalah): Let the Secretariat furnish Hon. Members with the same. Mr. Ndegwa, is it possible to do the list of the files that you expect to interrogate?

The Advocate for the County Assembly (Mr. Njiru): Mr. Chairman, Sir, we shall touch all the Governor's files relating to the tenders.

The Chairperson (Sen. Malalah): You may proceed.

The Advocate for the County Assembly (Mr. Njiru): Witness, I want to refer you to a document. Members, the document appears as bundle of page 18. There is a leaf indicated as 18H. The document I am referring to is a document titled as ‘guarantee application form’.

The Chairperson (Sen. Malalah): You may proceed.

The Advocate for the County Assembly (Mr. Njiru): Witness, are you looking at the form?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, yes, I am.

The Advocate for the County Assembly (Mr. Njiru): What sort of form is it?

Hon. David Kinyua Wangui: It is an application for a guarantee.

The Advocate for the County Assembly (Mr. Njiru): What guarantee or what was being guaranteed?

Hon. David Kinyua Wangui: A purchase for a motor vehicle for the county government of Kirinyaga was being guaranteed by KCB bank.

The Advocate for the County Assembly (Mr. Njiru): Is it your allegation that the tender did not follow the procedure?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, to the best of my knowledge, it is actually a facility that is applied in form of a loan. One of the roles of the Members of the County Assembly as provided in Section 8 of the County Government Act is to approve any borrowing of the county government. In this case, a purchase was done through a bank guarantee and the approval of the County Assembly was not sought to which I am a Member and I never saw such an approval being sought or passing through the County Assembly.

The Advocate for the County Assembly (Mr. Njiru): Being a Member of the County Assembly, which votes finance the purchase of that motor vehicle?

Hon. David Kinyua Wangui: Referring to the budget, a budget for a vehicle is supposed to be voted as a recurrent budget. In our budget for the financial year it was voted as a development budget to which the Controller of Budget declined approval requisition when it is on a development vote and requested that the County Assembly be sought to do a supplementary budget, which was done in the month of April. Having in mind that the vehicle was purchased in the month of October.

The Advocate for the County Assembly (Mr. Njiru): It is evidence that the vote that financed the purchase was that of recurrent expenditure?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, looking at the details and the fact that the purchase was done in the month of October and the supplementary budget to revote the money from development to recurrent was done in the month of April. It is best suited for one of the witnesses to confirm whether the purchase was done through a recurrent or a development vote.

The Advocate for the County Assembly (Mr. Njiru): Look at the letter date 27th February, from the same file. What is it about?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, it is actually application of a bank guarantee extension. Meaning the first application was approved and expired, therefore, the County Government of Kirinyaga was applying for an extension.

The Advocate for the County Assembly (Mr. Njiru): Was the County Assembly involved in approval of that guarantee?

Hon. David Kinyua Wangui: To the best of my knowledge and availability for the services of the County Assembly of Kirinyaga, no such approval was sought or approved by the county assembly.

The Advocate for the Assembly (Mr. Njiru): Is that why you are saying that the Governor has the tendency of undermining your authority?

Hon. David Kinyua Wangui: Through the Chair, that is a clear manifestation of the fact that the Governor does not recognize one of the roles given to the county assembly by the law.

The Advocate for the County Assembly (Mr. Njiru): I want to refer you to the Governor's file. Finally, it is tender NO. CGKKICT0T046, 2017/2018, it is a company called velocity. Are you aware of that company?

Hon. David Kinyua Wangui: Through the Chair, I am aware of that company.

The Advocate for the County Assembly (Mr. Njiru): When was that company incorporated?

Hon. David Kinyua Wangui: It was incorporated in the year 2017.

The Advocate for the County Assembly (Mr. Njiru): Are you aware that the company participated in that particular tender?

Hon. David Kinyua Wangui: With the information available, I want to confirm that that company participated in two tenders in the County Government of Kirinyaga, to which we have a lot of confidence that this company, from the definitions in the Integrated Financial Management Information System (IFMIS).

Mr. Chairman, Sir, I want to invite your attention on this. We are living in a digital era. We are able to access the eCitizen accounts. Having the CR 12 number, anyone can actually search for that company and you realize that it is not available in the records. Therefore, with a lot of confidence, I would say that it is fictitious, it does not exist.

The Advocate for the County Assembly (Mr. Njiru): Was this a tender that was reserved for any particular affirmative group?

Hon. David Kinyua Wangui: Through the Chair, I want to say that this was an open tender that was supposed to be processed as an open tender and not as a restricted tender.

The Advocate for the County Assembly (Mr. Njiru): You said that you have evidence that the company called velocity, is the one that bid for this tender?

Hon. David Kinyua Wangui: Through the Chair, I want to confirm that the information that we get from the county executive is more confusing. This is because at time if you ask for that information concerning the tender, they will give information for velocity and other times you get information relating to velocity. Meaning, there is clear intension to confuse the county assembly as they do their mandate.

The Advocate for the County Assembly (Mr. Njiru): So, it is your evidence that the company going by the name of velocity is the one that executed the contract while the company that bided for the bid is Velocity?

Hon. David Kinyua Wangui: I want to confirm, Chair.

The Advocate for the County Assembly (Mr. Njiru): Mr. Chairman Sir, I want to yield the witness for cross examination.

The Chairperson (Sen. Malalah): That is in order. I invite the counsel representing Hon. Anne Waiguru to cross examine the witness. You have 25 minutes.

The Advocate for the Governor (Mr. Andrew Muchigi): Hon. Kinyua.

Hon. David Kinyua Wangui: Yes, my name.

The Advocate for the Governor (Mr. Andrew Muchigi): Hon. Kinyua, I will ask you questions. I just want you to be very brief. I just want a yes or no answer. Any explanations, your counsel will guide you on that. Are we together?

Hon. David Kinyua Wangui: Very much Indeed.

The Advocate for the Governor (Mr. Muchigi): I want you to get a copy of the Motion that you lodged.

The Chairperson (Sen. Malalah): Counsel, try to be loud enough.

The Advocate for the Governor (Mr. Muchigi): I want you to get a copy of the Motion that you lodged before the Senate, but before we embark on it, I want to ask, just answer the first question.

When was the Motion for impeachment of Her Excellency, Hon. Waiguru, presented before the county assembly for the first time?

Hon. David Kinyua Wangui: Actually, the Motion was presented to county assembly on 31st of March, 2020.

The Advocate for the Governor (Mr. Muchigi): 31st of March, 2020?

Hon. David Kinyua Wangui: Yes.

The Advocate for the Governor (Mr. Muchigi): There was an order that was given by the court, still pending resolution of the COVID-19 issue by the Government.

Hon. David Kinyua Wangui: It happened.

The Advocate for the Governor (Mr. Muchigi): Just answer my question please. The question I wanted to ask you is, at the time when the Motion was moved, is it not the time when operations at the county government ceased because of the pandemic and directives by the Government on essential services?

Hon. David Kinyua Wangui: It was the period.

The Advocate for the Governor (Mr. Muchigi): Has that directive on essential services been lifted, so that the county is now fully operational? Yes, or no.

Hon. David Kinyua Wangui: Mr. Chairman, I would wish to seek for your intervention on this. Since some of the answers that are being sought by the counsel are questions that you cannot give a yes or no answer. You require an explanation.

The Chairperson (Sen. Malalah): You are free to do that.

Hon. David Kinyua Wangui: Through the Chair, actually, the measures by the Ministry of Health had not been lifted, but making reference to the court order, we were given a leeway as a county assembly to determine whether we are actually abiding to the measure given by the Ministry of Health; to which we actually maintained the social distance, provided sanitation centre, washing hand centre. All those were provided. Actually, the counsel went to court to challenge the same that we are contemptuous of the court decision and it was ruled in our favour.

Therefore, Mr. Chairman, Sir, in light with that, I want to say that the court order did not deter the county assembly of Kirinyaga from prosecuting the Motion.

The Advocate for the Governor (Mr. Muchigi): Hon. Chair, the reason why I am asking that he abides by my request on how I want questions answered is also to save on my 25 minutes. If he takes 10 minutes on one question, it means I will not have done justice for my client. I will insist that he just answers, if there is anything, his counsel will have the right of re-examination to affirm some these questions, so that he can save on my time.

The Chairperson (Sen. Malalah): I would not want to limit him to a yes, or no answer, I would just advise him to be brief in his response.

Hon. David Kinyua Wangui: Through the Chair, I seek your guidance---

The Advocate for the Governor (Mr. Muchigi): So, I will proceed. Hon. Kinyua, please, let us not waste time.

The question I wanted to ask and I just want you to focus on that question; at the time when you moved the Motion, was there a directive that dealt with essential services from the national government?

Hon. David Kinyua Wangui: The directive was in force.

The Advocate for the Governor (Mr. Muchigi): Thank you very much. The operations of the Kirinyaga County government, were they affected in any way by that directive?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I want to say that by then, the operations were back to normal. There before, they were affected for a short while, then we resumed to normalcy.

The Advocate for the Governor (Mr. Muchigi): So, you are telling this honourable Committee that from 30th of March, 2020, until now, all the employees of Kirinyaga County have been reporting to work daily or you do not know?

Hon. David Kinyua Wangui: To the best of my knowledge, they are.

The Advocate for the Governor (Mr. Muchigi): Okay, I will move to the next question. When the court suspended, or rather issued a conservatory order concerning the impeachment, there are directions it gave. The first direction was that you must not prevent the public from participating in the process. I am right in saying that, or do I have to read the ruling for you?

Hon. David Kinyua Wangui: No.

The Advocate for the Governor (Mr. Muchigi): I will reframe my question. When the court stated--- I will read it for you: "The impeachments of a Governor is not a closed-door affair. Where and impeachment Motion is successful, it does not only affect the Governor, but also prejudices political rights. Article 38 of the Constitution of the people who voted who voted for the Governor, the public must be involved in such a process through qualitative and quantitative participation."

What did you understand by that?

Hon. David Kinyua Wangui: That public participation must be done. However, it must not be done directly. It can also be done indirectly.

The Advocate for the Governor (Mr. Muchigi): So, in this particular, it was done indirectly.

Hon. David Kinyua Wangui: It was done indirectly without full exposure of people of Kirinyaga to COVID-19.

The Advocate for the Governor (Mr. Muchigi): Thank you, very much. What does the County Governments Act state concerning how public participation should be undertaken? I know you are familiar with the legislation that governs how your operations are done.

Hon. David Kinyua Wangui: I will not go to the County Governments Act, but the rules that govern public participation in Kirinyaga County Assembly.

The Advocate for the Governor (Mr. Muchigi): I am very specific on the County Governments Act. Let me give you a copy of this so that you can read. I just want you to read Section 91 of the County Governments Act, internalize and then summarize it in one sentence.

Does Section 91 of the County Governments Act provide the modalities and platforms for citizen participation?

Hon. David Kinyua Wangui: It actually provides.

The Advocate for the Governor (Mr. Muchigi): Can you name some of them, please? Just read and name some of them from there.

Hon. David Kinyua Wangui: They are information communication technology based platforms, town hall meetings--- In fact, in our case we adopted---

The Advocate for the Governor (Mr. Muchigi): Continue with what you are reading. What are the things?

Hon. David Kinyua Wangui: There is also budget preparation and validation fora; notice board: announcing jobs, appointments, procurement; development project sites and avenues for the participation of peoples' representatives including but not limited to Members of the National Assembly and Senate; and, establishment of citizen fora at county and decentralized units.

The Advocate for the Governor (Mr. Muchigi): Thank you. Now, let me ask you a simple question. In the motion that you filed before this Senate, have you attached any documents to show how you complied with that requirement of the law?

Hon. David Kinyua Wangui: In the first instance, there is no attachment, but as per the procedure, after doing the Motion, you facilitate the process of public participation.

The Advocate for the Governor (Mr. Muchigi): Thank you. In the statements that you have filed as witness statements for all your four witnesses, has any witness alluded to what was done to comply with the issue of public participation? Answer “yes” or “no”.

Hon. David Kinyua Wangui: I want to confirm in my case, yes.

The Advocate for the Governor (Mr. Muchigi): In your case, yes. Could you take me to the paragraph, please? Remember you have just told this honourable Senate that it was through indirect participation.

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I withdraw the statement that it is actually in my statement. Information can be furnished to confirm that we did public participation as a County Assembly.

The Advocate for the Governor (Mr. Muchigi): Thank you for confirming that. The next question is very simple. When was the decision made to have the hearing for the Motion to remove the Governor by way of impeachment?

Hon. David Kinyua Wangui: Actually, by the time we submitted to the Motion to the County Assembly---

The Advocate for the Governor (Mr. Muchigi): I have not asked that. For the decision to be made that you are coming on this particular date to vote, when was the vote made?

Hon. David Kinyua Wangui: It was made on 8th June, 2020.

The Advocate for the Governor (Mr. Muchigi): When was the decision to call the Governor for that hearing communicated to her?

Hon. David Kinyua Wangui: The decision and the communication was done on 7th June, 2020.

The Advocate for the Governor (Mr. Muchigi): So, the communication to the Governor was made on 7th June, 2020?

Hon. David Kinyua Wangui: Yes.

The Advocate for the Governor (Mr. Muchigi): Do you have any evidence in the motion that you have filed to indicate the day when she was served with those summons telling her to come before the Committee on 8th June, 2020?

Hon. David Kinyua Wangui: The information can be provided.

The Advocate for the Governor (Mr. Muchigi): I have not asked that. In your motion, is there anything to confirm that this is the day she was served with those summons?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, the confirmation or the question of what I should be put to task is the fact whether the Governor was furnished with the information or not.

The Advocate for the Governor (Mr. Muchigi): Focus on my questions and not the questions you want to ask yourself. I am asking you if you have any evidence in your motion, indicating that the Governor was served with the summons on 7th June, 2020 requiring her to come on 8th June, 2020 or another day?

Hon. David Kinyua Wangui: The Governor was served with a notice on 7th June, 2020.

The Advocate for the Governor (Mr. Muchigi): Do you have evidence of that in your motion?

Hon. David Kinyua Wangui: The notice can be availed.

The Advocate for the Governor (Mr. Muchigi): So, you do not have it in your motion. Thank you very much. Now, I want you take a copy of the motion and ask your advocate to give it to you.

Hon. David Kinyua Wangui: I have it with me.

The Advocate for the Governor (Mr. Muchigi): I will want us to go step by step. The first violation you have talked about is the one that relates to the annual state of the county address.

Hon. David Kinyua Wangui: Yes.

The Advocate for the Governor (Mr. Muchigi): You are a legislator by virtue of being in the County Assembly and so you understand the laws that govern your business. Let me ask a simple question: Can you direct us to the provision in the Constitution – because you have called it a gross violation of the Constitution – that mandates the Governor to appear before the County Assembly to deliver that address?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, the County Governments Act is an enabling Act to the Constitution of Kenya. It is the Constitution that required that the National Assembly assents to a Bill that would enable the formation of the county

government. It is from that we borrow from the County Governments Act Section 30, which requires the Governor to address the County Assembly annually.

The Advocate for the Governor (Mr. Muchigi): Please, I would want you to read that provision. There is no direct provision in the Constitution. Are you confirming that?

Hon. David Kinyua Wangui: You cannot detach the County Governments Act from the Constitution.

The Advocate for the Governor (Mr. Muchigi): I have not asked that. Does the Constitution have an express provision before we move to the County Governments Act?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I want to remain with my position that---

The Advocate for the Governor (Mr. Muchigi): Thank you. I will accept your answer that there is no provision in the Constitution. Now, can we move to the County Governments Act, Section 30(2)(k). I want to just read to the Senate – it is a very short sentence – what Section 30(2)(k) states.

Hon. David Kinyua Wangui: Section 30(2)(k) states that the Governor is supposed to deliver---

The Advocate for the Governor (Mr. Muchigi): Just read it the way it is. Do not interpret it. Just read the way it is in the Act.

Hon. David Kinyua Wangui: It is actually Section 30(1)(k). It says-

“The governor shall take and subscribe to the oath or affirmation as set out in the Schedule to this---

The Advocate for the Governor (Mr. Muchigi): We are focusing on Section 30(2)(k) because that is what is in your motion.

Hon. David Kinyua Wangui: Good.

The Advocate for the Governor (Mr. Muchigi): So, please, focus on what I have told you.

Hon. David Kinyua Wangui: Good. That is where I am, but remember it is 30(2)(k).

The Advocate for the Governor (Mr. Muchigi): Yes, that is what I have asked you. Just read it to us. What does it say?

Hon. David Kinyua Wangui: It says-

“(2) Subject to the Constitution, the governor shall—

(k) deliver annual state of the county address containing such matters as may be specified in county legislation.”

The Advocate for the Governor (Mr. Muchigi): Thank you very much. Now, from what you have read, does that provision mention county assembly?

Hon. David Kinyua Wangui: It does not mention the county assembly.

The Advocate for the Governor (Mr. Muchigi): Thank you very much. When the Governor, in her response, indicates that she gave her address at the public hospital, do you have anything to support your position in terms of evidence that, that was in violation of any law?

Hon. David Kinyua Wangui: State of the County Address cannot be done in a conference or in a public rally. It is actually supposed to be done where the executors, the implementers of that address are available. We, as the County Assembly, were not invited to that address. Actually, if we borrow from what happens in the National Assembly, all those addresses are discussed by the National Assembly. In our case, we did not receive even the Statement itself.

The Advocate for the Governor (Mr. Muchigi): Thank you for confirming that you do not have a legal provision for that.

Now, I want us to move to the valuations of the tender, the Procurement and Asset Disposal Act. You have mentioned quite a number, but we will cut across all of them with simple questions so that we can save on time. The Public Procurement and Asset Disposal Act is very clear. Any person who is aggrieved by the decision of the tender committee of a procuring entity has a right to seek a review with the review Board under the Act.

Do you have any decisions of the review board or of any Court of Law by any aggrieved party that supports your position that tenders were made out of conflict of interest, nepotism and any criminal enterprise? Or on the basis that there are people whose tenders were more responsive than others, but did not get the tender. Do you have any search decisions from the review board which is mandated under the law to make such a determination or a Court of Law that is empowered to make such a decision in the event of an appeal?

Hon. David Kinyua Wangui: I want to say that the County Assembly is privy to PPRA report on matters of some of those tenders. A report that can be tabled and the executive can confirm that such communicate from the PPRA question some of these tenders are in this Motion.

The Advocate for the Governor (Mr. Muchigi): I have just asked you about this. Do you have the body that is authorized to make such a decision under the law? Do you have a decision from that review Board authorized under the Public Procurement and Asset

Disposal Act or by virtue of any Court of Law that is pursuant on appeal under this Act? Do you have any decision?

Hon. David Kinyua Wangui: Through the Chair, I want to say that we are privy to Public Procurement Regulatory Authority (PPRA) report on matters some of those tenders, a report that can be tabled and the executive can actually confirm that they have such a communiqué from the Public Procurement Regulatory Authority questioning some of these tenders that are in this motion.

The Advocate for the Governor (Mr. Muchigi): Thank you for volunteering that information. Can you show us a copy of that report please in the volume that you are holding and in the volumes that we are holding please?

You have severally in the issues of the tenders talked about the Governor being in charge of a criminal enterprise that is intended to defraud the County. The question I want to ask you, in your Motion, do you have any evidence showing that she received any money from any beneficiaries of these tenders? Do you have evidence showing that she received any money?

Hon. David Kinyua Wangui: Tendering process is being manipulated.

The Advocate for the Governor (Mr. Muchigi): No, the words you have used are ‘criminal enterprise and its corruption’ You have talked about corruption because of the purpose of trying to defraud the county of funds. I am asking, do you have evidence in your Motion showing the Governor receiving any money from these successful bidders?

Hon. David Kinyua Wangui: I want to prove that her hand was actually in this tendering process. The onus is on her head to actually prove that she was not.

The Advocate for the Governor (Mr. Muchigi): Thank you for confirming that you do not have that evidence. Now, I want to move straight to the issue of Pauline Kamau and Gichira.

The Chairperson (Sen. Malalah): Just before you move on to that, considering the gravity of this matter, we had allocated cross examination for 25 minutes and since this is the main witness, we have reconsidered that position. We shall add you 15 more minutes and then for reexamination we shall also add you a further 15 minutes, so that we deal with this matter.

The Advocate for the Governor (Mr. Muchigi): Much obliged Hon. Chair. I will humbly request to be warned when I finish the 25 minutes so that my learned colleague can address a particular question, please.

The Chairperson (Sen. Malalah): I had earlier indicated that you look at the signals, the light signals. This light signifies 15 more minutes remaining; this light signifies five more minutes and this light signifies that your time has lapsed. Stand guided.

The Advocate for the Governor (Mr. Muchigi): Thank you very much. Concerning the issue of Gichira---

The Chairperson (Sen. Malalah): In total you have 20 minutes, five that you had remained with plus the 15 that we have added.

The Advocate for the Governor (Mr. Muchigi): Much obliged. The question I wanted to ask is concerning Gichira. Which body is mandated to employ Public Service employees for Kirinyaga County under the Act?

Hon. David Kinyua Wangui: The County Public Service Board.

The Advocate for the Governor (Mr. Muchigi): Under the County Government's Act, who has the power to fire or exercise disciplinary action against members of that Board. Is it the Governor or is it the County Assembly?

Hon. David Kinyua Wangui: It is actually the County Assembly.

The Advocate for the Governor (Mr. Muchigi): So the Governor cannot threaten them because she cannot fire them, is that not a fact?

Hon. David Kinyua Wangui: It is a fact.

The Advocate for the Governor (Mr. Muchigi): Thank you very much. So, the question I want to ask. You indicated that there is a letter that you received from the Board indicating that they are under pressure to hire the lady called Pauline Kamau. That was in the year 2018. How many years ago was that?

Hon. David Kinyua Wangui: That was two years.

The Advocate for the Governor (Mr. Muchigi): Was Pauline employed?

Hon. David Kinyua Wangui: She was employed.

The Advocate for the Governor (Mr. Muchigi): So the question I want to ask you as the body that was approached by this Board, what action did you take to prevent her employment if she was not qualified for the position?

Hon. David Kinyua Wangui: Article 179 of the Constitution confers the Chief Executive Officer authority to the Governor, meaning she is in charge of both administrative and executive powers in the County, being the person who appoints the members of the County Public Service Board and bring them to the Assembly for approval, therefore, she remains their boss.

The Advocate for the Governor (Mr. Muchigi): I want you to read the last paragraph of the letter that was written to you. What does it say? Please, read it to the Senate.

The Advocate for the Governor (Mr. Muchigi): It says-
“If you do not act fast to stop this by invoking your supervisory role, the Board will be left with no choice but to issue the said Pauline Kamau with an appointment letter.”

The Advocate for the Governor (Mr. Muchigi): Did you do anything as a Committee, that is what I am asking?

The Chairperson (Sen. Malalah): Counsel, use your microphone.

The Advocate for the Governor (Mr. Muchigi): Is there any evidence in your Motion of any action you took?

Hon. David Kinyua Wangui: I want to confirm that report can be availed that the Committee acted on that letter.

The Advocate for the Governor (Mr. Muchigi): I have asked you; in your Motion is there evidence of any action? Thank you for confirming that there is no such evidence.

I want you to look at the file of Velocity, I think. I want you to look at the certificate of incorporation that appears at the top. What is the name appearing for that company?

Hon. David Kinyua Wangui: It is appearing as Velocity.

The Advocate for the Governor (Mr. Muchigi): So when you say Velocity and in your evidence you kept on saying that you were given letters by the County, some saying Velocity, others saying Velocity, can you show us in your Motion evidence of those letters. Do you have those letters in your Motion?

Hon. David Kinyua Wangui: Through the Chair, I want to produce evidence in line---

The Advocate for the Governor (Mr. Muchigi): I am asking from your Motion, do you have any evidence to support the statement you said on oath that you have received letters from the County Government some calling this entity as velocity, others calling it as Velocity. Do you have that evidence? That is what I am asking you.

Hon. David Kinyua Wangui: In the documents provided.

The Advocate for the Governor (Mr. Muchigi): In the Motion you filed, do you have it?

Hon. David Kinyua Wangui: In the Report, we filed the document provided for us. You can realize that there are two; Velocti and the other one for Velocity. I would want to go ahead and look in this document that was provided by the Governor--- There is one contract for Velocti and the other one for Velocity.

The Advocate for the Governor (Mr. Muchigi): I am focusing on your Motion.

Hon. David Kinyua Wangui: We cannot run away from the facts.

The Chairperson (Sen. Malalah): We shall allow him to answer you comprehensively. You also need to give him time to answer you comprehensively on the questions you are raising, Counsel.

Hon. MCA, you are allowed to make that presentation, but consider that you are eating into Gov. Waiguru's time. So, you would rather hasten your response.

The Advocate for the Governor (Mr. Muchigi): Please, refer the Committee to the particular contract that is signed and has those names that you are talking about. The other question I wanted to ask---

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I am already in one of the documents that they have provided. One is the contract for provision of consultancy services for design. If you look at the second page, this agreement made on 4th May, 2018 between the County Government of Kirinyaga P.O. Box Kutus, located at the county headquarters in Kutus, herein called the employer. On the one hand is the Velocity Partners Limited. On proceeding, you realize in the same document provided by counsel that the signature and the stamp is for Velocti.

Why would I not say that there is confusion in such a scenario?

The Advocate for the Governor (Mr. Muchigi): I want you to go to the execution page of that agreement. What name appears on the execution page for that company?

Hon. David Kinyua Wangui: It is Velocti Partners.

The Advocate for the Governor (Mr. Muchigi): What stamp have they used for that company?

Hon. David Kinyua Wangui: It is Velocti Partners?

The Advocate for the Governor (Mr. Muchigi): When you go to the cover of that agreement, what name appears?

Hon. David Kinyua Wangui: It is Velocti Partners.

The Advocate for the Governor (Mr. Muchigi): Thank you very much.

Hon. David Kinyua Wangui: Mr. Chairman, Sir, it needs to be noted that there is a point the counsel is running away from. As I said, there is confusion in the documents. One agreement is indicated 'Velocity' and the other agreement indicates 'Velocti.'

The Chairperson (Sen. Malalah): Well noted. You may proceed.

The Advocate for the Governor (Mr. Muchigi): You talked about the Governor taking imprest and allowance, and not travelling.

Hon. David Kinyua Wangui: True.

The Advocate for the Governor (Mr. Muchigi): Do you have any evidence?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, with your permission, I would like to assist my colleague, so that we can move quickly. In your Motion, you allege that Kshs50 million was paid against a contract of KShs27 million. However, Kshs30 million was paid against a contract of Kshs27 million.

The Advocate for the Governor (Mr. Muchigi): Your Motion alleges that the amount of money was paid by the County Government to Velocity Partners.

Hon. David Kinyua Wangui: (Hon. Kinyua): True.

The Advocate for the Governor (Mr. Waiganjo): How much does it say was paid?

Hon. David Kinyua Wangui: In my Motion, I Indicate Kshs50 million.

The Advocate for the Governor (Mr. Waiganjo): What do you indicate the contact was for?

Hon. David Kinyua Wangui: As I have put it previously, there is Velocti and Velocity; there were two contracts. If you read those documents keenly, you will realize that one was invitation of consultancy services and the other tender was provision of the service itself.

The Advocate for the Governor (Mr. Waiganjo): So, you acknowledge that there are two contracts?

Hon. David Kinyua Wangui: There are two contracts.

The Advocate for the Governor (Mr. Waiganjo): It is not the one for Kshs27 million given to the same company. There are two contracts paid for provision of separate services to the same company---

Hon. David Kinyua Wangui: Point.

The Advocate for the Governor (Mr. Waiganjo): But not one company which was overpaid?

Hon. David Kinyua Wangui: It is one company paid for two contracts.

The Advocate for the Governor (Mr. Waiganjo): So, there is no overpayment because the two contracts--- What are the amounts of both contracts in total?

Hon. David Kinyua Wangui: Previously, I alluded to a report from the Public Procurement Regulatory Authority (PPRA). If you can take your time to study that Report, this is one of the tenders that PPRA questioned in the manner in which it was prosecuted and paid.

From the information, the tender was meant for four Level 4 facilities we have in Kirinyaga, but it was narrowed down to two facilities. The actual sum was Kshs27 million for one of the tenders. We narrow down to two facilities. At the end of the day, the total amount is Kshs27 million that was paid for two facilities, but the contract was for four facilities.

The Advocate for the Governor (Mr. Waiganjo): *Bwana* MCA, you know you are before the equivalent of a court of law, and there are consequences for telling things that are untrue. Hon. David Kinyua, you acknowledge even in your statement that you wrote and later, you talk about two separate contracts.

Hon. David Kinyua Wangui: I actually talk of two separate contracts.

The Advocate for the Governor (Mr. Waiganjo): Do you now wish to withdraw your allegation in your motion that there was only one contract?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, withdrawal in the name of the company that was doing the work is one that was paid KShs50 million? The withdrawal is that it is not one contract. It is two contracts.

The Advocate for the Governor (Mr. Waiganjo): Thank you.

The Advocate for the Governor (Mr. Muchigi): The next question relates to the travel allowances. You say they the Governor appropriated for “her personal benefit” - those are your words- KShs10, 634, 614 and did not travel.

In your Motion, do you have any evidence--- not my documents, in the documents you lodged before the Senate as the complainant, do you have any documents to support your allegation that she did not travel?

Hon. David Kinyua Wangui: The document provided is that she was paid but witness can be produced in form of documents or individual.

The Advocate for the Governor (Mr. Muchigi): Do you have any witness in a statement that has been produced who has been able to confirm authoritatively that she did not travel?

Hon. David Kinyua Wangui: I confirm that one of the witnesses who will appear before this Committee will confirm the same.

The Advocate for the Governor (Mr. Muchigi): Can you indicate from the witness statements that have been filed the witness who has talked about the issue of travel? If you do not know, just say so.

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I have not looked at the statement of the other witnesses but one will attest to the same.

The Advocate for the Governor (Mr. Muchigi): The other question is on the issue of KIDA. Who passed the legislation that led to the creation of KIDA?

Hon. David Kinyua Wangui: The legislative authority of the county is on Kirinyaga County Assembly and we legislated.

The Advocate for the Governor (Mr. Muchigi): You are the one who passed that legislation?

Hon. David Kinyua Wangui: Yes.

The Advocate for the Governor (Mr. Muchigi): In that legislation did you--- On Kirinyaga Investment Development Authority (KIDA), did legislation you passed indicate that these Board members had to be paid some salaries?

Hon. David Kinyua Wangui: Of course, when you engage an officer, you have to pay him or her.

The Advocate for the Governor (Mr. Muchigi): Does the Constitution prohibit servitude or forced labour where people work and are not paid?

Hon. David Kinyua Wangui: It prohibits.

The Advocate for the Governor (Mr. Muchigi): Having passed that legislation, and also complying with the Constitution, was it proper for people to assume public office and not be paid?

Hon. David Kinyua Wangui: It is proper. However, I want state this---

The Advocate for the Governor (Mr. Muchigi): Is it proper or improper?

Hon. David Kinyua Wangui: It is proper to have officer employed but there must be a budgetary provision for their salary. Two, we very well there is the Salaries and Remuneration Commission (SRC) which must provide for the guidelines on the salaries and salary scale for state officers and public officers.

The Advocate for the Governor (Mr. Muchigi): I will ask your advocate to give you the file for Kirinyaga Investment Development Authority (KIDA). Are you aware that there

is a letter that was issued by the Salaries and Remuneration Commission (SRC) giving guidelines for board members?

Hon. David Kinyua Wangui: Yes, SRC gave guidelines for board members. Not for staff of the board.

The Advocate for the Governor (Mr. Muchigi): Is the complaint in your Motion not about board members?

Hon. David Kinyua Wangui: The complaint is about the composition of the board itself. You must remember that a board cannot work in isolation. It must have staff members.

The Advocate for the Governor (Mr. Muchigi): I would like you to read your Motion because I do not want us to waste the time of this Committee playing games. I would like to refer you to page no.14 of your Motion.

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I seek your protection from counsel. His statement is demeaning and arrogant. I am not the wasting the time of this Committee.

The Advocate for the Governor (Mr. Muchigi): Focus on the question that I have asked you.

Looking at Page No. 14, on Paragraph four of your Motion, have you distinguished between board members and staff?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I talked about the members of the board.

The Advocate for the Governor (Mr. Muchigi): Thank you very much.

Considering that the SRC had already issued guidelines on that specific issue in 2014, was there any justification for including this complaint in your Motion?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I would like to confirm that my intention was to cover the whole board and not just the board members. The board cannot work on its own. It must have staff members.

The Advocate for the Governor (Mr. Muchigi): At the time you launched your complaint, were you aware that the SRC had already given guidelines for the board members?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, the evidence I gave in line with this Motion is in form of a letter from the County Public Service Board members or the board protesting against the inclusion of the staff of the board in the payroll against the advisory by the SRC which has not been sought up to date.

The Advocate for the Governor (Mr. Muchigi): Mr. Chairman, Sir, the documents from the SRC are in your records. I do not think we need to rehearse the point.

I would like us to move to the travel imprests which are in the impeachment Motion. Mr. Kinyua, do you have copies of the imprests because I would like to ask you specific questions?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I have copies.

The Advocate for the Governor (Mr. Muchigi): Mr. Chairman, Sir, there is a payment he alleges was made on 30th June 2019 amounting to Kshs2,600,297. Do you have any evidence whether by way of deposits in the Governor's bank account or through the Integrated Financial Management Information System (IFMIS) system in your records that the money was paid?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I would like to confirm that the money was paid to the Governor. The evidence will be produced by one of the witnesses that the County Assembly of Kirinyaga sought the Senate to invite her before this Committee. We have been seeking this information but the County Executive has failed to produce it because the money was paid as imprest to one of the officers in the Governor's office and the said officer forwarded the money to the Governor.

The Advocate for the Governor (Mr. Muchigi): Mr. Chairman, Sir, does Mr. Kinyua mean that at the point at which he made this statement, he had no evidence and that he will get the evidence from the said officer?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, the evidence will be produced by the officer who will appear before this Committee.

The Advocate for the Governor (Mr. Muchigi): My question is; did you have evidence? If you have the evidence, produce it. Show us the IFMIS extract with that figure. I can give your counsel two hours to locate the evidence.

