

REPUBLIC OF KENYA



Rt. Hon. Speaker  
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J. M. Nyegenye, C.B.S.,  
Clerk of the Senate/secretary, PSC  
Date: 26/06/23

THE SENATE

THIRTEENTH PARLIAMENT

THE REPORT OF THE SPECIAL COMMITTEE ON THE PROPOSED  
REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HONOURABLE  
WILLIAM ODUOL, THE DEPUTY GOVERNOR OF SIAYA COUNTY

PARLIAMENT  
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26 JUNE, 2023

PAPERS LAID	
DATE	26/6/2023
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COMMITTEE	Special Committee
CLERK AT THE TABLE	

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*Annex I:* Letter from the Speaker of County Assembly of Siaya dated 9<sup>th</sup> June, 2023, Ref (CASADM/33/04) to the Speaker of the Senate on notice of resolution by the Assembly to remove the Deputy Governor, Mr. William Oduol.

*Annex II:* The Order paper of the Senate dated 15<sup>th</sup> June, 2023.

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*Annex VII:* Response by the County Government of Siaya on the Invitation to Appear, dated 19<sup>th</sup> June, 2023

*Annex VIII:* Response by the Deputy Governor of Siaya on the Invitation to Appear, dated 19<sup>th</sup> June, 2023

*Annex IX:* Hearing Programme of the Senate Special Committee to Investigate the Removal from Office of the Deputy Governor, Siaya County

*Annex X:* Hansard of the Hearing by the Senate Special Committee to Investigate the Removal from Office of the Deputy Governor, Siaya County

*Annex XI:* The Communication by the Chairman of the Senate Special Committee to investigate the Removal from Office of the Deputy Governor, Siaya County

*Annex XII:* The Charges against the Deputy Governor of Siaya County

*Annex XIII:* Affidavit sworn by Mr. Erick Ogenga, the acting Clerk, County Assembly of Siaya

***Annex XIV:*** Volume 1 of the bundle of the documents from the County Assembly of Siaya

***Annex XV:*** Volume 2 of the bundle of the documents from the County Assembly of Siaya

***Annex XVI:*** Witness statement of Honourable William Oduol, the Deputy Governor of Siaya County

***Annex XVII:*** Volume 1 of the List and bundle of documents of the Deputy Governor Honourable William Oduol

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***Annex XIX:*** Video transcript

## PREFACE

**Mr. Speaker Sir,**

Honourable Senators will recall that at the sitting of the Senate held on Thursday, 15<sup>th</sup> June, 2022, the Honourable Speaker of the Senate, by way of a Communication from the Chair, informed the Senate that he had received correspondence from the Speaker of the County Assembly of Siaya communicating the approval of a Motion by the County Assembly of Siaya to remove from office, by impeachment, the Deputy Governor of Siaya County.

**Mr. Speaker Sir,**

On Thursday, 15<sup>th</sup> June, 2022, the Senate Majority Leader gave Notice of the following Motion-

*THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, on Thursday, 8<sup>th</sup> June, 2023, the Siaya County Assembly approved a Motion to remove from office, by impeachment, Hon. William Oduol, the Deputy County Governor of Siaya County;*

*AND FURTHER, WHEREAS by a letter Ref. No. CASADM/33/04, dated 9<sup>th</sup> June, 2023, received in the Office of the Speaker of the Senate on Saturday, 10<sup>th</sup> June, 2023, the Speaker of the Siaya County Assembly informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly;*

*AND WHEREAS, pursuant to section 33(3)(b) of the County Governments Act, and Standing Order 80(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;*

*NOW THEREFORE, pursuant to section 33(3)(b) of the County Governments Act, and Standing Order 80(1)(b), the Senate resolves to establish a special committee comprising the following Senators: -*

- 1. Sen. William Kipkemoi Kisang, MP - Member*
- 2. Sen. Abass Sheikh Mohamed, MP - Member*
- 3. Sen. Mwenda Gataya Mo' Fire, MP - Member*
- 4. Sen. Tabitha Mutinda, MP - Member*
- 5. Sen. Raphael Chimera Mwinzagu - Member*
- 6. Sen. Miraj Abdullahi Abdulrahman, MP - Member*
- 7. Sen. Erick Okong'o Omogeni, MP - Member*
- 8. Sen. Catherine Mimma, MP - Member*
- 9. Sen. Daniel Maanzo, MP - Member*
- 10. Sen. Betty Batuli Montet, MP - Member*
- 11. Sen. Richard Momoima Onyonka, MP – Member*

*to investigate the proposed removal from office of the Deputy Governor of Siaya County and pursuant to standing order 80 (2), to report to the Senate, within ten (10) days of its appointment, on whether or not it finds the particulars of the allegations against the Deputy Governor to have been substantiated.*

**Mr. Speaker Sir,**

The Senate Majority Leader moved the Motion at a sitting of the Senate held on Thursday, 15<sup>th</sup> June, 2023. Following debate on the Motion, the Senate resolved to establish a Special Committee comprising the following Senators –

- 1. Sen. William Kipkemoi Kisang, MP - Member*
- 2. Sen. Abass Sheikh Mohamed, MP - Member*

3. *Sen. Mwenda Gataya Mo' Fire, MP - Member*
4. *Sen. Tabitha Mutinda, MP - Member*
5. *Sen. Raphael Chimera Mwinzagu - Member*
6. *Sen. Miraj Abdullahi Abdulrahman, MP - Member*
7. *Sen. Erick Okong'o Omogeni, MP - Member*
8. *Sen. Catherine Mimma, MP - Member*
9. *Sen. Daniel Maanzo, MP - Member*
10. *Sen. Betty Batuli Montet, MP - Member*
11. *Sen. Richard Momoima Onyonka, MP – Member*

to investigate the proposed removal from office of the Deputy Governor of Siaya County and to report to the Senate within ten (10) days of its appointment on whether it finds the Particulars of the Allegations to have been substantiated.

**Mr. Speaker Sir,**

Section 33(4) of the County Governments Act, 2012, standing order 80 (2) and rule 2 (Part 2) of the Third Schedule to the Senate Standing Orders mandate the Special Committee to-

*(a) investigate the matter; and*

*(b) report to the Senate within ten days on whether it finds the Particulars of the Allegations against the Deputy Governor to have been substantiated*

The Committee, in the execution of its mandate, was guided by the provisions of the law and the Standing Orders.

**Mr. Speaker Sir,**

Following its establishment, the Special Committee held its first meeting on Thursday, 15<sup>th</sup> June, 2023. Pursuant to standing order 203 and rule 3(a) of Part 2 of the Third Schedule to the Senate Standing Orders, the Clerk of the Senate conducted the election for the position of Chairperson and Vice-Chairperson. Senator William Kipkemoi Kisang, MP and Senator

Betty Batuli Montet, MP were elected to the positions of Chairperson and Vice-Chairperson of the Committee, respectively.

**Mr. Speaker Sir,**

Section 33(5) of the County Governments Act, standing order 80 (3) and rule 4(a) of Part 2 of the Third Schedule to the Senate Standing Orders provide that the Deputy Governor shall have the right to appear and be represented before the Special Committee during its investigations. Rule 4(b) of Part 2 of the Third Schedule to the Senate Standing Orders further accords the County Assembly the right to appear and be represented before the Special Committee during its investigations. Pursuant to these provisions of the law, the Special Committee invited both the Deputy Governor and the County Assembly to appear and be represented before the Special Committee.

The County Assembly was represented by Gordon Ogola, Peter Wanyama, Willis Otieno, Peter Okiro, Renny Langat, Leonard Okanda, and Omondi Okoyo Shem in the proceedings. While the Siaya County Deputy Governor was represented by Paul Nyamodi, Moses Chelanga and Patrick Barasa.

**Mr. Speaker Sir,**

The Special Committee wishes to thank the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee further extends its appreciation to the County Assembly of Siaya County and its Advocates, and the Deputy Governor and his advocates for their submissions in this matter. The Special Committee also appreciates the media for the coverage of its proceedings during the course of the investigations.

**Mr. Speaker Sir,**

It is now my pleasant duty and privilege, on behalf of the Special Committee, to present and commend to the Senate this Report of the Special Committee on the Proposed Removal from Office, by Impeachment, of Hon. William Oduol, the Deputy Governor for Siaya County.

SIGNED:  .....

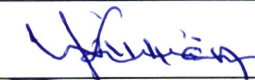




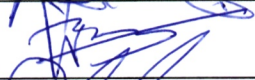



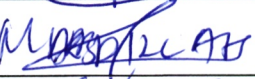

26<sup>TH</sup> JUNE, 2023

SEN. WILLIAM KIPKEMOI KISANG, MP

**CHAIRMAN, SPECIAL COMMITTEE ON THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE DEPUTY GOVERNOR FOR SIAYA COUNTY.**

## MEMBERS' ADOPTION LIST

Date: 26/06/2023

NO	NAME	SIGNATURE
1.	Sen. William Kipkemoi Kisang', MP (Chairperson)	
2.	Sen. Betty Batuli Montet, MP (Vice – Chairperson)	
3.	Sen. Erick Okong'o Omogeni, SC, MP	
4.	Sen. Richard Momoima Onyonka, MP	
5.	Sen. Daniel Maanzo, MP	
6.	Sen. Abass Sheikh Mohamed, MP	
7.	Sen. Mwenda Gataya Mo' Fire, MP	
8.	Sen. Catherine Mumma, MP	
9.	Sen. Tabitha Mutinda, MP	
10.	Sen. Miraj Abdullahi Abdulrahman, MP	
11.	Sen. Raphael Chimera Mwinzagu, MP	

## 1.0 INTRODUCTION

1. Pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, No. 17 of 2012, on 8<sup>th</sup> June, 2023, the County Assembly of Siaya approved a Motion “*to remove from office, by impeachment,*” the Deputy Governor for Siaya County.

2. Article 181 of the Constitution provides as follows-

### ***Removal of a county governor***



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

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

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

*(c) abuse of office or gross misconduct; or*

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

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

3. Section 33 of the County Governments Act provides as follows-

### ***Removal of a governor***

*(1) A member of the county assembly may by notice to the speaker, supported by at least a third of all the members, move a motion for the removal of the governor under Article 181 of the Constitution.*

*(2) If a motion under subsection (1) is supported by at least two-thirds of all the members of the county assembly—*

- (a) *the speaker of the county assembly shall inform the Speaker of the Senate of that resolution within two days; and*
  - (b) *the governor shall continue to perform the functions of the office pending the outcome of the proceedings required by this section.*
- (3) *Within seven days after receiving notice of a resolution from the speaker of the county assembly—*
  - (a) *the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the governor; and*
  - (b) *the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.*
- (4) *A special committee appointed under subsection (3)(b) shall—*
  - (a) *investigate the matter; and*
  - (b) *report to the Senate within ten days on whether it finds the particulars of the allegations against the governor to have been substantiated.*
- (5) *The governor shall have the right to appear and be represented before the special committee during its investigations.*
- (6) *If the special committee reports that the particulars of any allegation against the governor —*
  - (a) *have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation; or*
  - (b) *have been substantiated, the Senate shall, after according the Governor an opportunity to be heard, vote on the impeachment charges.*
- (7) *If a majority of all the county delegations of the Senate vote to uphold any impeachment charge, the governor shall cease to hold office.*

- (8) *If a vote in the Senate fails to result in the removal of the governor, the Speaker of the Senate shall notify the speaker of the concerned county assembly accordingly and the motion by the assembly for the removal of the governor on the same charges may only be re-introduced to the Senate on the expiry of three months from the date of such vote.*
- (9) *The procedure for the removal of the President on grounds of incapacity under Article 144 of the Constitution shall apply, with necessary modifications, to the removal of a governor.*
- (9A) *Subsections (1) to (9) shall, with necessary modifications, apply to the removal from office of a deputy governor.***
- (10) *A vacancy in the office of the governor or deputy governor arising under this section shall be filled in the manner provided for by Article 182 of the Constitution.*

4. By a letter dated 9<sup>th</sup> June, 2023, *Ref(CASADM/33/04)* which was received in the Office of the Speaker of the Senate on 10<sup>th</sup> June, 2023, the Speaker of the County Assembly of Siaya informed the Speaker of the Senate of the approval of the Motion for the removal from office of the Deputy Governor of Siaya County by the County Assembly and further forwarded to the Speaker of the Senate various supporting documents which are together with the letter attached as ***Annex I***.

5. Pursuant to section 33(3)(a) of the County Governments Act and standing order 80 (1)(a) of the Senate Standing Orders, the Speaker of the Senate is required, *within seven days after receiving notice of a resolution from the speaker of a County Assembly supporting the removal of a governor of the county pursuant to Article 181 of the Constitution-*

- (a) the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the governor.*

6. In accordance with these provisions of law, at a sitting of the Senate held on 15<sup>th</sup> June, 2023, the Speaker of the Senate, by way of a Communication from the Chair, informed the Senators that he had received communication from the Speaker of the County Assembly of Siaya relating to the approval of the Motion by the County Assembly of Siaya for the removal from office of the Deputy Governor of Siaya County. The Order Paper of that sitting and the Communication made by the Speaker of the Senate on that day are attached as *Annex II* and *Annex III*, respectively.

7. Thereafter, the Senate Majority Leader gave Notice of the following Motion-

*THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, on Thursday, 8<sup>th</sup> June, 2023, the Siaya County Assembly approved a Motion to remove from office, by impeachment, Hon. William Oduol, the Deputy County Governor of Siaya County;*

*AND FURTHER, WHEREAS by a letter Ref. No. CASADM/33/04, dated 9<sup>th</sup> June, 2023, received in the Office of the Speaker of the Senate on Saturday, 10<sup>th</sup> June, 2023, the Speaker of the Siaya County Assembly informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly;*

*AND WHEREAS, pursuant to section 33(3)(b) of the County Governments Act, and Standing Order 80(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;*

*NOW THEREFORE, pursuant to section 33(3)(b) of the County Governments Act, and Standing Order 80(1)(b), the Senate resolves to establish a special committee comprising the following Senators: -*

*1. Sen. William Kipkemoi Kisang, MP - Member*

2. *Sen. Abass Sheikh Mohamed, MP - Member*
3. *Sen. Mwenda Gataya Mo Fire, MP - Member*
4. *Sen. Tabitha Mutinda, MP - Member*
5. *Sen. Raphael Chimera Mwinzagu - Member*
6. *Sen. Miraj Abdullahi Abdulrahman, MP - Member*
7. *Sen. Erick Okong'o Omogeni, SC, MP - Member*
8. *Sen. Catherine Mumma, MP - Member*
9. *Sen. Daniel Maanzo, MP - Member*
10. *Sen. Betty Batuli Montet, MP - Member*
11. *Sen. Richard Momoima Onyonka, MP – Member*

*to investigate the proposed removal from office by impeachment of Hon. William Oduol, the Deputy Governor of Siaya County and pursuant to standing order 80(2)(b), to report to the Senate, within ten (10) days of its appointment, on whether or not it finds the particulars of the allegations against the Deputy Governor to have been substantiated.*

**Mr. Speaker Sir,**

The Senate Majority Leader moved the Motion at a sitting of the Senate held on Thursday, 15<sup>th</sup> June, 2023. Following debate on the Motion, the Senate resolved to establish a Special Committee comprising the following Senators –

1. *Sen. William Kipkemoi Kisang, MP - Member*
2. *Sen. Abass Sheikh Mohamed, MP - Member*
3. *Sen. Mwenda Gataya Mo Fire, MP - Member*
4. *Sen. Tabitha Mutinda, MP - Member*
5. *Sen. Raphael Chimera Mwinzagu - Member*
6. *Sen. Miraj Abdullahi Abdulrahman, MP - Member*
7. *Sen. Erick Okong'o Omogeni, MP - Member*

- 8. Sen. Catherine Mumma, MP - Member*
- 9. Sen. Daniel Maanzo, MP - Member*
- 10. Sen. Betty Batuli Montet, MP - Member*
- 11. Sen. Richard Momoima Onyonka, MP – Member*

to investigate the proposed removal from office of the Deputy Governor of Siaya County and to report to the Senate within ten (10) days of its appointment on whether it finds the Particulars of the Allegations to have been substantiated.

