

**EVIDENCE TAKEN BEFORE THE SENATE SPECIAL COMMITTEE
INVESTIGATING THE PROPOSED REMOVAL FROM OFFICE BY
IMPEACHMENT OF THE GOVERNOR OF MURANG'A COUNTY HELD
ON WEDNESDAY, 4TH NOVEMBER, 2015,
AT COUNTY HALL, AT 10.10 A.M**

[The Chairperson – Sen. David Musila]

SENATORS PRESENT

Sen. Fatuma Adan Dullo	-	Vice Chairperson
Sen. Billow Kerrow		Sen. Abu Chiaba
Sen. (Prof.) John Lonyangapuo		Sen. (Eng.) Muriuki
Sen. Stephen Sang		Sen. Janet Ong'era
Sen. Catherine Mukiite Nabwala		Sen. Stewart Madzayo
Sen. Moses Kajwang		

SECRETARIAT

Ms. Eunice Gichangi	-	Director, Legal Services, Senate
Mr. Njenga Njuguna	-	Director, Committee Services, Senate
Ms. Mary Chesire	-	Deputy Director, Committee Services, Senate

IN ATTENDANCE

THE GOVERNOR'S TEAM

Mr. Mwangi wa Iria	-	The Governor
Mr. Harun Ndubi	-	Advocate
Mr. Anthony Oluoch	-	Advocate
Mr. Benson Wairagi	-	Advocate
Mr. George Ng'ang'a Mbugua	-	Advocate
Mr. Charles Njenga	-	Advocate
Mr. Peter Wanyama	-	Advocate

THE COUNTY ASSEMBLY'S TEAM

Hon. Peter J Kihungi	-	MCA, Kanyenya-Ini (Leader of Majority)
Hon. Catherine W. Mugo	-	Nominated MCA
Hon. Bernad Wanyoike	-	MCA, Gaichanjiru Ward
Hon. Peter Mweri	-	MCA, Rwathia Ward

Mr. Chris Kinyanjui - Clerk
Mr. Peter Kimani - Legal Counsel

(The Special Committee convened at 10.10 a.m.)

(Prayers)

The Chairperson (Sen. Musila): Ladies and gentlemen, we welcome you to this sitting. You are aware that we are here today as a Special Committee of the Senate on the proposed removal from office by impeachment of the Governor of Murang'a County. I would like to start by introducing Members of the Special Committee.

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

Thank you very much, counsel. Hon. Senators, ladies and gentlemen, the Special Committee on the proposed removal from office of the Governor of Murang'a County was established on Wednesday 28th October, 2015, by a resolution of the Senate. The Special Committee is provided for under Section 33 (4) of the County Governments Act, 2012, and the Standing Order No. 68 (2) of the Senate Standing Orders. A Special Committee now assembled is required:-

- 1) To investigate the matter
- 2) Report to the Senate within 10 days whether it finds the particulars of the allegations against the governor of Murang'a County to have been substantiated.

Hon. Senators, ladies and gentlemen, it is important to observe the strict 10 day timeline attached to the discharge of the mandate of the Special Committee. The Special Committee, therefore, urges all parties to effectively use the time allocated to them to ensure that the Committee concludes its work and reports back to the Senate within the required time. Yesterday, we had a conference here and we did agree on the timelines and discussed all aspects of timing. Therefore, we ask and urge all parties to keep to the times as we agreed yesterday.

As the Hon. Speaker of the Senate observed in his communication to the Senate on Wednesday 28th October, 2015, when this Committee was being appointed, the hearing of the charges for the proposed removal from office of a governor is one of the most important and also one of the most solemn functions of the Senate under the Constitution. The Hon. Speaker, therefore, urged that the Senate exercises the highest level of responsibility and circumspection on this matter in plenary and also in this Special Committee.

The Special committee, therefore, wishes to emphasize that it is cognizant of the gravity of the matter with which it is seized, and that it shall accord all the parties to the proceedings a full and fair hearing. Further, the Special Committee undertakes to discharge its mandate impartially and in accordance with the Constitution.

I thank you.

I now wish to call on the Clerk to read the charges and kindly ask His Excellency the Governor to take that seat there for a moment, and all the witnesses to this matter should leave the room now, and the Serjeant-at-Arms will ensure that all witnesses are not in this Chamber as we continue from now on. They will be called when necessary. But for now, do we have any witnesses here? Silence means no. So, I invite the governor to take a seat and ask the Clerk to read the charges.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, with your permission, there is a clarification that might need to be made with respect to that request. This is because the rules of procedure that were circulated by the Office of the Clerk, specifically Rule No. 7 requested the Governor to indicate whether he will choose to appear in person or by an advocate. The clarification that I am seeking is with regard to the request that the Governor takes that seat for purposes of reading of charges. We have in our response indicated that the Governor proposes to appear through his advocate, pursuant to Regulation 7(d).

Mr. Chairman, Sir and Members of the Committee, you could clarify because the information we had is that, upon formal reading of the charges, the counsels appearing for the Governor will either confirm or deny those charges as opposed to the Governor himself taking plea. The Committee should make that clarification because in our response, we indicated that the Governor will appear through his counsel. If that formality is to be observed, then perhaps the right person to confirm or deny will be the person that the Governor has deputized to appear for him. Kindly clarify that for record purposes.

Thank you.

The Chairperson (Sen. Musila): Yesterday, you informed us that the Governor will not be appearing but the three counsels representing the Governor. This morning, the Governor appeared and is present in this Chamber. Our assumption was that there was change and that he was going to be present. In that case, we saw no reason to ask any other person to take a seat. If you feel you want to take the plea as the lead counsel, I do not think the Committee will have any objection to that.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, that is fine. I must confirm that the presence of the Governor is just to show how seriously he is taking the proceedings before the Special Committee but he has instructed me, including answering to charges that will be read. I will answer the charges with respect to the questions that might be posed by the Committee.

The Chairperson (Sen. Musila): That is right counsel. In that case, you can now ask the Clerk to read the charges and you will be asked to respond.
Clerk, you can now read the charges.

The Director, Legal Services - Senate (Ms. Eunice Gichangi): Thank you Mr. Chairman, Sir. The following are the charges and their particulars against Governor Mwangi Wa Iria, the Governor for Murang'a County.

Ground 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.

(1) Lack of accountability for the management and use of county resources by incurring unsustainable debts to the tune of Kshs2.5 billion which were not disclosed in the Debt Management Paper, 2015 and the County Fiscal Strategy Paper, 2015, thus violating Article 201(e) of the Constitution, 2010, Section 123 and Section 107(2) (e) of the Public Finance Management Act, 2012.

Further scrutiny of the Debt Owning Report submitted by the County Executive Committee Member for Finance, IT and Planning as at 14th August, 2015 indicated violation of Article 226(5) of the Constitution of Kenya, 2010, since some programmes in the debt report already had an appropriation in the budget for the Financial Year 2014/2015 only to re-appear in the said debts, a clear indication of misappropriation of funds for the projects.

For instance, Gakoigo Stadium, under the Department of Youth and Sports, was allocated Kshs30 million in the Financial Year 2014/2015 yet it had incurred a total debt of Kshs59 million and no monies had been paid. This positions the county at a very precarious situation which may lead to the auctioning of county assets.

(2) Violation of Article 201(a) and (d) of the Constitution, 2010 that stipulates principles of public finance and Section 5 and 130(1)(b)(i) of the Public Finance Management Act, 2012. The County Governor allowed misappropriation of county funds by spending public funds in private commercial entities. The report of the Auditor-General on the financial operations of Murang'a County Executive for the period 1st July, 2013 to 30th June, 2014, shows that the County Executive contributed a total of Kshs28,489,800 to Murang'a Investment Co-operative Society "*Shilingi kwa Shilingi*".

The expenditure was incurred in respect of advertisements to promote the co-operative society and invite the general public to purchase shares in the co-operative. Further details of the same are contained in the Report of the County Assembly on the Murang'a Investment Cooperative Society, *Shilingi kwa Shilingi*.

The Society is registered under the Co-operative Societies Act, Cap.490, Section 6(3) of the Laws of Kenya. The Society is an autonomous body, independent of the County Executive and according to the Auditor-General's Report, it was not clear, therefore, the circumstances under which the County Executive was funding it. This was in contravention of Section 5(1) of the Public Finance Management Act, 2012, as the Society was not declared a county cooperative.

(3) Violation of the Constitution of Kenya, 2010, Articles 201(a), (d), (e), on the principles of public finance and Article 226(5) on audit of public entities, Article 227(1) on procurement of goods and services and the Public Procurement and Disposal Act, 2005 by failing to adhere to the principles of public finance management and procurement of public goods and services.

In the Financial Year 2014/2015, as stated in the County Governments Budget Implementation Review, Reports of the Controller of Budget, the County Executive under the stewardship of the County Governor incurred advertisement expenditure amounting to Kshs247 million against an approved budget of Kshs7 million as at 31st March, 2015, that is, Kshs114 million and Kshs133 million in the half year and third quarter report respectively; thus further undermining the principles of fiscal prudence as stipulated in Article 201(d) of the Constitution of Kenya, 2010, and Section 107(2) of the Public Finance Management Act of 2012.

(4) Violation of Article 183(2) and (3) of the Constitution of Kenya, 2010 and Section 30(3)(b) of the County Governments Act, 2012 through failure to provide leadership to the County Executive Committee on the generation of county policies, plans, legislations and full and regular reports, regarding key programmes such as the napier grass, artificial insemination, crushes, among others.

(5) Failure to establish the County Budget and Economic Forum as stipulated under Section 137 of the Public Finance Management Act 2012. As a result, the County Governor has failed to consult with the public over the preparation of county plans, budgets, economy and financial management at the county level thereby violating the provisions of Sections 87, 91 and 115 of the County Governments Act, 2012 and more importantly, Articles 10 of and 201(a) of the Constitution.

(6) 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 undermining its legislative authority, through requisition of monies and not remitting the same, hence crippling the operations of the Assembly and undermining the independence of the latter. This by extension violates Articles 6 and 10 of the Constitution of Kenya, 2010 that underpins the spirit of mutual respect, cooperation and consultation on all governance structures.

This misappropriation and misdirecting of funds indicates lack of good intentions towards the Assembly and creating a monarchy system, an endeavour to curtail the oversight role of the Assembly, violating Article 73(b) of the Constitution of Kenya, 2010 which requires a state officer to serve the people and not power to rule over them. This further violates Article 174 of the Constitution of Kenya 2010, which requires county governments to provide democratic and accountable exercise of power.

(7) Violation of Section 4 the County Governments Act, 2012, that requires the County Executive Committee to develop legislation on county symbols, for example, the Murang'a County Symbols Act. After the Murang'a County Symbols Bill was passed in the Assembly, and consequently gazetted into an Act, the County Executive so far has failed to implement the approved symbols in all their communication artefacts.

(8) Violation of Article 227 of the Constitution of Kenya, 2010, on procurement of goods and services by state organs and public entities and Section 135(1) of the Public Finance Management Act (PFMA) 2012, by disregarding cost-effectiveness and over-spending in the departments of Finance, IT, Economic Planning, Transport, Energy, Infrastructure and Public Service and Administration, among others, as indicated in the Third Quarter Budget Review Implementation Report for the Financial Year 2014/2015 from the Office of the Controller of Budget.

(9) Violation of Articles 186(1), 189(2) and 226(5) of the Constitution of Kenya, 2010 by approving/directing/diverting public funds to non-devolved functions, contrary to Schedule 4(2) of the Constitution of Kenya 2010, for example, the construction works at Kahuhia Girls High School that were split nine times, amounting to Kshs31 million and conversion of public primary schools into boarding schools, among others.

(10) Violation of Article 227 of the Constitution of Kenya 2010 and Section 30 of the Public Procurement and Disposal Act, 2005 through splitting of tenders with different Local Purchase Order (LPO) numbers for the same contractor. For instance, the proposed opening of Kahuruko-Ngatho Junction, under the Department of Transport and Infrastructure, was split 11 times with different LPO numbers.

(11) Violation of Articles 10, 183 and 201 of the Constitution on priorities through public participation, legislative framework and fiscal prudence and accountability and Section 29 of the Public Procurement and Disposal Act through evading of open tender method, by purchasing of land along Kenol-Kabati Road worth Kshs340 million, through request for quotation without stipulated reasons for using alternative procurement procedure in writing by the Tender Committee.

(12) Contravention of Article 201(a) and (e) of the Constitution of Kenya 2010, on principles of public finance in regard to accountability, responsible finance management and clear fiscal reporting and Section 155(5) of the Public Finance Management Act, 2013, by failing to ensure that an internal audit committee is established. This has exposed the county executive operations to lack of checks and balances in financial controls, especially in the county treasury.

Ground 2: Crimes under National Law

The County Governor committed serious crimes under national law in the following ways;

(1) Violation of Article 212 of the Constitution of Kenya 2010 and Section 58 of the Public Finance Management Act, 2012, by borrowing a loan of Ksh200 million from Kenya Commercial Bank (KCB) without guarantee by the National Treasury. The said loan was not factored in the Debt Strategy Paper of the County Government of Murang'a over the Medium Term Expenditure Framework (MTEF)

(2) Contrary to Article 201(d) of the Constitution of Kenya 2010, that requires public money to be used in a prudent and responsible way, the county executive irregularly purchased hay for cows at the controversial Mariira Farm. Further investigations revealed that there was no documented evidence for release and delivery of the 20,000 bales of hay, resulting to loss of public funds amounting to Kshs4 million. This criminal undertaking is clearly substantiated in the Auditor-General's Report.

(3) Contravention of Articles 201(d) and 227(1) of the Constitution of Kenya 2010, that requires a state organ or any other public entity to contract goods or services in accordance with a system that is fair, equitable and cost effective; and, violation of Section 29 of the Public Procurement and Disposal Act 2005 by incurring exorbitant cost of advertisement amounting to Kshs247 million, glaringly inclined to one company, *Top Image Media*, according to the Report of the Controller of Budget for 2014/2015 Financial Year.

(4) Violation of Article 41(1) of the Constitution of Kenya 2010, that stipulates the rights of every person to fair labour practices and Section 19 of the Employment Act 2012, through failure to remit statutory deductions of the defunct local authorities, which have continued to attract interests and penalties to a tune of Ksh131,615,210.

Ground 3: Abuse of Office/Gross Misconduct

The County Governor of Murang'a exhibited cross-misconduct and abused his office in the following ways:-

(1) Violation of Article 75(1) of the Constitution on the conduct of state officers and Section 13 of the Leadership and Integrity Act, using public funds to brand his name that is evident in the enormous advertisements in a vernacular station and billboards erected along the roads and at Ihura Stadium Gate. The Governor has continued to misappropriate public funds for personal branding in every advertisement made by the county. For instance, the front page of the printed examination cited 'Murang'a County Post Mock Examination' for the year 2014/2015 bearing the name of the Governor insinuating that he is the sole sponsor of the program and not the county government.

(2) Pretentious realignment of departments and programs within departments that had not exhausted their budgets, hence disregarding avenues that have been provided for by law as manifested during the supplementary budget for the financial year 2014/2015, thus causing confusion and hindering effective budget implementation of programmes in various departments.

(3) Appointment of Mr. Christopher Ngera as the Chief Officer for Education and Technical Training Department who had been rejected by the county assembly, contrary to Article 185 of the Constitution of Kenya and Section 45(1) (b) of the County Governments Act, 2012; thus defrauding public funds through payment of allowances and salaries to the said Chief Officer for the period he was illegally in office.

(4) Use of personal portraits in county-funded projects contrary to Article 73(1) (a) (i) and (iv) on Public Trust, Article 75(1) of the Constitution of Kenya and Section 13 of the Leadership and Integrity Act.

(5) Loss of public funds through payment of 80 ghost workers and lack of a precise inventory of the staff establishment, as indicated in the Report of the Auditor-General.

(6) Failure to appoint a substantive chairperson of the County Public Service Board and allowing the vice chairperson to occupy the said office for an undefined period, contrary to Section 64(2) of the County Governments Act, 2012.

(7) The Governor failed in his duty to Gazette all the county executive committee members whom he appointed on different dates, in accordance with Section 30(2) (i) of the County Governments Act, 2012.

(8) Contrary to the provisions of Section 30 of the County Governments Act, 2012, the Governor since inception of the county government, has never submitted to the Murang'a County Assembly any implementation status report of county policies and plans.

(9) The Governor has continuously displayed negligence on his duties by failing to issue Gazette Notices of all important formal institutions made by him and/or by the county executive committee, pursuant to Section 30(1) of the County Governments Act, 2012.

Counsel for the Governor; kindly indicate how the Governor pleads to the specific charges.

Mr. George Ng'ang'a Mbugua: The governor pleads to those allegations as "not guilty."

The Chairperson (Sen. Musila): Very well. That is recorded. We will now move to the next area of opening statements. We want to invite the county assembly to make their opening statements. We indicated yesterday that these statements will be limited to 40 minutes each, on the side of the county assembly and that of the governor. That is the maximum; you may do less. We have no problem with that, but not more than 40 minutes.

I now invite the Counsel for the County Assembly of Muranga to make the opening remarks. We want that to be done at the Dispatched Box, so that all members of the Special Committee are able to see and hear you.

Mr. Mbuti Gathenji: Thank you, Mr. Chairman, Sir and Members of the Special Committee. On behalf of the Assembly, I wish to make an opening statement and I promise not to disappoint.

The assembly from the outset wishes to thank the Senate for according it a hearing. The Senate is indeed the protector of the county governments, not only from the external

forces, but also from the internal threats. The overarching goal of the Constitution is to grant the people of Murang'a County self-governance; not to continue being under threat from the governor. The democratic space and public participation has continued to be reduced. Instead of acting as a symbol of the county unity, the county governor has been scattering the people. Governor Mwangi wa Iria is before this Committee facing removal by way of impeachment. The grounds of his removal include gross violation of the Constitution, law and abuse of office.

The County Governor was formerly known as Francis Mwangi. He changed his name, opting to use the nickname he was given by dairy farmers. He worked as the Managing Director (MD) of the New Kenya Cooperative Creameries (New KCC). The County Governor of Murang'a leads a county with immense opportunities. He leads a county we believe is a breadbasket and most importantly, the source of tea and coffee, which are major foreign exchange earners for Kenya.

I would like to talk about mediation efforts done before coming to the impeachment process. Members of the County Assembly (MCAs) have made serious effort to consult the County Governor. Initially, the Governor met with MCAs regularly. He consulted area MCAs and Members of Parliament (MPs) on their views on his government projects and initiative. He had respect for the institution of national and county government. However, this lasted for less than 6 months. Power seems to have consumed his soul and he became intransigent, arrogant, a know-it-all and the epitome of impunity. He stopped consulting leaders and the public anymore; choosing to implement any project he wanted and affixed his portrait and county symbol that was not approved by any national or county legislation.

In numerous occasions, MCAs sent emissaries to nudge him to consult the people and their leaders, in line with Article 10 of the Constitution of Kenya, 2010. The hon. Speaker has made tremendous effort to convince the Governor to serve the people rather than rule over them. Countless times, the hon. Speaker of the Assembly reconciled him with national and local leaders only for the Governor to relapse in his intransigence.

The Assembly has sent businessmen, religious leaders and eminent persons to the Governor to tone down his hard-line stance, only for them to hit a dead end. These noble efforts have become a nullity as the Governor continues to burn all the bridges and isolate himself by building a high wall between him and the people.

When all mediation failed, the county leaders sought the help of some of the respected leaders from the business community, religious institutions, former political leaders and professionals, to make the last-ditch effort in September and October, 2015 but the Governor declined to meet them. The MCAs regret that on 21st October, 2015, they had to make a hard decision to remove the Governor by way of impeachment.

The impeachment motion was submitted to the Speaker after deep reflection. The County Governor was informed in writing and provided with the evidence against him. He was also given a chance to be heard. The Assembly resolved to impeach the Governor after he

incurred a debt of Kshs2.5 billion in the 2014/2015 Financial Year. The Governor admitted incurring the debt. The Murang'a County Government has an annual budget of Kshs6.3 billion. The debt owing represents 40 per cent of their entire annual budget. The Kshs2.5 billion debt was not disclosed in the Debt Management Paper, 2015, and the County Fiscal Strategy Paper, 2015, thus, violating Article 201(e) of the Constitution of Kenya, 2010, Section 123 and Section 107(2) (e) of the Public Finance Management Act, 2012.

The Assembly will prove before this Committee that the Governor grossly violated Article 201(a) and (d) of the Constitution of Kenya, 2010, that stipulate principles of public finance and Sections 5 and 131(b) and (i) of the Public Finance Management Act, 2012. The County Governor directed misappropriation of public funds by spending public funds in private commercial entity, incurring Kshs28,489,800,000, which was used to market a project called *Shilingi kwa Shilingi*; a pyramid scheme that was created as a pipeline for siphoning taxpayers' money. We will show this Committee that the manager of the media company sat in a steering committee of the *Shilingi kwa Shilingi* chaired by the Governor. The said manager won the tender for advertisement of about Kshs8.7 million, but was paid a whopping Kshs23 million.

We will demonstrate to this Committee that unless the County Governor is impeached, he will plunder the resources of the people of Murang'a with impunity. We will demonstrate that during 2014/2015, the County Executive headed by the County Governor, incurred an advertisement expenditure amounting to Kshs181 million, against an approved budget of Kshs7 million. We will show that the amount was paid to one company known as Top Image Media Consultancy Ltd through inflated invoices. We will demonstrate that the Murang'a County Governor grossly violated Articles 10, 183 and 201 of the Constitution of Kenya, 2010, and Section 29 of the Public Procurement and Disposal Act, 2005, through evading open-tender method by purchasing land alongside Kenol-Kabati Road worth Kshs340 million, through request for quotation without the stipulated reason for using alternative procurement procedure in writing by the Tender Committee. No valuation was undertaken.

The Governor does not essentially deny the allegations. He says that the person responsible is the County Executive Committee (CEC) member in charge of Finance. He also contends that his failures should be excused because other governors have failed in their counties. For this reason, the Assembly prays that this Committee finds the grounds that we will present before you substantiated for the purpose of impeachment.

I thank you.

The Chairperson (Sen. Musila): Thank you counsel for keeping time and using less than 40 minutes. We appreciate that.

I now call upon the Counsel for the Governor to make his opening statement on behalf of the Governor.

Mr. Browne Nathans: Mr. Chairman, Sir, I have just been requested to introduce myself. I apologise for not having introduced myself. For purposes of the HANSARD, my name is Browne Nathans, the Lead Attorney.

Thank you very much.

The Chairperson (Sen. Musila): Could you move to the Dispatch Box?

(Mr. Ng'ang'a moved to the Dispatch Box)

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, before I make my opening statement on behalf of the Governor, perhaps he needs to say “hallo” to the hon. Members of the Senate. I think we should not begrudge him of that opportunity. Allow him a minute just to say “hallo” to Members then, I will carry on with my opening statement.

The Chairperson (Sen. Musila): I will not allow that because we gave him an opportunity earlier to say something. You should just proceed. When the time comes and we feel it is necessary, we will decide on that. For now, it is your time.

Mr. George Ng'ang'a Mbugua: I am well guided, Mr. Chairman, Sir. Before I begin my opening statement on behalf of the Governor, I take this opportunity to – on behalf of the Governor – express my gratitude to the Senate.

For the very first time, since these matters began at the County of Murang'a, he has finally been given an opportunity to be heard. I must very profoundly state that we were comforted by your statement as you were making your remarks; that you are aligned to the solemn obligation and duty that you have as a Senate to protect counties, and to carry out the mandate that has been bestowed on you by the Senate with fairness and impartiality. On behalf of the Governor, let it go on record that we are most grateful that that has come to be.

Mr. Chairman, Sir, before I make my remarks, just allow me to briefly delve into a bit of background to this matter and perhaps quite a bit of what might have happened before we finally came to the Senate.

Mr. Chairman, Sir, as we all know, when the resolution that approved the Motion for the removal of the Governor from office was first passed before the Assembly, the Governor, being very aggrieved by the manner in which the Motion was initiated, moved and passed before the Assembly, felt very strongly that his rights have been violated. Like any other citizen, we felt that perhaps before we engage the time of Honorable Senators, because we are alive to the fact that you discharge a very solemn mandate in our constitutional architecture, we felt that perhaps the matter was not ripe to come before the Senate and that until such a time as the procedures provided for by law for the manner in which a Motion for proposed removal of a governor from office has been exhausted, perhaps he needs to have that redress before a court of law.

I say this deliberately, because you may all be aware, Honorable Senators, that there was a matter that the Governor instituted before a court of law in which he was challenging the process that was undertaken before the assembly. I must point out that the chief grievant was against the County Assembly of Murang'a. The courts in their wisdom felt that this is the matter that would very well be interrogated by the Senate and that the Senators would be able to make a determination on the grievances that the Governor had.

We are here because we believe as directed by court that in the discharge of your mandate, you do have the capacity to interrogate all the matters related to the Motion for removal of a governor from office. One, we seek to satisfy yourself that the procedures provided for under the Constitution for the removal of a governor from office are complied with by the County Assembly of Murang'a. Two, the resolution that was passed to the Senate that formed the foundation of the formation of the Committee was properly before the Senate. We will point out from the outset that we have tremendous confidence in your ability to interrogate those matters and make a finding according to the law and the Constitution.

Having said that and having listened to counsel making his opening statement on behalf of the Assembly, you have been taken through a lot of rigmarole of how the Governor failed to consult, how the Governor has been arrogant, how the Governor has allegedly violated the Constitution and how the Governor has been allegedly circumventing procurement laws extra, *et cetera*.

Mr. Chairman, Sir, it is very easy to cite provisions of the law because as it were, everybody is assumed to know what the law says, but I think you have an onerous responsibility and obligation to interrogate the facts that form the foundation of the alleged violation and satisfy yourself whether the threshold that has been set out under Article 181 of the Constitution has been complied with.

Mr. Chairman, Sir, and Honorable Senators, impeachment process occupies a very central place in our Constitution architecture. The Senate, as the guardian of devolution, has been vested with that mandate to decide whether indeed a popularly elected governor should continue to hold office. It is an onerous responsibility because you will be asking yourself whether even after the Governor was given the mandate by hundreds of thousands of voters in Murang'a, whether he should continue to hold office. A county government like any other institution has its own challenges, the Senate as a constitutional organ has its own challenges, the National Assembly has its own challenges, the National Executive and the Judiciary; indeed, all arms of Government have their own challenges. It is the manner in which those challenges are resolved which is critical.

I am comforted by the report that investigated the proposed removal of Governor Chepkwony of Kericho County, when this Senate observed as one of its closing remarks that; impeachment as a process should be used as a measure of last resort. It has to be demonstrated that the Assembly has exhausted all oversight mechanisms available to

them. I say this deliberately. As we move along, you will realise that there were a chain of events including an attempt to impeach the county executive committee member for finance allegedly on the basis of the same allegations that formed the basis of Governor Wa Iria's removal.

We will be addressing you at length on the motives because we must be alive to the fact that, that mechanism for removal, if we are not careful, can be abused. I think as Honorable citizens who are bestowed with the mandate to protect county governments, you should guard against that; you should be on the look-out for that. We will be showing that there was no *bona fide* in the manner in which this Motion was moved and passed by the County Assembly of Murang'a.

We shall be seeking to demonstrate to you that the first time the Governor became aware that a resolution had been passed by the Assembly was through the press. As his lawyer through and through, I became aware of the resolution through the press. A letter was sent by the Speaker giving the Governor seven days allegedly to furnish exonerating evidence in writing. Before those seven days were over, there was an intervening weekend and there was Mashujaa Day. So, there were three days excluded but he had seven days within which to respond. Within two days, he sought for further particulars and documents to enable him respond to the allegations but they were not furnished to us. He waited for an invitation to appear before either at a Committee of the Assembly or the Assembly at plenary to make his position heard, but there was no such invitation yet the County Assembly Standing orders were very clear that the Governor had a right to appear and be heard by the Assembly. We will be demonstrating to you that it is not a discretion of the Assembly to determine how that right is to be exercised.

When I read the Senate Standing Orders with respect to the matters that are before us this morning, they are very categorical on the procedures. When I watch proceedings before the Senate, I take a lot of pleasure when many times honourable Senators remind their colleagues what Standing Order this and that says, the Speaker intervening and saying: "Yes." So, if you say something that contravenes, it is to be retracted. What am I saying? If we do not send a clear message to the Assembly that the law was crafted for a good reason – Standing Orders is a formal legislation and not for pleasure – we will invite other assemblies to simply as it were, craft charges or allegations, purport to send them to the Governor, move the Motion and then say that it will be heard before the Senate.

Mr. Chairman, Sir, in the Wambora I Report in which I participated – when you retire to consider – you will recall the words of Senators in that Report where they said that some form of hearing must be given to the Governor. It is because in that case, the Embu County Assembly had not made provision for that. The Senate, in their wisdom, felt very strongly that the Governor should be heard. The beauty about Murang'a County Assembly is that there is already a Standing Order that sets out the procedure that is to be followed when you are considering a matter for the proposed removal of a person from office. That procedure was not followed.

So, before you even interrogate the merits or otherwise of these proceedings, it is important for the Senate to tell the county assembly: “Look, you have to get your act together. If the law says this is the procedure, kindly, you must follow that procedure before you invite the Senate to come and intervene.” This has been our chief grievance. Had the Governor been given that opportunity to, for instance, table re--- to the allegations, there would have been perhaps Members of the County Assembly (MCAs) that would have taken a different view of the matter, after hearing what the Governor had to say. Or when the matter went to plenary, perhaps there would have been some MCAs that would have said: “Hey, wait a minute; because of the response or answer that was given by the Governor, we have felt that this is not the sort of matter that we will pass a resolution to forward to the Senate.”

Mr. Chairman, Sir, the procedure before the Assembly is not a formality. The Assembly initiates and triggers the impeachment process so that if they had not done what they did, neither you or the Governor would be here this morning. All of us would be probably expending our energies serving this great nation. We will demonstrate this even in the response that we have put in that they actually admit that they did not give the Governor an opportunity to be heard because according to them, this opportunity is granted by the Senate. The Senate has set a precedent in the Wambora I Report, that a form of hearing before the Assembly is mandatory. To the extent that that was not done, we will seek to persuade you in the fullness of time that, in fact, this or the resolution that was forwarded to the Senate was in itself, unlawful and unconstitutional. Under Article 24 of the Constitution, the implication of an unconstitutional act is obvious. It is null and void.

These are some of the issues that we were canvassing before the court but the court in its wisdom found that these are matters that Senators can also interrogate. We are happy to be here before you this morning. We shall be raising that issue.

I think we also have to mention that the Motion for removal of a governor from office seeks to take away the right of the governor to hold office. When you were elected as the Senator for Kitui County, there were certain rights that accrued from that election. Of course, before that right is taken away, at the very least, your right to be heard must be observed.

Mr. Chairman, Sir, we read in the Press about some action that might be taken by the electoral body about one of your colleagues. I was happy to read in the papers that there are people planning to go to court and say: “Before you take that administrative action of striking someone from the roll of voters, you must hear him.” Before the Assembly triggered the Senate mechanism, they had an obligation to hear the Governor. They did not give the Governor that opportunity.

Article 47 of the Constitution is very clear about procedural propriety. The proceedings before the Assembly are *quasi*-judicial in nature. The net effect of those proceedings is intended to deprive the Governor the right to hold office. At a bare minimum, our Constitution – one of the most progressive ones in the world – says very categorically, that that procedure must be fair. Was the procedure before the Assembly fair? It was not.

Have they considered as much? Yes, they have. We will demonstrate that as we make our argument.

Mr. Chairman, Sir, let me come to fair trial. Again, I was very comforted by your words that you will conduct these proceedings with a lot of fairness. How the Governor was treated before the Assembly was totally unfair. Yes, they had the right to make all these manner of allegations because they have an obligation to prove. It is one thing to say that someone has done something wrong, and it is another to say that before we take adverse action against you, we will not hear you.

We will also be seeking to demonstrate in the fullness of time – that is one of the things that you will see in our answer – that there was no meaningful public participation in the process leading to the adoption of the Motion for removal of the Governor from office. Why is public or citizen participation necessary? When I look up at the gallery, I see very highly spirited residents probably from Murang'a County very concerned about the proceedings that are going on before this Senate about the removal of the Governor from office through impeachment. It is because they exercised a right to vote their Governor in and then you have an Assembly that trashes all procedural regulation and says: "Go to the Senate and defend yourself there." Were they involved? When I say involved, they needed not concur.

However, what attempt was made by the Governor under Chapter 8 of the County Governments Act to engage citizens? It is now an obligation under the Constitution that assemblies and other legislative bodies have an obligation to involve members of the public when they are carrying out their actions. You will just see one advert that was run in *The Standard* that gave a website where residents of Murang'a County were told: "If you want to access the complaints made against the Governor, you can access."

The first question perhaps is – and this is with due respect to Murang'a County – how many households have access to internet facilities, for instance? How many people have the privilege of buying *The Standard* newspaper? When I read what the County Governments Act provides, it says; notices in the market places, for instance, at the sub ward level. This is because when Wanjiku, Achieng' and Akinyi are going through their daily business, maybe at the market place or to fetch water, they might just stumble on a notice that there is something like this that is going on – probably in vernacular language – and you are requested to congregate next to someone's – may be one of the renowned *dukas* within that village – for purposes of us getting your feel about this matter. That was not done.

Mr. Chairman, Sir, we will demonstrate to you that the High Court pronounced itself on this matter in the last decision of the Governor of Murang'a County, the one that was presided over by Justice Mwongo, Justice Odunga and Justice Korir, that public participation must be qualitative. It is not enough, as it were, to *tweet* that this and that is going on. It is not enough to run an advert in *The Standard* newspaper and give a website. You have to go further than that as the Assembly and demonstrate that there was genuine intention to involve the public. It was not done.

These provisions that are in the Constitution were not put there by the framers for the fun of it. When we overwhelmingly voted for that document, it was not for jest purposes, we expressed our will through that document. Yes, the statutory mandate to trigger the process of removal of a Governor is with you, as an Assembly, but please as people who voted this Governor in, can you qualitatively engage with us? You can choose to ignore our view, but you cannot choose whether to engage us or not. That is the bottom line.

If this process is then vitiated by those constitutional violations, is the resolution that was forwarded before the Assembly valid? Is it lawful? It is not. If you find that you will not be trashing these allegations. However, you will be telling the Assembly to play by the rules if they want you to get involved. You will not be abdicating your responsibility, but rather showing them how you carry out or discharge your mandate. You will be showing them how business is done. That if they do not do it that way, you will tell them so.

This is to stop another County Assembly, say, Kitui, Homa Bay, Nyandarua and others from doing the same thing. A precedent needs to be set by this Senate. I must disclose, I will not mind becoming the CEO of Kiambu County, where I come from. That is why I am very keen about the precedence that we set. Because, if I ever succeed and my dream comes true, I would hate that one day a precedence was set where a disgruntled Member of County Assembly who, probably, does not like my face will go and just conjure up some allegation as it were, and send or tweet me a notice and in no time, I find myself before the Senate. I would hate such a happening. I am giving myself as an example because out there, this Senate will take judicial notice of how a lot of people are interested in those positions.

I do not know how much time I have remaining out of the 45 minutes I had. I have barely done 20 minutes. There will be preliminary issues that we shall be raising to that effect.

The Chairperson (Sen. Musila): Yes, you have 10 minutes.

