

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 13th May, 2014

Special Sitting

*(Convened via Kenya Gazette Notice
No.3138 of 9th May, 2014)*

*The Senate met at the County Hall,
Parliament Buildings, at 9.00 a.m.*

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

PRAYERS

COMMUNICATION FROM THE CHAIR

PROCEDURE FOR CONSIDERATION OF REPORT OF SPECIAL COMMITTEE ON PROPOSED REMOVAL FROM OFFICE OF THE GOVERNOR OF EMBU

The Speaker (Hon. Ethuro): Order, Senators! I have the following Communication to make relating to the procedure that we will use in conducting the business with regard to the consideration of the Report of the Special Committee on the proposed removal from office of the Governor of Embu County.

Hon. Senators, the Chairperson of the Special Committee will lay the Report of the Committee this morning. Once it is laid, hon. Senators will have time to peruse it. It will, therefore, not be debated immediately, but the House will adjourn for one hour in order to allow hon. Senators to go through it. This is because at the point at which it is being laid now, it will not be known to the House which of the two procedures provided by Section 33(6) of the County Governments Act and Standing Order No.68(4) will be applied. Its contents will determine the procedure to be applied.

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

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

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

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

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

Consequently, after you, hon. Senators, have had the opportunity of perusing the Report and after establishing whether or not the particulars of the allegations against the Governor have been substantiated, the Motion to consider it will be listed for business in a Supplementary Order Paper which once prepared will be circulated when we reconvene after one hour. If the Special Committee reports that any particulars of the allegations have been substantiated, the Senate will vote on each of the impeachment charges, after according the Governor the opportunity to be heard.

Hon. Senators, arrangements have been made for the Governor of Embu County to sit in the Gallery during debate on the Motion. At the appropriate time before I put the Question on the Motion, he will appear before the Senate and be heard, either by himself or his legal representative.

I wish to inform the hon. Senators that if the Governor chooses to exercise his right to appear and be heard by the Senate, he shall be heard here, either by himself or his advocate in total silence. His speech shall not be followed by any question or comment. The Senate shall, thereafter, immediately proceed to vote on each allegation found to have been substantiated.

Thank you.

PAPERS LAID

REPORT OF THE SPECIAL COMMITTEE ON THE PROPOSED REMOVAL FROM OFFICE OF THE GOVERNOR OF EMBU COUNTY

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the House today, Tuesday 13th May, 2014.

The Report of the Special Committee on the proposed removal from office of hon. Martin Nyaga Wambora, the Governor of Embu County.

Mr. Speaker, Sir, this is the Report, the annexes to the Report and minutes of the sittings of this Committee when the investigation was going on.

(Sen. (Dr.) Khalwale laid the documents on the Table)

REPORT OF THE STANDING COMMITTEE ON FINANCE, PLANNING AND BUDGET ON THE DIVISION OF REVENUE BILL, 2014

Sen. Billow: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the House today, 13th May, 2014.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

The Report of the Standing Committee on Finance, Commerce and Budget on the Division of Revenue Bill (National Assembly Bill No.15 of 2014).

(Sen. Billow laid the document on the Table)

The Speaker (Hon. Ethuro): Hon. Senators, we have concluded the business for this morning. We will adjourn the House for one hour and then come back.

(The Senate adjourned temporarily at 9.23 a.m.)

(The Senate resumed at 10.20 a.m.)

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

PRAYERS

COMMUNICATION FROM THE CHAIR

INVITATION OF SENATORS TO WORKSHOP ON AGRICULTURE, LIVESTOCK AND FISHERIES

The Speaker (Hon. Ethuro): Order, Senators. I have a Communication to make.

The Standing Committee on Agriculture, Livestock and Fisheries has convened a high level workshop on Agriculture, Livestock and Fisheries from the 5th to 8th June, 2014 at Enashipai Resort, Naivasha, to identify specific, measurable, attainable, realistic and time-bound interventions by the Senate Committee in order to accelerate agricultural transformation in Kenya during its tenure between 2014 and 2017.

Hon. Senators, this is an invitation to all of you who would wish to attend this forum to register their names with the Clerks-at-the-Table noting that agriculture is one of the devolved functions.

Thank you.

NOTICE OF MOTION

IMPEACHMENT OF THE GOVERNOR OF EMBU COUNTY

Sen. (Dr.) Khalwale): Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on 29th April, 2014, the County Assembly of Embu approved a Motion “to remove from office, by impeachment,” the County Governor of Embu County;

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

AND FURTHER, WHEREAS by letters; dated 29th April, 2014 (Ref: CAE/SCA/1/35 and 36) and received in the Office of the Speaker of the Senate on 30th April, 2014, and 2nd May, 2014, the Speaker of the County Assembly of Embu informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 68(1)(b) the Senate, by resolution on Tuesday, 6th May, 2014, appointed a Special Committee comprising eleven of its Members to investigate the matter of the proposed removal from office of the Governor of Embu County and to report to the Senate within ten (10) days of its appointment on whether it finds the particulars of the allegations to have been substantiated;

AND WHEREAS, pursuant to Section 33(4) of the County Governments Act, 2012 and standing order 68(2), the Special Committee has investigated the matter and tabled its Report today, Tuesday, 13th May, 2014;

AND WHEREAS, pursuant to Section 33(4) and (6)(b) of the County Governments Act, 2012 and Standing Order 68(4) (b), the Special Committee has found that the particulars of the following allegations against the Governor of Embu County have been substantiated; namely:-

- a) Gross Violation of the Public Procurement and Disposal Act 2005, and Regulations, 2013;
- b) Gross Violation of the Public Finance Management Act, 2012; and
- c) Gross Violation of the Constitution of Kenya;

NOW THEREFORE, pursuant to Section 33(6)(b) of the County Governments Act, 2012 and Standing Order 68(4)(b), the Senate after according the Governor of Embu County an opportunity to be heard, resolves to impeach the Governor of Embu County on the following grounds; namely:-

- a) Gross Violation of the Public Procurement and Disposal Act 2005, and Regulations, 2013;
- b) Gross Violation of the Public Finance Management Act, 2012; and
- c) Gross Violation of the Constitution of Kenya.

COMMUNICATION FROM THE CHAIR

REORGANIZATION OF BUSINESS ON THE ORDER PAPER

The Speaker (Hon. Ethuro): Order, Senators! If you look at the Supplementary Order Paper, the next Order is supposed to be Division of Revenue Bill, the Committee of the Whole and then the Motion by the Special Committee. According to the powers given to me under Standing Order No.39(2), and to allow some amendments to the Bill to be processed, I direct that Order No.5 becomes Order No.3 and then the rest follow. In any event Order No.3 should not exceed in terms of time beyond 12.30 a.m. Thereafter we will go into a *Kamkunji*. This will be immediately after the rise of the House. The Bill will be debated at 2.30 p.m. I hope this is clear to everyone.

The Chairperson of the Special Committee, you may proceed and move the Motion.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. (Prof.) Kindiki?

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I rise to inquire, get clarity and directions from the Chair on whether with regard to the subject matter listed under Order No.5, that is on the issue of the Governor for Embu County, whether he is notified and he is around.

The Speaker (Hon. Ethuro): I am just wondering why that clarity is necessary. Of course, all these proceedings are done in public. The communications made from the Floor through the committee are also public. The lawyer appeared before the Committee. The Committee chairperson also instructed the lawyer to instruct his client to be here at 9.00 a.m. this morning. In addition to that, the *gazette* notice is to everybody, including the Senators who happen to be here today.

I can further confirm that the lawyer is around and we are still waiting to hear from him whether his client is also coming. He is allowed to either take brief on presentation alone or himself being present.

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. I am raising this point of order for the record. I know you have made a ruling to move Order No.5 to Order No.3---

The Speaker (Hon. Ethuro): Order, Sen. Khaniri! For the record, the Clerk-at-the-Table had told me the lawyer is here, but she is also telling me there was somebody who looked like him.

(Laughter)

It has since been established that it is not the lawyer.

Sen. Khaniri, you may proceed.

Sen. Khaniri: Mr. Speaker, Sir, I am raising this point of order for the record. A short while ago you made a ruling that you will move Order No.5 to become Order No.3. I think you used Standing Order No.39, if I am not wrong. But for the record, this is already provided for in the Standing Orders. This is Standing Order No.70 which says that:

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

“A Motion for the removal of a person from office under this Part shall take precedence over all other business in the Order Paper for the day.”

Therefore, I believe that rightfully, this Motion that we want to debate now was supposed to take precedence and come first before the Division of Revenue Bill.

Hon. Senators: Well done!

(Applause)

The Speaker (Hon. Ethuro): Well done, Senator for Vihiga County. Congratulations.

Sen. (Dr.) Khalwale, you may now proceed.

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

The Speaker (Hon. Ethuro): What is it, Sen. Kiraitu Murungi?

Sen. Murungi: Mr. Speaker, Sir, Standing Order No.69 is on the right to be heard. The Standing Order states:-

“Whenever the Constitution or any written law requires the Senate to consider a petition or a proposal for the removal of a person from office, the person shall be entitled to appear before the relevant committee of the Senate considering the matter and shall be entitled to legal representation.”

Maybe in the course of moving the Motion, it should be clarified to us whether, indeed, the Governor appeared before the Committee or not. But he is also given another chance to appear before this House. Before we proceed, it is important for us to establish whether, indeed, he had been notified or invited to appear before this House. If he has not been notified, it will be unfair for us to proceed unless that notification was made.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. For the information of the House, that is a substantive matter in the report. If Sen. Kiraitu can read the report and wait for the Chairman to move the Motion, when we proceed, all those issues will be answered.

The Speaker (Hon. Ethuro): Sen. Murungi alluded to the fact that, maybe, it is an issue to be raised by the Committee. As Sen. Murkomen has confirmed, I will leave the Chairman to address that issue during his submission.

On the other issue of being invited here, I had already dealt with the matter when responding to Sen. (Prof.) Kindiki’s point of order.

Proceed, Mr. Chairman.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir, for the direction. I want to confirm that in the course of my moving this Motion, that matter and many others will become clear.

Mr. Speaker, Sir, let me now move on to the Motion.

MOTION

IMPEACHMENT OF THE GOVERNOR OF EMBU COUNTY

Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on 29th April, 2014, the County Assembly of Embu approved a Motion “*to remove from office, by impeachment,*” the County Governor of Embu County;

AND FURTHER, WHEREAS by letters; dated 29th April, 2014 (Ref: CAE/SCA/1/35 and 36) and received in the Office of the Speaker of the Senate on 30th April, 2014, and 2nd May, 2014, the Speaker of the County Assembly of Embu informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 68(1)(b) the Senate, by resolution on Tuesday, 6th May, 2014, appointed a Special Committee comprising eleven of its Members to investigate the matter of the proposed removal from office of the Governor of Embu County and to report to the Senate within ten (10) days of its appointment on whether it finds the particulars of the allegations to have been substantiated;

AND WHEREAS, pursuant to Section 33(4) of the County Governments Act, 2012 and Standing Order 68 (2), the Special Committee has investigated the matter and tabled its Report today, Tuesday, 13th May, 2014;

AND WHEREAS, pursuant to Section 33(4) and (6)(b) of the County Governments Act, 2012 and Standing Order 68(4) (b), the Special Committee has found that the particulars of the following allegations against the Governor of Embu County have been substantiated; namely:-

- a) Gross Violation of the Public Procurement and Disposal Act 2005, and Regulations 2013;
- b) Gross Violation of the Public Finance Management Act, 2012; and
- c) Gross Violation of the Constitution of Kenya;

NOW THEREFORE, pursuant to Section 33 (6)(b) of the County Governments Act, 2012 and Standing Order 68(4)(b), the Senate after according the Governor of Embu County an opportunity to be heard,

resolves to impeach the Governor of Embu County on the following grounds; namely:-

- a) Gross Violation of the Public Procurement and Disposal Act 2005, and Regulations 2013;
- b) Gross Violation of the Public Finance Management Act, 2012; and
- c) Gross Violation of the Constitution of Kenya.

Mr. Speaker, Sir, allow me to thank you and the entire House for allowing us, the 11 Senators, to sit in this historic and Special Committee for the proposed removal from office of Mr. Martin Nyaga Wambora, the Governor for Embu County. I also wish to thank Members of the Committee who chose to elect me and Senator Onesmus Kipchumba Murkomen as my Vice Chairperson.