## 2.0 METHOD OF WORK

8. In the execution of its mandate, the Committee conducted several activities which are set out below-

### 2.1 Meetings of the Special Committee

9. Following its establishment on Thursday, 15<sup>th</sup> June, 2023, the Special Committee held its first meeting on the same day. Pursuant to standing order 203, and rule 3(a) of Part 2 of the Third schedule of the Senate Standing Orders, the Committee conducted the election of the Chairperson and Vice-Chairperson of the Committee. Senator William Kipkemoi Kisang, MP was elected, unopposed, as the Chairperson of the Committee while Senator Betty Batuli Montet, MP was elected unopposed as the Vice-Chairperson of the Committee. Further, pursuant to rule 3(b) of Part 2 of the Third Schedule to the Senate Standing Orders, the Special Committee appointed Wednesday, 21<sup>st</sup> June, 2023 as the date for the commencement of the hearing of evidence for the purposes of the investigations.
10. On Tuesday, 20<sup>th</sup> June, 2023, the Special Committee held a pre-hearing meeting where members considered the documentation received from the parties, the rules of procedure to be followed by the Committee in discharging its mandate as set out in Part 2 of the Third Schedule to the Senate Standing Orders and the hearing programme. The Minutes of the meetings held by the Committee are attached at **Annex IV**.

### 2.2 Indicative Programme of Events

11. At its first meeting, the Committee adopted an Indicative Programme of Events which is attached as **Annex V**. The Committee observed that, in terms of section 33(4)(b) of the County Governments Act and standing order 80(2) of the Senate Standing Orders, the Committee had ten days within which to investigate the matter in respect of the

allegations against the Deputy Governor and thereafter to report to the Senate on whether or not it found the Particulars of the Allegations against the Deputy Governor to have been substantiated.

### **2.3 Invitations to Appear**

12. The Committee observed that section 33(5) of the County Governments Act and standing order 80(3) of the Senate Standing Orders provide that “*the Governor shall have the right to appear and be represented before the special committee during its investigations*”. The Committee further observed that rule 4(a) of Part 2 of the Third Schedule to the Senate Standing Orders provide that “*upon the appointment of a date for the commencement of the hearing of the evidence for the purposes of the investigation, the Committee shall invite the Governor to appear and be represented before the special committee during its investigations*”.
13. The Committee also observed that rule 4(b) of Part 2 of the Third Schedule to the Senate Standing Orders provide that “*upon the appointment of a date for the commencement of the hearing of the evidence for the purposes of the investigation, the Committee shall notify the County Assembly of the date for the commencement of the investigation and invite the Assembly to designate the members of the Assembly, being not more than three members, if any, who shall appear before the Committee to represent the Assembly during the investigation*”.
14. Having made these observations, and taking into account the limited time available, at its first meeting held on Thursday, 15<sup>th</sup> June, 2023, the Committee resolved to invite the County Assembly and the Deputy Governor to appear before the Committee for the hearing of the evidence. Copies of the Invitations to Appear are attached as ***Annex VI***.

15. The Invitation to Appear served on the County Assembly required the Assembly, where it chose to appear before the Committee, to file with the Office of the Clerk of the Senate by 5:00 pm on Monday, 19<sup>th</sup> June, 2023 documentation —

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

16. The Invitation to Appear served on the Deputy Governor required him to indicate whether he would exercise his right to appear before the Committee. If he chose to exercise that right, the Deputy Governor was informed that he would be required, to file an answer to the charges with the Office of the Clerk of the Senate by 5:00 pm on Monday, 19<sup>th</sup> June, 2022 in which the Deputy Governor would set out-

- (a) the Deputy Governor's response to the Particulars of the Allegations;
- (b) how the Deputy Governor proposed to appear before the Special Committee; whether in person, by Advocate, or in person and by Advocate;
- (c) the names and addresses of the persons to be called as witnesses, if any, and witness statements containing a summary of the evidence to be presented by such witnesses before the Committee; and
- (d) any other evidence to be relied on.

17. Following the service of the Invitations to Appear, the County Assembly filed a Response to the Invitation to Appear on 19<sup>th</sup> June, 2023, to which was attached various annexures and which is marked as *Annex VII*.

18. The Deputy Governor filed a Response to the Invitation to Appear on 19<sup>th</sup> June, 2023 to which was attached various annexures and which is marked as *Annex VIII*.

#### **2.4 Hearing**

19. The Committee met on Wednesday 21<sup>st</sup> June, 2023 and Thursday, 22<sup>nd</sup> June, 2023 to hear evidence for the purposes of the investigations in accordance with its Hearing Programme which is attached at *Annex IX*. The Hansard record of the hearing is also attached as *Annex X*.

20. The parties called witnesses to testify during the hearing as follows—

(a) County Assembly had four witnesses; Honourable Otiato Francis Otieno, MCA; Mr. Jack Odinga, Ag. Chief Officer, Finance and Economic Planning; Mr. Martin Okwata, Director Supply Chain Management; and Mr. Joseph Ogutu, County Secretary.

(b) The Deputy Governor had two witnesses; Deputy County Governor; and Mr. Austine Otieno Ogollah, Former Social Welfare Officer.

21. The parties were represented at the hearing as follows-

(a) The County Assembly was represented by M/S Gordon Ogola, Kipkoech & Co. Advocates. Advocates Gordon Ogola, Peter Wanyama, Willis Otieno, Peter Okiro, Renny Langat, Leonard Okanda, and Omondi Okoyo Shem appeared during the proceedings.

(b) The Deputy Governor, Siaya County, was represented by M/S V.A Nyamodi & Co. Advocates. Advocates Paul Nyamodi, Moses Chelanga and Patrick Barasa appeared during the proceedings.

22. The County Assembly called the following witnesses—
1. Honourable Otiato Francis Otieno, MCA;
  2. Mr. Jack Odinga, Ag. Chief Officer, Finance and Economic Planning;
  3. Mr. Martin Okwata, Director Supply Chain Management; and
  4. Mr. Joseph Ogutu, County Secretary.
23. The Deputy Governor called the following witnesses—
1. Deputy County Governor; and
  2. Mr. Austine Otieno Ogollah, Former Social Welfare Officer.

### **3.0 THE CONFERENCE OF PARTIES**

24. The Committee convened a Conference of the Parties on Wednesday, 21<sup>st</sup> June, 2023 at 10.00 a.m. This provided an opportunity for the formal introduction of the members of the Special Committee and the Counsel for the County Assembly and the Counsel for the Deputy Governor.
25. During the Conference of Parties, the Chairperson of the Committee made the Opening Remarks where he recited the Mandate of the Special Committee. The Communication by the Chairman is attached as **Annex XI**.

### **4.0 READING OF THE CHARGES**

26. Pursuant to rule 15 of Part 2 of the Third Schedule to the Senate Standing Orders, at the commencement of the hearing, the Clerk read out, verbatim, the Particulars of the Allegations against the Deputy Governor. The Charges appear as **Annex XII**.

## **5.0 WORKING RETREAT**

27. The Committee held a Working Retreat from Friday, 23<sup>rd</sup> June, 2023 to Monday, 26<sup>th</sup> June, 2023 where it considered the charges, the particulars of allegations and documentation received in regard to the matter. The Committee also considered the submissions of the County Assembly and the Deputy Governor. The Committee subsequently drafted, considered and approved its Report.

## 6.0 PRELIMINARY ISSUES

### **I. Request by the County Assembly of Siaya to Submit List and Bundle of Authorities**

28. The Counsel for the County Assembly made a request that the Special Committee admits hard copies of the List of Authorities that the Assembly of Siaya would rely on. In response, Counsel for the Deputy Governor did not oppose the application as it was not prejudicial receiving them and informed the committee that they had gone through the List and prepared a response.

29. Having heard the parties, the Special Committee noting that the application was not opposed by the Counsel for the Deputy Governor, and in the interest of justice allowed the request and directed Counsel for the County Assembly to supply enough copies to the Committee.

### **II. That the Notice of Resolutions of County Assembly of Siaya for the removal of the Deputy Governor of Siaya County by way of Impeachment dated 9<sup>th</sup> June, 2023 was invalid, null and void as it resulted from a process conducted in contravention of Article 50 of the Constitution**

30. Counsel for the Deputy Governor Mr. Nyamodi pleaded with the Special Committee to dismiss the motion summarily as it did not meet the threshold. The Deputy Governor had submitted a similar request through a statement (DG-1) dated 19<sup>th</sup> June, 2023, arguing that there was no Motion within the meaning and understanding of the Constitution and the County Government Act that the Special Committee needed to spend its time considering. Mr. Nyamodi also submitted that the Hon. Gordon Onguru

who initiated the motion did not appear before the county assembly to prosecute the motion on 6<sup>th</sup> June 2023. He further submitted that the proceedings at the County Assembly did not adhere to Article 47 and 50 of the Constitution; that the Clerk of Siaya County Assembly summoned and made witnesses and that the chair of the committee examined in chief and led to production of evidence of witnesses before the assembly. The Counsel indicated that the case was prosecuted in a biased and partial manner, and maintained that the County Assembly was not an independent and impartial body contrary to Article 50 (1) of the Constitution.

31. In response, Counsel for the County Assembly, Mr. Wanyama submitted that the County Assembly followed the procedure as set out in Section 33 of the County Government Act and Article 47 and 50 of the Constitution and the motion met the threshold. Mr. Wanyama stated that the concerns were substantive in nature and they were prepared to demonstrate during the hearing that the procedure for the conduct of that impeachment met the threshold. He maintained that there was no provision of the Constitution that the County Assembly breached and therefore the application by the Deputy Governor was premature. Counsel further submitted that the process before the Committee being a quasi-judicial, was not confined to the legalese and being pedantic with interpretation of Articles 47 and 50 of the Constitution. He affirmed his position that the mandate of the Committee was to find whether the charges against the Deputy Governor were substantiated or not. Finally, Mr. Wanyama stated that they had adequately responded to the preliminary issue raised by the Deputy Governor in the bundle of responses that was to demonstrate that they followed the right procedure during hearing.

32. Having heard the parties, the Special Committee ruled that the motion was properly before the Senate Committee.

33. Following the directions from the Committee, the following preliminary issue were raised by counsel for the Deputy Governor:

- a) *That the County Assembly was not an independent and impartial body*
- b) *That the County Assembly violated the Deputy Governor's right to a fair hearing and fair administrative action*
- c) *That the County Assembly violated the Deputy Governor's Constitutional Right Against the Principal of Double Jeopardy*
- d) *That the motion of impeachment of the Deputy Governor was invalid by apparent failure by the mover of the motion to affirm the said motion*

These issues were considered in the hearing of the main grounds contained in the charges for removal from office by impeachment of the Deputy Governor at various stages during the hearing as detailed below: -

**a) That the County Assembly was not an independent and impartial body**

34. The Deputy Governor and his Counsel during hearing argued that the County Assembly was not an independent and impartial body contrary to Article 50 of the Constitution. They submitted that the Special Committee of the Siaya County Assembly through the Clerk of the Assembly collected all the evidence that was relied upon by the Special Committee in support of the motion during the hearing. They also accused the special committee of leading the evidence in chief and re-examination of the witnesses. It is their submission that there was no way that the Special Committee that was tasked to investigate the motion could have prosecuted the motion itself. They placed reliance on the Hansard of 6<sup>th</sup> June 2023 (Annex XIV Volume 1, pages 120-245).

35. In response, Counsel for the County Assembly argued that although impeachment is a legal process governed by provisions of section 33 of the County Governments Act and Article 181 of the Constitution, the purpose of impeachment worldwide has been ascertained to bring certain leaders to account for their actions. The Counsel submitted

that impeachment is about governance and political accountability and that is why the county assembly was involved.

36. In their closing remarks, the Counsel for the County Assembly submitted that the in discharge of its oversight mandate under Article 185 (3) of the Constitution, the Assembly has the power to summon anyone to appear before it and provide information and evidence.

### **Committee Observations**

37. The Special Committee observed as follows-
- a) that County Assemblies have a special mandate flowing from the Constitution and County Governments Act to oversight the County Executive. In furtherance of this mandate, it is empowered to summon any person to appear before it to give evidence or information;
  - b) that the practise and procedure in an Assembly is that once a motion is moved, the motion becomes the property of that Assembly;
  - c) that the County Assembly special committee had the mandate under the Constitution, County Governments Act and County Assembly Standing Orders to investigate the allegations raised in the motion. In the course of the investigations, they can summon witnesses for purposes of giving evidence or providing information; and
  - d) that Taking into consideration the provisions of the Constitution and the County Governments Act, the County Assembly was within its mandate to prosecute the motion by itself and therefore it cannot be said not to have been independent and impartial.

**b) That the County Assembly violated the Deputy Governor's right to a fair hearing and fair administrative action**

38. Counsel for the Deputy Governor submitted that some witnesses were called by the Special Committee to testify against the Deputy Governor notwithstanding the fact that the Deputy Governor had not been furnished with their witness statements. Further, he stated that the statements were supplied to him very late.
39. In response, the Assembly through their counsel and one of the witnesses Mr. Francis Otiato stated that the Assembly and the Special Committee followed the procedure of removal of the Deputy Governor and that the Deputy Governor was accorded a fair hearing. The County Assembly further submitted that they supplied all the witness statements and documents received by the Assembly to the Deputy Governor and had informed him that some witnesses did not file statements.

