

**EVIDENCE TAKEN BEFORE THE SENATE SPECIAL COMMITTEE
INVESTIGATING THE PROPOSED REMOVAL FROM OFFICE BY
IMPEACHMENT OF THE GOVERNOR AND DEPUTY GOVERNOR OF
EMBU COUNTY HELD ON TUESDAY, 11TH FEBRUARY, 2014 AT THE
AMPITHEATRE, KENYATTA INTERNATIONAL CONVENTION
CENTRE AT 10.15 A.M.**

[The Chairperson - Sen. (Dr.) Khalwale]

SENATORS PRESENT

Sen. Kipchumba Murkomen	-	Vice Chairperson
Sen. Kimani Wamatangi		Sen. Zipporah Kittony
Sen. (Prof.) Wilfred Lesan		Sen. Naisula Lesuuda
Sen. Peter Mositet		Sen. James Orengo
Sen. Boy Juma Boy		Sen. (Eng.) Hargura Godana
Sen. Judith Sijeny		Sen. Mutula Kilonzo Jnr.

SECRETARIAT

Mr. Jeremiah Nyegenye	-	Clerk of the Senate
Ms. Eunice Gichangi	-	Director, Legal Services
Mr. Anthony Njoroge	-	Director, Litigation & Compliance
Mr. Boniface Lenairoshi	-	Principal Clerk Assistant I
Mr. Zakoyo Mogere	-	Principal Clerk Assistant I
Mr. Ahmed Hassan Odhwa	-	Senior Research Officer

IN ATTENDANCE

GOVERNOR'S TEAM

Hon. Martin Nyaga Wambora	-	The Governor of Embu County
Mr. Wilfred Nyamu	-	Advocate
Mr. Peter Wanyama	-	Advocate

DEPUTY GOVERNOR'S TEAM

Ms. Dorothy N. Muchungu	-	The Deputy Governor of Embu County
Mr. Julius Njoroge	-	Advocate
Mr. Kibe Mungai	-	Advocate

COUNTY ASSEMBLY TEAM

Hon. Kariuki Mate	-	The Speaker, Embu County Assembly
Hon. Ibrahim Swaleh	-	Deputy Speaker, Embu County Assembly
George Nganga Mbugua	-	Advocate

Charles Njenga - Advocate

(The Committee convened at 10.15 a.m.)

Prayers

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

The Chairperson (Sen. (Dr.) Khalwale): Ladies and gentlemen, welcome and thanks again for yesterday. It is regrettable that we are starting late partly because you were also late and, more so, the Governor was also late. I understand that you had applied to the Clerk that you would be late because of traffic issues. We want to commence with the Governor's matter. I want to invite the counsel to indicate how he wants to proceed. Please note that we are expecting you to call witnesses, indicate how many they are and it will be up to you to use your time to fix all your witnesses. As for the Office of the Clerk, be on standby because you have to go where the podium is as soon as every witness is introduced and you have to administer the oath.

Mr. Wilfred Nyamu: Hon. Members, today we shall be ready to present our response to the allegations that have been made by the County Assembly against hon. Martin Wambora, the Governor of Embu County. Firstly, we wish to be indulged in terms of presentation of evidence by witnesses owing to the fact that the implication of the impeachment proceedings and the outcome are quite serious especially on the Governor in the event that it is found that he ought to be impeached. We need to have adequate opportunity to present his response.

Yesterday, the schedule was affected by time, therefore, certain issues did not come out. After we had given our opening remarks, there are questions that were raised by hon. Members but we never got an opportunity of clarifying to hon. Members as to what we meant specifically as opposed to the County Assembly who had that opportunity. So, we request that we be given time. We should be able to sum up that in 30 minutes and then we start taking evidence.

The Chairperson (Sen. (Dr.) Khalwale): That is okay. You can proceed and do that in 30 minutes.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, based on the allegations, we wish to draw the attention of hon. Senators to applicability of the Acts or legislations that were cited yesterday. Majorly, what arose yesterday was the application of the procurement law in relation to the Governor of Embu. Procurement in the County Governments is governed by the Public Finance Management Act, 2012; specifically sections 148 and 149. It is also governed by the Public Procurement and Disposal Act, 2005 and the regulations there under and also the County Governments Procurement Regulations 2013.

Mr. Chairman, Sir, under Section 148 of the Public Finance Management Act, it is provided that the county executive committee member for finance shall, except as otherwise provided by law, in writing, designate accounting officers to be responsible for managing finances of the county government entities; the county government entities which in our interpretation are departments within the county government. In county government entities, the person responsible for administration of county government entity shall be the accounting officer responsible for managing the finances of that particular entity. When it comes to accounting officers that have been defined as such, then we now move to section 3 of the Public Procurement and Disposal Act.

Under section 3(i) (a) of the Public Procurement and Disposal Act, 2005, an accounting officer is defined. Under section 3(i) (a) an accounting officer means; for a public entity other than a local authority, the person appointed by the Permanent Secretary as accounting officer and if there is no such officer, the chief executive of the public entity. For our local authority, the town or clerk of the local authority. Basically, that definition leads us to one inference; that an accounting officer is the person responsible for an entity. When we move to Article 226 of the Constitution, paragraph 2 states that the accounting officer of a national public entity is accountable to the National Assembly for its financial management. The accounting officer of a county public entity is accountable to the County Assembly for its financial management. So that now it is very clear; that accounting officers are appointed under the Public Finance Management Act, and actually under the Constitution Article 226(i) (a) and (b) where the legislature is mandated to enact the Public Finance Management Act. It so did and provided for appointment of accounting officers and they have been so appointed in respect of the County Government of Embu.

Mr. Chairman, Sir, under section 149 of the Public Finance Management Act, it is also provided that an accounting officer is accountable to the County Assembly for ensuring that the resources of the entity for which the officer is designated are used in a way that is lawful and authorized, efficient, effective, economical and transparent. Actually his responsibilities are even further defined under sub-section (ii); how he shall conduct himself. When you read that together with Article 226(ii) and (iv), you realize that the County Assembly ought to have gone to those accounting officers. They are the people that ought to have been summoned under Article 195 of the Constitution. They are the ones that ought to have answered any questions---

The Chairperson (Sen. (Dr.) Khalwale): You have made a very important point that the County Assembly should have summoned those people.

Mr. Wilfred Nyamu: Yes, Mr. Chairperson, Sir.

The Chairperson (Sen. (Dr.) Khalwale): We were just digesting it, you can continue.

Mr. Wilfred Nyamu: Yes, Mr. Chairman, Sir, under Article 195, and not the Governor. So, that by the time they are getting to the Governor they ought to have exhausted those particular provisions. What they ought to have been telling this Committee in the

impeachment proceedings is that they have followed those officers, they have made recommendations in respect of those officers and gone a step further to ensure that the officers are investigated, investigations have commenced and that the Governor has failed to ensure that those officers, despite having been charged, are suspended under Section 62 of the Anti-Corruption and Economic Crimes Act. This is not the case here. So, in matters of procurement, it is actually the County Assembly that has reneged in its role and duty to ensure that accounting officers follow procedure, if any procedure has been flouted.

Mr. Chairman, Sir, we are saying this so that we may pray that the focus now departs now from the Governor having to explain why procurement procedures were not followed, where these procedures are supposed to be under officers with statutory and constitutional duties to perform. The same cannot obviously be visited upon the Governor. There is the County Governments Procurement Regulations and that is where we can also find the definition of accounting officers and the Governor is not one of them at all.

On the issue of appointments, the County Public Service Board is independent of the Governor and what the County Assembly is trying to tell this Committee is that the Governor should have interfered and such interference would be a bait for the Governor to be cited for abuse of office. The County Assembly has power or authority, under the County Governments Act, to summon members of the County Public Service Board. Where the County Public Service Board has exceeded its mandate for any reason, then it has to take responsibility and be faulted. The same cannot be visited upon the Governor. They have not shown that they have taken such steps and that the Governor is obstructing any process under the County Governments Act in respect to the application of the legislative power of the County Assembly and its oversight power in respect of the County Public Service Board.

This is clearly a misconceived position taken by the County Assembly. We do not have any documents, even as they submitted here, where they applied section 195 and even came up with a position under the County Governments Act in respect to the County Public Service Board. Besides, some of the offices that are stated in the charges are offices that were actually created by the Transition Authority which the Governor and his government found in existence. Some of the officers are seconded and those are the positions that were being replaced. I am saying this so that this Committee is not misguided. Again, there is an audit report that was extensively---

The Chairperson (Sen. (Dr.) Khalwale): Order! What you are saying was specifically prosecuted by the counsel for the County Assembly and he read us a list of positions that were not supposed to be approved by the County Assembly and the ones which were. What is your comment about that, now that you have said it? Was he misleading us?

Mr. Wilfred Nyamu: Yes, he was misleading you because all these positions were there and actually there is a circular from the Constitution Implementation Committee (CIC) by which those positions exist.

The Chairperson (Sen. (Dr.) Khalwale): Could you refer us to that document?

Mr. Wilfred Nyamu: Mr. Chairman, Sir, that is a public document and it can be availed to this Committee without forming part of the abstract or bundle of the documents that we are relying on just as we have not bundled these legislations. That will be availed along with the County Governments Procurement Regulations.

The Chairperson (Sen. (Dr.) Khalwale): Mr. Nyamu, your counterpart has tabled a document here and he has convinced us that for those positions, the law requires that the County Assembly be involved and you are saying that you have a document from the CIC to the contrary. The only way you can make us migrate from that thinking to yours is by you tabling that document.

Mr. Wilfred Nyamu: There is a circular to that effect and it is in the public domain. It was not specifically to Embu County but generally to all counties in the country. So, now it is a public document and we shall provide the same.

The Chairperson (Sen. (Dr.) Khalwale): So, you will be able to---

Mr. Wilfred Nyamu: We will be able to provide that. It is a public circular that even Governor Kidero can provide if requested.

Sen. Orenge: He should not draw Governor Kidero into these proceedings. I think it is easier for Governor Wambora to access that document from Governor Kidero.

Mr. Wilfred Nyamu: I cited that to demonstrate that it is nothing specific to the Embu County but it is generally to all counties so that it cannot be construed that the Governor of Embu came up with his own position. Again, it is very clear that the statutory obligation is on the part of the County Public Service Board and they are responsible under the Statute and also the Constitution. The County Assembly has mandate, power and responsibility to ensure that they follow the process. The same cannot be visited upon the Governor at all. They ought to demonstrate that they called the County Public Service Board and it was faulted or it said that the Governor insisted. Even if so, they have a constitutional statutory mandate which cannot be visited upon the Governor for purposes of these proceedings.

There is also an audit report that was extensively referred to in these proceedings. But one thing that my learned friend and counsel for the County Assembly did not disclose – they are guilty of failure to disclose material facts before this Committee – is that that particular audit report is actually not official. It has not been adopted by the County Assembly as we speak. So right now, the same cannot be said to be authentic or a document that this Committee ought to apply in these impeachment proceedings. I challenge them to provide any proceedings or the HANSARD adopting the same.

The Vice Chairperson (Sen. Murkomen): Are you saying that any document that is provided by a constitutional commission cannot be relied upon by any institution including the Senate and the County Assembly unless it is has been adopted? I thought the authenticity of this document or the issues in question is whether the document was authored by the Auditor-General, that suffices for us and not necessarily whether the County Assembly sat to adopt it. Are you questioning whether the Auditor-General actually authored the document?

Mr. Wilfred Nyamu: What I am raising here is a statutory issue. There is a procedure by which audited reports become public documents for purposes of scrutiny and implementation.

The Chairperson (Sen. (Dr.) Khalwale): Counsel, I think we will not allow you to mislead all of us. What we want to be convinced of is whether the report by the Auditor-General is authentic. As far as tabling is concerned, it is not the tabling in Parliament that makes it authentic. What is required to be adopted by the Assembly is after the Public Accounts Committee (PAC) has held proceedings and deliberated on the report by the Auditor-General and they have called witnesses. It is the report of the PAC that requires adoption. But the report of the Auditor-General, an independent institution under the Constitution is authentic. You cannot mislead us.

Mr. Wilfred Nyamu: We shall submit at the end and report our submission to that effect for the consideration of this Committee.

Sen. Orengo: It would be of assistance to the counsel if he read Article 229 of the Constitution, particularly if you look at paragraphs 5, 6, 7 and 8. I think we are more concerned about paragraphs 5,6 and 8; what Parliament or the County Assembly does with the report. It shall debate and consider the report and take appropriate action. There is no question of validating the report or otherwise.

Paragraph 6 reads:-

“An audit report shall confirm whether or not public money has been applied lawfully and in an effective way”

Within those provisions, can you tell us, since this is a question of law and you are supposed to guide us, on what basis are you making those remarks? If you can point out any legislation in the Constitution that says that an auditor’s report is only valid when approved by the County Assembly or by Parliament.

Mr. Wilfred Nyamu: For purposes of paragraph 8 of Article 229, the County Assembly ought to debate and consider the report.

Sen. Orengo: Yes, but not approve. They simply consider and take appropriate action.

Mr. Wilfred Nyamu: So, at the point of consideration, I believe that it ought to look at what has been recommended or stated in that report and verify.

The Vice Chairperson (Sen. Murkomen): But it does not mean that that report cannot be used. The debate that is required here at Article 229 is as we have seen that report, for example, it has various recommendations that need to be done within the county and so forth, but it does not mean that if any member of the public or the county assembly or any institution would like to use the same document to justify a different cause, it does not mean that that document becomes invalid just because it has not been debated by the county assembly. In fact, the same document can be picked by county “Y” which is not in Embu. For example, an officer in Embu who has been cited in the report has moved to county “Y”, that county can use that report, for example, in basically trying to vet that officer for appointment. They can produce that report and say that this is an officer who has a questionable character. He has been cited in Embu County as having violated this and that. That report will not be invalid just because of the absence of the Embu County Assembly not debating it. So, the validity of that report being used for a different cause does not rely on it being debated by the county assembly.

Mr. Wilfred Nyamu: All I am saying is that at this stage, in the absence of that report having been debated and considered by the Assembly, I pray that the same be treated as of persuasive efficacy before this Committee.

Sen. Orengo: What about the county government, can it ignore it? What you are saying is bordering on very dangerous grounds. The issues raised in that report are very serious issues. From what you are saying, the Governor can ignore it because it has not been considered. I find that very dangerous because the Auditor-General is performing a constitutional duty and it is an independent office just like a judge or the Director of Public Prosecutions (DPP). So anything coming from an independent office with a constitutional mandate, can you just ignore it?

Sen. Boy Juma Boy: Mr. Chairman, Sir, on the same Article 229 (7) it says:-
“An audit report shall be submitted to Parliament or other relevant county assembly within three months after receiving the audit and Parliament or the County Assembly shall debate and consider the report”

It states that so long as it has been submitted to the assembly or Parliament---. In my view, this report was submitted to the county assembly.

In paragraph 6 it states:-

“The audit report shall confirm whether or not public money has been applied lawfully in an effective way”

Counsel, how do you treat that?

Mr. Wilfred Nyamu: At this juncture, what I would do is---

The Chairperson (Sen. (Dr.) Khalwale): Counsel, I also want you to consider the following. If you look at the Constitution, the office of the Auditor-General is created under Article 229. In Article 229, there are the following statements; Article 229 (5) says:-

“The Auditor-General may audit and report on the accounts of any entity that is funded from public funds”

Article 229 (6) says:-

“The audit report shall confirm whether or not public money has been applied lawfully and in an effective way”

If it was otherwise, then it would have clearly spelt out after Parliament has debated, considered, adopted and approved. This is not there in the Constitution. Where are you taking us?

Mr. Wilfred Nyamu: Mr. Chairman, Sir, let me proceed and leave it to the Committee. But as I proceed, I also wish to state that the particular report was in respect to a period within which the Transition Authority was in charge of financial management of the county although the Governor had been installed. The Governor took oath of office on 27th March, 2013 and yet this report is for the period beginning March and ending 30th June. The Transition Authority, through the coordinator handed over – we have a letter to that effect – the resource management role to the county government in September 2013 so that all expenditures and procurement, including the refurbishment of the office of the Governor, the Governor himself was not involved. It was the Transition Authority that was dealing with those matters.

Sen. Orengo: Counsel we have a report which we were shown yesterday where the County Secretary was of the view that to order seeds was an urgent matter and then the process started. Were those functions being performed under the direction---?

Mr. Wilfred Nyamu: That was in October.

Sen. Orengo: Okay, I stand corrected.

Mr. Wilfred Nyamu: Actually, we shall proceed to show that her letter of 25th October was actually prompted by a requisition from the Department of Agriculture. She was not the originating source of the procurement.

Sen. Wamatangi: If I could ask a question on that last point you have made; the import of what you are saying is that the Governor was indeed then not in charge of the affairs of Embu County at that period when the Transition Authority was in office.

Mr. Wilfred Nyamu: With due respect, hon. Members, we shall proceed and show the role of the Governor in the county. As it is, we have already demonstrated that in matters of procurement, there are officers that are statutorily and constitutionally mandated and accountable to the assembly and also culpable under the law. So, as it is, those are procurement matters. In these impeachment proceedings, we have to look at the conduct of the Governor. We also need to look at what steps were taken. For example, there were some steps that ought to have been taken by the county assembly, but instead of taking such steps they visited the same on the Governor. It is like the famous railway tender; you cannot go to the President before you go to the procurement officers. It is a similar case. By the time you get to the Governor, you ought to have dealt with the accounting officers.

The Chairperson (Sen. (Dr.) Khalwale): Order, counsel! Where are you taking us to? The contract you are talking about is under investigation by the National Assembly. Have you read a copy of their conclusions? I know you have not because they have not concluded the exercise. They might end up blaming the President. So do not go there.

Mr. Wilfred Nyamu: It was just an example, but I can give another one.

The Chairperson (Sen. (Dr.) Khalwale): A wrong example!

(Laughter)

Mr. Wilfred Nyamu: If I have treaded on dangerous grounds, I beg to be forgiven, but it is in the public domain.

Sen. (Prof.) Lesan: I wish to draw the attention of the counsel to Article 30(3) (f) of the County Governments Act. This is with regard to the functions and responsibilities of the Governor. They are well stated there. If you look at that Article which I am referring to, it lists the functions. It states:-

“In performing the functions under Sub-section 2, the Governor shall---
(f) Be accountable for the management and use of county resources”

Mr. Wilfred Nyamu: I think that particular provision ought to be read with other provisions of the County Governments Act and the Constitution, Article 226 and also the Public Finance Management Act so that now you cannot expect the Governor to sit in every office because he is managing resources. He cannot be the cashier, he cannot be a--
- He cannot be a procurement officer for this purpose. Basically, the law and even the Constitution provide that. Members of the legislature were not out of course when they provided for responsibility in terms of deployment of Accounting Officers who are accountable to the County Assembly. By the time you get to the Governor, you must have frustrated the course under those provisions.

The Chairperson (Sen. (Dr.) Khalwale): Counsel, you have indicated that 33(f) should be read together with 226 of the Constitution. I want to agree with you and invite you to look at Article 226(5) of the Constitution which says;

“If the holder of a public office including a political office directs or approves the use of public funds contrary to the law or instruction, the person is liable for any loss arising from that use and shall make good the loss whether the person remains the holder of the office or not.”

Mr. Wilfred Nyamu: It is very important for hon. Senators to consider the fact that there was no specific allegation saying that the Governor had approved any expenditure by himself or directed to warrant the application of this particular provision which covers all officers including Accounting Officers.

Sen. (Prof.) Lesan: Mr. Chairman, Sir, I still want to read what I had read together with Section 31(d) of the County Governments Act.

I want to bring to your attention the powers that are given to the Governor and the responsibilities that go with it.

“The Governor shall have the powers, as may be necessary for the execution of duties of the Office of the Governor.”

So, if he has the powers to do all the things that have been expressed, then the responsibility goes along with it.

Mr. Wilfred Nyamu: We are going to demonstrate that. However, specifically, what I was trying to address is that before you get to the Governor, one ought to have frustrated the effort by the County Assembly to apply these Statutes in respect to Accounting Officers and that has not been demonstrated. So, we cannot just stand and say that it is the Governor. We cannot by-pass provisions of the law which are called responsibility and accountability in terms of the Constitution and the legislation provided for under the law.

Sen. Orenge: I was going to wait to the end. However, now that you have brought this point and I want to clear it, could you look at Article 226(1) of the Constitution?

It says:

“An Act of Parliament shall provide for;

(a) the keeping of financial records and the auditing of accounts of all Governments and other public entities and prescribe other measures for securing efficient and transparent fiscal management.”

I have quoted that article because the Public Finance Management Act flows from that article. In the Public Finance Management Act, the definition of a County Treasury is found in page 887. Section 2(d), if you have the Statute, this is on page 887. This one defines what a County Treasury is. A County Treasury is established under Section 103

which is on page 965. There is established for each county government an entity to be known as the County Treasury. The County Treasury shall comprise of the County Executive Member for Finance. That is critical. That is the point I wanted to make.

Mr. Wilfred Nyamu: Mr. Chairman, I may have to get another copy. Mine does not have that section. It may be an omission which is not deliberate.

Sen. Orengo: Before we go to 103, look at 102 which is on Public Government Responsibility in Public Finance.

Each County Government shall ensure the principles of Public Finance set out in Chapter 12 of the Constitution---

The Article that you are referring to, 226, is part of that Chapter. So, 103 show that the County Executive Member in charge of Finance is the Head of the Treasury.

At 104, you will find the responsibilities and powers of a County Treasury. If you turn over the page; you will see the responsibilities as follows.

(h) in ensuring compliance with accounting standards prescribed and published by the accounting standards board from time to time,

(i) ensuring proper management and control and accounting for the finances of a county government and its entities in order to promote efficient and effective use of counties budgetary resources and so forth and so on.

For that matter, the Auditor-General, in his report, you can look at it on page 53; paragraph 9, there is reallocation of voted funds without authority and so on and so forth. This one says;

The Public Finance Management Act, subject to the Constitution, states that a county treasury shall monitor, evaluate and will oversee the management of public finances and economic affairs of the county government.

Further, Section 104 states that a county treasury shall monitor the county government entity to ensure compliance with this Act and effective management of their funds.

Counsel, if you read that paragraph, the Auditor-General seems to have formulated a basis for holding the county government and holding the county treasury accountable as opposed to the officers you are referring to. What do you say to that?

Mr. Wilfred Nyamu: What I would say, hon. Senator, is that under the provisions of the County Governments Act under which the County Executive Members are appointed, there is also provision that the County Executive Committee Members are accountable to the Assembly. If the head of the county treasury, being the County Executive Committee Member in charge of finance has already, under Section 148 designated Accounting Officers for that purpose, if there is any anomaly or problem in procurement, the first

person to summon, under Article 195 would be the County Executive Committee Member, Finance. Did they summon him? If they did, have they gone through the process because they have power under the County Governments Act to remove a member of the County Executive Committee?

The Chairperson (Sen. (Dr.) Khalwale): Before you speak, Sen. Vice Chairperson, we have been joined by Sen. Mutula Kilonzo Jnr., Senator for Makueni, and a Member of the Senate and a Member of the Committee on Finance, Commerce and Economic Affairs. Under our Standing Orders, a Senator who is not a Member of this Committee is free, through the Chair to ask questions, make comments but the only thing he will not have is an opportunity to make decision by way of voting. Feel free, you are welcome. You can participate briskly.

The Vice Chairperson (Sen. Murkomen): I just want to draw your attention to what Sen. Orenge read, Section 102(2) of the Public Finance Management Act because you are making a very important point. This one says, the County Executive Committee shall observe principles of collective responsibility in exercising their functions under this Act. It is worth noting that the Constitution does not list the functions of a Governor and there was a reason for that. This was because of the principles of collective responsibility but also because the County Executive is expected to work as a team collectively. So, if you read Article 179(2), you will see that the County Executive Committee consists of;

“The County Governor and the Deputy County Governor and the Members appointed by the County Governor with the approval of the Assembly from among persons who are not Members of the Assembly.”

The County Executive Committee is a team and is required to work under collective responsibility. In the arguments you are making, you should remember that we are not presiding over criminal responsibility. We would be very careful if we were looking for individual criminal responsibility if this was a crime. We are dealing with governance matters. The way you are arguing suggests that the Governor was oblivious of what was happening in the county. His ears were nowhere, he did not see anything, he did not see that the seeds did not germinate and at no point was he aware that there was a County Secretary who was the Secretary to the County Executive Committee who was being sought for certain things that happened at the County Assembly.

Counsel for the County Assembly said something very important yesterday, that the County Assembly did not wake up one morning and say the Governor must go. There was a movement of issues where they had to sit together. The issue here is that we are presiding over a governance issue, an issue of management, prudence in management and averting. Apart from acts of commission, it is possible to demonstrate that there were acts of omission in the responsibility of collective management. There is an argument that you are trying to pursue – the Committee will make that decision later – that the County Assembly attempted to discipline a public officer who was serving in the Office of the Governor and there was interference.

That general argument is very important.

Mr. Wilfred Nyamu: That is very important, hon. Chairman. It is good that you have raised that matter. I am trying to drive this Committee to this. In the first place, the Committee ought to be guided by the County Governments Act and the Public Finance Management Act when dealing with financial matters. Under Part V of the County Governments Act, Section 30 talks about the appointment of the County Executive Committee Members. Section 31 talks about the functions and the responsibilities of the Governor. The Governor is charged with the responsibility of constituting a County Executive Committee but the Committee is approved by the County Assembly. Under the Public Finance Management Act, Section 41, 48 and 49, it is the responsibility of the County Executive Committee Member, Finance - he is one of our witnesses here today. I will convince this Committee that it has not been confirmed or proved that there have been procurement lapses within the county. So, we are still in the process.

I am submitting generally that where there is a problem the County Executive in charge of Finance ought to be the first person that the County Assembly goes for.

The Chairperson (Sen. (Dr.) Khalwale): Order. I think you have repeated that again and again. I want to draw you and the Committee to the presentation by the County Assembly as CECs 7 on page 160. They convinced us, with evidence, that investigations were done by the County Assembly and the following CECs were invited, the CEC in charge of Agriculture, the CEC in charge of Finance and the County Secretary who refused to come. They have annexed the proceedings - annexure 6 - of what the CEC Finance said. Therefore, the due process was observed.

Mr. Wilfred Nyamu: Mr. Chairman, Sir; that is where I am going. First, it is to demonstrate that the County Secretary was given her summoning letter on Friday 3rd at 5.30 pm after she had already gone home. She received the letter at 8.30 in the morning on 6th January. When she received the letter, she wrote and requested for time because she was to appear before two committees. One is the Committee on Infrastructure and the Committee on Agriculture.

The Chairperson (Sen. (Dr.) Khalwale): Counsel, I am starting to get disturbed. Have you read the evidence from the County Assembly? The County Assembly, in these proceedings, in page 160 of CAE 7 says as follows

CAE 7 - Procurement Process under Evidence by the County Secretary

The County Secretary requested for 14 days to allow her to get back to the officers who had been summoned earlier but failed to give substantive information. To this end, the Committee declined her request since this had been granted to her earlier without any progress.

So, you are giving the impression that she was getting it as a first incident when earlier on she had made the request, it had been granted and no progress was made. So, the Committee could not be held back. They then proceeded that she will never come.

Mr. Wilfred Nyamu: Your honour, that ought to have been demonstrated earlier on, she had been summoned.

The Chairperson (Sen. (Dr.) Khalwale): Well, but it is here. He has demonstrated; he did it yesterday in the afternoon in your presence.

Mr. Wilfred Nyamu: You see, hon. Committee Members, first, before the County Secretary appears before the County Assembly, she has to be informed. She has to get documents. She also has to be flagged by officers.

Sen. Wamatangi: Counsel, if I would just intervene with the permission of the Chair. You have deviated widely because you are making your presentation in regard to the fact that the County Assembly should have summoned the CEC in charge of finance. That was the line you were along.

Mr. Wilfred Nyamu: I was answering a question.

Sen. Wamatangi: When an interjection was made comparing that with the County Secretary, you have gone ahead to try and justify facts around the County Secretary. So, you have abandoned what you were saying. What you should have just continued with is to focus on what you were saying so that we can move on. When you get to the issue of the County Secretary, deal with those issues at that time.

Mr. Wilfred Nyamu: That is okay. I urge hon. Members to also keep me on focus and not deviate to questions relating to other officers in respect of whom I will submit. That way, I will also have to digress. Hon. Members, be fair.

The Chairperson (Sen. (Dr.) Khalwale): Counsel, I can see you are starting to feel uncomfortable.

Mr. Wilfred Nyamu: Mr. Chairperson, I am very comfortable.

The Chairperson (Sen. (Dr.) Khalwale): Again my assurances, relax, you are being given a fair hearing. However, that does not include you not being asked to clarify issues that are not clear.

You need to conclude because you have been on it for one hour. You wanted 30 minutes. You can do what you are doing through the witnesses. We and the country are waiting to hear what your witnesses have to say, if you could sum up.

Mr. Wilfred Nyamu: Your honour, may I be allowed to answer this question?

The Chairperson (Sen. (Dr.) Khalwale): Okay, that is fine.

The Vice-Chairperson (Sen. Murkomen): To be fair to the counsel we are part of the reason he has delayed. We can agree that we reduce our interventions for now so that he runs through what he wanted to do in the first 30 minutes. We can then ask questions after that, so that we proceed.

Mr. Wilfred Nyamu: Very well, Mr. Vice Chairperson. It is good you have saved me!

(Laughter)

Basically, what we are saying here is that it needs to be understood that the process under which a CEC is supposed to appear before the County Assembly, and even if he appeared, one of the things that ought to happen is that the County Assembly ought to have gone a step further and applied its role in terms of finance. It ought to have even looked into these accounting officers. The accounting officers are answerable to the County Assembly. We have not been told that there is an accounting officer that was faulted and recommended for dismissal, surcharge or otherwise to warrant going further and so high, to the Governor and applying the general managerial role of the Governor before you go to the specifics.

That is why we are saying that the County Assembly failed, in its mandate, to exhaust the remedies available under both the County Governments Act and the Public Finance Management Act. They cannot now be heard and excused for deviating and going so high to the Governor. The Governor cannot be a driver so that if a car breaks down, the Governor is faulted. You cannot go that far.

For the County Assembly to prove its charges against the Governor, they have to demonstrate that the Governor actually obstructed their cause under Sections 148 and 149 of the Public Finance Management Act and all consequential provisions before they get to the Governor. It would only be malicious of them to move and leave the officers who are responsible and step up to the Governor.

They raised the issue of the Governor failing to dismiss the County Secretary, failing to apply the law and require the County Secretary to be suspended. As it is, the County Secretary is not a member of the County Executive Committee. It is a misconception when they say she is; she is not. When you look at the composition of the members of the County Executive Committee, it is very well defined. She is only a secretary. She writes minutes. She is an equivalent of Mr. Kimemia at State House in respect to Cabinet meetings.

The Vice Chairperson (Sen. Murkomen): Mr. Chairman, Sir, I did not want to interject. So, once you write a letter to require procurement of seeds, for example, and since she is just a secretary of the County Executive Committee, could it be construed that she was writing on behalf of either her boss, who is the Chair of that Committee or the Committee itself? Then she is just an equivalent of a secretary.

Mr. Wilfred Nyamu: She has roles under Section 44 of the County Governments Act. These roles are statutory. Section 44 of the County Governments Act---

An hon. Senator: She is not just a Secretary!

Mr. Wilfred Nyamu: She is not just a Secretary, but I am saying for purposes of the County Executive Committee operations, she is a Secretary. I will even refer to her responsibilities. Section 44(3)(b)(c) says:-

“The County Secretary shall-

“(b) be responsible for arranging the business, and keeping the minutes of the County Executive Committee subject to the directions of the Executive Committee;

(c) convey decisions of the county executive committee to the appropriate persons or authorities; and”

Basically, that is her role. What happens here is that, owing to the fact that it was a transitional and formative period of the County Government where there were no chief officers who were supposed to be accounting officers---

The Vice-Chairperson (Sen. Murkomen): The first role of the County Secretary is very profound. If you do not mind, you can read from (a) to (d), they are very few, so that everybody can follow.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, Section 44(3)(a) states:-

“The County Secretary shall-

(a) be the head of the County Public Service;

So, she is a substantive office. I wish to remind this Committee that we are dealing with the issue of the conduct of the Governor, not the County Secretary, so that Members do not deviate from that.

She is the head of the County Public Service. In cases where chief officers of the relevant departments of the county had not been appointed, she was the accounting officer. We shall demonstrate through the proceedings, she will be one of our witnesses here, we are not hiding anything. She will be subjected to scrutiny by this Committee.

What would ordinarily happen is that, like in the case of the issue of maize, she was summoned. It is only proper to also understand that she was summoned on Friday evening. She went to the office in the morning at 8.30 a.m. and she was told that: “There is a letter here that says that by 11.00 o’clock, you are supposed to appear before this Committee.” Obviously she had to appear with documents. She had to be armed. She needed to give an informed position in respect to matters. That is why she wrote that letter. If she just ignored, then she would be faulted.

When they made their recommendations, obviously, for the Governor to take any action against a County Secretary, due process had to be followed. It cannot be expected that a County Secretary would just be acted upon on the recommendations of the County Assembly without due process. That is why we are asking ourselves, should the Governor have haphazardly acted on the recommendations of the County Assembly in relation to suspension of the County Secretary without following due process and invite litigation which would be costly to the County Government? He is independent in terms of administration.

A line ought to be drawn between the role of the County Assembly and the County Government. Even under Article 185 of the Constitution where the County Assembly is mandated to exercise an oversight role, it ought to be guided by the principles of separation of powers.

The Chairperson (Sen. (Dr.) Khalwale): Just move on, do not read the article, you have given us the number. We want you to conclude.

Mr. Wilfred Nyamu: It has been confirmed by the affidavit of the Ethics and Anti Corruption Commission by one Mr. Mbaitalu under paragraph 20 that it is only upon investigations and charging an officer that they would recommend his or her suspension. The due process would be, once the investigations which have been commenced by the EACC are completed, then it will be recommended by the EACC. It will be incumbent upon the Governor now because it has been established that there is a *prima facie* case, so there is a charge that is to be preferred against the officer under Section 62 of the Anti-Corruption and Economic Crimes Act. The Governor was duty bound to suspend the County Secretary, but not before. Otherwise this would be premature. Again, for the same reasons, the Governor could even be brought here and impeached for such reasons. Basically, we should look at both sides.

In conclusion, I wish to state that the role of the Governor, even under Section 30 that has been cited by Sen. (Prof.) Lesan---

Sen. Wamatangi: Counsel, with the permission of the Chair, let me just seek a clarification on something you have just said. You have said that the Governor would, either in anticipation of if he received a positive report from the EACC, be in a position to act upon the County Secretary. But then how does it go along with the fact that at the same time, if that is the reason he would have acted, he swore an affidavit in support of a suit that sought to stop the EACC from conducting its job. Is that not contradictory?

Mr. Wilfred Nyamu: Hon. Member, you need to look at the affidavit.

The Vice Chairperson (Sen. Murkomen): There is some kind of misnomer in this country, that the only way a President can suspend someone in Government or the Governor in this case is when they have been charged or implicated or the EACC has called him or something of that sort. Do you not think that in their oversight responsibility, a County Assembly can actually find a public officer incompetent? That

he is unable to arrest the situation when there is a crisis whether it is in security, farming related issues or even superintending upon running financial affairs and the Assembly to say: "For just gross incompetence in running the office, we want that person removed." Suppose we find a situation where someone is completely unable to carry out his constitutional duties on grounds of incompetence, what happens?

Mr. Wilfred Nyamu: Hon. Member, it is also incumbent upon the Governor or, indeed, any holder of an office to follow due process. Even where there are no investigations on charges of corruption, it is incumbent upon them to follow due process. In a situation whereby the County Secretary had already gone to court and the circumstances under which this recommendation was made warranted care and caution on the part of the Governor--- There is a situation and we will show it, that the County Secretary had just sought advisory in respect of County Assembly members expenditure from the Controller of Budget earlier. So, there were many issues. Actually, this is in one of the bundles that we will cite here.

Section 44(2)(c) says:-

"The County Secretary-
(c) may, subject to the conditions and terms of appointment, be dismissed by the governor."

So, the Governor can only dismiss or act on the County Secretary upon following due process. He cannot just act haphazardly. The County Assembly in the letter that they wrote to the EACC which was only copied to the Governor and not addressed to him – they were requesting the Governor to suspend. When they made the request, it was considered, it was not an order. The question is, if there is failure to suspend the County Secretary, which law did he break to warrant these proceedings or a ground for impeachment?

Sen. Wamatangi: Counsel, as you clear that point, was there correspondence or response from the Governor in answer to that request; as you called it a request, that he was either going to act in a certain manner?

Mr. Wilfred Nyamu: In answer to that request, the Governor just got a copy of the letter. If you read the letter, it was not addressed to him. What he said is that when he learnt that there was pressure even on impeachment, pressure was mounting--- He learnt not because he was notified formally, he just learnt from the media that there was an impending Motion that was going to be tabled the following day. He requested the County Secretary to step aside because he could not act on her by law. Due process had to be followed.

The Vice Chairperson (Sen. Murkomen): What do you mean when you say he could not act on her? Under which terms and conditions of service? Had the Governor given the Secretary such terms and conditions of service that made it impossible for her removal? The County Secretary's position in the County Government is close to what the Attorney-

General is to the President. The appointment procedure requires approval, but their removal---- In fact the Governor need not request anybody's permission to fire a CEC member.

Mr. Wilfred Nyamu: Mind you, this is not a CEC member.

The Vice Chairperson (Sen. Murkomen): This is saying; what kind of terms and conditions of service had the County Government of Embu given to County Secretary (CS) because the impression being created is that she was a grand *mullah* of some sort; that-- I mean, I am just saying that from the presentation of the County Assembly, she was untouchable in the sense that the Governor was even cornered to swear an affidavit. You see, if you are a Governor and you have an officer who is putting you into trouble for whatever reason, your relationship with various institutions, your governance becomes impossible; the easy thing is to dispense off with that officer. Even the excuse that someone has already requested you from the County Assembly to do it would make it even easier than to go through all this trouble trying to protect this person. That is why you never answered my first question. When she was writing a letter, for example, saying "procure seeds of this kind;" I mean, was that, therefore, an action of her own? Was that not even enough for the Governor to fire her?

Mr. Wilfred Nyamu: Mr. Chairman, Sir, we are still very far in these proceedings; you are only relying on what they said and I would urge this Committee to have a blank mind and listen to me; and not take any particular insinuation or position.

Sen. Orenge: From what the Vice-Chairperson has said, I am looking at this letter which was written by the CS in respect of the seeds, and I have looked at other letters she has written in your bundle and compared them with the letter written by the lady in charge of agriculture. The letter by the CS is written within the office of the Governor. If you look at the letter head, it reads "Office of the Governor." If you look at the one of the other county executive, it is an independent department, and there are so many others we can show so that the linkage between that office and the office of the Governor is so tight that anything she is doing, she is doing in the name of the Governor.

Mr. Wilfred Nyamu: This is a statutory office, mind you. It is a statutory office. I am sorry for those remarks---

The Vice Chairperson (Sen. Murkomen): I was saying, counsel, that by the way do not feel agitated. I mean, you are a lawyer like me, like Sen. Orenge and Sen. Sijeny; you are just an officer of the court and you want the truth to be found. Do not feel---

Mr. Wilfred Nyamu: By referring to her as a *mullah*---

The Vice Chairperson (Sen. Murkomen): The questions we are raising are basically to help you address the concerns we have so that it makes our work easy. So, even where you feel like we have bombarded you with many questions, relax and say "Can I answer this?" This investigation is not a trial, so relax.

The Chairperson (Sen. (Dr) Khalwale): Okay, Members. I think I want to request that you allow me to protect the counsel to this extent that these interventions are quite useful, but counsel, do not provoke us. I would like us to intervene through his witnesses. So, those things you are asking now, bring them through witnesses so that we pin your witnesses down. You are provoking us on issues of law; we cannot keep quiet.

Mr. Wilfred Nyamu: And that is why I stand here, Mr. Chairman, Sir. Otherwise, I would be in my chambers.

The Chairperson (Sen. (Dr) Khalwale): That is right!

(Laughter)

Mr. Wilfred Nyamu: So, basically, what we are saying is that this CS is actually an office; this is the secretary, and the establishment of that office is under Section 44 of the County Government Act. In reference---

The Chairperson (Sen. (Dr) Khalwale): You really must conclude.

Mr. Wilfred Nyamu: Yes, Mr. Chairman, Sir. I will conclude, but let me be given at least some time to just sum up.

The Chairperson (Sen. (Dr) Khalwale): How many minutes?

Mr. Wilfred Nyamu: Five minutes.

The Chairperson (Sen. (Dr) Khalwale): Okay.

Mr. Wilfred Nyamu: I was on my feet before I was interrupted by the hon. Member, and I stated that a CS cannot be suspended or even dismissed without following due process. The Governor, as it is, is an Executive Office, and he is independent of the County Assembly. Only the oversight role can be played by the County Assembly; so that, now, when the County Assembly recommends the suspension of the CS, then the County Governor has to consider. He does not have to obey; he has to consider.

The other issue is that of the role of the Governor in terms of the provisions that have been cited by hon. Senator (Prof.) Lesan. The role of the Governor is actually to give direction in terms of vision and mission of the county; and actually, when he stands here, he is going to demonstrate in his evidence. His role is actually to direct the county towards prosperous management and ensure that prosperity prevails within the county itself in terms of development and other matters. His other role is also to ensure that the county values are observed in chairing the County Executive Committee (CEC) meetings. But the office or department of the County Government has its roles defined by statute and the Constitution; and before the Governor can be reached, all these other avenues ought to have been exhausted.

In his affidavit – just as the hon. Member has requested – I had pointed out that what actually he was saying is that there is ongoing investigations and the County Secretary is entitled to an opportunity to be heard. This is a Governor who is sensitive to the sentiments of the public and also the rights of individuals as enshrined in the Bill of Rights under the Constitution. So that now the County Assembly Members cannot just wake up and tell him “sack this one!” That cannot happen; the due process has to be followed even if he was to sack anybody.

So, basically, we are going to demonstrate, through the evidence by witnesses, how the Governor cannot be faulted. We are also going to demonstrate to this Committee – although we have said that the Governor is not involved in procurement matters – however procurement was properly carried out. We are also going to demonstrate however that his Government has performed exceptionally well as compared to other counties in this country where there is no noise.

Just, maybe, as a closing remark which borders on certain aspects, I wish to draw the attention of this Committee to the fact that besides the fact that we do not have the Speaker of the Senate here, we have the Speaker of the Assembly, very agitatedly consulting with lawyers and prosecuting this particular matter, where actually this should be the role of the Clerk and the reason would be obvious. If the Governor and the Deputy Governor is impeached, he takes office. So, basically, even as you consider all this, you ought to consider that fact.

Thank you very much.

The Chairperson (Sen. (Dr) Khalwale): Thank you.

You can now take your seat---

Sen. Orengo: I just wanted to ask one straight question; it is a yes or no question. In Article 179(2) of the Constitution, I want you, in respect of the Governor of Embu, to tell me whether this statement is correct. The County Governor and the Deputy County Governor are the Chief Executive Officer (CEO). Do you believe in that statement; that the Governor is the CEO?

Mr. Wilfred Nyamu: Yes.

Sen. Orengo: Thank you.

The Chairperson (Sen. (Dr) Khalwale): You may now take your seat.

Mr. Wilfred Nyamu: I will invite my learned colleague for 10 to 15 minutes.

The Chairperson (Sen. (Dr) Khalwale): No; you did not make that request at the beginning. So, I am about to make a remark on how we shall proceed, if you may take your seat.

Peter, relax; relax, you will be heard. We will create time for you. Peter, we are not gagging you; we are going to create time now when you are presenting witnesses for you to have your say.

For now, counsel, as you go to sit down, I am reminded of two things in view of what has transpired. I am reminded of what the former Prime Minister said when we were in Parliament; he said a case of responsibility – like we are looking for the responsibility of the Governor – he quoted a case in India where a Minister who was not a driver of a train; who was not an accounting officer, resigned when a train crashed because he believed the buck stopped at his doorstep.

The second thing I am reminded is the weight given to resolutions of county assemblies. If there is no weight given to resolutions of county assemblies, then it means that county assemblies will perpetually be speaking in vain. President Kibaki listened to the voice of Parliament when, without Kimunya facing charges, he was relieved of his responsibilities as Minister for Finance; when Wetangula, without facing charges, he was relieved of his responsibility as Minister of Trade. So, we have to give respect and weight to the resolutions of institutions under this Constitution. That is just a commentary; it is not part of this, but I just wanted you to know.

Mr. Wilfred Nyamu: That is very much in order. At the same time, this is an elected leader and the people of Embu County elected him in hundreds of thousands of votes. So, for 33 persons to impeach him, the threshold should be very high. In fact, it is not 33 but 22 persons. For them to remove him from office, the threshold has to be set as high as possible. I am actually before elected leaders and each one of you knows how weighty getting elected would be.

Thank you.

The Chairperson (Sen. (Dr) Khalwale): So, we will take a break of 15 minutes and when we come back, counsel, you will call your first witness.

(Loud consultations)

Oh, sorry; I am reminded correctly so that as a counsel, he must be given an opportunity at this stage to make one or two comments.

Mr. Peter Wanyama: Hon. Senators, with respect, we have not finished our part of the Governor's highlighting of the issues.

The Chairperson (Sen. (Dr) Khalwale): Okay; so, when we come back, you will then highlight a few issues.

Mr. Peter Wanyama: Yes, we will highlight certain pertinent issues.

Thank you, Mr. Chair, Sir.

Sen. Orengo: But I think, Mr. Chairman, Sir, you should clarify which areas have not been uncovered. You remember when the other two counsel were addressing us, they told us: "I am dealing with three grounds and the other one is dealing with two grounds." So, it should not become open ended; and also to avoid repetition.

Mr. Peter Wanyama: We definitely will not repeat what---

Sen. Orengo: No, no; it is not a question of repetition. I think it is good to tell us which grounds---

Mr. Peter Wanyama: For instance, allegations with regard to abuse of office or issues about collective responsibility, which had been raised. The Governor himself will explain his roles, and more importantly, certain aspects which are coming out from this process which we think in the interest of justice, must be highlighted which is about threshold---

Sen. Orengo: You know that is a bit open ended. Your response is here; in fact, counsel did not go systematically to say "I am dealing with this ground or that ground;" he dealt with everything generally. I would have thought that you would say "Out of the response that we have, I am going to deal with the following grounds" because otherwise, we are going to spend too much time.

The Chairperson (Sen. (Dr) Khalwale): Yes; Sen. Orengo has a point. I will not allow Peter to speak just yet; I want to request the lead counsel. You know what you have addressed us on; what is it that you have reserved for your colleague to address us?

Mr. Wilfred Nyamu: Mr. Chairman, Sir, I wish to raise this with due respect to the hon. Members. Yesterday, my fellow lead counsel submitted here for hours and without interference. When he finished, his colleague also came in; I do not understand why we are not being given such an opportunity also. Basically, he had not stated from the beginning that his colleague would speak, and he was allowed. We ought to be given all the opportunities. In fact, we are the ones---

The Chairperson (Sen. (Dr) Khalwale): Counsel, you will be surprised that yesterday, they were doing it to exhaust their time. You still have your time maybe up to evening; the whole day, you will have time to apportion some of it to your colleague. We will ensure that nobody will be favored here.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, I am relaxed; but I wanted to finish with that so that we may go to witnesses uninterruptedly. We wanted to finish with our submissions and then when we get to witnesses, we follow through.

The Chairperson (Sen. (Dr) Khalwale): So, after the health break, we will give you 10 minutes, Peter, to raise---

Mr. Charles Njenga: Mr. Chairman, Sir, kindly, we would like---

The Chairperson (Sen. (Dr) Khalwale): Would 10 minutes be good with you?

Mr. Wilfred Nyamu: Mr. Chairman, Sir, 15 minutes is on the maximum side.

The Chairperson (Sen. (Dr) Khalwale): Okay; we will give you 15 minutes after the health break.

Yes, counsel for the County Assembly?

