

**EVIDENCE TAKEN BEFORE THE SENATE SPECIAL COMMITTEE  
INVESTIGATING THE PROPOSED REMOVAL FROM OFFICE BY  
IMPEACHMENT OF THE GOVERNOR AND DEPUTY GOVERNOR OF  
EMBU COUNTY HELD ON WEDNESDAY, 12<sup>TH</sup> FEBRUARY, 2014 AT  
THE AMPITHEATRE, KENYATTA INTERNATIONAL CONVENTION  
CENTRE AT 10.20 A.M.**

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

**SENATORS PRESENT**

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

**SECRETARIAT**

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

**IN ATTENDANCE**

**GOVERNOR'S TEAM**

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

**DEPUTY GOVERNOR'S TEAM**

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

**COUNTY ASSEMBLY TEAM**

Hon. Kariuki Mate	-	The Speaker, Embu County Assembly
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Hon. Ibrahim Swaleh - Deputy Speaker, Embu County Assembly  
George Ng'ang'a Mbugua - Advocate  
Charles Njenga - Advocate

*(The Committee convened at 10.20 a.m.)*

*Prayers*

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

**The Chairperson** (Sen. (Dr.) Khalwale): Ladies and gentlemen, parties, counsel to the parties, I would like to call the proceedings to order. I would like us to start off in our usual tradition.

I want to welcome you, with a lot of thanks, for the endurance you demonstrated yesterday having sat up to 2.00 a.m. We will change our style a little bit in the sense that we will control time slightly more than we have done before, so that we do not find ourselves in the same predicament as we did yesterday.

You will remember that the Governor was not yet done. But before he resumes, there is a small housekeeping re-arrangement we have been forced to do. In our midst we have the Auditor-General. As you know, he has got a constitutional office. We cannot expect him to sit through our sittings the whole day waiting for his time to come later on in the evening. If parties will oblige, I want us to invite him, he clarifies what we thought he should. You will have a go at him, if you so choose then we release him.

County Assembly, what is your view if we invite him before we bring in the Governor?

**Mr. George Ng'ang'a Mbugua:** We agree entirely with that proposal, so that we can release the Auditor-General. We are happy with that proposal. We can start with him.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel for the Governor, what is your position?

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, we have no problem with the Auditor-General testifying before this Committee, save that we may need to be told in advance the context within which he is going to address this Committee, so that we may be on the alert.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, the context is as follows: If you looked at the rules you were expected to follow, if you had any witnesses and the same applies to your counterparts, they came before us. We also have a right to call for any other witness under duty. The Auditor-General is such a witness. Shortly you will see why he is such a witness.

**Mr. Wilfred Nyamu:** We are only worried about any ambush that may be occasioned. That is why we are asking for direction. What documents will he be dealing with?

**The Chairperson** (Sen. (Dr.) Khalwale): You notice that both in your bundle of documents and in the case by the County Assembly of Embu, you repeatedly referred to reports of audit. He is the custodian of all audit reports. So, he will strictly speak to the two documents; the one that is authored by him and, if you people so choose, ordered by his agents in the eastern region, where Embu is located. But our intention is to invite him to speak to his own document, which he has signed.

**Mr. Wilfred Nyamu:** Very well, Mr. Chairman, Sir.

**The Chairperson** (Sen. (Dr.) Khalwale): Mr. Edward Ouko, before you, this is the Special Committee of the Senate. I will give an introduction of the membership.

*(The Chairperson introduced himself and other members of the Special Committee)*

Welcome Mr. Ouko. We want to invite you to go where the podium is; the one written; "The Senate." Clerk, we would like you to administer the oath.

Sen. Orenge knows the difference between swearing-in and administering the oath.

Sen. Orenge, I do not know whether this is because of your legal training or because you went to Alliance High School and I learnt my English in Kakamega High School, but my teacher was very good!

*(Laughter)*

Let us proceed.

*(The Auditor-General (Mr. Edward Ouko) took the oath)*

**The Auditor-General** (Mr. Edward Ouko): Honourable Chairman, hon. Senators, the hon. Governor, Members of Embu County Assembly, may I say good morning to you all.

**The Chairperson** (Sen. (Dr.) Khalwale): Order, Mr. Ouko. We want to do a few preliminaries before you start. The preliminary is that, you have confirmed that you are the Auditor-General of the Republic of Kenya?

**The Auditor-General** (Mr. Edward Ouko): Yes, Mr. Chairman, Sir.

**The Chairperson** (Sen. (Dr.) Khalwale): We want to find out if you are aware of an audit report which has been presented here by other witnesses and which you authored and signed, dated 5<sup>th</sup> December, 2013. The report is a detailed audit report on the Embu

County Government Executive and County Assembly financial operations for the period 3<sup>rd</sup> March, 2013 to 30<sup>th</sup> June, 2013. Is this your document?

**The Auditor-General** (Mr. Edward Ouko): I confirm this is my document which is signed by me.

**The Chairperson** (Sen. (Dr.) Khalwale): The reason you are here is not to run through the whole report---- Sorry, Mr. Ouko, do you prefer speaking when you are standing or you will be comfortable in a chair?

**The Auditor-General** (Mr. Edward Ouko): I would be comfortable on a chair.

**The Chairperson** (Sen. (Dr.) Khalwale): Some doctors think that when you are standing blood flows better. You may take a seat.

*(Mr. Edward Ouko took a seat)*

So, we might not necessarily require that you run through the whole of your detailed report. We do not have time for that. However, there are specific issues that have been cited in your report. We would like you to respond to them.

In the charges against the Governor of Embu County, he has been accused of violating the Public Procurement and Disposal Act, 2005 and regulations of 2013. We have seen in your document that you have attempted to respond to it. We would like you to lead us to that part in your document, which supports the fact that the Governor violated the Public Procurement and Disposal Act. If you are unable to go there, we can help you.

**The Auditor-General** (Mr. Edward Ouko): Thank you, Mr. Chairman, Sir. Indeed, part of our findings is on the procurement of goods, works and services. This is fairly detailed in the report. I will just run through that.

In the context of procurement of goods, works and services, two contracts for construction of a conference hall and partitioning of an office, Embu Town Hall and refurbishment of the probation offices block at a cost of Kshs3 million – I will not put all the figures – and a cost of Kshs12.8 million respectively were awarded to two contractors on 24<sup>th</sup> May, 2013 by the Embu County Tender Committee. We noted some irregularities.

The first irregularity is, the firm awarded the contract for the construction of the conference hall and the partitioning of the Embu Town Hall was not among those registered by the Ministry of Public Works as evidenced by the letter of the Public Works which is cited in the report.

**The Chairperson** (Sen. (Dr.) Khalwale): Since Members want to follow you, they have copies of the report, it is good for you to indicate when you are reading by saying which page and paragraph you are making reference to.

**The Auditor-General** (Mr. Edward Ouko): Mr. Chairman, Sir, I had summarized the issues. But there is a detailed report which you have. The details, like for the one I am reading, is on the key findings which is item 3.5 of page 6 of my document which was signed on 5<sup>th</sup> February..

**The Chairperson** (Sen. (Dr.) Khalwale): When you say 3.5 that is adequate. Members have that report. It is not too long.

**The Auditor-General** (Mr. Edward Ouko): So, I should still continue with the irregularities, but the details are in the detailed report which goes through more narratives of what went on. But for the purposes of the Committee, I had summarized for my presentation the issues. That is what I am reading.

**The Chairperson** (Sen. (Dr.) Khalwale): Members, I want to make him flow in his mind, we allow him to do it his way. Then after we have listened to him, if you want a clarification, then we raise it.

Proceed, Mr. Ouko.

**The Auditor-General** (Mr. Edward Ouko): Mr. Chairman, Sir, on the irregularities, let me go back on these two contracts.

The firms awarded the contracts for the construction were not registered by the Ministry. Conditions set out under Section 73(2) of the Public Procurement Disposal Act, 2005, on restricted tendering were not met since no evidence was produced to us to support the restricted tendering.

There was unwarranted disqualification of interested bidders whereby two bidders were disqualified for not being tax compliant although this particular condition was not communicated to the prospective bidders.

We sense favouritism in consideration for responsiveness of tendering during evaluation by using different criteria. For instance, under tender for construction of conference room and partitioning of offices of Embu Hall for Kshs3 million, the condition for responsiveness used included submission of tax compliance certificate amongst others whereas in the others it was not.

Under tender for refurbishment of Embu office of the Town Hall and improvement of existing sentry at a cost of Kshs22 million, tax compliance was not considered, but instead only deviation from engineer's estimates of 10 per cent was one of the conditions. So, there were inconsistencies in the conditions of these tenders. Therefore, there was no objectivity and consistency in the tender evaluation by the tender committee.

The other area which we felt was important was lack of proper financial and technical evaluation of contracts. The bidders' financial and technical capabilities to undertake the

contract appear not to have been evaluated since there was no evidence that the contractors were required to provide details on: The number of technical employees of the company and their qualifications, ownership and number of equipment to undertake the works and the audited financial statement for a certain period to show the financial position of the firm and access to credit facilities. Therefore, it was not clear how the contractors' financial and technical capabilities to deliver the works were ascertained.

There was also irregular reallocation of funds between the budgets. A purchase of a generator for the county costing Kshs3.8 million, included in the bills of quantity for repairs and works which was at the probation offices was not installed, but instead funds were utilized for extra works not in the bill of quantities. No prior authority for the relocation was sought as required by the Government financial regulations and procedures. When you reallocate funds, the bills of quantities should be in compliance with those reallocations.

The other thing is lack of formal contracts. No formal contracts were executed between the three contractors and the client, which is the County Government; namely, the construction of the conference room, the partitioning of offices at Embu Hall, refurbishment of the probation offices, re-roofing of the town hall and improving of existing sentry. This was contrary to Section 68 of the Public Procurement and Disposal Act, 2005, which requires that written contracts be entered into with the successful tenderers and procuring entity.

The sub-contractors in some of these procurements did works of electrical installation, closed circuit television installation and plumbing works, valued at Kshs2.4 million yet the contractor was not registered under any category as per the list of prequalified contractors obtained from the Ministry of Works.

On refurbishment of Embu County Council Hall to house the County Assembly, irregularities were also noted. A contractor was sourced through restricted tendering method based on conditions under Section 72(2)(3) namely: The project was to be completed by 9<sup>th</sup> September, 2013. By 10<sup>th</sup> September, 2013, it was only 90 per cent complete. So, the deadlines were completely out. There was no evidence to show that an extension period had been sought by the contractor and granted.

A power line was not upgraded to three phase at a cost of Kshs540 as indicated by the bills of quantities.

We also had other findings which generally cover the procurement which were the major findings we had. There were irregular payments of subsistence allowance amounting to Kshs81 million to a non-employee of one of the defunct local authorities and sitting allowance amounting to Kshs366---(?) to County Executive Committee members using incorrect rates from those approved by the Salaries and Remu---

**The Vice Chairperson** (Sen. Murkomen): Auditor-General, did you say Kshs81 million?

**The Auditor-General** (Mr. Edward Ouko): Sorry, Kshs81,366 which were not in accordance to rates approved by the Salaries and Remuneration Commission.

Mr. Chairman, Sir, this is important; there were expenditures totaling Kshs154 million incurred by the County Government that had no supporting documentation; unauthorized re-allocation of voted funds to pay for the Toyota Prado at a cost of Kshs12 million. This Kshs12 million exceeded the budgetary allocation of Kshs10 million by, of course, Kshs2 million. Basically, it was an amount which was unbudgeted and was over the budget by 20 per cent.

Mr. Chairman, Sir, these are the major issues which we had under procurement. Procurement was the major issue we found to be of material impact.

**The Chairperson** (Sen. (Dr) Khalwale): You have completed, is that right?

**The Auditor-General** (Mr. Edward Ouko): Yes, I have completed.

**The Chairperson** (Sen. (Dr) Khalwale): Very good. So, now that you have completed, I would like to start by allowing my colleagues to ask the first questions and then the other parties will come in. I will have two questions; one towards the end, and the other one, now.

The first question is: It is the evidence of the Governor that the procurement audit queries that you are raising – if they did occur – he could not have had anything to do with it. Now, we would like you to help us; in your discharge of duties as the Auditor-General, what are your expectations about Governors as far as Article 30(3)(f) is concerned, which provides that the use and management of county funds is under the responsibility of the Governor? Let us read it for you. Article 30(3)(f) provides as follows:-

“In performing the functions under subsection (2), the governor shall—  
(f) be accountable for the management and use of the county resources;”

That is the law. But the Governor has given us evidence here that he could not be expected to be part of this accountability because he has accounting officers in what he called “user departments.” What would be your evidence to guide this Committee to that extent?

**The Auditor-General** (Mr. Edward Ouko): Mr. Chairman, Sir, under the Financial Act, of course, the Governor has the accounting officer who is dealing with matters of accountability, especially accounting and recording of the accounting records. But the responsibility of the Governor is; one, to make sure about the appointment of this person; the responsibility of the Governor is to ensure that the person or the system which this person is going to work on must be adequately supported by internal controls and segregation of duties which are adequate. In terms of procurement, I think the responsibility of the Governor is to ensure that there is a tender committee which is appointed, together with the purchasing officer who is managed and instructed well by the accounting officers to ensure that all procurement must follow the Public

Procurement and Disposal Act. That responsibility must be there, but the Governor has got the overall responsibility for accountability as per that section.

But there is a delegated responsibility to the accounting officer which also requires that before you delegate, adequate controls and systems are there in your county or in the office to ensure that all procurements will follow the correct and proper regulations and laws. That is set up through the relevant committees which have the purchasing committee, which makes sure that all the purchases go through the proper procedures and comply with the Public Procurement and Disposal Act, 2005.

**The Chairperson** (Sen. (Dr) Khalwale): Thank you, that is very clear.

Yes, proceed, Sen. Orengo.

**Sen. Orengo:** As a follow up to your question, after a Governor sets up those systems and has delegated responsibility, does his position or, rather, his responsibility stop there; or is he required to ensure that those systems work and to oversight those systems? Where does it end?

**The Auditor-General** (Mr. Edward Ouko): I think it is clear that the responsibility is delegated responsibility, but there must be another ultimate system which is put in place by the Governor to ensure that he or she can monitor that delegated responsibility. That means, perhaps, regular reporting on certain procurements of certain amounts; or making sure all the minutes of the tender committees are copied to him and, therefore, be able to question. So, that is a delegated responsibility. Therefore, there is also a responsibility to ensure that it is monitored and accounted for.

**The Chairperson** (Sen. (Dr) Khalwale): With a “yes” or “no” answer so that it is crystal clear to us: You are, therefore, saying that at no time can the Governor divorce himself from the expectation of Article 30(3)(f); that he is accountable for the use and management of the funds?

**Mr. Wilfred Nyamu:** On a point of order, Mr. Chairman, Sir. I think to us, it is unfair to lead a witness into coming to a certain conclusion. Let the witness answer the question in the best way he knows rather than pointing out to him that this is happening. Because this is a very key witness, let him speak his mind rather than guide him into answering a question in a certain manner.

**The Chairperson** (Sen. (Dr) Khalwale): I will allow your objection. I was helping the HANSARD to be clearer, but it is already clear anyway.

Your objection is granted.

**Mr. Wilfred Nyamu:** I am only worried about the future of these proceedings. This is a very competent witness and qualified for that matter; he knows how to answer his questions.

**The Chairperson** (Sen. (Dr) Khalwale): Yes, counsel, I have granted your objection.

Yes, Eng. Mositet.

**Sen. Mositet:** Thank you, Mr. Chairman, Sir. Mr. Auditor-General, at least you are very much aware of when we held our elections in March. Let us say that by the time you did the audits, it was between March and June. Within that period, the structures in the counties were still being put in place. In this case, with your report, who should really be answerable; is it the Transitional Authority (TA) or the Governor?

**The Auditor-General** (Mr. Edward Ouko): Thank you, *Mheshimiwa*. First of all, the issues - you know, we are basically coming from the local authorities to now the County Governments, which were taking over accounts of these local authorities and their bank accounts. Under the transition, it was very clear that the local authorities had to prepare accounts up to 28<sup>th</sup> February for all the defunct local authorities. So, there was a cut-off effectively in the transition from the old system of Government to the new system of Government from 28<sup>th</sup> February; and if you know, 28<sup>th</sup> was a Thursday and 1<sup>st</sup> was a Friday; the election was on the 4<sup>th</sup>. So, we had the weekend. So, technically, from the 4<sup>th</sup>, you now had the new Constitution in place. Therefore, the accountability from that transition aspect was now the Governors' and the counties'.

**The Chairperson** (Sen. (Dr) Khalwale): Thank you very much.

Yes, Sen. Orengo?

**Sen. Orengo:** I had said I had additional questions. Could you tell us what triggered this report? Was it a regular report or was it triggered because of certain circumstances?

**The Auditor-General** (Mr. Edward Ouko): This report was triggered by, first of all, my constitutional duty to ensure that the resources during this period, especially the transition period, were accounted for properly. Hence, this was actually a special exercise which was meant to respond to this very critical period when we felt that resources were at most risk. We felt that our cut-off – since the transition had already ensured that the local authorities had already done their accounts – was then from March. Therefore, in March, we were looking at the movements: How those bank accounts were transferred to the Governors, what happens to those bank accounts and what happens to major procurements during that period. The intention was to bring it to 30<sup>th</sup> of June because that is when the 2012/2013 Financial Year ended. So, that is what motivated this exercise. To me, it was a responsibility which was wholly constitutional.

**Sen. Orengo:** What then did you do with the report? Was it directed---

*(Loud consultations)*

I will come to that; but what did you do with the report? Was it handed over to the county governments or to the National Assembly or Parliament?

**The Auditor-General** (Mr. Edward Ouko): What I did with the report was fully in line with what I think I am expected to do under the new dispensation. In other words, at the national level, all my reports would go to the Speaker of the National Assembly through the Clerk. So, likewise, since it is just two levels of Government, but replicating, naturally this report had to go to the County Assembly through the Speaker and through the Clerk. So, this report was addressed to the Speaker through the Clerk and finally, to the Members of County Assembly (MCAs) of the County Assembly. That I think was in line with my reading of the Constitution. By the way, it was copied to the Governor and the Senate.

**Sen. Orengo:** And what were your expectations after presenting this report?

**The Auditor-General** (Mr. Edward Ouko): The expectation is very clear; just as you have at the national Government, my report would go to the Speaker and then it would be considered by the County Assembly; who would decide whether to refer it to their Public Accounts Committee (PAC) or not. So, at the county level, it is also similar; it is to the Speaker, then the Speaker, after tabling it, would decide what to do with it. But ordinarily I think it will be to refer it to the county PAC.

**Sen. Orengo:** I see from copy that there was a direction that the Chairman of PAC should lay the report in the Assembly. That is what happens with your reports after you have handed them over to the relevant legislature.

Now, what about the County Government; was there any expectations on your part after giving them this report?

**The Auditor-General** (Mr. Edward Ouko): Mr. Chairman, Sir, for the County Government, they were to prepare and wait for the necessary oversight which would have been expected by the PAC of the County Assembly. So, they would have been preparing to respond to those proceedings.

**Sen. Orengo:** Mr. Chairman, Sir, was this done for all the counties or just for Embu County?

**The Auditor-General** (Mr. Edward Ouko): Mr. Chairman, Sir, I undertook this exercise for the 47 counties. Each report is unique to each county. Most of them are being processed. These are some of the reports which we have now released and we are still continuing to release for the other 47 counties. We have released about 20 to 30 per cent.

**Sen. Orengo:** So, there was no extraneous force driving you to do a particular report for Embu County? You did it in line and in the course of your duty?

**The Auditor-General** (Mr. Edward Ouko): Mr. Chairman, Sir, my report was driven by my responsibility as the Auditor-General during this critical period in the country to ensure that the transitioning in the context of our Constitution was properly accounted for and that resources were protected. I did this for all the counties and also made recommendations for all the counties. So, it was not unique to Embu County.

**Sen. Wamatangi:** Mr. Chairman, Sir, mine is a procedural issue. There are quite a number of queries that you raised in this report concerning the County Government of Embu. Just do confirm that before you issued this report with those queries, you had given the Governor or the County Government of Embu ample time to respond to those queries and satisfy you before you printed the report. It is in the absence of satisfactory explanation that you published the report. Is that the case?

**The Auditor-General** (Mr. Edward Ouko): Mr. Chairman, Sir, this would be the case. But you also must realize that we also operate under time lines, which we make aware to the County Assembly. So, there comes a time, despite our best efforts, that we do not receive responses. But all procedures must have been undertaken by the person who actually undertook that procedure. Mrs. Agnes Mita confirmed to me that all procedures were followed.

*(Sen. Wamatangi spoke off record)*

I would say that all those procedures that you are talking about were all followed.

**The Chairperson** (Sen. (Dr) Khalwale): Order! Order, Mr. Ouko! Who is Mrs. Agnes Mita?

**The Auditor-General** (Mr. Edward Ouko): My Deputy Auditor-General who was in charge of Embu County.

**The Chairperson** (Sen. (Dr) Khalwale): Would you like to be given one minute to consult your assistant then you come and---

**The Auditor-General** (Mr. Edward Ouko): Yes, I would like one minute.

**The Chairperson** (Sen. (Dr) Khalwale): Mrs. Agnes, approach him.

She is not on oath. It is an investigation; we have to get it right.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, again, we wish to remind the plenary that questions to these particular experts ought not to be for purposes of confirmation. But let questions be put to them and let them answer them the way they know rather than put a statement for confirmation. That ideally is very likely to influence a witness into answering a question as desired by the person who has asked it. So, let us exercise caution; justice here is very important and my client is exposed---

**The Chairperson** (Sen. (Dr) Khalwale): Counsel, I think you might not have heard the Senator very well. Sen. Wamatangi wanted to confirm that before writing this report, the Auditor-General had taken trouble to give the accounting officer an opportunity to explain themselves on the possible audit query. That is what he is responding to. Proceed, Mr. Ouko.

**The Auditor-General** (Mr. Edward Ouko): Thank you very much, Mr. Chairman, Sir. The information is very clear. After we had done the field work, what we call the verification work, we have what we call a management letter which sets out the issues which we have seen. We address this management letter to the County Assembly Governor and we then give them time to respond---

**The Chairperson** (Sen. (Dr) Khalwale): Is it the County Assembly or---

**The Auditor-General** (Mr. Edward Ouko): No! This does not go to the County Assembly. It goes to the County Executive.

**The Chairperson** (Sen. (Dr) Khalwale): I wanted that clarification.

**The Auditor-General** (Mr. Edward Ouko): Yes, it is the County Executive, and we gave them time. We wrote again to them on the 6<sup>th</sup>, having read what they had said. We told them that their response had not addressed certain issues which we still maintain in our report. So, as far as we are concerned, we had gone through the due process which is necessary. Otherwise, to extend it and extend it, we would not be having a report today because the reality on the ground is that sometimes people do not take our reports seriously and they play cat and mouse games in terms of responding. So, at a point in time, we take a cut-off and we report. The rest we leave it to the PAC to further address. So, this is the procedure.

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

**Sen. Boy Juma Boy**: Thank you, Mr. Chairman, Sir. First, let me apologize for coming late.

Auditor-General, we were informed here that an Authority to Incur Expenditure (AIE) of Kshs61 million was issued last year in the name of Governor, Embu County. But this was the transition time. The Committee was informed that during that time, the AIE was implemented by the TA. From the queries that you have raised, these issues did not come out clearly as to who would be responsible for that AIE. Who was responsible for this AIE, is it the TA or the County Government of Embu?

**The Chairperson** (Sen. (Dr) Khalwale): Order, Senator! It is unfortunate that you came in a bit late. A similar question was raised by Sen. Mositet, trying to find out the responsibility of the Governor and where it started during the time of transition. It has been answered. As far as the specificity of the authority to incur expense is concerned, another witness---

*(Sen. Boy Juma Boy spoke off record)*

From the queries that you have raised, these issues did not come out clearly as to who will be responsible for that AIE. Who did that query actually fall under? Did it fall under the TA or County Government of Embu?

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, we are interested in that question and the answer.

**The Chairperson** (Sen. (Dr.) Khalwale): You will have time to cross-examine him. He is our witness and you will have free time. Just keep your cool.

**Sen. Kittony:** Thank you, Mr. Chairman, Sir. Mr. Ouko, having looked at this report, in many places your comments are “doubtful payments” and so on. But in your own conclusion you are thanking them. If it were me, I would have helped the Embu County by drawing their attention to the irregularities. But to conclude and thank the management of Embu for the co-operation accorded to you, surely, are you helping them?

**The Auditor-General** (Mr. Edward Ouko): Mr. Chairman, Sir, we have our professional civilities which we always adhere to as professionals. So, not everybody in Embu County was against or did not help. We recognized that there were some people. Generally, we felt that those who we approached were forthcoming. So, we need to thank them.

**The Chairperson** (Sen. (Dr.) Khalwale): Thank you. I now want to open, first, to the counsel for the County Assembly. Do you have any issues to clarify?

**Mr. Charles Njenga:** Just one question. Mr. Auditor General, in one of your findings, especially on the irregular award of contracts for repair works, on page 34, you say the service was sourced using restrictive tendering method of procurement. However, there was no evidence produced to show that the conditions set out under Sections 73 (2) of the Public Procurement and Disposal Act, 2005 were met. I just want you to clarify. This evidence that you were looking for, in what form would it be? Would it be by way of minutes or a report? What form would it take?

**The Auditor-General** (Mr. Edward Ouko): Mr. Chairman, Sir, first of all, the evidence is actually set out in that particular section, because that is the Public Procurement and Disposal Act. It says when you do restricted tendering under specific conditions---. So, if you are going to tender, you should justify that these conditions exists. Therefore, you are going to do restricted tendering.

**Mr. Charles Njenga:** Mr. Chairman, Sir that is precisely my question. If this clarification is supposed to be contained in a particular document, would that be in the form of minutes of a meeting that decided that restricted tendering would be applied?

**The Auditor-General** (Mr. Edward Ouko): That would be the correct position. It is justified by writing and minuting the position which you, as the executive, have taken.

**Mr. Charles Njenga:** So, it is these minutes that you did not find anywhere in the course of your audit?

**The Auditor-General** (Mr. Edward Ouko): Yes, Mr. Chairman, Sir.

**Mr. Charles Njenga:** Very well. Thank you so much.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel for the Governor!

**Mr. Wilfred Nyamu:** Mr. Auditor, my name is Wilfred Nyamu. I represent the Governor, Embu County, in this matter.

In relation to the audit that you conducted, essentially was it an audit performed and actually prompted by transitional reasons?

**The Auditor-General** (Mr. Edward Ouko): Mr. Chairman, Sir, it was very much so prompted by my responsibility where I see the risks to the public resources. Transition was a particular risk period which we needed to ensure that the resources of the public are protected.

**Mr. Wilfred Nyamu:** In expenditures and financial matters, during this period between March and 30<sup>th</sup> June, what was the responsibility of the TA on financial matters, in relation to the County Government of Embu?

**The Auditor-General** (Mr. Edward Ouko): In my view, the responsibility of the TA was to ensure that the closure of 2013, especially the defunct local authorities' accounts were done and closed.

**Mr. Wilfred Nyamu:** Did the reports also include matters occurring as early as February? Did it touch on matters arising as early as February 2013?

**The Auditor-General** (Mr. Edward Ouko): Mr. Chairman, Sir, it would have certainly touched because if any transaction is happening--- The financial recording of them may happen later. So, the fact that it goes a little bit back is not unusual in the financial traction of events.

**Mr. Wilfred Nyamu:** So, basically, in your consideration, there are matters that were not within the period that the Governor was in office?

**The Auditor-General** (Mr. Edward Ouko): If they were, they were very few.

**Mr. Wilfred Nyamu:** I am asking a question. Were there matters that you dealt with that were not within the period within which the Governor was in office, without qualifying? Say “yes” or “no”.

**The Auditor-General** (Mr. Edward Ouko): Yes, Mr. Chairman, Sir.

**Mr. Wilfred Nyamu:** Now, in procurement matters, does the Governor directly sit in the tender committees?

**The Auditor-General** (Mr. Edward Ouko): No, Mr. Chairman, Sir.

**Mr. Wilfred Nyamu:** Does he form the tender committees himself?

**The Auditor-General** (Mr. Edward Ouko): Mr. Chairman, Sir, he has to ensure that the tender committee is in place. That is a responsibility.

**Mr. Wilfred Nyamu:** Does he form the tender committees himself?

**The Auditor-General** (Mr. Edward Ouko): Counsel, the tender committee would have to be formed by somebody who is in the leadership and that tender committee must be ensured that it is formed by the Governor.

**Mr. Wilfred Nyamu:** Would this be somebody with statutory duty to form such a tender committee? Would that be a person, in certain circumstances with statutory duty or obligation to form tender committees, specifically?

**The Auditor-General** (Mr. Edward Ouko): I do not understand your question.

**Mr. Wilfred Nyamu:** Would that be a person with statutory responsibility to form a tender committee?

**The Auditor-General** (Mr. Edward Ouko): I think that it is very clear in the Constitution. The Constitution says that the Governor has got the primary accounting responsibility.

**Mr. Wilfred Nyamu:** During your audit, which statutes guided you?

**The Auditor-General** (Mr. Edward Ouko): In terms of procurement it is Public Procurement and Disposal Act, 2005.

**Mr. Wilfred Nyamu:** What other statute in relation to the county government when coming up with your audit report or you simply applied the Constitution and thought that, that was enough?

**The Auditor-General** (Mr. Edward Ouko): First of all, Mr. Chairman, Sir, there was a constitutional responsibility which I have explained and in terms of procurement, the guiding principle was the Public Procurement and Disposal Act.

**Mr. Wilfred Nyamu:** Did you know that there was a County Governments Act, 2012 in existence or did your officers overlook that fact? Did you consider that there was such an Act and you ought to have used it as a working tool?

**The Auditor-General** (Mr. Edward Ouko): Mr. Chairman, Sir, if it was maybe it was not relevant for the procurement which I was considering.

**Mr. Wilfred Nyamu:** When did the County Governments Act come into operation in terms of the county governments and in relations to the Governor of the County of Embu?

**The Auditor-General** (Mr. Edward Ouko): Mr. Chairman, Sir, I am not a lawyer, but I think that is in the Act.

**The Chairperson** (Sen. (Dr.) Khalwale): Order, Mr. Ouko! Order, Counsel!

**The Vice Chairperson** (Sen. Murkomen): Counsel, that would not be a relevant question for a non-lawyer. You need to frame your question properly. When you ask “when did the Act come into effect” most people, even including us, may not know the exact date. You need to frame it not in a legal way.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, this is an auditor and he had working tools.

**The Vice Chairperson** (Sen. Murkomen): But the day that an Act comes into effect; you need to frame that question differently. You know how to do it.

**Mr. Wilfred Nyamu:** First, I want to ask him whether he used Acts of Parliament as working tools in his audit.

**The Vice Chairperson** (Sen. Murkomen): He has answered that, but to expect him to know when the Act came into force, is expecting too much. He can go to the schedule of the Act. I know what you want to ask, but you need to frame it differently; not by asking him when the Act came into effect.

**Mr. Wilfred Nyamu:** Mr. Auditor, just kindly look at that Act. What Act is that and when did it come into force?

**The Auditor-General** (Mr. Edward Ouko): Counsel, what you are showing me here is the Kenya Gazette Supplement Act, 2012, Nairobi. It was gazetted on 3<sup>rd</sup> August, 2012.

**Mr. Wilfred Nyamu:** What Act is that? Flip through.

**The Auditor-General** (Mr. Edward Ouko): The County Governments Act.

**Mr. Wilfred Nyamu:** Now, in terms of financial management, which was actually part of what we are dealing with, there is another Act of Parliament here. Which Act of Parliament is that?

**The Auditor-General** (Mr. Edward Ouko): This is the Public Finance Management Act, 2012. This was gazetted on 27<sup>th</sup> August, 2012.

**Mr. Wilfred Nyamu:** Were you aware of that particular Act, at the point of your audit?

**The Auditor-General** (Mr. Edward Ouko): Of course, Counsel. I was aware of this Act and was a contributory to this Act.

**Mr. Wilfred Nyamu:** Did you consider that Act when you were doing your audit?

**The Auditor-General** (Mr. Edward Ouko): I did, indeed, consider this Act when I was doing my audit.

**Mr. Wilfred Nyamu:** You said that it was the responsibility of the Governor to ensure that finances and tendering process was done properly and that the tender committee was appointed.

**Sen. Orengo:** Mr. Nyamu, I am quite happy with you asking any question, but because of time, why do you not ask direct questions? If there is a provision in any of those statutes, you can just draw his attention, so that we move fast.

**Mr. Wilfred Nyamu:** I am well guided, my senior, Hon. Orengo. Now, kindly, Mr. Ouko, move to Section 148 of the Public Finance Management Act, 2012.

**The Auditor-General** (Mr. Edward Ouko): Right.

**Mr. Wilfred Nyamu:** Kindly read it.

**The Auditor-General** (Mr. Edward Ouko): It reads:-

“A county executive committee member for finance shall, except as otherwise provided by law, in writing, designate accounting officers to be responsible for managing the finances of the county government entities as is specified in the designation.”

**Mr. Wilfred Nyamu:** Carry on and read the next.

**The Auditor-General** (Mr. Edward Ouko): It reads as follows:

“Except as otherwise stated in other legislation, the person responsible for the administration of a county government entity shall be the accounting officer responsible for managing the finances of that entity.”