**Committee Observations**

40. The Committee observed that-
- a) pursuant to Standing Order 71(8), 72 and 74 of the Siaya County Assembly Standing Orders, the Deputy Governor, by a letter dated 29<sup>th</sup> May, 2023 was informed of the impeachment motion adopted by the Assembly, was accorded an opportunity to be heard and a chance to cross-examine witnesses that appeared before the County Assembly Special Committee. (Annex XVIII- *WO-12 page 520*);
  - b) by a letter dated 2<sup>nd</sup> June, 2023, the Deputy Governor was furnished with Witness Statements of six (6) witnesses and other documents they relied on. The Deputy Governor was also informed that four (4) witnesses were to give oral evidence as they had not filed witness statements; and

c) the County Assembly had followed the procedure set out in the Standing Orders of the Siaya County Assembly Standing Orders and accordingly the Deputy Governor was accorded a fair trial thus his right to fair hearing and fair administrative action was not infringed.

**c) That the County Assembly violated the Deputy Governor's Constitutional Right Against the Principal of Double Jeopardy**

41. The Deputy Governor argued that the County Assembly of Siaya violated his constitutional right against the principle of double jeopardy. The Deputy Governor argued that on 23<sup>rd</sup> March, 2023 the Assembly adopted a motion sponsored by Hon. Otiato to summon him to appear before the Committee on General Oversight to shed light on his utterances about the Governor and his administration. The motion was adopted and the Deputy Governor appeared before the Committee on 12<sup>th</sup> April, 2023. He further argues that he was never supplied with documents or given an opportunity to rebut the allegations by the persons called to give information to the General Oversight Committee. It was his argument that the grounds for impeachment in the motion executed by the County Assembly and now before the Senate were similar to the facts and grounds in the motion executed by the General Oversight Committee.

42. In response to the issue of double jeopardy, the County Assembly argued that the Deputy Governor was invited to appear before the General Oversight Committee to shed light on the utterances that he had made about the Governor and his administration and this was different from the impeachment proceedings before the Special Committee. The county assembly submitted that it was a coincidence that the documents that were presented to the General Oversight Committee related to the evidence that was produced before the Special Committee. The county assembly

confirmed that the two Committees were different and therefore the issue of double jeopardy cannot arise.

43. The Counsel for the County Assembly in his closing submissions submitted that the principle of Double Jeopardy is only applicable in criminal cases where the accused is subjected to a trial based on charges of similar sets of facts. He restated that the County Assembly was within its mandate and powers to conduct impeachment proceedings if an appropriate motion is moved.

44. In rebuttal, the Counsel for the Deputy Governor stated that it has been determined that the principle of Double Jeopardy extends to quasi-judicial matters and relied on the case of *Henry Thurania Ruuti & 2 others v National Police Service & 3 others [2020] Eklr* in which it was held that: “...*The Petitioners argued that they could not be charged again for the same offences before another officer. They argued that upon being charged again they were found guilty and fines imposed. The Petitioners argue that the second disciplinary process that resulted in their fines run counter to Article 50(2)(o) of the Constitution and the principle of double jeopardy and that after the illegal sentence the interdiction was lifted and the notice of show cause and removal letters were issued. The Petitioners argued that no justice would be served at the retrial as it seemed there was a particular outcome that was desired and having failed to achieve it in the first orderly room proceedings subjected the Petitioners to the second trial. It was argued this action by the employer violated Articles 41, 47 and 50(o) and fair labour practices as once a person is disciplined there should be no further disciplinary proceedings. The Petitioners are right about them not being subjected to multiple disciplinary hearings over the same matter. Having been acquitted of the charges and being fined and then proposed for removal from service seems to run counter to the Forces Standing Orders as the Orders do not contemplate a retrial over the same facts. Once the first tribunal discharged the Petitioners it was not open to re-charge them and*

*punish them again. The Standing Orders no doubt provide for a slew of sanctions but these are to be imposed at once and not in successive retrials over the same facts.”*

#### **Committee Observations**

45. The Committee observed that;

- a) the hearing before the General Oversight Committee was not a trial but a forum for the Deputy Governor to shed light on the allegations he made through the public utterances. The Committee further observed that the General Oversight Committee and the Special Committee on Impeachment had two different mandates under the Standing Orders and Constitution respectively; and
- b) the Committee therefore observed that the principle of Double Jeopardy did not apply to the impeachment motion before the County Assembly as the Deputy Governor had not been tried before the General Oversight Committee.

**d) That the motion of impeachment of the Deputy Governor was invalid by apparent failure by the mover of the motion to affirm the said motion**

46. The Counsel for the Deputy Governor raised the issue that the motion of impeachment of the Deputy Governor was invalid for an apparent failure by the mover of the motion to affirm the said motion. He argued that the motion on removal from office by impeachment of the Deputy Governor was never affirmed by the mover of the motion that the particulars of allegations contained therein are true to his own knowledge. Mr. Nyamodi further argued that the motion that was now before the Senate was defective for failing to meet the mandatory dictates of section 33 of the County Government Act, and Standing Order 71 and 72 of the County Assembly Standing Orders. They also placed reliance on the case of *Aden Ibrahim Mohamed & 6 others v County Assembly of Wajir & 9 others [2022] eKLR* in which the High Court set out that “*We read the*

*law to mandate that that the allegations be cogent and armed by the member moving the motion and also be verified by at least one third of all the members of the assembly in writing. We consider the need for affirmation and verification to underscore the gravity of the matter. The matter is a grave one because the office of a governor is a public one acquired through an election by the majority of the voters in an election in that regard. It is also grave on the basis that an impeachment that when one is impeached for abuse or misuse of a state once or breached chapter six of the Constitution..... when standing orders imposed the duty upon the mover of a motion of impeachment to give an affirmation, such affirmation had to take the form that a statutory declaration would take. One would expect that in then absence of an appropriate template, the form provided undersection 15 of the Oaths and statutory declarations Act would suffice with befitting modifications. We hold that the mover of the notice of motion was obligated to give an affirmation to the facts and allegations in the notice of motion and therefore our duty is to establish if any such affirmation was given.”*

47. The County Assembly through Hon. Otiato on cross examination stated that the mover of the motion Hon. Gordon Onguuru prosecuted his motion in the Assembly and presented his evidence before the Assembly and once adopted, the motion became the property of the House and not Hon. Onguurus'. Further, counsel for the assembly stated that the Clerk of the Assembly had custody of all documents of the Assembly and therefore could not explain the failure by the Clerk to attach the affirmation of notice of motion to the documents that were forwarded to the Speaker of the Senate. In their closing statements, the Counsel for the County Assembly, reiterated that the Affirmation was inadvertently not forwarded initially by the Clerk but it was available to the Clerk at the County Assembly.
48. Counsel for the County Assembly urged the Senate Committee to apply the principle of *de minimis non curat lex* that states that when determining the substantive point in

this case the impeachment, one should not concern themselves with minor issues which do not cause prejudice. Counsel consequently emphasised that the motion was properly moved and supported by the required threshold and that the Senate Committee has an obligation based on the submitted evidence to find that the charges have been substantiated.

### **Committee Observations**

49. The Committee observed that;

- a) Standing Order No.71(1) of the Siaya County Assembly Standing Orders sets out that the Notice of Motion for impeachment of the Governor shall be signed by the Member who affirms that the particulars of allegations contained in the Motion are true to his or her own knowledge;
- b) the Deputy Governor in his response to the motion before the County Assembly questioned the validity of the motion based on the absence of an affirmation by the mover of the impeachment motion;
- c) there is no record whether the Special Committee of the County Assembly responded or made a determination on the issue of affirmation of the impeachment motion by the mover;
- d) the Notice of Resolution by the Assembly with the accompanying bundle of documents forwarded by the Speaker of the County Assembly of Siaya to the Speaker of the Senate on 10<sup>th</sup> June, 2023 did not contain an affirmation by the mover of the motion to impeach the Deputy Governor;

- e) the County Assembly in their submissions before the Senate Committee stated that the omission of the Affirmation was an inadvertent mistake.

**General observations by the Senate Committee on the Preliminary Objections  
by Counsel for the Deputy Governor.**

50. Following the determination on the preliminary issues raised by the Counsel for the Deputy Governor, the Senate Committee Consequently made the following general observations:

- (a) The Senate Committee was bound to uphold the Constitution and had a duty to investigate the matter and seek to establish the facts of the matters raised herein.
- (b) The Senate Committee was cognizant of the practise and procedure of executing a motion in an assembly, that once a motion is received by an Assembly it becomes the property of that Assembly.
- (c) On the request therefore, it was clear to the Committee that this was a matter requiring evidence in order to prove and for which the other side had an opportunity of rebuttal. The Committee could only make a fair determination having heard the evidence on both sides. This was the essence of the investigation. The investigation before the Senate is both in respect of procedural, as well as substantive matters.
- (d) The Committee therefore allowed the hearing to proceed on the basis that the wider mandate of the Committee was to exercise its oversight function which flows from the powers in Article 125 of the Constitution.

- (e) Based on the foregoing, Article 181 of the Constitution and Section 33(4) of the County Governments Act mandates the Senate Committee to investigate and report to the Senate on whether it finds the allegations against the Deputy Governor to have been substantiated.
- (f) It is further important to note that the Special Committee is not an appeal mechanism so it cannot dismiss the investigations into the allegations against the Deputy governor on account of a procedural issue in the County Assembly.

## **7.0 THE CHARGES AGAINST THE DEPUTY GOVERNOR FOR SIAYA COUNTY, HON. WILLIAM ODUOL**

### **CHARGE 1: GROSS VIOLATION OF CONSTITUTION AND OTHER LAWS**

The particulars of this charge are as follows—

#### **Allegation 1: Interference with Procurement Process Through Acts of Bid-Rigging**

51. The County Assembly in its particulars stated that the Deputy Governor, William Oduol,
- a) interfered with the procurement of contractors for various road projects in the County and that of Supply and Delivery of Certified Seed and Fertilizer contrary to provisions of Section 47(1) of Public Procurement and Asset Disposal Act, 2015 which states that, “*A procurement function shall be handled by procurement professionals whose qualifications are recognized in Kenya*”

- b) coerced the Head of County Procurement Unit to give him raw evaluation report for the tender on Supply and Delivery of Certified Seeds and Fertilizer, together with unsigned professional opinion despite being advised on the dangers of exposing such documents for a procurement process which had not yet resulted in final selection and award of tender.
- c) unjustifiably relying on the authority of the office of the Deputy Governor, caused to be changed by coercion, certain specifications in eighty – six tender documents for roads constructions.
- d) by engaging in actions explained herein, Mr. William Oduol, being not a procurement professional with qualifications recognized in Kenya, acted *ultra vires* to the provisions of procurement laws.

52. In support of the charge on gross violation of constitution and other laws and its particulars, the County Assembly submitted witness statements by Hon. Francis Otiato Otieno, a Member of the Siaya County Assembly representing Yimbo East Ward and the Chair of the Special Committee that investigated the removal from office of the Deputy Governor- William Oduol, by impeachment (Annex XV Volume 2, pages 340-345 of the County Assembly Bundle of Documents) and by Martin Okwata, Director for the Supply Chain Management in the County Government of Siaya (Annex XV Volume 2, pages 349-351 of the County Assembly Bundle of Documents).

53. The following are the issues arising under the allegation of interference with the procurement process through bid rigging from the submissions by the County assembly—

- a) interference in the procurement for supply of certified seeds and fertilizer; and
- b) interference and coercion for change in tender specifications in eighty-six (86) tender documents for road construction.

**i. Allegation relating to interference in the procurement for supply of certified seeds and fertilizer**

54. The County Assembly's second witness, Mr. Martin Otieno Okwata, Director for the Supply Chain Management in the County Government of Siaya stated that in December, 2022, the finance department advertised for the supply and deliver of certified seeds and fertilizer, the Deputy Governor called him to his office and inquired why they had reserved the eligibility criteria in the tender for the youth.
55. Mr. Okwata in his witness statement, stated that an explanation on the eligibility criteria was provided to the Deputy Governor and he seemed satisfied with it but later changed his mind when making submissions to the Assembly. The witness further, stated that during preparation of the professional opinion for the tenders for supply and deliver certified seeds and fertilizer, the Deputy Governor requested to be furnished with all the documents relating to the two tenders, the evaluation report and the unsigned professional opinion, which were issued to him.
56. Mr. Okwata in his statement further stated that a few days after the Deputy Governor was furnished with the tender documents, the Ethics and Anti-Corruption Commission (EACC) requested for the documents relating to the said tenders which documents while the process had not been completed. However, the tender was later terminated on material governance issues.

57. Mr. Martin Okwata, the Director for the Supply Chain Management stated that the Deputy Governor incessantly intermeddled in the tender to supply and deliver certified seeds (Tender No CGS/SCM/AGRIC/OT/2022-2023/04) and the tender to supply and deliver fertilizer (Tender No CGS/SCM/AGRIC/OT/ 2022-2023/05) in contravention of confidentiality under the Public Procurement and Asset Disposal Act, 2015.
58. In cross examination, Mr. Okwata confirmed that it is an Accounting Officer that appoints staff to sit in tender evaluation committees and therefore the Deputy Governor plays no role in those appointments.
59. When Mr. Okwata was cross examined on whether he made separate representations to the general oversight committee and the special committee on impeachment, he stated that he gave a written statement to the general oversight committee and gave verbal representations to the special committee based on what he had submitted before the general oversight committee. He further testified that he proceeded to cancel the tender for the procurement of the seeds and fertilizer due to the interference by the Deputy Governor as he had requested for documents for a process that had not been completed.
60. Mr. Okwata submitted that there was interference by the Deputy Governor in the procurement of the seeds through his request and receipt of the tender evaluation report yet the procurement process had not been completed. He further clarified that he was called severally by the Deputy Governor on the same however he could not adduce any evidence since he could not record his boss the Deputy Governor.
61. Mr. Okwata submitted that the Deputy Governor in receiving regular briefings on procurement matters was acting on the Authority of the letter from the Governor appointing Mr. Jacktone Odinga as the Chief Officer of Finance and Economic

Planning. He further submitted that the letter was contrary to the provisions of the law and the Deputy Governor's authority was limited to receiving briefings and not in respect to requests for tender documents. He further pointed out that the demand for procurement documents was in breach of the provisions of the procedure set out in the procurement law on the process.

62. Mr. Okwata admitted that the Deputy Governor had a legitimate right to inquire on the procurement of the seeds and fertilizer following the scandalous allegations made in the *Weekly Citizen* article.