Mr. Charles Njenga: Mr. Chairman, Sir, briefly and this is just for an expression of a remark; a very unfortunate remark made by a very senior advocate that the presence of the Speaker before this Committee is purely because, in his opinion and in his mind, he thinks that the Speaker wants to take over the seat of the Governor. I wish to remind him to look at the invitation made by this Committee; it was specific to the Speaker of the County Assembly of Embu. So, to that extent, I think he should be directed by the Chairman to withdraw that remark because it does not even augur well for the honor, dignity and even the mutual co-existence of all of us here as we continue with these proceedings.

That is all I ask.

The Chairperson (Sen. (Dr) Khalwale): Counsel, we do not want to go there. Let us maintain decorum. The matter you brought up is not the one that is being canvassed for, really. So, he is requesting that you withdraw. What will be your take on that?

Mr. Wilfred Nyamu: Mr. Chairman, Sir, for purposes of these proceedings, I would withdraw, if that helps.

The Chairperson (Sen. (Dr) Khalwale): Cheers!

So, let us take a health break.

(The Committee adjourned temporarily at 11.43 a.m.)

(The Committee resumed)

The Chairperson (Sen. (Dr.) Khalwale): Order! We now want to resume the hearing.

Counsel for the Governor, you have an extra 15 minutes to make your introductory remarks, before you call your first witness.

Welcome!

Mr. Peter Wanyama: Hon. Senators, for the record, my name is Peter Wanyama, Advocate; assisting counsel for the Governor.

I will proceed to highlight certain issues which did not come out from the earlier highlighting. I want to invite the hon. Senators, again, to look at the charge sheet, the letter from the Assembly dated 29th January, which encloses the charge sheet. This letter summarizes and particularizes the charges against the honourable Governor. At the very beginning of this letter, after the Motion, it says:

“Pursuant to and in accordance with the provisions of Article 181 of the Constitution, the County Assembly of Embu has passed a Motion to seek to remove the Governor from office, allegedly for violations of the provisions of the Public Procurement and Disposal Act of 2005, the County Governments Act of 2012, the Public Finance Management Act and the Constitution of Kenya 2010, and for abuse of office.”

Principally, let us go to particulars of violations – the one which says that the Governor has violated the Public Procurement and Disposal Act. Here, the particulars are that the county does not have procurement committees.

As a lawyer who practices in public procurement matters as well, I want to draw the attention of this Committee to the provisions of the Public Procurement and Disposal Regulations. It is a very important document which supplements the provisions of the Public Procurement and Disposal Act in so far as the details are concerned.

The Public Procurement and Disposal Regulations of 2006 operate side by side with the County Government Regulations of 2013. These three instruments form the substantive legal regime governing public procurement in Kenya and, therefore, there must be an express violation of the Act, including the regulations. Here, I want us to be very specific. When enzymes digest food, they are very specific. Enzyme ptyalin only digests starch. The implication of that is that these allegations must be very much specific to the Governor.

First of all, what do we mean by procurement committees? Under the regulations, there are committees which have been specifically required to be set by the county government. The regulations cannot be capable of any other interpretation. For instance, Regulation 10 provides that the procuring entity may set up a tender committee. Is it the committee which they are referring to here as having not been set up? We have to be specific.

Regulation 13 provides for what we call a procurement committee. In procurement pedagogy, these committees and under statute have different responsibilities. The trend throughout these committees is that the procurement officer is a secretary to all these committees. That is why we made an application yesterday that we have to summon him to actually explain this to the Committee in detail.

Fourthly is the evaluation committee, the committee which has not been set up by the county government in accordance with this charge. Which of these committees has the county government not set up? There is another committee; inspection and acceptance committee. So, the legal and institutional framework for public procurement anticipates the creation of these committees, and I have highlighted that clearly. Therefore, if you look at this allegation, at the very least – and we need to be very fair to the allegations themselves – which committee is it that we have not set up in the County Government of Embu, so that we can respond?

So, I will invite you, when we are cross-examining or rather asking questions to the witness who is going to come – the procurement officer – to actually put this matter to light. This is because certain documents have been put and they are coming from a particular context. So, we want to know which of these minutes belong to a tender committee and the evaluation committee, so that, that issue is properly highlighted for the clarity of minds and to clear any doubt at all as to the fact that the Embu County indeed has a committee.

What is the import of that? The import of that – and we have demonstrated and based on the testimony of the procurement officer – is that the County of Embu has all these committees which have been required by the legislation and regulations. This is where I specifically want us to focus, because it is our constitutional obligation, as the lawyers and not you, as the hon. Senators, because we are persuading you. We will be focusing on these allegations. Of course, there are certain allegations about the tender process and you have seen them. The County Assembly is not here in vain. There are certain allegations which have been made in the tender process, and that is a fact. We cannot run from that fact. So, the logical corollary of that is that do these allegations lead to the Governor? It is the Governor who has been charged. Do these allegations lead to the Governor in any way? Is there a co-relation, direct or indirect, from this evidence or particulars, that the Governor, indeed, violated the provisions of the Public Procurement and Disposal Act and the Regulations? Where is the nexus? If there is a nexus, then we will go to Article 181 of the Constitution, to now make the final decision.

The Governor – it does not say the county secretary, county government *et cetera* – can be removed from office for gross violation of the Constitution and law. So, if there is any nexus at all in these allegations, we have to make a determination on whether that is gross, in accordance with the constitutional threshold. Remember that there are very many matters in the Constitution which have not been clarified. The only issue which the Supreme Court has interpreted for us, for finality and in terms of setting the record straight, is the matter of the Division of Revenue Bill. But there are so many other issues for which we need constitutional interpretation from the Supreme Court. For instance, what is it that amounts to gross misconduct and gross violation of the Constitution and law? Is the fact that you have not set a tender committee one that can lead to that, if at all? These are some of the issues that this honourable Committee will, definitely, be facing.

We are persuading you that these allegations do not lead in any way to the Governor, because my colleague has highlighted the fact that procurement--- I would like to just highlight the fact that besides the County Governments Act and the Public Finance Management Act and the Regulations as well---

The Chairperson (Sen. (Dr.) Khalwale): Order!

The Vice-Chairperson (Sen. Murkomen): First of all, of course, we agreed that Regulations 9 and 10, whatever is called a procurement entity--- If you go to definition in the Public Procurement and Disposal Act, you will find that the county government is a procurement entity.

Secondly, you are saying that “gross violation” is something that we need to look at, but you are suggesting that the Supreme Court has not pronounced itself on that matter.

Mr. Peter Wanyama: Yes.

The Vice Chairperson (Sen. Murkomen): But I hope that you are saying that they were expected to pronounce themselves on that matter.

Mr. Peter Wanyama: Definitely not.

The Vice Chairperson (Sen. Murkomen): It is not in the confines of the courts alone to interpret the Constitution. The Constitution has given every person, including a citizen, the power to interpret.

Mr. Peter Wanyama: Absolutely.

The Vice Chairperson (Sen. Murkomen): So, then it is the responsibility of this Committee to put a definition of what could amount to a gross violation and then go ahead to make the determination.

Mr. Peter Wanyama: Absolutely. That is what we are persuading this Committee to do. In that line, let me just cite a few points to persuade you to make a determination in favour of Mr. Martin Wambora, the Governor of Embu.

The Supreme Court of Nigeria – I will be giving these cases to the Clerk – has gone ahead to interpret what amounts to gross misconduct. This is what it said:

“A grave violation or breach of the Constitution.”

So, they have used the word “grave.”

“A misconduct of such a nature as amounts, in the opinion of the House, gross misconduct.”

So, ultimately, it is a question of fact or evidence. Have we persuaded you enough to demonstrate that the allegations which are before this Committee will fall in that

category? So, it is ultimately based on the evidence which you are adducing and that is why, during the Governor's testimony, you will have an opportunity to also hear his side of the story, and then you can make a determination on whether he has any links at all in the procurement process. So, it is a question of fact.

I agree that this Senate has all the statutory and constitutional responsibilities to make that finding and determination in its report. Perhaps, it will really help in terms of developing jurisprudence in the sense that it will guide other county assemblies when they want to bring motions to ventilate the same issues. So, it is a significant fact. Thank you very much for that.

So, in view of what I have said, it is not very clear on---

The Chairperson (Sen. (Dr.) Khalwale): Order! Just a moment for Sen. Orengo.

Sen. Orengo: But you agree, in respect of any articles on impeachment in relation to abuse of office, it need not be grave and is not desired as so. If you look at Article 181(1) C in regard to abuse of office, it will just be a question of whether there is an abuse.

Mr. Peter Wanyama: Absolutely. You will allow me to submit that as one of the issues which I am supposed to address – abuse of office – separately. I agree with the hon. Senator that it is a ground for removal of a Governor, which is an express ground.

What we are trying to say is that the Constitution does not give us the threshold of what amounts to abuse of office. Therefore, we are looking at your interpretation of the facts to determine what nature will amount to abuse of office for purposes of making a final determination.

Thank you very much, hon. Senator.

I will proceed to highlight that as a final issue in my submissions.

The Chairperson (Sen. (Dr.) Khalwale): One more question, Sen. Orengo?

Sen. Orengo: On the same article, if, for example, somebody commits an abuse of office against the Penal Code or corruption law, that will be covered under Article 181(1)A, which talks about gross violation of this Constitution or any other law. But when it comes to Article 181(1) C, abuse of office or gross misconduct is left to the Senate, this Committee or county assembly to determine what is an abuse of office. It is not necessarily anchored on any law or legislation. Would you agree?

Mr. Peter Wanyama: Absolutely. The County Assembly has made a determination and we are here to interrogate that determination, because the Constitution and the County Government Act provides for a second tier of reviewing the evidence, to determine whether it meets the constitutional threshold. I am, again, persuading you that if we are talking about violation of the Public Procurement and Disposal Act, there must be an express, clear and unequivocal violation by the Governor. So, from the evidence adduced,

there is no--- What we have are, perhaps, irregular proceedings by the tender committee. That is why I will leave that matter for the county procurement officer to actually give us the true factual position. But in so far as we are concerned, the Governor has no role to play at all in the tender process.

That is why the provisions of Regulation 7 of 2006 – I did not want to mention this, but for purposes of the HANSARD – besides, the Public Finance Management Act and the County Governments Act also come to fore. They provide the role of the accounting officer in the procurement process. Particularly, at Regulation 4, it says “the accounting officer of the county.” Here, again, we need to make a distinction. There was a time when the county secretary was the accounting officer.

Then in view of the fact that we are implementing the framework of devolution, now accounting officers for these entities have changed; they are chief officers. This one does not absolve them from responsibilities. They have a responsibility. The county secretary when he was the accounting officer and chief officers, when they are accounting officers, have responsibilities to ensure that the procuring entity for the county establishes a tender committee, a procurement committee in accordance with this Act and regulations and procurement unit and makes sure that all subsequent decisions are done in accordance with the law. So, there is an express and clear obligation to the accounting officer, which I do not want to belabour because that issue has already been highlighted by my colleague.

Now, listening to these proceedings, there is an allegation and specific charge with respect to abuse of office. It is a serious charge and is in the Constitution, but the question that we will be asking ourselves is: Has the County Assembly submitted enough evidence to demonstrate that the Governor abused his office? If any, where is the evidence that links the Governor to an abuse of office, and what is an abuse of office anyway? There is a submission that an abuse of office will occur if the Governor has used his position as governor either for personal gain or to confer unfair advantage to a person. That will be an express and clear allegation of an abuse of office. Does it come out from these proceedings? No, it does not. The closest the County Assembly has attempted to tie the Governor to an abuse of office allegations having listened to these proceedings carefully, the closest they have done, the nearest they have done, is where they say that the County Governor swore an affidavit to support the County Secretary who had been in that process where certain recommendations had been made to remove the County Secretary from office by the County Assembly and that is a fact.

So, the closest they say the Governor may have abused his office is when he swore an affidavit to support the county secretary. I want to invite you to look at that issue in totality. The other side of the coin then exonerates the Governor and this side is where they say he swore an affidavit to support the county secretary. Under what context did the Governor swear the affidavit? When he comes here in person, please, ask him that question; under what context did the Governor swear an affidavit allegedly to protect the county secretary? These are the facts which we need to demonstrate more credibly; that the Governor has not abused his office.

Let me just give one reason but I do not want to pre-empt that because he is going to testify. The Governor was an interested party in the court case where that affidavit was filed. If that is not enough, Order 19 of the Civil Procedure Rules which is one of the substantive framework of regulations that govern matters in court proceedings, Rule 1(iii) provides that a party in proceedings can swear an affidavit to express his state of mind for the dispensation of justice. So, the question is; was that really an issue which the Governor ought not to have done because the Assembly's position is that he should not have sworn that affidavit? Our remarks and our submission is that the context of swearing an affidavit can be distinguished. If you make that distinction, then it logically follows that the abuse of office charge will definitely collapse. The abuse of office charge to that extent has not been substantiated. I am avoiding using the word "baseless". Under the County Governments Act, the allegations must be substantiated and not "baseless" because if you use the word baseless, people will be very mad at you, given the effort which they have done to bring this Motion here.

The Chairperson (Sen. (Dr.) Khalwale): Order! I want to agree with you when you say that if an officer uses his office to give undue advantage, then he is abusing it. When the Governor swore that affidavit, do you think he gave any undue advantage to the county secretary on the matter that the secretary was faced with?

The Vice Chairperson (Sen. Murkomen): You have referred to the Evidence Act and the Rules, let us put it the other way. If you think the witness will bring this information, you do not need to answer now. The question I need to ask was, whether the Governor was put in a situation that he had to swear the affidavit? Was it mandatory in law that he had to do so?

Mr. Peter Wanyama: Absolutely. There was a matter which was in court and we usually swear affidavits in court for the interest of justice. Remember, do not condemn the county secretary, do not just make that determination that she is guilty, perhaps she may be innocent. So, for the interest of justice and the fact that the issue is still pending for determination, you cannot make an argument then to say that it was helping one side. We are now saying that the courts of law are supposed to receive any information which will help them dispense justice to the parties. If at all, it conferred due advantage, I want you to ask that question to the Governor directly.

The Vice Chairperson (Sen. Murkomen): These are legal issues which need legal interpretation of what would happen. The fact that the Governor swore the affidavit---The issue of abuse office is not basically for me, the fact is that he swore an affidavit. I thought the County Assembly was trying to say that to demonstrate that the Governor did not want to act as requested by the County Assembly. We have an affidavit that was sworn in a court that contains the contents that enables us to see the mind of the Governor in terms of what he was thinking or his attitude towards the resolution of the County Assembly. So, it is not just the act of swearing the affidavit that is in question here but the contents of that affidavit *vis-à-vis* a decision that needed to be made. The message I got yesterday from the County Assembly is that if you want to read the mind of the Governor

as to what was his attitude towards a resolution of the County Assembly, here is what he was saying; that the person in question was innocent.

Mr. Peter Wanyama: Mr. Chairman, Sir, I agree with you entirely in so far as the County Assembly is concerned but that is their case. Our case is that being a party to any proceedings in a court of law, courts of law usually make orders, and we are assuming in this case, they made an order, that you, party number one, file a response within seven days and party number two, file a response within 14 days. So, the mere fact that a person is a party to a court proceeding, we expect them to file a response and in this case, especially in a legal aspect, you do not expect a party in proceedings not to file an affidavit. Whether it confers an advantage, that is purely a question of fact; I will invite this Committee to look at the two sides of the coin and to make a determination. My persuasion is that that allegation alone is not weighty or serious, of such a nature that can remove a Governor from office under Article 181 of the Constitution. That is our submission but ultimately, we will leave the final decision to you, Senators.

Sen. Orenge: Mr. Chairman, Sir, there is a point which may be lost here. I have seen in the Governor's affidavit at part 8(a), page 194, paragraph 23 that in the premise and without prejudice, section 40(4) of the County Governments Act, Article 47 and 50 of the Constitution stands to be grossly violated. I am just bringing this point probably to understand the position of the Governor that, under the Bill of Rights which is an integral part of Kenya's democratic state and it is upon every citizen that where there is a threat to those rights any person can intercede on behalf of the affected person. If the Governor was motivated by the Bill of Rights, then I understand that position but it would be wrong for him where there was going to be gross violation of the Bill of Rights which is an integral of part of our democratic space for him, to keep quiet in those circumstances. Would you agree with me?

Mr. Peter Wanyama: Perfectly, agreed, hon. Senator, for the rule of law and interest of justice, those are fundamental tenets of Kenya's constitutional and legal order.

Hon. Senators, if I may proceed. The second nearest attempt to link the Governor to gross violation of the Constitution, and I am saying it is very far in terms of that threshold of being substantiated and I saw this coming from the submissions by the County Assembly. If you look at the provisions of Section 34 of the County Governments Act, it provides for the exercise of county executive authority by the county executive committee which the Governor chairs in accordance with the legal framework. The closest they have come is by saying that the Governor is the chief executive of the county, the chairperson of the county executive committee and therefore must be responsible for anything which is done by the county government given the fact that he is the chairperson.

Today morning an issue arose on a question by Sen. Murkomen about the principle of collective responsibility which is intricately tied to this matter. We want now to transcend it to the domain of facts on issues which have not been settled. These issues are:-

Does the mere fact that you chair a county executive committee or are the chief executive officer of a county government – remember county governments are governments on their own, they are not local authorities. They are governments with a proper and clear cut structure which is determined by not less than 21 statutes. I do not want to go into specific details. The point which I am making is this; does the mere fact that he chairs the county executive committee and the mere fact that the County Governments Act designates him as the chief executive officer of the county make him personally culpable for all the wrongs which are done in government? Some allegations have been made but does it make the Governor personally culpable for all these allegations which have been made by the County Assembly? This is the point. Despite the principle of collective responsibility, and I do not want to go into the philosophies and the arguments about the principle of collective responsibility because in constitutional law and theory, the principle of collective responsibility is not one of those principles in which there are hard and fast rules to determine. This is something which can go either way. What is very clear is that contemporary systems of criminal law - I am not saying this is a criminal process - accept that for the purpose of guilt, the fact of guilt can never be personal.

I am submitting here that for purposes of impeachment, because impeachment is a process of removing a public officer from office, for purposes of impeachment, allegations which have been levelled against specific officers, for instance, the county secretary or the county executive committee members, for purposes of determining an impeachment, they can never, in accordance with contemporary knowledge in criminal law and civil procedures, be attributed personally to the Governor. This is what the County Assembly has been saying all along. We have been hearing them say that since yesterday. The county secretary has clearly done some things which are clearly questions of fact. They say that the county secretary wrote a letter to the County Assembly members saying that she will not go to the committee and asked for 21 days. These are the allegations which are being raised and in our view and in view of the fact that we want to make sure we ensure fidelity to the Constitution and law because we are impeaching the Governor---. So, we want to see that logical co-relation of facts to a point where the Governor is personally involved.

For instance, if the allegations are that the Governor wrote a letter to the County Public Service Board, to the company which was doing procurement or that the Governor actually attended a meeting where these issues were discussed and decisions made; if that is the allegation, then you can ascribe personal responsibilities. If the allegations are that someone else did this, then you want to ascribe it to the Governor, then I am afraid to say that under the framework in Article 1 of the Constitution, that allegation cannot be substantiated. One of the most beautiful things about our Constitution is that it sets out certain issues. Previously, we used to call them extra-legal norms. We could not find them in any statute but now it is in the Constitution for us to read and interpret. For instance, the principle of sovereign power could not be found in any statute but only in the minds of scholars like the Late Prof. Okoth Ogendo.

This is what the Constitution says:-

“The sovereign power of the people is exercised at the national level and at the county level---.”

Clearly at the county level where the Governor is elected to be the chief executive officer, even though from a factual perspective he does not control most of the things. For purposes of complying with the Constitution, the Governor is the chief executive officer of a county. He is elected by the people. So, removing such a Governor from office, you must prove that aspect of personal guilt by the Governor for you to impeach him. Where is the aspect of personal guilt in these allegations? The allegations we are seeing here in these charges is that “the county secretary did this or that” These are allegations which are very weighty and we are not rubbishing them but what we are asking is where is the involvement of the Governor?

The Vice Chairperson (Sen. Murkomen): Mr. Chairman, Sir, there is something that the Chair raised before we went for break. First of all, we agreed that these are neither criminal nor civil proceedings. It is somewhere in-between. The Chair was trying to find out, because we need your assistance because when we retreat to make a determination, we will have to ask ourselves one question; to what extent is a Governor responsible for actions or breaches under him like the county secretary and so on?

I am alive to the provisions of the Constitution which provide in Article 183 - and this is a very critical question as you said and rightly so, that there is no day that the Governor sits in the tender committee or presides over the actual actions in the various offices, yet in Article 183, it says that the county executive committee and I said earlier that in the Constitution, there is no enumeration of the functions of the Governor, it says that the county executive committee shall implement county legislation, implement within the county national legislation to the extent that it so requires, manage and coordinate the functions of county administration and its department.

Suppose you have a situation in county “s” where everybody does as they wish, they do not follow the County Integrated Plan, they do not even come to the office in time, the chief officers do as they wish, the officers write letters as they wish instructing people left, right and centre in the name of the Governor or otherwise. When he gave an example of the transport in India, it was not like he was making a conclusive statement. He was simply saying; at what stage do you say that the buck stops with the Governor in terms of administration and what do citizens in a county do if they are frustrated by an officer and they have brought that issue to the attention of the Governor? Does the Governor sit down and say I am not the one who does that, go and look for the relevant person?

Is it, therefore, right to say under Article 181 that this is gross violation of the Constitution? The Constitution requires the Governor to be the coordinator, CEO, manager in chief in the coordination of the function and administration of departments of the county government. Does that mean, therefore, that if such a situation occurs, you can safely say that there is gross violation of the Constitution because the coordination and management and running of the affairs of the county is in disarray? What standards will

you attribute to the Governor? I must be very honest with you; that is where the crux of the matter is in terms of the link between the Governor and the other officers.

Mr. Peter Wanyama: Mr. Chairman, Sir, in my presentation I have tried as much as possible to illustrate that link. The hypothetical facts which you have used to ask the question; in an ideal county where the systems have failed, the public expenditure is bad, the CRA is not doing its work and the CIC is completely not there, if that matter is brought before the committee of the Senate and the Senate looks at all the facts and is satisfied that the Governor is not doing his work, then strictly under the Constitution - Article 181 - I will concede that such a Governor can be removed from office for violating the Constitution. These are issues which are principally dependent on facts.

But here we are in the ideal world; the County Government of Embu. We are persuading you that systems have not failed in the County Government of Embu. The Governor is fully in charge and he has not been mentioned in any scandal at all. He has not been mentioned in any irregular allocation of offices or irregular decision making, except the allegations which are being made by the County Assembly that he has not fired the County Secretary and, therefore, is complicit in this process.

So, we are looking at the fact that we want to impeach a Governor based on alleged complicity. I am submitting that, that fact of alleged complicity must come out clearly from the evidence which has been submitted. If the fact of alleged complicity is not there, you must dismiss because that is the duty you owe the Constitution of Kenya and the people of Embu so that we really move forward. So, our argument is that these facts which are being adduced by the County Assembly do not meet the statutory and constitutional threshold at all. They cannot be substantiated. Secondly, they do not amount to what we call gross misconduct. Earlier on I was just reading the meaning of "gross misconduct" in the Meridian Website Dictionary and it defines it very clearly.

The Chairperson (Sen. (Dr.) Khalwale): Counsel, you know this matter is so delicate that it might turn on very few issues. I want to attempt to remember exactly what the Counsel for the Assembly said in the afternoon when we asked him about the issue of gross violation in relation to this matter. He said had he ignored the resolution of the County Assembly, that would have been violation. But when he chose to wade into the arena of going to the extent of doing that affidavit, then he had now grossly violated the Constitution. With due respect you have spoken about Nigeria, but I just want you to comment on those words of his so that either I remain there, or I come somewhere in the middle of come where you are.

Sen. Wamatangi: Mr. Chairman, Sir, I am also curious, especially on the question that has been raised by the Vice Chairperson. The counsel is treading very well along the line of establishing a minimum threshold that the Governor cannot be held accountable for the actions of the other officers. For that case to be convincing, it must have an upper level that says that it is from this level that the Governor starts to be implicit or responsible. But we cannot build a case where we convincingly state that he would not be accountable for any actions of his appointees or the officers and at no time then would he be culpable

for any actions for anyone within the county unless he himself is caught red handed walking into the vaults and breaking the Treasury and carrying away money. That is the time, probably, he would be guilty. So, if you establish the higher legal level that at this level we would say that he is culpable, then I think that argument would make sense.

Mr. Peter Wanyama: Absolutely, Mr. Chairman, Sir. Hon. Senators, that is where the rubber meets the road.

The Chairperson (Sen. (Dr.) Khalwale): Sorry, this is very delicate. I want to give the chance to the Vice Chairperson again.

The Vice Chairperson (Sen. Murkomen): Mr. Chairman, Sir, I just remember yesterday Sen. Orenge said something that you also use it along that line. He helped us because we are here so that we can be helped to make the best decision for the best interest of devolution and the country. Sen. Orenge said yesterday that in a parliamentary system, you do not need to do all these business we are doing here. You just wake up one morning and say that you do not want the Prime Minister, you remove him and appoint another Prime Minister and move on or the appointing party appoints another person. But a replacement of a vote of no confidence in a presidential system is impeachment. So, you need to juxtapose the same that the argument here is whether the person who is holding office is still culpable. Are there grounds of culpability on matters of governance?

Mr. Peter Wanyama: Mr. Chairman, Sir, first of all, let me answer the question by Sen. Wamatangi. Here let me illustrate from the allegations. Perhaps, it may be convincing. An allegation has been made which is a factual allegation. It is a factual allegation in the sense that it is something which you cannot contest because it is a statutory provision. I want us to look at the provisions of Section 62 (2) of the County Governments Act. I want to illustrate the involvement of the Governor and why we think he cannot be involved at a personal level, then I will illustrate the other point on matters of governance.

The counsel for the County Assembly painstakingly and correctly submitted yesterday that some decisions with respect to the creation of offices – even though it is a question of fact, but in terms of the law, there was a true legal interpretation and we have to highlight it. If the County Service Board wants to establish or abolish an office, it shall submit that proposal for approval. It is a legal position and there is no question about it. So, you will go into law again and ask yourself; the advertisement which was done by the County Service Board, assuming there were positions which were being created, they were being created without the County Assembly approval. There is a serious breach of law if the County Public Service Board goes ahead to create a position without the approval of the County Assembly.

The next question is this: Can this breach then be attributed to the Governor so that he can be impeached from office? Is it not better for the County Assembly simply to remove members of the County Public Service Board for gross violation of the law in accordance

with the same legislation? Remember the County Public Service Board is not above the law. When they make a decision, it is supposed to be made strictly in accordance with the resolutions of the County Governments Act. At Section 53(2) it is express, clear, unequivocal that the only nexus between the county government and the County Public Service Board which is a *quasi* independent institution; it is a body corporate in terms of the County Governments Act, which establishes it as a body corporate. It cannot be controlled by the Governor in that sense. The only nexus between the county executive which the Governor lives and the County Public Service Board is where his chief officers make requests, for example, under Article 63(2) and ask them to create a position in the department. So, the County Public Service Board operates independently.

This is what has been alleged that the Governor breached this Section 62(2), yet we know that this is a statutory responsibility of the Board. Nowadays the County Public Service Board has legal structures. I have been seeing them advertising for legal counsel. So, we expect them to function as fully statutory bodies. So, I must apologize for the County Public Service Board because this is an express violation of the law. You cannot create an office without the approval of the County Assembly. They should summon the County Public Service Board to express this clear violation of the law, but do not impeach the Governor. It is absolutely premature to impeach the Governor and maybe demonstrates malice and certain issues maybe of a political nature or ethnic that they want to settle with the Governor. But strictly from a legal perspective, there is no ground to impeach a Governor based on the breach of Section 62(2). I will invite questions to that effect to clear the air, once and for all.

The Chairperson (Sen. (Dr.) Khalwale): Order! Do you intend to bring evidence or to call a witness who will confirm that this is malice? If you have no such intentions, then we cannot allow you to proceed that way.

Mr. Peter Wanyama: Mr. Chairman, Sir, in our list, one of the issues which we are raising is that these impeachment proceedings were premature and malicious because the County Assembly did not exhaust all the mechanisms. For instance, the Constitution is very clear that the County Assembly is a legislature for all intents and purposes. It can summon any person to appear before it. If you disobey a summon of the County Assembly, you risk going to jail. We will be demonstrating through appropriate testimony from witnesses that, indeed, there is evidence of malice and I do not want to go into that because that is not my domain. The witness will clearly and expressly tell us so that we can do our own evaluation to see whether it makes juristic sense, factual sense, *et cetera*.

The Chairperson (Sen. (Dr.) Khalwale): You have done exactly 55 minutes. Would you like to be given five more minutes so that you do a full one hour and you conclude at the hour or you want some more time?

Mr. Peter Wanyama: Mr. Chairman, Sir, I humbly request to be given 30 more minutes if it makes a case for the Governor to be exonerated.

The Chairperson (Sen. (Dr.) Khalwale): Are you aware you requested 15 more minutes and then we have given you 55 minutes?

Mr. Peter Wanyama: Mr. Chairman, Sir, I actually spent most of the time responding to pertinent questions, but there are three other points which I want to highlight and then we end the matter there.

The Chairperson (Sen. (Dr.) Khalwale): The disadvantage to you is that you are going to adduce evidence from witnesses and now you are taking all your time addressing legal issues. Do you really want to go that route?

Mr. Peter Wanyama: Mr. Chairman, Sir, perhaps, let me just cut it into one point and then you give me five or ten minutes and then the rest we will address during our submissions. I agree with the philosophy in your point. It really makes a lot of sense to address most of the issues during the submissions. So just one---

The Chairperson (Sen. (Dr.) Khalwale): So, you will stop on the hour?

Mr. Peter Wanyama: Yes, Mr. Chairman, Sir. Hon. Senators, there are contradictions in law. Should the Governor take the fall for some of the contradictions in legislation and the Constitution? Can I illustrate a fact of contradiction? The Governor will highlight what he did because the law is very clear on his functions. So many arguments have been raised about the provisions of Article 30 of the County Governments Act. I am submitting here that the Governor will now tell us specifically what he did to make sure that there is no doubt at all in the minds of this Committee that the substantial grounds have not been adduced.

Section 31 of the County Governments Act provides that the Governor may appoint an accounting officer for each department. This section contravenes expressly with the provisions of Section 148 of the Public Finance Management Act. There was an issue which was raised in the morning or I think yesterday. Under the provisions of the Interpretation and General Provisions Act, if there is a conflict between the County Governments Act and the Public Finance Management Act on matters public finance, then the provisions of the Public Finance Management Act override the County Governments Act. Therefore, anything in this Act which gives the Governors powers over accounting matters should be looked at in the context of the provisions of the Interpretation and General Provisions Act. So, it really comes out. It is the County Governments Act Section 31(c). It expressly contravenes Section 148 of the Public Finance Management Act. Perhaps, one of the jobs for the Senate is to audit some of the existing laws and that may be something which is on-going. It is one of the functions of a Governor.

The Vice Chairperson (Sen. Murkomen): Is it in your submission that there was a situation where the Governor had to choose between the two Acts?

Mr. Peter Wanyama: Mr. Chairman, Sir, in our position, the functions of the Governor have been expressly exemplified, particularly as provided for in Section 30 of the Act and then there is this emerging and dominant argument that the Governor is responsible. That he is the accounting officer of the County Government. That brings me to the second last issue before my time expires which is that despite the provisions of Section 30 which relate to the functions of the Governor, you will find the powers and functions of the County Governor being taken away by the same legislation and either being vested in the County Executive Committee which he chairs, of course. So, when it comes to statutory responsibility, you must look at statutory legislation in totality. You cannot interpret Section 30 and then you leave Sections 33 and 34 and all that.

So, it is principally an academic issue and we are saying that if at all there is any negative issue which arises from these conditions, then the Governor shall not be responsible because the Governor in this case followed the provisions of the Public Finance Management Act to designate the accounting officers. It is our testimony and an issue which we really want to emphasize that we need to make sure that we comply with the legal framework. Secondly, is there a procedure for summoning witnesses by the County Assembly and timelines? There is no law to that effect.

This is just a question of facts. If the County Secretary says that he needs 14 or 21 days, there is no substantive law that would require the County Assembly to receive the evidence within 14 or 21 days or even 10 days. This becomes a question of facts. Was the County Assembly overzealous or did the County Secretary appear contemptuous to the County Assembly in that regard?

The Chairperson (Sen. (Dr.) Khalwale): Order!

Sen. Orenge: Mr. Chairman, Sir, are summons a process or legal instruments once they are issued by a competent authority? Unless there is doubt about the summons should they not be honoured? Yesterday, we ordered summons to be served to a particular individual to appear today. We expect him to be here. Do you doubt the efficacy of the legality of the summons?

Mr. Peter Wanyama: Mr. Chairman, Sir, not at all. Under Article 195 of the Constitution, the County Assembly has powers to summon any person to appear before it. However, the question is: If we summon a person and he is sick or completely bedridden, is that an issue? Must he appear before us?

There are certain practical issues that arise and we will need guidance in legislation so to provide the timelines. For instance, the Attorney-General, the other day, was complaining that Parliament is summoning him when he is supposed to be in another meeting. He asked why they cannot designate only Tuesdays. What I am saying is that there is a lacuna in legislation. We really must look at it and to legislate for that. We need a substantive legal framework to provide for modalities for the execution of the summons so that there is responsibility on the recipient officer.

At this rate, we will say that the County Secretary was contemptuous and yet the Secretary can also say that he is she needed time to consult the Department. This is a lacuna in law and does not question the powers of the County Assembly that have been provided for in Article 195 of the Constitution. It is an issue that you have to look at when you are retreating to examine whether, indeed---

The County Secretary's testimony will, probably, beef up the issue for purpose of consideration to see that we have covered all the matters.

Hon. Senators, that is the end of my submission.

Sen. Orengo: Mr. Chairman, Sir, I am just wondering because the County Assembly and where the Governor sits is not in different terms. Why can you not honour the summons to appear before the Committee and say that you are sorry that you are not ready? We face those situations many times with the Cabinet Secretaries. They send very senior representatives and we know that they are not taking us for granted. Here, you have a secretary who writes a letter, does not appear and does not have a follow up letter. The next thing we hear is that she is in court.

Mr. Peter Wanyama: Mr. Chairman, Sir, in that sense, that becomes a question of facts. I leave that to you, Senators, to ask the County Secretary what was in her mind when she wrote that letter so that we clear it, once and for all. However, for legal purposes, I am simply highlighting that the law is not very clear. Perhaps, it is one of the issues that the Kenya Law Reforms Commission (KLRC) needs to look at so that there are no doubts in legislation. If summons have been issued, probably, within seven days, you should send a representative or honour the summons without fail.

The Chairperson (Sen. (Dr.) Khalwale): I am compelled to remind you the same question which I put to your lead counsel although he did not respond. With regard to the excuse of 14 days, the evidence of the County Assembly was that this was not the first time an opportunity was being given to the secretary to be given time. That request was made earlier, it was granted, they waited, no progress was made and when it was made the second time, they refused to for good reasons. Could you respond to that?

Mr. Peter Wanyama: Mr. Chairman, Sir, my response is that the Committee can find it either way. However, for purposes of how the County Governor is involved in the process and if he is, in accordance with Article 181 of the Constitution, personally responsible for the fact that a County Secretary has not honoured summons; do you impeach a Governor because a County Secretary has not honoured summons really? Is this something that makes sense from a constitutional perspective?

The Chairperson (Sen. (Dr.) Khalwale): Good, so you agree that the County Assembly was justified in taking action after she failed to appear?

Mr. Peter Wanyama: Mr. Chairman, Sir, I am saying that it can go either way. So, she will testify why she refused and you make a determination on your own.

The Vice Chairperson (Sen. Murkomen): Mr. Chairman, we are in a governance forum and presiding over a process that is questioning the running of a county and not criminal. We have heard the arguments and counter allegations and some have been discounted. Someone has said that the reason the Speaker is doing this is because of this and that, and the motive. The question I hope will be answered as we proceed is the ultimate state of governance in Embu County and who takes the ultimate responsibility of putting the County Executive in order in a particular synergized condition so as to respond to the interests of the people? Going forward, with regard to the decisions we will make, how will they respond to a governance problem?

Part two, legally speaking, the County Governments Act, Section 31, the one that you read, says that the County Governor may appoint an accounting officer for each department into decentralized units and so forth. If you go back to the rules of interpretation and the Public Finance Management Act, you will see that it talks about “the County Executive in charge of Treasury will designate a person”. So, I do not think that the two will be in any conflict if we do proper interpretation.

The other point is that the other person doing designation is an appointee of the Governor. Any time a Governor wanted “X,” “Y” or “Z” to be designated to an accounting officer, he would need to talk to his appointee to do the designation. So, I do not think that this is a fatal scion of conflict because they are working as a team. The point here is that the Constitution envisaged all that. It has listed the functions of the President, the Deputy President and so forth.

However, when we come to the county, this was left so much more to be a team work. The County Executive Committee is left to work as a team.

Mr. Peter Wanyama: Mr. Chairman, Sir, I take that as a comment. Thank you for giving me the opportunity. I hope I have persuaded you.

Sen. Orengo: Mr. Chairman, Sir, I must say that I am grateful to Peter with regard to the way he has handled the Articles on impeachment. Something is coming to my mind, that probably, we have not fully examined the Articles of Impeachment. When I look at the proceedings before the House, for instance, on abuse of office, the relevant provisions do not appear to have been brought to the notice of the County Assembly. However, in any case, the one regarding the abuse of office, there is a reference to Section 39(i). I have been looking at various legislations that we have been dealing with, but I have not found any that is relevant. I think the closest is Section 39(i) of the County Governments Act. When I look at it I see that the mischief that the law targets is in relation to discrimination. Can you look at it, Peter, and tell us whether, in your view, the particulars of that charge of abuse of office fall within Section 39 of the County Governments Act. In fact, to assist you, probably, I could read it.

Section 39(i) – This one is on accountability of Members of the Executive Committee. In the other provision which is found in the Public Procurement and Disposal Act 39(i) is in

relation to discrimination. So, in a way, I am at a loss at what was the mischief in the abuse of office that these charges were targeting, but probably, a response from you will be important.

The Chairperson (Sen. (Dr.) Khalwale): Maybe to be fair to Peter, what you are referring to is not their document. It is a document from the Embu County Assembly. Let them be the ones to tell us what 39(i) meant. If they agree with you that it refers to 39(i) of the County Governments Act, then we will ask them to respond.

Sen. Orengo: No, they have already put their case. They cannot have that opportunity again.

The Chairperson (Sen. (Dr.) Khalwale): But for clarification, we want to know what they meant by referring to Statute 39(i).

Sen. Orengo: Mr. Chairman, Sir, I feel that the Governor is the one in the dock. Therefore, he should be given an opportunity to comment on this very important issue. He is being charged with abuse of office, but when I look at the law, I do not see any relevant provisions, as it were. But if you feel that you do not want to comment, I will be quite happy.

The Chairperson (Sen. (Dr.) Khalwale): Sen. Orengo, I am trying to persuade you. Since we are trying to get to the bottom of this, you will remember when we were at the two day workshop. We also raised this issue of 39(i). Yesterday, it was a failure on our part when the County Assembly was making a presentation on this evidence for having forgotten to seek clarification. If it remains ambiguous the way it is, then it will be to the advantage of the Governor. He will not have to speak to it. He will just say that he does not know what 39(i) means. However, it will be to the advantage of Kenyans and, especially to the people of Embu, that it be clear what the County Assembly was speaking to. After that, we can ask him to comment. That is what I will persuade you. I do not know.

Sen. Orengo: Mr. Chairman, Sir, the charges were read. This is a matter of record. A charge can be read and the accused person pleads guilty to it. I just wanted us to be clear that without a comment on this particular aspect, are you accepting it or are you quite happy with it?

The Chairperson (Sen. (Dr.) Khalwale): Hon. Members, without appearing to be dictatorial, that is my strong understanding. The alternative is this. If we do not invite the County Assembly to tell us what 39(i) means, then we would not be fair to the process to ask the Governor to comment on something that is merely speculative or ambiguous. Really, if we are looking for evidence, I am convinced that we should go for it wherever we think it is. We are not trying anybody. So, Members, you will guide me.

Sen. Wamatangi: Mr. Chairman, Sir, I will add something. I want to remind the Committee that our mandate is to conduct an investigation. That is important because in

conducting the investigation, we cannot be limited in the means to find the information required by the investigation.

The Chairperson (Sen. (Dr.) Khalwale): I want to request the counsel for the County Assembly, are you on the same page with us?

Mr. Charles Njenga: Yes, I am, Mr. Chairman, Sir.

The Chairperson (Sen. (Dr.) Khalwale): We would like to find out something. In your document of evidence, on this issue, you have referred to that Statute 39(i). Which one is it?

Mr. George Ng'ang'a Mbugua: Thank you very much, Mr. Chairman, Sir. Perhaps, to illustrate how Section 39(i) falls into place within the context of abuse of office charge, I will invite--- This is Section 39 of the County Governments Act.

The Chairperson (Sen. (Dr.) Khalwale): Then you have answered us. You do not have to make any invitations. That is good enough for us. It is now on record that it was a clerical error. You left out the words Section 39(i) of the County Governments Act.

Mr. George Ng'ang'a Mbugua: That may have been an oversight.

The Chairperson (Sen. (Dr.) Khalwale): Peter, you can rise if you, please, and respond to the concerns of hon. Orengo.

Mr. Peter Wanyama: Hon. Senators, this is a pertinent issue for us. When we were reviewing the charges yesterday, we said that the charge sheet is full of contradictions and all that. This is one of the issues we highlighted. In our response, we have expressly said that. But, nonetheless, we will assume that they meant Section 39(i) of the County Governments Act. We went ahead and gave a response.

The response is that the County Governor in this multi-layered structure of governance has his responsibilities. The County Executive exists to undertake other responsibilities. There are Directors among others. Within the structure, for the County Assembly to pin down the Governor to a charge of abuse office, then there must be express and clear violations of Section 39 of the County Governments Act. We did not see any and in our response, we have said that.

The Chairperson (Sen. (Dr.) Khalwale): Before you go away, Sen. Orengo is a senior counsel and he is of great use to this Committee, the Senate and even the country. That is why he enjoys that status.

I want to attempt to get maximum benefit from his concerns because 39(i) says:-

“The Members of the County Executive Committee are individually and collectively accountable to the Governor in the exercise of their powers and performance of their duties and responsibilities.”

This is the beginning of the nexus between the action of those Members and the Governor. They do not do those things individually or collectively in isolation.

Mr. Peter Wanyama: Mr. Chairman, Sir, there are three responses. The first response is that the County Assembly has not clearly exhausted all the mechanisms to ventilate that issue. Have they summoned all the County Executive Committee Members, including the chief officers to ascertain that fact or are there failures in the system?

So, there are only two instances where they attempted to summon the County Secretary. In other instances, they summoned the CEC responsible for Agriculture and it is very clear and on record. The County Assembly, first of all, should exhaust all mechanisms, including the provisions of Article 195 of the Constitution, to exercise its oversight. So, the question we have been pondering and putting on the Governor’s case is that we want this Committee to factually determine whether the County Assembly of Embu exhausted all mechanisms in terms of oversight and summoning of witnesses despite the challenges they were experiencing. Did they exhaust that? If they did, then this will be a different matter. If they did not, and this is our clear submissions, then the impeachment procedures were highly premature.

Secondly, there is the issue of responsibility. Assuming that they summoned the chief officers, the principle of collective responsibility as I have explained, I do not want to go into the semantics and the legalities and constitutional arguments about the principle of collective responsibility. Here there are many issues. There is an encyclopedia from Stanford University on the Principles of Collective Responsibilities alone. So, there is consensus when it comes to collective responsibility.

Where there is personal involvement, guilt can never be collective. If you have messed up, you are on your own. You cannot say that we are collectively responsible for this or that mess. That is the consensus in the practice or theories about collective responsibility. It is something which is clearly practiced in criminal law in Kenya and elsewhere. We are persuading this hon. Senate Committee that no allegations, so far, have been substantiated. I have highlighted the instances where they have attempted to do so. No allegations so far have been substantiated in a manner that is weighty enough to bring the elected Governor of Embu County within the confines of this section. That is our clear submission. We are persuading you, when you retire ultimately after hearing the witnesses from the Governor, that nothing substantial has been brought. Probably, there are allegations, but there is nothing substantial that can bring the Governor to the ambit of that particular issue. Thank you, hon. Senators.

The Chairperson (Sen. (Dr.) Khalwale): Before you step down, the County Assembly, in attempting to get to the bottom of the issue of the maize seed summoned the CEC on Agriculture, Finance and the County Secretary. It is now your assertion that they should

have summoned more people. For purposes of this particular issue of maize seed, which other CEC should have been summoned before they arrived at the conclusion they reached?

Mr. Peter Wanyama: Mr. Chairman, Sir, that is an important question because I need to distinguish. There was a general question which was asked about the collective responsibility of the entire County Government. But this one is specific on one issue, that there is an allegation that was made. The committee attempted to summon the others who appeared and then summoned the County Secretary who did not appear for whatever reasons. She is going to explain why she did not appear. But the principle issue which we want to ventilate here for purposes of making that matter final, once and for all, is: Is the Governor personally responsible for that?

If I was the County Assembly what I would have done is that after I have summoned the County Secretary, after I have summoned these officers who do not want to appear before him, what do I do next? I bring a Motion in the House and pass a specific resolution to remove that officer from office and see what the Governor will do with that Motion. It did not happen in this case. There was no specific Motion to remove the County Secretary from office. Instead, the County Secretary benefited from other remedies, for example, going to court to attempt to explain some issues. It is a benefit which she enjoys. You cannot take it away. So, the County Assembly should have exhausted that process by summoning and, indeed, passing a resolution. After summoning, you pass a resolution. If you do not obey summons, we punish you because under Article 195 of the Constitution the powers of the County Assembly are full, they are not challenged, and they cannot be qualified at all. So, they should have punished the County Secretary instead of rushing quickly to file a Motion to impeach a Governor. That is really our case. Why is it that they were rushing the Motion in that manner?
Thank you, Mr. Chairperson, Sir.

The Chairperson (Sen. (Dr.) Khalwale): There is one little hanging thing from Sen. Wamatangi.

Sen. Wamatangi: Thank you, Mr. Chairman, Sir. Since this Committee may not have the benefit of visiting Embu County, I want a clarification on this. Are the premises that house the offices of the Governor the same premises that house the County Assembly in Embu County?

Mr. Peter Wanyama: Mr. Chairman, Sir, I will pass over that question to the Governor. He will adequately answer it. You will allow me, with a lot of respect, to consult. He is just next here.

The Chairperson (Sen. (Dr.) Khalwale): You can consult very quickly, so that we clear it.

(Mr. Peter Wanyama consulted the Governor of Embu County (Hon. Martin Nyaga Wambora)

Mr. Peter Wanyama: Mr. Chairman, Sir, I have consulted. He says they are not in close proximity. He will qualify the details.

The Vice Chairperson (Sen. Murkomen): Mr. Chairman, Sir, the point that Sen. Wamatangi is driving at is that: Do you have to drive for some several kilometres to go to the County Assembly from the County Executive? Is it within reasonable proximity? The much I know about Embu County is that they are opposite each other. They are across the road.

Mr. Peter Wanyama: Hon. Senators, the problem is, when you take lawyers to factual issues, we can confuse. What we are saying is that the hon. Governor will make a final determination so that it goes on record. But that is an important point which you have raised. Perhaps, it can explain one side of the coin and another explanation also comes from the County Secretary on why she did not attend. She is one of the witnesses listed by the Governor.

With a lot of respect, I think the Governor can answer that question.

Thank you for giving me the opportunity. Could I stand down?

The Chairperson (Sen. (Dr.) Khalwale): Okay Peter, you are now free.

Mr. Peter Wanyama: Thank you very much.

The Chairperson (Sen. (Dr.) Khalwale): You may resume your seat. Not that you had been confined anywhere.

An hon. Senator: You had not been jailed!

(Laughter)

The Chairperson (Sen. (Dr.) Khalwale): Thank you. The lead counsel for the Governor, you can see that we have lived up to our promise, that we will not gag anybody. From 15 minutes it has ended up to two hours.

Mr. Wilfred Nyamu: And we appreciate.

The Chairperson (Sen. (Dr.) Khalwale): Hon. Senators, I want to adjourn the sitting. It is now a quarter to two. I will adjourn to a quarter to three so that we have a health break of one hour.