Mr. Chairman, Sir, there is an allegation made over the payment of Kshs943,700 and another payment made on 25th February, 2020 for KShs1,125,440. Can you provide the evidence because you even indicated a bank account in your Motion where the money was paid? Kindly, give us the evidence you used in making that allegation.

Hon. David Kinyua Wangui: Mr. Chairman, Sir, evidence of the same will be given by one of the witnesses that will appear before this Committee. The said witness is one of the witnesses who accompanied the Governor and they alighted at the Airport.

The Advocate for the Governor (Mr. Muchigi): Finally, are you aware that payment for the travel of June 2018 to Italy Coffee and Rice Harvesters, the Assembly Majority Leader was also in Italy and photographed with the Governor?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I am not aware. However, I would like to confirm that the Assembly Majority Leader was not paid any money by the County Assembly to accompany the Governor

The Advocate for the Governor (Mr. Muchigi): That is not what I am asking. You said that the Governor did not travel. You have just said that you are not aware even though there are photos to the same regards and they were with your colleague in Italy. Are you aware that the Assembly Majority Leader was with the Governor for that trip?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I would like to confirm that the Assembly Majority Leader is with us so he can confirm whether he was there or not?

The Advocate for the Governor (Mr. Muchigi): Do you have the receipts of payments that you used to make this Motion to say that the Governor was paid but did not travel?

The Advocate for the County Assembly (Mr. Njiru): Mr. Chairman, Sir, we asked the Senate to call the said witnesses because of the difficulty we had in procuring these documents that are in your custody. The Senate has summoned the Chief Officer of Finance. All these documents are always in the custody of the Governor's Office.

The Chairperson (Sen. Malalah): Counsel, you should be winding up because your time is up. You have one minute to finish up.

The Advocate for the Governor (Mr. Muchigi): Mr. Kinyua, are you aware that in the two trips that you claim the Governor did not travel, she has the responsibility of returning the money back to the county?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I am aware.

The Advocate for the Governor (Mr. Muchigi): Are you aware that the money was repaid?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, the money may have been repaid but the question is when? How can you accrue personal benefit in terms of foreign travel allowances three times without making reimbursement?

The Advocate for the Governor (Mr. Muchigi): Mr. Kinyua, do you understand how imprest works?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I know how imprest works.

The Advocate for the Governor (Mr. Muchigi): So, you know that you can collect money but if you do not use it, you reimburse the money.

Hon. David Kinyua Wangui: Mr. Chairman, Sir, the reimbursement should be done within a stipulated timeline.

The Advocate for the Governor (Mr. Muchigi): From where you sit, the Governor has never refunded the money?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, the Governor made a reimbursement after this Motion was tabled. In fact, in one of the receipt that is provided, reimbursement was done on 17th of this Month. That can only mean that if there was no such a Motion, the Governor's intention was to defraud the residents of Kirinyaga County.

The Advocate for the Governor (Mr. Waiganjo): Mr. Kinyua, do you recognize that those trips were cancelled in January and February respectively and therefore, a reimbursement in April cannot be an intention to defraud Kirinyaga?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, there is a stipulated period in which you must account for imprest and do reimbursement.

The Chairperson (Sen. Malalah): Thank you. I will allow the Counsel representing the County Assembly to do re-examination. I had initially allocated him five minutes but I will give him a further 15 minutes. I will be flexible with him the same way I have been with the counsel representing Gov. Waiguru. I would like to be as fair as possible so that we get a just ruling for this matter.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, before my colleague starts, I would like to give our apologies for running the time that you allocated us for the cross examination of this important witness. However, there is a clarification that needs to come from the horse's mouth.

I can conclude within 60 seconds. Mr. Chairman, Sir, I seek your indulgence to just put that point to this witness.

The Advocate for the County Assembly (Mr. Njiru): Mr. Chairman, Sir, we have a serious objection to the position my senior is taking because they have actually yielded the witness for re-examination. Procedurally, even from the law of evidence - my senior bears me witness having practiced law many years than I have - once the witness has been yielded for re-examination, you cannot reopen cross-examination. He is trying to open a cross-examination. The witness has been yielded to us.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, I do not know what my learned friend is afraid of. He was the one who put it on record in the morning that we were truth-seeking. My little point is very important for this Committee's desire to find the truth.

The Chairperson (Sen. Malalah): I have ceded a lot of ground for the counsel representing Governor Waiguru. I would not grant you that opportunity. You will, maybe use other available opportunity for your team to raise the issue. As for now, your request has been denied.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, that is well noted. Thank you.

The Advocate for the County Assembly (Mr. Njiru): Mr. Kinyua, kindly go with me to the County Government Act Section 30, the one that requires the Governor to issue an annual address. Are you there with me?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I am there.

The Advocate for the County Assembly (Mr. Njiru): Kindly, read it out.

Hon. David Kinyua Wangui: Mr. Chairman, Sir, on the functions and responsibility of the county governor it says -

“(2) Subject to the Constitution, the governor shall-
(k) deliver annual state of the county address containing such matters as maybe specified in county legislation;”

The Advocate for the County Assembly (Mr. Njiru): So, it is your evidence that the procedure for where, how and when the governor must address the County Assembly is not domiciled within that Act but in a county legislation? Is that correct?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I want to confirm the same. Like I did put it across in my previous submission is the fact that borrowing from the history of all the parliaments, the tradition is that, the Governor and even the President addresses the legislatures in the precincts of the assemblies. In this case, the allusion that the address was done elsewhere, I am not informed. A communication is done to the Members who participate.

The Advocate for the County Assembly (Mr. Njiru): Hon. Kinyua, so you are referring to our customs of the Westminster traditions. Is that correct?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, actually that is what I am ---

The Advocate for the County Assembly (Mr. Njiru): I am referring you to that Section K where the provisions of that law refer to another county legislation. Is that correct?

Hon. David Kinyua Wangui: Thank you, Mr. Chairman, Sir. Yes, counsel.

The Advocate for the County Assembly (Mr. Njiru): To that effect, the County Assembly has legislated its Standing Orders. Is that correct?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, true.

The Advocate for the County Assembly (Mr. Njiru): I want to refer you to a particular Standing Order for your reference and reading.

Hon. David Kinyua Wangui: Mr. Chairman, Sir, in Kirinyaga County Assembly Standing Order No. 18-

“The Governor shall address a special sitting of a county assembly once every year and may address the county assembly at any other time.”

The Advocate for the County Assembly (Mr. Njiru): So, there is specific provision and legislation from the County Assembly of Kirinyaga to the effect that she shall?

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, I would like to raise a preliminary objection on that issue. It is very clear even to the House that Standing Orders are not legislations. Standing Orders relate to the conduct of the House and they regulate Members of a House. They cannot regulate the Governor.

The Chairperson (Sen. Malalah): I think that is well received but we shall listen to the counsel as he re-examines and then it will be upon the Committee to make that determination.

The Advocate for the County Assembly (Mr. Njiru): Mr. Chairman, Sir, maybe to guide the Committee as and when they sit, the Standing Orders are domiciled in the Constitution. The County Assembly and legislative assemblies like this one and the National Assembly have been given the mandate to legislate on the issues of their operation in the Standing Orders. So, it is domiciled in the Constitution and we can argue that until the cows come home.

I am asking you, Hon. Kinyua, is that the county legislation that is being referred to in that particular provision?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, yes.

The Advocate for the County Assembly (Mr. Njiru): Did the governor comply with that provision?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I confirm that the Governor did not comply and not in any time within the period of the two years has he complied with the provisions of that Standing Order.

The Advocate for the County Assembly (Mr. Njiru): Is it ridiculous to allege that a public address was granted or issued by the Governor from hospital?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, it is unheard of. Like I have said, even the President of the Republic of Kenya addresses the National Assembly and the Senate in the Plenary.

The Advocate for the County Assembly (Mr. Njiru): You were put to task to explain whether there was public participation. Is that correct?

Hon. David Kinyua Wangui: Thank you, Mr. Chairman, Sir. Yes, counsel.

The Advocate for the County Assembly (Mr. Njiru): You answered in affirmative that public participation was done and advertisement was done. Is that correct?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, that is true and the documents are availed to confirm that we advertised in two newspapers of national circulation requiring the residents of Kirinyaga County to give their input and participate in this exercise, to which written memoranda were submitted to the County Assembly and through the County Assembly's email. To go further, a questionnaire was done that was circulated to our people and bundles of responses are with us in affirmative.

The Advocate for the County Assembly (Mr. Njiru): Mr. Witness, is the question of public participation domiciled in your Notice of Motion for the removal of the Governor. Is it a question for determination? Yes or no? Is it an issue for interrogation by this Committee?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, it is not registered anywhere in this.

The Advocate for the County Assembly (Mr. Njiru): It is not an issue. You were put to task by counsel in respect to the question of the employment of one Ms. Pauline Wairimu. Is that so?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, yes.

The Advocate for the County Assembly (Mr. Njiru): Do you have a witness to come and testify to that effect?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, yes. We have a witness who attests to that effect that, the recruitment was not worth since there was a substantive director of administration.

The Advocate for the County Assembly (Mr. Njiru): What is the designate of that witness that we are calling?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, he is the Chairperson of the County Public Service Board (CPSB).

The Advocate for the County Assembly (Mr. Njiru): I now take you to "Velocity" and "Velocly". Read with me. There are two tenders, Tender 047 and 046. I will begin with Tender No. 046. Witness, kindly lead this Senate Committee as to the distinction between Velocly and Velocity. Is it one and the same thing?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, looking at the documents, it is actually a reference of one and the same thing.

The Advocate for the County Assembly (Mr. Njiru): It is your statement that they are two companies existing by those acronyms that is “Velocity” and “Velocity”. Is that correct?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I confirm.

The Advocate for County Assembly (Mr. Njiru): I have shown the contract that was signed in this tender. Who executed that tender? Who executed the agreement? Who is reflected as the party executing the agreement on the phase of the agreement? Is it Velocity or Velocity?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, in the phase of the agreement, it is actually “Velocity”.

The Advocate for the County Assembly (Mr. Njiru): From the documents submitted by the Governor, who bided for this tender? Is it Velocity or Velocity? Who tendered?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, it is actually Velocity.

The Advocate for the County Assembly (Mr. Njiru): So, a fictitious company was introduced in the midway. Is that correct?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I confirm.

The Advocate for the County Assembly (Mr. Njiru): Finally, on this issue, who was the chairperson of the tender committee? Was it Ms. Pauline Kamau or Ms. Gichira?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I confirm that in this tender, the chairperson was one, Ms. Winnie Gichira.

The Advocate for the County Assembly (Mr. Njiru): Do you want to confirm that Ms. Winnie Gichira is an employee as an advisor in the Office of the Governor?

Hon. David Kinyua Wangui: Mr. Chairman, Sir, with the documents availed, she is actually a partisan staff who works as an Information Communication Technology (ICT) officer to the Office of the Governor. Well informed that such partisan staffs are not supposed to participate in any executive or administrative affairs of the county government.

The Advocate for the County Assembly (Mr. Njiru): Witness, move with me to the next file or the tender 047. Correct?

Hon. David Kinyua Wangui: Yes.

The Advocate for the County Assembly (Mr. Njiru): You agree with us that the same confusion and the same two companies participated in that tender, Correct?

Hon. David Kinyua Wangui: Through the Chairperson, I confirm.

The Advocate for the County Assembly (Mr. Njiru): Do you also confirm that the same person, Ms. Gichira is also the Chairperson of the Devolution Committee?

Hon. David Kinyua Wangui: I confirm that the Governor's personal ICT advisor chaired the evaluation and tender Committee.

The Advocate for the County Assembly (Mr. Njiru): You were put to task to explain when the company was incorporated, yes?

Hon. David Kinyua Wangui: I was.

The Advocate for the County Assembly (Mr. Njiru): When was the company incorporated?

Hon. David Kinyua Wangui: It was incorporated in 2017.

The Advocate for the County Assembly (Mr. Njiru): Was this an open tender?

Hon. David Kinyua Wangui: It was an open tender.

The Advocate for the County Assembly (Mr. Njiru): Would you recap the requirements for participation of a company if the tender is an open tender? Would you recap for the Senate?

Hon. David Kinyua Wangui: I would recap and confirm that the company must have been in operation for a minimum of three (3) years. Secondly, it must provide audited accounts for the last three (3) Years. In this case, it is not the scenario. It was registered in 2017, and participated in the tender in 2018.

The Advocate for the County Assembly (Mr. Njiru): Witness, I want to take you to the technical evaluation report by the said evaluation Committee in tender no.046.

I want to refer you to annexure 12(i) in the Governor's documents. There is a document titled technical evaluation. There is a column of description and the column of the math. I am referring to the column of description.

In that column of experience, what is indicate there?

Hon. David Kinyua Wangui: It is indicated that the company has an experience of five (5) years.

The Advocate for the County Assembly (Mr. Njiru): In the column of audited reports, did the company pass that test?

Hon. David Kinyua Wangui: It is indicated as audited for the last three (3) years. From the documents, it passed.

The Advocate for the County Assembly (Mr. Njiru): Move with me to the next page where I have underlined where we have the reasons. Kindly read out the statement.

Hon. David Kinyua Wangui: The following are some of the key explanations why the evaluated bidders were not a maximum score of 100 per cent at the detailed technical evaluation stage.

The Advocate for the County Assembly (Mr. Njiru): Why the bidders were not awarded 100 per cent. Therefore, they were awarded but not a 100 per cent. Yes?

Hon. David Kinyua Wangui: Yes.

The Advocate for the County Assembly (Mr. Njiru): Read for those three companies and read the remarks.

Hon. David Kinyua Wangui: Company or bidder no.1, **M/s. Parity** Performance Company limited submitted audited accounts for only one year. Work plans provided does not clearly define the timelines, particular understanding of the scope and the terms of reference (TORs) and no clear documentation.

Company no. 2 is M/s. Volar systems and solutions limited. No Master's degree for the team lead, relevant experience of less than 10 years, no proof of qualification and competence of key staff for the assignment.

The Advocate for the County Assembly (Mr. Njiru): What remark is entered for Velocity Partners Limited?

Hon. David Kinyua Wangui: For Velocity Partners Limited, scope and specifications will be fully understood during pilot stage or feasibility study phase.

The Advocate for the County Assembly (Mr. Njiru): The reason why the company did not garner 100 marks was given was that scope and specification will be fully understood during the pilot stage or feasibility stage?

Hon. David Kinyua Wangui: Yes.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Is it procedurally in view of procurement?

Hon. David Kinyua Wangui: I want to confirm that it is not procedural because you must provide the proof of evidence that you have the expertise and the experience to perform such a tender.

The Advocate for the County Assembly (Mr. Njiru): Is that why you are saying that the tender was skewed?

Hon. David Kinyua Wangui: It was skewed in favor of a company.

The Advocate for the County Assembly (Mr. Njiru): I want to take you to the question of the Kirinyaga Investment Development Authority (KIDA).

It is your testimony that there exists a staff and a board. Correct?

Hon. David Kinyua Wangui: After it was passed by the Kirinyaga County Assembly, there exists board members and staffs of the board.

The Advocate for the County Assembly (Mr. Njiru): Has the County Assembly passed any salary issues regarding to the board members and the staffs?

Hon. David Kinyua Wangui: It is not the responsibility of the County Assembly to pass matters of salary. It is a responsibility of the Salaries and Remuneration Commission (SRC).

The Advocate for the County Assembly (Mr. Njiru): Was that advice communicated to any organ of the county government, be it the county executive or the county assembly?

Hon. David Kinyua Wangui: What we have is information or a letter from the County Public Service Board cautioning the inclusion of the staff of the staff of the board in the payroll against SRC.

The Advocate for the County Assembly (Mr. Njiru): How long has that board been in existence? When was the board incorporated? When were the members recruited?

If you do not know you can say you do not know. It is okay. It is also an answer.

Hon. David Kinyua Wangui: I am not sure.

The Advocate for the County Assembly (Mr. Njiru): We go to the last limb of the re-examination. I refer the Members to a file titled travel documents forwarded to us by the governor.

You have been put to task to explain whether you have the evidence or not in regards to this imprest.

Hon. David Kinyua Wangui: Yes, I was.

The Advocate for the County Assembly (Mr. Njiru): Did you make any attempt to procure this information before you filed the information from the relevant organ.

Hon. David Kinyua Wangui: Yes, we did letters to the chief officer in charge of finance

In fact, that is the reason as to why we requested the Senate to summon the chief officer to give the information relation to foreign travel.

The Advocate for the County Assembly (Mr. Njiru): When you made that requisition from that officer, was it availed to you?

Hon. David Kinyua Wangui: The information was not availed to the County Assembly of Kirinyaga.

The Advocate for the County Assembly (Mr. Njiru): You said that you have witnesses to testify to the effect that Governor went off board the plane when it was just about to take off her trip to China?

Hon. David Kinyua Wangui: True. Witnesses will be there. Some of them are former staffers in the office of the Governor who had travelled with her.

The Advocate for the County Assembly (Mr. Njiru): You made an application in the morning before this Senate to be provided with clear copies of the ordinary or regular passport and diplomatic passport.

Hon. David Kinyua Wangui: Yes. I made an application because we had within our information that the Governor holds both diplomatic passport and the ordinary passport.

It is also not clear which passport she uses to travel in the foreign travels.

The Advocate for the County Assembly (Mr. Njiru): You were to use it during this session. Correct?

Hon. David Kinyua Wangui: True.

The Advocate for the County Assembly (Mr. Njiru): You were put to task to explain whether or not a refund was done.

Hon. David Kinyua Wangui: Yes.

The Advocate for the County Assembly (Mr. Njiru): Did you make an application in the morning to have a receipt provided? Was it the receipt dated 17th April 2020?

Hon. David Kinyua Wangui: True.

The Advocate for the County Assembly (Mr. Njiru): That receipt is domiciled in the Governor's documents as an indication of refund of the imprest?

Hon. David Kinyua Wangui: Yes, it is domiciled. True.

The Advocate for the County Assembly (Mr. Njiru): When were these travels done? Between which month and which month so that we can be able to compute time.

Hon. David Kinyua Wangui: The travels were done between 18th June 2018 and 18th February 2019.

The Advocate for the County Assembly (Mr. Njiru): Assuming that these receipts is indicative of one of those trips and the imprest refund, is that consistent with the provisions of the law relating to the surrender and return of the monies?

Hon. David Kinyua Wangui: It is against and the imprest warrant provides for the timelines.

The Advocate for the County Assembly (Mr. Njiru): Is that why you are saying that the Governor abuses her office?

Hon. David Kinyua Wangui: That is a confirmation that the Governor abuses her office to confer herself extra benefits that are irregular and illegal.

The Advocate for the County Assembly (Mr. Njiru): This is indicative of that personal benefit, correct?

Hon. David Kinyua Wangui: True.

The Advocate for the County Assembly (Mr. Njiru): Was she surcharged for withholding this money by the chief officer of the county?

Hon. David Kinyua Wangui: Within my knowledge, the chief officer did not surcharge the governor for such benefits.

The Advocate for the County Assembly (Mr. Njiru): Did the governor provide any surrender documents in her evidence?

Hon. David Kinyua Wangui: Not at all.

The Advocate for the County Assembly (Mr. Njiru): Is that an admission of guilt?

Hon. David Kinyua Wangui: It actually admits that she is guilty of the same.

The Advocate for the County Assembly (Mr. Njiru): When was the money refunded?

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, if I may---

The Chairperson (Sen. Malalah): Yes, proceed.

The Advocate for the Governor (Mr. Nyamodi): Some of the conclusions that my learned colleague is asking the witness to make, with tremendous respect to him, go beyond the scope of re-examination. They are fresh allegations being made. We have sat patiently and he seems to be taking liberties that do not belong to re-examination. Let him constrain himself.

The Chairperson (Sen. Malalah): Mr. Njiru, kindly.

The Advocate for the County Assembly (Mr. Njiru): I am well guided, Mr. Chairman Sir. I am actually winding up.

Kindly confirm to us that this money was paid after the Motion was domiciled within the Assembly?

Hon. David Kinyua Wangui: Through the Chair, true to your words, Counsel, that receipt was made on 17th April. I am very well informed that the Motion was tabled in the Assembly on 31st March.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): So, this is an admission of your allegation, correct?

Hon. David Kinyua Wangui: An admission of my allegation.

The Advocate for the County Assembly (Mr. Ndegwa Njiru): Mr. Chairman, Sir, that marks the end of my re-examination in respect to this witness. If time allows us, we will call the next witness.

The Chairperson (Sen. Malalah): Thank you. I think that is detailed enough. Just before we call in the next witness, hon. members, ladies and gentlemen, in the spirit of power sharing, and in recognizing women in leadership, you will allow me to invite my Vice-Chairperson to continue chairing this session as I participate as a member. I call upon Sen. Halake to continue chairing the meeting. Considering the Ministry of Health guidelines and the parliamentary health protocols, I will also call upon the Sergeant-at-Arms to come with speed and sanitize our seats so that we may facilitate the exchange.

Sen. Halake, *karibu sana*.

[The Chairperson (Sen. Malalah) left the Chair]

[The Vice-Chairperson (Sen. Halake) in the Chair]

The Vice-Chairperson (Sen. Halake): I call the meeting to order. I think we have quorum. We will give the Chairman a little time to--- but we will continue.

I am not a former Member of County Assembly (MCA), so I will not be very lenient like Sen. Malalah, but I have never been a governor either, so I am not going to be lenient to any side. Given that not much time is left, we will move very quickly.

With the remaining time, I will allow hon. members to seek clarification from Hon. Kinyua so that we close that witness and move on to the next one. Is that acceptable Counsel?

Counsel: Yes!

The Vice-Chairperson (Sen. Halake): Good. I will now call upon Sen. Kwamboka, Sen. Pareno and Sen. M. Kajwang' then we will take the next round. I can see you, Sen. Mwangi. Let us do the three, and then you will be the first one in the next round.

Sen, Kwamboka, please proceed.

Sen. Kwamboka: Thank you, Madam Vice-Chairperson. I am a former Member of Nairobi City County Assembly and I am now a Senator. In the Governor's opening remarks, she said that the MCA's spent the night before impeachment in the County Assembly Chambers. We have the COVID-19 pandemic and you never observed the guidelines set by the Ministry of Health. Can you tell us the logic behind your actions?

Sen. Pareno: On a point of order, Madam Vice-Chairperson.

The Vice-Chairperson (Sen. Halake): What is your point of order?

Sen. Pareno: Madam Vice-Chairperson, is it possible for him to answer the questions after the first round?

The Vice-Chairperson (Sen. Halake): That is what I was going to say. *Mheshimiwa*, allow them to ask the questions then you will answer them in one go.

Sen. Pareno: Thank you, Madam Vice-Chairperson. I heard him say at one point that he got confused about Velocity and Velocity and that he was not sure if it is one and the same. During the cross-examination, he said that it is one and the same thing but he later on said that they were two different things during re-examination. Can he tell us what he knows? Is it one and the same thing? Did he do any investigation to find out if it is the same company or two different companies?

He has indicated that he requested for documents for Velocity or Velocity and they kept giving him different documents. He requested for those documents and they were given to him. I can also see a bundle of documents here such as the tender documents. We also have a very long list of tender documents and a lot of documents from the executive. Why is he saying that the executive was not supplying documents yet he has told us that they were able to supply the documents at one point? One of the allegations is that they were never given information that they requested for yet they have a lot of documents that they were given that they have submitted to us.

Finally, he has indicated that they had indirect public participation and that they received memos and emails. I have not seen a single item that he has identified. Can he identify those memos or emails in his Motion to show that public participation was actually done?

Sen. M. Kajwang’: Madam Vice-Chairperson, I have about two questions to the Hon. Member. They are so precise that I wish you would amend your ruling for him to just deal with them directly.

In the Motion and the charges, he has noted that the tender for design, development, installation and commissioning of the hospital integrated management information system had been completed by the previous County Government. Is there anywhere in this pack where we will get evidence to that fact? Is it there in the pack?

Hon. David Kinyua Wangui: Madam Vice-Chairperson---

The Vice-Chairperson (Sen. Halake): Sen. M. Kajwang’, I think that you are the last person in the first round. Just ask all your questions. We will be taking questions from three Senators in each round.

Sen. M. Kajwang’: That is okay, Madam Vice-Chairperson. I will abide by your ruling though it would have been easier for the Hon. Member to respond directly.

Can he give us the evidence that the system was implemented by the previous administration?

He has asserted that no work was done. Can he also provide us with the evidence for us to ascertain that no work was done?

My third question is on imprest management. I want to draw his attention on the Public Finance Management (County Government) Regulations, 2015, and I will specifically point at regulation No. 93(6) which talks of imprest management. He might not have had the benefit of looking at it but it says that

‘In the event of the imprest holder failing to account for or surrender the imprest on the due date, the Accounting Officer shall take immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank Rate.’

Is there evidence that the accounting officer attempted to recover the amount from the Governor and the Governor refused? He needs to share that with us to help us make a determination.

The Vice-Chairperson (Sen. Halake): *Mheshimiwa* Kinyua, please answer the questions raised by the three Senators then we will go for the next round.

Hon. David Kinyua Wangui: Thank you, Madam Vice-Chairperson. I will start with the question raised by Sen. Kwamboka. I am happy that she has admitted to having been once a Member of the County Assembly.

Madam Vice Chair, these are bundles of responses that can be availed. It is obvious that the advert is available. Some of these are available in our archives.

Sen. Pareno: Madam Vice Chair, I did not ask whether they are available. I asked whether it is part of the evidence that we have before the Senate.

The Vice-Chairperson (Sen. Halake): *Mheshimiwa*, can you just answer that directly please?

Hon. David Kinyua Wangui: I want to be precise on that. We have a procedure of doing a Motion for removal of somebody from office. First of all, you table the Motion then you invite members of the public. Therefore, the issue of public participation is not captured anywhere in the Motion. However, it is upon me as the Mover of the Motion to provide evidence that public participation was conducted by the County Assembly of Kirinyaga.

The Vice-Chairperson (Sen. Halake): Sen. Pareno, are you satisfied or do you have a follow up question before we go to another Senator?

Sen. Pareno: I do not know why he is not just telling us that either he has the evidence here or not. It is as simple as that.

Hon. David Kinyua Wangui: Madam Vice Chair, the advert is available. It is in the bundles that may be availed at a convenient time provided. May I proceed to the question from Senator for Homa Bay?

Regarding completion of this tender for installation of software for the hospital, I want to confirm that the next witness was the first CEC member for Health and Medical Services of Kirinyaga County who resigned out of frustration. The CEC will be better positioned to confirm that actually this system had been installed when she took office as the CEC for Health and Medical Services. That is the much I can say on that.

It is in connection with that that a system was in place. I asked myself a simple question. If the system was in place, which other system was being advertised for works to be done? That will be my simple explanation on the same.

Regarding matters imprest, Madam Vice Chair, I said it is a challenge to us when we write to the Chief Officers (COs) and the CECs to produce especially the cashbooks which bear most of these imprests that accrued and unaccounted for. Remember in the cashbook, vouchers are attached that confirm whether expenditure was incurred or not. Therefore, I request the Senator for Homa Bay to---

At the point where the CO for Finance will be invited to give witnesses, let him answer this question; whether he made an attempt to recover the imprest or not. In the event he made an attempt, why was it not executed or did the Governor approve or disapprove it? We can get better answers from that other witness.

The Vice-Chairperson (Sen. Halake): Sen. M. Kajwang', was that your question?

Sen. M. Kajwang': Yes, Madam Vice Chair. I think he has deferred some of the questions to the next witness. So, we can deal with it at that point.

The Vice-Chairperson (Sen. Halake): Okay, thank you very much.

We will take the next round of questions from the Senators. I know Sen. Mugo has sent in her question. Sen. Mugo, would you like to ask your question directly? Are you able to ask directly?

Sen. Mugo: I sent my question concerning the health sector and the connection between the Governor and the daily running of the health sector since there was the CEC for Health and Medical Services. That was one part but there was also the second part. Do you have the question there?

The Vice-Chairperson (Sen. Halake): Okay, I will ask it on your behalf. Let me first allow Sen. Mwangi to ask his question and then I will ask Sen. Mugo's question directly the way she texted it.

Sen. Mwangi: Madam Vice Chair, my questions are fairly simple but I want them answered. The first one is about the vehicles that were purchased by the County Government. We have Toyota Land Cruiser Prado. Did the County Assembly ultimately approve the purchase of this vehicle? There were some few problems between the County Government and the Assembly. We heard about that.

The other simple question is; there is a contract between the Ministry of Transport, Infrastructure, Housing and Urban Development and various motor vehicle companies. They have even given the prices such that whenever county governments want to buy vehicles, they can go directly to the Ministry of Transport, Infrastructure, Housing and Urban Development at the Industrial Area and they will be directed who sells the vehicles that they want and the cost. Is the County Assembly aware of this? If they are aware of this, why was it a big issue buying this one vehicle?

I am aware several county assemblies are buying various vehicles. For example, my county assembly bought 15 vehicles at a go and there was no much of questioning of how they were bought because they went straight to the Ministry of Transport, Infrastructure, Housing and Urban Development and they got the prices of the type of vehicles they wanted and the companies which can sell the vehicles. Was the County Assembly aware of this? If they were aware, why was it a big issue?

The Vice-Chairperson (Sen. Halake): Let us listen to Sen. Malalah who is the Chairman.

The Chairperson (Sen. Malalah): Thank you, Madam Vice Chair. Just on the same issue of purchase of motor vehicles, this is what I would like to ask hon. David Kinyua.

You are alive of the fact that supplementary budgets are passed by the county assembly sometimes as a way of ratifying expenditure by the executive. If so, do you have any knowledge in the Public Finance Management (PFM) Act that requires the County Assembly to pass the supplementary budget ratifying the expenditure of the executive? If so, it appears you knew about the misappropriation of monies to purchase the said motor vehicles and yet you went ahead to pass the supplementary budget. Does this mean that you also participated in a process that is not lawful?

The Vice-Chairperson (Sen. Halake): Thank you, Sen. Malalah. I will take one more and then we will do another round, so that the witness does not get overwhelmed with the questions. Proceed, Sen. Loiptip.

Sen. Loiptip: Thank you, Madam Vice Chair. Maybe Witness No.1, who is hon. David Kinyua, will make a clarification on this. Do you know a lady known as Pauline Kamau? What is her position in the current County Government structure?

In alignment to that, there is tender No.1 which is CGK/TR & PW/02/01/2017-2018. Tender No.2 is CGK/MW/02/039/2017-2018. Lastly is tender No. CGK/MOE/OT/036/2017-2018. My question is; is there any supporting document aligned to Pauline Njoroge or Governor Anne Waiguru?

The Vice-Chairperson (Sen. Halake): Thank you *Mheshimiwa*. Answer those three then we will take the next round of questions.

Hon. David Kinyua Wangui: Thank you, Madam Vice Chair. I want to start with the question by the Senator for Nyandurua, Sen. Mwangi. I will join his with the question asked by the Senator for Kakamega, Sen. Malalah because it is about the same thing.

It is the county assembly that passes the budget but it originates from the executive. The County Government of Kirinyaga submitted the budget to the County Assembly with the vote on purchase of vehicle as a vote under development. Therefore, at the point when the requisition for the purchase was being prosecuted, the Controller of Budget rejected the requisition on the ground that purchase of vehicle is recurrent in nature and not development. Therefore, the County Government of Kirinyaga was required to go back to Kirinyaga and initiate a supplementary budget in which the money will be relocated from development to recurrent. This was in the month of October.

The supplementary budget that was brought to Kirinyaga County Assembly was submitted in the month of March the following year. Other than expediting on the process of budgeting or waiting until the supplementary budget is finished by the County Assembly of Kirinyaga, the County Government of Kirinyaga went ahead to secure a facility with a bank. There comes or complain or our allegation; the fact that the Governor undermined the authority of the County Assembly. It is required by the County Government Act that any borrowing by the county government must be approved by the County Assembly, which did not happen.

In this bank guarantee or facility that was secured with KCB bank, the bank did not commit itself in signing or stamping the application. What security did they offer? This brings out the issue as to why this issue arose. There is a retention account for contractors. Once a contractor does certain work, there is a fee that is deducted from the payment and deposited in an account referred to as a retention contractors' account which is run by the county government. It reached a point when the contractors started seeking for payment. At that point, this money has already been committed as a security to a loan or a facility. The question is whether this is not an irregularity or illegality. Is this not undermining the authority of the County Assembly?

We are not questioning the fact that the county budgeted or the County Assembly budgeted for money for this vehicle and it was annulled or done. Then question is the process and undermining the authority of the County Assembly while well informed of the provisions of the County Government Act, 2012 and the Public Finance Management Act, 2012. I hope I have answered the area of the purchase of vehicle.

Mr. Chairman, Sir, I have handled questions asked by the Senator for Nyandarua and Kakamega, next is Lamu Senator on the question about Pauline.

Sen. Mwangi: Mr. Chairman, Sir, before the Lamu Senator, there is a question you did not answer about the contract between the Ministry and various motor vehicle companies. Normally the governors go to the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works at the Industrial area and are given the companies that are selling the vehicles. They go to them directly because there is an agreement, so they do not need to advertise for the purchase. I wanted you to answer that.

Hon. David Kinyua Wangui: Mr. Chairman, Sir, I do not dispute that. I am alive to the fact that there is such a framework agreement between the Government of Kenya and various providers of that service. In fact, in the year 2017/2018, the County Government of Kirinyaga purchased a fleet of vehicles via such an agreement of which we do not challenge because it was done within the provision of law and that framework.

I proceed to Senator for Lamu, he asked me about Pauline Kamau. You may not understand why the name Pauline Kamau is featuring in the whole of this motion. When Governor Waiguru assumed office in the month of September 2017, her personal designate, the person who was being paid by the County Government of Kirinyaga as the Personal Assistant (PA) is one Pauline Kamau. At some point, without any knowledge or information as to why the Governor decided that her PA would have to be promoted to a Director Administration.