**Mr. Wilfred Nyamu:** So, in terms of procurement in your interpretation, would those be officers that would be charged with the responsibility of forming tender committees and ensuring that financial management and their entities are properly taken care of?

**The Auditor-General** (Mr. Edward Ouko): Counsel, this is an Act, but there is also the constitutional provision which says that--- When I answered the question I said that this one is a delegated responsibility.

**Mr. Wilfred Nyamu:** It is responsibility provided by statute. Is that statute created by the Governor?

**The Auditor-General** (Mr. Edward Ouko): By an Act which is responding to a constitutional delegation.

**Mr. Wilfred Nyamu:** This particular Act of Parliament is the one that you are reading. Is it not?

**The Auditor-General** (Mr. Edward Ouko): Right.

**Mr. Wilfred Nyamu:** That particular Act---

**The Chairperson** (Sen. (Dr.) Khalwale): Order, Counsel!  
Yes, Sen. Orengo.

**Sen. Orengo:** Counsel, since you want to rely on a statute, why do you not allow him to look at the entire provision? I think that it is wrong to burden the witness. If there is something in that section which---

**Mr. Wilfred Nyamu:** If he wants to make reference to any other provision of that Act, in answer to my question, let him go ahead if that helps him.

**Sen. Orengo:** No. I am just saying that as counsel you are an officer of the law. So when you apply the law selectively---

**Mr. Wilfred Nyamu:** I am not, Mr. Chairman, Sir.

**Sen. Orengo:** I am just looking at subsection 5 of what you are reading. If you look at that, does it not say more beyond what you are trying to get the witness to say?

**Mr. Wilfred Nyamu:** Let him read through; we are in an investigation session. I am not limiting him in any way. He has the Act.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, why do you not save us the trouble? We expect you, just like you expected him to know the date when the Act came into commencement, because you are a lawyer, to know the entirety of that provision. So, why pin him on No.2 when you know that there are provisions in Nos.3 and 5, in Section 148?

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, as I was saying and as you had directed earlier, we are likely to actually engage for a longer time, if I am not let to deal with this witness - I am conducting my cross-examination. If interjections are allowed in respect to how I should conduct it, then we are wasting time. Let me deal with the witness and when my time is over, I will discharge him.

**The Chairperson** (Sen. (Dr.) Khalwale): Order, Counsel! We are not wasting time. We are getting to the bottom of the truth. If the reason we are here is because we have come to waste time, we should not be here in the first place. So, please, mark your words.

**The Vice Chairperson** (Sen. Murkomen): Mr. Chairman, Sir, let me just make one request. Counsel, just like Sen. Orengo said, you know where you are going. For example, you want to drive to the point that your client is not responsible, based on certain Acts. Instead of going through 1 up to 5, in my own consideration, it only helps your case to read the sections that are relevant and then put the question to the person, so that we move fast. This is because some of the sections are so obvious. I am just suggesting because I also see that you are considerate about time. Remember that you have other five witnesses.

**Mr. Wilfred Nyamu:** Very much so, I am also considerate about interjections. Kindly look at the Constitution, Article 226(1); what does that part say?

**The Auditor-General** (Mr. Edward Ouko): It says:-

“An Act of Parliament shall provide for the keeping of financial records and auditing of accounts of all governments and other public entities and prescribe other measures for securing efficient and transparent fiscal management and the designation of an accounting officer in every public entity at the national and county level of government”

**Mr. Wilfred Nyamu:** Now would you bear with me when I say that this particular Act was actually enacted pursuant to that provision of the Constitution?

**The Auditor-General** (Mr. Edward Ouko): Certainly.

**Mr. Wilfred Nyamu:** And it is even referred to in section 148, sub-section 3 of that Act.

**The Auditor-General** (Mr. Edward Ouko): Yes.

**Mr. Wilfred Nyamu:** So, that now when it is provided that the County Executive Officer under section 3 is the one to appoint accounting officers; that is in line with the Constitution?

**The Auditor-General** (Mr. Edward Ouko): Yes.

**Mr. Wilfred Nyamu:** So that, in line with the Constitution under Article 226, those accounting officers for those particular departments are directly responsible for financial management?

**The Auditor-General** (Mr. Edward Ouko): Yes.

**Mr. Wilfred Nyamu:** So that, now it is also clear under Article 226(5) that such an officer would be held liable for mismanagement of resources in the department that they hold?

**The Auditor-General** (Mr. Edward Ouko): Yes.

**Mr. Wilfred Nyamu:** Must that officer be the governor?

**The Auditor-General** (Mr. Edward Ouko): It will be the accounting officer.

**Mr. Wilfred Nyamu:** That would be the accounting officer. For purposes of that particular provision, Section 148, the accounting officer is not the governor?

**The Auditor-General** (Mr. Edward Ouko): Yes.

**Sen. Orenge:** I am sorry, Mr. Nyamu. If you look at that definition it says that the holder of a public office, including a political office. In the county government, the only political office is that of the governor.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, I am not reading that provision selectively, I am saying that even that accounting officer by virtue of the Constitution is accountable under Article 226. That is what I am saying. It is not that I am saying that the governor is not.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, I want you to go on and remember that we have those other many witnesses. It looks like you are now attempting to ask the witness, who is not a lawyer like you--- If the things you are saying you want to, you can say them in submissions.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, this is being very unfair, for me not to be allowed to exhaust my time with this expert who has even been asked questions relating to Section 30 of County Governments Act in relation to the governor, so that now when I touch that, it becomes a dangerous ground. My only problem is that I am trying to drive my point home and it seems like I am not doing what I am supposed to do.

**The Vice Chairperson** (Sen. Murkomen): Counsel, what the Chairman was trying to do is to protect you from us and that is why he said he wants you to go on until you finish uninterrupted.

**The Chairperson** (Sen. (Dr.) Khalwale): So that you avoid what Sen. Orengo is doing, do not force them because they are not just stooges here to see loopholes where they need to point out what you are leaving out. All that Sen. Orengo did, he told you that you are talking about a public office then he pointed out that the same section also includes a political office. In the executive committee of any county government, the political office is that one of the governor. So, it is you who has invited Sen. Orengo to correct you.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, I practice law in this country. When I asked my question which was specific; I asked whether that particular officer being an accounting officer is liable under Article 226(5).

**The Chairperson** (Sen. (Dr.) Khalwale): Now proceed in view of all that we have said and remember that we must progress.

**Mr. Wilfred Nyamu:** I do expect the Chair to also try to control interjections, especially when there are interruptions.

**The Chairperson** (Sen. (Dr.) Khalwale): I will do my work. The Senate has confidence in me. So, I invite you to enjoin yourself in the confidence of the Senate.

**Mr. Wilfred Nyamu:** I am enjoying my period in this Committee. The environment is very good.

In the procurement law---

**The Chairperson** (Sen. (Dr.) Khalwale): Hon. Members, I request you hold your horses until he concludes.

**Mr. Wilfred Nyamu:** Section 3 of the Public Procurement and Disposal Act, kindly read it. Who is an accounting officer under that section?

**The Auditor-General** (Mr. Edward Ouko): Section 3 says:-

“In this Act, unless the context otherwise requires, accounting officer means, for a public entity other than a local authority, the person appointed by the Permanent Secretary to the Treasury as the accounting officer or if there is no such person, the chief executive of the public entity or for local authority the town or county clerk of local authority”

**Mr. Wilfred Nyamu:** Are you also aware of the County Governments Procurement Regulations?

**The Chairperson** (Sen. (Dr.) Khalwale): Clerk, can you help the counsel with regulations? Counsel, in the meantime, if you remember the particular rule or regulation, just point it out.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, I find it appropriate that I need to give him a copy so that he may refer. As you indicated, he is not a lawyer and I can see that they are well equipped.

In that particular Act, the County Government Public Finance Management Transition Act---

**The Auditor-General** (Mr. Edward Ouko): I do not have that.

**The Vice Chairperson** (Sen. Murkomen): I thought you are talking about regulations?

**Mr. Wilfred Nyamu:** I have the management act and I was actually going to ask him questions also in the regulations.

Do you have the County Governments Procurement Regulations?

**The Auditor-General** (Mr. Edward Ouko): I have the County Governments Public Finance Management Transition Act.

**Mr. Wilfred Nyamu:** In that act or regulation that you are looking at---

**The Auditor-General** (Mr. Edward Ouko): I also have the Public Procurement and Disposals County Government Regulations.

**Mr. Wilfred Nyamu:** Is the county government entity or procuring entity defined in that Act?

**The Auditor-General** (Mr. Edward Ouko): That is not my domain.

**Mr. Wilfred Nyamu:** There is a definition here for the county government entities. Kindly read the meaning.

**The Auditor-General** (Mr. Edward Ouko): This is the definition of county government entities. It says:-

“Entities under a county government which include county corporations and institutions as may be determined to be county government entities by the county executive committee”

**Mr. Wilfred Nyamu:** Would you agree with me that those are the entities referred to under Section 148 of the Public Finance Management Act?

**The Auditor-General** (Mr. Edward Ouko): I think I prefer a lawyer to guide me here.

**Mr. Wilfred Nyamu:** That is the procurement law which you cited. Would you confirm or not confirm that those are the entities referred to under Section 148 of the law that you said you participated in its enactment.

**The Auditor-General** (Mr. Edward Ouko): Yes, it is.

**Mr. Wilfred Nyamu:** Now you move to county procuring entity. It is also defined in those regulations.

**The Auditor-General** (Mr. Edward Ouko): It is defined as:-

“The public entities within the county making procurement as provided for in the Act”

**Mr. Wilfred Nyamu:** That is the entity or department of the county government responsible for procurement. Is it not so?

**The Vice Chairperson** (Sen. Murkomen): Sorry counsel, we do not want to miss that point. The definition of what is a procurement entity is in the Act, right?

**Mr. Wilfred Nyamu:** It is in the Act and it is also in the regulations.

**The Vice Chairperson** (Sen. Murkomen): But in the Act, it is not just a department of government, it can include the whole government. It says the government, a department. It can also include the whole government. It is in the regulations, Public Procurement and Disposal Act, 2005.

**Mr. Wilfred Nyamu:** That is true, but I am referring to Public Finance Management Act which deals with county governments.

**Sen. Orengo:** What the Deputy Chairman said is relevant because subsidiary legislation is inferior to the Act itself and I have a copy here, if you can resolve the issue. A public entity means the government or any department of the government and the government means national government or county government.

**Mr. Wilfred Nyamu:** Remember, my learned senior, Sen. Orengo, we are dealing with a county government which has systems. The financial systems are defined under Article 226(1) and the Public Finance Management Act. So, we are not actually beating about the bush, we have specifics unless we are told to go and search.

**The Vice Chairperson** (Sen. Murkomen): That is okay, counsel. The only thing I wanted you to avoid is a situation where we will go on record as you try to lead the witness to say that the only procuring entity is that department of government. I just want you to appreciate that a government can procure. It may not be in the situation that you are dealing with, but generally it must not go on record as though a government cannot

procure. It does not have to be a department only, there are situations, maybe not in this instance, where a government is procuring.

**Mr. Wilfred Nyamu:** That is true, but my questions are very specific on county government and the systems thereunder. That is why I am not being general. Accounting matters touching on finances are specific. So, I am dealing with the role of the governor in this matter.

**The Chairperson** (Sen. (Dr.) Khalwale): What the vice chairperson and Sen. Orengo have said is that you are quoting the Act and you have put in on HANSARD and you do not have to belabour it. We will refer to it as we write the report. You just proceed and conclude.

**Mr. Wilfred Nyamu:** Thank you. When you look at the County Government Public Finance Management Transition Act, 2013 which is actually provided, you have the definition of transition period at section 2, in the preliminaries, on page 136. What is stated as the transition period?

**The Auditor-General** (Mr. Edward Ouko): Transition period refers to the period between the date of commencement of this Act and the date when the respective county treasuries are established and in any case not later than 30<sup>th</sup> September, 2012.

**Mr. Wilfred Nyamu:** In transition, is there a role of the TA in terms of this period of transition referred to and defined? Does the TA have a role in the financial management of a county within the context of this particular Act which your colleague actually had and she has given it to you?

**The Auditor-General** (Mr. Edward Ouko): The TA has got its own responsibility under the Act which establishes it.

**Mr. Orengo:** Why do you not just put a straight question?

**Mr. Wilfred Nyamu:** The officers you were dealing with when you were doing the audit at the county government, did you deal with the Governor directly or somebody else?

**The Auditor-General** (Mr. Edward Ouko): We were dealing with the people who were in place managing these things.

**Mr. Wilfred Nyamu:** Who were these people?

**The Auditor-General** (Mr. Edward Ouko): Those who were employed by the Embu County or those who were in position employed and recognized as such.

**Mr. Wilfred Nyamu:** The persons that were working in the Embu County. Were these people, some of whom in your knowledge hired by the TA?

**The Auditor-General** (Mr. Edward Ouko): That was not a point to consider. It was irrelevant to us.

**Mr. Wilfred Nyamu:** You did not consider that there were funds which were coming from the TA that you were dealing with?

**The Auditor-General** (Mr. Edward Ouko): No. I said that you were talking about individuals who we were dealing with. We were not bothered whether they were hired by TA. I am not talking about the funds.

**Mr. Wilfred Nyamu:** And the TA definitely had offices and organs that connect with the county government during the transitional period. Is that right?

**The Auditor-General** (Mr. Edward Ouko): I think the Act which establishes the TA establishes all that.

**Mr. Wilfred Nyamu:** So, basically, even during this time on financial matters you were dealing with the TA. Would you confirm?

**The Auditor-General** (Mr. Edward Ouko): I do not know what you are referring to as financial matters.

**Mr. Wilfred Nyamu:** In terms of financial management, you were considering the TA and its role; its role in the financial management during that transition period, especially on matters of procurement.

**The Auditor-General** (Mr. Edward Ouko): First of all, the closure of the defunct local authorities accounts which was the responsibility of the TA and then---

**Mr. Wilfred Nyamu:** We are talking of the closure of the defunct Local Government authorities.

**The Auditor-General** (Mr. Edward Ouko): Which was the responsibility of TA?

**Mr. Wilfred Nyamu:** It was also the responsibility of TA to install systems in the county government. Is that right?

**The Auditor-General** (Mr. Edward Ouko): The TA would have to answer that. In my view, it was not their responsibility to install.

**Mr. Wilfred Nyamu:** You are not aware that the TA was supposed to prepare for the coming in of the County Government after the election; right?

**The Auditor-General** (Mr. Edward Ouko): You will have to ask TA.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, you can see I am now having a hold on the Senators. Can you now indicate how much more time you need.

**Mr. Wilfred Nyamu:** Five minutes.

**The Chairperson** (Sen. (Dr.) Khalwale): Right.

**Mr. Wilfred Nyamu:** We have information and we have been told that the Governor was sworn in on 27<sup>th</sup> March; but your accounting period runs from 1<sup>st</sup> March. In terms of that period, who were you dealing with because the Governor was not in office? Whose records did you use for purposes of your audit?

**The Auditor-General** (Mr. Edward Ouko): For us, the Government was continuing, whether it was in the old system or the new system. Kenya as a county was continuing, transactions were continuing from 4<sup>th</sup> onwards, and those transactions were continuing in the context of the new Constitution which had established the county government. Granted, the Governor was sworn in on that date. My responsibility was not the one of swearing in the Governor. My responsibility was to safeguard the resources during that period.

**Mr. Wilfred Nyamu:** So, now, would you confirm that you cannot specifically pinpoint and say that the Governor had a role in procurement during the entire accounting period, but the Government and systems of Government work. Is it not so?

**The Auditor-General** (Mr. Edward Ouko): Yes.

**Mr. Wilfred Nyamu:** So that now, whoever in the systems of Government who was accountable at that time is what you were interested in.

**The Auditor-General** (Mr. Edward Ouko): I was not interested in the people. I was interested in how the resources were being accounted for.

**Mr. Wilfred Nyamu:** My very last question: During your audit, did you establish that indeed there were tender committees in place?

**The Auditor-General** (Mr. Edward Ouko): Yes, we did establish that there were tender committees.

**Mr. Wilfred Nyamu:** That is all for this witness.

**The Chairperson** (Sen. (Dr.) Khalwale): Thank you, counsel. You have gone very well. Now, I just want to allow really burning issues from three Senators. Sen. Orendo will have the first go.

**Sen. Orendo:** Mr. Chairman, Sir, I want you to look at the audit report. On the very first page, it states which entity or entities you are auditing. Can you confirm to me that that

report is self explanatory in terms of who you are auditing? Can you just read out the top of that page?

**The Auditor-General** (Mr. Edward Ouko): We have the executive summary.

**Sen. Orengo:** No. The report itself titled “Detailed Audited Report”.

**The Chairperson** (Sen. (Dr.) Khalwale): Marked No.27 of your report.

**Sen. Orengo:** I just want you to read that title.

**The Auditor-General** (Mr. Edward Ouko): “The County Government Act, 2012, repealed the Local Government Act, Cap. 265, thus resolving all—

**The Chairperson** (Sen. (Dr.) Khalwale): Just wait so that they can show you that section.

**Sen. Orengo:** I am talking of the subject of that audit.

**The Auditor-General** (Mr. Edward Ouko): Can I read the title first?

**Sen. Orengo:** That is all I am interested in.

**The Auditor-General** (Mr. Edward Ouko): The title is “The Audit of Embu County Government Executive and County Assembly financial operations from 3<sup>rd</sup> March to 30<sup>th</sup> June, 2013”.

**Sen. Orengo:** So, the institutions you were auditing are very clear in this audit report.

**The Auditor-General** (Mr. Edward Ouko): Right.

**Sen. Orengo:** Did you go beyond these two institutions?

**The Auditor-General** (Mr. Edward Ouko): No.

**Sen. Orengo:** If you were auditing the TA you could have said as much.

**The Auditor-General** (Mr. Edward Ouko): Yes.

**The Chairperson** (Sen. (Dr.) Khalwale): Mr. Ouko, I invite you to go to page 40 of your report using the numbers at the bottom on the purchase of a motor vehicle. Yesterday this matter came up and you had said in your report that you could not ascertain the ownership of this motor vehicle; the new Toyota Prado for the Governor, for the reason that the log book was not availed to you. The reason I am asking you is we would like you to confirm that you asked for the log book of the vehicle and you were not given during the audit.

**The Auditor-General** (Mr. Edward Ouko): Yes, we asked and we were not given at the time of the audit.

**The Chairperson** (Sen. (Dr.) Khalwale): Was there any reason given?

**The Auditor-General** (Mr. Edward Ouko): To my knowledge we asked for the document, but we were not given and no reason was given which we could have recorded.

**The Chairperson** (Sen. (Dr.) Khalwale): That is right. Counsel we are not going to re-open this. You have had your bit.

**Mr. Wilfred Nyamu**: I am not re-opening cross examination; I am only making a comment.

**The Chairperson** (Sen. (Dr.) Khalwale): Just a minute counsel. I will help you. I told you from the beginning that you will have your way all the time. You had promised yesterday that you will give us a copy of the log book today. You said it last night. Have you come with it?

**Mr. Wilfred Nyamu**: Mr. Chairman, Sir, one of the witnesses that we had summoned, we summoned them for purposes of producing certain documents which are in their custody. This was a procurement officer who has not even showed up. This is one Gedion Makenge, the brother to the Mover of the Motion for impeachment. So, we have some frustration here. He will confirm that the procurement department would actually have the custody of logbooks and such documents.

**The Chairperson** (Sen. (Dr.) Khalwale): You will canvas that. I will give you appropriate time.

**Mr. Charles Njenga**: Mr. Chairman, Sir, there is an issue of fact the Counsel is raising from where he sits and it is not true. It is very misleading. The Mover of the Motion who sits here with me has no brother called Makenge. I can name all his brothers and produce their identity cards. This is a figment of imagination in the mind of the Counsel.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel for the County Assembly, when we shall call out for that witness and then he makes that allegation, we shall ask--- Do you have evidence that they are brothers?

**Mr. Wilfred Nyamu**: Mr. Chairman, Sir, there is a misconception here. The witness that is seated there is the Mover of the Motion against the Deputy Governor and not the Governor. The Mover of the Motion against the Governor was one ---

**Mr. Charles Njenga**: This is Swaleh Ibrahim seated with me. I do not know whether---

**Mr. Wilfred Nyamu:** But Mr. Makenge is not in.

**The Chairperson** (Sen. (Dr.) Khalwale): Order, counsel! What you are now doing is you are subjecting us to your own sideshows. Keep us out of them. Counsel for Wambora, if you have reason to substantiate that that, kind of relationship is there, the time will come. Keep your cool.

**The Vice Chairperson** (Sen. Murkomen): Mr. Chairman, Sir, we are only dealing with the Governor at the moment.

**The Chairperson** (Sen. (Dr.) Khalwale): The vice chairperson is insisting that we make a decision on the side show. You can make that allegation if you wish when we come to the case of the Deputy Governor. But because that might not apply in case of the Governor, just withdraw it so that we move.

**Mr. Wilfred Nyamu:** Let us go on. We will deal with it at an appropriate time.

**Sen. Orenge:** The problem is the record. These are HANSARD records and this is a permanent record.

**The Chairperson** (Sen. (Dr.) Khalwale): So, counsel, the cooperation that the Chair has extended to you from last night, could you also move on the same wave length of mutual respect by withdrawing the statement?

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, that is appropriate.

**The Chairperson** (Sen. (Dr.) Khalwale): You say "I withdraw".

**Mr. Wilfred Nyamu:** I withdraw, Mr. Chairman, Sir.

**The Chairperson** (Sen. (Dr.) Khalwale): Thank you. So, Mr. Ouko, we want to thank you most abundantly for making time for this. If we need you, we will get back to you. Thank you so much.

**The Auditor-General** (Mr. Edward Ouko): Thank you, Mr. Chairman, Sir.

**The Chairperson** (Sen. (Dr.) Khalwale): You are free to sit in and listen to what is going on or go back to the office. Thank you.

The two parties, we also have another witness who we want to ask one question in your presence. That witness is here for one question. If you have anything you want to add on that question, we will allow you. But anything out of it, then we will be reluctant to give you space for the same.

Members should go to the page of AIE. Governor, also go to that page of the AIE for the Kshs61 million. Governor it was your document, could you lead us to that page? The AIE of Kshs6 million from the TA. They are in your bundle of documents.

*(Mr. Stephen Keros Makori before the Committee)*

*(Mr. Stephen Keros Makori took the oath)*

Welcome, Mr. Makori. Mr. Makori, I invite you to take a seat right where you are. This is a Special Sitting of the Senate presiding over the proposed removal of the Governor of Embu. These are the Senators and, on your right, slightly back, is the Governor and his team and on your left is the County Assembly team. On your far left is the Deputy Governor and her team. Also seated there is the Auditor-General. You are here for only one question we would like you to clarify.

Can you confirm that you are the Mr. S.K. Makori who is the CEO of the TA?

**Mr. Stephen Keros Makori:** Yes, Mr. Chairman, Sir.

**The Chairperson** (Sen. (Dr.) Khalwale): We will show you a document which has been submitted by one of the witnesses from the Governor's office being a document headed "Authority to Incur Expenditure". Have you seen it?

**Mr. Stephen Keros Makori:** Yes, Mr. Chairman, Sir.

**The Chairperson** (Sen. (Dr.) Khalwale): Scan it for a second. Can you confirm that you are the S.K. Makori whose name is sighted in that document?

**Mr. Stephen Keros Makori:** Yes, Mr. Chairman, Sir.

**The Chairperson** (Sen. (Dr.) Khalwale): Can you also confirm that you signed that document on 23<sup>rd</sup> April, 2013?

**Mr. Stephen Keros Makori:** Yes, Mr. Chairman, Sir.

**The Chairperson** (Sen. (Dr.) Khalwale): What is this document?

**Mr. Stephen Keros Makori:** This is an AIE we issued to the County Government of Embu for purposes of putting up infrastructure and HANSARD to begin off as the county government.

**The Chairperson** (Sen. (Dr.) Khalwale): The real reason we have called you here is for you to look at the top left of that document where you have written, GOV, Embu and tell us whether this meant the Governor of Embu. After you have seen that, you should explain who the AIE holder is.

**Mr. Stephen Keros Makori:** Mr. Chairman, Sir, according to this document, the GOV Embu meant, Governor Embu. However, in the letter that we forwarded this AIE; we send it to the Interim Chief Finance Officer (CFO) of the county, instructing him that this was an AIE that had to be used in accordance with Government regulations.

**The Chairperson** (Sen. (Dr.) Khalwale): Thank you. So, it was to the Governor of Embu? Is that what you are saying?

**Mr. Stephen Keros Makori:** Yes, Mr. Chairman, Sir.

**The Chairperson** (Sen. (Dr.) Khalwale): So, I invite counsel for the County Assembly. Do you have anything to clarify?

**Mr. George Ng'ang'a Mbugua:** Thank you, Mr. Chairman, Sir. We do not have any questions to the witness.

**The Chairperson** (Sen. (Dr.) Khalwale): We invite the Counsel for the Governor. Do you have anything to clarify?

**Mr. Peter Wanyama:** Mr. Makori, my name is Peter Wanyama, Assistant Counsel for the Governor. This is a very pertinent issue. Therefore, I want to ask you a very specific question so that you clarify it to this Committee.

Did you write a letter enclosing the AIE voucher?

**Mr. Stephen Keros Makori:** Mr. Chairman, Sir, Yes, I did.

**Mr. Peter Wanyama:** Where is a copy of that letter?

**Mr. Stephen Keros Makori:** Mr. Chairman, Sir, The copy of the letter is on page 459.

**Mr. Peter Wanyama:** Could you, please, read when the letter is dated?

**Mr. Stephen Keros Makori:** Mr. Chairman, Sir, the letter is dated 23<sup>rd</sup> April, 2013.

**Mr. Peter Wanyama:** Who is it addressed to?

**Mr. Stephen Keros Makori:** Mr. Chairman, Sir, it is addressed to the Chief Finance Officer, the Principal County Finance Officer, Embu County.

**Mr. Peter Wanyama:** Principal Chief Finance Officer, Embu County?

**Mr. Stephen Keros Makori:** Mr. Chairman, Sir, yes.

**Mr. Peter Wanyama:** What did you mean by putting the brackets that read (county)?

**Mr. Stephen Keros Makori:** Mr. Chairman, Sir, the Principal Finance Officer is in accordance to the County Government Financial Management Transition Act where the Accounting Officer who is the AIE holder---

**Mr. Peter Wanyama:** What are the responsibilities of the Chief Finance Officer?

**Mr. Stephen Keros Makori:** Mr. Chairman, Sir, to ensure that the money was received and spend.

**Mr. Peter Wanyama:** Was he the Accounting Officer of the County?

**Mr. Stephen Keros Makori:** Mr. Chairman, Sir, the Principal Chief Finance Officer?

**Mr. Peter Wanyama:** Yes, do you confirm that he was the Accounting Officer?

**Mr. Stephen Keros Makori:** Mr. Chairman, Sir, yes, I confirm that he was the Accounting Officer.

Let me declare here that according to my letter, the Principal Accounting Officer was supposed to be the Accounting Officer.

**Mr. Peter Wanyama:** Were the interim officers seconded by yourself to the counties answerable to the Governor in terms of actual reporting on these expenditures or were they answerable to you?

**Mr. Stephen Keros Makori:** Mr. Chairman, Sir, they were meant to give us returns on expenditure, but they were answerable---

**Mr. Peter Wanyama:** So, they were answerable to you in terms of the returns?

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, keep your calm. As we said, this will bring up quite a number of things. Give the witness a chance to respond to your question.

**Mr. Peter Wanyama:** Hon. Senators, that is a strategy from us. We want to go to the point so that we finish with this.

**The Chairperson** (Sen. (Dr.) Khalwale): Peter, save us the theatrics. We want facts. You have your time, you must be heard.

Proceed, Mr. Makori.

**Mr. Stephen Keros Makori:** Mr. Chairman, Sir, could he repeat the question?

**Mr. Peter Wanyama:** Can you clarify to this Committee the reports which you were receiving? What is the nature of the reports you were receiving from the---

**The Chairperson** (Sen. (Dr.) Khalwale): Order! Peter, that was not your question. We heard you and you were on record.

**Mr. Peter Wanyama:** Perhaps, let me go back because this is an important point and we want the matter to be addressed in a conceptualized way.

**The Chairperson** (Sen. (Dr.) Khalwale): Mr. Makori, because the Chair was here when he was asking you the question, since he does not want to ask you again, respond to his question. Was the Accounting Officer reporting to the TA or the Governor? You had started answering.

**Mr. Stephen Keros Makori:** Mr. Chairman, Sir, he was reporting to the TA, but in terms of working, he was working under the Governor and the County Government. Ours was to receive returns on how they had spent the money. Ultimately, the TA is responsible for money, Kshs61 million, that went to each county. I have to answer to the Auditor-General how the monies had been used. Therefore, the CFO was to answer to that. However, in terms of operations and usage, they worked together with the County Government.

**Mr. Peter Wanyama:** So, if there were any irregular dealings – I am not saying there were any – in respect to these finances, who would be ordinarily answerable in terms of being surcharged or being asked to explain? Is it the Governor or the CFO?

**Mr. Stephen Keros Makori:** Mr. Chairman, Sir, that would depend on many factors.

**Mr. Peter Wanyama:** I am asking, assuming that the Auditor-General makes a finding that Kshs1 million---

**The Chairperson** (Sen. (Dr.) Khalwale): Peter, you asked the witness a very good question. I want to protect the witness from you. Let him respond and then you will have another go.

**Mr. Peter Wanyama:** The witness is swaying away. Therefore, I want to be very specific so that he understands the question.

**The Chairperson** (Sen. Dr. Khalwale): You see, Mr. Wanyama, if you will be the player and the referee, then you will count goals that you have not scored.

**Mr. Stephen Keros Makori:** Mr. Chairman, Sir, I want to reply by saying that if the Auditor-General finds out that money has been misused at the county level, he points that out after seeing the records. Therefore, the officers responsible defend themselves by showing the written instructions they have for doing a, b or c.

**Mr. Peter Wanyama:** That is good enough for me. Do you recall the name of the CFO whom you forwarded the AIE to, for the record?

**Mr. Stephen Keros Makori:** Mr. Chairman, Sir, the CFO we forwarded this AIE to is called Mr. Kamau Wachiuri.

**Mr. Peter Wanyama:** Are you in a position to tell us where he is working now?

**Mr. Stephen Keros Makori:** Mr. Chairman, Sir, right now, I do not know where he is because he was released by the County Government. However, I believe that he must have gone back to his former station.

**The Chairperson** (Sen. (Dr.) Khalwale): Mr. Makori, we want to thank you for making time to see us. You have really been of great help to us. If we need you at another stage, we will come back to you. You are free to go. However, in the interests of your office, with regard to what is going on in Embu, you can sit anywhere in the public gallery and listen.

**Mr. Stephen Keros Makori:** Mr. Chairman, Sir, thank you for calling me and giving me an opportunity to sit before you and clarify issues that had arisen. God bless you.

**The Chairperson** (Sen. (Dr.) Khalwale): Hon. Members, I want to call for a break of 15 minutes. When we come back, the Governor's witnesses will go back to the dock. Tea is served in the usual place.

*(The Committee adjourned temporarily at 12.10 p.m.)*

*(The Committee resumed at 12.35 p.m.)*

**The Chairperson** (Sen. (Dr.) Khalwale): Hon. Senators, we now want to resume the hearings. Thank you for the morning session and the cooperation. I call upon the lead counsel for the Governor's case to bring their next witness.

**Mr. Wilfred Nyamu:** Mr. Chairman and hon. Members, we will now have a witness by the name Robert Ileri whose evidence is appearing on page 364 of the big bundle.

I wish to seek certain directions from your office in terms of the manner in which we deal with witnesses. I pray that if possible, we have them cross-examined by the County Assembly, Members of the Committee and after all questions have been taken, we re-examine them so that---

**The Chairperson** (Sen. (Dr.) Khalwale): Has anything changed?

**Mr. Wilfred Nyamu:** Yes, there are times when---

**The Chairperson** (Sen. (Dr.) Khalwale): What are you trying to change?

**Mr. Wilfred Nyamu:** I am trying to say that in respect of a witness, I have seen a witness being asked questions after re-examination. My concern is that he may answer a question

in a certain way that may warrant further re-examination which will waste a lot of time. So, for purposes of ensuring that no party is prejudiced, cross-examination should be done by the County Assembly, the Special Committee. After all questions are done, we can re-examine.

**The Vice Chairperson** (Sen. Murkomen): What counsel is trying to say is that we should avoid interruptions when he is doing re-examinations so that we do not introduce more questions.

**Mr. Wilfred Nyamu:** What I am saying is this. After I am through with re-examination and sit down, we should not ask further questions. No more questions should come from the plenary.

**The Vice Chairperson** (Sen. Murkomen): You are right. That is how it should be. Once in a while, we deviated.

**The Chairperson** (Sen. (Dr.) Khalwale): What are you trying to cure?

**Mr. Wilfred Nyamu:** One, I am trying to save time. Two, I want to ensure that there is no prejudice that is likely to be suffered by my client in the event that a witness answers questions after I have sat down and I cannot reexamine.