Mr. George Ngang'a Mbugua: I will do five minutes and give my colleague the other five to wrap up. Going to the crux of the matter, we will demonstrate to you that there is:

1. No nexus between the purported allegations and the person of the Governor.
2. That the threshold that has been set by Article 181 as read together with the various decisions of this Republic have not been satisfied.

Going through the various allegations, you will notice they are saying “gross violation of the Constitution and the Public Finance Management Act”. It is so easy to cite a section of the Constitution. However, when you look at the particulars and the documents supplied by the Assembly, you realize that there is actually no basis at all.

You have been told of a report that was given by the Office of the Auditor-General, but you have not been told some of those audit queries that were raised. What effort has the

County Assembly done in making sure that these recommendations have been complied with, in line with Chepkwony's report? What oversight mechanisms did they employ? Are they saying that they recommended some corrective measures and they were not taken? You will not be told that.

Going through various allegations you see the phrase "gross violations" over and over. You have also been told about crimes under national law. We all know and I appreciate that Hon. Senators read reports extensively, having interacted with the previous reports. A crime must be defined in law. One should state the crimes and the actions of the Governor. Not a County Executive Member (CEC). We have a County Treasury that is charged with the direct responsibility for fiscal matters. So, they are now saying, first, besides what the county treasury is supposed to do, the Governor is directly involved in this because he signed or gave some directions.

You will not be told which sections of the law that creates those alleged crimes. There is absolutely nothing like that. You will be told about abuse of office and misconduct that a chief officer was appointed without approval. We will demonstrate to you that the Assembly, because it is busy in doing so many other things outside their legislative role, a nomination was sent to them though they did not approve or reject within the 14 day timeline. By the time they are writing to the governor to say they disapprove, that appointment has taken effect by default. And they were notified as such. However, you are now being told that that appointment was done without the approval of the Assembly.

You will notice, and this is on the issue of motive, that before these allegations were tabled, they initiated a process of the removal of the CEC of finance. They felt that all the fiscal issues in these allegations are directly attributed to the officer who holds the position of CEC, Finance. There was a court challenge that was mounted and an injunction was given. So, when that attempt hit a snag, they redirected their focus to the office of the Governor.

Therefore then, you will realise and we will demonstrate this to you, that when the budget for this financial year was sent, it was mutilated by the Assembly. They actually redesigned it, changed the various proposed provisions of different programmes. They came up with a programme called 'Ward Development Fund' for Kshs700 million. When the Governor wrote a memorandum back to them and explained that the budget would not sustain that, they demanded he adopts it. This is because they have the powers and we do not begrudge them of the powers, they went ahead and gazetted that budget for this financial year.

A lot of correspondences were exchanged on that issue of that kitty and we will demonstrate that even under the Ward Development Fund Act of Murang'a, the MCAs are directly involved in implementation of projects and allocation of funds under that fund. Murang'a has a budget of about Kshs5 billion. So, you can imagine Kshs700 million being taken away from programmes like infrastructure and health. The net effect is the County Government will not be able to buy medicine; roads will remain dilapidated merely because something has to go for the control of the MCAs.

These facts preceded the Motion for Governor's removal. In the fullness of time, we will demonstrate to you that these particular allegations have not been substantiated, the Governor is a victim of mischief, ill-will and an ulterior motive. It is an expression of dissatisfaction with the person of the Governor merely because the demands of the MCAs of Murang'a were not met. The process is not being used *bona fide*.

So, I will now close my remarks and again, say that we have tremendous confidence in your ability to interrogate the matter that we shall table before you and report back to plenary as appropriate.

Thank you very much.

The Chairperson (Sen. Musila): Thank you. Mr. Mbugua, you still have four minutes.

Mr. Peter Wanyama: Mr. Chairman, Sir, the process before you is for the removal from office of the Governor under Article 181 of the Constitution. One of the issues that you will see throughout the evidence is that the Court of Appeal has interpreted Article 181. It is a decision which has much significance. There must be nexus. However, throughout the evidence, you will not see nexus between the Governor and those allegations.

Secondly, it is on the principle of collective responsibility. Whereas the Court of Appeal has said that there must be personal involvement and some direct act that the Governor did in person and not in the context of criminal sense, but in the context of personal activity and not through collective responsibility; you will not see that in their testimony. Therefore, one of the issues that we want to urge you to look at is whether the nexus has been established. For instance, if the county treasury borrows money from a commercial bank or any other source, pursuant to a legislative process, is the Governor as the Chief Executive Officer (CEO), culpable for that borrowing? If it was done without approval, is he culpable for that borrowing or there are other mechanisms for dealing with that particular issue?

Looking at how they have defined crime, it is said that the Governor is guilty of crime.

I urge this Committee to look at this issue critically because crime is defined by law. A statute will prescribe an offence and penalty thereof stating. If you look at the charge accusing the Governor of having committed crime under national law, the specific sections of statutes do not create an offence. Is the punishment stated? For instance, is it a crime when Section 58 of the Public Finance Management Act is breached?

Thirdly, the Court of Appeal has also emphasized the fact that the allegations against the governor must be extremely gross. The meaning of "gross" as we will demonstrate has been defined. If you look at the charges before the Governor, there is no mention of the word "gross" in the particulars. That is critical as it is fundamental for purposes of impeachment. The Court of Appeal has said that not every violation of the law is justifiable through an impeachment process. It must only be gross acts of violation. It has

gone ahead to define what gross violation is. It is a conduct which is completely despicable and where there is personal involvement of the Governor.

Throughout the evidence that the Governor will submit, you will not see the nexus between the governor and the allegations as well as the meaning of gross violation coming out clearly. More importantly, you will not see the aspect of personal culpability of the Governor. We will take you through the evidence in cross examination and you will see the importance of our statement in that line as it were.

Thank you, Mr. Chairman, Sir.

The Chairperson (Sen. Musila): Thank you very much, Mr. Wanyama. We are moving on well. I thank you for observing time. I ask Sen. Billow who was not introduced earlier to introduce himself and make his contribution.

Sen. Billow: Mr. Chairman, Sir, can I ask a question to those giving the opening statements?

The Chairperson (Sen. Musila): You can seek a clarification.

Sen. Billow: Mr. Chairman, Sir, in the last few days, we have seen proactive engagements by some governors to the county assemblies to forestall these kinds of situations that would have led to impeachment. Would you say that your governor has gone out of his way to attempt to engage with the county assemblies in the light of these issues in the last one month?

Secondly, on the issue of public participation in impeachment, on matters of violation of the law and the Constitution, to what extent did you expect that the public participation should have been done by the county assembly?

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, the Governor at one point invited the county assembly members for a meeting to discuss these matters. However, out of the entire 49 members, only 19 went. The Governor extended an olive branch and said "Let us put our heads together and see how to resolve this issue". Sadly, there was a substantial number that was not responsive to the Governor's call and he could not compel them to come for the meeting. In fact, long before this, the Governor knew that the assembly is an important arm of the government that he leads and he has continuously continued to engage with them.

You will see in our bundle of some of the documents we shall be tabling, some documents have been signed by MCAs on policy generation initiative and seminars have been held, where the members of the county assembly have been involved. It has been the Governor's initiative to engage with them in matters of operations of the County Government of Murang'a. It has been a continuous engagement.

With respect to the second issue on the extent of public participation, we have attached documents that will deal with it as we make our submission. This, perhaps, will answer clearly the question that was raised by the Sen. Billow. The level of public participation that is envisaged by Chapter Eight of the County Governments Act is clearly demonstrated.

On paragraph 151 of our answer, we have said that the County Assembly of Murang'a only published a notice of the intention to remove the Governor under Article 181 in *The Standard* newspaper. That notice was not sufficient to facilitate public participation for the reason that the notice did not set out the allegations made against the Governor nor indicate the date and time when the Motion to be remove the Governor would be moved--

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The Chairperson (Sen. Musila): We will come to that later.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, lastly, this is in the Act, there is an infrastructure that should have been engaged. They should have engaged ward offices, local churches, mosques and community forums. For it to be meaningful, it should have taken that shape. Therefore, it was not qualitative enough to satisfy that requirement.

The Chairperson (Sen. Musila): We will revisit that at the right time.

I would like us to move on to the next phase. However, before we do so, let me give a chance to Senators to make some remarks.

Proceed, Sen. Adan.

The Vice Chairperson (Sen. Adan): Thank you Chair. I think I have one clarification. It was very clear from the presentation made by the counsel for the assembly that there was good relationship between the county assembly and the governor's office for the first six months. Apparently, you are telling us that there were consultations even before the impeachment. What was the kind of relationship that was there between the assembly and the governor's office in terms of their relationship?

Mr. George Ng'ang'a Mbugua: Thank you Mr. Chairman, Sir. Since the governor took his oath of office - because this engagement did not begin before this Motion was tabled - he has continuously engaged Members of the county assembly, but there is one issue which became a very serious bone of contention; the Ward Development Fund. Yes there has been goodwill and consultation but there was no meeting of minds on how that particular issue, because when the proposal was initially brought and the members of county assembly said for each Ward, they needed Kshs20 million. That is why we do some quick Mathematics and see the amount that was assigned in the budget comes to Kshs700 million.

Mr. Chairman, Sir, the governor at that point said that if we do that, there are other critical projects that we will not be able to address. That became a serious bone of contention. This is what we shall be seeking to demonstrate as we make our defense that

prior to that, there was even an attempt to write to the office of the Controller of Budget on that issue and the opinion that the office of Controller of Budget wrote is that that particular Act is unconstitutional. So, you can see that even at the time when these discussions were held, there is even an attempt to engage a constitutional body to give guidance on this matter. But still, this matter escalated to this level where the governor and the members of the county assembly could not be able to agree and subsequently one situation led to another, and now we find ourselves where we are. So, the relationship was initially good, but then some intervening situations came in and strained the relationship.

The Chairperson (Sen. Musila): Okay, any other clarification from Members of the Committee? Sen. Sang.

Sen. Sang: Chair, I think we would not want to engage at this point because those were just preliminary opening remarks. Can we just proceed to the substance then we are able to interrogate and deal with the issues as at that point?

The Chairperson (Sen. Musila): Yes, indeed, I thought so and I want to agree with you. That is why I had announced earlier that we want to move to the next phase which is the hearing of evidence by the county assembly. I earlier on said that witnesses ought to have left by now. So, no one in the room will eventually turn up to be a witness. Witnesses are now out presumably and now we proceed with the hearing of the evidence by the county assembly.

The counsel for the assembly, Mr. Gathenji.

Mr. Muthi Gathenji: Thank you, Mr. Chairman, Sir. I had just needed a few directions from you before we recall the evidence. First, we are ready to present the evidence and I assure you that we complied with your request yesterday. We have this bundle which had been served containing our evidence, but there is one thing I want to indicate from the onset, that we do not have the bundle from the governor. I have heard him allude to the documents that he is going to refer; we have not yet received it.

The Chairperson (Sen. Musila): Just before you continue - thank you that is a very important point - earlier on I was told annexes had not been forwarded but I have just been told that they are here. Have they not been forwarded to the county assembly?

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, as you noticed, they came in a bit late so when the documents came, I supplied the bundle that I had. I apologize for that.

The Chairperson (Sen. Musila): Can they be given now as we watch?

Mr. George Ng'ang'a Mbugua: Yes, Mr. Chairman, Sir.

The Chairperson (Sen. Musila): So, that settles that one now.

Next point?

Mr. Mbuti Gathenji: Secondly, Mr. Chairman, Sir, I want to indicate that in our bundle, we have a video and we will at the end of the last witness be requesting for facilities and facilitation. The strategy we would like to adopt if it is agreeable---

The Chairperson (Sen. Musila): Did you make that request earlier?

Mr. Mbuti Gathenji: Mr. Chairman, Sir, we did. The other part of my clarification, direction and agreement, is that we will respect the strategy for facilitating witnesses to testify. We would like to take the shortest time possible and we would like to be consistent. There is a procedure, if it is accepted, where the courts these days adopt the statements of witnesses and turn over the witness for cross-examination. We have prepared very comprehensive statements and we would - with your indulgence - wish to have those statements; confirm the witness and introduce as evidence and we immediately hand over that witness for cross-examination by the governor's counsel

Mr. Chairman, Sir, if that is accepted, this hearing will move very fast and there will be no loss of any evidence at all.

The Chairperson (Sen. Musila): That is in order, counsel. We will adopt that request if it is accepted. It is a precedent that has been accepted even in proceedings of committees in the past.

Mr. Mbuti Gathenji: Thank you very much Mr. Chairman, Sir. We will call the first witness---

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, sorry for the intervention; with your kind permission. Just in line with those housekeeping views, I also have some directions I would want to seek from the Special Committee. There are some preliminary issues that we have raised in our answer to the allegations, some of which I have alluded to in my opening statement and that takes the nature of what in ordinary litigation we call "preliminary objections", because they go to the jurisdiction. We have set them out pursuant to the rules as preliminary issues for determination, the directions we will be seeking - because we have two preliminary issues that you will notice in our answer.

So, we have this first answer that is separated from the bundle we filed and there is the supplementary answer. Will it be the direction of this Special committee that we canvas those preliminary issues and invite the Special Committee to pronounce itself on those issues? Perhaps, that might be the proposal I will be making. Because if we were to return, for instance, a finding that agrees with our representations, it may not be necessary to go to the merits of the allegations.

Mr. Chairman, Sir, I really seek the directions of this Special Committee on how you would propose. Our view, of course, would be that we might shorten these proceedings if we were to deal with them first, because if you are to pronounce yourselves in the

affirmative and agree with our representation, then there may not be a necessity to delve to those other issues. We are entirely in your good hands.

Thank you.

The Chairperson (Sen. Musila): The position of the Special Committee is that we hear all issues. You can raise the issues you want to raise, I know you talked about the procedure taken by the county assembly, also, we will have to listen to all the allegations and the evidence because of the time limit we have, and then after that, we will go and reconsider everything that we will have submitted. But we are not going to take a preliminary issue, deliberate on it and we rule. So, we want you to be free to give us all your issues and we will deliberate on each and every one of them. That is the route we would like to follow. I believe this is in agreement with the Members of the Committee.

Sen. Madzayo: Mr. Chairman, Sir, while I share the same view with you, I just want to point out to our Rules of Procedure No. 14. I do not know whether we have accorded the counsel those 30 minutes either in his statement of opening remarks or we use his opening remarks as a preliminary point he has raised that the Governor was not accorded an opportunity to be heard. He was just bundled and told to go and defend himself in the Senate.

Thank you.

The Chairperson (Sen. Musila): Thank you very much Senator. According to that, we will give you special time for the preliminary issues that you want to raise which according to the Rule 14 is limited to 30 minutes. That will be an extra time for the preliminary issues that you want to raise in 30 minutes but the evidence will continue as we have already ruled.

Thank you.

Mr. Mbuti Gathenji: Thank you, Mr. Chairman, Sir. I wish to indicate that we have three witnesses today. There are two more witnesses who are formal witnesses; the Auditor-General and the Controller of Budget who we asked to be summoned and I understand they will come tomorrow. These are witnesses who are across the board. They are useful to all of us. I will start with our first witness.

Sen. Ongera: Thank you, Mr. Chairman, Sir. Not that I want to go against the decision that you have made but I believe that if a preliminary objection has been raised, it should be heard first before we proceed. Although we have collectively agreed we are going to make our decision later, I think we should hear the preliminary objection in accordance with our Rules of Procedure.

Thank you.

The Chairperson (Sen. Musila): I think it will depend on how the counsel has arranged his things. If you want to start with preliminary objection, you are free to do so when your time comes and take 30 minutes and then we proceed. It is only fair that we proceed

with the process. We hear the witnesses and when your time comes, not far from now, after the assembly has finished their evidence, you will be given time to start with your preliminary issue which as I have said, we are going to consider alongside the allegations made on the floor.

Mr. Browne Nathans: Thank you, Mr. Chairman, Sir. I truly believe that we are here to serve one country and one system called devolution and these are the protectors. My learned colleague has already introduced the point and I suspect that it has been canvassed very heavily by the gracious lady, Sen. Ongera, who has actually pointed out our intention on behalf of our Governor and the county executive. It should be for all of us.

Mr. Chairman, Sir, we are before you on a serious substantial matter that if given the attention will render the entire process to reach a conclusion. The preliminary matters we are raising are not rejects - to use the words of my colleague. We are before this Committee truly not because we wanted to be here but because the County Assembly of Murang'a has deliberately, even in their own admission, failed to accord the Governor an opportunity to respond. In fact, the Governor is hearing this for the first time formally here.

The Senate is not the accuser but is the arbiter. We are suspecting that the only way to do this, with tremendous respect, is to ask if we could ventilate that particular part of our argument so that learned counsels could go into the depths of it and suggest why we created constitutional provisions or laws that support the constitutional provisions and why did we anchor our Standing Orders the way we did. If we do find, and we invite you to find, that the entire process was flawed and our being here should not have occurred.

That is the point we want to demonstrate so that if we spend time before the county assembly starts to accuse us, and we are frankly afraid of the accusations, but it will be useful for my learned counsel to go through the depth of the process because it is the process that brought us here.

As the Holy Bible has put it, with respect to those who are not Christians, even when God found Adam and Eve in the act, he still asked Adam what he had done. He still accorded him an opportunity to explain his case. This man was not caught, called, given the opportunity, invited nor summons issued but they have sidetracked the issue and come to the Senate. That is why we are asking that we ventilate and the issues put forward before the Committee then we can make a finding on that position. That is what we wanted to say.

It is a preliminary objection to the entire process and once that is done, we can move to the next step.

Thank you.

The Chairperson (Sen. Musila): I am inclined to take a five minutes break for the Committee to consult.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, can I respond before we take a break?

The Chairperson (Sen. Musila): Yes, you are free to do so. After that we shall take a five minutes break.

Mr. Mbuti Gathenji: Most obliged Mr. Chairman, Sir. A preliminary point which has been described by the counsel for the Governor is called a preliminary objection on the point of law. It can only be raised when the facts upon which it is being argued, have been admitted. There is an assumption, I do not know where it comes from, that the assembly has agreed that there was flawed proceedings in the assembly. That is the assumption from the Bar. There is no evidence. So, when you go to deliberate on this, the first thing is to ask what, who and when was that admission done? This Committee is being treated to drama that does not belong here. That belongs to the court. They went to the court and that is where the assumption that there was an admission was made. I was in court when that assumption was made. We denied. While deliberating, the first thing you must ask yourselves is who and when was the admission made?

I agree with the Chairman that the first thing is to go through the evidence. If there is such an admission, you find it in their documents or in our documents, then you have a basis to consider this preliminary objection. I will demonstrate clearly that the issues that are raised here have already been decided by the court. The first thing that should be placed before you, before the matter is argued, is the judgement of the court that was delivered yesterday.

The Chairperson (Sen. Musila): Very well. The Committee adjourns for five minutes.

(The Special Committee adjourned temporarily at 11.55 a.m.)

(The Special Committee resumed at 12.15 p.m.)

The Chairperson (Sen. Musila): When we left there were arguments about the preliminary issues which the Counsel for the Governor thought that should be heard. I want to give our considered ruling on that matter.

We have considered the procedure issue raised by Counsel for the Governor. The Special Committee now directs that the preliminary issues raised by the Governor as to whether he was given fair hearing by the county assembly shall be raised when the Governor's case is being presented. In accordance with our rules, at that time we shall allocate an extra 30 minutes for the preliminary issue, which shall be allocated as follows: Twenty minutes shall be for the Governor and ten minutes for the assembly. Therefore, we rule that we go back to what we had ruled earlier; that the county assembly now presents its witnesses.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, we are calling our first witness.

The Chairperson (Sen. Musila): Serjeant-at-Arms, bring in the witness, James Benson Kagoni.

(Hon. James Benson Kagoni before the Committee)

Are you *Mhe.* James Benson Kagoni, Member of the County Assembly?

Hon. James Benson Kagoni: Yes.

The Chairperson (Sen. Musila): That is your chair and you will be sworn.

(Hon. James Benson Kagoni took the oath)

The Chairperson (Sen. Musila): Proceed, Counsel.

Mr. Mbuti Gathenji: Mr. Kagoni, can you now settle so that we can start?

The Chairperson (Sen. Musila): Could you help him to sit? We want you to be as comfortable as possible.

Hon. James Benson Kagoni: I am, Mr. Chairman, Sir. Thank you.

Mr. Mbuti Gathenji: Mr. Kagoni, you have sworn to tell the truth and have a statement before you.

Hon. James Benson Kagoni: Yes, Counsel. I have a statement with me.

Mr. Mbuti Gathenji: Could you confirm to this Committee that, that is your statement and you have signed it?

Hon. James Benson Kagoni: Indeed, this is my statement and I have signed it.

Mr. Mbuti Gathenji: Could you also confirm that it contains the evidence that you want to adduce before this Committee?

Hon. James Benson Kagoni: Yes, it contains the evidence that I want to adduce to this Committee.

Mr. Mbuti Gathenji: Would you like to have it adopted as your evidence before this Committee?

Hon. James Benson Kagoni: Yes, I would want it to be adopted before this Committee. I only have a small addition on No.18; to remove a typographical error of the word "member" that was added there.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, it has to be noted that there is a correction.

Hon. James Benson Kagoni: Mr. Chairman, Sir, just a small correction, under No.18, of the word “member” that has been added after “the county executive committee.”

The Chairperson (Sen. Musila): It reads: “The county executive committee member.”

Hon. James Benson Kagoni: Yes. So, we remove “member,” which was wrongly inserted.

Sen. Sang: Mr. Chairman, Sir, which number is this witness?

The Chairperson (Sen. Musila): On the list it is Witness No.3. Am I right, Counsel? In the document that I have, he is listed as No.3; Mr. Benson Kagoni. Counsel for the Governor, do you have it?

Mr. George Ng’ang’a Mbugua: Yes, I have his statement.

The Chairperson (Sen. Musila): Very good. Proceed.

Mr. Muthi Gathenji: Mr. Kagoni, is there any other correction that you would like to make in your statement?

Hon. James Benson Kagoni: Mr. Chairman, Sir, I do not have any other addition that I would want to make in my statement.

Mr. Muthi Gathenji: Mr. Chairman, Sir, the witness is ready for cross-examination. We ask that the statement be adopted as his statement and evidence in this Committee.

The Chairperson (Sen. Musila): The statement by the witness, hon. James Benson Kagoni, is adopted. We ask the Counsel for the Governor to cross-examine the witness.

Mr. George Ng’ang’a Mbugua: Mr. Kagoni, I notice at paragraph three of your witness statement that you confirm that you are a member of the Public Accounts and Investments Committee of the County Assembly of Murang’a.

Hon. James Benson Kagoni: Yes, I am a member of the Public Accounts and Investment Committee.

Mr. Ng’ang’a Mbugua: I presume that in that capacity you are familiar with the certain provisions of the Public Finance Management Act (PFMA) in so far as the county treasury is concerned?

Hon. James Benson Kagoni: I can recall some.

Mr. George Ng’ang’a Mbugua: Who is the head of the county treasury under Section 103 of the PFMA?

Hon. James Benson Kagoni: The head of the county treasury is the appointee of the governor who is the County Committee Member (CEC) for Finance.

Mr. George Ng'ang'a Mbugua: I take that in so far as matters of fiscal management, as set out under Article 201 of the Constitution and actualized by the PFMA, are directly under the docket of the CEC member for Finance. Is that correct?

Hon. James Benson Kagoni: Not fully. If you read the County Governments Act, it would tell you that the person who is in charge of the resources of the county is actually the governor.

Mr. George Ng'ang'a Mbugua: You are jumping the gun. We are dealing with Article 201 because this is what is stated in Gross Violation No.1. You have based the allegation of lack of accountability on Article 201(e) of the Constitution. Is that what is stated in Violation No.1?

Hon. James Benson Kagoni: Yes.

Mr. George Ng'ang'a Mbugua: So, can you keenly follow my question?

Hon. James Benson Kagoni: Yes.

Mr. Ng'ang'a Mbugua: Article 201 provides for the principles of financial management. Is that correct?

Hon. James Benson Kagoni: Yes.

Mr. George Ng'ang'a Mbugua: Could you follow my question keenly? Article 201 provides for the principles of financial management. It is then underpinned in statute. I want to read for you because this is very critical. Do you have a copy of the Public Finance Management Act?

Hon. James Benson Kagoni: Yes, I have it.

Mr. George Ng'ang'a Mbugua: Please, go to Section 103. Are you there?

Hon. James Benson Kagoni: Yes.

Mr. George Ng'ang'a Mbugua: Section 103 of the Public Finance Management Act states that:-

“There is established for each county government, an entity to be known as County Treasury.”

Is that correct?

Hon. James Benson Kagoni: Yes.

Mr. George Ng'ang'a Mbugua: In Section 103(2) of the Act, the County Treasury shall comprise—

- (a) the County Executive Committee member for finance;
- (b) the Chief Officer; and
- (c) the department or departments of the County Treasury responsible for financial and fiscal matters.

Is the Governor one of the persons who comprises the County Treasury under this Section?

Hon. James Benson Kagoni: He is not mentioned under that Section.

Mr. George Ng'ang'a Mbugua: Thank you.

I want us to go to Section 103(3). I do not know whether you have that.

Hon. James Benson Kagoni: I have it.

Mr. George Ng'ang'a Mbugua: Could you read for us what it says?

Hon. James Benson Kagoni: Mr. Chairman, Sir, it states that:-

“The County Executive Committee member for finance shall be the head of the County Treasury.”

Mr. George Ng'ang'a Mbugua: If you read that in conjunction with Article 102 as read together with Article 201 of the Constitution, you will see that matters of financial management are directly vested in the County Treasury that is headed by the County Executive Committee (CEC) member for finance. Is that correct?

Hon. James Benson Kagoni: Mr. Chairman, Sir---

Mr. George Ng'ang'a Mbugua: Just answer “yes” or “no”, before you go to the explanation.

Hon. James Benson Kagoni: No, it is not correct.

Mr. George Ng'ang'a Mbugua: Okay, let us go on.

You have said that it is not correct. However, when I read violation No.1, I can see that you have referred to further scrutiny of the debt owing submitted by the CEC member for finance. Who submitted the basis of the report that constitutes the basis of allegation No.1?

Hon. James Benson Kagoni: This report was submitted by the appointee of the Governor, who is the CEC member for finance.

Mr. George Ng'ang'a Mbugua: Thank you.

Prior to this Motion being presented before the Assembly, was there a Motion that was tabled before the Assembly for the proposed removal from office of the CEC member for finance?

Hon. James Benson Kagoni: Could you come again?

Mr. George Ng'ang'a Mbugua: Prior to tabling of the Motion for the proposed removal of the Governor from office or before the Assembly moved to give a notice of Motion for the removal of the Governor, had a notice of Motion been given by the same Assembly for the removal of CEC member for finance?

Hon. James Benson Kagoni: If my memory serves me correct, there was a Notice of Motion.

Mr. George Ng'ang'a Mbugua: How far did the attempt to remove the CEC member for finance go as far as the Assembly is concerned?

Hon. James Benson Kagoni: Mr. Chairman, Sir, there were days that I was not in the Assembly. Therefore, I am not in a position to know about Notices of Motion and how far they have gone.

Mr. George Ng'ang'a Mbugua: Let me rephrase my question. Was the Motion for the removal of the CEC member for finance with respect to the fiscal issues that you had raised, was it ever adopted by the Assembly?

Hon. James Benson Kagoni: I can only recall that there was a Notice of Motion. However, I cannot recall about the Motion because there are days that I was not in the Assembly.

Mr. George Ng'ang'a Mbugua: As a member of the Public Accounts Committee, matters of finance are directly under the Committee that you sit.

Hon. James Benson Kagoni: Yes.

Mr. George Ng'ang'a Mbugua: Whether or not you interacted with the Motion is another issue. However, are you aware that such a Motion was tabled?

Hon. James Benson Kagoni: I was aware of the Notice of Motion.

Mr. George Ng'ang'a Mbugua: To that extent, is it not tacit that the Assembly felt that the person who was directly responsible for matters of fiscal discipline was the CEC member for finance and that is why there was a Motion for his removal?

Hon. James Benson Kagoni: Mr. Chairman, Sir, I would want to refresh myself exactly about the content of the Notice of Motion that was given.

Mr. George Ng'ang'a Mbugua: I have not asked you about the content of the Motion. Please listen to my question. An MCA gave the notice for the removal of the CEC member for finance on matters that form the basis of allegation No.1. Was that not a clear indication that it was very clear in the mind of the Assembly who the person directly responsible for matters of finance was?

Hon. James Benson Kagoni: Mr. Chairman, Sir, I repeat that I cannot recall the contents of the Notice of Motion. Therefore, I cannot tell whether there is any relation between that allegation and what Mr. Ng'ang'a is asking.

Mr. George Ng'ang'a Mbugua: I take that to be your answer because I have noticed that you are prevaricating because you do not want to answer my question. However, let us carry on.

What was the basis of the information regarding the Kshs2.5 billion debt?

Hon. James Benson Kagoni: Mr. Chairman, Sir, the allegation in the Impeachment Motion in regard to the Kshs2.5 billion was the debt that the county has incurred under the leadership of the Governor. The Kshs2.5 billion debt is in a report that was tabled in the Assembly in August, 2014. That is part of the annexes forwarded to your Committee. That is the allegation based on it.

Mr. George Ng'ang'a Mbugua: Could you take us to that report so that we can see which report you are referring to, that allegedly contained the information on the issue of debts? Before you do that, I will give you a document that we may refer to from time to time.

Mr. Chairman, Sir, this is the response that was filed by the governor in respect to the matter that forms the basis---

(Mr. Ng'ang'a spoke off record)

I want you to take us directly to that document. First of all, you have to establish what document it is and the page.

The Chairperson (Sen. Musila): Please tell us the page so that we can refer to it.

Hon. James Benson Kagoni: Mr. Chairman, Sir, the document is on page 102.

Mr. George Ng'ang'a Mbugua: What is the name of the document?

Hon. James Benson Kagoni: "Total Amount of Debts Owing."

Mr. George Ng'ang'a Mbugua: When is it dated?

Hon. James Benson Kagoni: Mr. Chairman, Sir, the document is dated 6th August, 2015. It was received in the assembly on 14th August, 2015.

(An hon. Member spoke off record)

The Chairperson (Sen. Musila): Please guide us properly because we also need to refer. For example, you have talked about a document of 15th August, yet the one we have is for 14th August. Which is which?

Hon. James Benson Kagoni: Mr. Chairman, Sir, I am talking about the one dated 14th August, 2015.

The Chairperson (Sen. Musila): You mean Volume Six?

Hon. James Benson Kagoni: Yes, Mr. Chairman, Sir.

The Chairperson (Sen. Musila): It is good to announce so that Members of the Special Committee can also make reference.

Mr. Ng'ang'a, please proceed.

Mr. George Ng'ang'a Mbugua: Thank you, Mr. Chairman, Sir.

Could you tell us what debts the document relates to and with respect to which financial years?

Hon. James Benson Kagoni: Mr. Chairman, Sir, the debts that are contained in this document were for 2014/2015 Financial Year.

Mr. George Ng'ang'a Mbugua: According to the document, how much is that?

Hon. James Benson Kagoni: According to this document, that would approximately add up to around Kshs2.4 or Kshs2.5 billion.

Mr. George Ng'ang'a Mbugua: Does it relate to 2013/2014 and 2014/2015 financial years or it does not specify the duration?

Hon. James Benson Kagoni: Mr. Chairman, Sir, when you scrutinise the debts, you will realise that it takes part of some debts from 2013/2014. Therefore, it could be cumulative of 2013/2014 and 2014/2015.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, I want to refer the witness to page 19, annexure MI11. I do not know whether we have managed to flag all our documents for the Senators' ease of reference. However, we have paginated. So, Senators, please turn to page 19 of my blue bundle. Sorry, I beg your pardon. That starts from page 59 to page 60. The pagination is on the on the bottom right. What is that document?

Hon. James Benson Kagoni: Mr. Chairman, Sir, the document is from the Office of the Controller of Budget concerning Annual County Governments Budget Implementation Review Report, 2014/2015.

Mr. George Ng'ang'a Mbugua: Allow me one second please. I do not know whether hon. Senators---

The Chairperson (Sen. Musila): Is that annex 1?

Mr. George Ng'ang'a Mbugua: It is MI11. It is where the copy---

The Chairperson (Sen. Musila): They are not flagged.

Mr. George Ng'ang'a Mbugua: Okay, let us go with pagination because that is easier. Let us look at page 059 at the bottom of the document. That is the Annual County Government Budget Implementation Review from the Office of the Controller of Budget.

The document is listed as 05059. So that is the Annual County Government Budget Implementation review from the Office of the Controller of Budget. We have pending bills at 060 for all the counties and not just the County of Murang'a. I want you to go to the part showing the County of Murang'a.

Hon. James Benson Kagoni: Yes, I can see it, Mr. Chairman, Sir.

Mr. George Ng'ang'a Mbugua: You will see that there is the first column on recurrent expenditure of Kshs 141,061, 251 and there is development expenditure pending bills of Kshs953,000,000. That gives you a total figure of Kshs1,094,315(?). Is that the figure that you have quoted in violation No.1of Kshs2.5 billion? Certainly, no!

Hon. James Benson Kagoni: No

Mr. George Ng'ang'a Mbugua: So, it seems that the particulars of your allegations are actually misleading. Now, if you go to that document, first of all, you have said that this is the official document from the Office Controller of Budget, you will notice that there is massive component of development expenditure. As a member of the County Assembly Public Accounts Committee, you realise that one of the principles of budgeting is that there are projections of local revenue that the county anticipated to generate for each financial year. Correct?

Hon. James Benson Kagoni: Yes, there are local revenue projections

Mr. George Ng'ang'a Mbugua: And that more often than not, those projections are not realised for one reason or the other. Correct?

Hon. James Benson Kagoni: Mr. Chairman, Sir, the projection for the local revenue from any institution there is only a percentage which should be reasonable. What will not be released should be reasonable.

Mr. George Ng'ang'a Mbugua: We will get there, but often you get that I have projected locally to generate Kshs1 billion and I end up generating much less than that. Correct?

Hon. James Benson Kagoni: Yes, Mr. Chairman, Sir.

Mr. George Ng'ang'a Mbugua: And in the estimates, the programmes that are set in there, they have taken into account a component of amount that the county expects to generate and therefore goes ahead to procure for goods and services based on that budget as appropriated by the Assembly? Correct?

Hon. James Benson Kagoni: I am answering the question---

Mr. George Ng'ang'a Mbugua: Let us go systematically before we go to the question. You have a budget that has a figure?

Hon. James Benson Kagoni: Yes, Mr. Chairman, Sir.

Mr. George Ng'ang'a Mbugua: Based on that, the County Government goes ahead to engage a contractors to do certain road, because there was an infrastructure vote head in the budget, on account of what the County government was executed to generate?

Hon. James Benson Kagoni: Yes.

Mr. George Ng'ang'a Mbugua: Based on those projections, you find that works has been done on account of failure to realise those projections and the situations arises? Correct?

Hon. James Benson Kagoni: Yes.

Mr. George Ng'ang'a Mbugua: Answer my question.

Hon. James Benson Kagoni: The answer is correct, Mr. Chairman, Sir, and I want to ---

Mr. George Ng'ang'a Mbugua: Thank you. Let us go on, we will get to your explanation. There is a component that comes from national Treasury directly to fund the county budget and you know well that it comes in arrears?

Hon. James Benson Kagoni: I am not aware.

Mr. George Ng'ang'a Mbugua: Oh, you are not aware?

Hon. James Benson Kagoni: Yes.

Mr. George Ng'ang'a Mbugua: I am surprised that as a member of the Accounts Committee, you are not aware that it comes in arrears.

