

REPUBLIC OF KENYA



TWELFTH PARLIAMENT THE SENATE

COMMUNICATION FROM THE CHAIR

PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HON. MIKE MBUVI SONKO, THE GOVERNOR OF NAIROBI CITY COUNTY: MANDATE OF THE SENATE, RULES OF PROCEDURE AND HEARING PROGRAMME

- 1. Honourable Senators, Ladies and Gentlemen,** having dispensed with the Pre-Hearing meeting of Senators, which was a closed session, it is now time to commence the proceedings of the Proposed Removal from Office, by Impeachment, of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County.
- 2. Honourable Senators, Ladies and Gentlemen,** by a letter, Ref: *NCCA/SPK/12/2020(1)*, dated 4th December, 2020 and received in the Office of the Speaker of the Senate on Friday, 4th December, 2020, the Speaker of the Nairobi City County Assembly informed the Speaker of the Senate that at a sitting of the Nairobi City County Assembly held on Thursday, 3rd December, 2020, the Nairobi City County Assembly had approved a Motion

for the removal from office, by impeachment, of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County.

3. The Speaker of the County Assembly also forwarded copies of the following documents —

- (a) the Order Paper of the Nairobi City County Assembly for the sitting of the County Assembly held on Thursday, 3rd December, 2020;
- (b) a Notice of Motion by Hon. Michael Okumu Ogada, MCA, dated 25th November, 2020 on the proposed removal from office, by impeachment, of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County;
- (c) a list of names and signatures of Members of the Nairobi City County Assembly in support of the removal from office, by impeachment, of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County; and
- (d) the Votes and Proceedings of the sitting of the Nairobi City County Assembly held on Thursday, 3rd December, 2020.

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

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

6. **Honourable Senators, Ladies and Gentlemen**, allow me to remind you of the mandate of the Senate in so far as it relates to the removal of a Governor from office as provided for under Article 181 of the Constitution as read together with section 33 of the County Governments Act, 2012 and standing order 75 of the Senate Standing Orders. In particular, Article 181 of the Constitution provides as follows—

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

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

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

(c) abuse of office or gross misconduct; or

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

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

7. Section 33 of the County Governments Act, 2012, standing order 75 of the Senate Standing Orders and the Fifth Schedule to the Senate Standing Orders provide for the procedure to be followed in the hearing and determination of the proposed removal from office, by impeachment, of a Governor.

8. **Honourable Senators, Ladies and Gentlemen**, by way of a status update, pursuant to rules 4(a) and 6 of Part 1 of the Fifth Schedule to the Senate Standing Orders, the Senate invited the Governor to appear and be represented before the Senate during its investigation. The Senate further invited the Governor, if he chose to appear before the Senate, to file an answer to the Charges with the Office of the Clerk of the Senate by 4:00 pm on Tuesday, 15th December, 2020 setting out –
 - (a) the Governor’s response to the Particulars of Allegations;
 - (b) the mode of appearance before the Senate; whether in person, by advocate or in person and by advocate;
 - (c) the names and addresses of the persons to be called as witnesses, if any, and witness statements containing a summary of the evidence to be presented by such witnesses before the Senate; and
 - (d) any other evidence to be relied on.

9. Pursuant to rules 4(b) and 7 of Part 1 of the Fifth Schedule to the Senate Standing Orders, the Senate notified the County Assembly of the date for the commencement of the investigation and invited the County Assembly to

designate Members of the County Assembly, being not more than three Members, if any, who shall appear before the Senate to represent the County Assembly during the investigation. The County Assembly was further invited, if it chose to appear before the Senate, to file with the Office of the Clerk of the Senate by 4:00 pm on Tuesday, 15th December, 2020, documentation –

- (a) designating the Members of the County Assembly, being not more than three Members, if any, who shall attend and represent the Assembly in the proceedings before the Senate;
- (b) indicating the mode of appearance before the Senate; whether in person, by Advocate, or in person and by Advocate;
- (c) indicating the names and addresses of the persons to be called as witnesses, if any, and witness statements containing a summary of the evidence to be presented by such witnesses before the Senate; and
- (d) specifying any other evidence to be relied on.