However, we realise after Pauline is appointed Director Administration, aware that at the point of her appointment there was a substantive Director for Administration. I want to bring to the attention of this House why some of these county governments are having bloated wage bill is the fact that there is a lot duplication. You realise that when a governor comes to office and finds a director procurement, he redeploys that director and employ another. This means you have two offices doing the same function. In Kirinyaga, we have several scenarios; another director for budgeting was employed, there is a

director administration and there are other deployments. Once the director is deployed, you are not given the duties you are told to report in a certain Ministry and no duty is allocated to you. Majority of them are just coming to the office doing nothing and moving up and down.

I narrow down to Pauline who is recruited as Director Administration. Go back to her file and you will find out that the chairperson County Public Service Board complains to the Assembly that he was coerced to recruit who is not qualified and, at the same time, the office is occupied. He submits the document to us. The requirement for one to be recruited as a director, you must hold a minimum of a first degree from a recognized university, but Pauline provides a result slip from Nyeri Polytechnic indicating that he did a diploma 10-20 years ago, no certificate from The Kenya National Examinations Council (KNEC), Secondary school certificate. Nothing other than a Kenya Revenue Authority (KRA) certificate. Why would you not find it out of order that a position that does not exist, a person who is not qualified recruited as Director Administration and she automatically become the Chairperson of majority of the tender committees in the county. That is what we are questions.

This is the Governor's PA who you push for appointment as Director Administration, she sits in all the committees. You can connect why. Basically, that would be my explanation concerning Pauline and sitting in various tender committees.

The Vice-Chairperson (Sen. Halake): Hon. Members, we need to move. Time is not on our side, very quickly we have Sen. Mpaayei, but Sen. Mugo says she is ready now.

Sen. Mugo: Madam Vice Chairperson, yes, I am. I am sorry my battery had been low for a while, but now I am ready.

The Vice-Chairperson (Sen. Halake): Please go ahead.

Sen. Mugo: I have a question on procurement and on health. I am asking, where the accounting officers of procuring entities, tender evaluation committees and person responsible for procurement investigated prior to allegations against the Governor. Secondly, was the County Executive Committee Member for Health investigated or questioned prior to allegations being made against the Governor? Were other methods of resolving issues surrounding this impeachment, especially within the health sector attempted by the County Executive Member for Health prior to the Impeachment Motion against the Governor with respect to implementing legislation and managing and coordinating functions of the relevant county departments?

I am asking because there are procedures and policies of running different departments of a Government. This is the first stop before even going to the Governor. Did you do any of those?

The Vice-Chairperson (Sen. Halake): Hon. Kinyua, you are going to answer, but let me just take one question from the Senator for Kajiado County, Sen. Mpaayei.

Sen. Mpaayei: Thank you, Madam Vice-Chairperson. My question is on Tender No.CGK/MOW/OT/038/2017/2018. Down the paragraph and I will read, it says:

“In total disregard of conflict of interest, an in furtherance of a corruption and joint criminal enterprise overseen by the Governor.”

I want to ask my brother here: How did they arrive at the words ‘joint criminal enterprise,’ considering that if a person is to be named a criminal, he or she must have gone through a court of law.

My question is: Have they ever taken this enterprise to court, and if yes, what was the verdict?

I thank you, Madam Vice-Chairperson.

The Vice-Chairperson (Sen. Halake): Thank you, very much, Hon. Members. Hon. Kinyua, please, very briefly, respond to the questions.

Hon. David Kinyua Wangui: Thank you, Madam Vice- Chairperson. I want to start by the question from one of our great mothers of this nation, Hon. Beth Mugo, on accounting and investigation---

The Vice-Chairperson (Sen. Halake): Hon. Kinyua, speak a bit loudly, so that she can hear. This is because she is behind you.

Hon. David Kinyua Wangui: Thank you, Madam Vice-Chairperson. I want to respond to the question from Sen. Mugo on investigation. First of all, the county assemblies do not have powers to investigate. County assemblies have powers to oversight, which basically means, looking at the documents and overseeing the whole of that process.

Madam Vice-Chairperson, the main problem and the reason this issue reached to a level of impeachment is what I heard the Senator ask. Basically, what she wanted to know was whether it was last option.

Madam Vice-Chairperson, I want to say that this was the last option. We have summoned County Executive Committee Members (CECs) to our Assembly and some of them have failed to appear, claiming that they have direct instructions from the Governor not to come to the Assembly.

The same CECs cannot append a signature to a letter that is transmitted to the Assembly without the approval of the Governor. The County Secretary is on record, while interrogating him in the Assembly, confirming that they get instructions from the Governor verbally; unrecorded statements. What can you deduce from a County Secretary, a senior officer who oversees the public servants?

Therefore, we felt that this was the last resort. Some of us have made attempts to go to the Governor's office in person. Some of us are left there just watching her leaving and issuing insults to us. This was the last resort for us and we had no other option.

The only CEC for Health who has been in office in Kirinyaga County resigned. She will be appearing on this desk. Sen. Mugo will get a better clarification from her.

The next question is from the Senator for Kajiado County, in the regard of conflict of interest. Once again, investigation is a function of Directorate of Criminal Investigation (DCI) and Ethics and Anti-Corruption Commission (EACC).

Madam Vice-Chairperson, I want to confirm to this House that as we speak, some of these issues are being investigated by EACC. Some officers in the County Government of Kirinyaga have been summoned by EACC to give evidence and information. Therefore, investigations are ongoing.

Madam Vice-Chairperson, on conflict of interest, how can you prove to us that you are the Chief Officer, Finance---

The Chairperson (Sen. Malalah): On a point of order.

The Vice-Chairperson (Sen. Halake): What is your point of order?

The Chairperson (Sen. Malalah): Madam Vice-Chairperson, in the interest of time, we are taking a lot of time getting the response from the Hon. MCA, considering that we had three hours and 30 minutes for the entire case. Is it possible that we abide by your earlier ruling on the allocation of time per section, so that we move? We have two more witnesses to handle, and looking at the time, it is already 5.30 p.m. Is it possible to shorten your responses so that we move on?

The Vice-Chairperson (Sen. Halake): Actually, this will be your last response. Please, keep it very brief, so that we can move on.

Hon. David Kinyua Wangui: Madam Vice-Chairperson, I will be very brief. My point was on the conflict of interest; that we have the Chief Officer for Finance, who is Mugo Ndathi. Eva Trading is a company that secured majority of the tenders in Kirinyaga County Government, and it is owned by a brother to Mugo Ndathi. The shareholders are sisters, brothers and children to the same family.

Therefore, Madam Vice-Chairperson, I would say that, automatically, there is conflict of interest. This is a matter under investigation.

The Vice-Chairperson (Sen. Halake): Thank you very much, Hon. Kinyua. You can step down. We can move on to the next witness.

Hon. David Kinyua Wangui: Madam Vice-Chairperson, with a lot of respect, will you allow me to make a closing remark?

The Vice-Chairperson (Sen. Halake): Two minutes.

Hon. David Kinyua Wangui: Thank you, Madam Vice-Chairperson. The reason I have asked for this opportunity is the fact that I am a Member of Kirinyaga County Assembly and not an outsider. I was elected to conduct certain functions, which are legally provided and constitutional.

However, Madam Vice-Chairperson, I want to request the Hon. Senators not to look at this a matter on the face value. Let us scrutinize these documents in details and make sure---

Sen. Madzayo: On a point of order, Madam Vice-Chairperson.

The Vice-Chairperson (Sen. Halake): What is your point of order, Sen. Madzayo?

Sen. Madzayo: Kindly, restrict the witness from addressing issues that the defence counsel for Gov. Anne Waiguru will not have an opportunity to respond to. Since these are closing remarks, I thought that it would be fair that once he has given evidence that is more than enough. I think we have given them enough latitude on that aspect.

The Vice-Chairperson (Sen. Halake): Hon. Kinyua, I indulged you because I thought you would keep to the subject matter to conclude and thank us for an opportunity, but keep it short. You have got one-minute left; do not go into details. This Committee is seized of everything. We have volumes of documents and are going to ensure that justice is served. Please, keep it short. You have had a lot of opportunity to actually talk your mind, even with the questions that were asked. So, keep it short and let us conclude this.

Hon. David Kinyua Wangui: Madam Vice-Chairperson, I will conclude in 30 seconds. Let justice be done and be seen to be done to the residents of Kirinyaga, since we are the representatives and are just conducting our oversight mandate.

Thank you, so much.

The Vice-Chairperson (Sen. Halake): Thank you, *Mheshimiwa*. Thank you for taking the stand.

(Hon. David Kinyua Wangui withdrew from the witness stand)

Let us have the next witness. I would like to repeat that let us go back to the timings. We are going to be very strict with timings. Examining Counsel, you have 15 minutes. We will not go beyond that. We will have the cross-examination for 10 minutes and the re-examination for five minutes.

Please, Counsel, keep to that. Please, ask the witnesses to be very concise when it come their responses.

(Dr. Gor Goody Krit Kurma before the Special Committee)

The Advocate for the County Assembly (Mr. Njiru): Madam Vice-Chairperson, I am well guided. Thank you, for the opportunity to call our next witness. Our next witness is Dr. Gor Goody Krit Kurma.

She has filed her evidence. It is at the back of the big volume, titled: "Witness statements of Dr. Gor Goody." She will be exclusively limited to that statement and the annexures thereto.

The Vice-Chairperson (Sen. Halake): Before she takes the oath, let us find the---Hon. Members, have you found the witness statement, so that we are on the same page?

The Advocate for the County Assembly (Mr. Njiru): Dr. Goody, we are constrained of time and so, we shall move very fast so that we can address the interest of time. Kindly, address the Members of the Senate as to your full names, qualifications and your current positioning.

Dr. Gor Goody: My name is Dr. Gor Goody, I am the Brand Secretary for Kenya Medical Practitioners Pharmacists and Dentist Union (KMPDU) for Central Branch, the former Central Province. I am also a senior medical officer and holder of a degree in medicine and surgery. I am a Senior Medical Officer serving in Nyeri County.

The Advocate for the County Assembly (Mr. Njiru): Doctor, what are your qualifications? You hold a degree in medicine and what?

Dr. Gor Goody: Medicine and surgery.

The Advocate for the County Assembly (Mr. Njiru): In this case, how do you get connected to testify or why do you come to testify on behalf of Kirinyaga County Assembly?

Dr. Gor Goody: As I said previously, I represent the doctors in the former Central Province. Kirinyaga County is one of the counties in the former Central Province. As such, when there is an outcry from a county that I represent in terms of membership welfare, I immediately get involved. I am an elected leader of KMPDU.

The Advocate for the County Assembly (Mr. Njiru): You are aware that the Governor is facing accusations of having run down the entire health sector in Kirinyaga County. Yes?

Dr. Gor Goody: What would you testify to that effect? Testify to the Committee how she has run down the facility, when the running down of the facility commenced and the consequences of that running down?

The Advocate for the County Assembly (Mr. Njiru): Sure. I request for indulgence from this Hon. Committee. This whole issue of the deplorable state in Kirinyaga County

started all the way from 2017. We have documentation to show the same effect. Several meetings and letters were written to the Governor and the county health offices but they all went unanswered.

The Advocate for the Governor (Mr. Nyamodi): Madam Vice-Chairperson, by way of guidance, the witnesses seems to be reading from scripts. I can see them but you cannot see them from where you are seating. They are reading from a script rather than a statement. Perhaps those who have filed statements, if they can constrain themselves to their statement and not any handwritten script, then the ends of justice will be best served.

Thank you.

The Vice-Chairperson (Sen. Halake): Dr. Goody, please, could you keep to the statement so that when we are dealing with what has been submitted to us, we are not introducing new stuff?

The Advocate for the County Assembly (Mr. Njiru): Doctor, before I go further, would you want to adopt these statements as your statement and would you wish to rely on it in these proceedings?

Dr. Gor Goody: Affirmative.

The Advocate for the County Assembly (Mr. Njiru): Much obliged. Proceed.

Dr. Gor Goody: The issues started in 2017 where the autoclave that is used to sanitise and sterilize surgical equipment and linen broke down. The incinerator, a machine used to dispose infectious waste like amputated limbs and placentas from mothers, broke down. Several letters were written to the County including the Governor letting her know that these issues have been going on and lack of repairing these important machines can lead to spread of infections to workers, patients and the community at large.

However, steps were not taken. As I speak today, the incinerator and autoclave have still not been fixed. Infectious wastes are being disposed in hospital grounds that is accessible to patients, other health workers and the community at large. Actually, the waste products are disposed close to the pediatric ward for children as has been shown on television. This has caused many problems.

Another issue is that because of lack of linen in the hospitals, mothers who had just delivered did not have clothes to wear. They had to go and see their babies in the newborn unit with *lessos* they bring from home because the hospital could not have its linen. The linen was being cleaned at Karatina Hospital at a very minimal load because the hospital has its own linen to do.

This led to many infections in the newborn unit. I am talking about neonates. These are small babies who are not even 28 days and have not even learnt to smile. They get infections because of a dirty hospital. We have to start giving them poison – medicine is

essentially poison – in low dose to kill active living bacteria in your body. We have to start pumping poison in these neonates at a very early age.

What does that mean for that child going on? They will have resistance to antibiotics. It increases the use of resource in this child or patient should they get sick again. The deplorable hospital condition does not just affect the people who are in but Wanjiku in general. This is because at the end of the day, Government hospitals are what is accessible to the public.

As if that is not enough, the dispensaries in the county were shut down. Meaning, as we speak, there is grave lacking of promoting preventive health in Kirinyaga County. This means that vaccination, advice on non-communicable diseases like diabetes and hypertension that is prevalent in central region, cannot be done.

That means that Kerugoya Level 5 hospital is over-burdened with those kinds of services. Therefore, they cannot do what a Level 5 hospital should do; that is palliative and curative health. This has led to many patients being over-burdened in Nyeri County. I work in that County and 50 per cent of my patients in the ward are from Kirinyaga County.

As if that is not enough, all other unions after realising that letters being written to county health committees and even the former County Executive Committee (CEC) Member, Dr. Agnes, all the communication about the dilapidation of the hospital was ignored. All these letters were delivered to the office of the Governor. After the county officers failed, the unions had to come in for the welfare of their doctors and other health workers.

On 13th May, 2020, we did a presser and requested the Governor to ensure that Hospital is up to date because the casual labourers that were trained and specialized in managing human waste, hospital waste segregation and management, handling of patients from casualty and theatre to the wards were fired.

This made the entire deplorable condition even worse because the casuals that were hired after that were untrained. Meaning, they did not know proper ablution methods or do waste segregation and management. That further worsened the condition of the Hospital. Patients started sleeping on mackintosh, wards were so dirty and three health workers contracted hepatitis B and C.

It is important to know that Hepatitis B and C eventually predisposes these health workers to liver cancer in the next 10 to 15 years, should they remain completely healthy. That is not something we can guarantee.

Other living facilities in the Hospital that is given to health workers is riddle with asbestos. Asbestos is the single most agent causing mesothelioma, which is an aggressive lung cancer. That goes against the Occupational Safety and Health Act. Not only are the lives of our workers in danger but as we speak, they have been fired for over one year. I

would like to note that they were fired even before the strike was deemed illegal and unprotected.

The reason why health workers in Kirinyaga County went on strike is because we exhaustively searched for everything, we could possibly do to negotiate this crisis in the County but could not get any communication from the officer of the Governor. As we followed up from 2017 to 2019, the answer we kept getting was that there was no money to upgrade the health facilities and all those things.

To mitigate that, we went to the County Assembly on 2nd July, 2020, swore an oath and made our case. We were assured by the chairman of the Committee on Finance that Kshs1.5 billion was allocated to health to mitigate this exact crisis that has happened.

That is when we realised that we are lacking goodwill from the Chief Executive Officer of the County to mitigate this crisis. That is the genesis of our strike. As we speak, all the issues we went on strike for – lack of proper equipment, human resource – the doctor-patient ratio in Kirinyaga County is 1-30,000. We only have seven consultants. That is one-one of each.

The World Health Organisation (WHO) recommends one doctor to 1,000 patients. You can see that one doctor in that county is working for over 30 doctors and still, salaries do not come on time, they have not been promoted in 10 years. The doctors are not taken for postgraduate studies; that is specialized studies. In Kirinyaga County, we get many patients with head injury. We have doctors who applied to study neurosurgery but they were denied.

There are doctors who wanted to do neurosurgery, but their requests were denied. No specialization is happening. Three doctors went to school to pursue their post-graduate studies but they were un-procedurally fired. We wrote letters asking the County why they were fired but we never received back any communication.

I would like the Committee to note that since 2017, all the communications that we have done through the Union, none of them have been answered, even the labor dispute that we registered with the Ministry of Labor was not responded to by the County of Kirinyaga. As I speak right now, I have never had a chance to sit down with the Chief Executive Officer of Kirinyaga County and discuss health matters a lot. Even when we had normal meetings we used to be stood up.

I can say openly that in health, we need to feel leadership because health is not a matter of joke. When a patient dies, we cannot recover that. When the specialist in your county, the people whom you have hired to take care of your health tell you that indeed people are dying after surgery because the linens you are using on them have blood from other patients because the autoclave is not working, the Governor should take it seriously. When we say that the hospital kitchen is dirty, the drainage is terrible and is causing hospital acquired infections, the Governor should take it seriously. When you employ a

specialist and you do not take their advice, you are doing a disservice to yourself, to that person and to community in general.

Thank you.

The Advocate for the County Assembly (Mr. Njiru): *Daktari*, just to clarify some issues, you spoke about the shutting down of some dispensaries?

Dr. Gor Goody: Yes.

The Advocate for the County Assembly (Mr. Njiru): Are you aware who might have ordered the shutting down of those dispensaries?

Dr. Gor Goody: Yes, we were told that that order came from the CEO of the County citing lack of funds to run the health facilities.

The Advocate for the County Assembly (Mr. Njiru): I gather you to mean the CEO, the Governor?

Dr. Gor Goody: Yes.

The Advocate for the County Assembly (Mr. Njiru): How many dispensaries were shut down?

Dr. Gor Goody: Over 30 dispensaries.

The Advocate for the County Assembly (Mr. Njiru): You know the reasons as regional representative why they were shut down, and are they in operation today?

Dr. Gor Goody: They are not in operation, we even have a letter from the Public Health Officer in Kirinyaga who did a letter to the Governor telling the Governor that the dispensaries are dilapidated, the grass is at the level of the hip, that is where pests like snakes are roaming around in the hospital. For example, Kibembe Hospital, we have incidences of snakes entering the theatre. When the doctor wants to operate, first you have to be a snake wrangler so that you can finally take care of your patient.

The Advocate for the County Assembly (Mr. Njiru): *Daktari*, you spoke about the issues of the casual workers who were fired. Yes?

Dr. Gor Goody: Yes.

The Advocate for the County Assembly (Mr. Njiru): What time were they fired, before the strike or during the subsistence of the strike?

Dr. Gor Goody: During the subsistence of the strike

The Advocate for the County Assembly (Mr. Njiru): Had the strike been declared illegal by the Labor and Relations Court?

Dr. Gor Goody: No.

The Advocate for the County Assembly (Mr. Njiru): Could you be knowing whether the Governor was involved in the firing of the side casual workers?

Dr. Gor Goody: Yes, and there is even a public statement to the same effect.

The Advocate for the County Assembly (Mr. Njiru): Who made the public statement?

Dr. Gor Goody: The Governor of Kirinyaga.

The Advocate for the County Assembly (Mr. Njiru): You speak to the issues of the surrounding environment relating to the situation in which your doctors work in; yes?

Dr. Gor Goody: Yes.

The Advocate for the County Assembly (Mr. Njiru): And you allege that or you state that there is some asbestos roofing?

Dr. Gor Goody: Yes.

The Advocate for the County Assembly (Mr. Njiru): Which hospitals are roofed with asbestos?

Dr. Gor Goody: The Kerugoya hospital and the houses within the hospital that houses the health workers.

The Advocate for the County Assembly (Mr. Njiru): Has your union made any attempts to have that issue looked into or rectified?

Dr. Gor Goody: Several times, especially after the arrival of the Cuban doctors, we realized that the Kenyan doctors have horrible housing. We tried to address it but we could not get back any communication.

The Advocate for the County Assembly (Mr. Njiru): You speak in your statement paragraph 8, you speak about reinstated 77 health workers, yes?

Dr. Gor Goody: Yes.

The Advocate for the County Assembly (Mr. Njiru): When were they reinstated, and who ordered or authorized their reinstatement?

Dr. Gor Goody: During the strike, the Governor had given us an olive branch, that should the health workers go back to work, they will be reinstated. 77 health workers went back to work in July last year. However, their salaries were never paid up to date until last Monday when the Court gave the judgment to have the reinstated health workers be paid. They worked for almost a year without salary after reinstatement.

The Vice-Chairperson (Sen. Halake): Counsel your time is up. I was just waiting for her to finish that sentence. So, you may sit.

The Advocate for the County Assembly (Mr. Njiru): Much obliged.

The Vice-Chairperson (Sen. Halake): Thank you very much. I think we have had the submission of Dr. Gor. Now we will go to the cross examination, which will take us just ten minutes, so Counsel please let us keep time.

The Advocate for the Governor (Mr. Nyamodi): Thank you very much, Madam Vice Chairperson. I shall keep time.

Daktari, if may address you as *daktari*, good evening?

My name is Paul Nyamwodi. I am the advocate on record for Her Excellency the Governor of Kirinyaga, Madam Anne Waiguru.

I want to ask you a question and put your testimony in to perspective. You impress me with your knowledge and your passion about the matters health in not just Kirinyaga but Central at large.

Have you testified before the County Assembly of Kirinyaga or a Committee of that Assembly?

Dr. Gor Goody: Yes, I have. On the second of July 2019.

The Advocate for the Governor (Mr. Nyamodi): Alright. Subsequent to the beginning of April this year, have you appeared before the County Assembly of Kirinyaga or a Committee of that Assembly?

Dr. Gor Goody: No.

The Advocate for the Governor (Mr. Nyamodi): Alright. This Committee is really here to seek the truth and the truth is very important in respect of this matter. Impeachment of a Governor is no small matter and the truth is important. When is your statement dated?

Dr. Gor Goody: 19th June 2020.

The Advocate for the Governor (Mr. Nyamodi): 19th June 2020. If my memory serves me right that is Friday last week?

Dr. Gor Goody: Yes.

The Advocate for the Governor (Mr. Nyamodi): Now I want you to tell the Committee, the manner and content of the invitation you got to make that statement. Who called you and what did they tell you?

Dr. Gor Goody: I was called by the Mover of the Motion. They requested me to be a chief witness in the provision of the health, and if I can be able to witness and give my testimony that indeed, without the goodwill of the Governor, the hospitals have been deplorable.

The Advocate for the Governor (Mr. Nyamodi): Do you remember when that took place?

Dr. Gor Goody: Yes.

The Advocate for the Governor (Mr. Nyamodi): When did that important call from the mover of this motion come?

Dr. Gor Goody: I think it was on 13th June.

The Advocate for the Governor (Mr. Nyamodi): So really you are here to add weight to the Mover of the Motion's voice after they have impeached the Governor?

Dr. Gor Goody: No, I am here to speak on behalf of the dilapidated health care in Kirinyaga and fired 457 health workers.

The Advocate for the Governor (Mr. Nyamodi): I will allow the Committee to make their own mind up about why you are here. Thank you for being truthful.

The Vice-Chairperson (Sen. Halake): Thank you very much, Counsel.

The Advocate for the Governor (Mr. Nyamodi): I am not finished. We were just getting to know each other, that is the beginning. Now I want to get into the substance of my cross-examination. I believe I still have another eight minutes, Madam Vice-Chairperson?

The Vice-Chairperson (Sen. Halake): I just thought you had exceeded your time.

The Advocate for the Governor (Mr. Nyamodi): I appreciate her candor, so I just ---

The Vice-Chairperson (Sen. Halake): Okay.

The Advocate for the Governor (Mr. Nyamodi): So, I will ask you again and it is a little repetitive. Why are you here? In what capacity are you here? You have told us that you are a doctor. Do you practice medicine in Kirinyaga County?

Dr. Gor Goody: No. I do not.

The Advocate for the Governor (Mr. Nyamodi): Do you have the ability to admit patients in hospital in Kirinyaga County?

Dr. Gor Goody: No. I do not.

The Advocate for Governor (Mr. Nyamodi): So, you are here under the other hat that you wear as a trade unionist?

Dr. Gor Goody: I am here to speak on behalf of the Kirinyaga doctors as their leader.

The Advocate for the Governor (Mr. Nyamodi): Their leader as a doctor, as union leader? What do you wear?

Dr. Gor Goody: You cannot really separate a doctor from who they are. So, I am a doctor that is a union leader.

The Advocate for the Governor (Mr. Nyamodi): A doctor practices medicine, admits patients.

Dr. Gor Goody: I do, but in another county not in Kirinyaga County.

The Advocate for the Governor (Mr. Nyamodi): So, in Kirinyaga, you are not a doctor?

Dr. Gor Goody: No.

The Advocate for the Governor (Mr. Nyamodi): Alright. You have testified about the state of certain equipment and autoclave and incinerator and you do not practice medicine but you know that they are either not there or not working?

Dr. Gor Goody: Yes.

The Advocate for the Governor (Mr. Nyamodi): Would you know or would you find it strange if I were to tell you that in the Financial Year 2018/2019, not insignificant amount of Kshs23 million was budgeted for the purchase for an incinerator by the County Government in the conjunction with the County Assembly of Kirinyaga?

Dr. Gor Goody: Counsel, if you look at my statement, you will see in some of the documents that I have given, there are letters written from the hospital committee talking about the incinerator having the bricks broken. This was way after that 2018 budgetary allocation.

The Advocate for the Governor (Mr. Nyamodi): Just answer my question. Ten minutes is not a lot.

The Vice-Chairperson (Sen. Halake): *Daktari* you have to talk through the Chair not directly to the Counsel.

Dr. Gor Goody: That is noted, Madam Vice-Chairperson.

The Advocate for the Governor (Mr. Nyamodi): There is something that we ought to have made very clear going forward and it is the issue of the state of the asbestos roofs. Asbestos roofs are, if I am not wrong, roofing material that was used historically because it was cheap because it was thought to be efficient.

Dr. Gor Goody: Yes.

The Advocate for the Governor (Mr. Nyamodi): Do you know when Madam Anne Waiguru became the Governor of Kirinyaga County?

Dr. Gor Goody: About four years ago.

The Advocate for the Governor (Mr. Nyamodi): Give me the year. Do you know what year it was?

Dr. Gor Goody: 2016?

The Advocate for the Governor (Mr. Nyamodi): All right! Do you know when those asbestos roofs were fitted on those buildings?

Dr. Gor Goody: I do not.

The Advocate for the Governor (Mr. Nyamodi): Are those asbestos roofs only on the health facilities?

Dr. Gor Goody: Madam Vice-Chairperson, I would not know that kind of information. What I am aware of is the welfare of health workers. When health workers tell me that they are living in a house--- I like the way the counsel has said that the materials were used historically and are still permanently there in 2020, I do not think that the question stands.

If the Governor wished and was an effective leader in health management, the asbestos roofs would have been removed a long time ago because we started complaining about them from 2017.

The Advocate for the Governor (Mr. Nyamodi): That was your testimony, but thank you at least for saying that the reason you are here is for the welfare of health workers. That was a little difficult, but thank you for saying it now.

You have collected all the ills, real, perceived and otherwise, and placed them at the door of the Governor. Yes, the Governor may be the chief executive of the county, but there

are other officers within the county structures who are responsible for health. Are there not?

Dr. Gor Goody: Yes, there are. I stated earlier we exhausted all these offices. By the time we were coming to Kirinyaga the CEC had resigned, we had a meeting with the Chief Health Officer on the 24th --- I think. It is in my statement. That letter was written to the Governor that it was important to sit down and talk with the healthcare workers on the same issue.

The Advocate for the Governor (Mr. Nyamodi): I want to perhaps hazard a guess or suggestion as to why you have placed all these either perceived or real issues at the door of the Governor. Does the name Agnes Gachoki ring a bell?

Dr. Gor Goody: Yes.

The Advocate for the Governor (Mr. Nyamodi): Who is she?

Dr. Gor Goody: The former CEC, Health of Kirinyaga County.

The Advocate for the Governor (Mr. Nyamodi): Who is she to you?

Dr. Gor Goody: We have never met.

The Advocate for the Governor (Mr. Nyamodi): Have you practiced medicine together? Are you friends? Do you know her?

Dr. Gor Goody: Absolutely not.

The Advocate for the Governor (Mr. Nyamodi): I want to read you a paragraph from her statement. It is a statement that is filed here. It says-

“On the issues of running down of the Kirinyaga health sector, I wish to join issues with the statement of Dr. Gor Kumar – you - who is the Regional Representative of KMPDU and who I worked with closely during my tenure as CEC responsible for health and whom I currently continue to work with in my private practice.”

Tell the truth. Do you know her?

Dr. Gor Goody: We have never worked closely in the medical field.

The Advocate for the Governor (Mr. Nyamodi): You do not practice medicine together?

Dr. Gor Goody: No, we do not. She is a specialist and I am a medical officer.

The Advocate for the Governor (Mr. Nyamodi): Is she lying?

Dr. Gor Goody: I would rather she comes and answers the question.

The Advocate for the Governor (Mr. Nyamodi): Nothing else for this witness. She is not very helpful.

The Vice-Chairperson (Sen. Halake): Five minutes for re-examination.

The Advocate for the County Assembly (Mr. Njiru): *Daktari*, a question has been put to you by my senior learned friend, Mr. Nyamondi as to whether you appeared before any Committee and your answer was negative that you never appeared before the County Assembly during the time of the impeachment?

Dr. Gor Goody: Yes.

The Advocate for the County Assembly (Mr. Njiru): You were, however, invited to testify on the question of the health status?

Dr. Gor Goody: Yes.

The Advocate for the County Assembly (Mr. Njiru): Where do you draw your competence from in so far as the testifying on behalf of Kirinyaga County on this issue? Is it from your current engagement as an officer of the KMPDU?

Dr. Gor Goody: Yes.

The Advocate for the County Assembly (Mr. Njiru): Do you get regular reports and do you have opportunities of visiting those facilities as an officer of the KMPDU currently?

Dr. Gor Goody: Yes, I do.

The Advocate for the County Assembly (Mr. Njiru): From your testimony, has the situation improved in Kirinyaga County?

Dr. Gor Goody: Not one bit. In fact, it has worsened.

The Advocate for the County Assembly (Mr. Njiru): You are aware that the County Government is constructing a multibillion project?

Dr. Gor Goody: Yes, I am.

The Advocate for the Governor (Mr. Muchigi): It is being constructed in the midst of your officers living in health hazard houses?

Dr. Gor Goody: Yes.

The Advocate for the County Assembly (Mr. Njiru): And no priority was granted to such kind of renovation?

Dr. Gor Goody: Not at all.

The Advocate for the County Assembly (Mr. Njiru): Where does the buck stop? Who bears the brunt? Is it the CEC or the Governor?

Dr. Gor Goody: From my various engagements with the County Assembly, CEC and Chief Health Officer, I have come to realize and make a conclusion that without the goodwill of the Governor in Kirinyaga County, nothing moves.

The Advocate for the County Assembly (Mr. Njiru): No further questions.

The Vice-Chairperson (Sen. Halake): Thank you, very much. I think we have kept time. Let us keep the same. I will allow Senators to quickly seek any clarification from Dr. Gor. I think it was very clear, but if anybody has anything else for clarification only, keep it short.

Let us start with Sen. (Dr.) Mbito and then I will go to the Senator for Lamu and then Sen. Pareno in that order please.

Sen. (Dr.) Mbito: I just have a quick one for *daktari*. Do you feel that the issues that you have raised today are unique for Kirinyaga County or is it also happening in other counties? How many counties do you represent?

Dr. Gor Goody: Five counties.

Sen. (Dr.) Mbito: So are the issues that you have raised today unique to Kirinyaga county or just for the region?

Dr. Gor Goody: Most issues are unique to the county. Most counties in the Central branch are not that dilapidated in terms of healthcare.

Sen. (Dr.) Mbito: Are you aware of the Managed Equipment Scheme (MES) programme where autoclaves are being supplied?

Dr. Gor Goody: Yes.

Sen. (Dr.) Mbito: Would you say that Kirinyaga County was not supplied with autoclaves?

Dr. Gor Goody: I would not be privy to such information.

Sen. (Dr.) Mbito: This is because you are saying the autoclave broke down.

Dr. Gor Goody: Yes.

Sen. Loititip: You said you are a doctor, but you do not practice in Kirinyaga county. Have your colleagues in Kirinyaga County ever made any communication to the Governor for a meeting and the Governor ignored them?

Dr. Gor Goody: We have tried communicating through the Governor - the doctors' union, the clinical officers' union, the nurses' union, laboratory officers and other amorphous groups. We have tried writing letters to the Governor directly. Not only did we not get her audience, we were chased away violently. For example, on the 26th of June all health workers were teargassed.

Two days later when we went with the MCAs to seek answers from the Governor we almost got teargassed. You can see the level of violence that we face.

Sen. Loititip: Can the information that you have clarified be substantiated?

Dr. Gor Goody: Absolutely. The teargassing was televised.

Sen. Pareno: Thank you, Madam Vice-Chairperson and Dr. Gor for getting time to come and give us this statement. When you allege as you say in your statement that the trained casual laborers were fired and replaced by untrained casual laborers leading to reduced efficiency and also led to three health workers contracting Hepatitis B and C, these are very serious allegations.

I would want to know whether you have any evidence. I have perused through the annexures that you have given and I do not see any evidence that any laborers were fired and replaced by untrained officers.

Secondly, because of that un-procedural firing of health workers, this led to the death of pregnant mothers while delivering. That is a serious allegation that would have called for you, as a doctor, to have given us evidence that such death actually occurred. However, I do not see any evidence or documentation to show that deaths resulted from that move.

Dr. Gor Goody: Madam Vice-Chairperson, the mortality records can be found at the sub-county records office and they can be attributed to---

Sen. Pareno: Madam Vice-Chairperson, that is not what I asked. Why was the evidence not attached? We cannot go fishing for records in the archives of Kirinyaga County. Do you have the evidence with you?

Dr. Gor Goody: I would like the counsel to respond.