The Vice Chairperson (Sen. Murkomen): I propose 2.30 p.m.

The Chairperson (Sen. (Dr.) Khalwale): Will you manage?

The Vice Chairperson (Sen. Murkomen): Mr. Chairman, Sir, 45 minutes.

The Chairperson (Sen. (Dr.) Khalwale): So, 45 minutes will be okay for a break?

Hon. Senators: That is fine!

The Chairperson (Sen. (Dr.) Khalwale): Very good. 45 minutes it is. Just to clarify further that the lunch for Senators will be at the Senate Restaurant. Lunch for the parties and the media will be at Tin Tin Restaurant. The public will have lunch in their usual place.

(The Committee adjourned temporarily at 2.45 p.m.)

(The Committee resumed at 2.35 p.m.)

The Chairperson (Sen. (Dr.) Khalwale): Hon. Senators, I now call this meeting to order. I have the following announcement.

It is now time for the Governor to present his case. Hon. Governor, we have noted the number of witnesses that you have. It is up to you to divide the time so that you finish on time. We will not rush you. But if you end up using all your time without accomplishing what you want, you will only have yourself to blame. So, you will be your own time keeper. Witnesses will start by being given oath or affirmation. For every witness who comes, you will pause and make sure that Senators have got copies of their statements.

We will proceed in the manner they proceed in the Royal Court of Justice where when the statements are given, the witness is not expected to read them out because all these members are able to read. As soon as I say so, they will start asking questions. During re-examination, if there are issues you want to clarify you can then lead the witness. We hope that if we do this, we might use around a maximum of ten minutes per witness. Thereafter, you are expected to do your submissions today. If you do not do your submissions, you will not have another chance.

First witness.

Mr. Wilfred Nyamu: Thank you, Mr. Chairman, Sir and hon. Members of the Senate Committee. Our first witness is the Governor.

*(The Governor of Embu County (Hon. Martin Nyaga
Wambora before the Committee)*

The Chairperson (Sen. (Dr.) Khalwale): Clerk and proceed and swear-in the witness.

(Hon. Martin Nyaga Wambora took oath)

The Chairperson (Sen. (Dr.) Khalwale): Hon. Governor, I would like you to give your evidence from comfort. Take your seat in front of me.

(The Governor took his seat)

I am being pushed by the Vice Chairperson that I address you as His Excellency!

(Laughter)

I can assure you I will not for the reason that, that title exists only in the imagination of Governors, it is not in law.

Be comfortable. I hope it does not offend you when you are not addressed as His Excellency.

The Governor of Embu County (Hon. Martin Nyaga Wambora): I have no problem, Mr. Chairman, Sir.

Once again, I wish to thank the Members of the Senate Special Committee for giving me a second chance to present my case. Do I need to be led by questions?

Mr. Wilfred Nyamu: Could you tell this Committee what your full names and what your relation to this case is.

The Governor of Embu County (Hon. Martin Nyaga Wambora): My full names are Martin—

The Chairperson (Sen. (Dr.) Khalwale): Order, Martin. Counsel I would like you to take the podium. Lead counsel, take the stand there. We must remain organised.

(The Lead Counsel moved to the podium)

So as to be tidy, we will expect you to point out where the statements are in your bundle of documents. Endeavour to use around five minutes to organize the witness before examination starts from the Senators here assembled.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, and hon. Senators, in respect to this witness, that is the hon. Governor, we decided that we just pose questions based on his role and duties as the Governor of the County of Embu and how the County Government operates, just an overview. This is just a short witness, so that we are only going to deal with issues touching on statute. We did not prepare a witness statement for him.

The Chairperson (Sen. (Dr.) Khalwale): Well, we will give it to you because it is your case. Does that mean that you will lead him all through?

Mr. Wilfred Nyamu: We will lead him, but on a very limited scale.

The Chairperson (Sen. (Dr.) Khalwale): We are not restricting you. If your style is to lead him, go ahead, only indicate to us for how long because we do not want you to do it again for a protracted period of time.

Mr. Wilfred Nyamu: Hon. Members, we will be here for 20 minutes. We shall let the hon. Members and the County Assembly to cross examine him.

The Chairperson (Sen. (Dr.) Khalwale): Hon. Members, in view of the fact that Hon. Martin Wambora is the one to be impeached if this hearing succeeds against him, it is only fair that we give him that 20 minutes to make his case.

Hon. Senators: That is fine.

Mr. Wilfred Nyamu: Hon. Wambora, Governor of Embu County, could you let this Committee know when you were sworn into office?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, my full name is Martin Nyaga Wambora, the first Governor of Embu County. I was sworn-in on 27th March, 2013.

Mr. Wilfred Nyamu: At the point at which you were sworn-in, what system did you find at the County?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I found systems set by staff of the Transition Authority (TA) who had been employed much earlier before the elections, mainly civil servants seconded to the County reporting directly to the headquarters, the TA. But we used to handle administrative and policy issues, but definitely not procurement.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, so in matters of procurement during the time the TA was in place, that is the period running between March and June, were you involved in matters of purchases and supply?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, absolutely not. Even to date all the laws which deal with the Governments, especially the County Governments Act, the Public Finance Management Act and the Constitution of Kenya have made sure that Governors, the Chief Executives, have nothing to do with procurement.

Mr. Wilfred Nyamu: Hon. Governor, when you took office, did you endeavour to put in place systems that have been established by law and ensured that your county government runs in accordance with those systems?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, indeed. The first thing we did was to ensure recruitment of County Executive Committee members

(CECs), the Ministers. That was the first step. It was a slow process. The names were not being approved fast enough, so we got the first four. Much later, we recruited six more. We did not interfere with the administration which was already in place, comprising of the former defunct Local Government civil servants and the officers seconded by the TA. We left the systems intact until a circular was issued in September for them to go back to Nairobi. We had to recruit starting with the Chief Secretary. By that time we had already recruited members of the Public Service Board. The process of recruiting the Chief Secretary was undertaken by the Public Service Board.

Much later, we recruited chief officers, who are in place now, as well as some county administrators. That is how far we have gone. But we also had to recruit, through the County Public Service Board (CPSB), principal officers to replace – not new positions – the ones who had to go back to Nairobi. It was critical because there is no county which can run without principal finance officer, head of budget, internal auditor or head of supply chain. There is no county which can run without those people. So, we had to quickly recruit to fill the gaps. The CPSB did not seek authority from the County Assembly because we were simply replacing the officers who had gone back to Nairobi or wherever they had come from.

Mr. Wilfred Nyamu: Hon. Governor, is this document familiar with you? That is page 49 of our Supplementary bundle---

The Chairperson (Sen. (Dr) Khalwale: The way to do it is this, counsel. I want you to be very relaxed; this is your time. When you want to go to a document, you tell plenary that “I now want to show the witness such and such a document; it is found on such and such a page.” Once you establish that, you then tell the witness “Do you know---” or whatever you wanted to ask. Please, we want to move systematically.

If you can retrace that, retrace and retrieve the document from the witness.

Mr. Wilfred Nyamu: Hon. Members, now I wish to refer the witness to the document appearing on Page 49 of the supplementary bundle; no, it is the smaller bundle. That is a document in relation to progress by the TA.

The Chairperson (Sen. (Dr) Khalwale): Yeah, I would like you to put on record what the document is about; say this is a document concerning progress report on blah, blah, blah; then it goes on record and you ask the witness what you want him to introduce.

Mr. Wilfred Nyamu: Yes, hon. Members, that document is in relation to preparedness authored by the TA. It is written by the County Transitional Co-ordinator, Embu County and it is a progress report on preparedness for assumption of office of the Governor and the steps that had to be taken.

Now, in relation to that document, hon. Governor, when you were assuming office, who ensured that your office was refurbished?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, that was the work of the County Preparedness for Assumption of Office Committee under the chairmanship of the Interim County Secretary; an official from the TA. He was the person who was the interim head of the CPSB. That was their work to do; to refurbish, repair and all that. They also were tasked to buy furniture, provide a vehicle and do procurement.

Mr. Wilfred Nyamu: So, basically, would you know when the TA handed over full operations to the County Government?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, the handing over was done in September and they only left behind a TA Co-ordinator and a budget controller to represent the Controller of Budget. All the others went back to Nairobi or wherever they had come from.

Mr. Wilfred Nyamu: So now, hon. Governor, what has been your role as the Governor and what does your duty as the Governor of the County of Embu entail?

The Governor of Embu County (Hon. Martin Nyaga Wambora): As a firm believer of due process, my duties, functions and responsibilities as a County Governor are derived from Section 30(2) of the County Governments Act, and I will quickly read the 12 functions and responsibilities:-

- “(2) Subject to the Constitution, the governor shall -
- (a) diligently execute the functions and exercise the authority provided for in the Constitution and legislation;
 - (b) perform such State functions within the county as the President may from time to time assign on the basis of mutual consultations;
 - (c) represent the county in national and international fora and events – as I did represent the county, not the Kenya Government, the County of Embu in an international Commonwealth Conference in Kampala in June.
 - (d) appoint, with the approval of the county assembly, the county executive committee in accordance with Article 179(2)(b) of the Constitution;
 - (e) constitute the county executive committee portfolio structure to respond to the functions and competencies assigned to and transferred to each county -which I have done.
 - (f) submit the county plans and policies to the county assembly for approval;
 - (g) consider, approve and assent to bills passed by the county assembly;
 - (h) chair meetings of the county executive committee - and later I have explained the issues of individuals and collective responsibility on that.
 - (i) by a decision notified in the county gazette, assign to every member of the county executive committee, responsibility to ensure the discharge of any function within the county and the provision of related services to the people;
 - (j) submit to the county assembly an annual report on the implementation status of the county policies and plans;

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

(l) sign and cause to be published in the county Gazette, notice of all important formal decisions made by the governor or by the county executive committee.

Additionally, in terms of amplification, I am also responsible for delegation as necessary. I also give policy guidelines on issues of county mission, vision, values and public-private partnership initiatives and, finally, performance contracting.

Mr. Wilfred Nyamu: Now, you have looked at your roles under the law that you have just read to the Committee.

Hon. Your Excellency the Governor, could you tell this Committee whether you have complied with those provisions?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I have complied with the responsibilities and duties I have just gone through without failure.

Mr. Wilfred Nyamu: Now, you have stated that you have already appointed CEC members. Were those committees approved by the County Assembly of Embu?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, absolutely. All the 10 Members of the CEC were approved by the County Assembly of Embu as it happened with 10 Chief Officers and also as it happened with County Secretaries (CS), all of whom were approved by the County Assembly of Embu, and I thank them.

Mr. Wilfred Nyamu: Now, are those Committee Executives and their departments functional?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, all our departments are functional, headed by the CEC members. They have organizational charts and they are doing a good job.

Mr. Wilfred Nyamu: Now, questions were raised and comments made in relation to collective responsibility and your responsibility in terms of collective responsibility together with the CEC members. To what extent is your responsibility in respect of the functions of the CECs covered?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, Members of the Senate Committee, individual responsibility by the Ministers for what they do in terms of policy formulation, initiation of formulation for various plans, running and overseeing of their Ministries is individual responsibility. But all decisions by the CEC Committee comprising of the Governor, the Deputy Governor and the CEC members with various portfolios, policy decisions, decisions of approval of the budget,

approval of the integrated development plan, spatial plans and sectoral plans, those are joint collective responsibilities. At no time since we took over have we ever discussed procurement in the Cabinet, because it would be completely out of order. I have made it clear to the CEC members that I will not allow them to get involved in procurement; we might later get evidence to show why some of the conflicts have come about because of that effort of some wanting to get involved in procurement.

Sen. Orengo: Mr. Chairman, Sir, for purposes of this record, could the right titles be used? Because when he says “cabinet,” we do not know which organ you are talking about; or when you are talking about “Minister.” I would rather you go by the terminology in the Act, just for the record.

The Chairperson (Sen. (Dr) Khalwale): Governor Wambora, I told you jokingly at the beginning that some things only exist in the imagination of Governors. We want you, when you refer to everything; you refer to it as it is in the Constitution. There are no Cabinet Ministers in your Government; just call them Committee Members and so on so that we do not confuse matters.

The Governor of Embu County (Hon. Martin Nyaga Wambora): County Executive Committee (CEC) Member.

Thank you.

The Chairperson (Sen. (Dr) Khalwale): That is very correct!

The Vice Chairperson (Sen. Murkomen): And what you call a cabinet would have been called a CEC committee meeting.

The Governor of Embu County (Hon. Martin Nyaga Wambora): CEC Committee members or CEC meeting.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, and the hon. Members, I think it is better that for purposes of these proceedings, we refer to those meetings as CEC meetings; and CECs. For example, CEC Finance, CEC Agriculture so that, now, we may move appropriately and avert confusion.

So, now, you said that you have the CEC in place. Do you have a CEC Agriculture?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, we have the CEC Agriculture, livestock and Co-operative Development.

Mr. Wilfred Nyamu: Do you have a CEC Finance?

The Governor of Embu County (Hon. Martin Nyaga Wambora): We have a CEC Finance, Planning and Administration.

Mr. Wilfred Nyamu: Now, in these particular departments, do you have chief officers?

The Governor of Embu County (Hon. Martin Nyaga Wambora): We have chief officers in all the ten departments headed by the CEC Members.

Mr. Wilfred Nyamu: Hon. Governor, could you tell this Committee; where you had no chief officers or where chief officers had not been employed, what system was employed to fill this vacuum?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Before employment of chief officers, the Minister--- I am sorry. The CEC Finance, Planning and Administration would appoint an accounting officer. In our case, it was the CS.

Mr. Wilfred Nyamu: Now, for purposes of procurement; for purposes of ensuring that the policies to supply maize and to refurbish the Embu Stadium, to what extent did you, as the Governor and the CECs participate?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, we approved the upgrading of Embu Stadium and the procurement of maize seeds as a CEC Committee.

Mr. Wilfred Nyamu: After approval, for example, of the procurement of maize, did you have any role any further as the Governor, specifically on procurement?

The Governor of Embu County (Hon. Martin Nyaga Wambora): I did not have any other role other than to officiate or launch the distribution of maize seeds, cowpeas and green grams.

Mr. Wilfred Nyamu: Now, when you were launching that project, were you launching it in your executive capacity or were you launching it as a ceremony?

The Governor of Embu County (Hon. Martin Nyaga Wambora): What?

Mr. Wilfred Nyamu: Were you launching it ceremoniously as the Governor, or were you actually supplying as an officer charged with the responsibility to supply?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, definitely, I was doing my work as a Governor and because it was part of promoting and notifying the people, we had seeds and we always do those kinds of launches. But I had nothing to do with procurement.

The Chairperson (Sen. (Dr.) Khalwale): Order, Counsel! Those are two questions. You have asked whether he was doing it ceremoniously or as a public officer. Can you make him answer one question? Can you rephrase it so that we see what you are looking for?

Mr. Wilfred Nyamu: When you were gracing the occasion, were you gracing that occasion as the immediate supplier or as the Governor of the County of Embu?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I was gracing the occasion as the hon. Governor of Embu.

The Chairperson (Sen. (Dr.) Khalwale): Maybe it could help to answer his question. When you were addressing the congregation, did you tell them that your government had brought those seeds?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, absolutely. They were bought by my government.

The Chairperson (Sen. (Dr.) Khalwale): Very good.

Mr. Wilfred Nyamu: Now, at the point of gracing the occasion in terms of distribution of seeds, who did you confer with just to know that the seeds were, indeed, ready and it was time to launch the distribution?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I did not confer with anybody. I was just informed by the county secretary that the maize seeds, green grams and cowpeas were ready to be distributed to the needy farmers.

Mr. Wilfred Nyamu: And you confirm that, that was in line with your policy, as passed in the CEC meeting as a resolution?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, well, it was because we had discussed the issue of the need to avail those seedlings as we had done earlier with 26,000 tonnes of cotton seeds donated by a development partner.

Mr. Wilfred Nyamu: Now, in terms of refurbishment of Embu Stadium, at what level did you participate?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I participated at the level of being the chairman of CEC, because we thought that it was---

The Chairperson (Sen. (Dr.) Khalwale): Order, Governor! I am being pushed here by one of my Senators. He has a burning issue.

Sen. Wamatangi: Mr. Chairman, Sir, I just wanted to confirm from the Governor, in his evidence, at the time that he has said he was giving the seeds or presiding over that ceremony of giving the seeds, whether it was of concern to him, as the Governor of the county, that then those seeds were either of good quality and their usability. Was that an issue that you would have addressed yourself to? Supposing you were presiding over the launch of a county ambulance, would it not be good sense to start it and ensure that it starts and moves?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Thank you, Mr. Chairman, Sir. Indeed, I was assured that the due process had been followed and the department of agriculture had initiated the requests. Evidence will be tabled to that extent. So, with the officials of agriculture, procurement officials and the county secretary, I could not have doubted the three groups that we were launching seeds of quality.

The Chairperson (Sen. (Dr.) Khalwale): Counsel, if you can just hold. Dear colleagues, the first person to have a shot at this witness will be the Counsel for the county assembly. They will cross-examine him and at the end, they might leave out a few things which are critical to you as an individual. That is when we shall come in to seek further clarification. Let us just spectate at this history being made.

Mr. Wilfred Nyamu: That includes the Chairman.

The Chairperson (Sen. (Dr.) Khalwale): The Chairman will only come in on issues of procedure.
Proceed!

Mr. Wilfred Nyamu: Mr. Chairman, Sir, I wish to suggest that such interjections in terms of questions would also warrant re-examination in the middle of examination-in-chief, as I was going to do with respect to the question raised by the hon. Member. So, I think that it is imperative that you let us move and then---

The Chairperson (Sen. (Dr.) Khalwale): We are doing very well.
Proceed!

Mr. Wilfred Nyamu: Very well! In terms of the refurbishment of Embu Stadium, at what level did you participate? That was the question that I had posed before the interjection.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I had participated at the level of County Executive Committee (CEC), to make it a priority project, which already had a budget of Kshs8 million. We were planning to enhance that amount to have a stadium good enough for CECAFA, which was to take place in December. We wanted to bid for CECAFA matches and also make sure that we were going to use the stadium on 12th December, 2013, which we did. But we did not get the CECAFA participation, because we had not put up the changing rooms and stands. But we were able to beat one deadline in terms of the “Kenya at 50” celebrations.

Mr. Wilfred Nyamu: At that particular moment, did you have a CEC infrastructure or CEC in charge of that particular docket that was refurbishing the stadium?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, Mr. Chairman, Sir, we had a CEC, infrastructure, an engineer by profession. He must have been working closely with the government architect, government engineer and quantity surveyor.

Mr. Wilfred Nyamu: Did you have other officers in that particular department who dealt with the issues touching on that matter and ensuring that your policy decision was achieved?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, Mr. Chairman, Sir, I have mentioned the county architect, the county engineer and the county quantity surveyor. Those were the implementers, but the conceptualization of the project was done at CEC level; Eng. Gitonga.

Mr. Wilfred Nyamu: Was it one of your roles to determine or get to know who was involved in the works?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, it was of no interest to me. Even as we took over on 27th March, I just found contractors on top of my building and others trying to clear my place and leave the office, so that they could rehabilitate and furnish it. There were no details that I used to get about contractors at all. Indeed, I have just learnt about most of the contractors when we were compiling this document.

Mr. Wilfred Nyamu: Now, have you ever, at any given time, been addressed on the issues touching on the procurement of maize and the refurbishment of the Embu Stadium by the county assembly, in terms of summons to appear before them or otherwise?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Absolutely not, Mr. Chairman, Sir.

Mr. Wilfred Nyamu: Have you ever been given any notice to show cause why you should not explain to the county assembly the manner in which these procurements were done, as a Governor yourself?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, they could not have done that because they knew that I have nothing to do with procurement.

Mr. Wilfred Nyamu: When did you get to learn about the issues that the County Assembly had raised with regard to those two procurements, as a Governor? When was your first time that you got to know that they had issues to do with that?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, in the beginning of the year; that was, after the new year- January, 2014.

Mr. Wilfred Nyamu: Now, it has been said that in your county, the CPSB has committed a breach of the law by recruiting and creating offices without seeking the approval of the County Assembly. Do you have a CPSB, substantively in place in the county?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, we have Embu County Public Service Board in place, and they are independent of the Governor.

Mr. Wilfred Nyamu: Do you at any given moment dictate upon them on how to deal with their matters?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, doing so would be abuse of office. So, I have not done that.

Mr. Wilfred Nyamu: On the issues touching on the county secretary---

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I would just add that we always inform them when we want positions advertised and appointments done, as we did when we got information that the TA would withdraw the interim officials. We had to ask the county secretary to now notify them that we, definitely, need them to advertise those positions and fill them, so that we will not have a gap. Before we could release these officials who are required back, wherever they had come from, we had to ask them to now interview and appoint.

Mr. Wilfred Nyamu: Now, you have been accused of abuse of office, by not heeding the resolutions passed by the county assembly in respect of your county secretary. Kindly, tell this Committee why you did what you did in terms of the county secretary; why you did not suspend her?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, the county assembly did not tell me to suspend the county secretary. They resolved that she steps aside. Suspension or interdiction is very harsh because you go on half-pay. My interpretation of stepping aside is for somebody to get out of office as investigations are going on. However, I had first to get her story and that is when I was shown the letters which had summoned her. She explained to me that she could not attend the meeting the same morning – that was 6th. She brought that to my attention and showed me the letter that she was writing to the County Assembly, asking for 21 days. I told her to reduce those 21 days to 14 days, because 21 days was too much. That is the letter which she sent people to take. Then, before the end of the day, a debate took place the same day with those resolutions, which I was getting through email, at first unsigned. I told the Clerk of the County Assembly that I do not deal with unsigned documents. I was doing official work in Nairobi and saw the document, send through email, addressed not to me, but the CEO of Ethics and Anti-Corruption Commission. It was copied to me among others.

My immediate reaction after I came back was that it was good to give the county secretary a hearing before acting against her. But after my plea was not heard, for the sake of the harmony of the County Executive Committee and County Assembly, I told this lady to step aside on the evening of 15th of January. She was very hurt, but I told her: "For the sake of the county, step aside. Take your leave and stay away from the office." Even with all this signing of affidavits which have been referred to here, I have still insisted: "Hold on at home." But she had to be called by the investigators to the office recently to give documents. Of course, I have seen also the affidavit of the investigator, saying that they do not tell people to leave until they have done investigation. But I have still said: "Stay away." So, that is the status up to now. So, I would not say why there is this cry about the Governor disobeying issues resolved in the County Assembly.

Mr. Wilfred Nyamu: Now, these particular proceedings were commenced on 16th January. That is when the notice was tabled. The motion for your removal was actually approved on 16th. Is that so?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, Mr. Chairman, Sir, I am aware, but I have never been notified. I got this message through word of mouth from some of the MCAs that, that had happened. I only came to receive the notice of motion from the Senate last week.

Mr. Wilfred Nyamu: Now we have seen that the notice of motion had actually grounds and particulars, including an affidavit that you filed in court. Would you remember the date of that affidavit?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I cannot remember the date.

Mr. Wilfred Nyamu: Let me show you the affidavits and then you will be able to confirm to this honourable Committee. To my recollection, the affidavit was actually done on the 21st of --- page 191 all the way to page 194.

The Chairperson (Sen. (Dr.) Khalwale): Order. Counsel, I think it would be better procedurally that I show you an affidavit that is purported to have been signed by you. Is it true that it is yours? Then you ask which date he signed it because you are now giving the evidence yourself.

Mr. Wilfred Nyamu: Just look at the affidavit. Is that your affidavit?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, Mr. Chairman, Sir; that is my affidavit.

Mr. Wildred Nyamu: What date was that affidavit sworn?

The Governor of Embu County (Hon. Martin Nyaga Wambora): This was 21st January, 2014.

Mr. Wilfred Nyamu: Now look at paragraph 23 of that affidavit. Looking at that paragraph, would you tell this Committee on what basis you were hesitant to suspend the county secretary?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I was not really hesitant to suspend her, but I was hesitant to ask her to step aside before she was heard and before she had handed over investment documents. However, there is also this second reason that in the premise and without prejudice, that is, Section 40(4) of the County Governments Act, Articles 47 and 50 of the Constitution of Kenya stands to be grossly violated against each party applicant and justifiably illegally and arbitrarily in line with the rules of natural justice and due process.

Mr. Wildred Nyamu: What did you mean by saying that you need the principles of natural justice and due process to be applied in her case?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, first the county secretary had not been heard by the Assembly and, of course, the speed at which they responded before hearing her or after even she had submitted written request to be heard, but at a later date. Secondly, I did not want to break any due process. If she had already gone to court, I wanted the court to also have a say in her application.

Mr. Wilfred Nyamu: Was the government made a party to those proceedings?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, the government was a party to the proceedings and I was an interested party as the Governor of the county. I can assure you I wanted to protect the county from any legal litigation which could have been costly.

Mr. Wilfred Nyamu: The county secretary had already written and requested for 14 days and 21 days, respectively. Are you aware of the number of committees she was to appear before on that particular day that she was summoned?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, two committees, one for agriculture and a joint committee for infrastructure, youth and sports.

Mr. Wilfred Nyamu: Were you made aware of any response to the letters that she wrote to the effect that her request had been rejected and so she should appear before the committee? Were you made aware of any letter that was written by the County Assembly in response to the letters that she wrote requesting for more time?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, there was no response, either by telephone or in writing. We just got the news of the County Assembly resolution, recommending for her to be investigated and urging me to ask her to step aside.

Mr. Wilfred Nyamu: Hon. Governor, had you been aware of any friction emanating from advisory sought by the county secretary in respect of the County Assembly Members?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, Mr. Chairman, Sir, that exactly happened on 30th December, 2013. It was explosive and it came like thunder for a very simple reason that the county secretary had proceeded to Nairobi and approached the Salaries and Remuneration Commission and officials of the Controller of Budget to clarify whether payment of ward staff and ward office operations at ward level was legal or irregular. She was advised to write a letter when she was in the office of Salaries and Remuneration Commission which was replied to the same day by e-mail addressed to her and copied to the County Assembly. I got a copy of that letter before the end of the day and the situation has boiled since leading to the situation of 6th, leading to the suspension of discussion of the Financial Bill and Supplementary Budget.

Mr. Wilfred Nyamu: Hon. Senators, I wish to refer the witness to certain letters contained in the main bundle of our documents. In my reference, I wish to refer to pages 263 all the way to page 308. Kindly look at the letter appearing on page 271; could you read that letter and, probably, tell members of this Committee what it was about?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, it is by the county secretary, addressed to the Office of the Controller of Budget and copied to the Salaries and Remuneration Commission on approved budget lines 2110104 (Basic Salary for Ward Staff).

Mr. Wilfred Nyamu: What is the date of that letter?

The Governor of Embu County (Hon. Martin Nyaga Wambora): It is 30th December, 2013. I had not finished the reference--- And 2211377 (Ward Office Operations of the Embu County Government) – The County Assembly of Embu. The letter on the above subject matter is read to recruitment---

Mr. Wilfred Nyamu: Probably, for purposes of time, you could tell us what the letter was about.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, the letter is drawing the attention of the Controller of Budget and the Salaries and Remuneration Commission to payments being effected by the County Assembly of Embu to ward staff and toward office operations. The county secretary is asking whether this is in order in the absence of a legal framework.

Mr. Wilfred Nyamu: Those ward employees, who had employed them?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, they were employed by the County Assembly Service Board.

Mr. Wilfred Nyamu: What were her concerns? What are the details of her concerns that you would tell this House in overview?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, it is clear in the letter. She is asking for advice as to whether it is regular or irregular in the absence of a legal framework.

Mr. Wilfred Nyamu: Yes, look at the response. She will come and expound on what she meant in her letter, but let us know what response was elicited by that particular letter.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, since the county secretary is appearing, why do I not just cite the three letters then she can explain them when she comes because it would be repetition?

The Chairperson (Sen. (Dr.) Khalwale:.) That is correct. Just refer to them. You are right Governor.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, the first letter is a response from Salaries and Remuneration Commission on folio 263 dated 30th December, 2013, the same date she applied for advice and essentially, it is advising her to get in touch with the Transition Authority, the Public Service Commission and the Ministry of Planning and Devolution for further guidance.

The second letter, folio 265, that is page 265, from Controller of Budget dated 9th January, 2014 is harsh. I would read the last paragraph. It says:-

“Therefore, it is our view that if the above legal requirements were not adhered to in the recruitment of the ward staff then they are illegally in office and should be immediately terminated and officers involved in the irregular employment be surcharged for loss which has arisen from the employment.”

The third letter, folio 267, dated 28th January, 2014, is a long letter by the chairman of the Transition Authority, Mr. Wamwangi. It is a laborious letter and I prefer the CS explains this long letter. It is a very long letter.

Mr. Wilfred Nyamu: The long and short of that correspondence; was it very welcome to the County Assembly?

The Governor of Embu County (Hon. Martin Nyaga Wambora): They were furious. They were baying for my blood. I think that is why I am here.

Mr. Wilfred Nyamu: In relation to the charges for abuse of office, in terms of procurement and payments in respect to the maize and the contractor in relation to infrastructure, did you benefit in any way?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, there is no way I would have benefitted in any way because I was not involved in it. I think for saving time, we can spare more question on those two projects to the officers who were directly involved in them to shed more light. I am also waiting for the results of investigation from the Ethics and Anti-Corruption Commission to also discipline those who may have gone wayward. They will meet the wrath of the Governor if he survives.

Mr. Wilfred Nyamu: Hon. Governor, in terms of procurement---

The Chairperson (Sen. (Dr.) Khalwale): Counsel, you might have to organize yourself because you have now done one hour and twelve minutes.

Mr. Wilfred Nyamu: Hon. Governor, do you have anything else that you wish to tell this Committee that you feel the same would not be relayed through your other witnesses?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, in one sentence: Hon. Chairman, Members of the Senate Committee, I am genuine when I say that I do not do procurement. The law does not allow me. I will never do procurement as long as I am a Governor. It would not happen. So, those who may have caused problems with procurement, I will not hesitate to make sure the strong arm of the law descends on them because we are talking of public funds. I have been saying, let us wait for results from the Ethics and Anti-Corruption Commission so that we may take those who may have broken the law to court and charge them and let them be convicted. That is my stand and I mean it. Even if it was my son, he would go in. That is how strict I am.

I fought a hard battle when I was the chairman of Kenya Airports Authority (KAA) in 2012. Even if it is legal, my argument was; you cannot spend Kshs56 million for Greenfield terminal with only one tenderer being prequalified. In terms of finance, I do not tolerate or compromise. I have not also compromised with my stand on the ward staff and ward office operations as long as these funds are not regularized through a legal framework.

Mr. Wilfred Nyamu: Hon. Governor, lastly, in terms of the charges that have been read to you to the effect that you breached the Constitution, the County Governments Act, the Public Procurement and Disposals Act and the Public Finance Management Act, 2012. What do you say about those charges?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I will go to my report here, pages 1 to 9, in my defence, I have answered all those accusations and I am as white as snow, very innocent.

Mr. Wilfred Nyamu: Much obliged, hon. Senators. That would be all for our first witness.

The Chairperson (Sen. (Dr.) Khalwale): County Assembly, the counsel, you can now go to the podium if you have any issues.

Mr. Charles Njenga: Thank you, Mr. Chairman, Sir. I have a few questions for the Governor. Mr. Governor, I just want you to clarify the last issue that you have raised and that you contend is the reason you are here. You have referred the Committee to a letter dated 9th January, 2014 which features at page 267 of your bundle of documents addressed to the County Secretary. The letters he referred to run from page 265 up to 272. Now, you have said that it is because of these letters that the County Assembly resolved to bring the Motion for your impeachment. I want you to identify any particular letter within these four letters that makes a decision or where directions were made either by the Salaries and Remuneration Committee (SRC), the Transition Authority or by any other body that there was wrong doing on the part of the County Assembly Service Board either in payment of persons illegally or in establishment of any offices illegally. Could you just kindly advise the Committee specifically to that letter?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, if you go to page 265 the last paragraph which I read, unless you want me to read it again. It is there in black and white.

The Chairperson (Sen. (Dr.) Khalwale): Could you read it out so that those of us who have not reached that page can follow?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, it is a letter from the Controller of Budget. In its conclusion, it says:-

“It is our view that if the above legal requirements were not adhered to in the recruitment of the ward staff, then they are illegally in office and should be immediately terminated and the officers involved in the irregular employment be surcharged for any loss which has arisen from the employment”

I will read another one which triggered all this on page 261—

The Chairperson (Sen. (Dr.) Khalwale): Order, Governor! You will only read the things you are directed by the counsel.

Mr. Charles Njenga: Let us remain on page 267; that is the letter from the Controller of Budget which you have read well. It says:-

“It is our view that if the above legal requirements were not adhered to”.

The Controller of Budget is qualifying her findings; that if there is a process that established that there was lack of adherence to the law, then those people would be in office illegally. I am asking you to confirm to this particular committee whether there is a finding by the Controller of Budget that, indeed, the particular persons you are referring to were illegally in office. Do you have it?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, you will have to read that letter along with the one on 271 in order to get the message which is being replied to because that is where the message is.

Mr. Charles Njenga: Do I understand it to mean that the letter you are referring to is the one by the county secretary?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, Mr. Chairman, Sir.

Mr. Charles Njenga: Very well. It is your evidence that it is this letter by the Controller of Budget on 9th of January that has now precipitated this private Motion.

The Governor of Embu County (Hon. Martin Nyaga Wambora): No, that is just one of them, but the main one---

The Chairperson (Sen. (Dr.) Khalwale): Order, Governor Wambora! Just answer the question. Counsel could you ask the question again and then we expect you to answer.

Mr. Charles Njenga: Mr. Chairman, Sir, if he answers the question, we shall finish this very fast. I am asking the Governor that if this is not the letter that he says precipitated what he is calling a hunger for blood on the part of the Assembly or a thirst for blood, which is the letter that now says we have discovered there has been wrong doing and illegalities perpetrated by the Assembly and, therefore, we are exposing you. In fact, the letter proposes that persons should be surcharged, offices terminated and any loss recovered. To the best of your knowledge, is there any person in the County Assembly who has been surcharged by either the Controller of Budget or---

(Mr. Wilfred Nyamu consulted with his colleagues)

Mr. Chairman, Sir, counsel over here is shouting me down.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, I did not. I was talking to my colleagues. I think my learned friend has been caught off guard by these letters.

The Chairperson (Sen. (Dr.) Khalwale): Counsel for the Governor, keep your calm. If you want to raise an issue among yourselves, do it in low tones. If you want to speak to it, you can always seek permission from the Chair.

Mr. Wilfred Nyamu: I oblige, Mr. Chairman, Sir.

Mr. Charles Njenga: Thank you very much, Mr. Chairman, Sir. Governor Wambora, kindly advise the Committee whether, to the best of your knowledge, you know of any surcharging proceedings or directions made against any member of the County Assembly

or the County Assembly Service Board with regard to the matters contained in the letter dated 9th January, 2014. Are you aware of any?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I am not aware of any surcharging because it takes time. They will have to bring in internal auditors first and investigate before they surcharge.

Mr. Charles Njenga: Governor Wambora, are you aware that all these offices referred to in this letter as established by the County Assembly Service Board are still operational? Persons are in those offices, they are working and they are being paid. Are you aware?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I would be shocked if it is continuing and it is very dangerous.

Mr. Charles Njenga: So, it is your answer that you are not aware.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I am not aware. If it is, there is trouble.

The Vice Chairperson (Sen. Murkomen): Let us keep it simple so that we move faster.

Mr. Charles Njenga: You are not aware, Governor Wambora?

The Chairperson (Sen. (Dr.) Khalwale): Governor Wambora, you see if you give the impression that you are deliberately being evasive, it does not help your case. Just firmly give correct answers and we will make a determination at the end.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I am not aware.

Mr. Charles Njenga: Governor Wambora, maybe we can venture into matters that I am sure you are well aware of.

Mr. Chairman, Sir, I want to refer the Governor to the supplementary bundle of documents on Page 49; the letter that the witness referred to about the assumption of office and which he referred to, to demonstrate that he was not in charge of procurement within the county. It is on Page 49. The letter goes on up to page 53. It is a long report.

Governor Wambora, you say that the Assumption of Office Committee, under its chair, was in charge of procurement at the time that you assumed office. Is that true?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, it was.

Mr. Charles Njenga: Now on page 50 of that letter on the next page, the Committee enumerates the things that it has been able to realize in its mandate. Kindly read out to the Committee with regard to procurement at Clause (d).

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, it reads:-

“Procurement of services and work necessary for the ceremony and minimal office refurbishment”

Mr. Charles Njenga: So, this Committee was only responsible for procurement with specific regard to the ceremony and minimal office refurbishment alone and nothing else. Is that true?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Let me read it. Do not rush me. I have not read it.

The Chairperson (Sen. (Dr.) Khalwale): Order, Governor Wambora! These documents are from you. So you will not tell us that you have never seen them before. Then where have they come from? Just keep on responding to what the counsel is asking.

Mr. Charles Njenga: Is that true, Governor Wambora?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, it is, Mr. Chairman, Sir.

Mr. Charles Njenga: On page 53, it now talks in detail about office refurbishment. It is on page 53 of the same letter; the pagination is on the top right. Are we there?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, Mr. Chairman, Sir.

Mr. Charles Njenga: On office refurbishment, that is paragraph (c) it states:-

“The Committee notes that the county assembly requires major renovation to accommodate the court of arms, mace, *et cetera*, repair of leaking roof, seats replacement along with other minor improvements. This cannot be done prior to the inauguration ceremony owing to the cost implications currently not budgeted for in the initial AIE”.
Are we there, Governor Wambora?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, I am, Mr. Chairman, Sir.

Mr. Charles Njenga: So, you confirm that all major repair works, refurbishments and works generally within the county happened after your inauguration; after you were sworn in. Is that true?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Absolutely. Yes, the major ones.

Mr. Charles Njenga: This was done under the directions of your County Executive Committee because now you were in authority. You were in charge of the county of Embu. Is that true?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, it is totally not true for a very simple reason that it was now done under page 1 of the big document. Can you see the first tender committee meeting headed by Kamau Wachuiru? It was done by this tender committee because the Assumption of Office Committee was a small committee chaired by the County Commissioner. Now the transitional interim officials had now to form a tender committee which undertook the big project starting with the Kshs61 million which was sent from the TA headquarters. These are the ones who implemented this project of Kshs61 million on page 1.

Mr. Charles Njenga: So, Governor Wambora, was this your committee?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, what do you mean? It was not my committee. Note that I am calling it – I am very careful with you because you are a very tricky person.

(Laughter)

I am calling it TA appointed procurement committee, Committee No.1.

Sen. (Prof.) Lesan: On a point of order, Mr. Chairman, Sir. I think to be fair to the counsel, he does not look tricky at the moment, but he is only asking questions. So, I think it is not fair to refer to him as tricky. He is not trying to trick anybody. We are just trying to find out the truth of this matter.

The Chairperson (Sen. (Dr.) Khalwale): My dear colleagues, the counsel for the County Assembly does not need any support from you. If he has reasons to protest, he is going to protest in very long English. In fact, “fat” English.

Mr. Charles Njenga: Mr. Chairman, Sir, I will not do that because I do not want to lose my time. Governor Wambora, you were in charge as at the time this first tender committee was instituted. Is that true? It was after your inauguration.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I was in charge. I was the Governor.

Mr. Charles Njenga: You were the Governor of Embu County.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, absolutely, Mr. Chairman, Sir.

Mr. Charles Njenga: Do you know how these people were appointed to become members of the tender committee? Are you aware of how the first tender committee came into being?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, there was no way I would be aware because as I said I was not involved in procurement. There was no way I would have known.

Mr. Charles Njenga: Who were they reporting to?

The Governor of Embu County (Hon. Martin Nyaga Wambora): On matters of procurement! Not me. Definitely it was not me.

Mr. Charles Njenga: Who were they reporting to or you do not know?

The Governor of Embu County (Hon. Martin Nyaga Wambora): They were reporting to the headquarters where the money had come from. The Kshs61 million was an AIE issued by the TA headquarters as part of their budget.

The Chairperson (Sen. (Dr.) Khalwale): Governor, help us a little. We want to understand you. We understand the counsel to mean that this tender committee was established after you were sworn in and you are now responding as though this tender committee was created by the headquarters in Nairobi where they were reporting to. Is that true?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, this committee was formed by the Interim County Secretary appointed by the TA from Nairobi. It was decided in Nairobi.

The Vice Chairperson (Sen. Murkomen): Mr. Chairman, Sir, this is very important because the re-examination will be done later. I think this is a very important point and I would like to request the Governor to help us because I was just asking my colleagues here, but it is better it comes from you. Were these people who were appointed by TA as part of the transition staff to various counties within the country, including yours, having their parallel system of reporting that never involved any officer and ultimately the county government was not involved? Senators here know about the Kshs61 million and so they do not need to ask. Was this money completely out of the reach of the county government by any officer who is reporting to the county government so that whoever was the secretary and so forth was just separate? You never even saw and said anything about the Kshs61 million?

Sen. Wamatangi: Mr. Chairman, Sir, just to add to what Sen. Murkomen has asked so that he can answer it at one go. This is just a further clarity on the tender. Governor, what you call the first tender committee, if you look at the names and then you look at the names in the second tender committee and then you go to the documents you presented in

October under the heading of the office of the Governor, the tender committee is still the same people.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Do you mean one and two?

Sen. Wamatangi: One and two and even on page 17, the committee that was in place in October under the heading of the office of the Governor are still the same people.

The Governor of Embu County (Hon. Martin Nyaga Wambora): No, they are not the same people. I will tell you why. Some are not the same people. This will explain why we wanted Joshua Munyaka here because you are now making me answer questions in a field I have never gotten involved in. I can only rely on correspondence which I---

The Chairperson (Sen. (Dr.) Khalwale): Governor, you have the option to tell this Committee that you do not know.

The Governor of Embu County (Hon. Martin Nyaga Wambora): May I answer what I can because there are some questions I am not able to answer. I will answer you what I know.

At least, I have a letter here on page 56 of the small document; the supplementary document. The letter is dated 23rd April, 2013. It is on the projects that have been raised by the Embu County Assembly. It shows the money that did the projects for the County Assembly, Governor's Office and the Probation Office.

In fact, the letter is signed by the Secretary, CEO of Transition Authority (TA), forwarding the money to the Chief Finance Officer, Principal County Finance Officer who was a TA appointed official. He is now the Chairman of the Committee, Kamau Wachiuri. That one could not change because he was there up to September. The same will apply to Marangu who was in charge of personnel up to September. The same will apply to Munyaka who even left later. This is the person who ought to do this explanation. I may not give the details, but I can assure you, as the Governor, that I knew about the appointed tenders when I heard noise, *kelele kwa roof ya nyumba yangu* on top of my office. When it rained, the roof would get wet and I had to leave the office for one month.

That is how I knew that the tenders had been given out already for the County Assembly, the Probation Office and for the roof of the Governor's Office. They did not notify the Governor and that is why, Vice Chairman, Sen. Murkomen, Governors were very firm in winding up these chaps in September as quickly as possible. They were not giving us information in terms of procurement so that we could know what they were doing.

The Chairperson (Sen. (Dr.) Khalwale): Mr. Governor, that is okay. You will notice that the things you are saying are not in question. We will take it that, that is some of your response to points of clarification and I want to take you back to the counsel to continue.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Of course, Mr. Chairman, Sir, you will appreciate that there are many questions that I will not answer because I was not hands-on. If you ask me any question to do with policy, that one I can answer. With regard to issues of procurement, I can only get that from literature.

The Chairperson (Sen. (Dr.) Khalwale): That is okay. You will answer to the best of your knowledge.

Sen. Hargura: Thank you, Mr. Chairman, Sir. Concerning the letters that we are referring to on page 56, I want to know from the Governor who was the Authority to Incur Expenditure (AIE) holder who was responsible for that expenditure.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, the AIE holder would have been the Principal Finance Officer, Mr. Kamau Waciuri.

Sen. Hargura: If look at page 58, you will see who the document was addressed to.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, it was addressed to S. Makori. That is not a cheque. It is an AIE which transferred funds from the headquarters of TA and S.K Makori is the CEO of the TA. He was issuing an AIE to forward money from Nairobi to Mr. Kamau Waciuri who was the AIE holder, the Principal Finance Officer and again, a TA Official. So, these are TA issues.

The Chairperson (Sen. (Dr.) Khalwale): Order! I want to support you. We all know Makori. He works for the TA. However, I want you to look at that AIE. It is addressed to the Governor of Embu. Read it. That is on page 58.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, it is addressed to the Governor. Yes, but you can see the letter enclosing it which is addressed to the Chief Finance Officer. This was on 23rd April, but was done through the Governor. I knew about the Kshs61 million, for sure, but I did not know when the tender became operational and what was prioritized and all that. That is it.

The Chairperson (Sen. (Dr.) Khalwale): We have no problem with that. We wanted to have the record straight. The AIE does not have the chief.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, he does not have the Chief but—

The Chairperson (Sen. (Dr.) Khalwale): Hold on, Governor. Owing to your background, you know what we are talking about.

Sen. Orengo: But Chairman, Sir, that GOV could also mean Government.

The Chairperson (Sen. (Dr.) Khalwale): All we want is for your evidence to be clear and to know whether it was you or somebody else in charge. If it was somebody else, since you are the Chief Executive Officer, you will tell us who that person was because the Senate wants to know who the AIE Holder was. You can tell us that.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Chairman, Sir, there is a difference between a Chief Executive Officer, Interim County Secretary, AIE holder and an Accounting Officer. The Accounting Officer, in this case, is the Principal Finance Officer. The voucher is put in an envelope and is brought to Embu, attention of County Principal Finance Officer. I knew about the funds because we fought for the funds which were being utilized by the headquarters to be decentralized. That was the end of the work of the Governor, to fight for Kshs61 million. I know about the funds.

Sen. Mositet: Thank you, Mr. Chairman, Sir. I am not trying to support the Governor, but if you look at page 59, the last sentence of the letter, says, all expenditures and returns should be submitted to the TA by 30th June, 2013. That means that the AIE holder could have been somebody from the TA.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Who was in the Governor's Office? Who was in Embu, the Chief Finance Officer or the Principal Finance Officer?

The Chairperson (Sen. (Dr.) Khalwale): Eng. Hargura, since you have been an AIE Holder in the Ministry of Public Works for many years, I would like you to speak to it.

Sen. Hargura: Thank you, Mr. Chairman, Sir. I think the AIE Holder is very clear. The person who had the authority to incur expenditure (AIE) was the Governor. My problem is that the Governor is saying that he was not aware of this. He is saying that it is other people who were supposed to do that. I think he cannot run away from the fact that he is the one who was mandated to incur and be responsible for the funds.

The Chairperson (Sen. (Dr.) Khalwale): Let me help in this, hon. Senators. Governor, we have taken your evidence. We will not subject you to arguments. If it will be necessary for someone to interpret to us who the AIE holder was, then we can always call Makori and he will tell us who this was. So, do not belabour that.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, it is very clear that there is no way that the Governor, in the new laws, can be an AIE holder. It can never happen; neither can a Governor be an Accounting Officer. It is illegal and would be abuse of office.

The Vice Chairperson (Sen. Murkomen): Mr. Chairman, Sir, the Kshs61 million, as far as I know, was meant for infrastructure. Remember we debated this lot so as to share the money to the counties. Why were we asking the question about the Kshs61 million? I guess it is because in the Audit Report, we were discussing the auditing period and the

expenditure of that period. The impression being created is that the only money spend in that period was Kshs61 million or that is what was available for expenditure.

I thought that all the reports of financial use, procurement were in regard to not only that money, but all the monies collected locally and, perhaps, any other. Was there more money allocated to the counties?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, there was more money for recurrent expenditure which was much more than this, absolutely.

Mr. Charles Njenga: Governor Wambora, of all the lists you have given us of members of tender committees, which one was established at the time you were fully in charge of County affairs? Which one of the three Committees? Which one is your Committee?

The Governor of Embu County (Hon. Martin Nyaga Wambora): There is no Governor's Committee, Counsel.

Mr. Charles Njenga: Which Committee came as at the time and after you were fully seized of all the affairs of the county, including the financial affairs?

The Governor of Embu County (Hon. Martin Nyaga Wambora): May I put it this way--
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Mr. Charles Njenga: Answer the question, please.