**The Chairperson** (Sen. (Dr.) Khalwale): I have heard you.

*(Mr. Robert Njeru Ileri before the Committee)*

*(Mr. Robert Njeru Ileri took the oath)*

**The Chairperson** (Sen. (Dr.) Khalwale): Welcome, Mr. Ileri.

**Mr. Wilfred Nyamu:** Mr. Ileri, when you speak, kindly, switch on that gadget so that you are audible during this session. Could you tell these hon. Members what your names are?

**Mr. Robert Njeru Ileri:** I am hon. Robert Njiru Ileri, the MCA elected to represent the people of Kagaari South Ward, Runyenjes Constituency.

**Mr. Wilfred Nyamu:** You are the Member of the County Assembly representing which ward?

**Mr. Robert Njiru Ileri:** Kagaari South Ward in Runyenjes Constituency.

**Mr. Wilfred Nyamu:** Now, kindly, move the gadget closer to you so that you relax. You will be asked questions by the Committee and Counsel for the County Assembly. If need be, we will ask you questions.

Did you do a statement in relation to these proceedings?

**Mr. Robert Njiru Ileri:** Yes, Mr. Chairman, I did a statement.

**Mr. Wilfred Nyamu:** On what date did you do that statement?

**Mr. Robert Njiru Ileri:** That was on Thursday.

**Mr. Wilfred Nyamu:** Now, would you like to rely on that statement as evidence in these proceedings?

**Mr. Robert Njiru Ileri:** Yes, I will Mr. Chairman, Sir.

**Mr. Peter Nyamu:** Now, hon. Members and Chairman, I request that the statement by Mr. Robert Ileri be adopted as evidence in these proceedings.

**The Chairperson** (Sen. (Dr.) Khalwale): As we adopt them, could he also sign? You have not signed on page 5 neither have you put the date.

**The Vice Chairperson** (Sen. Murkomen): Could you also supply us with copies of the document?

**Mr. Wilfred Nyamu:** Mr. Chairman, we will give out three or so copies that will be signed.

**Sen. Orengo:** Some of the copies are not signed.

**Mr. Wilfred Nyamu:** Hon. Members, since he is signing before the Committee and for purposes of HANSARD, I urge that he dates it today.

**Sen. Orengo:** He should sign a copy that will remain with the Clerk.

**Mr. Wilfred Nyamu:** Mr. Ileri, you will be asked questions by both the counsel for the County Assembly and the Special Committee.

**Mr. Charles Njenga:** Thank you Mr. Chairman, Sir. Mr. Ileri, I see, from your description that you are a Member of the County Assembly of Embu, the party that I represent in these proceedings. So, I have no questions for you. I do not wish to pose any question.

**Mr. Robert Njiru Ileri:** Sorry, I need to seek protection from this Committee. My being a witness here may be used back in the Assembly so that I stop being a Member of certain Committees as it has happened. The threat is real. It has happened to some Members who did not support this Motion. I seek to be protected by the Committee.

**The Chairperson** (Sen. (Dr.) Khalwale): Mr. Ileri, membership of Committees by Members is a decision of political parties. This special committee cannot manage political parties in their political party internal democracy.

As you see me here, I once faced the music and that will be nothing special. Those are the occupational hazards for being a politician. The Vice Chairperson was the one cheering the process of removing me. So, take it easy. It is not a big deal.

*(Laughter)*

However, if, indeed, you feel there is actual threat to your life that is where we come in and direct that you record a statement with the police to that effect. We are encouraging the Inspector-General to ensure that your security issue is addressed.

**Mr. Robert Njiru Ileri:** Thank you, Chairman, Sir.

**The Chairperson** (Sen. (Dr.) Khalwale): Members, the County Assembly has no questions. I look on my right and look on my right again and I see no question. I look on my left and on my left again and see no question.

What about you Vice Chairperson?

**The Vice Chairperson** (Sen. Murkomen): I have no question.

**The Chairperson** (Sen. (Dr.) Khalwale): You will be able to inform me when I will be leading you during report writing. So, we are done. Counsel for the Governor, the floor is now yours.

**Mr. Wilfred Nyamu:** Now that he has not said anything and he stands by his statement, ordinarily as a lawyer I would not have any questions. I know it is a strategy, but strategy, indeed, and it is taken.

**Mr. Robert Njiru Ileri:** Mr. Chairman, Sir, ---

**The Chairperson** (Sen. (Dr.) Khalwale): Order, who has given you the floor? Counsel for the Governor, do not go into unnecessary side shows. This business of strategy and so on, *hiyo ni mambo yenu bwana, usituingize*.

Witness, thank you so much. We are now standing you down. We appreciate your coming. What you have said will be acted upon by the respective institutions and authorities.

Next witness.

**Mr. Wilfred Nyamu:** Our next witness is Rose Muthoni Ndwiga.

**The Chairperson** (Sen. (Dr.) Khalwale): Is the witness still sleeping the way she reported last night?

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, we have sent for the witness. She is very much awake and energetic.

**The Chairperson** (Sen. (Dr.) Khalwale): Okay, administer the oath.

*(Ms. Rose Muthoni Ndwiga before the Committee)*

*(Ms. Rose Muthoni Ndwiga took the oath)*

Take the seat. Counsel, you may proceed.

**Mr. Wilfred Nyamu:** Could you kindly tell this Special Committee of the Senate your names?

**Ms. Rose Muthoni Ndwiga:** Thank you, all hon. Members of the Special Committee of the Senate, all protocols observed, my name is hon. Rose Muthoni Ndwiga, nominated Member of the County Assembly of Embu.

**Mr. Wilfred Nyamu:** On which party were you nominated?

**Ms. Rose Muthoni Ndwiga:** I was nominated by the TNA party.

**Mr. Wilfred Nyamu:** Have you done a statement in respect to these proceedings?

**Ms. Rose Muthoni Ndwiga:** Yes, Mr. Chairman, Sir.

**Mr. Wilfred Nyamu:** Would you like to rely on the statement for purposes of these proceedings and have the same adopted as evidence in this Special Committee of the Senate?

**Ms. Rose Muthoni Ndwiga:** Yes.

**Mr. Wilfred Nyamu:** Mr. Chairman and hon. Members, I pray that the witness's statement be marked as a document and adopted for purposes of evidence in this Committee.

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

**Mr. Wilfred Nyamu:** Now you may be asked questions by advocates for the County Assembly and the Special Committee of the Senate. If so, kindly answer those questions deliberately.

**The Chairperson** (Sen. (Dr.) Khalwale): Muthoni, I can see you have signed this document, but you have not indicated when you signed it. Do you remember when you signed it?

**Ms. Rose Muthoni Ndwiga:** Mr. Chairman, Sir, I am the one who signed it. I am sorry I cannot remember.

**The Chairperson** (Sen. (Dr.) Khalwale): Last week?

**Ms. Rose Muthoni Ndwiga:** It was early last week.

**The Chairperson** (Sen. (Dr.) Khalwale): Monday? I want her to put the date.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, for purposes of these proceedings I would request that she is not certain in relation to the date, let her countersign and we put today's date.

**The Chairperson** (Sen. (Dr.) Khalwale): Okay. Put a signature and put today's date on my copy.

**Mr. Wilfred Nyamu:** It forms part of the bundle that we had supplied earlier.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel for the County Assembly of Embu.

**Mr. Charles Njenga:** Hon. Rose Muthoni Ndwiga, I notice you are a member of the County Assembly of Embu. We appear in these proceedings for the County Assembly of Embu. On behalf of the County Assembly of Embu we have read your statement. We are satisfied by the contents and we do not have any questions for you.

**The Chairperson** (Sen. (Dr.) Khalwale): Very well. I will start on my left. Do we have any Senator who has an issue for clarification? This statement came a long ago, so you have had time to look at it.

**The Vice Chairperson** (Sen. Murkomen): What is the composition in terms of parties? You said you were nominated by the TNA. Are there members nominated from other parties in your County Assembly?

**Ms. Rose Muthoni Ndwiga:** Yes, there are. Within TNA or without?

**The Vice Chairperson** (Sen. Murkomen): I am just saying in the composition of the County Assembly, which is the leading majority party?

**Ms. Rose Muthoni Ndwiga:** The majority party is Jubilee.

**The Vice Chairperson** (Sen. Murkomen): Party? That is the coalition.

**Ms. Rose Muthoni Ndwiga:** The TNA is the majority party.

**The Vice Chairperson** (Sen. Murkomen): The minority leader is from which party?

**Ms. Rose Muthoni Ndwiga:** He is from NARC (K).

**The Vice Chairperson** (Sen. Murkomen): Mr. Chairman, Sir, I have no further question.

**The Chairperson** (Sen. (Dr.) Khalwale): Very well. I have no question.

Lead counsel for the Governor.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, I have no questions for this witness.

**The Chairperson** (Sen. (Dr.) Khalwale): Okay Muthoni. It was very nice that you came. I want to apologise abundantly for the sake of your family that we kept you up to 2.00 a.m. last night. But that is the price of patriotism.

**Ms. Rose Muthoni Ndwiga:** Thank you, Mr. Chairman, Sir, although I wished I could be given an opportunity to say one small thing. If you could allow me to do so, can I?

**The Chairperson** (Sen. (Dr.) Khalwale): Which question would you be responding to?

*(Laughter)*

**Ms. Rose Muthoni Ndwiga:** Okay.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, these proceedings are investigations. This is not a court. I would request that if she has a comment to make, as even a member of the County Assembly; therefore, an interested party, may be, this Committee would benefit from what she says.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, I appreciate your views, but I am reluctant to exercise them. Since I have that discretion under the rules, I direct that you be stood down and give us the next witness.

**Mr. Wilfred Nyamu:** Very well, Mr. Chairman, Sir, we are in your hands.

**The Chairperson** (Sen. (Dr.) Khalwale): Clerk, can you administer the oath.

*(Mr. John Mwangi Muriuki before the Committee)*

*(Mr. John Mwangi Muriuki took the oath)*

Mr. Mwangi you can be seated. I can see you know the procedure very well. You have been with us from the very beginning; I could not help noticing your afro.

*(Laughter)*

Counsel, you can proceed.

**Mr. Wilfred Nyamu:** Could you tell this Committee what your names are?

**Mr. John Mwangi Muriuki:** My name is John Mwangi from Embu County. I am a County Representative from Gatari South in Manyatta Constituency.

**Mr. Wilfred Nyamu:** In respect to these proceedings, did you do a written statement?

**Mr. John Mwangi Muriuki:** I did.

**Mr. Wilfred Nyamu:** Would you like to rely on the same as evidence before this Special Committee?

**Mr. John Mwangi Muriuki:** Yes I will.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, I request that the statement in respect of this witness be adopted in evidence in these proceedings for consideration.

**The Chairperson** (Sen. (Dr.) Khalwale): Mr. Mwangi, do you recall signing this statement?

**Mr. John Mwangi Muriuki:** Yes, Mr. Chairman, Sir. It was on Thursday---

**An hon. Senator:** Which page is it?

**Mr. John Mwangi Muriuki:** Mr. Chairman, Sir, page five.

**The Chairperson** (Sen. (Dr.) Khalwale): No, I am asking the date on which you signed.

**Mr. John Mwangi Muriuki:** It was on Thursday last week.

**The Chairperson** (Sen. (Dr.) Khalwale): We are inviting you to counter sign it and then indicate today's date on this copy.

**Mr. John Mwangi Muriuki:** Yes, I will.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, while I am still on my feet, I made a request that this statement be adopted as evidence in these proceedings. For purposes of the HANSARD, I am waiting for an answer.

**The Chairperson** (Sen. (Dr.) Khalwale): I am waiting to accept it after it has been signed.

Counsel for the County Assembly I now have it. It is signed and you have a copy. It is now admitted. It is now your opportunity to rise and interrogate the patient---

*(Laughter)*

Sorry not the patient, the witness. Mr. Mwangi, I am sorry to call you a patient.

**The Vice Chairperson** (Sen. Murkomen): It is because the Chair is a Doctor.

**The Chairperson** (Sen. (Dr.) Khalwale): I am a doctor in my other life, but in my current life, I am what I am.

*(Laughter)*

**Mr. George Ng'ang'a Mbuga:** Mr. Mwangi, we have looked at your statement. You are a Member of the County Assembly whose interests we are here to safeguard and we do not intend to ask any questions.

That is all, Mr. Chairman, Sir.

**The Chairperson** (Sen. (Dr.) Khalwale): Okay, that is all right. I now move to Members of the Special Committee.

**Sen. Orenge:** I just want you to confirm that your name is John Mwangi Muriuki.

**Mr. John Mwangi Muriuki:** Yes, Mr. Chairman, Sir. My name is John Mwangi Muriuki.

**The Chairperson** (Sen. (Dr.) Khalwale): It looks like there are no questions from the other Members. I also have no question.

Lead counsel, do you have anything on re-examination?

**Mr. Wilfred Nyamu:** There is no re-examination since there was no cross-examination. I just adopt evidence as tabled by the witness, unchallenged.

**The Chairperson** (Sen. (Dr.) Khalwale): Thank you so much, Mr. Mwangi. You are now free to go back to Gatari South in Runyenjes Constituency.

**Mr. John Mwangi Muriuki:** Mr. Chairman, Sir, it is not Runyenjes Constituency, it is Manyatta Constituency, Gatari South.

**The Chairperson** (Sen. (Dr.) Khalwale): Please, send our greetings to the people of Manyatta.

**Mr. John Mwangi Muriuki:** I will, thank you.

**The Chairperson** (Sen. (Dr.) Khalwale): Next witness.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, we have two other witnesses whose statements are being printed by your secretariat so that they may be circulated to the members. We still have a witness who was summoned and we have not seen him.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, which Secretariat is printing the statement?

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, I have been corrected. I have been told that it is our side that is printing just within the building. I thought the Secretariat was.

**The Chairperson** (Sen. (Dr.) Khalwale): Can you give us the first copy then we shall use it. The others will come while we are in session. We are running late.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, in five minutes they should be here. I would have expected my team to ask the secretariat to assist, but I think they did not know it would assist.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, would you like the secretariat to help?

**Mr. Wilfred Nyamu:** Since they are doing it, let them just continue.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel let me tell you, last night at 2.00 a.m. you requested that you did not want to give witnesses because they were sleeping, we granted you. You never told us that your challenge included the issues of statements. Since we are time- bound, the Chair will have no choice, but to proceed. We have given you sufficient time, we are going to accommodate you for ten minutes. At the end of ten minutes, we will proceed. You had requested for five minutes, but I am giving you ten minutes.

**Mr. Wilfred Nyamu:** Very well, Mr. Chairman, Sir. We are humbled.

**Mr. Charles Njenga:** Mr. Chairman, Sir, for clarification, are you now saying that in your ruling or directions that at this stage that we are admitting fresh witness statements?

**The Vice Chairperson** (Sen. Murkomen): No! No!

**The Chairperson** (Sen. (Dr) Khalwale): Not at all!

**Mr. Charles Njenga:** Because the indication by counsel is that somewhere within the building, they are making statements that they propose to make available to us. I would have serious problems with that on behalf of the County Assembly.

**The Chairperson** (Sen. (Dr) Khalwale): You know the witnesses we are asking for, counsel; it is the county secretary. You have been waiting for her all this time; so have we. So, it is nothing new. But if it is a new witness, we shall refuse.

**Mr. Charles Njenga:** I remember, Mr. Chairman, Sir, when you spoke on that and counsel indicated that we would have those statements early in the morning so that by the time these witnesses come, we can at least consult within ourselves and prepare for cross examination. I remember we made a lengthy application and a lengthy response on the matter of documents and their admission, and a ruling was made.

Mr. Chairman, Sir, all I am saying is that, let the records read that the County Assembly is opposed to the admission of any further documents at this stage.

**The Chairperson** (Sen. (Dr) Khalwale): Hon. Members, we have to ventilate a little bit since we still have a few minutes. We will deliberately come up with an answer. It is true that we had said that those copies be provided in the morning for you to go through them, but I overlooked that when I then gave them 10 minutes. So, we are coming back with an answer.

In the meantime, continue what we had granted you.

**Sen. Kittony:** Mr. Chairman, Sir, if they have it ready, perhaps, they could circulate it when you are coming to make a decision.

**The Chairperson** (Sen. (Dr) Khalwale): No, we will rule on that. You have five minutes, because you have already done five minutes.

*(Loud consultations)*

Order! Order, everybody! We have made a decision and it is on the premise that from the beginning, we chose to elect to do everything possible to ensure that both parties are heard. So, we have decided that we shall not move away from that principle and we are not going to take away anything from either party.

For this reason, we have ruled that this document – which you have given us within the 10 minutes which we specified – will be given to the members of the County Assembly team. Ten minutes from the time that I am speaking, the other copy should also have been availed to the members of the County Assembly; that is a total of 20 minutes.

We will adjourn for one hour 15 minutes, during which time we will have lunch. But in the meantime, members of the County Assembly team, you will have an opportunity to look at the evidence and prepare accordingly. If you are not given a copy through the Clerk 10 minutes from now, that witness will not be admitted. But the first witness has been admitted; they will study, come after one hour 15 minutes and we will take the evidence.

That is the ruling. Make sure that you sign.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, I wish to confirm that we have got the statement. We will be more than ready within that one hour to take on the witness.

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

**Mr. Charles Njenga:** We are getting them in the next 10 minutes as ordered by the honorable Committee and the Chairman.

**The Chairperson** (Sen. (Dr) Khalwale): So ruled. Thank you.

**Sen. Lesuuda:** Mr. Chairman, Sir, can they come signed?

**The Chairperson** (Sen. (Dr) Khalwale): Yes, we shall confirm the signatures when we convene. In the meantime, if you can sign, the better.

We are adjourned for one hour 15 minutes. We will be back at 2.30 p.m.

*(The Committee adjourned temporarily for lunch at 1.20 p.m.)*

*(The Committee resumed at 2.45 p.m.)*

**The Chairperson** (Sen. (Dr) Khalwale): Order, everybody! I want to call this meeting to order now.

Counsel, you are now going to call witnesses and your time is limited because we now want to start on the Deputy Governor's case. So, can you indicate how much time you need for the remaining two witnesses?

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, and hon. Senators, we have these two witnesses; one of them is a procurement person who worked within the county and who we wish to take through for 30 minutes, probably, depending on how questions are put in cross examination; he now has a statement. Then we do have the county secretary who is likely to deal with most of the documents here. I am sure the hon. Members of this Committee and the County Assembly are likely to pose many questions. So, such questions would warrant some lengthy cross examination. So, if I could be given, on an ambitious side, for her, one hour.

**The Chairperson** (Sen. (Dr) Khalwale): So, you are requesting one hour for the county secretary and 30 minutes for the procurement officer?

**Mr. Wilfred Nyamu:** Yes, hoping that the procurement officer is not going to attract as many questions that would warrant a lengthy re-examination.

**The Chairperson** (Sen. (Dr) Khalwale): Okay. I want to be very generous to you.

**Mr. Wilfred Nyamu:** Yes.

**The Chairperson** (Sen. (Dr) Khalwale): And when we start going out, please, do not scream. We will do a total of two hours on both witnesses. This includes interventions from all parties.

**Mr. Wilfred Nyamu:** That is okay.

**The Chairperson** (Sen. (Dr) Khalwale): I could not give you more. If in the process, one eats into the other, you will be weakening your case.

**Mr. Wilfred Nyamu:** I do understand.

**The Chairperson** (Sen. (Dr) Khalwale): Yeah.

**Mr. Wilfred Nyamu:** The only thing that I would want to ask is what I requested for during the morning session; that all questions to that witness ought to be asked before I re-examine. Once I have re-examined, that witness be released so that my client is not prejudiced.

**The Chairperson** (Sen. (Dr) Khalwale): We are not going back to that. We have already settled the issue, but the Chair always reserves the right to exercise his discretion when the moment so dictates.

Counsel for the County Assembly, we are allowing a total of two hours. Do you have any objection?

**Mr. George Ng'ang'a Mbugua:** No, we do not have any objection. We can take the two witnesses.

**The Chairperson** (Sen. (Dr) Khalwale): Very good; so, let us have the first witness.

**Mr. Wilfred Nyamu:** Before the witness comes, hon. Members and the Chairman, there is a circular which is a public document---

**The Chairperson** (Sen. (Dr) Khalwale): Order! You have already consulted us. When you reach that stage when you now want to do what you want to do, you will draw the attention of the Chair and then we shall guide you accordingly. You just start your case.

**Mr. Wilfred Nyamu:** Very well.

*(Mr. Joshua Kalola Munyaka before the Committee)*

*(Mr. Joshua Kalola Munyaka took the oath)*

**The Chairperson** (Sen. (Dr) Khalwale): Thank you, Mr. Kalola. If you may assume that seat directly in front of me and be most relaxed; you are not accused of anything. You are

here purely as a witness to help the exercise that you know has been ongoing in respect of the proposed removal of the Governor and Deputy Governor of Embu from office. Welcome.

**Mr. Joshua Kalola Munyaka:** Thank you, Mr. Chairman, Sir.

**The Chairperson** (Sen. (Dr) Khalwale): Counsel?

**Mr. Wilfred Nyamu:** Could you kindly tell this honorable Special Committee of the Senate what your names are?

**Mr. Joshua Kalola Munyaka:** My name is Joshua Kalola Munyaka.

**Mr. Wilfred Nyamu:** What do you do for a living?

**Mr. Joshua Kalola Munyaka:** I am currently the Senior Assistant Director of Supply Chain Management Services of Kitui County Government.

**The Chairperson** (Sen. (Dr) Khalwale): Pull the microphone next to you.

**Mr. Wilfred Nyamu:** Initially, before you went to Kitui, where were you working?

**Mr. Joshua Kalola Munyaka:** Before I went to Kitui, I worked for the Embu County Government, where I had been posted by the TA as the Interim Head of Supply Chain Management Services.

**Mr. Wilfred Nyamu:** Now, you were summoned by this honorable Special Committee of the Senate and you responded to the summons; you have also written and signed a statement. Now, would you like this statement to form part of your evidence in these proceedings?

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, I do request that the statement signed and forwarded by the witness be included in the evidence before this Committee.

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

**Mr. Wilfred Nyamu:** You will now be asked questions by the lawyers for the County Assembly and also Members of this Special Committee. If need be, I will ask you questions.

**Mr. Joshua Kalola Munyaka:** Yes.

**The Chairperson** (Sen. (Dr) Khalwale): Counsel for the County Assembly of Embu?

**Mr. George Ng'ang'a Mbugua:** Mr. Munyaka, I have a few questions for you. You say in your statement that the Principal Finance Officer, who is the Interim County Secretary, was always consulting the TA Co-ordinator at the county level. Is that right?

**Mr. Joshua Kalola Munyaka:** Yes.

**Mr. George Ng'ang'a Mbugua:** In what form did this consultation take; was it by way of a meeting, exchange of correspondence or by way of a report?

**Mr. Joshua Kalola Munyaka:** It used to be by way of reports, by way of letters and verbal communications because during the transition period, the activities that we undertook in terms of the financial and human resource, some of the issues were relating directly to TA as the transition co-ordinator. Some of the issues now were relating to the Interim County Secretaries on the ground. The TA had their own officer, who was the TA Co-ordinator, on the ground for that purpose.

**Mr. George Ng'ang'a Mbugua:** So, this would be a report of how funds have been spent; a return of how funds have been spent at the county level?

**Mr. Joshua Kalola Munyaka:** Yes.

**Mr. George Ng'ang'a Mbugua:** Did this correspondence or consultation, include decisions on how funds, would be spent at the county?

**Mr. Joshua Kalola Munyaka:** Yes.

**Mr. George Ng'ang'a Mbugua:** Could you give us an example of such decisions?

**Mr. Joshua Kalola Munyaka:** An example of such decisions was, for example, there were funds that were provided by the TA initially for the purposes of the assumption of the Office of the Governor and the County Assembly Members. Later on, other funds were issued for the purposes of refurbishment of the existing structures to pave way for offices of the Governor and the staff, and also the Members of the County Assembly (MCAs).

**Mr. George Ng'ang'a Mbugua:** So, these were spending decisions to pave way and to facilitate the coming in of the Governor, the County Executive and the structures now under the new County Government?

**Mr. Joshua Kalola Munyaka:** Yes.

**Mr. George Ng'ang'a Mbugua:** But a report and a return would be made to the TA on how funds have been spent?

**Mr. Joshua Kalola Munyaka:** Yes. A report would be made through consultations with the interim county secretary and the TA Co-ordinator, who would now submit those reports to TA on the expenditures based on those funds that came from TA.

Mr. Chairman, Sir, when I say TA, I mean the Transition Authority.

**Mr. George Ng'ang'a Mbugua:** To help in the transition to the new County Governments?

**Mr. Joshua Kalola Munyaka:** Yes.

**Mr. George Ng'ang'a Mbugua:** So, when the County Government and the Governor was sworn in on the 27<sup>th</sup> of March, the County Government was properly constituted as from that date; is that true?

**Mr. Joshua Kalola Munyaka:** That is true.

**Mr. George Ng'ang'a Mbugua:** Now, the officials who had been seconded by TA to the counties continued working even after the institution of the County Government under the Governor?

**Mr. Joshua Kalola Munyaka:** Yes.

**Mr. George Ng'ang'a Mbugua:** Now, did these officials now working under the Governor have any power or any mandate to make spending decisions on behalf of the county, independent of the Governor? For example, if they wanted to build an airport, could they go ahead without consulting the Governor and the County Executive?

**Mr. Joshua Kalola Munyaka:** They would not generally do that because the funding that came from the TA was specific. It was to be used for specified purposes. So, they would not spend that money outside what was specified. What was specified was what the office of the Governor and county coordinator would consult and implement as specified.

**Mr. George Ng'ang'a Mbugua:** So, these were not decision makers in terms of spending at any time; they were just accounting to the TA as the source of funds on whatever and however funds have been spent.

**Mr. Joshua Kalola Munyaka:** Mr. Chairman, Sir, they were decision makers in terms of spending, but they had to give returns to the authority that funded those expenditures.

**Mr. George Ng'ang'a Mbugua:** That is why I am asking you: Could they make spending decisions independent of the Governor after the Governor had been sworn in as the County Governor and the institution of the County Governor?

**Mr. Joshua Kalola Munyaka:** They could make those decisions, Mr. Chairman, Sir.

**Mr. George Ng'ang'a Mbugua:** Now, could you tell us, by way of example, one such decision taken out after the institution of the county government, made by what you are calling the interim officials?

**Mr. Joshua Kalola Munyaka:** One of the examples would be the variations in one of the refurbishment project that was instituted, based on the County Assembly. Since it was found that the variations were within the regulations and budgeted provisions, those variations, for example, were not approved anywhere by the Governor. They were approved by those decision makers on the ground.

**Mr. George Ng'ang'a Mbugua:** These were on projects that had already been decided upon prior to the coming in of the county government; right?

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir.

**Mr. George Ng'ang'a Mbugua:** Were you ever a member of any tender committee in Embu County?

**Mr. Joshua Kalola Munyaka:** No, I was not a member of any of the tender committees, but my role there, being a professional supply chain management officer, was to be the secretary of the tender committee.

**Mr. George Ng'ang'a Mbugua:** For how long were you the secretary of any of the tender committees that you are referring to?

**Mr. Joshua Kalola Munyaka:** I was the secretary of the tender committee since the first committee was constituted on 17<sup>th</sup> April, 2013. That was the first committee that was constituted, that was composed of the interim officials that were posted to the county government from the TA.

**Mr. George Ng'ang'a Mbugua:** In the Governor's bundle of documents – and I will proceed to show you – there is a list of names written “the first tender committee.” I am referring the witness to the Governor's bundle of documents on page 1. Now that is the list of what has been presented as the first tender committee.

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir.

**Mr. George Ng'ang'a Mbugua:** Now, are you the one who appointed these persons?

**Mr. Joshua Kalola Munyaka:** Through the Public Procurement and Disposal Act, I am not authorized to appoint tender committees. The accounting officer is the one who is authorized to appoint tender committees. In our case, it was the interim county secretary who had the authority to appoint the tender committee members.

**Mr. George Ng'ang'a Mbugua:** I want you to look at that list and the list that you have provided in your statement. I want you to confirm that in the list written "first tender committee" we do not have a person by the name Mugira Njeru, in the bundle.

**Mr. Joshua Kalola Munyaka:** In the bundle the name does not appear, but the reason we got out of this is because we were in the transition. Some of the departments were not sure that they were being devolved. So, there were further consultations in the future regarding some of the appointments and they were declined. So, the working committee is what we presented as the duly appointed committee members of the tender committee.

**Mr. George Ng'ang'a Mbugua:** I also want you to confirm that the person you are calling F.K. Ndaire is not in the list that is presented as the first tender committee.

**Mr. Joshua Kalola Munyaka:** He is not in the list that you have given. I have confirmed that.

**Mr. George Ng'ang'a Mbugua:** I also want you to confirm that the person you are calling Joseph Kelly is not also in that list.

**Mr. Joshua Kalola Munyaka:** Joseph Kelly is not also in that list, but there are explanations to this.

**Mr. George Ng'ang'a Mbugua:** Before you explain, I also want you to look at the list on page 2 and confirm that in that list we also do not have Mugira Njeru as a member.

**Mr. Joshua Kalola Munyaka:** Yes, the name did not appear on the list before.

**Mr. George Ng'ang'a Mbugua:** F.K. Ndaire?

**Mr. Joshua Kalola Munyaka:** The name did not appear and we gave the reasons before.

**Mr. George Ng'ang'a Mbugua:** We also do not have Joseph Kelly.

**Mr. Joshua Kalola Munyaka:** Yes.

**Mr. George Ng'ang'a Mbugua:** I also want you to look at the list on page 3 and confirm whether as at this date you were still the interim county secretary.

**Mr. Joshua Kalola Munyaka:** At this stage, I was still the interim county secretary.

**Mr. George Ng'ang'a Mbugua:** As at 8<sup>th</sup> November, were you still the interim county secretary?

**Mr. Joshua Kalola Munyaka:** Yes, I was still the interim county secretary. However, I can explain my absence from this list because I was not in the office.

**Mr. George Ng'ang'a Mbugua:** To the best of your knowledge, when appointments are made to this tender committee, is the county executive advised or does it have any role?

**Mr. Joshua Kalola Munyaka:** Kindly explain what you mean by county executive.

**Mr. George Ng'ang'a Mbugua:** The county executive comprises of the Governor, the Deputy Governor and County Executive Committee members. Is there a mechanism in which they are advised of the appointments to a tender committee?

**Mr. Joshua Kalola Munyaka:** The Public Procurement and Disposal Act does not give a provision for the Governor and Deputy Governor to be necessarily advised, because the county secretary on the ground is the accounting officer. By the law, that is the institution that is mandated to appoint tender committee members. By extension, I would say that the county secretaries, since they are the eyes of the Governor and Deputy Governor, would advise the Governor and Deputy Governor.

**Mr. George Ng'ang'a Mbugua:** Now, in that bundle, I want you to look at page 316. It is an extract of minutes signed by Joshua K. Munyaka.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel for the County Assembly, you should know that your time is starting to tick towards the end. Sum up your---

**Mr. George Ng'ang'a Mbugua:** Mr. Chairman, Sir, I am very alive to that.

**Mr. Joshua Kalola Munyaka:** I am on page 318.

**Mr. George Ng'ang'a Mbugua:** Kindly confirm that you are the one who signed those particular minutes as confirmed.

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir. I signed those particular minutes as confirmed together with the chairman of the then tender committee.

**Mr. George Ng'ang'a Mbugua:** When was this?

**Mr. Joshua Kalola Munyaka:** This was on 27<sup>th</sup> November, 2013.

**Mr. George Ng'ang'a Mbugua:** Now, in the list that I showed you, for the first tender committee and the second tender committee, do we have the name of Edwin Rugendo?

**Mr. Joshua Kalola Munyaka:** There is a list that you have not referred to of a tender committee that was appointed.

**Mr. George Ng'ang'a Mbugua:** I just want you, first, to confirm that in the first and second tender committees, Edwin Rugendo James is not a member.

**Mr. Joshua Kalola Munyaka:** In the first tender committee, Edwin Regendo is not a member. Also, in the second tender committee he is not a member. But I would explain that in this second tender committee, the names were extracted from minutes of a tender proceeding. It is not a list of tender committee members that were appointed.

**Mr. George Ng'ang'a Mbugua:** So, you are saying that the names, in what you are calling the second tender committee, is not a list of members of any tender committee?

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir. This is because the second tender committee has different names from what you are referring to as the second tender committee.

**Mr. George Ng'ang'a Mbugua:** In this bundle of documents, do you have any list showing that Edward Rugendo James was the chairman of a certain committee where you were secretary?

**Mr. Joshua Kalola Munyaka:** I am seeing the bundle that I have here for the first time. So, if I have to confirm that I will have to go through the list.

**Mr. George Ng'ang'a Mbugua:** Now, in the minutes that you have signed – you are confirming that the signature is yours. Do you know the date when this meeting took place?

**Mr. Joshua Kalola Munyaka:** These minutes that I signed here were a confirmation that the minutes were confirmed as a true record of a previous meeting that was held on a previous date.

**Mr. George Ng'ang'a Mbugua:** Do you know this previous date? That is what I was looking for.

**Mr. Joshua Kalola Munyaka:** Kindly, let me make some little reference.

*(Mr. Munyaka perused documents)*

Yes. This meeting was held on 29<sup>th</sup> October, 2013.

**Mr. George Ng'ang'a Mbugua:** In your evidence that is the day when the issue of procurement of maize was discussed?

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir.