The Advocate for the County Assembly (Mr. Njiru): Madam Vice-Chairperson, allow me to draw the mandate of this Committee. This Committee is mandated by law to conduct an investigation. For purposes of aiding the process, it is procedurally fair that the Committee calls for those documents because they will aid the process. Looking at

Section 33 of the County Governments Act, one of the obligations of the Committee is to conduct an investigation. That is an obligation of the Committee *suo moto*. The Committee on its own Motion can call for those documents if they want to establish the truth and cracks of the matter. It is a statutory obligation.

The Vice-Chairperson (Sen. Halake): From my understanding, when an allegation is made the basic burden of proof should be on you.

The Advocate for the County Government (Mr. Njiru): Madam Vice-Chairperson, we provided what was within our ability and, humanly possible to provide, but that does not limit the powers of this Committee under Section 33 to do its own investigations in search of the truth.

Sen. Pareno: Madam Vice-Chairperson, in other words, the Counsel is telling us that we should give the evidence on their behalf. Is that what he is asking this Committee to do?

The Advocate for the Governor (Mr. Muchigi): Madam Vice-Chairperson, my learned friend has argued a point of law that I would like to respond to.

Article 50(2) is very clear that there is a presumption of innocence on any person who is charged. As a result of that presumption, there is an obligation on any party making any allegation to assert it. If you look at the Evidence Act, Section 107 to 110, it is clear that he who asserts must prove. That is the law in Kenya. Looking at that in light of Article 50 and the Sections we had quoted earlier from the Fair Administration Practices Act, the party who alleges has to furnish the other person with evidence, so that they can exercise their right to challenge that evidence.

The issue here is that a witness has come today and testified on issues some of which are not even in the statement. The Governor has not had a chance to respond to the allegations because the statements were not in the Motion that was served on the Governor before she appeared before this Committee. The Governor only saw the statement on Saturday after she had filled her documents.

The Advocate for the County Assembly (Mr. Njiru): Madam Vice Chairperson, allow me to respond and join issues if you may. The counsel seems to have misconceived the process that we are now engaged in. We are not engaged in a criminal trial so that the presumption of innocence is called upon to apply. Remember when the charges were read against the Governor, she was not called upon to plead guilty or not guilty simply because we are in a different arena completely different from what the Counsel is casually engaged in. However, could we read what the law says in Sub-section 3(b). It states that the special Committee appointed under Sub-section 3(b) shall investigate the matter.

The reading of the law and my seniors such as Dr. Okello and Mr. Kamotho Waiganjo, who taught me law at the Kenya School of Law, will bear me witness on the interpretation of this provision that the Committee has a duty on its own Motion to investigate this matter. Remember that we are on a fact finding mission. Why is the

Committee given that opportunity? It is because it is perceived as a neutral arbiter so that each case is determined on its own facts. There is no provision in law guiding the question of impeachment that calls upon the county assembly to investigate. It is not an investigator, but this Committee has been bestowed with that statutory power. We urge the Committee to invoke Sub-Section 4(a) so that we can to the cracks of the matter.

Allegation has been made that maternal mothers are dying yet we are struggling with the 'Beyond Zero Campaign.' Why do we still have maternal deaths to date?

The Vice-Chairperson (Sen. Halake): Counsel, I rule you out of order. I would like to close this matter. The Committee is seized of all the submissions and it will make its decision. We know what the rules of procedure are as far as the Senate Committee investigations are. Therefore, we shall be guided by that.

I thank you Dr. Gor. You have done your civic duty as a Kenyan, a trade unionist and doctor. We have taken your submissions and will make our decision.

The Chairperson (Sen. Malalah): Dr. Gor, I believe that this is your personal statement; you believe in it and can attest that everything that you have said here is true.

Dr. Gor Goody: Yes, it is.

The Chairperson (Sen. Malalah): Dr. Gor, in your fourth pointer, you say that all the hospitals and health centers are not adhering to the Occupational Safety and Health Act thus harbouring snakes and other dangerous rodents within the precincts of the hospitals. My question is, have you visited all the hospitals and health centres in Kirinyaga County?

Dr. Gor Goody: I have visited most of the health centres.

The Chairperson (Sen. Malalah): Dr. Gor, the key word in your statement is that all the hospitals and health centres. Are you saying that you want to amend your statement to read some of the hospitals and not all?

Dr. Gor Goody: I mean all the hospitals and that can be corroborated by the statement given by the Public Health Officer in Kirinyaga County.

The Chairperson (Sen. Malalah): Dr. Gor, this is your personal statement. So are you saying that you got evidence through other documents or other people's statement or is this your personal statement?

Dr. Gor Goody: This is my personal statement.

The Chairperson (Sen. Malalah): Dr. Gor, have you visited all hospitals and health centres in Kirinyaga County for you to make such an allegation?

Dr. Gor Goody: Mr. Chairman, Sir, I said that I visited most. The others that I could not get to are not even hospitals. They are just rooms covered in grass. So we did not go into those rooms. The dilapidated health centres, dispensaries---

The Vice-Chairperson (Sen. Halake): Sen. Malalah, let me rule that Dr. Gor would like to stand by her statement. The Committee will make a determination on that statement. I hope that is fair.

The Chairperson (Sen. Malalah): Madam Vice-Chairperson, it is not fair because I want Dr. Gor to ascertain whether she visited all the health centres as alleged in her statement. I am not getting anything outside her statement. I would like to know whether her statement is that she has visited all the hospitals and health centres in Kirinyaga County.

Dr. Gor Goody: Yes, I have.

The Chairperson (Sen. Malalah): Thank you.

The Vice-Chairperson (Sen. Halake): If the witness wants to stand by her statement, we will take it and make a determination. Thank you, Dr. Gor.
Kindly proceed, Sen. Kwamboka

Sen. Kwamboka: Madam Vice-Chairperson, Dr. Gor was called by the Mover of the Motion to be a witness. On the allegation that the drainage systems are blocked and that there is lack of water and electricity in the hospitals, I would like to know whether the witness knows the functions of a MCA?

Dr. Gor Goody: I do not know them off head, but I could Google them.

Sen. Kwamboka: Let me help you. The functions of a MCA are oversight, legislative and representation.

Madam Vice-Chairperson, when it comes to that, is it the job of the Governor to make sure that these things are done in the county?

Dr. Gor Goody: Madam Vice-Chairperson, it is not directly the job of the Governor. However, there are teams that are supposed to enable the Governor to do it. We talked to those teams and we could not get anywhere because as I stated earlier, it was made very clear to us that until there is goodwill from the Governor, nothing can happen.

Sen. Kwamboka: Madam Vice-Chairperson, let me just clarify. For this job to be done, it is the work of the MCA to pass the allocation of funds so that those services can be done in Kirinyaga County. According to the Mover of the Motion the way he was directing you to be the witness here; he should know his mandate as a MCA. I do not see where you come in between the health and the duty of the MCA.

The Vice-Chairperson (Sen. Halake): Thank you, Senator. Do not answer. Let me take a few more. Sen. Mwangi, proceed then Dr. Gor can answer all of them together.

Sen. Mwangi: Thank you, Madam Vice-Chairperson. We have been told that the health facilities in Kirinyaga County are in deplorable state. We have also been told 30 dispensaries have been shut down by Gov. Waiguru. About 400 casual workers have also been sacked by the Governor. I would like Dr. Gor to tell this Committee, now that these very bad things have happened in Kirinyaga County and the Kirinyaga people are suffering because they have no health facilities--- They have nobody to resort to because they have tried and nothing is working. What would you advise this Committee to do for the situation to be restored?

The Vice-Chairperson (Sen. Halake): Dr. Gor and hon. Members, I know we have gone very much beyond our allocated time. I will allow Dr. Gor to answer these and we close it here for this witness.

Dr. Gor Goody: Madam Vice-Chairperson, I will first answer Sen. Kwamboka. I had earlier stated that on 2nd July, 2019 we went to the County Assembly and we stated all those issues. The Chairperson of the Committee on Finance and Budget assured us that Kshs1.5 billion was allocated to handle the crisis that the Senator has just talked about. From my point of view and from the documentation that was given, the MCAs did their part. What was waiting was the execution.

Secondly, advice to Sen. Mwangi on what we should do for healthcare to be better, I know one thing for sure, after visiting all the five counties and meeting their governors, good and effective leadership is important in healthcare. Healthcare is one of the most important sectors and it is devolved. We know that the counties are still young to handle it, but they are trying their best.

Madam Vice-Chairperson, I have realized, for example, in Nyeri County, majority of promotions and the postgraduate studies that have happened are because of the goodwill of the Governor. I know for sure that if we get an effective leader with goodwill and people's heart at her heart and at the core of the function that is done, I am sure that the health sector in Kirinyaga County will improve.

Thank you.

The Vice-Chairperson (Sen. Halake): Thank you very much. As I said, Dr. Gor, you have done your civic duty as a witness. We will let you go and thank you very much.

Dr. Gor Goody: Madam Vice-Chairperson, thank you for having me.

(Dr. Gor Goody withdrew from witness stand)

The Vice-Chairperson (Sen. Halake): Counsel, we have to get the next witness.

The Advocate for the County Assembly (Mr. Njiru): Madam Vice-Chairperson, our next witness is Dr. Agnes Gachoki. Her statement follows Dr. Gor's statement.

The Vice-Chairperson (Sen. Halake): Hon. Members, please, find the statement of Dr. Agnes Gachoki.

Okay. Let me call the hearing to order. Sergeant-at-Arms, is the chair ready and sanitized? You may bring the witness in. Counsel, are you ready with your witness?

The Advocate for the County Assembly (Mr. Njiru): Yes, Madam Vice-Chairperson.

The Vice-Chairperson (Sen. Halake): Counsel, it is the same drill, please, 15, ten and five minutes. We are really running out time.

The Advocate for the County Assembly (Mr. Njiru): Yes, Madam Vice-Chairperson. Our witness is Dr. Agnes Gachoki. You can process the witness.

(Dr. Agnes Gachoki before the Special Committee)

The Vice-Chairperson (Sen. Halake): You can take the oath.

(Dr. Agnes Gachoki took the oath)

The Advocate for the County Assembly (Mr. Njiru): Good afternoon, Dr. Gachoki.

Dr. Agnes Gachoki: Thank you, Madam Vice-Chairperson. Good afternoon.

The Advocate for the County Assembly (Mr. Njiru): I know it has been a long day for you waiting to testify so we will be very brief with you, so that we can also have time to accommodate other witnesses.

Dr. Gachoki, on 20th June, 2020, you recorded your statement. Your statement is in support of the case that is before us. This statement you recorded voluntarily. You read the content of the same therein following which you appended your signature. Is that correct?

Dr. Agnes Gachoki: Yes, Madam Vice-Chairperson.

The Advocate for the County Assembly (Mr. Njiru): Would you wish, therefore, that we adopt this statement as your statement for these proceedings?

Dr. Agnes Gachoki: Yes, Madam Vice-Chairperson.

The Advocate for the County Assembly (Mr. Njiru): Having confirmed that, kindly introduce yourself to the Committee.

Dr. Agnes Gachoki: Madam Vice-Chairperson, my name is Dr. Agnes Gachoki. I am a holder of Bachelor's Degree in Medicine and Surgery and a Master's Degree in Obstetrics and Gynecology. I practice obstetrics and gynecology. I was the County

Executive Committee Member (CEC) appointed in 2017 in Kirinyaga County in charge of medical services, public health and sanitation until January, 2019

The Advocate for the County Assembly (Mr. Njiru): Dr. Gachoki, where do you come from? Are you a resident of Kirinyaga County?

Dr. Agnes Gachoki: Madam Vice-Chairperson, yes I come from Kirinyaga County.

The Advocate for the County Assembly (Mr. Njiru): Were you appointed as CEC by the current Governor?

Dr. Agnes Gachoki: Madam Vice-Chairperson, I was appointed as the CEC following the 2017 national election by the current Governor.

The Advocate for the County Assembly (Mr. Njiru): Are you still serving? I have heard you mention that you served up to 2019.

Dr. Agnes Gachoki: Madam Vice-Chairperson, I resigned in January, 2019.

The Advocate for the County Assembly (Mr. Njiru): Was the resignation voluntarily or what necessitated the resignation?

Dr. Agnes Gachoki: I made a voluntary resignation. However, it was necessitated by a lot of frustrations and a difficult working relationship with the governor.

The Advocate for the County Assembly (Mr. Njiru): Where was the frustration and bad working relationship emanating from? Which organ of the county government?

Dr. Agnes Gachoki: Madam Vice-Chairperson, if you may allow me, I can just give a few minutes on my tenure as a CEC Member for Health in Kirinyaga County.

What I would like to state to this Committee is that when I was appointed as the CEC for Health in Kirinyaga County, being my home county and my background as a medical doctor and practicing clinician with over 20 years of experience, I was very excited. This is because I knew that we had a woman governor, and with the motherly nature of women, I felt that this was an opportunity for the healthcare of the people of Kirinyaga.

I took the appointment with a lot of excitement and started my work. My first task in the department was to deal with the nurses' strike, which was ongoing at the time. I managed to negotiate with the union members and the strike ended in Kirinyaga County before nurses in the others counties could get to work.

I proceeded with the authority of the governor, and at her instructions, we opened a dialysis unit, which served the people of Kirinyaga well. Knowing that Kirinyaga is in the central region where we are battling non-communicable diseases, the need for dialysis is

very high. We were excited to open the dialysis unit and started running the unit by doing a lot of dialysis.

However, it got to a point where we could not procure the consumables for the unit. The reason we were given for the consumables not being procured was that there was no budget for that. We started sending patients who would come for dialysis away to other centres in Embu, Nyeri and the Kariga Mission Hospital. It was very frustrating. However, we held on and continued with our work.

My third most important task was the renovation of the hospitals. Our outpatient hospitals, the four county hospitals, were dilapidated, if I may put it that way. We managed to renovate, especially the county referral hospital to a level where our residents were happy and excited. I think you all saw it in the media.

We went on with the trust that I have with the donors due to being in the medical field for a long time. I managed to get donors to construct an eye unit in the hospital. The eye unit was funded by the donors, Operation Eyesight. They may be watching and can confirm that. They equipped the eye unit with equipment worth over Kshs20 million. They requested for an opening ceremony since some of the donors are from Canada.

I made an appointment with the Governor. I informed her two months in advance of the opening ceremony and she wrote it in her diary. However, when the donors arrived in the country and boarded the bus coming to Kirinyaga County, I was informed that it was not going to be possible to have the opening ceremony. Considering that these are donors who had spared their time to travel from Canada, I had to put them in a hotel and buy them tea with my own money, so that I could get time to have the Governor come and do the opening ceremony.

I had to leave them in a hospital and went to her office to convince and plead with her to come and do an opening ceremony that had been awaited for long by the residents of Kirinyaga. She finally managed, but you can imagine the frustrations I had to go through on that day, to plead with the CEO of the county, who is supposed to be excited about this since the residents of Kirinyaga were going to enjoy eye care.

That led to so much disappointment from the donors that they withdrew from doing another unit, which they would have done for the people of Kirinyaga. To date, any resident of Kirinyaga can confirm that that eye unit serves people from all over the region; Nyeri, Murang'a and Embu because it is a very big eye unit with surgical operations. I was not willing to give up as yet.

The Advocate for the County Assembly (Mr. Njiru): When did you give up?

Dr. Agnes Gachoki: Because of time, I would say that there are many other things that went on. However, what broke the camel's back is that I had been talking with the Governor on a personal level because we used to meet in her office - the Chief Officer for

Health and I - to plead with her so that we could employ more health care workers in the county.

The other witness who was before me has alluded to the shortage that was in the county. We had many staff who had retired, transferred to other counties and also due to natural attrition. We needed to replace these healthcare workers, so that we could have good healthcare provision in the county.

The nurses were suffering. Some were even getting miscarriages because they were being overworked; they were working without leave. As an obstetrician, maternal and neonatal mortality is in my heart; I do not like to see a mother losing her baby.

We pleaded with her to employ healthcare workers, so that we could operate the healthcare workers and dispensaries. However, I was shocked when she told me that I could go ahead and close the dispensaries.

The Advocate for the County Assembly (Mr. Njiru): Who gave the orders to close down the dispensaries?

Dr. Agnes Gachoki: The Governor told me to go ahead and close the dispensaries.

The Advocate for the County Assembly (Mr. Njiru): She did not find them useful to the people of Kirinyaga?

Dr. Agnes Gachoki: I think it was not her priority.

The Advocate for the County Assembly (Mr. Njiru): It was not her priority to have the facilities fully functional?

Dr. Agnes Gachoki: In my capacity as a clinician and as a medical doctor, that was a step back in universal health coverage.

The Advocate for the County Assembly (Mr. Njiru): Were the dispensaries eventually closed down?

Dr. Agnes Gachoki: Yes, they were closed. Even the dispensary in my local village is closed down up to now.

The Advocate for the County Assembly (Mr. Njiru): The one in your local area is not functional?

Dr. Agnes Gachoki: It is not functional.

The Advocate for the County Assembly (Mr. Njiru): Were you serving during the doctors' strike? Were you in service as the CEC?

Dr. Agnes Gachoki: When I was instructed to close down some of the dispensaries because we did not have enough healthcare workers, I vowed that I would not be the one to oversee the deterioration of healthcare in Kirinyaga County. At that point, I tendered my resignation to the office of the Governor.

The Advocate for the County Assembly (Mr. Njiru): Were you there during the time of this strike?

Dr. Agnes Gachoki: Immediately after my resignation, that is when the casual workers were all sacked and that followed the doctors' strike. I was not there when they started their strike.

The Advocate for the County Assembly (Mr. Njiru): Are you aware whether a CEC to replace you was hired immediately or not?

Dr. Agnes Gachoki: I learned that there is one who was hired recently.

The Advocate for the County Assembly (Mr. Njiru): After how long since your resignation?

Dr. Agnes Gachoki: After more than a year.

The Advocate for the County Assembly (Mr. Njiru): Is that a confirmation that the Governor is not concerned about the health of Kirinyaga County?

Dr. Agnes Gachoki: I would put it that way.

The Advocate for the County Assembly (Mr. Njiru): You have indicated a Tender No.CGK/ICT/OT/046/2017-2018, which relates to installations of software in the county.

Dr. Agnes Gachoki: Yes.

The Advocate for the County Assembly (Mr. Njiru): Are you aware of that tender?

Dr. Agnes Gachoki: I am very well aware because it was tendered during my tenure.

The Advocate for the County Assembly (Mr. Njiru): Who made the need request for that tender? Was it your department or the need came from elsewhere?

Dr. Agnes Gachoki: Madam Vice-Chairperson, I would like this to be put on record that the Chief Officer and I went to the Governor's office and we had a conversation. We informed her that there was an already existing healthcare management system that had been installed by the national Government and it just required activation.

However, she insisted on going ahead with the procurement. We did not requisition for it.

The Advocate for the County Assembly (Mr. Njiru): The need to procure did not come from the user department?

Dr. Agnes Gachoki: No.

The Advocate for the County Assembly (Mr. Njiru): Are you aware these senders, that is 047 and 046 were given to a company called Velocity?

Dr. Agnes Gachoki: I hear so. I am not in charge of procurement, but I heard that it was given to the Velocity Company.

The Advocate for the County Assembly (Mr. Njiru): Are you aware whether the software was working at the time of your tenure?

Dr. Agnes Gachoki: It was never installed. Even up to date, it has never been installed.

The Advocate for the County Assembly (Mr. Njiru): So, there is no software of this nature?

Dr. Agnes Gachoki: No.

The Advocate for the County Assembly (Mr. Njiru): In your statement, you have confirmed and joined issues with your predecessor witness, Dr. Gor. You agree with her that in so far as the status of the health sector is in issue, yes?

Dr. Agnes Gachoki: Yes.

The Advocate for the County Assembly (Mr. Njiru): Is it your confirmation that up to date, the status of the facility and the facilities in Kirinyaga County are still dilapidated?

Dr. Agnes Gachoki: I cannot confirm that right now because I am not working there, but I believe that because the healthcare workers were sacked, the status of the healthcare in Kirinyaga is still wanting.

The Advocate for the County Assembly (Mr. Njiru): It is still wanting?

Dr. Agnes Gachoki: Yes.

The Advocate for the County Assembly (Mr. Njiru): Finally, as I finish up with you, how would you describe the current status of the health facilities in Kirinyaga County?

Dr. Agnes Gachoki: I would say that it is really sad to know that even after devolution, Kirinyaga County cannot be able to take care of its own residents for healthcare. Many of our residents are still going to Embu and Nyeri for healthcare because of the lack of facilities in our county.

The Advocate for the County Assembly (Mr. Njiru): Why do you attribute this to the Governor?

Dr. Agnes Gachoki: Because she is the Chief Executive Officer (CEO) of the county and is in charge of all the departments. It is upon her to improve the healthcare standards of Kirinyaga County residents.

The Advocate for the County Assembly (Mr. Njiru): One of the obligations under Section 30 of the County Governments Act is that the Governor should offer leadership to her County Executive Committee members (CECs) and administration of the county. Having served under her, would you confirm that she is capable of offering that leadership to the CECs and in the administration of the county?

Dr. Agnes Gachoki: I think that leadership is something that the Governor does not understand, because leadership is different from dictatorship. When you lead people, you guide them and show them the way, the Governor of Kirinyaga County dictates what is going to be done, and you just do it.

The Advocate for the County Assembly (Mr. Njiru): Are you saying that there is a serious lack of collective responsibility in the manner the CECs are organized in the county?

Dr. Agnes Gachoki: The CECs in the county are just there to ratify what the Governor wants to be done.

The Vice-Chairperson (Sen. Halake): Counsel, this would be---

The Advocate for the County Assembly (Mr. Njiru): I think I will yield the witness for cross examination.

The Vice-Chairperson (Sen. Halake): Thank you very much Dr. Gichoki. Can we proceed to cross examination?

The Advocate for the Governor (Mr. Nyamodi): Thank you very much, Madam Vice-Chairperson. My learned colleague, Mr. Muchigi, will start and I will share the time with him.

The Advocate for the Governor (Mr. Muchigi): Much obliged, Madam Vice-Chairperson.

Dr. Gichoki, I wish to ask you just two questions. The first one is, you have indicated that the issue of the procurement for the two tenders was done directly by the Governor. I want you to look at your statement please.

Dr. Agnes Gachoki: I recall what is in the statement.

The Advocate for the Governor (Mr. Muchigi): Have you directly stated that in your statement?

Dr. Agnes Gachoki: I did not state that the procurement was done directly. I only said—

The Advocate for the Governor (Mr. Muchigi): Thank you. I just wanted to confirm that.

Dr. Agnes Gachoki: I would like to clarify that the user department did not requisition for the Health Service Management System (HSMS).

The Advocate for the Governor (Mr. Muchigi): I will repeat my question. You have said that you sat in the Office of the Governor. What I am asking is, in your statement, is there such evidence about you going to the Governor's office when this decision was made?

Dr. Agnes Gachoki: We did write in communication---

The Advocate for the Governor (Mr. Muchigi): I am asking about your statement.

Dr. Agnes Gachoki: What I wrote in my statement is about abuse of office and I am giving evidence to ratify that. I am just making clarifications and explaining how the Governor has abused her office.

The Advocate for the Governor (Mr. Muchigi): Dr. Gichoki, I will repeat my question, again. Please remember that we do not have time. I will ask you, if you look at the statement dated 20th June, 2020, is there any place in that statement where you have mentioned that you had that sitting with the Governor and that decision was made by the Governor? Yes or no.

Dr. Agnes Gachoki: We do not record verbal conversations.

The Advocate for the Governor (Mr. Muchigi): Thank you very much.

Dr. Agnes Gachoki: If you know how the Governor works--- and the Counsel is just trying to deviate from the main point. Our Governor does not like things in writing. We did write advising her that there already is a management system in the county, but she instructed us to withdraw that from the file, and we did.

The Advocate for the Governor (Mr. Nyamodi): May I proceed, Madam Vice-Chairperson?

The Vice-Chairperson (Sen. Halake): Please, proceed.

The Advocate for the Governor (Mr. Nyamodi): Good afternoon, *daktari*. My name is Paul Nyamondi and I am the Lead Counsel for the Governor's team in these proceedings.

I just want us to start at the beginning and ask you a direct question, *daktari*. Have you played any role in the process leading up to the Governor's impeachment thus far?

Dr. Agnes Gachoki: No. I am not a politician. I am here as a professional to offer my professional statement, so I did not involve myself in the impeachment.

The Advocate for the Governor (Mr. Nyamodi): So, you have played no role and recorded no statement other than this one on the 20th?

Dr. Agnes Gachoki: No.

The Advocate for the Governor (Mr. Nyamodi): You have not testified before the County Assembly? You have done nothing?

Dr. Agnes Gachoki: I do not do that. I am a professional.

The Advocate for the Governor (Mr. Nyamodi): Okay. I want us to look at your statement. I hope you have a copy in front of you.

Dr. Agnes Gachoki: Yes.

The Advocate for the Governor (Mr. Nyamodi): I want you to look at the beginning of the second paragraph, where you state, "I am, however, aware that the Governor is now facing an impeachment Motion."

Do you see that part?

Dr. Agnes Gachoki: Yes, I do.

The Advocate for the Governor (Mr. Nyamodi): I want to ask you the question, how did you know that the Governor was now facing an impeachment Motion?

Dr. Agnes Gachoki: It has been all over in the media. Everybody in the whole country knows. That is how I learnt about the impeachment.

The Advocate for the Governor (Mr. Nyamodi): Alright. You have told a very compelling story, and I must congratulate you for what sounds like a stellar career as a medical practitioner. Congratulations for that.

Dr. Agnes Gachoki: Thank you.

The Advocate for the Governor (Mr. Nyamodi): However, that story is surprisingly absent from your statement.

Dr. Agnes Gachoki: That is because the statement was to be brief and to the point. What I have said here today is to qualify---

The Advocate for the Governor (Mr. Nyamodi): *Daktari*, let me just stop you there. It was to be brief and to the point?

Dr. Agnes Gachoki: Yes.

The Advocate for the Governor (Mr. Nyamodi): To what point was your statement to be? Can I be of assistance? You are having some difficulty. Can I be of assistance?

Dr. Agnes Gachoki: No, I am going to answer you. Just be patient.

The Advocate for the Governor (Mr. Nyamodi): Go ahead.

Dr. Agnes Gachoki: In the third paragraph of my statement, I have stated that, “On the issue of abuse of office, I wish to state that the Governor adopted an intimidating approach to all the issues relating to governance in Kirinyaga County”.

That is what I have said I am qualifying.

The Advocate for the Governor (Mr. Nyamodi): Good. The context is important. Without putting words into your mouth, you have stated in the second paragraph that, the point was that now that you had understood, that the Governor was facing an impeachment Motion, you were to now come to speak to the issue of abuse of office.

Dr. Agnes Gachoki: These are issues that when I resigned as a---

The Advocate for the Governor (Mr. Nyamodi): Is that the point? Yes or no.

Dr. Agnes Gachoki: Say that again.

The Advocate for the Governor (Mr. Nyamodi): I am asking you a direct question. I am just reading from your statement. Now that you learnt that the Governor is facing an impeachment Motion, and you have said that it was all over the media, and you took no role in the impeachment so far. You are now playing a role to come before this Senate to speak to the issue of the Governor’s abuse of office. That is the long and short of the point of the statement. Is it not?

Dr. Agnes Gachoki: Can I explain that? You want me to say yes or no, but I would like to expound on that. I am a resident of Kirinyaga County, so I am privy to the information of all the ongoings of Kirinyaga County. I am not an outsider. All the information coming from the county is touching me directly. I have relatives who are living in Kirinyaga county. They go to the hospitals and they find that they are closed. I am not just learning this and coming to give my evidence because I have learnt that there is an impeachment Motion.

When I resigned from the County, this is information that was given to the Ethics and Anti-Corruption Commission (EACC), and that is an independent body. Maybe he should

be asking whether there was any information that was given to the EACC to investigate that. That is a body that I cannot talk behalf on.

The Advocate for the Governor (Mr. Nyamodi): *Daktari*, what is the point? You have spoken for three minutes and you have not answered my question. What is the point of you being here? You have played no role and you are not a politician.

Dr. Agnes Gachoki: Madam Deputy Chairperson, I am here as a resident of Kirinyaga County and a former County Executive Committee (CEC) Member. I was appointed and I am passionate about health and I wanted to improve the healthcare standards of Kirinyaga County. That is why I am here.

The Advocate for the Governor (Mr. Nyamodi): What do you want to do here?

Dr. Agnes Gachoki: Madam Deputy Chairperson, I am here to give evidence and to show how it was difficult for me. I also want to show how the Governor has run down the healthcare system in Kirinyaga County under her watch.

The Advocate for the Governor (Mr. Nyamodi): Well, it took us a long time to get there, but we did eventually get there. Okay, that is why you are here.

You have played no role, how did you end up recording this statement?

Dr. Agnes Gachoki: Madam Deputy Chairperson, something that is happening in Kirinyaga County is not a private matter and I will definitely get to know about it because I am a resident of Kirinyaga County. The Members of the County Assembly requested me to record a statement and I obliged.

The Advocate for the Governor (Mr. Nyamodi): What did they tell you when they asked you to record the statement?

Dr. Agnes Gachoki: Madam Vice-Chairperson, they asked me if I could record a statement about my tenure as a CEC Member and the role that I played in healthcare in Kirinyaga County and I did that.

The Advocate for the Governor (Mr. Nyamodi): What was the purpose of the statement that you were recording?

Dr. Agnes Gachoki: Madam Vice-Chairperson, the purpose of the statement was to show the nation that the healthcare standards in Kirinyaga County have gone down under the watch of the Governor.

The Advocate for the Governor (Mr. Nyamodi): *Daktari*, does the name Tim Theuri ring a bell?

Dr. Agnes Gachoki: No, Madam Vice-Chairperson.

The Advocate for the Governor (Mr. Nyamodi): Do you know of any appointment or any name of your replacement that was sent to the Assembly by her Excellency the Governor?

Dr. Agnes Gachoki: Madam Deputy Chairperson, I think that there have been two names.

The Advocate for the Governor (Mr. Nyamodi): You cannot remember, but you can remember that there has been no CEC for one year.

Dr. Agnes Gachoki: Madam Vice-Chairperson, I know the name of the one who is currently in office. As I previously said, I am a resident of Kirinyaga County and I am in the health profession so I will get to know if there is no CEC Member for Health. We do communicate with the doctors in the counties and there is no way I will not know that there is no CEC Member in the County. I know when the CEC Member was appointed and that is how I know that there has been no CEC to replace me until very recently.

The Advocate for the Governor (Mr. Nyamodi): According to you, the responsibility for non-replacement of the CEC rests only with the Governor.

Dr. Agnes Gachoki: Madam Deputy Chairperson, she is the appointing authority.

The Advocate for the Governor (Mr. Nyamodi): You were appointed as a CEC. Does the Assembly play any role in the appointment?

Dr. Agnes Gachoki: Yes, Madam Vice-Chairperson. When the appointment is done by the Governor, the appointee goes to the Assembly for vetting.

The Advocate for the Governor (Mr. Nyamodi): Would I be correct in saying that the process of appointment of a CEC is an act that happens between the Governor and the Assembly, which means that they both have a role to play?

Dr. Agnes Gachoki: Madam Deputy Chairperson, I am not here to say whether the Assembly or the Governor is wrong in the appointment of the CEC. That is not my role.

The Advocate for the Governor (Mr. Nyamodi): My last question. Can a governor appoint a CEC without the approval of the Assembly?

Dr. Agnes Gachoki: No, Madam Vice-Chairperson. I do not think so.

The Vice-Chairperson (Sen. Halake): Thank you, very much. I am going to open the floor for questions from the Members. Hon. Members, please be very concise with this. Remember that we did summon two more people at the behest of the County Assembly.

The Advocate for the County Assembly (Mr. Njiru): Madam Vice-Chairperson, you seem to have bypassed me on reexamination.

The Vice-Chairperson (Sen. Halake): I am sorry, counsel. You will have five minutes for reexamination.

The Advocate for the County Assembly (Mr. Njiru): Thank you, Madam Vice-Chairperson. Well guided.

You have been put to task to explain why you are here and your purpose. Is it your statement that you are here as a doctor, as a resident of Kirinyaga County Assembly and as a former CEC?

Dr. Agnes Gachoki: That is correct, Madam Vice-Chairperson.

The Advocate for the County Assembly (Mr. Njiru): You have been put to task to explain whether the Assembly has a role to play and you said that you cannot testify on that and that you cannot tell as to whether they are wrong or right. However, you are aware that a name was taken to the Assembly and it was rejected because of the reasons that the County Assembly adduced?

Dr. Agnes Gachoki: That is correct.

The Advocate for the County Assembly (Mr. Njiru): Did the Governor react immediately?

The Advocate for the Governor (Mr. Nyamodi): Madam Vice-Chairperson, that was not the witness's testimony. It is a statement that is now being put by the Counsel to the witness and it is an objection that I had earlier taken. The witness's answer is that she does not know, but she now knows.

The Vice-Chairperson (Sen. Halake): Counsel, can you withdraw and please ask the relevant questions.

The Advocate for the County Assembly (Mr. Njiru): I am well guided, Madam Vice-Chairperson.

You are aware that the name was rejected by the County Assembly for being non-responsive to the qualifications that were being sought?

Dr. Agnes Gachoki: Madam Vice-Chairperson, if it is the name that has been mentioned by the Lead Counsel now, then it is yes.

The Advocate for the County Assembly (Mr. Njiru): Are you aware of how long the Governor took to send a replacement of that name to the County Assembly?

Dr. Agnes Gachoki: I think that it took nearly one year.

The Advocate for the County Assembly (Mr. Njiru): Is that a year after the name was thrashed, the name of Theuri? Does it mean that it took almost another year for the next name to be brought?

Dr. Agnes Gachoki: Yes.

The Advocate for the County Assembly (Mr. Njiru): Is that conduct consistent with a person who minds about the people of Kirinyaga County?

Dr. Agnes Gachoki: No, Madam Vice- Chairperson.

The Advocate for the County Assembly (Mr. Njiru): You testified about the question of abuse of office and you were put to task to explain. I gather where the learned Counsel was coming from. What was the relationship between the CEC's and the Governor?