The Governor of Embu County (Hon. Martin Nyaga Wambora): But I have to answer. When I start by saying; "may I put it this way" that forms part of the answer. You cannot gag me.

The moment that the TA appointed members left, in came No.3 which is on page 3, the Rugene's, Mwende's and Kinyua's, among others. These are now county appointed officers. They were appointed by the county secretary who will be the last to give evidence today. Therefore, I will leave this question to her. These are her appointees. The same applies to No.4, the chief officers, the last group that she appointed before she stepped aside to go on leave. I insisted that she appoints chief officers and not to leave a gap. The chief officers were in place. This is the last group I would expect to be in place. She will explain about these two groups because these are her appointees and not the Governors.

Mr. Charles Njenga: So, you confirm that these are her Committees; that in your evidence, were established by your appointed county secretary?

The Governor of Embu County (Hon. Martin Nyaga Wambora): My appointed county secretary.

These are the appointees appointed by the current county secretary and she should answer for herself.

Mr. Charles Njenga: Did it concern you as the Governor, that at one time, even afterwards, how members of the tender committee or any other tender committee under your watch were appointed?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Why would it concern me?

The Chairperson (Sen. (Dr.) Khalwale): Order, Governor! You are starting to lose your calm. None of us would want to be where you are. This is a very difficult moment for you and your supporters. So, we will give you all the understanding. However, please, know that you are under oath to respond to all questions that are put to you through the Chair. Do not challenge him. Just respond.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I do not see how the concern comes in because I have an officer whom I have instructed to effect official appointment for members of the tender committee because I know how critical they are. She confirmed that she did and it did not concern me how they were appointed. However, I was determined to ensure that they were appointed so that there is no gap as the TA officials left. I told her to ensure that we had a tender committee. As chief officers came in, I asked her to apply the law and appoint chief officers as members of the tender committee. I was only concerned about the due process of law.

Mr. Charles Njenga: No, it is okay. We got you right. It did not concern you.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I was concerned with the due process of law and that is why I insisted that appointments should take place.

Mr. Charles Njenga: Do you know about the number of projects or contracts of goods or services or the particulars that this tender committee has procured, so far, for the county? Can you tell?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I am able to tell because there is a schedule indicating some of the awarded contracts from page 248 to 250. That will be further clarified by the county secretary.

The Chairperson (Sen. (Dr.) Khalwale): Governor, I would like you to help us. In good faith, you are the Governor of Embu. Some of these projects are multi-million projects. Are you telling us that the Governor of Embu does not know about the projects that have been procured even if you are not part of the procurement process?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I know about the big ones. I may not know about the small ones. That is what I meant.

The Chairperson (Sen. (Dr.) Khalwale): Then respond to that question. It is important.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I know about the big projects. These are listed on page 248 to 250. Some of which are small projects.

Mr. Charles Njenga: Is page 249 the one with the list of goods and services procured and supplies engaged during the period 2013 to 2014?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, the pit latrine is a small project that I would not have known.

Mr. Charles Njenga: Mr. Governor that is the document on page 249, right?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, mine starts from 248. Anyway, it is the list of goods and services.

Mr. Charles Njenga: Where the first one is the construction of a pit latrine at Gategi Market? That was procured by the Committee appointed by your county secretary?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Well put.

Mr. Charles Njenga: Tell us the date of the first project as listed in your schedule.

The Governor of Embu County (Hon. Martin Nyaga Wambora): It is 4th July.

Mr. Charles Njenga: This was 4th July, 2013?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes.

Mr. Charles Njenga: As at 4th July, 2013, through your county secretary, you were in charge of procurement?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes. Who? I was not in charge of procurement.

(Laughter)

You see what I was saying? Of course, I was not in charge of procurement. On this date, we still had the previous group which left in September. These were the TA appointed people.

Mr. Charles Njenga: So, what big projects, Governor Wambora? You said you knew about big projects, right?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Right.

Mr. Charles Njenga: Are these the projects you know from the time you took over or from the time that you are saying that the TA officers left?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, these are small projects. We have projects like the one you quoted, of the County Assembly, Kshs33 million. That is a big project. The Probation Office Rehabilitation cost Kshs15 million. The rehabilitation of the stadium was a big project. The rehabilitation of the Governor's Office is not so big, but visible because I was there. I could not fail to see it.

Mr. Charles Njenga: Now, the big projects you are talking about, how do you differentiate what you describe as big from small?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, the amount of money.

Mr. Charles Njenga: So, what is your threshold of small? What about a classroom?

The Governor of Embu County (Hon. Martin Nyaga Wambora): A class room is a small project.

Mr. Charles Njenga: A school?

The Governor of Embu County (Hon. Martin Nyaga Wambora): We do not build schools.

Mr. Charles Njenga: Where does it start becoming big? A road? At what point, in your estimation, hon. Governor, does it become big? If the budget is Kshs10 million, Kshs5 million, Kshs3 million---

The Governor of Embu County (Hon. Martin Nyaga Wambora): You know when you ask too many questions about procurement you are really--- The county secretary is coming up with a table of threshold; could we leave that to her?

Mr. Charles Njenga: So, you do not know?

The Governor of Embu County (Hon. Martin Nyaga Wambora): How would I know if it is not my area?

Mr. Charles Njenga: Very well. That is okay.

You said you know about Embu Stadium. Am I right?

The Governor of Embu County (Hon. Martin Nyaga Wambora): It is very visible from the road.

(Laughter)

Mr. Charles Njenga: Am not asking about directions and location. I am talking about the works done in the face lifting of Embu Stadium.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, I do.

Mr. Charles Njenga: Briefly, tell us what do you know about those works?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, these are small projects which started, but never took off.

Mr. Charles Njenga: We are talking about Embu Stadium.

The Governor of Embu County (Hon. Martin Nyaga Wambora): I am talking about Embu Stadium.

Mr. Charles Njenga: Very well.

The Governor of Embu County (Hon. Martin Nyaga Wambora): The details will be explained by the county secretary because she has them. What I know is that there was an attempt to plant grass, *blah blah*, people *wanaenda wana spread* grass seeds, they tried drainage, it never worked. Eventually this tender was given. The tender for the current Embu Stadium which is on now has stalled. It involved scooping red soil and adding more red soil, putting manure and buying what they call carpet grass, drainage, a bit of rehabilitation here and there. It is now a very good green stadium as we talk.

The Chairperson (Sen. (Dr.) Khalwale): Counsel, there is a brief point of order from Sen. Lesuuda before you continue.

Sen. Lesuuda: Mr. Chairman, Sir, listening to the Governor and what we have said severally, that this is really an investigation, it is not a trial. So, the better the answers are put across, the easier it will be for us to understand a number of things. When the Governor says: "I am aware of big projects" I mean there are those things from the top of your head which you know. When you tell us: "*blah, blah*, grass and so on". Seriously this Committee needs to be accorded the seriousness that it deserves even though, maybe, he has a problem with the counsel. But for the Committee, we need to get those answers.

The Chairperson (Sen. (Dr.) Khalwale): That was a point of order. I will rule as follows: Governor, it is in your interest that you give accurate answers that will help your case. The way you respond to those questions will remove doubt from our minds of the possibility of corruption, if I may be allowed to say. If the people of Embu, who are watching this, hear their Governor saying that a project of planting grass at the stadium

which in the documents is worth Kshs8 million, that, that is little money--- A sum of Kshs8 million in Embu County, just like in Kakamega County, is not small money. You might end up inadvertently sending out the message that you are not in touch with the day to day running of your county. We do not want to go there. Let us move slowly together.

Sen. Orengo, I have seen your hand up.

Sen. Orengo: Mr. Chairman, Sir, something has come up in my mind. Chinua Achebe once said about Shehu Shagari who was once President of Nigeria that he was a very good President, but he never lived in Nigeria. This means he did not know what was going on around him. So, Governor, really, do not give us that impression.

Sen. Mositet: At the beginning, Mr. Governor, you had indicated that you have architects, quantity surveyors and engineers in your county. When you talk about a stadium, I believe an architect, engineer and eventually a quantity surveyor who came up with the estimates was involved. This would have at least enabled you to know, before you even take it to the Assembly that the stadium will cost this amount. That is exactly what the counsel is asking.

The Chairperson (Sen. (Dr.) Khalwale): Let us hear a brief point from Sen. Kittony.

Sen. Kittony: Mr. Chairman, Sir, this being the first Committee to look into this issue, it is rather new and maybe we have not really come to understand it properly. I think we need to buy your approach of being friendly because Kenyans are watching. Our mandate is very clear. We would like to do the best for this county and for other counties that may experience what we are experiencing now. Ours is to save a situation. We surely want the best for Embu County. I am sure the people of Embu County want the best from the Senate and also from their Governor. Really, you should continue reminding us of our friendly sitting, we are not a jury *per se*. That is why some of us kept quiet to listen and understand what the situation is. It will be of great interest to know, for the sake of the people of Kenya and Embu County, what we are doing here.

The Chairperson (Sen. (Dr.) Khalwale): Governor, you can comment on that.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I take the advice. I wish to inform you that the architect will give the details about the stadium. But all the same, may I say that the engineer's estimates for various works which include grass, drainage, walling, changing rooms for two teams, stands, VIP stand, pay points as you enter the stadium and paved parking will cost - according to the engineers estimates - will cost Kshs50 million. The budget in the printed budget is Kshs8 million. We would want to fund the balance of the money through budgetary reallocation, the supplementary budget. That is the status.

The Chairperson (Sen. (Dr.) Khalwale): Proceed, counsel.

Mr. Charles Njenga: Governor, you said in your evidence that you only know about this stadium at the County Executive level. Is that by way of certain documents that came to your possession? If it is, which particular documents gave you information, at that executive level, about Embu Stadium and the works that were on going on at that stadium?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, the documents which came to my attention by way of budgetary process are the engineer's estimates which we had to use to recommend for supplementary budget.

Mr. Charles Njenga: So, this was for the supplementary budget?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes.

Mr. Charles Njenga: So, you had no sight of any documents with regard to the initial spending of Kshs8 million, initially allocated, that had been exhausted and that now required the Executive to propose a supplementary budget of another Kshs50 million?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, the information I have is that other than a few thousands, over Kshs7 million is still intact. No payment has been done to the current contractor. Some little money had been paid for previous contractors, but it cannot be more than Kshs100,000. It is less than that. So we still have more than Kshs7 million which is in the current budget. We still need more money to meet the engineer's estimates which we shall be asking for through the supplementary budget.

Mr. Charles Njenga: So you confirm, to the best of your knowledge, that there is a contractor on site who has done works on the stadium?

The Governor of Embu County (Hon. Martin Nyaga Wambora): There is a contractor on site.

Mr. Charles Njenga: Have you ever seen the letter of award for that contractor? Do you have it in your bundle of documents or with you for evaluation by ourselves and also by the Committee? We want to see the terms of engagement with this contractor.

The Governor of Embu County (Hon. Martin Nyaga Wambora): I would have to check.

The Chairperson (Sen. (Dr.) Khalwale): Counsel for quick speed, if you have it just say: "I refer you to document so and so." Do you have it?

Mr. Charles Njenga: I do not have it in my documents.

The Chairperson (Sen. (Dr.) Khalwale): Counsel for the Governor, assist him to get the documents, if they are there.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, actually one of the reasons we were seeking to summon Mr. Munyaka and Mr. Makenge is so that we could access some of the documents through them. Basically, there are documents that have been in those officers' custody. The manner in which we were invited here and the timelines that were given meant that we were unable to access certain documents in that particular time.

The Chairperson (Sen. (Dr.) Khalwale): Sorry, counsel about the time you were given, blame the law. Do not blame the Speaker of the Senate.

Sen. Mositet: Mr. Chairman, Sir, I think the counsel for the Governor is really misleading us because I do not think an officer was transferred and he never handed over. By the time any officer of the Government is transferred, they hand over officially. I believe handing over means handing over documents and making sure that the office they are leaving is intact. In case there are other queries which may come up, they are always followed.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, there is a witness. The CEC infrastructure has some documents in his custody. He will be able to enlighten the Committee on this issue.

The Chairperson (Sen. (Dr.) Khalwale): Have you had access to the documents the CEC has?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, I saw some engineer's assessments and a letter of offer.

The Chairperson (Sen. (Dr.) Khalwale): Counsel, you can continue from there.

Sen. Orengo: Mr. Chairman, Sir, before he does so, I want to add this for the attention of the Governor. Part of the complaint is - and this comes from the Auditor's report - that there are award of contracts without formal contracts. He enumerates three. The County Assembly seems to be saying that this is a pattern, leave alone the three enumerated by the Auditor-General. But in this case, I think the counsel is trying to say that this thing is systematic, you do not secure a formal written contract which puts you at risk. Your counsel should be very careful about this one because if there is absence of those contracts - for instance, we cannot find this particular one - then a systematic pattern of misfeasance may be the gross violation we are looking for. So, counsel should try as much as possible to get this document, if it exists. But for me, if does not exist, then it would tend to prove that, that pattern which is noted by the Auditor is actually correct.

The Chairperson (Sen. (Dr.) Khalwale): Governor, because you are an elected leader just like us, whom many Kenyans look up to, also, do not seek too much comfort in saying: "I do not know, it is not my work." You might just be confirming that you are not good enough for the office. For that reason, somebody can easily be forced to conclude that you do not know because you are unable to know. Therefore, you are not fit to be

there because the place requires somebody who knows. Are you being sabotaged? Be careful.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I do not think it is a pattern. It could be the case with this particular project and one other. But we have tender documents for other projects. At least, I am aware of that. It is not a pattern.

Mr. Charles Njenga: So for two big projects, in your description, you do not have tender documents, but you have for the rest. Is that the case?

The Vice Chairperson (Sen. Murkomen): Mr. Chairman, Sir, just to make that point clear, Governor, you told us that you are aware of the big projects which include the stadium. I know the lawyer is going round, but let me ask you: Have you ever seen the tender documents for this project?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I have not seen the tender document for the stadium. But I have seen tender documents for the contract to purchase vehicles, which cost quite some money. I have seen tender documents for tractors which we are purchasing. I have also seen tender documents for the Assembly project, the Kshs33 million project. There are tender documents for my office as well as for the rehabilitation of the probation offices.

Mr. Charles Njenga: But for the record, you confirm and your advocate has confirmed that in the documentation submitted to the Committee, we do not have a letter of award for the contractor doing works at Embu Stadium presently. Is that true?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Again, I will repeat, the engineer in charge of infrastructure has seen a copy of the letter of award.

Mr. Charles Njenga: You said that what you saw, because you do not have the letter of award, were engineer's estimates requesting for a further Kshs50 million for completion of the works. Is that true?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, it is not requesting the entire Kshs50 million. The engineer's estimates are about Kshs50 million. But we already have about Kshs7 million, so it will not be the entire amount. The difference is about Kshs43 million. But the entire costing of the project as per the engineer's estimates is about Kshs50 million.

Mr. Charles Njenga: Do you have with you these documents you are calling an engineer's estimate with regard to Embu Stadium that founded the basis for your request for further funds to be reallocated to this project?

The Governor of Embu County (Hon. Martin Nyaga Wambora): It is with the engineer in charge of infrastructure.

Mr. Charles Njenga: We are here talking about this project. We have been doing that for the last two days. In the documents that you have submitted for our evaluation and for the evaluation by the committee; are they there? Whatever you are calling engineer's estimates, do you have them for reference?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, they are with one of the witnesses who will be appearing today.

Mr. Charles Njenga: So, in the bundles that you have, they are not there?

The Governor of Embu County (Hon. Martin Nyaga Wambora): No, Mr. Chairman, Sir.

Mr. Charles Njenga: Is there any good reason you did not deem it advisable to disclose these documents to the committee and to ourselves at the earliest available opportunity?

The Governor of Embu County (Hon. Martin Nyaga Wambora): For a very simple reason; that I thought I was going to be cross examined on the role, duties and responsibilities of the Governor, which I read from the County Governments Act.

The Chairperson (Sen. (Dr.) Khalwale): Counsel, I would like to urge you to conclude. See how you can move with speed. Indicate to me how much time you need for the balance of your cross-examination.

Hon. Members, this is the most important witness, so to speak, because he is the one who is wearing the shoe, he knows where it pinches.

Mr. Charles Njenga: Mr. Chairman, Sir, could I have 20 minutes and then a share for clarification on the mode of proceeding that we are taking for cross examination? There are a set of issues that my co-colleague will also have opportunity to put to the Governor.

The Chairperson (Sen. (Dr) Khalwale): I would request you to cleverly share those 20 minutes; we are really under pressure. Okay, how much time did your colleague require?

Mr. Charles Njenga: Just about 20 minutes. Maybe I can take---

The Chairperson (Sen. (Dr) Khalwale): So you are talking about 40 minutes?

Mr. Charles Njenga: Yes, 40 minutes for both of us.

The Chairperson (Sen. (Dr) Khalwale): Okay; we will give you 30 minutes; see how the two of you share the time. Sen. Orenge, let him finish so that the flow of thought is not interrupted.

Mr. Charles Njenga: So, Governor, we do not have the engineer's estimates with us. You said they are coming with somebody else. Now, the request for further funds, was it forwarded through your office or through the office of the CEC? Or through which office was it forwarded, if you are aware?

The Governor of Embu County (Hon. Martin Nyaga Wambora): The initial request for additional funds was forwarded through the CEC Finance; but when they could not agree with the Assembly Committee for Budget, we had to sit with the CECs and prepare a bigger document to cover several projects – about three or four – including the stadium to make it more convincing. Which we forwarded on 30th of December to give it more weight so that--- We also involved some funds for investment---

Mr. Charles Njenga: In regard to the stadium, the document that you forwarded, did it have underlying supporting documents to show the basis for your request for further funds? Did it have, let us say, bills of quantities and engineer's estimates?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, it had.

Mr. Charles Njenga: Who had generated those particular estimates?

The Governor of Embu County (Hon. Martin Nyaga Wambora): They had been generated by the county quantity surveyor, the county architect and the engineer himself.

Mr. Charles Njenga: Did you ever receive any estimates for these works forwarded by the Director of Public Works under the Ministry?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, they came to the Office of the Governor from where we forwarded to the County Assembly.

Mr. Charles Njenga: So, you confirm that at some point, you received some estimates of these works from the Director of Public Works under the Ministry, which you forwarded?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, there are, of course, seconded officials; so, they fall under my office now---

Mr. Charles Njenga: Which you forwarded?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Ex-Ministry of Works; which I forwarded.

Mr. Charles Njenga: When did you receive these estimates from the Director of Public Works in regard to the stadium?

The Governor of Embu County (Hon. Martin Nyaga Wambora): It must have been the same day, most likely; around 30th.

Mr. Charles Njenga: Around 30th of December?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, Mr. Chairman, Sir.

Mr. Charles Njenga: Do you have these estimates with you? Are they part of the bundle that is before us?

The Governor of Embu County (Hon. Martin Nyaga Wambora): No, they are not part of the bundle because we forwarded them to the Assembly and the engineer in charge of infrastructure is having some copies.

Mr. Charles Njenga: You forwarded them with your letterhead to the Assembly. These are the estimates received and the Bills of Quantities (BQs) received on the 30th of December, 2013?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, Mr. Chairman, Sir.

Mr. Charles Njenga: Before this date of 30th December, 2013, did you have a separate set of estimates of BQs that first formed the basis of the initial allocation of Kshs8 million and the works which are presently being taken out by the contractor on site?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, a sum of Kshs8 million was just a budget item. It was a budgetary provision in the printed or approved budget.

Mr. Charles Njenga: So, did you have those initial estimates that, based on them, you gave to the contractor and he commenced works before 30th of December, when you now received, officially, estimates from the Ministry and from the Director of Public Works?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Counsel, let us separate the two things. I do not deal with the issues of contract. So, they must have been forwarded directly to the relevant officers who deal with contracts. For me, I was only interested with this problem which was brought to my attention; that the budget committee of the County Assembly was not happy with the information generated for additional funds. So, it starts with my officers and we prepared documents to enhance the kind of information they wanted, including attachments.

Mr. Charles Njenga: And this is the time that you forwarded the ones received on the 30th of December?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Strictly for budgetary purposes, not for procurement.

Mr. Charles Njenga: Now, Mr. Governor, briefly because my time is almost out; what do you know about this maize that did not germinate? Are you aware that there was maize seed that did not germinate in your county?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, I am aware.

Mr. Charles Njenga: How did it come to your knowledge?

The Governor of Embu County (Hon. Martin Nyaga Wambora): I got the report from CEC Agriculture, and---

The Chairperson (Sen. (Dr) Khalwale): Sorry Governor, because you have now moved to the next stage of investigation, I think there is an important ruling that we should make from the Chair for record.

It has become necessary that we establish who was the AIE holder in Embu in respect of the Kshs61 million. So, we are directing from the Chair that Mr. S.K. Makori, the Secretary and CEO to the TA should appear before this Committee, latest, tomorrow.

Mr. Charles Njenga: Thank you for those directions, Mr. Chairman, Sir.

The Chairperson (Sen. (Dr) Khalwale): Hon. Wambora, you can continue; I just did not want to forget that one.

Counsel, repeat the question for him so that he is clear.

Mr. Charles Njenga: I am asking the Governor how and when he became aware that certain seeds of maize distributed by himself within the County of Embu had not germinated.

The Governor of Embu County (Hon. Martin Nyaga Wambora): From a report generated by the CEC Agriculture.

Mr. Charles Njenga: Now, was this report generated pursuant to your inquiry or to your direction, or how did it come to be; this particular report that you are talking about?

The Governor of Embu County (Hon. Martin Nyaga Wambora): It was the initiative of the CEC Agriculture.

Mr. Charles Njenga: It was an initiative by the CEC Agriculture?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes.

Mr. Charles Njenga: Now to the best of your knowledge, what was wrong with this maize, according to the information that you received?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, it is a report by the body which deals with seeds--- It is the one I am looking for. Kenya Plant Health Inspectorate Service (KEPHIS).

Mr. Charles Njenga: Kindly tell us what the page is of the document you are referring to on your big bundle?

The Governor of Embu County (Hon. Martin Nyaga Wambora): It is on page 347.

Mr. Charles Njenga: Proceed, kindly, because of time.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, it is written to the supplier, Monsanto; the General Manager, Quality Assurance, KEPHIS. It says:

“The seeds bought were sold to farmers in Embu by your company with full knowledge that the germination capacity was far below the national standard of 90 per cent; and the certificate copy is attached having been stamped ‘not for sale’ as required by law. The Seeds and Plant varieties Act, Cap.326, Regulation 16, clearly states that it is the responsibility of the seed merchant to call inspectors for retesting---”

Mr. Charles Njenga: So that you do not read the whole letter because of my time, the letter was basically saying that these seeds that had been sold to Embu farmers had, in fact, been condemned; they were not supposed to be sold to anyone for planting – not even to the farmers in the County of Embu. Is that the long and short; and the import of that letter?

What is your response, Governor Wambora?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, my response is that Monsanto must now compensate the Embu County Government for the seeds which could not germinate.

Mr. Charles Njenga: What is the date of that letter?

The Governor of Embu County (Hon. Martin Nyaga Wambora): 10th January.

Mr. Charles Njenga: And these are seeds that you had distributed personally on the 1st of November, 2013. Is that true, Governor?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, Mr. Chairman, Sir.

Mr. Charles Njenga: So, you only came to be aware that there was a problem about this maize on the 10th of January, 2014 and where you are saying now that Monsanto, the supplier, should compensate the farmers?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, we had distributed them for free so that we can buy seeds for another season from the same farmers.

Mr. Charles Njenga: You had distributed them for free?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, Mr. Chairman, Sir.

Mr. Charles Njenga: Is that why you gave Embu farmers seeds that had been condemned, because they were for free?

The Governor of Embu County (Hon. Martin Nyaga Wambora): I would not have known.

Mr. Charles Njenga: Now---

The Chairperson (Sen. (Dr) Khalwale): Counsel, there is something important. If you are pursuing Monsanto to make a refund, what arrangements is your Government putting in place to compensate the farmers because they did first ploughing at a cost, second ploughing at a cost and planting at a cost?

The Governor of Embu County (Hon. Martin Nyaga Wambora): We shall do the costing and compensate them accordingly.

Mr. Charles Njenga: Now, having found out that there was a problem, did you endeavor to find out how these seeds had been procured in the first place? Did you ask for the tender documents that led up to bad seeds – condemned seeds – seeds that cannot germinate being distributed under your name, by yourself and to the farmers of Embu County who elected you as their Governor?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, I did. I have seen the quotations; the four bidders. It was competitive, but one of the bidders who won the tender is the one who now went to source this maize from Monsanto in Nairobi.

Mr. Charles Njenga: Do you have minutes of that tender committee that sat and competitively went through various tenders, and appointed one supplier? Do you have those minutes in your bundle of documents? Could you kindly point them out to us so that we can evaluate them?

Mr. Wilfred Nyamu: On a point of order, Mr. Chairman, Sir. We were told that we are working on limited time. We have persons in these departments who are going to deal

with those specific questions. We are actually belaboring and asking the Governor questions that he may not answer. He has said time and again that there are departmental heads and accounting officers who deal with these matters and, actually, unless we just want to ask questions for fun, basically we are wasting a lot of time.

The Chairperson (Sen. (Dr) Khalwale): You had your time---

The Governor of Embu County (Hon. Martin Nyaga Wambora): These officers are here---

The Chairperson (Sen. (Dr) Khalwale): Order, Governor! You had your time; you are the counsel for the Governor. You are free to quietly pass those messages to him and then in his response, he can say what you are saying.

Hon. Governor, I have told you many times if you do not have an answer and that answer, to your knowledge, is in the custody of a CEC, just say it: "I do not know; the CEC will respond" and then we shall move very fast.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, I wish to humbly request that we were cautioned about the time that we had here. We had to finish today and if that is to happen, we have got to come up with certain parameters. We have witnesses that we have lined up and he has the advantage of looking at the witness statements and he is able to ascertain that we have officers from the Department of Agriculture and we have the CS who is coming here. We have officers from the Infrastructure Department who can answer certain questions. Whatever is required to be obtained in relationship to the Governor may be gotten through these witnesses.

The Vice Chairperson (Sen. Murkomen): I think the message, Mr. Chairman, Sir, to the counsel of the County Assembly is that we will not extend beyond the 30 minutes we gave. So, you need to use your time efficiently. Once the 30 minutes are over, we move forward. After the break, I think the Chair will communicate that. But we had agreed that we will come back with a mode of how we can move fast on the remaining---

The Chairperson (Sen. (Dr) Khalwale): Sen. Orengo, before I give you the chance, Sen. Lesuuda had her hand up earlier.

Sen. Lesuuda: Mr. Chairman, Sir, mine is on what the Vice Chairperson has just said; provided that he is within his time – which he had agreed to be 20 minutes – it is up to the counsel to know how he will use his time.

The Chairperson (Sen. (Dr) Khalwale): Yes, Sen. Orengo?

Sen. Orengo: Mr. Chairman, Sir, I thought as much, because you know the witnesses who are coming here are not being impeached; it is the Governor who is being impeached. I think the counsel is trying to establish accountability on the part of the Governor and the answers that are coming out, I mean, it is helping me make out my

mind. So, I find the questions quite relevant; but the timing, counsel, you should help us move faster. But as to asking a lot of questions to the Governor, I mean, he is the one being impeached or proposed to be impeached, and those answers are going to help us on the issues of accountability.

The Chairperson (Sen. (Dr) Khalwale): Counsel for Wambora, there are two big interests here; you have the interest of the Governor, who is being impeached and we have to bend backwards to make sure that he is given an opportunity to be heard. Then, there are the interests of the people of Embu and the custodian is now the counsel for the County Assembly. So, if we short change any of them, the Senate will not be respected in the manner that the Constitution envisaged. So, bear with us and adjust a few things. I have got able colleagues here, all of them keep on consulting quietly as we move on together with the---

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, may I just comment, please?

Mr. Charles Njenga: Mr. Chairman, Sir, allow me to ask my last question---

The Chairperson (Sen. (Dr) Khalwale): Yes, I will add you an extra five minutes, counsel.

The Governor of Embu County (Hon. Martin Nyaga Wambora): May I just comment? I concur with my counsel because the people with the full information on these specialized areas are waiting since yesterday. They will be more useful to answer most of these questions.

The Chairperson (Sen. (Dr) Khalwale): We have heard you, but that is for us to decide because we want to know you. Who was impeached; is it the governor or the officers? You are facing removal from office based on acts of commission or omission. We want this counsel to lead us in obtaining that evidence so that we make a fair decision in public.

Sen. Orengo: Mr. Chairman, Sir, he could have kept quiet. He elected to give evidence. You see, the County Assembly elected not to put up any witnesses. But as soon as you stepped there, and you know in your open remarks, you said how you work – you brought your character into play by your address yesterday. So, you have opened the floodgates for the counsel. So, I find those questions very relevant.

Sen. Wamatangi: Mr. Chairman, Sir, I was just wondering because I saw as if there is something you did not hear; it is something that Governor Wambora said; that they distributed seeds for free and then he said that they will be compensating the people of Embu. So, I was unable to make good sense of that. When he said they distributed the seeds for free, I did not get it; so, probably, that needs some clarity.

The Chairperson (Sen. (Dr) Khalwale): He said they are going to surcharge Monsanto. It is me who brought in the issue of compensation when I was feeling for the farmers who prepared their fields. But, of course, our mandate does not include us helping the farmers to be compensated. But I just wanted to be a patriotic Kenyan to the poor of Embu.

Sen. Orengo: Mr. Chairman, Sir, I do not think that you understood Sen. Kimani Wamatangi's concern. This is because we cannot proceed on the basis that these seeds were for free. They were bought by public resources. In the eyes of the public, you may look very good. You were giving it for free, but public resources were spent to buy these seeds. Therefore, we are here because of the expenditure of those public resources.

The Chairperson (Sen. (Dr.) Khalwale): I am well guided. Thank you very much, Sen. Wamatangi.
Counsel, I have added you an extra five minutes. It means that you will finish at 5.26 p.m.

Mr. Charles Njenga: Thank you, Mr. Chairman, Sir. Just two questions which I believe the Governor can take together, so that we finalize. On this issue of maize, did you and have you ever seen a letter of award of the tender to the supplier setting out the terms and did that supplier sign a bid bond, so that under the law, he is now under a legal obligation to make good the loss suffered as a result of his supply of bad seeds?

The Governor of Embu County (Hon. Martin Nyaga Wambora): No, I have not seen a letter of award of whoever won this tender, but the supplier who supplied the person who won the award is the one who is going to do the compensation.

Sen. (Prof.) Lesan: Mr. Chairman, Sir, just for clarity. I do remember sometime when we heard this same evidence, it was not the recommended seeds that were bought by the person who won the tender. He bought other seeds. So, in fact, it is very unlikely that anybody here will be compensated because the supplier of the seeds will say that his seeds do very well in Kitale. It is just that the wrong seeds were bought. That is the information that is important; that the supplier on his volition changed the type of seeds without reference to whoever wanted the seeds.

The Vice Chairperson (Sen. Murkomen): I do not think that I agree with my colleague. For avoidance of distorting that information, there is a letter by the county secretary, I got this case right. The CEC, agriculture requested the right seeds that were being planted in that region, and the county secretary demanded other seeds. I think the CEC asked for eight tonnes and the county secretary doubled to 16 tonnes. So, I do not think that it was the supplier just getting lost. It is the county secretary interfering and writing directly. I think that those are questions that we will ask later.

Mr. Charles Njenga: I think just for the economy of my time--- I want to finalize according to the directions of the Chairman.

One last question, Mr. Governor; in your bundle you have annexed about four different lists of tender committees which have changed over time. I just want you to confirm which committee was in place as at the time that this maize was procured.

The Governor of Embu County (Hon. Martin Nyaga Wambora): No.3, Chairman - Edwin Rugendo.

Mr. Charles Njenga: Do you have in your bundle of documents – and you are free to confirm in the affirmative or negative – minutes of this committee that sat and procured for this maize; this Rugendo tender committee that you talked about?

(Mr. Wambora perused documents)

Do you really have them; I am really short of time, Mr. Governor?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes.

Mr. Charles Njenga: What page is that?

The Chairperson (Sen. (Dr.) Khalwale): Counsel to the Governor, be of assistance.

The Governor of Embu County (Hon. Martin Nyaga Wambora): There is a lot of confusion in pagination. It is between page 316 and 318.

Mr. Charles Njenga: On the flip side? Page 316? Signed on which date?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Signed on 27th November, 2013.

Mr. Charles Njenga: This was when minutes procuring the maize that was distributed on 1st November were confirmed?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Confirmation always takes place in the following meeting and not in the same meeting.

Mr. Charles Njenga: Do you have the date when this meeting took place, to confirm the procurement?

The Governor of Embu County (Hon. Martin Nyaga Wambora): On 28th October.

Mr. Charles Njenga: What page is that?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Page 319. That is when the quotations were opened.

Mr. Charles Njenga: I am asking for the date when the meeting happened, making a decision to procure this maize. Do you have any other date in your bundle of documents, talking about a decision made to procure maize apart from what you have annexed and it is dated 27th November, 2013?

The Governor of Embu County (Hon. Martin Nyaga Wambora): I expect my county secretary to have the minutes and she is due to give evidence. I cannot see it here.

Mr. Charles Njenga: Mr. Chairman, Sir, because of my time let me just have my colleague finalize his 20 minutes and then we can finish our part. I am just trying to be alive to your concern about time.

The Chairperson (Sen. (Dr.) Khalwale): But what is your remark about the failure by the Governor to respond to that question?

Mr. Charles Njenga: He is confirming that he does not have on record any such minutes.

The Chairperson (Sen. (Dr.) Khalwale): Governor, you are still in that seat. We would like you to face the other counsel.

Mr. George Ng'ang'a Mbugua: Thank you very much, Mr. Chairman and the honourable Committee. I will take questions regarding Violation Nos.4 and 5, specifically, for purposes of time, the allegation regarding the creation of offices within the county. Perhaps, just before I get to the crux of my question, does the county secretary report to you as the chief executive officer of the county?

The Governor of Embu County (Hon. Martin Nyaga Wambora): She does.

Mr. George Ng'ang'a Mbugua: So, the county secretary does report to you.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Absolutely.

Mr. George Ng'ang'a Mbugua: Thank you. Before creation of any offices within the county are you consulted as the Governor by the CPSB?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, I would be consulted because sometimes we are the ones who request for the creation and sometimes the board does it on its own volition.

Mr. George Ng'ang'a Mbugua: Mr. Chairman and hon. Members, I am referring the witness to Annexure CAE 4 of the county assembly's bundle.

Following that confirmation by the Governor that he is consulted in creation of offices, let us go to the advert – CAE 4. I take it that following the answer that you have given us, hon. Governor, before the proposal to invite personnel to fill those positions appearing at

Annexure CAE4, you were, indeed, duly consulted by the CPSB. Now, look at that advertisement. It contains no less than 33 vacancies intended to be filled. Is that correct?

The Governor of Embu County (Hon. Martin Nyaga Wambora): That is correct.

Mr. George Ng'ang'a Mbugua: Looking at the various offices sought to be filled through that advert, are all those offices sought to be filled created by legislation, specifically, provided for under Sections 50 to 55 of the County Governments Act? Take a minute and have a look.

The Governor of Embu County (Hon. Martin Nyaga Wambora): I have seen it. Can you repeat the question now?

Mr. George Ng'ang'a Mbugua: Looking at those offices that were sought to be filled through that advert, in your response you say that under Sections 50 to 55 of the County Governments Act--- Mr. Chairman, I am referring to verbatim the defence by the county Governor, paragraph 3(a) (II). I can read it just to make it easy for you.

Mr. Governor, you stated that specifically in respect to the advertisement that I have just referred you to, it is important to note that the positions are established through legislation, and you specifically say that Section 50 to 55 of the County Governments Act establishes the said positions. As a result, the Public Service Board is mandated to advertise and make appointments to those positions. That is your defence.

My question is: You have referred to Section 50 to 55. Is it your evidence that, that list of those 33 positions are all provided for under Section 50 to 55 of the County Governments Act? Yes or no?

(Mr. Wambora perused documents)

Let me make it easy. Section 50 provides for the office of the sub-county administrator. So, when it comes to filling that position, the approval of the County Assembly would not be necessary.

Section 51 provides for the office of ward administrator. When it comes to filling that position, the approval of the county assembly would not be necessary.

Section 52 – village administrator. Yes, we all agree that it is created by a legislation.

Section 53 – village counsel. Section 54 provides for structures of decentralization.

Section 55 does not even provide for appointment of any.

Now we have gone through about three offices and 33 were sought to be filled. Do you confirm before this Committee, as we try to establish the truth in these proceedings, that all the other 28, other than those three that we have gone through and, perhaps, the one in

respect to the county secretary, are not created by legislation, and so, the proposal to create those offices required the approval of the county assembly, in line with Section 62 (2) of the Act? Do you confirm that position, Mr. Governor, so that we can move on?

The Governor of Embu County (Hon. Martin Nyaga Wambora): I have seen Section 52 and this answer may not be correct.

The sections that you have read could be true, but my position has been that these are not new positions.

Mr. George Ng'ang'a Mbugua: Please, answer my question, Mr. Governor. I have read your defence and it is that they are all provided for by the law. We have read the law. So, my question to you is very simple, Mr. Governor; that you confirm that not all those 33 positions that you were seeking to fill are provided for under Sections 50 to 55 of the County Governments Act. Is that the answer?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Just hold on. The one that I went through yesterday on Violation of County Governments Act, 2012---

Mr. George Ng'ang'a Mbugua: Mr. Governor, is that your defence? Have you read the document that you supplied this honourable Committee with? In the interest of time, we are seekers of the truth.

The Governor of Embu County (Hon. Martin Nyaga Wambora): This may not be correct, that is, Sections 50 to 55. May I give an answer, which is---

Mr. George Ng'ang'a Mbugua: You have answered and said that it may not be correct. That is an answer, Mr. Governor. I am trying to make your life quite easy. Let us move on.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I still want to have a chance to clarify because a mistake can happen.

Sometimes they say it can happen, but I want to still stand by the fact that Public Service Commission Act, most of these other positions that had been filled by the TA, most of them fall under that category. That is the circular which we applied when I was consulted about this advertisement.

The Chairperson (Sen. (Dr.) Khalwale): You are telling this Committee that your defence is a mistake on that particular item?

The Governor of Embu County (Hon. Martin Nyaga Wambora): There is a mistake there.

The Chairperson (Sen. (Dr.) Khalwale): Counsel, you can continue.

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

The Vice Chairperson (Sen. Murkomen): Governor, you were consulted when the advert was supposed to be put forward?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, because these are posts which we had to fill. Most of these posts are the ones which we had to replace initial interim officials from TA.

The Vice Chairperson (Sen. Murkomen): Was that consultation in writing?

The Governor of Embu County (Hon. Martin Nyaga Wambora): I cannot remember; it could have been verbal.

The Vice Chairperson (Sen. Murkomen): In that verbal conversation, was it with the secretary of the county public service board or the chair?

The Governor of Embu County (Hon. Martin Nyaga Wambora): I think they must have told me about it. They must have expressed to have these positions, especially the ones of principal officers. Most of them are positions which are replacements of the officials from the TA. Other than the five he has read, there is, head of budget, head of supply chain and so on. Those are positions which fall under the Public Service Commission Act.

The Vice Chairperson (Sen. Murkomen): Just the question I was asking; did you speak to the secretary of the county public service board or the chair?

The Governor of Embu County (Hon. Martin Nyaga Wambora): We must have talked because we needed those posts.

The Vice Chairperson (Sen. Murkomen): But you cannot remember whether it was in writing or not?

The Governor of Embu County (Hon. Martin Nyaga Wambora): I cannot remember.

Mr. George Ng'ang'a Mbugua: Thank you. Let us move on to the operations of the CPSB that you now confirm that you were aware about. I want to refer this witness to a very important document that, partly, may answer the question that was raised yesterday when I was making my submission regarding the independence and autonomy of the CPSB. I am referring the witness to the report attached as annexure CAE5 in the County Assembly's bundle. I want to refer the witness first to page 15 and, perhaps, this part even answers the question by Sen. Murkomen, I am referring to pagination at the top of that report. There is a paragraph written "Consultative meetings with the Executive County Assembly and TA. It is page 86 at the top. There is paragraph 3(ii), I am referring the Governor to the paragraph that starts "This report is from the CPSB. The board has on several occasions held consultative meetings with his Excellency, the Governor regarding

staff establishment/regularization and also the issue of casual labourers; be advised accordingly.”

That is a report from the board confirming that there has, indeed, been consultation as confirmed by the Governor. Down there, there is a comment from the board. Governor, if you could just look at it. The CPSB is reporting that the county secretary, that the Governor, has just confirmed reports to him, agreed to prepare the final structure before it is taken to the Assembly for approval through the board and county executive committee member for finance, economic planning and administration. I want to tie that to the question on the issue of approval. First, it is acknowledged that the county secretary has agreed to prepare for approval. So, it is an acknowledgement that an approval is necessary. If you look at that letter, I then want the Committee to look at that paragraph together with the letter that has been copied to the Governor that is dated 17th December, 2013 that follows that report, immediately after that report. Mine is not paginated, unfortunately, but that is the letter: Embu CPSB; addressed to the county secretary, copied to the Governor. I do not know whether we have seen that letter. It is a letter dated 17th December, 2013. On one hand, the CPSB is reporting about action that needs or requires to be taken by the county secretary. If you look at that letter dated 17th December, 2013, paragraph 2, that letter was copied to you by Johnson Nyaga, CEO public service board – Public Service Organizational Structure – paragraph 2 reads:-

“The board notes with a lot of concern that to date you have not responded to this matter despite the urgency it deserves. Please note that the approved structure – the approved structure is to be read together with that page 15 where I referred to in the report – was to facilitate issuance of various appointment letters. The board feels derailed in executing its mandate.”

Hon. Governor, you confirm that the frustrations of the CPSB directed at your own county secretary has been copied to you, what action did you take as the chief executive officer regarding that very important concern on the organizational structure and recruitment of personnel within the county? What was your intervention having been copied that letter on 17th December, 2013?

The Governor of Embu County (Hon. Martin Nyaga Wambora): My intervention was to find out why that letter has not been replied to. It was drawn to my attention that in May, 2013, we invited experts from the management consultancy services. The organizational structure was done by experts.

Mr. George Ng’ang’a Mbugua: Hang on Governor. The frustrations are on 17th December, 2013. So, we want to see intervention immediately after that 17th December, 2013.

Mr. Wilfred Nyamu: On a point of order, Mr. Chairman, Sir. He is trying to give background information to his answer, if he does not get the specific answer that he wants.

The Governor of Embu County (Hon. Martin Nyaga Wambora): I have to explain the delay.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, with all due respect, if he wants to do the case of the County Assembly, I will step aside.

Mr. Wilfred Nyamu: With due respect, I have a right to protect my client.

The Vice Chairperson (Sen. Murkomen): Order, Counsel!

The Governor of Embu County (Hon. Martin Nyaga Wambora): May I answer this one?

The Vice Chairperson (Sen. Murkomen): Yes, Governor.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, this one is critical; to answer the Committee Members, we managed to get experts from what used to be the Directorate of Personnel Management, whose name has now changed. They have written very big reports here and they gave us an organization chart which we forwarded to the County Assembly in June last year for deliberations and approval. We feel that the organizational structure must be done by experts. We are still waiting for that organizational structure to be debated and approved by the County Assembly. We held a meeting sometime in December at the Multimedia University and the proposals by MCAs was different from the report of the experts. So, we could not agree because I would rather go by an organizational structure which is done by experts. We are still maintaining that let them debate on the organizational structure which was done by experts and which we forwarded to the County Assembly. This is on page 174 of the bigger document.

Mr. George Ng'ang'a Mbugua: That is okay, Governor. I want to agree with you and your counsel that that is the background. You are now supposed to answer, what action you took after this complaint in December confirming that the process had been derailed?

The Governor of Embu County (Hon. Martin Nyaga Wambora): This explanation, I was getting it when the heat was already on in January. So, we have not resolved it yet because the crisis grew between us and the County Assembly, but that is our stand. We still feel that we must go by the organizational structure by experts. So let the County Assembly give us a formal reply on what happened with the submission of June.

The Chairperson (Sen. (Dr.) Khalwale): Counsel, you can continue, we have heard his answer.

Mr. George Ng'ang'a Mbugua: Thank you, Mr. Chairman, Sir. I want to refer the witness to page 18 of that report by the CPSB, the report by the county public service board, the one we have just referred to marked CAE5 – the Annual Report for the Period Ended 31st December, 2013. There are challenges and recommendations there. This is the

document and it is indicated at the top, part 4 – Challenges and Recommendations, page 89. I am referring specifically to a challenge documented by the public service board attributable to the executive. If you look at part (d) on financial independence – I do not know whether we are there, it is on page 18, at the top there, the public service board in its report is saying as at 31st December, 2013, the board has faced many challenges from time to time, some of which can be highlighted as below. Although it is indicated part (d), but I think it should be part (e), I am referring to “Financial Independence”.

On the financial independence challenge, the recommendation by the CPSB is that the appointment of the board secretary as the accounting officer be facilitated. Who facilitates the appointment of the board secretary as the accounting officer?

The Governor of Embu County (Hon. Martin Nyaga Wambora): That would be the CEC Finance, Planning and Administration.

Mr. George Ng’ang’a Mbugua: To whom does the CEC Finance, Planning and Administration report, under the County Government Act?

The Governor of Embu County (Hon. Martin Nyaga Wambora): To the Governor.

Mr. George Ng’ang’a Mbugua: Did you satisfy yourself from your county executive member of finance why a very important assignment with respect to the appointment of the accounting officer, so that you can give financial independence to the CPSB - why that very simple role had not been performed by your executive committee member for finance?

The Governor of Embu County (Hon. Martin Nyaga Wambora): I am told the board had advertised the position of accountant to facilitate the CEO of the board to be able to perform effectively as an accounting officer. So, we are waiting for that recruitment to take place in the board because there is no need of appointing an accounting officer and he does not have the personnel---

Mr. George Ng’ang’a Mbugua: For how long had the CPSB been in existence without an accounting officer?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Immediately he has the finance officer and an accountant, he would be the accounting officer because you need to facilitate an accounting officer with the necessary personnel. They had advertised for the post and when they have those people, the CEC Finance will definitely appoint accounting officers.

Mr. George Ng’ang’a Mbugua: My question is: How long did the CPSB operate without a designated accounting officer?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, we have been serving them from the county treasury until they recruited their own finance

officer and an accountant. I think it is not asking for too much. We cannot recruit for them. They have to do it themselves then we give them the empowerment.

Mr. George Ng'ang'a Mbugua: Let us go on Governor. I want to because of the background the Governor gave us on the element of control that he exercised---

Sen. Orengo: Counsel, so that we have a complete picture of this; in the hierarchy of challenge, there is a challenge part (b), which is very essential and look at where he puts the blame. As we say these things, I think we should get the complete picture that there is some element where the County Assembly is also equally being blamed. What do you say to that?

Mr. Ng'ang'a: My reading of that recommendation is that what they are saying is that they have forwarded the secretariat organogram and schemes of service to the County Assembly for approval. I do not want to mean that the County Assembly has failed to act because what I am reading from part (d) is that the appointment of the board secretary as accounting officer be facilitated. There is a challenge there. This is because if it is not facilitated, then the board will not work or operate independently. What I am reading, with all due respect to my learned senior counsel, is the recommendation with regard to (b) is that yes they have forwarded the secretariat organogram and scheme of service to the County Assembly for approval as at the date of this report, but I do not read that, perhaps, to suggest that no action has been taken.

Sen. Orengo: Which is when?

Mr. George Ng'ang'a Mbugua: This report is as at 31st December, 2013.

Sen. Orengo: But you agree with me that the challenge is with the County Assembly?

Mr. George Ng'ang'a Mbugua: To that extent, yes, you can attribute the challenge if it turns out that there is a delay. What we are saying is that "yes" we acknowledge that they are saying that they have submitted that and the case of the Assembly, perhaps, although I am not answering it because they will respond to it, but the point on part (d) was that when the accounting officer is not designated then there is a problem with the independent operation. Remember the question that was posed yesterday by Sen. Murkomen about the nexus between the executive and the public service board. So that now we are beginning to unravel the nexus and then trying to build the case of accountability on the Governor.