**Deputy Governor's Response to the Allegation relating to procurement of seeds and fertilizer**

63. The Deputy Governor stated that the Governor delegated to him the overall supervision of the entire Finance and Economic Planning Department of Siaya County Government based on his strong background in finance so as to put in place strong financial systems, infrastructure and processes. To support that the Deputy governor stated that the Governor directed Chief Officer Finance and Economic Planning Mr. Jacktone Ouma Odinga during his appointment to the said position to be briefing the Deputy Governor on the departmental progress on weekly basis or upon request. (Letter Pg....)
64. In response to the tendering process of seeds and fertilizer, the Deputy Governor stated that he picked up on the matter as there was a publication in the *Weekly Citizen* Newspaper where allegations of corruption surrounding the tender process was mentioned. The Deputy Governor stated that Mr. Okwata being the Director of Supply Chain Management and which falls under Finance and Economic Planning department was summoned to give clarification and shed light on the issues of corruption in the tendering process raised in the said publication. He stated that after Mr. Okwata had clarified on the issues, there were no further follow up and he did not request for any

evaluation form or professional opinion in respect of the said tender. The tender was eventually canceled following a letter from the EACC questioning the process.

65. Upon cross examination, the Deputy Governor testified that he did not play a direct role in the procurement processes. He further confirmed that he summoned Mr. Okwata to his office to shed light on the allegations made in respect to the claims set out in the *Weekly Citizen* Article on the procurement process for the supply of Seeds and Fertilizer. He further stated that he was aware that there are internal mechanisms for dealing with complaints on ongoing procurement exercises. The Deputy Governor further submitted that he did not superintend himself over the appeal mechanism but instead sought to clarify what had been reported in the *Weekly Citizen* article.
66. On examination by the Senate Committee regarding his request to change the tender reservation for youth, the Deputy Governor stated that he is supportive of youth, women and persons with disabilities but admitted that he had suggested for the changes following the publication in the *Weekly Citizen* that portrayed the county in bad light. Upon further examination by the Senate Committee, the Deputy Governor stated that he had suggested for the change of the reservation in the advertisement but upon explanation by Mr. Okwata the reservation was not changed.

#### **Committee Observations**

67. The Committee observed that;
  - a) Section 67(3) of the Public Procurement and Asset Disposal Act provides an exemption for disclosure of tender particulars where such disclosure is made to an authorized employee of the procuring entity; and

b) The Deputy Governor admitted that he attempted to interfere with the tender Categories in the procurement of supply of seed and fertilizer but the same was not effected upon consultation and clarification from Mr. Okwata.

**ii. Allegation relating to the coercion for change in tender specifications in eighty-six (86) tender documents for road construction**

68. The second witness, Mr. Martin Okwata stated that eighty-six (86) tenders for roads constructions were being processed for advertisement. The procurement department had made a resolution to restrict the number of tenders that could be bid for by the companies having the same directors as part of the tender specification.

69. He stated that the Deputy Governor summoned him and expressed his reservations with the clustering specifications and pushed for changes to allow for the removal of the specification restricting companies with the same directors from bidding for multiple tenders. Mr. Okwata further stated that on 3<sup>rd</sup> February, 2023, he wrote an email at 2.00 am to Mr. Ben Oboge, the roads department procurement officer in an attempt to implement the Deputy Governor's instructions which, upon Mr. Oboge consulting the CECM roads, were declined. The specifications were therefore not changed. The email correspondences between Mr. Okwata and Mr. Oboge are contained in **Annex XV**, Volume 2 of the County Assembly Bundle of Documents at pages 499-509.

70. He stated that when the originating department refused to make alterations, the Deputy Governor threatened him with an acrimonious working environment should he continue disregarding his orders. He indicated that he was further warned from taking instructions from County Executive Committee Member for Roads.

71. Upon cross examination, Mr. Okwata indicated that he did not copy the Deputy Governor in the emails to Mr. Oboge as the Deputy Governor had been particularly

harsh and that he did not anticipate that the matter would escalate in the manner that it did. He further reiterated that the Deputy Governor did not wish for his instructions to be on record and for that reason failed to copy him in the emails to Mr. Oboge.

72. Upon examination by members of the Senate Committee, Mr. Okwata confirmed that the tender specifications were not altered.

**Deputy Governor's response on the Allegation relating to the coercion for change in tender specifications in eighty-six (86) tender documents for road construction**

73. In response to the charges, the Deputy Governor submitted his response and witness statement dated 19<sup>th</sup> June, 2023. He stated that though he was accused of interference with the procurement of contractors of various road projects in the County, the particulars of the said tenders in terms of the tender reference numbers and the dates of those tenders were never disclosed to him nor produced before the Special Committee of the County Assembly. He further stated that Mr. Martin Okwata never produced before the County Assembly any document as proof that he had interfered with the tendering process.

74. On the allegations of request to change of the specifications in the tender documents for road, the Deputy Governor denies the said allegations and stated that he was not aware of the alluded emails. He further stated that the Procurement specifications for the road tender were not changed and no evidence was produced to the effect of interfering with the tendering process.

**Committee Observations**

75. The Committee Observed that there was no record or document portraying direct instructions from the Deputy Governor requiring the tender specifications in the eighty-six tender documents to be altered.

## CHARGE 2: ABUSE OF OFFICE AND GROSS MISCONDUCT

The particulars of this charge are as follows—

### **Allegation 1: Bulldozing Officers to Renovate the Office of the Deputy Governor Outside Approved Budgetary Provisions;**

76. The Deputy Governor, banking on the authority of his office, forced incurring of expenses of approximately Ksh 18 million for purposes of renovating his office (interior and exterior works), purchase of furniture and office equipment; an expenditure that was not in the budget and therefore not in the procurement plan.
77. This was in contravention of Section 53(2) of the Public Procurement and Asset Disposal Act, 2015 states that *“An accounting officer shall prepare an annual procurement plan which is realistic in a format set out in the Regulations within the approved budget prior to commencement of each financial year as part of the annual budget preparation process”*.
78. Further, Section 53(3) of the same Act states that, *“Any public officer who knowingly recommends to the accounting officer excessive procurement of items beyond a reasonable consumption of the procuring entity commits an offence under this Act.”* The actions of the Deputy Governor of forcing unbudgeted for expenditure contravened the canons of procurement requirements.
79. The Deputy Governor, banking on the authority of his office, forced incurring of expenses of approximately Ksh 18 million for purposes of renovating his office (interior and exterior works), purchase of furniture and office equipment; an expenditure that

was not in the budget and therefore not in the procurement plan. This was in contravention of Section 53(2) of the Public Procurement and Asset Disposal Act, 2015 states that *“An accounting officer shall prepare an annual procurement plan which is realistic in a format set out in the Regulations within the approved budget prior to commencement of each financial year as part of the annual budget preparation process”*.

80. Further, Section 53(3) of the same Act states that, *“Any public officer who knowingly recommends to the accounting officer excessive procurement of items beyond a reasonable consumption of the procuring entity commits an offence under this Act.”* The actions of the Deputy Governor of forcing unbudgeted for expenditure contravened the canons of procurement requirements.
81. In support of the above allegation and its particulars, the County Assembly submitted the following documents (Annex XV, Pages 510-562)
- (a) An Invoice dated 19<sup>th</sup> January, 2022 from Nile Logistics Services Co. Ltd on proposed office interior-;
  - (b) A technical Inspection Report on the proposed Office Interior improvement;
  - (c) Appointment of Tender Opening and Evaluation Committees;
  - (d) Recurrent and Development plans for the Department of Governance and Administration;
  - (e) Letter dated 21<sup>st</sup> October, 2022 from the Ag. Chief Officer of Finance and Economic Planning to the Director, Supply Chain Management indicating the reallocation of the development budget; and
  - (f) Letter dated 2<sup>nd</sup> June, 2023 from the Chief Officer, Governance, Administration and ICT to the Ag. Clerk County Assembly of Siaya on renovations to the Deputy Governor’s Office.

82. Hon. Otiato the first witness, testified that the Special Committee of the county found this charge substantiated based on the evidence adduced by officers that the Deputy Governor issued instruction on the renovation of his office with full awareness that there were no budgetary allocations for them. He further stated that the witnesses before the Special Committee testified that the Deputy Governor called them to confirm whether the renovations had been done.
83. Hon. Otiato further testified that the procurement of the Deputy Governor's Furniture and Renovations to his office was not done in accordance with the law and as such the County has accrued an outstanding bill of Kshs. 18 million.
84. Mr. Okwata witness number two, testified that there is evidence that Staff in the Deputy Governor's office were involved in the tender evaluation and inspection and he however, confirmed that the Deputy Governor did not participate in the actual procurement but participated in the pre-bidding and post-bidding process. Mr. Okwata also stated that the Deputy Governor's chair cost Kshs. 1.1 million.
85. In cross examination, Mr. Okwata confirmed that it is an Accounting Officer that appoints staff to sit in tender evaluation committees and that the Deputy Governor plays no role in the appointment of members to the tender evaluation Committee.
86. Mr. Okwata indicated that on the renovations to the office of the Deputy Governor, the specifications for the items came from the Deputy Governor's Office. There was no budget allocated for the other renovations. He further testified that it is the responsibility of an accounting officer in the County Government, to ensure that procurement is done as per budget and as per plan.
87. Upon examination by members of the Senate Committee, Mr. Okwata stated that the budget allocated for the whole governance department for purposes of procurement of

furniture was Ksh. 5 million however what the user wanted cost Kshs. 11 million. He testified that he received a requisition from the Chief Officer for Governance for the office renovations in which he indicated that there was going to be a reallocation of funds in the budget for these renovations. He further submitted that there was a draft supplementary budget that had been submitted by the executive to the assembly indicating the reallocation of funds for the said renovations and furniture.

88. He submitted that there was an open tender for the procurement of the furniture and it was awarded to the lowest bidder. He further confirmed that the procurement process in relation to the furniture was above board. He further submitted that the impeachment in the assembly did not question the process instead it questioned the budget and bullying as he felt coerced to undertake the procurement process without a budget.

89. The County Assembly while submitting before the Senate Committee, presented the chair that was procured for the Deputy Governor at Kshs. 1.1 million.

**Response by the Deputy Governor on Bulldozing Officers to Renovate the Office of the Deputy Governor Outside Approved Budgetary Provisions;**

90. In response to the charges, the Deputy Governor submitted a witness statement dated 19<sup>th</sup> June, 2023(Annex XVI). He stated that he had no role to play at any level in the procurement cycle and did not in any way violate section 53 of the Public Procurement and Asset Disposal Act, 2015 as alleged. He further submitted that upon his election as Deputy Governor his physical office was in a deplorable state and not conducive for working. He further stated that the Governor visited his office and suggested the need for renovation.

91. The Deputy Governor stated that he summoned the Chief Officer in charge of Governance, Administration and ICT, Mr. Joseph Omondi Onyango and identified the areas of required renovation and repairs. The procurement department then commenced the procurement process which he was not part of.
92. The Deputy Governor stated that he did not come up with any Bill of Quantities as that was done by the Department of Public Works. He further stated that he did not requisition for the furniture neither did he approve the requisition.
93. He also stated that there was no evidence to indicate that he instructed the procurement officers to renovate his office based on funds that were not in the budget. He further submitted that if the procurement took place without requisite due process, then the Director of Procurement and the chief officer, governance need to take full responsibility.
94. In his statement, the Deputy Governor submitted that the Special Committee of the County Assembly of Siaya while considering the matter, disregarded the evidence of the Director of Procurement, - Mr. Martin Okwata - and the Chief-Officer in charge of Governance, - Mr. Joseph Onyango - who confirmed that the Deputy Governor did not play any role in the procurement process of the renovations to his office.
95. Upon examination by the Senate Committee, the Deputy Governor indicated that he did not requisition for the items procured for renovating his office. He further stated that he didn't know that the chair was purchased at a cost of Kshs. 1.1Million and that he got to know when the matter was before the County Assembly of Siaya.

96. On the procurement of furniture, the Deputy Governor indicated that he expressed the need for the furniture but the extent of the need was determined by the Chief Officer of Governance.

**Committee Observations**

97. The Committee observed that;
- a) the procurement for the office furniture and renovation of the Deputy Governor's office was undertaken after the reallocation of funds in the supplementary budget; and
  - b) in respect of the office renovations and repairs, the Deputy Governor pointed out the areas that required renovation and repairs and was not involved in the procurement process;
  - c) there was no evidence of a market survey carried out before the procurement and purchase of the Deputy Governor's chair at Kshs. 1.12 million

## **Allegation 2: Misuse of Public Resources**

98. It is on record that in November 2022, the Deputy Governor – William Oduol, while attending ICPAK meeting in Sarova Whitesands Hotel in Mombasa, in his personal capacity and not in his official capacity as the Deputy Governor, caused the county department of Governance and Administration to facilitate him and three other officers whose relevance to ICPAK meeting could not be confirmed as they were not members of the ICPAK, apart from the driver whose roles were undoubtedly essential. This was contrary to provisions of Section 46 of Anti-Corruption and Economic Crimes Act, 2003 (Rev 2016) which states that “*A person who uses his office to improperly confer a benefit on himself or anyone else is guilty of an offence*”
99. The Deputy Governor used his office to confer benefits to officers to attend a function that was irrelevant to them.
100. To support this allegation, the County Assembly submitted Witness Statements sworn by the following Members and officials: -
- a) Hon. Otiato Francis Otieno, MCA representing Yimbo East Ward and the Chair of the Special Committee that investigated the removal from office of the Deputy Governor. (Annex XV, Volume 2, page 340 of the County Assembly Bundle of Documents).
  - b) Mr. Jack Odinga, Acting Chief Officer for Finance and Economic Planning of the County Government of Siaya (Annex XV, Volume 2, page 346 of the County Assembly Bundle of Documents).
101. Hon. Otiato Francis Otieno vide his Witness Statement dated 17<sup>th</sup> June, 2023, stated that being the Chair of the Select Committee that investigated the removal from office of the Deputy Governor, the Committee resolved to invite a number of officers to

submit information on the allegations raised in the Motion by Honourable Gordon Onyango Onguuru, MCA.