Dr. Agnes Gachoki: Madam Vice- Chairperson, the relationship between the CEC's in Kirinyaga County and the Governor was not one of a leader and the cabinet. That is the way I would put it. In our cabinet meetings, which were about three in my one and a half year tenure, the meetings were purely used to ratify the policies of the Governor yet we were appointed as advisors to the Governor. I had several policies that I needed the cabinet to pass, which I felt would help improve healthcare in Kirinyaga County, but those policies would never be read in the cabinet because they were not her priority. The only policies that would be read in the cabinet meetings were those that she wanted passed. We would pass them then leave.

The Advocate for the County Assembly (Mr. Njiru): Is it your testimony that the Governor runs her own show?

Dr. Agnes Gachoki: Yes, Madam Vice- Chairperson.

The Advocate for the County Assembly (Mr. Njiru): Is it your prayer that this Committee does adopt the prayers of the County Assembly and find her as unfit to continue serving and holding the office of the Governor? Will that serve the interest of the people of Kirinyaga County?

The Advocate for the Governor (Mr. Nyamodi): He is at it again, Madam Vice- Chairperson.

The Vice-Chairperson (Sen. Halake): Counsel, please desist from the conclusions that the Committee is mandated to make.

The Advocate for the County Assembly (Mr. Njiru): That is alright. No further questions.

The Vice-Chairperson (Sen. Halake): Thank you, very much. Senators, I will start with my Chairman. We will then hear from Sen. Madzayo and Sen. Kwamboka.

The Chairperson (Sen. Malalah): Thank you, Madam Vice- Chairperson. I will be specific and brief. I have a question on the issue of closing down all dispensaries. Was the directive verbal or in writing?

Dr. Agnes Gachoki: Madam Vice-Chairperson, it was verbal directive.

The Chairperson (Sen. Malalah): Does that mean that you acted on a verbal directive?

Dr. Agnes Gachoki: I did not act. It is at that point that I felt that I needed to resign from the government.

The Chairperson (Sen. Malalah): Who directed that all the dispensaries should be closed?

Dr. Agnes Gachoki: I would still follow on what was happening in Kirinyaga County and I learnt that all the casual workers were sacked and it was a directive from the County Secretary. Following that directive, the dispensaries had to be closed.

The Chairperson (Sen. Malalah): Was that matter brought before the cabinet?

Dr. Agnes Gachoki: I was not in the County Government at that time.

The Chairperson (Sen. Malalah): Did you ever discuss that matter when you were still in the County Executive Committee?

Dr. Agnes Gachoki: Those are some of the policies that the Governor would never allow us to discuss because she had her own priorities in the cabinet meeting.

The Chairperson (Sen. Malalah): That means that it was never discussed?

Dr. Agnes Gachoki: The matter was never discussed, but the Chief Officer, the Governor and I had a discussion in her office. It was also discussed in the Public Service Board. There are also letters to the Public Service Board and the Governor's office on the employment of health care workers.

The Chairperson (Sen. Malalah): That is all, Madam Vice-Chairperson.

Sen. Madzayo: Thank you, Madam Vice-Chairperson. I want her to confine herself to very short responses. She has said that the doctors within and outside Kirinyaga County communicate a lot. As a result of being in the same profession, you must be knowing one another very well.

Dr. Agnes Gachoki: Yes, we do.

Sen. Madzayo: I am looking at Paragraph four where you joined issues with the statement of Dr. Gor Kumar who is a representative of the Kenya Medical Practitioners

Pharmacists and Dentists Union (KMPPDU). Of course you worked very closely. Do you know Dr. Gor? “Yes” or “No”?

Dr. Agnes Gachoki: We do not know each other personally. I would like to say this.

Sen. Madzayo: I did not ask you to say anything further than that. I am sure you have been following these proceedings. Do you have a mortuary in Kirinyaga?

Dr. Agnes Gachoki: Yes, we opened the mortuary at the Kerugoya County Referral Hospital when I was there. We were in the process of opening another one at Kibibi Hospital.

Sen. Madzayo: If anybody came here and said that in Kirinyaga there is no mortuary at all, would that be a true statement?

Dr. Agnes Gachoki: No.

Sen. Madzayo: Thank you. If the witness who was here earlier, the one I have referred you to, said they do not know you and that you have never worked together, would you accept that? Just listen to my question first. Your statement says that currently you continue to work with her in your private practice and we know what private practice means. Do you work together?

Dr. Agnes Gachoki: Madam Vice-Chair, if I may explain what I meant by that---

Sen. Madzayo: Do you work together in private practice?

Dr. Agnes Gachoki: We doctors communicate a lot even when we have never met. When Dr. Gor used to work with my Director when I was the CEC, that was a relationship with the Department and me. When she referred to a patient in the private practice, that is still working together.

Sen. Madzayo: I think you have answered me. Can you listen to my next question?

You have stated that you were formerly an employee of Kirinyaga County. Being an employee of Kirinyaga County, you were employed at a time when you were requested to go and work by the Governor. Of course you made a lot of requests at that time, but they were not done, in terms of whatever you wanted implemented, and you felt a bit dejected. Are you bitter that you left and this is the time to hit back because the Governor never implemented what you wanted and you resigned maybe in protest?

Dr. Agnes Gachoki: Madam Vice-Chair, in my medical and clinical practice, I have taken a Hippocratic Oath. I do not hold any bitterness even against the person who has done the worst thing to me. I will even treat the person who shoots my son or mother without holding anything against them.

Sen. Madzayo: Thank you very much. Lastly, would you accept a statement that basically nothing is functioning health-wise in Kirinyaga County?

Dr. Agnes Gachoki: I would not say nothing is functional, but they could be better.

Sen. Madzayo: Thank you.

The Vice-Chairperson (Sen. Halake): Thank you very much.

Hon. Members, let us keep it very short because we still have two more witnesses to go. In fact, this could be the last one. I will take the last two and then we continue.

Sen. Kwamboka: Thank you, Madam Vice-Chair. You have just told us that Governor Waiguru does not understand what leadership entails. My question is; when she appointed you as the CEC member for Health and Medical Services, because she had trust during that time, was she participating in leadership and when did she change and become a dictator?

The Vice-Chairperson (Sen. Halake): *Daktari*, let us take a few more then you will answer all of them together. Let us have Sen. M. Kajwang' and then Sen. Pareno.

Sen. M. Kajwang': Madam Vice-Chair, I was promised earlier that some of the concerns I had raised about the Health Management Information System (HMIS) will be addressed by the current witness.

Daktari, you have mentioned that there was a system already in place in the hospitals in Kirinyaga before this other tender was floated. Is that correct?

Dr. Agnes Gachoki: Correct.

Sen. M. Kajwang': Was it a system that was in use or it had been implemented and not utilised?

Madam Vice-Chair, if I take this approach, I will not exceed two minutes. Just respond. Was it being used?

Dr. Agnes Gachoki: Madam Vice-Chair, I mentioned earlier on that there was and there is still an existing HMIS which required to be activated.

Sen. M. Kajwang': The question is; was it in active use?

Dr. Agnes Gachoki: It was not in active use. It required to be activated.

Sen. M. Kajwang': When this tender was floated, you have indicated that you were the user department and you were completely uninvolved in procurement and implementation.

Dr. Agnes Gachoki: Yes.

Sen. M. Kajwang’: What action did you take as the CEC who provided leadership for health matters in the county, seeing that a tender had been floated and a system was being implemented under your nose? Is there any evidence of the action you took?

Dr. Agnes Gachoki: There is no system that was implemented.

Sen. M. Kajwang’: So, it is your submission that even this tender having been floated, no implementation occurred?

Dr. Agnes Gachoki: Not at all.

The Vice-Chairperson (Sen. Halake): *Daktari*, maybe you can answer Sen. Kwamboka’s question as well.

Sen. M. Kajwang’: Finally, are you aware that payments were done with respect to consultancy, design and implementation of the new system?

Dr. Agnes Gachoki: Yes, I am aware.

Sen. M. Kajwang’: Was there any part where the user department was involved in user acceptance and testing? We have seen the Governor’s records here of user acceptance and testing; people drawn from the Health Department. Are you aware of your staff being involved in testing of that system?

Dr. Agnes Gachoki: The staff in my department were involved in the testing, but the system was never implemented because it had too many faults and the company was not able to correct.

Sen. M. Kajwang’: So, your submission is that there was an existing system, there was no need to tender for a new system and the tendered system was not implemented even though payments were made?

Dr. Agnes Gachoki: Correct.

Sen. M. Kajwang’: Thank you, Madam Vice-Chair.

The Vice-Chairperson (Sen. Halake): *Daktari*, could you go ahead and answer Sen. Kwamboka’s question, so that you do not lose it?

Sen. Madzayo: Madam Vice-Chair, can you ask *Wakili* Waiganjo to put his mask on?

The Vice-Chairperson (Sen. Halake): Counsel, you have been asked to do so.

Dr. Agnes Gachoki: Madam Vice-Chair, I would like to answer the question by Sen. Kwamboka about the leadership and the dictatorship. As I said earlier, when I was appointed the CEC Member for Health and Medical Services in Kirinyaga County, I was very excited because I was going to serve under a female governor. I felt that that was the time Kirinyaga County was going to see tremendous change, especially in my department.

When I started working with her, slowly by slowly, I realised that I was wrong, that this was not the kind of leadership that I was waiting for. That is why I was not able to work with her for too long.

Sen. Pareno: Madam Vice-Chair, I have just two issues. You indicated that you got frustrated because you were not able to budget for some consumables in the department, and that you were told that there was no budget for it. Did you confirm whether there was a budget passed by the County Assembly and it was the Governor who was not performing her part?

Dr. Agnes Gachoki: May I answer that? When you are a medical person and you have patients that you have to turn away because you cannot give them service, it becomes frustrating. I started getting calls from the residents and doctors. They were not able to offer services to patients who were seeking dialysis because we could not buy consumables for the Dialysis Unit.

We had budgeted for the consumables in our budget. Now we have a budget for the consumables in our budget. The suppliers would say that they cannot supply because they have not been paid for the previous supplies. That is how we ran into a crisis. This is why I say it is still the role of the Governor because she has to authorize all the payments that are made from any department.

The Vice-Chairperson (Sen. Halake): Thank you, *daktari*.

Sen. Pareno: Madam Vice-Chairperson, I have one more, a short one. You indicated that you had these donors from Canada and they got frustrated and left. You also had to close down all the dispensaries. I wonder why you did not put these two items that are very important in your statement. In your statement there is nothing about the donors and nothing about you being ordered to close the dispensaries that led you to resign. Why did you not put it in your statement?

Dr. Agnes Gachoki: I said that this was part of the abuse of office. In my statement when I alluded to abuse of office, these are some of the explanations that I wanted to give regarding abuse of office.

The Vice-Chairperson (Sen. Halake): Thank you, *daktari*. Now, I would like to ask Sen. Mugo, do you have anything? I hope you have been able to follow. If you have anything to add I would like to give you an opportunity to do so now before we call in the next witness. Sen. Mugo, can you hear me? I think she is frozen.

Thank you very much, *daktari*. You have done your civic duty. This Committee will look at determine what is contained in your statement and in your witness responses as well.

Dr. Agnes Gachoki: Thank you, Madam Vice-Chairperson. As I leave, I would like to urge this honorable Committee, the whole Senate and the Assembly to seriously- I am not talking about this Motion but health matters as a doctor.

I would like to add that universal healthcare which is His Excellency the President's Big Four Agenda, for it to be realized we have to get serious about provision of primary healthcare. When you close the dispensaries then you do not provide primary healthcare.

As from a doctor's perspective we are finding it very difficult that the government intends to provide Universal Healthcare, but governors are not helping.

The Vice-Chairperson (Sen. Halake): *Daktari*, well noted. Thank you very much. *Asante sana*.

(Dr. Agnes Gachoki withdrew from the witness stand)

Hon. Members, we will take two minutes to stand up as we call in the next person.

I will also invite back the chair to continue. Sanitize, stretch for two minutes, then we will come.

(The Committee adjourned temporarily)

[The Vice-Chairperson (Sen. Halake) left the Chair]

(The Committee resumed its hearing)

[The Chairperson (Sen. Malalah) in the Chair]

The Chairperson (Sen. Malalah): Hon. Members, let us extend the break by a further two minutes and then we proceed.

Hon. Members, we are remaining with two more witnesses. I would like to refer you to the Fifth Schedule Part One on Rules of Procedure when considering the proposed removal of a Governor. It has been provided in our rules that once we start hearing evidence, we will have to finish with hearing the witnesses so we shall extend our sitting times until when we shall have concluded hearing the witnesses. We have two more witnesses and I will now call upon counsel Ndegwa to call his witnesses.

The Advocate for the County Assembly (Mr. Njiru): Thank you, Mr. Chairman, Sir. With your permission, allow me to call my next witness Wanjiru Njeru.

(Ms. Wanjiru Njeru before the Special Committee)

The Chairperson (Sen. Malalah): I am told there are three more witnesses. This one plus an extra two. You may proceed with the oath.

(Ms. Wanjiru Njeru took the Oath)

The Chairperson (Sen. Malalah): We shall be very strict with the allocated time.

The Advocate for the County Assembly (Mr. Njiru): Thank you, Mr. Chairman, Sir, we shall be capable of observing the directions.

Ms. Wanjiru, good evening?

Ms. Wanjiru Njeru: Good evening to you.

The Advocate for the County Assembly (Mr. Njiru): Are you aware that the Governor of Kirinyaga County is facing an impeachment?

Ms. Wanjiru Njeru: Yes, I am.

The Advocate for the County Assembly (Mr. Njiru): Among the grounds of impeachment is abuse of office and violation of the law. However, just before you tell us that, could you kindly introduce yourself?

Ms. Wanjiru Njeru: My name is Ms. Wanjiru Njeru. I am a graduate in International Relations. I served in Kirinyaga County from 2017, where I was as a nominated Member of County Assembly (MCA) by the Jubilee Party. I served for exactly a year to the day, at which time, upon appointment as a Committee Executive Committee (CEC) Member, I resigned to join the County Executive Committee as Member in charge of Gender, Culture and Social Services. In my time as the MCA, I was the initial Chair of the Public Service Committee, the Deputy Chair of Implementation Committee and several other committees, including the Budget Committee. I served as CEC for Gender, Culture and Social Services from September, 2018 to December of 2019, when I resigned.

The Advocate for the County Assembly (Mr. Njiru): *Mheshimiwa*, are you still serving as a CEC Member to date?

Ms. Wanjiru Njeru: No, I resigned in December, 2019.

The Chairperson (Sen. Malalah): Kindly, speak up.

Ms. Wanjiru Njeru: I resigned in December, 2019.

The Advocate for the County Assembly (Mr. Njiru): What caused your resignation?

Ms. Wanjiru Njeru: I could no longer reconcile my conscience with being a member of a government that was defrauding its people.

The Advocate for the County Assembly (Mr. Njiru): Your conscience spoke to you in respect of being a Member of a government that was defrauding people?

Ms. Wanjiru Njeru: Yes.

The Advocate for the County Assembly (Mr. Njiru): What do you exactly mean by defrauding the people?

Ms. Wanjiru Njeru: As I said, I begun my time at Kirinyaga County from the Assembly as an MCA. I was extensively inducted into matters of a county and county government, especially with the responsibility of the Assembly. When I moved to being a CEC, first, I did not receive any induction to the position. When I asked regarding the process of induction to hold such a high responsibility, I never got any satisfactory response.

Secondly, I worked very closely with Her Excellency the Governor. I must say that at this point, to the Members of this hon. Committee and distinguished Senators, that it is not an easy thing for me to be giving---

Sen. Madzayo: Mr. Chairman Sir, incidentally, I do not have her statement on my file, the same to my colleague.

The Chairperson (Sen. Malalah): In the interest of time, as we proceed, the Secretariat can furnish you with the same.

Ms. Wanjiru Njeru: Hon. Chair, I was saying that my being here as a witness today to testify in support of the Impeachment Motion for Her Excellency the Governor, is not an easy thing for me. This is because I served very closely with her. I had a front row seat of what was happening in the County Executive, but to be silent today would be in gross betrayal of the people of Kirinyaga County to whom I took an oath to serve truly and diligently.

In my time as the CEC Member, I was also in charge of coordination of government business. As such, I had a very in-depth exposure and understanding of the running of all departments.

One of the things that I found that was pretty surprising was that, given the Governor's experience in public service, my expectation when I joined the Executive was that I was going to find a very high cadre of operation in the Executive arm of the government. As such, I expected that we were going to do great things and run the development agenda for the great people of Kirinyaga and that it would be one of those sterling performance.

The Advocate for the County Assembly (Mr. Njiru): Were your expectations met?

Ms. Wanjiru Njeru: Unfortunately, not, to my disappointment. I found that we had a pretty much dysfunctional public service, in that, none of the things that I had been

inducted to know that are the procedures and processes of a running government, were being upheld.

For example, in my understanding, from my induction of the Budget Committee, the county budget was a generation of the County Executive; by way of the people responsible for the different departments sharing their budget estimates and giving their input to the County Executive Committee Member for Finance, who in turn would put the budget together, share it to the County Executive for discussion, before it was presented to the County Assembly. This is for purpose of the CECs being able to go and defend their projects, programmes and budget when summoned by the County Assembly.

The Advocate for the County Assembly (Mr. Njiru): Witness, you mentioned that you found a very dysfunctional public service, what do you mean by dysfunctional?

Ms. Wanjiru Njeru: That is what I am trying to explain with the example of the budget process. This is because I know the distinguished Members of this Senate are very familiar with the budget process.

What I found when I joined the Executive is that the budget of the County Executive is a strange document to the county executive. Much to my surprise, in fact, in my time as the CEC, I was there for the generation of one budget, which I received upon it having been passed by the Assembly.

In addition, in December, 2018 when I was very new, the County Assembly summoned the County Executive to go and defend the county budget outlook and County Budget Review and Outlook Paper (CBROP), which I cannot remember right now. We were summoned to the Assembly and honoured the summons. However, we were presented by the Budget Committee with a document we had never seen before, yet we were on oath and on HANSARD required to defend---

The Advocate for the County Assembly (Mr. Njiru): Are you then saying that the county government is run like a one man show by the Governor?

Ms. Wanjiru Njeru: Unfortunately, that was my finding. My surprise was that something as critical as the budget, which the County Executive is held responsible to defend and implement, I found it very strange that it is treated as a private document, until when it is published and signed into law.

The Advocate for the County Assembly (Mr. Njiru): Who treats that document, the budget, as a private document?

Ms. Wanjiru Njeru: When I asked questions, I was told that the budget is developed by the Governor and a private finance team.

The Advocate for the County Assembly (Mr. Njiru): The Governor is the one who develops the budget? So, there is no doctrine of collective responsibility in the County Executive?

Ms. Wanjiru Njeru: None at all.

The Advocate for the County Assembly (Mr. Njiru): Kindly, proceed.

Ms. Wanjiru Njeru: That was my first surprise. So, given that the CECs are held responsible for implementation of budget and projects, then, the set up of how bad the budget is generated sets them up to fail right from inception. This is because how are you expected to be responsible for something that you had no input in?

The Advocate for the County Assembly (Mr. Njiru): In the interest of time, would you kindly then speak to the limb of abuse of office. Did you experience any abuse of office during your service?

Ms. Wanjiru Njeru: I did, especially by way of the Governor disregarding systems of checks and balances and usurping the authority of the County Executive.

The Advocate for the County Assembly (Mr. Njiru): You are saying that the Governor does not just undermine the County Assembly as testified in the morning, but also does not even take regard the place of the County Executive?

Ms. Wanjiru Njeru: Yes, I stand guided, Hon. Chair, but my understanding of the County Executive Committee was that they serve as advisers to the Governor. They are not people to run errands or execute instructions. When they are reduced to only that, then the authority that is described in the County Governments Act is usurped from the County Executive.

The Advocate for the County Assembly (Mr. Njiru): Do you have any other incidence that speaks to the abuse of office?

Ms. Wanjiru Njeru: I have several, but I am going to just highlight one.

The Advocate for the County Assembly (Mr. Njiru): Please do, in the interest of time. The lights are going on.

Ms. Wanjiru Njeru: I will try to be fast. In the interest of what has been tabled before this hon. Committee, I will just correspond with one incident, which was quite shocking to me. I was scheduled to travel with Her Excellency the Governor to the United States of America (USA) for a conference in March, 2019. This was following the Devolution Conference that was hosted very proudly by Kirinyaga County and at which you heard Her Excellency announce in her opening remarks at the Conference that Kirinyaga county would open a coffee house in Newark. On 16th of March the same year, I was

scheduled to travel with her, given that we were going to attend the Commission on the Status of Women (CSW) in New York at the same time as well as open the coffee shop.

When we got to the airport after processing through customs and now waiting in the lounge to travel, I was informed by the Chief of Staff who I was also traveling with that the Governor who had already arrived at the airport and had decided that we were not going to travel. At this point, we were boarding the plane.

The Advocate for the County Assembly (Mr. Njiru): To where were you boarding the plane?

Ms. Wanjiru Njeru: To New York via Dubai. I was instructed to disembark which I did not even think was possible. However, I did and we failed to travel. I later learnt that the delegation of Kenyans waiting in New York were expecting to receive us very happily join us to open the coffee shop, but the coffee shop was not in existence.

That speaks to the issues of defrauding the people because then the people of Kirinyaga County were waiting for a coffee shop to be launched. We proceeded to even disregard national security issues by having checked into our flights now requiring the Kenya Airports Authority (KAA) to remove our luggage and hold the flight so that we disembark. I was completely unable to reconcile myself with how that was possible and how somebody can feel at liberty to do that.

The Advocate for the County Assembly (Mr. Njiru): There was demonstration during the conference at Kirinyaga County for the county governments that, indeed, the coffee shop does exist. Is it your testimony that, that was a fictitious thing?

Ms. Wanjiru Njeru: The demonstration existed. We did Kirinyaga Coffee at the Devolution Conference, but the coffee shop in New York did not exist.

The Advocate for the County Assembly (Mr. Njiru): Are those some of the reasons that caused your resignation?

Ms. Wanjiru Njeru: That and many others.

The Advocate for the County Assembly (Mr. Njiru): Did you have any bad blood between you and the Governor?

Ms. Wanjiru Njeru: None, whatsoever.

The Advocate for the County Assembly (Mr. Njiru): So, you want to testify that your evidence is not triggered or relayed with bad faith?

Ms. Wanjiru Njeru: Yes, I want to say that and just reiterate the words of the late Prof. George Saitoti that there comes a time when the good of the nation is better than the good of a person. So, as much as I have admitted before this Committee that I was very close

to her Excellency, the good of the people of Kirinyaga County require of me to come here and speak the truth.

The Advocate for the County Assembly (Mr. Njiru): Was the Governor capable of offering leadership to the CECs and other administrations in the County during your service?

Ms. Wanjiru Njeru: I would say no because leadership requires communication and interaction which is two way. When a CEC feels they cannot speak freely, then there is no leadership.

The Advocate for the County Assembly (Mr. Njiru): Is that your own experience or the general experience in the Kirinyaga County Government executive arm?

Ms. Wanjiru Njeru: I do not understand your question. Please, repeat.

The Advocate for the County Assembly (Mr. Njiru): Is what you are testifying to us only your experience or the general view or experience that other member of the executive also undergo?

Ms. Wanjiru Njeru: It was not expressly my experience because as I said, I enjoyed a very good relationship with the Governor. However, it was the experience of the CEC as a whole.

The Advocate for the County Assembly (Mr. Njiru): No further questions.

The Chairperson (Sen. Malalah): Let us have cross examination.

The Advocate for the Governor (Mr. Waiganjo): Good afternoon! I will ask you a couple of questions.

The Chairperson (Sen. Malalah): Counsel, you have 10 minutes. I would request that we move through them as quickly as possible.

The Advocate for the Governor (Mr. Waiganjo): I am curious; as a member of the County Assembly, which year were you nominated to join the County Assembly?

Ms. Wanjiru Njeru: August, 2017.

The Advocate for the Governor (Mr. Waiganjo): When did you join the Kirinyaga County Government as an executive member?

Ms. Wanjiru Njeru: September, 2018.

The Advocate for the Governor (Mr. Waiganjo): Was that like a year later?

Ms. Wanjiru Njeru: Exactly a year later.

The Advocate for the Governor (Mr. Waiganjo): So, between this time when you were a member of the County Assembly, you had had interaction with the Governor's office?

Ms. Wanjiru Njeru: I had.

The Advocate for the Governor (Mr. Waiganjo): You knew it to be an efficient office?

Ms. Wanjiru Njeru: I did know that because I was not an insider.

The Advocate for the Governor (Mr. Waiganjo): Okay, but your colleague was here in the morning and he told us that this office is dysfunctional and does not do anything and does not relate with the Assembly. You were a Member of the County Assembly so that should also be your experience.

Ms. Wanjiru Njeru: Well, Mr. Chairman, Sir, as you can hear, I served the Kirinyaga County Assembly for exactly a year. At the beginning of the term, really, nobody had any expectations. At that point, we were all getting to know each other.

The Advocate for the Governor (Mr. Waiganjo): I am asking this because I find it curious that despite what cannot have been a positive experience – unless you are the only one having a positive experience in the Assembly – you proceeded to resign and join that Government.

Ms. Wanjiru Njeru: I did. As I said, my purpose and focus of going to Kirinyaga County was to serve the people of Kirinyaga County, which is my home county. Now, at the point that it became demonstrable that I would be more effective lending service in the executive than in the Assembly, I did the equivalent of falling on the sword. I gave up my seat, which I was nominated into and took an executive appointment from which I could be fired, to serve the people of Kirinyaga County better.

The Advocate for the Governor (Mr. Waiganjo): You did all that for the great service of the people?

Ms. Wanjiru Njeru: Absolutely; 100 per cent.

The Advocate for the Governor (Mr. Waiganjo): Was it your experience at that time that there was no problem, otherwise you would not be going to a place with problems?

Ms. Wanjiru Njeru: There were challenges definitely because even by the time I was joining the CEC for Gender who was appointed at the time I joined the Assembly had been laid off. Prior to my resignation and appointment, I had discussed with the Governor who had expressed challenges especially on issues where women and youth are concerned. So, I was not under any illusion that it was a smooth sailing government. However, I definitely believed at the time, that my input would help.

The Advocate for the Governor (Mr. Waiganjo): Now, when you resigned as an executive member – and you have no obligation to do so – you posted in the social media for everybody to see, your experience with the Governor of Kirinyaga County Government. What did you say in that video?

Ms. Wanjiru Njeru: Well, I cannot remember expressly, but I thanked her Excellency for the exposure and appointing me in the first place. I also thanked the people of Kirinyaga County for allowing me to serve them and for taking my leadership, amongst other things.

The Advocate for the Governor (Mr. Waiganjo): Do you remember saying that you had been empowered during the time you served as a CEC?

Ms. Wanjiru Njeru: Absolutely.

The Advocate for the Governor (Mr. Waiganjo): You were not required to do this. So, I would imagine you were speaking the truth.

Ms. Wanjiru Njeru: Yes.

The Advocate for the Governor (Mr. Waiganjo): Yet you are saying is that this was a government that was defrauding the people. This government empowered you and was defrauding the people?

Ms. Wanjiru Njeru: Yes.

The Advocate for the Governor (Mr. Waiganjo): That sounds a little contradictory.

The Advocate for the County Assembly (Mr. Njiru): Mr. Chairman, Sir, ordinarily, it is not in my habit to interject when the counsel is doing a cross-examination because I know cross-examination is wide. However, I seek your guidance as how to deal with that aspect of the evidence. How do we test it ourselves? It is not before us. How do we test that evidence of the social media?

The Chairperson (Sen. Malalah): Counsel, I think you should stick to the evidence before us and not introduce any new evidence. Just stick to what we have.

The Advocate for the Governor (Mr. Waiganjo): Mr. Chairman, Sir, noted. Though the witness has no problem and she is willing to confirm what it is I had said.

Anyway, we can move on. You say in your statement that you were the chair of the taskforce on health?

Ms. Wanjiru Njeru: Yes. I would like to expound on that---

The Advocate for the Governor (Mr. Waiganjo): No, were you appointed as chair of the taskforce?

Ms. Wanjiru Njeru: Yes.

The Advocate for the Governor (Mr. Waiganjo): By who?

Ms. Wanjiru Njeru: By her Excellency.

The Advocate for the Governor (Mr. Waiganjo): How were you appointed? Is there a letter appointing you?

Ms. Wanjiru Njeru: No, as has been expressed before this Committee, how we run things in Kirinyaga County was a bit different. So, in the same way that everything else was done, I was appointed chair.

The Advocate for the Governor (Mr. Waiganjo): Are you aware that there is a substantive chair who was substantively appointed?

Ms. Wanjiru Njeru: I am not.

The Advocate for the Governor (Mr. Waiganjo): Okay. Now, you call yourself the Coordinator of Government or Cabinet Services. I am trying to look for the title. Yes, the Chief CCM responsible for coordination of government business. Is there such a title in Kirinyaga County?

Ms. Wanjiru Njeru: Mr. Chairman, Sir, to that effect, there is a cabinet paper passed by the CEC of Kirinyaga County designating the CEC member in charge of Gender and Youth as the Coordinator of the Kirinyaga County Government Development Agenda.

The Advocate for the Governor (Mr. Waiganjo): No, that is not the same as coordinating cabinet.

Ms. Wanjiru Njeru: I did not say I was coordinating cabinet.

The Advocate for the Governor (Mr. Waiganjo): I thought that is what you said here. You said you are the coordinator of government business.

Ms. Wanjiru Njeru: Yes.

The Advocate for the Governor (Mr. Waiganjo): That is your position? You are saying there is a position like that in Kirinyaga County Government, you were appointed to that position and there is a letter appointing you?

Ms. Wanjiru Njeru: I have further expounded that there is a Cabinet Paper passing policy that the CEC Member in charge of Gender and Youth as the coordinator of the Kirinyaga County Government Development Agenda.

The Advocate for the Governor (Mr. Waiganjo): Okay. Three final questions. You made a very interesting statement that you could not stand a government that was defrauding the people.

Ms. Wanjiru Njeru: Yes.

The Advocate for the Governor (Mr. Waiganjo): So, what is this fraud? Fraud is a very serious allegation. What are particulars of the fraud? Are they in your statement?

Ms. Wanjiru Njeru: I do not believe because I believe the direction from the Senate was to give a summary of our evidence in our statements.

The Advocate for the Governor (Mr. Waiganjo): So, you can give an allegation of fraud which you do not particularise in your statement?

Ms. Wanjiru Njeru: I believe evidence issues have been addressed by the County Assembly.

The Advocate for the Governor (Mr. Waiganjo): No, I am talking about you. You have said here that you could not sit in a government that defrauds the people. What is the fraud?

Ms. Wanjiru Njeru: Mr. Chairman, Sir, I believe I have just given an example and I have said that I have many, but I have given two.

The Advocate for the Governor (Mr. Waiganjo): So, disembarking from a plane and a change of a flight is fraud on the people, in your estimation?

Ms. Wanjiru Njeru: Definitely, when flight documents have been procured with Government money to the tune of Kshs150,000, that is bursary for ten children.

The Advocate for the Governor (Mr. Waiganjo): When you left the County Government of Kirinyaga, where did you go to work? Who do you work for now?

Ms. Wanjiru Njeru: I do not work for anybody.

The Advocate for the Governor (Mr. Waiganjo): Would I be right in saying that you work for a Ministry that is in Harambee House as a consultant?

Ms. Wanjiru Njeru: You would be wrong.

The Advocate for the Governor (Mr. Waiganjo): And if I produce evidence to this event, will that evidence not be correct?

Ms. Wanjiru Njeru: Yes.

The Advocate for the Governor (Mr. Waiganjo): You do not work for the Ministry of Interior?

Ms. Wanjiru Njeru: I do not.

The Advocate for the Governor (Mr. Waiganjo): Thank you. The final point that I want to ask is on the question of that travel that was cancelled. You had collected an imprest on that---

Ms. Wanjiru Njeru: Yes, I had.

The Advocate for the Governor (Mr. Waiganjo): And you surrendered that imprest?

Ms. Wanjiru Njeru: I travelled the following month to the Boston Convention on Coffee and did my surveillance

The Advocate for the Governor (Mr. Waiganjo): So, if the County Executive Committee Member (CEC) for Finance comes you will be able to confirm that you surrendered?

Ms. Wanjiru Njeru: Absolutely.

The Advocate for the Governor (Mr. Waiganjo): Thank you very much. No further questions.

The Chairperson (Sen. Malalah): Thank you. Hon. Members, we have exactly ten minutes. Before that, we shall have re-examination for five minutes.

The Advocate for the County Assembly (Mr. Njiru): Yes, very brief.

You were put to task to explain whether you have an appointment letter to the task force, yes? Do you have any letter?

Ms. Wanjiru Njeru: No. As I said, like things are usually done in Kirinyaga County---

The Advocate for the County Assembly (Mr. Njiru): When you say things are usually done, who does these things?

Ms. Wanjiru Njeru: The Chief Executive Officer.

The Advocate for the County Assembly (Mr. Njiru): The Governor under trial?

Ms. Wanjiru Njeru: To whom County Executive Committee Members report.

The Advocate for the County Assembly (Mr. Njiru): Is that how casual the governance of Kirinyaga County is ran?

Ms. Wanjiru Njeru: Unfortunately.

The Advocate for the County Assembly (Mr. Njiru): When you say that you are the Chief CEC in Coordination of Government Business, that puts you in a position that you can be in possession of clear and concise information of how Government is ran in that particular County?

Ms. Wanjiru Njeru: Yes.

The Advocate for the County Assembly (Mr. Njiru): As I sum up, are you the only person who has resigned from that CEC or there could be several others?

Ms. Wanjiru Njeru: No.

The Advocate for the Governor: Again, Chairman, Counsel is straying beyond the acceptable bounds of re-examination.

The Advocate for the County Assembly (Mr. Njiru): I rest my case.

The Chairperson (Sen. Malalah): Thank you, Hon. Members. We have exactly 10 minutes, so one or two minutes per Member.

Sen. (Dr.) Michael Mbitu, proceed.

Sen. (Dr.) Mbitu: Thank you, Mr. Chairman, Sir. I have just one quick question. There is a report attached here on the preliminary finding of the taskforce. Is this seven-page report that the Governor found too long?