**Mr. George Ng'ang'a Mbugua:** Mr. Chairman, Sir, I do not wish to pose any further questions to this witness. Thank you.

**The Chairperson (Sen. (Dr.) Khalwale):** Very well. Thank you.

Hon. Members, I am going to allow interventions now. I urge you not to build your questions. Just ask your questions straight.

Yes, Vice Chairman.

**The Vice Chairperson** (Sen. Murkomen): I am forgetting the page, but there was a page where the Counsel of the County Assembly--- There is a document that you referred to. It is on page 3. There was a meeting on 8<sup>th</sup> November, where minutes for the county tender committee meeting. Present are so-and-so, and your name is not there. You are saying that there is a reason to that. What is the reason?

**Mr. Joshua Kalola Munyaka:** Mr. Chairman, Sir, the reason is that I was unwell. I was actually admitted to hospital for two days and when I came out I was also given a further five days to recuperate.

**The Vice Chairperson** (Sen. Murkomen): But in the ordinary way of doing meetings, there would be members present, members absent with apology and absent without apology. But no name is appearing from the other tender committee members whom you are saying could not have been present, including yourself, but are the members.

**Mr. Joshua Kalola Munyaka:** All the members on that particular day were present, except me. However, our role being supply chain management, basically, procurement, the next in command – My deputy would take over as the acting secretary for that particular day in my absence.

**The Vice Chairperson** (Sen. Murkomen): Can you confirm that your name is not anywhere; neither as absent or absent with apology?

**Mr. Joshua Kalola Munyaka:** I can confirm that, Mr. Chairman, Sir.

**The Vice Chairperson** (Sen. Murkomen): But then these minutes do not have the last page of signing, for purpose of the advocates there. This meeting was held on 8<sup>th</sup> November. Then there are the minutes on page 318 which you now signed, which you are telling us they were of 29<sup>th</sup> October.

**Mr. Joshua Kalola Munyaka:** Yes. On 29<sup>th</sup> October, I was present as the secretary. When the matter came up now for confirmation during a meeting that was held on 27<sup>th</sup> November, that is when the minutes were confirmed. That is where we are indicating our acknowledgement or confirmation of those minutes.

**The Vice Chairperson** (Sen. Murkomen): No problem. The only question that I would ask myself is: Why were these minutes not confirmed on 8<sup>th</sup> November?

**Mr. Joshua Kalola Munyaka:** Mr. Chairman, Sir, it is because they had not been done, since I was the one who was taking the minutes at that time. I was not present and was unwell during the period when these minutes should have been confirmed. They had not been done.

**The Vice Chairperson** (Sen. Murkomen): You have said in your statement that the county secretary is the eye of the Governor and Deputy Governor. What do you mean by that?

**Mr. Joshua Kalola Munyaka:** Mr. Chairman, Sir, what I meant is that the county secretary, being the accounting officer, is accountable to the Governor for management of both human resources, financial resources and all that.

**The Vice Chairperson** (Sen. Murkomen): Very well. So, that means that the county secretary, in your opinion, is in constant consultation with the Governor on those issues; and accountable anyway to the Governor.

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir.

**The Chairperson** (Sen. (Dr.) Khalwale): Yes, Sen. Kittony.

**Sen. Kittony:** Mr. Munyaka, in your own statement you worked at Embu from April, 2013, I would like you to tell this Committee where else you have worked before, your experience before you came to Embu, briefly.

**Mr. Joshua Kalola Munyaka:** Mr. Chairman, Sir, I graduated from the University of Nairobi in 1990 with a Bachelor of Commerce degree, then in 1991, I was employed as a Supplies Officer II and posted to Machakos District as the deputy to the district supplies officer. In 1994, I was posted again to Taita Taveta District under the district commissioner as the district supplies officer. In 1998, I was posted to Lamu where I worked for five years, up to 2003. I was promoted while in Lamu and I became a senior procurement officer. Then from 2003 to 2004, I worked with the Ministry of Finance at the Directorate of Public Procurement. From 2004 up to March, 2013, I was working with the Ministry of State for Public Service as the head of supply chain management services. From March to 29th November, I worked as the Interim Head of Supply Chain Management Services of Embu County Government. From that time, I applied for a job at Kitui County Government at a higher grade and I was employed as the senior assistant director of supply chain management services of Kitui County Government.

**Sen. Kittony:** So, you are employed by Kitui County Government?

**Mr. Joshua Kalola Munyaka:** Yes.

**Sen. Kittony:** Just for clarity; are you not under the TA?

**Mr. Joshua Kalola Munyaka:** No. I am no longer with the TA.

**Sen. Kittony:** While in Embu, were you employed by the Embu County Government or on secondment?

**Mr. Munyaka:** I was seconded by the TA as the interim head of supply chain management services.

**Sen. Mositet:** Mr. Munyaka, you said you were in charge of procurement when in Embu?

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir.

**Sen. Mositet:** You are the one who procured the services for the rehabilitation of the governor's house and the Assembly chambers?

**Mr. Joshua Kalola Munyaka:** Yes.

**Sen. Mositet:** And you used restricted tendering?

**Mr. Joshua Kalola Munyaka:** Yes.

**Sen. Mositet:** Where did you get the list of the contractors you called to tender?

**Mr. Joshua Kalola Munyaka:** In consultation with the county works officer, I was able to get the list that I used to tender.

**Sen. Mositet:** So, not previously prequalified contractors of that year?

**Mr. Joshua Kalola Munyaka:** Not previously prequalified contractors because we had just gone to the county government and we were just starting. We did not have time to do a prequalification. In fact, we were just going there towards the end of the last quarter before the year came to an end.

**Sen. Mositet:** When you are using the restricted method of tendering and you had not prequalified, you just go on getting any name?

**Mr. Joshua Kalola Munyaka:** The law says that any department and more so a technical department, because that is basically where we would get the list because we wanted contractors. The people who register them are the department of public works. That is the reason we went there and the law allows us to go to a government department that has a prequalified list.

**Sen. Mositet:** Among the contractors who did not fulfill the requirement or those who never won tenders, did you communicate to them that they never won the tenders?

**Mr. Joshua Kalola Munyaka:** Yes, we communicated to all of them.

**Sen. Mositet:** And you made sure you have copies of the letters in your office after that?

**Mr. Joshua Kalola Munyaka:** Yes.

**Sen. Mositet:** In terms of variations, you said that there were some variations which were done and were done by officers. Are you among the people who ordered the variations?

**Mr. Joshua Kalola Munyaka:** No. I was not among the people who ordered the variations. But you know variations would come from the user and also from the resident engineer on the ground. Based on the works that were going on, they would find that it is essential to have an additional item, which will be brought to our attention in writing for us to, after confirming that funds are available and that we are within the allowable percentages for a variation, then I would advice as an expert in procurement on the procurement method to follow.

**Sen. Mositet:** When you have two projects which were won by one contractor, through the method of procurement you used to get the contractor. If there is a variation where you want to remove funds from one project to another one, I believe definitely you are supposed to have a meeting with the entire tender committee.

**Mr. Joshua Kalola Munyaka:** Yes, that would be done. It would be done at a stage where you have made a saving on this project. All of them were refurbishments. If you realize a saving on this one, but also realize that the other one is wanting, you could still utilize those funds.

**Sen. (Prof.) Lesan:** Mr. Munyaka, one of the roles you specified in your affidavit is the procurement of goods and services which I believe is an activity you did. I also believe that it is also your concern to make sure that any of the goods you have procured for the county belong to the county, both physically and by documentation?

**Mr. Joshua Kalola Munyaka:** Yes.

**Sen. (Prof.) Lesan:** There is a small question about the purchase of motor vehicle on 17<sup>th</sup> June, that is the vehicle to be used by the Governor. Were you involved in the procurement of the vehicle to be used by the Governor?

**Mr. Joshua Kalola Munyaka:** Yes, I was informed.

**Sen. (Prof.) Lesan:** I would not go into the details of what happened there, but the concern here is that the auditor's report indicates that it is now difficult to confirm whether the vehicle which was bought for the Governor actually belongs to Embu County because there is no logbook or any documentation to that effect. Are you aware of that?

**Mr. Joshua Kalola Munyaka:** I am not aware, but I would say that a government procurement process for a vehicle and which goes through the government system of LPOs, for it to be registered by the Government, it is most unlikely that it would ever be registered in any other name apart from the Government.

**Sen. (Prof.) Lesan:** The information we have from the Auditor-General actually indicates that there is a vehicle in the County of Embu which cannot be identified. The logbook is missing. It was not produced to the Auditor-General. In the circumstances, the ownership of that vehicle cannot be confirmed and yet you say it is actually not possible to have a vehicle in the country without registration.

**Mr. Joshua Kalola Munyaka:** Mr. Chairman, Sir, I would say there was a period of time maybe when the auditors were doing their work when I was not working in Embu, maybe that explains the reason. However, I would say that if we make further inquiries, because I was involved in the procurement of that vehicle and I am certain, if given chance we can prove that it belongs to the County Government of Embu.

**Sen. (Prof.) Lesan:** So be it. Thank you.

**The Chairperson (Sen. (Dr.) Khalwale):** I am not ready to ask my question, but that is important. What other chance do you want to be given beyond the management letter which was written and sent by the Auditor-General when he wanted an explanation why the vehicle was appearing to be registered through different ways and there was no physical evidence of a logbook? Then you failed and it became an audit query. What other chance do you want us to give you?

**Mr. Joshua Kalola Munyaka:** Mr. Chairman, Sir, I cannot recall the auditors asking me about the issue of registration of that vehicle, but we can simply confirm that registration from the Kenya Revenue Authority (KRA). Apart from the logbook, I was saying that it is easier for us to confirm with certainty, who that vehicle belongs to.

**Sen. Juma Boy Juma:** Mr. Chairman, Sir, there was an allegation that there was no tender committee, but in your statement you categorically said that there was a tender committee. You further said that the appointment letters were issued to the chairmen and deputy chairmen. You further said that these are the letters I have in soft copies. This means that the letters of the tender committee are there in soft copy. Can you produce those letters?

**Mr. Joshua Kalola Munyaka:** I can only produce them in soft copies because, as I said, the ones that were signed remained in the filed records of County Government of Embu. As I said, since I was the one authoring or drafting the letters for the signature of the county secretary, I retained the soft copies in my laptop which I am still using up to today. I believe the letters are still in the filed records of County Government of Embu.

**Sen. Juma Boy Juma:** The problem we have here is that there is no trace of those letters. From your statement, you are confirming that those letters are there. I am quite delighted because I would like to see those letters because you would have cleared my doubt as to whether they are there or not.

**Mr. Joshua Kalola Munyaka:** Mr. Chairman, Sir, I knew the letters were there because I am the one who authored them. The only issue that I am clarifying here is that I no

longer work in the County Government of Embu. So, I do not have access to their documents.

**The Chairperson** (Sen. (Dr.) Khalwale): The presence of those letters on your laptop does not amount to evidence. Evidence arises from those appointment letters being sourced from the office where you used to work. Did you hand over the office when you left?

**Mr. Joshua Kalola Munyaka:** I did hand over the office.

**Sen. Orengo:** Looking at your statement on page 2, you gave a list of members of the tender committee; that was Embu County Tender Committee?

**Mr. Joshua Kalola Munyaka:** Yes, for the interim period.

**Sen. Orengo:** I am not talking about period. I am talking about there being a tender committee which you have referred to in your statement. It says that the committee was constituted in accordance with Legal Notice No.6.

**Mr. Joshua Kalola Munyaka:** Correct.

**Sen. Orengo:** That was a tender committee for the procurement entity known as the County Government of Embu.

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir.

**Sen. Orengo:** Not any other usual department, but to the government?

**Mr. Joshua Kalola Munyaka:** Yes.

**Sen. Orengo:** You have been referred to in the big bundle which was produced by the Governor with your signature on 27<sup>th</sup>---

I want you to go back to the page before that signature, that is, page 317 and it has a heading at the top there "Prices Comparison Schedule, secretariat comments and a decision" This was part of the record of the minutes of the county.

And the page before that – I am going backwards so that you can confirm that you are party to these proceedings – there is Minute ABU/CNT/M7---. The item is the procurement of maize seeds for distribution to farmers in Embu County. Correct?

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir.

**Sen. Orengo:** And the department that was requisitioning this particular item was the county secretary.

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir.

**Sen. Orengo:** Then the number of quotations is there. There is a list of firms invited and bidders. Would you tell this Committee which of those firms was given the tender?

**Mr. Joshua Kalola Munyaka:** The firm that was given this tender was Ukulima Agrovet Services Limited of Embu.

**Sen. Orengo:** And that Ukulima Agrovet is quite distinct and separate from a company which has been appearing on our record known as Monsanto.

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir.

**Sen. Orengo:** Those are two different companies.

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir.

**Sen. Orengo:** Which company was paid money for the supply of these seeds? Was it Monsanto or Ukulima Agrovet?

**Mr. Joshua Kalola Munyaka:** I believe it must have been Ukulima Agrovet.

**Sen. Orengo:** In fact, you are quite right if you look at page 327; there is a Local Purchase Order (LSO) showing the amount of money paid to Ukulima Agrovet Services.

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir.

**Sen. Orengo:** As far as you are concerned, there would be no other payment in respect of this item other than Ukulima Agrovet Services.

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir.

**Sen. Orengo:** So, would you explain why then, when things went wrong, the county would be writing to Monsanto?

**Mr. Joshua Kalola Munyaka:** I am not aware of that, Mr. Chairman, Sir.

**Sen. Orengo:** But you will agree with me that, that would be irregular. Monsanto is not involved in this process, you give your money to Ukulima Agrovet. There is no complaint to them being your suppliers and the consumer of your resources and a third company is the one that the complaint is being lodged against. You would agree with me that that is odd.

**Mr. Joshua Kalola Munyaka:** I would agree with you that the payee---

**Sen. Orengo:** I am asking you this question because you are a member of that tender committee; participating as secretary; keeping the notes.

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir.

**Sen. Orengo:** Would you tell me that the decision to supply this DK8031; the maize seeds, was there due diligence done, or provision of some material before the tender committee, to advise you on which particular seeds you would buy? I am asking you that question as a member of the tender committee. Was there that process?

**Mr. Joshua Kalola Munyaka:** Mr. Chairman, Sir, the form of due diligence that was conducted was---

**Sen. Orengo:** Not the "form". You know you are a responsible officer, very well read. I am glad Sen. Kittony went through the process of asking you where you went to school and where you worked. So, with that experience, due diligence was necessary. Is it not so?

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir.

**Sen. Orengo:** Was any material put before you to ensure that the seeds you were buying were the right variety? Do you remember?

**Mr. Joshua Kalola Munyaka:** Mr. Chairman, Sir, I remember that even the minutes of the tender committee indicated that a distribution team would be appointed which would--

**Sen. Orengo:** That I know. In fact, that was a rent seeking exercise; you wanted money and how much it will involve. But I am saying, prior to the question of distribution; you had not even acquired the seeds. Did you go through that process?

**Mr. Joshua Kalola Munyaka:** No, Mr. Chairman, Sir.

**Sen. Orengo:** So, who made this decision that you buy this variety of seed?

**Mr. Joshua Kalola Munyaka:** What informed our decision was basically the requisition that came from the county secretary that these were the seeds that were required.

**Sen. Orengo:** And you can show us that requisition.

**Mr. Joshua Kalola Munyaka:** I do not have it here, Mr. Chairman, Sir.

**Sen. Orengo:** I want you to be very truthful to this Committee because this is one of the real issues before us. It is one of the real issues. Can you tell us? You were working there not as a passenger. Did you ever see a requisition coming from the appropriate officer

who was here; Mr. Ngatho? Did you find any requisition from that department ordering for this particular seeds or requesting for this particular seeds?

**Mr. Joshua Kalola Munyaka:** I did not see that requisition of Mr. Ngatho, but the requisition that I got was from the county secretary. I believe the office was communicating directly with the office of the county secretary who would be the one to give me requisitions on what is to be procured.

**Sen. Orenko:** I am saying that the county secretary would not be involved in due diligence. He is just a coordinator, but I am now talking about the technical people who would inform you. If you want to buy a motor bike for a particular purpose for the county, would you leave it to the county secretary or you would look for somebody who knows something about what you intend to buy? I want you to answer this very truthfully. I am appealing to you. What you say may get the Governor off the hook. But if you begin to tell us stories which are not consistent, then we begin to get the feeling that you are hiding something. You are the one who was maintaining the records. You were the secretary. Is it not so?

**Mr. Joshua Kalola Munyaka:** Yes, I was the secretary.

**Sen. Orenko:** Consistently, throughout the time that you were the secretary, you were the one keeping the records, and who would jog the memory of the committee that during the last meeting this is what was discussed and apart from the chairman signing, even you as the secretary was signing. I am putting that question again: Do you remember getting some material from your technical staff in Embu County, advising you what seeds to buy?

**Mr. Joshua Kalola Munyaka:** Mr. Chairman, Sir, my submission is that requisitions would come from departments to the county secretary. And once they come to the county secretary, the procurement office would be instructed to--- If it is technical, we would be instructed to consult with the technical department for technical evaluation.

**Sen. Orenko:** I do not want to take too long with you. The process of procuring, there is technical evaluation, *et cetera*. All those are important. And the way you are answering those questions, I am beginning to wonder why you served in this committee. Can you tell me and this Committee whether, at all, there was any technical information coming to you about the propriety of these seeds in relation to the answers?

**Mr. Joshua Kalola Munyaka:** Mr. Chairman, Sir, no technical information was brought to my attention. The only information that was brought to my attention was the reference to maize DK.

**Sen. Orenko:** So, the only information that you had came from the county secretary. Is that what you are saying?

**Mr. Joshua Kalola Munyaka:** That is right, Mr. Chairman, Sir.

**Sen. Orengo:** And you do not remember getting any information from the Department of Agriculture and Fisheries?

**Mr. Joshua Kalola Munyaka:** No, Mr. Chairman, Sir. I never got any information at all from that department directly to me.

**Sen. Orengo:** So, when it is the question of accounting for this entire procurement process, you want to tell us now that the buck stops with the county secretary because he is the officer who requisitioned.

**Mr. Joshua Kalola Munyaka:** Sorry, I did not get you right.

**Sen. Orengo:** You are saying that the requisition you got was from the county secretary. That is what you have just said.

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir.

**Sen. Orengo:** So, while now we are looking for accountability, where we should now go and stop and ask questions is with the county secretary. Is that what you are telling us?

**Mr. Joshua Kalola Munyaka:** Yes, because the instructions I was given came from the county secretary.

**Sen. Orengo:** No further questions.

**The Chairperson** (Sen. (Dr.) Khalwale): Witness, looking at your age with a Masters degree in 1990, probably, from the premier university of those days; the University of Nairobi.

**Mr. Joshua Kalola Munyaka:** Sorry. The Masters degree was in 2009. I got my Bachelor of Commerce degree in 1990 from the University of Nairobi.

**The Chairperson** (Sen. (Dr.) Khalwale): Looking at your age, I want now to speak to your mind and speak to your heart. You have told us when posed to you by the Counsel of the County Assembly that the list labeled here as first tender committee, the names which were pointed out to you as missing in that list and also in the second one, it is because it was not the tender committee. This is the list in this big document that the counsel was showing you there. Having told us that, the question is: Does it disturb you that the person who introduced this list to this Committee was none other than the Governor? Would you like us to believe the Governor who you have come here to defend or we disbelieve him and believe you because you have a different idea about the authenticity of this list?

**Mr. Joshua Kalola Munyaka:** Mr. Chairman, Sir, in all sincerity---

**Mr. Wilfred Nyamu:** On a point of order, Mr. Chairman, Sir.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, relax! The question is hot and that is why---

**Mr. Wilfred Nyamu:** It is not about the question. It is just clarification.

**The Chairperson** (Sen. (Dr.) Khalwale): Relax. You will clarify after I have heard the answer.

**Mr. Joshua Kalola Munyaka:** Mr. Chairman, Sir, from the bottom of my heart, what I know is that on 17<sup>th</sup> April, that is when we appointed the first tender committee as the TA team that was sent from TA. It was properly constituted. We gave the individual members their letters and they confirmed that they were served with letters that were signed by the county secretary because I was only the author of the letters. I was not a signatory to those members. That committee continued up to 16<sup>th</sup> October---

**The Chairperson** (Sen. (Dr.) Khalwale): You are, therefore, confirming that the committee you refer to is the authentic one.

**Mr. Joshua Kalola Munyaka:** Yes.

**The Chairperson** (Sen. (Dr.) Khalwale): And you are explaining how it became a committee.

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir.

**The Chairperson** (Sen. (Dr.) Khalwale): The second issue I would like you to clarify is the process of awarding contracts. When you were awarding contracts as the secretary of that Committee, did you use to take trouble to ensure that the contractor you awarded a contract was registered?

**Mr. Joshua Kalola Munyaka:** Mr. Chairman, Sir, we used to take trouble to ensure---

**The Chairperson** (Sen. (Dr.) Khalwale): Thank you. You used to take trouble. I take you to page 37 of the report by the Auditor-General CAE3. Counsel can you show him?

On that page, we have the award of contract where the Auditor-General has said that the tender was irregularly awarded to the contractors since the other six competing firms as per the evaluation minute were not on the list of registered contractors provided by the Ministry of Public Works. So you pretended that this guy you awarded was the lowest bidder simply because you were weighing him against people who were not registered at all by the Government.

**Mr. Joshua Kalola Munyaka:** Mr. Chairman, Sir, this contractor is dully registered.

**The Chairperson** (Sen. (Dr.) Khalwale): The contractor is registered. But for him to win, you helped him by weighing him against people who were not registered at all and who were, in the first place, already disqualified. You hold a Masters degree and you are a father of the children of this nation.

**Mr. Joshua Kalola Munyaka:** Mr. Chairman, Sir, I do not believe that the list I had was wrong because I got it from the Ministry of Public Works. Even if you authenticate at that particular period of time, you will find that they were registered contractors.

**The Chairperson** (Sen. (Dr.) Khalwale): But you said you go through the due process to establish that people are registered and the Auditor-General has come deliberately---. He has been here in the morning and given evidence and confirmed that this person was helped to compete against people who were not registered.

**Mr. Peter Wanyama:** Perhaps, Mr. Chairman, Sir, speaking as counsel, I have a duty to the law to explain to this Committee that Kenya's legal framework is developing. In Kenya, we now have a legal framework known as the National Construction Authority Act which establishes an entity known as the National Construction Authority which is mandated to register all the contractors. So, what is happening in that sector is that registration is going on and, perhaps, the witness can be asked whether these contractors were actually registered with National Construction Authority because registration by the Ministry of Works is not now legally recognized at all.

**The Chairperson** (Sen. (Dr.) Khalwale): Thank you for informing me about that, but it that has nothing to do with what I am pursuing. The next thing is on unregistered contractors. Go to page 36 (7) of the same document. The Auditor-General has told us that the contractor undertook further works related to electrical installation and closed circuit television installation and plumbing works all valued at Kshs2.4 million. The contractor was not registered. So, as you talk very highly of your tender committee, it was a committee which was acting, probably, under some instructions to continue perpetuating these audit queries.

**Mr. Joshua Kalola Munyaka:** No, Mr. Chairman, Sir. The committee was not acting under any instructions from anyone. It was independent. As you have said, I think that clarified the issue of registration; the National Construction Authority is part of what we were looking at. But it may not have come to the attention of the Auditor-General at the time and that is why this report is painting a picture that they were not registered while in our due diligence we invited these contractors when we knew that all of them were registered.

**The Chairperson** (Sen. (Dr.) Khalwale): Thank you for those answers, but I end by cautioning you, that this matter is to do with investigations. Parliament is not yet done with this. Do not be too comfortable wherever you are. The Public Accounts Committee (PAC) will come calling and ask you to account for why you did what you did. This is at a personal level now. Thank you very much.

**Sen. Wamatangi:** I have a very short question, Mr. Chairman, Sir. Mr. Munyaka, in your statement that you have produced before us today, you have mentioned twice that you are aware that the tender committees had appointment letters; the first one and the second one. Is that right?

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir.

**Sen. Wamatangi:** The purpose of you mentioning the presence of those appointment letters was because you are aware in your statement that one of the questions that you need to address as you came here, why did you not print out those letters for purposes of scrutiny? Secondly, confirm the letters that you have claimed that you have in soft copy, were they signed or not signed?

**Mr. Joshua Kalola Munyaka:** Mr. Chairman, Sir, on the first question, I explained that I am coming from another Government. I already left Embu County Government. There was no way I could access file records from Embu County Government when I was summoned just yesterday to come and make this presentation.

**Sen. Wamatangi:** The ones you have in your soft copy; why did you not bring them?

**Mr. Joshua Kalola Munyaka:** The ones I have in soft copy are not signed. They are drafts that I had authored of the signed copies.

**Sen. Wamatangi:** So, what you are saying is that your statement here is not right; that you have the letters of appointment, because you have just said that you have drafts of the letters. Is that not so?

**Mr. Joshua Kalola Munyaka:** I am not saying that I have the letters of appointment. I am saying that I have a soft copy because I am the one who drafted the letters for the authority that signed them.

**Sen. Wamatangi:** Thank you.

**The Chairperson (Sen. (Dr.) Khalwale):** I have to move on, but I can see Sen. Kittony agitating.

**Sen. Kittony:** Mr. Chairman, Sir, allow me to speak as a mother because it really pains me to see that there is misleading information coming to this Committee. I think it is even doing a lot of disservice to the Governor of Embu and the people of Embu if we do not speak the truth. You took oath and said that you will tell us nothing but the truth. I respect your age. I am a mother in this nation and I think it is really important that we speak nothing but the truth. I am very disappointed with this submission.

**Sen. Orenge:** Mr. Chairman, Sir, I wanted to appreciate Mr. Munyaka that he was given summons at the eleventh hour and he made himself available readily. A lot of people try to avoid appearance, but for that I think we are very grateful.

**Mr. Joshua Kalola Munyaka:** Thank you.

**The Chairperson** (Sen. (Dr.) Khalwale): A very timely remark. Counsel!

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, I am going to re-examine the witness, but I am concerned that witnesses may freak away if they are told of the consequences harshly, especially from the Chairman. This is on a light note.

**The Chairperson** (Sen. (Dr.) Khalwale): You are most welcome. You have been to courts longer than most of us in here and you know that the courts never hesitate to remind a witness of the consequences of what they are saying.

**Mr. Wilfred Nyamu:** Mr. Munyaka, in your statement, you have indicated that monies that were supposed to be in the Governor's control, their budgets started flowing as from July.

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman, Sir.

**Mr. Wilfred Nyamu:** Before July, who had the control of finances in respect to county governments and, especially the County Government of Embu?

**Mr. Joshua Kalola Munyaka:** It was the TA.

**Mr. Wilfred Nyamu:** Now at that particular time there was an interim county secretary. Who was the appointing authority?

**Mr. Joshua Kalola Munyaka:** The appointing authority at that time was the Interim county secretary.

**Mr. Wilfred Nyamu:** Can you confirm that there was also a Principal Accounting Officer? Who was this?

**Mr. Joshua Kalola Munyaka:** There was a Principal Finance Officer who was also the county secretary.

**Mr. Wilfred Nyamu:** The county secretary was the Principal Accounting Officer.

**Mr. Joshua Kalola Munyaka:** Yes, Sir.

**Mr. Wilfred Nyamu:** Who did he account to?

**Mr. Joshua Kalola Munyaka:** The Accounting officer at that time would account to the TA through the TA coordinator on the ground.

**Mr. Wilfred Nyamu:** Now, in terms of refurbishment of offices to be occupied by the Governor and the County Assembly, whose initiative was it? Was it the Governor's initiative or the Transition Authority's (TA) initiative?

**Mr. Joshua Kalola Munyaka:** It was the TA's initiative.

**Mr. Wilfred Nyamu:** Who was in control of that process?

**Mr. Joshua Kalola Munyaka:** It was the TA.

**Mr. Wilfred Nyamu:** In terms of the purchase of the motor vehicle, that has extensively been referred, to both by the County Assembly and this honourable Committee, who initiated the purchase of that motor vehicle?

**Mr. Joshua Kalola Munyaka:** It was the TA.

**Mr. Wilfred Nyamu:** Would you confirm that the motor vehicle was purchased under the name of the County Government of Embu?

**Mr. Joshua Kalola Munyaka:** I confirm that it was purchased under the name County Government of Embu.

**Mr. Wilfred Nyamu:** Was it purchased following Government tendering procedures for motor vehicles?

**Mr. Joshua Kalola Munyaka:** Yes, your honour.

**Mr. Wilfred Nyamu:** Was it a vehicle that was exempt from tax by virtue of being a Government vehicle?

**Mr. Joshua Kalola Munyaka:** It was not a vehicle subject to exemption of duty because the exemption on purchase of Government vehicles was ceased.

**Mr. Wilfred Nyamu:** But it was a vehicle purchased under negotiated terms for the Government of Kenya as contained in the circular?

**Mr. Joshua Kalola Munyaka:** Yes, your honour.

**The Chairperson (Sen. (Dr.) Khalwale):** Counsel, since you have decided to lead him on the evidence of the purchase of the vehicle, do not be economical with facts. The same audit query, that we are trying to clear, also points out that, contrary to the provisions of

Government Financial Regulations and Procedures, there was a budget for only Kshs10 million.

Without seeking approval from the Controller of Budget, they bought a more expensive car. Since he was involved, could he tell us why?

**Mr. Wilfred Nyamu:** Basically, as you answer that question, the AIE, we were told, was raised by the Interim County Secretary. Would you confirm that?

**Mr. Joshua Kalola Munyaka:** Yes, your honour.

**Mr. Wilfred Nyamu:** In the event of---

**The Chairperson** (Sen. (Dr.) Khalwale): Order, allow him to answer before you move to the event.

**Mr. Joshua Kalola Munyaka:** The task of commitment of funds was not under my docket. That belonged to the head of finance and, therefore, I would not know the source of funds to cover this vehicle as a Procurement Officer.

**Mr. Wilfred Nyamu:** Who was supposed to ensure that budget lines are not exceeded in terms of purchase of this particular motor vehicle and probably, if necessary, justify to the relevant authority?

**Mr. Joshua Kalola Munyaka:** It was the interim Chief Finance Officer.

**Mr. Wilfred Nyamu:** When the interim Chief Finance Officer tried to readjust their budget, would they go to the Governor or the TA at that time?

**Mr. Joshua Kalola Munyaka:** At that time, they would have consulted the TA which was giving out the AIEs.

**Mr. Wilfred Nyamu:** Even if the Governor of Embu wished to divert these funds meant for the purchase of a motor vehicle, probably for purposes of preparing some roads that were in a dilapidated condition, would the interim County Secretary have conceded to such kind of an arrangement at that time?

**Mr. Joshua Kalola Munyaka:** No, your honour.

**Mr. Wilfred Nyamu:** Would it have been something subject to deliberations by the County Executive Committee? Would such an issue fall under the ambit of the County Executive Committee when the money was from the TA?

**Mr. Joshua Kalola Munyaka:** No, it would fall under the TA.

**Sen. Orengo:** Understand that question. Who was incurring expenditure? Is it the TA or the other entity?

**Mr. Wilfred Nyamu:** I asked him a question, let him answer.

**Sen. Orengo:** It is an important question. I think you are treading on very dangerous grounds. The documents speak for themselves. Who was incurring the expenditure? Money can come from anywhere including from donors. But the question is the person to whom resources are entrusted. We cannot run away from that fact.

**Mr. Wilfred Nyamu:** While appreciating the comments by my learned senior and Senator, I also want to point out that these are monies that were meant to ensure that County Governments are settled. That is why there is a period referred to as the transition period ending 30<sup>th</sup> September, 2013. That is why, in the morning, Mr. Makori here stated very clearly that the interim County Secretary---

**The Chairperson (Sen. (Dr.) Khalwale):** You will make that presentation in your submission. Just pursue evidence.

**Mr. Wilfred Nyamu:** That is what I was doing until my honourable senior---

**The Chairperson (Sen. (Dr.) Khalwale):** He was bringing you back to line because as he has said, you had started treading on dangerous grounds. I think it is in your interest that you do not tread on such grounds because this is obviously to the disadvantage of your client.

**Mr. Wilfred Nyamu:** With due respect to you, Mr. Chairman, I am not convinced, but I will move on.

Now, in terms of the supply chain where you used to work, what would you require? Would you require technical information for you to supply or an inventory of the goods that you were supposed to supply from the procuring entity?

**Mr. Joshua Kalola Munyaka:** From the procuring entity, I would require to have technical information and also the quantity of items to procure.

**Mr. Wilfred Nyamu:** Now, would you confirm that as it were, in terms of procurement, there is nowhere that the Governor was involved as an officer?

**Mr. Joshua Kalola Munyaka:** Yes, I confirm that.

**Mr. Wilfred Nyamu:** Can you also confirm that in terms of refurbishment of his office, the Governor had no role at all?

**Mr. Joshua Kalola Munyaka:** I can confirm that, your honour.

**Mr. Wilfred Nyamu:** In respect to purchase of products, were there times when procurement officers would use dealers so that instead of going directly to the supplier, you go directly to the dealer or agents?

**Mr. Joshua Kalola Munyaka:** Yes, I confirm that there are times when an institution can go directly to dealers or agents.