10. Honourable Senators, Ladies and Gentlemen, on Tuesday, 15th December, 2020, the Office of the Clerk of the Senate received a response to the Invitation to Appear issued to the Governor from M/s J. Harrison Kinyanjui & Co. Advocates who indicated that the Governor had appointed the firm to represent him in the proceedings before the Senate and that the Governor would appear in person and by Advocates. To the response were attached various documents, including a Notice of Preliminary Objection.

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

12. **Honourable Senators, Ladies and Gentlemen**, on Monday, 14th December, 2020 and Tuesday, 15th December, 2020, the Office of the Clerk of the Senate received a response to the Invitation to Appear issued to the County Assembly from Hon. Benson Mutura, MCA, the Speaker, Nairobi City County Assembly, which provided-
 - (a) the names of three members of the County Assembly designated to attend and represent the County Assembly in the proceedings before the Senate and also stated that the County Assembly would appear in person and by a team of Advocates led by Mr. Ndegwa Njiru, Mr. Duncan Okatch and Mr. Ashioya Biko Brian, to be assisted by four other Advocates;
 - (b) a list of three witnesses;
 - (c) a list of eleven persons whom the County Assembly requested the Senate to summon to appear; and
 - (d) further evidence to be relied on.

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

- 14. Honourable Senators, Ladies and Gentlemen,** the Hearing Programme which has been circulated, details the various activities in the hearing and determination of the matter and the time allocated to each activity. It will be crucial that all the parties comply with the time allocated. The parties will be notified of the balance of time on each activity through the Clerks at the Table.
- 15.** In summary, the Programme states that today, Wednesday, 16th December, 2020, after we have dispensed with preliminary matters, the Charges against the Governor, as submitted by the County Assembly, shall be read to the Governor. This will be followed by an Opening Statement to be made on behalf of the County Assembly. Thereafter, an Opening Statement shall be made on behalf of the Governor. After the conclusion of the Opening Statements, the presentation of the case of the County Assembly shall commence and should take us up to the end of today's Sitting.
- 16.** At the Sitting scheduled for tomorrow, Thursday, 17th December, 2020, the Governor will have an opportunity to present his case before the Senate. This will be followed by a Closing Statement on behalf of the County Assembly and a Closing Statement on behalf of the Governor.
- 17.** The Senate shall then proceed to a Closed Session for deliberations prior to voting on each of the Charges. In accordance with section 33(7) of the County Governments Act, 2012 and standing order 75(6) of the Senate Standing Orders, the voting shall be by county delegations. The Governor

shall cease to hold office if a majority of all county delegations of the Senate vote to uphold any impeachment charge. If, however, the vote in the Senate fails to result in the removal of the Governor, pursuant to standing order 75(7), the Speaker of the Senate shall notify the Speaker of the Nairobi City County Assembly accordingly.

18. Hon. Senators, Ladies and Gentlemen, this hearing is being conducted at a very challenging time when the Covid-19 pandemic is with us. As has been the practice in the sittings of the Senate since the start of the pandemic, the sittings shall be conducted in strict compliance with the Covid-19 guidelines issued by the Ministry of Health and in various Communications from the Chair. I therefore implore you, Honourable Senators, ladies and gentleman, to observe and abide by the Covid-19 guidelines throughout the sittings. As I conclude, I would like to assure you all that the Senate is cognizant of the gravity of the matter with which it is seized and that it shall accord the parties a fair hearing.

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

[Introduction of County Assembly's team]

20. I now similarly invite Counsel for the Governor to introduce the legal team representing the Governor and the Governor, by stating the full name and designation of each person.

[Introduction of Governor's team]

21. On behalf of the Senate, I welcome the County Assembly's team, the Governor's team, members of the public and the media to the Senate and to these proceedings.
22. I now invite the Clerk to read the Charges against Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County.

I thank you.

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

16TH DECEMBER, 2020