Ms. Wanjiru Njeru: Yes.

Sen. (Dr.) Mbitu: Is this the same report?

Ms. Wanjiru Njeru: Yes.

Sen. (Dr.) Mbitu: I am perusing here and seeing that among your findings, you seem to have found out that one of the renal machines had broken down and only four were working.

Ms. Wanjiru Njeru: Yes.

Sen. (Dr.) Mbito: Were these not the ones that had been given to the county on lease by the Manage Equipment Scheme (MES)?

Ms. Wanjiru Njeru: Yes, I believe they were the same ones.

Sen. (Dr.) Mbito: Is it really the duty of the county to work on that? Do you not just have to report it to the contractor?

Ms. Wanjiru Njeru: Well, at the time when we were generating the report of the taskforce, the assignment was to explore every single unit of the hospital and report in detail to exactly know what was not working, what was working and on the changes that we needed to make to ensure that the crisis did not repeat itself.

Sen. (Dr.) Mbito: Thank you, Mr. Chairman, Sir.

Sen. Kwamboka: Thank you, Linet. You have just told us that the budget of Kirinyaga is being generated by the Governor and a private scheme. Kindly, clarify and tell us which private scheme that is.

Ms. Wanjiru Njeru: I actually did not say a private scheme; I said a ‘private finance team.’

Now, I said ‘private’ because I have no idea who they are to now, but I know there is a team that sits with Her Excellency that generates the budget.

Sen. Kwamboka: Mr. Chairman, Sir, this is like a court. Once you say something, it is good enough to provide the evidence. You cannot just tell us that there is a private finance team and cannot provide the evidence.

Ms. Wanjiru Njeru: Well, respectfully Hon. Chair, I can only give the information that I have. I was a CEC Member and I am reporting to this honorable distinguished Senate Committee, that as a CEC Member, I was never involved in the budget process. Now asking me to substantiate who does the process, really if I knew that, I would have contributed to the budgets.

The Chairperson (Sen. Malalah): Ms. Njeru, you need to remain alive to the fact that oral evidence is evidence, and you need to substantiate whatever you say. You have clearly stated before this Committee that there are certain people who help the Governor come up with the budget. Could you, please, tell this Committee who are these people? If you do not know them, then do not use it as evidence against the Governor.

Ms. Wanjiru Njeru: Okay.

The Chairperson (Sen. Malalah): Could you, please, tell this Committee whether you know the people who helped the Governor come up with the budget?

Ms. Wanjiru Njeru: Hon. Chair, because I would not want to water down in my statement, I withdraw that statement.

Sen. M. Kajwang’: Thank you, Chair. Chair, I want to appreciate the witness for her eloquence and firm grasp of issues. Article 179 of the Constitution vests executive authority in the CEC, which comprises of the Governor, the Deputy and members that have been appointed through vetting by the County Assembly. Listening to you, you have been a CEC Member for about a year and before you there was another person who had also been a CEC.

I am just wondering, at what point, when you think about that collective responsibility, do you embark from that bus and leave Gov. Waiguru to take the blame when for one year, you have been part of that collective executive authority of the county?

Ms. Wanjiru Njeru: I hope that I have got a good understanding of your question Hon. Senator. I will say this, as you have said, I have served as a CEC Member for exactly one year and four months. Having stated before this Committee that I received no induction into this office, clearly, given the complexity of this responsibility because it is not a pedestrian job, I took a good part of that time learning the office.

I resigned at the point when I established that the things that were visibly wrong to me, were not that way for lack of knowing better. That is why I have said that I was unable to reconcile my conscience with continuing to be a part of a government that was defrauding its people. I used that word intentionally because defrauding is when you know the right thing, but you make the option not to do it.

Sen. M. Kajwang’: Mr. Chairman, Sir, just a final one, because I was also concerned by the use of the word ‘defrauding’ its people. That would be a criminal enterprise. The witness has given one or two examples. Would I be in order to request the witness, because you said that you have several examples, but due to limitation of time, to cite one or two other instances where you feel that the Governor has defrauded the people, because that is an extremely powerful statement to put against the Governor?

Ms. Wanjiru Njeru: I do not know what my limitations are in terms of what has been presented as evidence. So, I do not know where I can go or where I cannot go, given that I am required to give evidence.

The Chairperson (Sen. Malalah): I would give the following direction that we would not allow any new evidence.

Sen. M. Kajwang, you should be guided accordingly that this Committee will not admit any new evidence that is enshrined in our Rules of Procedure, more specifically, Rule No.19.

Sen. M. Kajwang’: Mr. Chairman, Sir, would then that mean that we expunge the example given of the coffee issues in New York?

The Chairperson (Sen. Malalah): Was that matter encapsulated in the witness statement? If it is oral evidence, I think it is part of evidence.

Sen. Pareno: I was just going to talk about that coffee shop, because that is one of the examples of defrauding the people. I wanted to hear whether apart from the losses in terms of tickets and, of course, you admitted that you refunded the *per diem* and, therefore, there was no loss there. Was there money expended on that coffee shop and do you have evidence that there was money that was expended and lost because of that cancellation that you have cited as being part of defrauding the people of Kirinyaga?

Ms. Wanjiru Njeru: Thank you, Senator. As to whether there was money spent on the coffee shop, I am not in a position to answer that. However, I can say that given that the statement of proclamation that was done in public by Her Excellency the Governor in front of the people of Kirinyaga, there was an expectation from the farmers in Kirinyaga County who we serve, that there was a place now that their coffee was going to. Since the Governor is by no means a junior officer of the County, when she says something in a public statement, it is actually a policy statement.

So then, when we were continuously confronted with questions from the public when in our interaction with them to either confirm the existence of the coffee shop or give the plan of how we were planning to run the coffee sector with reference to the fact that we had a coffee shop, we found ourselves in a very difficult situation as Members of the County Executive Committee, to explain exactly why nothing had changed for the people of Kirinyaga who had very high expectations.

Sen. Mpaayei: Thank you, Mr. Chairman, Sir. You said that you were appointed to the County Executive Committee? Right?

Ms. Wanjiru Njeru: Yes, I was.

Sen. Mpaayei: So it meant you sat in that Committee?

Ms. Wanjiru Njeru: I did.

Sen. Mpaayei: Would you kindly tell the Committee how many times in that year you sat in that Committee?

Ms. Wanjiru Njeru: I am pressed to remember off head. I think I sat in three special sittings of the County Executive Committee and in two full sittings in my year there.

Sen. Mpaayei: Mr. Chairman, Sir, I asked that because someone here said that they only sat twice for the full year. So, I just needed clarification for that.

The Vice-Chairperson (Sen. Halake): Ms. Njeru, the mandate of this Committee is to find substantiation of allegations made. I know you have a witness statement which I very much hoped would provide us that substantiation.

Let me just read one of those things you said about the taskforce-

“Upon receipt of the said report, the Governor, Her Excellency, dismissed the Report, refused or neglected to act on the restarting stating it was too long and that she wanted it reduced to address just two issues and the list of the capable staff who needed to be fired and the list of the things that she needed to procure.”

In leadership or management, sometimes you want to reduce things to the those that you can action in good time and perhaps---

Would you not have any goodwill to give your Governor that perhaps, the reason she wanted the issues reduced or the things she needed to do could have been in good faith to be able to action things better as opposed to just calling this vote?

I have managed organizations and have always insisted on reducing things that we can do now so that we can move on to something else. So, I still wonder why you would conclude that this is a callous and dismissive and things like that. You also say-

“I am aware that the Governor is charged with issues of abuse of office. That I am competent to testify on the Governor’s abuse of office allegations, having worked for her as Chief CECM responsible for---”

But not a single substantiation has been provided without going outside the---. Other than perhaps the Report--- The Report just lists the different things for us.

Can you explain why this would constitute abuse of office when perhaps she could explain that she wanted to reduce it to a low lying fruit that she could execute perhaps? Is that not something that you could consider or is it something else that you know? What is it that would make this such an abuse of office?

Ms. Wanjiru Njeru: Woow! Thank you, Sen. Halake. I am trying to find your question exactly, but let me see if I got you.

Of course, I am limited here to my opinion in this matter. Given the gravity of the situation in our healthcare at the time, I think you can all remember footage you saw on television. The fact that the KMPDU came for a site visit and required that we make a turnaround in the hospital in 14 days failure to which they would have shut it down.

I thought that disregarding the recommendations of the taskforce on pertinent issues as those that have already been brought before this Committee and reducing to an issue of who was at fault and what needed to be bought was removing yourself from the feelings of the people who were suffering in the hands of our healthcare at the time. So, that was my feeling given the gravity of the issue.

The Vice-Chairperson (Sen. Halake): And therefore, you concluded it to be abuse of office or fraud? What did that feeling then amount to for you?

Ms. Wanjiru Njeru: I cannot call it disregard.

The Chairperson (Sen. Malalah): Hon. Members, we shall cross over to hon. Mugo on Zoom. *Mheshimiwa* can you hear us? We cannot hear you.

The Vice-Chairperson (Sen. Halake): Ask her to unmute her microphone.

The Chairperson (Sen. Malalah): As we reconnect with Sen. Mugo, I will give hon. Madzayo one minute and then we conclude this matter in the interest of time.

Sen. Madzayo: Thank you, Mr. Chairman, Sir. Madam Njeru, I want to be very sympathetic to your case because you have said in your oral evidence that you were thrown out of an aircraft going to the US or you were rather told to get out which is contrary to all the procedures. Were you told the reasons you were being told to get off the plane?

Ms. Wanjiru Njeru: No, I was not.

Sen. Madzayo: I find it to be a very serious allegation, but unfortunately it is not reflected on your witness statement. Why did you choose to omit it here when it is a very serious allegation of a member of staff who had been officially booked to proceed to represent the county and, of course, in the company of the Governor, told to disembark and you never put it here? Would we consider that to be a rumor or personal hatred or women issues or what would it be?

The Vice-Chairperson (Sen. Halake): Order Sen. Madzayo. Do not go there.

Ms. Wanjiru Njeru: On the contrary, Sen. Madzayo, I think as I said, we were guided to believe that our statements were supposed to be a summary and so we would be appearing here in person to further expound on the what you see on our statements. That is why it is not appearing there because I was coming to give it as an example of the things I said on my statement.

Sen. Madzayo: On a serious allegation as this and you say it was one of the reasons you resigned and yet it is not reflected on your statement, Yes or no?

Ms. Wanjiru Njeru: Yes or no to which question Senator?

Sen. Madzayo: Why you never put that incident as part of your statement to say why it was a ground for resignation.

Ms. Wanjiru Njeru: As I said because I was led to believe that we were supposed to keep our statements in summary to come then and speak before this Committee and expound.

The Chairperson (Sen. Malalah): As we conclude, you said you did not travel to the USA. Right?

Ms. Wanjiru Njeru: In March of 2019, we did not.

The Chairperson (Sen. Malalah): How then did you know that there existed no coffee shop in the US yet you did not travel?

Ms. Wanjiru Njeru: I was privy to that information following progression in the Government. I continued to serve as CEC past March then I was able to know there was no coffee shop---

The Chairperson (Sen. Malalah): How did you know yet you did not travel?

Ms. Wanjiru Njeru: It was discussed.

The Chairperson (Sen. Malalah): Where?

Ms. Wanjiru Njeru: In the County Executive Committee.

The Chairperson (Sen. Malalah): And agreed that there was no coffee shop in the US?

Ms. Wanjiru Njeru: I think it was reported. It was not really agreed.

The Chairperson (Sen. Malalah): We shall allow Ms. Ms. Njeru to leave. Do you have anything to say? Thirty seconds.

Ms. Wanjiru Njeru: Thank you, Chair and hon. Members for giving us the opportunity. As I said, this has not been an easy thing for me to do and so I implore the Members of this Committee as the defenders of the institutions of devolution to look at this matter from a very diverse perspective.

If we are to give credence to the offices such as the one, I had of county executive committee, I think they require the protection of this Senate just like the office of the Governor does and just like the county assembly does. I hope that there will be a substantial way forward.

I thank you, very much.

The Chairperson (Sen. Malalah): Thank you, Ms. Njeru. You may leave now.

(Ms. Wanjiru Njeru withdrew from the witness stand)

I shall now call upon the next witness. We still have two more witnesses.

The Advocate for the County Assembly (Mr. Njiru): Mr. Chairman, Sir, once the next witness testifies, we shall be left with one more witness.

Our next witness will be Mr. Ngiabi Kennedy Mureithi.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, we have not received any witness statement late or otherwise for any other witness. We have no notice of who is supposed to testify.

The Advocate for the County Assembly (Mr. Njiru): Mr. Chairman, Sir, this is a witness who was summoned by the Committee.

The Chairperson (Sen. Malalah): The witnesses who were summoned by the Committee will just submit their oral evidence.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, there is no notice about what the witness is supposed to talk about even in the summons. In respect to the other two witnesses, there was notice. However, we are completely blind to this witness.

The Chairperson (Sen. Malalah): We issued summons to these witnesses yesterday, we shall allow them to give their oral evidence. The advocates of the Governor shall have a chance to cross-examine them as we proceed.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, that is well noted. It has been a little while since we did it, but I would like my learned colleague to share any document that he has in his bundle with this Committee and ourselves.

The Chairperson (Sen. Malalah): That is in order.

The Advocate for the County Assembly (Mr. Njiru): Mr. Chairman, Sir, I have already done that. I am actually relying on some of the documents that have already been produced.

The Chairperson (Sen. Malalah): We may proceed.

The Advocate for the County Assembly (Mr. Njiru): Mr. Chairman, Sir, the next witness is the Chairperson of the Kirinyaga County Public Service Board.

The Chairperson (Sen. Malalah): Where is he?

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, do I need to put that objection on record or you have noted where the witness comes from?

The Chairperson (Sen. Malalah): I have noted that. I have just realized that the witness was in the Chamber while the other witnesses were testifying.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, in that case, on behalf of the Governor, I wish to put it formally on record that this witness is not in a position to testify having sat and listened through the testimonies. We all know what the protocol is. Witnesses have to sit outside the Chamber before they testify. Once a witness has testified and it is permitted by the Committee, they are free to sit and listen.

The Advocate for the County Assembly (Mr. Njiru): Mr. Chairman, Sir, I pray that we may not confuse this process which is inquisitorial. It is not an adversarial process. We

are all here for fact finding. I know a witness that was summoned by the Governor is in the Chamber but I have no issue with that because we are all here to find the truth.

The Chairperson (Sen. Malalah): I would like to give direction on the matter. I request that we deal with the next witness as I deliberate on the matter and then I will make a ruling in a short while.

Let us proceed to the next witness, Mr. Mugo Ndathi.

(Mr. Mugo Ndathi took oath)

The Advocate for the County Assembly (Mr. Njiru): Good evening, Mr. Ndathi.

Mr. Mugo Ndathi: Good evening, Sir.

The Advocate for the County Assembly (Mr. Njiru): Kindly introduce yourself to the Committee.

Mr. Mugo Ndathi: My name is Mr. Patrick Mugo Ndathi. I am the Chief Officer Finance and Economic Planning in Kirinyaga County.

The Advocate for the County Assembly (Mr. Njiru): Kindly speak to your qualifications and former employment.

Mr. Mugo Ndathi: I graduated from the Jomo Kenyatta University of Agriculture and Technology (JKUAT) with a Bachelor of Commerce. I worked in the banking sector for over 24 years, ten of which were in management.

The Chairperson (Sen. Malalah): I will allow you to remove your mask because it is interfering with the delivery of your speech.

The Advocate for the County Assembly (Mr. Njiru): Kindly repeat what you just said because I did not get you.

Mr. Mugo Ndathi: I am a graduated from the Jomo Kenyatta University of Agriculture and Technology (JKUAT) with a Bachelor of Commerce. I worked in the banking sector for over 24 years, ten of which were in management.

The Advocate for the County Assembly (Mr. Njiru): Are you conversant with travel of dignitaries such as the Governor. Are you conversant with what happens during a foreign travel?

Mr. Mugo Ndathi: I am conversant with the payment process.

The Advocate for the County Assembly (Mr. Njiru): In the event an imprest is raised to facilitate the travel of the Governor, are you aware of what happens therein after in case she travels?

Mr. Mugo Ndathi: The imprest is supposed to be surrendered upon return.

The Advocate for the County Assembly (Mr. Njiru): What happens in the event the Governor fails to travel?

Mr. Mugo Ndathi: The imprest is supposed to be reimbursed incase the Governor does not travel.

The Advocate for the County Assembly (Mr. Njiru): To whom is the refund made to?

Mr. Mugo Ndathi: Mr. Chairman, Sir, to the County Treasury.

The Advocate for the County Assembly (Mr. Njiru): In which you are the Chief Officer. Is that correct?

Mr. Mugo Ndathi: Yes, Mr. Chairman, Sir.

The Advocate for the County Assembly (Mr. Njiru): I want to refer you to some payment that was done on 17th April, 2020. I am referring to the Governor's bundle of documents labeled "Travel Documents". Are you aware of that payment? I may show you.

Mr. Mugo Ndathi: Yes, I am, Mr. Chairman, Sir.

The Advocate for the County Assembly (Mr. Njiru): Who made the payment?

Mr. Mugo Ndathi: Mr. Chairman, Sir, the County Treasury did.

The Advocate for the County Assembly (Mr. Njiru): It was on behalf of whom?

The Chairperson (Sen. Malalah): Counsel, Mr. Njiru, could you share with the Committee which document you are referring to?

The Advocate for the County Assembly (Mr. Njiru): I am referring to the Governor's file labeled "Past Travel". It is appearing as (e). It is a receipt that we were raising in the morning.

The Chairperson (Sen. Malalah): Proceed.

The Advocate for the County Assembly (Mr. Njiru): Do you have a clear copy of that receipt?

Mr. Mugo Ndathi: Mr. Chairman, Sir, the copy was taken from the original banking slip that we did.

The Advocate for the County Assembly (Mr. Njiru): On whose behalf was this payment being done?

Mr. Mugo Ndathi: Mr. Chairman, Sir, it was on behalf of Her Excellency the Governor.

The Advocate for the County Assembly (Mr. Njiru): What does it relate to?

Mr. Mugo Ndathi: Mr. Chairman, Sir, a refund of travel that did not happen in January this year.

The Advocate for the County Assembly (Mr. Njiru): When was the travel supposed to happen?

Mr. Mugo Ndathi: Mr. Chairman, Sir, sometimes in January this year.

The Advocate for the County Assembly (Mr. Njiru): Did the travel take place?

Mr. Mugo Ndathi: Mr. Chairman, Sir, it did not. That is why there is a refund.

The Advocate for the County Assembly (Mr. Njiru): Procedurally, are you aware of how many days, hours or months a refund must be done?

Mr. Mugo Ndathi: Mr. Chairman, Sir, it is normally a practice that the surrender of imprests are recorded and done before the end of the financial year.

The Advocate for the County Assembly (Mr. Njiru): Speak to the microphone kindly.

Mr. Mugo Ndathi: Mr. Chairman, Sir, yes, I am aware.

The Advocate for the County Assembly (Mr. Njiru): After how long should a refund be done?

Mr. Mugo Ndathi: Mr. Chairman, Sir, just after the event has happened.

The Advocate for the County Assembly (Mr. Njiru): Do we have a prescribed period of doing the refund?

Mr. Mugo Ndathi: Mr. Chairman, Sir, yes, it is seven days.

The Advocate for the County Assembly (Mr. Njiru): Did this refund comply with that provision of seven days?

Mr. Mugo Ndathi: Mr. Chairman, Sir, no.

The Advocate for the County Assembly (Mr. Njiru): In the event a refund is not done, what happens or what is the obligation or the role of the Chief Officer, Finance?

Mr. Mugo Ndathi: Mr. Chairman, Sir, it is to inform the person who took the imprest.

The Advocate for the County Assembly (Mr. Njiru): Are you also aware that you are also supposed to surcharge an individual?

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, maybe counsel would allow the witness to complete his answer.

The Advocate for the County Assembly (Mr. Njiru): Mr. Chairman, Sir, I will. Are you also aware that you are also supposed to surcharge the officer responsible?

Mr. Mugo Ndathi: Mr. Chairman, Sir, the practice that is normally there in---

The Advocate for the County Assembly (Mr. Njiru): I am not asking the practice. I am asking whether you know the law requires that you surcharge. It is not the fragrant and abuse of the process that you have.

Mr. Mugo Ndathi: Mr. Chairman, Sir, yes, I am aware.

The Advocate for the County Assembly (Mr. Njiru): You are supposed to refund with seven days. Is that so?

Mr. Mugo Ndathi: Mr. Chairman, Sir, I was saying that the normal practice is normally there. All the surrenders are normally done before we cross the financial year.

The Advocate for the County Assembly (Mr. Njiru): That is the practice that you have.

Mr. Mugo Ndathi: Mr. Chairman, Sir, when these imprests were done, Her Excellency the Governor was busy. She is busy and could not be in the county some of the time. When I was able to get her, I reminded her that this has not been refunded. She immediately gave it back and the money was refunded.

The Advocate for the County Assembly (Mr. Njiru): I know you are here to defend your employer but you are also here to find the truth, Mr. Mugo. Is that correct? I am asking a simple question? Did this refund comply with the provisions of Rule 93 of the regulations?

Mr. Mugo Ndathi: Mr. Chairman, Sir, the refund was done in time only that the money had not yet reached us.

The Advocate for the County Assembly (Mr. Njiru): The rip was to take place in January. Is that correct?

Mr. Mugo Ndathi: Mr. Chairman, Sir, yes.

The Advocate for the County Assembly (Mr. Njiru): The refund was done in April this year. Is that correct?

Mr. Mugo Ndathi: Mr. Chairman, Sir, yes.

The Advocate for the County Assembly (Mr. Njiru): The law says seven days. Is that correct, Mr. Ndathi?

Mr. Mugo Ndathi: Mr. Chairman, Sir, I was trying to---

The Advocate for the County Assembly (Mr. Njiru): I am asking you about what the law says.

Mr. Mugo Ndathi: Mr. Chairman, Sir, I was trying to explain to the counsel that when those days reached, we got in touch with Her Excellency. Most of the time, Her Excellency is busy with other things. She could even be abroad at that time. When we put that across to her, she made it good to refund the cash even before the end of the financial year.

The Chairperson (Sen. Malalah): Do you have any proof to that effect?

Mr. Mugo Ndathi: Mr. Chairman, Sir, I have the deposit slip.

The Chairperson (Sen. Malalah): No, to the effect that you approached Her Excellency to refund?

Mr. Mugo Ndathi: Mr. Chairman, Sir, I got in touch with the people that take care of her diary. Often times, she is busy and you might not reach her. I got in touch with the personal assistant (PA) to remind the Governor that there was this trip and it is not yet refunded. Immediately that got to her and she got the opportunity, she was able to give the money back immediately.

The Chairperson (Sen. Malalah): You may proceed.

The Advocate for the County Assembly (Mr. Njiru): I asked you a question, Mr. Ndathi. Did you surcharge the Governor for failure to refund or surrender? Yes or no?

Mr. Mugo Ndathi: Mr. Chairman, Sir, the Governor had not refused to refund.

The Advocate for the County Assembly (Mr. Njiru): Did you surcharge?

Mr. Mugo Ndathi: Mr. Chairman, Sir, no.

The Advocate for the County Assembly (Mr. Njiru): So, this is an admission that she got public money in the month of January, decided to keep with it and when the Motion of Impeachment is brought, she decides to defend herself through a refund. Is that correct?

Mr. Mugo Ndathi: Mr. Chairman, Sir, no. That is not correct.

The Advocate for the County Assembly (Mr. Njiru): No further questions on that issue. I will move to the next issue. You are referring to a file I referred to previously about the motor vehicle. It is written Land Cruiser Prado Turbo KDG or something as Tender No. 001. Mr. Ndathi, are you aware of a tender in purchase of a motor vehicle for the Governor?

Mr. Mugo Ndathi: Mr. Chairman, Sir, I am.

The Advocate for the County Assembly (Mr. Njiru): Did you participate in that tender in any way?

Mr. Mugo Ndathi: Mr. Chairman, Sir, I participated.

The Advocate for the County Assembly (Mr. Njiru): What was your role in that tender?

Mr. Mugo Ndathi: Mr. Chairman, Sir, my role was warding the tender to Toyota Kenya after an opinion by the professionals in procurement department.

The Advocate for the County Assembly (Mr. Njiru): Could you be aware how the tender was financed and from which vote head the same was done?

Mr. Mugo Ndathi: Mr. Chairman, Sir, if I may explain that. We had budgeted for that motor vehicle in the budget under the development line. In our opinion, a vehicle is an asset as defined in the definitions under the Public Finance Management Act. When we came to requisition the amount from the Controller of Budget (COB), the COB had a different opinion.

The Advocate for the County Assembly (Mr. Njiru): Sorry, what was the opinion of the COB in regard to the purchase?

Mr. Mugo Ndathi: Mr. Chairman, Sir, that we should have budgeted that particular item under recurrent budget.

Mr. Mugo Ndathi: Mr. Chairman, Sir, we appealed to the COB quoting our understanding on how we are budgeting like that. The County Assembly also passed the budget like that. After that, the COB stuck to her guns and we came and re-budgeted for that money under the supplementary budget under recurrent items as per the recommendations of the COB.

The Advocate for the County Assembly (Mr. Njiru): How was the purchase of the motor vehicle financed?

Mr. Mugo Ndathi: Mr. Chairman, Sir, in the meantime, the Governor's vehicle totally depreciated because it was over five years.

The Advocate for the County Assembly (Mr. Njiru): I am not asking about the status of the motor vehicle. I am asking about the financing of the motor vehicle. I refer you to a letter dated 27th February, 2020. Would you read the content of that letter? What is the reference of that letter?

Mr. Mugo Ndathi: Mr. Chairman, Sir, an application for bank guarantee.

The Advocate for the County Assembly (Mr. Njiru): For what purpose?

What is the reference of that letter?

Mr. Mugo Ndathi: It is an application of bank guarantee.

The Advocate for the County Assembly (Mr. Njiru): For what purpose?

Mr. Mugo Ndathi: To secure the vehicle for her Excellency the Governor.

The Advocate for the County Assembly (Mr. Njiru): To secure a facility to purchase the Governor's vehicle, correct?

Mr. Mugo Ndathi: No, the purpose was not to secure the facility.

The Advocate for the County Assembly (Mr. Njiru): What was the purpose for the guarantee?

Mr. Mugo Ndathi: The guarantee was to assure the supplier that he would still be paid, despite him having supplied the vehicle.

The Advocate for the County Assembly (Mr. Njiru): Who was giving the assurance of the guarantee?

Mr. Mugo Ndathi: The Treasury.

The Advocate for the County Assembly (Mr. Njiru): Are you conversant with the provisions of the Public Finance Management Act (PFM Act)?

Mr. Mugo Ndathi: Yes, I am.

The Advocate for the County Assembly (Mr. Njiru): Are you aware that a county government cannot get into such arrangements without the approval of the national Government?

Mr. Mugo Ndathi: Mr. Chairman, Sir, essentially, in this case, we were not borrowing. We could not have borrowed because we had money in the budget.

What we were doing - if the counsel allows me - is that we were having a stopgap measure to secure the vehicle. We actually repaid that money after the budget was passed.

The Advocate for the County Assembly (Mr. Njiru): Let me take you back to the budget that you had passed and given a vote head of development expenditure, where you said that you had budgeted for the purchase of that motor vehicle and the Controller of Budget (CoB) advised you that, that vote head cannot be used for that purpose and it needed to be re-voted to the recurrent expenditure.

Is that correct?

Mr. Mugo Ndathi: Yes.

The Advocate for the County Assembly (Mr. Njiru): At the time of the purchase of this motor vehicle, had you re-voted it to the recurrent expenditure?

Mr. Mugo Ndathi: We did that in the Supplementary Budget.

The Advocate for the County Assembly (Mr. Njiru): At the time of the purchase, Mr. Ndathi, had the re-voting taken place?

Mr. Mugo Ndathi: That is what I was explaining. We did that when we did the Supplementary Budget.

The Advocate for the County Assembly (Mr. Njiru): When was the Supplementary Budget passed?

Mr. Mugo Ndathi: In March.

The Advocate for the County Assembly (Mr. Njiru): When was the purchase done? Check on the document you have there.

Mr. Mugo Ndathi: This letter is dated 27th February 2020.

The Advocate for the County Assembly (Mr. Njiru): And when was the budget passed?

Mr. Mugo Ndathi: In March.

The Advocate for the County Assembly (Mr. Njiru): I want to refer you to another letter. Before I do that, I want you to explain what you meant by bank guarantee extension. What were you extending with the bank?

The Chairperson (Sen. Malala): Mr. Njiru, your time is up, but I will add you strictly two more minutes.

The Advocate for the County Assembly (Mr. Njiru): Mr. Chairman, Sir, please just give me five more minutes because I have three more files to peruse through.

The Chairperson (Sen. Malala): Granted.

The Advocate for the County Assembly (Mr. Njiru): Much obliged. Let us move on very fast. What were you guaranteeing the bank?

Mr. Mugo Ndathi: We were guaranteeing that the vehicle will be paid for.

The Advocate for the County Assembly (Mr. Njiru): That the vehicle will be paid. Good!

Had you gotten the approval of the County Government for this guarantee?

Mr. Mugo Ndathi: Mr. Chairman, for us it was not a borrowing.

The Advocate for the County Assembly (Mr. Njiru): Moving to the next point, do you know one Wayne Gichara?

Mr. Mugo Ndathi: I know him.

The Advocate for the County Assembly (Mr. Njiru): What is his role in the County Government?

Mr. Mugo Ndathi: He is an Information and Communication Technology (ICT) advisor.

The Advocate for the County Assembly (Mr. Njiru): To whom?

Mr. Mugo Ndathi: To her Excellency the Governor.

The Advocate for the County Assembly (Mr. Njiru): Do you have the responsibility of constituting any evaluation Committee for any tender? Are you the one who plays that role?

Mr. Mugo Ndathi: My role in appointment in any committee is that once the Procurement Director recommends, because he is the professional in that area, that is the time I appoint. This is after the recommendation of the professionals.

The Advocate for the County Assembly (Mr. Njiru): So, are you the one who appointed Wayne Gichara in that particular tender - the Velocity Tender?

Mr. Mugo Ndathi: I need to confirm that with the appointment letter which I cannot see here. This is because there are many tenders that happen in the counties, so there are normally many documents. I need to see the particulars to confirm that I did that.

The Advocate for the County Assembly (Mr. Njiru): Moving on to the next point, are you aware of the contents of this tender for Velocity?

Are you the one who signed the agreement? Did you participate in the signing of this agreement Mr. Mugo? Yes or No? I have five minutes.

Mr. Mugo Ndathi: Through the Chair, the bulk of the procurement process is done by the professionals. I only rely on the opinion of evaluation committee, the Director Procurement. I do not participate in the tender opening and evaluation process.

The Advocate for the County Assembly (Mr. Njiru): But do you participate in appointing the evaluation Committee?

Mr. Mugo Ndathi: I appoint on the recommendation of the professionals. I do not identify, I appoint.

The Advocate for the County Assembly (Mr. Njiru): Are you aware that this tender has been impinged in these processes?

Mr. Mugo Ndathi: I do not understand your question.

The Advocate for the County Assembly (Mr. Njiru): Are you aware that this tender has been questioned?

Mr. Mugo Ndathi: Yes. I am aware.

The Advocate for the County Assembly (Mr. Njiru): Kindly look at the letter dated 7th March, 2018. Is that the letter you are looking for, for the appointment? Are you the one who executed it?

Mr. Mugo Ndathi: Yes, I am.

The Advocate for the County Assembly (Mr. Njiru): Is Wayne Gichara a member of the committee?

Mr. Mugo Ndathi: Yes, he is.

The Advocate for the County Assembly (Mr. Njiru): What role is he playing? Is he the Chairman?

Mr. Mugo Ndathi: Yes, he is.

The Advocate for the County Assembly (Mr. Njiru): By the way, do you know a company called Ever Trading Company Limited?

Mr. Mugo Ndathi: I do not know it.

The Advocate for the County Assembly (Mr. Njiru): Do you know one Mr. Edwin Gichobi Ndathi?

Mr. Mugo Ndathi: I know him.

The Advocate for the County Assembly (Mr. Njiru): Who is he to you? What is your relationship to him?

Mr. Mugo Ndathi: He is my brother.

The Advocate for the County Assembly (Mr. Njiru): He is your brother. Are you aware that he has been participating in tendering processes?

Mr. Mugo Ndathi: I am not aware.

The Advocate for the County Assembly (Mr. Njiru): You are not aware. I will show you now.

I am referring to a document contained in the Governor's documents, tender No. 039. In the interest of time, it is labelled as 8M. Very fast, look at the contract, Mr. Ndathi.

Who are the parties signing the agreement? It is the County Government and who else? Ever Trading Limited Company, correct?

Mr. Mugo Ndathi: Yes.

The Advocate for the County Assembly (Mr. Njiru): Who executed the agreement?

Mr. Mugo Ndathi: I executed this agreement of recommendation of the---

The Advocate for the County Assembly (Mr. Njiru): No, I am not asking about the recommendation. You executed it with someone else. Who was it?

Mr. Mugo Ndathi: The Chief Officer of Environment and I do not know the others.

The Advocate for the County Assembly (Mr. Njiru): Can I read them out for you? Do you know Ms. Evelyn Wakaria Nyaga?

Mr. Mugo Ndathi: No.

The Advocate for the County Assembly (Mr. Njiru): Do you know Samuel Mugira Mwangi?

Mr. Mugo Ndathi: No.

The Advocate for the County Assembly (Mr. Njiru): Do you know the owners of Ever Trading Limited Company?

Mr. Mugo Ndathi: No.

The Advocate for the County Assembly (Mr. Njiru): I put it to you that the company is owned by your brother. What do you say?

Mr. Mugo Ndathi: I am not aware; I do not know.

The Advocate for the County Assembly (Mr. Njiru): I put it to you that this is a family company. What do you say?

Mr. Mugo Ndathi: Mr. Chairman, Sir, I may not know what companies my brothers and sisters own because I have no interest in knowing about what they do in their lives.