**Mr. Wilfred Nyamu:** So, when goods are purchased from the producers and supplied by dealers, in the event that the goods are found to have a problem, would the originator of the goods be liable?

**The Chairperson** (Sen. (Dr.) Khalwale): Order, there is a point of order.

**Sen. Orengo:** The question of liability is a legal question. I do not think he would be comfortable to answer that.

**Mr. Wilfred Nyamu:** Mr. Chairman, he would be competent because he is the head of the supply chain. When goods that he has sought are not usable in their quality, he can return them where they came from. Since he has answered the question, that is all from me.

**The Vice Chairperson** (Sen. Murkomen): The way you have proceeded, including the questions you have raised, has all been confined to the Kshs61 million that was given for infrastructure through TA for the transition period. That does not mean that is the only money that was spent in that financial period. There was far much more, over Kshs200 million, that was spend. Are you saying that the accountability was to TA?

**Mr. Joshua Kalola Munyaka:** We are not saying that the accountability was to TA. After 1<sup>st</sup> July, 2013---

**The Vice Chairperson** (Sen. Murkomen): I am talking about before 30<sup>th</sup> June. There was other monies that came from the National Treasury and some which was collected by the County Council. This is money that was being spent by the County Government over and above the Kshs61 million. We are confining ourselves to Kshs61 million but that is not the only money that was in Embu.

**The Chairperson** (Sen. (Dr.) Khalwale): I agree. That is not the only money that was in Embu. Other monies such as that of administrative services, stationery and fuel were also provided, not through the TA but also through the Treasury, to the County Government.

**Mr. Joshua Kalola Munyaka:** Yes, to the County Government.

**The Vice Chairperson** (Sen. Murkomen): So, when you talk about accountability for money collected locally and expenditure for that money which was far much more than what was earmarked for infrastructure development on the TA period; you can say that you were doing that on behalf of the County Government of Embu?

**Mr. Joshua Kalola Munyaka:** That is right.

**The Vice Chairperson** (Sen. Murkomen): In other words, your highest percentage of work, since the highest amount of money, other than Kshs61 million - your real responsibility - was to the County Government?

**Mr. Joshua Kalola Munyaka:** Yes, Mr. Chairman.

**The Vice Chairperson** (Sen. Murkomen): So, you cannot tell us that you were a staff of the national Government, accountable to the TA? We are just saying that in relation to the Kshs61 vote, that accountability was to go to the County and the national Government. However, when it comes to the bulk of the money that was from the national Treasury but collected locally, you were fully involved for that purpose, as the staff of the County Government?

**Mr. Joshua Kalola Munyaka:** Yes, that is true.

**The Chairperson** (Sen. (Dr.) Khalwale): Thank you very much, Counsel. Do you have something to clarify?

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, on the issue of the refurbishment of the offices of both the Governor and the County Assembly, was this money from the TA or was it money that was collected locally, to the best of your knowledge?

**Mr. Joshua Kalola Munyaka:** To the best of my knowledge, this was money from the TA.

**Mr. Wilfred Nyamu:** How about the purchase of the motor vehicle that has been referred to?

**Mr. Joshua Kalola Munyaka:** That money was also provided by the TA.

**Mr. Wilfred Nyamu:** So, you confirm that it was not money collected locally for use by the County Government?

**Mr. Joshua Kalola Munyaka:** Yes.

**Mr. Wilfred Nyamu:** Thank you

.  
That is all for this witness.

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

**Mr. Peter Wanyama:** Just one direct question. Are you aware of an organization known as the National Construction Authority?

**Mr. Joshua Kalola Munyaka:** Yes, I am aware of that organization.

**The Chairperson** (Sen. (Dr.) Khalwale): Mr. Munyaka, we want to thank you. I cannot repeat what Sen. Orenge said about you. We are happy that you acted honourably against all odds and came here. You are now stood down. You may report to your Counsel for further administrative arrangements.

**Mr. Wilfred Nyamu:** Our next witness will be Margaret Kariuki, the County Secretary and we wish to point out that the Procurement Officer who was summoned from Embu has totally disappeared. His phone is off and that report is with the Clerk. We informed the Serjeant-at-Arms who went looking for him. So, we will not waste more time. We will call in Margaret.

**The Vice Chairperson** (Sen. Murkomen): Can you confirm that the witness that cannot be found is an employee of the County Government?

**Mr. Wilfred Nyamu:** I confirm that he is an employee of the County Government. I am sure you will get a report from the Clerk regarding the efforts that have been employed by the Committee to track that particular officer. That will inform the issues involved in this matter.

**The Chairperson** (Sen. (Dr.) Khalwale): Very well. You have confirmed that it is the Governor's employee. What the Clerk has done will be communicated to us in the usual manner. This is not part of plenary. Could you call us your next and last witness?

*(Ms. Margaret Lorna Kariuki before the Committee)*

*(Ms. Margaret Lorna Kariuki took the oath)*

**The Chairperson** (Sen. (Dr.) Khalwale): Margaret Lorna Kariuki, you are welcome to sit on that Chair right opposite me.

**Ms. Margaret Lorna Kariuki:** Thank you, Chair.

**The Chairperson** (Sen. (Dr.) Khalwale): We appreciate, from the evidence adduced earlier, that you have been running through courts and so on. This is not the reason why you are here. We would like you to be most relaxed. We want you to give evidence on the proposed removal of the Governor of Embu and the Deputy Governor of Embu.

**Mr. Wilfred Nyamu:** Could you, kindly, tell this Committee what your names are?

**Ms. Margaret Lorna Kariuki:** My names are Margaret Lorna Kariuki.

**Mr. Wilfred Nyamu:** What do you do for a living and what are your qualifications?

**Ms. Margaret Lorna Kariuki:** I am the County Secretary, Embu County.

**Mr. Wilfred Nyamu:** What are your qualifications for that matter?

**Ms. Margaret Lorna Kariuki:** I am a trained senior graduate teacher, a civil educator, a Masters Degree Holder, Agriculture and Rural Development and I am undertaking a Masters of Arts degree in Diplomacy and International Studies at the University of Nairobi.

**Mr. Wilfred Nyamu:** You have written a statement which is before this Committee. Would you like this Committee to use that statement as evidence in these proceedings?

**Ms. Margaret Lorna Kariuki:** Yes, but with amendments.

**Mr. Wilfred Nyamu:** Mr. Chairman, I wish to have the statement marked as evidence in these proceedings.

**The Chairperson (Sen. (Dr.) Khalwale):** You are welcome. May I just confirm that we have a signed document? Your request is granted.

**Mr. Wilfred Nyamu:** Much obliged.

Margaret, you will be asked questions by the Counsel for the County Assembly and also members of the Special Committee of the Senate. If need be, I will ask you questions on what is called re-examination. Kindly answer the questions.

**The Chairperson (Sen. (Dr.) Khalwale):** Thank you, counsel. You conducted yourself very well with the first witness. So did the County Assembly advocates and the Members. Let us maintain these high standards.

Let us proceed, Counsel for the County Assembly.

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

Madam witness, we will proceed and ask you a couple of questions.

**Sen. Orengo:** It is more courteous to call her by her name.

**Mr. George Ng'ang'a Mbugua:** Thank you, I am well guided.

I will take the liberty to address you as Margaret, which is your first name. Margaret, you have signed a statement and I will ask you a few questions.

Margaret, as the Secretary of the County of Embu, in the discharge of your functions, do you report to the Governor of the County?

**Ms. Margaret Lorna Kariuki:** I report to the County Executive Committee which constitutes the Governor, the Deputy Governor and ten members of that committee.

**The Chairperson** (Sen. (Dr.) Khalwale): Order, Margaret. We have been doing very well. Besides requesting you to speak through the microphone, pay attention to the question and then give the answer. The question was: Do you report to the Governor? You have changed it to mean: Who do you report to? You can answer that and then tell us who you think you report to.

**Ms. Margaret Lorna Kariuki:** Occasionally.

**Mr. George Ng'ang'a Mbugua:** You report to the Governor occasionally? When you undertake matters to do with procurement and, specifically, I am referring to the procurement of the seeds that are at the centre of this inquiry - is that one of the instances that you informed the Governor about a decision of that nature; when you issue a letter directing that there be procurement of, for example, seeds? Would that be one of the instances that you would report or advise the Governor about a decision like that which you have taken?

**Ms. Margaret Lorna Kariuki:** Our procurement is done by a department with some structures that run from tender opening committees, evaluation and, ultimately, an award, depending on the type of tender in question. For this matter - a request for quotation - I do not have to report to the Governor on such a matter; that is actually a request by technical staff on the ground, taking into consideration this matter did not just start in Embu, it had been there as a national function under the Ministry of Agriculture. It is just like the way stationery such as pens are bought. I really do not have to get back to the Governor over matters that involve technical staff.

**Mr. George Ng'ang'a Mbugua:** Let me make my question very direct to you. Please refer to page 314 of the response by the Governor. My bundle is page 314; the letter dated 25<sup>th</sup> October, 2013. Margaret; in your bundle, that is page on 305.

**Ms. Margaret Lorna Kariuki:** I got it.

**Mr. George Ng'ang'a Mbugua:** In that letter you will confirm that instructions are being given to procure by yourself. Is that correct?

**Ms. Margaret Lorna Kariuki:** 305 is an extract of 304.

**Mr. George Ng'ang'a Mbugua:** Margaret, let us please move systematically. If you listened to my question, we will be able to move a bit faster.

I am referring you to a letter dated 25<sup>th</sup> October, 2013, that is in your hand that has a subject. Please, very directly, that letter that you authored, were you communicating instructions to procure? Look at the first line of that letter. Do I understand that line to mean that you were instructing or communicating instructions to procure?

**Ms. Margaret Lorna Kariuki:** Mr. Chairman, Sir, with all due respect, counsel this memo is an extract of page 304---

**The Chairperson** (Sen. (Dr.) Khalwale): Order, Margaret. Help us. Just listen to the counsel and respond. Do not have on your mind a desired outcome. Just give the answers. The answers you will give will tie up with what other witnesses have said and it will achieve the outcome you want or maybe you did not. Respond to the letter, not where it came from.

**Ms. Margaret Lorna Kariuki:** Thank you, Mr. Chairman.

**Mr. George Ng'ang'a Mbugua:** Margaret, you confirm that instructions to procure are being given by yourself via that letter?

**Ms. Margaret Lorna Kariuki:** Yes.

**Mr. George Ng'ang'a Mbugua:** Please confirm that, that letter is made under the letterhead of the office of the Governor of Embu County Government.

**Ms. Margaret Lorna Kariuki:** Yes, it is.

**Mr. George Ng'ang'a Mbugua:** By issuing that instruction or that letter, under that letter-head and being the Secretary of the County Executive Committee to which the Governor is a member, it would be deemed that those instructions were given by its secretary. Is that correct?

**Ms. Margaret Lorna Kariuki:** Not at all.

**Mr. George Ng'ang'a Mbugua:** So, by issuing that letter you want this Committee to believe that it is only yourself as the County Secretary who would know that those instructions have been given; there would be no form of notification to the County Executive Committee, to which the Governor is a member, about those instructions, is that what your answer is?

**Ms. Margaret Lorna Kariuki:** The reason I refute that fact is because this letter is not unique. Very many other letters have been written under this heading. These are some of the gaps in the transition period where you find that the county is still looking for identity. You will find this letter-head not only at the County Secretary's office, you may find it being used elsewhere. This is not the only document that you will find with such a letter head. The letter head has nothing to do with the office. I think the person who has signed is more critical to this matter than just a letter-head. This is the office of the County Secretary.

**Mr. George Ng'ang'a Mbugua:** When you are discharging your functions as the County Secretary, do you discharge those functions under the directions of the County Executive Committee?

**Ms. Margaret Lorna Kariuki:** Yes. Constitutionally that is the position.

**Mr. George Ng'ang'a Mbugua:** When you carry out that function, do you report formally or through any other means to the County Executive Committee about the actions you have taken as the County Secretary? Do you, or you do not, report?

**Ms. Margaret Lorna Kariuki:** I do. The fact that I work for the Committee as a Secretary does not limit my interaction with individual members outside the Committee room.

**Mr. George Ng'ang'a Mbugua:** Let us go on. When you were giving the instructions that are documented in that letter of 25<sup>th</sup> October, 2013, was there any specific reason that informed, one; the need to procure the amount and type of seeds indicated in that letter?

**Ms. Margaret Lorna Kariuki:** Let me start with the type of seed and then I will go to the quantities. The type of seed is captured under page 304. We have green grams that had been earmarked for Mbeere North. The variety was N26 and KS20. We also had sorghum and maize. Sorghum was Gadam and maize was KDB1.

**Mr. George Ng'ang'a Mbugua:** Sorry, which page are you referring to? Page 304 seems to be different.

**Hon. Senators:** 305.

**The Chairperson** (Sen. (Dr.) Khalwale): Margaret I would like to know exactly what table you are reading from.

**Ms. Margaret Lorna Kariuki:** From what I have it is No.304 titled "Seed Procurement Plans/Request for Short Rains 2013 Embu County."

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, these bundles are confusing. We have the earlier bundle and the final one which is big.

**The Chairperson** (Sen. (Dr.) Khalwale): It is okay. It does not in any way damage the evidence of the witness.

**Mr. George Ng'ang'a Mbugua:** So, you were taking us through the reason that informed that type of seed and the amount of seed that was bought. Please proceed.

**Ms. Margaret Lorna Kariuki:** The consignment did not just consist of maize. We had green grams and the varieties are outlined in the table. We also had the cow peas under

Mbeere South. We have maize and beans for Embu East and also maize and beans for Embu West.

I will refer to----

**Mr. George Ng'ang'a Mbugua:** Just a minute. Before we leave that page, let us go back. That page that you have referred to that provides for Seed Procurement Plan Request for Short Rains 2013, from whom did that schedule providing for the type of seed and amount originate?

**Ms. Margaret Lorna Kariuki:** According to the forwarding letter, the schedule originated from the Ministry of Agriculture. It was forwarded to my office by the CEC member for Agriculture. The letter was not signed by the Ministry of Agriculture, but the CEC Member for Agriculture.

**Mr. George Ng'ang'a Mbugua:** So, the source of that schedule providing for the specific type of seed allegedly came from the Ministry via an unsigned letter?

**Ms. Margaret Lorna Kariuki:** It came from a signed letter by the CEC Member for Agriculture. That is on page 302.

**Mr. George Ng'ang'a Mbugua:** That is a letter from the central Government, Ministry of Agriculture, Livestock and Fisheries – J. G. Ngatho. Now J.G. Ngatho, the County Director of Agriculture was here yesterday. For your information, he disowned that schedule. He had nothing to say about that schedule. As a matter of fact, he said he is unaware of that schedule. Are you aware of that?

**Ms. Margaret Lorna Kariuki:** I am not aware of that. But the letter was forwarded to the office by the CEC Member, Agriculture. He signed, stamped and forwarded the letter. I am referring to the comments that have been foot-noted there that say: "CS/Procurement – Kindly facilitate with procurement process. This is rather urgent as rains are coming in two weeks." This is duly signed, dated and forwarded to my office on 22<sup>nd</sup> October, 2013 as per the stamp at the top.

**Mr. George Ng'ang'a Mbugua:** Margaret, for a letter to be authentic, you will agree with me that it has to be signed. Is that correct?

**Ms. Margaret Lorna Kariuki:** The letter is signed.

**Mr. George Ng'ang'a Mbugua:** Is yours signed by J.G. Ngatho?

**The Chairperson (Sen. (Dr.) Khwalwale):** Order, Margaret. Do not stand your ground on the obvious. What is signed is not the letter. What is signed is the forwarding note in hand writing. You are able to make that difference if your qualifications, which you are claiming to have, are correct.

**Ms. Margaret Lorna Kariuki:** Mr. Chairman, Sir, the letter is not signed by Mr. Ngatho. It is signed by the boss. The boss is the CEC, Member for Agriculture. Mr. Ngatho reports to Dr. Patricio Njiru who is the person who has forwarded this letter. This is according to the document I have on page 302.

**Mr. George Ng'ang'a Mbugua:** According to the witness, the letter is signed. I will leave it to the Committee to establish where the truth lies. Let us move on.

Your evidence is that J.G. Ngatho is the one who made a recommendation that, that specific seed and the amount be procured.

**Ms. Margaret Lorna Kariuki:** We were actually talking about who initiated procurement.

**Mr. George Ng'ang'a Mbugua:** Margaret, please relax, we are friends. We are just trying to establish the truth.

Now the letter that you issued for purchase was informed by this unsigned letter from J.G. Ngatho. That is your evidence, correct?

After the procurement of those seeds was undertaken, are you aware whether those seeds germinated? How was the performance of those seeds that were procured for Embu farmers? To the best of your knowledge, did they germinate? If they did, to what percentage did they germinate?

**Ms. Margaret Lorna Kariuki:** The seeds, as per the sampled farms within Embu County, West and East, the tests that were done by the department involved showed a germination percentage of between 10 to 20 per cent. That is the report.

**Mr. George Ng'ang'a Mbugua:** So in your assessment, the seeds performed poorly?

**Ms. Margaret Lorna Kariuki:** True.

**Mr. George Ng'ang'a Mbugua:** Did the County Executive Committee headed by the Governor ever become aware of that fact about the poor performance of those seeds?

**Ms. Margaret Lorna Kariuki:** Basically, the Cabinet which is involved in policy issues and formulation of Bills, first and foremost was to handle this matter at that level and first pursue means of establishing the truth so that even if I am doing a report to the County Executive Committee (CEC), I give a comprehensive report on this matter.

**Mr. George Ng'ang'a Mbugua:** Margaret---

**Mrs. Margaret Lorna Kariuki:** So, counsel, what actually happened was that I had to initiate the process of establishing---

**Mr. George Ng'ang'a Mbugua:** In the Cabinet?

**Mrs. Margaret Lorna Kariuki:** ---establishing the truth about these things and lodging a formal complaint to Kenya Plant Health Inspectorate Services (KEPHIS)---

**Mr. George Ng'ang'a Mbugua:** As you undertook those measures, did you inform---

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, when a question is asked, it has to be answered. My learned friend does not have to get the answers that he wants. Let the witness answer questions and then he can ask another question.

**Mr. George Ng'ang'a Mbugua:** Mr. Chairman, Sir, I am constrained to---

**The Chairperson** (Sen. (Dr) Khalwale): Hold your horses, counsel; we are firmly in the Chair!

Yes, Vice Chairperson?

**The Vice Chairperson** (Sen. Murkomen): No, he is proceeding very well; just leave it to flow.

**Mr. George Ng'ang'a Mbugua:** Relax, counsel, relax! We are all seekers of the truth and I am sure Mr. Nyamu is also---

**Mr. Wilfred Nyamu:** Get the truth through answers!

**The Chairperson** (Sen. (Dr) Khalwale): Order, counsel for County Assembly and order, counsel for the Governor! When a witness is there, it is not a question of the witness talking and talking. If the witness does not answer the question asked, they will be reminded that we are looking for an answer. If she does not want to answer, she can say "I do not know" instead of going round and rattling on and on. So, let us not interfere with the thought flow of the counsel. I will also allow you to flow in your thoughts when your time for re-examination comes.

Proceed, counsel for the County Assembly.

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

Margaret, please, let us go back to that letter dated 25<sup>th</sup> of October; it is really at the centre of these proceedings. What was the value---

**The Chairperson** (Sen. (Dr) Khalwale): Sorry, counsel; bear with us, we must get the ground level.

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

**The Chairperson** (Sen. (Dr) Khalwale): We are levelizing.

**Sen. Orengo:** What I am trying to appeal is that nobody is here to harass the witness; but this is cross examination. Normally, in cross examination, a counsel is entitled to ask a specific question instead of going round and round. So, she could be helpful by listening to the question and answering the question that has been asked. She can give those explanations when the counsel for the Governor comes. But for our purposes now, just listen to the question and respond to what the counsel is asking you; if you do not know, just say you do not know.

**Mr. George Ng'ang'a Mbugua:** Thank you, honorable Senator.

**The Vice Chairperson** (Sen. Murkomen): And for that reason, Mr. Chairman, Sir, I see that counsel wants to go to the next question, but there was an answer we were waiting for which was, when all this was happening, was the Governor made aware? You were asking that question and now you are moving from that issue yet we were waiting for the answer.

**Mr. George Ng'ang'a Mbugua:** So, was the Governor ever made aware about the under-performance of these seeds that, according to your letter, you had directed that they be procured?

**Mrs. Margaret Lorna Kariuki:** Personally as a CS, I was pursuing a line of thought where I have to give a comprehensive report. It is not just saying---

**Mr. George Ng'ang'a Mbugua:** Even before you did the comprehensive report, did you even informally or verbally, during CEC meetings, inform the Governor? That is the question, Margaret; did you ever do that?

**Mrs. Margaret Lorna Kariuki:** Counsel, no, because I was waiting to do a report.

**Mr. George Ng'ang'a Mbugua:** Let us proceed, Margaret; we will take that to be your answer, that you were waiting to do the report.

Let me take you back to your statement so that we can now make some progress. Now, in your statement, you have made certain remarks. Now, if you look at paragraph---

Mr. Chairman, Sir, I am referring the witness to a statement that she has made at paragraph 1, 2,3,4 and 5 of page 1 of her statement. Now, you have made certain allegations about some 147 persons and your reservations about those personnel. Now, these are personnel under the County Assembly, and you have said:-

“I checked the approved budget of the County Assembly and found some budget lines that required advice from the relevant constitutional offices.”

Now, my question is this; in your capacity as the Secretary of the County, are you the accounting officer of the County Assembly? Or does the County Assembly, simply put, have its own accounting officer?

**Mrs. Margaret Lorna Kariuki:** It does.

**Mr. George Ng'ang'a Mbugua:** That is the Clerk to the County Assembly?

**Mrs. Margaret Lorna Kariuki:** Yes, but in this matter, I wish to shed light---

**Mr. George Ng'ang'a Mbugua:** Just a minute before we shed light. I have asked you whether there is an accounting officer.

**Mrs. Margaret Lorna Kariuki:** Yes.

**Mr. George Ng'ang'a Mbugua:** Does the County Assembly have the County Assembly Service Board that deals with matters of recruitment of personnel in the county?

**Mrs. Margaret Lorna Kariuki:** Yes.

**Mr. George Ng'ang'a Mbugua:** Are you a member of that board?

**Mrs. Margaret Lorna Kariuki:** No.

**Mr. George Ng'ang'a Mbugua:** So, when recruitment is being carried out by the County Assembly, you would not know what has informed the need to make such recruitment?

**Mrs. Margaret Lorna Kariuki:** I ordinarily have a responsibility when my advice is---

**Mr. George Ng'ang'a Mbugua:** Listen to my question; when you are not a member of the board, you would ordinarily not know what informs the decision of the County Assembly Service Board to recruit.

**Mrs. Margaret Lorna Kariuki:** Yes.

**Mr. George Ng'ang'a Mbugua:** Now, let us go to the last line of that paragraph: "I checked the approved budget---;" so, you confirm that there was an approved budget by the County Assembly before the recruitment of those personnel – that you are casting aspersion. There was an approved budget, is that correct?

**Mrs. Margaret Lorna Kariuki:** Yes.

**Mr. George Ng'ang'a Mbugua:** Who would approve that budget? Would that budget be approved by the County Assembly or the County Executive? You would be referring to approval by which entity; the County Assembly or the County Executive?

**Mrs. Margaret Lorna Kariuki:** The Budget is approved by the County Assembly.

**Mr. George Ng'ang'a Mbugua:** Thank you. Let us move on.

“I inquired in writing at page 271 of the Office of the Controller of Budget.”  
So, you have in your own understanding, seen something that does not add up about that paragraph I have just taken you through, and you said:

“I inquired in writing at page 271 of the Office of the Controller of Budget, the Salaries and Remuneration Commission (SRC) and later the TA; reason being the holders of the same offices who were being paid salaries differently despite them occupying similar offices with similar functions.”

So, you undertook to write a letter to the Controller of Budget on matters touching on the Assembly; did you copy that letter to the Clerk of the County Assembly as the accounting officer of the Assembly?

Hon. Members, if we could look at that letter on page 271 of the Governor's bundle--- Well, mine is a bit different. The letter to the SRC is on page 271--- Is it page 260? I think we have different paginations. Yes, the letter is just in the statement; I picked it out as written at page 271 to the office of the Controller of Budget.

Mr. Chairman, Sir, I have lost my tag; I was trying to establish that letter. Sorry, it is page 254 in some bundles.

*(The Chairman gave guidance to the counsel)*

Thank you, Mr. Chairman, Sir, for coming to my rescue.

Now, Margaret, you have picked what you consider to be irregular recruitment of staff by an independent or an autonomous organ in the name of the County Assembly. In your statement, you author a letter to the Controller of Budget and then you copy it to the SRC. Did you copy that letter to the Clerk to the County Assembly saying: “Look, I have noted the following anomalies” or, rather, copying it to them so that they can know you are communicating with another State organ regarding what you consider to be irregularities?

**Mrs. Margaret Lorna Kariuki:** This was advice that I was seeking and at this point, I never called it an irregularity. According to me, I was suspicious; I was casting aspersions, and I---

**Mr. George Ng'ang'a Mbugua:** You were casting aspersions?

**Mrs. Margaret Lorna Kariuki:** Let me finish.

**Mr. George Ng'ang'a Mbugua:** Thank you; go ahead.

**Mrs. Margaret Lorna Kariuki:** If you look at the letter on page 254, it is even without a letter head, reason being I went for a verbal consultation in the office of the Controller of Budget and I requested to be given guidance. But I was told to do the letter so that I could get feedback and I could move on. So, the advice---

**Mr. George Ng'ang'a Mbugua:** So, you informally sought advice. Are you now distancing yourself because by looking at this letter, your complaint was documented. So, you either have a problem with understanding English--- Because if it was verbal, then that communication would not be documented. But, Margaret, hang on; you formally authored the letter we are looking at.

**Mrs. Margaret Lorna Kariuki:** True.

**Mr. George Ng'ang'a Mbugua:** Why did you not copy that letter to the Clerk of the County Assembly, yet that is the entity against which you were raising a query? Do you have a specific answer why you did not consider it appropriate to copy the letter to the Clerk of the County Assembly?

**Mrs. Margaret Lorna Kariuki:** It may have been an oversight; otherwise there was nothing to hide.

**Mr. George Ng'ang'a Mbugua:** It may have been an oversight?

**Mrs. Margaret Lorna Kariuki:** Yes.

**Mr. George Ng'ang'a Mbugua:** I wish to put it to you, Margaret, that in an attempt to try and paint the County Assembly in bad light, you went on a witch-hunt to try and seek what you consider to be guidance on matters that you did not even consider it appropriate to first bring it to the attention of the accounting officer of the County Assembly. I do not require an answer on that; let us go on.

**Mrs. Margaret Lorna Kariuki:** I think I---

**Mr. George Ng'ang'a Mbugua:** Please, turn the page of your statement, Margaret.

**Mrs. Margaret Lorna Kariuki:** Ok.

**Mr. George Ng'ang'a Mbugua:** I was putting to you; so, I did not require an answer to that. Let us go on; turn the page. Now---

**The Chairperson (Sen. (Dr) Khalwale):** Counsel, I must be fair.

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

**The Chairperson (Sen. (Dr) Khalwale):** If you put such a strong statement to the witness, and the witness has a comment, we would like to hear it.

**Mr. George Ng'ang'a Mbugua:** Thank you. I am well guided; but I think I got it; that it was an oversight; but I take it not to be an oversight.

**The Chairperson** (Sen. (Dr) Khalwale): That is a very strong statement.

**Mr. George Ng'ang'a Mbugua:** Thank you. I am well guided

**Mrs. Margaret Lorna Kariuki:** Thank you, Mr. Chairman, Sir. The County Assembly of Embu has been running a payroll independently until such a time that they were given instructions from the Ministry of Devolution that they had to bring their payroll for IPPD System in the Executive; and the Government is of the position that a county should not run two IPPD systems; one from the Executive and the other from the Assembly.

For the many months they paid their workers, none of us knew whatever it was that they used to pay in the Assembly. So, when time for bringing their names so that we integrate them into the IPPD came, they brought a list of 147 staff without the elected or nominated Members of the County Assembly. So, 147 plus 33 was totaling to roughly almost 190 or over 180-something. I have been a clerk to that Assembly; I mid-wifed their swearing in and I know the precincts of the Assembly. I was wondering where these people are in that Assembly.

Genuinely speaking and being in a responsible position in that Government, really, I had to interrogate what it was that was happening. When I looked through the list, having been born, bred, gone to school there, married there and working there, I know so many people. So, when I went through the list, I was able to identify several people known to me who do not work for the County Government at all! So, I went to---

**The Chairperson** (Sen. (Dr) Khalwale): Okay; you have set up a case for patriotism, but I would like to ask, were you acting on your own volition or when you saw these things, you then gave the matter or drew the attention of either the entire County Executive or the Governor, because here you seem to have started like you are a law unto yourself.

**Mrs. Margaret Lorna Kariuki:** What actually happened at that point is that I requested audience with the Speaker, because I actually wanted to know exactly what was happening on that long list, but he never gave me the chance.

**The Chairperson** (Sen. (Dr) Khalwale): Order! Counsel, you may proceed. The County Secretary knows very well that the Speaker is not the accounting officer. Proceed.

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

Now, Margaret, in that letter which you have alluded to, the function to recruit – and I wish to refer the witness to Section 12(7) of the County Governments Act; I do not know, I could share my copy with you.

**Mrs. Margaret Lorna Kariuki:** Yes.

Through the Chair, the Chairman of the County Assembly Public Service Board is the Speaker; he is the Chair of that board that recruits staff.

**Mr. George Ng'ang'a Mbugua:** Who is the secretary?

**Mrs. Margaret Lorna Kariuki:** So, I was actually properly addressing the right person and the right office.

**Mr. George Ng'ang'a Mbugua:** So, you are saying that you addressed that letter to the Speaker?

**Mrs. Margaret Lorna Kariuki:** I talked to the Speaker about it.

**Mr. George Ng'ang'a Mbugua:** No, did you copy that letter to the Speaker?

**Mrs. Margaret Lorna Kariuki:** I was calling for negotiations; we are working together, we are one and the same---

**Mr. George Ng'ang'a Mbugua:** Let us move on, Margaret; let us move on, please.

Let me make your life easy; look at Section 12(7) of the Act. Can you tell me whether, according to you, the mandate to recruit for the County Assembly falls under the County Assembly Service Board?

**Mrs. Margaret Lorna Kariuki:** It does.

**Mr. George Ng'ang'a Mbugua:** It does?

**Mrs. Margaret Lorna Kariuki:** Yes.

**Mr. George Ng'ang'a Mbugua:** So, the recruitment of these 147 or the number that you are referring to had been carried out by a body that is charged with the responsibility to recruit?

**Mrs. Margaret Lorna Kariuki:** I do not doubt that.

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

**Mrs. Margaret Lorna Kariuki:** Yes.

**Mr. George Ng'ang'a Mbugua:** Let us move on. Just turn the page; let us go to your witness statement to the first paragraph, where you have made allegations about some ghost workers.

**Mrs. Margaret Lorna Kariuki:** Where? Which page?

**Mr. George Ng'ang'a Mbugua:** The next page.

**Mrs. Margaret Lorna Kariuki:** Okay.

**Mr. George Ng'ang'a Mbugua:** "I am born, bred, married and work in Embu. I am no stranger to the residents of Embu County; I knew for a fact that some names that appeared on the payroll were never staff of Embu County." This is a very strong statement.

Mr. Chairman, Sir, I want to refer the witness to a schedule that she has supplied; it is in the Governor's bundle and it appears on page 309 of my bundle – Embu County Assembly Ghost Workers. If you just go to the schedule that you have allegedly---

**Mrs. Margaret Lorna Kariuki:** On page 30---?

**Mr. George Ng'ang'a Mbugua:** 309. That is a word that is used---

**Mrs. Margaret Lorna Kariuki:** I do not have it.

**Mr. George Ng'ang'a Mbugua:** Could the witness be helped? Mine reads 309 in the Governor's bundle. 308---

**Ms. Margaret Lorna Kariuki:** I have found it.

**Mr. George Ng'ang'a Mbugua:** Just take your time.

**Ms. Margaret Lorna Kariuki:** Count Assembly of Embu.

**Mr. George Ng'ang'a Mbugua:** Mine reads: "Embu County Assembly ghost workers."

**Ms. Margaret Lorna Kariuki:** I do not have it. I am sorry.

**Mr. George Ng'ang'a Mbugua:** I will borrow a copy from the Governor's Counsel. Do I take it that, that schedule that has been attached there is probably what you could be referring to when you are referring to some of these persons?

**Ms. Margaret Lorna Kariuki:** It is the schedule; a few of them.

**Mr. George Ng'ang'a Mbugua:** Now, you have made a very strong statement. I want the witness to look at this as against the statement that she has made about alleged relationship, probably with a view to achieving certain objective. You have referred to Grace Wawira Njagi as the fiancée to Ibrahim Swaleh.

**Ms. Margaret Lorna Kariuki:** Yes.

**Mr. George Ng'ang'a Mbugua:** Do you have any evidence of that relationship?

**Ms. Margaret Lorna Kariuki:** I really will request that this list is interrogated on the ground.

**Mr. George Ng'ang'a Mbugua:** That is why we are here to interrogate you, because you supplied us with it.

**Ms. Margaret Lorna Kariuki:** Chair, with all due respect, I pray that the list be interrogated. There are Government machineries to do this and give a report.