I would like to thank the 11 Members, particularly because for all the sessions that we held, we did so as a full house. As I will be demonstrating in moving the Motion, in spite of the fact that at one time, neither the Governor nor his advocate were in the meeting, these Senators went on and ensured that all the allegations that were raised by Members of the County Assembly (MCAs) and prosecuted by their two lawyers, were vigorously interrogated so as to get to the bottom of the truth. I thank them.

Mr. Speaker, Sir, both the Governor of Embu and the MCAs of Embu opted not to call even a single witness. The Governor was represented by Mr. Wilfred Nyamu Mati of Nyamu Mati & Co. Advocates. The County Assembly was represented by Mr. George Ng'ang'a Mbugua and Mr. Charles Njenga of Muchoki Ng'ang'a Njenga & Co. Advocates.

The County Assembly prosecuted its case using several documents that included reports of committees of the County Assembly of Embu, testimonies from witnesses who appeared before those committees, accounting documents and reports of the Auditor-General of the Republic of Kenya, amongst others. Furthermore, Mr. Njenga and Mr. Ng'ang'a, advocates for the County Assembly gave an official response to the invitation to appear and also annexed court judgments in Kerugoya High Court, Petition No.8 of 2014 involving the International Legal Consultancy Group verses this Senate and another. They also annexed a judgment of the Kerugoya High Court, Petition No.3 of 2014, Hon. Martin Wambora and four others verses the Senate Speaker and five others. We found these annexure extremely useful as we shall be demonstrating.

Mr. Speaker, Sir, on the part of the Governor of Embu, through his advocate, Mr. Wilfred Nyamu Mati, the Governor formally presented the Governor's memorandum of response in which the Governor, through his advocate, responded to all the allegations against him. But I wish to inform the House that at the end of that response, which was both written and verbal and taken as such in evidence, the advocate of the Governor then informed us that he was opting out of the proceedings, not because he was pulling out, and this is on HANSARD, but because he had received instructions that he should not proceed beyond that point. The point meant that he had made his preliminary presentation to the Committee and also gone through the responses that I have stated.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Mr. Speaker, Sir, it is important to inform this House that the advocate for the Governor of Embu had serious reservations about the composition of this Special Committee and, in fact, went on to demand that we disqualify ourselves on two grounds; namely, that his client felt that we would not be impartial; and secondly, this Committee and the Senate were breaching the *sub judice* rule in Standing Order No.92 of the Senate Standing Orders.

It is our humble report to this Senate that this Committee refused to grant Mr. Nyamu his request because the matter of the composition of this Committee had been sufficiently ventilated on the Floor of this House. You will recall that it was done by Sen. (Dr.) Machage, Sen. Madzayo and Sen. Khaniri. This occasioned a ruling from the Speaker in favour of proceeding with investigations. In fact, the proceedings of the previous impeachment were declared a nullity by the High Court; this has been annexed in this report. Having been declared a nullity by the High Court means that those proceedings were never there. They do not exist. It is, therefore, my conviction that reference to those particular proceedings can only mean delusions only in the beautiful dreams of the Governor and his advocate and not in reality.

Mr. Speaker, Sir, as for the issue of *sub judice*, it was merely a claim from Mr. Nyamu. In the bundle of documents he had, he never annexed any petition to any court. He only mentioned that he had petitioned the High Court in Nyeri, but he never annexed that petition, neither did he show us the specific pleadings of the said matter in the court to support his claim to the Committee. Therefore, this Senate is technically not aware of such proceedings. According to the Standing Order No.92(5) on *sub judice*, the Chairperson of the Committee chose to proceed.

On the wild allegations against this Committee about its integrity, I want to assure the country that we, the 11 Members of this Committee, are as clean as cotton. In fact, we play only one league; the league of Caesar's wife. Finally before I go to the specific allegations, I see no witch-hunt. I see no tribalism or ethnicity whatsoever even on the part of the Members of the County Assembly of Embu because the Governor of Embu comes from the most populous ethnic community in Embu. In fact, this ethnic community in Embu is so adequately represented in the County Assembly of Embu that it commands 60 per cent of the elected Members of the County Assembly of Embu. It is important that the facts be stated here.

In Embu, which is a cosmopolitan county, there are five communities represented in the Assembly namely; the Embu, the Mbeere, the Kamba, the Kikuyu and the Tharaka. There are 12 elected Embu MCAs, four nominated Embu MCAs totaling to 16. We have six elected and six nominated from Mbeere totaling to 12. For the Kamba, there are two elected, zero nominated. For the Kikuyu, there are zero elected and two nominated totaling to two. For the Tharaka, there are nil elected, but one nominated. Therefore, any claim there was an ethnic factor at play in Embu flies through the window.

Mr. Speaker, Sir, there are specific charges. However, because of time, I wish to approach them this way. First of all, I want to inform the public and this House that in this Report which is with Members, on page 68, our conclusion is one, that all the three

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

charges have been substantiated. Since matters of law are intertwined, what proves the procurement law to have been breached, to an extent, goes on to prove the breaching of the Public Finance Management Act. What I will deal with is the breach to the Constitution.

Mr. Speaker, Sir, may I, therefore, start with the charge of gross violation of the Public Procurement and Disposal Act. It was our finding that the County Assembly of Embu, in the particular allegation stated on 25th October, 2013 - we found that the Office of the Governor had actually authorized procurement of maize of a variety and quantity other than that which had been requisitioned by the Office of the Director of Agriculture; that being the only office in the County Assembly of Embu which has the prerequisite expertise on the matter that has been cited. By so procuring that particular variety, the Assembly further stated that the procured seeds of variety DK8031, either did not germinate at all or where it did, it had a germination of less than 20 per cent. Most of us come from farming communities. In fact, some of us are farmers. A seed that germinated less than 75 per cent on your farm means crop failure because you cannot break even. In this case, it was zero to 20 per cent germination.

Coupled with the fact that the Office of the Governor changed the right variety to this particular one, we were forced to ask the Governor to respond. The only thing he told us which is on record is that: It was not his business and he does not know. He also told us in this response that, maybe, it was the lack of rain. We must disabuse the issue of blaming the rains. This particular variety was deliberately procured in consideration of the short rains. It was an attempt to plant during the short rains. So, had they procured using the one that had been recommended by the technical committee, it was going to meet the requirements of the short rains. We, therefore, found that on that particular charge, the Governor had failed to sufficiently find an excuse enough for him to exit from blame.

We, as a Committee, therefore, observed that it was clear that DK8031 maize seeds was a matter of great concern within Embu County. Hon. Members, I want you to understand the county we are talking about. It could be different from yours if you come from Mandera where they keep camel. Embu is a county that relies heavily on agriculture and it is known for its productivity. Thus where maize seeds are distributed extensively within the county by the authority of the governor, where he did it personally using his own authority, planted by the farmers in absolute good faith, but the seeds “refuse” or fail to germinate or where they did, the germination rate was less than 20 per cent, this is a matter that would be of utmost and grave concern to the residents of Embu. Some of these maize could have been sold and some of it used for family consumption.

Imagine a situation whereby a family had sold some of its assets like goats, sheep and cattle so as to prepare the fields knowing that when they sell the seeds, they will take their children to school. Where are those children today? Imagine further that if the planting was intended for food, has the County Assembly of Embu today given relief food to those families whose maize failed to germinate? Are we aware of any one in the national Government having taken relief food to Embu? This Senate must speak, so that

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

devolution is not perceived by the people of Embu as being the one that visited on them the catastrophe of famine and loss of benefits that would have helped to take their children to school.

Mr. Speaker, Sir, this Committee was informed that it is these concerns that led to the establishment by the County Assembly of a joint Committee of Agriculture, Livestock, Fisheries and Co-operative and the Committee of Public Accounts and Investments to investigate the matter of procurement of maize seeds by the executive in a report that we have annexed on page 10. The chief officer had not provided documentary evidence to prove that the necessary procurement method was allowed in the procurement of DK8031 maize seeds.

I want to pause here, but even after the Governor had defied the advice from the technical committee, he never subjected these seeds worth millions of shillings to the Public Procurement and Disposal Act. He just woke up one morning went to his office and said: "Let the seeds be procured from that particular company". It was the responsibility of the Governor to appear beyond that response and tell us why he chose not to observe the public procurement law that requires transparency and competitiveness. Is he a friend to one of the *dukawallas* in Embu or was he one of the hidden directors in the companies that provided these particular seeds? These are important questions of accountability on which an oversight House like this one is expected to pronounce itself.

Mr. Speaker, Sir, on the issue of procurement of works for face-lifting of the stadium in Embu, the County Assembly states that the Governor, through his office, initiated the works for the face-lifting of the stadium without involving the user department and other technical departments in total violation of Section 26(1) and Section 26(3c) of the Public Procurement and Disposal Act, 2005. The county assembly convinced us, in its statement or particulars of allegations, that the head of the user department was on record stating that she had not been involved at any point in the procurement process. In support of this, the county assembly made reference to the report of the joint committees of infrastructure, youth and sports on face-lifting of Embu stadium which you will find attached on page 53, annexure one.

Mr. Speaker, Sir, the Governor, through his office, further had received bills of quantities for the face-lifting of the stadium long after the tenders had already been floated. In fact, he received it on 30th December, 2013, while the tender works were floated on 22nd October, 2013, a very clear violation of Section 26 of the Public Procurement and Disposal Act. What the county assembly stated was a clear indication that the bills of quantities appeared to be a deliberate effort and an after-thought to regularize an otherwise irregular procurement process. They could come fool the auditors, fool the committees of the county assembly and also attempt to fool this Senate.

When challenged, the Governor stated that he was not personally involved in the award of the tender and that it was the accounting officer and the procurement officials who were in charge of the tendering process as required under Section 27(2) of the Public Procurement and Disposal Act, 2005. He further stated that the award of the tender was

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

the subject of investigations of the Ethics and Anti-Corruption Commission (EACC). He advised that it would, therefore, be prudent to await the outcome of the investigation so as to verify whether the procurement process was contrary to the law. Can you hear that, Mr. Speaker, Sir? We are giving him an opportunity to make that clarification so that when the EACC chooses to use our proceedings as part of their working documents, they could get a ready answer, but he refuses. He tells us: “You wait until the EACC has done its work.” Who told him that we can only wait for another organ under the Constitution before we make our decision?

Mr. Speaker, Sir, I want to remind this House that unlike the EACC, we derive our responsibility from the sovereign power of the people of Kenya. Therefore, when we speak, the people of Kenya have spoken. When the people of Kenya speak, the big ones – like Governor Wambora – have spoken; and the small ones – like the ones whose children have jiggers in Kenyan constituencies – have also spoken. The people whose families are so poor that they have jiggers and those who are so stinking rich in this country and take their children to school using helicopters, are all equal in the eyes of God because they are all children of God. Because those children have nowhere else to go and the processes of litigation are full of bullish acts, the straight strike is through their elected representatives, coupled by the nominated Members who were elected on the same ticket, and those people are found in the County Assembly of Embu which has spoken. These people are found in the Senate of the Republic of Kenya.

Mr. Speaker, sir, on the allegation of insufficient funds, the Governor stated in his response that the Kshs8 million was an amount provided for in the budget. However, the Embu County Executive Committee (CEC) had decided to allocate additional funds required in the 2013/2014 Supplementary Budget. The Governor further stated that the Kshs8 million budgeted for appropriating on the stadium is yet to be spent to date. There are no documents to support his allegations. He did not convince us by, maybe, showing us a bank statement or money and the minutes of the CEC, to prove that it was not his personal decision.

There was the issue of the special county secretary and we shall be demonstrating later on in the proceedings that she had a unique relationship with the Governor. This relationship is so unique that when the people’s assembly of Embu said that this woman should step aside and be investigated, the Governor found time to respond appropriately. Time seemed to have lacked in these proceedings. In his response, the Governor set out to mislead the EACC and even mislead the courts by, under his own hand, swearing an affidavit that was meant to let this woman off the hook. How I wish that some of these women in high places knew how the women in the rural areas wake up at 4.00 a.m., walking kilometres upon kilometres to get water for their children to drink. Some of these women have to go to the neighbourhood to borrow a matchstick so as to light a fire to make porridge. In Luhya language we call it *lidaka*; the one that does not have sugar in it at all. They make this porridge so that their children can lick something before they go to school. This is not a laughing matter; it is almost a crime against humanity.