Hon. James Benson Kagoni: I am not aware.

Mr. George Ng'ang'a Mbugua: So, according to you, immediately the budget is passed, the entire provision comes in one tranche?

Hon. James Benson Kagoni: Mr. Chairman, Sir, the release is always published in the papers, it comes on quarterly basis

Mr. George Ng'ang'a Mbugua: Is it released before? Is it released in advance or in arrears? For lack of a better word

Hon. James Benson Kagoni: It is released when after we have passed the budget

Mr. George Ng'ang'a Mbugua: We always read newspapers and we have a situation where you have county governments saying that National Treasury has delayed in releasing allocations to county governments. Has that information reached the County of Murang'a?

Hon. James Benson Kagoni: Yes, Chairman, Sir, but the release does not take long.

Mr. George Ng'ang'a Mbugua: We are not talking about length, Mr. Kaguni. We are saying there is a delay in remittance of those funds?

Hon. James Benson Kagoni: And I am answering that, Mr. Chairman, Sir. I am saying that delay is a relative word. The delay we are talking about is not years or many months. It is just for awhile and the money is released.

Mr. George Ng'ang'a Mbugua: And that time when there is a delay, goods and services are procured because the county government has to run?

Hon. James Benson Kagoni: Mr. Chairman, we do not issue a Local Purchase Order (LPO) when we do not have money to commit to that LPO.

Mr. George Ng'ang'a Mbugua: I mean that we get this sequentially, because we all are saying there is a gross violation of the Constitution because there is a debt of Kshs1billion.

Hon. James Benson Kagoni: Yes, as per the allegation

Mr. George Ng'ang'a Mbugua: And we have seen that, in fact, in all the counties other than Busia where that information is not provided for, there are actually pending bills. Can you go to page 60, that debt situation you confirm is not unique to Murang'a?

Hon. James Benson Kagoni: Mr. Chairman I can say that even other county have debts. Simply because other counties have debts, it does not mean that the Count of Murang'a has any valid reason to have debts that are outside the budget.

Mr. George Ng'ang'a Mbugua: I have not asked you that question. I have not even asked you to make conclusion for my statement. What I have just asked you is to look at that document and see the other bills that other county governments do have. And my question, Mr. Kaguni is; because the county government is an entity that has to procure goods and services, some of these procurements, perhaps you might be aware surpasses one financial year. For instance, you have a road that is probably done in phases because you do not have sufficient funds to do that road in one financial year, but then when it comes to certification of those works, works are certified at a time when there is delay in the remittance of funds from the National Government. Really, what would the Governor do even if we were to stretch your argument to mean that the Governor is the one who will be directly responsible in a situation of that nature? What would you expect personally, Mr. Kanguni, if you were the Governor to do?

Hon. James Benson Kagoni: Mr. Chairman if I am the Governor, I would appreciate and acknowledge Article 201 of the Constitution that requires the principle of Public Finance that requires prudence accountability and good planning of the money. The purpose of the budget---

Mr. George Ng'ang'a Mbugua: I am asking how you would have averted that situation, if you were the governor?

Hon. James Benson Kagoni: I would ensure that I would not find myself in a crisis because I did not follow the budget. I would ensure---

Mr. George Ng'ang'a Mbugua: The issue is not that you did not follow the budget. I have taken you sequentially, and you have confirmed that there is delayed remittance of funds. So, we are saying a debt situation has a reason because there is delayed remittance. Would you perhaps, if you are in the governor's shoes go and tell Mr. Rotich, the Cabinet Secretary for National Treasury (CS) that you know he has to release funds or what would you do because these ones are receivable to the county government, but they are not forthcoming? There are bills here that must be paid, would you go to the National Government and compel them or take them to court to release the allocation?

Hon. James Benson Kagoni: Mr. Chairman, I would not go to the National Treasury to get the money but I would ensure that I do not issue any LPO for money that I do not have in the account at that particular time.

Mr. George Ng'ang'a Mbugua: Let us go on. We are still on violation No.1 where you have stated that Kshs30 million has been incurred for Gakoigo Stadium yet no monies have been paid. So, my question, first and foremost, is; with respect to those renovations, do you have documents to show how those works have gone and whether indeed those works are due for payment?

Hon. James Benson Kagoni: Yes, Mr. Chairman I have the document that I was referring to that I received.

Mr. George Ng'ang'a Mbugua: No! The allegations are about renovations of Gakoigo Stadium. Let me remind you that Gakoigo Stadium is under the Department of Youths and Sports - that is violation No.1 - was allocated Kshs 30 million in the financial year, yet it had incurred a total debt of Kshs59 million and no money had been paid. I want you to, first of all, show us because when you are procuring for those works, you remember as you have stated in your statement, you are a member of the Public Accounts and Investments Committee so there are certain regulations that I expect you will be knowing like the Public Procurement Disposal Regulations. At what point are works paid for or just because works have been procured, Mr. Kanguni, and I am saying this very deliberately, does it necessarily mean that if you had Kshs30 million budget for Gakoigo Stadium, whether or not the works have been done, those monies must be paid to the contractors?

I am saying this because I am reading what you have stated that no money had been paid for Gakoigo Stadium and in your own words, this positions the county at a very precarious situation. In your understating because you are the framer of this allegation, once Gakoigo Stadium was to be refurbished, whether or not those works had been completed according to you, the County Government should have gone ahead to pay that amount?

Hon. James Benson Kagoni: Mr. Chairman, Sir, on my statement No.17, I have stated very clearly that the Gakoigo Stadium was allocated Kshs30 million in the Financial Year 2014/2015. In the debt list that was sent to the Assembly, it appears to have a total debt of Kshs59 million and no money had been paid into it. It only means that the Kshs30 million that was budgeted for had not been paid. Other than that, it had even increased to Kshs59 million as a project which was a debt and an acknowledgement---

Mr. George Ng'ang'a Mbugua: One second, Mr. Kagoni. Let us go systematically. You know why I have to keep referring you to this, one of the rules of procedure of this Committee is that you confine yourself to the allegation and documents that you have tabled. We are not on a fishing expedition. We prepared on account of an allegation for Gakoigo Stadium for Kshs30 million which originated from the Assembly that you are testifying on behalf. Correct?

Hon. James Benson Kagoni: Yes.

Mr. George Ng'ang'a Mbugua: I am asking you a simple question. You are saying Kshs30 million was not paid. Satisfy us on the basis of the documents that you have submitted. Take us, for instance, to a page and say: "Gakoigo - there is evidence of completion of works, certification of those works and no payment." That is the answer that I want.

Mr. George Ng'ang'a Mbugua: My statement is very clear in simple English. I have stated very clearly that Gakoigo Stadium was allocated Kshs30 million in the budget of 2014/2015. In the debt list, it appeared to have incurred Kshs59 million although no money had been paid. The rationale of that could be that if it incurred higher money, then approximately the money that was budgeted for had been paid into it and then the rest of the balance is what incurred because perhaps there had been other works that appeared that were not projected for in the budget.

The Chairperson (Sen. Musila): Had the work been done for Gakoigo Stadium?

Hon. James Benson Kagoni: Mr. Chairman, Sir, the work has been done for Gakoigo Stadium but not complete.

Mr. George Ng'ang'a Mbugua: Thank you. Work not complete but you still expect the Governor, prudently speaking, to expend money for uncompleted work. We take that to be our answer. We take that to be your explanation.

Let us go to your statement, paragraph 23. I do not know whether we are there?

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Chairman, Sir. It is important that Members are shown every detailed evidence. The MCA is saying that there is a pending bill of Kshs59 million. Where is it listed in these pending invoices? You need to tell us the number so that you do not engage one another until we lose the point that we are looking for. You are talking of Kshs30 million and now Kshs59 million. Where is it here in this huge document?

The Chairperson (Sen. Musila): After you answer that, I would like to request that if Members of the Committee have any clarifications, they will come to them later so that we do not disturb your thoughts.

Please, respond to what the Senator has asked but from now, we will proceed in the manner that I have said.

Hon. James Benson Kagoni: Mr. Chairman, Sir, I am referring to the Annex 6. For those who have it paginated, it is No.102. On page 12 just above the Department of Trade and Commerce, you will find item No.7. It is written that the supplier is Jusa Consolidated. The LPO number for that contract is not there but it is under the

Department of Sports. The description is Gakoigo Stadium whose total cost is Kshs59 million. Total paid is nothing and total owing is Kshs59 million.

Mr. George Ng'ang'a Mbugua: From that document, are you able to tell us whether these works extended beyond one financial year? It is because you would be talking about a budget item of Kshs30 million but for a particular financial year. Are you able to tell whether this couple of works from that document extended beyond one financial year?

Hon. James Benson Kagoni: Mr. Chairman, Sir, when you read the reference letter for this document---

Mr. George Ng'ang'a Mbugua: Which page are you reading from? I want you to specifically show us – where you have referred us – where it was Kshs30 million and went to Kshs59 million, whether you can discern from that information that this was with respect to a particular financial year.

Hon. James Benson Kagoni: Mr. Chairman, Sir, where we are finding that Kshs30 million is under the budget of the 2014/2015 Financial Year which is part of the annexes and I was trying to peruse through it. It is where we had budgeted. I also sit in the Committee of Youth and Sports and I recall very clearly---

Mr. George Ng'ang'a Mbugua: Not what you recall. We are here because there are documents that you have supplied us with and the allegations are not to be substantiated on the basis of your recollection. Please, just take us there so that we stick to the parameters of this investigation.

Hon. James Benson Kagoni: Mr. Chairman, Sir, I will ask ---

Mr. George Ng'ang'a Mbugua: If you cannot get that information, there is no problem. Your colleague can assist you as we carry on with the cross-examination. You realise because of constraint of time, Mr. Kagoni, we will have to try and ---

Now, there is the issue of nexus. Look at that allegations that you have taken us through on the items in the budget on what you consider to be violations. I would like you to demonstrate now the nexus. From those documents, were they, first and foremost, authored by the Governor? Look at the letter and those documents that you have referred us to. Without going to the content, were they in the hand of the Governor?

Hon. James Benson Kagoni: Mr. Chairman, Sir, the documents are authored by the the CEC Finance.

Mr. George Ng'ang'a Mbugua: I have to also keep reminding you that this same Assembly had proceeded to impeach the CEC Finance. Let us go on.

I would like you to go to page 4, paragraph 24 of your statement. This is what you say, Mr. Kagoni, that, during the Financial Year 2014, the County Governor directed the County Treasury to borrow Kshs200 million from the Kenya Commercial Bank (KCB) without guarantee by the National Treasury.

Hon. James Benson Kagoni: Yes, Mr. Chairman, Sir.

Mr. George Ng'ang'a Mbugua: In gross violation of Article 212 of the Constitution. Very quickly, I am referring you to page 190 of the answer by the Governor.

Mr. Chairman, Sir, I would like to ask Mr. Kagoni to look at that document. It is a very short document from the County Assembly of Murang'a to the CEC, Finance, dated 26th November. The reference is short-term borrowing by the County Government. Could he confirm whether that is right?

Hon. James Benson Kagoni: That is correct, Mr. Chairman, Sir.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, can he confirm whether it originates from the Assembly.

Hon. James Benson Kagoni: Yes, Mr. Chairman, Sir.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, paragraph two. The County Assembly in a sitting on 20th November passed a Motion on short-term borrowing by the County Government moved by Duncan Njuguna, MCA, Gitugi Ward.

“In view of the foregoing, the county treasury is hereby authorised to borrow a short-term basis fund not exceeding five per cent of the most recently audited revenue pursuant to Section 142 of the Public Finance Management (PFM) Act.”

Mr. Chairman, Sir, Section 142 of the PFM Act states as follows:

“The County Assembly may authorise short-term borrowing by county Government entities for cash management purposes.”

So, there is a statutory basis for the County Assembly authorizing. From that document, is it your understanding that it is the Assembly authorizing the Executive to borrow?

Hon. James Benson Kagoni: Yes, Mr. Chairman, Sir.

Mr. George Ng'ang'a Mbugua: Mr. Kagoni, you are aware of the matters that preceded the resolution to impeach the Governor. Are you?

Hon. James Benson Kagoni: Yes, Mr. Chairman, Sir.

Mr. George Ng'ang'a Mbugua: I presume you are aware of your Standing Order No.67 on removal of a person from office.

Hon. James Benson Kagoni: Yes, Mr. Chairman, Sir.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, for your reference you will get the extract of the Standing Orders on pages 022 to 023 of my documents. Do you have the document, Mr. Kagoni; page 022 - right to be heard?

Hon. James Benson Kagoni: Yes, Mr. Chairman, Sir.

Mr. George Ng'ang'a Mbugua: So, the Assembly, in its wisdom of Standing order No.67, is the process of removal of a Governor anchored in the Constitution?

Hon. James Benson Kagoni: Mr. Chairman, Sir, the removal of the Governor is anchored in another law. The County Governments Act is very clear on the removal.

Mr. George Ng'ang'a Mbugua: We got you. I am asking you; is it anchored in the Constitution?

Hon. James Benson Kagoni: Yes, Mr. Chairman, Sir. It is anchored under Article 181 of the Constitution.

Mr. George Ng'ang'a Mbugua: So, there is a contemplation by that Standing Order, that if the Constitution, first, makes reference to removal of a person from office, as is the situation here. Section 33 of the County Government Act, there is a statutory basis of the removal of a Governor. Correct?

Hon. James Benson Kagoni: Yes, Mr. Chairman, Sir.

Mr. George Ng'ang'a Mbugua: It says, if that is then the situation, Standing Order No. 67(a) requires the Assembly to consider a petition or a proposal for the removal of a person from office. The Motion for the proposed removal of a Governor from office was meant for consideration by the Assembly under that Standing Order No.67(a). Correct?

Hon. James Benson Kagoni: Yes, Mr. Chairman, Sir.

Mr. George Ng'ang'a Mbugua: So, a person shall be entitled to appear. Mr. Kagoni, as a representative of the Assembly, did the Assembly invite the Governor to appear in the matter of his proposed removal from office?

Hon. James Benson Kagoni: Yes, Mr. Chairman, Sir. He was given a chance through a notice of motion and a letter from the Speaker of the County Assembly of Murang'a.

Mr. George Ng'ang'a Mbugua: Let us go to the letter. The beauty about this investigation is that it does not allow us to frolic. There are documents to support. So, the

Governor was given a letter. It is on page 24 of the answer by the Governor. For purposes of expediency, Hon. Senators, you could turn to page 25. Mr. Kagoni, I presume that is the letter, correct?

Hon. James Benson Kagoni: Yes, Mr. Chairman, Sir. That is the letter. Paragraph one, on page 25.

Mr. George Ng'ang'a Mbugua: The Speaker says:-

“Pursuant to Articles 10, 47 and 50 of the Constitution, your rights and fundamental freedom are guaranteed; in particular you will be accorded fair administrative action and a fair hearing.”

That is the message communicated by the Speaker to the Governor.

Hon. James Benson Kagoni: Even in the next sentence as well.

Mr. George Ng'ang'a Mbugua: I am getting there. Do not jump the gun.

“Any information to exonerate you from the allegation should be submitted.”

I want us to interact with how the right to appear is framed by your Standing Orders. Not by the Speaker. We have seen Standing Order No.67 mandates the Assembly to give the Governor a chance to appear.

Go to page 25 and point to us, where the Speaker is telling the Governor to appear before the Assembly on a specific date, at specific time and venue and for specific business. Just tell us whether you can see that on this letter.

Hon. James Benson Kagoni: Mr. Chairman, Sir, our Standing Order does not state anywhere, that there is a Committee to be set or anyone to come and listen to the Governor. What it states very clearly---

Mr. George Ng'ang'a Mbugua: Hang on Mr. Kagoni. I have referred you to the letter you have stated originated from the Assembly for purposes to give the Governor that right to be heard as captured by Standing Order No.67. My question will attract a 'yes' or 'no'. Point out to that letter, where it reads;

“Hon. Governor in this matter, you shall appear before the Assembly on this date, time, venue and for this business.”

Is that information in that letter by the Speaker? Yes or No?

Hon. James Benson Kagoni: Mr. Chairman, Sir, I want to let this Committee know that the purpose of notice of Motion, is to alert anyone who will be affected in any way by that Motion, to make that submission.

The governor responded to that letter---

Mr. George Ng'ang'a Mbugua: Hold on, Mr. Kagoni. We will go to the response. Kindly do justice to these proceedings, now that you took an oath to tell the truth. We are seekers of the truth.

Hon. James Benson Kagoni: Mr. Chairman, Sir, we are telling the truth.

The Chairperson (Sen. Musila): Counsel, you have so far taken 35 minutes. Your total time is one hour and thirty minutes.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, that is why I am having a problem with the witness because I am asking a targeted question. However, when he gets into a frolic, it takes more time. The witness should be reminded to confine to the documents that originated from the Assembly. We want to establish facts from a letter that he has relied on.

The Chairperson (Sen. Musila): The witness is advised to answer questions precisely.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, I would like to rephrase my question. The information on that letter that invites the Governor to appear where, when and what time to appear and for what purpose? Can you get that information from the letter?

Hon. James Benson Kagoni: Mr. Chairman, Sir, let me read it for you. It gives the opportunity for seven days between 13th to 21st when the Governor can come in person or exonerate the document. It leads further to the Standing Order No.64(3), that period of seven days notice.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, the Standing Order No.67 talks of "in view of and pursuant to". The Speaker wrote pursuant to the Standing Order No.67 and we have seen in black and white what that Standing Order says.

Mr. Kagoni, we will take that to be your answer because you are barricading and do not want to tell the truth. The last question is that because you deliberately do not want to answer in terms of Standing Order No.67, are you aware of a document that invited the Governor whether before plenary or any other committee of the assembly for purposes of hearing him on the charges and not asking him to submit documents? The Standing Order No. 67 does not say that the Governor shall be written to give exonerating evidence because it is not how the Speaker coached the letter. It is what the Standing Orders tell the Speaker to do. In your view, the letter on page 25, complies with the requirement on the Governor being allowed to appear and be heard. Is that your answer?

Hon. James Benson Kagoni: Mr. Chairman, Sir, yes, it is. The Standing Order No.67 which the Speaker quoted in the last paragraph of that letter---

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, let us move on. I refer the witness to page 27 where the Governor responded to that letter. Paragraph seven from the top of that page, the Governor is telling the speaker in response to his letter. Please, read that paragraph for us.

Hon. James Benson Kagoni: Mr. Chairman, Sir, it says:-

“From the material supplied, we have been unable to discern any documents that show any nexus to the person of the Governor and the alleged violation.”

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, please, move on to the next paragraph.

Hon. James Benson Kagoni: Mr. Chairman, Sir, it says:-

“As such and in order to enable us substantially respond, I request for further particulars and documents showing the Governor's direct and personal liabilities on the matters that form the basis of the allegations.”

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, as you can see, the Governor is asking for some documents to enable him substantively respond.

As a representative of the assembly, do you have a copy of the HANSARD during the time when the Motion was adopted that shows the Governor appeared or was invited or did not appear in the HANSARD. I believe that the communication is captured in the HANSARD to show that in your understanding and pursuant to that letter from the Speaker, that the Governor appeared or was that information brought to the attention of the Assembly at plenary regarding the right of the Governor to be heard. Do you have a copy of the HANSARD?

Hon. James Benson Kagoni: Mr. Chairman, Sir, I have a copy of the HANSARD. The Mover of the Motion even alluded to this letter when she was moving this Motion.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, my question is not about reference to the letter. We have referred to the issue of appearing and being heard. There was reference during the debate on the Motion when it was tabled before the assembly, there was evidence that was tabled showing an invite to the governor to appear and he wrote back to say that he will not appear or that he ignored the invite all together? Was such information tabled?

The Chairperson (Sen. Musila): Counsel, do you have an intervention?

Mr. Muthi Gathenji: Mr. Chairman, Sir, I wonder what the relevance of those questions are referred to by the Speaker and not to the Assembly instead of taking too much time on this, it is good for us to know the relevance of the question of the Member of County Assembly (MCA) when the letter refers to the Speaker.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, with due respect to the learned Senior, the rules of cross examination are obvious. One of the issues for determination that prompted this Committee to retreat and make a finding is on the right to be heard. This witness has been called by the Assembly to present the case of the Assembly. It is this witness that I should engage on that matter because he comes wearing the hat of the assembly, speaker, clerk and the entire membership. This is cross examination time. Therefore, I am not aware of any particular rule that limits my cross examination to a letter that he may have authored. This matter is relevant if not a primary issue for determination. If we are able to extract the factual position, it will make your report very easy because you will simply make reference to an answer that came from---

The Chairperson (Sen. Musila): You may proceed, Counsel.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, I had asked whether they have in the HANSARD any information regarding the fact that the Governor was invited to appear to present his defence before the Motion was moved.

Hon. James Benson Kagoni: Mr. Chairman, Sir, the Governor was invited, but we waited in vain for seven days expecting that the Governor would respond to the notice of Motion because the business of the Assembly is through notices and the Order Paper. We waited in vain for seven days for the Governor to show up and find out what the matter was. We waited for long, but nothing was forthcoming.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, this is very material. They waited for seven days yet the letter that was served to the Governor on page 24 shows that he was served on 15th October, 2015. When was the Motion adopted by the Assembly? Was the Motion adopted on 21st October, 2015?

Hon. James Benson Kagoni: Mr. Chairman, Sir, the notice was given on 13th October, 2015.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, let him hang on. When was the letter served to the office of the Governor? Please, read that for us.

Hon. James Benson Kagoni: Mr. Chairman, Sir, the Motion was adopted on 21st October, 2015.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, according to the notice on the letter on page 24, it was served to the Governor on 15th October, 2015. Is that correct?

Hon. James Benson Kagoni: Yes, Mr. Chairman, Sir, it is.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, from 15th to 21st October, 2015, how many days were those? Even if you included *Mashujaa Day* and the intervening weekend, it is six days to be precise.

Hon. James Benson Kagoni: Mr. Chairman, Sir, our Standing Orders do not state working days. The number of days stated in the Standing Orders is seven days without specifying working days. It is very clear. I hope that the Counsel has read the Standing Orders clearly.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, I have interacted with the Standing Orders for his comfort.

Looking at page 24, the Governor is served on 15th October. There was an intervening weekend, including *Mashujaa Day* on 20th October. Therefore, the seven days that Mr. Kagoni is talking about were not allowed to lapse because on the 21st October, 2015, the Communication by the Speaker of Murang'a County to the Speaker of the Senate makes reference to 21st October. This is an undisputed fact that the Assembly, contrary to the representation by the witness, moved the Motion before the time that the Speaker had given. We have seen that from 15th October, 2015 when the notification was given to the Governor bears a stamp. This is the letter addressed to the Governor, Mwangi wa Iria dated on the 15th October, 2015. It was received on 21st October, 2015, meaning that was when the Governor was notified.

Mr. Chairman, Sir, it is not in dispute that the Motion was moved on 21st October, 2015. Therefore, if we are take the six days, including the weekend and *Mashujaa Day* that contradicts the representation by this witness. Mr. Kagoni, I put it to you that you are misleading this Committee. It is a factual statement that the Assembly moved the Motion on 21st October, 2015.

I put it to you that you are misleading this Committee. The assembly moved- and this is a factual statement- the Motion before even the expiry of the seven days notice that the Speaker had given, so that if the intention of the assembly was to wait for the expiry of seven days, you actually moved the Motion on the 21st before the expiry of the seven days.

Mr. Chairman, Sir, I was just asking my colleague to take a short break.

The Chairperson (Sen. Musila): But you need to be sure of the time because you have already taken 45 minutes, and we want you to finish cross-examination so that we can break and then the examination will follow. Is that okay? So, would you like to---

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, it is fair enough. May be we could finish with cross-examination and then---

The Chairperson (Sen. Musila): It is fair to finish this. How far are you? If you are far then we will adjourn.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, I think I have still got quite a bit of ground to cover. The statement is the one that constitutes the main allegations.

The Chairperson (Sen. Musila): Okay. Then in that case, it is 1.20 p.m. I will, therefore adjourn the session for one hour. Please keep time.

(The Special Committee adjourned temporarily at 1.20 p.m.)

(The Special Committee resumed at 2.25 p.m.)

The Chairperson (Sen. Musila): I now call the proceedings to order. Before we resume, I am asking counsel Mbugua that we must limit our time. We are giving you 10 minutes to finish with this witness and then after that there will be re-examination for not more than 20 minutes. We will be very strict on cross-examination. After this witness - I think you have used one hour already - we will insist that you use 20 minutes for cross-examination and because the assembly saved time because there was no delay of witnesses, we shall give them 10 minutes to re-examine if they so wish. I plead with you that you use 10 minutes with this witness then we allow for re-examination and then we proceed with other witnesses.

Mr. George Ng'ang'a Mbugua: Thank you Mr. Chairman, Sir. I, however, recall that yesterday when we had the pre-hearing conference, we indicated that we would cede a bit of our time as the defence so that we can exhaustively deal with the assembly. I do not know how we will manage that because I had indicated it. It was deliberate because of the level of documents that we were served with and we shall need to refer these witnesses to.

Mr. Chairman, Sir, if you can be gracious enough, by the look of the statements that were submitted, I take this to be the assembly star witness and we thought we can take a bit more time on him. I have seen the statements by the other witnesses and I doubt that we will deal with some of the matters we have dealt with, with this witness. What we can do is to make up for the time we might expend with this witness by ceding a bit of our time when we are making our case.

The Chairperson (Sen. Musila): Can we have an indication how many minutes you want to take with this witness so that we plan accordingly?

Mr. George Ng'ang'a Mbugua: We are proposing one hour from now so that we do not revisit some of the issues from this witness with the other witness because I noticed there is another witness.

Mr. Brownie Nathans: Mr. Chairman Sir, let me thank you for this opportunity again. I hope you had good lunch. Thank you for giving me a second session this afternoon. We could review our time frame for tomorrow and see what we can cut off. We shall have eaten into this time. This being the star witness, this is their *Ronaldo* and we would like to deal with him exhaustively and finish with him so that when we have the others we will probably take as little as 10 to 20 minutes. If you allow us, then we can proceed. In fact, on that score alone, I wish to introduce Mr. Njenga to take just three minutes with

him on one particular question and I will take two minutes so that we can leave this able gentleman to proceed with the other matter.

The Chairperson (Sen. Musila): We would like to be as fair as possible. At the time of opening, we said we will be fair to both sides. We think one of the ways to be fair is to allow you time but you realise there must be a limit. Therefore, can we compromise on 30 minutes with this witness? From 10 to 20 minutes, I think the Committee has been very generous.

Mr. Brownie Nathans: Thank you Mr. Chairman, Sir. I invite, with your indulgence, Mr. Njenga to deal specifically with one aspect and he will take 3 to about 5 minutes.

The Chairperson (Sen. Musila): We will allow you 30 and not 45 minutes.

Mr. Charles Njenga: Mr. Chairman, Sir, allow me to go straight to the questions. I am Charles Njenga for the Governor of Murang'a County.

Mr. Kagoni, I will be addressing paragraph 10 of the Governor's response in my few questions. Are you aware of the Murang'a County Appropriations Act, 2015 at page 41 of the Governor's documents? There is a letter by your clerk at page 40 and the Act is at page 41. You have seen it? The Governor's document is bound in blue. I am referring to page 41 where the Act starts. If you have it, are you able to confirm that this is the Murang'a County Appropriations Act, 2015 passed by the assembly?

Hon. James Benson Kagoni: Mr. Chairman, Sir, I am not in a position to confirm this. I have just seen the document. I do not know.

Mr. Charles Njenga: Are you aware that Murang'a County where you sit as the Member of the County Assembly has an Appropriations Act for the year 2015?

Hon. James Benson Kagoni: Mr. Chairman, Sir, yes we have passed an Appropriations Act.

Mr. Charles Njenga: Mr. Chairman, Sir, now that is the Act I am referring to. It is at page 41. I am glad you have said that the assembly passed the Act. Quickly because I do not have the luxury of time, I want to refer you to one item at page 47 under vote D03. Have you seen it?

Hon. James Benson Kagoni: Mr. Chairman, Sir, yes.

Mr. Charles Njenga: Are you able to confirm that in this Appropriations Act passed by the County Assembly, you appropriated for the Ward Development Fund a sum of Kshs. 700million?

Hon. James Benson Kagoni: Mr. Chairman, Sir, if you look at---

Mr. Charles Njenga: Kindly because of our time, confirm to me on that and I will be grateful.

Hon. James Benson Kagoni: Mr. Chairman, Sir, I am not in a position to confirm and it is also not part of my statement with regard to what he is asking.

Mr. Charles Njenga: Mr. Chairman, Sir, I am referring the witness to the document which he can read and I do not think it is in the witness's---
Mr. Chairman, Sir, you can advise the witness for us to expedite that he answers the question and he can make his comments later? You may not have seen it but I am sure you can read. Are you able to read?

Hon. James Benson Kagoni: Mr. Chairman, Sir, yes.

Mr. Charles Njenga: Your statement says you are an investment banker.

Hon. James Benson Kagoni: Mr. Chairman, Sir, yes.

Mr. Charles Njenga: By that fact alone I will assume you are literate, right?

Hon. James Benson Kagoni: Mr. Chairman, Sir, yes.

Mr. Charles Njenga: Read for us vote 071300. Just read. What does it say?

Hon. James Benson Kagoni: Mr. Chairman, Sir, vote 071300, Ward Development Fund

Mr. Charles Njenga: How much?

Hon. James Benson Kagoni: Mr. Chairman, Sir, according to this document, it is allocated Kshs.700 million.

Mr. Charles Njenga: Kshs.700 million to the Ward Development Fund by the county assembly, right? Are you aware of the legal framework under which this Fund was appropriated by the county assembly? If you are not, then tell us what it is.

Hon. James Benson Kagoni: Mr. Chairman, Sir, the assembly of Murang'a passed Murang'a Ward Development Fund. It was not assented to by the Governor but after the expiry of the 14 days, it became an Act like it is required.

Mr. Charles Njenga: So, you confirm that the county assembly passed the Ward Development Fund without any input by the Governor of Murang'a County?

Hon. James Benson Kagoni: Mr. Chairman, Sir, I do not confirm that.

Mr. Charles Njenga: That is what you said in other words.

Hon. James Benson Kagoni: Mr. Chairman, Sir, I have said that the Murang'a County Assembly passed a Ward Development Fund. It was not assented to by the Governor but it became an Act automatically. There was no memorandum of rejection. There was nothing.

Mr. Charles Njenga: Mr. Chairman, Sir, it is okay. You passed it in default of assent. Right?

In the Ward Development Fund Act, are you aware that it constitutes a member of the county assembly as a patron of the Ward Development Fund in their wards?

Hon. James Benson Kagoni: Mr. Chairman, Sir, the document he is referring to is not here. It is not something that we can confirm. I do not know why we are referring to it because it is not part of my statement.

Mr. Charles Njenga: You can say that you do not know. I am putting to you that the ward development fund constitutes the ward member; the MCA of each and every ward, as the patron of that fund at Section 30. That is a document that is available. The sum total of what I am saying is that you, as the assembly, passed an Act and provided for a fund of Kshs700 million to yourselves, to be used for purposes where the MCAs will be patrons. Is that true or false?

Hon. James Benson Kagoni: Mr. Chairman, Sir, I am not aware of the document he is referring to and he has not even told me where I can check it. Maybe you could assist because I do not have it.

Mr. Charles Njenga: I am reading the Act which you said you passed. How many wards are in Murang'a County?

Hon. James Benson Kagoni: We have 35 wards in Murang'a.

Mr. Charles Njenga: What is Kshs700 million divide by 35? That would be Kshs20 million. If this Act were to be implemented, every ward would receive Kshs20 million to administer their own wards.

As I conclude this point, because I do not have a lot of time, is it true - and you can deny or confirm - that the rejection of this fund was what triggered, first of all, the attempt to remove the CEC member for finance and then later on, the Governor.

Hon. James Benson Kagoni: Mr. Chairman, Sir, I would ask that he repeats that question.

Mr. Charles Njenga: I am saying that the motivation and the real issue that has brought you here as a witness was the rejection of the ward development fund by the Governor and the Controller of Budget. Because of that frustration you decided to remove the CEC member for finance and also the Governor. You can say "no."

Hon. James Benson Kagoni: Mr. Chairman, Sir, in the impeachment motion there is no allegation related to what the Counsel is questioning me about.

Mr. Charles Njenga: Mr. Kagoni, you were part of the select committee that was constituted for purposes of investigating the removal of the CEC member for finance. Is it not?

Hon. James Benson Kagoni: Yes.

Mr. Charles Njenga: You seem to be in all these impeachment processes. Is that right?

Hon. James Benson Kagoni: I am a member of the county assembly and it is part of my role.

Mr. Charles Njenga: You are the impeachment champion.

Hon. James Benson Kagoni: It is part of my oversight role.

Mr. Charles Njenga: Are you also aware of the budget appropriation committee report by the county assembly on the initial budget estimates that were submitted by the CEC member for finance on the Financial Year 2015/2016?

Hon. James Benson Kagoni: Pardon?

Mr. Charles Njenga: Are you also aware of the budget appropriation committee report of the county assembly with regard to the submitted budget estimates for the Financial Year 2015/2016?

Hon. James Benson Kagoni: Mr. Chairman, Sir, I would want to know when it was tabled.

Sen. Madzayo: If I may interject. If the Counsel is referring to a certain document, then we would want him to tell us exactly what document he is referring to. He is asking the witness about a document that we do not have. If we have it, we would like to know exactly which document he is referring to.

Mr. Charles Njenga: Very well. I am guided. I am asking the witness whether as a member of the county assembly he is aware of that report. If he is not aware that is fair enough.

Hon. James Benson Kagoni: Mr. Chairman, Sir, I am not aware of that report.

Mr. Charles Njenga: I put it to you in my final question - we shall interrogate this point further as these documents become clearer - that the County Assembly of Murang'a, when evaluating the budget estimates, removed from the development expenditure

Kshs304 million. Kshs104 million was removed from irrigation expenditure. All these funds were lumped into a fund that was entirely for the benefit of the Members of the County Assembly, which they called the ward development fund. Is that true? Just confirm or deny for the record.

Hon. James Benson Kagoni: No! Since I am not a member of the budget committee, I might not be privy to the details that you are giving.

Mr. Charles Njenga: That will be all for that particular issue.

Mr. Browne Nathans: Mr. Chairman, Sir, I have another four or five minutes on my part.

The Chairperson (Sen. Musila): Your total balance is 21 minutes.

Mr. Browne Nathans: Mr. Kagoni, I regret that we have put you through a lot of intellectual pain. I want to make it less painful. If you go to page –

Hon. James Benson Kagoni: Mr. Chairman, Sir, I am comfortable and it is part of my work. When I was nominated, I knew exactly what--

Mr. Browne Nathans: Intellectual pain is normally not very good.

The Chairperson (Sen. Musila): He is very comfortable.

Mr. Browne Nathans: I am very happy and that is why I want to take you to the next item. You are a good man who goes to the Anglican Church in Murang'a. On page 275 of the Governor's response--- Could you please read it out? Are you surprised? Take a deep breath. What is the last name; No.8? Take your time.
I will ask again. What do you see?

Hon. James Benson Kagoni: Mr. Chairman, Sir, under No.8 I see my name.

Mr. Browne Nathans: Just read out the name. What name do you see?

Hon. James Benson Kagoni: James B. Kagoni.

Mr. Browne Nathans: Is that your designation as an MCA?

Hon. James Benson Kagoni: That is familiar to me.

Mr. Browne Nathans: Is that your phone number?