The Chairperson (Sen. (Dr.) Khalwale): So that we may be able to give proper apportionment of blame, we can easily get an answer to what Sen. Orengo has asked. You are the counsel of the County Assembly and you are lucky to have the Speaker. Probably, he can just whisper to your ear that this is the reason and then you tell us.

Mr. George Ng'ang'a Mbugua: I am well guided, Mr. Chairman, Sir.

The Chairperson (Sen. (Dr.) Khalwale): It is not a trial. We are getting information that will help us to make a proper decision.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, I am being whispered to a very important observation by the Speaker, and I am referred to Section 46 of the County Governments Act. Under that section, the organizational structure does not require the express approval of the county assembly. That is on Section 46. It says:-

“The County Executive Committee shall determine the organization of the county and its various departments and for that purpose may establish, continue or vary any department and determine the objects and purposes, determine the number and nature of departments, abolish a department and determine or change the name of the department”
So, it seems the case of the County Assembly is that the request for approval may have been superfluous because clearly under Section 46, the executive can simply just proceed and have it improved and implemented without express approval from the County Assembly.

The Vice Chairperson (Sen. Murkomen): Mr. Chairman, Sir, in the absence of that accounting officer - because I am seeing you are moving away from that point – for the Public Service Finance Board, how do they, for example, advertise? Who approved that advertisement and sent it to the media house to publish it?

The Governor of Embu County (Hon. Martin Nyaga Wambora): They do the advertising. They just need to get an LPO from the county treasury in order to advertise. However, I wanted to reply to what has been said; that is now the County Executive Committee (CEC) which is supposed to do this. It is only that the CEO of the Board believes that he still needs an organizational chart approval from the County Assembly. So, if he is advised by the county assembly, he does not need it and he has employed the people he needs to facilitate the handling of funds, then we shall have no problem on our side

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, as I wind up, let me just now refer to the affidavit that was sworn by the Governor just to bring into perspective one or two questions and then I will wind up my cross examination.

If we could all turn to the affidavit which is at the centre of this inquiry; CAE8A. As I refer to this affidavit, I am beginning from the primaries. Mr. Governor, you acknowledge that as the Chief Executive Officer, you do exercise control of not just your county executive, but also the various chief officers and the various user departments within the county. Is that correct?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, chief officers, the CEC members, the county secretary and the sub-county administrators.

Mr. George Ng'ang'a Mbugua: You confirm that you exercise control over who reports to you. For instance, which chief officer is responsible for the department that deals with procurement?

The Governor of Embu County (Hon. Martin Nyaga Wambora): It is the Chief Officer, Finance.

Mr. George Ng'ang'a Mbugua: So, the Chief Officer, Finance, who reports to you would invariably report to you on matters that go on within his department. Is that correct?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, absolutely.

Mr. George Ng'ang'a Mbugua: Now I want to refer the Governor to a very strong averment he has made at paragraph 16 of the affidavit, sworn in the case of the county secretary seeking to challenge the investigations by the Ethics and Anti corruption Commission.

Mr. Governor, as at the time you were swearing this affidavit on 21st January, 2014, confirm to this Committee that the investigations that the County Secretary was facing with regard to the procurement surrounding Embu Stadium and the maize, that those investigations were still on-going.

The Governor of Embu County (Hon. Martin Nyaga Wambora): They were still on-going.

Mr. George Ng'ang'a Mbugua: Thank you. Now let us go to your conclusions.

The Vice Chairperson (Sen. Murkomen): Counsel, investigations by who?

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, by the Ethics and Anti-corruption Commission. So, he confirms the investigations that were facing the County Secretary were on-going. I want to refer the Governor to what his conclusions were about the matters that the county secretary was facing. I am referring the Governor to his own averments at paragraph 16. Can you, please, read it to us? You confirm investigations are on-going, so your county secretary is yet to be cleared by the EACC. Please, read to us what your conclusion was regarding those investigations.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, it reads:-

“The first, second and the third respondents’ unfortunate and unfounded acts are actuated by malice, bad faith, ill spirit, witch-hunting and revenge”.

Mr. George Ng'ang'a Mbugua: That the first, second and third respondent acts---. First is the act by the County Assembly resolving that the County Secretary steps aside. That is

one of the impugned acts because if you look at the first respondent, it is the Speaker, the second respondent is the Clerk, and the third is the County Assembly of Embu. So, they are three offices. Now, this is what the Governor thinks. It is important that the Committee starts to read the mind of the Governor in as far as the actions of his own officers are concerned. That the first, second and third respondents' unfortunate and unfounded acts are actuated by malice. So, first of all, he does not believe that the investigations that are facing the county secretary are well founded. Secondly, that they are in bad faith.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, I do request that my learned friend clarifies whether he is submitting or posing questions upon the Governor.

The Chairperson (Sen. (Dr.) Khalwale): We are satisfied that he asked the Governor the question and the question was: Could he, through reading, confirm that paragraph 16 was a confirmation that he had made a conclusion on an investigation that was still on-going, and he has done that. So, that recap he is putting, is just wasting time.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I need to answer because I had talked about it earlier with the lead counsel and I still want to reiterate our annexure MNW11; the letter from the Controller of Budget the SRC and the TA. To me, I know all this hate came from there because the heat about these issues came up after the county secretary raised these issues with these Government agencies.

The Chairperson (Sen. (Dr.) Khalwale): Sorry, what you said was verbatim, and it is on HANSARD. Counsel for the Governor, you are right. Counsel for the County Assembly, having gotten the answer you wanted, why are you going for an over-kill?

Mr. Wilfred Nyamu: Mr. Chairman, Sir, I wish to point out that as he is answering questions, those questions should be posed as questions and not submissions. Otherwise, my client may fail to understand that it is a question that is being posed. So, it is imperative upon the counsel to ask questions and not submit.

Mr. George Ng'ang'a Mbugua: So, Mr. Governor, looking at the content of this affidavit and specifically the paragraph that we have referred to, the intention of your averments in that affidavit was intended to achieve the objective of having the investigations facing the county secretary quashed. Yes or no?

The Governor of Embu County (Hon. Martin Nyaga Wambora): No. I can give the reason.

Mr. George Ng'ang'a Mbugua: You did not seek to exonerate her from that case?

The Governor of Embu County (Hon. Martin Nyaga Wambora): No, I did not seek to exonerate her because up to now she is still outside the office, except the day she was called by the investigator to give documents. So, as far as I am concerned, I am still the

Chairman and I am still waiting for the report of the EACC for me to act on my county secretary.

The Chairperson (Sen. (Dr.) Khalwale): What was the intention of paragraph 16?

The Governor of Embu County (Hon. Martin Nyaga Wambora): It is very simple; I felt strongly and I still do that the issue was based on malice because she exposed the County Assembly's irregularities. I still stand by that.

The Vice Chairperson (Sen. Murkomen): So, it is your position that even up to now, the county secretary is innocent.

The Governor of Embu County (Hon. Martin Nyaga Wambora): No, I am not saying that she is innocent. No, I cannot say that.

The Vice Chairperson (Sen. Murkomen): You can consult your lawyer, why would somebody swear an affidavit in support of somebody's application?

The Governor of Embu County (Hon. Martin Nyaga Wambora): It was for a very simple reason; I was an interested party. Investigations which the Assembly had asked for were still being conducted and the investigator had already said that she could still work. That they could still continue with investigations even when she was in office and I wanted due process of the law to be followed.

Mr. George Ng'ang'a Mbugua: So, as I wind up---

The Chairperson (Sen. (Dr.) Khalwale): Counsel, before you wind up, there is one of your senior colleagues who has quietly kept her cool.

Sen. Sijeny: Mr. Chairman, Sir, I have reserved my questions, but just on the last statement, you are saying that you are an interested party. How did you become an interested party? Are you the one who applied to join naturally?

The Governor of Embu County (Hon. Martin Nyaga Wambora): I did not apply to be enjoined, but when my opinion was sought in the form of an affidavit, I signed it because I thought it was unfair for them to sanction this lady when she is already under investigation. I would rather rely on the report of the investigations from the EACC which I am still waiting for.

Sen. Sijeny: Just for clarity, were you enjoined or did you apply to be an interested party? How did you appear on these records as an interested party?

Mr. Wilfred Nyamu: These are pleadings where the County Government of Embu is actually joined in by the *ex parte* applicant as an interested party from the inception of the pleadings. So, they were served with the pleadings and they had to respond.

Sen. Orengo: Mr. Chairman, Sir, in judicial proceedings, you can actually join a party at the first instance as an interested party because you may not be directly interested in the outcome, but there are matters that may concern that particular party.

Sen. Sijeny: That part; how he came to be joined in was not clear enough. I just needed that clarity.

Sen. Orengo: I think for record, we need to know how you came to be in this procedure.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, if need be, we shall provide those pleadings. They were joined from inception. The heading of the affidavit should bear us witness. At the end, after all the respondents, is the County Assembly of Embu joined in as an interested party so that if they have anything to say they would say it and that is what they said.

Mr. Wamatangi: Mr. Chairman, Sir, I think the Counsel's question was direct. He was seeking to find out whether the Governor was in support of the application by the county secretary, but his conclusion is in affidavit, that is paragraph 25. It says:-

“The *ex parte* applicant herein was condemned unheard against the cardinal principles of natural justice and hence would greatly suffer irreparable harm if the orders sought by her are not granted.”

The orders she had sought are express. She wanted the whole proceedings quashed. That was her application.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, owing to the fact that this is technical, at that particular point; the point of these affidavits, the Governor was actually responding to an application for stay pending the hearing of a substantive application for judicial review which was pending before the court.

The Chairperson (Se. (Dr.) Khalwale): That is mainly what we have done in the last few minutes. It was mainly legalese. So, that is okay. I am keen on evidence and now you can conclude the evidence.

Mr. George Ng'ang'a Mbugua: Mr. Governor, by swearing this affidavit and making the averment that we have just referred you to, I put it to you that you sought to aid, abet and exonerate an officer who chiefly reports to you by the name of the county secretary on matters touching on procurement and upgrading of Embu Stadium, that you have feigned ignorance about. You deliberately aided and you are seeking to subvert investigations being carried out by an agency duly constituted in law for purposes of investigations, to subvert that very investigation; and that amounts to abuse of office.

I rest my case.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I must answer that. There was no abetting justice. I was just unhappy that this lady was being pushed by the County Assembly even when investigations started. I am still waiting for those investigations. They are still ongoing. I am urging the Ethics and Anti-Corruption Commission to bring their report to me and I will take action. There is no abetting justice. I believe in justice.

Mr. George Ng'ang'a Mbugua: Thank you very much. Unless there is any clarification from the plenary, I am done with my cross.

The Chairperson (Sen. (Dr.) Khalwale): Counsel, we will direct a few things to you. So, please, just take your seat. Hon. Senators, we are just about to take a break. We have made a few critical interventions, but I want to give room for a few to the Governor now that he is there so that when we remove the Governor, we now come back with a new witness.

Mr. Wilfred Nyamu: I stand to be directed as at what I point I should do my reexamination given that I do not know that hon. Members have reserved questions. I want to come last after he has answered questions from Members.

The Chairperson (Sen. (Dr.) Khalwale): The way I was looking at it, until Sen. Orenge intervened, was that we do ours a bit then your reexamination will come as final. So, if we finish ours, we can have a quick break, give you time to talk to your client and then we come back for the reexamination. Is that okay with you?

Mr. Wilfred Nyamu: Yes, Mr. Chairman, Sir.

The Chairperson (Sen. (Dr.) Khalwale): Governor, there is an area where I want you to help me. In the Auditor-General's Report, page 40, there is a matter; that of the purchase of a motor vehicle for yourself. This is a new Toyota Prado worth Kshs12.1 million. The Auditor-General has complained loudly about two audit queries. The first one is that the efforts to have the log book given to him so as to ascertain the owner of the vehicle were frustrated. The second audit query he has raised is that there was a request from your secretary that the vehicle be registered in civilian number plates. Could you clarify?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I am entitled to two vehicles. The first one is GVN 014 for Embu, the one I am using today. I am also entitled to another vehicle when this one is at the garage or undergoing repair or when I cannot use the GVN vehicle which is very conspicuous or for security reasons. This one does not have the green numbers, but ordinary numbers. The vehicle is 100 per cent a county vehicle. It is on our list or schedule. It is right there listed as MNW12 on page 310. If you go to that page, you will see it listed there. The last one listed there is Toyota Prado, KBU 638T.

The Vice Chairperson (Sen. Murkomen): That is okay. Do we have a copy of the log book here?

The Governor of Embu County (Hon. Martin Nyaga Wambora): That is why we are looking for Makenge. He is the custodian of these log books.

The Vice Chairperson (Sen. Murkomen): Is that the witness who went to Kitui?

The Governor of Embu County (Hon. Martin Nyaga Wambora): No, that is the Procurement Manager. Makenge is a much junior person.

Sen. Orengo: The problem is that it was an audit query, not now but last year.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Here is the log book. Please, write, K198313.

The Chairperson (Sen. (Dr.) Khalwale): Order! Log books are not submitted through that kind of arrangement. Go and bring that physical copy because you failed to give it to the Auditor-General. We will give you time. We will give you up to tomorrow.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, where do I get it?

Sen. Mositet: Mr. Chairman, Sir, maybe we also need clarification of registration. Page 310 that the Governor is talking about, this vehicle is registered as KBU 638T. However, in the Governor's file that we have, this one is KBU 268T.

The Chairperson (Sen. (Dr.) Khalwale): Sen. (Prof.) Lesan, could you supplement the question by Eng. Mositet?

Sen. (Prof.) Lesan: Mr. Chairman, Sir, there are several letters written by the county secretary requesting to have this registration civilian. I find that difficult to understand because all vehicles, once they are out, are registered in civilian numbers. I do not see the need for requesting. That was requested on three days in a row. This was on 27th, 29th she requested not to have it in civilian numbers and on 30th, another letter was written and the number is KBU 683T. It is not 638. I also find it difficult to understand that the inspection receipt for the purchase of this vehicle was given in July. That means that the inspection was done way after the vehicle had been bought and delivered. Following that, the mode of payment for this vehicle in Toyota Kenya was through Real Time Gross Settlement (RTGS) which is the normal way of making payments. However, I realise that travel and subsistence allowance was paid to Toyota Kenya and that is how the price became Kshs12,196,659.

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

Sen. (Prof.) Lesan: Mr. Chairman, Sir, that is the Auditor's Report which is also in several other documents.

The Chairperson (Sen. (Dr.) Khalwale): While you are answering that, there is a related issue.

Sen. Kittony: On the same page, 41, of the Auditor-General's Report, No.II says that the log book for the purchased motor vehicle was not made available for audit scrutiny although a work ticket and a file for a vehicle registration No.KBU 268T had been opened.

The Chairperson (Sen. (Dr.) Khalwale): Combine those answers and as you do it, please, recall that subsistence allowance, when varied to help you buy a car by law, according to the Government financial regulations and procedures, needs approval from the Controller of Budget.

The Auditor-General is saying that you did not seek that authority.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, the Interim Secretary, TA, appointed will be surcharged. He is the one who bought it and not me.

The Chairperson (Sen. (Dr.) Khalwale): Surcharged?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, he will be surcharged for that subsistence allowance.

The Chairperson (Sen. (Dr.) Khalwale): Governor, your experience helps me to deal with you. You know that long before the Auditor-General raised this audit query, he gave you an opportunity, through a management letter, to explain all those things so that they did not have to be in his list of audit queries. So, what we are saying is that, having failed to satisfy the Auditor-General with that answer, I find it difficult for us to be satisfied by the same answer.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, the truth of the matter is that the officers who keep these documents are the ones we will follow up.

Sen. Wamatangi: Mr. Chairman, Sir, I am seeking clarification on how he has explained that his travel and subsistence allowance has become part of the payment for the motor vehicle?

The Governor of Embu County (Hon. Martin Nyaga Wambora): What subsistence allowance is this now?

Sen. Wamatangi: It is in the report. Just look at the report.

Sen. (Prof.) Lesan: Mr. Chairman, Sir that is precisely what I was saying. The money for this vehicle was paid through RTGS and all of it was paid to Toyota Kenya, including subsistence and travel. That is documented in this Report.

Sen. Wamatangi: Mr. Chairman, Sir, there is a payment on page 40 where we have a payment of Kshs10 million and another payment of Kshs2.1 million. The Kshs2.1 million is under travel and subsistence.

The Governor of Embu County (Hon. Martin Nyaga Wambora): A Mr. David Kanji, former Interim County Secretary is being followed on that issue for surcharge.

Sen. Wamatangi: Who is following him?

The Chairperson (Sen. (Dr.) Khalwale): Who is following him? You are the one facing the threat of removal from office so the burden of proof is on you. This Committee will not be convinced.

The Governor of Embu County (Hon. Martin Nyaga Wambora): He is the one who acquired the vehicle and made the payment.

The Chairperson (Sen. (Dr.) Khalwale): Any other question on the motor vehicle?

Sen. Kittony: I am not sure that the Governor has seen this document that reads, ownership documents for the vehicle should be maintained and budgetary controls should be put in place to ensure that the county government operations are within laws.

The Vice Chairperson (Sen. Murkomen): For purposes of information – this is important – that is also a defence. If the Governor chose to say that action is being taken against the officer who purchased the vehicle that is also a defence. I just want to know who is following the officer. Is it the Auditor-General or the County Government? Of course, it cannot be the Auditor-General.

The Governor of Embu County (Hon. Martin Nyaga Wambora): The County Government.

The Vice Chairman (Sen. Murkomen): So, you are aware that there was misappropriation of funds on that issue?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Absolutely, we are aware.

The Chairperson (Sen. (Dr.) Khalwale): Can you table evidence before the end of this sitting to demonstrate that the process of following has commenced? We will not take your word, I am afraid.

The Governor of Embu County (Hon. Martin Nyaga Wambora): I will follow it up.

The Chairperson (Sen. (Dr.) Khalwale): What documents do you intend to table?

The Governor of Embu County (Hon. Martin Nyaga Wambora): The action taken to date. I will ring my office and see what documents they have.

The Chairperson (Sen. (Dr.) Khalwale): “Follow up”, Governor, may mean that you have told the Ethics and Anti-Corruption Commission (EACC) to look into the matter or the Criminal Investigations Department (CID) to investigate or, probably, you have written a letter for him to be suspended or a letter for him to be surcharged. That is evidence.

The Governor of Embu County (Hon. Martin Nyaga Wambora): In fact, he has been in the Ministry since July.

The Chairperson (Sen. (Dr.) Khalwale): If he went back to the Ministry, have you written to the Principal Secretary advising that the money be recovered from the officer? You did this over the years when you were a Permanent Secretary. Have you taken those options?

The Governor of Embu County (Hon. Martin Nyaga Wambora): May I find out whether my orders were followed?

Sen. Sijeny: Mr. Governor, I have been listening throughout, to the proceedings since you started giving your evidence. Looking at your defence, this is just a matter of; “ it was not me, it was someone else”.

I am just wondering, in your own agenda, whether you have a strategic plan on how you want to govern the Embu County? How do you monitor and evaluate the issues that occur in your Government? Do you have a way of overseeing? If there is screaming evidence that has been reported to you – this or that is not working – how do you manage it? I would like to see your hands on it.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Thank you for that wonderful question and comment. We are managing. There are issues that have been raised. We are definitely taking action on them. However, I can assure you that the county is not collapsing. Our finances are in good order. Our budget is balanced and we will work on these audit questions.

The only thing I want to repeat is that I do not want to be victimized for criminal activities done by other officers related to procurement. I still insist on that because it is not right even as per the---

The Chairperson (Sen. (Dr.) Khalwale): Governor, what Sen. Judith Sijeny is asking is: Are you in charge?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I am in charge.

The Chairperson (Sen. (Dr.) Khalwale): If you are in charge, how come on everything we have asked; your answer has been that you do not know or it was not you? Are you really in charge?

Sen. Sijeny: Sorry, Mr. Chairman, Sir; to answer that, as a way of governance, he must be having a certain tool where at a click of a button, he can see the challenges. What have you done as a way forward? You should also see where you are now and where you want to be in a year, two years or six years to come. A tool like that would really have answered. Even if you say that some things are dealt with by certain committees or boards, you would be having everything. Do you have something like that?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, we are working with Embu Info to do a kind of system similar to the one that you are talking about which is highly digital. We have found the need for that and we are working closely with the United Nations Children Education Fund (UNICEF) to establish an Embu Info so that at the touch of a button, we know what is happening and what is going wrong.

Sen. Hargura: Mr. Chairman, Sir, along the same line, I have made the same observation. However, I would like to ask the Governor what he makes of this section. At the beginning, he read for us Section 30 of the County Governments Act which gave the functions and responsibilities of a County Government. But sub section 3(f), at the bottom, says;

“In performing the functions under sub section 2, the Governor shall be accountable for management and use of the county resources.”

So, if he knew his functions, then that means that he is accountable for everything. There is no way he can pass the buck and say that it is that officer.

The Governor of Embu County (Hon. Martin Nyaga Wambora): I take the point very well from the financial expert and he is right. Accountability for management and optimization of resources is part and parcel of good governance. I will take responsibility for that. The only responsibility I will not take is for criminality. However, for good governance, I will take responsibility. The people who committed crimes will have to be arrested and the law will take its course. However, our mission is optimization of resources. We are effecting that to reduce these shortfalls.

Sen. Hargura: I just want the Governor to say what he understands by the word accountable.

The Vice Chairperson (Sen. Murkomen): How often does the County Executive Committee meet?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Twice a month.

The Vice Chairperson (Sen. Murkomen): Twice a month? So, it is not weekly.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, except, of course, we have not met since January because of this crisis.

The Vice Chairperson (Sen. Murkomen): In your County Executive meetings projects, do you discuss issues like the maize seed, the stadium and so forth? Do these things get to your meetings, what you call the Cabinet?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, we discuss progress in projects. If there is a crisis, we handle it.

The Vice Chairperson (Sen. Murkomen): What do you understand by the words “step aside”?

The Governor of Embu County (Hon. Martin Nyaga Wambora): My understanding is an officer should not be in office.

The Vice Chairperson (Sen. Murkomen): An officer will enjoy all privileges, but not come to the office?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Like which ones?

The Vice Chairperson (Sen. Murkomen): Am saying, can he enjoy all the privileges, salaries, remuneration and entitlements to Government cars?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes. The only time you do not enjoy those remunerations is when you are interdicted or suspended. But if you are sent on forced leave, it is also a sanction to enhance stepping aside.

The Vice Chairperson (Sen. Murkomen): Finally, I do not know if you are the person competent to answer this question. If you are not, let me know. You talked about the motive behind the County Assembly for going after you, “being angry for blood” as you put it.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Being angry for?

The Vice Chairperson (Sen. Murkomen): Blood. I mean, figuratively. This was because your office intercepted possible measures put in place of some County Assembly staff serving in the ward. What was that? If they had a witness on the other side, that question would have gone to the domain of the County Assembly. Whatever it was, you may comment on it.

The Governor of Embu County (Hon. Martin Nyaga Wambora): There is a witness who is coming with more detailed information on that. But briefly it is about Kshs50,000 paid to employees of each elected MCA to pay salaries and Kshs40,000 to pay for office operations. That is Kshs90,000 per month. It is the one we were saying requires legal basis.

The Vice Chairperson (Sen. Murkomen): In other words, you are saying the County Assembly wanted to create a ward office for their elected leaders with some remuneration and office payment?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes.

The Vice Chairperson (Sen. Murkomen): That is okay.

Finally, you are the Governor of Embu County; suppose this Committee finds that you are not culpable, after looking at all the evidence and, therefore, you are going back to the county – I have watched the demeanor and the language between yourself and the County Assembly leadership, even almost spilling to the lawyers – what will be the working relationship between the County Assembly and the County Executive? Do you think you will have the confidence to table documents in the County Assembly again and they are approved? Do you think that the people will have the confidence that there is a united team that is working together, moving forward? This is a hypothetical question.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, immediately after I won this seat and we went to my hotel with the current Speaker, I am the one who proposed him for the post of Speaker. All is not lost. We are not enemies. He is a gentleman. When I was having problems at the counting hall, he is the one who rose up and argued with my opponents. There is nothing impossible. We are brothers and understand each other. We can fight and shake hands.

Sen. Wamatangi: Mr. Chairman, Sir, the Governor has tried to make a case, as has been said, around a hypothesis or a line that most of the execution of the works lie with the officers beneath him, to the extent of sometimes making some very interesting remarks like when he said he was unaware that there were contractors until he saw builders on his roof. In another statement, he said it is not until January 2014 when he knew that there were such complaints.

As a Governor of Embu, if the CEC of Agriculture or Finance were culpable, as you have endeavoured to demonstrate, will that exonerate you? Do you feel like if they carried responsibility for the wrong doings which have happened, hypothetically or allegedly, would that free you of your obligation?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I hope they are not involved. But what we are saying is, investigations can point to anybody. Whoever they point to, the person takes responsibility. If it points to me, I will take responsibility. That is what I believe when it comes to issues of mishandling

procurement. Since investigations are being done, to whom they point, action will be taken regardless of who it is. That is clear in my mind.

The Chairperson (Sen. (Dr.) Khalwale): Mr. Munyaka has arrived, so you are safe now.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, I appreciate his arrival. He will save us a lot of problems that he ought to have tackled.

The Chairperson (Sen. (Dr.) Khalwale): *Asante sana*. Sen. Orengo, do you have something to say?

Sen. Orengo: Hon. Governor, I want to ask you some direct questions following what Sen. Sijeny asked. Was the function that you graced to launch maize seed, to use the words of your counsel, a county function?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes. We are trying to promote food security in the county.

Sen. Orengo: Mr. Chairman, Sir, what I am wondering is, you go to that function, you give members of the public seeds which turn out to be seeds that had been condemned and they could not germinate. Your own people were taking you for a ride. In fact, you were being made a mockery of because, really, you go to a public function and you want to look like this very caring Governor, there are seeds worth millions of shillings and it turns that, that function was a hoax. What you did ended up in nothing. Did it not bother you at the end of it that: "My officers have made me commit myself to the public. I am telling the public I am giving them free seeds" and then it turns out this entire exercise was a hoax", if I may put it that way. At the end of it, do you not ask for some accountability in all these happenings? I do not see any signs that you were worried about this. Instead it is the County Assembly which takes up the matter. I thought, from your part, you should have held some officers responsible for this.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I cannot blame the County Assembly for the seeds when it was done by my own people. I am bothered. The only benefit I am enjoying, hon. Senator, is that the people we distributed this seeds have so much faith in me.

Sen. Orengo: They do?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Ooh, yes! I can assure you---

Sen. Orengo: Could we just---

The Governor of Embu County (Hon. Martin Nyaga Wambora): May I just finish.

Sen. Orengo: Mr. Chairman, Sir, I do not want that history. All I am asking is a direct question. If today I went to my county and participated in an event of this nature where my staff was making a fool of me, eventually, as it turns out, do you not call a crisis meeting, as the Vice Chairman has said. You could ask them: “What have you done to me? How did it happen?” Instead, there is no evidence at all in the entire record to show that the Governor’s office was concerned about this entire process which has bungled up a lot of people.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, the officers who facilitated the acquisition of these seeds, honestly they did not know they were bad seeds. The germination rate was between 10 and 20 per cent. In fact, KEPHIS is blaming the suppliers because the officers were not able to know they were bad seeds. Therefore, I cannot blame them for that. However, the investigations are still ongoing. We will find out if there was any conspiracy with the suppliers.

To answer your question about what I feel. Of course, I felt very bad. However, my people have given me the benefit of doubt because of my record. I have never conned them. They know it was a genuine problem.

Sen. Orengo: Mr. Chairman, Sir, what is worrying me is that after all that, what worries you more is going to court to defend the county secretary, that they have a right to be heard; you issue a press statement and run to court almost immediately as soon as the case is filed. However, on account of this loss, you do nothing up to now.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, after you hear her, if you are still of the same opinion, then we can discuss. Let her come and we hear her.

Sen. Orengo: Mr. Chairman, Sir, I am looking at the press statement that you read. You said that you truly believe in the seven values of the County Government in running of the government business which is accountability. Accountability is in capital letters. So, accountability applies to everybody, but not the Governor of Embu County.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, accountability applies to the Governor for good governance, management and vision of the county.

Sen. Orengo: Mr. Chairman, Sir, I am concerned with regard to some of the documents which you have supplied to us. This is in relation to the document to do with the minutes which were signed by Mr. Munyaka. Do you remember those minutes? They are in regard to the maize seeds.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, Mr. Chairman, Sir.

Sen. Orengo: My concern is, if I may put it as a general question, there is a tendency in the documents that you have supplied that you do not give us the whole document. You give the part that you think may persuade us to think in a certain direction. In the minutes, we see the page which was signed, but the entire record of the meeting of that day is not there. You are the one supplying them. I am worried about you giving documents which are not complete. Is that deliberate?

The Governor of Embu County (Hon. Martin Nyaga Wambora): No, it is because we did not consider the issue of the board and did not give it a lot of weight. But now that we have heard some of the challenges, we will address ourselves to them.

The Chairperson (Sen. (Dr.) Khalwale): hon. Governor, that is a true test on integrity before this Committee. If your intention is to annex minutes – you cannot purport to annex minutes when you have left out some other aspects of those minutes. What would be your intention in making sure that we do not see the balance of the minutes? You do not have to answer that one. I was just wondering aloud, following Sen. Orengo's questions.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, you can see this document of 340 pages which we had to compile in two days, Friday and Saturday, it was overwhelming. We compiled the first lot in River Road. The pages were scattered here and there. It was a big challenge compiling this document in two days. So, understand a problem.

The Chairperson (Sen. (Dr.) Khalwale): Sen. Orengo, had you finished?

Sen. Orengo: Mr. Chairman, Sir, I had not finished. In fairness to the Governor, there is a document in the smaller bundle. If you look at page 64, I think this is a letter from the Transition Authority in Embu County signed by the County Co-ordinator, a Mrs. Kariuki. It is dated 12th September. It seems to be talking about handing over of certain certificates and for practical completion. One of those is the roofing of the Embu Town Hall and extension of the Town Hall. Do you have any comment to make on this particular document? In aid of your case, I am just trying to be of assistance. If there is something which can assist you, we should point it out. But if this document makes no sense to you, then you do not need to answer.

The Governor of Embu County (Hon. Martin Nyaga Wambora): We do not have documents on this. I have seen the letter. But we have not replied to this one.

The Chairperson (Sen. (Dr.) Khalwale): He has not seen the olive branch.

The Governor of Embu County (Hon. Martin Nyaga Wambora): These are the projects which, again, we were reading documents here where the returns were being done by 30th June to Mr. Makori, the Transition Authority. Again, this is one of the areas we were looking for Makeenge.

The Chairperson (Sen. (Dr.) Khalwale): Makenge will come.

Yes, Sen. Lesuuda.

Sen. Lesuuda: Thank you, Mr. Chairman, Sir. Hon. Governor, I will ask questions that are general after listening to you yesterday and today. You have said on several occasions that the people of Embu County have hope and faith in you. They had it when they elected you and even now. But when they listen to you now, passing the blame for everything that happened in your office. They know you are the one who put those people in office. They do not know who Mr. Munyaka or other officers in that office are. They look up to you.

Looking at the press statement that you read, there were issues that were touched on, among them, the procurement of the maize seeds. There are farmers whose seeds did not germinate up to zero per cent; you did not address anything with regard to that. Most of the content here is about the county secretary. Did you not feel that the people of Embu really just needed assurance when you were issuing this statement on your leadership as the Governor of Embu County?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, thank you for the questions, hon. Senator. The people of Embu, the things we have achieved so far, the levels of operationalisation of funding for investments and the things we have done to date supersedes these complaints.

Sen. Lesuuda: So, this complaint is not important?

The Governor of Embu County (Hon. Martin Nyaga Wambora): No, it is important and we are going to address it. That is why we have now embarked on the info centre because we want to be more efficient. But what I am saying is that the issues raised here are surpassed by the achievements we have done for the last few months.

Sen. Lesuuda: Mr. Chairman, Sir, I will ask another question. If you are found to be fit to remain in that office, are there things that you will do differently? Are you going to be more accountable or do you think you will just go on? Are you sure of yourself that you would just go on with handling things in Embu County the way they have been?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, definitely, it will not be business as usual. I have learned a lot and I can assure you, Madam hon. Senator, it will not be business as usual; there is no doubt about that.

Sen. Lesuuda: Mr. Chairman, Sir, my final comment or question is that, I find it very difficult when I hear things like “big projects” and “small projects” from a Governor who had a plan when you were being elected into that office; and every little thing that you do affects the people of that county. There are resources which are being used in the county. There is a reason you went for seeds and not for goats or whatever else, because there are things which are suitable for the people of that county. Probably, like in Samburu

County, maybe that would not have been an issue there. Then now when asked, you refer to these projects as “big” or “small;” I do not know; I mean, you have to know how these projects are implemented to finality and ensure that the results actually come out positive. And then whether you then take accountability for it or you s till say it is so and so.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, that is one area we have taken account of and it will not be business as usual, for either big or small projects.

Sen. (Prof) Lesan: Mr. Chairman, Sir, this is a very small question just to let me also be clarified in my mind. You were sworn in on the 27th of March, 2013. According to the evidence you gave us, you said you fully took charge of Embu County on the 23rd of September, 2013, when the TA left. Recently, we have seen very senior policemen, after vetting, sent home simply for taking home a salary without showing any evidence of doing anything. On 23rd of September is when you said you took charge of Embu. In the intervening period, is it true to say that you were taking home a salary without doing anything for the people of Embu?

Secondly, if I may ask, what exactly hindered you from exerting yourself as the Governor of Embu from the day you were sworn in?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Thank you for the questions, Sen. (Prof.) Lesan. We have done progress in Embu; we have done a lot of grading of roads using very little money because we are using our own tractor and petrol, buying directly without giving tenders; the stadium we are talking about used to be just a dusty place, but now it is clean; the funds for development began arriving in October, but most of it from January. We have done all the projections in terms of spatial plans, development integrated plans---

Sen. (Prof) Lesan: Sorry, Governor, if I may interrupt. Did you say you bought things like petrol without tenders? In fact, that is an audit query---

The Governor of Embu County (Hon. Martin Nyaga Wambora): No, there is a tender. We have a tender for petrol.

Sen. (Prof) Lesan: Okay.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, we have a tender for petrol where our vehicles and tractors fuel. We have saved a lot of money on grading of roads using that method. We were concentrating mostly on recruitment of personnel. Secondly, we were concentrating on preparing integrated plans, spatial plans and sectoral plans. We are now ready for the take off, now that we have development money and there will be a big difference in the county. But, again, as the Senator said, it will not be business as usual. We shall up the game from now on.

Sen. (Prof) Lesan: All those things you are doing which are obviously good for Embu was as result of procurement which is something you really feared to undertake here. When you say “we,” I believe it is your office.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, procurement for the Governor is not possible, but we shall ensure that it is done better.

The Chairperson (Sen. (Dr) Khalwale): Thank you, (Prof.) Lesan.

Yes, Sen. (Eng.) Mositet?

Sen. Mositet: Thank you, Mr. Chairman, Sir. My first question is: Is the County Assembly of Embu financially independent, or is it still depending on you or, maybe, on the County Government?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, we had already organized for them to go on to the Integrated Financial Management Information System (IFMIS) so that they can now be getting their funds directly from the Central Bank of Kenya (CBK). However, that exercise has not been completed. But we do not control the funds of the County Assembly.

Sen. Mositet: But you procure for them?

The Governor of Embu County (Hon. Martin Nyaga Wambora): No, no, no, no; absolutely not; except, of course, for the County Assembly building where with these funds which came from the TA, that was done by the procurement committee from the County Treasury.

Sen. Mositet: Mr. Chairman, Sir, you had a lot of energy because you were going in as the Governor and the people had a lot of hope and faith in you. After realizing that the TA had put up structures which you were not comfortable with and, even later, because of the systems of the national Government where we have the Auditor-General going in and doing routine reports, which action did you take? Did you ever come up just with a slightest move that, at least, was showing that you were acting on that report?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Yes, we did. We have started measures first by improving the personnel because that has been part of the problem. The personnel we found there were not of very good quality. Therefore, we have enhanced the quality of the personnel, including the tender committees. We expect better results now.

Sen. Mositet: Finally, Mr. Chairman, Sir, I heard the Governor talking about the noble project of buying seeds for the farmers. He says he wants to see farmers compensated. I want to ask the Governor, did they have a performance bond against the supplier? Did they have a performance bond or a guarantee when that contract was given for the supply of maize seeds?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, the maize was worth Kshs3.52 million. The competitors were small dealers and Mr. Munyaka will clarify whether there was a bond. A bond is critical. There is no doubt about it.

The Chairperson (Sen. (Dr) Khalwale): Thank you, Governor.

Hon. Governor, now I want to stand you down, but I cannot do it without speaking on something which I thought my colleagues would speak to. After the General Election of 4th of March, 2013, the accounts of the defunct local authorities were directed closed. The Government then directed all County Governments to open accounts where any revenue collection will be banked intact and swept directly to a special fund account at CBK or Kenya Commercial Bank (KCB). As a Governor, obviously, you knew this. Now, according to the Auditor-General, in Embu, you refused as at 11th of May, 2013, to close those accounts belonging to the Municipal Council of Embu, Municipal Council of Runyenjes and County Council of Embu, County Council of Mbeere. You continued operating those accounts outside that directive and, what is more, at one stage, you are shown to have collected over Kshs21 million for which no cash book was kept and no receipts were issued. This is a very serious audit query which is going to force us to make a decision on you on the management of the cash office. Can you respond?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Thank you, Mr. Chairman, Sir. We got the report and that is how we insisted also on the quickest replacement of the interim officials from the TA because they are the ones who were responsible for all these problems. The situation is now under control.

The Chairperson (Sen. (Dr) Khalwale): But the question is: How do you account for all the millions that must have been irregularly banked and withdrawn from these accounts? I am talking about the millions of shillings that were collected without receipts and maintenance of a cash book. How do you absolve yourself, given that you had been sworn in on the 27th of March, and this has gone on up to May 11?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, as I said earlier, the interim officials were acting in a very opaque manner and they were not facilitating information. So, once it came to us, we went to Treasury and insisted that they fast track the IFMIS and we got internal auditors. In fact, we are the people who called the internal auditors to give us an audit. That is when we discovered the problem.

The Chairperson (Sen. (Dr) Khalwale): So, that we move quickly, I want to direct that either tomorrow or the day after, you furnish us with evidence of action from you showing that you wrote to these people who had refused to close accounts. If you wrote to Treasury, you show us the communication so that we believe you took action. In the absence of that, we would be forgiven for thinking that it was being done conveniently with you looking the other way.

The Governor of Embu County (Hon. Martin Nyaga Wambora): No! absolutely not!

The Chairperson (Sen. (Dr) Khalwale): So, give us that evidence.

Very well; so, hon. Senators, we still have ten more witnesses. We have dealt with the most important witness. I am sorry, hon. Governor, earlier on I had told you that we are standing you down; we are not, until after the examination is when we stand you down. We just want to give you and also ourselves a breather so that we go for a health break for 20 minutes and we will come back. Mr. Clerk, you will be automatically calling us using the bell so that I do not have to remind you.

(The Committee adjourned temporarily at 7.15 p.m.)

(The Committee resumed at 8.00 p.m.)

The Chairperson (Sen. (Dr) Khalwale): Ladies and gentlemen, I now wish to call this meeting to order. I would like to ask the Governor to resume his seat in the middle. I want to find out from the Governor's counsel; for your examination, how much time do you want?

Mr. Wilfred Nyamu: Mr. Chairman, Sir, we will try to make it as brief as we can. But kindly allow us ten minutes if I am protected from interjections.

The Chairperson (Sen. (Dr) Khalwale): Okay, you have ten minutes.

Proceed.

Mr. Wilfred Nyamu: Hon. Governor, I wish to ask you to tell this honorable Committee; who was running the affairs on the financial matters from March to June, the period that is stated as the accounting period for purposes of this audit?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, in terms of procurement and finance, it was exclusively the interim officials of the TA as grounded by the County Governments Finance Public Management Transition Act, which was effective from January to 30th September. They were in total control of finances and procurement.

Mr. Wilfred Nyamu: Now, there are certain letters here; there is a letter dated 23rd of April. Who has generated that letter? The letter is on page 56 of the supplementary bundle.

The Governor of Embu County (Hon. Martin Nyaga Wambora): The letter is dated 23rd April, 2013, addressed to the Chief Finance Officer or the Principal County Finance Officer; it was generated by Stephen Makori, Secretary/CEO of TA explaining how the infrastructure development funds of Kshs661,592,200 was to be spent.

Mr. Wilfred Nyamu: And who is it addressed to?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, it is addressed to the Chief Finance Officer, Embu County.

Mr. Wilfred Nyamu: Was that Chief Finance Officer part of the secretariat that you formed, or whose secretariat did he belong to?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, this was one of the interim officials of the TA.

Mr. Wilfred Nyamu: Now---

The Chairperson (Sen. (Dr) Khalwale): Order, counsel! I know what you are trying to prove. If you really want to achieve it, then you should find a way of putting here the name of the Chief Officer himself. If it is just the status, it could be anybody. It could be the one he appointed or the one that the TA appointed. Is there a way you can do it? If you do not do so, then what you are trying to achieve---

Mr. Wilfred Nyamu: Yes, I have asked him whose officer it was. Now I want to ask him his name. What was his name?

The Governor of Embu County (Hon. Martin Nyaga Wambora): The name was Mr. Kamau Waciuri, who appears on pages 1 and 2 as the Chairman. He was also the interim principal finance officer. Indeed, he was the AIE holder.

Mr. Wilfred Nyamu: Was he an employee of the County Government or of the TA?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Kamau Waciuri was seconded to the County Government by the TA.

Mr. Wilfred Nyamu: Now, kindly look at Section 10 of the County Public Finance Management Transition Act.

The Governor of Embu County (Hon. Martin Nyaga Wambora): I am there.

Mr. Wilfred Nyamu: What is provided under that Act?

The Governor of Embu County (Hon. Martin Nyaga Wambora): That Section is titled "Accounting Officer." It says:-

"The transition principal officer shall be the accounting officer of a transitional county treasury."

Mr. Wilfred Nyamu: In terms of financial operations, were they totally answerable to your office under that Act?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Under this Act, they were answerable to the appointing officer who is the Secretary/Chief Executive Officer, Transition Authority, for purposes of finance and procurement, up to 30th September.

Mr. Wilfred Nyamu: Hon. Members, I wish to refer to a letter dated 12th September. It is on page 64 of the supplementary document. What is the reference of that particular letter?

The Governor of Embu County (Hon. Martin Nyaga Wambora): The reference is “handing over certificates and completion certificates.”

Mr. Wilfred Nyamu: Who is the author of that letter?

The Governor of Embu County (Hon. Martin Nyaga Wambora): One Mrs. Joyce K. Kariuki, County Coordinator, another seconded interim official by the Transition Authority.

Mr. Wilfred Nyamu: What is the letter about?

The Governor of Embu County (Hon. Martin Nyaga Wambora): The letter covers handing over certificates for:-

1. Proposed refurbishment of probation office.
2. Extension of Town Hall and partitioning of upper offices.
3. Proposed re-roofing of Embu Town Hall and improvement of existing sentry box.

The other issue is certificate of practical completion for the same offices.

Mr. Wilfred Nyamu: Now, when you looked at that Act that you have mentioned, that is, the County Government Finance Management Transition Act, what is the period within which the transitional system was to run – the operation of that Act?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, the operation period for the County Government Finance Management Transition Act was from January 2013 to 30th September, 2013.

Mr. Wilfred Nyamu: So, basically, there is this accounting period that you have been extensively asked questions on.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, I was very disadvantaged because these accounting officers appointed by the TA were reporting to their CEO in Nairobi.

Mr. Wilfred Nyamu: Now, you have looked at the audit.

The Chairperson (Sen. (Dr.) Khalwale): Counsel, this letter that we have just gone through, on page 64, is very specific. It is speaking to three projects; the Town Hall extension and refurbishment of the office and the Town Hall of Embu. Now, clearly, these are the projects that had been started by the TA, long even before the Governors were sworn in. It was across the whole country. So, how then do you use it to justify queries arising on Embu Stadium and maize seed?

Mr. Wilfred Nyamu: Mr. Chairman, Sir, I am not on maize. Maize is after September. I am talking about events taking place before 30th September; the accounting period in terms of this particular audit.

The Chairperson (Sen. (Dr.) Khalwale): Then you have to convince us that these people were not handing over that which they had started before the Governor was sworn in. This is because when the Governor was sworn in, obviously, he started working. So, we want to be convinced that the Governor was sworn in and he was not working until December, after these people handed over.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, remember that all that we are talking about here is management of finances and procurement. That is what we are talking about. We are not talking about the Governor's role as a Governor. The Governor's role as a Governor; he has been operating since being sworn in. But in terms of procurement, he had no control. The TA is the one that was in charge in terms of procurement. That is why we are citing the County Government Management Transition Act, 2013.

The Chairperson (Sen. (Dr.) Khalwale): Very well! Since it forms an important part of your evidence, could you make it complete by giving us copies of those certificates of handing over; the ones referred to?

The Vice Chairperson (Sen. Murkomen): Let me just assist you. There is a handwritten note on that document.

The Chairperson (Sen. (Dr.) Khalwale): The top right-hand corner. You can read those two points.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, it reads:-

“Kindly, refer to our letter dated 2nd September, 2013. Your letter has no documents as purported.”

Joyce is the author of this letter. She is actually an employee of the TA. That is why we are citing that---

The Chairperson (Sen. (Dr.) Khalwale): And who is that making this note on the letter written by Joyce Kariuki?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, this note is addressed to the interim supply chain management, Mr. Munyaka, who has just arrived from Kitui and is ready to appear before the honourable Senate Committee.

The Chairperson (Sen. (Dr.) Khalwale): We hope that he will answer why he wrote this to Joyce and whether he got those documents that he was asking for. Now, can you respond to the issue of you giving us the handing over certificates? They are only mentioned in this letter and are nowhere in the attachments.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, in the event that Mr. Munyaka never received these certificates, then we shall ask Joyce to scan them and send to our email.

Sen. Mositet: Mr. Chairman, Sir, the way I know these handing over certificates or completion certificates, these are the ones which normally empower the client to pay the last amount of money in any contract entered. So, I am sure that, that certificate was written, so that some funds could be paid. The quantity surveyor, architect or resident engineer of the project must append their signature. So, it is a very important document. So, when we see such a letter without such a document, then it is not complete.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, what we want to show and demonstrate is that around that time the TA was actually procuring services and goods. The Act that we have referred to, which I hope has been circulated, is very clear on those aspects. Now, the audit report that appears on page 65 – just turn to page 65, the small document - was to for the period between when and when?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, the special audit Embu County Government executive financial operations runs from March 2013 to 30th June, 2013.

Mr. Wilfred Nyamu: Can you remember when the motor vehicle that was referred to was purchased and handed over to the office of the Governor and which authority purchased the same?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, the Toyota Prado VX was purchased in July by the Interim County Secretary, a Mr. David Kanji.

Mr. Wilfred Nyamu: Was he an employee of the county or the TA?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Kanji was an employee of the TA.

Mr. Wilfred Nyamu: What is the scope of that particular audit – on the same page 65?

The Governor of Embu County (Hon. Martin Nyaga Wambora): The audit scope covered the following areas:-

1. Handing over of county council's assets and liabilities to the county government.

2. Cash and bank balances.
3. Closure of council's bank accounts.
4. Debtors and creditors balances.

Mr. Wilfred Nyamu: So, was that audit in respect of continuous operations or transition and handing over?

The Governor of Embu County (Hon. Martin Nyaga Wambora): It was mainly part of the handing over kind of audit.

Mr. Wilfred Nyamu: In this case, who was supposed to be handing over to whom in this process, up to 30th September, 2013?

The Chairperson (Sen. (Dr.) Khalwale): Order, Counsel! Hon. Members, I think that there is something preliminary on this document, which we have to make a determination on; namely, it is part of the purported audit report. This is because if it is the whole audit report, it would have indicated a signed admission by the auditor that it was his document at the end. So, you have gone up to page 24. Probably, there are pages 25, 26 and so on, I do not know up to what number. So, by the standards of the Senate, this document is not signed. How do we admit it? It is on page 65 of the Governor's small supplementary bundle of documents. They are referring to the Kenya National Audit Office. If you follow it through, you will find that it is not signed anywhere. You just stopped at page 24.