(Applause)

Mr. Speaker, Sir, my Committee observes as follows. On this very important issue of the Embu Stadium, it observed that the joint Committees had established in its report, which is attached in page 53 Annex No.1, that there were apparent signs of fraud and theft of public funds that required urgent investigations by the EACC. The Committee, therefore, recommended that until cleared by the EACC, the county secretary and the tender committee members who were involved in the unprocedural procurement act had to step aside and be discharged of their duties immediately to allow for investigation.

(Applause)

Mr. Speaker, Sir, the wonder of wonders is that I am only talking about the county secretary, because even the tender committee that the county assembly was referring to is not there. It was never there. In the County Assembly of Embu, apparently the Governor is comfortable spending billions belonging to the public without a tender committee in place.

Mr. Speaker, Sir, my Committee further observed that as in the case of the maize seeds, the County Assembly and the EACC had taken action on the matter of face-lifting of the Embu Stadium. However, no tangible action had been taken by the Governor. Again, the Governor, in his response, chose to assign blame to the procurement officials in the county. Although the procurement officials have various responsibilities under the Public Procurement and Disposal Act, their roles and obligations do not override those of the Governor as the chief executive of the county who, in terms of Section 27(3) of the Public Procurement and Disposal Act of 2005, must demonstrate that he has taken all the necessary steps to ensure that procurement laws and regulations have been complied with in the county. No evidence of such action was adduced in the matter of procurement relating to the face-lifting of the Embu Stadium.

Mr. Speaker, Sir, the matter of procurement of motor vehicles is a sad story. I hope this is only happening in Embu. If it is happening anywhere else in Kenya, then I do not know what this Senate is going to do. We have documents attached in this bundle showing that the Governor personally procured a Toyota Prado vehicle; the invoice, proforma and every other document are in his names. The Governor went on and registered that particular vehicle in civilian number plates. What is more, in the proceedings in the Chamber Assembly, those of you who will have time to read the proceedings, a narration is given of how the Governor has never been seen in that particular Prado. A narration is also made in that particular presentation of how that vehicle is of the highest mileage. Who uses it?

In the notes, Mr. Speaker, Sir, they refer to somebody called the "First Lady of Embu." I have gone through the Constitution; the laws of the land, and I do not know whether there can be any other First Lady in this country other than Margaret Kenyatta. Now that Margaret Kenyatta was not seen in this vehicle, who is this woman? Who is this

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

woman masquerading as the First Lady, driving a vehicle belonging to the people of Embu and accumulating more mileage than any other vehicle in that particular Assembly?

(Laughter)

Mr. Speaker, Sir, these are issues that anybody wanting to doubt the proceedings of this House must give us contrary evidence for us to migrate away from this unacceptable behaviour. As I have said, the vehicle was directly procured, not just one, but various motor vehicles from specific dealers for special amounts without any reference whatsoever to the tender committee in blatant disregard and violation of Sections 26(1), (2), (3) and (4) of the Public Procurement and Disposal Act.

Mr. Speaker, Sir, this is not an allegation. To support this claim, the county assembly made reference to a letter of authority ordered by none other than Martin Nyaga Wambora, whose subject is “Procurement of Embu County Vehicles.” This is your bundle of documents on page 134 of Annex No.1. On this, it was argued by the Governor that he did not. However, as the Governor, he has personal responsibility because in purchasing motor vehicles, the county procurement department had not violated procurement procedures as it had used existing and valid Government Supply Branch contracts in respect of motor vehicles purchased from CMC Motor Group and Toyota Kenya Limited.

Further, the Governor said that where the Government Supply Branch department do not float their own, other branch contracts exist. The Ministries of the national Government and the county Government supply departments do not float their own tenders, but use the short listed firms. But purchase of the vehicles then proceed according to them and in accordance with the vehicle engine capacities approved by the Salaries and Remuneration Commission (SRC). The Governor, therefore, argued that where the county government procures vehicles from approved firms, there can be no violation on the part of the Governor.

Mr. Speaker, Sir, either the Governor was trying to be too clever by a half, or since he had a lot of reservations about us and this Senate, he thought we are a bunch of idiots. Yes, we could be a bunch of idiots, but who are we to say we are Albert Einstein? We could be a bunch of idiots, but they are the same idiots who the people of Kenya decided will represent them on the 4th of March, 2013. So, in our own idiocy, we then pursued the matter. We went and looked at the Act and found that even where such pre-existing tenders are there with the CMC Motors and Toyota Kenya, the Public Procurement and Disposal Act, in particular, Section 29(3) provides the following:-

“A procuring entity may use restricted tendering or direct procurement as an alternative procurement procedure only if, before using that procedure, the procuring entity —

(a) obtains the written approval of its tender committee; and

(b) records in writing the reasons for using the alternative procurement procedure.”

Mr. Martin Nyaga Wambora, however, does not have a tender committee in his county. So, he could not have been guided by this particular law.

Mr. Speaker, Sir, although, in his response, the Governor indicated that restricted tendering was used as the procurement method, there was no evidence whatsoever to demonstrate to the Committee that Section 29(3) of the Public Procurement and Disposal Act, which I have cited above, had been complied with in the purchase of the vehicle and, in particular, that the approval of the tender committee was sought and obtained. From the evidence, therefore, the Governor and the county secretary procured these vehicles without the approval of the tender committee as required under Section 39(3) of this Act.

Mr. Speaker, Sir, may this House note that a procuring entity may use restricted tendering or direct procurement as an alternative procurement procedure only if, before using that procedure, the procuring entity obtained written approval of its tender committee. The tender committee was not there to record in writing the reasons for using the alternative procurement method. Such writing at any meeting was not there. So, Governor Wambora and this lady county secretary, should tell us who are they to take public funds, in their unique relationship or whatever it is. Sen. (Prof.) Lesan, who is a professor of gynecology, attempted to go there and we told them do not go there. So, it is not on record.

(Laughter)

Mr. Speaker, Sir, I want to briefly now go to the issue of the Auditor-General and the violation of the Public Procurement and Disposal Act, 2005, as set out in the report of the Auditor-General. Governor Wambora has said that this Senate is partial or my Special Committee is partial--

Hon. Senators: It is impartial!

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, he has said repeatedly that the County Assembly of Embu is harassing him; that it is on a witch hunt and it is driven by ethnicity. But in evidence, we have a report on all that, signed by none other Edward Ouko, the Auditor-General of the Republic of Kenya, who is a constitutional office holder and a man from Siaya.

Mr. Speaker, Sir, Siaya is in my neighbourhood and I know Edward Ouko personally. I can confirm to the Governor of Embu that Edward Ouko is actually a Luo. He is not a Mbeere; he is not an Embu, he is not a Tharaka or a Kamba; the people at play in that particular Assembly. So, his argument cannot be believed.

Mr. Edward Ouko said the following, which I will just highlight. He found irregular award of contracts for repair of the Town Hall and probation offices in violation of Section 27 of the Public Procurement and Disposal Act. He found unwarranted disqualification of interested bidders in violation of Section 66(3)(b) of the Public Procurement and Disposal Act. When you read the presentations in the HANSARDS of

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

the County Assembly of Embu – and I want to congratulate the composition of that Assembly; how I wish more assemblies could have such competent Members of County Assembly (MCAs)--- After reading that breach, he then tells us: “Oh, our county of Embu has become one county with one contractor, one Governor and one county secretary that constitutes the will and wish of all the people of Embu.”

Mr. Speaker, Sir, Sen. Gideon Moi is looking at me very nicely; I think we are now moving on the right path.

(Laughter)

Mr. Edward Ouko found that there was favoritism in the consideration of responsiveness to tenders during evaluation which is against the objective enshrined under Section 2 of the Public Procurement and Disposal Act, 2005. This is contrary to Section 34 of the same Act. Mr. Ouko found failure to conduct financial and technical evaluation of contracts, in violation of regulation 16 of the Public Procurement and Disposal Act. He further found irregular allocation of funds for works not included in the bills of quantities, contrary to Sections 26(1), (2) and (3) of the Public Procurement and Disposal Act.

Mr. Speaker, Sir, the Auditor-General found lack of formal contracts for works, such as contract EBU/COUNTY/07/2013 and EBU/COUNTY/09/2012-13; and contract EBU/COUNTY/08/2012-13 in gross violation of Section 68 of the Public Procurement and Disposal Act.

The Auditor-General found the use of unregistered sub-contractors such as during the undertaking of works related to electrical installations of CCTV and plumbing works all valued at Kshs2.4 million in violation of Section 31 of the Public Procurement and Disposal Act. There was irregular procurement found by the Auditor-General in the method of the contract for refurbishment of the Embu County Council Hall to house the County Assembly, contract No.EBU/Count/06/Count/2011-2013.

That contract, which was issued like *njugus* – peanuts – was valued at Kshs33.3 million in gross violation of Section 29 of the Public Procurement and Disposal Act.

Like the County Assembly, the Auditor-General found irregular purchase and registration of motor vehicle No.KBU 683T. In that purchase, the purchase price exceeded the budgeted amount in clear violation of Section 26(2)(a) of the Public Procurement and Disposal Act. Further, there was no record to show that the same vehicle was registered from the time of its purchase in the name of the Embu County Government; an action that violates Section 45 of the Public Procurement and Disposal Act.

It is important that this issue of registration comes out clearly. When a public vehicle is procured, it is supposed to be registered in the name of the public. If for security purposes, the user of that vehicle wants to use civilian number plates, he can apply to the Government to have private number plates. However, the vehicle retains its logbook and everything in the registration of the public. The vehicle is worth Kshs12

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

million, but it is not registered in the name of the public. The number plate is not in the name of the public and the logbook is non-existent. When we pressed for evidence through documents to search and see where the logbook was, the Governor had an opportunity to attach, in his response, the logbook just to confirm that it was in the name of the public. However, for security reasons, he was using a private number plate. In fact, he did not attach such a logbook. My fear is that when the Ethics and Anti-Corruption Commission (EACC) is through, we will find that the registration of this vehicle is also in private.

As if that is not enough, on a daily basis, the Governor's Office also chose to make a kill by procuring fuel. The procurement was found to be irregular with no store records whatsoever. So, in Embu County, on a daily basis, people make a kill in the name of fueling vehicles.

Mr. Speaker, Sir, on the same matters, in response, the Governor stated that it was not his responsibility for any omissions or acts of violations since the Transition Authority (TA), through its appointed official, was in charge for the period of June 2013. Therefore, the TA officers should be held personally responsible or in accordance to Article 226(5) of the Constitution. He said that the Governor could not be held responsible for the store clerks who did not keep proper records. Could you just think about that? The TA, after the Governor was sworn in, operating under the Governor, should not take responsibility for what the Chief Executive Officer was employed to do by the people of Embu.

Mr. Speaker, Sir, the Committee observed that the Auditor-General in his Report has cited serious matters relating to the state of financial management in Embu County. While the Committee would have benefited from a clear response by the Governor to each of the issues raised by the Auditor-General, the Governor opted to provide a generalised and rather casual response to the issues in which he cited the TA through its appointed officials as being responsible for the violations. No supporting documents, whatsoever, or further evidence could be adduced to shed further light on this mere statement from the Governor.

Finally, we observed, that as a result, the serious matters cited by the Auditor-General, all pointing to massive irregularities in the procurement process in the award of contracts in the county, remain unchallenged and unexplained. It is up to this House to satisfy itself on whether that statement from the Governor satisfies the House or sufficiently explains this matter. I have mentioned the issue; non-existence of the tender Committee in the County Executive. I do not want to go further.

I want to confirm that this Act was grossly violated. As I said at the beginning, the arguments that are carried in this particular Act are cross-cutting and violated the Public Finance Management Act, specifically Sections 121 and 162.

I would like, although the light is on, to move very quickly and to mention a few points on the violation of the Constitution of Kenya.

The Speaker (Hon. Ethuro): Mr. Chairman, you should be concluding.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, in conclusion, the two Acts and the Constitution were violated. My able Vice Chairperson will speak to the violations of the Constitution of Kenya. As he does so, he will be affirming one thing; that the charge of violation of the Constitution of Kenya has been proved.

The final point, which I must make so that we are not assumed to have gone there with a tunnel view, although a comprehensive analysis of the state of affairs of Embu County was not part of the mandate of this Special Committee, it would be an omission on our part not to mention one thing. In the course of our investigations and, particularly, considering the documents received from the public, it became apparent that matters in that county were in a far less than satisfactory state.

In the interest of the people of Embu, whichever way the present matter concludes, there is an urgent need for a concerted effort at seeking reconciliation and cohesion in that county. There is also a need for the county to proceed as a united county in ensuring that development succeeds in Embu County.