Hon. James Benson Kagoni: That is my phone number.

Mr. Browne Nathans: Is that your signature?

Hon. James Benson Kagoni: It is a little bit faded.

Mr. Browne Nathans: I told you it would be less painful. So, let us agree. What is this document about?

Hon. James Benson Kagoni: Mr. Chairman, Sir, the document is titled “Conference to harmonize, synchronize and propose sector-specific policies and legislation.”

Mr. Browne Nathans: Are you aware of that? Does that ring a bell? Never mind the bell; I will give you the bell. On page 268 you can read out what that is about. We are in session so, do not pause. When we go out on a social sitting you can pause. We are now in session and limited in terms of time. What is that about?

Hon. James Benson Kagoni: Am at page 268. What is the question again?

Mr. Browne Nathans: What is it about? That should be clearer. Do you know this process?

Have you taken part in the details you are reading about on that page? Yes, you have because you have signed on page 275. This is the process for the record: Murang’a County is the only county in the Republic of Kenya that has had to go through a thorough process of formulation of policies and legislation. There is no other county that has done that for the last two years, but we will get to that later.

Since you attended this process from 8th to 10th at the Sport View Hotel, Kasarani, do you want to give one piece of recommendation you made in relation to the subject under consideration; that you thought ought to be canvassed before you came to the Senate; to say that you engaged with the county executive because this document, as you will see, involves the entire Government of the Republic of Kenya, but in Murang’a County? The county assembly, county executive, chief officers, members of the public service board and everybody attended and trained for the last two years.

During this session, in your own docket of that particular committee, can you demonstrate to the Committee here that you made attempts, either individually or as a committee, to engage with the counterparts at the county executive to make recommendation on how the matters you are trying to canvass ought to have been handled? In other words, as part of the team that is making laws, policies or trying to legislate, have you made one recommendation on how these issues ought to have been dealt with; whether in relation to the Public Finance Management Act or ward development fund? Just give one then, I will let you free.

Hon. James Benson Kagoni: Mr. Chairman, Sir, I am lost. I wish it was in a summative way, so that I get exactly what the question seeks.

Mr. Browne Nathans: Okay. Finally, Mr. Kagoni, have you ever made one recommendation as an MCA – the person I have seen here since that time - or as a committee to the executive to say: “in my considered view or as a committee, this is how we feel these matters ought to be done or dealt with?”

Hon. James Benson Kagoni: I cannot remember any that has been adopted.

Mr. Browne Nathans: Thank you very much, I appreciate that. As I said, I will make it less painful.

Mr. Chairman, Sir, I now hand over to my colleague.

Mr. George Ng’ang’a Mbugua: Mr. Kagoni, please look at Violation (VI). Hon. Senators, that is under “Gross Violation of the Constitution.” Do you have the violations with you? I can read for you the allegations that were---

I am referring the witness to the violations in the motion. There is an alleged violation of undermining the legislative authority of the assembly by failure to remit funds to the Assembly.

Hon. Senators, there is a document I want to refer the witnesses to, which unfortunately, was not part of my bundle, but I had shared it with the secretariat. It is the Auditor-General’s Report for the Assembly for the period 1st July, 2013 to 30th ---

The Chairperson (Sen. Musila): Could we confirm that the assembly has this document because it was not part of the bundle?

Mr. George Ng’ang’a Mbugua: We had bound the bundle before but it was part of the documents.

The Chairperson (Sen. Musila): Could I get a confirmation from the Lead Counsel of the assembly that they have the document that you are referring to?

Mr. George Ng’ang’a Mbugua: Mr. Chairman, Sir, this is the document. It is presumed to be with the assembly because it is a document from the Auditor-General of Murang’a County Assembly. I had run copies but, unfortunately, I bound the documents because I included it. However, I just want to refer the witness to it, because it is very relevant to one of the---

The Chairperson (Sen. Musila): Could they confirm that they have it?

Mr. George Ng’ang’a Mbugua: I can share with the witness.

The Chairperson (Sen. Musila): What page is that?

Mr. George Ng’ang’a Mbugua: I am referring the witness to page 3.

(An hon. Senator spoke off record)

Yes, it had been submitted separately because it came in a bit late. We apologise for that.

The Chairperson (Sen. Musila): What page is that?

Mr. George Ng'ang'a Mbugua: Page 3

The Chairperson (Sen. Musila): Just pose a bit as we sort out this matter, because it is very important to us. We will compensate you for the time lost.

It is very important that Members of the Committee and the Assembly have the document. I can see that the witness has a copy. Therefore, we can proceed to look at page 3.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, the item is on over-expenditure; Clause 4, page 3. The subheading is: "Over-expenditure on local and subsistence allowance." The report is from the Office of the Auditor-General on Financial Operations of Murang'a County Assembly for the period 1st July, 2013 to 30th June, 2014. The specific reference is the alleged violation of non-remittance of funds and what the Auditor-General reports.

Mr. Kagoni, kindly look at paragraph 4 of that document - the comments of the Auditor-General with respect to the expenditure. Please, read for us that short paragraph.

Hon. James Benson Kagoni: Mr. Chairman, Sir, before I read, I have just seen this document and it does not form any part of the statement that I made. I am here to give evidence on the statement that I made and swore.

When I look at what he is referred to, I will not answer any question unless it connects with any of the statements I have made here. I am a witness and will give evidence on statements that I have made, but not on something that I am being provided with here; that I am not aware of.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, let me just guide the witness because this is cross-examination. There is a violation of failure to remit funds. There is a report from the Auditor-General on expenditure. The report says that there is over-expenditure. The accusation is that funds were withheld. This is a report that relates to the assembly and touches on a very serious allegation facing the Governor, and this is cross-examination. I do not think it would be fair for the witness to be allowed, as it were, to run away from a question that he might find unpalatable on the part of the assembly.

Mr. Chairman, Sir, we are being accused and made to look, before the world, like we have incorrigible sins. The assembly is the subject of a report from a constitutional office on expenditure and we are told that we withheld money. I am not asking him to recollect

anything. He should simply refer to what the Auditor-General says with respect to their expenditure in connection, of course, with the allegation; that we withheld funds. That is a relevant question for purposes of cross-examination and the witness cannot be allowed to run away from it merely, because he says that he needs to rely on what is in the statement he made. If that happens, then, we will lose the whole meaning of cross-examination.

The Chairperson (Sen. Musila): The witness may answer that. However, he may refuse to answer because we cannot force him to answer.

Mr. George Ng'ang'a Mbugua: Well guided.

Sen. (Eng.) Muriuki: Mr. Chairman, Sir, the witness is asking that the document should be connected with what he wrote. I also want to know about that.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, there is a violation in connection---

Hon. James Benson Kagoni: Mr. Chairman, Sir, I would like to know what part of the statement I made that is connected to this.

Sen. Ong'era: Mr. Chairman, Sir, I think that question, in cross-examination, is relevant because the essence of cross-examining a witness is to try to check the credibility of the witness in terms of what they have answered. It does not mean that the question must come from exactly what the witness gave. Otherwise, cross-examination will not be cross-examination.

The Chairperson (Sen. Musila): As I said, that has come from the accusation and the witness should answer. However, if he refuses to answer, it is okay because it is within his right not to answer.

Mr. George Ng'ang'a Mbugua: Well guided.

Mr. Kagoni, kindly look at Paragraph 4 and see what the Auditor-General says. The Auditor-General says:-

“During the year under review, the county assembly incurred a total of Kshs44 million on local travel and subsistence allowance, against an approved budget of Kshs35 million, resulting to over-expenditure of Kshs9 million without the approval of the Office of the Controller-General.”

That is the report of the Office of the Controller of Budget, that you overspent your budget. In view of what is in your particulars of allegation, there were monies that were withheld. How would you overspend if you did not have the funds? Could you answer my question?

Hon. James Benson Kagoni: Mr. Chairman, Sir, I am not comfortable with answering the question. Like I said from the outset, I have just seen this document. It is not part of my statement and I am not knowledgeable at all about the---

Mr. George Ng'ang'a Mbugua: We will take that to be your answer; that you are not comfortable to answer the question.

Let us carry on, Mr. Kagoni. Let me go back to the statement. I want to ask this specifically, because you sit in the accounts committee. Before these matters were escalated to form the basis of impeachment, especially the fiscal matters--- I am referring the witness to Paragraph 5 of his statement where he says:-

“I raised the matter of public debt with the Chairman of Finance and Planning Committee and sought to know the extent of the pending Bills, since the County Government of Murang'a was engaged.”

Were there other oversight mechanisms that, perhaps, the Assembly deemed necessary to employ before escalating this matter to the Senate? If so, could you show us some correspondence in your bundle, just for ease of reference?

Hon. James Benson Kagoni: Yes, Chairman, Sir, there were measures that the County Assembly had tried to take. If you look at my statement Nos.6, 7 and 8, we are trying to explain even the chronology of events because we wanted to capture the entire debt in the budget estimates that were supposed to be submitted on 30th April.

Mr. George Ng'ang'a Mbugua: So, in your answer the evidence of the oversight mechanism you engaged is what is stated in your statement. You do not have documents originating from the Assembly to the executive on account of these matters and you could quickly show us from your bundle.

Hon. James Benson Kagoni: Yes, Chairman, there is quite a number of documents.

Mr. George Ng'ang'a Mbugua: Show us one.

Hon. James Benson Kagoni: One among them is the debt management paper. It is the first document in Annexure 3 of this---

Mr. George Ng'ang'a Mbugua: Please, do not mislead us. Just tell us which page it is and where it originated from.

Hon. James Benson Kagoni: Thank you. At the cover page, there is a letter attaching that debt management paper. It originated from the Assembly.

Hon. James Benson Kagoni: This debt management paper emanated from the Finance Department.

Mr. George Ng'ang'a Mbugua: Thank you. The debt management paper emanated from the executive and not from the Assembly?

Hon. James Benson Kagoni: Yes.

Mr. George Ng'ang'a Mbugua: Let us go to where you have accused the Governor. I am referring to the statement at paragraph 13 of the witness, and this what the witness had to say about the debt management paper. It is at what page, very kindly?

Hon. James Benson Kagoni: It is at page 3, Annexure 1. It begins there

Mr. George Ng'ang'a Mbugua: Honorable Senators, the witness says that the County Governor was intending to conceal the debts owing. The word is "concealing". The witness is telling us that the debt management paper that he has referred to emanated from the executive, but in his statement, he is saying that the Governor of Murang'a County concealed the debts. Mr. Kagoni, I hope I am reading the same statement you have. I hope that was not a typo.

Hon. James Benson Kagoni: Mr. Chairman, when you read my statement; No.13, so that you can get the correct information of the entire context, I am referring to the letter that was brought to the County Assembly on 7th September after we raised the matter that the debts had risen to Kshs 2.5 billion and the letter that came from the office of the Governor stated that the debt was actually at Kshs 1 billion. I stated thereafter that without an attendant schedule - the one they had brought on 14th August had an attendant schedule - you can be able to see Gakoigo Stadium

Mr. George Ng'ang'a Mbugua: Excuse me!

Hon. James Benson Kagoni: Mr. Chairman, if I can only complete my statement because he has asked me on something.

Mr. George Ng'ang'a Mbugua: You are eating into my time. I am questioning and very respectfully. Mr. Kagoni, you have said that the debt management paper originated from the executive; in that debt management paper, one of the things you will realise is the borrowing of Kshs 160 million; the borrowing that you are saying was concealed. I am referring to this because you said that the County Governor was intending to conceal the debt. Let us go to the page that shows the borrowing. It is actually part of that document. There is a schedule in that document.

The Chairperson (Sen. Musila): Mr. Mbugua, your time is up but I allow you to finish that question.

Mr. George Ng'ang'a Mbugua: Let us go to that document, the debt management paper and see whether it has information on the debts. Maybe it is easier because that same document is at page 200 of the answer by the Governor, the same document that he

confirmed came from the executive where he accuses the Governor of not disclosing the debts. Mr. Kaguni, go to page 200 - Planned repayment plan. Are we there?

Hon. James Benson Kagoni: Yes.

Mr. George Ng'ang'a Mbugua: You will notice that the short-term debt of Kshs 190 million actually forms part of the debt which the Governor is accused of not having disclosed. So you are now sufficiently satisfied that the document from the executive did in fact disclose what you are accusing the Governor of not having disclosed?

Hon. James Benson Kagoni: Not everything, Mr. Chairman. The document did not disclose the entire debts that were owed to the county.

Mr. George Ng'ang'a Mbugua: You seem mesmerized by the issue of debts, because according to you, the debts were Kshs 2.5 million?

Hon. James Benson Kagoni: Kshs 2.5billion.

Mr. George Ng'ang'a Mbugua: Are you, Mr. Kagoni, taking the position that the report from the office of the Controller of budget at page 19 documenting debt of slightly above Kshs1 billion is, in fact, incorrect?

Hon. James Benson Kagoni: Mr. Chairman, I am committing in my own statement.

Mr. George Ng'ang'a Mbugua: It is not what you commit. Can you, please, answer the question because of constraint of time? It appears to be a contest. Is it your evidence that the Kshs1.94 billion stated at page 60 from the Office of the Controller of Budget does not represent the actual debt situation in Murang'a County as at the date this report was submitted by the Office of Controller of budget?

Hon. James Benson Kagoni: The Report of the Controller of Budget that is dated 30th June has differed with the report brought to the Assembly by the CEC Finance in the total amount of debts owed. This document emanated from the Governor's Office.

Mr. George Ng'ang'a Mbugua: If we are to establish which documents are to guide these proceedings - the Office of the Controller of Budget is an independent constitutional office - the Governor does not run the Office of the Controller of Budget. So your statement is simple that whatever is in that document does not represent, according to you, the actual debt situation instead what is in your allegation in the particulars you submitted to the Senate of Kshs 2.5 billion is indeed the correct position. That is your evidence?

Hon. James Benson Kagoni: Yes

The Chairperson (Sen. Musila): Mr. Mbugua, your time is up. Now we go for re-examination of the witness by the counsel of the Assembly.

Mr. Browne Nathans: Mr. Chairman, Sir, our time is up. I think as we sum up, we just wanted to confirm that this information that has been very ably and eloquently presented by my learned colleague did not emanate from His Excellency the Governor but from the department of the executive. Just for the record ---

The Chairperson (Sen. Musila): You will still have time at the end to do your submission.

Mr. Browne Nathans: Mr. Chairman, Sir, as he sits, I thought that should sink. Meaning, if the Assembly had taken time, we would have extracted them from the executive.

The Chairperson (Sen. Musila): Yes, you will have more time at the end, Mr. Brown.

Mr. Browne Nathans: Mr. Chairman, Sir, well guided. Thank you.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, I have unlimited number of questions in the re-examination. Let me start with a question regarding the document in page 024 of the Governor's document. This is the letter dated 13th October, 2015. Please, have a look at that document. There is something that I want you to clarify.

Are you there?

Hon. James Benson Kagoni: Yes, I am.

Mr. Mbuti Gathenji: Please, let us move fast. This letter is written by the Speaker of the Assembly.

Hon. James Benson Kagoni: Yes.

Mr. Mbuti Gathenji: Were you involved in delivery of this document?

Hon. James Benson Kagoni: No, I was not involved in the delivery of this letter.

Mr. Mbuti Gathenji: Are you aware of a prior attempt to serve the Governor before 15th October, 2015?

Hon. James Benson Kagoni: Yes, there was a prior attempt to serve the Governor which ---

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, with tremendous respect, that issue never arose in cross-examination. We cannot stretch the rules of cross-examination. Was there any attempt to serve the Governor prior? That is an attempt because I must state this is an attempt to run away from the stamp showing when the Governor was notified. That issue never arose from cross-examination and it cannot form the basis of re-examination.

They can only clarify on the content of that letter but not to try and introduce oral evidence to rebut what is actually documented. That is mischievous, with due respect.

Mr. Mbuti Gathenji: Can I respond?

The Chairperson (Sen. Musila): Yes, go ahead and respond. I will be making a ruling.

Mr. Mbuti Gathenji: This letter was brought by them and I raised the issue and they agreed that they need to use it. So, we can also use it.

You said you were not aware?

Hon. James Benson Kagoni: Yes.

Mr. Mbuti Gathenji: I want you to look at the next letter which is dated 16th October, 2015.

Hon. James Benson Kagoni: If it is the letter at page 026, I have it.

Mr. Mbuti Gathenji: I do not want you to go beyond just confirming that this is the letter that came from the counsel or the advocate of the Governor.

Hon. James Benson Kagoni: Yes, it is.

Mr. Mbuti Gathenji: I do not want to belabour you. Is it not correct from just looking at the letter, it answers substantially what their relation is in the Motion?

Hon. James Benson Kagoni: Yes, with even admissions.

Mr. Mbuti Gathenji: Let us go to the other questions raised with respect to the Kshs30 million debt. The impression given to this Committee is that the real purpose of your evidence was to show whether the work at Gakoigo Stadium was done or not. Do you remember?

Hon. James Benson Kagoni: Yes.

Mr. Mbuti Gathenji: Could you just explain the context in which you brought the issue of Kshs30 million?

Hon. James Benson Kagoni: The issue of Kshs30 million, as an allegation, was an example to show that the budget was not followed. The budget had allocated that Kshs30 million to a stadium. The debt paper shows that they had incurred Kshs59 million.

Mr. Mbuti Gathenji: So, your position was whether work was done or not done, you are concerned with the budget of Kshs 30 million? Would you be able to show the Kshs30 million in your document?

Hon. James Benson Kagoni: Yes, it is part of this document. It is the budget for 2014/2015.

Mr. Mbuti Gathenji: If you would quickly point it out, I will be quite happy.

Hon. James Benson Kagoni: Mr. Chairman, Sir, I am taking my time just to get where the document is. I would like if my counsel is able to get it faster than me ---

Mr. Mbuti Gathenji: We have it. Can somebody help?

The Chairperson (Sen. Musila): Counsel, you could assist even the Committee to give us the page.

Mr. Mbuti Gathenji: Just give the page to the Chairman.

Hon. James Benson Kagoni: It is page 118, Annex 6 page 12. We can also get the budget itself of 2014/2015.

The Chairperson (Sen. Musila): Stick to what you have been asked.

Mr. Mbuti Gathenji: Just explain it from the perspective of the list of debtors and tell the Committee what that list is showing as far as the Kshs30 million is concerned.

Hon. James Benson Kagoni: Item No.7 shows that Gakoigo Stadium has incurred a debt of Kshs59 million. The money that was budgeted for it was strictly Kshs30 million for that particular Financial Year.

Mr. Mbuti Gathenji: So, clarify to this Committee that the issue was a budget of Kshs59 million and not whether the work was done or not.

Hon. James Benson Kagoni: Not on the level of works. It is purely to show that the budget was not followed.

Mr. Mbuti Gathenji: I just want you to look at what you have been shown on page 102. I think that is their document or may be our own. Let me clarify. Wait, we will give you the document. Before I do that, I want you to answer this question; you have been asked about the development of the wards. May be you can clarify the context of whether you were part of it.

Hon. James Benson Kagoni: No, I am not a part of it at all. Indeed, I am a Nominated Member and, therefore, I do not even have a ward. I would not even be fighting for Ward Development Fund for any reason.

Mr. Mbuti Gathenji: Thank you. You also have other Nominated Members. How many are nominated?

Hon. James Benson Kagoni: We have 14 Nominated Members, one of them being the Mover of the Motion that I am giving evidence to.

Mr. Mbuthi Gathenji: Are you confirming that they are not Members and do not have wards?

Hon. James Benson Kagoni: They do not have any wards. I personally do not have any ward. Therefore, I would have no interest whether the Ward Development Fund is there or not.

Mr. Mbuthi Gathenji: Were you in the Assembly when the voting was done for the adoption of the Motion?

Hon. James Benson Kagoni: The Motion of impeachment?

Mr. Mbuthi Gathenji: That is correct.

Hon. James Benson Kagoni: Yes, I was there.

Mr. Mbuthi Gathenji: Would you recollect how many voted for and against the adoption of the Motion?

Hon. James Benson Kagoni: Yes, 34 voted Yes and 15 voted No.

Mr. Mbuthi Gathenji: So, there was also a substantial dissent?

Hon. James Benson Kagoni: That is correct.

Mr. Mbuthi Gathenji: It has been put to you that you all ganged up against the Governor because of the ward. What is your take on that?

Hon. James Benson Kagoni: Not exactly. There was no allegation even in the impeachment Motion in regard to the Ward Development Fund. There was no allegation associated to that Ward Fund at all.

Mr. Mbuthi Gathenji: Therefore, it is wrong to put it that the impeachment Motion was motivated by the Ward Development Fund?

Hon. James Benson Kagoni: Yes.

Mr. Mbuthi Gathenji: You were also asked questions by Mr. Njenga with respect to the impeachment of the CEC in charge of Finance.

Hon. James Benson Kagoni: Yes.

Mr. Mbuti Gathenji: According to your understanding, is it true that both the Governor and the CEC, Finance, have different roles?

Hon. James Benson Kagoni: Mr. Chairman, Sir, it is very clear. The functions of both the Governor and the CECs are well stipulated in Article 183 of the Constitution and also in the Public Finance Management Act. Section 30 of the County Governments Act is also clear on the responsibilities of the Governor. The Governor is accountable for all the resources of the County. So, their roles are very distinct.

Mr. MbutiGathenji: There are matters that I do not want to bring here. Are you aware that there is a case pending with respect to the CEC, Finance?

Hon. James Benson Kagoni: Mr. Chairman, Sir, I just heard about it.

Mr. Mbuti Gathenji: Are you aware whether it has been determined or not?

Hon. James Benson Kagoni: Mr. Chairman, Sir, I am not aware.

Mr. Mbuti Gathenji: Alright. I have two more questions then I wind up. Is it your position that Kshs2.5 billion debt is still unsustainable?

Hon. James Benson Kagoni: Very unsustainable, Mr. Chairman, Sir.

Mr. Mbuti Gathenji: Confirm from your position whether you have any other independent authorities that commented on this Kshs2.5 billion.

Hon. James Benson Kagoni: Mr. Chairman, Sir, we have a document that came from the Executive that alluded to the Kshs2.5 billion. However, even in the quarterly reports of the Controller of Budget has been cautioning us on the issue of debt.

Mr. Mbuti Gathenji: The last question was; there were attempts to show that the Executive is the one that satisfactorily explains about this debt and there was a sequence of events. Look at paragraph six of your statement, who initiated this enquiry with respect to Kshs1.1 billion?

Hon. James Benson Kagoni: Mr. Chairman, Sir, it is part of the budget cycle for the Debt Management Strategy Paper to be brought before the House so that before the budget estimates are there---. This is to make it possible for it to be reflected. The figure that was brought under the Debt Management Strategy Paper, did not and was not included in the budget estimate.

Further, after the Committee of Finance pressed hard to get the exact position of the debt, is when the document of Kshs2.5 billion was brought. After the horrible row that came out and people were not comfortable with the unsustainable debts, that is when the Governor offered a different one showing Kshs1 billion which did not have any attendant schedule to show that.

Mr. Mbuthi Gathenji: So, in fact, the Governor showed Kshs1 billion?

Hon. James Benson Kagoni: Mr. Chairman, Sir, it was purely a narration. It was not a document that you could see who exactly holds what amount of money. It was just stating we had a debt worth Kshs1 billion.

Mr. Mbuthi Gathenji: So, in conclusion, it is you who brought out the figure of Kshs2.5 million after your enquiry.

Hon. James Benson Kagoni: Mr. Chairman, Sir, about the Kshs2.5 billion, I believe the document they brought on 14th August. It had the attendant schedule showing exactly who is owed what amount of money.

Mr. Mbuthi Gathenji: My learned friend, Mr. Kimani, has a question.

The Chairperson (Sen. Musila): Well, you still have two minutes remaining.

Mr. Peter Kimani: Mr. Kagoni, I want to wind up on that issue of Kshs2.5 billion. There is Kshs1.094 billion debt that you have been referred to by the Controller of Budget, that is in the Governor's response on page 60. Has the debt been disclosed or factored in this financial year's budget estimates?

Hon. James Benson Kagoni: Mr. Chairman, Sir, the debt ceiling for Murang'a is zero. They had mentioned that the debt is not Kshs2.5 billion, but Kshs1.094 billion shows this is an explanation that the evil is not as big as you think. It is slightly lower than that. The debt ceiling for Murang'a is supposed to be zero. We had a budget that was very clear. There was no reason to incur when we had a budget if only we followed it strictly.

Mr. Peter Kimani: If I may refer to that document on page 60 on the Governor's response, the report from the Controller of Budget.

Mr. Browne Nathans: Mr. Chairman, Sir, with respect to my colleague we have not discussed the budget. So, unless he wants to table the budget here for discussion, we have not yet referred to it, discussed or tabled it. Frankly, we are being taken round and round looking for evidence. We never referred to the budget. The gentleman who I hold in very high regard is one of the finest MCAs we have in the County. He should not be put to shame to discuss a document that he has not even been introduced to. Be fair to this gentleman. He is a good man. Do not put the wrong things to him. He has a good future. He is hardly 35 years. Do not blame things on him which we never revealed or tabled.

Mr. Peter Kimani: Thank you, Mr. Chairman, Sir. Mr. Kagoni, on page 60, the figure for Murang'a is Kshs1,084,315,526. Apprehending of that report, which date is the pending Bills as at?

Hon. James Benson Kagoni: As at 30th June, 2015, Mr. Chairman, Sir.

Mr. Peter Kimani: The report which is in the Bill bundle by the Assembly on page 102, talks about Kshs2.5 billion. It has been referred to severally, if you may check.

The Chairperson (Sen. Musila): Counsel, that should be your last question. I will allow you to finish up, but your time is up.

Mr. Peter Kimani: Thank you, Mr. Chairman, Sir. I am guided. Mr. Kagoni, can you see it?

Hon. James Benson Kagoni: Yes, Mr. Chairman, Sir.

Mr. Peter Kimani: What date is the report by the CEC, Finance? What date is that letter?

Hon. James Benson Kagoni: It is dated 14th August, 2015, Mr. Chairman, Sir.

Mr. Peter Kimani: So, which period is the figure of Kshs2.5 billion covering? Comparing it with what the Controller of Budget has said.

Hon. James Benson Kagoni: Mr. Chairman, Sir, this would then say that it is covering the period for the 2014/15 Financial Year and up to 2015 August.

Mr. Peter Kimani: Thank you.

The Chairperson (Sen. Musila): I think that concludes the re-examination of that witness. I invite Hon. Senators for any clarification they may wish to put to the witness before I release him.

Sen. Billow: Mr. Chairman, Sir, I would like to clarify some issues with the witness and the Counsel of the Governor. First, I would like a clarification from you that certain documents are public and available to the Senators. These documents are the audit reports of the Murang'a County, the budget reports and all the other documents. All of them will be availed to us.

I would like to draw the attention of the Counsel of the Governor to the role of the governor as provided for in the County Governments Act.

I have listened carefully to some of the issues that you have raised; that it is the County Executive Committee (CEC) member in charge of finance and not the Governor. However, in Section 30 of the County Governments Act, which clearly provides that the Governor is the CEO with the mandate and responsibility for the resources of the county, why would you find it difficult that the Governor should be in the know regarding a pending bill of Kshs2.5 billion that his Finance Ministry has prepared? Why is that nexus difficult if he is the CEO? I would appreciate that information.

Secondly, on the issue of witness, the pending bills of Kshs2.5 billion, the Public Finance Management Act, provides that any budget prepared by a county government must be balanced and there should be no deficit. Is that it?

Hon. James Benson Kagoni: Yes, Mr. Chairman, Sir.

Sen. Billow: Mr. Chairman, Sir, what that means, is that there should be no deficit at the end of the year arising from the implementation of the budget.

Hon. James Benson Kagoni: Yes, Mr. Chairman, Sir. That is correct.

Sen. Billow: Mr. Chairman, Sir, therefore, even if this debt was Kshs1 million, and it is cumulative from 2013 to 2015, from the county assemblies point of view that has the constitutional mandate, would you say that the debt is justified from the PFM Act point of view?

Hon. James Benson Kagoni: Yes, Mr. Chairman, Sir. From Section 107 Of the PFM Act, the debt is not justified. That is the purpose we have a budget to ensure that we do not have any deficit.

Sen. Billow: Mr. Chairman, Sir, lastly---

The Chairperson (Sen. Musila): I want the Counsel for the Governor to respond to your first question before you go. I will then give you an opportunity to finish up.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, I would like us to read Subsection 30 of the County Governments Act in context. First, looking at the principles as laid out under Article 201; we quickly go to the Act that gives effect to Article 201, which is the PFM Act which in this case is Section 103. Therefore, you have the general responsibility of the general principles on financial management laid out clearly in the Constitution. Parliament then enacts PFM Act and establishes an institution called the county treasury and gives composition and imposes directly the responsibility to ensure compliance with the principles of financial management on the county treasury; it then goes ahead to set out the membership of the county treasury and deliberately assigns the responsibility to the CEC member for finance, who in some cases can be the accounting officer.

The person who engages on matters finance at the county level is the country treasury headed by the CEC member for finance. Therefore, the issues that you raised, would be raised at that level and the person that you deal with immediately to query how finances are run should be the county treasury headed by the CEC member for Finance. I agree with you that he sits in a cabinet chaired by the Governor. However, before the matter is escalated to the Governor's level, there is a technical person who engages on a daily basis on matters of compliance so that the initial link you get on matters and queries of finance-

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In fact, I am told that if you walk into the office of the Controller of Budget, if you are not a CEC member for finance, she will not engage with you, especially if you are querying matters of finances. That is beside the point. If I am to establish the first link, it should be with the CEC member for finance. First of all, the obligation should have been that you raised this matter to the CEC Member for Finance and the Governor deliberately or otherwise, frustrated attempt to correct the issues that were raised. From there, you could have brought in the issue of nexus like a liability.

We are talking about the CEO here yet the Act tells us that the first direct link should be the CEC Member for Finance. It is no wonder that you notice as part of the documentation, the attempts to remove the CEC Member for Finance had been made initially by the Assembly because it must have been clear to the Assembly that the first link you get on matters finance must be that particular officer. Therefore, moving to the question of functions, when I read Section 30 on the functions and responsibilities, it provides for executing functions and exercise of the authority, performance of State functions equivalent to those carried out by the President at the national level such as represent the county in national and international fora, appoint with the approval of county assembly the county executive committee, constitute the county executive committee portfolio structure, submit county plans, consider, approve and assent to Bills, chair meetings and many other duties.

There is a general framework of administration of the county vested in the Governor. However, the first thing should have been, if we are to demonstrate that nexus and not to infer it, to show that whereas the first nexus is with the CEC finance, this is how the governor directly frustrated the attempt to correct the issues. Before I wind up, I refer to a paragraph that the Court of Appeal, sitting in Nyeri on the Wambora case part two gave. I have attached it to page 28 of the answer. It reads;-

“Collective responsibility does not mean that the leader is individually responsible and politically liable for all acts or omissions of subordinates”

The CEC member for finance is subordinate to the governor.

The Chairperson (Sen. Musila): I think that should be---

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, maybe I could just wind up before the intervention.

The Chairperson (Sen. Musila): Okay.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, if collective responsibility were to be a principle of culpability and liability, it would follow that all persons who are collectively bound must individually be held answerable, blameworthy and accountable. This is not the intendment of the concept of collective responsibility. Yes, there is collective responsibility but on matters of this nature, the first nexus should be with the

CEC Member before you are able to infer nexus with the governor. You must also bring out the actions of the governor deliberately that brings out that nexus.

The Chairperson (Sen. Musila): Okay the Vice Chairperson wants to ask a question.

Mr. Browne Nathans: Mr. Chairman, Sir, while on that point, with your permission, let me make one important clarification.

The Chairperson (Sen. Musila): Let the Vice Chairperson ask first. Just a second, please.

The Vice Chairperson (Sen. Adan): The counsel who was on the Floor needs to read Section 30(3)(f); what does it mean?

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, it reads; "submit the county plans and policies---

The Chairperson (Sen. Musila): No, 30(3)(f).

Mr. Ng'ang'a Mbugua: Mr. Chairman, Sir, I am sorry. I was reading Section 30(f). Section 33---

The Chairperson (Sen. Musila): It is Section 30(3)(f).

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, it reads:-

"In performing the functions under subsection(2) the governor shall be accountable for the management and use of county resources."

The Vice Chairperson (Sen. Adan): What does that mean in relation to your argument that the governor is not accountable?

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, I did not say that. The governor is accountable through an officer designated by statute called the CEC Member for Finance. Yes, there is accountability but we have quickly seen that in that portfolio, there is a CEC Member for Finance, who is vested, because we have seen what the statute tells the CECM to do so that when it comes to matters of accountability - yes they are raised, for instance, by the assembly with the CECM for finance. The technical person who would respond to those matters would be that technical person we have seen described in statute. A reading of that section says he is accountable but it is not enough to simply say that he is accountable. The Assembly should go beyond that and say: "With respect to these matters, when---

The Vice Chairperson (Sen. Adan): Excuse me, counsel, with due respect I just requested you to read that provision. That is very clear. The explanation you are giving is not within the provision of the Act.

The Chairperson (Sen. Musila): I suggest that when we ask questions, just be precise because Members are seeking clarifications and not serious arguments; there will be time for that.

So, please clarify what you are asked to clarify, so that we can give as many Members time to seek clarification.

Do you want to deal with the same?

Mr. Browne Nathans: Mr. Chairman, Sir, yes, you had told me to speak after---

The Chairperson (Sen. Musila): Proceed, you have one minute only.

Mr. Browne Nathans: Mr. Chairman, Sir, we live in a country called the Republic of Kenya which has laws and rules of practice and procedure. Not long ago and not very far from here, the Cabinet Secretary for the National Treasury, Mr. Henry Rotich has had to answer to questions relating to financial management in that particular docket; not His Excellency the President, Uhuru Kenyatta. It has been made public; you will take judicial notice of this. What we are saying is, no governor, no President and for that matter no Senator should run away from responsibility. In fact, part of the document that I have annexed and I was taking my good friend, the MCA, a very able gentleman who obviously got his answers wrong through, was about the training on responsibilities, functions and duties. This is important.

Sen. Billow is well versed in this training on budget matters. You cannot assign responsibility to His Excellency the President on matters of the Eurobond, for example. You probably know what hon. Gumbo and his Committee are doing. They are investigating. So, had the relevant Committee of the County Assembly of Murang'a County interrogated the matters just the way the hon. Gumbo and his team are doing, because they are simply the same, it would have been very useful.

Sen. Billow: Mr. Chairman, Sir, on a point of order.

The Chairperson (Sen. Musila): There is a point of order. Everyone will get an opportunity but let Sen. Billow finish then I will give professor a chance.

Sen. Billow: Mr. Chairman, Sir, the issue the counsel is raising has been raised by the Council of Governors; they have raised it even in the courts. We will not argue whether the governor is at the same level with the President of the Republic of Kenya. That is not the issue before this Committee. So, let us not compare the President with the governor. Clearly, the governor is accountable. According to the provisions of the County Governments Act, there is a role for the governor in accountability with regard to financial management of his county. Basically, that is what we have said. Your counsel has explained, in his own way, that he does to agree with that. However, it is better to leave it there. To try and relate the position of the governors with that of the President would be misleading this Committee.

The Chairperson (Sen. Musila): Counsel, do you want say something before I give Sen. (Eng.) Muriuki an opportunity?