The Advocate for the County Assembly (Mr. Njiru): Are you aware how many tenders they were awarded in that particular year?

Mr. Mugo Ndathi: In the county, there are many tenders that are awarded over the years. I may not know.

The Advocate for the County Assembly (Mr. Njiru): Which you might not know conveniently? Is that correct? So, does it surprise you that the Chief Officer facilitates the award of tenders to your brother without declaration of a conflict of interest?

Mr. Mugo Ndathi: Mr. Chairman, Sir, that is not a true statement.

The Advocate for the County Assembly (Mr. Njiru): I am asking whether it surprises you, I did not say it is true.

Mr. Mugo Ndathi: I am not surprised because my relatives can do business without my knowledge. I cannot follow what people are doing with their own lives.

The Advocate for the County Assembly (Mr. Njiru): Yes, and your relatives are free to do business with the county government, correct?

Mr. Mugo Ndathi: I did not say that. I said they are free to do business anywhere.

The Advocate for the County Assembly (Mr. Njiru): Okay. I will not ask you further questions in that respect, but I will only ask you if you are aware that that tender was Access to Government Procurement Opportunities (AGPO) reserved?

Mr. Mugo Ndathi: For that, because I have a competent team of procurement officers, I normally leave it to them to evaluate and then give me a professional opinion on that.

The Advocate for the County Assembly (Mr. Njiru): So, you cannot tell whether it was AGPO or not?

Mr. Mugo Ndathi: As I said, I relied on the professional opinion of the Procurement Department led by the Director.

The Advocate for the County Assembly (Mr. Njiru): Are you the one who makes the payments once a requisition or voucher is raised?

Mr. Mugo Ndathi: Payment is a process.

The Advocate for the County Assembly (Mr. Njiru): Are you the one who facilitates or are you involved in the process of payment?

Mr. Mugo Ndathi: I am involved, along the way.

The Advocate for the County Assembly (Mr. Njiru): Does it ring bells when you see two, three, four or five vouchers in respect of one particular company, in this case, Ever Trading Limited Company?

Mr. Mugo Ndathi: It does not. For example, if it is a project and it is done in phases--- there are many projects that happen like that. The kind of payments that happen in the county government are many. I may not be able to notice payments to a particular company.

The Advocate for the County Assembly (Mr. Njiru): But you confirm that your brother is free to do business as you stated, correct?

Mr. Mugo Ndathi: I did not say that. What I said is that I may not be following up what everybody is doing, whether it is my relative or not.

The Advocate for the County Assembly (Mr. Njiru): Are you aware that your bother participated in the campaigns for the election of the Governor and played a major role in her campaigns?

Mr. Mugo Ndathi: By that time, I was busy in the bank. I could not have known.

The Advocate for the County Assembly (Mr. Njiru): When did you join the county government?

Mr. Mugo Ndathi: In 2017.

The Advocate for the County Assembly (Mr. Njiru): In 2017, immediately after the campaigns. Yes?

The Chairperson (Sen. Malalah): Mr. Njiru, your time is up, but I will add you three more minutes to complete.

The Advocate for the County Assembly (Mr. Njiru): Much obliged.

I, therefore, put it to you that you are holding that seat as a result of favourism, nepotism and cronyism due to the role your brother played in the Governor's campaign. What do you say?

Mr. Mugo Ndathi: Absolutely not. I hope it is because I am qualified for the position.

The Advocate for the County Assembly (Mr. Njiru): I have no further questions for this witness.

Mr. Mugo Ndathi: Mr. Chairman, Sir, I went through the process of application and was vetted by the Assembly. I hold the chair because I am qualified for it.

The Chairperson (Sen. Malalah): Thank you. I will call upon the Counsel representing Governor Waiguru to do cross examination.

The Advocate for the Governor (Mr. Nyamodi): Mr. Muchigi will start. I will share the time with Mr. Muchigi.

The Advocate for the Governor (Mr. Muchigi): Can we have 15 minutes?

The Chairperson (Sen. Malalah): 15 minutes.

The Advocate for the Governor (Mr. Muchigi): Mr. Ndathi, I want to ask just two questions. Is a guarantee different from a loan?

Mr. Mugo Ndathi: They are different.

The Chairperson (Sen. Malalah): Counsel, just be guided, do not ask leading questions.

The Advocate for the Governor (Mr. Muchigi): Okay.

What is the difference between a guarantee and a bank loan in your understanding?

Mr. Mugo Ndathi: A bank loan is a facility given to an applicant to pay in instalments over a period of time. On the contrary, a guarantee a statement by the bank that do what you need to as applying object, you are ensured of payment.

The Advocate for the Governor (Mr. Muchigi): So, the money that is used for the guarantee belongs to who?

Mr. Mugo Ndathi: It belongs to the applicant.

The Advocate for the Governor (Mr. Muchigi): Thank you. In that case, was there any loss of money because of the purchase of a vehicle for the Governor?

Mr. Mugo Ndathi: As a matter of fact, after the budget, we refunded that money back to the account that we had used to guarantee.

The Advocate for the Governor (Mr. Muchigi): Had the County Assembly approved the purchase of that vehicle?

Mr. Mugo Ndathi: The County Assembly approved the purchase of the vehicle twice, when we budgeted under development, and when budgeted under recurrent.

The Advocate for the Governor (Mr. Muchigi): The other question I want to ask is; you have been asked about the imprest and allowance issue. I just want you to clarify one thing. Have you had reason to surcharge the Governor for the time that she has been holding office because of non-refund of any imprest or allowances for a trip that was not travelled?

Mr. Mugo Ndathi: I have had no reason.

The Advocate for the Governor (Mr. Muchigi): Thank you.

Sorry, one last question. Forgetting the title that you hold, what is your position in the county government?

Mr. Mugo Ndathi: I am the overall Accounting Officer in the county.

The Advocate for the Governor (Mr. Muchigi): As a result of that, decisions will have to pass to you from most of the other committees for approval one way or the other?

Mr. Mugo Ndathi: I would say that all of them pass through me.

The Advocate for the Governor (Mr. Muchigi): Even if it is the other committees that have made those decisions?

Mr. Mugo Ndathi: Yes.

The Advocate for the Governor (Mr. Muchigi): Thank you.

The Advocate for the Governor (Mr. Nyamodi): Thank you, Mr. Chairman, sir. Just two clarifications.

Good evening, Bw. Ndathi.

Mr. Mugo Ndathi: Good evening, Sir.

The Advocate for the Governor (Mr. Nyamodi): In respect to the issue that my learned colleague made very heavy weather about imprest, was there any loss occasioned to the Kirinyaga County Government?

Mr. Mugo Ndathi: There was none.

The Advocate for the Governor (Mr. Nyamodi): In respect to the purchase of the motor vehicle, was there any loss occasioned to the Kirinyaga County Government?

Mr. Mugo Ndathi: There was none.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, that is all the examination-in-chief for this witness.

Mr. Chairman, Sir, I seek your direction. Cross examination in this matter has already taken place. Cross examination and examination-in-chief took place, but they happened the other way around. I want to cite you as my witness in that respect.

When my learned colleague, Mr. Muchigi was asking questions, you constrained him not to ask leading questions. As Dr. Okello will tell you, that constraint is only applicable to examination-in-chief. Cross examination has taken place. Cross examination was done by my learned colleague, so the then has no right to reexamine.

The Chairperson (Sen. Malalah): Mr. Njiru.

The Advocate for the County Assembly (Njiru): Could I have a bite of the cherry? This is a witness who appears before the Committee pursuant to our trigger. Our trigger in the sense that we are the ones who invoked the powers, or sought to invoke the powers of the Committee to summon him. It is normal practice that whenever you cross examine and reexamine, it is an obligation that is vested with the person who cross examined it. I do not know why my senior learned friend is missing the point.

Again, my learned friend is confusing the proceedings before this Committee. These are not adversarial proceedings. We are here for fact finding. I will not tire to remind him that we are doing an inquisitorial process. We are trying to inquire into the conduct of this individual, whether he has a conflict of interest or not.

When he says that I have no right of reexamination, I may rest my case and leave it to the Committee for determination, but he has not cited the law that he is relying on, so that I can have some substantive submissions on the same.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, by way of a brief response, I am not confusing anything. I have gotten nothing wrong. Even if these proceedings are inquisitorial, it does not enjoin your Committee to become informal. You put things to a witness when you cross examine them.

You are constrained not to ask leading questions when you examine in chief. It is the party that examines in chief that has the ability to reexamine. Cross-examination, having taken place, the learned Counsel cannot get an opportunity to cross examine the witness again.

The Chairperson (Sen. Malalah): I think I will use the practice and traditions of this Committee to make a determination on the same and, therefore, allow reexamination for five minutes. It is within my powers to overrule your objection.

The Advocate for the Governor (Mr. Nyamodi): We are guided. Perhaps now that it is re-examination the restriction to no leading questions will be applied strictly to Mr. Njiru.

The Chairperson (Sen. Malalah): That is true. Mr. Njiru, stand guided. You have exactly five minutes.

The Advocate for the County Assembly (Mr. Njiru): Mr. Ndathi, a question has been put to you on whether the county government of Kirinyaga and by extension, the republic of Kenya, lost any money, right?

Mr. Mugo Ndathi: Yes.

The Advocate for the County Assembly (Mr. Njiru): Between January, when the trip was to take place, and April, when the refund was done, where was the money domiciled? Who was drawing the benefits of that money for that period of four months? Is it the County Government of Kirinyaga or the Republic of Kenya?

Mr. Mugo Ndathi: I may not be able to talk about benefits, but for me as---

The Advocate for the County Assembly (Mr. Njiru): Who was in possession of the money?

Mr. Mugo Ndathi: The money was in the imprest holder's account.

The Advocate for the County Assembly (Mr. Njiru): In this case, it happens to be the Governor?

Mr. Mugo Ndathi: It happens to be the Governor.

The Advocate for the County Assembly (Mr. Njiru): Did she give you an account as to what she did with Kenyan money for four months?

Mr. Mugo Ndathi: As the Accounting Officer, it is not my interest to know whether when money got to an individual's account it sat there until the time she came back in April, withdraw the money and bring it to me or otherwise. For me, when I followed the refund, it was given back to me at the time that it was given as per that deposit slip, and I deposited. My assumption is that the money was till sitting there. For some reason, I could not get it until that time it was deposited.

Mr. Chairman Sir, I am not able to answer that question the way the Counsel has asked.

The Advocate for the County Assembly (Mr. Njiru): On the issue of the bank guarantee. Did I hear you explain that the bank guarantee is not a facility?

Mr. Mugo Ndathi: Yes, Mr. Chairman, Sir.

The Advocate for the County Assembly (Mr. Njiru): What is it in financial terms?

Mr. Mugo Ndathi: Mr. Chairman, Sir, it is a statement by the bank giving a guarantee that you supply what the applicant is requesting for and you are guaranteeing to be paid--

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The Advocate for the County Assembly (Mr. Njiru): What happens in the event of default for payment in financial circumstances?

Mr. Mugo Ndathi: Mr. Chairman, Sir, in our case---

The Advocate for the County Assembly (Mr. Njiru): No, I am asking about financial circumstances and not what happens in your case. What happens in the event of default if you are guaranteeing?

Mr. Mugo Ndathi: Mr. Chairman, Sir, I think that this question arises because of the issue that is on the table right now.

The Advocate for the County Assembly (Mr. Njiru): Yes, and I am now asking for purposes of information. Financially, in the event of default to honour the guarantee, what happens?

Mr. Mugo Ndathi: Mr. Chairman, Sir, in our case, there was no chance of default because we are under the budget.

The Advocate for the County Assembly (Mr. Njiru): That is not the question that I am putting. I am very precise on the answer that I want. What happens in the event of default?

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, the learned Counsel is asking a hypothetical question and the answer that the witness has given is that the scenario that the Counsel is asking did not arise. This is not a lesson on the law of guarantees.

The Chairman (Sen. Malalah): I think that you are right. Mr. Njiru, kindly remain relevant.

The Advocate for the County Assembly (Mr. Njiru): Why do you think that there could not have been a default? Is it that the County Government would still have honored the guarantee?

Mr. Mugo Ndathi: Mr. Chairman, Sir, it is because there was a budget to pay for that vehicle.

The Advocate for the County Assembly (Mr. Njiru): To honour the guarantee. Correct?

Mr. Mugo Ndathi: Mr. Chairman, Sir, to pay for---

The Advocate for the County Assembly (Mr. Njiru): Subsequent to the passing of the supplementary budget, the County Government was to honour the guarantee. Is that correct?

Mr. Mugo Ndathi: Mr. Chairman, Sir, I said that the purpose of budgeting for the vehicle was to pay for the vehicle using the budget.

The Advocate for the County Assembly (Mr. Njiru): But you took possession of the motor vehicle before the budget was passed.

Mr. Mugo Ndathi: Mr. Chairman, Sir, in the procurement process---

The Advocate for the County Assembly (Mr. Njiru): Is it a yes or no?

Mr. Mugo Ndathi: Mr. Chairman, Sir, in the procurement process, one can go on and procure if they have a budget. That is the reason as to why we went ahead and procured the vehicle because we had a budget in that financial year.

The Advocate for the County Assembly (Mr. Njiru): No further questions.

The Chairperson (Sen. Malalah): Thank you. We will have a maximum of three to four questions. We will start with Sen. M. Kajwang' then we will hear from Sen. Madzayo.

Sen. M. Kajwang': Thank you, Mr. Chairman, Sir. I will go straight to the issues. The Chief Officer is aware of the PFM Act and regulations particularly regulation No. 93 that talks about imprest management. It defines an Accounting Officer for imprest purposes. Will I be correct to say that he is the Accounting Officer referred to in the regulations for imprest management and accountability?

Mr. Mugo Ndathi: I am, Mr. Chairman, Sir, alongside the departmental accounting officer.

Sen. M. Kajwang': He had alluded that imprest should be surrendered within seven days. Is he aware of that provision?

Mr. Mugo Ndathi: Yes, Mr. Chairman, Sir. I am aware of that.

Sen. M. Kajwang': Is he also aware that he is not supposed to issue imprest before the previous imprest is surrendered?

Mr. Mugo Ndathi: Yes, Mr. Chairman, Sir. I am aware of that.

Sen. M. Kajwang': In this case, did he issue an additional imprest before the previous imprest had been surrendered.

Mr. Mugo Ndathi: Mr. Chairman, Sir, as much as I can remember, I did not though I will need to go and confirm that. However, what I recollect is that I did not.

Sen. M. Kajwang': If that was the case, does he know that it will be an offence.

Mr. Mugo Ndathi: Yes, Mr. Chairman, Sir.

Sen. M. Kajwang’: Is he also aware of the provisions of regulation No. 93(7) which states that where the accounting officer fails to recover imprest within the parameter stipulated within the Act and regulations, he or she commits an offence. That means that on the charge of imprest management, the person who should be charged is the Accounting Officer and not the Governor. That is because it has been specifically stated as an offence. It says that if the Accounting Officer fails to recover, he or she commits an offence. In this case, this burden should be on his shoulder and not the shoulder of the Governor.

Mr. Mugo Ndathi: Mr. Chairman, Sir, I do agree with the Hon. Senator but we did recover it.

Sen. M. Kajwang’: Finally, on conflict of interest, is he aware of the provisions of the Public Procurement and Asset Disposal Act, 2015. It does talk of conflict of interest and it defines the persons who will constitute conflict of interest. These persons are spouse, brother, parent and many more.

One of the charges against the Governor is that through his office, he has been issuing contracts to companies that are related to him. For avoidance of doubt, is Eva Trading Agencies Limited a company that he has any interest in?

Mr. Mugo Ndathi: Mr. Chairman, Sir, I have no interest in Eva Trading Agencies Limited.

Sen. M. Kajwang’: Is it a company where his brother or relative has an interest in?

Mr. Mugo Ndathi: Mr. Chairman, Sir, I am not aware about that.

Sen. M. Kajwang’: In the case of writing the letters that we have seen here, has there been a point in time when he has declared conflict of interest?

Mr. Mugo Ndathi: Mr. Chairman, Sir, I have not because I did not have a reason. There are many contracts that take place in the County and I have to sign all of them. I may not be able to peruse the documents for all the companies. It is difficult for an individual to know the owners of a company. If I am to find out about the owners of a particular company, my interest would be questioned? They would want to know the particulars that I want to find out. Therefore, I may not be in a position to find out about the many companies that tender in the County.

Sen. M. Kajwang’: Thank you, Mr. Chief Officer. Mr. Chairman, Sir, I do appreciate that it will be upon the Assembly to prove that Eva Trading Agencies Limited is indeed owned by persons with relation to the Chief Officer. I do appreciate that it is not his duty but he has said it on oath that he knows nothing about them and that he did not declare any interest when he signed these documents as required in the Public Procurement and Asset Disposal Act, 2015.

The Chairman (Sen. Malalah): Thank you. We will now hear from Sen. Madzayo.

Sen. Madzayo: Thank you, Mr. Chairman, Sir. This is a very interesting scenario and the truth might actually set Mr. Ndathi free. If I saw the name Madzayo making an application and it has been awarded, would I not be interested to know who the Madzayo is or would I ignore it because there are so many tenders that have been allocated?

Suppose I see it getting more than three or four tenders, what would come in my mind if the name is more or less similar to my surname?

Mr. Mugo Ndathi: Mr. Chairman, Sir, the documents that I sign the award letter to is passed by an opinion that is generated by an evaluation and the tendering committees. The opinion letter does not have the names of the directors of the companies. The only information that is there is the companies that were evaluated and the one that the evaluation committee thought was the best qualified. The opinion letter, which is normally brought to my attention by the Director of Procurement advising me that they have gone through the process and they have found the company to be the most qualified, does not have names. I do not have a way of knowing the names of the owners of those companies.

Sen. Madzayo: Mr. Chairman, Sir, Mr. Ndathi should get serious. Does he know what a certificate of incorporation of a company is? He knows about Eva Trading Agencies Limited. He knows that it was awarded tenders by the County. Is he aware of it?

Mr. Mugo Ndathi: Yes, Mr. Chairman, Sir.

Sen. Madzayo: Is he in charge of that particular department.

Mr. Mugo Ndathi: Yes, Mr. Chairman, Sir. I am in charge.

Sen. Madzayo: When people apply for a tender, they usually supply the list of directors.

Mr. Mugo Ndathi: Mr. Chairman, Sir---

Sen. Madzayo: Just wait for my question.

Mr. Mugo Ndathi: I am sorry.

Sen. Madzayo: Did he have a chance to peruse through so as to see who the directors were so as to establish if it was right or wrong. As an employee, his antennas must be up for him to be fair to both parties. In my humble view, does he think that this was conflict of interest and is he deliberately refusing?

Mr. Mugo Ndathi: Mr. Chairman, Sir, that is not true because I am not involved in the tendering process where they open the tender documents, evaluate and peruse them. It is not just for this particular tender but it is the case for all the tenders in the County

Government. I usually leave that work to the professionals and they give me an opinion by telling me the company which they believe is the most qualified to do the job.

Sen. Madzayo: Thank you, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Thank you. I would like to remind hon. Members of this Committee that the person who has been accused is Governor Anne Mumbi Waiguru. Therefore, whatever question you ask should be limited to facts or matters you want clarifications on the charges that have been brought this honourable House. Am I clear?

Is there any other concern? Sen. Mpaayei, you had something to say? You are okay? I think that is done and dusted. Do you have anything to say in your closing remarks?

Hon. Members, I was to make a determination on the matter where we had a witness seated in the Chamber while other witnesses were giving out their evidence. I would like to rule as follows.

We need to appreciate that this is not a purely criminal matter. Therefore, looking at our Rules of Procedure which guide the proceedings of this honourable Committee, we do not have a specific provision that provides that a witness will not sit in the Chamber while other witnesses are giving evidence.

Secondly, we also need to remain alive to the fact that the proceedings of this sitting are being aired live. Therefore, even if the witness was sitting in a holding room, we had already provided that we shall be broadcasting the events of this honourable Committee live. Therefore, he or she will still be privy to the facts that are being canvassed in this Committee.

Therefore, I will like to rule as follows. I will admit the evidence of the said officer. I hereby call upon the officer to come and provide evidence before this Committee. You may take oath of affirmation.

(The Chairperson of the CPSB (Mr. Ngiabi Mureithi) took the oath)

The Chairperson (Sen. Malalah): Again, we shall be very strict on the time. We shall have 15 minutes for cross-examination.

The Advocate for the Governor (Mr. Nyamodi): Sorry to bother you again. It is 26 minutes to 9.00 p.m. and we have the curfew. I hope the Chairman will bear that in mind as we proceed.

The Chairperson (Sen. Malalah): I think we are classified under essential services. So, you are safe. We shall ensure that you reach home safely.

The Advocate for the Governor (Mr. Nyamodi): If we cannot, we hope we can come home with you, Mr. Chairman, Sir.

(Laughter)

The Chairperson (Sen. Malalah): Mr. Njiru, you may proceed.

The Advocate for the County Assembly (Mr. Njiru): Mr. Ndathi, you have been called before this Committee do adduce evidence.

Mr. Ngiabi Mureithi: Correction, I am not Mr. Ndathi.

The Advocate for the County Assembly (Mr. Njiru): Sorry, Mr. Ngiabi. Thank you for the correction. We have called you here to adduce evidence to particular issues where the Governor is accused of abuse of office in the manner she conducts her affairs. To that effect, Mr. Ndathi, you wrote a letter that I tabled before this Committee, dated 4th January---

The Chairperson (Sen. Malalah): For purposes of record, can we get the exact name?

The Advocate for the County Assembly (Mr. Njiru): Mr. Ngiabi is the correct name. I think I am obsessed by the Ndathis.

Mr. Ngiabi Mureithi: It is N.G.I.A.B.I.

The Advocate for the County Assembly (Mr. Njiru): Mr. Ngiabi, I will refer you to a letter that I tabled in the morning, dated 4th January, 2018. Would you look at the content of that letter, Mr. Ngiabi?

Mr. Ngiabi Mureithi: I would wish to look at the content of this letter but before I do that, I would also want to make some comments.

The Advocate for the County Assembly (Mr. Njiru): Among those comments, give us your qualifications.

Mr. Ngiabi Mureithi: My name is Kennedy Mureithi Ngiabi, the current Chair of Kirinyaga CPSB. I am a holder of Bachelor of Commerce (BCom) degree. I am also a certified public accountant.

For the past 24 years, I have been working in the Office of the Auditor-General. I resigned to go and join Kirinyaga County because I wanted to be one of those people involved in making Kirinyaga County to rise. Before I resigned from my last station in the Office of the Auditor-General, I was the Liaison Officer for the parliamentary affairs. I used to coordinate all the Ministries and Departments, bringing their reports to the County Public Accounts and Investments Committee (CPAIC).

I have a wealth of knowledge in auditing. That is my background because all my life, I have been working as an auditor, stationed in various Ministries and Departments. I have worked with the National Treasury and State Law Office. I also worked with the Kenya

Revenue Commission (KRA) as the auditor in charge. I have also worked as the auditor in charge of the State Houses between 2013 and 2014. I left became the parliamentary liaison officer for the Office of the Auditor-General. That is my opening remarks.

I wish to state that I received a letter of invitation yesterday at around 5.00 p.m. informing me that I should appear to clarify some issues. When I went through that letter, there is somewhere where it is written: “Therefore, the Special Committee hereby summons you to appear before the Committee in person on Tuesday, 23rd June, 2020, at 10.00 a.m. at the Mini Chamber, First Floor, County Hall, Parliament Buildings.”

The letter went ahead to give me some caution that: Should I fail to appear before the Special Committee on the date and time specified in the summons, or to produce the documentation required by the Committee, the Committee may impose upon me a fine not exceeding Kshs500,000 or may order for my arrest, pursuant to Section 19(1) and (3) respectively of the Parliamentary Powers and Privileges Act, 2017, and secondly, that it shall also be an offence---

The Advocate for the County Assembly (Mr. Njiru): Time, Mr. Ngiabi.

Mr. Ngiabi Mureithi: The reason I am reading this is because I wanted to give the reason why I am here. I just received this letter. I was not told what I should come with here. So, I am here to answer what I will be asked exhaustively because I understand the issues touching on the county.

The Advocate for the County Assembly (Mr. Njiru): That is okay, Mr. Ngiabi. Look at that letter.

Mr. Ngiabi Mureithi: This is my letter.

The Advocate for the County Assembly (Mr. Njiru): Do you own it?

Mr. Ngiabi Mureithi: I own it.

The Advocate for the County Assembly (Mr. Njiru): What is the subject of the letter?

Mr. Ngiabi Mureithi: I had written to the Sectoral Committee for Public Service, Kirinyaga County Assembly. The subject matter is coercion by Her Excellency the Governor to recruit unqualified Director of Administration by the name Pauline Wairimu Kamau.

The Advocate for the County Assembly (Mr. Njiru): What is the date of the letter?

Mr. Ngiabi Mureithi: The date of the letter is 4th January, 2018.

The Advocate for the County Assembly (Mr. Njiru): Why do you call it coercion by the Governor to recruit Pauline?

Mr. Ngiabi Mureithi: I would wish to state that if you look at the organogram or the organisation chart of the county, you will realise that the relationship between the Governor and everybody else is well stipulated.

The relationship between the Office of the Governor and the office of the County Public Service Board is in a dotted line, not a complete line. Therefore, in Human Resource terminology it means that it is an office where you are supposed to consult both ways. In that respect, as the Chairperson of the Public Service Board, my letter of appointment and the County Governments Act, 2012, stipulate my functions.

One of the roles is to coordinate all the activities of the board and liaise with governor on matters going on. Some of these matters mostly involve human resource. Therefore, I wrote this letter when I found that we have advertised for the positions of directors; not only the director of administration, they are many. We were to recruit several directors. When we are recruiting directors, we are guided by the provisions that are in existence, as guided by the Transition Authority, which gives specific qualifications for each and every cadre.

The Advocate for the County Assembly (Mr. Njiru): What are the qualifications for a director given by the Transition Authority?

Mr. Ngiabi: The Transition Authority gives the minimum qualification for a person to be appointed director is a degree from a recognized university and 10 years' experience in that relevant field.

The Advocate for the County Assembly (Mr. Njiru): Did you assess Pauline and found out that she was not qualified?

Mr. Ngiabi Mureithi: I did that. Since I had that information, when I was discussing with Her Excellency the Governor, I brought it to her attention that as much as we would have liked to recruit this person, Pauline Kamau, when we go through the documents we found that she does not have the minimum requirements.

The Advocate for the County Assembly (Mr. Njiru): You mean you discussed the recruitment of Pauline with the governor. Why was it necessary for you to do so?

Mr. Ngiabi Mureithi: Since the relationship between the Governor's Office and the County Public Service Board is a dotted line. Therefore, if I find that there is something which is not going on, there is nothing that prevents me from discussing with the governor and giving my opinion.

The Advocate for the County Assembly (Mr. Njiru): After you gave your opinion to the governor about the qualification of Pauline, what was her reaction?

Mr. Ngiabi Mureithi: She became adamant and decided that Pauline was the person to be given the position.

The Advocate for the County Assembly (Mr. Njiru): Are you aware where she was working previously before she became the director?

Mr. Ngiabi Mureithi: I am privy to that because I had gone through the records even when she was hired before I had not joined the county. She joined way before in November or September, 2017. I was still in the office of the Auditor General. She was given the position of the Personal Assistant to the Governor. She was introduced to the board the normal way Governor introduces her staff, that ‘this is a list of my staff, can you regularized and give them whatever is required?’ That is what we did.

The Advocate for the County Assembly (Mr. Njiru): So, you mean the Governor never took it lightly when you informed her that the lady she once recruited has no qualifications.

Mr. Ngiabi Mureithi: I would say that she did not take it lightly. If she did, we could have discussed that matter further. However, it ended there, which forced me to go and report back to my full board the decision of the Governor. When I reported back that the governor had said that we must employ this person, all of my board members were very annoyed about it.

The Advocate for the County Assembly (Mr. Njiru): Were there other people who were more qualified than she was in the list?

Mr. Ngiabi Mureithi: I have a database. I wish you had asked me which document I should come with.

The Advocate for the County Assembly (Mr. Njiru): We will favour you with some. Is that the database you are talking about?

Mr. Ngiabi Mureithi: This is the database.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, again, the witness and counsel have gone into conversation on their own. We cannot follow the conversation because we do not have the benefit of the documents they are talking about.

The Advocate for the County Assembly (Mr. Njiru): I restrict myself to the letter than I have shown you. However, do you confirm that Pauline was hired out of coercion by the governor?

Mr. Ngiabi Mureithi: I would say that.

The Advocate for the County Assembly (Mr. Njiru): Look at the next letter I have given you. What is the date of that letter?

Mr. Ngiabi Mureithi: 4th, December, 2017.

The Advocate for the County Assembly (Mr. Njiru): Whom are you addressing the same to?

Mr. Ngiabi Mureithi: To the Sectoral Committee for Public Service Kirinyaga County Assembly.

The Advocate for the County Assembly (Mr. Njiru): What are you addressing them on?

Mr. Ngiabi Mureithi: Request for intervention.

The Advocate for the County Assembly (Mr. Njiru): What intervention? Would you read the content of the letter?

Mr. Ngiabi Mureithi: I was writing to the Sectoral Committee because it is in charge of public service, and I was asking to put some mechanism in place to reign on the governor to respect the law.

The Advocate for the County Assembly (Mr. Njiru): You mean the governor was not respecting the law?

Mr. Ngiabi Mureithi: Yes, simply because when I am told to recruit somebody who is not qualified, it is me who will be answerable together with my board. It is me and my board who will be held responsible by the Ethics and Anti-Corruption Commission (EACC), asking us what we did as an independent body.

The Advocate for the County Assembly (Mr. Njiru): Look at the next letter, the one that has been brought. It is on the table. What is the content of that letter?

Mr. Ngiabi Mureithi: It is a letter of appointment.

The Advocate for the County Assembly (Mr. Njiru): Dated when?

Mr. Ngiabi Mureithi: Dated 15th November, 2017.

The Advocate for the County Assembly (Mr. Njiru): Whom are you appointing?

Mr. Ngiabi Mureithi: The Information Communication and Technology (ICT) advisor.

The Advocate for the County Assembly (Mr. Njiru): Who is the ICT advisor?

Mr. Ngiabi Mureithi: It is one Wayne Gachera Gakuya. I would want to clarify that when this Wayne Gachera was being recruited, I had not reported to the county by that time. However, he was given the letter of appointment by the existing board.

The Advocate for the County Assembly (Mr. Njiru): Do you own the letter as a board?

Mr. Ngiabi Mureithi: Yes, because it is in the file. I do not know how you got it.

The Advocate for the County Assembly (Mr. Njiru): Mr. Ngiabi, who is he advising?

Mr. Ngiabi Mureithi: The governor. This is a governor's staff.

The Advocate for the County Assembly (Mr. Njiru): According to your knowledge in Human Resource, accounting and audit, do governor's staff play any role in procurement processes?

Mr. Ngiabi Mureithi: Governor's staff have got very specific and restricted roles. Number one, they do not report to the County Secretary because they are not in the line

of public servants. They are governor's staff and they report to the Chief of Staff. The Chief of Staff reports directly to the governor.

The Advocate for the County Assembly (Mr. Njiru): Are they supposed to play any role in the tendering processes?

Mr. Ngiabi Mureithi: As far as I am concerned and from my background, governors' staff are people who take direct instructions from the governor, and are therefore, not qualified to sit in such public activities, like the tendering committees.

The Advocate for the County Assembly (Mr. Njiru): Are you aware that there is a manual from the Transition Authority creating the Offices of Governors' staff?

Mr. Ngiabi Mureithi: I am aware of that.

The Advocate for the County Assembly (Mr. Njiru): Is that one of the offices that has been created by the manual?

Mr. Ngiabi Mureithi: Not really. It is not provided for in that manual, because the manual specifically gives the number, their roles, salaries and everything. ICT advisor is not one of them.

The Advocate for the County Assembly (Mr. Njiru): I now take you to my last position and issue on the question of the reinstatement of the 77 medical doctors. Are you aware of the reinstatement?

Mr. Ngiabi Mureithi: I am aware of this as the Chairman of the Kirinyaga County Public Service Board.

The Advocate for the County Assembly (Mr. Njiru): Did you play any role in their reinstatement?

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, again, we do not have the benefit of that letter.

The Advocate for the County Assembly (Mr. Njiru): Counsel, we have served you with the letter.

The Advocate for the Governor (Mr. Nyamodi): The witness has not identified the letter by date or reference.

The Advocate for the County Assembly (Mr. Njiru): Do you have the letter?

The Advocate for the Governor (Mr. Nyamodi): What letter?

The Advocate for the County Assembly (Mr. Njiru): What is the date of the letter?

Mr. Ngiabi Mureithi: 11th December, 2019.

The Advocate for the Governor (Mr. Nyamodi): I do not have the letter.

The Chairperson (Sen. Malalah): Can you furnish the Counsel with a copy of the letter? You can share it.

Note that your time is over. So, I will add you two more minutes.

The Advocate for the County Assembly (Mr. Njiru): Anyway, even in the absence of the letter, evidence was laid to the effect that there was a reinstatement of 77 medical officers. Are you aware of that?

Mr. Ngiabi Mureithi: I am aware of that. It came about as a result of the olive branch, which was extended by our Hon. Governor, and she said in a paid press statement that those people - after the ruling in Nyeri - who come back to work will not be sanctioned, will to be punished, as long as they come back.

The Advocate for the County Assembly (Mr. Njiru): Are you aware whether they are drawing their salaries or not?

Mr. Ngiabi Mureithi: I am aware that they are not drawing salaries.

The Advocate for the County Assembly (Mr. Njiru): For how long have they worked?

Mr. Ngiabi Mureithi: They have even been served with a court summon on the same.

The Advocate for the County Assembly (Mr. Njiru): For how long have they been working without salaries since the time of their reinstatement?

Mr. Ngiabi Mureithi: Although, I do not know whether it has been accepted here.

The time I wrote this letter was in December, 2019.

The Advocate for the County Assembly (Mr. Njiru): December which year?