With those remarks, I wish to conclude and to request the Vice Chairperson of the Committee, Sen. Murkomen, to now second this Motion.

I, therefore, wish to move.

Sen. Murkomen: Mr. Speaker, Sir, permit me to second the Motion by Sen. (Dr.) Khalwale who has ably tackled the issues we have dealt with as a Committee. Owing to constraints of time on my part, I have no benefit of the time that the Mover of the Motion had. I will quickly rush through a few issues.

The situation in Embu is very sad. It is a situation that must be corrected. The problem in Embu is about leadership. As I will be demonstrating, a leadership problem is something that the Constitution of Kenya, 2010, tries to address. Unfortunately, those who are elected, particularly the CEO of Embu County, did not live to the expectations of the Constitution, 2010.

Let me start with the argument that was made by the counsel for the Governor before us that we should disqualify ourselves. Disqualification of a committee, tribunal, court or a judge happens when a judge satisfies himself that a situation of bias will ensue. We sat and agreed that we were dealing with a different case.

The counsel for the Governor erroneously tried to drive the Committee to think that we were a court of appeal and that we were sitting on an appeal. It is our considered opinion that we were dealing with a different matter. There was a different matter that came to this House during Valentine's Day which was disposed of by this House. We were dealing with a different matter and with a Committee that was established by this House.

It is understandable that if you are facing the situation that Governor Wambora is facing, you would, definitely, engage in a forum shopping. It is in public knowledge that the Governor has gone to courts in Embu, Kirinyaga, Nairobi, Nyeri and he even wanted to select the Committee that would listen to his case. We, as a Committee, rejected that argument believing that if we had entertained the kind of argument that the Governor was making through his counsel, we would have entertained a thought that even this Senate

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

cannot vote on the matter considering that there is no other Senate in this Republic. We would have entertained a thought that the County Assembly of Embu would not have considered the matter and yet there is no other Embu County Assembly.

In our Report, we have made it very clear that there can be no other Senate until the next elections. So, any other matter that will come as envisaged in the law even if it is from the same county in the next three months will still be dealt with by this House. Therefore, we satisfied ourselves that this Senate must continue acting impartially when dealing with such matters. This House has the jurisdiction. Our Committee had the jurisdiction to deal with the matter.

Why is there impeachment in our Constitution and in our Acts of Parliament? Impeachment is not a criminal charge. Impeachment is a governance tool. It is what is called, in a parliamentary system, a “vote of no confidence.” This is the equivalent of a vote of no confidence in a presidential system. Our kind of governance refers to this as an impeachment. This is not meant to declare that Governor Wambora is a criminal. That process is out. It is not meant to declare the innocence of Governor Wambora in terms of personal liability. It is meant to deal with his position as a leader to correct the ills of governance. Therefore, it is important to point out that the Senate of the Republic of Kenya is the right place to deal with that matter.

I would like to quote the judgment of the courts where Wambora was ably represented. The Senate was not there. I want to commend the Judges, Justices Ong’undi, Kithua, and Olao. In paragraph 245 of that judgment, they say;

“We must to some extent agree with Mr. Ng’ang’a that the County Assembly and the Senate are the best judge to determine whether the charges presented against the first petitioner, who is the Governor, were in accordance to Article 181 of the Constitution.

The Constitution has set out the power of judging the merits of the charges to those two Houses. It would, thus, be wrong, in our view, for this court to question the merits of the decision of the county assembly and the Senate.”

Mr. Speaker, Sir, the only competent institution to look at the merits of an impeachment process of a Governor under our Constitution and our Acts of Parliament is this House. Despite the fact that we were not represented in that matter, the court correctly observed that. In fact, the court quoted a judgment of Nancy Baraza versus the Judicial Service Commission and they said;

“It is not for this court or the Commission to find that the allegations made against the petitioner do not amount to gross misconduct. In fact, according to Prof. Yash Pal Ghai, Constitution of Kenya and the Instrument for Change cited by the petitioner, whether a conduct is gross or not will depend on the matter as exposed by the facts. Which facts? It is the duty of the tribunal to establish that.”

The facts as to whether there is a gross violation of the Constitution or as to whether there are grounds for impeaching the Governor; that is left to this House. The

courts have agreed that the competent judge is this Senate sitting now, in trial, to preside over the matter of Governor Wambora.

Indeed, the Governor told us, through his lawyer; “it was not me.” He said that he was not the one who was procuring or doing this or that. I want to go to another celebrated judgment of the court in the International Legal Consultants Group versus the Senate and the Clerk of Senate. Again, the Senate was not represented here. You will recall the matter of summoning the Governors. The courts said, in paragraph 57; “we, therefore, reject the argument by the petitioner that the Senate’s power----“. The petitioner was represented by one lawyer called Ahmed Nassir.

The courts rejected and said:

“We, therefore, reject the argument by the petitioner that the Senate’s power is limited to oversight over national agencies, management of national revenues allocated to the counties by the National Treasury.”

The courts further said:

“To our minds, this would be against the spirit and the letter of Article 96(3) of the Constitution which vests a wide power on the Senate to oversee both the provisions and the expenditure of national revenue allocated to counties.

In the foregoing, it is our determination that since the Senate was properly seized of the matters with regard to the issues raised by the Controller of Budget in the County Implementation Report, it had the power to summon any person.”

In paragraph 58, the courts went further to say:

“Nevertheless, the Constitution provides for oversight of county public finance of two levels. One, by the county assemblies at the county level and by the Senate at the national level. That is the Constitution and unless amended, this court can only interpret it as it is. Moreover, the Constitution does not prohibit the Senate from summoning Accounting Officers or County Executive Members in performing oversight functions.”

So, in exercise of its powers under Article 125 of the Constitution, the Senate is empowered to summon any person, including Accounting Officers. Article 59 says that the same county governments shall be accountable for the management and use of county resources.

By implication, this provision means that the county Governor as the overall head of the county is accountable for utilization of county resources, including national revenue allocated to his respective county.

Section 30(3) is about the Chief Executive Officer. The courts said that the Governors must be held accountable by the Senate for the national revenue allocated to their respective counties in view of the provisions of Section 30(3) of the County Governments Act of 2012 as read together with Article 10(2)(c) of the National Values and Principles of Governance. It says:

“The Governors, being state officers are bound by national values and principles of transparency, accountability and observance of good

governance when performing their duties as the Chief Executive Officer of the County Government.”

So, a governor should not be heard saying that I did not know. If the Governor of Embu said that he did not know, that means that he failed in his constitutional responsibility, as found by this Committee, to observe diligence in the governance of Embu County.

Why do we impeach? The Constitution under Article 181 says; one, for gross violation of the Constitution: Is the Constitution grossly violated? We, as a Committee, opine that yes, when a governor fails to lead and to deal with leadership and integrity.

Article 73 of the Constitution says that;

“Authority assigned to a State officer-

(a) is a public trust to be exercised in a manner that-

(i) is consistent with the purposes and objects of this Constitution;

(ii) demonstrates respect for the people;

(iii) brings honour to the nation and dignity to the office; and,

(iv) promotes public confidence in the integrity of the office.”

Mr. Speaker, Sir, the manner in which the Governor of Embu was relying on one Margaret Kariuki and ignoring the advice of the County Executive Officer, he absconded his responsibility under Article 73 of the Constitution. So, these grounds do not need to be big. You do not need to talk about billions of money. In fact, there is precedent that in the United States (US) where the Senate impeached Judge John Pickering for an act of drunkenness and unlawful rulings. In the case of the Governor of Oklahoma, Henry Johnson in 1929, the Senate impeached him on grounds of general incompetence. Governance is a requirement of competence of the person and not a question that it must be so grave in the manner in which some Kenyans think that billions of money must be misappropriated. Even general incompetence, under Article 73 of the Constitution is enough to impeach a governor. I want to submit to this House that the incompetence of Governor Wambora has been demonstrated beyond doubt.

Mr. Speaker, Sir, it has been argued that impeachment will be misused by the county assemblies and the Senate to witch-hunt, malign and blackmail governors. Impeachment is not about tribe, party or size and colour of the person; it is about accountability. If it means that we impeach a governor today and the governor who takes over from that person commits the same offence or even more grievous offences, we will impeach the next one. That is the law. This is not a new thing. In Oklahoma in 1921, for example, they impeached a governor who was a lawyer. In 1929, they also impeached another Governor Henry Johnson, that I have quoted, for general incompetence. So, the question is about facts and not whether we are witch-hunting or anything. This House is mature enough to be able to deal with those issues.

Mr. Speaker, Sir, does impeachment depend on the popularity of the governor? No! In fact, there is precedent that in the impeachment of Governor Blagojevich who wanted to sell the seat of Obama when he became President: He was the most popular person on CNN, CNBC, Fox News. Everybody was rating him high, but the Senate of

Illinois went ahead to impeach him. In fact, in the impeachment of the Governor of New York in 1913, Governor William Sulzer, while the impeachment proceedings were going on in a Chamber like this, there were 10,000 supporters waiting outside. However, that did not stop the Senate from impeaching him, because it was about the facts. So, popularity is not an issue here. Some people have said that a governor was elected by many people, but is impeached by a few people. That is because that is the governance tool that we chose. As the court said, unless we amend the Constitution, that is the law.

Mr. Speaker, Sir, does impeachment, therefore, prejudice matters that are going on in court? In the case of Blagojevich in the United States, again, it was decided that an impeachment trial and removal from office did not add any effect in the federal indictment of the Governor in the US district courts. Impeachment was a political and not a criminal action. So, the question of *sub judice* does not arise, because the courts will be able to determine the other issues. In fact, our impeachment procedure here does not stop the EACC from continuing with investigation; neither does it stop Governor Wambora from facing other criminal charges, if need be. It is just about holding him to account in terms of leadership.

Mr. Speaker, Sir, lastly, does impeachment affect the future of Governor Wambora? Yes, it might affect him in one way or another. But in all the precedence that I have read, including Governor Henry Johnson of Oklahoma (1922) who was a lawyer, after he was impeached, he went back to practice successfully up to age 97. So, it is not the end of life for Governor Wambora. It is just for him to give way, so that the people of Embu can have a leadership that is able to deal with their aspirations and desires.

Mr. Speaker, Sir, in conclusion, it is not the magnitude or amount that we are dealing with, but about whether that principle has been breached. You remember that in the Lewinski issue, President Clinton was almost being impeached over a small thing. That small thing almost put him in trouble. So, it is not the size that is important in that matter. It is important for this House to consider all the issues that are before us, to be able to impeach this Governor and open a new Chapter for the people of Embu.

Mr. Speaker, Sir, I beg to second.

(Question proposed)

Sen. Lesuuda: Mr. Speaker, Sir, thank you for giving me this opportunity to contribute to this important Motion and also to commend the Chairperson of the Special Committee, Sen. (Dr.) Khalwale and the Vice Chairperson, Sen. Murkomen for ably tabling the Report and also giving their contributions.

Mr. Speaker, Sir, I request that my colleagues consult in very low tones so that I can be heard.

(Loud consultations)

The Speaker (Hon. Ethuro): Order, hon. Senators!

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Proceed, Sen. Lesuuda.

Sen. Lesuuda: Mr. Speaker, Sir, I will start my contribution by raising one of the issues in the Report. This was just a general view that the people of Embu County would like this matter to come to a conclusion so that they can also enjoy the fruits of devolution. We know through various ways that the people of Embu County are anxious. They are waiting for a solid CEO whom they know is in charge and who is running the affairs of their county. So, they are looking upon this House to bring this matter to conclusion. I believe that this honourable and distinguished House is capable and will bring this matter to the right conclusion so that the people of Embu can then enjoy the fruits of devolution.

Mr. Speaker, Sir, there are several schools of thought that have been advanced on the whole process of impeachment in this country. The first one is that devolution is a baby and we are still nurturing it. They say we should give it time to mature. That we should give the governors time to make a few mistakes here and there as they get a grip on devolution.

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

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

Mr. Muthama: Mr. Speaker, Sir, we have to finish this Motion by 12.30 p.m., but looking at the time and the people who want to contribute, would I be in order to kindly ask the Chair to give three minutes to each individual for debate?

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir.

While I agree with the general view that the time is short, would I be in order to request that rather than limit the contribution of Members on such a grave and important matter to the nation, that we extend time and spend a little bit more time on the matter.

An hon. Senator: Move it!

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, in that regard, I beg to move that we extend this morning sitting to 1.30 p.m. in line with Standing Order No.30(3).