Mr. Muthi Gathenji: Mr. Chairman, Sir, it is fair if I say something. I am obliged by the remark of Sen. Billow. Actually, that is the gist of our case. It is not yet right to refer to court decisions on a matter that we are engaged in now. I am also obliged by the Vice Chairperson because this Section clearly elaborates and in one word says that the governor is accountable for management and use. Whether interpretation will involve other people, there is a finality. I want to draw the attention of the Committee to the fact that this Section is mandatory. There is a “shall.” There is no discretion.

The Chairperson (Sen. Musila): Very well. Proceed, Sen. (Eng.) Muriuki.

Sen. (Eng.) Muriuki: Mr. Chairman, Sir, I have two brief points by way of comment and seek comment from the very able counsel.

First, with regard to the loan and this idea that perhaps the person responsible is the CEC for Finance and not the governor; the question is who is actually borrowing? It is not the Treasury. This committee you are talking about is not the one borrowing. The one borrowing is the county government and the person in charge of it, who in fact, even if the committee sat, and said whatever they want; they would not generate a request for a loan. Even if they did, the one to borrow is the county government headed by the governor. So, you would be the one to agree or concur rather than the CEC for finance. I would wish to have your comment on that.

Secondly, there have been a number of references to the fact that the county assembly had attempted to impeach the CEC; perhaps on the same matter. The comment I would like to get from you is that, in fact, they can go ahead and impeach the CEC on the same matter and go ahead and impeach the governor on the same matter. They could, they are not exclusive.

Thirdly, is the issue of over expenditure by the county assembly. I will just comment on it so that I can hear your view. It is quite possible if you say, for discussion purposes, if you have, for example, a Kshs.400 million budget for the county assembly. It can have a shortfall on a particular vote which is say, Kshs30 million, they over expend on that. That could happen. So, they are not exclusive. The allegation here was that the money was being withheld from going to the county. The fact that there was an over expenditure on one particular item is not conclusive proof that there was no shortfall in submissions to the County Assembly because you are only over expending on one which may be Kshs10 or Kshs20 million but overall, there could be a shortfall.

The Vice Chairperson (Sen. Adan): Sen (Prof.) Lonyangapuo, is yours also related to the same or a different issue?

Sen. (Prof.) Lonyangapuo: Thank you Madam Chair. To repeat what my colleagues have said, I do not know when the Constitution elevated the governor to be equivalent to a President of a nation. We need that to be clearly understood so that we do not run away from our responsibilities. I wanted to hear from the two sides. There was this issue that came about a road split 11 times. Nobody talked about it. Is it tomorrow or now? They will respond. Another one is this loan of Kshs200 million. We wanted to see whether this approval of Treasury came, I did not see the letter circulated here because that is what they were supposed to have done. But I was further interested when he said he was told to take a loan of not more than five percent of the last audited accounts. We wanted to see a copy of the last audited accounts in order to see whether this Kshs200 million is within that or not.

Madam, Chairperson, I do not know much about Murang'a but I am interested about this controversial *Maarira* Farm. Nobody talked about. Is it a county government farm or it is something that the county assembly was getting surprised that we are talking about it. Lastly is abuse of office and gross misconduct. This violation people are talking about that everywhere the picture of the county governor is appearing even in exams. Somebody talked about it.

The Vice Chairperson (Sen. Adan): I think Sen (Prof.) Lonyangapuo we have not reached there.

Sen (Prof.) Lonyangapuo: Okay Madam Chairperson.

The Chairperson (Sen. Musila): We only deal with matters that are ready. So, no new issues like the one you are talking about.

Sen. Ong'era: Thank you. I have two questions. One is to the governor's counsel and the other one is to our distinguished witness here. I want to follow on the question asked by Sen. Billow. That follows as to whether the governor is the accountable authority or the County Finance Officer. My question follows from the provisions of Article 179 of the Constitution. Article 179 (1) (4) and (6) which say:-

(1) The executive authority of the county is vested in, and exercised by, a county executive committee.

(4) The county governor and the deputy county governor are the chief executive and deputy chief executive of the county, respectively.

(6) Members of a county executive committee are accountable to the county governor for the performance of their functions and exercise of their powers.

Mr. Chairman, Sir, I also want the counsel to bear in mind that this is the Constitution which is the Supreme law and any act that says contrary to that, then the Constitution takes precedent. I wanted to seek clarification on that. The second clarification is to our witness here. I wanted to ask the witness from the pending bills invoice that we have been given in this big document which says that the pending bills

were Kshs2.5 billion. I wanted to know if they include the loan of Kshs200 million that was borrowed under that pending bill. Is it part of it?

Secondly, when he was being re-examined, he was asked the question whether Kshs2.5 billion debt is unsustainable, and he was requested by his own counsel to give us an independent authority which will verify that comment. I did not hear what he said neither did he give us that independent authority.

Finally Chair, we have been told about the short term borrowing. From my own knowledge, what does the law say about short term borrowing? Who guarantees it? Is it the county assembly or the National Treasury?

Sen Nabwala: Thank you, Chair. Mine is to the assembly. There was an attempt by the assembly to remove the County Executive Committee Member for Finance (CEC). Who does the CEC for Finance report to? Because here, we are trying to establish the nexus and I think it is very important but through the Constitution under Article 179, that has been answered because the buck stops with the governor. That is why we have a governor heading a county government so that you are able to know what is happening concerning finances especially when there are huge contracts, tenders or money being paid out or if there is any borrowing being undertaken by the county government.

Chair, once the assembly approves, I think it still goes to the governor. He owns it; he is the one who arranges with the bank to have the facility granted to the county government.

Thank you.

Sen. Sang: Chair, throughout the presentation, it appeared to me that what the counsel for the governor focused more was particularly on distinction between the responsibilities of the governor and that of the CEC. Whereas, the other counsel mentioned references to the President, I would begin to see any provisions in law that would easily be equated to Section 30 (3) (f) with regard to the President. I am sure that might not exist. I think it is important for us to focus on the CEC and the governor without making some references to the President in issues that may not be relevant.

Chair, if you look at the document that was the response by the governor to the Speaker, in some of those requests for more documentation, I do not know how realistic this was, that they were expecting by the county assembly, for example, of documents that imposes personal obligation on the governor to provide report to the assembly on *napier grass* and *artificial insemination* crutches programme. I think it is important to be realistic. Did they expect that there would be provisions in law or in terms of policing that the county assembly should quote in asking for reports on *napier grass* and *artificial insemination*? The county executive needs to be a bit clearer in terms of their presentation.

Finally Chair, I would just quote section 30 (2) (g) which says, one of the responsibilities of the governor shall be:-

“Consider, approve and assent to bills passed by the county assembly”

There was this particular bill that we made differences to and that is the Ward Development Fund Bill. It was considered, approved by the county assembly, according to the operation al law, if the governor does not assent to it, then it becomes law within 14 days. The question - I think this is what you made reference to that, it was rejected - how did they come to that position that that Bill was rejected? Was it rejected or it is an Act of the county assembly?

Sen. Billow: Madam Vice Chairperson, on the debt of Kshs 2.5 million, I will appreciate if the counsel for the Governor explains the Kshs 2.5 billion. My understanding that the counsel for the Governor disputes that the Kshs 2.5 billion by the County Executive Committee member is incorrect and that the correct pending bills is the amount reflected in the Report of the Controller of Budget. I want to get that clarification and if so, whether you can also confirm for our recourse that the amount of the pending bill in the Report is that Kshs 1 billion is in respect of goods that have been delivered to Murang’a County Government.

The Vice Chairperson (Sen. Adan): Thank you. I will give the counsel for the Governor, 10 minutes to respond because the bulk of the questions are yours.

Mr. Browne Nathans: Madam Vice Chairperson, Mr. Mbugua will deal with it initially then Mr. Wanyama as well. The two will respond.

The Vice Chairperson (Sen. Adan): It depends on how you will divide amongst yourselves. Five minutes for the counsel for the county assembly.
Thank you.

Mr. George Ng’ang’a Mbugua: Madam Vice Chairperson, let me start with the last question because it is fresh in my mind. The correct figure - I say without any fear of contradiction - of the pending bills is the one that is contained in the Report at page 069 which shows the figure slightly above Kshs 1billion. That figure has been confirmed by a letter that I am happy the assembly acknowledged. They have written on the 7th September, 2015 appearing at page 65 which reflects the same figure that is in the Report of the Controller of Budget.

The county government is a stranger to this figure being bandied around of Kshs 2.5 billion. I am happy because the Committee observed that some of these documents are public documents. There was an attempt in re-examination to show that the cut-off period was actually June 30th. But what you have not been told - I think this is critical - is do they have the information from the executive saying that besides the figure of Kshs 1billion that is reflected in the Report of the Controller of Budget, we now communicate to you that there is an additional Kshs 1.4billion. That, you will not get from their bundle or from us. That is important because some of these factual matters we need not debate because it is for this Committee to determine whether that debt is unsustainable and

whether in fact that the so called "unsustainability" amounts to a gross violation of the law. That is for the determination of this Committee. That is on that issue.

On the issue of the Committee - Ward Development Fund, the issue was not on the Ward Development Fund Act – the reference that was done to the Ward Development Fund Act. There is already an Act that was passed by the county assembly. In fact, our complaint is not that it was not assented to by the Governor, because we have a default provision for failure to assent. If the governor sent a memorandum and he feels that memorandum is overturned by the assembly, then by an Act of the assembly, they can assent to that Bill.

Madam Vice Chairperson, our complaint is not that. The Ward Development Fund is an Act of the County Assembly of Murang'a. That was not the concern. The reference that was made on non-assent was on the budget for 2014/2015. When it was initially sent by the County Executive Committee member for Finance, it was rejected by the county assembly and a communication was made to the Governor. The Governor wrote back and said when you have denied me the amount that I have set for infrastructure and health and allocated Kshs 700million for Ward Development Fund, I will be unable to act on this budget.

So, he never assented for good reasons. You will notice there is a correspondence from the Governor to the Clerk of the Assembly. After that, because the assembly has these powers and we cannot begrudge them those powers, they Gazetted that budget. It is the current one that the honourable witness referred to and he said he cannot confirm whether in fact it is the document from the assembly. I hope I have made that clarification.

There is the issue that was raised by the Sen. Ong'era on the Constitution. Collectively, the members of the executive are answerable to the governor and I must state that the plain reading of Section 30(3) will demonstrate that there is a level of accountability on the part of the Governor. I think we have to read that in a methodological manner. Because he has his county executive team that is answerable to him, let us see first of all that these matters were escalated to this team of able persons under him and that by design, the Governor frustrated any attempt to redress them.

Madam Vice- Chairperson , that submission need not be taken to mean that we are shielding the Governor from accountability. We are only saying that before we get to the top, let us engage these people who are on a daily basis dealing with these matters. This takes me back to the various avenues of oversight that were echoed by the Senate in Chepkwony's Report. It is a public document which you will interact with. There was a deliberate remark by the Senate that the assembly should first of all engage these oversight mechanisms before they escalate. That is not to say we are shielding the governor, but we are saying let us involve them first at this level so that if you feel perhaps it is the act of the governor and you can show, that has made it impossible for the matter to be resolved at the County Executive Committee member for Finance level, then, you now go to where the buck stops. That is where we are coming from. It should not be taken to be a submission that we are refusing to be accountable. Far from it!

The other question that was raised by Sen. (Eng.) Muriuki is the issue of borrowing. This issue of borrowing is critical to understand it in its context because the way I understood Sen. (Eng.) Muriuki, yes, the county executive can make a request for approval. First of all, we need to understand that this was a short term borrowing. As a matter of fact, if you turn to page 191 of the answer because that will clear whatever may not---

Madam Vice Chairperson, if you look at the opening remarks, the motion is on short term borrowing by county government. It was not a term loan that would require the guarantee by Treasury. You will notice the wording is very deliberate. It is short term. When you interact with the provisions of Section 142 of the Public Finance and Management Act, it contemplates that short term borrowing can indeed happen with the approval of the assembly. You will notice that it comes out clearly that the assembly is conceding that it is aware that Murang'a County Government recognises that there has been continuous delay by the National Government to promptly release funds. This is from the assembly.

(Sen. (Eng.) Muriuki spoke off record)

I now want to put the question in context.

Sen. (Eng.) Muriuki: Madam Vice Chairperson, Sir, it is not the County Executive Committee member for Finance or the Treasury Committee but the County Government of Murang'a.

Mr. George Ng'ang'a Mbugua: Madam Vice Chairperson, I agree.

(Sen. (Eng.) Muriuki spoke off record)

Mr. George Ng'ang'a Mbugua: Madam Vice Chairperson, I agree entirely but the violation was not that there was a borrowing. The violation was that there was no approval so that the complaint is not that money was borrowed. Quickly, the answer you get from there is that the assembly itself approved. Yes, the executive is the one that implements and the one that borrowed but there was approval from the assembly. There was a question whether they can impeach both. We are not saying they could not---

Sen. (Eng.) Muriuki: Mr. Chairman, Sir, with all due respect I think the Counsel got both issues wrong. On the first one, I was not questioning whether the borrowing was valid or not. It is the connection between the Governor and this borrowing. It is not about whether he is right or wrong. If there is a wrong, it is the CEC member for finance who is wrong. The legal person borrowing is actually the county government, headed by the governor. If anything, the responsibility is not the treasury body of that committee. It is actually the executive and, therefore, the governor. That is what I wanted you to respond on.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, I will be gracious enough to donate two minutes---

(Sen. (Eng.) Muriuki spoke off record)

That is why I am giving Mr. Wanyama to---

The Vice Chairperson (Sen. Adan): Counsel, restrict yourself to the questions asked.

Mr. Peter Wanyama: Thank you very much for the opportunity to clarify a few things. I want to clarify just two points. One, there is no doubt at all that the governor is accountable for the use of county resources. In fact, the Council of Governors went to court on two cases and the court is very clear; that the governor is accountable for the use county resources. That is not the issue at all. The issue that is very pertinent is what we need to look at in the context of Article 181 of the Constitution. If the governor misuses public resources for whatever reason, he can be charged with a criminal offence and impeached. If you look at Article 181 of the Constitution, the grounds for impeachment of the governor have not been met at all. That is our case. We are not saying that the governor is not accountable. He is accountable, but have we met the threshold in Article 181 of the Constitution as interpreted? That is the issue we need to look at.

Secondly, on the aspect of whether the governor is equivalent to the President, I think the Constitution is very clear. Kenya has a presidential system of government. In constitutional law and theory, a presidential system of government does not mean that the governor is equal to the President. It means that the governor is elected in the same process as the President by the people and not by the county assembly or the National Assembly for the President. It also means that the process of removal--- If you look at Article 145 of the Constitution, it replicates Article 181; the grounds for impeachment. Both of them can be impeached through a political process. So, it is not our case that the governor is equal to the President or that the governor is not accountable for the use of county resources. He is accountable.

Lastly, on the issue of borrowing which we were supposed to clarify, there are structures which have been put in place by legislation to make sure that even as the governor is running the county government, there are certain structures which he must follow. For instance, there are structures in the county treasury which are contained in the Public Finance Management Act (PFMA). There is a complete and elaborate regime on how public resources are supposed to be managed.

Again, there structures in procurement which have been laid down by law to be followed. The issue for us – for purposes of impeachment - is whether the governor has done anything. If you look at Article 226 of the Constitution, if the governor wrote a letter to influence the procurement process, interfered with the purchase of land or pocketed resources from the public coffers, those are clear grounds for impeachment. For now, that is not the case. There is no nexus at all between those allegations and complaints made.

The Vice Chairperson (Sen. Adan): Thank you, Counsel. Counsel for the county assembly?

Mr. Mbuti Gathenji: Mr. Chairman, Sir, I would also request my colleagues to respect the Chair. When the time is over, it is over. I will be direct on the issue of Kshs2.5 billion, because we have the tally here. I am grateful that the Senator has come back because this is an answer to his question. On page 106 there is a figure on the bottom of the schedule of Kshs1,865,816,240.

The Chairperson (Sen. Musila): Counsel, can you go a little bit slower because we want to make reference? Which document is that?

Mr. Mbuti Gathenji: The document of the assembly, page 106; the schedule for pending invoices. The figure at the bottom is Kshs1, 865, 816, 240. If you turn to the next page 126, which is the summary of Local Purchase Orders (LPOs), if you add the two figures, you get Kshs2.5 billion. This document comes from the executive.

The Vice Chairperson (Sen. Adan): Are you done?

Mr. Mbuti Gathenji: I just wanted to say that this is the evidence of the witness before you.

The Chairperson (Sen. Musila): Counsel, you need to make that clear. The figure you added comes to Kshs2.5 billion. Can you repeat that?

Mr. Mbuti Gathenji: It is page 106 and page 126.

The Chairperson (Sen. Musila): What is the figure on page 106?

Mr. Mbuti Gathenji: The figure on page 106 is Kshs1, 865, 816, 240. That is on the pending invoices. On page 126---

The Chairperson (Sen. Musila): I want to admit that your page is different, because page 106 does not show us the figures that you are reading.

(Mr. Ng'ang'a Mbugua spoke off-record)

The Vice Chairperson (Sen. Adan): Counsel, let him finish the explanation.

Mr. Mbuti Gathenji: The figure on page 106, at the bottom---

The Chairperson (Sen. Musila): We are on page 106. Hon. Senators, have you found the figure? May be they are different because the ones we have---

Mr. Mbuti Gathenji: Mr. Chairman, Sir, I could give you the documents that I have.

The Chairperson (Sen. Musila): We want to be sure that the figures you are pointing out are correct.

Sen. Billow: The figures on the LPO on page 125 in our document---

Mr. Mbuthi Gathenji: I am very sorry. I can see there was a problem in paginating.

The Chairperson (Sen. Musila): We are on page 106. You can now read your figures.

Mr. Mbuthi Gathenji: Mr. Chairman, Sir, you have my book.

The Chairperson (Sen. Musila): I am so sorry. The problem is that you brought bundles which are different in pagination. I appreciate that they are quite huge bundles and so that can happen.

Mr. Mbuthi Gathenji: I will give you the figure again, which is, Kshs1,865,816,240. You add Kshs612---

The Chairperson (Sen. Musila): Where is that?

Mr. Mbuthi Gathenji: On page 126.

Sen. Billow: On our document it is page 125.

The Chairperson (Sen. Musila): The figure is Kshs612---

Mr. Mbuthi Gathenji: Kshs612, 171, 230. I am very sorry because of the errors in the pagination.

The Chairperson (Sen. Musila): When you add the two figures---

Mr. Mbuthi Gathenji: It comes to about Kshs2.5 billion. This document came from the executive and this is the evidence of the witness.

Sen. Billow: Mr. Chairman, Sir, if, indeed, the Kshs2.5 billion is not correct, I am just curious to know what action the Governor has taken against the CEC member for sending a list of pending bills that are incorrect. In fact, the Kshs2.5 billion is incorrect according to the Office of the County Governor.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, I will start by seeking clarification. Using this document, you will notice that you are told to add figures. I am surprised that an LPO is a debt. You can raise an LPO but what constitutes a debt? I have heard the assembly say that we should add the pending invoices. An invoice is very different from an LPO. Where is the proof that goods and services were delivered, as to constitute a debt? The assembly is telling us to add the figure with this to get about Kshs2.5 billion.

There are also monies being collected locally. Therefore, there is revenue coming in from time to time. That means that today the debt situation might be this and it becomes

different the following month. For instance, I am told – and this is something that we shall demonstrate – that it is very easy to generate locally Kshs500 million per month in the county. Whereas Kshs1 billion may appear like a huge figure, there is an issue here, unless the LPO constitutes a debt. They need to show us the LPOs and the additional invoices that were raised on account of those LPOs.

The Chairperson (Sen. Musila): Point taken.

The Vice Chairperson (Sen. Adan): Let us have the final question by Sen. Billow.

Sen. Billow: Mr. Chairman, Sir, the CEC member for finance is the person responsible for finance according to the PFM Act. We have said that many times. Here is a CEC member who came with a very elaborate list of debtors of Kshs2.5 billion and submitted it to a government institution; an independent county assembly. Now, you are saying that the Governor – and you represent him – says that, that is incorrect. On one hand, you are saying that the CEC member is responsible for finance matters but not the Governor. On the other hand, you are saying that the Governor is the final authority on matters of finance. Could you be specific on the issue of Kshs2.5 billion? What action has the Governor taken, as the head of a county government, against CEC member who, as you say, gave false figures to the county assembly, if any?

Mr. Browne Nathans: Mr. Chairman, Sir, that is the best question of the session. Frankly speaking, all these figures are subject to audit. If the executive has submitted to the assembly, which is an oversight body, I put it to the witness earlier - and you will see from the demonstration I gave on page 268 and 275 – that these teams have been working together, day in, day out. If a county assembly committee on finance, expenditure, fiscal planning, management or discipline ever wanted this issue to be interrogated, it should have summoned the same gentleman we are talking about that they have sought to impeach, to clarify these issues. You do not have run to the Senate or anywhere else; you discipline, ventilate or exhaustively deal with the matter at source.

We are awaiting an audit process because it is a constitutional office that will look at both figures and all the other figures that have been submitted. At the end of the process, we shall have an audited account report which will be submitted and tabled before the assembly. That process is ongoing and we will be hearing more evidence on that when we get into that particular component. Therefore, I cannot pre-empt what we will say on that. It is actually a live matter which is being dealt with.

The Chairperson (Sen. Musila): All right. I am sorry we interrupted the Counsel for the assembly. Let us allow him a few minutes to finish with the clarifications that have been sought by Members of the Special Committee.

Mr. Mbuti Gathenji: I think there is a consensus on one issue, which I do not want to go back to. That is the role of the Governor and the role of the CEC member, which is provided for in the Constitution. Section 30 has confirmed the position. I want to go back to what Mr. Wanyama said concerning threshold. The issue was whether or not the

crimes have been proved. We are here, having started a process. It is not until at the end of our evidence and the evidence of cross-examination that this Committee will find out the issue of threshold. Therefore, it is not right to raise matters of threshold at this point in time.

The Chairperson (Sen. Musila): Mr. Kimani, just say one word.

Mr. Peter Kimani: Mr. Chairman, Sir, I just what to point out the two summaries that my Senior, Mr. Gathenji, touched on. On pages 106 and 126 about both pending invoices and pending LPOs. Elaborate summaries are attached to them.

Responding to my colleague, Mr. Mbugua, the LPOs are indicative of amounts that have been committed and work is already executed, at least, according to the report that has been annexed.

Thank you, Mr. Chairman, Sir.

Sen. (Eng.) Muriuki: Mr. Chairman, Sir, there is an issue I raised but it was left hanging.

The Chairperson (Sen. Musila): We shall listen to Sen. (Eng.) Muriuki and then conclude on this particular witness.

Sen. (Eng.) Muriuki: Mr. Chairman, Sir, there was a serious allegation among the items on the charge, that is, 1(VI), where the county assembly alleges that the Governor undermines it by refusing or otherwise to remit money to them. The Counsel took the issue to some extent proving that because the county assembly had overspent on an item, this allegation is not true. I would like to hear the comment of the Counsel because it could happen that they overspent on one item. For example, they could have spent Kshs30 million instead of spending Kshs20 million. If the Governor declined to remit, for example, Kshs50 million or Kshs60 million, that in itself does not absolve him.

Sen. Ong'era: Mr. Chairman, Sir, I have a final question to the present distinguished witness. He told us that the total outstanding pending bills amount to Kshs2.5 billion. The Controller of Budget stated that as of 30th June, 2015, the actual pending bills for Murang'a County was roughly Kshs1 billion. Could he give us a breakdown between 30th June, 2015 and 14th August, 2015 and tell us what the pending bills were? It means that within that period, which is about one-and-a-half months, Kshs1.5 billion became a pending bill. We would like a breakdown of that.

Mr. George Ng'ang'a Mbugua: On Page 10 as paginated at the bottom, there is a sub-heading on allegation on funds requisition and transfer to the County Assembly. I have stated there that from the letter relied on by the Assembly allegedly in support of this allegation, you see the amount of Kshs 28, 779 was outstanding at closure of the year. The process of release of the money is explained in that letter. First, they have a letter and the requisition of funds.

(Technical hitch)

(The Special Committee temporarily adjourned at 4.35 p.m.)

(The Special Committee resumed)

The Chairperson (Sen. Musila): Hon. Senators, ladies and gentlemen, we have taken quite a lot of time today, but I think we understand it is because we were starting. It is our view that we must tackle more witnesses. The only caveat that I want to add is that this time round, we will be very strict with time. After the evidence has been confirmed, cross-examination by the counsel for the Governor will take strictly 20 minutes and re-examination 10 minutes. That way, we will be able to take probably three more witnesses and only have a balance of the Controller of Budget, the Auditor-General (AG), submissions and so forth.

So, if you let me, we will move that way. Now, I ask the counsel for the Assembly to invite the second witness and then we proceed the way we have agreed. Give us the name of the witness.

Mr. Mbuti Gathenji: Thank you, Mr. Chairman, Sir. I also want to take this opportunity to assure you that we have only two witnesses, except the other two who may come from the Auditor-General (AG) and the Controller of Budget.

The Chairperson (Sen. Musila): Fair enough. So, we will finish with two now.

Mr. Mbuti Gathenji: The one coming is also very brief. His name is Mr. Joseph Kimani Gitau.

The Chairperson (Sen. Musila): Karibu, Bw. Gitau. You are welcome and take a seat.

(Hon. Joseph Kimani Gitau took the oath)

Mr. Mbuti Gathenji: Please, confirm that your name is Joseph Kimani Gitau.

Hon. Joseph Kimani Gitau: Yes, Mr. Chairman Sir.

Mr. Mbuti Gathenji: Mr. Gitau, do you have a statement with you?

Hon. Joseph Kimani Gitau: Yes, Mr. Chairman, Sir, yes.

Mr. Mbuti Gathenji: We want you to confirm that that is your statement.

The Chairperson (Sen. Musila): Mr. Gitau, you have to speak up to the microphone so that you are on record.

Hon. Joseph Kimani Gitau: Yes, Mr. Chairman, Sir.

Mr. Mbuti Gathenji: Does the statement contain the evidence that you want to give before this Committee?

Hon. Joseph Kimani Gitau: Yes, Mr. Chairman, Sir. But I have two observations on No. 6 and 12 which I would like the Committee to observe as a request. There was an oversight on No. 6.

Mr. Mbuti Gathenji: Do you want to make a correction?

Hon. Joseph Kimani Gitau: Yes, I would like to make a correction. No. 6, the last paragraph is reading: “The Auditor Report” and it was a typographical error. It should be “The Controller of Budget.”

The Chairperson (Sen. Musila): So, do you want it to read “The Controller of Budget Report”?

Hon. Joseph Kimani Gitau: Yes, Mr. Chairman, Sir.

The Chairperson (Sen. Musila): Is that all for No. 6?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, that is all for No. 6.

For No. 12, I would like the first sentence to read that “Under the AI crush programme, about 600 instead of 175 crushes.” Substitute the figure 175 with 600.

On the finishing of the statement, it was not correct. It reads that “600 crushes were built across the county which cost Kshs61.69 million according to the Controller of Budget Quarterly report.”

The Chairperson (Sen. Musila): Could you go slowly on that? Is this after “counties”? Could you tell the Committee what you want added after “county”.

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, after “county”, I would like to add “which cost Kshs61.69 million according to the Controller of Budget.”
Are we together?

The Chairperson (Sen. Musila): Yes, we are together.

Hon. Joseph Kimani Gitau: “Which cost Kshs61.69 million according to the Controller of Budget, Third Quarter Report.”

That is all.

The Chairperson (Sen. Musila): Unless Counsel, you have any other issue?

Mr. Mbuthi Gathenji: No. that is all for the correction.

Mr. Gitau, would you like to table this statement before this Committee as your evidence in-chief?

Hon. Joseph Kimani Gitau: Yes, Mr. Chairman, Sir.

Mr. Mbuthi Gathenji: I wish to invite my colleague of the Committee to take over from there. Thank you.

The Chairperson (Sen. Musila): Counsel, you have 20 minutes to cross-examine the witness.

Mr. George Ng'ang'a Mbugua: Thank you, Mr. Chairman, Sir. I noticed there was attempt to allegedly correct what is in the statement. Of course, I have my own reservation whether that is permitted within the rules of this Select Committee. It is because this is evidence. I noticed that if the so called corrections are coming after he had been sworn; and this is a statement that he had made; and you notice that these are figures that are being changed; and you notice that is --- on some of the documents that we have supplied. That is just for this Committee to note.

The Chairperson (Sen. Musila): Would you like him to be sworn again?

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, you notice that he has adopted and then corrected. Perhaps for good order, he can retake the oath. I mean, this is evidence in chief.

The Chairperson (Sen. Musila): I have no problem with that. Clerk, could you serve Mr. Gitau again so that the corrections he has made are valid?

Sen. Madzayo: Mr. Chairman, Sir, once a witness has been sworn in to give evidence, there is no need of repeating the oath again.

The Chairperson (Sen. Musila): Very well. I stand advised. Again, I said strictly, this is a quasi-court process. We do not need to go to those nitty---

Mr. Browne Nathans: Honestly, these amendments go into the root of what we had prepared to respond to. So when they are coming too late in the day it is not right. For example, from 175 to 600 arising out of nowhere and we have to respond to that, they are being unfair to us. However, having said that, my learned friend is good to go. That is what we wanted the Committee to note.

You cannot, as Chairperson of the Finance Committee of the County Assembly of Murang'a, on the spot amend substantive remarks on your own statements which you made yourself. I wish you had done it earlier. You would have now brought a

supplementary statement other than doing it here. We do not know at what level you are likely to change what you have already given.

The Chairperson (Sen. Musila): Counsel, we are going to proceed. You are actually eating into your time now.

Mr. George Ng'ang'a Mbugua: Thank you, Mr. Chairman, Sir. I refer you to your statement at paragraph six. There is a bundle that I had supplied, the answer by the Governor. If you could refer to page 77; this is in respect to the allegation that an amount of Kshs247 million has been expended on account of the so called advertisement expenditure.

This is violation (iii): That in the financial year as stated in the County Government Budget Implementation Review Report---. So, they rely on the review report. The document starts from page 72, but I am referring to page 77. This is the Implementation Review Report from the office of the Controller of Budget.

The allegation is that Kshs247 million were spent on account of advertisement expenditure. Mr. witness, is that your evidence?

Hon. Joseph Kimani Gitau: No, Mr. Chairman, Sir.

Mr. George Ng'ang'a Mbugua: These are the particulars of the allegations. It is referring to (iv) which states;

“That the County Executive under the stewardship of the County Governor incurred advertisement expenditure of Kshs247 million.”
So, we pick it that, that is not your evidence.

Hon. Joseph Kimani Gitau: Mr. Chairman Sir, there is reference to that statement.

Mr. George Ng'ang'a Mbugua: Can you answer my question first? Is that the evidence? These are the charges.

Hon. Joseph Kimani Gitau: No, Mr. Chairman Sir.

Mr. George Ng'ang'a Mbugua: No?

Hon. Joseph Kimani Gitau: Yes.

Mr. George Ng'ang'a Mbugua: Thank you.

Mr. Chairman, Sir, with tremendous respect to the counsel, I do not know whether the witness is in his right frame of mind.

(Laughter)

This is because this is his affidavit. He is being questioned on his affidavit. If he is recanting the first question, then maybe he did not understand.

The Chairperson (Sen. Musila): I asked you whether you are with us. If for any reason you do not understand a question, take your time.

Sen. Madzayo: Mr. Chairman, Sir, I request the document he is being referred to because there is possibility he is saying it is not his. Let us see the document he is referring to and relate to the question properly.

Mr. George Ng'ang'a Mbugua: Sorry. This is the charge sheet. I am referring the witness that is bringing evidence to support the charge sheet, and he is recanting. That must go on record. Trying to get the witness to, perhaps, give a different answer will be subverting the course of justice.

The witness has said himself that that is not the figure. We should go on to the next question because that is already in the HANSARD. You have an allegation you will be making a finding on.

Sen. Billow: Mr. Chairman, Sir, how does page 77 relate to the statement? We are not all lawyers. We, as Senators, have farmers and fishermen here. You should explain properly for us to understand and be on the same page.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, immediately that answer was given, I did not even take on that question even to its logical conclusion. Ultimately, these are the charges. They are not framed by the Senators, but by the County Assembly. However, the witness has recanted the evidence. I did not need to go to that page to contradict him.

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, I you should protect me because---

The Chairperson (Sen. Musila): You are protected, but listen carefully. If you do not understand the question, ask that the question be repeated and we will give you all the time to respond.

Mr. Browne Nathans: Mr. Chairman, Sir, on our side, kindly let me make a professional statement. Please, guide me on this one. We have a human being, of an adult age, who has sworn an affidavit that he has presented. That is the basis upon which the charges facing his Excellency the Governor, seated next to me is facing. The man who framed the charges and swore the affidavit in God's name has come and denied the evidence.

It should not be upon us or the Senate Committee, with all tremendous respect, to know whether he is of sound mind. This is an adult who has children and a home. He also has an income because he is an MCA. He has made his statement. I urge that we proceed. It is on record. We cannot change the HANSARD. He said "no" thrice. We cannot persuade him to reconsider his sentiments.

The Chairperson (Sen. Musila): Let us hear what the witness has to say.

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, the Counsel must be having the wrong document. According to the statement I have, he is referring to the third quarter of the Controller of Budget Report. So, the report which he is referring to is not my document.

Sen. Ong'era: So as not to lose the proceedings and the substance of the question, I request that the HANSARD be reread once again as to what question was asked by counsel and what the reply was. On that basis we can decide to proceed.

The Chairperson (Sen. Musila): Mr. Gitau was making a point which I want us to listen to.

Sen. Ong'era: Mr. Chairman, Sir, you are not following the procedure right.

The Chairperson (Sen. Musila): You are out of order, Senator.

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, according to the statement that I have signed, it is stating the evidence that was supposed to be here and I have it in my book; it states the Controller of Budget report as at 31st March, 2015 and not the annual one. The one he has produced is the annual report. There is confusion there.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, the question was based on the charge sheet, for lack of a better word. I have not even gone to what the witness has stated. I have stated a very direct question to him. Is it his allegation that an amount of Kshs247 million was expended on account of advertisement and he said "that is not my evidence"; not once, but three times. That answer was sufficient for me and I needed not to ask any other question.

The Chairperson (Sen. Musila): Please, proceed Counsel Mbugua. We will look at that later in the HANSARD. We do not want to delve on that. Proceed to the next one.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, I would like to refer Mr. Gitau to paragraph ten of your statement. This is on account of the allegation at (iv) that the Governor has failed to initiate legislation on programmes such as nappier grass and Artificial Insemination (AI) Crushes.

Mr. Gitau, are you a member of the county assembly?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, yes, I am.

Mr. George Ng'ang'a Mbugua: Are you aware that your core mandate under Article 185 of the Constitution is legislation?

Hon. Joseph Kimani Gitau: Yes, I am, Mr. Chairman, Sir.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, what attempts if any did the County Assembly make to legislate over those two programmes if they considered them so important as to be in form of legislation. Was there any attempt by the Assembly to legislate on those two programmes?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, I must say that the legislation of the policies in most cases comes from the Executive. It is only when the County Assembly comes up with the programme that they can formulate a policy on it. However, when it comes from the Executive, they are the people who come up with the policy on it.

Mr. George Ng'ang'a Mbugua: Mr. Gitau, do you have a copy of the Constitution with you?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, yes I do.

Mr. George Ng'ang'a Mbugua: Mr. Gitau, kindly look at Article 185(1). What does that Article provide?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, Article 185(1) reads:-

“The legislative authority of a county is vested in and exercised by its county assembly.”