Mr. Ngiabi Mureithi: From July, 2019, when we reinstated them up to December, 2019, they had not been paid. Even now, I have not received any communication from any quarter. The only communication I got is that I had been summoned to a court to go and respond to charges of not paying those people salaries.

The Advocate for the County Assembly (Mr. Njiru): From a human resource perspective, which you have knowledge of, does that motivate or demote workers?

Mr. Ngiabi Mureithi: Although there are some scholars who say that money is not their only motivating factor, it is also a factor to motivate. It is called hygiene factor. Therefore, even if it is not, it can interfere with the type of service you are going to deliver.

The Advocate for the County Assembly (Mr. Njiru): So, it can interfere with the output of the workers.

Mr. Ngiabi Mureithi: Yes.

The Advocate for the County Assembly (Mr. Njiru): No further questions.

The Chairperson (Sen. Malalah): Thank you, we shall accept cross examination from the counsels representing Governor Waiguru.

The Advocate for Governor (Mr. Waiganjo): Thank you, Mr. Chairman, Sir. We will share this time with my colleague, my learned friend, Mr. Nyamondi.

Very quickly, Mr. Ngiabi, you are a long serving public officer in a fairly senior position. You understand the mandate of the Public Service Board, the concept of independence of that office and why that independence was given. Why is that board made independent?

Mr. Ngiabi Mureithi: Yes, on paper.

Let me answer you this way. The Board is regarded as independent, but what do we mean by independence, counsel? If the Board does not have its own budget, what kind of independence are you talking about?

The Advocate for Governor (Mr. Waiganjo): So, what you are saying is that your Board is not independent.

Mr. Ngiabi Mureithi: Not my board, all 47 County Service Boards. I am here, in my closing remark, I am going to make comment to the Hon. Senators. This is because there is a Bill for County Public Service Board, lying here in the Senate for the last two years and it has never been passed, trying to seek that independence.

The Advocate for Governor (Mr. Waiganjo): Mr. Ngiabi, of all the independent institutions in this country, is there any independent institution that has its own budget that is not approved by any institution?

Mr. Ngiabi Mureithi: Yes.

The Advocate for the Governor (Mr. Waiganjo): Which one?

Mr. Ngiabi Mureithi: There are independent offices like the Office of the Auditor-General and Office of the Controller of Budget (CoB). Those are independent offices. They control and regulate their own budgets.

The Advocate for the Governor (Mr. Waiganjo): So, they allocate themselves the money?

Mr. Ngiabi Mureithi: It is only approved. They seek approval from Parliament.

The Advocate for the Governor (Mr. Waiganjo): Can the Governor sack you as members of the Board?

Mr. Ngiabi Mureithi: Directly, the Governor cannot sack me as a Chair or a Member of the Board, but if the Governor is in good terms, or proper terms with the Members of

County Assembly (MCAs), any person can be sacked because it is matter of writing to the MCAs and the MCAs will go ahead and ---

The Advocate for the Governor (Mr. Waiganjo): Mr. Ngiabi, you have served in the public for a long time. Can the Governor sack you as a Member of the Board?

Mr. Ngiabi Mureithi: She may not sack me, but she can frustrate my operations.

The Advocate for the Governor (Mr. Waiganjo): So, what you are saying, is that what you are fearing is the frustration.

Mr. Ngiabi Mureithi: Not that I am fearing.

The Advocate for the Governor (Mr. Waiganjo): But you said that Ms. Pauline did not qualify.

Mr. Ngiabi Mureithi: Yes.

The Advocate for the Governor (Mr. Waiganjo): Did you issue her an employment letter?

Mr. Ngiabi Mureithi: The Board issued and then I wrote---I had written this letter even before I issued that letter. This is because I was telling the assembly, if you do not act fast, to forestall this, we will issue the appointment letter.

The Advocate for the Governor (Mr. Waiganjo): The Board sat down, knew that all they were doing was wrong, but decided we would go ahead and do it.

Mr. Ngiabi Mureithi: We had to get an exit route because I knew that next time, Ethics and Anti-Corruption Commission (EACC) will be on my neck and the Board. Why did you employ this? The same question you are asking me would be asked by the EACC.

I decide to write to the assembly, I will have an alibi to say that I sent it to the assembly, they have the oversight role and probably, what they did is up to them.

The Advocate for the Governor (Mr. Waiganjo): Is that how you understand your responsibility? To throw to somebody else.

Mr. Ngiabi Mureithi: Yes.

The Advocate for the Governor (Mr. Waiganjo): Alright. Mr. Ngiabi, are you aware of a lady called Ms. Maurine Nyawira Mureithi?

Mr. Ngiabi Mureithi: Yes, precisely.

The Advocate for the Governor (Mr. Waiganjo): Who is that lady?

Mr. Ngiabi Mureithi: That lady is my relative.

The Advocate for the Governor (Mr. Waiganjo): How is she your relative?

Mr. Ngiabi Mureithi: She is my daughter.

The Advocate for the Governor (Mr. Waiganjo): Where does she work?

Mr. Ngiabi Mureithi: She works with Kirinyaga County Government.

The Advocate for the Governor (Mr. Waiganjo): When was she employed?

Mr. Ngiabi Mureithi: She was employed in 2019.

The Advocate for the Governor (Mr. Waiganjo): Who was the Chair of the Public Service Board at that time?

Mr. Ngiabi Mureithi: Let me take you through some--- It was me.

The Advocate for the Governor (Mr. Waiganjo): You have said that you are a public--- Let me finish.

Mr. Ngiabi Mureithi: I was the Chair.

The Advocate for the Governor (Mr. Waiganjo): Mr. Ngiabi, you knew what you were doing was wrong, and yet you went ahead because the assembly would cover you.

Mr. Ngiabi Mureithi: Mr. Chairman, Sir, through you, let me take the counsel through recruitment---

The Advocate for the Governor (Mr. Waiganjo): No.

Mr. Ngiabi Mureithi: No. you cannot dictate what to say.

The Advocate for the Governor (Mr. Waiganjo): These are questions. I can dictate how you answer them.

Mr. Ngiabi Mureithi: I am answering the questions.

The Advocate for the Governor (Mr. Waiganjo): I have only asked you whether this is your daughter. Full stop. That is it. I am not asking anything else.

Mr. Ngiabi Mureithi: Yes, she is my daughter, but I want---

The Chairperson (Sen. Malalah): Mr. Ngiabi Kennedy, kindly stick to the questions that you have been asked. Do not create your own questions and your own responses. Be guided accordingly.

Mr. Ngiabi Mureithi: I am guided.

The Advocate for the Governor (Mr. Waiganjo): Now, let me ask you Mr. Ngiabi, on the issue of doctors, you have had a disagreement with the Governor.

Mr. Ngiabi Mureithi: Mr. Chairman, Sir, before we go to that one, I would have liked to pinpoint how, when somebody related to you applies and is qualified, that you declare the interest and move away from that panel when that person is being interviewed. That is what happened.

The Chairperson (Sen. Malalah): Counsel, just to notify you, you are remaining with five minutes. However, I am tempted to add you more minutes. This is because the session is interesting. I will add you a further three minutes. You are remaining with eight minutes.

The Advocate for the Governor (Mr. Waiganjo): Thank you, Mr. Chairman, Sir.

Mr. Ngiabi, on this issue of doctors, you disagreed with the position that the Governor took, not to pay the doctors that were re-engaged. Have you had an active disagreement with the Governor on that issue?

Mr. Ngiabi Mureithi: You want a yes or no.

The Advocate for the Governor (Mr. Waiganjo): Yes. Have you had an active disagreement? You have different positions with the Governor.

Mr. Ngiabi Mureithi: It was not an active disagreement.

The Advocate for the Governor (Mr. Waiganjo): But the Governor has taken the position that you were wrong.

Mr. Ngiabi Mureithi: No. I also took the position that she was wrong.

The Advocate for the Governor (Mr. Waiganjo): Precisely, that is what I mean.

Now, you said that you feared. The reason you did what you did is because you feared that if you disagree with the Governor, you will be frustrated. So, how comes in this issue, you have no problem with disagreeing with a Governor.

Mr. Ngiabi Mureithi: Because that time I was ready to resign.

The Advocate for the Governor (Mr. Waiganjo): But the previous time you were not ready.

Mr. Ngiabi Mureithi: I was ready to resign on this issue of the doctors.

The Advocate for the Governor (Mr. Waiganjo): But on the other one you were ready to disobey the law---

Mr. Ngiabi Mureithi: Yes, and get an exit route when the EACC comes.

The Advocate for the Governor (Mr. Waiganjo): Before I go there, the letters you have conveniently produced complaining about the issue of Ms. Pauline, I find it strange that they are not copied to the Governor. This is because the person you are complaining about, if you are an independent officer, is the Governor, but for some reason these letters are copied to the Governor. Explain that to us.

Mr. Ngiabi Mureithi: Let me ask you; you are saying I am---

The Advocate for the Governor (Mr. Waiganjo): No, it is not you to ask.

Mr. Ngiabi Mureithi: Let me respond to you. You are saying I am independent. Why do I copy that letter to the Governor, if I am an independent officer?

The Advocate for the Governor (Mr. Waiganjo): You are the one who said you are independent. In fact, you said you cannot be fired.

Mr. Ngiabi Mureithi: No, I told you independence is on paper, and I gave you explanations.

The Advocate for the Governor (Mr. Waiganjo): So, from where you sit, your responsibility is to do whatever you are told by anyone else---

Mr. Ngiabi Mureithi: I am telling you even the Chief of Staff had even usurped powers of the Public Service Board.

The Advocate for the Governor (Mr. Waiganjo): Alright. Mr. Ngiabi, Ms. Pauline was employed in January, 2019. We are now in April, 2020.

Mr. Independent chairperson, you sent a letter conveniently that time like you said, to cover your back?

Mr. Ngiabi Mureithi: Yes.

The Advocate for the Governor (Mr. Waiganjo): What have you done since then because this is an issue which you know your Board---

Mr. Ngiabi Mureithi: Yes.

The Advocate for the Governor (Mr. Waiganjo): According to you, what is it that you have done in furtherance other than these letters that have conveniently appeared now?

Mr. Ngiabi Mureithi: In furtherance of that, I was still waiting for the Ethics and Anti-Corruption Commission (EACC) to come and ask those questions.

(Laughter)

The Advocate for the Governor (Mr. Waiganjo): All right.

Mr. Ngiabi Mureithi: Yes. That is why I had that exit route.

The Advocate for the Governor (Mr. Waiganjo): Okay. Now, Mr. Ngiabi, you have given a position that relates to the appointment of Evaluation Committee members. Does the Governor appoint members of the Evaluation Committee?

Mr. Ngiabi Mureithi: I am not aware.

The Advocate for the Governor (Mr. Waiganjo): I thought you said you are an expert. You even gave an example of who cannot be in an Evaluation Committee. So, you must know who appoints.

Mr. Ngiabi Mureithi: I talk purely about the Governor's staff because their laws are all well stipulated in the Transition Authority (TA) of the document.

The Advocate for the Governor (Mr. Waiganjo): So, you do not know who appoints and Evaluation Committee members?

Mr. Ngiabi Mureithi: I do not.

The Advocate for the Governor (Mr. Waiganjo): Although you could say who cannot serve in an Evaluation Committee?

Mr. Ngiabi Mureithi: It is because I have this document showing me what they are supposed to do.

The Advocate for the Governor (Mr. Waiganjo): Show me where it says they cannot sit in an Evaluation Committee.

Mr. Ngiabi Mureithi: When I say that, it does not mean that it must be said you should not. However, when you are given the roles of the Governor's staff here in this document, there is nowhere.

The Advocate for the Governor (Mr. Waiganjo): Can I show you this letter and show me where it says? This letter of this lady called Ms. Maurine Nyawira Mureithi. Show me where it says whether or not it says she can sit in an Evaluation Committee.

Mr. Ngiabi Mureithi: Who?

The Advocate for the Governor (Mr. Waiganjo): I am just saying you are saying that the issue of what somebody can and cannot do must be in their letter of engagement.

Mr. Ngiabi Mureithi: What?

The Advocate for the Governor (Mr. Waiganjo): You are saying---

Mr. Ngiabi Mureithi: This Ms. Maurine you are talking about is a procurement officer. She can sit in an Evaluation Committee---

The Advocate for the Governor (Mr. Waiganjo): Where does it say that in her letter?

Mr. Ngiabi Mureithi: Where?

The Advocate for the Governor (Mr. Waiganjo): Where does it say that she can sit in an Evaluation Committee?

Mr. Ngiabi Mureithi: In appointment letters, they are given many roles.

The Advocate for the Governor (Mr. Waiganjo): So, where is the role of an evaluation committee--- The point I am trying to make is; how did you decide that this officer can sit in an Evaluation Committee and this one cannot?

Mr. Ngiabi Mureithi: I did not say that Ms. Pauline should not sit in an evaluation committee---

The Advocate for the Governor (Mr. Waiganjo): No, I am talking about Gichira.

Mr. Ngiabi Mureithi: I said, when a Governor's staff and a Governor's staff report to the Chief of Staff who reports directly to the Governor---. Therefore, you do not expect the fairness which would be expected by everybody.

The Advocate for the Governor (Mr. Waiganjo): Who is it that does not expect fairness?

Mr. Ngiabi Mureithi: Now, if this Governor's staff here under the COS chairing the Tender Committee, what do you expect?

The Advocate for the Governor (Mr. Waiganjo): So, what you are saying is that the even the people who report to the Chief of Staff should not be involved in Tender Committees because they might also benefit the Chief of Staff?

Mr. Ngiabi Mureithi: I did not say that but I said---

The Advocate for the Governor (Mr. Waiganjo): No, I am following your argument that because these people report to the Governor, they should not sit in Tender Committees because then that would be partisan.

Mr. Ngiabi Mureithi: Now, can I take you through the roles of these staff of the Governor? Why are you running away from it?

The Advocate for the Governor (Mr. Waiganjo): No, I am asking about an Evaluation Committee and that is about evaluation there.

Mr. Ngiabi Mureithi: No. Why are you running away from this document which gives specific roles to these governors' staffs?

Sen. Madzayo: Mr. Chairman, Sir, I would not want to interrupt the parties concerned. However, I am more concerned but the witness not answering questions and instead, asking questions. The Advocate is asking specific questions which require specific answers and the witness should restrict himself to that.

Sen. Pareno: Mr. Chairman, Sir, I was also concerned when the witness keeps saying no., he is being asked questions and he shouts back no. we are not at a speaking contest. It is for him to be able to answer in a nice way without necessarily shouting no. I think he is here to answer and not say no.

The Chairperson (Sen. Malalah): According to me, Sen. Pareno, no is an answer. We cannot dictate the rendition or delivery in the manner in which the witness is replying to questions. It is his personal demeanor and we would want to accept him the way he is.

You have three more minutes to conclude, Advocate. Kindly, let us concentrate. I will not start looking at the body language, the poise, pose and the postures of the witnesses. So, let us concentrate on the subject matter.

The Advocate for the Governor (Mr. Waiganjo): Thank you, Mr. Chairman, Sir. Mr. Ngiabi, you talked about the 77 health workers. Had you been involved in the process of recruiting the replacement health workers?

Mr. Ngiabi Mureithi: Yes.

The Advocate for the Governor (Mr. Waiganjo): Your Board was involved in recruiting the replacement health workers?

Mr. Ngiabi Mureithi: Very well.

The Advocate for the Governor (Mr. Waiganjo): Those workers were employed through your Board?

Mr. Ngiabi Mureithi: Yes.

The Advocate for the Governor (Mr. Waiganjo): So, once the workers were employed, when you replaced them, which positions were they supposed to occupy since you had already filled the pre-existing positions?

Mr. Ngiabi Mureithi: Thank you for the question. Mr. Chairman, Sir. As the Board, we were alive to that problem, that we have recruited new staff. If I had the chance of bringing the advertisement for those new recruits, I can prove here that we did not recruit all those positions.

We left quite a big chunk, almost 200 positions without being filled, because we knew that some people would appeal to the decision of the CPSB and some will have come back after the olive branch. Therefore, as a Board, we decided not to fill all those positions. Documents are there. The advertisement is there and the actual number which was recruited is there. The difference was almost 190. We left it that way so that those people who would come back with genuine cases and reason, would still have a place to be fixed.

The Advocate for the Governor (Mr. Waiganjo): Mr. Ngiabi, you are aware that the County Government operates on a budget. The health is allocated, as well as the budget for salaries, development and so on. The Governor has no power for additional staff beyond the budget that is allocated.

Mr. Ngiabi Mureithi: I am aware of that, and that is why we left almost 190 slots unfilled. We knew if we filled all of them, where would we take those who succeed in their appeals?

The Advocate for the Governor (Mr. Waiganjo): Mr. Ngiabi, where is that evidence you are talking about the positions---

Mr. Ngiabi Mureithi: Positions that were advertised?

The Advocate for the Governor (Mr. Waiganjo): No, about the number of doctors whose positions you left.

Mr. Ngiabi Mureithi: I did not have a statement but I said it in the opening statement. I was not asked to put any statement and I came here to answer questions.

The Advocate for the Governor (Mr. Waiganjo): How many workers did you hire?

Mr. Ngiabi Mureithi: Myself?

The Advocate for the Governor (Mr. Waiganjo): No. As the Board, how many health workers did you hire?

Mr. Ngiabi Mureithi: Off head, I will not be able to tell exactly how many because---

The Advocate for the Governor (Mr. Waiganjo): How many workers had gone on strike?

Mr. Ngiabi Mureithi: Not unless I check because we have those documents in the office.

The Advocate for the Governor (Mr. Waiganjo): Anyway, I put it to you that what you are seeking to do is to bloat the wage of the county without taking due regard to the problems of their budgetary allocations.

Mr. Ngiabi Mureithi: Advocate, I would say no because I have told you – this is the third time I am repeating to you – that as a Board, we decided against the numbers which were advertised, to leave at least 190 unfilled positions for all those cadres so that those would succeed in their appeal cannot actually go overboard.

The Advocate for the Governor (Mr. Waiganjo): Okay. No further questions.

The Chairperson (Sen. Malalah): Thank you. I think we shall now have 10 minutes restricted to concerns raised by hon. Senators. I will start with Hon. Member of Trans Nzoia---

The Advocate for the County Assembly (Mr. Njiru): A very quick one.

The Chairperson (Sen. Malalah): You will do five minutes for re-examination and then 10 minutes for raising concerns by hon. Senators.

The Advocate for the County Assembly (Mr. Njiru): Mr. Ngiabi, you have been put to task to explain why you recruited, did you say your daughter? On the document that you were shown?

Mr. Ngiabi Mureithi: Yes.

The Advocate for the County Assembly (Mr. Njiru): Was she competent enough to be recruited?

Mr. Ngiabi Mureithi: She is a graduate in procurement from the Jomo Kenyatta University of Technology (JKUAT) and she applied just like anybody else. When we advertise, we do not put a caveat on the advert that relatives of Board members should not apply. We do not and it has never happened.

The Advocate for the County Assembly (Mr. Njiru): Did you declare your interest on that particular day of the interview?

Mr. Ngiabi Mureithi: I declared my interest and the Director of Procurement is here and can attest to that. I did not sit in that panel. When that name was called, I told Board members to hold on and that the person who had been called is known to me and therefore I could not sit in the panel. I sort leave and my Vice-Chairperson took over and they went through the interviews while I was away.

The Advocate for the County Assembly (Mr. Njiru): So, it is your testimony that you never participated in her recruitment?

Mr. Ngiabi Mureithi: It is my testimony.

The Advocate for the County Assembly (Mr. Njiru): It is your testimony that you never participated in---

Mr. Ngiabi Mureithi: It is my testimony and even if I am called upon by this Senate to bring the score sheet for those board members who scored on that issue of that lady, they will see that my name is not on those score sheets.

The Advocate for the County Assembly (Mr. Njiru): You have been taken to task to explain whether or not the Governor's partisan staff can sit in the procurement processes. There is a manual which you are referring to. Which manual is that?

Mr. Ngiabi Mureithi: It is the Transition Authority (TA) Manual which guides us up to date on how to go about recruiting the Governor's staff, their numbers, salaries and everything else.

The Advocate for the County Assembly (Mr. Njiru): So are you guided by the same manual when you are recruiting for the Governor's staff?

Mr. Ngiabi Mureithi: This is one of the reasons I was saying this person was hired when I was not in the CPSB yet. He was hired earlier than myself. Therefore, I would not be able to tell the Board's feeling or what drove them to actually hire that person when he was not provided for in the guidelines.

The Advocate for the County Assembly (Mr. Njiru): What is the working relationship between the Board and the Governor, not specifically Mr. Ngiabi, but the entire Board?

Mr. Ngiabi Mureithi: I would say that when we took over, when this government was started in 2017, we had a very good and cordial relationship with Her Excellency the Governor. She could summon me in her office and we could discuss issues cordially. We went on very well. From 2018, there were no issues. If I had any issue, I would go and tell her, for example, "This I wrote to the Assembly." We would discuss and when I saw things were not forthcoming, I would get an exit route because oversight is in the Assembly, I would write and keep quiet because I do not want to go to jail for no reason.

The Advocate for the County Assembly (Mr. Njiru): Okay. So, currently, what is the relationship between the Board and the Office of the Governor?

Mr. Ngiabi Mureithi: I would not say that it is very good. This was brought about by the issue of the health workers. I stood my guard that the number that was reinstated by the Board after due diligence and verification, that when Her Excellency gave an olive branch – I know that the Governor is not a liar - she said it clearly that when they come, they will not be sanctioned.

The Advocate for the County Assembly (Mr. Njiru): Did she put it in writing?

Mr. Ngiabi Mureithi: It was in the Press.

The Advocate for the County Assembly (Mr. Njiru): But did she put it in writing authorizing the Board?

Mr. Ngiabi Mureithi: To do what?

The Advocate for the County Assembly (Mr. Njiru): To reinstate?

Mr. Ngiabi Mureithi: No, she is not supposed to do that. It is not her role.

The Advocate for the County Assembly (Mr. Njiru): Is she accustomed to that conduct of writing or issues directives?

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, if I may---

The Chairperson (Sen. Malalah): Yes, Counsel.

The Advocate for the Governor (Mr. Nyamodi): Mr. Chairman, Sir, he is asking in re-examination whether my client is accustomed to doing things in a certain way. That is not re-examination.

The Chairperson (Sen. Malalah): Mr. Njiru, I think you are out of order.

The Advocate for the County Assembly (Mr. Njiru): I am well guided, Mr. Chairman, Sir.

Mr. Ngiabi Mureithi: I was saying that we had a good relationship. The relationship became a bit sour only on principle because of those health workers. I stood my ground. When the County Secretary came and told me that Her Excellency had said that we must withdraw the reinstatement letters, I asked the County Secretary: "Really?, You mean the Governor can say that? Is she a liar? You want to tell me the Governor is a liar that she put this one in the newspaper of wide circulation that those people who come back will not be sanctioned? Then you come and tell me when we have finished all this verification that we do not put these people in the payroll and withdraw them?" I told him---

The Advocate for the County Assembly (Mr. Njiru): The time is over Mr. Ngiabi.

Mr. Ngiabi Mureithi: I told the County Secretary that: "If you want me to withdraw that letter, go and tell Her Excellency to put up another press statement telling the whole country that she was lying, that she was not intending to take back---

The Advocate for the County Assembly (Mr. Njiru): Did she do it?

Mr. Ngiabi Mureithi: No.

The Advocate for the County Assembly (Mr. Njiru): What was the motivation for the withdrawal of the reinstatements by the Governor?

Mr. Ngiabi Mureithi: Those are the questions I was asking. I was not given satisfactory reasons why we should withdraw those letters for the health workers.

The Advocate for the County Assembly (Mr. Njiru): Mr. Chairman, Sir, I have no further questions.

The Chairperson (Sen. Malalah): Thank you. Time is up! Now we have 10 minutes for Hon. Senators. I will start with my Vice-Chairperson, Sen. Halake.

The Vice-Chairperson (Sen. Halake): Mr. Ngiabi, I have a very simple question. Why did you not honour the request by the MCAs to appear as a witness occasioning us to summon you here today?

Mr. Ngiabi Mureithi: That is a good question. Why did I not do what?

(Laughter)

The Vice Chairperson (Sen. Halake): You forgot the good question? The County Assembly wrote to us informing us that they had difficulties convincing you to come to give evidence or provide whatever it is that you know about this case. Why did you refuse to do so and occasion us to summon you here today?

Mr. Ngiabi Mureithi: Mr. Chairman, Sir, I am a professional working for the Kirinyaga County Government. I am not an MCA. I am the Chairperson of the CPSB. Even if it is the Assembly which wrote to me to come and testify, I could not have come. I came because it is the Senate which called me to come and clarify what they want.

The Vice Chairperson (Sen. Halake): So you have no regard or respect for the primary oversight of the County Assembly?

Mr. Ngiabi Mureithi: They had not summoned me in writing.

The Vice Chairperson (Sen. Halake): They had not summoned you?

Mr. Ngiabi Mureithi: Yes.

The Vice Chairperson (Sen. Halake): Okay. Is it then in order for the County Assembly to say to us that they had difficulties to get this witness when, in fact, he is confirming that they did not? Can the Counsel tell us what is going on? Are they using us to get witnesses here?

The Chairperson (Sen. Malalah): That is a matter that will be raised in a different meeting. I do not think this is the time to ask the Counsel questions.

The Vice Chairperson (Sen. Halake): Fair enough, Mr. Chairman, Sir.

The Chairperson (Sen. Malalah): Proceed, Sen. (Dr.) Mbiti.

Sen. (Dr. Mbiti): Actually my question was on the same point the Vice-Chairperson has raised. The County Assembly told us that Mr. Ngiabi was summoned to give a statement and produce documents, which you refused to do. Hence, the reason we were requested to summon you here. If that is not true, then there is a problem. Somebody duped the Committee to bring this distinguished gentleman here. He had never refused to come.

The Chairperson (Sen. Malalah): Did you receive any letter from the County Assembly requesting you to appear before them or produce any documents?

Mr. Ngiabi Mureithi: There are two issues here, Mr. Chairman, Sir. On 10th June, 2020, I was summoned by the County Assembly to shed light on the same issues. That was quite a different issue because I was called and the letter was very clear. It said: "Appear before the Assembly to shed light on these four points." One of them was this issue of the health workers; why they are not being paid, how long they have not been paid---

The Chairperson (Sen. Malalah): Was it an independent interrogation or it was in relation to the impeachment of the Governor?

Mr. Ngiabi Mureithi: It was not related to the impeachment of the Governor at all. I went there with all the documents that they had requested to support my claim that these people were working and they are not being paid.

The Chairperson (Sen. Malalah): So, initially you had not received any letter---

Mr. Ngiabi Mureithi: To write a statement for the impeachment, no.

The Chairperson (Sen. Malalah): Okay, thank you. Sen. Pareno, proceed.

Sen. Pareno: I needed to hear from you on this, Mr. Ngiabi. If you could refuse to withdraw the statement letters of the nurses and say that you cannot as directed by the Governor, why did you not refuse to be forced to hire this Pauline? Now that you can actually defy what the Governor has told you, you would have defied her on this one, so that you do not have to tell us that you were forced.

Mr. Ngiabi Mureithi: Through the Chair, let me say this. The hon. Senator has used a very powerful word "defy". I did not defy. I stood my ground on principle because I had reasons to believe that those people were properly in the payroll. That does not amount to defying.

The Chairperson (Sen. Malalah): The concern of Sen. Pareno is why you did not use the same principles to stand your ground and refuse the appointment of one Pauline.

Mr. Ngiabi Mureithi: Look at the letter which I wrote about Pauline. What is the date of that letter? Can I be reminded the date? I was very new in that Board. I was hardly two months in that Board.

The Chairperson (Sen. Malalah): You did not have principles by then?

Mr. Ngiabi Mureithi: Not that I did not have principles, but I had not learnt the operations of the Governor; how she liked doing things. Therefore, I decided to, first of all, give it time. Probably we will continue talking and we would make Kirinyaga rise again and rise further through discussions.

Sen. Pareno: Chair, you are on record saying that I would have resigned---

The Chairperson (Sen. Malalah): Which Chair?

Sen. Pareno: Chair of this Special Committee. I am not addressing the witness. So, just following up, I heard him say that, in fact, he would have resigned. So, I was wondering if at that time when you were being allegedly forced to hire Pauline you would have resigned, what made you not to resign?

All these malpractices have been there and you seem to be somebody who stands your ground. Why did you not report to Ethics and Anti-Corruption Commission (EACC) that you had malpractices going on? Why were you waiting for EACC to say they do not know?

Mr. Ngiabi Mureithi: Mr. Chairman, Sir, let me answer that question. Why did I not resign? When I was dealing with the case of Pauline, I was dealing with a single person. When I was dealing with the health staff, I was dealing with 77 people suffering for a whole year. There was that motivation that if the rights of these people were be trampled on because of my omission, commission or anything, I would rather resign than do what I am bring asked to do to recall the letters of reinstatement.

Pauline was a single person and I have also said I was very new. I did not want to bring controversies while I was barely two months old. At the back of my mind, I knew there was a problem here, EACC is coming and I must get a way out. I got that way out by writing to the County Assembly so that when the EACC comes I would tell them, "This is what I did. I wrote this. What did they do? Ask them."

The Chairperson (Sen. Malalah): Mr. Kennedy, I think the paradox in your submission is that you appreciate that the CPSB is an independent body and it operates semi-autonomously. At the same time, you are attesting to this Committee that you always go to get approvals from another source of authority. So, how then do you want us to believe in you that you always operate independently and without any due influence?

Mr. Ngiabi Mureithi: Thank you, very much, Mr. Chairman Sir. I did not say that I go to get approvals from the Governor, but for the proper functioning---

The Chairperson (Sen. Malalah): But you said when the Governor was adamant that Pauline must be appointed, you had no option but to appoint her?

Mr. Ngiabi Mureithi: Let me explain this: My role is to be the intermediary between the CPSB and the Governor. When there are sticky issues, I am the one to forward them the Governor. One of these sticky issues at that time was the recruitment of Pauline. I went in

good faith to discuss with the Governor, to tell her: “If we do this, there will be a problem. I had been an auditor for long and I know why people are going to jail. I have taken very many people to jail when I was in that office and this is one thing which will take me to jail.”

When you are talking to the Governor and see this is the position, you now try to figure out how to get out of that hole. That is exactly why I said I was not going to antagonize the Governor. Let us employ that one, but on top of that I must write to the County Assembly and tell them.

I was taking a big risk because at that time the County Assembly was in very good terms with the Governor. They were talking and they could even take that letter to the Governor and tell to look at what the Chair of CPAB was saying. I took that risk. I said if it was going to cost my job let it do so, but I would have something to tell these people in Nyeri - the EACC people who are very dangerous, that I did it.

The Chairperson (Sen. Malalah): You are telling this honorable Committee that in Kirinyaga, you do not operate by the rule of law, but depending with your relationships with the Governor and MCAs. So, when there are good relationships, you do not raise issues, but when there are bad relationships is when you raise issues?

Mr. Ngiabi Mureithi: The primary role of the CPSB is even to advise the Governor. Okay? When you advise---

The Chairperson (Sen. Malalah): In good times?

Mr. Ngiabi Mureithi: Even in bad times. Like this one of the health workers, it was not in good times. I went and told her it was wrong and I stood by that. I was with other people in my office in teleconferencing. We were talking with Her Excellency who was away in Nairobi. I pleaded with her that we needed to relook at that matter.

The Chairperson (Sen. Malalah): Good enough. Hon. Members, do you have any other matter to raise. I give you 30 seconds to wind up your submissions. We will allow you to leave and as we wind up today's session.

Mr. Ngiabi Mureithi: Thank you, Mr. Chairman Sir. Thirty seconds are too few.

The Chairperson (Sen. Malalah): I will give you one minute.

Mr. Ngiabi Mureithi: First of all, I want to thank this Committee because you have shown you want to know exactly what is happening.

Secondly, I appeal to the Senate now that I have got this chance that the County Public Service Board Bill which has been lying in this Senate for more than two years be fasttracked. This is because if it was fasttracked, I would not have been called here to come and talk about what the Governor is saying or doing because the law would be there to protect everybody and everybody would work according to the Act.

My former chairman of the CPSB forum Architect Phillip Kung'u has been lobbying for this Bill to go through and his term ended when the Bill had not gone through. It was a

very bitter experience for him that he did all that, but did not see the fruit. All the 47 counties are undergoing the same kind of problems.

Mr. Chairman Sir, I am assuring you that you are going to see very many impeachments simple because of those kinds of loose and grey areas which have been left there. For example, we do not know who is supposed to sit in the panel which appoints the CPSB. You have not given those directions.

I am beseeching this House through you to do something. Let the CPSB be independent and be seen to be so. When they tell the Governor no, it should be a no.

The Chairperson (Sen. Malalah): Thank you, Mr. Kennedy. The Senate has no such Bill called County Public Service Board Bill. However, the Senate Committee on Labour and Social Protection is trying to come up with a proposed legislation on the same. I believe we shall be pushing it through the legislation process.

I believe the Senate is in a better position to ensure that you are cushioned and CPSBs.

Hon. Members that brings us to a close of today's session that has been lengthy. I take this opportunity to thank hon. Senators for being patient enough and also thank both parties for being patient and abiding by the rules of the Chair.

I would like to give the following directives:

- (1) The counsel had raised issues about the curfew. Our Secretariat has organized and notified the Deputy Officer Commanding Parliament Police Station who has subsequently notified the Officer Commanding Station in Nairobi City County. That OCS is called Inspector Kandugu who will facilitate you going home. In case you experience any difficulty along kindly feel free to contact Inspector Kandugu. I cannot say his number because we are live.
- (2) The meeting will commence in good time. According to our programme, the meeting is slated to begin at exactly 9.00 a.m.

The Vice Chairperson (Sen. Halake): There seems to be a change to that effect. You may need to confirm.

The Chairperson (Sen. Malalah): I am certain about tomorrow's venue. We shall use the Main Chamber of the Senate in the morning session, from 9.00 a.m. to around 1.30 p.m. Thereafter, we shall come back to this Chamber from 2.00 p.m. to close of business. The media and the technical team should be guided accordingly.

I wish you all a pleasant night this meeting is adjourned. I thank you.

The Committee adjourned at 9.31 p.m.