We have to make a decision on admissibility.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, probably, then we may need to come up with a full document.

The Chairperson (Sen. (Dr.) Khalwale): If you want to bring it in full then it is not admissible. So, you cannot base your evidence on it. Those are the rules of this Senate.

Sen. Orenge: *(Spoke off record)*

The Chairperson (Sen. (Dr.) Khalwale): But what weight shall we give to this evidence here?

The Vice Chairperson (Sen. Murkomen): Subject to submission of the full document, we can preliminarily accept now. Then if they do not provide the other document, then we can discard it.

Sen. Hargura: Mr. Chairman, Sir, the same audit, I think, is in the big document on page 29. It is signed at the end. It is the same document and it is signed.

(The hon. Senators perused the document)

The Chairperson (Sen. (Dr.) Khalwale): Yes, we are properly guided.

Counsel, if you go to your big bundle you have the proper document at page 30. That one is signed and we can admit it. It goes up to page 36. It is signed by J. M. Kareda. Have you seen it, Counsel?

Mr. Wilfred Nyamu: Yes.

The Chairperson (Sen. (Dr.) Khalwale): That one is admissible. So, you can use that one.

Mr. Wilfred Nyamu: So, I will pose the question again.

Sen. Orengo: Mr. Chairman, Sir, there is a point which I think was a bit misleading. This is because I do not think that you are giving us the full picture of the object of this special audit. If you look at the first page, the second paragraph, the objective of the special audit was to verify and confirm the existence of a seamless transition process as well as Embu County Government's preparedness to receive and efficiently and effectively utilize the devolved funds before, during and after the transition period. So, I do not think that it is just confined to the period before the handover. It is about the level of preparedness, but not just before or during. It is even after the transition.

Mr. Wilfred Nyamu: Very well, Senator. Basically, what we are trying to demonstrate is the audit period and the scope of the audit is very clear so that now we may show that this audit was confined to a period during transition where procurement issues were actually under the TA.

The Vice Chairperson (Sen. Murkomen): You know you have led the Governor to read the County Government Public Finance Management Act and you keep hammering this point that the county government was not responsible at that period, which is not true, and to demonstrate that, I would like you to read the same document, there are several sections, but let us read section 6 – The County Government Public Finance Management Transition Act. I will read it. It says:-

“Not later than 15th January, 2013 the national treasury or any other relevant state department shall, upon the request of the Transition Authority, identify officers provided for in section 5 for deployment to respective transition county treasuries. Upon the establishment of the county government, the officers deployed under this section shall be deemed to be seconded to the county government.”

Section 7 says:-

- “The transition principal officer shall report and be accountable to-
- (a) the transition authority on all public finance management matters before the county governments are established, that is, before 4th March.
 - (b) the county executive member responsible for finance after the establishment of county treasury; upon the establishment of the county

government, the head of internal audit shall report to the governor subject to the regulations made under the Public Finance Management Act, 2012.”

When you go to section 18, you will see similar provisions things; like “until the establishment of county treasury for a county, the chairperson of the Transition Authority shall be, in writing, designate the transition county principal officer of the respective county government to be responsible for receiving, collecting, accounting for county government revenue. Just until the county government is put in place so that even if the transition period or the Act - I remember it even came to the House for extension - the main argument here was that they just needed a legal framework for doing various things including collection of revenue because of the transition from local authorities to county governments.

So, it is not true that all these officers that were appointed, I can see that is the line you are taking, I want you to confirm counsel in whichever way you want to do it, from the provisions of the Act, it is not true to say that the Governor was an innocent by-stander with absolutely no responsibility and management oversight. I know of counties that even fired some of them by writing to the Transition Authority to take them back because that responsibility immediately after transition - now the supervision and leadership went to the county governments.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, I wish to request the Committee to appreciate the teething issues that were afflicting transition at that particular period, especially when you look at the period between the time the governor took office, which must have been effectively 1st April, 2013 as he was sworn in on 27th March, 2013. These two months which is the only part of the audit period that covered his being in the office, was marked with teething issues. So, whatever that is contained in that audit cannot essentially - and caution has to be exercised - be visited upon the Governor.

The Vice Chairperson (Sen. Murkomen): What I want us to avoid is to make a generalized statement that until September, the Governor had no responsibility to make comments, to fire, to recommend for arrest or recommend to the Transition Authority to take back their staff. In fact, the counties that were ready in good time could have their constitutional and legislative powers to replace them by May, but due to transitional challenges, others opted to keep them. It does not mean that they were not accountable to the Governor or the county executive officer in charge of treasury.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, I am well guided. I was actually trying to drive the Committee to appreciate the period and the fact that this is the time when all these issues arose. That was the time when the Governor had issues even in dealing with TA in terms of monitoring them.

The Chairperson (Sen. (Dr.) Khalwale): Let us hear the Governor. Governor, you have heard Sen. Murkomen. He has said that whereas it is true that TA was still in the office up to September, he has said that you, as the Governor of Embu, you were not a by-stander. Can you comment?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, the truth of the matter is that they had clear instructions to keep Governors in the dark in terms of finance and procurement. They were not giving information. Ultimately, I was also forced to fire the interim county secretary, that is, in July. He eventually had to go because it became too much.

Sen. Orengo: How could you do that in July?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Just get him back to the headquarters.

The Chairperson (Sen. (Dr.) Khalwale): It means that you were in the office and you were exercising the powers of the Governor.

The Governor of Embu County (Hon. Martin Nyaga Wambora): However, we could not have---

The Chairperson (Sen. (Dr.) Khalwale): No! No! Answer my question, Governor. We are helping you so that we hear you fully and well. You can exchange with the County Assembly Members but not us. Just answer us. You were exercising the powers of the Governor?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Absolutely!

The Chairperson (Sen. (Dr.) Khalwale): Very good. So, he was not a by-stander.

The Governor of Embu County (Hon. Martin Nyaga Wambora): But it had limitations because the accounting officers had been entered in the sophisticated Integrated Financial Management Information System (IFMIS) and it would have been very dangerous to fire such a person before Treasury trains an alternative. So, the finance people are very difficult to fire because of IFMIS.

Sen. Orengo: Mr. Chairman, Sir, the objective of re-examination is to clear any points. If you go back to some of the evidence that is coming up, then the other side may feel inclined to come back. So, I would expect you to say, during cross-examination, what arose and if it can be made clear, but I think you are open. With that rate we will go until midnight.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, I am not open. What is there is that given the nature of these proceedings, questions came from all corners and questions of audit came about yet in our examination, we never touched on the audit. So the only opportunity that we have is now. Basically, I would waste so much time, if I referred to what was said by so and so before I can introduce a question.

The Chairperson (Sen. (Dr.) Khalwale): I want you to take the comment by Sen. Orengo seriously.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, during cross-examination by counsel---

The Chairperson (Sen. (Dr.) Khalwale): How much more time do you want?

Mr. Wilfred Nyamu: I only have a few questions. They are about four questions.

The Chairperson (Sen. (Dr.) Khalwale): How much more time do you want?

Mr. Wilfred Nyamu: About ten minutes, subject to being interjected. The nature of these proceedings is such that I cannot say that I am going to take ten minutes because I am being interjected every time.

Sen. Orengo: Mr. Chairman, Sir, can I suggest that even if we are conducting an investigation, it is quite clear if there is some material out there which you think we should look at, he can present that to the secretariat so long as there is an exchange of documents. If we go on at this rate and we are time bound, then we must do a good job. To consider the case against the Governor, we will have to look at the articles of impeachment one by one. So, unless it is something which touches on those articles of impeachment, I would limit myself to the case. I think your assisting counsel, Mr. Peter Wanyama, got the point very well. I like the way he is dealing with this matter because he was being specific on abuse: What is the complaint and has it been proved? So, in order to help your client, all the things that you are bringing forward should be in relation to the articles of impeachment then we will move faster.

The Chairperson (Sen. (Dr.) Khalwale): You have five minutes to conclude.

The Vice-Chairperson (Sen. Murkomen): Actually, Sen. Orengo is trying to help you. You do not have to respond to charges that are not in the articles even if the Chairman here in a very eloquent manner would like to take you there. Confine yourself to the charges.

Mr. Wilfred Nyamu: Yes, Mr. Chairman, Sir. I am confining myself to the charge. One of the allegations and particulars are the audit report.

Hon. Governor, when you were being cross-examined by advocate for the County Assembly, you were asked what steps you have taken and why it took you so long in respect to the issue of maize. The letter dated 10th January, 2014 from KEPHIS was referred to.

The Governor of Embu County (Hon. Martin Nyaga Wambora): The letter from KEPHIS on maize was in response to a letter written by our county director of agriculture. They were working on our response.

Mr. Wilfred Nyamu: Hon. Senators, this is the letter by KEPHIS on this matter.

Sen. Orengo: Mr. Nyamu, what is not clear there? We have dealt with that letter. I thought that you were saying we had not seen the letter in order to clarify the matter further. When we dealt with it, the Governor was given a lot of opportunity and unless there is something which is not clear in the letter, because it is your own evidence which is there. In fact, it is evidence from both sides. So, you can submit at the end what the letter says; whether it removes culpability from the Governor or shall we believe that they are saying that the Governor is the one culpable. The letter speaks for itself.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, I was just trying to make him refer to the letter as a response to a complaint that they had made through his departmental head in the docket of agriculture.

Lastly, hon. Governor, you were referred to a document in relation to a report that was made by the county public service board, where it was said that they have not been facilitated in terms of being given an accounting officer. That document appears on page 89 of the document by the County Assembly. You said that the county public service board had already forwarded an organogram to the Assembly for approval. That was in June 2013 and it had not been responded to. You were referred to a letter dated 17th December, 2013, where you were being told that you did not act on the same letter which was by the county public service board raising concerns. That is the letter appearing on page 94 of the document.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Mr. Chairman, Sir, this is the letter by the secretary of the county public service board, the county secretary. Our position is that, to date, our letter on organizational chart has not been responded to by the County Assembly. So, the county executive is not to blame for any delays or non-response by the County Assembly.

Mr. Wilfred Nyamu: It has been indicated that under section 46 of the County Governments Act, they needed not approve an organogram. Are you aware of any communication to the county public service board on that matter?

The Governor of Embu County (Hon. Martin Nyaga Wambora): I am not aware.

Mr. Wilfred Nyamu: So, are you still waiting for the approval of the organogram?

The Governor of Embu County (Hon. Martin Nyaga Wambora): I think with the clarification in this session then we can move ahead to do the needful.

Mr. Wilfred Nyamu: Do you confirm that they never communicated to you?

The Governor of Embu County (Hon. Martin Nyaga Wambora): I do confirm.

The Chairperson (Sen. (Dr.) Khalwale): What do you mean you can move ahead? The question you are asked is whether you are still waiting for that approval?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Today, it has been clarified that it is not necessary, so we do not need to wait for it.

The Chairperson (Sen. (Dr.) Khalwale): When the speaker is approving Motions to appear before the House, he also has to make a determination whether such a Motion is in accordance with the provisions of the law. So, if the Speaker found that it was not necessary for that approval to be made under Section 46, he was perfectly in order.

The Governor of Embu County (Hon. Martin Nyaga Wambora): But our request was not communicated to.

The Chairperson (Sen. (Dr.) Khalwale): You are assuming that in your office there is nobody who reads Section 46 of the County Governments Act?

Sen. Orengo: Mr. Nyamu, if I was doing your case, I would be more concerned about the challenge in EF because that is the complaint, the other issue you are dealing with is something I raised, which is neither here or there, in relation to the case being raised by the other party. That is why I am saying that you should reflect on what the case is against your client; then you will know what is relevant for purposes of clearing the evidence which arose in cross-examination. The assisting counsel was very clear and I challenged him on this one: financial independence.

The Chairperson (Sen. (Dr.) Khalwale): Hon. Senators, you can see because we have allowed a whole long day for the Governor to be in that seat and the counsel, we are starting to run the risk of them repeating themselves and even Sen. Orengo now correcting him back to the issues that form part of the charges. So, I want to direct that if you have got anything, you are going to make it in your submissions. You still have time to address us.

Mr. Wilfred Nyamu: That was my last question, Mr. Chairman, Sir, which I wanted clarification on.

The Chairperson (Sen. (Dr.) Khalwale): We want you to bring us witnesses.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, the next witness that we are going to bring---

The Chairperson (Sen. (Dr.) Khalwale): Governor Wambora, you can now stand down. I am really sorry we have kept you there for a very long time.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, we are now going to bring the County Secretary so that she may clarify some of the issues that have been left grey.

The Chairperson (Sen. (Dr.) Khalwale): This is how we shall proceed. You will call the witness, you will give us the statements and you will not let the witness go through everything. You will let the witness accept that that statement is his or hers and then the Members will ask questions.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, we have the county secretary coming to deal with documents. I will not lead her so much. She will just sit in and explain. We have found it necessary for her to come in and explain in view of the issues that arose during these proceedings. So, we did not find time to do her statement. But the rest of the witnesses, except Mr. Makenge, we have their witness statements.

The Chairperson (Sen. (Dr.) Khalwale): Are you saying that there are no witness statements for the county secretary?

Mr. Wilfred Nyamu: We do not have statements for the county secretary; we have only written her name in the abstract for purposes of the documents, and that she has been mentioned severally.

The Chairperson (Sen. (Dr.) Khalwale): Counsel, to me, this is a very critical witness. Why have you not organized her in form of a statement so that since some Members and may be all of them are fatigued, during report writing would refer to the statement. It is in your interest. Really!

Sen. Wamatangi: Besides, Mr. Chairman, Sir, the Counsel had the rules before and you know that is part of the rule. Just to be fair, because the witness is here can we listen to her?

Mr. Wilfred Nyamu: Alternatively, we could do her statement as we assemble other witnesses so that---

The Chairperson (Sen. (Dr.) Khalwale): I think if we start deviating midstream from the rules which you had right from the beginning and the letter was clear that you would come with the statement, we will never finish this thing and we will open up the possibility of you complaining that we were not fair. So, let us stick to the rules. How you go about is your business. Give us the first witness with their statement, for whom you are ready.

Mr. George Ng'ang'a Mbugua: Mr. Chairman, Sir, on the issue of witnesses, our position remains as we had earlier maintained when they sought to introduce a supplementary list of documents which was admitted. I remember saying that because of the time bound nature of these proceedings, from that point hence, we will not allow further material for interrogation because invariably without a statement we are not going to effectively cross examine because the rules were clear. You disclose by summary what a particular witness was coming to say so that we take instructions or we prepare and then we are able to take the witness. But now we are being told that it is proposed to be introduced to the dock a witness whose statement is not among the bundle that was

supplied to us or to the Committee. We shall have serious problems taking such a witness and we seriously object to any such procedure being adopted because it amounts to ambush.

We shall be undermining the mode in which we have been proceeding. We have cross examined, we have submitted. Right now, at this stage, it is not tenable in all fairness to all parties to then introduce new things that will need the whole process. Remember this is a process that involves the County Assembly as much as it involves the Governor. So, it is only fair that we play by the rules. This is because if we deviate from the rules, then the proceedings that this Committee is undertaking will not inspire fairness and the credibility that they deserve.

The Chairperson (Sen. (Dr.) Khalwale): Thank you. So, you have amplified further. That is the mood of this Special Committee. Proceed with those witnesses for whom you are ready.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, I will proceed with the witnesses whose statements I have right now, but again, I wish to also humbly bring to the attention of this particular Committee that this is not a trial. If a witness, especially where she or he is mentioned, it is necessary even at this point to have her testify. These rules are not meant to prejudice a party and under Article 159 (2)(d) which I referred to yesterday---

The Chairperson (Sen. (Dr.) Khalwale): Counsel, the nearest that we can go and let us be fair to the County Assembly. We have not insisted that you must start with this witness or the other one. Let us start with the one for whom you are ready. The request you could make at the very end if it becomes impractical is that we then, later on, in the morning, tomorrow, somewhere, allow you to bring that witness when you are ready in the manner that the rules have provided.

Mr. Wilfred Nyamu: Very well, Mr. Chairman, Sir. I am obliged.

The Chairperson (Sen. (Dr.) Khalwale): Give us the first witness.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, we now wish to bring Mr. John Njeru Njagi. We have his witness statement and it is actually in the supplementary bundle. It is not paginated, but it is in the end immediately after page 98. Some of the statements were being done by these witnesses as they were coming. So, essentially we had no time to---

The Vice Chairperson (Sen. Murkomen): They can date them now. They can use their own handwriting to date them and sign.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, we request that the witness be sworn and this is the CEC Finance.

(Mr. John Njeru Njagi before the Committee)

The Chairperson (Sen. (Dr.) Khalwale): Mr. Njagi, if you may go where the counsel is on your right.

(Mr. John Njeru Njagi took the oath)

Mr. Kibe Mungai: Mr. Chairman, Sir, I seek an intervention. Given the time limitations that this Special Committee has to operate, it is my view that the whole idea of preparing witness statements is ordinarily, under the current judicial practice, to enable the formal sessions to begin with cross examination, now that the evidence has now been tendered. Therefore, I would beg the Committee to consider that we start with cross examination by the relevant advocates of the Committee so that we can cut down on time and the witness will only be re-examined by the advocates as the evidence has already been tendered in writing and, therefore, we do not have to use a lot of time on this.

The Vice Chairperson (Sen. Murkomen): The objective of swearing in the witness, and then they produce, and then from there we cross examine and then the advocate for the Governor will have time to re-examine---. Let us put everything, including our questions and the other side, for 20 minutes.

Mr. Wilfred Nyamu: I hope they are going to limit themselves to 20minutes. For us, 20 minutes, will be enough depending on the questions.

The Chairperson (Sen. (Dr.) Khalwale): How many witness statements are ready?

Mr. Wilfred Nyamu: We have eight that are ready. The three that are not ready are in respect of Mr. Munyaka who was summoned, Mr. Makenge and now the County Secretary. Otherwise, we have the statements for the rest.

The Chairperson (Sen. (Dr.) Khalwale): Can you now introduce your witness?

Mr. Wilfred Nyamu: Could you kindly introduce yourself and say what your names are?

Mr. John Njeru Njagi: My name is John Njeru Njagi. I am the CEC in charge of finance.

The Chairperson (Sen. (Dr.) Khalwale): I want you to relax. You are not under arrest. You will definitely go back home. These are your elected leaders at the national level. Just address us and say nothing, but the truth and the whole truth. Raise your voice.

Mr. John Njeru Njagi: Thank you, Mr. Chairman, Sir. My name is John Njeru Njagi. I am the County Executive Member in charge of Finance and Economic Planning, Embu County Government.

Mr. Wilfred Nyamu: Mr. Njagi, is this your statement?

Mr. John Njeru Njagi: Yes, Mr. Chairman, Sir, this is my statement.

Mr. Wilfred Nyamu: Would you like to use this statement as evidence before this Special Committee of the Senate?

Mr. John Njeru Njagi: Yes, Mr. Chairman, Sir, I would want to use this statement.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, I wish to release this witness for cross examination and I do request that this witness be adopted as part of the documents in these proceedings.

The Chairperson (Sen. (Dr.) Khalwale): Do we have any counsel who is ready with the first question?

Mr. Charles Njenga: Thank you, Mr. Chairman, Sir. Just a few questions in cross examination to this witness. Mr. Njagi having confirmed that you are the Executive Member in charge of finance---

The Vice Chairperson (Mr. Murkomen): Counsel, try your best not to repeat the obvious and confine your questions to what is in the witness statement.

Mr. Charles Njenga: Mr. Njagi, matters to do with procurement, do they fall under your docket as the executive member for finance? When procurement matters are carried out within the county, do you get to know about them?

Mr. John Njeru Njagi: Mr. Chairman, Sir, when it comes to matters to do with procurement, I would, first, like to state that this is what we call an independent department and for the purpose which is actually guided by the Public Procurement Act, 2005 and for the purpose of separation of the role of the executive and the other levels of the county civil service, this is a docket which would actually fall under the ambit of the head of the County Public Service Board and that is the County Secretary who actually has the mandate of appointing the relevant committees which normally evaluate or do the process of procurement within the county government.

Mr. George Ngang'a Mbugua: For purposes of county administration, procurement falls under which executive committee member? Does it fall under the Finance Executive Committee Member?

Mr. John Njeru Njagi: Yes, Sir.

Mr. George Ngang'a Mbugua: Do you get reports for procurements carried out by the procurement department as the Executive Committee member in charge?

Mr. John Njeru Njagi: Yes, Sir.

Mr. George Ngang'a Mbugua: When you get those reports, do you ever get to report to your Chief Executive, the Governor about the reports that you get from these procurement officers under your department?

Mr. John Njeru Njagi: As a CEC member, we actually have joint sittings of the County Executive Committee where every portfolio gives its own operations of the department, and that forum is actually where the Governor gets information on what is happening in the various departments.

Mr. George Ng'ang'a Mbugua: I will repeat that question again. Do you give reports formally to your Governor and the Chief Executive Officer? I mean the reports that you get from the Procurement Department on the procurement of goods and services being carried out in the county. Do these matters get to feature in the County Executive Committee meetings?

Mr. John Njeru Njagi: Mr. Chairman, Sir, issues to do with procurement, at the end of the day, will feature in the County Executive Committee deliberations. They feature.

Mr. George Ng'ang'a Mbugua: So, reports would be made about the status of various procurements; whether goods have been procured as intended? The status of works and services that have been procured would also be debated within the County Executive Committee meeting where the Governor would be present. Is that correct?

Mr. John Njeru Njagi: That is correct.

Mr. George Ng'ang'a Mbugua: With respect to the subject procurement and I am referring to procurement to do with rehabilitation of the stadium and the maize that did not germinate. That was procurement that was undertaken by the county. Were those matters ever discussed before the County Executive meetings?

Mr. John Njeru Njagi: As part of the operations of various departments, most of these issues would appear in the form of the various Committees tabling their reports. For example, the issue to do with the stadium, definitely, that is a cross-cutting issue that would touch on the portfolio of the CEC member for infrastructure and that of sports. So, in the deliberations, these things are discussed in the County Executive Committee meetings.

Mr. George Ng'ang'a Mbugua: So, your answer is, so that we get it correctly, that with respect to those two procurements, they were discussed by the County Executive Committee in the presence of the Governor?

Mr. John Njeru Njagi: Yes, that is correct.

Mr. George Ng'ang'a Mbugua: Were you, at any one time, summoned by the County Assembly with respect to the procurement of maize to answer specific questions with respect to the procurement of maize?

Mr. John Njeru Njagi: Yes, Sir.

Mr. George Ng'ang'a Mbugua: Do you recall the response that you gave to the committee that summoned you?

Mr. John Njeru Njagi: I can recall because of what you would call the adequacy of notice. I was summoned, but the notice was not adequate for me to prepare a response that the Assembly Committee wanted.

Mr. George Ng'ang'a Mbugua: Do you recall, stating, before the committee you were not aware, as the County Executive Officer in charge, how the maize was procured? Do you recall making such an answer?

Mr. John Njeru Njagi: No, I cannot recall that.

Mr. George Ng'ang'a Mbugua: I can show you the HANSARD.

Mr. Chairman, can I refer the witness to the HANSARD, page 7 of the documents supplied by the County Assembly?

The Chairperson (Sen. (Dr.) Khalwale): Yes, please. Mr. Njagi, HANSARD is the accurate recording of what you are saying while you were at the meeting in Embu. So, it is what they are about to show you. Show him.

Mr. George Ng'ang'a Mbugua: This is page 7 of the HANSARD. This is the document that follows immediately after the charges and it is paginated as No.7, January, 23rd 2014. Sorry, let me confirm this first.

I am assisted that this is CAE D1, page 7. We apologise for that. I am referring the witness to the fourth paragraph, the one that begins with; "When we summoned the County Executive in charge of Finance, he clearly indicated that he did not---"I do not know whether we are there.

Sen. Orengo: That is not him. That is Ibrahim Swaleh.

The Chairperson (Sen. (Dr.) Khalwale): What do you want to do with that?

Mr. George Ng'ang'a Mbugua: The question I wanted to pose to the witnesses is with respect to the answer that he gave when he was summoned because he confirms that he was summoned by the Committee of the County Assembly. I want the response that he gave specifically.

The Chairperson (Sen. (Dr.) Khalwale): So, you want to tell the witness what a Member said?

Mr. George Ng'ang'a Mbugua: I am trying to show him what is stated there and whether what is reported is what he stated. This is a report from the HANSARD and it is being reported as having originated from him.

The Chairperson (Sen. (Dr.) Khalwale): Hon. Members, I want us to understand him. He says that something was said in the County Assembly about this witness. He wants to remind the witness of what was said and for the witness to confirm whether what was said in the Assembly is true or deny that he did not say those things.

Mr. George Ng'ang'a Mbugua: The query is in respect to the procurement. That is on the procurement bit. I had posed a question because he confirmed that he was summoned. That is number one. Number two; is this the response that he gave to the Committee in respect to that question on procurement? I could be asking it in a different way and yet I could paraphrase to make it easier.

The Vice Chairperson (Sen. Murkomen): The impression we got earlier is that you wanted to refresh his memory using live proceedings which is not true. So, you want to read something that a Member is reporting and find out from him?

Mr. George Ng'ang'a Mbugua: Yes. May be I can make it easy. Mr. Njagi, when you appeared before this Committee of the County Assembly that was probing this matter regarding the procurement of maize, what was your response regarding what you knew?

Mr. John Njeru Njagi: Mr. Chairman, Sir, just like I have indicated when I was summoned, the notice was short. I remember I was plucked out of another meeting. I indicated to the Chairman of that Committee that I needed to be given more time to go and collect information about that procurement because there were many that the County Government had undertaken. Due to the fact that there was no adequate notice, I asked the Chair to give me more time to collect information. The Chair allowed me two weeks to collect information and to present it.

Mr. George Ng'ang'a Mbugua: Fine, you may have asked for more time. But as at the time you were being summoned, did you know anything about how this maize had been procured by a department that is directly answerable to you, as the County Executive, in charge of Finance? You may not have known the finer details, but did you know that maize had been procured and had not germinated?

Mr. John Njeru Njagi: Just like I have indicated, this is a bit sensitive. There are many procurement processes and many items are being procured. Just like I have indicated, to avoid the Executive interfering with the daily operations of the county systems, unless there are specific issues that the Executive requires, that is the time that we go to the Chief Executive Officer and get more information.

Mr. George Ng'ang'a Mbugua: Can you confirm that these persons who are responsible for these departments would, as a matter of obligation, when you demand, notify you as the line Executive Member about the status of those procurements?

Mr. John Njeru Njagi: Just like I have indicated, there are various departments that would be in need of procuring items within their systems. At the end of the period, there are monthly reports of procurements that have taken place in different entities.

Mr. George Ng'ang'a Mbugua: I will take that to be your answer.

Sen. Orenge: I was just wondering, because you made your case in your proceedings, before the County Assembly. According to the Mover of this Motion, Ibrahim Swaleh, this witness appeared before a Committee and made these statements. I thought that all the records are with the Assembly and the best thing would have to bring to us what happened in the Committee?

Mr. George Ng'ang'a Mbugua: There was also that issue, from the way it is reported in the HANSARD and what the witness is confirming. He said that he needed time. I am not sure that there is any material that he supplied regarding the status. That is why these questions were very critical. In terms of documentation, the witness may not have been very useful in terms of the material that the Committee wanted. However, I am well guided nonetheless by the learned Member.

Lastly, there is the issue of the Accounting Officer of the County Public Service Board (CPSB). That is the question I had raised regarding the challenges and recommendations. As the County Executive Committee Member in charge of Finance, why had you not designated an Accounting Officer to the Public Service Board until 31st December, 2013?

Mr. John Njeru Njagi: Thank you, Mr. Chairman, Sir. As the person in charge of the Finance portfolio within the County Government, first of all, before you can appoint an Accounting Officer, you have to establish that the entity has the necessary infrastructure or systems to operate financial management systems to avoid a situation where public funds are put in misuse.

I want to report to this Committee that our CPSB is not well established. It has the membership, but when it comes to the secretariat, which is the body mandated to manage the affairs of the Public Service Board, we only have the secretary who is part of the secretariat. This is the secretary who does the typing work within the CPSB. So, in terms of structure, our CPSB did not as by December last year have the necessary structures to manage a financial management system. I am referring this Committee to the Public Finance Management Act under the current Government system.

The public finances are governed through electronic systems. We have the Integrated Financial Management System (IFMIS) system, the Government Pay (GPay) system and these are requirements for any accounting unit to be fully fledged to deliver on those areas. I had to satisfy myself that the CPSB had the necessary structures and infrastructure to run a good financial management system to avoid the misuse of public finances.

Mr. George Ng'ang'a Mbugua: So, you confirm, Mr. Njagi that the CPSB was entirely dependent on the Executive for operational expenses and day to day running? This was entirely dependent on the Executive? Would that be a correct statement?

Mr. John Njeru Njagi: Let me also inform this Committee that the CPSB had its own budgetary provisions. They had their own vote heads. That meant that if they needed anything, they would make their requests to the County Treasury and they would be facilitated to that extent. What was not happening is that they were not able to run their own financial management system unlike our counterparts in the County Assembly who had established their own financial management system with a proper finance department.

They had put in place IFMIS and GPay systems. So, their votes were quite intact and they would advise the County Treasury on what they require and from that, they get the necessary support until they put their systems in place.

Mr. George Ng'ang'a Mbugua: So, I take it that your answer is that when the CPSB was to carry out an exercise like recruitment of staff at the counties or run advertisements, these funds would come from the Executive. Is that correct?

Mr. John Njeru Njagi: Yes, from the budgetary allocation.

Mr. George Ng'ang'a Mbugua: And you would know about it?

Mr. John Njeru Njagi: Yes, I would know about it.

Mr. George Ng'ang'a Mbugua: The County Executive would also know about this request for funding and for what purpose they would be intended to achieve and the Governor would preside over the County Executive meetings?

Mr. John Njeru Njagi: Yes, Sir.

Mr. George Ng'ang'a Mbugua: Thank you. That is all.

The Chairperson (Sen. (Dr.) Khalwale): From us, is there anything burning? The witness has been very clear.

The Vice Chairperson (Sen. Murkomen): Mr. Njagi, there is a report that you gave to the County Assembly. Can you confirm that you appeared before any of the County Assemblies Committees in the investigations related to the maize and the stadium? Did you appear before any of the Committees over those issues?

Mr. John Njeru Njagi: Yes, Mr. Chairman, Sir.

The Vice Chairperson (Sen. Murkomen): Can you confirm that you appeared before any of the County Assembly Committees in the investigations related to maize and the stadium?

Mr. John Njeru Njagi: Yes, Mr. Chairman, Sir.

The Vice Chairperson (Sen. Murkomen): Did you in any of those Committees say that you needed more time?

Mr. John Njeru Njagi: Yes, Mr. Chairman, Sir.

The Vice Chairperson (Sen. Murkomen): Considering that they did not give you more time, have you now acquainted yourself with what happened?

Mr. John Njeru Njagi: Yes, Mr. Chairman, Sir.

The Vice Chairperson (Sen. Murkomen): Did any of your officers, people under you procure the maize seeds? Do you know anyone who procured maize?

Mr. John Njeru Njagi: That is actually the sole mandate of the user department. They had given their request to the centralized services now the procurement department for them to commence the procurement processes.

The Vice Chairperson (Sen. Murkomen): But you have now had time to look at that matter unlike the time when you were in the County Assembly. Have you finally established whether there was a procurement committee, a procurement process, a tender and an agreement or award letter signed between the supplier and the County Government?

Mr. John Njeru Njagi: Yes, Mr. Chairman, Sir.

The Vice Chairperson (Sen. Murkomen): Under whose watch was that done?

Mr. John Njeru Njagi: Mr. Chairman, Sir, I beg your pardon.

The Vice Chairperson (Sen. Murkomen): Under whose leadership was that process of awarding that contract done? Was it yourself?

Mr. John Njeru Njagi: In terms of?

The Vice Chairperson (Sen. Murkomen): The whole management of the process.

Mr. John Njeru Njagi: Like I was trying to indicate to this Committee, as the Executive, it is actually the issues of separation of the roles to avoid interference---

The Vice Chairperson (Sen. Murkomen): That is fine. I do not want you to go to the procedure. Can you put a name to the person who was in charge of that process?

Mr. John Njeru Njagi: The tender committee?

The Vice Chairperson (Sen. Murkomen): Yes. The person in charge of the whole process---

Mr. John Njeru Njagi: At that time, the head of the procurement entity, that is actually the County Government per se; that was actually the county secretary.

The Vice Chairperson (Sen. Murkomen): Was the county secretary in charge? So you can confirm that one Margaret Lorna Kariuki actually superintended upon the process of procuring the maize seeds?

Mr. John Njeru Njagi: Being the head of the procurement entity.

The Vice Chairperson (Sen. Murkomen): So, it is our opinion that she was actually like the last person to that regard?

Mr. John Njeru Njagi: As the head of the public service, all the staff within the county establishment solely fall under her.

The Vice Chairperson (Sen. Murkomen): Okay, thank you.

Do you attend Cabinet meetings, the County Executive Committee meetings?

Mr. John Njeru Njagi: Yes, Mr. Chairman, Sir.

The Vice Chairperson (Sen. Murkomen): How often do you have them?

Mr. Njeru Njagi: They are supposed to be held on a weekly basis, but depending on the need----

The Vice Chairperson (Sen. Murkomen): Sometimes it can go for two weeks.

Mr. John Njeru Njagi: Sometimes we could skip one week and also depending on some other urgent issues like there was a time we had the investors' conference. So much depends on the need.

The Vice Chairperson (Sen. Murkomen): After this maize seeds debacle, whatever you can call it, have you in the Cabinet discussed what really happened? Did you introduce this issue in the Cabinet as an agenda?

Mr. John Njeru Njagi: I do not think it has been discussed as an agenda in our Cabinet.

The Vice Chairperson (Sen. Murkomen): It has never been discussed in the Cabinet? If you were to create an organogram, a structure of some sort, between the county secretary and yourself, who is senior?

Mr. John Njeru Njagi: Well, the county secretary being the head of the civil service could fall below the Executive. Actually we have the Executive arm which is in charge of policy formulation.

The Vice Chairperson (Sen. Murkomen): I just asked a straight question, between you and the county secretary who reports to the other?

Mr. John Njeru Njagi: The county secretary functionally reports to the Governor. The CEC members also report to the Governor.

The Vice Chairperson (Sen. Murkomen): But I am asking, between you and the county secretary, in your normal relationship, who would be reporting to the other?

Mr. John Njeru Njagi: Who should?

The Vice Chairperson (Sen. Murkomen): Who is reporting to the other in your relationship in the county?

Mr. John Njeru Njagi: Are we looking at this in terms of seniority?

The Vice Chairperson (Sen. Murkomen): Forget about seniority. In your day today operations, do you find yourself often reporting to the county secretary or does she report to you?

Mr. John Njeru Njagi: The county secretary would actually report to the Executive because she communicates the Cabinet decisions.

The Vice Chairperson (Sen. Murkomen): The Executive being yourself or some other persons?

Mr. John Njeru Njagi: She is actually the County Secretary and also Secretary to the Cabinet.

The Vice Chairperson (Sen. Murkomen): This is a simple question. Let us leave that. In your opinion, what would be the relationship between the County Secretary and the Governor? Do you think they talk daily?

Mr. John Njeru Njagi: As the head of the civil service, there should be some regular communication with the Governor.

The Vice Chairperson (Sen. Murkomen): Is it possible for the county secretary to do something on behalf of the County without the knowledge of the Governor?

Mr. John Njeru Njagi: When it comes to daily operations?

The Vice Chairperson (Sen. Murkomen): Can she, for example, procure a contract of the magnitude of the maize seeds without the knowledge of the Governor?

Mr. John Njeru Njagi: What I am trying to put to this Committee is that when it comes to those particular procurement issues, they really touch on different departments. These departments have developed---

The Vice Chairperson (Sen. Murkomen): That is why I am asking you a straight question. Do you think she can do something of that magnitude without the knowledge of the Governor?

Mr. John Njeru Njagi: Actually, if there is any procurement----

The Vice Chairperson (Sen. Murkomen): Is it “yes” or “no”? You have a right to say: Yes, no or you do not know.

Mr. John Njeru Njagi: No, because it must have originated from one of the portfolios. That portfolio must have brought the issues at the Cabinet level.

The Vice Chairperson (Sen. Murkomen): It is a simple answer. Yes or no.

Mr. John Njeru Njagi: No.

The Vice Chairperson (Sen. Murkomen): Okay. Thank you, Mr. Chairman, Sir.

The Chairperson (Sen. (Dr.) Khalwale): Very well. Anybody else? Relax Counsel.

Yes, Sen. Mositet.

Sen. Mositet: I want to know whether Mr. Njagi is the one who is also referred to on page 4 of the big book as Domiano Njagi.

Mr. John Njeru Njagi: No. That is a different Njagi.

Sen. Mositet: Okay. That is all.

Sen. (Prof.) Lesan: Mr. Njagi, in your statement, I see you have indicated very strongly there that under Section 166 of the Public Finance Management Act on the accounting officers, in fact, in capital letters, it says “THE GOVERNOR NOT RESPONSIBLE FOR PREPARATION AND SUBMISSION OF REPORTS.” As far as the Public Finance Management Act, 2012 is concerned I would like to agree with you on that, that the Government is not responsible for the preparation and submission of reports. But in your

opinion, do you not think that the Governor is responsible for direction and decision making even in matters that relate to finances?

Mr. John Njeru Njagi: Thank you for that question. As the chief executive of the county, there is what we call the policy direction. For the county to operate effectively, we require that kind of policy direction from the head of the government such that we are able to run the affairs of the county.

Sen. (Prof.) Lesan: In those policy directions, there are some policies that directly involve financial affairs. Do you not think so?

Mr. John Njeru Njagi: Yes, Sir.

Sen. (Prof.) Lesan: Let me refer you to the Constitution; Article 179(6) with regards to the County Executive Committee. Members of the County Executive Committee are accountable to the County Governor for the performance of their functions and exercise of their powers. You are an executive member in finance. In your functions, your committee is accountable to the County Governor. You have said in your statement here that the Governor is not involved in these financial matters. What do you think about the constitutional statement on Article 179(6)?

Mr. John Njeru Njagi: To clarify the issue, when it comes to the daily running of operations of the different departments, the Governor does not participate in the running of the portfolios. But in terms of the policy direction, as the Executive, he normally gives the policy direction on how to run the affairs of those portfolios.

Sen. (Prof.) Lesan: And that is where accountability comes in?

Mr. John Njeru Njagi: Yes, Sir.

Sen. (Prof.) Lesan: Section 30(3)(f) of the County Governments Act says:-

“In performing the functions under subsection (2), the Governor shall-
(f) be accountable for the management and use of the county resources; and---.”

In other words, I am just trying to show you that you cannot isolate the functions of the Governor entirely from financial management, either in policy or actual direction of the county. What is your take on that?

Mr. John Njeru Njagi: There is a difference between the policy area and the operations. The staff below the Governor, these are actually the operators of the system. But at the top, he is giving the policy direction such that, in a way, he delegates that kind of authority to the relevant heads of the portfolios to run the affairs of the various portfolios.

The Chairperson (Sen. (Dr.) Khalwale): Hon. Senators, you will remember that this witness has a statement. What we seek clarification from him should be limited to what is in his statement. We should keep this brief so that we finish with the other witnesses.

Sen. Kittony: Mr. John Njeru Njagi, is that your name?

Mr. John Njeru Njagi: Yes, Mr. Chairman, Sir.

Sen. Kittony: In your statement, you say you are mandated to supervise administration, delivery and so on. You are a holder of a degree from the university you have mentioned. I would like to know whether you have worked elsewhere. What is your experience in handling the finances of the County of Embu?

In your own words, when you say that: “I am aware that there are procedures that the County Government of Embu may not have complied with so far” can you mention some of those things to us?

Mr. John Njeru Njagi: Thank you, Madam Senator. When it comes to my experience in financial management, I have more than 15 years of financial management experience, especially in the public sector. I have worked in various organizations, including semi-autonomous Government agencies and also within the Government systems. I have actually accumulated 15 years of experience in financial management.

In terms of the kind of a caveat I had given in my statement, it is good to understand that the issues of devolution are new. We are all new in this kind of dispensation. As you are rolling out something new, there are various challenges which come by. We may not be in a position to fulfill all the requirements required by devolution. At times, there are instances where there could be some issues which could be left out in terms of time and staff limitations. County Governments, for instance, inherited staff from the former local authorities. All of us appreciate how the local authorities were operating and where they were coming from. There was a challenge in terms of setting up some good structures which are accountable to the members of the public. So, there are instances where due to those kinds of resource constraints such as human resource, a county government cannot really perform at 100 per cent. Those are some of the limitations I was trying to put across.

Sen. Wamatangi: Mr. Chairman, Sir; my question is derived from your statement, Mr. Njagi, as the CEC member in charge of Finance in Embu County. You have listed your constitutional responsibilities, amongst them; “supervise the administration”, but in number three, you have said: “As the head of Treasury.” When you are the head of treasury and under your watch procurement of maize and the work at the stadium was carried out and payments were done from the treasury, I am sure you listened when the Governor was speaking. He said that under him he has got officers who are responsible such that it is not the Governor who is responsible for those kinds of misdeeds and losses. As the CEC in charge, do you, in line with what the Governor said to us, take

responsibility for the monies that left the treasury under your watch as the head of treasury at that time?

Mr. John Njeru Njagi: Yes, Mr. Chairman, Sir.

The Chairperson (Sen. (Dr.) Khalwale): Finally, Mr. Njagi, could you tell the Committee when you were hired? When did you report on duty?

Mr. John Njeru Njagi: Mr. Chairman, Sir, I reported on 22nd June, 2013.

The Chairperson (Sen. (Dr.) Khalwale): And as soon as you reported, were you working or you were just idling around?

Mr. John Njeru Njagi: When I took over office, there was actually the issue of the budget making process. There was a lot of work that was going on.

The Chairperson (Sen. (Dr.) Khalwale): So, you were working?

Mr. John Njeru Njagi: Yes, I was working.

The Chairperson (Sen. (Dr.) Khalwale): Were you reporting to the TA or you were reporting to the Governor?

Mr. John Njeru Njagi: According to the TA arrangement, when it comes to the financial management aspect, up to 30th June, 2013, it was actually being handled by a principal officer who was actually a chief finance officer. He was reporting to the CEO, TA. Actually that was during the transition period.

The Chairperson (Sen. (Dr.) Khalwale): Was he reporting to you?

Mr. John Njeru Njagi: In terms of the necessary reports and management of those finances.

The Chairperson (Sen. (Dr.) Khalwale): He was reporting to you?

Mr. John Njeru Njagi: This was under the TA. These were the members who were seconded to the County Government in terms of finances per se. Finances were being provided by the TA. So, in terms of making the financial reports, they were being done to the CEO, TA.

The Chairperson (Sen. (Dr.) Khalwale): They were under your management?

Mr. John Njeru Njagi: Mr. Chairman, Sir, under my management in which sense?

The Chairperson (Sen. (Dr.) Khalwale): Were you supervising them or they were supervising you?

Mr. John Njeru Njagi: Well, actually they were under my management when it comes to making those relevant reports and in terms of AIEs. AIEs were originating from the TA. There was actually that kind of a transition period.

The Chairperson (Sen. (Dr.) Khalwale): Sen. Orengo, you have something to say?

Sen. Orengo: I want to ask you a straight question. This idea of supplying maize – as the Governor put it – for free, it is something which did not come from the general civil service in the county. It is something which was conceived at the level of the County Executive Committee (CEC); is it not?

Mr. John Njeru Njagi: I am not getting it.

Sen. Orengo: I am saying that the decision to supply maize to farmers is not something that came from your officers in the departments, maybe the department of agriculture. I am saying that it is something that came to the CEC; you discussed it and agreed that this was a worthy venture. Is that correct?

Mr. John Njeru Njagi: Yes, Mr. Chairman, Sir.

Sen. Orengo: Once you had made that decision, the provision of the funds for that particular project-- I have been looking at some papers which show that there was actually a budgetary allocation for it.

Mr. John Njeru Njagi: Yes, Mr. Chairman, Sir, there was a budgetary allocation to that effect.

Sen. Orengo: Is this something that would concern you or is it something that you completely would be oblivious to as the CEC Finance?

Mr. John Njeru Njagi: In terms of finances, it would concern me.

Sen. Orengo: And ensuring that, those finances were available is something which would concern you?

Mr. John Njeru Njagi: Yes, Mr. Chairman, Sir

Sen. Orengo: When the funding was made available through this allocation, the process of procurement, but at the end of the day, in terms of the management of the financial resources at the county, it would still concern you. Is it not?

Mr. John Njeru Njagi: Yes, Mr. Chairman, Sir.

Sen. Orengo: And if the matter would be discussed in the CEC, you would be the relevant officer, together with the CEC Agriculture, to inform Cabinet on implementation both in terms of the results and the efficient use of the financial resources?

Mr. John Njeru Njagi: Yes, Mr. Chairman, Sir.

Sen. Orengo: And you will be reporting to the Governor?

Mr. John Njeru Njagi: Yes, Mr. Chairman, Sir.

Sen. Orengo: I thank you.

The Chairperson (Sen. (Dr) Khalwale): Very well. So, counsel for Mr. Wambora, do you have issues for examination?

Mr. Wilfred Nyamu: Yes. You have stated that you were summoned by a Committee of the County Assembly at some point.

Mr. John Njeru Njagi: Yes, Mr. Chairman, Sir.

Mr. Wilfred Nyamu: How much notice did they give you to appear before them?

Mr. John Njeru Njagi: I was given a summons in the afternoon, but I was actually not in the office. Someone was actually requiring me to appear in the Committee the following day.

Mr. Wilfred Nyamu: You were summoned in the afternoon and you were supposed to appear before the Committee the following day.

As the CEC, what would you require in terms of what you had been summoned for, for you to be prepared well enough to appear before that committee?

Mr. John Njeru Njagi: As a CEC Member, I needed to get all the documentation with regard to the subject of the summons from the relevant departments and in this cause, actually, to involve the procurement department, the finance department and also the user department, for me to be able to put my records in order so as to give the Committee the relevant information they required from me.

Mr. Wilfred Nyamu: So, now, as a CEC or, probably, even if you were an accounting officer, would you be adequately prepared to respond to departmental issues if you were given a two-hour notice?

Mr. John Njeru Njagi: It is not possible. That is why in such a scenario, I asked for more time to be given.

Mr. Wilfred Nyamu: Now, in terms of working with the relevant departments and statutory offices like the CPSB, besides managing their finances owing to what you have stated, that they did not have adequate structures to get financial autonomy, would the Governor's office or, indeed, your office or the CS's office interfere with their mandate under the County Governments Act?

Mr. John Njeru Njagi: No, Mr. Chairman, Sir.

Mr. Wilfred Nyamu: Do they enjoy autonomy in matters of their mandate?

Mr. John Njeru Njagi: Absolutely, Mr. Chairman, Sir.

Mr. Wilfred Nyamu: Now, when you talk about user departments in terms of procurement of maize and the refurbishment of the stadium, who are the user departments in this case?

Mr. John Njeru Njagi: For the maize, that is actually the Ministry of Agriculture. For the stadium, that is the Ministry of Sports. We were a kind of service portfolio. We were all assisted in terms of the design under the Bill of Quantities (BQs).

Mr. Wilfred Nyamu: You have stated that you were appointed in June; when did you have the full infrastructure in terms of the various entities of the county?

Mr. John Njeru Njagi: Actually, that was around the end of November. That was the time we were actually able to bring the chief officers on board. The chief officers are very instrumental because these are the main operators of the systems. Without the chief officers, we could not actually achieve 100 per cent performance levels in terms of most of the operations. So, the chief officers came on board around the end of November. That is the time now we can say, actually, we had some good structures.

Mr. Wilfred Nyamu: And where the departments had no chief officers, who would fill in the gap?

Mr. John Njeru Njagi: In the absence of the chief officers, during that time under the transition period before we could actually get the chief officers on board, the CS was actually amalgamating the different departments. She was actually what you would call a composite accounting officer manning the various departments in terms of the public financial management.

Mr. Wilfred Nyamu: We have been told that the CS actually stepped aside. Did you make certain changes when she stepped aside to ensure that the work continues?

Mr. John Njeru Njagi: Yes, Mr. Chairman, Sir. When the CS stepped aside, one of the chief officers actually stepped into that office in an acting capacity.