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, the legislative authority of a county is vested and exercised by its county assembly. Therefore, was there anything that could have stopped the county from initiating legislation with regards to those two programmes that were so dear to the hearts of the MCAs? Was there anything that would have stopped them from moving a private members Bill to legislate over that programme?

Hon. Joseph Kimani Gitau: No, Mr. Chairman, Sir, there was not.

Mr. George Ng'ang'a Mbugua: Mr. Gitau, kindly look at Article 183(1) and read it to me.

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, Article 183(1) reads:-

“(1) A county executive committee shall—

(a) implement county legislation;”

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, what has been given prominence by the framers of the Constitution as the first major function of the Executive Committee according to the Constitution?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, implementing county legislation has been given prominence.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, implementation of county legislation has been given prominence. Therefore, primary mandate for legislation is with

the county assembly while that of implementation lies with the County Executive. Therefore, in essence, the alleged violation is to protect the Assembly as it were or allow the Assembly to abdicate its responsibility for legislation which we have seen.

In Paragraph 12 of the statement, you have stated that there were how many AI Crushes?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, about 600.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, the 600 Crushes were spread to about how many wards or sub wards?

I take it that Murang'a County is predominantly an agricultural county whose primary mainstay is agriculture. Therefore, in terms of AI Crushes, it is a programme that is critical to the *mwananchi* in Murang'a County. Is that correct?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, that is true.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, what is the spread of AI Crushes within the county because you have amended that to a figure of 600. Do you have a document showing a figure of how many crushes there are or it is 600 flat?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, I said about 600 because we have the figure---

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, I have asked that question because he said that is wastage of public funds. Are you aware that agriculture is a fully devolved function?

Hon. Joseph Kimani Gitau: Yes, Mr. Chairman, Sir, I am aware of that.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, therefore, is the Assembly contending that the Executive should not have rolled out that programme yet agriculture is a devolved function? Is that the evidence of the Assembly that the Executive should not have rolled out the AI Crush programmes within the county?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, that is not true because we are not talking about the essence of it, but the construction of the AI Crushes.

Mr. George Ng'ang'a Mbugua: Mr. Gitau, therefore, the construction of the AI Crushes was a gross violation of the Constitution according to you? Can you tell us whether according to you, the construction of the AI Crushes to carry out artificial insemination on cows within Murang'a County was a gross violation of the Constitution?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, according to me, it was not. However, we are talking about---

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, moving to paragraph 14, the accusation by this witness is that the Governor has failed to consult on preparation of county plans, budgets, economy and financial management at the county level thereby violating the provision of Sections 87, 91 and 115 of the County Governments Act.

During budget making process, does that county Assembly play a role in the county budget process?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, yes it does.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, there is a page that I would like to refer you to. Please, turn to page 281.

The Chairperson (Sen. Musila): you have five minutes to go.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, this is an attendance sheet for a consultative programme undertaken under the behest of the executive in conjunction with the Assembly and other stakeholders.

Hon. Senator, kindly refer to the Governor's response quickly because I have less than five minutes left.

Sen. Billow: Mr. Chairman, Sir, is the cross examination not supposed to be on the document of the witness and not the Governor's response? Kindly, guide me.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, let me comment on that. The purview of cross examination is that if there is a document that is material to the matter under investigation, I can cross examine. This is because the witness is raising a very critical accusation of failure to consult and engage. This document is to show that, in fact, this witness attended a forum where there was engagement on matters of policy.

Mr. Gitau, please, turn to page 281.

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, it is not there.

Mr. George Ng'ang'a Mbugua: Sorry, Mr. Gitau. I beg your pardon. Let us go to page to 281. The pagination is at the bottom.

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, it is not there.

Mr. George Ng'ang'a Mbugua: On page 281, the first name is Mr. Joseph Kimani Gitau. Is that your name and signature confirming attendance of a seminar on Policy and Legislation?

Hon. Joseph Kimani Gitau: It is.

Mr. George Ng'ang'a Mbugua: So, that confirms engagement on matters of policy?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, we are talking about the county forum. We are not talking of---

Mr. George Ng'ang'a Mbugua: We will go to the county forum. Now let us go to what is so dear to your heart; the county forum.

The County Budget Economic Forum, at Paragraph 15, first of all, you have referred to a motion that was passed - that was ignored - for the implementation of that initiative. Can you show us that motion that the Assembly passed on the County Budget Economic Forum? The accusation is; having noted the importance of involvement of members of the public in budget making, the county assembly through its initiative passed a motion on the establishment of county budget economic forum.

First of all, before the county assembly approves the budget, does it engage members of the public which is a requirement since citizen participation is a requirement?

Hon. Joseph Kimani Gitau: It does.

Mr. George Ng'ang'a Mbugua: So, at that stage, you as the assembly engage the public. Correct?

Hon. Joseph Kimani Gitau: Yes, we do.

Mr. George Ng'ang'a Mbugua: So, regardless of whether there is this so-called economic forum, in fact, public participation is realised at the Assembly level. Is this correct?

Hon. Joseph Kimani Gitau: Yes, at the Assembly level.

Mr. George Ng'ang'a Mbugua: Thank you. Do you have the motion that you have referred to, at paragraph 15 on the establishment of the economic fora?

Hon. Joseph Kimani Gitau: I do not think it is in the attachment.

Mr. George Ng'ang'a Mbugua: Okay, let us go Paragraph 21. That, the head of county executive failed to submit to the County Assembly the supplementary budget for approval of over expenditure. First of all, let us know what this over expenditure you are talking about is and the documents to show that, in fact, there was no supplementary budget and for which financial year. Is this clear from your statement; which expenditure and financial year you are talking about?

Hon. Joseph Kimani Gitau: It is.

Mr. George Ng'ang'a Mbugua: So, which financial year? Can one tell the financial year?

Hon. Joseph Kimani Gitau: Yes, one can.

Mr. George Ng'ang'a Mbugua: Read for me paragraph 21.

Hon. Joseph Kimani Gitau: Paragraph 21 is also connected to paragraph 20. It is on the same matter.

Mr. George Ng'ang'a Mbugua: I am at paragraph 21. So, which are these items that there was expenditure that was not appropriated for in the budget? Perhaps you could point for us in that big bundle that, for instance, this animal a, b, c, d; funds were expended on it yet that was not a programme that was in the budget that you approved as the Assembly. Do you have that information? Point it for us from the bundle that you have from the Assembly.

If you do not have it, it is okay.

Hon. Joseph Kimani Gitau: We have it because we are referring to the third quarter report to the Controller of Budget.

Mr. George Ng'ang'a Mbugua: Where? You can look for it as we carry on so that---

The Chairperson (Sen. Musila): Counsel, your time is up. 20 minutes are over but I will give you another two because of that intervention we had.

Mr. George Ng'ang'a Mbugua: There is an issue you have raised at Paragraph 28, that the head of the county executive committee, the governor, has violated Article 41 of the Constitution that stipulates the rights of every person to fair labour practice through failure to remit statutory deductions of the defunct local authority which have continued to accrue interests of an amount you have stated.

First of all, before you expend, monies have to be appropriated in the budget. With respect to that item, show us where there was an appropriation of that particular item and that, the so-called debt or failure to remit was not done by the executive. Do you have a document to support that allegation?

Hon. Joseph Kimani Gitau: We have the Auditor-General's report for 2013/14.

Mr. George Ng'ang'a Mbugua: Where is it, on that particular item?

Hon. Joseph Kimani Gitau: It is there.

Mr. George Ng'ang'a Mbugua: Mr. Gitau, whether or not that item was in the budget, for instance, it has to be paid.

Hon. Joseph Kimani Gitau: Yes.

Mr. George Ng'ang'a Mbugua: Show us then where it is and evidence to show that, in fact, such a debt exists.

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, this has been reflected in this book on page 338 from evidence by the report by the Auditor-General which outlines unremitted money of statutory deductions which is the same figure, Kshs131 million, which we are saying that---

The Chairperson (Sen. Musila): Which page, Mr. Gitau?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, the Auditor-General's report, page 338.

The Chairperson (Sen. Musila): Page 338 is the cover.

Mr. George Ng'ang'a Mbugua: There is a problem with pagination because I am also not following. Which page exactly are you referring to?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, page 19 of the Auditor-General's report.

The Chairperson (Sen. Musila): Okay.

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, that is the figure we are referring to. Taking into account that the county government is aware of this money---

Mr. George Ng'ang'a Mbugua: So, let me put the question. These so-called liabilities were incurred by the defunct local authorities? Correct?

Mr. Joseph Kimani Gitau: Yes.

Mr. Ng'ang'a Mbugua: Was there an item for appropriation? I believe that if that is a debt payable, when the county assembly was approving the budget for that financial year, was there an item for appropriation of those debts? How do you as the Assembly expect that to be paid if it was not part of the budget?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, the figure which was in the budget was Kshs20 million only.

Mr. George Ng'ang'a Mbugua: Where is it in the budget?

Hon. Joseph Kimani Gitau: It is in the supplementary budget. My page is indicated as 375.

The Chairperson (Sen. Musila): Counsel that will be the last question. I am sorry, we have to stop you.

Mr. George Ng'ang'a Mbugua: Yes, that would mark the end. I wanted the witness to perhaps guide us on the budget where there was appropriation of those funds for purposes of clearing those debts which you confirm were allegedly inherited from the defunct local authorities.

Let me put it differently as you look for it.

Have all the liabilities of the defunct local authorities been transferred by the Transition Authority (TA) to the county government? Are you aware as the assembly whether those liabilities have finally been transferred?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, they have not really been transferred.

Thank you.

The Chairperson (Sen. Musila): I will stop your counsel. Now, it is the counsel for the county assembly of Murang'a to re-examine the witness.

Mr. Muthi Gathenji: Thank you Chair. I would like to do some few clarifications. In Mr. Gitau's evidence, did he say whether he had made any reference to the County Government Budget Implementation Review Report or was it the report of the Controller of Budget?

Hon. Joseph Kimani Gitau: Mr. Chairperson, Sir, we had a reference to the Controller of Budget third quarterly report which is also stating the same.

Mr. George Ng'ang'a Mbugua: Objection, Mr. Chairman, Sir.

Mr. George Ng'ang'a Mbugua: Okay, that is dangerous. Can I have the objection?

The Chairperson (Sen. Musila): Can I have order, please? Counsel, if you have an objection, please raise the objection and I give you permission so that you do not just rise and - we have to have some order here. What objection do you have on that question?

Mr. George Ng'ang'a Mbugua: Mr. Chairperson, Sir, there is a question that has been put on whether the witness has seen a report from the Controller of Budget. The answer is yes. It is there confirming the same. So, we do not know what the same is. That is really my question.

The Chairperson (Sen. Musila): Or you want an elaboration?

Mr. George Ng'ang'a Mbugua: Yes, Mr. Chairperson, Sir because I do not know where that--- this is re-examination. Why I am asking that question is in case it is meant to

change something that was said by the witness. I just wanted that clarification because he has been told that it is this document but confirming the same.

The Chairperson (Sen. Musila): Counsel for the county assembly.

Mr. Mbuti Gathenji: Mr. Chairperson, sir, I think I had not finished the question. So, if the counsel can let me finish my question, he has a basis of raising an objection. I am only asking the witness whether he had a chance to look at the County Government Budget Implementation Review Report of the Controller of Budget.

Hon. Joseph Kimani Gitau: Yes, Mr. Chairperson, Sir.

Mr. Mbuti Gathenji: Mr. Chairperson, Sir, he has actually made a correction in his statement at the controversial paragraph six.

Hon. Joseph Kimani Gitau: Mr. Chairperson, Sir, this is the one I had corrected initially on No. six which I had referred to the report on the controller of budget which was stating the third quarter, which had the same amount of money.

Mr. Mbuti Gathenji: Mr. Chairperson, Sir, I would like to ask him to look at page 77 of the blue book regarding the assembly. This is the document headed, Office of the Controller of Budget Murang'a County.

The Chairperson (Sen. Musila): This is the document on Annual County Government Budget Implementation Review Report.

Mr. Mbuti Gathenji: Mr. Chairperson, Sir, at the top it is written the Office of the Controller of Budget Murang'a County. Have you seen it?
He has seen that page 77.

Mr. George Ng'ang'a Mbugua: Mr. Chairperson, Sir, with tremendous respect, you will notice that this document had generated a lot of debate because I asked a question based on the violations you are investigating which constitutes a figure that remains the figure to date. The witness said in his evidence that that is not his evidence, and I stopped there. Now in re-examination, we are being taken—because if he had answered differently, I would have gone to this document.

The Chairperson (Sen. Musila): Can we hear his question?

Mr. Mbuti Gathenji: Mr. Chairperson, Sir, I have not asked the question, I have asked the witness to look at page 77 of the governors document which he was referred to. Can you look at that, why does it hurt him so much?

Mr. George Ng'ang'a Mbugua: Mr. Chairperson, Sir, I did not refer to that document and the HANSARD can bear me witness.

The Chairperson (Sen. Musila): I think I did caution that when you have an issue, you object then I give you the permission. Now, this kind of exchanges, we cannot---

Mr. George Ng'ang'a Mbugua: Mr. Chairperson, Sir, this is my objection, kindly. In cross-examination, the figure that is in the violation - because the rules are very clear - the rules that I got from the Senate is that they can only deal with the violation as submitted by the assembly to the Senate. The issue of the figures on advertisement arose. The evidence by this witness was that it was not his evidence, and I stopped there. Now, Mr. Gathenji, with due respect is saying that there is a figure there at page 77 that I referred the witness to. I did not. In fact, I stopped at the point where he answered in the negative and I stopped my question there. If he is allowed to take that line of questioning, it will re-open, and I will not have a chance to cross-examine this witness.

The Chairperson (Sen. Musila): This Special Committee has a right to hear that question because as of now, we have not heard the question so that we can rule whether it is out of order or it is correct. Let us hear the question first.

Mr. Browne Nathans: Mr. Chairperson, Sir, please permit me to make it clearer. I think the way my learned friend answered - forgive me, Chairman. This is really our case. Our case is this; we put the able witness, the Chairman of Finance Committee of Murang'a County Assembly - and I have worked with him. Is this his evidence and if not, he should stop there. Had he answered otherwise, my learned colleague would have gone beyond and thoroughly dealt with the subject. The prejudice we stand to suffer, His Excellency stands to suffer and the county government stands to suffer, is that my learned team - and again I want to question, you cannot go behind doors and bring out a document that we had the liberty to deal with but we could not because your witness chose not to delve into it.

Mr. Chairperson, Sir, we can go back and say, let us open that question so that he can change the answer, and we can re-examine the point but we cannot because it is a closed matter. We are begging you, Chairman, you are a senior man, and this Senate is honourable. Do not permit our learned senior to go behind and reintroduce the topic which was closed. The HANSARD speaks for itself. It is as simple as that, because the moment you entertain him to go beyond, then you also owe us- under the rules of natural justice - to discuss and interrogate the same document because we do not have the opportunity, but also the evidence. Do not permit. That is all we are begging. We have many lawyers who are working out an address to what I may be saying.

The Chairperson (Sen. Musila): Counsel, what is your comment on that?

Mr. Mbuti Gathenji: Mr. Chairman, Sir, my learned friends are completely out of order. First, I have not put any question to the witness. The only thing I have asked is to look at page 77 which he was referred to by my learned friend. If I have a question and the question is something they would like to object to, then, they object it. Let me also clarify that if I reopen any examination, they would like to say is a prejudice, you can give them a chance to clarify. I am getting very concerned about these two counsels. I

respect them but they do not seem to respect this Committee. We should wait until the Chairperson gives us a chance to speak. Now you are eating into my time.

The Chairperson (Sen. Musila): I think I have already ruled that we hear the question.

Mr. Mbuti Gathenji: Mr. Githau, you are referring to page 77 of that document. Correct?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, correct.

Mr. Mbuti Gathenji: And you have said that is not your evidence. I would like you to clarify whether in your statement that, that is not your evidence relating to the page that you have been shown first and foremost.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, with a tremendous respect, this is my objection. First of all, I want to make it known to all and sundry the tremendous respect and esteem I hold for the Members of this Special Committee. The words used by my learned senior are that we have no respect. We want to play by the rules because it has to remain a fair process.

In my interjection you heard my learned senior say, if it becomes necessary. We will not reopen that issue. Let it go on record with tremendous respect that as the Governor's team, we are taking serious exception to that question.

Mr. Chairman, Sir, now having listened to the question, he wants the witness to either retract the answer he gave or to qualify and that is not fair. We object.

Sen. Ong'era: Thank you, Mr. Chairman, Sir. I want to seek a clarification with regard to our Rule 20. By allowing that question to be reopened - this is not the question of the county assembly but the reply given by the Governor - it adduces to new evidence. By allowing the lawyer for the county assembly to use that evidence, will we not be opening or adducing to new evidence which is against our Rule 20? I need a clarification on that matter.

Sen. Madzayo: Mr. Chairman, Sir, I would like to comment on this issue.

Sen. Sang: Mr. Chairman, Sir, I think we have made this clear over and over that this is a *quasi*-judicial process. We have taken note of those issues that were raised. When the counsel put the question to the witness, we noted what the witness said. You will also note that in paragraph 6 of his evidence, the witness said something about advertising. We have noted and it will be important for us because this is an inquiry. We have noted what has taken place and we still want to get the context. Trust us, we will interrogate all these issues but we will not be comfortable if we are going to sit here on the basis of one or two small technicalities we are unable to get the picture and context of these issues.

Mr. Chairman, Sir, that will help us if we get as much information as possible to help us process this.

Mr. Browne Nathans: Mr. Chairman, Sir, allow me. I beg.

The Chairperson (Sen. Musila): No. let me allow someone else.

Mr. Browne Nathans: Mr. Chairman, Sir, thank you.

Sen. Nabwala: Mr. Chairman, Sir, I think we should play by the rules and whether the witness recanted his statement, going back to that statement is reopening afresh. It means that we will deny the chance of the other party to interrogate that statement.

Sen. Madzayo: Mr. Chairman, Sir, this is a soul searching issue where we realise that this is an allegation and in an allegation, the burden of proof does not shift. The question was asked and the witness responded. That is what shocked almost all of us. That notwithstanding, the witness still stood on his ground and, therefore, the counsel on the other side decided not to pursue it. As per the rules of justice, as much as we would like to see that everybody is accorded an opportunity when a witness says that particular point, I will not cross-examine because the witness has said no to it. I think the matter comes to rest. As much as we say technicalities should not be used, whether the other side has an opportunity, we will have an opportunity to test that line of evidence, that particular time has been surpassed. They do not have the opportunity. I do not know whether we should go into details and he answers that question or we leave it there.

The senior learned counsel does not have to rely on this one alone. There are quite a number of issues that he has gone into. He can just go into that. This one, we have taken note of whatever he said.

The Chairperson (Sen. Musila): I think we made progress by asking the counsel for the county assembly in view of what the objections we have heard and the views expressed by Members of the Committee that you move to another matter but we will take note of what both counsels have said on this matter.

Certainly, it is not a new matter and my views are that this is really a *quasi* judicial matter and we are going too much into technicalities because the matter is not new but if it is the feeling of the Committee Members that it is a new matter, we ask the counsel to move on to another item. Maybe we will revisit this later.

Sen. (Eng.) Muriuki: Mr. Chairman, Sir, this is a *quasi* judicial process and in a number of times we have stated. The Rules are there but are not like the ones in courts. If I got the counsel of the county assembly right, it is like he was bringing in something to the effect that when the witness said “no”, what he was saying “no” to is not this but it was something else. This is the way I got the counsel of the assembly. If that was the case, I think it was fair to ask the counsel what he meant so that we do not leave the matter hanging.

Sen. Billow: Mr. Chairman, Sir, I want to agree with your view also that this is not new evidence but, nonetheless, I think the bigger picture is we are investigating a number of allegations against the Governor. The evidence that this Committee will rely on does not solely constitute the evidence that will be given by the witness. There are a lot of documents and there is a lot of other information that has been provided to this Committee and there is more information that will be provided by others, including independent commissions that will come before us.

In my view, to the learned counsels from both sides, we have taken note of this matter. Let us go to something else because the point is made. We all understand what happened. Let us make progress on the other issues.

The Chairperson (Sen. Musila): Counsel for the Assembly, could you move on? We have taken note of that and you heard what we said. You can move on to another item.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, up to now, I do not understand the objection. I was making reference to a page, which was the basis of the questions that were asked by the Counsel for the Governor. I had not taken any further step to establish whether he is retracting or changing his statement in so far as the Kshs247 million were supposed to have expended on advertisement. It was important for me to establish the reason I made reference to the same page. I have not gone beyond page 77 which was referred to by Counsel. That is all I wanted to do. Before I put any other question, may be an objection will come.

The Chairperson (Sen. Musila): I do not understand.

Mr. Browne Nathans: Mr. Chairman, Sir, you have made a ruling on this matter. I am wondering why he cannot proceed to the next point.

The Chairperson (Sen. Musila): Let us proceed to the next point.

Mr. Peter Kimani: Mr. Gitau, I want to refer you to the figures that you have mentioned under Item 17.

The Chairperson (Sen. Musila): Could you put on your microphone, so that you are on record? Counsel, could you repeat your question so that it can be replied to?

Mr. Peter Kimani: Mr. Chairman, Sir, we want to let the witness get to this point. I have discovered that my colleagues have not commented on the point that I wanted to make. I do not want to re-open debate on this matter. So, it is only fair that we let the witness go.

The Chairperson (Sen. Musila): Before I release the witness, I open the floor for the Members of the Committee to seek any clarifications from the witness.

The Vice Chairperson (Sen. Adan): Mr. Chairman, Sir, my question goes to the Counsel for the Governor. In your cross-examination you referred to paragraph 14 of the witness's statement. According to my understanding of that paragraph, it purely talks about county budget and economic forum. In your argument, you referred us to page 281 of your document. Is there any relationship between that document and the witness's statement on paragraph 14? According to my understanding, paragraph 14 is on the budget and this particular one is on policy and legislation.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, I see two issues there. There is the issue on the County Budget Economic Forum, which is an issue of law. I did not want to engage the witness on that issue of law, because we will go into what the County Governments Act provides; whether there are timelines for constitution of that particular forum. But I dealt with the factual bit on public participation in preparation of plans, budgets *et cetera*. The schedule I referred the witness to is with respect to a forum that has been heard on matters of policy and legislation, which constitutes an aspect of an allegation that the assembly has against the Governor. I will deal with the County Budget and Economic Forum in my submission, because that is an issue of law. I noted that, that paragraph has two aspects. The one I referred to was strictly on how far the executive has gone to engage the various stakeholders in policy formulation and legislation. I wanted to confirm that the witness has been party to such deliberations.

Perhaps for your comfort, I will deal with the aspect of County Budget and Economic Forum as an issue of law in my submission.

That is my answer.

The Chairperson (Sen. Musila): We will take two or three Senators.

Sen. M. Kajwang: Mr. Chairman, Sir, I have two queries; one to the witness and the other to the Counsel for the Governor. First, there are various references to the Auditor-General's report in the statement by the witness. As we understand the cycle of the process that these reports go through, once the auditors are done with their audits, there is usually a process through which the executive is given an opportunity to respond and then the matters are forwarded to the Public Accounts Committee. Sometimes, sanctions or recommendations are implemented, which could be punitive and touch on the governor and his team. Could we be in a situation where as we are prosecuting this impeachment on the basis of the Auditor-General's report, the governor is also in another situation where other actions are being undertaken, in which case, he will be punished twice?

The second question goes to the Counsel for the Governor. On page 268 of your blue book; the one from the governor, there is policy generation and legislative drafting training. It has come up twice. I will not go into that because the first witness is gone. Even in the second witness raised it. What was this training because the impression I am

getting is that there is an insinuation that this could have fulfilled the requirements for public participation?

Lastly, I see a signature on page 273. It is signed: "Nathans Browne, J.P. Lead Consultant." I want to find out whether this is a coincidence or the person who delivered this training is also counsel for the governor, and whether that introduces any conflict.

The Chairperson (Sen. Musila): That is a mouthful. I ask the witness to respond first and then the counsel. Did you get the question from Sen. M. Kajwang? He can repeat if you wish.

Sen. M. Kajwang: Mr. Chairman, Sir, I will make it brief. The witness has referred to the Auditor-General's report several times in his statement. We know that the report of the Auditor-General goes through a process or cycle. Maybe, the recommendations of some of these findings are being implemented as we speak. If the recommendations are being implemented and we are now in the process of impeaching the governor, are we punishing him twice?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, I may not be aware whether the process is over or it is still on. I am not able to answer that.

Mr. Browne Nathans: Mr. Chairman, Sir, first, what Sen. M. Kajwang has said is true. Anything touching on reports, recommendations and working drafts issued and conveyed to the county government by the Auditor-General, the Director of Budget or whoever it is remains just that.

The executive then proceeds to deal with them. As the hon. Senator has said, certain sanctions and recommendations attached to the same issue are with respect to the county executive. As I said earlier and that is on record, this has not been concluded. Therefore, if we refer to the Auditor-General's report, it will not be a conclusive documentation that we could table before the Special Committee stating that, that is in so far as those matters go. So, the matters are still alive.

With respect to second and a very important one, the HANSARD will bear us out. Murang'a County Government is the only Government in the Republic – unless contradicted this evening – that has been working together as a team; both the county assembly and the county government. In fact, I draw your attention to page 248. If you look at it, you will see that all the committee members, including this gentleman - the hon. witness here is a man of honour that we have worked with. He is the Chairman of the Finance Committee.

What is our case? I want to be very clear on this. These matters could very easily have been interrogated at the county assembly level and concluded. Had the Governor been accorded the opportunity, the committees that he has been working with could easily have resolved these issues. We witnessed, together with all the county assembly committee chairmen, and they are on record. Each one of them has signed and the record is here. It was signed by everybody, including the Speaker, hon. Leonard Nduati Kariuki.

Have there been attempts to resolve these issues? Of course, there have been. This is one family that has been working together in ensuring that before a policy is formulated--- In fact, I can now speak authoritatively that Murang'a County Assembly is one of the finest assemblies of men and women, properly trained on how to perceive, conceive, formulate and, finally, craft and draft policies and legislation. That is the route we have been taking. Concerning where all these started happening and when the rain started beating us, is what we thought could have been dealt with at the county assembly level, had the Governor been accorded the opportunity.

The Chairperson (Sen. Musila): Earlier, I said that when a clarification is sought, it should be answered briefly. I hate to stop you, Counsel, because you are taking too long to respond to the clarifications.

Mr. Mbuti Gathenji: I would like to mention that what he is saying is evidence, and he is not a witness. He cannot come here and start praising Murang'a County Council and the administration of the Governor, unless he takes the stand in which we will cross-examine him. It is time he stuck to the limits.

The Chairperson (Sen. Musila): Counsel, that is a valid point.

Sen. M. Kajwang: Mr. Chairman, Sir, there was a critical question I had asked that the Counsel has not responded to. Is it a coincidence on the names or is Counsel the person who facilitated the session; in which case then, will it be proper for him to talk about it before this Special Committee?

The Chairperson (Sen. Musila): That would not require a lengthy answer.

Mr. Browne Nathans: Mr. Chairman, Sir, it is the reason I responded to it. That is true and it is a process that has been going on for the last two years and it is active. I said that it is what both the county assembly and the county executive have been doing.

The Chairperson (Sen. Musila): I think Sen. M. Kajwang wanted a specific answer. The question was whether it is you who conducted this programme or it was another person.

Mr. Browne Nathans: Mr. Chairman, Sir, it is one and the same.

The Chairperson (Sen. Musila): Fine. Let us move on.

Sen. Billow: Would it then be in order for the learned gentleman to spend a great deal of time praising a programme simply because he is the one who executed it in the county? I think that is not fair from the point of view of conflict of interest.

The Chairperson (Sen. Musila): The counsel answered that. It will be upon you to form whatever---

Sen. Billow: Can I proceed to my question?

The Chairperson (Sen. Musila): Yes, seek clarification.

Sen. Billow: On page 3, No.12 of your statement on the Artificial Insemination (AI)/crush programme, you said that Murang'a livestock farmers largely practice zero-grazing and, therefore, the construction of all those crushes is a waste of public resources and, hence, they are not being utilised. Are you suggesting that - I am not from an area where farmers practice that--- Do you mean that if you practice zero-grazing, you do not need the AI crushes?

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, that is very correct. Despite the fact that all the crushes have been constructed, not more than a-quarter of them are in operation. That means that cows are inseminated there. As a common practice, we thought that this was an outdated way of insemination. Since farmers practice zero grazing, nobody would take their cows to the crushes. You will also confirm that the Governor himself stated that whoever takes their cows to those crushes will not pay anything. Therefore, regarding that, we feel that money has, somehow, been wasted on those crushes.

Sen. Ong'era: Mr. Chairman, Sir, I have one observation and one question to ask. I just want to make an observation on a statement made; that this is a quasi-judicial process. Therefore, we may not go into the depths of our rules.

Mr. Chairman, Sir, I would like it to go on record that Parliament is a House of rules. Therefore, the Senate is a House of rules. That is why, in our wisdom, in this Committee, we saw it necessary to establish the rules of procedure for the investigation into a proposed removal from office of a governor. Therefore, I feel that we cannot escape our very own rules.

Mr. Chairman, Sir, under Paragraph 12, the witness talked about the AI Crush Programme. The witness said that about 600 crushes were built across the country. I want him to assist by telling us how much money was lost as a result of the violation or the damage that was suffered as a result of the crushes being built.

Hon. Joseph Kimani Gitau: Mr. Chairman, Sir, we are emphasising that crushes were built using Kshs61 million. However, very few people take their cows to those crushes. Whenever somebody calls a veterinary officer to inseminate a cow at home, he or she pays Kshs500 shillings. However, if they take the cows to the crushes, they do not pay anything. We have spent a lot of money to buy insemination materials. Therefore, we feel that almost the whole amount of money was, somehow, a waste of the county resources.

The Chairperson (Sen. Musila): Sen. Sang.

Sen. Sang: Mr. Chairman, I have a few specific questions to the witness. One, is that everyone of us is aware that it is possible for a county government and department within the county to make a decision that they want to subsidise, for example, Artificial

Insemination (AI) services. Are you suggesting that if a county government decides to give A.I service for free, that is actually a waste of public resources? Is that your evidence?

Secondly, still on the same, you suggest that it was a waste of public resources and you are saying that there was there was no policy. Whose responsibility is it in your understanding, to develop a policy?

Thirdly, there is Kshs61 million which was appropriated by the county. How did the Governor spend the Kshs61 million? Was it not sanctioned within the county budget? The bigger question for you would be: How did the Governor obtain the authority to spend Kshs 61 million to create and establish the crushes rather than talking about the policy?

Hon. Joseph Kimani Gitau: Mr. Chairman, I think that is very right because it is a way of subsidizing the AI services to Murang'a County residents. Initially, they were paying Kshs 1,000 and after the Governor introduced the programme, they are now paying Kshs 500. We agreed and we are saying that it is a good thing. But on the construction of crushes, is where the problem is because we did not have any policy. Although the money was in the budget, we needed a policy formulated to factor that programme.

The Chairperson (Sen. Musila): Witness, you were asked by Sen. Sang about the Kshs 61 million which you are talking about, was it in the budget and approved by the Assembly?

Hon. Joseph Kimani Gitau: Mr. Chairman, the amount was appropriated, but in the agricultural sector, we did not programme on how to use the money.

Sen. Sang: Just a follow up, Mr. Chairman. Procedurally, I understand that you needed to start with the policy, then from the policy, you get to budget. So, by the time you are doing your appropriation of the budget, you would have asked where is the policy, and if you over looked the need for a policy, then how do you get back to start blaming the county executive yet you should have asked for that policy when you went ahead to develop the budget?

Hon. Joseph Kimani Gitau: I think that one has been a challenge for the last one year or so because we actually never had a programme based budget. We started having the programme based budget from this year. In that period what happened was that if you allocated Kshs300 million for agriculture, irrigation and water, how much then we had to get the formulation of the programme to reflect the same.

The Chairperson (Sen. Musila): Are you insinuating that before the Governor did the crushes, he should have come back to you, although you had given him the money to ask: "Shall we do this and that, should we involve other projects? Are you insinuating that?"

Hon. Joseph Kimani Gitau: Actually, I am thinking that way.

(Laughter)

Because by having a lumpsum in the budget does not mean that the money can be used in any way. That is why we are saying actually the programme should have come in the Assembly for ratification and improvement.

The Chairperson (Sen. Musila): Members, I think we have exhausted with this witness. We want to thank you, Mr. Gitau, for the time you have been with us and for answering our questions. Therefore, we want to release you. Thank you so much for the cooperation you have extended to us.

Hon. Joseph Kimani Gitau: Thank you very much, Mr. Chairman.

The Chairperson (Sen. Musila): Let us go to the last witness for today from the counsel for Assembly. Do I take it that the witness you have presented here, who is Mr. Albert Irungu Gacheru, is not coming?

Mr. Mbuti Gathenji: I do not want to call that witness now but we have another witness for today.

The Chairperson (Sen. Musila): Yes, but for tomorrow.

Mr. Mbuti Githenji: I have to consult with the client and confirm that but we have a witness for today; Hon. Mary Waithera Njoroge.

The Chairperson (Sen. Musila): You are Hon. Mary Waithera Njoroge

Hon. Mary Waithera Njoroge: Yes.

The Chairman Sen. Musila: You will be sworn in by the clerk.

(Hon. Mary Waithera Njoroge took the oath)

The Chairperson (Sen. Musila): We shall proceed with the same rules as the previous witness; that is to say 20 minutes for cross-examination and 10 minutes for re-examination but first the counsel for the Assembly, you may start with your witness.

Mr. Mbuti Githenji: Thank you, Mr. Chairman. Hon. Waithera, you have confirmed that your name is Mary Waithera Njoroge?

Hon. Mary Waithera Njoroge: Yes, Mr. Chairman.

Mr. Mbuti Githenji: We have a statement before you; just confirm that, that is your statement

Hon. Mary Waithera Njoroge: The statement is mine but it has some corrections.

Mr. Mbuti Githenji: Point out the corrections you would like to make in your statement.

Hon. Mary Waithera Njoroge: The correction is on page 213, the first paragraph that is on No.48. There is a sentence that is in bold, Annex multi--- that is not supposed to be there. It was an error it was supposed to be erased.

The Chairperson (Sen. Musila): Can you, please, go slowly?

Hon. Mary Waithera Njoroge: I am talking of correction on page 13. On paragraph 48, there is a sentence there that is in bold, Annex multi---. The whole of that sentence is not supposed to be there. It is supposed to read that “it is in the bundle of documents tabled before the Senate.” That is the sentence that should be there.

Mr. George Ng’ang’a Mbugua: Sorry, I do not seem to have that page with the statement that I was supplied with . May be the Assembly would be kind enough to supply us with a copy of the same.

The Chairperson (Sen. Musila): Page 13 or 14 of the Statement, part one?

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, the one we were given and which I have goes up to page eight of fourteen but the others are not there. So, may be that was an inadvertent mistake. We could have those ---

The Chairperson (Sen. Musila): Please, provide to the counsel a complete document. Okay, you got it.

Witness, what do you want us to do? Counsel has your document now.

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, I was saying there was some correction on Paragraph 48 Page 13 of 14. As you finish up that paragraph, there is a sentence that is in bold. It is not supposed to be there. It is supposed to read, as we conclude on that paragraph: “It is in the bundle of documents tabled before the Senate.” So, let us do away with the bolded words annexed --- the whole of that and insert: “It is in the bundle of documents tabled before the Senate.”