Sen. Kajwang: On a point of order, Mr. Speaker, Sir. In as much as we want to give more time, the Motion moved by the Senate Leader of Majority that we proceed beyond the normal time - in that case, he would be seeking for adjournment because the normal sittings are meant to end at 12.30 p.m. I do not know whether that is in order, although that is your discretion.

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Standing Order No.30 quoted by the Leader of Majority gives the Speaker the power to stop the proceedings of the House and not to increase the time. I beg to be corrected.

The Speaker (Hon. Ethuro): Order, Senators! This is a Special Sitting dedicated to the special business before us. While we would ordinarily be guided by practice, I think there is also a case to be made that special business might require some special consideration. So, in recognition of that I will try to marry the two proposals on the floor

that we extend time from 12.30 p.m. to 1.00 p.m. and we will give Members five minutes, subject to review, starting with the one who has the Floor.

Sen. Lesuuda: Mr. Speaker, Sir, I was at the point where I was saying there is a school of thought which feels that it is too early to start impeaching governors. That we need to give time to governors to make a few mistakes here and there and that the Senate should give governors time to understand devolution. I want to state it here in this distinguished House that even as we celebrate 50 years of Independence as a nation, there are counties which are celebrating their first year of independence because of devolution. We also said, during the 50 years of Independence celebrations that we are starting to rewrite the history of this country starting from now to the next 50 years. So, it advances the school of thought that we have to get it right. We have to set the standards of devolution to be high. Just as Sen. Murkomen had said, we do not have to wait until millions or billions of shillings are lost or until a grave matter is committed by the CEOs of these counties so that an impeachment takes place.

Mr. Speaker, Sir, let me divulge to you that it is the first time in the history of Kenya, through devolution, that Samburu County has been allocated Kshs2.3 billion. This is something that cannot be fathomed. It is the first time that Embu County got Kshs3.52 billion. It is the first time that Migori County got Kshs4.05 billion. So, the citizens of these counties have seen devolution as their hope. Then we are saying that those who have been mandated by the people have a leeway to make mistakes and ruin the dreams of the children of these counties. We have to set the standards so that the counties can enjoy their independence fully.

Mr. Speaker, Sir, it is important to also note that the Special Committee or the Senate did not just wake up one morning and decide to go through this process. It is being alleged that the Senate and the MCAs are colluding so as to prove a point or to show that we are greater than the governors. It did not just happen, but we were guided by the laws of this land. This would be the first time that laws would actually work in this country. For many years, it has been stated that Kenya has beautiful laws that we have put laws in place, but they are never followed. This would be the first time that the law would be respected and followed to the letter.

As the Chairperson of the Special Committee cited, there are several laws that were violated including the Public Procurement and Disposal Act, the Public Finance Management Act and the Constitution of Kenya. It is important to note that each governor will be treated differently so that the issue of malice will not arise. Each county will be treated differently just in case another impeachment process is to be initiated.

Mr. Speaker, Sir, it is also important to note something that was quoted by the ruling of the judgment in Kerugoya Court on the whole issue of values. If I can quote the Constitution of Kenya, Chapter 13, Article 232(1) the values and principles of public service include—

(b) efficient, effective and economic use of resources;

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

Sen. Lesuuda: Mr. Speaker, Sir, I beg to support this Motion.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

The Speaker (Hon. Ethuro): Proceed, Sen. Wetangula. In recognition of your status as the Senate Minority Leader, we will double your time.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Speaker, Sir. I laud the Committee, chaired ably by the distinguished Senator for Kakamega and vice chaired by the distinguished Senator for Elgeyo Marakwet. I also laud all the Members who spent their weekend working for this Senate.

Mr. Speaker, Sir, this morning, a court in Israel sent to jail an immediate former Prime Minister for ten years and a fine equivalent to Kshs25 million for corruption. In the same country, the immediate former President is in jail for rape. Last week, the Prime Minister of Thailand who had been popularly elected was sent home by the courts for flouting the Constitution. Examples are endless.

Mr. Speaker, Sir, here in Kenya, we have a new Constitution that brings on board new expectations, responsibilities and everybody must work within and under the Constitution. It is not, like Sen. Murkomen said, the quantum; it is not that one was a repeat offender, the moment you are caught, you must face the music. This House is faced with a decision to make; forget that we dealt with the Wambora issue some two or three months back. We are now dealing with a case that has come here on its own merit and the Committee has listened to evidence. What is startling is the level of arrogance that was exhibited by the governor in question.

Mr. Speaker, Sir, when I talked to one of the Members of the Committee, I told him that the right to be heard includes the right not to appear; the right to be heard includes the right to appear and say nothing; the right to be heard includes the right to cast aspersions on the court; the right to be heard even includes some misguided approach of exhibiting unhelpful arrogance. You still have your right to be heard. When a person is invited to a legitimate organ of the Constitution like the Senate, and you are told you have to answer to the following charges, and you send a lawyer who abdicates his duty to advise the client and goes to insult the Committee, then that lawyer is not helpful to the client either.

(Laughter)

Mr. Speaker, Sir, you will remember the famous saying that “many patients die out of complications arising out of their treatment rather than the diseases they suffer from.” Here is Martin Wambora being a victim of the misadventure of his lawyer who is supposed to have been there to save him rather than even anything else.

Mr. Speaker, Sir, I want to urge this House, like the Chairman of the Ethics and Anti-Corruption Commission (EACC), Mr. Mumo Matemu, said the other day in a meeting in Eldoret with Senators - he said: “We do not have any governors who are thieves, but we have thieves who have found their way into the offices of governors.” That is what we must weed out. Any governor who engages in corrupt practices must face the law. The Senate is not on a witch hunt. However, we hear of governors out there practicing nepotism, tribalism and corruption in total violation of Chapter Six of the

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Constitution and other laws of this country. This Senate assures the people of Kenya that we are not on an avalanche of impeachments. We will deal with each and every case that comes to this Senate on its merit. We will listen to everybody; the meek and the arrogant. We will pass judgment. That judgment will go towards strengthening devolution and helping the people of Kenya.

Mr. Speaker, Sir, in the words of Sen. James Orengo when he spoke here, this Senate should either have it right now or never have it right in future. We must tell our brothers and sisters who opted to become governors that we salute them for the sacrifices they have made. However, we also caution them that it is wrong and dangerous for anybody to start thinking that devolution means governors and governors mean devolution.

(Applause)

That is not the case. When you are caught, the law will come on you like a ton of bricks. You have heard people out there saying that it is too early to impeach governors. It is like telling Kenyans that it is too early to arrest thieves.

(Laughter)

Mr. Speaker, Sir, when is the correct time to arrest offenders? When you are caught up, you are caught up! The law will act without fear or favour. This House entrusted eleven distinguished men and women to do the work for it. They have brought before this House a unanimous verdict on one Martin Nyaga Wambora who happens, like I did say last time, to be a friend of mine. We have been in Parliament together. We worked together in Nakuru and we have socialized together. But when it comes to protecting devolution, protecting the interests of Kenyans and protecting the Constitution, it matters not whether he is your friend, your brother or your sister; the law must apply to all in an even manner. Again, this afternoon, the Senate is being called to higher moral standing; to stand and tell Kenyans whether you truly fit the bill as the defenders, custodians and protectors of devolution, including the resources that you send to the counties.

Mr. Speaker, Sir, the Governor is not just an elected boss around the county; he is the Chief Executive Officer (CEO); the buck ends on his table on every issue. Even an errant person he has appointed, if he goes on a frolic of his own, the Senate will go for the governor because the buck ends on your table. In fact, it is a dereliction of duty and a serious error of judgment for a governor to appoint people who are dishonest, people who are corrupt or people who do things wrong. In law, for example, we say the governor will take vicarious responsibility for such wrong doing.

So, this afternoon, this Senate sends a very clear message, that we will act without fear or favour. We will also be balanced and just, but when the law is not on your side, too bad. You must face the music. I urge this House, this afternoon, to resoundingly,

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

without exception, pass the verdict that supports the outcome of the Committee that we all entrusted to do the work for us and to impeach Governor Wambora, not on behalf of other governors, but those who can learn lessons will learn from the proceedings of today.

Mr. Speaker, Sir, I beg to support.

(Applause)

The Speaker (Hon. Ethuro): Order, Members! I am seeing the interest in the matter. I will reduce the time for each contributor from five minutes to three minutes.

Sen. Kembi-Gitura: Thank you, Mr. Speaker, Sir. I am grateful because you recognise that law does not act retrospectively. So, the issue of the three minutes does not affect me.

The Speaker (Hon. Ethuro): Okay! That will apply after the Deputy Speaker has contributed.

Sen. Kembi-Gitura: Mr. Speaker, Sir, I want to thank you for giving me this opportunity to magnify my voice to be heard on the issues affecting the impeachment of the Governor of Embu County.

From a legal point of view, and even assuming that this is what in law, we call a review brought before a court of law, if, indeed, it was a review, the question that the judge will be asking will be pure and simple: Are there any new facts or is it the same thing that we are dealing with?" Of course, if it is found that there are no new facts the application will be dismissed summarily.

This is not a review nor is it an appeal; it is a fresh matter that is coming before us. However, we all know that the facts before us are the same as the ones we dealt with in February this year on Valentine's Day. Our decision at that time was that we made a final decision. It was frustrated by an operation of the law and the matter has come back to us under the operation of the law because our earlier actions were nullified by the other court.

Mr. Speaker, Sir, the question that we must ask ourselves, and I want to thank the Committee chaired by Sen. (Dr.) Khalwale, is this: What is there that has come to us this time that we do not know or that we have not dealt with? Are there any new facts to make us deal differently with the situation before us? Are there any new basis that we did not deal with in February or are we dealing with the same facts that we dealt with in February?

The Speaker (Hon. Ethuro): Order, Sen. Kembi-Gitura! That debate was carried last time when we were proposing the Committee. This is a new ball game. Proceed along those lines.

Sen. Kembi-Gitura: Mr. Speaker, Sir, I appreciate that. I am talking about the factual aspect of the situation.

If Sen. (Dr.) Khalwale had come and told us that the maize seeds that were planted, we were wrong in February, that they have actually germinated and been

harvested, those would be new facts. They would most likely let us know that we were wrong. But what I am hearing Sen. (Dr.) Khalwale telling us is that those are the same seeds that had a 20 per cent germination rate. I do not see if there is anything new.

(Applause)

Mr. Speaker, Sir, the important thing and the message we must send to our people under Article 96 as guardians of the Constitution and also the counties---. I heard Sen. Murkomen refer to this in his submissions – under Chapter six of the Constitution, there is no small or big sin or crime when it comes to matters of the responsibility that has been given to us. So, it is wrong, even for any commission, like I have been reading recently, to say that the law needs to be changed to change the threshold of impeachment. The law is very clear.

The Constitution, Section 33 of the County Governments Act and our Standing Orders are very clear. It is a question of how they are interpreted by Members of the County Assembly (MCAs). The question is: Is it true that the Members of the County Assembly can be manipulated or made to make a decision that is wrong because of bribery and other ways of manipulation? Yes, it can happen just as Members of Parliament can be manipulated. So, let us not talk about MCAs as if they are lesser legislators than we are. They have an authority because they are elected by the people. They are on the ground and have dealt with all these situations that we are dealing with. For example, this is situation that has been brought to us. So, do we know whether or not the maize germinated? We did not go to any *shamba* to check on that. But the report is there and we were able to interrogate it. We appointed a Committee chaired very ably by Sen. (Dr.) Khalwale and he has given us a report.

I want to thank him and his Committee because after I have read the Committee's Report, it convinces me that nothing has changed. The message must go out there. We must make it clear that it is not the MCAs or the Senators. I want to believe that we, as Senators, are enjoined by law to work judiciously and look at what the MCAs in Embu have said. If they have made a mistake, in our view, as a Senate constituted into a court, then we should be able to correct it. That has not arisen.

I beg to support.

The Speaker (Hon. Ethuro): Sen. Orengo, you have three minutes.

Sen. Orengo: Mr. Speaker, Sir, I will I will take a short time.

As a starting point, I want to cite a finding in the case in Kerugoya which was filed by Governor Wambora. This is to put to rest the fact that there may be doubt out there that we do not know what we are doing. It is important that the public knows that when the Senate is seized of the matter, the Senate knows what it is doing.

Hon. Senators: Yes!

(Applause)

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Sen. Orengo: Mr. Speaker, Sir, in paragraph 238 of the judgment of a case filed by the Governor before the court in Kerugoya, the court found out the following:-

“We find that in the present case the procedure followed at the Senate was not faulted.”