102. On the allegation of Misuse of Public Resource, Hon. Otiato Francis Otieno in his Witness Statement stated that oral and written Submissions from Damianus Omollo and the Deputy Governor were received and vide the Report dated 9<sup>th</sup> June, 2023 and the Special Committee chaired by Hon. Otiato Francis Otieno found all allegations to have been substantiated.
103. During the hearing, Hon. Otiato Francis Otieno testified that the Deputy Governor was invited to the ICPAK meeting in his personal capacity and as a member of the ICPAK. Hon. Otiato further testified that during the hearing before the Special Committee that he chaired, the Deputy Governor was given an opportunity to elaborate on the invitation letter for the ICPAK meeting to which the Deputy Governor said that he was invited as a key note speaker and in his official capacity.
104. Hon. Otiato further testified that Kshs. 422,000 was spent by the Deputy Governor and four (4) of his staff in respect to the ICPAK meeting and that there was no specific responsibility that the staff members were going to do at the ICPAK meeting. He relied on Annex XV Volume 2, pages 563 to 565 of the County Assembly Bundle of Documents in support of his testimony.
105. The County Assembly vide a Witness Statement sworn by Mr. Jack Odinga, submitted that the Deputy Governor attended the ICPAK meeting in November, 2022 at Sarova Whitesands Hotel in Mombasa. That before travelling the Deputy Governor requested for facilitation from the County Government to attend the meeting through his Assistant Director-Administration, Damianus Omollo. He further submitted that despite the Deputy Governor relying on an invitation letter from ICPAK addressed to him in his personal capacity, he initiated a request for imprest vide Memo dated 28<sup>th</sup> October,

2022 for attendance of himself and four (4) other officials (Annex XV, Volume 2 of the County Assembly Bundle of Documents (Page 563-565)).

106. In support of the allegation on misuse of public resources, the County Assembly submitted the following documents (Annex XV, Volume 2, pages 563 to 568 of the County Assembly Bundle of Documents): -
- a) Facilitation request for the Deputy Governor and other officers to attend the ICPAK meeting in Mombasa.
  - b) Letter dated 26th October, 2022 inviting CPA – William Oduol to the ICPAK meeting in Mombasa.
  - c) Payment Vouchers for payment of Seminar Charges for CPA – William Oduol

**Response by the Deputy Governor to this allegation**

107. In response to this allegation, the Deputy Governor submitted a Witness Statement dated 19<sup>th</sup> June, 2023. In the said Statement, and during the hearing, the Deputy Governor submitted that he attended the ICPAK meeting in the capacity of a Deputy Governor and as a main speaker in respect to a topic on “*Challenges and Opportunities for Elected Leaders*”. To support this, he relied on posters for the ICPAK meetings held in November, 2022 (Annex XVIII, Volume 2, page 581 of the Deputy Governor’s List and Bundle of Documents).
108. The Deputy Governor further submitted that the ICPAK meeting was attended by leaders from various Counties and he was representing Siaya County in the said meeting. He further stated that the meeting was for the benefit of Siaya County and other Counties as well.
109. Upon examination by the Senate Committee, the Deputy Governor further testified that there were ten (10) CPA-K’s from Siaya County Executive and four (4) from the County Assembly who attended the ICPAK meeting and were facilitated by the County

Government of Siaya to attend. He further confirmed that he did not have any evidence to support this.

110. Upon further examination, the Deputy Governor submitted that the invitation letter from ICPAK needed to be considered together with the brochure (Annex XVIII – Volume 2, page 581, Deputy Governor’s bundle of documents) in support of his position that he was invited to the ICPAK conference in his Official Capacity as the Deputy Governor and as a Key Note Speaker.
111. The Deputy Governor further submitted that the County Government of Siaya has no policy in place that forbids professionals working with the County Government from attending professional events and/or that deter the County Government from facilitating them to attend such events.

#### **Committee Observations**

112. The Committee observed that –
- a) Siaya County has no policy on approval and attendance of trainings, conferences and events;
  - b) the ICPAK Conference Invitation Letter was addressed to CPA Oduol William Odhiambo, Membership Number 2747;
  - c) the Conference Brochure indicated that the Deputy Governor was one of the conference speakers discussing Challenges and Opportunities for elected leaders;
  - d) there was no evidence that fourteen county employees were facilitated to attend the ICPAK conference as alleged by the Deputy Governor;

- e) the request for facilitation of the Deputy Governor and four staff to the ICPAK conference was approved by the Chief Officer for Governance and Administration; and
- f) there was no formal approval submitted to the Senate Committee for the Deputy Governor to attend the ICPAK Conference from his superiors.

### **Allegation 3: Bullying**

113. The particulars of this Allegation are as follows—

- a) In his effort to coerce the County Director of Supply Chain Management – Mr. Martin Okwata, to bend to his whims and change specifications in certain tenders, the Deputy Governor – William Oduol, threatened the director and promised him a harsh working environment in the coming future, apparently in reference to director’s adamance to give him tender documents; It is also on record that the Deputy Governor demanded constant briefings from the Director Supply Chain Management directly on matters of procurement, despite the Director not being answerable to him as per the structure of the County Government Service.
- b) The Deputy Governor demanded constant and repeated briefings not only on matters of Procurement but also on matters of Finance. It was on record that he constantly and persistently demanded information on county financial transactions directly from the Ag. Chief Officer for Finance and Economic Planning – Mr. Jack Odinga, despite the fact that Mr. Odinga was not directly answerable to him in his duties and responsibilities. This repeated behaviour humiliated Mr. Odinga. It was peculiarly noted the Deputy Governor, William Oduol, only demanded direct and constant briefings from Finance and Procurement departments only, and not from other

county departments which are equally important in service provision to the residents of Siaya.

- c) The Actions of the Deputy Governor of threatening and persistently demanding information from officers who were not directly answerable to him was akin to the provisions of Section 34 of Leadership and Integrity Act 2012 states that; *(1) A State officer shall not bully any person. (2) For purposes of subsection (1), "bullying" includes repeated offensive behaviour which is vindictive, cruel, malicious or humiliating and is intended to undermine a person.*

114. In support of the above charge and its particulars, the County Assembly relied on witness statements and oral submissions from the following witnesses—

- (a) Honourable Otiato Francis Otieno, MCA;
- (b) Mr. Jack Odinga, Ag. Chief Officer, Finance and Economic Planning;
- (c) Mr. Martin Okwata, Director Supply Chain Management; and
- (d) Mr. Joseph Ogutu, County Secretary.

115. The witness statement of Mr. Jack Odinga, the Acting Chief Officer, Finance and Economic Planning states that he received e-mail instructions from the Deputy Governor (who doubled up as the chairperson of a Cabinet sub-committee on pending bills) to keep paying pending bills without reference to or approval by the County Executive Committee Member (CECM) as per practice. He stated that the Deputy Governor had no role in ordering for payment of pending bills as per the Public Finance Management Act (Annex XV, County Assembly Bundle of Documents, Volume 2, pages 78 – 919).

116. Hon. Otiato testified that the governor had made allegations of huge and frequent withdrawals from the County's imprest account. He stated that when the Deputy

Governor talked about withdrawals, the special committee of the County Assembly asked for evidence of approval of withdrawals and there was none. What was presented to the County Assembly Special Committee was a letter written by the Chief Officer requesting the CECM to transfer funds from the recurrent account to imprest account.

117. Hon Otiato further testified that the act of transferring money from one account to another cannot did not amount to misappropriation.
118. Mr. Jack Odinga further stated that the Deputy Governor mentioned him over thirteen times when the Deputy Governor appeared before the County Assembly Committee on General Oversight to answer to questions on alleged mismanagement of county funds where the Deputy Governor laid all the culpability on him. He further stated that this was meant to humiliate him publicly as the CECM Finance is the one who authorizes most of the payments.
119. Mr. Jack Odinga also stated that the Deputy Governor had on several occasions mentioned him on social media, radio and TV stations alleged that he had transferred and withdrawn Kshs. 21 million from an imprest account in a single day. He further stated that the Deputy Governor linked him to alleged misappropriation of funds when he was not even the Acting Chief Officer, Finance and Economic Planning.
120. Mr. Jack Odinga stated that he always kept the Deputy Governor informed on the Siaya County financial status despite the accusations of him being corrupt. He also stated that the Deputy Governor was on a mission to profile and humiliate him. He further stated that the Deputy Governor could have used Siaya County internal dispute resolutions mechanism to address those issues.

121. During oral submissions, Mr. Jack Odinga also testified that the Deputy Governor utterances had made it impossible for him to lead a normal life and he alleges that his life was in danger and felt humiliated before his family.
122. Upon examination by members of the Committee on whether he was being investigated by EACC on allegations of corrupt conduct, abuse of office, irregular payment of imprest and embezzlement of public funds in Siaya County, he stated that he has never been investigated.
123. The County Assembly also stated that the Deputy Governor exerted immense pressure on county employees to make a particular set of payments and were under constant harassment to make payment to an identified group of contractors and in this regard submitted email correspondence from the Deputy Governor forwarding a list of pending bills cleared by the pending bills sub-committee for payment. (*Annex XV- County Assembly Bundle of Documents, Volume 2 pages 781-919*)
124. The submissions by the County Assembly also stated that Mr. Martin Okwata was bullied and intimidated by the Deputy Governor who was his superior in the County because of insisting that the county procedures and law needs to be followed.
125. Mr. Martin Okwata testified that he sent e-mails to Mr. Oboge at 2.00 a.m. (*Annex XV, County Assembly Bundle of Documents, Volume 2, pages 553 – 558*). He further stated that he was bullied to make payments for the Deputy Governor's office furniture whereas there was no budget for the same. The witness also testified that the procurement of the Deputy Governor's office furniture was done legally and procedurally.

### **The Deputy Governor's response to the allegation of bullying**

126. In response to the charges, the Deputy Governor submitted that the particulars provided to this charge do not disclose any abuse of office and gross misconduct on his part. He stated that asking for constant briefings from the Director of Supply Chain Management and the Chief Officer for Finance and Economic Planning cannot amount to bullying when the Deputy Governor is part of the executive and entitled to be informed on matters management of the County Government of Siaya.
127. The Deputy Governor further stated that the letter dated 6<sup>th</sup> October, 2022 (*Annex XVII, WO-1, Deputy Governor Bundle of Documents, Volume 1 at page 5*) appointing Mr. Jacktone Ouma Odinga to the position of Chief Officer Finance and Economic Planning expressly directed him to brief the Deputy Governor on departmental progress on a weekly basis or more frequently upon the Deputy Governor's request. He further stated that requests for briefings were done in line with the terms of appointment of the said officers in their letters of appointment. In addition, he stated that the request was done in good faith and in accordance with his right to access information guaranteed by Article 35 of the Constitution so as to ensure there is accountability in the management of the county resources.
128. In response to the issue of pending bills, the Deputy Governor stated that he was appointed the chairperson of the cabinet subcommittee on pending bills. He however, recused himself following which the sub-committee nominated Mr. Dismas Wakla (Former County Executive Committee Member for Health) to chair the said cabinet sub-committee meetings. Upon Mr. Wakla's exit, Architect Jared Oluoch was nominated to chair the sub-committee meetings as both of them were members of the pending bills sub-committee.
129. The Deputy Governor stated that his role was to transmit what was passed at the pending bills committee to the Finance Department and he would copy the Chief

Executive Committee Member for Finance and Economic Planning and the chairperson of the cabinet subcommittee on pending bills as demonstrated in the emails (*Annex XVII, WO-24, Deputy Governor's Documents, Volume 1, pages 615-618*). He also stated that his payment instructions would relate to all payments on development and recurrent and for all suppliers and contractors approved by the pending bills subcommittee. He further stated that he never made any unilateral decisions on the pending bills. The Deputy Governor stated that it cannot amount to bullying when the Chief Officer in charge of Finance and Economic Planning is asked to pay eligible pending bills and more so, when he is asked by the Chairperson of the Pending Bills Committee.

130. Upon examination by members of the Committee on the Kshs.176 million pending bill, the Deputy Governor stated that it was not part of the County's Kshs.1 billion pending bills as the same was sneaked in on 29<sup>th</sup> March 2023. He further stated that upon inquiring on the same, the Minister for Roads withdrew the documentation on the Kshs.176 million pending bill.

131. In his written statement and oral submissions, he stated that Mr. Jacktone Odinga had been in finance for a long time and he had presided over financial mismanagement. He stated that Mr. Jacktone was an alternate signatory to the Chief Finance Officer until October, 2022 and then became a signatory, as the Chief Finance Officer. That in most of his transactions, he never involved his boss the CFCM Finance and Economic Planning.

132. He further blamed Jacktone Odinga for misappropriation of public funds because he is a signatory to all the payments made from the Siaya County Government Bank Accounts as the Acting Chief Finance Officer and even before as the acting Director of Finance and as such, he was an alternate signatory and signed most of the payments as his substantive boss, Mr. Mariwa was away from office for close to three months.

133. In response to management of imprest, the Deputy Governor testified that once money has been transferred to imprest account it is as good as a withdrawal. That the Kshs. 21 million transferred to the impress account was indeed withdrawn unless the contrary can be proved. He further stated that there was no emergency that would warrant the huge transfer to imprest account and the said transfers were never approved by the Controller of Budget, which is a very serious policy breach. He further testified that Kshs.46.5 million was withdrawn in November, 2022, Kshs.41.1 million in December and Kshs.15.7 million in the months of January to March, 2023. (*Annex XVII WO-2, Deputy Governor's Documents, Volume 1, pages 6-75*).
134. The Deputy Governor testified that the EACC has taken over the matters surrounding imprest as an active investigation into the allegations of corrupt conduct, abuse of office, irregular payment of imprest and embezzlement of public funds in Siaya County. He further confirmed that Mr. Jacktone Odinga Ouma is one of the officers being investigated by the EACC. (*Annex XVII, WO-25, Deputy Governor's Documents, Volume 1, pages 619-621*).
135. The Deputy Governor stated that publicly speaking about public finance misappropriation and blaming Mr. Jack Odinga, the accounting officer and a person in charge of the department of Finance and Economic Planning cannot amount to bullying but calling the respective officer to be accountable and transparent in the spending of the Siaya County financial resources.
136. On cross-examination, the Deputy Governor, on being asked whether there was documentation on his appointment as the chair for the cabinet sub-committee on pending bills, he stated that they were never produced before the Senate Committee but could provide if requested.

137. Upon examination by members of the Committee on his recusal from the sub-committee on pending bills he stated that he recused himself and asked the remaining members to nominate amongst themselves a temporary chair and they nominated Dismas Wakla.

**Committee Observations**

138. The Committee observed that –
- (a) the Deputy Governor requested for briefings from the Director of Supply Chain Management based on the Authority granted him to by the Governor in the appointment letter of the Chief Officer for Finance and Economic Planning;
  - (b) there is no evidence demonstrating that the Deputy Governor threatened a difficult working environment for the Director Supply Chain Management for failure to follow his instructions;
  - (c) the Deputy Governor forwarded lists of approved pending bills by the Cabinet through emails to the Finance Department for payment and that there was no contention from the County Assembly on the list of pending bills forwarded by the Deputy Governor;
  - (d) there is no evidence to show that the Deputy Governor recused himself as the chair of the Sub-Committee on pending bills; and
  - (e) the amount of cash transfers to the county imprest account have significantly reduced following the Deputy Governor’s utterances.