The Chairperson (Sen. (Dr) Khalwale): Counsel, we are time bound. You really must summarize.

Mr. Wilfred Nyamu: Now, you have been asked whether monies have been disbursed in terms of the maize and the stadium. Can you confirm whether or not, in respect of the stadium, the contractor has been paid?

Mr. John Njeru Njagi: In respect of the stadium, no cent has actually left the County Treasury.

Mr. Wilfred Nyamu: In terms of the role of the Governor, would he get into the day to day running of the departments, or what did you mean by “at policy level, that is where the Governor would deal.”

Mr. John Njeru Njagi: With the various portfolios and departments, the Governor would operate at policy level. Having appointed the various officers in the various portfolios, then the various officers appointed in those portfolios are actually the ones who were running the show – the daily operations in the various departments.

Mr. Wilfred Nyamu: So, do you confirm that the Governor had no role in procurement at all?

Mr. John Njeru Njagi: Yes, I confirm that the Governor had no direct role in the procurement process.

Mr. Wilfred Nyamu: Would you also confirm that the Governor had no role in the performance of the duties of the CPSB?

Mr. John Njeru Njagi: Yes, that one I confirm.

Mr. Wilfred Nyamu: That is all for this witness.

The Chairperson (Sen. (Dr) Khalwale): Thank you very much.

Mr. Njagi, it was a pleasure listening to you. You have been extremely helpful to the people of Embu and also the management of the county in general. Thank you so much; you are now free.

Mr. John Njeru Njagi: Thank you, Mr. Chairman, Sir.

The Chairperson (Sen. (Dr) Khalwale): Next witness.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, we will now be bringing Eng. David Gitonga Njiru, who is Witness No. 2 on our abstract of witnesses. He is the CEC Infrastructure.

The Vice Chairperson (Sen. Murkomen): That is infrastructure?

Mr. Wilfred Nyamu: Yes, Mr. Chairman, Sir.

The Chairperson (Sen. (Dr) Khalwale): Can you point out where his statement is? We have found it.

The Vice Chairperson (Sen. Murkomen): Mr. Chairman, Sir, for us, as Members, I think in terms of structure and so forth, we had exhausted with the other witness. There are certain questions related to the structures and whatever else that we have exhausted with the other witness. So, we can save time on this one.

(Eng. David Gitonga Njiru before the Committee)

The Chairperson (Sen. (Dr) Khalwale): Mogere, can you administer the oath?

(Eng. David Gitonga Njiru took oath)

Thank you, Eng. Gitonga. I would like you to go and sit on the chair right before you.

Counsel, can you commence?

Mr. Wilfred Nyamu: Mr. Gitonga, could you kindly tell this Special Committee what your names are?

Eng. David Gitonga Njiru: My name is Eng. David Gitonga Njiru.

Mr. Wilfred Nyamu: Could you tell this Committee what you do for a living?

Eng. David Gitonga Njiru: I am an engineer by profession. I am the CEC in charge of infrastructure, transport and public works in Embu County.

Mr. Wilfred Nyamu: Now, in this matter, did you record a statement?

Eng. David Gitonga Njiru: Yes, I recorded a statement.

Mr. Wilfred Nyamu: Would you like to use this statement as evidence in these proceedings?

Eng. David Gitonga Njiru: Yes.

Mr. Wilfred Nyamu: I do request, Mr. Chairman, Sir, the statement provided in respect of this witness be used as evidence in these proceedings.

The Chairperson (Sen. (Dr) Khalwale): Thank you, counsel.

I now want to invite the counsel for the County Assembly to cross examine this witness.

Mr. Charles Njenga: Thank you, Mr. Chairman, Sir.

Mr. Gitonga; as the CEC member in charge of infrastructure, what are your main roles? Be specific with regard to projects within Embu County.

Eng. David Gitonga Njiru: My roles as the CEC member in charge of infrastructure with regards to projects are:-

1. To formulate the policies--

The Chairperson (Sen. (Dr) Khalwale): Order, counsel! Let us make speed; these things are already on paper. Just go straight to cross examination; that way, we will save a lot of time.

Mr. Charles Njenga: With regard to you work and your roles as you have outlined them in your statement, tell the Committee what you specifically did as the CEC, if anything, with regard to the works undertaken at the Embu Stadium.

Eng. David Gitonga Njiru: I will start by saying that this issue was discussed in a Cabinet meeting to upgrade and renovate the Embu Moi Stadium.

Mr. Charles Njenga: When was it discussed?

Eng. David Gitonga Njiru: It was discussed at around September, as I have recorded in the statement.

Mr. Charles Njenga: In that meeting, was the CS present?

Eng. David Gitonga Njiru: Yes, she was present.

Mr. Charles Njenga: Was the Governor present?

Eng. David Gitonga Njiru: Yes, Mr. Chairman, Sir.

Mr. Charles Njenga: So, proceed; what happened after you discussed?

Eng. David Gitonga Njiru: So, what happened after we discussed is that I was charged with the responsibility to write to the experts who, in this case, happened to be the public works officers so that they can prepare the BQs, the estimates and their architectural and structural plans.

Mr. Charles Njenga: Now, that is the directorate of public works?

Eng. David Gitonga Njiru: Yes.

Mr. Charles Njenga: Did you ever receive this particular BQs or whatever documentation you were asking from them?

Eng. David Gitonga Njiru: Yes, in this particular work, we start with the architectural drawing, which is here with me. Then, from there, the estimates – what we call the engineer’s estimates – is prepared, which is also here with me.

Mr. Charles Njenga: I am asking, are all these from the directorate of public works?

Eng. David Gitonga Njiru: Yes, Mr. Chairman, Sir.

Mr. Charles Njenga: So, when were they prepared? The date is what we want to note.

Eng. David Gitonga Njiru: They were prepared in the month of November.

Mr. Charles Njenga: In the month of November?

Eng. David Gitonga Njiru: Yes, Mr. Chairman, Sir.

Mr. Charles Njenga: Is that both for the BQs and the structural plans or---?

Eng. David Gitonga Njiru: Yes.

Mr. Charles Njenga: You say that these are documents that you have here with you.

Eng. David Gitonga Njiru: Yes, these are the documents that I have.

Mr. Charles Njenga: Were they ever forwarded to you formally or how did they get to your procession.

Eng. David Gitonga Njiru: Yes, I have a letter here with me that is dated 20th September. This is a letter that I requested the County Works Officer, Ministry of Public Works, that is, the Directorate of Public Works, Mr. Ndaire. From there---

Mr. Charles Njenga: When is the letter dated?

Eng. David Gitonga Njiru: The letter for the request is dated 20th September.

Mr. Charles Njenga: No, the letter forwarding the document.

Eng. David Gitonga Njiru: The letter forwarding the document is dated 5th November.

Mr. Charles Njenga: Was it addressed to you or which office?

Eng. David Gitonga Njiru: The letter is addressed to the County Executive Committee (CEC) member in charge of infrastructure and a copy is made to the county secretary.

Mr. Charles Njenga: Now, do you know whether, indeed, works ever commenced on this stadium?

Eng. David Gitonga Njiru: After preparing the documents and they are forwarded to the county secretary, it is now her duty to forward them to the procurement.

Mr. Charles Njenga: I was asking you: Do you know whether work has begun at the stadium, as we speak?

Eng. David Gitonga Njiru: Yes. I know that there is some work that has been done.

Mr. Charles Njenga: Now, do you know the name of the contractor doing the works?

Eng. David Gitonga Njiru: Yes, Mr. Chairman, Sir.

Mr. Charles Njenga: That is found in which document?

Eng. David Gitonga Njiru: The name of the contractor No.1 is Diamond Spare General Suppliers. This contract was divided into two. The other one is Mumu Suppliers.

The Vice Chairperson (Sen. Murkomen): The question was: Where are they found? We are trying to look for them in the documents.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, it seems like besides the document that we have with us here, the witness has travelled with some documents.

The Chairperson (Sen. (Dr.) Khalwale): Make your point, counsel?

Mr. Wilfred Nyamu: Mr. Chairman, Sir, I wish to state that what I have noticed is that this particular witness has travelled with certain documents. I can even see that he has come with some maps to this Committee. In the circumstances, I seek for directions, given that we did not know that he would come with this. This is material that would assist this Committee.

The Chairperson (Sen. (Dr.) Khalwale): Counsel, I think that you are surprising all of us. This is your witness and you are supposed to know what he has come with and what he is coming to tell the Committee. So, why are you resorting to us? If your intention is that you want to apply that these documents be presented here to us, you can do so either now or during re-examination. It is not a big deal.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, since we only have documents that are here and we did not know that he had others, and given that we have been here the whole day and I have not had time to meet him today, I do request that the documents that he is producing be availed to the Committee.

The Chairperson (Sen. (Dr.) Khalwale): Have you made copies which you have shared with the other party? Remember the rule was that we will not introduce fresh documents. It might be to the disadvantage of your counterparts at the county assembly.

Counsel for the County Assembly, would you have any problem if they were introduced?

Mr. Charles Njenga: As we have persistently said, even in our cross-examination, as you saw me rise, I came with the documents supplied by the Governor. So, it can be very unfair to then now ask me to cross-examine through admission of additional documents. I was hoping that the witness will refer to the documents that they have and then answer the question, because everybody then would be able to follow and close on our cross-examination very fast. But if it is in a matter now of raising new documents at this stage, then that naturally presents sufficient prejudice to our case. It will be very unfair.

The Chairperson (Sen. (Dr.) Khalwale): hon. Members, because it would require preparedness for the county assembly counsel to speak to this, and this being an investigatory process, let us allow the documents to come to us, but neither the counsel for the Governor nor the County Assembly will speak to them. When we are writing the report we will be free to look at those documents, because it is an investigation.

Mr. Wilfred Nyamu: Very well, Mr. Chairman, Sir.

Sen. Orenge: But with a rider. They have to be authenticated. They should not be photocopies.

The Chairperson (Sen. (Dr.) Khalwale): Make sure that what you are giving us are authentic documents. If they are not, then do not take that trouble. We will then make our own decision later on if they are useful.

Mr. Charles Njenga: Mr. Chairman, Sir, in that event would, it then be in order for the witness to refer to them in a situation where even us, as counsel cross-examining, have no notice and, therefore, have no capacity whatsoever to interrogate that document?

The Vice Chairperson (Sen. Murkomen): We have had BQs, maps and so forth. Is there a contract? Is the award letter there? That is material evidence that we have to find a way of first agreeing on what to do with it.

Sen. Wamatangi: Mr. Chairman, Sir, I was also going to support what you said. Yes, we can have the documents ourselves and look at them. But they cannot be altered or discussed there, because that will take us back. But we will have them subject to authentication, like Sen. Orenge proposed.

Sen. Mositet: Mr. Chairman, Sir, I am also of the opinion that let us have the documents. In fact, it is drawings. Let us make sure that we have all of them; mechanical, electrical, structural and architectural. I believe that the BQ itself was formed from the drawings. Sen. Harguara and I can check, just for the benefit of this Committee.

Sen. Sijeny: But in all fairness, if the counsel knew that their witnesses came with some documents, even before they admitted, we, as Committee Members, ought to have perused them. Even their worthy opponents ought to have perused them by now. Do they have sufficient copies, at least, so that even the County Assembly can know what is going on?

Sen. Wamatangi: But what we were proposing, Senator, is that the documents do not get dealt with there, neither the counsel to question over them nor the witness to refer to them. We have them for our own purposes.

The Chairperson (Sen. (Dr.) Khalwale): I think that we have made a fair ruling; that you will not cite or refer to them. But you will just give them to us. We might find them useful during our investigations. So, just authenticate them today or tomorrow and then give us.
Proceed!

Mr. Wilfred Nyamu: Mr. Chairman, Sir, we are obliged by that ruling and do apologize to the Members of the Committee. Just as we had indicated yesterday, kindly indulge us owing to the fact that the County Assembly had adequately prepared themselves from 16th January to date. So, it is expected that they have everything that they require. But for us, we have been invited and had to come up with documents, some of which---

Mr. Charles Njenga: Mr. Chairman, Sir, I think that if counsel is saying that the rules were unfair, I think that, that should have been the first order of business, so that we settle the rules. This is because if this is going to be fair, the rules have to be followed by the Committee, the Assembly and the Governor, so that we do not have a situation where the rules, as initially settled, are now being applied in favour of one party by latitude granted continuously. They have introduced, I think, four sets of documents since the time that we started. We opposed right from the start that if we were subjected to the same rules, then they had that obligation to bring all that they had, so that when we sit here and make our case, both by way of submissions and evidence---

As we earlier stated, our decision not to call witnesses was not made without consideration. We evaluated the documents as presented by the Governor and the rules. We made an informed determination; that based on the material before us and seized of us, then we do not need to call witnesses. But over time, material that speaks to the matter before the Committee has been brought forth and we are now saying that we are going to admit it. Howsoever it reaches you, it is admitted. It is going to affect your minds and in evaluation of whether the County Assembly has made its case or not. Those are going to be determinant factors.

Sen. Orengo: The problem I have with you, counsel, is that it is out of your cross-examination that the witness is saying: "Yes, there was an award and, in fact, I have a copy of the award." So, you must bear the consequences of your questions. Cross-examination can help you establish guilt or take you in the opposite direction. But if you

confine yourself to asking questions that will not take the witness where you helped him destroy your case, then you will be on safe ground. I think that, that is a primary concern of those who practice criminal law. What I thought was that what has come from the statement would not shake your case. But for now, I think that if you would reduce your questions and then we have a general rule, that if there is any document out there that is not being manufactured now from both sides, since this is an investigation--- If you have some documents that can help us get to the bottom of what happened, my position would be that the Committee should not be in a situation where there is a document out there which can help us and we are stopped from receiving it. But I would also agree that the witness should not refer to those documents if he did not find it convenient to include or refer to them in the statement. Probably, the Lead Counsel would say: "I have a bundle of documents. I am not commenting on them, but since they were documents which are already out there, and these are public documents, you can have them." I do not know whether that---

The Chairperson (Sen. (Dr.) Khalwale): Thank you, Sen. Orenge. I think that the ruling that we have made has not favoured either side. We have made a ruling blocking both of you from referring to those documents. But because it is in the interest of the people of Embu that we give the results of our investigations, we will look at those documents anyway, and you will not have introduced them as evidence from both sides. So, it is fair that we avoid a legal battle between the two of you and we proceed.

Mr. Charles Njenga: If we follow the rules, we will not have any battle. We will all be at peace. However, if the rules as settled are certainly not going to be followed, that is manifestly unfair, and that is true. We have to say it because we represent a people who have brought certain documents and decisions made, based on information that we had.

Sen. Orenge: But counsel, you know that you can actually have a witness produce evidence through you, as opposed to the lawyer who is examining the witness-in-chief. You can actually introduce evidence yourself in cross-examination, by the manner of questioning you are undertaking. That is what I have found; that you must alive to the consequences of your questions. If you ask a witness if there is an award and he says: "Yes. In fact, I can do better than what you are telling me. I have got it here." Then what does he do?

Sen. Wamatangi: Mr. Chairman, Sir, I just want to request that, probably, it is time to make a firm ruling, so that in case the other pending witnesses have got any documents, they should know that they are not going to be admissible. This will ensure that we do not have this back and forth again. If you look at the earlier evidence, there was no award. So, he was trying to refer to that thinking; that there will be no award, as was earlier tendered. But then now he finds that there is one. So, probably, let us make a ruling.

The Chairperson (Sen. (Dr.) Khalwale): The ruling has already been made. But you need to be careful. Sen. Orenge is a senior counsel. He is telling you: "There is no way this witness would have brought these documents if you had not brought it up through your cross-examination." So, be strategic, so that you do not open other avenues that

might water down what you have already achieved. The remarks that you have made will affect us when we are weighing those documents. We shall remember what you have said. It is on record.

Can we proceed now?

Mr. Charles Njenga: Engineer, you were saying that the BQs and all the structural plans were forwarded to you on 5th November.

Eng. David Gitonga Njiru: Yes.

The Chairperson (Sen. (Dr.) Khalwale): Order, counsel! We have said that you do not refer to those documents. You have complained that you do not want them to be used. Why are you referring to them?

Mr. Charles Njenga: It is in the statement.

The Chairperson (Sen. (Dr.) Khalwale): Okay! That is fine. I am sorry. Proceed!

Mr. Charles Njenga: Just confirm, is it 5th October or 5th November?

Eng. David Gitonga Njiru: I think it is in my statement. Let me look at it.

Sen. Wamatangi: The document says 5th November.

Mr. Wilfred Nyamu: Just as he prepares himself to come back, I wish to point out one part. We know that there have been inquiries, but this is an investigation. So that we do not appear to lock out any information or evidence that may come out in the course of these proceedings that may lead this Committee into coming up with the correct position so that rules do not override facts, I am just saying that is what my learned friend does not---

The Chairperson (Sen. (Dr.) Khalwale): Counsels, we have settled this matter, but let us go on. We are aware of the other provisions of our rules and the Constitution about the need not to have this process frustrated by undue reference to technicalities and so on. Those are things we are going to weigh when we are writing the report. You just go ahead.

Mr. Charles Njenga: Engineer, is it 5th October or 5th November, clarify the dates, it is important.

Eng. David Gitonga Njiru: The documents were forwarded to me on 5th October.

Mr. Charles Njenga: These are what we are calling the BQs?

Eng. David Gitonga Njiru: These are engineer's estimates.

The Vice Chairperson: Sorry for that; did you say October or November?

Eng. David Gitonga Njiru: That is the day when the estimates were forwarded to me. There are engineer's estimates and BQs.

Mr. Charles Njenga: Were the BQs forwarded to you at any time as the CEC, Infrastructure.

Eng. David Gitonga Njiru: We have BQs and engineer's estimates.

Mr. Charles Njenga: I am asking about BQs. Were they ever forwarded at any time to you?

Eng. David Gitonga Njiru: When engineer's estimates are prepared, we generate BQs from the engineer's estimates.

Mr. Charles Njenga: So you generated BQs and when did you do it?

Eng. David Gitonga Njiru: That was around November. I cannot remember the exact date.

Sen. Hargura: Just for the benefit of the Committee, the BQs and engineer's estimates are just one and the same thing. The engineer's estimates is the price to BQs, but it actually the same document.

The Chairperson (Sen. (Dr.) Khalwale): Can you confirm what Sen. Hargura has said?

Eng. David Gitonga Njiru: We prepare the estimates first. It is from those estimates that we now include the BQs. Engineer's estimates are BQs that are priced. A BQ is a BQ that is blank that is ready now to go to the tender.

Mr. Charles Njenga: So, this document that you are saying was now ready to go to the tender. When did you prepare it?

Eng. David Gitonga Njiru: In November.

Mr. Charles Njenga: I am referring the witness to page 355 of the bundle of documents provided by the Governor. There is a document written "Government" of Embu. On page 356, there is a preamble that says that ten tenders for the above works were floated on 22nd October, 2013 through restricted tendering from locally prequalified contractors. If tenders were floated on 22nd October, 2013, and you are confirming to us that your BQs were only ready in November. On what basis were tenders for this works floated on 22nd October, 2013?

Eng. David Gitonga Njiru: I think when we float tenders which were done on 22nd October, 2013--- but the reason we have indicated that the BQs were ready by November is because of that time frame whereby you give the tenderers around 14 days. So, we had to indicate the BQ at the last day for the floating at the end of the 14 days.

Sen. Wamatangi: Does that make sense?

Sen. Mositet: It does not make sense because, first of all, you get the BQs then you float the tenders and after that you evaluate. So, that means we have to go backwards from 22nd October if we have to follow his case.

The Chairperson (Sen. (Dr.) Khalwale): Counsel, you have made your point, the witness has responded, we have seen the discrepancy. Proceed.

Sen. Wamatangi: Mr. Chairman, Sir, I just want to point out for the sake of clarity on what the engineer is saying. It is a precondition that when you are floating a tender, you must have those engineer's estimates which are derived from those BQs. So, it does not follow at all.

Sen. Hargura: Mr. Chairman, Sir, maybe we can sort that out if we can be shown the tender notice because it has the date.

The Chairperson (Sen. (Dr.) Khalwale): Eng. Gitonga, do you have anything?

Eng. David Gitonga Njiru: My duties just end at the preparation of the document. How to invite the bids I cannot participate because I am an interested party. So, I cannot participate in inviting the bids. That is now the work of the procurement department.

The Chairperson (Sen. (Dr.) Khalwale): Counsel, you have made your point, let us proceed.

Sen. Orenge: Mr. Chairman, Sir, I am getting a little bit worried because it looks like the County Government of Embu works in compartments that when you are doing something you are just concerned with your little corner. You are not just a professional, but also in charge of infrastructure and even the end product is within your docket. So, you do not know when the tenders were floated. If you are somebody who is brought from outside as an engineer or architect we would understand, but you are part of the county executive. These things were done and I would expect you to follow up and you would like to know how the works progress. Is that the true manner in which the County Government of Embu operates?

The CEC, finance, was here and he is also in charge of that little compartment. Is there something else I do not know? Even the Governor is up there, but he is not concerned about what happens around him.

The Chairperson (Sen. (Dr.) Khalwale): Sen. Orengo, I do not think anybody has said it, but they are cleverly trying to avoid creating a situation which corroborates; because they are worried that, probably, they might implicate one in a matter that they might have agreed that they should not do. Otherwise, ordinarily, when you are working in a system, you are part of the whole.

Mr. Charles Njenga: Eng. Gitonga, do you remember being summoned to the County Assembly Committee that was investigating this matter?

Eng. David Gitonga Njiru: Yes.

Mr. Charles Njenga: Did they ask you questions specifically on matters arising from your perspective and portfolio with regard to this project?

Eng. David Gitonga Njiru: The first thing that I was supposed to answer was about procurement which I think I answered. The second one was about the budget allocation---

Mr. Charles Njenga: For Members to follow, that is the document CAE6 which is a report of that joint committee. It is on the bundle of documents forming the motion. The first page after preface is written "Investigation".

Mr. Wilfred Nyamu: Mr. Chairman, Sir, we are facing some difficulties where it appertains to documents. We thought witnesses would be supplied with documents from the secretariat. I find myself in a predicament where I have to give my own copy to a witness.

The Chairperson (Sen. (Dr.) Khalwale): Once you settle, we will give you. There is no problem. What we do not allow is documents to be introduced by you. But the ones we have here, we can always share with you more copies for the purpose of the witness. So, just specify which document you want and they will give you.

Mr. Wilfred Nyamu: If the witness could be supplied with the document that is being referred to by the counsel for ease of reference.

Mr. Charles Njenga: So, your evidence before the Committee was that the procurement was done by the supply and chain management and that you had no role whatsoever.

Eng. David Gitonga Njiru: Yes, I also repeat, I have no role in procurement.

Mr. Charles Njenga: You also reported that proposed estimates for the project were prepared by the Ministry and the documents were received by the County Government on 31st December, 2014?

Eng. David Gitonga Njiru: That is wrong. 31st December, 2014 is wrong.

Mr. Charles Njenga: So, are you denying?

Eng. David Gitonga Njiru: I am denying that the documents were not received by the county government on 31st December, 2014.

The Chairperson (Sen. (Dr.) Khalwale): Is it 2013 or 2014?

Mr. Charles Njenga: It is 2013.

Eng. David Gitonga Njiru: It is still not right.

Mr. Charles Njenga: So, when did you receive these documents?

Eng. David Gitonga Njiru: I think I have indicated in my statement.

Mr. Charles Njenga: I am talking about documents from the Ministry of Public Works.

Eng. David Gitonga Njiru: I have indicated that the documents were forwarded to me on 5th October, 2013.

Mr. Charles Njenga: Which documents were you referring to when you talked about estimates prepared by the Ministry of Public Works?

Eng. David Gitonga Njiru: Those are the BQ estimates.

Mr. Charles Njenga: I have with me a document and I want to show you whether they are the ones.

Eng. David Gitonga Njiru: These are the engineer's estimates that were received on 5th October, 2013.

Mr. Charles Njenga: I am referring the witness to a copy of this document prepared by the director of public works. It is not in that bundle, I have just been given by the Speaker.

The Vice Chairperson (Sen. Murkomen): We know we had said that we are not admitting documents.

Mr. Charles Njenga: I am just referring to this document---

Mr. Wilfred Nyamu: We can just record consent.

Mr. Charles Njenga: Just allow us to proceed the way we want.

The Vice Chairperson (Sen. Murkomen): You have to choose between referring to the document and, therefore, as the counsel for the Governor is saying "consent" or you just ignore completely.

Mr. Charles Njenga: Just leave them. Our case is okay.

Mr. George Ng'ang'a: Engineer, what was the budget for these works?

Eng. David Gitonga Njiru: The budget that was budgeted for renovation and upgrading was Kshs8 million, but the engineers estimate was Kshs50 million.

Mr. George Ng'ang'a: To the best of your knowledge, has this Kshs8 million been used?

Eng. David Gitonga Njiru: No. It has not been used.

Mr. George Ng'ang'a: But there is a contractor on site?

Eng. David Gitonga Njiru: Yes, Mr. Chairman, Sir.

Mr. George Ng'ang'a Mbugua: So, the works being done now; are they being undertaken under this budgetary allocation of Kshs8 million?

Sen. Wamatangi: Mr. Chairman, Sir, on the issue of the budget where the estimates were Kshs50 million and the budget was Kshs8 million, I just want to establish the efficacy of that, even using standard rules - how would you float a tender with Kshs8 million in your kitty and yet the budget is Kshs50 million. How was that?

Eng. David Gitonga Njiru: When we budgeted for Kshs8 million, the works were to be carried out in phases. But now we had to get the overall engineers' estimates so that we can know how much we are going to allocate this project in the next phase or in the supplementary estimates; how much we are going to add on our budget of Kshs8 million. The works were to be carried out in phases and that is why initially we had budgeted for only Kshs8 million.

The Vice Chairperson (Sen. Murkomen): What does the law say about budgeting and awarding?

Sen. Hargura: What was the tender sum awarded? The tender that is now there; the first phase is Kshs10 million according to the engineer's estimates for the first phase. The second phase is around Kshs19 million and the other one was to be Kshs19 million. So, the first documents which you gave out were actually for the first estimate of Kshs10 million.

Eng. Gitonga: Yes, Sir.

Mr. Charles Njenga: So, you started works whose total cost would be an excess of Kshs15 million with a budget of only Kshs8 million which would not even suffice for what you were calling a first phase and you had---

Eng. David Gitonga Njiru: Not an excess of Kshs50 million. I am saying that the Kshs50 million was an estimate of the whole works. So the work had to start with the budget that we had before. I do not think there is a problem with that because you start with what you have and in the next phase you re-budget again and the next time you re-budget again. I have been in road construction whereby a road starts with only Kshs50 million and it is a project of Kshs1.9 billion. So, you go phasing out, but the engineer's estimate has to be given even before you budget.

Mr. Charles Njenga: Have you secured what you are calling a supplementary budget for this particular project to cover the balance?

Eng. David Gitonga Njiru: Yes, we have proposed it in the County Assembly.

Mr. Charles Njenga: Who gave the proposal to the Assembly?

Eng. David Gitonga Njiru: The CEC in charge of finance.

Mr. Charles Njenga: That is your evidence. Let me rest here. I think I have made my point.

The Vice Chairperson (Mr. Murkomen): Hon. Senators, anyone who has a question for the witness starting with Sen. Mositet? Let us just limit them to the witness' statement and the available statements.

Sen. Mositet: Mr. Chairman, Sir, we have the so called works officers. Do they work under your Ministry?

Eng. David Gitonga Njiru: Not until recently when they were devolved. Initially, there was that tug of war as to whether they are working under us or in the Ministry of Lands - as it was just sometime introduced. So, it is not until recently when we got the payroll that now, they are directly answerable to us.

Sen. Mositet: But the position of the County Works Officer was created way back in 2012. By last year when the governors assumed offices in the rest of the country, all those people have been working under the Governor's office.

Eng. David Gitonga Njiru: No. Initially we had to gazette. When the Governors assumed office, the TA had to find out which functions we ready to be devolved. At that time the Works Officer had not been devolved until recently now when they were devolved in a Gazette Notice, only that I do not have it at the moment.

Sen. Mositet: When you gave out the briefs to the architects and the engineers, was there another meeting you sat down for them to bring the concept you had given them in order to understand whether they got the concept correct?

Eng. David Gitonga Njiru: Yes, we had a meeting in my office and that is why there is a letter that I had written. It reads:-

“You are kindly requested to prepare the above mentioned document as per our discussion”.

So, we are in discussion.

Sen. Mositet: Later when they brought the estimates plus un-priced BQs and that is now when you went floating the tenders. Did your office participate in the evaluation or the Works Office?

Eng. David Gitonga Njiru: The Works office participated.

Sen. Mositet: So, that means actually you participated in the procuring.

Eng. David Gitonga Njiru: I did not participate directly, but the Public Works participated.

Sen. Mositet: And the Public Works was reporting to you what they were doing.

Eng. David Gitonga Njiru: By then they were not reporting to me. We only engaged them as experts.

Sen. Mositet: When it reached the point where, maybe, the contractors have submitted their bids and you have already awarded or you have known whom you are giving the job, did you go to the site handing over?

Eng. David Gitonga Njiru: The work has not been handed over.

Sen. Mositet: But the contractor is on site?

Eng. David Gitonga Njiru: Yes, the works have not been paid for.

Sen. Mositet: The contractor went to the site?

Eng. David Gitonga Njiru: Yes, Mr. Chairman, Sir.

Sen. Mositet: And you did the handing over?

Eng. David Gitonga Njiru: I am not getting the handing over bit.

Sen. Mositet: For the contractor to get to the site or to possess the site, as a person or your office must have handed over that site to that contractor.

Eng. David Gitonga Njiru: Still that was done by the public works. We engaged them as experts at that time. They had not been devolved.

The Vice Chairperson (Sen. Murkomen): Which month was that?

Eng. David Gitonga Njiru: The devolvement of the public works was done---

The Vice Chairperson (Sen. Murkomen): No, the day you handed over the site.

Eng. David Gitonga Njiru: Well, I cannot remember the date.

The Vice Chairperson (Sen. Murkomen): Was it after November?

Eng. David Gitonga Njiru: Yes, it was around November.

The Vice Chairperson (Sen. Murkomen): Then how do you talk about them not being devolved? Is there another devolution of functions that happened after November?

Eng. David Gitonga Njiru: Sorry, Sir.

The Vice Chairperson (Sen. Murkomen): That time around November, you have said that they had not been devolved. Is there another devolution of functions that occurred somewhere in between? I thought the only time we completed devolution of functions was about August/September.

Eng. David Gitonga Njiru: Officially, or at the high level? The devolution might have even taken place in the month of September, but now at the county level. You realize that these people are saying that they are not devolved not until when we received their payroll, which is just about two weeks ago. That is now when we can own them. Initially, we used to go to them and they would say that they were waiting for the letter from the Ministry of Devolution. So, we could not engage them directly.

Sen. Mositet: You were the clients and you went to hand over the site. How come again you saying that it is the public works which handed over the site and not you?

Eng. David Gitonga Njiru: You see now, on our side, we had no expertise. We had no expertise on how the site is handled or how it is given and so we had to engage them.

Sen. Mositet: And you got the handing over certificate.

Eng. David Gitonga Njiru: Well, I did not get the handing over certificate, but I can request them to give it to me.

The Vice Chairperson (Sen. Murkomen): I just want to ask you one question: In your arrangement of things, who signs contracts of this magnitude in the county?

Eng. David Gitonga Njiru: The contracts are signed by the county secretary.

The Vice Chairperson (Sen. Murkomen): She has the authority to sign all the contracts in the county?

Eng. David Gitonga Njiru: Yes.

The Vice Chairperson (Sen. Murkomen): So, you did not participate in the preparation or signing?

Eng. David Gitonga Njiru: No. I did not participate.

The Vice Chairperson (Sen. Murkomen): Did you come across anything to do with that process? What informed the awarding of Kshs8 million when the budget was Kshs10 million? What informed such a variation of Kshs2 million?

Eng. David Gitonga Njiru: I think now it is from the evaluation and the tender committee.

The Vice Chairperson (Sen. Murkomen): When it was done, it was with the full knowledge that the only amount in the budget is Kshs8 million.

Eng. David Gitonga Njiru: The only budget that was there was Kshs8 million and I think the contract can also exceed with 15 per cent. That is how we came to Kshs10 million.

The Vice Chairperson (Sen. Murkomen): It can exceed the budget by 15 per cent. I thought the variation was basically in regard to the estimates; that it can vary 12 or so per cent of the estimates. Can it vary from the budget?

Eng. David Gitonga Njiru: It cannot vary from that current budget. We had hopes that when we submit the supplementary budget the balance of Kshs2 million will be provided. This is an estimate that has brought Kshs10 million, so we cannot go below the estimates.

The Vice Chairperson (Sen. Murkomen): To the best of your knowledge, where did the county secretary derive the power to sign contracts?

Eng. David Gitonga Njiru: I think it is in the Procurement Act whereby he is the head of the procurement entity. He also appoints the tender committee. It is in the procurement regulations.

The Vice Chairperson (Sen. Murkomen): So, you were not even participating in the appointment of the tender committee?

Eng. David Gitonga Njiru: No, Sir.

The Vice Chairperson (Sen. Murkomen): Okay. Thank you.

Sen. Hargura: Maybe based on what he has said, I want him to clarify one thing. I did not have in mind, but this is after he said something. You asked who signed on behalf. My question is: Who is actually the accounting officer for infrastructure?

Eng. David Gitonga Njiru: The accounting officer for infrastructure is the chief officer. When we were procuring these tenders the county did not have the chief officers. They were still being recruited. So, the only person who could sign the contract as the head of the procuring entity was the person who was the head of the procurement department who happened to be the county secretary.

The Chairperson (Sen. (Dr.) Khalwale): So, we will allow for re-examination. Counsel, you will favour us; you do not go the way you went last time. Just highlight the things which are straightforward.

Mr. Wilfred Nyamu: Can I get from the Chairman an indication of how much time I am given.

The Vice Chairperson (Sen. Murkomen): Could you give us that indication yourself?

Mr. Wilfred Nyamu: I do not need much time. I only have three questions for the witness.

The Vice Chairperson (Sen. Murkomen): Just ask him the three questions only.

Mr. Wilfred Nyamu: Eng. Gitonga, are CEC members accounting officers in Embu County for purposes of procurement?

Eng. David Gitonga Njiru: The CEC members in Embu County are not accounting officers.

Mr. Wilfred Nyamu: So, are you an accounting officer for purposes of procurement?

Eng. David Gitonga Njiru: I as a CEC member, I am not.

The Vice Chairperson (Sen. Murkomen): Question two?

Mr. Wilfred Nyamu: Mr. Chairman, Sir, this is a serious matter that we are dealing with.

The Vice Chairperson (Sen. Murkomen): No, I am just asking you to move to the next question.

Mr. Wilfred Nyamu: Eng. Gitonga, when you took the budget estimates to the County Assembly of Kshs50 million, you said that this work was going on in phases and that what was in the first phase contracted was an estimate of Kshs8 million. Could you confirm that?

Eng. David Gitonga Njiru: Sorry, counsel, could you repeat the question, please?

Mr. Wilfred Nyamu: You said that the overall budget was Kshs50 million for the refurbishment of the stadium. Is that not so?

Eng. David Gitonga Njiru: No. I did not say that. I said that the overall estimates for the renovation or the refurbishment – I have a problem with pronunciation depending on which water I take - is Kshs50 million, but the budget that had been budgeted from the budget of 2013/2014 was only Kshs8 million. That is what I said.

Mr. Wilfred Nyamu: And to your knowledge, a tender committee was involved in procurement. There was a tender committee in place for purposes of procurement in that respect.

Eng. David Gitonga Njiru: Yes, of course. For you to get contractors there is a tender committee.

The Vice Chairperson (Sen. Murkomen): To your knowledge, forget about the obvious fact. What the counsel is asking you is whether you were aware of a tender committee in this contract.

Eng. David Gitonga Njiru: Yes, Mr. Chairman, Sir.

Mr. Wilfred Nyamu: Would you confirm that although there is a contractor on site, the money in respect of that particular contract has not been paid to that contractor.

Eng. David Gitonga Njiru: The money has not been paid.

Mr. Wilfred Nyamu: Do you know the reason?

Eng. David Gitonga Njiru: Well, I am not in the finance department. Maybe the contractor has not raised the claim.

The Chairperson (Sen. (Dr.) Khalwale): Eng. Gitonga, you have just told us that you are not an accounting officer.

Eng. David Gitonga Njiru: I am saying that there is an assumption.

The Chairperson (Sen. (Dr.) Khalwale): You have told us that you are not an accounting officer. If you have been coached to say certain things, then do not do it here. You have said that you are not an accounting officer and now you are responding to an accounting question.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, as a matter of policy, the Engineer is a CEC—

The Chairperson (Sen. (Dr.) Khalwale): I would like the Engineer himself to respond. Counsel, you will have your time.

Eng. David Gitonga Njiru: As the Chairperson is saying, it is becoming hard for me to answer because I am not an accounting officer. So, I might not know.

The Chairperson (Sen. (Dr.) Khalwale): So, you have retracted your earlier answer.

Eng. David Gitonga Njiru: Yes. I am saying that I am not aware whether the contractor was paid because I am not an accounting officer.

Mr. Wilfred Nyamu: As a matter of policy as a CEC Member, are you aware of any payments that have been made?

Eng. David Gitonga Njiru: As a policy---

Sen. Orengo: You know you are just being asked whether, to your knowledge, you may be aware. It is not that you must be an accounting officer to know. I thought you had initially answered the question which was very fair to your knowledge. But again now you are running away from what you had already told us. Do you want to reconsider that? Do not be confused by the Chairman.

The Chairperson (Sen. (Dr.) Khalwale): Can you speak?

Eng. David Gitonga Njiru: As a matter of policy, I know there is no money that has been paid.

Charles Njenga: When you forwarded these particular documents for approval as the CEC, were you forwarding them as a procuring entity or as a CEC to facilitate the operations by the Accounting Officer?

Eng. David Gitonga Njiru: I was forwarding the documents to facilitate the procurement process.

The Chairperson (Sen. (Dr.) Khalwale): We want to take a break for dinner. I also want to subject this to plenary. This is important because we are not the only players. I would like to know from the parties how much more you can do.

There is the law of diminishing returns. We do not want to pretend that we are going on when we are doing nothing. These lawyers are doing very tough work, analyzing the documents.

Mr. Charles Njenga: We are good to go. We can take three more witnesses.

Mr. Wilfred Nyamu: We can move up to midnight.

The Chairperson (Sen. (Dr.) Khalwale): May I know, would you like us to have dinner then we continue or do we do dinner at midnight?

The Vice Chairperson (Sen. Murkomen): How many witnesses do we have remaining?

Mr. Charles Njenga: We have five.

The Vice Chairperson (Sen. Murkomen): Can we take one person?

The Chairperson (Sen. (Dr.) Khalwale): I propose that we go and eat first. After we have eaten, we will see whether we can push to 1.00 a.m. or beyond. If we are unable, we will admit that it is not working.

Let us take a break for 30 minutes.

(The Committee adjourned temporarily at 11.10 p.m.)

(The Committee resumed at 12.05 a.m.)

The Chairperson (Sen. (Dr.) Khalwale): I now call the meeting to order.

(Mr. David Kiseli Kithisya before the Committee)

(Mr. David Kiseli Kithisya took oath)

The Chairperson (Sen. (Dr.) Khalwale): David, kindly, take the middle seat. Counsel, please, confirm that you have the witness statement with us.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, we have the witness statement for the witness. His name is David Kiseli Kithisya. The witness statement is on the supplementary document.

The Chairperson (Sen. (Dr.) Khalwale): You can now proceed, we have seen it.

Mr. Wilfred Nyamu: Could you, kindly, tell these Members of the Special Committee of the Senate your names.

Mr. David Kiseli Kithisya: My names are David Kiseli Kithisya.

Mr. Wilfred Nyamu: What do you do?

Mr. David Kiseli Kithisya: I am an architect by profession working with the Department of Public Works, Embu.

Mr. Wilfred Nyamu: Could you tell Members of the Committee whether you have done any statement in relation to these proceedings?

Mr. David Kiseli Kithisya: Yes.

Mr. Wilfred Nyamu: Would you like to rely on that statement for purposes of these proceedings?

Mr. David Kiseli Kithisya: Yes, Sir.

Mr. Wilfred Nyamu: Hon. Chairman and hon. Senators, I pray that the statement done by the witness is used as evidence for purposes of these proceedings.

The Chairperson (Sen. (Dr.) Khalwale): Cross examination counsel? Counsel for the County Assembly?

The Vice Chairperson (Sen. Murkomen): I am assuming that this is the statement that has been corrected using a biro pen.

The Chairperson (Sen. (Dr.) Khalwale): Yes, that is the one.

Mr. Charles Njenga: Very briefly, Mr. Chairman. Mr. Kiseli, in your statement, you refer to a tender committee. You have said that in the light of the short timelines and complexities of works, the then tender committee opted for the restricted tendering. Right?

Mr. David Kiseli Kithisya: Yes.

Mr. Charles Njenga: Were you part of this tender committee?

Mr. David Kiseli Kithisya: No, but I was involved in the technical evaluation.

Mr. Charles Njenga: Do you know the Members of the tender committee you are talking about?

Mr. David Kiseli Kithisya: I do not know.

Mr. Charles Njenga: So, how did you ever get to know that they opted for tendering by a restricted tender? Is this something that was communicated to you or something that you later discovered?

Mr. David Kiseli Kithisya: When we prepared the architectural drawings, tender documents and forwarded them to the client, we were in constant consultations with the client because of the short time. We were discussing how best we should have the works procured because we had the Kenya at 50 Celebrations and also the East and Central Africa Football Tournament coming up.

Mr. Charles Njenga: Who were you discussing with about how best to procure and yet you were not part of the tender committee?

Mr. David Kiseli Kithisya: I discussed that with the CEC Member for Infrastructure, Eng. Njiru.

Mr. Charles Njenga: Did you ever discuss, at all, anything with regard to this project with the county secretary?

Mr. David Kiseli Kithisya: No, Sir.

Mr. Charles Njenga: So, at no time did any communication flow to you as a works officer to the county secretary regarding this project?

Mr. David Kiseli Kithisya: There was some communication. I am not the Accounting Officer but we have a County Works Officer. I am an architect. The County Works Officer was communicating with the county secretary and the Chief Executive.

Mr. Charles Njenga: That is the information that you have, that the Works Officer was communicating with the county secretary?

Mr. David Kiseli Kithisya: Yes, Sir.

Mr. Charles Njenga: You made an observation in your statement that there are some investigations being done by the Ethics and Anti-Corruption Commission (EACC) regarding this project. Do you know, by your knowledge, the nature of the query and why this investigation was instituted? How did it come about? This is with respect to this project only.

Mr. David Kiseli Kithisya: I can only say that there are allegations that have been in the press. I am not sure about them because we have never received any written communication and why there is a delay.

Mr. Charles Njenga: So, the only thing you know about the investigations is what is in the press?

Mr. David Kiseli Kithisya: Yes, there is no written communication as to why they are carrying out these investigations. They requested for some documents which we forwarded to them.

Mr. Charles Njenga: Lastly, on your statement, you say that you received bid documents relating to the rehabilitation of road works, perimeter walling, fencing and gates.

The documents we got, related to those items set out here alone are; road works, perimeter walling and fence only. Is that right?

Mr. David Kiseli Kithisya: Yes, Sir.

Mr. Charles Njenga: That is okay.

Sen. Mositet: I just want to ask, is it parameter walling or perimeter wall?

Mr. Charles Njenga: It is perimeter walling.

Sen. Mositet: You were given the bricks by the client. Who was your client?

Mr. David Kiseli Kithisya: My client was the county secretary, but the CEC Member for Infrastructure was the one giving me the client requirements.

Sen. Mositet: Are there any brief notes?

Mr. David Kiseli Kithisya: Initially, the briefs were informal, but later he confirmed in writing.

Sen. Mositet: When you came up with the drawings, were they approved by the Embu County?

Mr. David Kiseli Kithisya: The drawings were not approved because the Public Works is an approving entity by itself and we do not need to rotate drawings to the municipal council for approval. The drawings are deemed to have been drawn by a registered architect.

The Chairperson (Sen. (Dr.) Khalwale): Anybody else?

Mr. Wilfred Nyamu: Mr. Kiseli, in the works that you were doing, did you ever meet the Governor of Embu County in relation to your evaluation process?

Mr. David Kiseli Kithisya: No, Sir.

Mr. Wilfred Nyamu: Did you have a chief officer in charge of Infrastructure at that particular time?

Mr. David Kiseli Kithisya: At that particular time, the chief officer had not been appointed.

Mr. Wilfred Nyamu: And to your knowledge, who was acting as the chief officer?

Mr. David Kiseli Kithisya: At the moment, the person who was acting as the Chief Officer was the CEC member for Infrastructure because he is also an engineer by profession. We were communicating with him all the time with regard to matters of infrastructure.

Mr. Wilfred Nyamu: In Public Works, are you directly under the County Government or are you helping them as part of the main Ministry of Public Works?

Mr. David Kiseli Kithisya: We have now been devolved to the counties. We are now working under them.

Mr. Wilfred Nyamu: When did that happen?

Mr. David Kiseli Kithisya: I am not sure of the dates, but I got a circular saying that officers, who were working within the counties after the General Election of March, 2013 were deemed to have been seconded to the counties.

Mr. Wilfred Nyamu: Thank you.

The Chairperson (Sen. (Dr.) Khalwale): Architect, you are free to leave. Thank you for coming.

Mr. David Kiseli Kithisya: Thank you Sir.

The Chairperson (Sen. (Dr.) Khalwale): Do we have another witness?

Mr. Wilfred Nyamu: Hon. Senators, we will now call upon a witness by the name Joseph Ngatho. His statement is in the bundle. He is the County Director of Agriculture.

(Mr. Joseph Ngatho Gicheru before the Committee)

(Mr. Joseph Ngatho Gicheru took oath)

The Chairperson (Sen. (Dr.) Khalwale): Mr. Ngatho, please, take the vacant seat in front of you. Counsel of Governor, could you lead?

Mr. Wilfred Nyamu: Mr. Ngatho, could you, kindly, tell this special Committee of the Senate your names and what you do?

Mr. Joseph Ngatho Gicheru: I am Joseph Ngatho Gicheru. I am currently the Head of Department of Agriculture, Embu County.

Mr. Wilfred Nyamu: Mr. Ngatho, did you do a statement with respect to these proceedings?

Mr. Joseph Ngatho Gicheru: Yes, I did a statement on Sunday.

Mr. Wilfred Nyamu: Do you want to rely on the statement during these proceedings?

Mr. Joseph Ngatho Gicheru: Yes, I want to wholly rely on the statement.

Mr. Wilfred Nyamu: So, you will be cross examined by the Committee and lawyers for the County Assembly.

Hon. Chairman, I request that this statement be treated as evidence in these proceedings.

The Chairperson (Sen. (Dr.) Khalwale): Counsel for the County Assembly, please, cross-examine.

Mr. Charles Njenga: I have a few questions, Mr. Chairman, Sir.

Mr. Ngatho, confirm to us who the County Executive Member in charge of the docket Agriculture, Livestock, Fisheries and Co-operatives was?

Mr. Joseph Ngatho Gicheru: That is Dr. Patrick Njeru Njiru

Mr. Charles Njenga: Would you know when he was appointed to that position?

Mr. Joseph Ngatho Gicheru: I am not very sure, but when we went to the County he was started dealing with us as the CEC member for Agriculture, Livestock, Fisheries and Co-operatives.

Mr. Charles Njenga: As at the time maize was distributed which regards your particular statement, was the County Executive Member already appointed?

Mr. Joseph Ngatho Gicheru: He had already been appointed.

Mr. Charles Njenga: With regard to the issue of maize, could you kindly confirm that according to your statement, it is the County Secretary who directed you and the officers under you to go and collect maize for distribution?

Mr. Joseph Ngatho Gicheru: That is correct. On a Monday she called me and told me to inform the sub-county agricultural officers, Embu East and Embu West to make arrangements to go and collect maize from Monsanto Kenya Limited.

Mr. Charles Njenga: Was this done by a call or a letter?

Mr. Joseph Ngatho Gicheru: This was a call.

Mr. Charles Njenga: It was a call directing you to go and collect maize from Mosantos Kenya Limited?