So, during the entire proceedings, nobody could point out anything that the Senate did that was at fault, unprocedural or unconstitutional for that matter.

On the question of the threshold, and we have been talking about “gross violation”. I agree totally with what Sen. Murkomen said here about what, indeed, the tool of impeachment is used for. It is a governance tool. But some guidance, again, was given in that same case in Kerugoya. It will be good to read out what they said constitutes gross misconduct so that we have a bearing of what the courts think about this whole matter.

They said the following quoting a Nigerian case.

“The following in my view constitute grave violation or breach of the Constitution:-

(a) Interference with the constitutional functions of the legislature and the judiciary by an exhibition of overt and unconstitutional executive power.”

Mr. Speaker, Sir, this is a warning to the national Government and to the governors that if they interfere with the functions of the legislature, as properly constituted, that could also be a breach.

There is also abuse of the fiscal provisions of the Constitution and abuse of the code of conduct so that you may think that a code of conduct is a small thing, but in the eyes of the Supreme Court in Nigeria and their courts have accepted, an abuse of the code of conduct can be a gross violation.

They further talk about:-

“(b) Pilfering of funds including monthly subventions for personal gains or for the comfort and advantage of the state governments.”

Mr. Speaker, Sir, you will find that although the threshold is what my friend, Sen. Murkomen was talking about, we took a very high threshold. That is found in Paragraph 54. If you look at that, the threshold was a little bit higher.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order Members. For clarity, Sen. Murkomen, wait for your turn to be in the Chair. For now, it is three minutes.

Sen. Kiraitu Murungi.

Sen. Murungi: Mr. Speaker, Sir, I rise to support this Motion and thank the Committee for doing an excellent analysis of both the law and evidence in this matter.

Kenyans should know the charges which have led to the impeachment of Governor Wambora. They include gross violation of the Constitution and gross violation of the Public Procurement and Disposal Act. Those are the issues which the Senate is dealing with. There are other issues being canvassed out there which the Senate is not dealing with. Some of them touch on me personally. I want to take this opportunity to clear my name.

Governor Martin Wambora is my personal friend. He went to school in my County at Nkubu Seminary, he was in Parliament with me and we have done politics with him. He was one of the chief promoters of the “Bus Party” in Embu County. But there are stories now making rounds that it is Sen. Kiraitu Murungi and Sen. Lenny Kivuti who have masterminded and engineered the impeachment of Governor Wambora because he defected from our party.

Hon. Senators: Shame! Shame!

Sen. Murungi: Mr. Speaker, Sir, nothing could be further from the truth and God is my witness. I have not talked to any Member of the Embu County Assembly during the day or at night regarding the impeachment of Governor Wambora.

(Laughter and applause)

Sen. Kivuti will speak for himself. But what I am saying is the gospel truth; that I have not been involved in any way in punishing Governor Wambora for jumping out of the Bus Party.

Mr. Speaker, Sir, there are no party politics in this matter. If you look at the proceedings which were brought to this House, the majority of the MCAs who passed the Motion to remove Governor Wambora from office were from his own Party, the TNA party. Some of our Members also voted with them, but we had not talked to them. It was purely an MCA affair.

Mr. Speaker, Sir, with those remarks, I thank you.

Sen. Kivuti: Mr. Speaker, Sir, I rise here with a heavy heart because this matter touches on my county. I note and I would like to go on record that this matter is not a personal matter for Governor Wambora as Wambora. It is a matter that touches on how county governance should be run.

We stand here as the Senate not because of what happened on 14th February, 2014, but as a new matter which I would like to say that pursuant to the first impeachment and the way the courts brought back Governor Wambora, I, personally, as a friend to him, called him.

I told him: “It is very necessary that you sit with all decision makers in Embu County.” He agreed. In our meetings I asked the county assembly to sit with him. However, it was not easy and it did not happen. When it did not happen I went further, because of the concern that I have for my county. I got other stakeholders, including the church missions. In the process, we ended up not getting Wambora to sit with the people, because apparently he had tried to get the county government to be dissolved through the idea of going to the President. Also by the time that I was trying to talk to the county government, there were already court summons, stopping them from going on with the county assembly business. I gave up.

Mr. Speaker, Sir, I swore to defend the law and Constitution of Kenya. That is why I am in this House. If my friend makes a mistake or is accused of wrongdoing and is given a chance to come and defend himself, and he chooses not to, what else do I have to

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

do? Given all that has been said, how else do I defend my friend? How else do I defend the rights of the people of Embu and the Constitution? How else do I do anything?

The Speaker (Hon. Ethuro): Order!

Sen. Kivuti: Mr. Speaker, Sir, I beg to support.

The Speaker (Hon. Ethuro): Order, Members! We are talking about matters of principle and to try to coerce the Chair to go against the three minutes allocating, will be committing the same crimes that we are talking about here.

(Laughter)

Sen. Mutula Kilonzo Jnr!

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I beg to support this Motion. However, I must say at the first instance that this is the most interesting proceeding that I have seen, where a lawyer representing a client, has sought leave to withdraw from proceedings affecting his client. So, since this is the first governor to be impeached twice and walk away from his fate, we might as well help him to walk away from his seat because he does not deserve to be a governor of any county in this Republic.

Mr. Speaker, Sir, secondly, I want to thank the Committee because this document that they have produced is a beautiful document. It has got all legal authority and is well researched. We must commend the Committee for doing a good job.

Mr. Speaker, Sir, Embu County has spoken twice. If we do not impeach this Governor today, what will he do when he goes back to Embu with a county assembly that does not want him? At this juncture, I then agree with Sen. Murkomen; that if a vote of no confidence has been passed by Members of the County Assembly of Embu, who represent public opinion and the people of Embu, we have no choice. Governor Wambora is damned if he does and will be damned if he does not.

Mr. Speaker, Sir, I support this Motion to impeach this Governor, because from my reading of this Report, he has abdicated responsibility under Chapter Six of the Constitution of Kenya. Therefore, he deserves the fate that will be falling at this Senate.

Mr. Speaker, Sir, I beg to support.

(Sen. Kagwe raised his hand to catch the Speaker's eye)

Sen. Kagwe: Mr. Speaker, Sir, may I from the outset apologize for raising my hand against the Standing Orders. It is because I have a slip-disk problem and an unable to rise as quickly as my friends are doing.

Mr. Speaker, Sir, having said that, on this historic occasion, from Nyeri County, there are three things that we want to send as a message to the nation. The first one is that we will support any Governor who is brought here in falsehood. Governors should be assured from this House that if they are ever brought to this House and a Committee is set up to investigate them, and they are not guilty, this House will find them not guilty. It is very important for us to do that, lest governors believe that as soon as they are brought

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

here, whether they are guilty or not, then they will be impeached. It is important that, that be on record.

Mr. Speaker, Sir, secondly, it is also important that the message goes forward, as has been the case in this particular matter, that any Governor who is brought here – who is guilty – then the House will rightfully find them guilty and proceed to impeach them. It is important for that message to go across.

Mr. Speaker, Sir, finally, I want to urge that the leaders of this country adopt a “resigning” attitude. Once you know that the die is cast, as a leader, and there is no way circumstances are going to be any different from what they are, it is important for us to save our families, those people who elected us, the county assembly and the Senate the necessity of discussing you and going through what you said and did not say. I think that it is only honourable that if you find that the position has become untenable, you tender your resignation; reconsider your position and say: “To save the people of Embu, Nyeri or any other country, the embarrassment of being discussed in every forum in the newspapers and other areas, I hereby tender my resignation.” In any event, as is clear in the Constitution, if you resign, your future in politics is brighter than if you are impeached. This is because if you are impeached there are constitutional issues that now face you.

Mr. Speaker, Sir, I beg to support.

Sen. Abdirahman: Thank you, Mr. Speaker, Sir, for allowing me to contribute to this very important debate this afternoon.

Mr. Speaker, Sir, from the outset, I would like to say that there are those who believe that devolution is a very young concept in this country. I think that we were supposed to have the right people in place. There is no shortage of manpower in this country, be it at the technical or managerial level. Therefore, an excuse that we cannot have good governance in this country because we need more time, is not a good solution. The fact that the current case before us this afternoon, in terms of evidence, is not different from what we have had last time, especially when one is accused of gross violation of the Public Procurement Act, Public Finance Management Act and above all, the Constitution. There is no other sufficient ground which we need to look for, as Senators, to send our good friend, hon. Wambora, home this afternoon.

Mr. Speaker, Sir, there are two other things that I want to mention. We were following what was happening in Embu. When some of us got wind that the lady called Lorna Margaret Kariuki, the County Secretary had been sacked, then there was no other proof that we needed to actually confirm that there was evidence of incompetence and actually corruption in Embu County, at this particular time.

Mr. Speaker, Sir, we also need to actually empower the Members of County Assemblies (MCAs). These are the people who are at the grassroots level who will be able to actually identify where the weaknesses are. Those who believe that MCAs are too fast to impeach governors are going on the wrong path.

Mr. Speaker, Sir, I support this impeachment Motion.

The Speaker (Hon. Ethuro): Proceed, Senate Majority Leader. You have the same time like the Senate Minority Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir. In fact, I deserved more time, but I will be very quick. I will use less than ten minutes. I rise in support of the Motion.

Mr. Speaker, Sir, about 100 years ago, an American humorist called Mark Twain wrote as follows:-

“Twenty years from now you will be more disappointed by the things that you did not do than by the ones you did do.”

Mr. Speaker, Sir, I quote Mark Twain in these walls because this Senate must do what it must do, either good, bad, pleasant or ugly. We must do it because we do not want disappointments. It is not just about our own disappointments, but the disappointments of the people of Kenya who have a lot of hope in devolution. In the same vein, we must protect the interest of counties at all times. We have emphasized this. All my colleagues who have spoken have said that we are not, in any way going to backtrack on our resolve to protect counties and their interests. We must also legislate on our counties.

Thirdly, Mr. Speaker, Sir, we must oversight our counties. Finally, we must continue disciplining the Executive; whether at the national level or at the county level. The Executive can be the servants of the people of Kenya and not the rulers of the people of Kenya.

(Applause)

I say so because of the suggestion that I have heard by some colleagues that: “Oh, if you touch on Governors, you are fighting devolution.” That suggestion is immature and incomplete because devolution is about systems and institutions. It is not about the office of a governor. It is not about the office of a Senator or the office of a Member of County Assembly (MCA). In the same vein, listening and watching my friends, I am seeing a very important institution called the Senate which will steer devolution and this country to the promised land.

(Applause)

Mr. Speaker, Sir, it is in this context that I want to say for myself that I do not see how this Senate will entertain any frivolous, vexatious or malicious Motions brought on the Floor of this House. So, governors can rest assured that we will protect them viciously if the accusations are false, frivolous or vexatious. However, we will also be very vicious with the corrupt, the fraudsters, the thieves and all manner of people who have thought that they can use the dignified office of a governor to commit felonies and serious offences of an economic nature against the people of Kenya.

Mr. Speaker, Sir, we must respect our County Assemblies. I have heard, but not on the Floor of this House, people suggesting that County Assemblies do not know what

they are doing and that they are just a lynch mob. For the record, the MCAs are constitutional office holders. They are entitled to oversight, at the first instance, our counties.

Mr. Speaker, Sir, what has happened has come from Embu; it has not emanated from this Senate. It emanated from the Embu County Assembly not once, but twice. In respect of the County Assembly of Embu, the people of Embu and the people of Kenya who have so much hope in devolution, I beg to support.

(Applause)

Sen. (Dr.) Machage: Bw. Spika, muda wa dakika tatu si mwingi, lakini nitautumia kutoa wasia wangu na labda kuwapa mawazo wale viongozi wa mashinani, hasa magavana.

Wahenga walisema: “Ukiona cha mwenzio cha nyolewa, chako kitie maji.” Pia walisema: “Asiyeskia la mkuu, huvunjika guu.” Leo tunajaribu kuangaza mawazo yetu juu ya Ripoti iliyotayarishwa na Kamati ya Sen. (Dr.) Khalwale. Mambo yote juu ya Kaunti ya Embu yameanikwa wazi. Tunaweza kudhibitisha kwamba kuna dosari katika usimamizi wa mali ya umma katika kaunti hii. Juzi nimejaribu kumtetea Gavana Wambora na kumpa nafasi ili ajitete. Yeye akadinda hata kufika mbele ya Kamati ya Seneti iliyoundwa na Seneti hii. Sina budi ila kusema ya kwamba yeye hafai kuwa kiongozi wa daraja lolote kwa sababu amekosa utiifu. Ingekuwa heri kama angekubali kusikiza mawazo ya viongozi wa Seneti hii. Je, atawezaje kuongoza wananchi wa Kenya ikiwa hana utiifu?