#### **Allegation 4: Misleading the Public by Giving False Information**

139. It is on record that the Deputy Governor – William Oduol misled the County Assembly and has continuously been misleading members of the public in the following instances:
- (a) The Deputy Governor misled the members of the Public that Funds allocated towards completion of the Siaya Stadium had been reallocated in the Supplementary Budget I for the FY 2022/2023. However, it was confirmed that the allocation had been enhanced and not removed as the Deputy Governor claimed.
  - (b) The Deputy Governor misled members of the public and the House that there was discriminatory budgetary allocation to disadvantage residents of Alego Usonga Constituency; it was later confirmed that Alego Usonga was the highest beneficiary of Development Funding in the Supplementary Budget I for the FY 2022/2023.
  - (c) The Deputy Governor misled the County Assembly and members of the Public that the County Secretary – Mr. Joseph Ogutu was forced to resign by the Governor, information that was denied by the county secretary
  - (d) The Deputy Governor misled the County Assembly and members of the Public that County bursary allocation in Siaya is riddled with corruption and that school head teachers who are critical stakeholders in the determination of needy cases are left out during vetting processes. This assertion was invalidated by statements of the CEC Member for Education.
  - (e) The Deputy Governor, William Oduol, misled the County Assembly and members of the Public that Mr. Austin Otieno who Political Affairs Officer in the County Public Service and that he had been interdicted without being given an opportunity to show cause why disciplinary action could not be

taken against him. Investigations revealed that Mr. Otieno was not appointed to the County Government as a Political Affairs Officer but a Social Welfare Officer, and further that Mr. Otieno was unprocedurally asked to show cause why disciplinary action could not be taken against him.

140. The County Assembly submitted video and transcript and English Translation of utterances made by Dr. William Oduol, the Deputy Governor of Siaya County, addressing members of the Public at a funeral in Alego Sub County. In the video in Dholuo, and transcript, the Deputy Governor is quoted informing the crowd that: -

- a) County Secretary who hails from Alego was sent on compulsory leave and forced to resign;
- b) there were ongoing plans to impeach the CECM in charge of Water who also hails from Alego Usonga;
- c) there were irregularities in the procurement of seeds pointing to possible corruption in the process;
- d) the Bursary was not assisting needy children but instead being utilized for the benefit of people's relatives;
- e) money reserved from the construction of the Siaya Stadium had been channelled towards building Migwena Stadium; and
- f) he asks the crowd for their support as he fights the "war of Alego Usonga".

**(Transcript of the video provided under Annex XV, County Assembly Bundle of Documents 3, pages 920-925 and Annex XIX)**

141. The County Assembly submitted that they relied on the Deputy Governor's submissions to the Committee on General Oversight of the County Assembly requiring him to shed light on various allegations of mismanagement at the County Executive. The submissions were in response to the allegations he had made in

public regarding the Governor and the administration of the County. (Annex XV, volume 2 pages 926 to 939).

142. In his oral testimony, Mr. Francis Otiato, the MCA Yimbo East affirmed that he was the Chairperson of the Special Committee that investigated the removal of the Deputy Governor by way of impeachment. The special committee relied on video evidence of the Deputy Governor addressing the crowd at the funeral event.
143. Hon. Otiato in his submission stated that it was not true that the county staff from Alego were being targeted unfairly. He testified that when Mr. Austin Otieno appeared before the Special Committee, they discovered that he was involved in a fight with some people at a certain funeral, in Alego sub-county. He further stated that the fight involved some of the county bosses and therefore, this led to Mr. Austin Otieno being issued with a letter of interdiction with a show cause.
144. Hon. Otiato argued that it was illegal and against the County's code of conduct for the Deputy Governor to use documents that he had acquired by virtue of his office to make statements in radio stations but when called upon by the county assembly cannot authenticate his sources. Hon. Otiato submitted that the statements made by the Deputy Governor were hearsay of which the actual source could not be substantiated.
145. Mr. Joseph Ogutu, testified that he is the County Secretary of Siaya County and has held the office since July 2020. He stated that he had tendered his notice of resignation voluntarily in February and he was not coerced. He restated that he was not forced to resign as claimed by the Deputy Governor and that he only gave an intention to issue a notice of resignation from service (Annex XV, Volume 2 page 941).

146. Mr. Ogutu stated that from the records in his office, Mr. Austin Otieno was going through a disciplinary process which is still active before the county human resource and advisory committee. Mr. Ogutu denied the Deputy Governor's claim that Mr. Austin Otieno's interdiction was connected to the impeachment of the Deputy Governor as his interdiction took effect on 10<sup>th</sup> March, 2023 before the impeachment motion was filed and that the show cause letter served upon Mr. Otieno was in relation to his fight with the county bosses.

147. Upon cross examination, Mr. Ogutu admitted having being sent on compulsory leave in August 2022 and was recalled back to service on February 2022 following which he voluntarily gave notice of his intention to resign in December. Mr. Ogutu clarified that there were other senior officers of the county who were sent on leave to pave way for investigations that were to be conducted by the taskforce that was appointed by the Governor at that time.

#### **The Deputy Governor's responses**

148. In the Deputy Governor's written submission, responding to allegation on misleading the public that funds allocated towards completion of the Siaya Stadium had been reallocated in the Supplementary Budget I for the FY 2022/2023, the Deputy Governor stated that:

- i. *he never talked about the budget for Siaya Stadium being re-allocated to Migwena Stadium as being alleged.*
- ii. *the Governor of Siaya County while opening Migwena Festival in December 2022 had committed to completing Siaya Stadium by March 2023.*

*Unfortunately, nothing significant happened between January, 2023 and March 2023 prompting him to raise the issue.*

*iii. he was however happy that the contractor was back on site and the that roofing structure was on course”*

149. In response to the allegation on misleading the public on discriminatory budget allocation to disadvantage residents of Alego Usonga sub county the Deputy Governor stated that:

*i. he never talked about budget in total. He talked about Governor and Deputy Governor’s residence, upgrading to Bitumen standards of Segere Ouru Ogaso road 6.5km and the status of Siaya Stadium all in Alego.*

*ii. it was true that in the supplementary Budget Estimates 1, 2023, monies allocated of Kshs. 31m and 20m respectively on pages 253 and 297 were removed.*

150. In his oral submission on the allegations regarding the reallocation funds from Siaya Stadium to Migwena Stadium, the Deputy Governor denied discussing budget reallocation to Migwena Stadium. He indicated that he was the chairperson of the committee overseeing the progress of the construction of the stadium and was therefore raising concern over the same. He stated that the Governor had committed to completing the construction of the stadium in March 2023 and the same had not been achieved. He reported that the Governor made this promise in November 2022 however for the period ensuing until March 2023, no progress had been made.

151. The Deputy Governor further addressed his remarks on the construction of the Governor and Deputy Governor's houses and the Siaya – Alego road he insisted that the monies were indeed retracted from the projects.

152. In response to the allegation on misleading the County Assembly and members of the Public that the County Secretary – Mr. Joseph Ogutu was forced to resign, the Deputy Governor stated that he still held the view that the current county secretary, Joseph Ogutu from Alego has constructively been dismissed.

153. The Deputy Governor also relied on the video evidence he submitted of the Governor discussing revision of county staff contracts in a media news show and insisted that this was evidence that the Governor was targeting various staff for termination from employment. The Deputy Governor further stated that the circumstances surrounding the resignation of the County Secretary were very suspect.

154. In response to the allegation that he misled the County Assembly and members of the Public that Country Bursary Allocation in Siaya is riddled with Corruption and that School head-teachers who are critical stakeholders in the determination of needy cases are left out during the vetting process, the Deputy Governor stated that—

*i. he never talked about corruption but raised the following concerns over certain areas that the county was deficient in terms of bursary allocation in Siaya County and he even offered recommendations—*

*a. inadequate participation of the heads of beneficiary institutions in the selection of eligible students has resulted in the inequitable distribution of bursary funds;*

- b. lack of mechanism to coordinate bursary and scholarship support among national and county governments; and*
- c. late disbursement of bursary funds to eligible students was partly occasioned by delays in submitting the merits list by the ward bursary committee.*

155. In respect of the allegation on misleading the County Assembly and members of the Public that Mr. Austin Otieno was a Political Affairs Officer in the County Public Service and that he had been interdicted without being given an opportunity to show cause why disciplinary action could not be taken against him, the Deputy Governor stated that—

- i. he indeed referred to Austin Otieno as Political Affairs Officer instead of a social worker was inadvertent mistake and out of confusion on his role and responsibilities, which were more of a political affairs officer than a social worker; and*
- ii. Austin Otieno was dismissed without following due process of Law. He was given an interdiction letter and dismissed from work without first being given a letter to show cause why he should not be terminated. It is not due process of law, as in the case of Austin Otieno, to interdict an employee and later on ask him to show cause (Annex XVII, WO-29, DG Documents)*

156. In his oral testimony the Deputy Governor reiterated that he was summoned by the oversight committee on the comments he had made at the funeral event of which the committee prosecuted the matter. He further stated that the Committee proceed to censure him and instructed him to seek clarifications from the relevant county officials before proceeding to make public pronouncements. The Deputy Governor

stated that there was no resolution or recommendation by the committee to impeach him.

157. Mr. Austin Otieno testified that he was employed as a Social Affairs Officer in the Political Affairs Liaison Office in the County. He stated that his role included research support for the office of the Governor and Deputy Governor and further planning and mobilizing attendance of county events.

158. Mr. Otieno indicated that he had been served with an interdiction letter and notice to show cause. He testified that the interdiction letter stated that he participated and facilitated a political meeting when he was meant to be at work and in the company of other persons beat up other participants and posted videos on various social media platforms indicating that he was in support of the same. He however declined and disputed the allegations in the interdiction letter which he was served with terming them as vague and unsubstantiated.

159. Mr. Otieno testified that he was not formally invited to the impeachment proceedings at the County Assembly. He further submitted that, he had attended the County Assembly impeachment proceedings as an observer, and then he was coerced to testify against the Deputy Governor during that proceeding.

a) Mr. Otieno confirmed that he is a permanent and pensionable employee, however, he was not fully conversant with the human resource policy and that he has not been submitted to a proper disciplinary process.

#### **Committee Observations**

160. The Committee observed that—

- a) the Deputy Governor made public utterances about the administration of the County Government of Siaya;
- b) There were budgetary reallocation affecting various projects in the county including Alego Sub- County;
- c) There was no budgetary reallocation in relation to the construction of Siaya Stadium to Migwena Stadium;
- d) Mr. Joseph Ogutu provided documentary evidence of intention to issue notice of his resignation voluntarily resigned from his position as County Secretary contrary to the statements made by the Deputy Governor;
- e) That the interdiction of Mr. Austin Otieno was not carried out procedurally; and
- f) That the Deputy Governor's reference to Mr. Otieno as the Political Affairs Officer was an inadvertent error.

## 8.0 THE IMPEACHMENT PROCESS

161. Article 96(1) of the Constitution provides that the “*the Senate represents the counties and serves to protect the interests of the counties and their governments*” Impeachment is one of the mechanisms by which the Senate exercises its role of protection of the Counties and their Governments.
162. The Black’s Law Dictionary<sup>1</sup> defines impeachment as “the act (by a legislature) of calling for the removal from office of a public official, accomplished by presenting a written charge of the official’s alleged misconduct”.<sup>2</sup>
163. In order to assist the Special Committee to make an informed decision on the proposed impeachment, it is important that the Committee examines the historical origin of the impeachment of public officials.

### Historical foundation of impeachment

164. According to Professor Ben Nwabueze, ‘concentration of government powers in the hands of one individual is the very definition of dictatorship and absolute power is by its very nature capricious and despotic.’<sup>3</sup> The concept of impeachment evolved as man got wiser and the need to preclude the exercise of arbitrary power became necessary. Impeachment has now become the most potent tool that is being used to keep public

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<sup>1</sup> Garner, B.A. (ed.) Black’s Law Dictionary, Thomson Reuter, St. Paul Minesota, 9th Edition (2009) p. 820

<sup>2</sup> Historically, impeachment was a political process, with the House of Representatives or Senate performing the function of a quasi-political court. See M. A. Owoade, “Impeachment of Chief Executives under the 1999 Constitution: New Problems, New Solutions” in *Journal of Constitutional Development* (2007) Vol. 7 NO. 4, p. 1

<sup>3</sup> Ben Nwabueze, *The Presidential Constitution of Nigeria*. (Hurst and Co, 1982) P.32

officers' actions within the boundaries of the law; it has long reaffirmed the principles of the rule of law and constitutionalism in the Nation.<sup>4</sup>

165. Impeachment developed because certain officers of government were, for various reasons, placed beyond the reach of ordinary courts. High judicial and executive officers were not subject to complaints of private individuals in the ordinary courts. Private persons aggrieved by the actions of such officers, turned to parliament for redress.<sup>5</sup>

166. The origin of impeachment process dates back to British parliamentary practice in the 14th century<sup>6</sup>, when in 1376 Lord Latimer was impeached by the British Parliament – the ‘Good Parliament’<sup>7</sup>. Latimer was accused of surrendering key military defences to the French. At the time England was fighting the Hundred Years War, and currently losing. The reigning king, Edward III, was very old and there were popular concerns that Latimer and other officials were abusing their position and profiting from the situation.<sup>8</sup> The Commons impeached Latimer and demanded that he was tried before the House of Lords, who agreed. A trial took place and Latimer was found guilty and, as a consequence, lost his position at the court.<sup>9</sup>

167. Consequently, parliament developed the impeachment as a means to exercise some measure of control over the King. An impeachment proceeding in England was a direct method of bringing into account the King's ministers and favourites men who might have otherwise been out of reach. Impeachment, at least in its early history, has been

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<sup>4</sup> Mitong Dapal (Author), 2019, The concept and procedures of impeachment. A comparison between Nigeria and the United States of America, Munich, GRIN Verlag.

<sup>5</sup> Chris Monaghan, 'Impeachment: The American Phenomenon's English Origins' available at <https://www.worcester.ac.uk/about/news/academic-blog/impeachment-the-american-phenomenon/s-english-origins.aspx>

<sup>6</sup> Peter Woll, America Government Readings and Cases (5th Edn, Little, Brown and Company Canada Ltd.) P.102-103

<sup>7</sup> Jack Simson Caird, 'Impeachment: Briefing Paper' <<http://researchbriefings.files.parliament.uk/documents/CBP-7612/CBP-7612.pdf>> accessed 12th October, 2019

<sup>8</sup> Ibid, Note 5.