**The Vice Chairperson** (Sen. Murkomen): Sorry, Counsel. Are you saying that there was no interrogation of this list, but now you want interrogation to be done on the ground or you are saying that this list is a product of interrogation on the ground? Which of the two?

**Ms. Margaret Lorna Kariuki:** Mr. Chairman, Sir, I actually said – and I own it what I have put here – that what is here is out of the fact that I have been born, bred, worked and lived in Embu for several years. I request that this list be investigated, so that it is not my word against the Counsel's word.

**Mr. George Ng'ang'a Mbugua:** So, having been born and bred in Embu County, you want this honourable Committee to believe that you would know the relationship of all the constituents in Embu County?

**Ms. Margaret Lorna Kariuki:** I just took a few out of a whole 147.

**Mr. George Ng'ang'a Mbugua:** Let us move on. I want to ask a specific question to the witness.

**The Chairperson** (Sen. (Dr.) Khalwale): Stop there for a minute and put your finger on your question.

Sen. Orengo!

**Sen. Orengo:** She may have been triggered by patriotism. Being a whistleblower, we do not want to take it against you. This is very good information. If this information is correct it is going to help the Governor's case, because there were some allegations here that all this process is because of malice and witch-hunt. This will go towards proof of the case that there has been a witch-hunt, but if you cannot offer to us why you came to that conclusion, then this information here does not help the Governor now. But if you could, it is a matter that I think is worth paying attention to, in regard to the very serious allegations which the Governor made and now we have got some element of proof that there could be something else.

**Ms. Margaret Lorna Kariuki:** Mr. Chairman, Sir, these names have been extracted from payment schedules. So, the people have the I.D. numbers here and their banks through which they have been paid, not just for the month of December, but even previous months. It is evidence that is traceable, auditable and verifiable.

**The Vice Chairperson** (Sen. Murkomen): Mr. Chairman, Sir, so that we can follow. As Sen. Orenge has said, if indeed all these people are related in this matter to a person--- I can link the earlier argument that who moved the motion against who and so forth. But before even we come to that place, is this document meant to tell us that these people who are listed here are ghost workers? In other words, my understanding of ghost workers would be that they are listed in the payroll of the county assembly or county government but they do not work there. This is because that is different from saying that there is someone who was employed in the county assembly, but he happens to be a fiancée, driver or watchman of someone. Are they are not working?

**Ms. Margaret Lorna Kariuki:** “Ghost worker” means that somebody is receiving a salary, but they report to no office.

**Mr. George Ng’ang’a Mbugua:** Margaret, let me pose there. Are there employees that we refer to as ward managers? For instance, do we have ward managers? Can an MCA engage a ward manager?

**Ms. Margaret Lorna Kariuki:** I do not know.

**Mr. George Ng’ang’a Mbugua:** Let us carry on. Let me refer the witness, because I must bring out this link. Margaret, turn the page. I want to refer to a name; “Peter Kariuki”. This is a connection or link that was tried to be established between the Speaker--- If you look at a gentleman listed at No.12, on the same schedule that Margaret has supplied us with--- She tells us that it is her schedule, but it is in the Governor’s bundle. So, I take it that it is meant to support the Governor’s case.

Look at Peter Kariuki Mbaka. You indicate very strongly that he is a brother to the Speaker of the County Assembly, merely because, perhaps, there is a name “Kariuki.” I would like to ask you: You are Lorna Kariuki. Suppose I say that you are the fiancée to the Speaker because you bear the name Kariuki?

**Ms. Margaret Lorna Kariuki:** Mr. Chairman, Sir I have written a letter to the Auditor-General and the EACC to investigate this matter. The contents which are here are not an allegation. This is information which I have said is verifiable and auditable. All the documents---

**Mr. George Ng’ang’a Mbugua:** Margaret, the verifiability obligation was on you. Do you have evidence of a relationship between Peter Kariuki Mbaka and Kariuki Mati? Do you have documents of kinship; birth certificates to show us that the mother of this or father of this is the same person? You simply cannot just draw a schedule and try to

suggest that the county assembly have done A, B, C, D without proof. You just bring a schedule and want us to take it as proof of your assertion of what you consider to be ghost workers engaged by the county assembly.

**Ms. Margaret Lorna Kariuki:** Mr. Chairman, Sir, I pray that this document be admitted in this Committee and interrogated.

**Mr. George Ng'ang'a Mbugua:** Mr. Chairman, Sir, I would want at this stage to request that if the witness cannot provide proof to support what she considers to be evidence of relationship, that schedule should be expunged from the record.

**Mr. Wilfred Nyamu:** May I respond, Mr. Chairman, Sir. This is an application.

**The Chairperson** (Sen. (Dr.) Khalwale): Just a moment. I will give you plenty of time. Margaret, you see me quiet because you have gone into an area which we cannot just brush off. It is very important because it might not be happening in Embu but elsewhere. We want whoever is watching to know that if it is happening wherever they are, the Senate will express its displeasure. So, keep your cool.

Members, since this is an investigation and not a trial, and the Speaker, Mr. Kariuki Mati is with us now, would you like us to extract that evidence from him? This is just what I am thinking. His brother is on the list and what I would be extracting is as follows---

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

**The Chairperson** (Sen. (Dr.) Khalwale): Just a minute; I will give you a chance. I am not rushing you. I will be extracting two things. The first one is: Informed by the fact that it is not a crime if somebody is an employee in place X and is a man, and a man is an employee in the same place, if they become fiancées. It is not a big deal; in fact, that is how people get married in most of these places. If I was to call for that piece of evidence from the Speaker, he would then answer two things. One, this man is my brother and is fairly employed. A brother can work in the same assembly with the Speaker. If he confirms that it is the brother and he is working there fairly and does a job in a particular office, it settles the matter. But then, if the Speaker says: This is not my brother, it would have consequences.

**Mr. George Ng'ang'a Mbugua:** Mr. Chairman, Sir, I have a list of the Speaker's siblings, because I had to arm myself with all this information.

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

**Mr. George Ng'ang'a Mbugua:** I have a list of the siblings of the Speaker here and he can even stand and speak for himself who the mother, father, brothers and sisters are. We will establish whether there is a brother that goes by that name.

**Ms. Margaret Lorna Kariuki:** Chair---

**The Chairperson** (Sen. (Dr.) Khalwale): Margaret, you will not be muzzled. I am now giving ventilation to my Members to inform me. I will start with Sen. Lesuuda, come to Sen. Orengo and finish with Sen. Wamatangi.

**Sen. Lesuuda:** Thank you, Mr. Chairman, Sir. I do not actually see the reason whether or not to call the Speaker, because Lorna has said that she is born and bred in Embu. She knows Embu very well. Just to know that Lesuuda's brother is so-and-so--- She is requesting that we accept this document. If you are asked who the brother of the Chairman is, it is just as simple as: Is that the brother or not? So, even before we start thinking whether or not to bring the Speaker, could she just confirm what is in this list? This is because now we are already imagining that she has said so. She has been asked the question and has not even responded to it.

**The Chairperson** (Sen. (Dr.) Khalwale): You are being asked: Beyond the claim, do you have any proof---

**The Vice Chairperson** (Sen. Murkomen): First of all, is that the brother?

**Ms. Margaret Lorna Kariuki:** Mr. Chairman, Sir, the list which I have here, including what I have written here, includes people who are beyond 80 years old.

**The Chairperson** (Sen. (Dr.) Khalwale): Just come to the brother first; one at a time. Then we shall go to the other employees.

**Ms. Margaret Lorna Kariuki:** Including recruiting students.

**Sen. Orengo:** I am interested in this evidence in so far as the Governor is trying to put a case. Now, if you are telling us to investigate, then this document is totally in the wrong place. It should go to where you have made those complaints. Since it is part of these proceedings, before we ask the other side to come in and make comments on it, and it is in her interest and the Governor's interest that this material is placed before us in a way that can lend credence to the case that the Governor is trying to put forward. But if she is being dismissive about it, then we can say that this is a side-show and leave it, because, otherwise, it is becoming a side-show.

**The Chairperson** (Sen. (Dr.) Khalwale): Just to carry on from where Sen. Orengo left, you want us to admit this document to demonstrate that there is an element of witch-hunt or something as a result of you unearthing the ghost workers. But, then, you are not willing to provide information that can enable us to put this on record. You are saying that it is up to us to go and investigate, yet we are reporting to the Senate in two days.

**Ms. Margaret Lorna Kariuki:** I admit that I can stand by this document. In my statement on page 2, paragraph 3; please refer to a text message sent to me by the Speaker on that material day. It is written:

“Your excellency, the county assembly payroll was forwarded to Treasury before 20<sup>th</sup> December, 2013. Since the Treasury has not raised any

concerns or questions on the same from the assembly accounting officer, staff have not been paid. Now, I am told that certain advice is awaited from Nairobi. I am treating this as an act of war.”

That text message came directly to me, and he had all along called me, the appointed---

**Sen. Orenge:** These are quasi-judicial proceedings and you have met the governor. Governor, I beseech you, if you want this to be hard on the Governor's face, please present to us evidence and material so that when we sit and deliberate we can say that the Governor---

**The Chairperson (Sen. (Dr.) Khalwale):** Margaret, the reason why you should take our advice to be helping you - I am not too strong a reader of the Bible but I hear it is written somewhere that do unto others as you would have them do unto you. So, there is nothing that is going to stop the people you are pointing fingers at from coming and telling me that look chairman, the reason why the Governor swore an affidavit for Margaret, it is because there was a special relationship between them, either they are cousins or uncles or have an intimate relationship. We do not want to go there.

**Ms. Margaret Lorna Kariuki:** I will provide evidence in terms of cheques. I will also provide evidence - I do not know whether that is evidence - duly signed---

**Sen. Wamatangi:** Mr. Chairman, Sir, I think it is important at this point that we determine - I started personally not believing most of the stories that Margaret was telling us, she proceeded well to almost prove and I started thinking that you are a convincing and honest witness but when we reach on certain questions you speak like a sincere person but if that patriotism that you are talking about has led you to take this trouble to compile this list and send it to verification, why is that patriotism not reflected in the question that you have been asked about the maize? You are being asked very simple questions but you keep on evading.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, at this juncture, we wish to request that we be allowed to submit as to why this evidence is relevant. These are investigations and not a court of law where parties ought to have come with all information. We only had two days. As it is, this is information that if this Committee is genuinely trying to pursue investigations, it can get information from the Registrar of Persons.

**The Vice Chairperson (Sen. Murkomen):** Thank you.

**Mr. Peter Wanyama:** On a point of order, Mr. Chairman, Sir. We are bound by rules of evidence. What this witness is testifying on are matters within her knowledge. You cannot say in law that matters which are within the witness' knowledge cannot be admissible. What we are saying here is that perhaps that is not persuasive enough. The witness cannot produce documents which she does not have. If that matter requires collaboration, then it is up to this Committee to go ahead and make positive or negative finding.

**The Vice Chairperson** (Sen. Murkomen): Thank you, counsel. You actually went ahead of me. That is where I was coming to. The witness is making an allegation of information that is within her knowledge. To be fair to her, it is now up to the counsel of the County Assembly to basically either question that evidence for lack of corroboration or to provide information that will show that this is misleading information. I think we will take it as it is because she could have come here without a document and just say what she knows.

**Sen. Orengo:** Mr. Chairman, Sir, Mr. Peter Wanyama has made a very good point; that these are matters within her knowledge. So, if it is a matter within her knowledge when you come to the conclusion that Grace Njagi is fiancée of Ibrahim Swaleh, you could probably tell us that I attended a betrothal ceremony. I think in those parts of the world there must be cultural practices which will tend to confirm that what you are saying is true. There are other allegations like “brother”, is it a distant cousin or blood brother and so on. Your counsel is saying that they are matters within your knowledge.

**Ms. Margaret Lorna Kariuki:** Mr. Chairman, Sir, I will provide evidence.

**Mr. George Ng’ang’a Mbugua:** Mr. Chairman, Sir, just to demonstrate why we should be very careful with this list. Just look at the name Peter Kariuki Mbaka; that name appears on the first page of the schedule and the relationship is described as son of former councillor. Just go to the first page. The same schedule shows the name Peter Kariuki Mbaka on page 1. The same identity at No12, he becomes a brother to the Speaker. That is the same identity card number. Look at Peter Kariuki Mbaka ID No.10461357 – Son of former councillor. Then there is Peter Ngare Makenge, look at all those names, there is no single name that is again shared by Kariuki Mate. Look at it this way; Peter Kariuki Mbaka, first of all, that Kariuki Mbaka is the same ID No.10461357. If you look at the first schedule, the relationship of son of former councillor. He now becomes the brother with the same identity as the brother of the Speaker.

**The Chairperson** (Sen. (Dr.) Khalwale): We can settle it this way; in that case, is the Speaker the son of the former councillor? That is what it means? Is it a fact?

**Mr. George Ng’ang’a:** It is not. If you look at Peter Ngare Makenge, in African naming system---

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, we have asked Margaret to do slightly more by way of convincing us and we are now allowing you to spend so much time in pursuing this particular matter. We advice that we go by the ruling of the Deputy Chair, when I stepped out, then proceed, we will weigh it during report writing. So, just pursue your logic up to its conclusion.

Members, let us not go there because it is starting to look like a side show.

**Mr. George Ng'ang'a Mbugua:** Thank you. Now Margaret, let us go back to your statement. Let us go to the summons that you were given by the County Assembly to appear. I am referring the witness to the same page, specifically on the paragraph where she concedes that she received summons. My question is; the summons that we delivered to you to appear before the County Assembly Committee, did you personally appear before that Committee that was investigating matters to do with the procurement of the maize, the subject matter of these proceedings, and the refurbishment of Embu Stadium?

**The Chairperson (Sen. (Dr.) Khalwale):** Members, you are starting to get tired and I am about to give you a health break. So, give the counsel space and time to conclude his case.

**Mr. George Ng'ang'a Mbugua:** Why did you not personally appear before that committee when you were summoned?

**Ms. Margaret Lorna Kariuki:** Personally, I received the letter as I had explained earlier at 8.30 a.m. when I arrived in my office and I quickly started doing replies to the two letters and organizing on how I will be able to do a presentation to the Committee. I ensured that before 10.00 a.m. they had a reply.

**Mr. George Ng'ang'a:** Was the summons to provide a letter or for you to appear personally and to explain those matters?

**Ms. Margaret Lorna Kariuki:** That is something that took me by surprise.

**Mr. George Ng'ang'a:** Was it a summons to appear, Margaret, so that we make some progress?

**Ms. Margaret Lorna Kariuki:** They wanted appearance but I send a communication to the committee because of the timeline between when they wrote the letter and when they wanted a response - to be reasonable enough for them to give me a chance to organize myself and be available for them.

**Mr. George Ng'ang'a Mbugua:** We will take that to be your answer. Please, let us go to the response you made to the County Assembly.

Mr. Chairman, Sir, I am referring to the bundle provided by the County Assembly, annex 7, that is the letter from the Office of the Governor, signed by the County Secretary, dated 6<sup>th</sup> January, 2014.

The witness will be assisted by the Governor's counsel with a copy of that letter. The letter is the one that she responded to the summons to appear before the committee.

Sorry, immediately after the report marked CAE7, the letter is dated 6<sup>th</sup> January, 2014 and is addressed to the Clerk of the County Assembly. I want to refer you to that letter which you wrote. The reference is: Summons to appear before the Committee on

Agriculture, Fisheries and Livestock. If you look at paragraph 2, I want us to appreciate the tone. What was in your mind when you were writing that letter? It is a small paragraph. Please read for us that one paragraph.

**Ms. Margaret Lorna Kariuki:** Paragraph 2 says:-

“That this matter has been topical for sometime to an extent of a number of MCAs conducting a mock voting on a dummy Motion on the subject matter within the corridors of the Assembly and the Motion carrying the day with the Ayes having it. The matter was largely discussed at Multimedia University on 13<sup>th</sup> December, 2013 by CCs and MCAs, by members of the Fourth Estate and the fifth column, the social media, public places (pedestrian) and the Sectoral Committee of Agriculture, PAC, by chief officer, finance and economic planning at the Speaker’s Office, by CC finance, planning and administration yet the matter has not rested and therefore not disposed of before, both in the court of public opinion and the legislature”

**Mr. George Ng’ang’a Mbugua:** Thank you, Margaret. You are telling the County Assembly about mock voting on a dummy Motion on the subject matter that you had been asked to appear and explain about. My question to you is; these matters that you are writing about, why did you not find it necessary to appear before the committee and answer to the summons which was specific as to what the committee wanted to establish from you?

**Ms. Margaret Lorna Kariuki:** Mr. Chairman, Sir, I have been a troubled county secretary for some time with talk everywhere about things happening. Instead of the business being conducted in the House, it is conducted out there to a point where even a shoe shiner is telling me that he is coming to remove me from office in January. Besides that a number of them held a public forum. As I said, I was their Clerk in the month of March and April, 2013. A number of officers who know me very well would come and tell me that the Motion was tabled outside the Assembly and people were saying “As many as are of that opinion say “Aye” and they all said “Aye”. As many as are of the contrary opinion say “Nay”---

**Mr. George Ng’ang’a Mbugua:** Margaret, reading that letter shows the contempt with which you held this committee.

**Ms. Margaret Lorna Kariuki:** It was not contempt.

**Mr. George Ng’ang’a:** Listen to me, Margaret. You were summoned and you take a pen to write a letter on what you consider to be the intention of the County Assembly.

Let us move on. Mr. Chairman, Sir, I am referring the witness to---

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, as we move on, I want you to drive it such that it is clear to the special committee that it is the matter of the governor. Do not

make it look like it is the trial of the county secretary. The young lady is under a lot of pressure now, I can see.

**Mr. George Ng'ang'a Mbugua:** That is the point I was going to. If you look at all these correspondences, they are actually being done by the secretary under the Office of the Governor. You can see from the correspondence; it is originating from the Office of the Governor, only that it has been executed by Margaret.

Let us proceed to the crux of the matter which is the case that you filed regarding investigations that are being carried out by the Ethics and Anti-Corruption Commission (EACC). Margaret did you file or are you aware of a suit that you have instituted against the County Assembly, the Speaker of the County Assembly and the Ethics and Anti-Corruption Commission, seeking to quash the resolution by the County Assembly directing that you step aside?

**Ms. Margaret Lorna Kariuki:** Yes, I am aware.

**Mr. George Ng'ang'a:** The case that we are referring to, for purposes of record, is it judicial review No.17 of 2014.

**Ms. Margaret Lorna Kariuki:** I do not have it off head. Which page?

**Mr. George Ng'ang'a Mbugua:** CAE8A is the affidavit that we have made substantial reference to. That is the one of Margaret Lorna Kariuki. Now, that affidavit; you confirm that it is in respect of a suit that you have filed as Margaret Lorna Kariuki, Ethics and Anti Corruption Commission, the fourth respondent. So, that suit that you filed, is it the suit where you are seeking to have the resolution of the County Assembly recommending that you step aside or be stopped. Is it the one that you are seeking to have that resolution quashed?

**Ms. Margaret Lorna Kariuki:** Unless I first read it.

**Mr. George Ng'ang'a Mbugua:** In that suit, are you seeking to quash the recommendation of the resolution by the County Assembly seeking to have you to step aside because of the issue of the maize and the procurement and the stadia?

**Ms. Margaret Lorna Kariuki:** Will you give me time to read it?

**Sen. Orengo:** Mr. Chairman, Sir, Standing Order No.90 does not allow any Senator to deal with any matter that is *sub judice* and the questions that are being asked may be bordering on that case and that probably would prejudice the witness' position.

**Mr. George Ng'ang'a Mbugua:** Well guided, Mr. Chairman, Sir. What we want is the background. I now want to draw a nexus between what she is seeking in that particular suit which touches on a letter that is already part of these proceedings which is already a resolution now – we shall see from this affidavit – she is the link with the Governor with

respect to the resolution which the County Secretary is challenging in these proceedings. That link is important for purposes of responsibility.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, what Sen. Orengo is saying is true. That is; if we do not manage it well, we will end up denying you the opportunity to make your point. So, treat it to this extent; that we shall be *sub judice* if we try to address ourselves on the merit of that application before the courts or the demerit. Just show that that attempt was made, but do not say that it was a deserved thing to choose to go that way or otherwise. Otherwise, we will be gagged by our standing orders.

**Sen. Orengo:** For the Counsel's benefit, the Standing Order says:-

"Subject to paragraph 5, not Senator shall refer to any particular matter which is *sub judice* or which by the operation of any written law is secret".

I am trying to emphasise the word "refer". But paragraph 5 says that the Chairman or the Speaker may allow reference to a matter before the Senate or the Committee. What I am afraid of is that the HANSARD is a matter which is available to the public and you may ask questions which, since she does not have her own counsel here, may compromise her position in the case that she is pursuing.

**Mr. George Ng'ang'a Mbugua:** Thank you. Maybe I can then paraphrase the question.

**The Chairperson** (Sen. (Dr.) Khalwale): So, Senators, what we could do to allow him pursue his case, I have cautioned him about commenting on the merit of the case or otherwise. Further, once he concludes, the Standing Orders gag us; so we cannot comment on that matter if we believe it is *sub judice* because then a member of the public as Sen. Orengo has said would move against us and the Senate. So, you make your point, but Members will not be able to substantively comment on it.

**Mr. George Ng'ang'a Mbugua:** So, Margaret when you were filing those proceedings, were you still serving as the Secretary of the Embu County?

**Ms. Margaret Lorna Kariuki:** I have my fundamental rights and freedoms under the International Labour Laws as well as the Labour Employment Act of this country. I was employed under the County Government Act, Section 44. Looking at an affidavit by one investigating officer of the EACC, he actually said or he has actually documented that EACC recommends suspension or stepping aside or even interdiction upon an investigation. I think I will refer the Committee to---

**The Vice Chairperson** (Sen. Murkomen): Just keep it simple. Just answer the question and then we proceed.

**Mr. George Ng'ang'a Mbugua:** I am just asking; were you still in office when you were filing those proceedings?

**Ms. Margaret Lorna Kariuki:** I went on leave knowing that my rights had been grossly violated.

**Mr. George Ng'ang'a Mbugua:** Did you go for normal leave or you had formally stepped aside? That is by the time you were going to file these proceedings.

**Ms. Margaret Lorna Kariuki:** Assist me to know the difference between stepping aside and taking leave.

**Mr. George Ng'ang'a Mbugua:** Were you still in office; were you still the Secretary of the County of Embu? That is the question, Margaret.

**Ms. Margaret Lorna Kariuki:** Chair, assist me. I do not understand the difference between stepping aside and taking leave.

**The Chairperson** (Sen. (Dr.) Khalwale): That is straight forward. If you are going on leave, it meant that you proceeded to go and rest; to take your days away from work when you were still in the office. But stepping aside means that you responded to a resolution of the House that had asked you to step aside and then found yourself going home. And while at home, you then went to court. Have I helped you?

**Ms. Margaret Lorna Kariuki:** Yes, you have. Thank you.

**Mr. George Ng'ang'a Mbugua:** So, what is your answer?

**Ms. Margaret Lorna Kariuki:** My answer is that I went on leave and went to court and the matter is still pending in court.

**Mr. George Ng'ang'a Mbugua:** So you did not step aside?

**Sen. Orengo:** You went on leave for how long?

**Ms. Margaret Lorna Kariuki:** I went for an annual leave which ought to be 30 days. Under the Employment Act, I think I have a case.

**Sen. Orengo:** You are saying that you went on leave for 30 days and those 30 days are over. Are they not?

**Ms. Margaret Ng'ang'a Mbugua:** Not really.

**Sen. Orengo:** The Governor has told us here that he talked to you and persuaded you; that do not worry, just step aside, and you were kind enough to do that. So, when we are getting a different story from you then the case becomes very complicated. We are just asking for consistency.

**The Chairperson** (Sen. (Dr.) Khalwale): You are the witness of the Governor to advance the Governor's cause and then here you are, you are contradicting the Governor who said

that he persuaded you to respect the decision of the Assembly and step aside. And now you are saying that you never did such a thing. So, who is right; you or the Governor?

**Ms. Margaret Lorna Kariuki:** Basically, for him, he said that I step aside. But I am saying that my rights have been grossly violated. When I look at the tenets of the law, I feel I have not been given a fair resolution by the Assembly.

**The Vice Chairperson** (Sen. Murkomen): Lorna, you are not on trial here. You are just a witness for establishing the truth.

**Ms. Margaret Lorna Kariuki:** That is the truth. He told me to step aside and I think there is a letter to that effect. That is why the case is in court.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel for Governor, maybe it would be nice through a note for you to point out to your witness how she is jeopardizing the evidence of the Governor by changing when she is in dock. Just point that to her.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, I will be accused of trying to show my witness what to do. I will do that during re-examination. I cannot do that during examination because I have actually been seen to be more aggressive than I should be. That is why I am reserved.

**Ms. Margaret Lorna Kariuki:** Mr. Chairman, Sir, for the record, I have a letter that told me to step aside. But am I satisfied? It is not my case. This is a different case. I will argue my case in court.

**The Vice Chairperson** (Sen. Murkomen): You have a letter that tells you to step aside. Did you respond to that letter? Did you act on the letter?

**Ms. Margaret Lorna Kariuki:** No.

**The Vice Chairperson** (Sen. Murkomen): So, the letter says you step aside but you chose just to go on leave and not step aside. Is that correct?

**Ms. Margaret Lorna Kariuki:** What I am saying is that I have a case.

**The Vice Chairperson** (Sen. Murkomen): I am just asking---

**Ms. Margaret Lorna Kariuki:** Yes, I have a letter.

**The Vice Chairperson** (Sen. Murkomen): Did you respond to the letter by---

**Ms. Margaret Lorna Kariuki:** The letter was ordering me to step aside.

**The Vice Chairperson** (Sen. Murkomen): So, did you step aside or you went on leave?

**Ms. Margaret Lorna Kariuki:** I do not want to jeopardize my case.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, what we have here before this Committee is a situation where the Governor is accused of actually not heeding the recommendations of the committee. Here, she says that the Governor gave her a letter directing her to step aside but she decided to go on leave and proceed to court. So, right now the Governor's order still stands but for her, she is at home. She has not been suspended because suspension ought to occur under Section 62 of the Anti-Corruption and Economic Crimes Act. So, she stepped aside and I do not know the implications of stepping aside in law. There is a very thin line. Actually when you step aside, you are at home.

**The Vice-Chairperson** (Sen. Murkomen): Thank you. We have heard you.

**Mr. George Ng'ang'a Mbugua:** So that I leave that point, you say that you reserve rights to go to court. Was one of your requests in your certificate of urgency an order that you remain in office?

**Mr. Wilfred Nyamu:** Objection. That is a court case and the Standing Orders bear us witness.

**The Chairperson** (Sen. (Dr.) Khalwale): That objection is sustained. Counsel we had already cautioned you about *sub judice*.

**Mr. George Ng'ang'a Mbugua:** Thank you. Let us go to Embu Stadium. I am referring the witness to page 3 of her statement. That is the part on Embu Stadium. The procurement of the refurbishment works. Was the County Executive Committee where you sit as the Secretary aware at any one time about the procurement of works to refurbish the stadium?

**Ms. Margaret Lorna Kariuki:** Yes, I have the minutes of the County Executive Committee and I think they should be here.

**Mr. George Ng'ang'a Mbugua:** So, they were aware.

**Ms. Margaret Lorna Kariuki:** Yes.

**Mr. George Ng'ang'a Mbugua:** By extension, the Governor was aware about that procurement?

**Ms. Margaret Lorna Kariuki:** Yes, because he is part of the Executive Committee.

**Mr. George Ng'ang'a Mbugua:** Thank you, Margaret. Now, on that part you referred to or you have justified or stated that in procurement of those works, the mode of tendering that was used was restricted tendering. Is that your evidence?

**Ms. Margaret Lorna Kariuki:** Yes. That is from the tender committee.

**Mr. George Ng'ang'a Mbugua:** Now, as the Secretary who sits in the Executive Committee when procurement is made, you are notified. If a specific tendering system is adopted, do you receive justification why? If they have elected to use restricted tender, do you get any justification?

**Ms. Margaret Lorna Kariuki:** Yes, I do.

**Mr. George Ng'ang'a Mbugua:** In this particular instance, what justification was given why the intended refurbishment of that stadium called for a restricted tender? I want to refer you to what you have stated; complexity of the works as one of the justifications. I want to refer you to Section 73(2) of the Act so that you tell us whether---

**The Vice Chairperson** (Sen. Murkomen): How many more minutes do you need?

**Mr. George Ng'ang'a Mbugua:** I have only got about two more questions, because that was basically the last item. On the issue of tendering for works or the procurement for works to refurbish, you confirm the mode of tendering which was used and that the executive was informed about was restricted tendering and you have quoted – I am using your statement – Section 73(2). I refer you to Section 73(2) so that we establish whether restricted tendering was the appropriate mode of tendering for works to refurbish the stadium.

**Mr. Peter Wanyama:** Point of order. Mr. Munyaka expressly and clearly testified and it is on record on why that method of tendering was chosen. He said that he advised in the circumstances to use restricted tendering. So, I do not see why we should repeat that question again.

**The Vice Chairperson** (Sen. Murkomen): Counsel could you let the witness answer the question?

**Mr. Peter Wanyama:** It is purely a legal issue and we have to protect our witness as well from unwarranted attacks and questions which she cannot answer.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, your objection is overruled.

**Mr. Peter Wanyama:** But this is unfair on the part of this Committee.

**Mr. George Ng'ang'a Mbugua:** There is a statement where the witness says: "To the best of my knowledge, the procurement procedure was followed". That is not from Mr. Munyaka, it is from Margaret. Now, Margaret, we want to establish whether the procurement of those works warranted a restricted tendering process. I will refer you to Section 73 (2) of the Public Procurement and Disposal Act. There are instances where restricted tendering can be used as per Section 73 (2) and one of the prerequisites that must be met is:-

1. Competition of the contract because of the complex or specialized nature of goods, works or services is limited to prequalified contractors.

Now, the nature of the works that were intended to be carried out for renovation of the stadium; do you consider those works to be specialized works? For example, repairing a seat and repainting. Would that be specialized works as to satisfy condition (a)?

**Ms. Margaret Lorna Kariuki:** Mr. Chairman, Sir, the Counsel should use the documentations that had been developed by engineers and then he can make an inference about complexity or lack of complexity because there are no parameters to measure it.

**The Chairperson** (Sen. (Dr.) Khalwale): You know Margaret, why I have allowed you to be questioned in that manner and I hope Mr. Peter Wanyama is listening; it is because you yourself asserted that to the best of your knowledge the procurement procedure was followed. That was to the best of your knowledge. So, if you did not want to testify to that, we are not the ones who did this statement to you. Counsel is now responding to your assertion and you volunteered that information.

**Ms. Margaret Lorna Kariuki:** Mr. Chairman, Sir, I am on record requesting that I admit the statement with amendments. This is on the HANSARD. There are so many amendments that are in this statement including dates which I would want to expunge. The HANSARD reporter or whoever is recording---

**Sen. Orenge:** Your Counsel asked us to admit the statement specifically. So, we admitted it.

**Ms. Margaret Lorna Kariuki:** I think this can be checked from the records because I said that I actually accept the statement with amendments. I think I am on record and this can be checked because there are even some dates here which are wrong.

**The Vice Chairperson** (Sen. Murkomen): Are you saying that your statement is wrong?

**Ms. Margaret Lorna Kariuki:** What I am saying is that there are amendments I want to make on this paragraph. I had already made them even before I came here, as you can see.

**Sen. Sijeny:** Just for clarity, who prepared that statement? Are you the one who prepared it or were you just called to sign it?

**Ms. Margaret Lorna Kariuki:** I am the one but the person who was typesetting it made some errors; just a few and not so many.

**Mr. Wilfred Nyamu:** On a point of order, hon. Chairman. In terms of the errors that appear on the statement, which she endeavors to amend, we request that this be accommodated in view of the fact that the statements are being done in the course of

these proceedings owing to the urgency that is involved. Remember there was a time when we were given ten minutes to ensure that the statements were in. As long as that does not change the substance of the statement, I urge for accommodation.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, it was in response to your own request that we admit this statement. So, if there is any small alteration that you want to make during reexamination, you can point it out and see how you can reintroduce it.

**The Vice Chairperson** (Sen. Murkomen): This is probably the first witness that you decided to bring here. Without all these discussions, this could have been the witness that you knew. The fact that you do not have a witness statement was not occasioned by this Committee. So, you are trying to imply that we rushed to do witness statements.

If we were talking about the previous witness, the one that came all the way from Kitui, I would understand; the one who was summoned. However, Margaret, whom I personally believe is the first key witness, or what would have been called the star witness of the Governor – whom the Governor has vouched for in a different forum – there would be no reason why her statement would become an issue. It is not occasioned by this Committee.

**Mr. George Ng'ang'a Mbugua:** Thank you Mr. Chairman. Maybe I will ask her one last question. Margaret, was the County Executive Committee satisfied that the mode of procurement of works to refurbish the stadium warranted a restricted tender?