Mr. Browne Nathans: Mr. Chairman, Sir, could we request all the witnesses from our brothers and sisters of the County Assembly to put all their documents together? The one who just came before she got here, Hon Gitau, did exactly the same. He confused us. When you amend substantial --- It is *quasi*-judicial, yes, but frankly, he who alleges must prove. So, the burden – as Sen. Madzayo said – still does not shift. However, we feel prejudiced. Now, we will be served with an entirely new document. We will take on this honourable gracious lady of Murang’a County Assembly on issues that we are yet to go through. We will really be prejudiced, with all due respect.

So, we request that you advise them to go through all their documents and then we can go through them procedurally and carefully. Or even take a break because she is a member on the spot just like Hon. Gitau did. We gave our latitude and said that it is okay and we have dealt with him honorably. The lady is now making her amendments ---

The Chairperson (Sen. Musila): Are you convinced that that deletion makes any change?

Mr. Browne Nathans: We do not know. We need a little break of 5 to 10 minutes to just be clear that we can take her on or seek an adjournment. It is because we do not know. We are just getting the document and the learned colleague has to properly just look through it. So, ---

The Chairperson (Sen. Musila): I do not want to give another adjournment.

Mr. Browne Nathans: Five minutes, perhaps, so that we can say if he is ready or not.

The Chairperson (Sen. Musila): Is it really necessary?

Mr. Mbuti Gathenji: Mr. Chairman, Sir, I need to intervene. This process, which we all asked and agreed that we must follow ---

Mr. Browne Nathans: Mr. Chairman, Sir, okay we agree that we proceed. Thank you.

Mr. Mbuti Gathenji: This process requires that when a witness is there, he or she should be completely comfortable that the document that she passed to you has been properly organised. Also, if you look at the amendments there, she is just saying that what she had referred to the document had been prepared with her. Now, it has been put in this document. So, my learned friend and respectable colleagues are making a deal out of nothing.

The Chairperson (Sen. Musila): I do not think anything ---

Sen. Madzayo: Mr. Chairman, Sir, if I may comment with tremendous respect to the learned counsel for the Governor. If I understand what the witness has said, instead of it being there as if it has been annexed here, she simply said it is annexed in the other bundle. Basically, the material facts as provided for have not changed. So, it is not an introduction of new bundles or material. It remains the same thing. I would urge my colleagues to just allow that deletion of the bold handwriting there.

Mr. Mbuti Gathenji: Could I call you Njoroge? Tell us how we should call you so that I do not seem to call you by the middle name.

Hon. Mary Waithera Njoroge: You may call me Hon. Mary Waithera Njoroge.

Mr. Mbuti Gathenji: Do you want to present this document for adoption as your evidence in this Committee?

Hon. Mary Waithera Njoroge: Yes.

Mr. Mbuti Gathenji: I would like to turn this witness to my learned friend for cross-examination.

The Chairperson (Sen. Musila): Very well. Counsel, 20 minutes for cross-examination.

Mr. Browne Nathans: Mr. Wanyama will go 10 minutes and then Mr. Ng'ang'a Mbugua another 10 minutes.

Mr. Peter Wanyama: Thank you. Very quickly, Hon. Mary Waithera Njoroge. Please, have a copy of the Constitution of the Republic of Kenya with you. Do you have it?

Hon. Mary Waithera Njoroge: No, I do not.

Mr. Peter Wanyama: Mr. Chairman, Sir, could you direct that the witness be given the Constitution?

Would you be kind enough to go to the Fourth Schedule of the Constitution?

Mr. Mbuti Gathenji: Mr. Chairman, Sir, could I have a small intervention just to clarify something?

The Chairperson (Sen. Musila): Yes.

Mr. Mbuti Gathenji: We mentioned that there are videos to be shown just to make sure that we complete our evidence from this witness and we only have the final witness tomorrow. We would like to, if this is not objectionable, have the video shown immediately after she finishes so that that forms part of her evidence.

The Chairperson (Sen. Musila): Before cross examination?

Mr. Mbuti Gathenji: Mr. Chairman, Sir, before cross-examination.

The Chairperson (Sen. Musila): If you were to show anything, it should be now before cross-examination. That should be part of evidence.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, I agree.

The Chairperson (Sen. Musila): Are we ready for that?

Mr. Browne Nathans: Mr. Chairman, Sir, any material that you wish to rely on on a matter of this magnitude, frankly, it is only fair --- We will not really stretch our requests.

We leave these matters in your hands. However, at about six o'clock we are being ambushed with a video testimony. It is not fair. We leave it at that.

The Chairperson (Sen. Musila): That request to show video evidence was made right from the beginning. So, you were aware that there would be videos. How long will they be, Counsel, if I may ask?

Mr. Mbuti Gathenji: Mr. Chairman, Sir, they are very brief.

The Chairperson (Sen. Musila): About how many minutes.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, I do not think they will go more than, may be, 10 minutes or so.

The Chairperson (Sen. Musila): That is okay. It is within the Counsel's time. I think we will bear with that. Are we ready?

Mr. Mbuti Gathenji: I would like to clarify that they are in this bundle at the end. If my learned friend wants to see, they had already been submitted.

The Chairperson (Sen. Musila): So, would you like now to start with the videos? She has already confirmed the evidence. As soon as she finishes the evidence, we will go straight to cross-examination.

(Video evidence was shown before the Committee)

Mr. Browne Nathans: Mr. Chairman, Sir, our only position is that we should know the subject matter on which this particular material is predicated. You cannot just ambush the Governor with a video whether he was in church or wherever. You must set the stage and say: "What you are about to see is on this." First of all, we ought to have subjected it to scrutiny ourselves. This is not asking too much. We are not in a hurry. We can even do that now and then resume. You are ambushing us with a video testimony here, we are only seeing the Governor's head and we do not even know what the subject matter is all about. He is the Mover of the Motion for God's sake. So, what ---

The Chairperson (Sen. Musila): Counsel, I agree with you on the part that it should be introduced to us. On the question of ambush, no it is not an ambush.

Mr. Browne Nathans: Not ambush but the content is the issue. What does it touch on?

The Chairperson (Sen. Musila): They are all included in the bundle. I do not think that there is any problem in us being told: "What you are about to see is this and that." There is no ambush.

Mr. Browne Nathans: Mr. Chairman, Sir, and how it relates to the evidence.

Mr. Mbuti Gathenji: It is unfair because in that case, it must come from the witness. I believe I really paid the re-examination-in-chief---. That is what we were debating with my learned friend here.

The Chairperson (Sen. Musila): Those screens are not working. We had to rely on this screen.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, there is a video and a transcription which has already been furnished as part of our evidence. Hon. Waithera, do these videos reveal the content of your statement?

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, there are two video clips that we are going to observe from the screen. One of them is of the Governor, Murang'a County in an event which was at Kahuhia High School. In the clip, he said he was going to work on the pavement. In the same, he has alluded also that he was going to look unto improvement of some of public primary schools to make them boarding.

That is evidence to show that he personally reiterated for those works to be done. Primary schools and the secondary schools, including Kahuhia Girls High School, are functions of the national Government.

Sen. Madzayo: Mr. Chairman, Sir, my mind is a bit disturbed on particularly--- I do not know what I am going to see there. I also do not know who took that video and whether it is certified. I do not know whether it was in a public rally or the County Assembly. The lead counsel instead of asking the witness to disclose, he should have taken materials from then witness and said, this is in relation to "a", "b", "c" and "d". We want to move faster with those clips.

Right now, what she is saying would amount again to repetition when she is being cross-examined. We do not know what is there. Maybe we could adjourn for 5 or 10 minutes to allow the witness to consult the lead counsel.

The Chairperson (Sen. Musila): Counsel, do you have any difficulties that would require and adjournment?

Mr. Mbuti Gathenji: This evidence can only be used when the witness is in the witness box. She will give us the background and then tell us how it is relevant to the statement. I cannot give you that because the rest will be in cross-examination. However, we have a certification which has been signed. It is on page 362.

The Chairperson (Sen. Musila): Let us proceed. Since there will be cross-examination of witness in relation to the video, those issues can arise.

Mr. Browne Nathans: For the record, we object to the production. However, we concede we can proceed.

Hon. Mary Waithera Njoroge: Mr. Chairman Sir, the other video clip will show us severally, many of the times that the Governor for Murang'a appeared on TV talking about the issue of Murang'a Investment Co-operative, *Shilingi kwa Shilingi* initiative, the billboards running, his portrait and also some of the things that would come up if at all the investments lands. Because it is contained here as evidence I produce to show that he was personally involved in the *Shilingi kwa Shilingi* initiative.

This initiative used a lot of money. Therefore, we wanted to show him as a person, he was really involved. Murang'a Investment Co-operative is a private entity which was being run using public money.

Mr. Mbuti Gathenji: Okay, can we see the first one then?

(Video clip showing Governor Mwangi wa Iria addressing Kahuhia Girls High School was played)

The Chairperson (Sen. Musila): That video has taken longer than we expected. You had promised that you would take five minutes. Therefore, I hope that the other one will take a shorter time.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, the other one is shorter. It is important that we watch them both.

The Chairperson (Sen. Musila): That is okay. Roll it but kindly limit time because the other one resembled watching a movie in the theatre.

(Laughter)

(Counsel for the Assembly made preparations to show a video clip)

Mr. Browne Nathans: Mr. Chairman, Sir, we wonder whether they have a video or there is a problem.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, we have no problem. It is part of our video to show substantiate what we are saying. I wonder if that is a gross violation.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, my question was whether the technical staff have any problem?

(Video clip showing an advertisement to invite participants to an investment forum in Murang'a County was played)

The Chairperson (Sen. Musila): Witness, are you satisfied with the video?

Hon. Mary Waithera Njoroge: Yes, Mr. Chairman, Sir, I am.

The Chairperson (Sen. Musila): Counsel, have you finished?

Mr. Muthi Gathenji: Mr. Chairman, Sir, that is the end of the clips. Since it is part of the evidence in her statement, I hand over to my learned friend to cross examine her.

The Chairperson (Sen. Musila): Please, proceed, Mr. Wanyama.

Mr. Peter Wanyama: Mr. Chairman, Sir, can Hon. Mary Waithera Njoroge get a copy of the Constitution. Please look at the Fourth Schedule on page 187 of the version of the Constitution published by the Government Printers. In the Fourth Schedule, Part Two, function No. 7 says that:-

“Trade development and regulation, including—

(a) markets;

(b) trade licences (excluding regulation of professions);

(c) fair trading practices;

(d) local tourism; and

(e) cooperative societies.”

For purposes of record, do you confirm that cooperative development is a function of the county government?

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, yes.

Mr. Peter Wanyama: Do you appropriate any money for the cooperative sector development in your annual appropriations budget?

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, yes.

Mr. Peter Wanyama: Have you had any discussions with the county executive committee members or with the CEC responsible about this initiative?

Hon. Mary Waithera Njoroge: Which initiative?

Mr. Peter Wanyama: About this *Shilingi kwa Shilingi* initiative. Have you had any discussions or meetings to understand what it is all about?

Hon. Mary Waithera Njoroge: No, to begin with, we did not know anything.

Mr. Peter Wanyama: You do not know anything?

Hon. Mary Waithera Njoroge: The Assembly had also not approved the same.

Mr. Peter Wanyama: That is fine. Let us go to page 280 in this big document. It is paginated in the corner. Are you there? I will request if an assistant can help her to locate very quickly so that we save on time.

Have you seen that letter? There is a letter which is addressed to the Murang'a County Assembly which you are part of. The letter is dated 27th January, 2014 and signed by the CEC Member responsible for Education, ICT and Tourism. Have you seen it?

The Chairperson (Sen. Musila): Witness, you were assisted. Do you see the letter?

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, I have seen the letter.

Mr. Peter Wanyama: It is addressed to the county assembly, right?

Hon. Mary Waithera Njoroge: Yes.

Mr. Peter Wanyama: Are you aware of the context in which this letter was issued.

Hon. Mary Waithera Njoroge: No.

Mr. Peter Wanyama: You are not aware?

Hon. Mary Waithera Njoroge: Yes.

Mr. Peter Wanyama: Let me ask you a question. What is a cooperative society?

Hon. Mary Waithera Njoroge: A cooperative society is a group that may be started by people of a common bond.

Mr. Peter Wanyama: Underline the word "people." You are saying by people---

Hon. Mary Waithera Njoroge: Of a common bond.

Mr. Peter Wanyama: Thank you, go ahead.

Hon. Mary Waithera Njoroge: With a given common interest.

Mr. Peter Wanyama: If you read the contents of this letter - and I want to take you to page four of that letter so that we summarize. The Special Committee will look at this letter and we will make our submissions on it but I want you to confirm something for the record.

Are we there? Let me read the last paragraph for you. After introducing what this *Shilingi kwa Shilingi* initiative is all about. It says:

"I can confidently say Murang'a County has captured the imagination of most Kenyans, including its citizens in the diaspora,"

So, in your testimony, is it wrong for the County Government of Murang'a to use appropriated funds to develop the cooperative sector for the people? You have confirmed it is for the people. Is it wrong?

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, in my allegation I am talking about the irregularity on the amount of money that was appropriated for the same without the approval of the County Assembly yet this is a private organisation.

Mr. Peter Wanyama: I have asked you a simple question, we will come to the irregularity. I am asking you a simple general question first: Is it wrong for the County Government of Murang'a to say : "The cooperative sector is very critical for us and therefore, we want to develop it in this manner." Then they go ahead and spend money in the budget for that sector. Is it wrong considering this is a devolved function? Just answer this before we move on to the alleged irregularities. Is it wrong for the county government to invest in the cooperative sector in that manner?

Hon. Mary Waithera Njoroge: If it has been appropriated by the Assembly, there is nothing wrong.

Mr. Peter Wanyama: there is nothing wrong?

Hon. Mary Waithera Njoroge: Yes.

Mr. Peter Wanyama: Thank you. Looking at the video, which we have just watched, what is wrong with the governor encouraging people to participate in a cooperative sector enterprise development initiative? What is wrong with the Governor inviting the manner as we have watched? Is there something wrong with that?

Hon. Mary Waithera Njoroge: By having his portrait; it leads to a lot of mischief. If only we have the advertisement reading Murang'a County and this is something that has been approved by the Assembly, I do not think there is anything wrong because cooperatives are movements that are a function of the county government.

Mr. Peter Wanyama: So, it was not wrong for the Governor to appear on television or in a forum to market the cooperative initiative for the benefit of the people? Confirm that for the record. It was not wrong, right?

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, the question is: Why the governor and not any other person? Are we bringing a kind of private advertising?

Mr. Peter Wanyama: Can you read the provisions of Article 179 of the Constitution? Are we there? Please go to sub Article (4) very quickly because of time. What does it read? We all know what it means but for the HANSARD, please read it very quickly.

Hon. Mary Waithera Njoroge: It states:-

“The county governor and the deputy county governor are the chief executive and

deputy chief executive of the county, respectively.”

Mr. Peter Wanyama: So, what is wrong for the chief executive officer of the county to market the cooperative movement in that manner? What is wrong with that?

Hon. Mary Waithera Njoroge: In my question and allegation, I am talking about the appropriation of---

Mr. Peter Wanyama: I know your question and allegation. You have shown us a video. What is wrong with the Governor appearing in that video as the chief executive officer of the county? You have confirmed it for the record. What is wrong for the governor to appear and say that? Is it a gross violation of the Constitution?

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, it is because the Murang’a Investment Cooperative had not been declared as a county entity or corporation. So, he should be there when it comes to issues touching on the county but since it had not been declared and it was private; it was not a county corporation or an entity.

Mr. Peter Wanyama: Hon. Waithera, thank you. You are now venturing on a terrain which you cannot defend yourself.

Let me ask you a question because you are there. Is there a section in law or in the Constitution which only provides that any investment from the county government will be done only through a state corporation or a county parastatal? Is there any legislation to that effect? Show me please.

Hon. Mary Waithera Njoroge: We are supposed to have---

Mr. Peter Wanyama: Is there any legislation or not that says you only must invest county funds through a state corporation at the county level or through a parastatal established at the county level? Show me that legislation.

Hon. Mary Waithera Njoroge: There has to be a legislation brought forward either by the Executive or the Assembly. In such a case, then we can agree but if the legislation is not there from the Executive or the Assembly, then it stands to be a private entity. We cannot expend money belonging to the public on it.

Mr. Peter Wanyama: But you have confirmed that it is a cooperative for the people. It is not a private entity. It is the people of Murang’a who are coming together. So, how is it a private entity? Is it a company which is controlled by very few shareholders? It is a cooperative society for the people, for Christ’s sake.

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, in the document that we have provided, about the *Shilingi kwa Shilingi*; there were so many questions from the Sacco Societies Regulatory Authority (SASRA) which is a regulatory body which deals with all the cooperatives.

Mr. Peter Wanyama: We are not discussing about regulatory issues. We are discussing whether it is wrong---

Hon. Mary Waithera Njoroge: The common bond for the Murang'a Investment is the one that was in question. It was questioned even by the Capital Markets Authority (CMA). They wrote several letters. So, we cannot say this is a common bond when we talk of roots for all those who have roots in Murang'a.

Mr. Peter Wanyama: Thank you. There is a document here on the motion which you moved; do you have it? With the permission of the Chair, can the Clerk show her the motion that was moved? While we are it, what do you understand by the definition of a crime?

Hon. Mary Waithera Njoroge: Come again.

Mr. Peter Wanyama: What is a crime? It is on page six of the impeachment motion that you moved. Yes, the document which contains the accusation and the charge sheet. Perhaps our clerk can confirm for us.

Hon. Mary Waithera Njoroge: Chairman, I think I am going to restrain myself to only what is contained in my statement, because that one was done by somebody else. Let me restrain myself to whatever is contained in my statement.

Mr. Peter Wanyama: You moved the Motion Hon.Mary Waithera, right? Are you the one who moved the Motion?

Hon. Mary Waithera Njoroge: I was the mover of the Motion.

Mr. Peter Wanyama: Now, if you go to page six of that Motion which you moved, there is something which you charged the governor with; that is crimes under national law. We want to interrogate that for the benefit of this Special Committee. You moved and accused the governor of committing crimes under national law as a ground of violation under Article 181 of the Constitution. That is what we are looking at here.

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, I moved the Motion. But we constituted this Motion when we were all and I took the responsibility of moving the Motion because the Motion can only be moved by one person. Again, that question was answered by somebody else.

Mr. Peter Wanyama: Hon. Waithera, are you a stranger to these allegations?

Hon. Mary Waithera Njoroge: I am not a stranger.

Mr. Peter Wanyama: Did you move this Motion?

Hon. Mary Waithera Njoroge: I moved it.

Mr. Peter Wanyama: Were you moving the Motion from a point of ignorance, because you are now saying that you do not want to answer questions relating to the Motion. I want to ask you specific questions about your own Motion; the Motion which you diligently, in your own sense, moved at the county assembly. I want to ask you questions about that Motion. Are you comfortable? If you are not, say you are not comfortable and I will step you down.

The Chairperson (Sen. Musila): Witness, this is your Motion, and, therefore, what you are being asked is relevant.

Hon. Mary Waithera Njoroge: Chairman, Sir, when we talk about crimes under national law---

Mr. Peter Wanyama: What do you understand by a crime?

Hon. Mary Waithera Njoroge: Crime is an irregularity that has been committed by someone which is straight forward. It is whatever has been misused or whatever one was not able to do.

Mr. Peter Wanyama: Thank you, very much.

The Chairperson (Sen. Musila): Mr. Wanyama you have finished your time, unless you want to eat into your friend's time.

Mr. Peter Wanyama: What I wanted to really conclude, because it is a very important process. We want to focus on the charges and you know the governor is accused of committing a crime. I want it to go on record for the Committee to make the conclusion that there was no crime committed. That is absolutely critical from the governor's defense. If there is time, then I will go very quickly.

The Chairperson (Sen. Musila): But you will be eating into your friend's time. We are going to be strict on 20 minutes; you have already finished 10 minutes.

Mr. Peter Wanyama: Thank you very much, Mr. Chairman, Sir, for that clarification. I want to give one example to illustrate the point. You have talked about crime under national law, and then you have said "violation of Article 212 of the Constitution and Section 58 of the Public Finance Management Act (PFM)". Let us look at section 58 of the PFM. I know you are not a lawyer and, so, I will not push you to the limit on whether it is a crime or not. What I want you to confirm from your own perspective is whether Section 58 of the PFM Act in your own view as the Hon. MCA and the mover of this Motion, in your view, the governor has been accused of committing a crime. Does that section disclose a crime?

Hon. Mary Waithera Njoroge: It is a crime because this money that was borrowed from Kenya Commercial Bank (KCB) ---

Mr. Peter Wanyama: Okay, thank you. Are you aware that the governor has been charged in a court of law or investigated by the CID, DPP or charged in a court of law, are you aware whether that has happened? If you are not aware, just say you are not, for this alleged crime that you said the governor committed.

Hon. Mary Waithera Njoroge: I am not aware.

Mr. Peter Wanyama: Thank you very much. I will take that to be your answer. Do you understand the meaning of the word “gross”?

Hon. Mary Waithera Njoroge: Yes, I understand.

Mr. Peter Wanyama: What is “gross” in your view?

Hon. Mary Waithera Njoroge: It is an irregularity that has been repeated.

Mr. Peter Wanyama: Chair, I just want to finish that part by showing the witness a decision and to go on record, that there is a report of this Special Committee but now in the matter of impeachment of Prof. Chepkwony of Kericho. It is something to go on record, there is a report here, and it can be shared to the witness. I made several copies. There is something which the Committee has on record, anyway.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, I had a little concern. Unless my learned friend is clear what he wants to put to this witness, the issue of judicial decisions in law, is she really the competent witness to answer? May be, we need to have an advance brief of what he intends to do on that one.

Mr. Peter Wanyama: Mr. Chairman, Sir, I just want to confirm something for the record. This witness is apparently the most competent witness from the county assembly to the extent that they allowed her to move the Motion. Therefore, when she was moving this Motion and convincing Members to vote on actions which are allegedly gross violation of the Constitution, at the very least, she must in her mind have understood the meaning of the word “gross”. For me, what I want to do is to deeply get it on record; a very simple statement then we move on.

The Chairperson (Sen. Musila): But the question is the relevance of this document you are distributing to us and they are not part of the bundle?

Mr. Peter Wanyama: It is an authority. It is not a bundle, it is a decision which in law we say that you can take judicial notice of.

The Chairperson (Sen. Musila): Yes, you can quote it but you cannot cross-examine the witness over it. Can you?

Mr. Peter Wanyama: No. It is a decision which I just want something to go on record. Anyway, let me go back to the document itself.

Sen. Madzayo: Chairman, while we appreciate the arguments of the cross-examination of the learned counsel, I was of the view that at this particular stage, laying down authorities which we are not being given the benefit, we do not know whether you have enough copies to give us so that we are able to now see whether those ---

Mr. Peter Wanyama: Thank you, I will abandon that and proceed on. We will raise it when we are submitting. I will quickly proceed.

Mr. Browne Nathans: Mr. Chairman, Sir, the only point he wanted to make is just to confirm because she has defined what gross in her view is. She is the mover; she is the one who has delivered the entire county executive here.

Mr. Peter Wanyama: Thank you Chair. Going back to your Motion, what I want to ask you again is that, looking at your bundle, do you have any documentary evidence to support, for instance, the allegation that the county governor undermined the county assembly? If you do not have you just say you do not.

Hon. Mary Waithera Njoroge: Whatever is provided were the requisitions that are usually done as contained in this document, and I think there is somebody who handled that properly.

Mr. Peter Wanyama: What I am asking you is, do you have any letter, correspondence or any phone call transcripts which say the governor undermined the county assembly? Just a simple question.

Second, do you have any evidence to demonstrate that the governor personally benefited from these alleged funds which were allegedly lost, for instance, the Kshs28 million which was invested in the cooperative sector?

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, from the law that we have and from the County Government law that we have, the governor is accountable for all the management and the use of the county resources and he is the chief executive in that. That is why he has been bestowed with that responsibility.

The Chairperson (Sen. Musila): We are done with your side. Now I want to go to re-examination.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, with tremendous respect, I thought because this gentle lady was the mover of that motion---

The Chairperson (Sen. Musila): But counsel, we gave you 20 minutes and you decided to give counsel Wanyama 10 minutes but he has done 20 minutes. Surely, we have got to

be strict with the time but I will give you two minutes. You have asked me to be gracious and we are finishing. I want to be gracious. Two minutes strictly.

Mr. George Ng'ang'a Mbugua: *Mheshimiwa*, I presume that you are not accusing the Governor of supporting Kahuhia Girls from that tape that we have just watched. I hope it is not the case of the assembly that it is wrong for the county government to support the initiative we have just seen in Kahuhia Girls. I take it that, that is not the complaint by the assembly. Correct?

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, as much as possible ours is for the money bestowed to the county government to be used solely for the devolved functions.

Mr. George Ng'ang'a Mbugua: Are you aware of a provision in the Constitution on cooperation between the two levels of the government -Article 6 of the Constitution - between National Government and county government.? Are you aware that indeed they are expected to cooperate in carrying out their mandate?

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, I am aware.

Mr. George Ng'ang'a Mbugua: On the issue of “*shilingi kwa shilingi*” has the assembly dealt with that cooperative society and come up with a report with recommendations about it? Are you aware if the assembly has done that?

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, the assembly did that but the recommendations that were to continue as from when the commission report was tabled.

Mr. George Ng'ang'a Mbugua: I refer you to your bundle. There is one paragraph---

The Chairperson (Sen. Musila): That will be your last reference counsel.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, at 213. Very kindly Chairman. This is page 213 of the big bundle where you have stated, this is the report by the assembly. *Mheshimiwa* this report was prepared on 8th February, 2014. Was there a recommendation in this report that the Governor should be impeached because the Governor was unable to make--Was impeachment of the Governor a recommendation by the assembly on the report that the assembly prepared on 8th February, 2014. Are you aware whether there was such a recommendation?

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, the recommendation from this report was from PIC and PAC, to push for the Auditor-General to bring the money that was misappropriated.

Mr. George Ng'ang'a Mbugua: Excuse me. This Report was tabled on 8th February, 2014. It now constitutes a motion for removal more than a year after. This was 8th February, 2014. My question is, was there a recommendation by the assembly, because it

is the one that prepared this Report that the finding of this Report does constitute a ground for removal of the Governor. Was the recommendation to that effect?

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, it does not matter how old an irregularity is but it is as fresh as it was when it was before a House.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, just the last one if you do not mind. It is the last question. I will read for you paragraph 213. This is what the assembly said:-

“The Commission appreciate the nobility of the idea and the vision behind the formation of MIC and its possible huge impact in the Murang'a County---”

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, I do not know where he is reading?

The Chairperson (Sen. Musila): Which paragraph?

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, paragraph 2. I do not know whether we are with the honourable Senators. It says:-

“It therefore recommends that if the county government is forming a county corporation pursuant to Section 182, such corporation will provide a solid legal platform.”

There was a recommendation for the formation of a county corporation. Correct? Which is a posited recommendation but the assembly in its own report appreciate that this was indeed a very noble idea that sought to empower the people of Murang'a. Is that what the assembly found in that particular paragraph?

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, the matter in question is about the money that was used in a private entity.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, the last one.

The Chairperson (Sen. Musila): No counsel you have said the last and on this one. I rule you out of order. Counsel for the assembly, re-examination please?

Mr. Mbuti Gathenji: Mr. Chairman, Sir, just one question on '*shilingi kwa shilingi.*' Was there a recommendation that more money should be used on that project?

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, yes, there was that recommendation.

Mr. Mbuti Gathenji: You have been talking about it being private. Was that the reason that no more money from the county should be committed to the budget entity?

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, yes.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, I do not have any other question. I will ask my friend if he has more questions.

The Chairperson (Sen. Musila): I now ask the distinguished Senators if they need any clarifications.

Sen. Billow: Mr. Chairman, Sir, Thank you. I just want to clarify from the witness that the concern about this scheme of '*shilingi kwa shilingi*.' I can see from your statement that the assembly did a lot of work on it. Is the concern that it was not a public entity and therefore public funds were being used on private entities? Is that the concern?

Hon. Mary Waihera Njoroge: Mr. Chairman, Sir, yes.

Sen. Billow: Did the assembly in terms of the implementation of its recommendation in the Report that was adopted by the House. Did you pursue the implementation of your recommendation? For example the one that your counsel asked about ensuring that no more funds are spend? Did the assembly follow up to ensure that your recommendation on that program is effected by the county executive?

Hon. Mary Waihera Njoroge: Mr. Chairman, Sir, yes, we followed but they still continued on the same, meaning our recommendations were ignored. We learnt that by the time the Commission was learning, the Chief Executive Committee member then, Hon. Waweru brought a letter committing that the MIC had used Kshs 22million and because there was a recommendation to PIC and PAC committee to continue with the audit on how much the MIC had used through the Auditor-General, whatever was revealed by the Auditor-General was Kshs 28million. So, they continued and there was more of Kshs 6million on top.

Mr. Browne Nathans: Mr. Chairman, Sir, yes, honestly the lady cannot refer to a letter from the Hon. Waweru. We have not known of him neither mentioned here. Let her table it. It was not referred to.

Mr. Mbuti Gathenji: Is it in the bundle?

Hon. Mary Waihera Njoroge: Mr. Chairman, Sir, yes, it is contained there in the '*shilingi kwa shilingi*' repor. At page 291, there is a letter to address it to the county assembly.

The Chairperson (Sen. Musila): Page 291 of the big bundle?

Hon. Mary Waihera Njoroge: Mr. Chairman, Sir, yes, I do not know if the paging is tallying but there is a letter at page 291 from the Murang'a County Government on the County Executive Committee member's response.

The Chairperson (Sen. Musila): Our page here does not tally. It is in the bundle and the clerks will look at it.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, there may be some bad numbering. It is 279 in my bundle. She can confirm whether that is the letter. She was referred to by my learned friend, the Counsel for the Governor.

The Chairperson (Sen. Musila): This is probably 280. When is the letter dated? Is it the one on 27th, January?

Mr. Mbuti Gathenji: Sorry, I understand it is not the one.

The Chairperson (Sen. Musila): We want you to confirm for the record that it is the one. You can pick this one and show the witness whether it is the one. Is it the one?

Mr. George Ng'ang'a Mbugua: If I understood Sen. Kerrow's question, it was whether after the recommendation, more money was expended. The letter the witness is referring to is dated 27th January, 2014. The report that the assembly gave and made recommendation is in February 2014; so that we get things in context.

Hon. Mary Waihera Njoroge: Mr. Chairman, Sir, I am talking about a letter dated 27th January, 2014. That letter has page 3 of 4. Before you get to "justification," there is a sentence that reads:

"Yes, the county has spent money on the Murang'a Investment Co-operative Society; totalling Kshs22 million on promotion and member mobilization."

The Chairperson (Sen. Musila): That is the letter we have. That question was on Sen. Billow.

Hon. Mary Waihera Njoroge: On the last page, 4 of 4, it is signed by hon. David Wakaba Waweru.

Sen. Billow: Mr. Chairman, Sir, I have not finished.

The Chairperson (Sen. Musila): Proceed.

Sen. Billow: On the same issue, could the Counsel for the Governor - for the record of this Committee - state categorically that the Murang'a Investment Co-operative Society is indeed a public corporation owned by the County Government of Murang'a? If so, are you able to provide evidence on that?

Mr. George Ng'ang'a Mbugua: As we have watched from that clip, one of the things that came out very clearly is that this is an initiative that belongs to the people of Murang'a. I am sure the Committee will have a chance to review that clip again. It is not limited to a particular segment of Murang'a County.

Sen. Billow: Is it a county government corporation?

Mr. George Ng'ang'a Mbugua: The structure of that entity is that it is a co-operative society that was initiated by the county government.

Sen. Billow: There are many co-operative societies in Murang'a. I am sure the county government did not go out of its way to give all of them money. Is this particular one that the government spent substantive amount of money an entity in which the county government has shares or is it like any other cooperative entity in Murang'a?

Mr. George Ng'ang'a Mbugua: It is a cooperative society. First of all, it was conceived and promoted by the county government. Yes, it is an entity that belongs to the county government. It may not be a county corporation, and this is the distinction we must get. My reading of Section 6 of the County Governments Act is that even if the structure does not take the shape of a county corporation, it can be supported by the county government.

Sen. Billow: *Wakili*, I understand that the county governments can support institutions. The issue here is: Is this co-operative society actually a public entity in which public funds can be spent? There are so many cooperative societies. Why are you insisting that this is a public entity on which you have to spend money? You can push for cooperative societies to be started, but is it a public entity?

Mr. George Ng'ang'a Mbugua: It is, in the understanding of the county government. That is why it is deliberately supporting this to promote the co-operative movement. The idea the county government sought to achieve under the devolved function of co-operatives would be achieved through Murang'a Cooperative Investments Society. You have seen even the objectives; in fact, the bylaws are part of the bundles.

According to the county government, the structures that were set up at that time were that it was for a public purpose and it was a public entity that was under the control of the county government. There were some recommendations on restructuring, and perhaps, this is what is critical. If you look at page 71, in the governor's blue bundle, there is actually an advertiser's announcement on this particular co-operative. It says that this was pursuant to the recommendation. The assembly felt that what needed to be worked on is restructuring; the first board disbanding. You will notice that the restructuring was informed by the recommendation of Murang'a County Assembly. It is important to note that *Shilingi Kwa Shilingi* as it is now, has fully complied with those recommendations. This initiative is still there. In fact, the savings currently are in excess of Kshs140 million. The county government wants to encourage savings in this particular initiative, so that people can access credit and get empowered to invest.

Sen. Billow: How many co-operative societies are in Murang'a County?

Mr. George Ng'ang'a Mbugua: There are numerous.

Sen. Billow: The concern is whether this thing is not a public entity, and co-operatives societies are not public entities. The individual members who subscribe are the ones who become owners and take the profit. Could you please state clearly whether this is not a

public entity, but you spent money to promote that co-operative society? It is good to be very clear, so that we do not take a lot of time on that.

Mr. George Ng'ang'a Mbugua: This is where we are not understanding each other. It is a public entity to the extent that it is open for membership by members of the public.

The Chairperson (Sen. Musila): Just like the Murang'a Co-operative Union or any other.

(Mr. Wanyama spoke off record)

This is now time for Members of the Special Committee to seek clarification seeking clarification. We have not opened it for---

Sen. Billow: Mr. Chairman, Sir, with all due respect to the learned colleagues, the point I have raised is very simple. We know what "public entity" means. That is not the meaning that we are looking at. Is this entity owned by the county government? No, it is owned by co-operative societies and individuals. If it is owned by co-operative societies and individuals, that is what we need to say and that is where it stops. The rest is for us to decide on the issues that have been raised in the impeachment.

Mr. Peter Wanyama: Mr. Chairman, Sir, with your permission, allow me to clarify a solution which is there in the law. The funds in question were budgeted for. If you look at the Public Procurement and Disposal Act, the legal regime which defines what a public entity is--- I can tell you for a fact that there are more than 50 cases in court on what is the meaning of a public entity. For instance, people argue whether Kenya Pipeline Company (KPC) is a public entity, and there are divisions on that. But here, the legal framework is crystal clear. Clause 2 of the Public Procurement and Disposals Act states:-

“Co-operative society established under the Co-operative Societies Act.”