<sup>9</sup> Ibid.

called "the most powerful weapon in the political armoury, short of civil war".<sup>10</sup> It played a continuing role in the struggles between King and Parliament that resulted in the formation of the unwritten English constitution. In this respect impeachment was one of the tools used by English Parliament to create more responsive and responsible government and to redress imbalances when they occurred.<sup>11</sup>

### **United States of America**

168. The United States Constitution gives the House of Representatives the sole power to impeach an official, and it makes the Senate the sole court for impeachment trials. The power of impeachment is limited to removal from office but also provides a means by which a removed officer may be disqualified from holding future office.<sup>12</sup>
169. The House of Representatives brings impeachment charges against federal officials as part of its oversight and investigatory responsibilities. Individual Members of the House can introduce impeachment resolutions like ordinary bills, or the House could initiate proceedings by passing a resolution authorizing an inquiry. The Committee on the Judiciary<sup>13</sup> ordinarily has jurisdiction over impeachments. The committee then chooses whether to pursue articles of impeachment against the accused official and report them to the full House. If the articles are adopted (by simple majority vote), the House appoints Members by resolution to manage the ensuing Senate trial on its behalf. These managers act as prosecutors in the Senate and are usually members of the Judiciary Committee.<sup>14</sup>
170. The House of Representatives has initiated impeachment proceedings more than 60 times but less than a third have led to full impeachments. Just eight (all federal judges) have been convicted and removed from office by the Senate. Outside of the 15 federal judges impeached by the House, three Presidents (Andrew Johnson in 1868, William

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<sup>10</sup> Plucknett, "Presidential Address" reproduced in 3 Transactions, Royal Historical Society, 5th Series, 145 (1952).

<sup>11</sup> See generally C Roberts, *The Growth of Responsible Government in Stuart England* (Cambridge 1966).

<sup>12</sup> U.S. Constitution, Article II, Section 4.

<sup>13</sup> Judiciary Committee was created in 1813.

<sup>14</sup> Impeachment, US House of Representatives: History, Art & Archives, available at <https://history.house.gov/Institution/Origins-Development/Impeachment/>

Jefferson (Bill) Clinton in 1998, and Donald J. Trump in 2019 and 2021), a cabinet secretary (William Belknap in 1876), and a U.S. Senator (William Blount of Tennessee in 1797) have also been impeached. In only three instances—all involving removed federal judges—has the Senate taken the additional step of barring them from ever holding future federal office.<sup>15</sup>

## Nigeria

171. Under the Constitution of the Federal Republic of Nigeria, 1999, the procedures for the impeachment of the President of Nigeria and State Governors are basically the same; except for the involvement of a bicameral Legislature in the impeachment of the President and a unicameral Legislature in the impeachment of the Governors. The procedures are contained in **Sections 143** and **188** of the Constitution.
172. Unlike, the American procedure, the impeachment procedure under the Nigerian Constitution is not initiated in the House of Representatives, but by a notice of Allegation signed by at least one third of the members of the National Assembly. Both Chambers of the National Assembly are involved in considering the notice of allegation and in resolving, by motion supported by two thirds of its members, whether to investigate the allegation or not.<sup>16</sup>
173. A distinguishing feature of the procedure under the Nigerian Constitution is the provision for an independent Panel set up by the Chief Justice or Chief Judge to investigate the allegations made against the office holder. Thus, unlike the procedure under the American Constitution where the entire process is carried out by the legislature from inception to conclusion, the procedure under the Nigerian Constitution precludes the legislature from conducting investigations into the allegations levelled by it against the office holder. However, the Nigerian National Assembly must still

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<sup>15</sup> Ibid.

<sup>16</sup> Udofa, Dr., The impeachment power of the legislature under the Nigerian and American constitutions compared, Available at <http://ijlljs.in/wp-content/uploads/2015/06/THE-IMPEACHMENT-POWER-OF-THE-LEGISLATURE-3.pdf> (Accessed: December 16, 2022).

resolve, by motion, supported by two thirds majority of members, to adopt or reject the report of the Panel of investigation.<sup>17</sup>

174. On the 15<sup>th</sup> day of July 2014, Governor Murtala Nyako was impeached as the governor of Adamawa State after the Adamawa State House of Assembly adopted a report of a panel set up to investigate him for alleged corruption. The report found the governor guilty of all the 16 allegations of gross misconduct. The Court of Appeal however overturned the impeachment on the basis that the same was not done in accordance with the provision of the law.

### **The impeachment process and procedure in Kenya**

175. The Senate is established pursuant to the provisions of **Article 93(1)** of the Constitution of Kenya, 2010. **Article 96(1)** thereof provides that the “*the Senate represents the counties and serves to protect the interests of the counties and their governments*”. Under this role the Senate exercises an oversight mandate over the counties. One such mechanism of oversight is the removal of a governor from office by impeachment.

176. The procedure and the grounds for the removal of a governor from office is provided for under the provisions of **Article 181** of the Constitution as read with **Section 33 of the County Governments Act, 2012** (“the County Governments Act”). **Article 181** of the Constitution provides as follows;

*“181. (1) A county governor may be removed from office on any of the following grounds*

- 
- (a) gross violation of this Constitution or any other law;*
  - (b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;*
  - (c) abuse of office or gross misconduct; or*
  - (d) physical or mental incapacity to perform the functions of office of county governor.*

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<sup>17</sup> Ibid.

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

**Section 33** of the County Governments Act provides as follows;

*“(1) A member of the county assembly may by notice to the speaker, supported by at least a third of all the members, move a motion for the removal of the governor under Article 181 of the Constitution.*

*(2) If a motion under subsection (1) is supported by at least two-thirds of all the members of the county assembly — (a) the speaker of the county assembly shall inform the Speaker of the Senate of that resolution within two days; and (b) the governor shall continue to perform the functions of the office pending the outcome of the proceedings required by this section.*

*(3) Within seven days after receiving notice of a resolution from the speaker of the county assembly — (a) the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the governor; and (b) the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.*

*(4) A special committee appointed under subsection (3)(b) shall — (a) investigate the matter; and (b) report to the Senate within ten days on whether it finds the particulars of the allegations against the governor to have been substantiated.*

*(5) The governor shall have the right to appear and be represented before the special committee during its investigations.*

*(6) If the special committee reports that the particulars of any allegation against the governor — (a) have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation; or (b) have been substantiated, the Senate shall, after according the governor an opportunity to be heard, vote on the impeachment charges.*

*(7) If a majority of all the members of the Senate vote to uphold any impeachment charge, the governor shall cease to hold office.*

*(8) If a vote in the Senate fails to result in the removal of the governor, the Speaker of the Senate shall notify the Speaker of the concerned county assembly accordingly and the*

*motion by the assembly for the removal of the governor on the same charges may only be re-introduced to the Senate on the expiry of three months from the date of such vote.*

*(9) The procedure for the removal of the President on grounds of incapacity under Article 144 of the Constitution shall apply, with necessary modifications, to the removal of a governor.*

*(9A) Subsections (1) to (9) shall, with necessary modifications, apply to the removal from office of a deputy governor.*

*(10) A vacancy in the office of the governor or deputy governor arising under this section shall be filled in the manner provided for by Article 182 of the Constitution.*

177. During the Senate’s consideration of the report of the special committee investigating the proposed removal from office of the Governor of Kericho County, the Senate adopted with approval the exposition of Senator Miriam Defensor Santiago of the Senate of the Philippines who in a keynote address at a workshop said that, ***“an impeachment trial is a unique process, because it is a hybrid. Impeachment is both quasi-judicial and quasi-political. It is neither a civil case nor a criminal case. A criminal case is designed to punish an offender and to seek retribution. In contrast, impeachment is the first step in a process that tries to remedy a wrong in governance. It has been said that the purpose of impeachment is not personal punishment, but rather to maintain Constitutional government, through the removal of an unfit official from a position of public trust.”***

178. The Court of Appeal in the case of **Martin Nyaga Wambora & 3 others –vs- Speaker of the Senate & 6 others [2014] eKLR, Civil Appeal No. 21 of 2014** stated as follows concerning impeachment of Governors in Kenya:

*“Our reading and interpretation of Article 181 of the Constitution as read with section 33 of the County Governments Act shows that removal of a Governor is a Constitutional and political process; it is a sui generis process that is quasi-judicial in nature and the rules of natural justice and fair administrative action must be observed. The impeachment architecture in Article 181 of the Constitution reveals that removal of a Governor is not*

*about criminality or culpability but is about accountability, political governance as well as policy and political responsibility. Section 33 of the County Governments Act provides for the procedure of removal of an erring Governor. The organ vested with the mandate at first instance to move a motion for the removal of a County Governor is the County Assembly. Neither the Courts nor the Senate have the Constitutional mandate to move a motion for the removal of a County Governor. The Senate's Constitutional mandate to hear the charges against the Governor and may appoint a Special Committee to investigate the matter. It is our considered view that the jurisdiction and process of removal of a Governor from office is hierarchical and sequential in nature. There are three sequential steps to be followed; first is intuition of a motion to remove the Governor by a member of the County Assembly; second there is consideration of the motion and a resolution by two thirds of all members of the County Assembly and third, the Speaker of the County Assembly is to forward the County Assembly's resolution to the Senate for hearing of the charges against the Governor... The Constitutional and statutory mandate to initiate and consider a motion to remove a County Governor is vested in the County Assembly and the Senate..."*

179. It is therefore clear that the purpose of impeachment is not to apportion culpability, criminal or otherwise but to ensure that the residents of a county are governed in a manner consistent with the Constitution and laws of Kenya. Consequently, impeachment is all about accountability, political governance as well as policy and political responsibility.

180. In the case of **Hon Mike Mbuvi Sonko –vs- The Clerk, County Assembly of Nairobi City & 11 Others (Petition 11 (E008) of 2022) [2022]** the Supreme Court observed as follows;

*"[14] "Impeachment", "recall" and "removal" are therefore the Constitution's final answer, a safety valve, to a State Officer or a public servant who mistakes himself for a monarch. As they say, power corrupts, and the framers of the Constitution being cognizant of this fact, built guardrails against autocratic exercise of power by the leaders..."*

*[17] The removal process of a Governor is, therefore, part of the oversight mandate of County Assembly and the Senate. The process is intended to serve as a reminder to the holders of office of Governor that the immense power vested in that office is to be exercised for the benefit of the people and is not a license for lawlessness...*

*[18] It must, however, be stressed for avoidance of doubt, that the power of impeachment, removal or recall is not one expected to be in constant or frequent exercise. It is only in the face of credible evidence of extraordinary wrongdoing that the conduct of a State officer will be investigated and even then, only upon sufficient proof of the allegations that impeachment, removal or a recall would be warranted... ”*

181. The Senate has the responsibility to set and maintain the standard for impeachment that adheres to the constitutional edicts of due process, fairness and justice. This it has endeavored to accomplish in the previous impeachments undertaken as evidenced by the reports of its special committees in: -
- (a) The 1<sup>st</sup> impeachment of the Governor of Embu County - the Report is dated 14<sup>th</sup> February 2014;
  - (b) The 2<sup>nd</sup> impeachment of the Governor of Embu County - the Report is dated 13<sup>th</sup> May 2014;
  - (c) The impeachment of the Governor of Kericho County - the Report is dated 3<sup>rd</sup> June 2014;
  - (d) The impeachment of the Deputy Governor of Machakos County - the Report is dated 15<sup>th</sup> August 2014;
  - (e) The impeachment of the Governor of Murang'a County – the Report is dated 6<sup>th</sup> November, 2015.
  - (f) The impeachment of the Governor of Nyeri County which was conducted in plenary;
  - (g) The impeachment of the Governor of Taita Taveta County- the Report is dated 24<sup>th</sup> October, 2019;
  - (h) The impeachment of the Governor of Kiambu County which was conducted in plenary.

- (i) The impeachment of the Governor of Kirinyaga County – the Report is dated 22<sup>nd</sup> June 2020.
- (j) The impeachment of the Governor of Nairobi County which was conducted in plenary.
- (k) The impeachment of the Governor of Wajir County – the Report is dated 17<sup>th</sup> May 2021
- (l) The impeachment of the Governor of Meru County – the Report is dated 30<sup>th</sup> December 2022

182. It is worthy of note that the Senate has only found the charges in support of removal from office of a Governor substantiated in four cases; the Governor of Embu County, the Governor of Kiambu County, the Governor of Wajir and the Governor of Nairobi County. The charges were found to be unsubstantiated in the cases of the Governor of Kericho County, the Deputy Governor of Machakos County, the Governor of Murang'a County, the Governor of Nyeri County, the Governor of Taita Taveta County the Governor of Kirinyaga County and the Governor of Meru County.

## 10. 0 THRESHOLD FOR IMPEACHMENT – BURDEN AND STANDARD OF PROOF FOR IMPEACHMENT

### Gross misconduct

183. Micheal J. Gerhardt, visiting Professor of Law, Duke University, in “**The Special Constitutional Structure of the Federal Impeachment Process**”, while reviewing the impeachment trial of then US President Bill Clinton states as follows;

*“The first such feature of the Constitutional allocation of power for impeachment and removal is that it facilitates and rewards a pragmatic or flexible analysis and impedes a formalistic analysis of the fundamental questions at the core of President Clinton’s impeachment proceedings - whether his misconduct constituted a “high crime or misdemeanor”. A pragmatic analysis of this issue entails balancing various practical considerations or factors, including the magnitude of harm that an impeachable official’s misconduct has caused society or the Constitutional order, the nexus between the official’s duties and his misconduct, public opinion, and other possible avenues of redress, such as electoral process or legal proceedings. In contrast, a formalist analysis employs rigid criteria for, or extremely well-defined elements of impeachable offences, such as treating every violation of the federal criminal law or every breach of the public trust as justifying removal.*

*By vesting the impeachable authority in the politically accountable authorities of the House and the Senate, the framers of the Constitution deliberately chose to leave the difficult questions of impeachment and removal in the hands of officials well versed in pragmatic decision making. Members of Congress are pragmatists who can be expected to decide or resolve issues, including the appropriate tests, by recourse to practical rather than formalist, calculations. In fact, members of Congress decide almost everything pragmatically, and decisions about impeachment and removal are not exception. The vesting of impeachment authority in political branches necessarily implies the discretion*

*to take various factors, including possible consequences, into consideration in the course of exercising such authority....*

*Moreover, if formalist reasoning were the norm in impeachment proceedings, many questions posed by the President's misconduct would not have been nearly as heart-wrenching or politically divisive as they were. Removal would have been extremely easy and straightforward. In addition, the American people flatly rejected the strict liability notion of impeachment; most Americans acknowledged that the President had broken the law, but still did not regard his misconduct as constituting an impeachable offence or as justifying his removal. Most Americans favored a less rigid approach that balanced the harm and wrongfulness of the President's misconduct against the public interest or welfare.*