**Ms. Margaret Lorna Kariuki:** That would amount to what I would call interference; if the County Executive Committee penetrated the Tender Committees and started digging to find out what was happening at every stage. We have the Tender Committee for opening tenders; we have another one, an ad hoc committee for financial and technical evaluation and another one for tender awards. So, if any Member wanted to penetrate the tender committees including myself---

**Mr. George Ng'ang'a Mbugua:** Margaret, my question was premised on the first introductory answer that you gave, that you do report to the County Executive on the status of procurement. What I am asking is this; have you conceded that you make those reports? I am imagining that the reports of this procurement committee would also entail a procurement of that nature?

As the Secretary to the County Executive Committee, was the County Executive Committee satisfied that that procurement warranted a restricted tender or it was not aware?

**Ms. Margaret Lorna Kariuki:** Counsel, Chairperson, I am not defending anything. I am only requesting the Counsel to understand that the County Executive Committee is involved in policy, Bills and giving direction on operations of Government.

With regard to tender issues, I also do not sit in any tender committee. This is for checks and balances so that we stop interference.

**The Chairperson** (Sen. (Dr.) Khalwale): Margaret, let me help you. You have the option to respond to this question by either confirming that, yes, indeed, the CEC was aware. You also have the option of saying that it was not aware. You also have the option of saying that you do not know.

**Ms. Margaret Lorna Kariuki:** Mr. Chairman, Sir, these works have been taking place since November. A considerable time of December and January, there has been war.

**The Chairperson** (Sen. (Dr.) Khalwale): You were saying the period has been what?

**Ms. Margaret Lorna Kariuki:** Mr. Chairman, Sir, I am talking about these exchanges, the push and pull such that for me – I am talking about myself as the County Secretary and not the Executive Committee.

**The Chairperson** (Sen. (Dr.) Khalwale): You are not aware?

**Ms. Margaret Lorna Kariuki:** I am aware. I am talking about the CEC, the body that is governing that Government.

**Mr. George Ng'ang'a Mbugua:** Is the CEC aware about the procurement of those works by restrictive means?

**Ms. Margaret Lorna Kariuki:** Yes, they are aware because in their minutes, this was authorized.

**Mr. George Ng'ang'a Mbugua:** Good, thank you for that. That's all.

**Mr. Charles Njenga:** Chair, allow me one simple direct question. How far is your office, where you sit, from the offices of the County Assembly and the House? How far by way of estimation of distance?

**Ms. Margaret Lorna Kariuki:** Probably between 400metres to 500 metres.

**The Chairperson** (Sen. (Dr.) Khalwale): Thank you, very good. Hon. Members, I must do justice to you. Are you satisfied? Juma Boy is satisfied and Judith is also satisfied.

**Sen. (Prof.) Lesan:** Lorna, there is this letter that you wrote in relation to purchase of seats. I think why we are here is because of a small item, No.3, which is maize and some famous six letters that were introduced there, 8031DK. Where did you get these letters from?

**Ms. Margaret Lorna Kariuki:** At times, Mr. Chairman, I request a secretary or a person who is available to do a draft and then I sign especially for such a letter. You can even see that the word *urgency* is spelt as *agency*. There are a few typos here and there. The maize ought to have been DK8031 and that is what was supplied despite that typo.

**Sen. (Prof.) Lesan:** I am asking about that because in this expert advice from the CEC Member of Agriculture, none of these varieties of maize were recommended.

**Ms. Margaret Lorna Kariuki:** Mr. Chairman, I still stand by page 311 and I request for paper trail audit. I would not want a situation where people bring documents, do a request and then change or turn and disown what they have done. I know that it is possible to do a paper trail audit and know exactly whether this paper originated from the Ministry of Agriculture, second floor, former Provincial Headquarters in Embu, the left side wing of that building.

**Sen. (Prof.) Lesan:** So, you are suggesting that one of these documents is an imitation or a fake?

**Ms. Margaret Lorna Kariuki:** What I am saying is that whatever other document is here is foreign. The document upon which procurement was acted upon is the one I am talking about and it has DK8031 as the requested seed variety.

**Sen. Lesuuda:** Mine will be brief. It is a general question. I do not want to be too hard because you are harassed already. As a Committee – we are learning that procurement is a totally different institution which wants to be treated fairly and which should not be interfered with and we do not even know what they are doing. That is fine. You are the one who wrote letters requesting for this and that. As the Executive Committee, would you be concerned if procurement people did the wrong thing and deliberate on it?

**Ms. Margaret Lorna Kariuki:** The CEC, they are policy makers.

**Sen. Lesuuda:** So, they would not be bothered?

**Ms. Margaret Lorna Kariuki:** They would and can even make proposals for amendments. No, I think they have to go through the Assembly so that the Assembly does some registration which then comes to the Senate. The Senate then proposes amendments to that Act. However, the Act has separated powers.

**Sen. Lesuuda:** Lorna, so that we do not try to be smart on each other, the people of Embu County, would they trust the Executive Committee to follow up if something had been done wrong or would you say that this was entirely not upon you? Would you say that it is not your office that did it? This is just a very general question.

**Ms. Margaret Lorna Kariuki:** Yes, Senator, through the Chair, we get concerned. That is why immediately after the complaints from the public; we embarked on a testing exercise and even a follow up with Kenya Plant Health Inspectorate Service (KEPHIS) because they are the ones with the LOT numbers for whatever seeds they have released in the market. So, we are not ignorant and we took it upon ourselves to investigate the complaints within seven days.

**Sen. Lesuuda:** Finally, Chair, this was something that was deliberated on?

**Ms. Margaret Lorna Kariuki:** I am talking about the Civil Service level and not the Cabinet level.

**The Chairperson (Sen. (Dr.) Khalwale):** Finally, Margaret, the issue of maize was so sensitive and attractive that at the time of launching, you informed the Governor who stepped out of the office to the field to go and launch the programme. Is that true?

**Ms. Margaret Lorna Kariuki:** Yes, he commissioned.

**The Chairperson (Sen. (Dr.) Khalwale):** If the matter was that attractive to the Governor, would you want us to believe that such an important project, when it fell on its face and collapsed, it did not occur to you that you have to inform the Governor? Would you like to change your mind to say that you informed the Governor? This was his pet project. He committed himself to the people who voted for him.

**Ms. Margaret Lorna Kariuki:** I have an obligation to properly do communication before the Executive Committee in form of tabling a document which has facts and solutions to whatever problems that there were.

**The Chairperson (Sen. (Dr.) Khalwale):** Are you aware that the Governor, upon seeing the rising pressure and tension on the ground was forced to call a press conference and his topics were two? One was about the maize and the other---

**Ms. Margaret Lorna Kariuki:** Not any that I know about. I do not know about a press conference. If it was there, I may not have known.

**The Chairperson (Sen. (Dr.) Khalwale):** There are exhibits here. What do you have to say about that because the same Governor you are saying did not know called a press conference – it is in this document and I do not want to waste time on it because everybody knows about it – to address the issue?

**Ms. Margaret Lorna Kariuki:** He addressed, not from the County Executive Committee Report which the County Secretary had given, but from his own investigations or reports by the public. I am sure the members of the public report to him. He also gets reports from Embu citizens.

**The Chairperson (Sen. (Dr.) Khalwale):** That brings me to my final question. Now that you have admitted that he was aware, through his other means, what action did the Governor take or did he ask you to take in response to the disaster that had affected hundreds of farmers of Embu?

**Ms. Margaret Lorna Kariuki:** I explained the matter and requested to make a follow up with the relevant bodies because it would not be in good faith that I buy bad maize. In any case, I felt hurt that there was a body charged with the mandate to ensure that seeds

that come to the market have seed viability and can be used to eradicate hunger. I was surprised and started wondering about the farmer who had bought five or two kilogrammes. I wondered how they would recover. I said that probably I was the sacrifice that needed to be at the altar so that a company like this one is exposed.

**The Vice Chairperson** (Sen. Murkomen): Lorna, thank you very much for coming. I just want to ask, before you came to the County Executive as the County Secretary, did you say that you were working with the County Assembly?

**Ms. Margaret Lorna Kariuki**: I worked for the Independent Electoral and Boundaries Commission (IEBC) and went to the County Assembly through the Transition Authority (TA). Therefore, I was answerable to the Transition Authority.

**The Vice Chairperson** (Sen. Murkomen): So, you were working for the County as a TA staff?

**Ms. Margaret Lorna Kariuki**: Yes.

**The Vice Chairperson** (Sen. Murkomen): Up to what month?

**Ms. Margaret Lorna Kariuki**: I worked for two months.

**The Vice Chairperson** (Sen. Murkomen): How did you leave the County Assembly?

**Ms. Margaret Lorna Kariuki**: I went on maternity leave.

**The Vice Chairperson** (Sen. Murkomen): So, after that they replaced you with someone else?

**Ms. Margaret Lorna Kariuki**: They replaced me but requested me to go back.

**The Vice Chairperson** (Sen. Murkomen): Before you joined the TA where were you working?

**Ms. Margaret Lorna Kariuki**: I was working for the IEBC.

**The Vice Chairperson** (Sen. Murkomen): As a permanent staff?

**Ms. Margaret Lorna Kariuki**: yes.

**The Vice Chairperson** (Sen. Murkomen): For how long?

**Ms. Margaret Lorna Kariuki**: Since 14<sup>th</sup> January, 2010.

**The Vice Chairperson** (Sen. Murkomen): Where were you before that?

**Ms. Margaret Lorna Kariuki:** I was a senior graduate teacher and a civic educator.

**The Vice Chairperson** (Sen. Murkomen): Okay. As the County Secretary, what is your relationship with the Governor? Do you talk? Do you consult? Does he consult you? Do you consult him?

**Ms. Margaret Lorna Kariuki:** Occasionally because the County---

**The Vice Chairperson** (Sen. Murkomen): Because you had already used the word "occasionally", that is after how long? A month?

**Ms. Margaret Lorna Kariuki:** Let me very sincere that I know that the work of a Governor is overwhelming. Quite often I would want to consult on matters that require his attention because I will find people queuing there. Virtually every other time you will find either delegations or official engagements. Whenever possible or when I get a chance, although I am the County Secretary, is when I may consult him. But we consult at County Executive Committee meetings because that is guaranteed.

**The Vice Chairperson** (Sen. Murkomen): How often is that committee meeting?

**Ms. Margaret Lorna Kariuki:** When I look at the minutes which I have tabled here, I believe---

**The Vice Chairperson** (Sen. Murkomen): Let me give you an example. We know the Cabinet of the Republic meets every Thursday unless the President has travelled. Do you have a regular County Executive Committee meetings day?

**Ms. Margaret Lorna Kariuki:** Thursday is the Cabinet meeting day.

**The Vice Chairperson** (Sen. Murkomen): So, it is weekly for you?

**Ms. Margaret Lorna Kariuki:** It ought to be weekly but it depends. Sometimes you find that is not possible because of one reason or the other.

**The Vice Chairperson** (Sen. Murkomen): To avoid taking so much time from you, it means you meet weekly except for situations where something arises. Do you have a cordial working relationship with the other CEC members?

**Ms. Margaret Lorna Kariuki:** Personally I have no enemy.

**The Vice Chairperson** (Sen. Murkomen): I am not talking about enmity here. In terms of team work, do you people consult, agree with each other and even assist each other?

**Ms. Margaret Lorna Kariuki:** If that was not the case then we would never come here as witnesses.

**The Vice Chairperson** (Sen. Murkomen): The reason I am asking you all this is because an impression is being created like you do not know what is happening, your people talk there, you do not know whether the Governor is involved down there, you do not even know about the seeds, you are not even sure, by the time you are talking to us in the beginning whether the Governor knew anything about the seeds or not. Even up to now you are not very sure how he got to know it.

I say this because the Governor is facing this Committee because of certain things that--- Do you think the Governor is unable to manage all of you? Would you say that you people are so detached from him, he is unable to coordinate all of you?

**Ms. Margaret Lorna Kariuki:** I would not say so.

**The Vice Chairperson** (Sen. Murkomen): That he is so busy seeing the members of the public that he has no time for the County Executive Committee members?

**Ms. Margaret Lorna Kariuki:** Through the Chair, there is a lot of progress in Embu County. This can be confirmed by relevant bodies like the Transition Authority.

**The Vice Chairperson** (Sen. Murkomen): The reason I am asking you this, Lorna, is because you are becoming so stiff. Most of your CEC members were stiff. None of you wanted to demonstrate that you work together with the Governor and that the decisions that you make are collective. Everybody is just trying to say: "It might be me and below, but the Governor does not know" Why is this? I would never imagine that there is a county, let alone the President--- If the President came here and said: "I do not know the CEC in that corner. I heard that there is a drought somewhere." Would you be comfortable if this happened?

**Ms. Margaret Lorna Kariuki:** Through the Chair, should you cross a line in Embu County, it is not very easy. It is not easy to cross boundaries. There is a lot of what I would say legal operatives that make work a bit---

**The Vice Chairperson** (Sen. Murkomen): Last question because we are not getting anything useful that will assist in making useful decisions about certain statements that have already been said about the Governor before, either in the maize situation or the stadium situation, do you want to tell me that is how it operates; that even if we were to stop this impeachment stories and you were to go back to the county; it would continue running that way? Do you think there are things that in your opinion, should be possible that the Governor is not culpable, and you were to go back to office as a team, and with the County Assembly, do you think there are things you should do differently in that county?

**Ms. Margaret Lorna Kariuki:** Through the Chair, a lot of them need to work together; especially team building. Besides that, we also need to thrash out issues and see how to work without putting a lot of what I would say are bottlenecks along our operations.

**The Chairperson** (Sen. (Dr.) Khalwale): You have made your point.

**The Vice Chairperson** (Sen. Murkomen): The last question. Lorna, you talked about ghost workers in the county assembly; are there also ghost workers in the other departments of the County Executive or it is only confined to the county assembly? Is it a phenomenon that is in all departments?

**Ms. Margaret Lorna Kariuki:** It is not like that in the Executive. We have been doing head counts to weed out any ghost workers. That head count has been done by the Transition Authority.

**The Vice Chairperson** (Sen. Murkomen): In Elegyo Market County, for example, there was no ghost worker that was found in the County Assembly. But many ghost workers were found in the medical sector and other sectors when the Governor and the team did a head count. So, it might be only Embu County which does not have ghost workers in the Executive side.

**Ms. Margaret Lorna Kariuki:** I have actually said “not really”. In Embu County, the former Local Authority only had 327 staff. The national Government, may be, needs to look at the payroll more keenly. I am not saying there is not. I am just saying that this case was unique.

**Sen. Sijeny:** Sen. Murkomen actually addressed the line I need to ask, so I need not to repeat.

**The Chairperson** (Sen. (Dr.) Khalwale): Sen. Wamatangi and then Sen. Orenge.

**Sen. Wamatangi:** I want to clear something. Margaret, would you say that the Governor of Embu County is in charge of the affairs of Embu County?

**Ms. Margaret Lorna Kariuki:** Yes, he is in charge.

**Sen. Wamatangi:** You said in response to a question that just the way you would buy stationery or other materials in the office, sometimes you would procure some services including to the tune of Kshs3.5 million without his knowledge. How would that happen and he does not know and you claim that he would be in charge? How many of such transactions have carried out that he is not aware of? That is what you said specifically in relation to the transaction that concerns the seeds and the stadium.

**Ms. Margaret Lorna Kariuki:** There is a list of many tenders that have been awarded between August and September of this year. If you look at the flow, the Government is a big consumer and virtually, quite often, you will find that consumption being done---- I think you can look at it briefly. You will be able to see the frequency that I cannot every other time be running to inform the Governor that we are buying this or that. Again, when you look at the Public Procurement and Disposal Act, it has really locked out and left the business to accounting officers and the procurement department.

**Sen. Wamatangi:** I rest my case.

**Sen. Orengo:** I am just coming back to the question that you have been asked by Sen. Wamatangi. Do you believe that the Governor is the Chief Executive of Embu County?

**Ms. Margaret Lorna Kariuki:** He is.

**Sen. Orengo:** And you work under him?

**Ms. Margaret Lorna Kariuki:** Yes.

**Sen. Orengo:** You truly believe that you work under him?

**Ms. Margaret Lorna Kariuki:** Yes, I do.

**Sen. Orengo:** And in the performance of your duties you do not see the necessity of regularly informing him of what is going on within the county?

**Ms. Margaret Lorna Kariuki:** I have been informing him. I said “occasionally” and I have given the reasons.

**Sen. Orengo:** I am saying; “regularly”. I am worried about that word “occasionally”. Do you inform him regularly of what is going on?

**Ms. Margaret Lorna Kariuki:** I want us to refer to a document which is here on the number of tenders that have been given within a short time. We can maybe ventilate and see how often---

**The Chairperson** (Sen. (Dr.) Khalwale): Do not refer to those tenders. You can tell us: “On the tenders, I used to tell him or I did not tell him” Then we shall make our own decision.

**Ms. Margaret Lorna Kariuki:** If I am not reporting to the Executive Committee the user department is what is critical in this matter.

**Sen. Orengo:** My question is: Do you regularly keep the Governor abreast of what is happening under him, knowing your unique position? If you look at the powers and functions of the County Secretary do you inform him regularly of what is going on or you find that not necessary, it is when the occasion demands, but not as part of your functional operation? Both the County Executive Committee and the Governor need regular reports from you because you are the head of the County Public Service.

**Ms. Margaret Lorna Kariuki:** May I give a very simple scenario that may shed more light.

**Sen. Orengo:** I am coming to the conclusion, because you are not answering my question; that you do not regularly inform the Governor of the goings on in Embu County. Partly that is why we are here today, that if he had a good County Secretary, the Governor would not be before us today. Things are happening, wrong seeds are being procured, the stadium is a mess, vehicles are bought and there is no evidence of ownership. All this is happening around him because the officer who should be keeping him abreast of what is going on thinks that is not necessary.

**Ms. Margaret Lorna Kariuki:** I do not concur with that especially when you mention the issue of procurement of vehicles because issues to do with vehicles is a contract that is already pre-done by the national Government.

**The Chairperson** (Sen. (Dr.) Khalwale): Margaret, we are really helping you to get the best. I see an attitude where you are saying: "Let me go to that Committee and not say anything that will give the impression that the Governor could have been anywhere near the procurement process." So you have kept on saying: "He is not involved." You have forgotten that your first statement after identifying yourself was that: "My constitutional responsibilities include taking of minutes of the CEC meetings and communicating cabinet decisions to any persons, authorities, departments, as directed by the Committee." The head of that committee is the Governor. As you continue divorcing him from everything and here you are saying you are the one who communicates, which decisions do you communicate to the other authorities?

**Ms. Margaret Lorna Kariuki:** Chair, I joined this government in August and minutes on matters cars had already been predetermined. There is a list. The minutes are there for record purposes. This means they make decisions collectively. If minutes are presented before this Committee showing collective decisions--- The decisions are collectively made. That is evidenced by the minutes which have been presented here.

**Sen. Orengo:** And, therefore, your defence is that the Governor, in the issue of seeds, he had no role to play, but you had a role to play.

**Ms. Margaret Lorna Kariuki:** In terms of procurement, he has no role. But in terms of giving out and commissioning, he has a role.

**The Vice Chairperson** (Sen. Murkomen): So he is a ceremonial Governor.

**Sen. Orengo:** He is a ceremonial Governor.

**Ms. Margaret Lorna Kariuki:** Surely, it would be unfair to say so. You cannot procure seeds with the Executive. That is the law.

Vice Chair, through the Chair, you have been a chair of the Committee on Devolved---

**Sen. Orengo:** Lorna, one last question. We have formed the impression of probably what you want to tell us today. This is to the extent that this Committee can deduce whether

you are a reliable witness or not. When you decided to go on leave, what did you do in order to proceed for that leave?

**Ms. Margaret Lorna Kariuki:** Not him alone, including the Minister for Agriculture.

**Sen. Orengo:** I am talking about you. What did you do?

**Ms. Margaret Lorna Kariuki:** He had been invited by County---

**Sen. Orengo:** Please, we are talking about you. When you went on leave, what did you do?

**Ms. Margaret Lorna Kariuki:** What about that?

**Sen. Orengo:** Let me put it directly. Did you write a letter like everybody does who is in a senior position that: "I am proceeding on leave for so many days and in my absence so and so will be acting"

**Ms. Margaret Lorna Kariuki:** The Human Resource Manager was aware.

**Sen. Orengo:** Did you write a letter? You are the head of the County Public Service. You have to answer this question candidly because, again, you are trying to demonstrate to us that in Embu County anything goes. We have been in the public service, we know how things work. For an officer at your level, it is not just a question of filling those forms. Did you write a letter to the relevant officers and copy it to the Executive Committee telling them that you were proceeding on leave and in your absence stating who was going to act in your place?

**Ms. Margaret Lorna Kariuki:** Somebody was given that position in an acting capacity.

**Sen. Orengo:** I am talking about you.

**Ms. Margaret Lorna Kariuki:** I went to court.

**Sen. Orengo:** Okay. Mr. Chairman, Sir, I am done.

**The Chairperson** (Sen. (Dr.) Khalwale): Thank you. Counsel for the Governor, it is time for you to go through re-examination.

**Mr. Wilfred Nyamu:** Mr. Chairman, I thought there would be a few minutes break so that I can relieve myself---

**The Chairperson** (Sen. (Dr.) Khalwale): You finish then we shall make that decision. Your request is not granted.

Counsel, I have to be careful. Did you say you wanted a health break may be a call of nature?

**Mr. Wilfred Nyamu:** The Committee is being insensitive to me. If I would request for time to relieve myself.

**The Chairperson** (Sen. (Dr.) Khalwale): Would you like Peter to take over and continue the way they did? He takes one side and you take the other.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, we have a way we are operating. That is why you realize that when she is talking I am also trying to do my notes.

**The Vice Chairperson** (Sen. Murkomen): Counsel you need to appreciate that we told the Deputy Governor we would start at 1.00 p.m. We have not even gone to closing submissions.

**Mr. Wilfred Nyamu:** I am okay, let us proceed.

**The Vice Chairperson** (Sen. Murkomen): Yes; you are saying that you need a three-minute break?

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, we are before the cameras and I would not want to argue with this Committee.

**The Vice Chairperson** (Sen. Murkomen): No, no, no---

**Mr. Wilfred Nyamu:** I would not want to; so, I will just proceed.

**The Vice Chairperson** (Sen. Murkomen): No, if it is three minutes, we will grant you. I mean, if it is for all of us to maybe stretch for three minutes---

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, let us just proceed. Let me address the Committee.

Mr. Chairman, Sir, during cross examination, I thought I had indicated to you that, at some point, the document that we had been referring to yesterday – a circular on human resource that is operational in all counties – we got it and I thought that at some point during cross examination as the Head of Public Service, she would be asked questions touching on the allegations in the County Public Service, but that did not come out. I thought at that point, I would introduce that document. So, I am seeking directions as to whether we just put it in and then, probably, we submit on it and share it. I had indicated to my learned friends when we resumed after lunch that we had that document; I indicated so to the Chairman and the Clerk, and the Clerk confirmed that, that is a document that we had promised to get as at yesterday.

We also have a copy of the logbook and official search in respect of the logbook, which is certified; the logbook that has been part of the issues in these proceedings. With your permission, we would submit---

**The Chairperson** (Sen. (Dr) Khalwale): The document that shows the human resource arrangement applies to all counties?

**Mr. Wilfred Nyamu:** Yes, it is a public document that applies to all counties.

**The Chairperson** (Sen. (Dr) Khalwale): So, that logbook plus that one, forward it to us. There is nothing wrong; we will look at it when we are writing our report for information.

**Mr. George Ng'ang'a Mbugua:** Mr. Chairman, Sir, could we have sight of these documents because they are speaking to them now from where they stand. You are taking his word as true as to whether they are---

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, I will not refer the witness to that document because she has not been---

**The Chairperson** (Sen. (Dr) Khalwale): It has not come up.

**Mr. Wilfred Nyamu:** Yes, it has not come up, but I thought---

**The Chairperson** (Sen. (Dr) Khalwale): You bring the documents and then I will pass them over to counsel; and if he has a comment, he will---

**Mr. Wilfred Nyamu:** Yes. Actually, if they are allowed a minute to ask a question on it, that is fair.

**The Chairperson** (Sen. (Dr) Khalwale): No, no, no, no!

**Mr. Charles Njenga:** If you wanted to introduce these documents, it would have been in the beginning and we would have cross examined it.

**The Chairperson** (Sen. (Dr) Khalwale): Okay, counsel, I am looking at the documents. You continue; you will not refer to it because it will be of serious disadvantage to the other party.

**Mr. Wilfred Nyamu:** I will not refer to it.

**The Chairperson** (Sen. (Dr) Khalwale): But whether we shall make use of it, I am going to make a ruling now; we are looking at it. Continue with the other business.

**Mr. Wilfred Nyamu:** Yes. So, Margaret, I wish to ask you certain questions relating to your work. Could you state whether or not you are a personal secretary to the Governor?

**Mrs. Margaret Lorna Kariuki:** I am not.

**Mr. Wilfred Nyamu:** Is your position statutory?

**Mrs. Margaret Lorna Kariuki:** My position is statutory.

**Mr. Wilfred Nyamu:** And you said that your position is provided for under Section 44 of the Act?

**Mrs. Margaret Lorna Kariuki:** Yes.

**Mr. Wilfred Nyamu:** Would you confirm that you were even competitively sourced?

**Mrs. Margaret Lorna Kariuki:** Yes.

**Mr. Wilfred Nyamu:** Would you also confirm that in respect of departments where County Chief Officers had not been recruited, it is your office that is an accounting office?

**Mrs. Margaret Lorna Kariuki:** That is true.

**Mr. Wilfred Nyamu:** Would you confirm, therefore, that as an accounting officer in those particular departments, you are there as an accounting officer in terms of Section 148 of the Public Finance Management Act?

**Mrs. Margaret Lorna Kariuki:** Yes.

**Mr. Wilfred Nyamu:** And for purposes of procurement, as an accounting officer, you are the one that would deal but not the Governor?

**Mrs. Margaret Lorna Kariuki:** Yes.

**Mr. Wilfred Nyamu:** And that for that purpose, you are just like all the other accounting officers in other departments, and there is nothing special in terms of your office?

**Mrs. Margaret Lorna Kariuki:** Yes.

**Mr. Wilfred Nyamu:** Do you enjoy autonomy as an accounting officer?

**Mrs. Margaret Lorna Kariuki:** Yes.

**Mr. Wilfred Nyamu:** Now, a question was asked as to how you deal with the CECs; do you mingle with CEC Members in your daily operations or do you meet them at policy level, where you are Secretary?

**Mrs. Margaret Lorna Kariuki:** We do meet at policy level, but that does not rule out consultations outside the Committee.

**Mr. Wilfred Nyamu:** Now---

**Mrs. Margaret Lorna Kariuki:** And as you can see as evidenced by the purchase of maize, through the Chair, the document which initiated the process of buying the seeds was forwarded to me by a CEC Member.

**Mr. Wilfred Nyamu:** Kindly refer to that document, which is purportedly not signed. That is on page 311, hon. Members.

**Mrs. Margaret Lorna Kariuki:** Yes, I am here.

**Mr. Wilfred Nyamu:** That particular letter was actually acknowledged by Mr. Ngathu, who was a witness here. In terms of that particular letter, were there instructions to you from a certain authority?

**Mrs. Margaret Lorna Kariuki:** Yes, there is an instruction from CEC Member for Agriculture.

**Mr. Wilfred Nyamu:** In what form?

**Mrs. Margaret Lorna Kariuki:** Footnotes.

**Mr. Wilfred Nyamu:** In handwritten footnotes?

**Mrs. Margaret Lorna Kariuki:** Yes.

**Mr. Wilfred Nyamu:** Are the instructions signed?

**Mrs. Margaret Lorna Kariuki:** Yes, they are signed.

**Mr. Wilfred Nyamu:** So, according to you, when the instructions are signed and the letter has come from the CEC Member for the department concerned, does that make that letter authentic?

**Mrs. Margaret Lorna Kariuki:** It does, and that is why we followed the instructions; and despite the fact that it was a footnote, we obeyed.

**Mr. Wilfred Nyamu:** Now, my other question refers to a certain issue that was raised in relation to the letter that you wrote to the Controller of Budget and copied to the Salaries and Remuneration Commission (SRC); that is the letter dated--- Just check the letter; I think you---

**Mrs. Margaret Lorna Kariuki:** Yes, I do. It is in page 263.

**Mr. Wilfred Nyamu:** Yes, it is on page 263; the letter dated 30<sup>th</sup>. There is a letter that you had written and it was responded to on the same day, that is on the 30<sup>th</sup> of December, 2013. Is that right?

**Mrs. Margaret Lorna Kariuki:** Yes.

**Mr. Wilfred Nyamu:** Now, in relation to the operations at the County Assembly level, are there documents--- Is there a way you deal with their finances?

**Mrs. Margaret Lorna Kariuki:** I believe so.

**Mr. Wilfred Nyamu:** Kindly look at page 78 of the supplementary bundle. On that page, there is a letter headed "County Assembly of Embu;" is that right?

**Mrs. Margaret Lorna Kariuki:** Yes, counsel.

**Mr. Wilfred Nyamu:** Who is the letter addressed to?

**Mrs. Margaret Lorna Kariuki:** Dear *Waziri*.

**Mr. Wilfred Nyamu:** No; it is addressed to whom?

**Mrs. Margaret Lorna Kariuki:** County Executive Committee Member for Finance, Planning and Administration.

**Mr. Wilfred Nyamu:** What is the topic or reference here?

**Mrs. Margaret Lorna Kariuki:** Requisition of funds.

**Mr. Wilfred Nyamu:** What funds were being requisitioned?

**Mrs. Margaret Lorna Kariuki:** The money is being requisitioned by the County Assembly for a retreat in Mombasa to discuss the Finance Bill, Alcoholic Drinks Control Bill, 2013; and the County Integrated Development Plan.

**Mr. Wilfred Nyamu:** Now, why are they--- And I can see that--- Are there instructions to you on that particular letter?

**Mrs. Margaret Lorna Kariuki:** There are no instructions to me; there is not. I cannot see any instructions to the County Secretary (CS).

**Mr. Wilfred Nyamu:** Did your office deal with that letter in any way as the CS?

**Mrs. Margaret Lorna Kariuki:** No. I think the contents of the letter speak for themselves.

**Mr. Wilfred Nyamu:** My question then would be this; the CEC Finance is under the Executive, is that right?

**Mrs. Margaret Lorna Kariuki:** Yes.

**Mr. Wilfred Nyamu:** So, why are they seeking for funds from the Executive? Do they have their own systems?

**Mrs. Margaret Lorna Kariuki:** Money systems?

**Mr. Wilfred Nyamu:** Yes.

**Mrs. Margaret Lorna Kariuki:** As far as I know, if nothing has changed since I went on leave, they handle their own bank account; that one I am aware of. But I know that at some point, the Treasury gave some directions about this matter which actually brought the Assembly back to the Executive.

**Mr. Wilfred Nyamu:** What were the directions in terms of funds?

**Mrs. Margaret Lorna Kariuki:** If I can clearly remember, I think the instructions were such that they needed to open an account with Central Bank of Kenya (CBK) so that they could get their allocations through CBK.

**Mr. Wilfred Nyamu:** Now as it is, as at the time of writing this letter – this letter is dated January 16<sup>th</sup> – is that right?

**Mrs. Margaret Lorna Kariuki:** Yes.

**Mr. Wilfred Nyamu:** As at this time, it was the Executive that was keeping their funds? Is that the position?

**Mrs. Margaret Lorna Kariuki:** The position is that the Executive was keeping their funds, and I believe that is why they had to address this letter to the CEC because there is no direct link between the Assembly and the Finance Officer without the CEC Finance.

**Mr. Wilfred Nyamu:** So, as a CS, do you have a system of justifying expenditure, including expenditure in respect of the County Assembly during this period when you were handling their funds?

**Mrs. Margaret Lorna Kariuki:** Yes, of course.

**Mr. Wilfred Nyamu:** Does that include salaries?

**Mrs. Margaret Lorna Kariuki:** Yes, it does.

**Mr. Wilfred Nyamu:** So, now, I will take you to your letter now dated 30<sup>th</sup> of December, where you raised concern in respect of payments to imaginary or ghost workers. Was that concern in relation to funds that the Executive was handling?

**Mrs. Margaret Lorna Kariuki:** Yes.

**Mr. Wilfred Nyamu:** Was this part of the Executive duty to ensure that the monies that they are forwarding to the County Assembly were genuinely for the purposes intended?

**Mrs. Margaret Lorna Kariuki:** Yes, of course.

**Mr. Wilfred Nyamu:** So, was it part of your duty as Secretary of the Executive Committee to ensure that the funds are going for the intended purpose?

**Mrs. Margaret Lorna Kariuki:** Yes, counsel, through the Chair.

**Mr. Wilfred Nyamu:** Was it out of malice, then, that you wrote that letter?

**Mrs. Margaret Lorna Kariuki:** No; it was not out of malice. It is also informed by an audit report that had come to our office that included the audit of the County Assembly of Embu. The Auditor-General liaises with the Office of the CS---

**Sen. Orengo:** On a point of clarification, Mr. Chairman, Sir. You are making the point that it was part of the audit report which shows you as a very conscientious officer. Now there is a matter to deal with the Assembly and you take action, but the audit query raises other questions involving the Executive and we do not have any evidence of what you did. Unless there is something else driving you, I just want to understand; if it is true that you are just doing it in the course of your duty. I would not have raised it if you did not refer to the auditor's report.