Mr. Joseph Ngatho Gicheru: By the sub-county agricultural officers.

Mr. Charles Njenga: Did you ever collect the maize or do you know if the maize was ever collected?

Mr. Joseph Ngatho Gicheru: The maize was collected.

Mr. Charles Njenga: Would you know whether that maize was ever distributed?

Mr. Joseph Ngatho Gicheru: The maize was distributed. Immediately the maize arrived I actually mobilized vehicles to deliver the maize to the relevant identified distribution points.

Mr. Charles Njenga: The launch of the distribution was by the Governor?

Mr. Joseph Ngatho Gicheru: I was with the Governor.

Mr. Charles Njenga: Did you ever get to hear of any complaints regarding this maize?

Mr. Joseph Ngatho Gicheru: Yes. I got the complaints on 11th November, 2013. The complaints were that the seeds that we distributed were not germinating. Actually the first person who informed me about this was Dr. Njiru. From that point I asked the sub-county agricultural officers whether they had received the same complaint, which they confirmed. From there we agreed to carry out a survey to confirm the germination status of that seed in most of the farms that we knew we had distributed the seeds.

Mr. Charles Njenga: Do you know, as head of agriculture, whether these seeds had been tested before they were distributed by any person, entity or organ within the county setup?

Mr. Joseph Ngatho Gicheru: Can you come again?

Mr. Charles Njenga: Do you know if these seeds had been tested before they were distributed?

Mr. Joseph Ngatho Gicheru: Before they came to the County?

Mr. Charles Njenga: Yes. Answer that to the best of your knowledge.

Mr. Joseph Ngatho Gicheru: I am not sure, but KEPHIS does that. In fact, they do not allow maize that has not been tested and passed the germination test to be distributed.

Mr. Charles Njenga: So, in respect to this maize, do you know whether KEPHIS had tested it before it was distributed to farmers?

Mr. Joseph Ngatho Gicheru: I was not aware and that is why I asked them to carry out the germination test.

Mr. Charles Njenga: You were not aware? These tests that you directed to be carried out, were after the distribution?

Mr. Joseph Ngatho Gicheru: That was after the distribution and after getting reports that the maize did not germinate.

Mr. Charles Njenga: Would you know how this maize was ever procured?

Mr. Joseph Ngatho Gicheru: I was not involved in procurement.

Mr. Charles Njenga: To the best of your knowledge, who was involved in the procurement of this maize?

Mr. Joseph Ngatho Gicheru: When I did my requisition for this seed, what used to happen is that we used to process our requirements or we used to direct our requisitions for our requirements to the CEC member for Agriculture, Livestock and Fisheries. From there, arrangements would be made to put the request further.

Mr. Charles Njenga: After you did your requisition to the CEC member you do not know how the maize came to be until you were called to go and pick it up by the county secretary?

Mr. Joseph Ngatho Gicheru: That is correct.

Mr. Charles Njenga: As an agricultural expert, could you enlighten us, in terms of values, what is an estimate of the loss that occurred to the farmers to whom these seeds were distributed because of their lack of failure to germinate?

Mr. Joseph Ngatho Gicheru: First, there was wasted time. It had been predicted that the October-November rains would not be adequate. So wasting time by one week was quite a big loss. In fact, the farmers who came after that and wanted advice and they could not put in anymore maize, we were advising them to plant crops that can mature within a short time.

Mr. Charles Njenga: So for the farmers who had planted - let us call it "bad maize" - they did not get to plant maize in that season?

Mr. Joseph Ngatho Gicheru: We recommended that they plant other crops that would survive in that short period.

Mr. Charles Njenga: Last question, to the best of your knowledge, do you know whether this Mosantos, where you collected these seeds, had signed and deposited a performance or a bid bond with the County Executive or with any office within the county set up with regard to the supply of this maize?

Mr. Joseph Ngatho Gicheru: I do not know that one

Mr. Charles Njenga: That is all from me.

The Vice Chairperson (Sen. Murkomen): Mr. Ngatho, did you get involved at any stage of procurement of the seeds?

Mr. Joseph Ngatho Gicheru: I requisitioned for the amount and type of seeds that we required and then I forwarded it to the CEC member. From there he was supposed to process.

The Vice Chairperson (Sen. Murkomen): Is it correct for me to say that the maize is it DK8031 variety, that it was not part of the type of maize that you had requested?

Mr. Joseph Ngatho Gicheru: What happened is that initially when we were requisitioning---

The Vice Chairperson (Sen. Murkomen): It is a “no” or “yes” answer. I do not want stories. In your request requisitioning for the variety of maize, was DK8031 part of the seeds you requisitioned?

Mr. Joseph Ngatho Gicheru: In my knowledge I think it was not.

The Vice Chairperson (Sen. Murkomen): It was not?

Mr. Joseph Ngatho Gicheru: It was not.

The Vice Chairperson (Sen. Murkomen): Is it also correct to say that you had requested for eight tonnes?

Mr. Joseph Ngatho Gicheru: Yes.

The Vice Chairperson (Sen. Murkomen): But 16 tonnes were delivered?

Mr. Joseph Ngatho Gicheru: That is correct.

The Vice Chairperson (Sen. Murkomen): Thank you.

The Chairperson (Sen. (Dr.) Khalwale): At what time did it occur to you that the wrong seed variety had been delivered?

Mr. Joseph Ngatho Gicheru: That was on 29th.

The Chairperson (Sen. (Dr.) Khalwale): Is it after they had been supplied or before?

Mr. Joseph Ngatho Gicheru: The maize arrived on 29th.

The Chairperson (Sen. (Dr.) Khalwale): And the ceremony of maize distribution.

Mr. Joseph Ngatho Gicheru: For the launch?

The Chairperson (Sen. (Dr.) Khalwale): Who led that exercise?

Mr. Joseph Ngatho Gicheru: It was Hon. Martin Wambora.

The Chairperson (Sen. (Dr.) Khalwale): Honorable?

Mr. Joseph Ngatho Gicheru: The Governor.

The Chairperson (Sen. (Dr.) Khalwale): When you discovered that the wrong variety of maize had been delivered did you draw the attention of any of the officers responsible, especially the accounting officer?

Mr. Joseph Ngatho Gicheru: I did not consider it very seriously wrong because initially we thought we would support the drier parts. But the variety could do well, but it was a bit risky because of the way the weather predictions had been given.

The Chairperson (Sen. (Dr.) Khalwale): You are not clear. Repeat.

Mr. Joseph Ngatho Gicheru: What I am saying is that the area which we distributed that seed, it could still do well there. But where we had intended to take the maize was a little bit risky because it was slightly a drier part in the lower areas.

The Chairperson (Sen. (Dr.) Khalwale): On that aspect of being risky, did you give any advice to any of the officers?

Mr. Joseph Ngatho Gicheru: What I did in my statement to the farmers when we were distributing I said that because they were not all going to get that seed, they can also go for other varieties that are more drought tolerant. I particularly mentioned DH02 and KDV.

The Chairperson (Sen. (Dr.) Khalwale): Do you think Governor Wambora received the advice that you had doubts about the viability of that seed either directly or indirectly?

Mr. Joseph Ngatho Gicheru: I actually got a letter from KEPHIS which I forwarded to the chief officer and my CEC member.

The Chairperson (Sen. (Dr.) Khalwale): Is the letter that you sent here?

Mr. Joseph Ngatho Gicheru: The letter should be there.

The Chairperson (Sen. (Dr.) Khalwale): Briefly, what was your advice in the letter?

Mr. Joseph Ngatho Gicheru: The letter that came from KEPHIS?

The Chairperson (Sen. (Dr.) Khalwale): I thought you are saying you wrote a letter?

Mr. Joseph Ngatho Gicheru: I wrote a letter to KEPHIS and copied to my CEC member requiring them to do germination test for that seed so that we would know the cause of the poor germination, which they did.

Sen. Sijeny: I am not getting you clearly. You said that at the time of distribution of the seed you realized that it was not the one you had recommended?

Mr. Joseph Ngatho Gicheru: Yes, Mr. Chairman, Sir.

Sen. Sijeny: At what stage were you writing to KEPHIS or whoever you wrote to? Why did you have to write to them at that time?

Mr. Joseph Ngatho Gicheru: Because even if the variety was not right, the act of not germinating required that we know why the seed did not germinate. They are the authority on this and have actually been given that responsibility to verify or inspect the plant health at any one particular time.

Sen. Sijeny: But you have also said at that particular stage of distribution, you advised some farmers on how to go about it because, in your mind you had that indication that they were not going to do well.

Mr. Joseph Ngatho Gicheru: I also gave alternative seeds that could do equally well there.

Sen. Boy Juma Boy: Mr. Ngatho, you said you are the requisition officer?

Mr. Joseph Ngatho Gicheru: Yes.

Sen Boy Juma Boy: And you requisitioned for a certain type of maize seed. When you went to Mosantos to collect the seed, you were given another type of seed. You are the one who did the requisition, but at the time of collection, you saw that the type you had requisitioned was not the one that was collected, did you not ask why there was the change?

Mr. Joseph Ngatho Gicheru: I want to make it clear that I actually did not personally go for the seed. I was surprised because the rains were almost on and knowing how the procurement process takes long, I thought it was wise that farmers go ahead and plant. In any case, the area that we had targeted initially was in the lower parts of Mbeere North and South sub-counties. We had also targeted the lower parts of Embu East and West. Those are dry areas. Actually DK8031 can do well in Runyenjes. It can do well in Embu East, but slightly in the upper areas. We did not distribute the seeds we got in Mbeere. So the maize could still do well *isipokua* that later the maize refused to germinate.

Sen. Lesuuda: Is there a particular reason that you ordered for particular types of seeds?

Mr. Joseph Ngatho Gicheru: The ones I had recommended?

Sen. Lesuuda: Yes.

Mr. Joseph Ngatho Gicheru: As I said, more than half of Embu County is arid and semi Arid. It is actually a dry area. That is why I am mentioning parts of Embu East and Embu West. The rest of the area is actually dry. Even going by the previous season - the March-April rains - the farmers got very depressed harvest because the rainfall did not do well. This is the reason we recommended the dry land seeds which are recommended for such dry areas----

Sen. Lesuuda: So you agree that you were concerned that you did not get that particular seed when you received it?

Mr. Joseph Ngatho Gicheru: Definitely.

Sen. Lesuuda: At any point was there a decision made that: “Although this was not the seed we asked for, let us go ahead and distribute the seed.” Was that decision made?

Mr. Joseph Ngatho Gicheru: My only consultation when we got the seed is that we were not going to the lower parts.

Sen. Lesuuda: Who made that decision?

Mr. Joseph Ngatho Gicheru.: As I said, I was not involved in the procurement.

Sen. Lesuuda: Not the procurement. I am asking, after you have received the seeds and they were not the correct ones – there was also a launch; who said: Let us just go ahead. Who made that decision if it was ever made?

Mr. Joseph Ngatho Gicheru: The people who procured are the ones who made the decision. As I said, when I took my requisition, the variety and the quantities I had recommended were not what I got.

Sen. Lesuuda: But the Governor went ahead to distribute those seeds. Of course, there is a decision that was made that: “This is not what we asked for, but we will go ahead and distribute the seeds.” Was that decision made?

Mr. Joseph Ngatho Gicheru: Somebody made the decision. I would, perhaps, say it the person who called me to call the sub-county agricultural officers to go and collect the seeds from Monsanto.

The Chairperson (Sen. (Dr.) Khalwale: Who was that person?

Mr. Joseph Ngatho Gicheru: May be the county secretary.

The Chairperson (Sen. (Dr.) Khalwale): He is making a very important point. It is the county secretary?

Mr. Joseph Ngatho Gicheru: I should think so because she is the one who called me to tell the sub-county agricultural officers to go and collect the seed for Mbeere.

The Chairperson (Sen. (Dr.) Khalwale): You say that when the Governor was distributing the seeds, you were there.

Mr. Joseph Ngatho Gicheru: Yes.

The Chairperson (Sen. (Dr.) Khalwale): When you gave the advice, was it in his presence?

Mr. Joseph Ngatho Gicheru: The advice on?

The Chairperson (Sen. (Dr.) Khalwale): That they could plant these seeds so long as they do not come from those parts?

Mr. Joseph Ngatho Gicheru: I did that.

The Chairperson (Sen. (Dr.) Khalwale): He was there?

Mr. Joseph Ngatho Gicheru: The Governor was there.

The Chairperson (Sen. (Dr.) Khalwale): So, he heard that advice?

Mr. Joseph Ngatho Gicheru: I think so.

The Chairperson (Sen. (Dr.) Khalwale): Would it be your evidence that the Governor went ahead and distributed the seeds in spite of what he had heard you say?

Mr. Joseph Ngatho Gicheru: I said this at every point that we launched the seeds; that the seed could be planted in that region, but because I knew the seeds were not going to be enough, for those who were not going to get, I actually did not recommend that seed. I said you can also try other varieties and I mentioned DH02 and KBV.

The Chairperson (Sen. (Dr.) Khalwale): Yes, Sen. Mositet?

Sen. Mositet: So, on that note, after advising the farmers that they can continue planting that variety, then the issue of compensation could not come in; that it was a wrong seed that you had collected.

Mr. Joseph Ngatho Gicheru: The only problem I saw with the seed, I said that seed in the region where we were distributing could also perform. The only problem is that we

were not able to detect at that time – and I think it was difficult to detect – was the non-germination, but for the area we distributed the seed, it is a variety that can also do well.

Sen. Mositet: So, you left comfortably knowing that if they continue planting, at least, the results can be positive?

Mr. Joseph Ngatho Gicheru: In fact, I told them because of the way the rains had behaved before and going by the prediction that there was not going to be an adequate and properly distributed rainfall, I told them now to save on that seed and that the best thing was now to wait for the onset of the rains. In fact, the following day, the rains came and the farmers started planting.

The Chairperson (Sen. (Dr) Khalwale): Okay, I will give Sen. Orengo and Sen. Wamatangi one chance each.

Sen. Orengo: I am showing the witness the affidavit sworn by the Governor--- Give it to the witness.

(The document was given to the witness)

We have referred to this affidavit before. Just confirm that, that is an affidavit by the Governor.

If you look at the end of that affidavit, it is sworn by Governor Wambora. Have you looked at the last page? It is numbered one, two, three up to 23, 24 or 25. Just keep it in the sequence in which it is. Have you seen where he has signed?

Mr. Joseph Ngatho Gicheru: Yes.

Sen. Orengo: Now, I want you to look at paragraph 8 of that affidavit and read it out loudly to the Committee.

Please, just read it out loudly to us.

Mr. Joseph Ngatho Gicheru: It says:-

“That whereas the ex-parte applicant is responsible for the co-ordination of the entire County Government and Executive, the accounting officers in respect of the departments of agriculture, infrastructure and sports are the officers appointed under Section 148 to head those entities, being departments of the County Government.”

Sen. Orengo: Yeah; and then look at paragraph 15. Again; read it loudly.

Mr. Joseph Ngatho Gicheru: It says:-

“My office has received correspondence between the Director of Agriculture and Kenya Plant Health Inspectorate Services (KEPHIS) on the issue of non-germinating maize seeds supplied to the county exonerating the county officers.’

Sen. Orengo: Now, when you read there that “there was correspondence between the Director of Agriculture---“, you were the director?

Mr. Joseph Ngatho Gicheru:: Yes.

Sen. Orengo: At the end of that affidavit, it says “the letter from KEPHIS;” can you look at it? Note that you have said the Governor says that KEPHIS exonerated the county officers. Looking at that letter from KEPHIS, is there anywhere where he has exonerated the county officers? It was in response to you. Has KEPHIS exonerated county officers?

Mr. Joseph Ngatho Gicheru: I think so.

Sen. Orengo: Where? I hope you know the word “exoneration.” Please, answer me accurately. Otherwise I will be forced to ask you where you went to school, the standard you reached, did you pass Kenya Certificate of Primary Education (KCPE) or Certificate of Primary Education (CPE); or something like that.

(Laughter)

Can you put your finger on it? You are not seeing that letter for the first time.

Mr. Joseph Ngatho Gicheru: Yes, I am not seeing it for the first time.

Sen. Orengo: Is there anywhere where it says that the county officers were exonerated?

Mr. Joseph Ngatho Gicheru: Yeah, I think so. “The seed lots were sold to farmers in Embu by your company with full knowledge that the germination capacity was far below the national standard of 90 per cent, and the certificate copy attached, having been stamped “Not for Sale” as required by law.”

Sen. Orengo: But I am talking about the exoneration. Is there anywhere they have exonerated county officers?

Mr. Joseph Ngatho Gicheru: It says:-

“Please note, therefore, that any adverse effects of this action would be the responsibility of your company.”

Sen. Orengo: Yeah, but the words “exoneration” is what I am looking for. Please, do not try to hide behind words.

Mr. Joseph Ngatho Gicheru: Yes. It says:-

“The Seeds and Plant Varieties Act, Cap.326, Regulation 16, Article 3 clearly states that it is the responsibility of the seed merchant to call inspectors for re-sampling, re-testing and receiving of seed lots whose validity certification has expired.”

While Regulation 17 Article 3 further says that:-

“The merchant is responsible for the quality of any seed he sells or offers for sale.”

Sen. Orengo: So, that is what you say is exoneration?

Mr. Joseph Ngatho Gicheru: Yes.

Sen. Orengo: Now, in that letter, KEPHIS seems to be saying that their seeds were sold to farmers. Is that true? You know, sometimes when you want to lie, I think you should lie with some little bit of intelligence because you know the law is talking about responsibilities of merchants in certain contexts.

Mr. Joseph Ngatho Gicheru: Yeah, the letter said so.

Sen. Orengo: Now, what I am asking you is this; were the seeds sold to farmers?

Mr. Joseph Ngatho Gicheru: No, the seeds were not sold to farmers.

Sen. Orengo: But where does the idea that the seeds were sold to farmers come from? I want to suggest to you that it was from your letter that you suggested to KEPHIS that, you know, there is this company that has sold seeds to farmers instead of saying they were sold to you as a County Government. Who were the seeds sold to; were they sold to farmers?

Mr. Joseph Ngatho Gicheru: They were sold to the County Government.

Sen. Orengo: So, what he is saying there, that it was sold to farmers, is not accurate?

Mr. Joseph Ngatho Gicheru: Yes.

Sen. Orengo: But I am suggesting that it is you who created that impression to KEPHIS. You are trying to run away from responsibility and liability.

Mr. Joseph Ngatho Gicheru: This must have been an omission and it is regretted.

Sen. Orengo: Yes. Do you have that letter that you wrote?

Mr. Joseph Ngatho Gicheru: I have it in soft copy.

Sen. Orengo: Do you have it here?

Yeah, I think you are correct in terms of this letter; that the County Government bought and distributed the seeds.

Mr. Joseph Ngatho Gicheru: Yes.

Sen. Orengo: So, the letter from KEPHIS is not accurate. That is what you said.

Mr. Joseph Ngatho Gicheru: Yes.

Sen. Orengo: Finally, what concerns me is that you were the one who would advise the County Government, for example, on the seed variety which was good for those particular areas.

Mr. Joseph Ngatho Gicheru: I did.

Sen. Orengo: You are the one who gave the advice?

Mr. Joseph Ngatho Gicheru: I gave the advice, in fact, in consultation with my sub-county agricultural officers and I even involved---

Sen. Orengo: But the advice came from you after consultation?

Mr. Joseph Ngatho Gicheru: Finally, I wrote the resolution that we made as a department.

Sen. Orengo: And did this variety, DK8030, feature in your advice?

Mr. Joseph Ngatho Gicheru: Actually---

Sen. Orengo: The answer is "yes" or "no". Did it feature?

Mr. Joseph Ngatho Gicheru: No.

Sen. Orengo: Thank you.

Sen. Wamatangi: Mr. Chairman, Sir, I have two very short questions. I hope it does not look like we are belaboring this point; but if we just reflect, distributing 16,000 tonnes of non-germinating seeds to farmers in a whole county, what that means is that you are creating the potential of causing---

Mr. Joseph Ngatho Gicheru: It is 16 tonnes and not 16,000 tonnes.

Sen. Wamatangi: Fine; 16,000 kilogrammes. If you distribute that, what we are saying in essence is that those are seeds you distribute to farmers can cause potential famine to a county; that is the import of what you are saying. You are saying that you have thousands of peasants who have tilled their land, prepared it for planting; they plant that seed and

wait for it to germinate, and it does not germinate. So, it is not a matter that is as light as it might seem. That is why I wanted to pose the question to the director. After this mess was caused, is there any action that you know that was taken either by yourself or by the County Government?

Secondly, because you have clearly stated that you recommended a different type of seed, do you think or know that the change into that non-germinating seed was either a deliberate action or a mistake?

The Chairperson (Sen. (Dr) Khalwale): As you answer him, quickly comment on this one. Did you receive any letter from the Governor or the county secretary asking you to show cause why disciplinary action should not be taken against you? If you did not receive it, did any officer who was in these positions of authority receive such a letter from the Governor or the county secretary?

Mr. Joseph Ngatho Gicheru: I am not aware of one.

The Chairperson (Sen. (Dr) Khalwale): Up to now, no such communication has been made?

Mr. Joseph Ngatho Gicheru: No.

The Chairperson (Sen. (Dr) Khalwale): Has the Governor or the county secretary ever called for a crisis meeting to address this disaster after it happened?

Mr. Joseph Ngatho Gicheru: I have not attended one, Sir.

The Chairperson (Sen. (Dr) Khalwale): Uh?

Mr. Joseph Ngatho Gicheru: I have not heard of one.

The Chairperson (Sen. (Dr) Khalwale): Okay.

Sen. Wamatangi: Mr. Chairman, Sir, I just want to say that two of my questions have not been answered. One, is there any action that you know of that has been taken since that action, as of today? Secondly, was it a deliberate action or an error; that you recommended a different type of seed and then a different type of seed that did not germinate was purchased?

Mr. Joseph Ngatho Gicheru: I think nobody could tell physically that these seeds were not going to germinate, unless we did a germination test.

Sen. Wamatangi: Excuse me, Mr. Director, that is not what I have asked. I have not asked whether anyone could tell; I have asked a direct question. You said that you recommended a different type of seed and then a different one was bought. Was that

change or shift in that position deliberate or would you sit there, and say that it was an error that occurred? What happened?

Mr. Joseph Ngatho Gicheru: You know in a certain area, you can grow different varieties of crops.

Sen. Wamatangi: Did you order for two different varieties of seeds?

Mr. Joseph Ngatho Gicheru: I did not order, what I did was---

Sen. Wamatangi: Did you recommend for two different types of seed?

Mr. Joseph Ngatho Gicheru: I had recommended two different two different types of seeds.

Sen. Wamatangi: So, are you saying that you had recommended for this DK8030?

Mr. Joseph Ngatho Gicheru: I had not recommended the DK8030 variety.

Sen. Wamatangi: So, was it an error that it finally found its way to the County Government and was distributed to farmers?

Mr. Joseph Ngatho Gicheru: I said I had clearly stated the seeds that we had recommended, but that is not what I got. I think I was not consulted when it came to the purchase.

Sen. Wamatangi: So, was that a deliberate action by somebody? If it is not by you, was it deliberate, according to you?

Mr. Joseph Ngatho Gicheru: I may not be able to tell why my requisition was not followed through.

The Chairperson (Sen. (Dr) Khalwale): Okay, thank you. Your answers are on record. But, please, note that you have been changing your answers over and over again.

Yes, re-examination?

Mr. Wilfred Nyamu: Mr. Ngatho, kindly look at the document that I am going to give you. Hon. Senators, refer to page 311 of the big bundle; do not go any further, just stick to that page. Are you there, hon. Senators?

Who wrote that letter?

Mr. Joseph Ngatho Gicheru: It is me.

Mr. Wilfred Nyamu: That is your letter?

Mr. Joseph Ngatho Gicheru: Yes.

Mr. Wilfred Nyamu: To who was it addressed?

Mr. Joseph Ngatho Gicheru: To the CEC Member.

Mr. Wilfred Nyamu: Why did you write to the CEC member? Could you explain the genesis of that letter?

Mr. Joseph Ngatho Gicheru: This was information that had been requested of me.

Mr. Wilfred Nyamu: What information?

Mr. Joseph Ngatho Gicheru: There was the issue of the Artificial Insemination (AI) kit.

Mr. Wilfred Nyamu: Is it the information on page 313; the next page? What information had he requested you for?

Mr. Joseph Ngatho Gicheru: There was the issue of the seed requirements and AI kits that he wanted to buy for the county.

Mr. Wilfred Nyamu: What else had he requested you for?

Mr. Joseph Ngatho Gicheru: Seed requirement.

Mr. Wilfred Nyamu: Hon. Members, that is on page 313. Are you the one who prepared this chart that is written "seed procurement plan/request for short rains 2013, Embu County?" Are you the one who generated that?

Mr. Joseph Ngatho Gicheru: I think that I had generated this list, but---

Mr. Wilfred Nyamu: Just answer that question. Are you the one who had generated that list?

Mr. Joseph Ngatho Gicheru: This list was generated by my crops officer, but I have what I forwarded under this letter.

Mr. Wilfred Nyamu: You stated that you were asked to provide certain information and you provided information on the seeds and also AI requirement kit. Right?

Mr. Joseph Ngatho Gicheru: Yes.

Mr. Wilfred Nyamu: This is from your office; the seed procurement plan?

Mr. Joseph Ngatho Gicheru: This seed requirement plan is from my office, but this is not what I forwarded together with this information.

The Chairperson (Sen. (Dr.) Khalwale): Can you explain? I can see you looking at the Governor.

Mr. Joseph Ngatho Gicheru: I am not looking at the Governor.

The Chairperson (Sen. (Dr.) Khalwale): Well, I have got eyes, just like you.

Mr. Wilfred Nyamu: He is looking at that side, but not at the Governor, Mr. Chairman, Sir. You may need to be specific, with due respect.

Mr. Joseph Ngatho Gicheru: This seed requirement here was made quite earlier. It was revised and what I attached in this letter is what I gave the advocate, Mr. Njoroge, on Sunday. It is purely in my email. If I open my email, you can see what I actually forwarded. It was not this one.

The Chairperson (Sen. (Dr.) Khalwale): What is the difference between what you forwarded and this one?

Mr. Joseph Ngatho Gicheru: The one that I forwarded had actually KDV. If I am not wrong, it was Kshs4,280,000. That was the first requisition that I sent to the CEC member and it was done on 11th.

Mr. Wilfred Nyamu: Did you forward that particular requisition that you had done when you were doing your statement?

Sen. Orengo: You know, now you are cross-examining him actually. I do not know whether that helps you.

Mr. Wilfred Nyamu: I am driving to a point, with due respect.

Sen. Orengo: We are lawyers. I do not know whether you appreciate the consequences of what you are doing, because now you are challenging your witness.

Mr. Wilfred Nyamu: I am just seeking for clarification.

Sen. Orengo: If you do not believe your witness, then you are telling us---

Mr. Charles Njenga: Mr. Chairman, Sir, maybe to be of assistance, I think that the witness is referring to schedule annexed to CAE7 in the bundle of documents that are--- our bundle that has KDV. CAE7 has several annexures. The document forwarded with annexure 2, that is, the letter by the CEC member, agriculture. Annex 2 is a letter which has a report annexed to it. At the last page, there is a schedule after Appendix 1, seed requisition by variety.

The Chairperson (Sen. (Dr.) Khalwale): Counsel for County Assembly, please, show him that so that he confirms whether that is what he is referring to.

(Mr. Njenga showed the witness the document)

Mr. Joseph Ngatho Gicheru: This is the schedule that I forwarded together with the said covering letter.

The Chairperson (Sen. (Dr.) Khalwale): Counsel, your witness is now imputing by now confirming that---

Sen. Orengo: What he is trying to say is that the story that you are trying to advance is false. That is why I was wondering why you are going there, and he is your witness.

The Chairperson (Sen. (Dr.) Khalwale): We will want you now to tell us why you have annexed this table which did not come from the witness. From whom did you get it? The table in page 313 has been disowned by your own witness.

Sen. Mositet: Mr. Chairman, Sir, I think that you need to protect the witness because of the way that I am seeing the counsel is handling him. He requires your protection.

Mr. Wilfred Nyamu: In which way, Mr. Chairman, Sir? I am not going to harm him.

The Chairperson (Sen. (Dr.) Khalwale): Counsel, I would like you to respond to this. You are an officer of the court and you know the consequences of what you are now wading into.

Mr. Wilfred Nyamu: This is a document that was forwarded to us by the CEC. These are documents that were forwarded from the department of agriculture and there is nowhere else we would have gotten them. We are also trying to find out. This is a fact finding operation. As it is---

Sen. Orengo: But your witness is on oath and you know the consequences of getting him to say what is not his---

Mr. Wilfred Nyamu: I am not going to get him to say what he does not want to say.

The Vice Chairperson (Sen. Murkomen): Can I get something from the witness again, just for the sake of clarity? You are saying that there is a letter that you wrote on 11th October, 2013 that says: "Seeds requirements and information on artificial insemination. Appended here, please, find the above information for your necessary action." But you are saying that the attachments here are not yours.

Mr. Joseph Ngatho Gicheru: The attachment on AI kit is mine, but if you go to the email---

The Vice Chairperson (Sen. Murkomen): Is the one on seed procurement plant not yours?

Mr. Joseph Ngatho Gicheru: What I am saying is that, that could have also come from my office, but that is not the attachment that I did.

The Vice Chairperson (Sen. Murkomen): The one that you did with the letter is 179. Okay.

The Chairperson (Sen. (Dr.) Khalwale): Hon. Members, I think that we have all made the point, unless you want us to pursue in asking the counsel. That is not necessary. We have made the point that the witness has disowned the evidence in the Governor's bundle. So, we proceed.

Mr. Wilfred Nyamu: Mr. Ngatho, would you agree with me that seeds were distributed in different areas of the county and were categorized into two areas; where there are some areas that did not get maize and Mbeere South and North got sorghum and green grams?

Mr. Joseph Ngatho Gicheru: That is correct.

Mr. Wilfred Nyamu: Was that on your advice?

Mr. Joseph Ngatho Gicheru: Yes. But in my initial requisitions where we had KDV, we wanted most of the support to go to Mbeere. We recommended that we can do to the lower drier parts of Embu East and Embu West. Because of the way that the rains were going to be short, we thought that the dry land seeds, that is, KDV 4 and KDV 6 would be suitable for all those areas. That is why I disown that attachment. This attachment was later---

The Chairperson (Sen. (Dr.) Khalwale): You have made your point. Counsel, we want to make progress.

Mr. Wilfred Nyamu: Now, you would agree with me that sorghum and green grams were supplied to Mbeere North and South?

Mr. Joseph Ngatho Gicheru: That is correct.

Mr. Wilfred Nyamu: And that maize, that is DK8031 was supplied to the upper part of Embu County?

Mr. Joseph Ngatho Gicheru: Yes.

Mr. Wilfred Nyamu: Would DK8031, in your opinion, be suitable for that area; the upper part of the Embu County in terms of the terrain?

Sen. Orengo: Counsel, what is that question in aid of, really?

Mr. Wilfred Nyamu: Mr. Chairman, Sir, it is because this DK---

Sen. Orengo: The case was "procurement of wrong seeds." So, whether you are saying that they are suitable or not and he has already made the point that those are not the ones that he recommended---

The Chairperson (Sen. (Dr.) Khalwale): Counsel, you are overruled because you are not going to make your own evidence. The witness is there.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, am I entitled to cross-examine him any further?

Sen. Wamatangi: Mr. Chairman, Sir, where this is leading to is that somebody, probably, below the Governor was playing games.

The Chairperson (Sen. (Dr.) Khalwale): Senior Counsel, Orengo, this is where your seniority comes to play. I am taking it very badly that at a sitting of the Senate, the Counsel of the Governor, either with or without his knowledge, is giving us here evidence that is misleading deliberately and we have a witness who is confirming that you, the Governor and somebody who is not here today, have fixed this thing here so as to mislead us, to achieve a desired goal.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, from the beginning and inception, we indicated very clearly in our opening remarks, that the Governor is not directly involved in procurement. So, in these particular investigations, if it is found that somebody is applying deceit either to this Committee or even the Governor, that person may be culpable, as the Governor is not involved in procurement at all. That is our point and these documents were actually given to us---

Sen. Wamatangi: Counsel, it is common sense that the Governor does not write these reports or place the order for seeds. It is as simple as that. If you are continuing on that line that these seeds can germinate here and there, then produce this person that you seem to know. Produce the person who has doctored the report and recommended those seeds, because the witness has disowned that report. You insisted on it and so, you must be having information.

The Vice Chairperson (Sen. Murkomen): How does it help your case, and the Senior Counsel has told you several times; that the only thing that you needed to deal with is the witness who is here. If he says that it is not true, then you move on, because it could be someone else who is not your witness and then we move to something else. I do not think that it is also helping if we were to make conclusion here. As Members, we will see all those things in balance later, but it is for you to deal with this witness in a manner that will conclude what you are supposed to re-examine in favour of your case, and then the

rest that he is unable to answer, we will draw our conclusions at the appropriate time. So, I would like you to move---

Sen. Orengo: Also, Counsel, you should not put us in a position where we begin to think that you are trying to make your witnesses lie on oath for the sake of the Governor, because you have got responsibilities to your witness also, just as much as you have got responsibility to the Governor. That is why I was trying to put in a word of caution; that you are endangering your case and also putting the witness in a situation where we may now cite him for perjury.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, let me proceed on another line, since he does not seem to understand that document. It is a process; we are also getting to know what is happening. Look at the letter that you wrote on page 343. Is that your letter?

Mr. Joseph Ngatho Gicheru: Yes, this is my letter.

Mr. Wilfred Nyamu: Why did you write that letter? You wrote it as a complaint to KEPHIS. Is it not?

Mr. Joseph Ngatho Gicheru: Yes.

Mr. Wilfred Nyamu: You have been asked whether the letter by KEPHIS exonerates officers in the directorate of agriculture from blame.

Mr. Joseph Ngatho Gicheru: That is correct.

Mr. Wilfred Nyamu: What does KEPHIS say in this letter in respect to seeds that fail? Whose responsibility is it, according to them?

Mr. Joseph Ngatho Gicheru: The company that sold the seeds.

Mr. Wilfred Nyamu: Would you explain to this Committee what Kenya Plant Health Inspectorate (KEPHIS) deals with?

(Consultations)

Yes, but we may not have him now and I do not know whether I will be given time to bring him if he does not come. So, I thought I should exhaust the issue.

The Chairperson (Sen. (Dr.) Khalwale): So, why use this witness to achieve what a witness from KEPHIS is going to achieve?

Mr. Wilfred Nyamu: Just in case we do not get a witness from KEPHIS. He is aware of KEPHIS and that is why I am asking that question.

Mr. Joseph Ngatho Gicheru: I am aware of KEPHIS, but I do not do exactly know what KEPHIS does. He has written a statement and explained details and I may not know their procedures. So, I may not be an authority on this document.

The Chairperson (Sen. (Dr.) Khalwale): I want to make a serious statement on this from the Chair. The fact that there has already been an attempt to make you honour a document that was not yours, I would be reluctant even if you knew about KEPHIS, to speak to it because you might again be cornered.

Witness, we want to thank you, we have kept you up to very late in the morning, but it is the seriousness of the matter. We are sorry. You are now free.

(The witness withdrew from the stand)

Counsel for Wambora, do you have another witness?

Mr. Wilfred Nyamu: Mr. Chairman, Sir, we have a witness who was summoned yesterday, that is, Mr. Munyaka, but he had not done his statement.

The Vice Chairperson (Sen. Murkomen): Do you have any other witness whose statement is before this committee?

Mr. Wilfred Nyamu: Actually, some of the witnesses have left because it is 1.30 a.m. and I have to find out if there is any that is left.

The Chairperson (Sen. (Dr.) Khalwale): Is there any of the witnesses whose statement is here?

Mr. Wilfred Nyamu: Let me check. Just give me two minutes to check.

Sen. Sijeny: As you go, there is Robert Ireri, John Muriuki and Rose Ndwiga.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, I am told that the witnesses that we have are actually asleep. They are here, but asleep. So, we are taking a risk because these people may be too tired.

Sen. Orengo: The problem is that we have to report on Friday. Tomorrow was set for The Vice Chairperson. The risk is we cut you short and you give us those statements which we will rely on.

The Chairperson (Sen. (Dr.) Khalwale): Let me hear the counsel very well. Is it your belief that if you woke up those witnesses, they would not perform to your expectations? Seriously? I want to make a decision.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, as it is, the mind works in different ways. When somebody is asleep, when you wake up sometimes you never know. So, basically I cannot vouch for the freshness of their minds.

The Chairperson (Sen. (Dr.) Khalwale): Hon. Senators, this is the case of the Governor and these are the witnesses of the Governor. So, the Governor is requesting that his witnesses should not take the stand because they are not alert. So, he is requesting us that we decide on how to deal with him now that his witnesses cannot take the stand. The options to me which we should decide at 2.00 p.m. are as follows: The first one is to see if we can navigate some little time for him tomorrow so that he brings in the witnesses, so that we are seen to be fair to him. The other option is that we decide to take their statements and weigh their evidence using those statements. So, can we make that decision? So, colleagues comment on the two options that we have.

The Vice Chairperson (Sen. Murkomen): Mr. Chairman, Sir, to be fair, I have not heard the counsel of the Governor says that he is unable to bring those people. He just said that he is not sure that when they awaken, they will be able to be put on the stand. He has not exhausted that option yet.

Sen. Wamatangi: Mr. Chairman, Sir, my proposal would be that we strictly allocate the Governor's witnesses only two hours of the morning. I am making my proposal based on where he is going. Probably, you can give him one and a half hours. We can start at 9.00 a.m. and we finish at 10.30 a.m.

Sen. Orenge: Mr. Kibe should tell us how long he needs then we work backwards.

Sen. Juma Boy Juma: Mr. Chairman, Sir, would it be hard to ask that we check their statements and take them as part of evidence.

The Chairperson (Sen. (Dr.) Khalwale): Mr. Kibe, what do you have to say? As you say, remember Sen. Orenge's question in terms of how much time you need.

(Consultations)

Is there a colleague or counsel from the county who is ready while Kibe is organizing himself? Is there a comment from the County Assembly?

Mr. Kibe Mungai: I am ready, Mr. Chairman, Sir.

The Chairperson (Sen. (Dr.) Khalwale): Proceed.

Mr. Kibe Mungai: Before coming to the question, the concern that we are having, originally we believed that we are going to start early yesterday. That was not possible. Yesterday we rose in order to point out that fact. It was obvious that the procedure that the Governor was adopting would lead us into this kind of a scenario. Personally, I am not surprised that we are in this situation. If we proceed this way, there is a high

possibility that up to 1.00 p.m. tomorrow, we shall still be dealing with the Governor. The loss of sleep today is on the assumption that we will be able to start today morning.

An hon. Senator: It is already tomorrow morning!

Mr. Kibe Mungai: Before I asleep, I am unable to change the day, sorry. The assumption is that if we begin late afternoon tomorrow we would be proceeding when we are most tired. Assuming that we start at 9.00 a.m. then it means one would have slept for three hours. That would place us at a disadvantage. Therefore, for all the sacrifice that these other witnesses are being called upon - it is just to come for 20 minutes. Actually they are in a better position because they have slept a little bit. Therefore, for me, those witnesses who are there should be woken up or the Governor must wake them up. We do not have to extend the number of people and we are seriously disadvantaged. As regards the issue of time---

The Chairperson (Sen. (Dr.) Khalwale): Mr. Kibe, I will tell you why I am going to protect the Governor. It is because we do not want him, in his submission, to tell us, therefore, the Senate and the Republic that we conducted ourselves in such a manner that he could bring the best out of his witnesses and that we forced him to wake up his witnesses. That, we shall not do because the stakes are so high for that man. He is likely to be removed from office. If you are removing me from office, you better hear me.

Mr. Kibe Mungai: I would then agree with the Chair and sacrifice more - probably more than anybody else. As regards time indication, our opening statement should be one hour.

Sen. Orengo: Mr. Chairman, Sir, before you make your final ruling, after the Governor completes his case in terms of witnesses, then there are going to submissions by counsels from the County Assembly, then they are going to respond. Then the County Assembly has a right of reply, that, obviously, as Kibe is saying, is going to take you to 3.00 p.m. tomorrow. Just think about how long the opening addresses took. So, the sacrifice would be that tomorrow we stand the Governor's case and give Mr. Kibe an opportunity since he is calling witnesses and we wrap it up. So, tomorrow if we go on until 1.00 p.m. in the night so be it. I think The Deputy Governor is keeping an advocate here and Mr. Kibe must be here because there maybe things arising that he may need to listen to. So, we can stand his case down and start with Mr. Kibe tomorrow.

Mr. Kibe Mungai: The facts for our case as they are coming out, these were charges that were really against the Governor and, therefore, ideally you would want to hear all the case against the Governor because the doctrine under which The Deputy Governor is being brought into this case is what they are calling co-superintending. Therefore, we would want to hear his submission exactly how it closes so that we can know what is our entry point? My big concern would be, as much as possible, by noon tomorrow, we should start with The Deputy Governor's case, but that may not be possible if some extra work is not done either tonight or some witnesses forfeited because this is foreseeable. We have seen witness, even if they are supposed to take 20 minutes, nobody has taken less than one hour. Even when we modified the procedure to begin with cross

examination, that thing has not been possible. The county secretary clearly is going to take quite some time from what is emerging from the evidence.

Sen. Lesuada: Mr. Chairman, Sir, I just wanted to ask that we all knew that we are going to push ourselves to a certain limit. I would just ask if the counsel of the Governor would look at the witnesses that they were to bring tonight apart from those two who did not have the statements, that is the Clerk and Mr. Munyaka, then we can see whether we can take statements and use them. I think we will take more time with those two, the ones we had instructed to bring their statements tomorrow. We need to hear from them.

The Chairperson (Sen. (Dr.) Khalwale): Counsel for the Governor, I know it has been a little bit disappointing for you to find your witness have fallen asleep, but are you able to respond to what she is saying? How many witnesses and how much time will you need so that we manage you, we do not want to push you.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, if we can allow the procurement expert, Mr. Munyaka, who is going to talk about procurement, although we do not have his statement, that is a technical aspect. We could have him now---

The Vice Chairperson (Sen. Murkomen): Let us just know how many witnesses we still have.

(Consultations)

They are five.

Sen. Lesuada: Mr. Chairman, Sir, the issue of asking how much time we will take---

The Vice Chairperson (Sen. Murkomen): You must produce the witness then.

Mr. Wilfred Nyamu: The one who was summoned has not showed up. So, they are five. So, we can confidently say that we have five witnesses.

The Vice Chairperson (Sen. Murkomen): Are you comfortable with the proposal by a Member that you put Mr. Munyaka and the county secretary on the stand, then for the other three, we can take their statements?

Mr. Wilfred Nyamu: No! No! They are too important. It is not possible.

The Governor of Embu County (Hon. Martin Nyaga Wambora): Let us take the proposal by the Chairman. Give us up to 1.00 p.m. tomorrow we shall have finished.

The Chairperson (Sen. (Dr.) Khalwale): Mr. Wambora, my brother, I believe the success of tomorrow will depend on how we handle administrative issues; namely, how strict I will be in making sure that people do not digress or take too much time building a question. Sometimes we take two minutes to build a question that we could have asked in

one minute. So, we would be slightly more strict so as to create time for The Deputy Governor's case to start by midday. By time we go for lunch at 1.00 or 1.30 p.m. we should have done one and a half hours of The Deputy Governor's case. So, administration of time will be strict. We are all here and we are interested to move in the right direction. So, Members, can we start at 9.00 a.m.? It is quite possible. This is early.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, to be very honest and realistic, there is no way we can put in witnesses at 9.00 a.m., do our submissions and responses and be through by mid day. That is not realistic. What I want to suggest is if, probably, we could get to know how much time - since Mr. Kibe is not coming up with any witness - how much time does he expect to take so that now if he expects to take three hours in his evidence---

Sen. Orengo: We are being unfair to Mr. Kibe because we are already eating into his time. According to our schedule, we should have started today up to tomorrow, and then we begin to do our deliberations. So, it is really upon you to make this decision. He wants to listen to you to the end.

Mr. Charles Njenga; Mr. Chairman, Sir, I think as you consider. Mr. Kibe, you will also want to consider that the County Assembly also has to make its case against the Deputy Governor. So, in the consideration of time, you will also want to be sensitive to that particular requirement for us to set out the basis and the case against the Deputy Governor so that she can respond, so that we balance. We should not just look at it as if it is going to be Mr. Kibe submitting alone, but our input in that particular process should also be factored in.

Sen. (Prof.) Lesan: Mr. Chairman, Sir, I know time is the real challenge that we have here. I do not know if I may ask and I will need your guidance on this. I do not know whether it is possible or what impact it will have if we as a committee split into two groups so that we conduct two sessions and then we will come back and report.

The Chairperson (Sen. (Dr.) Khalwale): That is against the Standing Orders.

The Vice Chairperson (Sen. Murkomen): If we split ourselves, we will not make a quorum in the first place.

The Chairperson (Sen. (Dr.) Khalwale): Hon. Members, a decision has to be made on all the parties.

Sen. Orengo: Mr. Chairman, Sir, you should also be fair to the Committee. After all these, we are supposed to sit, deliberate and write a report. In order to do justice to this case, like on any single charge - I listened to Peter very well - we have got to look at that charge, the elements, the particulars and the law. There are so many charges and if you want us to listen to you and then, at the end, we have only one hour to deliberate. I do not know what type of deliberation you want us to undertake. I think that is to the Governor's advantage that the Committee has enough time to look at all these issues.

Otherwise, if we are just going to make a general view of the case, it will be too late because once you give this presentation to the Senate they do not want---

Sen. Wamatangi: Mr. Chairman, Sir, I think we need to compartmentalize each of the functions of the duties that we have into time blocks without giving in, such that it is the hours we allocate to the first opening case of the Governor, we be strict that he follows those timelines. If we say we are allocating him just two hours, it is two hours strictly and then from there we proceed with the case of the Deputy Governor and we know we are closing her case at 6.00 p.m. and then we retreat to write our report. That is the only way we can succeed. This open door policy will not help us.

The Chairperson (Sen. (Dr.) Khalwale): Thank you. We have heard all we had to say and I want to adjourn with one appeal; that, especially Governor, tomorrow keep time. At 9.00 a.m., we will be here and then we want to promise you that we are going to manage the process until the desired goal is achieved. We want to make all parties happy, especially the country.

Sen. Orengo: Mr. Chairman, Sir, the other day I tried to plead with you that we do not start at 9.00 a.m. and I am always very much affected that meetings depend on who arrives last. So, today, at least on my part, I was on these premises at 7.00 a.m., but we did not raise a quorum until 10.00 a.m. and then we started waiting for the Governor. I think we need to be realistic.

Sen. Lesuuda: Mr. Chairman, Sir, we should give time that we are certain we will all be here. So, we should say 10.00 a.m. and we make sure all of us are here. If we say 9.00 a.m., others will come at 10.00 a.m.

The Chairperson (Sen. (Dr.) Khalwale): Could we make it at 10.00 a.m. Governor?

Mr. Wilfred Nyamu: Mr. Chairman, Sir, 10.00 a.m., is okay with us.

The Chairperson (Sen. (Dr.) Khalwale): The County Assembly?

Mr. Charles Njenga: Mr. Chairman, Sir, 10.00 a.m. is okay as long as we are able to manage time so that all parties are accommodated. But we are also ready to come here at 9.00 a.m.

The Chairperson (Sen. (Dr.) Khalwale): Counsel Kibe, do you support 10.00 a.m.?

Mr. Kibe Mungai: *(Mr. Kibe spoke off record)*

The Chairperson (Sen. (Dr.) Khalwale): We will manage the process tomorrow.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, I beg that we only be managed. If we say 1.00 p.m, and we have not finished, we do not want to commit ourselves to that. We are here up to 2.00 a.m. today. We can do up to midnight tomorrow.

The Chairperson (Sen. (Dr.) Khalwale): I want to assure you that we are going to manage. There is no problem.

Mr. Wilfred Nyamu: Mr. Chairman, Sir, we are optimistic you are going to manage.

The Chairperson (Sen. (Dr.) Khalwale): Thank you so much. We shall meet at 10.00 a.m.

The Committee adjourned at 1.50 a.m.