If you look at the registration instruments and the concerns which were raised Capital Market Authority (CMA) but all of them had been met. Therefore, that is an entity which can perfectly be supported by---

Sen. Billow: Mr. Chairman, Sir, with all due respect, the definitions provided in the Public Procurement and Disposals Act are specific for the purposes of procurement and disposals of public entities. We are not looking at the definition or the structure and ownership of an entity. I think it is completely a difference issue.

Mr. Chairman, Sir, my last point before I hand over is on education. I want to know from the legal counsel: under Article 187, if you went into an agreement, is there an agreement or a memorandum of understanding signed between the county government and the national Government allowing you to spend money on the construction at the school? If there is, could you table it?

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, there is no agreement. However, I must state that there is the county strategic paper that prioritised education, which even MCAs were involved in its formulation. The residents of Murang'a feel quite strongly that as the county government goes about to carry out its mandate, if it does not address matters education then, it will not be addressing matters that are key to them. I must remind this Special Committee that there is a level of co-operation. For instance, the other day some cancer or surgical equipment generated a lot of heat. In my view, the fact that a function is devolved does not necessarily make it illegal if a county government carries it out. My reading of the Constitution is that there is mutual cooperation; so that there is no agreement, but under that co-operation aspect, the county government was well within its rights. In fact, one of the things that came out from that clip is that there is a bursary bill that was actually sent to the Assembly. I heard the Governor say that. So, the assembly is part and parcel of the initiative to empower girls and generally promote education within Murang'a County.

The Chairperson (Sen. Musila): I think that answer is enough.

Sen. Madzayo: Mr. Chairman, Sir, how does the co-operative society or whatever money that was put to the *Shilingi Kwa Shilingi* initiative benefit the county government? How is the county government benefitting from the money that is not within its control?

Sen. Sang: Mr. Chairman, Sir, allow me to seek further clarification in line to what Sen. Madzayo has asked. If you look at Page 215 of the bundle of documents from the county assembly, there is a document resembling minutes of a meeting of the Murang'a Investments Cooperative Society county steering committee. In attendance was the Governor, hon. George Kamau (finance), David Waweru ("minister" for education and ICT), Mr. Kairu (head of supply chain), Ms. Jane Mbuthia of Top Image Media and the sixth person is Moses Kuria of the Brandmaster Agency Ltd. Then, there are apologies. You expect that the minutes would tell us who the members of the society are. In normal practice of writing minutes, you will have members and, maybe, members in attendance. Who are the members? In this case, how much shares does the Governor, the "minister" for finance and each of the six members in attendance have in the cooperative society?

Minute 2/12 on marketing says:-

"The meeting agreed to conduct Phase Two of the above in terms of marketing, advertisements in radio and television"---

It is clear that the members in this meeting are already conducting business of even making decisions on how to run the cooperative. Part of the membership of the committee is a Top Image Media person. That means that, that is one of the institutions that were later given the contract to market. How possible is it that you could have suppliers or possible suppliers sitting in a meeting to market the cooperative and make a decision on the need to procure X, Y and Z and they proceed to provide the services? What kind of a meeting was this?

The Chairperson (Sen. Musila): Let us have the questions answered. We will then listen to the three Senators and conclude.

Questions by Sen. Sang and Sen. Madzayo were directed to the Counsel for the Governor.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, before my colleague talks, we do not want to be left out. We had a comment on what Sen. Billow raised. Since we have an interest, it is important that you give us a chance to put our intervention before it is lost.

The Chairperson (Sen. Musila): The Chair recognises that. Would you like to have a go now or after the Counsel?

Mr. Mbuti Gathenji: I would like to go now because it could be lost.

The Chairperson (Sen. Musila): Go ahead.

Mr. Mbuti Gathenji: First and foremost, the question by the hon. Senator was not answered. He asked about the membership of the county in the *Shilingi Kwa Shilingi* initiative. I would like to draw your attention to the fact that this is Murang'a Investment Cooperative Society Limited. The society is not open and membership is also provided for. You will not find any document from the Governor showing that Murang'a Investment Cooperative Society was a member. On the contrary, you will see the promoters and we have them.

I would like to mention that the certificate on Page 224 of this document---. Membership is provided for on Page 229; the original members who signed the application for registration. I have the original members who signed for registration. That is on Page 228 of the same document. I can read their names if you allow me.

The Chairperson (Sen. Musila): Go ahead.

Mr. Mbuti Gathenji: We have Peter K. Ngugi, businessman; Kirimi Kamau, Wa Muchiri Kirubi, Carolyn Njeri, Anthony Mwangi, Benson K. Wairagwa – I think this is the gentleman seated next to me – Benson Githinji, Peter Juma Kuria, Eng. Njoroge Mwangi and Waithaka Ngaruiya. They are all businesspersons.

Murang'a County is not indicated as a member. I would like to see the document showing that it is a member of this cooperative.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, the answer to that is contained in the advertisement that was carried out, pursuant to the recommendations of the assembly. In fact, you will notice, in this advertisement it is very clear that the cooperative has thousands of members. If a list of members of this particular cooperative society is required, it can be provided because the impression being created is that it is owned by four people. Of course, there was a challenge with the structure at inception. That is even

admitted and it is a finding that was made by the assembly. The assembly observed that there be restructuring. This advert confirms that the executive went ahead, in compliance with this recommendation, to restructure. Therefore, it was not wound up; the membership continues to grow.

The objective that was set at inception is still being realized; which is to empower members, so that it is not a secretive entity run by two, three or four individuals. The totality of the documents that we have confirm that this entity was open for public membership as opposed to a select few. The challenges were there, in fact, that is one of the things you will see in the Auditor General's Report. What these challenges did inform is a process of restructuring because they said the idea is noble but let it be restructured, no wonder you will notice that they never recommended at the Assembly that, that particular investment or cooperative be wound up all together. There was never such a recommendation by them.

The Chairperson (Sen. Musila): But, counsel, Mr. Billow's question was---

Sen. Billow: That is not necessary because it is private. Why would they recommend a private a co-operative to be wound up and they have no mandate to shut down a private co-operative.

The Chairperson (Sen. Musila): Sen. Billow's question was: "Is it for Murang'a or other people? It is not necessarily for citizens of Murang'a because there are other cooperative societies where membership is for citizens of Murang'a. That is not the issue. The issue is *Shilingi kwa shilingi* - is it for the public or is it a private entity? If it is private, why do you invest public money in a private institution?"

Sen. (Eng.) Muriuki: Mr. Chairman, Sir, what I can see is that when this programme was started, the County Assembly did, in fact, support it and for them to support it, they must have looked through the document. I do not think they just voted for it. I imagine that somebody must have presented it, they looked at it and then they thought it is viable. Somewhere along the way, they changed their minds due to various reasons that I do not want to delve into.

Looking at page 215 of this document, and I think that is the one the counsel is reading; you have the membership in a cooperative society, and the ones who are promoting are not necessarily the membership because these are the promoters. You start with the promoters and then other people will join you, but when you look a bit further, you realize that this is an ordinary cooperative society. What we are up against is not the "publicness" of this cooperative, and I do not think even the counsel is actually purporting so. All they are saying is that every SACCO is a public entity. It is only a question of its wide coverage. So, the question before us is whether the Governor of Murang'a County and his government or for that matter, any other governor, is in order to use public funds which we send to county governments on any SACCO. I think this is really the issue so that we do not dwell too much on technicalities which may not help us.

The Chairperson (Sen. Musila): Precisely that is the question. I think we have reached a point we got whatever answer. For the record, we will deal with it when it comes to submissions.

Mr. Brownie Nathans: Mr. Chairman, just before we close on this one, with tremendous respect we wanted to be clear first about the minutes that have just been read out. They cannot be authenticated and they have not been duly signed as provided for by the Assembly. We do not even know where they came from. In any event, that was before the inception. I agree with you, Sen.(Eng.) Muriuki, that the recommendation be read out so that the HANSARD can bear us out on this one. The Commission that was established by the Assembly, and if you go by what the over sighting agency has said, they appreciate the nobility of the idea and vision behind the formation of this agency and its possible huge impact in the economic growth to Murang'a County. You cannot go against this from the Assembly, which is the overseeing agency. It therefore recommends that the County Government considers forming a county corporation pursuant to Section 192 of the PFM Act which will provide a legal and solid platform to accommodate entities such as MIC and facilitate public/private partnership.

I think this is the point that has been lost completely. A public private partnership is a drive that we are all alive to as a republic on various economic and development projects between the County Government and private entities where appropriate. There is nothing wrong with that. It is on record that, that is what the Assembly said and then the County Executive went ahead to implement the resolutions of the Assembly. Unless further information is required and we are prepared to come with that at your convenience but we will put this in our submissions.

The Chairperson (Sen. Musila): Was Sen. Sang's question answered?

Mr. Brownie Nathans: Mr. Chairman, these are not minutes. If you look at them, you will realise that they are not signed and they cannot be authenticated. There is no source just like we talked about the other documentation that came through. You can fling around documents and say this or that but unless you have certification or authentication, anybody can bundle around documents and we really should hold that against him.

Sen. Nabwala: Thank you, Mr, Chairman. I would like to know why the County Government of Murang'a is not a member of the SACCO so that they can get dividends at the end of the year since they have put in Kshs22 million.

Mr. Brownie Nathan: To dispose of that question quickly, Mr. Chairman, Sir, the members of that SACCO are members of the County of Murang'a.

Sen. (Prof.) Lonyangapuo: Mr. Chairman, Members are asking very valid questions. The Murang'a Investment Society Limited is a noble idea. We are not disputing it but the question is why you decided to spend Kshsh28 million from a public fund on a private entity. The mere fact that because members are public is not good reason to public funds from the County Treasury on this particular SACCO. I am sure you have several other

cooperatives in Murang'a County. Is this an umbrella body of all the SACCOs in the county? If you wanted to pursue this to look like a couple of corporation which can give directions on investment in the entire county, you must come up with procedures on how that money can be obtained legally and that will involve you taking the proposals to the County Assembly for approval. But if you spend the money without that authorisation, this will be a very serious audit query.

Lastly, on the same, you referred us to the Fourth Schedule and read the functions which have been devolved and those that have not been devolved. The functions which have not been devolved include universities, tertiary education, institutions of high learning, primary schools, special education and secondary schools. I anticipated to hear from you about pre-primary education, village polytechnic, homecraft centres and child care facilities.

What we just saw in a video is what the governor went to do, to assist education in Murang'a County as you have said. We know that primary and secondary schools have challenges in terms of funding of infrastructure from the National Government, but since this function has not been devolved, we should sit down and find ways of addressing that problem. I want to see an exhibit of nursery schools and village polytechnics that have been done by the Governor and there are more than 1,000 in Murang'a and the village polytechnics and so on. This will assist you not to be harassed by MCAs then when you go to Kahuya, they will not ask you what you have done in other wards.

I hope you do not have the same spirit like the one I saw in other counties where, since more voters and parents are found in high schools and primary school than in nursery school and polytechnics, they concentrate more on this. That is the impression we have been given. So, when you are going there and you want to do things, it is good to protect yourself by law because these are the people you are going to work with.

The Chairperson (Sen. Musila): I want you to note that because we are going to wind up with Sen. M. Kajwang and the Senator ---

Sen. M. Kajwang: Mr. Chairman, Sir, let me ask my question very quickly. The advertising that we have been told to look at on Page 71 of the Governor's pack says that there are 220 co-operative societies in Murang'a County. What worries me is that tomorrow or several years down the line when His Excellency the Governor is not the Governor of Murang'a County, what will stop the new governor from pouring money into the *boda boda*, Murang'a Women's or these other SACCOs and redefining them as the apex SACCOs for that county? The most specific question is, at the time that the commission of inquiry of the County Assembly did its report, the County Assembly reported that Kshs23 million had been invested in promoting and marketing the Murang'a Investment Co-Operative (MIC).

Secondly, the County Assembly says that this money was invested upon request for support by the said MIC. Is it possible for us to see that evidence of request from MIC for funding from Murang'a County Government?

Thirdly, as at the time the Auditor-General (AG) was doing his report, the amount spent on MIC had gone up to Kshs28.489 million. Could you account for the increase from Kshs23 million to Kshs28 million, yet the commission of inquiry in the Assembly had given directions that no further funds should be invested in this vehicle?

The Chairperson (Sen. Musila): That is another request and therefore, I want you to answer first before we move to another clarification.

Mr. Browne Nathans: Mr. Chairman, Sir, first of all, it pleases me to note that this money, Sen. Kajwang, was appropriated and it is on record. We already highlighted that. Secondly, we have only been treated to a video by the County Assembly. We did not come with any videos because nobody asked us that we could give videos of all the 225 or half, that were being supported. We are only responding to one. In fact, we did not even know whether that video was in support of the Assembly or to confirm that the Governor is really supporting the co-operatives movement.

With respect to Sen. (Prof.) Lonyangapuo, a great man who taught at universities, I remind him – I stand corrected – that even when a function is not devolved, no county government should be discouraged or dissuaded from giving or lending support. It is because part of what we have done as a country is run away from polytechnics – this is my view – and upgraded them into universities.

So, a prudent government in our considered view has to see to what extent they could help us lend a hand to the extent possible, but focus more on the devolved function. You do not say: “This is a no-go-zone, because it is not my baby, sorry, I cannot touch it.” No. You must ensure that this early Childhood development (ECD) progresses from --- For example, there is a poor policy – if you ask me now to give you my personal opinion – that the ECDs you are saying from Class 1 and 2 and then they are under a separate --- it is a very complex process. You can ask --- they will tell you. These are issues we are grappling with. I hope you will have an answer from this report and that it will go down to all the 47 county governments and give a sense of direction as to what you do with functions that are not yet devolved. As you have heard from the Chairperson of the Transition Authority, we give functions to governments that we manage. This is a process of transition.

The Chairperson (Sen. Musila): I have to stop you. I said “clarification with answers”. I know you are eager to amplify your point but let us be conscious of time. Sen. Kajwang’s question has not been answered.

Mr. Browne Nathans: What happens to a governor that comes into office and decides to do X, Y and Z? You will leave that to the conscience of the governor and the practice of governance. At this time, we have a very progressive Constitution with checks and balances. No governor today, or in the framework of the 2010 Constitution, can wake up and do things as they deem appropriate. That is why we are here with the assembly, which is the best illustration of the checks and balances. We cannot go into details of

what might happen in the future. Policies that are put in place and the administrative instruments will govern those processes.

Sen. M. Kajwang: That was not really the substantive question. The substantive question was evidence that there was a request to the Murang'a County and two, why the amounts increased from Kshs23 million to Kshs28 million between the report of the commission of the inquiry and the Auditor-General's report. If we could just focus on the two, I will be happy.

Mr. Browne Nathans: Thank you, Senator. I think they are the ones who made the allegations. We welcome that evidence. In fact, I must thank you for bringing that to our attention. So, we invite them to give the evidence and the audit is not even complete, in any event. We have to request them. Thank you, for bringing it up. If the honourable lady can give the evidence, we will be happy.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, we have been challenged and I will have my learned friend react to that immediately, if you allow.

The Vice-Chairperson (Sen. Adan): Quickly, go ahead.

Mr. Peter Kimani: The clarification that I wanted to make – I had requested my senior to allow me to do so – was because there was a comment that was made by Mr. Ng'ang'a Mbugua just in passing from the bar, that as we stand today MIC has raised over Kshs140 billion. I just wanted to clarify as per the MIC report printed by the Assembly at the point at which the report was done, Kshs23 million had been spent against a total collection of Kshs1.5 million. I wanted the Committee to appreciate what we are talking about. This is on Page 316 of that bundle. Let me highlight that to the Assembly in its oversight role, Kshs23 million against Kshs1.5 million --- I thought it is an important point for me to highlight tonight.

Sen. Ong'era: Madam Vice-Chairperson, I have some further clarifications to seek. I would like to know who took the video clip that we were shown today. Secondly, in the video clip that we were shown, some bursary money was allocated to the secondary school. Was this money approved by Murang'a County Assembly?

The other question is, in the Kshs28.4 million that was spent by the Governor to advertise for the SACCO, was this money approved by Murang'a County Assembly in the budget? If so, what informed the Governor to spend the Kshs28.4 million in advertising for a public entity?

Finally, are there other SACCOs that the Governor had promoted in Murang'a County other than this *Shilingi kwa Shilingi*? Can we be given the bank statement for *Shilingi kwa Shilingi* SACCO?

Sen. Sang: Madam Vice-Chairperson, just similar. On that clip, we saw the Governor apologising that there has been delay in the disbursement of that bursary because the

legislation to enable that process to be done had not been passed. My question is, in relation to the infrastructure support to the schools; one, could you confirm that actually the paving was done but some money was committed towards infrastructure to the school?

Two, we are not disputing that there is need for cooperation or that it is envisaged in the Constitution that there will be cooperation between the two levels of Government. However, the envisaged cooperation is governed by the law that there must be an agreement. If there is no agreement, what justification do you, then, have to engage in a cooperation supporting a national Government function? This is now a question to you, *Mheshimiwa*; as Murang'a County, have you passed a Bill that enables the County Government to support infrastructure development in primary or secondary schools and universities?

Madam Vice-Chairperson, my final comment is that in my own county in the County Integrated Development Plan, the residents of Nandi County made it clear that they need a public university. That is captured within the CIDP but the fact that the residents of Nandi County made clear indications that they need a public university does not authorise the county government to expend county resources to establish a public university. That is because that is not a devolved function. It only means that as leaders of Nandi County and the County Governor, we have now to kick in mechanisms to ensure that we reach out to the right institutions of national Government to establish a public university.

Did the Governor of Murang'a County – after the request by that girls' school that they needed that kind of infrastructure support – look at the opportunity of the Ministry of Education or the right institution to seek for that support for your school? If you are asked for an airport, will you establish one just because *raia* are asking for it? I think that is something that we need to address.

The Vice Chairperson (Sen. Adan): Thank you, Sen. Sang'. I will ask my question before I hand over to the Chair and then counsel to respond. First of all, it is not wrong for the county Government to have a co-operative society. However, looking at the by-laws that were established for the purpose of this society, it looks like the county Government has not been mentioned anywhere as being a beneficiary of that particular society.

Secondly, how did you come up with the names of the executive officers that you have used for the registration? Looking at the letter on page 263 of the County Assembly bundle, there is a letter that was written to the Governor by the Chairman, Anthony M. Mwangi. In the second-last paragraph, it says:

“We, therefore, respectively seek the support of your county Government in financial, logistical and moral support as we join with your Government in building Murang'a together.”

This paragraph clearly indicates that this society is not the property of the county government. There is no doubt that this co-operative does not belong to the county Government. What is the county government doing to make sure that they recover the money lost to this co-operative society?

The Chairperson (Sen. Musila): Questions have been exhausted by Senators. There were questions directed to the witness. Could you, please, respond?

Hon. Mary Waithera Njoroge: Mr. Chairman. Sir, there were two questions that were directed to me. One is in line with bursaries. Yes, there is legislation on scholarships. The other one was legislation as per the money in infrastructure to cover the Primary schools and the Secondary schools. No. We were raising an issue because the money that was used in Kahuhia Girls' High School was not factored in the budget. We were crying foul of this because of the status of the ECD and polytechnics which is our devolved function yet are left unattended.

For Kahuhia, we used money to the tune of Kshs31 million.

The Chairperson (Sen. Musila): For the pavement?

Hon. Mary Waithera Njoroge: Mr. Chairman. Sir, this was on refurbishment of Kahuhia Girls'. They are talking of Phase Four in the list that was provided to the Assembly on 14th August on debt owing. There was refurbishment of pathways and a dormitory walkway. So, all the money was spent on the walkways as per the video clip.

Sen. Ong'era: I asked a question which has not been answered. Who took that video clip?

Mr. Mbuti Gathenji: Mr. Chairman, Sir, this goes to the Counsel who put the document before you. I would like to draw your attention to the clip.

The Chairperson (Sen. Musila): Who is the person who took the clip?

Mr. Mbuti Gathenji: Yes, Mr. Chairman, Sir. The name of the person is there on page 362. It is Ms. Irene Mungai. These days our new legislation requires that a certificate of the person who has taken certain clips be processed. On page 362, she has even identified how she processed it. If there is a difference in pagination, I can pass the document to the Hon. Senator.

We do apologise for the amount of documentation.

The Chairperson (Sen. Musila): We even appreciate the documents are bulky.

Sen. Madzayo: Mr. Chairman, Sir, maybe I could take a rider on that question. The main---

The Chairperson (Sen. Musila): Let that be the last one.

Sen. Madzayo: Mr. Chairman, Sir, the main equipment used to capture that video is not disclosed by Ms. Irene Mungai.

The Chairperson (Sen. Musila): Are we reading the same Senator?

Sen. Madzayo: Mr. Chairman, Sir, yes. That is the main equipment. What is disclosed---

The Chairperson (Sen. Musila): I am reading something and I wonder whether you have it.

Sen. Madzayo: Mr. Chairman, Sir, the certificate as to electronic evidence that is on page 371.

The Chairperson (Sen. Musila): Is it paragraph after 2?

Sen. Madzayo: Mr. Chairman, Sir, it is a DVD that was played and I am referring to the certificate of electronic evidence. The clip that was prepared there. Looking at that certificate, the main equipment that was used to capture that video is not disclosed. What is disclosed is on the second last paragraph and that is not the main equipment. Those are instruments of replication, mass production. In evidence, the main equipment must be disclosed not the replications.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, if I can answer that one, the main aim of the Evidence Act is the processing. It is very clear that was a compact digital video data and it is given. The idea is to make sure that there is no interference or addition in that processing. So, that is what is normally certified. You do not have to say a camera this or that. The container or the information is the one that must be certified for the purposes of processing.

The Chairperson (Sen. Musila): Ask now the Counsel to address the issues raised.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, let me react because I believe this is the elephant in the room. May I put this into perspective, Hon. Members, that, it is not the case of the Governor or the Assembly that the County Executive is only supporting Murang'a Investment Cooperative Society. As a matter of fact, appropriation that goes toward cooperative movement, there is, for instance, a thriving *boda boda* Sacco where the county government does not have any issue, but they are supporting it. There is a milk, women and coffee SACCOs and many others across the board that the county government is supporting financially for the benefit of the people of Murang'a.

Mr. Chairman, Sir, if you look at the investment in Murang'a County, you will notice that the membership is interim for purposes of registration. If you look at the advertiser's announcement that followed the recommendation of the Assembly which appears on page 71, that was published by the County Government, among the things that they did

was allow the members to elect their own officials so that the involvement of the county government at inception was facilitative so they hand over this cooperative society to the members. The names you saw earlier were those of interim members so that after the systems were in place, they would hand over to the members to carry on with it as we are doing to the coffee, women and milk SACCOS.

Mr. Chairman, Sir, we do not get this in question that there is something sinister about identifying this particular cooperative society for purposes of support.

The Chairperson (Sen. Musila): Counsel, will you provide evidence to this Committee to show that other cooperatives have received funds as you have just said.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, I can see the Governor nodding. He must be confident that that is the case.

We are not being accused of not appropriating the Kshs28 million in the budget. It was appropriated. The accusation by the Assembly is that this is a private entity that we have no business supporting. There was an appropriation. We can supply material to show that across the board, there are other cooperative societies that the county government is supporting because they are taking the cooperative movement seriously as a vehicle to empower the residents. We can supply the documents at an appropriate time.

Mr. Chairman, Sir, the other question that was asked on matters of communication; you realize that cooperatives require mobilization so that one of the questions that was asked about the expenditure on communication. There is a vote head that is allocated to advertisement communication. This also covers the importance of public participation where we have red cards from media houses that if you want to inform members of the public about an initiative or policy developed by the county government, there is an expenditure on advertisement so the expenditure is not specifically for this cooperative society. It is an expenditure that is, first of all, appropriated in the budget on advertisement and creation of public awareness which then goes to matters of the cooperative society and other matters that the county government feels that they want to bring to the attention of the public.

The other question was asked about the bursaries by Sen. Ongera. The witness has confirmed that it was legislated upon. This is important because these bursaries are going to empower poor and needy children not from a particular school.

Therefore, when the Assembly in their wisdom passed that legislation and felt that in the county integrated development plan and the strategic plan for the county government, education was prioritized. They engaged everybody, including the residents, and felt quite strongly that they needed to do something and make interventions on matters of education.

When the Assembly passed the Bursary Bill, it was alive to that fact. I take the view that notwithstanding that there was no written agreement with the national Government on matters of this nature, the residents who are the beneficiaries of devolution, participate in

a process, come up with a Strategic Plan and the County Integrated Development Plan and say that: "Could you kindly look into matters bursary, so that those of us from poor backgrounds, are given a chance in life." In my view, I do not think that is unconstitutional.

Mr. Chairman, Sir, the other question that was raised was on the pay bills. There was an appropriation for the refurbishment that was done in Kahuhia Girls High School. One of the things that the county identified is the importance of Kahuhia Girls to the county. If I go to Kitui County, for instance, there is something that Kitui County prides in. Therefore, if the county feels that it needs to intervene and do refurbishment and appropriation by the assembly itself. We are not told that there was no appropriations. I do not think that would be wrong. We are not told that no refurbishment was done or no money was spent for the repair works.

The other question that was posed that the county government is not mentioned---

The Chairperson (Sen. Musila): Please, give brief clarifications.

Sen. Sang: The county assembly has stated that they did not appropriate money for the refurbishment of the school. The Governor's Counsel said that they did. We need to know the truth on that particular matter.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, under the budget, there was a vote head on infrastructure. We may not have specifically broken it down and said, 'Kahuhia Girls refurbishment', but it was under infrastructure. Money was not taken from somewhere else and used. With all due respect, it was appropriated in the budget.

The Chairperson (Sen. Musila): Kindly give a chance to the Hon. Member.

Hon. Mary Waithera Njoroge: Mr. Chairman, Sir, when we talk about appropriations for the infrastructure, we have the County Development plan that contains all the projects that are supposed to be done in each and every department. Therefore, when we say that the money was set aside for infrastructure of 'Kahuhia Girls', we are misleading this Committee because the projects that were to be carried out from the money set aside for infrastructure was well spelt out in the County Investment Development Plan (CIDP).

The other issue that we raised is that he did not disclose the Kshs28 million. Looking at the budget, we wish that budget be produced, we talked about the 2014/2015 budget that talks about publication and advertisement and has allocation of Kshs7 million yet we are seeing that Kshs28 million was used. When we talk about Kshs7 million, it was not only meant for only one cooperative. It is for all cooperatives as per the policy that had been provided to help in the initial stages. Therefore, why was this one cooperative given preference and the magnitude of money that was used yet it was not disclosed to the Assembly. We learnt from the media that and that raised eyebrows from the public.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, the report that was prepared by the Assembly, when they say that they knew nothing, it was actually in their report. They

themselves did not make recommendations to the effect that there was money that was misappropriated for purposes of promoting that investment.

Mr. Chairman, Sir, I kindly request that when you retire to consider this report, please, interact with the recommendations of the assembly so that we get the motive. It is so easy to say that the money was spent on something that they do not understand yet they initiated a commission of inquiry. It emanated from them and they made recommendations that were very progressive in my view. This is critical because when we are told that it constitutes a basis for an alleged violation, that it something they never knew anything about. On 14th February last year, they came up with a report that praised that initiative and only makes recommendation on how it can be restructured. It is very critical that comes out clearly.

What steps have been taken to recover money that was lost? No money was lost. In fact, the position of the county government is this: Just like they are doing this for *boda boda* Saccos and coffee farmers, where they do not have shares, they are supporting the initiative because of the social economic impact it will have on the people. The position of the county government that it maintains to date in as far as the Murang'a Investment Sacco is concerned, is that there was nothing unique about the support they gave that investment Sacco because they are replicating the same initiative in other Saccos.

I want to clarify this for purposes of record that no money was lost. The county government still maintains the position that the initiative was in the public interest. As a matter of fact - and this is borne by the document that appears on page 71 - this cooperative society has been handed over to the people for the purposes of running. They have conducted there elections. Why you will not see anybody from the executive is because the interest of the county executive was only limited---

Mr. Mbuti Gathenji: Mr. Chairman, Sir, let me---

Mr. George Ng'ang'a Mbugua: Counsel, let me first finish.

The Chairperson (Sen. Musila): There is a point of order.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, I am raising a strong objection to evidence from the bar. You will note that a lot of this information coming from the counsel, as far as it is concerned, there is no reference to any document. I would like also to mention that when this Committee retires, its first order of business is to know that there is no evidence being referred to. The governor has not testified---

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir,---

The Chairperson (Sen. Musila): Let him finish please. Counsel, to be fair, we have heard many times and that counsel has been quite. Let give him time.

Mr. Mbuthi Gathenji: Yes, of course, and I am a senior counsel. I must be accorded respect. I have had this for 40 years.

(Laughter)

The Chairperson (Sen. Musila): We agree with you, counsel.

Mr. Mbuthi Gathenji: Mr. Chairman, Sir, with all due respect, I think the age counts here. The most important thing to note is that all these clarifications, unfortunately, are coming from what we call “bar statements”. You are not being referred to any document. There is an attempt to make a kind of an appraisal and purification of the governor. This is not the purpose of the inquiry. The inquiry is to receive facts, figures, both from us and them.

I would request my learned friend from now to make sure that they confine themselves to evidence they can substantiate.

The Chairperson (Sen. Musila): This is why I cautioned earlier that when Members of the Special Committee seek clarification, it should be answered briefly. However, counsel, you will agree with me that you have gone overboard. Please if you have anything remaining, conclude.

Mr. George Nga’ng’a Mbugua: Mr. Chairman, Sir, it is the nature of the question that was asked specifically by the hon. Senator whether this is the only cooperative that is being supported. We had to clarify. In fact, I am so happy that one of the statements made by the hon. Chairman is whether proof of support being extended to other cooperatives can be provided. We gladly said we can give that information.

The Chairperson (Sen. Musila): Fine.

Mr. George Nga’ng’a Mbugua: So, learned senior, with tremendous respect, we can provide this information. I have a lot of respect for him.

The Chairperson (Sen. Musila): Are you through?

Mr. George Nga’ng’a Mbugua: Mr. Chairman, Sir, yes, I have already tackled the question of legislation on bursaries.

The Chairperson (Sen. Musila): The counsel for the Assembly has raised some issues where you have talked about things that we do not have documents, particularly areas where you have touched and went on and talked about things that we do not have papers. We will not consider that unless we have the evidence in writing. Those should be in the bundle.

Mr. George Nga’ng’a Mbugua: Mr. Chairman, Sir, I could refer that in this bundle, the recommendation of the Assembly. It is relevant to the query that has been raised; that, we

are making statements from the bar – the Assembly at page 214, say that the role of the county government should only be limited to supporting the cooperative society at infancy. This is on page 214. This explains the question that you had asked: “How comes that we do not have shares? They agree with the supposition that the county government can help in establishment of those structures at infancy but not play any other role. That is what they are playing at.

The Vice Chairperson (Sen. Adan): With the permission of the Chair, counsel, it is important for an institution to invest money but that should be guided by a policy or programme. Again, we have to move further to a monitoring and evaluation to make sure that the money that was dispensed is used in the right manner. It is not important for us to know that you allocate money at the infancy level then you let it go. That is not right. Nobody can accept that position.

Mr. Browne Nathans: In fact, Madam Vice Chairperson, we completely agree on that one. It is part of the reason as you saw from page 268 to 275, am not quite sure where, but that particular one. That is precisely what the Assembly and the executive are doing. They are identifying and demarcating boundaries where they say: “here we require a legislation, here we require policy, we require a nexus between the various committees of the Assembly and the Executive. It is an ongoing process.

The Chairperson (Sen. Musila): Right, hon. Senators, first, I want to thank you. You have had a long day. Sen. Sang, do you want to say something?

Sen. Sang: Mr. Chairman, Sir, I am just directing one question to the counsels. You realise that in today’s session, very few questions have been directed to them. On the issue of monies appropriated within the budget in a lump sum manner, for instance, infrastructure as mentioned. What is the understanding of the County Assembly, when you have an appropriation in lump sum, for example, infrastructure, is it the understanding of the County Assembly that then that would go to projects of infrastructure nature within the confines of Schedule Four or is it an open blank cheque that you can still do infrastructure projects with complete disregard of the Fourth Schedule?

Mr. Mbuti Gathenji: Mr. Chairman, Sir, we have a witness on the witness box. I would like her to react.

Hon. Mary Waihera Njoroge: Mr. Chairman, Sir, the reason why we, together with the Executive prepared the County Integrated Development Plan (CIDP) it is to give direction to the various projects that are supposed to be done per department. It is provided for in the CIDP for Murang’a – the kind of projects that are supposed to be done in each and every department.

Sen. Sang: Mr. Chairman, Sir, I gave an example of Nandi County where people say they want a university. So, in your understanding, from what I have picked from you, is that then as long as it is within the integrated development plan, the county government

can still expend the money to establish a university or an airport. Is that your understanding?

Hon. Mary Waithera Njoroge: No, Mr. Chairman, Sir. We got this project from the public participation. Members indicated what they would want to be done in each and every ward. This is as per the devolved functions. Articles 185 and 186 spell out what is supposed to be done when an issue is intergovernmental, that is the national; and the county governments. So, ours was from what we got from the people and as per whatever is devolved to the county governments.

The Chairperson (Sen. Musila): Very well. We wish to thank the hon. Waithera Njoroge for being there and for the cooperation that she has extended to this Special Committee. You have been very patient and articulate. We commend and thank you.

Distinguished Senators and counsel from both sides, we have come to the end of today's session. Going by the time that we have, I propose that we adjust tomorrow's programme. Instead of starting at 9.00 a.m. as is shown, we would like to start at 10.00 a.m. so that we give you time to refresh and relax.

We have done a lot of work today. So, tomorrow, we will have the two witnesses, the Controller of Budget and the Auditor-General, if the counsel for the Assembly is not bringing another witness. From there we will go to 30 minutes submissions or closing statements from each side.

If we adopt that programme for 10.00 a.m. tomorrow instead of 9.00 a.m., it will be fair. Tomorrow will be the last hearing day.
Yes counsel.

Mr. George Nga'ng'a Mbugua: Mr. Chairman, Just one intervention. We were just consulting with my colleagues because the Controller of Budget and the Auditor-General are really independent witnesses, perhaps, we could take on the case for the governor because they are really not coming to give evidence on behalf of the county assembly. I believe that to shed light on matters that are material to these proceedings, if we could just take on the evidence, rather, the case for the governor in the morning, then perhaps interact with those two witnesses after---

The Chairperson (Sen. Musila): It is fine because, yesterday, I think it was you or Mr. Wanyama, who told us that you will not be giving evidence.

Mr. George Nga'ng'a Mbugua: Yes, and that still remains the position. It was just a clarification that these two witnesses that are coming--- They are really not witnesses but are coming to shed light on matters that are in the Auditor-General's report. So, I believe they are witnesses to assist this Committee as it were, to deal with these matters. If we could take on the case for the governor in the manner proposed - because we are doing the case for the governor by way of submissions - and then after that, the two persons can come, then we can interact with them.

Mr. Mbuti Gathenji: Mr. Chairman, Sir, I have a different view. That will be completely distorting the manner in which we have progressed. Those witnesses, although they are independent, were summoned through our initiative. We would like to have order, we finish with them completely - even if they are independent - and then the other side opens up on all evidence from the assembly and from this independent witness is finished. Otherwise---

The Chairperson (Sen. Musila): I agree with you counsel because for your information, yesterday they requested us to summon those two witnesses. So, we did it as their request. Therefore, they will be fobbing part of their witnesses.

So, I now dismiss the session and ask the Senators to remain for a few minutes for housekeeping unless you want us to go to the Commission Room.

(The Special Committee adjourned at 8.47 p.m.)