Bw. Spika, ningetaka kutoa tahadhari juu ya mambao yanayotendeka wakati huu kule mashinani. Magavana wengi ambao wanajua wana makosa kama yale ya Gavana Wambora wameanza kutoa rushwa au mlungula kwa wale viongozi wa mashinani wanaojulikana kama MCAs. Ni lazima wajue ya kwamba twawakodolea macho na tunawachunguza. Hatutakubali mambo ya hongo kabisa katika Seneti hii. Ni vibaya kutumia pesa za umma kuwahonga viongozi wengine ili wafiche maovu yao. Iwapo wataletwa hapa, basi kisu ni kile kile na wembe ni ule ule!

An hon. Senator: Na makasi ni yale, yale!

(Laughter)

Sen. (Dr.) Machage: Wasitarajie kupata hukumu tofauti kwa sababu nguvu za Seneti hii hazina kifani. Yetu ni kutenda haki kwa kila gavana atayewasilishwa hapa kwa sababu tuna utu. Viongozi walio katika Seneti hii ni watu wazima na wenye hekima. Watayasikiliza mawazo ya kila gavana. Kama umeulizwa swali kule mashinani, tafadhi lijibu. Wale viongozi ambao wameitwa kuja kwa kamati zetu ili kutoa ripoti zao vile wanavyo tumia mali ya umma, tafadhali fanyeni hima. Fikeni mbele ya kamati hizi, na mjibu maswali juu ya matumizi ya pesa za umma katika kaunti zenu.

Leo tunaandika historia. Bw. Wambora ataenda nyumbani. Ikiwa watu wa Embu wamesema aende nyumbani, sisi ni akina nani kukata?

Bw. Spika, kwa hayo machache, ninaunga mkono Hoja.

Sen. Wamatangi: Thank you, Mr. Speaker, Sir. For the sake of the country and this House, and as one who sat in the Committee, first, I want to confirm that of all the charges that were preferred against Governor Wambora, nobody has denied that they were actually committed in Embu County. What happened was that the governor chose to vex this Committee because it questioned if there was a link between what happened in the County of Embu and the role of the governor.

Mr. Speaker, Sir, of profound importance to note is the fact that the governor chose to waive his right to appear personally in front of the Committee. We have to ask ourselves this pertinent question. Why did he choose not to appear and instead chose to send documents to the Committee? There can only be one answer; he chose not to appear in person to avoid scrutiny because he would have been asked questions in the Committee. Other than appearing, the governor also chose to go on a press campaign or a press war. I am sure Members of this House and members of the Republic of Kenya read several paid up advertisements in all the dailies which were titled “Devolution on trial.”

Mr. Speaker, Sir, the money which was used to run those advertisements was from the county government’s kitty. Indeed, these were taxpayers’ funds. The question we have to answer and to clarify to all governors is that the position and the person of the governor are not synonymous, at all, with county governments or devolution.

Looking at the issues that have come up, I am cognizant of the fact that time will not allow me to speak a lot. However, we have questions that we must answer to this nation.

The Speaker (Hon. Ethuro): Order, Sen. Wamatangi! Time, indeed, has caught up with you.

Sen. Wamatangi: Mr. Speaker, Sir, I support.

The Speaker (Hon. Ethuro): Hon. Senators, we had agreed to start voting at 1.00 p.m. You will appreciate that it is 12.45 p.m. which is the time reserved for the Mover to reply. However, we have agreed with the Mover that he will only need three minutes just like any other person. Therefore, we will proceed with more contributions from Members.

Sen. Kajwang: Mr. Speaker, Sir, first, I will start by declaring my personal interest. Governor Wambora was a Member of the Ninth Parliament where I was. He was also a Member of the House Business and Rules Committee where we served with the late Sen. Mutula Kilonzo, hon. Muite and hon. Musila. Therefore, we are friends.

Mr. Speaker, Sir, recently I was asked by a Member of Parliament directly whether we would impeach Governor Wambora. I said that if the facts were the same, we would impeach him. We elected governors because we thought they were managers. If a manager misappropriates funds or lets his officers steal, then he has to be fired.

It is not easy to impeach a governor. First of all, you must get an overwhelming majority in the Members of the County Assembly (MCAs). The Senate Committee must

look at the situation again to see whether there is a crime committed. The Senate must check whether he misappropriated funds or not or whether he has breached the Constitution or any other law. The assembly must also vote in the majority. That is not easy.

Those benchmarks are the same for the President. So, if we say that we cannot impeach the governor that means that we cannot also impeach the President. The same law applies to the President. He must get two-thirds majority in the assembly. The Motion must also come here and we vote by another two-thirds. That is not easy. However, if you commit a crime, then you must be impeached and there is no other solution to it. Let me put it this way; I respect Embu MCAs. I have not seen anything like this. They voted overwhelmingly, tribe or no tribe, clan or no clan. They voted twice and they spoke to us. If we do not do what we must do this afternoon, there will be no use for this Senate in this country. We will not have protected the interests of the counties. We will have violated the Constitution ourselves.

I beg to support.

Sen. Elachi: Mr. Speaker, Sir, I also rise to thank the Committee and to say this. Indeed, we may be blaming the Governor and wondering why he did not appear before the Committee. However, the Governor may have realized that, indeed, he had violated the Constitution that he swore to protect and the Public Procurement and Disposal Act. Therefore, he thought that he only deserved to go home.

We need to ask governors to look the law and to start following it. If they follow what the law says, they will not be impeached by the county assemblies. They will not find themselves being debated by the Senate. The Embu County Assembly did not bring in propaganda of saying that they needed mortgages or cars. They brought allegations of what the Constitution stipulates. That is something that all county assemblies should look at. They must follow the law when they notice that their governors are not following the law. They should impeach their governors in the correct manner if, indeed, they violate the law.

I beg to support.

The Speaker (Hon. Ethuro): The rest will take one minute each.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I just want to say one thing. The relationship between MCAs and governors is very important. Sen. (Dr.) Machage said that there is an attempt by governors to buy MCAs to do their bidding. We, as a Senate, have a responsibility to oversight both.

Secondly, I want to tell the governors and this applies to all leaders, that positions of leadership require humility and consultation. Indeed, the essence of democracy is consensus building. What we have seen in many of these counties is the tendency of the "big man syndrome" to arise in governors. This is very dangerous because in Embu this has led to a very unfortunate end. Therefore, the culture of consultation and humility and democracy by building consensus will help us create accountability and transparency in the counties.

Sen. Moi: Mr. Speaker, Sir, I know that I have one minute. I want to say two things. The first one is that when I read this Report, it becomes very clear to me that Governor Wambora did not benefit one iota personally. The second point is that what we will do and how we will vote will affect Governor Wambora. Once we impeach him; for ten years, he cannot hold any public office at all, including being a cattle dip chairman or member. He will have nothing for ten years and yet I do not see, personally, in this Report, how that can be justified and how Governor Wambora can be sent home on that plea.

Sen. Muthama: Mr. Speaker, Sir, I stand to send a very strong message to all leaders who occupy public offices. Be warned that not one of them will be allowed to use subordinate officers, engage them in stealing and corruption and he escapes from it. The message is that those who occupy public offices will be held responsible, more so, the governors. Governors are supposed to be the CEOs of counties. The money is sent to the governors. They co-chair all the meetings and allow all the expenditures. If Governor Wambora could not substantiate on the maize, stadium, purchase of vehicles scandals, what business does he have holding public office?

I stand to say that we impeach Governor Wambora.

Sen. Okong'o: Mr. Speaker, Sir, the mistake that Governor Wambora did was to move from the priesthood which he studied for, to the things of this world.

(Laughter)

Mr. Speaker, Sir, the county assemblies are empowered to deal with issues of checking the executive at the counties. This message has to be very clear. Yesterday, my county assembly became the second county assembly to kick out the Speaker because of malpractices. So, the MCAs are doing their rightful job. This afternoon, the Senate will do its rightful job.

Mr. Speaker, Sir, I beg to support.

Sen. Mbura: Asante, Bw. Spika. Mimi nina furaha sana kwa kikao hiki. Ninaringa kuwa mimi kama Seneta nimepata nguvu. Nataka kusema kuwa kijembe kile ambacho kimemnyoa Wambora kiwekwe vizuri ili kitembee Kilifi, Mombasa na kuingia Kenya nzima.

Bw. Spika, kwa sababu hiyo, ninaunga mkono Hoja hii.

(Laughter)

Sen. Hassan: Mr. Speaker, Sir, all I want to do is to support this Motion, but also second what Sen. Kiraitu did indicate; that this House is not guided by rumours, hearsay or supremacy. This House will always arbitrate and adjudicate based on the facts herein.

Mr. Speaker, Sir, you do recall that there is always the issue that the Senate is out to prove its authority or supremacy. But what the Senate will rightfully do is to conduct its mandate, under the Constitution, without fear or favour. Therefore, we warn all

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

governors – our friends or otherwise – that once they come to this Senate, the Senate will take its course. Where possible, they will be impeached.

Mr. Speaker, Sir, I beg to support.

Sen. Sang: Mr. Speaker, Sir, from the outset I want to support this Motion.

Mr. Speaker, Sir, the role of this Senate is to protect counties from internal and external factors. This morning we are engaged in an exercise to protect the County Government of Embu from an internal factor. This afternoon, we will be engaged in another process of protecting counties in this country from external factors. Therefore, I want to take this opportunity to support this Motion.

Thank you, Mr. Speaker, Sir.

Sen. Omondi: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute and support this impeachment Motion.

Mr. Speaker, Sir, Kenyans are important and we, as leaders, are servants. It is so sad to realize that Kenyans are going on empty stomachs. We need to think twice and realize that devolution did not come to make a section of Kenyans rich while another section remains poor. It was meant to empower Kenyans and bring resources closer to the people who are supposed to benefit.

Mr. Speaker, Sir, with those few remarks, I beg to support.

The Speaker (Hon. Ethuro): Order, Senators! Time is up. I will give the remaining minute or so to the Mover to reply.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. As I thank the Members and request them to vote, I want to make just two points.

Mr. Speaker, Sir, the first one is: Please, leaders of this nation, let us move away from the old order and mindset of the old Constitution and move the country forward, by letting the new Constitution work.

Mr. Speaker, Sir, lastly, I received a message from a 77 year old retired primary school teacher from a place called Shichinji in Kakamega. He is called Malikweni. He asked me to tell you, as a House, to make sure that during voting we do it well. When I asked him what he meant, the retired primary school teacher told me:-

“What is done well is done forever.”

Mr. Speaker, Sir, I beg to move.

The Speaker (Hon. Ethuro): Order, Senators! We are now about to vote. This is a Roll Call vote and so, we will have to ring the Bell for eight minutes. But before we do so, I want to respond to what Sen. Kiraitu Murungi had requested; whether the Governor had been invited.

Just to confirm, the Governor was invited. Under Standing Order Nos.68 and 69, he has a right to be heard and represented. But he has selected, for this particular Sitting, to exercise the right not to be heard or represented. So, under the circumstances---

(Sen. Murkomen stood up in his place)

Order, Sen. Murkomen! I am not going to engage in some platitudes or acts of generosity. We are here to pursue the law. So, if the notices had been given and the Chair himself communicated even in person, when the attorney appeared before the Committee, and these are live proceedings and everybody is following wherever they are, I do not think that it is my business to do otherwise. So, let us proceed.

Ring the Division Bell.

(The Division Bell was rung)

The Speaker (Hon. Ethuro): Order, Senators! Assume your seats and Tellers may approach the Table.

It is time to take the vote according to Standing Order No.72(1) because this is a matter affecting counties. Now the Division Bell has been rung, may the doors be locked and the bar drawn. Tellers are as follows:-

Sen. Lesuuda - Ayes

Sen. Sijeny - Noes

As we vote in the normal way by county delegations, the charges will be read to you. Since we do not want to repeat the process, we expect you to take a vote on each of the charge. So, the charges would be “a” “b” and “c”. You vote on each of the charge as read by the Clerk.