184. In the Supreme Court Nigerian Case of case of **Hon. Muiwa Inakoju & others -vs- Hon. Abraham Adeolu Adedeke and 3 others S.C. 272 of 2006**; quoted and relied upon by the Supreme Court of Kenya in the case of **Martin Nyaga Wambora & 4 others -vs- Speaker of the Senate & 6 others [2014] eKLR** the court observed as follows;

*“It is not a lawful or legitimate exercise of the constitutional function in section 188 for a House of Assembly to remove a Governor or a Deputy Governor to achieve a political purpose or one of organized vendetta clearly outside gross misconduct under the section. Section 188 cannot be invoked merely because the House does not like the face or look of the Governor or Deputy Governor in a particular moment or the Governor or Deputy Governor refused to respond with a generous smile to the Legislature qua House on a parliamentary or courtesy visit to the holder of the office. The point I am struggling to make out of this light statement on a playful side is that Section 188 is a very strong political weapon at the disposal of the House which must be used only in appropriate cases of serious wrong doing on the part of the Governor or Deputy Governor, which is tantamount to gross misconduct within the meaning of subsection (11). Section 188 is not a weapon available to the Legislature to police a Governor or Deputy Governor in every wrong*

*doing. A Governor or Deputy Governor, as a human being, cannot always be right and he cannot claim to be right always. That explains why Section 188 talks about gross misconduct. Accordingly, where a misconduct is not gross, the Section 188 weapon of removal is not available to the House of Assembly.”*

185. The duties and responsibilities of a state officer are encapsulated under the provisions of **Article 73** of the Constitution as follows;

***Responsibilities of leadership***

*73. (1) Authority assigned to a State Officer — (a) is a public trust to be exercised in a manner that — (i) is consistent with the purposes and objects of this Constitution; (ii) demonstrates respect for the people; (iii) brings honor to the nation and dignity to the office; and (iv) promotes public confidence in the integrity of the office; and (b) vests in the State officer the responsibility to serve the people, rather than the power to rule them.*

*(2) The guiding principles of leadership and integrity include — (a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections; (b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favoritism, other improper motives or corrupt practices; (c) selfless service based solely on the public interest, demonstrated by — (i) honesty in the execution of public duties; and (ii) the declaration of any personal interest that may conflict with public duties; (d) accountability to the public for decisions and actions; and (e) discipline and commitment in service to the people.*

186. In High Court Constitutional Petition No. 3 of 2014 being Hon. **Martin Nyagah Wambora & 4 others –vs- The Speaker of the Senate & 5 others**, the High Court held as follows:

*“To our minds therefore, whether a conduct is gross or not will depend on the facts of each case having regard to the Article of the Constitution or any written law alleged to have been violated. We find that it is not every violation of the Constitution or written law that can lead to the removal of Governor, it has to be a gross violation.*

*The question therefore is how to measure what constitutes gross violation. We are of the view that the standard to be used does not require a mathematical formula, but it must take into account the intendment of Article 181(1) of the Constitution. In our view therefore whatever is alleged against a Governor must;*

*(a) be serious, substantial and weighty.*

*(b) there must be a nexus between the Governor and the alleged gross violations of the Constitution or any other written law.*

*(c) The charges as framed must state with a degree of precision the Article(s) or even Sub-Articles(s) of the Constitution or the provisions of any other written law that have been alleged to be grossly violated.”*

187. In the case of **Hon. Mike Mbuvi Sonko –vs- The Clerk, County Assembly of Nairobi City & 11 Others (Petition 11 (E008) Of 2022) [2022]** the Supreme Court quoted approval of the decision of the Court of Appeal in **Martin Nyaga Wambora & 3 others –vs- Speaker of the Senate & 6 others, Civil Appeal No. 21 of 2014; [2014] eKLR**, where the court considered the standard for the impeachment of a Governor as follows;

*“...that standard is neither beyond reasonable doubt nor on a balance of probability. Noting that the threshold for removal of a governor involves “gross violation of the Constitution”, we hold that the standard of proof required for removal of Governor is above a balance of probability but below reasonable doubt.”*

188. During the Senate’s consideration of the report of the Special Committee investigating the removal of the Governor of Kericho on 3<sup>rd</sup> June 2014 the Senate adopted the Committee’s recommendation that the threshold for impeachment should take into account the following considerations-

*(i) The allegations must be serious, substantial and weighty;*

*(ii) The violation must be a flagrant and glaring violation;*

*(iii) There must be a nexus between the violation and the Governor;*

*(iv) The violation must have led to harm, loss or damage to society;*

(v) *The violation must have led to a loss of dignity in the office held and loss of confidence or trust in the person holding office to carry out the functions of that office with integrity and accountability.*

189. The Supreme Court in the case of Hon. Mike Mbuvi Sonko (supra) quoted approval of the decision of the Court of Appeal in Martin Nyaga Wambora (supra) which outlined the elements identified by High Court as constituting proof of the charges of gross violation of the Constitution or written law. The court held as follows;

*“i. the allegations must be serious, substantial and weighty.*

*ii. There must be a nexus between the Governor and the alleged gross violations of the Constitution or any other written law.*

*iii. The charges framed against the Governor and the particulars thereof must disclose a gross violation of the Constitution or any other written law.*

*iv. The charges as framed must state with degree of precision the Article(s) or even sub-article(s) of the Constitution or the provisions of any other written law that have been alleged to be grossly violated.”*

190. This Special Committee adopts the above threshold for removal of a Governor as adopted by the Senate on 3<sup>rd</sup> June 2014. The threshold was also used by the Senate in the subsequent consideration of the proposed removal from office, by impeachment, of Honourable Mwangi wa Iria, the Governor of Murang’a County in November, 2015 and the Honourable Granton Samboja, the Governor of Taita Taveta County.

Standard of proof

191. On the threshold or standard of proof for impeachment, Yale Law professor Charles Black Jr. in **“Impeachment: A Handbook”** observes as follows;

*“Weighing the factors, I would be sure that one ought not to be satisfied, or anything near satisfied, with the mere ‘preponderance’ of an ordinary civil trial, but perhaps must be satisfied with something less than the ‘beyond a reasonable doubt’ standard of the ordinary criminal trial, in the full literal meaning of that standard. ‘Overwhelming preponderance of the evidence’ comes perhaps as close as can to denoting the desired standard.”*

192. The question of the standard of proof in impeachment proceedings has been a subject of debate across the world. By way of example, Senator Miriam Defensor Santiago of the Senate of the Philippines while contributing to the debate was of the view that, *“an impeachment trial is a unique process, because it is a hybrid. Impeachment is both quasi-judicial and quasi-political. It is neither a civil case nor a criminal case. A criminal case is designed to punish an offender and to seek retribution. In contrast, impeachment is the first step in a process that tries to remedy a wrong in governance. It has been said that the purpose of impeachment is not personal punishment, but rather to maintain Constitutional government, through the removal of an unfit official from a position of public trust.”*
193. Impeachment proceedings are neither civil in nor criminal in nature. Justice Joseph Story of the United States Supreme Court held that, *“The design of impeachment is to remove the impeachable officer from office, not to punish. An impeachable act need not be criminal. That explains why the Constitution states that the officer removed shall be subject to prosecution in an ordinary criminal case”*.
194. In the United States there has been debate on the burden of proof required in impeachment proceedings. The argument of beyond reasonable doubt i.e., the highest threshold in proving a case has been argued by those facing impeachment proceedings, on the other hand the members of the Houses of Senate and Congress have argued for a lower standard of proof.
195. The argument on the appropriate standard of proof in impeachment proceedings played out in the 1986 Senate impeachment trial of Judge Harry Claiborne, where the attorneys of the judge filed a motion to designate beyond a reasonable doubt as the applicable standard for the Senate. In reaching its determination in support of the motion, they argued that the Constitutional language made it clear that an impeachment trial was in the nature of a criminal proceedings which is beyond a reasonable doubt.<sup>18</sup>

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<sup>18</sup> Gray & Reams, ‘The Congressional Impeachment Process and the Judiciary: Documents and Materials on the Removal of Federal District Judge Harry E. Claiborne’, Volume 5.

196. The response of the House Managers in opposition to the Claiborne motion noted that the reasonable doubt standard was designed to protect criminal defendants who risked forfeitures of life, liberty and property.<sup>19</sup> They argued that such a standard was inappropriate because the Constitution limits the consequences of a Senate impeachment trial to removal from office and disqualification from holding office in the future. Consequently, the United States Senate has left the choice of the applicable standard of proof to each individual Senator.

197. In the case of **Martin Nyaga Wambora (supra)** the Court of Appeal reviewed the impeachment of the County Governor of Embu County. The court in considering the nexus or conduct analogous to *mens rea* required for removal of a Governor observed as follows;

*“...The process of removal of a Governor from office is neither a civil nor criminal trial; it is sui generis political and quasi-judicial process that must adhere to constitutional criteria and threshold. The process involves policy and political responsibility and is a tool for ensuring good governance...”*

198. Similarly, in the case of **Hon. Mike Mbuvi Sonko (supra)** the Supreme Court while considering whether the charges were substantiated to the prescribed standard to warrant the Appellant’s impeachment held as follows;

*“[148] It has been observed at the beginning of the Judgment that impeachment or removal proceedings, though quasi-judicial are not in the nature of criminal proceedings. They do not necessarily require or depend on criminal culpability to succeed. All that is required is that the allegations be substantiated. But as a constitutional remedy, impeachment serves as an important check on the exercise of executive power. The purpose of impeachment is generally to protect public interest and to preserve constitutional norms, while at the same time observing the rules of natural justice throughout the process. Both interests must be balanced.*

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<sup>19</sup> Brinegar –vs- United States, 338 U.S. 160, 174 (1949)

*[149] As to the standard of proof in impeachable charges, the Court of Appeal in its judgment in Martin Nyaga Wambora & 3 others –vs- Speaker of the Senate & 6 others, Civil Appeal No. 21 of 2014; [2014] eKLR, found that, to impeach a Governor requires a high threshold but;*

*“... that standard is neither beyond reasonable doubt nor on a balance of probability. Noting that the threshold for removal of a governor involves “gross violation of the Constitution”, we hold that the standard of proof required for removal of Governor is above a balance of probability but below reasonable doubt.”*

199. The Special Committee is therefore obliged to determine whether the various charges brought against the Deputy Governor are offences that can form the basis for impeachment while factoring in the threshold set by **Article 181(1) of the Constitution.**

## **11.0 OTHER OBSERVATIONS AND RECOMMENDATIONS OF THE SPECIAL COMMITTEE**

200. In the course of its investigation of this matter, the Special Committee observed a number of issues which though outside the specific charges made against the Deputy Governor of Siaya County, are crucial in the promotion of the objects and principles of devolution-
- (a) There is need to develop a legal framework on the role, mandate, staffing and resourcing of the office of Deputy Governor.
  - (b) That Counties should utilize internal dispute resolution mechanisms. Complaints by state and public officers in the county government on the management of county government affairs should be processed through the duly established channels.
  - (c) Pursuant to Section 39 of the County Governments Act, County Executive Committee Members should be held individually and collectively accountable to the Governor in the exercise of their powers and performance of their duties and responsibilities.
  - (d) County Officers should abide with the Salaries and Remuneration Commission's circular on benefits and entitlements to avoid excesses and ensure prudent use of public resources.
  - (e) The EACC to investigate the procurement of the Deputy Governor's chair at Kshs. 1.12 million and appropriate action be taken against any person found culpable.
  - (f) The Office of the Auditor- General to undertake a special audit of the Siaya County Procurement processes to establish whether there was value for money and report to the Senate within ninety days of the tabling of this report.
  - (g) Proper induction should be undertaken for State and Public Officers serving in county governments on governance systems, policies and procedures of running an effective government.

## **12.0 FINDINGS OF THE SPECIAL COMMITTEE**

201. Having considered all these matters, it then fell to the Special Committee to discharge its mandate under section 33 of the County Governments Act, standing order 80 and Part 2 of the Third Schedule to the Senate Standing Orders. Section 33(4) of the County Governments Act, standing order 80 (2) and rule 2 of Part 2 of the Third Schedule to the Senate Standing Orders mandates the Special Committee to-
- (1) investigate the matter; and
  - (2) report to the Senate within ten days on whether it finds the Particulars of the Allegations against the Governor to have been substantiated.

202. The Committee takes the position that, in line with the precedents of the Senate in impeachment proceedings, in order to find that any particular of an allegation of the charges is substantiated, a determination must be made both that evidence has been adduced pointing to wrongdoing in the manner alleged in the Charge and that the threshold for an impeachable offence has been attained.

203. The thrust of the jurisprudence in successive impeachment proceedings before the Senate, which the Committee upholds, has been that, it is not every aberration, even if established, that will lead to the impeachment of a Governor/Deputy Governor.

204. The Committee's findings on each of the Particulars of the Allegations are therefore as follows –

### **Charge 1: Gross Violation of the Constitution and Other Laws**

#### **Allegation 1: Interference with the Procurement Process through acts of bid-rigging**

205. Evidence adduced before the Committee demonstrated that the Deputy Governor attempted to interfere in the procurement process by instructing the Director of Supply

Chain Management to change the tender categorization on the procurement for the supply and delivery of certified seeds and fertilizer.

206. The Committee finds that the allegation was proved and was therefore substantiated.

**Charge 2: Abuse of Office and Gross Misconduct**

**Allegation 1: Bulldozing officers to renovate the office of the Deputy County**

**Governor outside approved budgetary provisions**

207. The Committee finds that the allegation was not proved and was therefore not substantiated

**Allegation 2: Misuse of public resources**

208. The Committee finds that the allegation was not proved and was therefore not substantiated

**Allegation 3: Bullying**

209. The Committee finds that the allegation was not proved and was therefore not substantiated

**Allegation 4: Misleading the public by giving false information.**

210. Evidence adduced and presented before the Committee demonstrated that the Deputy Governor's utterances that the County Secretary, Mr. Joseph Ogutu was forced to resign by the Governor were not true.

211. Further evidence adduced and presented before the committee on the Deputy Governor's utterances that funds allocated towards completion of the Siaya Stadium had been reallocated in the Supplementary Budget 1 for the financial year 2022/2023 were not true.

212. The Committee finds that the allegation was proved and was therefore substantiated.

### **13.0 CONCLUSION**

213. The Special Committee having investigated the matter in accordance with its mandate under section 33(4) of the County Governments Act and standing order 80(2) of the Senate Standing Orders reports to the Senate that it finds—

**(a) That the Charge against the Deputy Governor on Gross Violation of the Constitution and other Laws, on the allegation of Interference with the Procurement Process through Acts of Bid- Rigging has been substantiated.**

**(b) That the Charge against the Deputy Governor on Abuse of Office and Gross Misconduct on the allegation of Misleading the Public by Giving False Information has been substantiated.**