

# REPUBLIC OF KENYA



## TWELFTH PARLIAMENT

### THE SENATE

#### **CHARGES AGAINST HON. FERDINAND NDUNG’U WAITITU BABAYAO, THE GOVERNOR KIAMBU COUNTY**

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1. **Honourable Senators**, pursuant to section 33(3)(a) of the County Governments Act and standing order 75(1)(a) of the Senate Standing Orders, I hereby proceed to read the Charges against Hon. Ferdinand Ndung’u Waititu Babayao, the Governor of Kiambu County as contained in the Resolution passed by the County Assembly of Kiambu on 19<sup>th</sup> December, 2019. Honorable Senators, please note that this is a full recital of the charges as passed by the County Assembly.

**(1)Gross violation of the Constitution of Kenya 2010, the County Governments Act, 2012, the Public Finance Management Act, 2012 and the Public Procurement and Disposal Act, 2005-**

- i. Lack of accountability in the management of County resources by incurring unsustainable debts and other pending obligations to the tune of 4 Billion. These pending obligations were never disclosed in the County Fiscal Strategy Paper 2019 thus violating Article 201 (e) of the Constitution 2010 and Section 107 (2) (e) of the Public Finance Management Act, 2012. The County Executive under the

leadership of the County Governor intentionally failed to draft the Medium Term Debt Management Strategy for the Financial Year 2018/2019 in contravention of section 123 of the Public Finance Management Act, 2012. This places Kiambu County in a highly precarious financial position as it may lead to protracted and costly court battles with the creditors and eventual auctioning of County assets.

- ii. Violation of Articles 176 (1) and 185 of the Constitution of Kenya, 2010 by disregarding the County Assembly as an arm of the County Government and further undermining its three cardinal roles of legislation, oversight and representation through systematic non-remittance of requisitioned funds in the Financial Year 2018/2019. The Governor diverted funds intended for use by the Assembly to projects where he would obtain personal benefits through irregular procurement. This systematic crippling of the Assembly operations compromises the independence of this Honourable House. This unwritten edict of the County Governor violates Article 6 and Article 10 of the Constitution of Kenya, 2010 that engenders the spirit of mutual respect, cooperation and consultation amongst all arms of governance.

Violation of Article 201 (a) and (d) of the Constitution of Kenya, 2010 that sets fundamental principles of public finance and further Section 5 and 130 (1) (b)(i) of the Public Finance Management Act, 2012;

Violation of the Constitution of Kenya, 2010 Articles 201 (a), (d) (e) on principles of public finance, Articles 227 (1) on procurement

of goods and services and Public Procurement and Disposal Act, 2005 by failing to adhere to the stipulated dictates of the law in awarding Kshs. 2.1 Billion road tarmacking contracts against as approved total Roads, transport, Public Works and Utilities Budget of Kshs. 1.4 Billion in the Financial Year 2018/2019. The purpose of the irregular awards was not to provide public roads but was intended to enable the Governor obtain personal benefit through kickbacks.

This has exposed the County to huge losses through potential suits for breach of contract and/or pending bills. Further, it has exposed the County Assembly Members to ridicule in their wards where promises to repair/construct roads were made on promises from the Governor who had no intention of honoring the promises.

- iii. Failure to establish the County Budget & Economic Forum as stipulated in Section 137 of the Public Finance Management Act, 2012; as a result the County Governor has sabotaged public consultation as regards the preparation of the County Plans and Budgets ultimately violating the provisions of sections 87, 91 and 115 of the County Governments acts, 2012 as well as Article 10 and 201 (a) of the Constitution that demands involvement of the public in decision making. The failure was deliberate to create an atmosphere of chaos to facilitate the plunder and loss of public resources.

## **(2) Crimes under the National Law**

The County Governor committed serious crimes under National Law in the following way-

- i. Violation of Article 40 of the Constitution of Kenya, 2010 on the protection of every person's right to property and Section 155 of the Land act, 2012 which bars unlawful acquisition and occupation of property through the forceful dispossession of Mrs Cecilia Njoki Mbugua, a widow of two prime plots of land within Thika Municipality. The two plots namely Thika Municipality/Block XI/877 and Thika Municipality/878 were part of the widow's inheritance from her deceased husband.

The County Governor promptly facilitated the irregular transfer of the said land totaling to 0.135 ha on the 2<sup>nd</sup> January 2018 to Mrs Esther Wamuyu Nyatu a common law wife of and mother of the children of the Governor. The Governor and his wife made admission to the Ombudsman of the irregular acquisition of the land. The Ombudsman is a constitutional body and its findings of fact implicate the Governor in impeachable conduct.

### **(3) Abuse of Office/Gross Misconduct**

The County Governor exhibited gross misconduct in the following ways:

- i. Conflict of interest and contravention of the Public Procurement and Disposal Act, 2005 in influencing the award of lucrative tenders to companies associated with immediate family and close relatives.
- ii. Violation of the Section 74 of the County Governments Act, 2012 by usurping the Powers of the County Public Service Board to regulate the engagement of persons on contract, volunteers and casual workers in the County of Kiambu by directly creating directorates and hiring staff on casual basis as Directors and

Assistant Directors, as well as Sub County Administrators and Ward Administrators. Further, to this, the County Governor has hired over 600 casuals without the involvement of the Public Service Board. Upon realizing that he had broken the law the Governor caused all the said staff to be fired exposing the County to risk of multiple suits and loss of public funds.

- iii. Violation of Article 226 (5) of the Constitution of Kenya, 2010 through the imprudent use of public funds in payment of staff without authorized staff establishment records as required under Section B5 (2) of the County Public Service Human Resource Manual. Examination of the Staff records and payroll by the Auditor General in 2017/2018 audit revealed that the County had employed 706 new employees yet there were no positions advertised in the newspapers declaring vacant positions.
- iv. Incurring unsustainable wage bill above the expected threshold of 35% in contravention of Regulation 25 (1) (b) of the Public Financial Management (County Government) Regulations, 2015.

The statement of receipts and payments on wages and benefit for public officers serving in Kiambu County Government for the Financial Year 2017/2018 was Kshs 5.9 Billion while the actual revenue collected during the year under review was Kshs 12.6 Billion, an indication that the percentage of wages and benefits of public officers to the total revenue was 47%.

The net effect of the above audited scenario is unsustainable bloated wage bill therefore revenue collected is used to finance

wages instead of financing development projects that enhances service delivery and overall wellbeing of Kiambu County residents.

2. **Honourable Senators**, that marks the end of the recital of the charges.

I thank you.

**SEN. KENNETH LUSAKA, EGH, MP,  
SPEAKER OF THE SENATE.**

**21<sup>ST</sup> JANUARY, 2020**