ROLL CALL VOTING

COMMENCEMENT OF VOTING

(Senators proceeded to vote as their names were called out by the Clerk-at-the-Table)

The Clerk-at-the-Table: Sen. Billow Adan Kerrow, Mandera County---

The Speaker (Hon. Ethuro): Order. You need to read the charges first.

The Clerk-at-the-Table: The charges are:-

(a) Gross Violation of the Public Procurement and Disposal Act, 2005, and Regulations 2013;

(b) Gross Violation of the Public Finance Management Act, 2012;

(c) Gross Violation of the Constitution of Kenya.

The Clerk-at-the-Table: Sen. Billow Adan Kerrow, Mandera County.

Sen. Billow: Mr. Speaker, Sir, on behalf of the great people of Mandera County, I vote yes in respect of each of the charges “a” “b” and “c”.

The Clerk-at-the-Table: Sen. Boy Juma Boy, Kwale County.

Sen. Boy Juma Boy: Bw. Spika, kwa niaba ya Kaunti ya Kwale, napiga ndio kwa “a” “b” na “c”.

The Clerk-at-the-Table: Sen. Bule Ali Abdi, Tana River County.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Sen. Chiaba Abu Mohamed, Lamu County; Sen. Haji Mohamed Yusuf, Garissa County; Sen. Hargura Godana, Marsabit County; Sen. Hassan Abdirahman Ali; Wajir County.

Sen. Abdirahman: Mr. Speaker, Sir, the Wajir County delegation votes yes on “a”, yes on “b” and yes on item “c”.

The Clerk-at-the-Table: Sen. Hassan Omar Hassan, Mombasa County.

Sen. Hassan: Mr. Speaker, Sir, Mombasa County votes yes on count “a”, yes on count “b” and yes on count “c”.

The Clerk-at-the-Table: Sen. Kajwang Gerald Otieno, Homa Bay County.

Sen. Kajwang: Mr. Speaker, Sir, on behalf of Homa Bay County, I vote yes on charge “a” yes on charge “b” and yes on charge “c”.

The Clerk-at-the-Table: Sen. Karaba Dickson Daniel, Kirinyaga County.

Sen. Karaba: Kirinyaga votes yes in all counts “a”, “b” and “c”.

The Clerk-at-the-Table: Sen. Kariuki Godfrey Gitahi, Laikipia County.

Sen. G. G. Kariuki: Mr. Speaker, Sir, I vote yes.

The Speaker (Hon. Ethuro): Order, Senator. There are three charges.

Sen. G. G. Kariuki: Sorry, Mr. Speaker, Sir. I apologise for not having heard my name being called and I vote yes on all charges.

The Clerk-at-the-Table: Sen. Kembi-Gitura James, Murang’a County.

Sen. Kembi-Gitura: Mr. Speaker, Sir, on behalf of the people of Murang’a County, I vote yes on “a”, yes on “b” and yes on “c”.

The Clerk-at-the-Table: Sen. Keter Charles Cheruiyot, Kericho County; Sen. (Dr.) Khalwale, Kakamega County.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, for the people of Kakamega, I vote yes for “a,” yes for “b” and yes for “c.”

The Clerk-at-the-Table: Sen. Khaniri George, Vihiga County.

Sen. Khaniri: Mr. Speaker, Sir, on behalf of the great people of Vihiga County, I do vote yes on count “a,” yes on count “b” and yes on count “c.”

(Applause)

The Clerk-at-the-Table: Sen Paul Wamatangi, Kiambu County.

Sen. Wamatangi: Mr. Speaker, Sir, on behalf of the people of Kiambu County, I vote yes on count “a,” yes on count “b” and yes on count “c.”

The Clerk-at-the-Table: Sen. (Prof.) Kindiki Kithure, Tharaka Nithi County.

Sen. (Prof.) Kindiki: Mr. Speaker, Sir, in exercise of the sovereignty bestowed upon me by the people of the great County of Tharaka Nithi, I vote yes on count “a,” yes on count “b” and yes on count “c.”

The Clerk-at-the-Table: Sen. Kioko Mike Sonko Mbuvi, Nairobi County.

Sen. Kivuti Lenny Maxwell, Embu County.

Sen. Kivuti: Mr. Speaker, Sir, as the father of Embu County, I abstain on count “a,” I abstain on count “b” and I abstain on count “c.”

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

The Clerk-at-the-Table: Sen. Kiyonga John Munyes, Turkana County.

Sen. (Dr.) Kuti Mohammed Abdi, Isiolo County.

Sen. Adan: Mr. Speaker, Sir, Isiolo County votes yes on count “a,” yes on count “b” and yes on count “c.”

Thank you, Mr. Speaker, Sir.

(Applause)

The Clerk-at-the-Table: Sen. (Prof.) Lesan Wilfred Rotich, Bomet County.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, on behalf of the people of Bomet County, who elected me, I vote yes on count “a,” yes on count “b” and yes on count “c.”

The Clerk-at-the-Table: Sen. Leshore Sammy Prisa, Samburu County.

Sen. Lesuuda: Mr. Speaker, Sir, after consultation with the Head of Delegation, Samburu County votes yes on count “a,” yes on count “b” and yes on count “c.”

The Clerk-at-the-Table: Sen. (Prof.) Lonyangapuo John Krop, West Pokot County.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, on behalf of the people of West Pokot County, I vote yes on count “a,” yes on count “b” and yes on count “c.”

The Clerk-at-the-Table: Sen. (Dr.) Machage Wilfred Gisuka, Migori County.

Sen. (Dr.) Machage: Mr. Speaker, Sir, on behalf of the people of Migori County, I vote yes on count “a,” yes on count “b” and yes on count “c.”

The Clerk-at-the-Table: Sen. Madzayo Steward Mwachiro, Kilifi County.

Sen. Madzayo: Mr. Speaker, Sir, on behalf of the people of Kilifi County, I vote yes on count “a,” yes on count “b” and yes on count “c.”

The Clerk-at-the-Table: Sen. Melly Isaac Kipkemboi, Uasin Ngishu County.

Sen. Melly: Mr. Speaker, Sir, on behalf of the people of Uasin Ngishu County, I vote yes on count “a,” yes on count “b” and yes on count “c.”

The Clerk-at-the-Table: Sen. Moi Gideon Kipsielei Towett, Baringo County.

Sen. Moi: Mr. Speaker, Sir, on behalf of the great people of Baringo County, I vote no on count “a,” no on count “b” and no on count “c.”

The Clerk-at-the-Table: Sen. Mositet Peter Korinko, Kajiado County.

Sen. Mositet: Mr. Speaker, Sir, on behalf of the great people of Kajiado County, I vote yes on count “a,” yes on count “b” and yes on count “c.”

The Clerk-at-the-Table: Sen. Mungai James Kiarie, Nakuru County.

Sen. Chelule: Mr. Speaker, Sir, on behalf of Nakuru County, I vote yes on count “a,” yes on count “b” and yes on count “c.”

The Clerk-at-the-Table: Sen. (Eng.) Muriuki Karue Muriuki, Nyandarua County.

Sen. (Eng.) Muriuki: Mr. Speaker, Sir, the Nyandarua Delegation votes yes on count “a,” yes on count “b” and yes on count “c.”

The Clerk-at-the-Table: Sen. Murkomen Onesmus Kipchumba, Elgeyo Marakwet County.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Sen. Murkomen: Mr. Speaker, Sir, on behalf of the great people of the County of champions, Elgeyo Marakwet and for the sake of devolution, I vote yes on count “a,” yes on count “b” and yes on count “c.”

(Applause)

The Clerk-at-the-Table: Sen. Murungi Kiraitu, Meru County.

Sen. Murungi: Mr. Speaker, Sir, the great County of Meru votes as follows; yes on count “a,” yes on count “b” and yes on count “c.”

(Applause)

The Clerk-at-the-Table: Sen. Musila David, Kitui County.

Sen. Mutahi Kagwe, Nyeri County.

Sen. Kagwe: Mr. Speaker, Sir, the brave people of Nyeri County vote yes on count “a,” yes on count “b” and yes on count “c.”

The Clerk-at-the-Table: Sen. Muthama Johnson Nduya, Machakos County.

Sen. Muthama: Mr. Speaker, Sir, on behalf of the people of Machakos County that neighbours Embu, I vote yes on count “a,” yes on count “b” and yes on count “c.”

The Clerk-at-the-Table: Sen. Mutula Kilonzo Jnr., Makueni County.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, the resilient people of Makueni County expressly instruct me and on their behalf to vote yes on count “a,” yes on count “b” and yes on count “c.”

The Clerk-at-the-Table: Sen. Mwakulegwa Danson Mwazo, Taita-Taveta County.

Sen. Mwakulegwa: Mr. Speaker, Sir, on behalf of the people of Taita-Taveta County, I am voting yes on count “a,” yes on count “b” and yes on count “c.”

The Clerk-at-the-Table: Sen. Ndiema Henry Tiolo, Trans Nzoia County.

Sen. Ndiema: Mr. Speaker, Sir, on behalf of the united people of Trans Nzoia County and my delegation, I vote yes on count “a,” yes on count “b” and yes on count “c.”

The Clerk-at-the-Table: Sen. Ntutu Stephen Kanyinke, Narok County.

Sen. (Prof.) Nyong’o, Peter Anyang’, Kisumu County.

Sen. (Prof.) Anyang’Nyong’o: Mr. Speaker, Sir, the gallant people of UK vote yes on count “a,” yes on count “b” and yes on count “c.”

(Laughter)

The Clerk-at-the-Table: Sen. Obure Christopher Mogere, Kisii County.

Sen. Obure: Mr. Speaker, Sir, on behalf of the delegation and the people of the County of Kisii, I vote yes on count “a,” yes on count “b” and yes on count “c.”

The Clerk-at-the-Table: Sen. Okong’o Kennedy Mong’are, Nyamira County.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Sen. Okong'o: Mr. Speaker, Sir, on behalf of the people of Nyamira County, I vote yes on count "a," yes on count "b" and yes on count "c."

The Clerk-at-the-Table: Sen. Orengo James, Siaya County.

Sen. Orengo: Mr. Speaker, Sir, on behalf of the heroic people of Siaya County, I vote yes on count "a," yes on count "b" and yes on count "c."

The Clerk-at-the-Table: Sen. Sang Stephen Kipyego, Nandi County.

Sen. Sang: Mr. Speaker, Sir, on behalf of the wonderful people of Nandi County, I vote yes on count "a," yes on count "b" and yes on count "c."

The Clerk-at-the-Table: Sen. Wako Sitwila Amos, Busia County. Sen. Wetangula Moses Masika, Bungoma County.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, on behalf of the dynamic people of Bungoma, I vote yes on count "a", yes on Count "b" and yes on Count "c."

**END OF VOTING AND ANNOUNCEMENT
OF RESULTS OF THE DIVISION ON THE
MOTION OF IMPEACHMENT ON THE
FOLLOWING GROUNDS:**

The Speaker (Hon. Ethuro): Order, hon. Senators! I have the results of the Division and they are as follows.

GROUND A – GROSS VIOLATION OF THE PUBLIC PROCUREMENT
AND DISPOSAL ACT, 2005, AND REGULATIONS 2013;

GROUND B – GROSS VIOLATION OF THE PUBLIC FINANCE
MANAGEMENT ACT, 2012 AND,

GROUND C – GROSS VIOLATION OF THE
CONSTITUTION OF KENYA

AYES: Sen. Abdirahman, Wajir County; Sen. Adan, Isiolo County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Chelule, Nakuru County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. G.G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang'a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Muthama, Machakos County; Sen.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Lesuuda

NOES: Sen. Moi, Baringo County.

Teller of the Noes: Sen. Sijeny.

ABSTENTION: Sen. Kivuti, Embu County.

The Speaker (Hon. Ethuro): Hon. Senators, we have the results of the Division on all the three grounds of impeachment. The results are as follows:-

AYES: 35

NOES: 1

ABSENTIONS: 1

(Question carried by 35 votes to 1)

Hon. Senators, the operational one is Standing Order No.68(5).

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

So, consequently, at 1.30 pm, Tuesday, 13th May, 2014, the Governor, Governor Martin Nyaga Wambora, ceases to hold office as the Governor of Embu County.

It is so ordered.

(Open the door and draw the bar)

ADJOURNMENT

The Speaker (Hon. Ethuro): Hon. Senators, we have come to the close of business. The House stands adjourned until 3.30 p.m. this afternoon. You will recall that this is a Special Sitting. The business for afternoon today must be concluded today and not tomorrow.

Our *kamukunji* will be held after five minutes.

The Senate rose at 1.30 p.m.