**The Chairperson** (Sen. (Dr) Khalwale): CS.

**Mrs. Margaret Lorna Kariuki:** Yes, Mr. Chairman, Sir.

**The Chairperson** (Sen. (Dr) Khalwale): The auditor's report which you are being re-examined on, has not only spoken to what you are saying concerning the County Assembly, but it has also raised several issues about the County Executive.

**Mrs. Margaret Lorna Kariuki:** That is true.

**The Chairperson** (Sen. (Dr) Khalwale): So, the question is; why did you choose to take action against the Assembly and not the Executive?

**Mrs. Margaret Lorna Kariuki:** Then, I was not a CS. But when the Management Letter came, I have several communications to specific officers, including the then Interim County Secretary telling them that they ought to return the money back to the Executive

coffers. Some of them did return the money – and I have receipts and bank transactions for those who refunded, especially sitting allowances – that the auditor-General had commented about.

**The Chairperson** (Sen. (Dr) Khalwale): Then if that is true, why did you not volunteer the same information the way you volunteered the information for the County Assembly, if you wanted to make us believe you?

**Mrs. Margaret Lorna Kariuki:** Yeah; the County Assembly was about---

Maybe I can shed more light, Mr. Chairman, Sir, if I am given an opportunity to---

**Mr. Wilfred Nyamu:** Please, proceed!

**Mrs. Margaret Lorna Kariuki:** Mr. Chairman, Sir, what really amazed me – and it is not really about the County Assembly, because as I have told you, when the Auditor-General's report came to my office, I have several communications to specific officers telling them to return all the non-practicing allowances they had been enjoying. Others---

**The Chairperson** (Sen. (Dr) Khalwale): Order! You are, therefore, speaking to documents which are neither in your statement nor before this Committee. You are, therefore, doing it to great disadvantage to the counsels for the County Assembly. We cannot allow you---

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, these are answers which have been necessitated by questions from your end; otherwise I was ready to proceed.

**The Chairperson** (Sen. (Dr) Khalwale): He was just demonstrating that there must have been a different reason why she chose to take only one side of the coin. So that she did not, we do not want you, through the back door, to allow you to speak to documents we have not seen; and your colleagues from the County Assembly have not seen.

**Mrs. Margaret Lorna Kariuki:** Through the Chair---

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, in my explanation, this particular documents and the matter that we are talking about appertains to her duty as the secretary to the CEC--- These documents and the explanation that she is making in relation to the ghost workers appertains to her duty. It seems like this is a matter that does not---

**The Vice Chairperson** (Sen. Murkomen): What Sen. Orendo was saying in not so many words is that she has evidence that defends the Governor; that the county executive has been taking action against executive members or issues that happened in the department, regarding the auditing report and so forth. It was not brought here. So, it is not really so much that it was to your disadvantage when he raised it. He was just wondering why this evidence was being hidden and it is more relevant to the Governor than--- The county assembly is not on trial.

**The Chairperson** (Sen. (Dr.) Khalwale): I am just being fair to the Special Committee and also your colleagues from the county assembly; that we are giving you undue advantage, which in the first place you do not deserve, because nobody stopped you from making those documents part of your bundle.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, the documents that I am referring to myself are actually part of the documents that I am holding, and they are part of the documents that are here.

**The Chairperson** (Sen. (Dr.) Khalwale): Okay. So, we will allow you to continue referring to those documents, but steer clear of the other documents.

**Mr. Wilfred Nyamu:** It was not me but the witness. Actually, I cannot control them to some extent when they are answering questions from yourselves.

Now, from this particular letter that we have referred to, that is, in page 78, which is in relation to monies that were required for a trip to Mombasa, we were given evidence here, and you would confirm because this is a document that is within the CEC, where you are secretary and custodian of the same. We have been told by a witness, whose evidence was not challenged at all, that is, Rose Muthoni--- I do refer the Committee to that particular witness statements. In her statement, at page 375 – page 2 of the statement – the third last paragraph which starts with “on 17<sup>th</sup> January, 2014, all members travelled to Sai Rock Beach Hotel, Mombasa, where they had been booked for full board, despite having been paid full per diem. I arrived at the hotel at 1.00 a.m. on 18<sup>th</sup> January.”

Now, this particular paragraph relates to that particular letter and page 79 as well. Could you confirm what kind of *per diem* was disbursed to the members of the assembly that were going to Mombasa at that particular time, from your office?

**Ms. Margaret Lorna Kariuki:** Kshs2,000 for 33 MCAs for five days.

**Mr. George Ng’ang’a Mbugua:** Mr. Chairman, Sir, with tremendous respect, I think that the latitude of re-examination is being unduly extended. Did the issue of per diem even arise in my cross-examination? It did not and now, that is exactly the evidence that Counsel is trying to extract, inviting us to go back and cross-examine the witness again.

**The Chairperson** (Sen. (Dr.) Khalwale): In fact, I was going to stop you. Even if you are taking refuge in the fact that Muthoni’s evidence was not challenged, she has not attached to that statement of hers the story about how much each member got as per diem, to cause them to react. So, because it was not canvassed, just steer clear of it, unless you want them to come back.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, it is part of the documents that are here. Probably, to save time I will submit on it.

**Sen. Orengo:** She was not part of the trip. She was not a pay master. These are documents that do not relate to her and the matter did not arise in cross-examination. Mr.

Nyamu, we are just being very careful about not offending your position, but I think that you know what re-examination is.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, we will confine ourselves to other matters and submit on that issue, based on the documents that are there.

**The Chairperson** (Sen. (Dr.) Khalwale): That is okay.

**Sen. Orengo:** Mr. Nyamu, in fact, if you could save time and go and consider your submissions because this is your final witness and there is not going to be any other witness. You need time to prepare those submissions and persuade us. At some point, I was very happy yesterday when your team was dealing with those charges, and for one I started thinking that this matter is not as easy as I think. But now you are taking a lot of your time which you should use in preparation for submissions.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, I cannot, again, just ignore issues that came about during cross-examination simply because we have to do submissions.

**The Vice Chairperson** (Sen. Murkomen): You just go for the ones for cross-examination without submitting to us, because there are some things that are obvious. Once you ask for whatever, you go and finish in the submission. We are not that bad in terms of catching the spirit of what you are dealing with. We will pick it quickly.

**Mr. Wilfred Nyamu:** Very well, Mr. Chairman, Sir. I am well guided. Now, this letter that was written to you – the summons that were referred to – on what day did 3<sup>rd</sup> January fall?

**Ms. Margaret Lorna Kariuki:** 3<sup>rd</sup> January was a Friday.

**Mr. Wilfred Nyamu:** And the letter was delivered in your office at 5.30?

**Ms. Margaret Lorna Kariuki:** Yes. That is the information that I got from the secretary on Monday, at 8.30.

**Mr. Wilfred Nyamu:** So, you confirm that you received the letter at 8.30?

**Ms. Margaret Lorna Kariuki:** Yes.

**Mr. Wilfred Nyamu:** How many letters did you receive, in respect of how many committees?

**Ms. Margaret Lorna Kariuki:** Very many, of course.

**Mr. Wilfred Nyamu:** How many summonses did you receive on that particular day?

**Ms. Margaret Lorna Kariuki:** two summonses; one relating to the procurement of maize seeds and the other one relating to the procurement of works in the Embu Stadium.

**Mr. Wilfred Nyamu:** And you were to appear before those committees on different days or the same day?

**Ms. Margaret Lorna Kariuki:** On the same day; one at 11 and the other one at 2 p.m.

**Mr. Wilfred Nyamu:** What did you require for you to respond to those summonses and attend those committee sessions?

**Ms. Margaret Lorna Kariuki:** Being a coordinator of various departments, I required to communicate the relevant information to specific departments that were involved, so that they could give a report or even forward the documents for presentation before the committees.

**Mr. Wilfred Nyamu:** For example, when you were summoned to appear at 11 O'clock, would you have had sufficient time for that purpose?

**Ms. Margaret Lorna Kariuki:** No.

**Mr. Wilfred Nyamu:** And then prepare to appear again before another committee at 2.30?

**Ms. Margaret Lorna Kariuki:** No.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, how much more time do you need? We are really under pressure of time.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, I do understand, but remember that cross-examination here was in terms of hours. I am only cross-examining.

**The Chairperson** (Sen. (Dr.) Khalwale): How many minutes do you need?

**Mr. Wilfred Nyamu:** Thirty minutes.

**The Chairperson** (Sen. (Dr.) Khalwale): I would like you, with utmost respect, to condense your presentation. Avoid the protracted leading of the witness, so that you get the desired result. We will ask you to do it in 15 minutes.

**Mr. Wilfred Nyamu:** When you wrote letters to these committees and requested for time within which to go and appear before those committees for purposes of preparation, did you get any response to those letters?

**Ms. Margaret Lorna Kariuki:** No.

**Mr. Wilfred Nyamu:** And you were asked about the distance between your office and the county assembly hall. Was anybody sent or any phone call made to tell you that the committee had rejected your plea for extension of time?

**Ms. Margaret Lorna Kariuki:** No.

**Mr. Wilfred Nyamu:** You did not receive any letter?

**Ms. Margaret Lorna Kariuki:** No letter and no phone call. If they had called me I would have presented myself. I thought that a letter was enough. Maybe I am strange to the legislative procedures.

**Mr. Wilfred Nyamu:** You were referred to Section 73 of the Public Procurement and Disposals Act, wherein conditions under which restricted procurement are provided.

**Ms. Margaret Lorna Kariuki:** Yes.

**Mr. Wilfred Nyamu:** I wish to refer you to Section 73 (2) (b) of that particular Act, in relation to your statement. Just read (b).

**Ms. Margaret Lorna Kariuki:** “The time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the goods, works or services to be procured.”

**Mr. Wilfred Nyamu:** What does that entail?

**Ms. Margaret Lorna Kariuki:** It shows that time is of the essence and even the cost.

**Mr. Wilfred Nyamu:** So, restricted tendering is provided where time is of the essence?

**Ms. Margaret Lorna Kariuki:** True.

**Mr. Wilfred Nyamu:** Now, in relation to the refurbishment of the stadium, how much time did you have and what were you looking at in terms of the deadlines?

**Ms. Margaret Lorna Kariuki:** We were celebrating Kenya at 50 and we also had CECAFA sports, that had been negotiated to come to Embu Stadium.

**Mr. Wilfred Nyamu:** When was it that you were commencing this particular contract?

**Ms. Margaret Lorna Kariuki:** Roughly around October. That was when the bids were floated and subsequent processes undertaken in November.

**Mr. Wilfred Nyamu:** Now, did that fit the description of a tender that attract restricted tendering?

**Ms. Margaret Lorna Kariuki:** Yes.

**Mr. George Ng'ang'a Mbugua:** Mr. Chairman, Sir, again, my apologies for that intervention. That Section provides for three grounds which are in conjunction, so that Counsel has a responsibility not to mislead.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, that is subject for a submission.

**Mr. George Ng'ang'a Mbugua:** Let me finish, Counsel. Mr. Chairman, Sir, when I refer to that Section, there are three grounds. Now, what Counsel is doing is picking one ground on the issue of time, not forgetting that the wording of the statute is "a" and "b" and "c". So, the three must be satisfied. So, what Counsel is doing through the witness is just to achieve the ground on the issue of time; that time was of the essence. So, it is just a point of order, that Counsel has a responsibility not to mislead this honourable Committee.

**The Chairperson** (Sen. (Dr.) Khalwale): In fact, the way I am seeing it, if he fails to speak to all three, then he would not have convinced us that there was sufficient merit in going to restrictive tendering. In any case, even if we are talking about the time, what was going to happen if the Governor was going to address the 50 years in a stadium that did not have some of the things that we are trying to put up? All over the country they did not put up new stadiums. So, it is not an essential thing, but we do not want to interfere. You just continue.

**Mr. Wilfred Nyamu:** Did your condition and position justify the conditions set out under Section 73(2)?

**Ms. Margaret Lorna Kariuki:** Yes.

**Mr. Wilfred Nyamu:** In terms of procurement, even deciding as to whether you are going to have a restricted tendering process or not, did this have to involve the Governor?

**Ms. Margaret Lorna Kariuki:** No. It is actually the prerogative of the tender committee. They make that decision on the method of tendering.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, I am seeing like the Committee is now ready to deliberate on other matters. I will stop there. I will submit the rest.

**The Vice Chairperson** (Sen. Murkomen): Counsel, that is not the point. The point is that you are not walking the narrow path of just trying to discount what was raised by us or him. Then there are issues of submissions and so forth. You have had almost five witnesses in a particular direction. You do not need to belabour something. It is like even the picture of the case is in our head. There should be something new---

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, it is okay. Members were going to become uncomfortable if you had gone beyond 20 minutes past. Right now you are at 14

minutes past. So, Members are still listening to you. If you have something to wrap up in six minutes, just go ahead.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, I am used to looking at the bench when I am submitting.

**The Vice Chairperson** (Sen. Murkomen): We have the advantage of the HANSARD.

**Mr. Wilfred Nyamu:** Now, in respect to procurement for seeds, you were the accounting officer at that time in the department of agriculture and you confirm that position. Is it not?

**Ms. Margaret Lorna Kariuki:** There were no chief officers then. They have just been recruited beginning December. By that time, the CEC Finance, appointed me to act or do that work, as the county government was catching up on appointment of the chief officers who were the authorized officers.

**The Chairperson** (Sen. (Dr.) Khalwale): Margaret, do you remember the unsigned letter, purportedly by Ngatho?

**Ms. Margaret Lorna Kariuki:** Yes, I do.

**The Chairperson** (Sen. (Dr.) Khalwale): You remember there was a CEC who forwarded it to you?

**Ms. Margaret Lorna Kariuki:** Yes, Mr. Chairman, Sir.

**The Chairperson** (Sen. (Dr.) Khalwale): So, was that CEC not in charge of agriculture?

**Ms. Margaret Lorna Kariuki:** The County Executive Committee Member is different from a chief officer. A Chief Officer is an equivalent of a PS.

**The Chairperson** (Sen. (Dr.) Khalwale): So, that is what you meant?

**Ms. Margaret Lorna Kariuki:** Yes, Mr. Chairman, Sir.

**The Chairperson** (Sen. (Dr.) Khalwale): Okay, I hear you. It is understood.

**The Vice Chairperson** (Sen. Murkomen): For the benefit of the Chairman, it depended on the CEC, Finance to designate somebody. He would have even designated the CEC.

**Mr. Wilfred Nyamu:** I had actually stated so yesterday. As the accounting officer in that particular ministry, when the maize seed fiasco occurred, did you take any steps?

**Ms. Margaret Lorna Kariuki:** Yes, I did.

**Mr. Wilfred Nyamu:** As an office, together with the department of agriculture?

**Ms. Margaret Lorna Kariuki:** Yes, we did.

**Mr. Wilfred Nyamu:** What steps did you take?

**Ms. Margaret Lorna Kariuki:** We engaged the technical staff on germination viability. We also engaged KEPHIS, which licenses the sale of maize, so that they could actually confirm to us the status of whatever we had been sold to, so that we could forge a way forward by engaging the owner of that consignment, which was MONSANTO.

**Sen. Orengo:** Counsel, I did not want to intervene but the County Assembly is saying there was no proper procurement and I think it is your case that there was procurement, that is what the Governor and the witness were saying. Now you are convinced that it was a fiasco.

**Mr. Wilfred Nyamu:** I am talking about the fiasco in terms of non-germination of seeds. That is what I am talking about.

**Sen. Orengo:** The impugned process is the procurement. That is what it is but when you begin to call it a fiasco and it is going to go on record where other Senators are going to read. There was one witness saying that it was a fiasco and you are also calling it a fiasco. Then how do you defend it?

**Ms. Margaret Lorna Kariuki:** Mr. Chairman, Sir, due process was followed.

**Mr. Wilfred Nyamu:** Was due process followed for this procurement?

**Ms. Margaret Lorna Kariuki:** Yes.

**Mr. Wilfred Nyamu:** Was the Governor involved in any way in procurement and at what point was he involved, at policy level or at procurement level?

**Ms. Margaret Lorna Kariuki:** At policy level.

**Mr. Wilfred Nyamu:** My last question would be this---

**The Chairperson (Sen. (Dr.) Khalwale):** Counsel, you will have the last question. I am a bit uncomfortable that something which annoyed you to the extent of calling it a fiasco, although you could have used a better word - you did all these things to KEPHIS and all that, but never told the Governor. What is it that you do not want us to know?

**Ms. Margaret Lorna Kariuki:** Mr. Chairman, Sir, I would request that you read the letter from KEPHIS which is dated 10<sup>th</sup> January, 2014 when I had already been thrown out of the office. I was thrown out of the office on 7<sup>th</sup> January, 2014.

**Mr. Wilfred Nyamu:** And that letter was in response to a letter from your government over the non-germination of maize.

**Ms. Margaret Lorna Kariuki:** Yes; which was way back in November. They took too long to give us a reply.

**Mr. Wilfred Nyamu:** The letter was written to MOSANTOS?

**Ms. Margaret Lorna Kariuki:** Yes, actually they just gave us a copy of what they had written to MOSANTOS.

**Mr. Wilfred Nyamu:** Now Ukulima has been said to be the supplier. How do you connect Ukulima and MOSANTOS? It came up. That is a question that arose.

**Ms. Margaret Lorna Kariuki:** We complained to KEPHIS because they are the custodian of lot numbers over the seeds in the market.

**Mr. Charles Njenga:** Mr. Chairman, Sir, it did not come in cross-examination. The Counsel is not just being candid. It was in somebody else's.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, can you conclude?

**Mr. Wilfred Nyamu:** Yes, my conclusion would be this; what is the relationship between MOSANTOS and Ukulima?

**Ms. Margaret Lorna Kariuki:** MOSANTOS Kenya Limited is the manufacturer of that maize and the dealer is Ukulima.

**Mr. Wilfred Nyamu:** That is all for this witness.

**Ms. Margaret Lorna Kariuki:** Thank you.

**The Chairperson** (Sen. (Dr.) Khalwale): Thank you. We want to consult briefly before we announce to you how we shall move forward.

Members, it is important that we consult amongst ourselves. It is a small tea break of around 15 minutes.

*(The Committee adjourned temporarily at 7.22 p.m.)*

*(The Committee resumed at 7.57 p.m.)*

**The Chairperson** (Sen. (Dr.) Khalwale): Order, Members. Welcome everybody. We are making very good progress. Where we have reached, we have now heard the last witness of the Governor. I want to walk you through to where we are going so that we make a decision. I have consulted both parties; for the Governor, the County Assembly and also

concluded a discussion with the parties for the Deputy Governor and the position is as follows: From now we want to start submissions. The parties want around 30 minutes apart. That is one hour. After that, we will invite the County Assembly, after the Clerk has read the charges against the Deputy Governor of Embu, we will invite the counsel for the County Assembly again to prosecute the case of the Deputy Governor.

Time is not clear. Before we go there, Mr. Kibe will have to make opening remarks. He has told me that for opening remarks, he will need one hour. Then after the prosecution of the charges by the counsels for the County Assembly in respect of the Deputy Governor of Embu, Mr. Kibe will come and do his bit for two and a half hours. The options are such that we should make a collective decision because we slept very late last night, at 2.00 a.m.

I want to weigh the following scenarios. If it is possible, we persuade Mr. Kibe to allow the parties for Governor and County Assembly to go and make written presentations which they will give us tomorrow so that Mr. Kibe can start his long journey of two and a half hours plus whatever time the County Assembly will do, which will probably be four and a half hours. So, we safely can sleep around 1.30 a.m. or 2.00 a.m. If we do not do that, then I see us sleeping at 3.00 a.m. So, we need to collectively make a decision. We cannot deny Mr. Kibe time. He wants collectively three and a half hours.

**Sen. Orengo:** Let me plead that it is only in circumstances where one or both parties are calling witness that there will be need for an opening address. In fact, had we known what the opening address was going to be in the case of the Governor, we could have saved quite a bit of time because it took so long. So, I am pleading with Mr. Kibe, I know you normally know how to crystallize your issues. Why can you not have an hour each?

**The Vice Chairperson** (Sen. Murkomen): Is it possible that we ask; how long will the County Assembly take to prosecute the case of the Deputy Governor?

**Mr. Charles Njenga:** In view of the fact that we are not calling in witnesses in respect to the Deputy Governor, basically more or less a presentation on the law application and how it connects with the case for the Governor, we shall propose to present the entire case within a maximum of one and a half hours at the most but I think we shall take about just one hour.

**The Chairperson** (Sen. (Dr.) Khalwale): We have decisions to make, we do not want to disadvantage anybody.

**Sen. Orengo:** Mr. Chairman, Sir, having listened to the county assembly and their presentation, I think they can do it in 45 minutes and give Mr. Kibe one hour and if there are issues, because he has no right of reply, if he wants to go a little bit, we can allow.

**Sen. Kittony:** Mr. Chairman, Sir, I concur with Sen. Orengo. You have been very generous. I do believe that both counsels can realize and understand the constitutional requirement that is before us. Surely, your generosity has taken us to this time. I concur

that you are asking a little bit too much from us. I think we also need to consider the constitutional requirement before us.

**Sen. Wamatangi:** Mr. Chairman, Sir, I also wanted to support the view that we persuade the counsels for both parties, that is, the Governor and the County Assembly to give written submission then we proceed straight to the case of the Deputy Governor. The reason I am saying so is because we can make promises now that they are going to take 45 minutes but we already have a two day precedence that has shown that every time we set time, when somebody starts a submission, you cannot stop them midway. So, that one hour will be one and a half and the other one will be three hours, and you cannot tell a counsel that you do not want to hear anymore of the opening statement or submissions. So, the best way is to persuade them because we have heard them.

Let me just make a comment. The proceedings that we are going to rely on, we are going to extract them from the HANSARD even when we are doing our report. It would not do any harm to add written submission because whatever they will be saying, we are still going to have to look at it in the HANSARD. We will not be remembering things about what they said when we are doing our report after tomorrow. So, we can just go straight to reading everything including what they want to submit now.

**The Chairperson** (Sen. (Dr.) Khalwale): I have seen many times even in the High Court--

**Sen. Orenge:** The problem with written submissions, writing submissions is not an easy job. If you tell them now to go sit and start writing and refer the law or give citation, in my practice I have seen that if you want written submissions, you give people sufficient time. In oral submission you can stand up because you know your case and execute it. So, written submissions might take a longer time. If this thing goes on until tomorrow; that we are still not finished with these proceedings, then I do not think we are going to do anything that the Senate is going to agree with.

**The Chairperson** (Sen. (Dr.) Khalwale): Can we hear you, starting with the senior one for Mr. Wambora. Would you like to give written or oral submission?

**Mr. Wilfred Nyamu:** In my opinion, we do not mind doing written submissions but then we need to have some little time for highlighting. We highlight for purposes of HANSARD.

**The Chairperson** (Sen. (Dr.) Khalwale): So, you want to highlight now and then given us a written one tomorrow.

**Mr. Wilfred Nyamu:** The best thing would be that if we go by the line that we go and write our submission, probably we do submissions then we come back here tomorrow morning with written submissions and highlight.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, you know why I am giving these considerations? It is because in spite of what you thought, I have been following you in the last incidence, you had done a lot of research; this is through the questions you were asking. It demonstrates how seriously you are weighing this matter. Therefore, it is my conviction that if it is in writing you will express yourself better. Therefore, the best we can ask you is that you highlight some things now then you will give us the written submission in the morning *twende nayo mahali tunaenda kuandika ripoti*.

**Sen. Sijeny:** How long will it take if they were to submit now?

**Mr. Peter Wanyama:** Mr. Chairman, Sir, first of all, this is a very important event in terms of the fact that it is precedent setting. Secondly, they have a constitutional implication. In Nigeria, a party has gone to court to challenge the constitutionality of the decision of the Senate to impeach. Usually, it is imperative that you record all proceedings so that in so far as we are seeking to do away with oral submissions it is imperative that something goes on the HANSARD to clearly record the parties position so that it becomes very clear to everyone's perspective that that was what was on record because the Clerk's Office is not a court registry where we can access and photocopy records for proving anything. We are concerned with time but in so far as these issues are concerned, there must be some kind of oral submissions because that is really now the crux of the matter.

I have to agree with Sen. Orenge that we have reached a point where we can make these written submissions within 45 minutes or one hour. If you need us to do written submissions which I think may take quite some time because you need one or two days to compile it. It would then be an issue which you have to rule on. For me I emphasize the fact that something must go in the HANSARD for compliance of the Constitution.

**The Chairperson** (Sen. (Dr.) Khalwale): From the County Assembly?

**Mr. Charles Njenga:** We share the sentiments of counsel without referring even to Nigeria; that we can summarize our case in about 40 minutes, it goes to the HANSARD; then tomorrow or the other day, it can be used. Most of these facts and statutes are within your possession. So, we are very confident that you will consider them as you deliberate.

**Sen. Lesuuda:** Mr. Chairman, Sir, I understand very well the importance of what we are doing here right now. Both parties agree that they will take about 40 or 45 minutes and it seems that there will be no cross-examination. So, I think we should just let them do it so that we can conclude earlier and so that we can also listen to them.

**Sen. Mositet:** Mr. Chairman, Sir, I think you should do a ruling on this one so that we do not waste any more time. I think it is clear that both camps are ready for oral submissions.

**Mr. Kibe Mungai:** Mr. Chairman, Sir, there is considerable concern by the Deputy Governor which I had tried to express earlier on whether, in terms of time, we will have

adequate opportunity, given the way things have gone to--- From what the lawyers of the County Assembly are saying, they take the position that they have given evidence and that evidence in my understanding, we want it to be construed to be evidence against the Deputy Governor provided they are able to connect the law to her. Now, when all their evidence was given, we were seated doing nothing---

**The Chairperson** (Sen. (Dr.) Khalwale): Sorry to cut you short. That is what you will do in your opening remarks. I just want you to comment on time.

**The Vice Chairperson** (Sen. Mukomen): Actually, Counsel, you did not get them. They said they needed one hour thirty minutes to prosecute the case. They did not say they will rely on what they did for the Governor. They said that they need one and a half hours for the Deputy Governor.

**Mr. Kibe Mungai:** But it is also important to follow what they have actually said. That as far as they are concerned, the evidence has been given and in the one and a half hours, they will be having a lesser burden. Now, if they have discharged any greater burden, we were not involved in challenging that so called greater burden. The rules under this time table were done by the office of the Clerk. Even in terms of allocation of time, we were allocated considerably lesser time. We are not going to mind.

In my discussions with the Chairman, we have agreed that although we are going to go by this time; four and a half hours, we have agreed I can do the opening, and then our submissions together with the Deputy Governor can be condensed in about two hours. So that now even after cutting down our own time from six hours to half the time, we are told that it is supposed to be an hour and a half. This would not be fair. For us, as far as we are concerned, we should not be here in the first place, so that in our game plan the reason why I need the one hour is that I need to contextualize the mind of the Committee that by the time you are listening to the evidence that is supposed to be given against us, to be able to understand that evidence is being given in respect to the wrong person; that there is no jurisdiction.

I cannot say that I cannot be able to prosecute that within 15 minutes or something like that. In any case I am just asking for three hours. Three hours is half the time that we have been given in your own time table so that I will be asking. How we deal with the three hours should be left to us.

**Sen. Orengo:** I think with respect to the Deputy Governor's case, I think we must have certain rules. We will be looking at the Deputy Governor's case distinctly from the Governor's because there is no joint charge as far as I am concerned and that the record in relation to the Deputy Governor's case is here on this file. If we are able to make sure that what was said in relation to the Governor does not apply to the Deputy Governor; if that record is not part of the bundle that has been presented, then we are on safe ground.

**Sen. Wamatangi:** I want to agree with what Sen. Orengo is saying but still remember that the lawyers for the County Assembly are the ones who are going to be prosecuting the case because we really do not know what they are going to say.

**The Chairperson** (Sen. (Dr.) Khalwale): I have heard you. We shall start with the County Assembly. We have given you 30 minutes to make your closing remarks followed by Wambora to make your submissions again in 30 minutes. We shall do one hour.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, at least we shall need 45 minutes. We are the ones that are exposed.

**The Chairperson** (Sen. (Dr.) Khalwale): Okay; 45 minutes to every party.

**The Vice Chairperson** (Mr. Murkomen): The County Assembly had requested for only 30 minutes and then the other 45 minutes.

**Mr. George Ng'ang'a Mbugua:** Mr. Chairman, Sir we had requested for 40 minutes; an extra five minutes would be okay.

**The Chairperson** (Sen. (Dr.) Khalwale): Okay, can you go ahead?

**The Vice Chairperson** (Mr. Murkomen): You should finish exactly five minutes to the hour.

**Mr. George Ng'ang'a Mbugua:** Thank you so much, Mr. Chairman, Sir. I will try and do 30 minutes and then if there is anything that I will have left my learned friend will do the ten minutes. So, we will try and split the 40 minutes between the two of us. I wish to start.

Now, Mr. Chairman, Sir, with respect to violations one and two in the charges that are facing the Governor, it is the case of the County Assembly that we have demonstrated through evidence that the Governor as the primary accounting officer or has the primary accounting responsibility in matters of procurement in the county. We have been able to demonstrate through evidence that under Section 30 (3) (f) of the Act, that he is accountable for the management and use of county resources within the county. Procurement of goods and service are about use of funds that have been allocated to the county.

The evidence that come out from the CEC Finance is that procurement, once carried by the user department; reports would be made to the County Executive Committee in which the honourable Governor sits and presides as the Chair. It was demonstrated through evidence again that was adduced by the CEC Finance, that once those reports are tabled, there would be discussions around those reports. The nature of the report that would be tabled in the submission of the County Assembly is the manner in which those procurements have been carried out; whether there has been due compliance with the law,

specifically starting with the requirement under the Constitution when it comes to procurement of goods and services. A clear requirement under Article 227 of the Constitution is that when a public entity like the county government contracts for goods and services, it shall do so in accordance with the system that is fair, equitable, transparent, competitive and effective.

Mr. Chairman, Sir, the impugned procurement laws are in relation to how restrictive tendering was carried out with respect to refurbishment of a stadium. Restrictive tendering has the effect of taking away the competitive requirement that is envisaged under Article 227 of the Constitution. To the extent that the Governor presided over a County Executive that deliberated over a procurement that defeated the whole essence of open transparency and competitiveness, he abdicated his responsibility. His accountability responsibility falls under Section 30 (3) (f) of the County Governments Act that assigns the office of the Governor the ultimate responsibility to ensure prudence and accountability in the manner in which funds are utilized in the county government; that he is the chief officer.

It is important to bring into perspective that the way the office of the Governor has been conceived both under the Constitution and under the County Governments Act, is that he is the Chief Executive with enormous executive powers. The moment a procurement method stinks, that is, it does not comply with the Public Procurement and Disposal Act and especially Section 2 that requires transparency, openness and integrity in the manner in which procurement of goods and services have been carried out---. The Governor is not a toothless bulldog, the Governor can bite. It is not enough for the Governor to say that the Procurement Department has a chief officer. Looking at the powers of the Governor, I did not see anywhere and you cannot read anywhere under Section 30 that gives any autonomy to a chief officer and especially autonomy when it comes to matters of accountability. Any attempt to get this Committee down that route would be misleading.

It behooves the Governor to take action. It is by taking action that - it would not amount to interference. What the case of the Governor was-- was to lead you down the path of "I cannot touch that department because it would amount to abuse of office". That is how I took the defence of the Governor to be. The contrary or the converse is what is true. By failing to take action, the Governor is first abdicating his express executive responsibility. By failing to take action given the powers he enjoys, he is contravening the law. He is betraying the trust that has been bestowed upon the office of the Governor; the office of a State officer, a public officer. The Governor sits in a public office. He has been conferred with an office of trust. He has been entrusted with the responsibility to ensure that those funds are accountably used. They are used in the manner that would advance the well being of the residents of that county. Prudence and accountability in the manner in which those funds are used, in our humble submission, is the core objective why there is an office of the Governor.

Mr. Chairman, Sir, it is our humble submission that to the extent that there was contravention with the provisions of Section 73 of the Public Procurement and Disposal

Act---. If I read that contravention in line with the grounds upon which this Committee can consider as a basis of removal of the Governor is if there is a violation of the Constitution or any other law. It is the case of the County Government that the violation of the Public Procurement and Disposal Act amounts to a violation of the law. It is gross.

Mr. Chairman, Sir, it is gross because while these reports are made as was confirmed by the CEC Finance, no action was taken by the Governor. Perhaps it would have sufficed to show that some measures to mitigate were taken; some pro-active measures to reprimand the concerned State officer was taken. The fact that, that was not done makes that act of omission gross. If there was proof that he sanctioned the concerned department, then we would be saying that the Governor took measures to mitigate, which he did not do.

On the contrary, what happened is that evidence was tabled where an affidavit was sworn by the Governor clearly concluding that the investigations facing the County Secretary who reports to him were premature, ill motivated and without foundation, yet the Ethics and Anti Corruption Commission (EACC) was undertaking investigations on that office. Is that not complicity? Is that not an act of abuse of office? There cannot be any better description of what abuse of office would amount to than when a Governor decides to take sides and seeks to exonerate an officer who answers to him on matters that that particular officer is facing investigations. He must take responsibility. If in the fullness of time as you deliberate, it is the case of the County Assembly that the very acts, because this is an act--. This is not an accusation by and association by inference. An affidavit sworn on oath is not an accusation on inference or implication. It is a direct accusation where he sends to the arena of supporting an officer who is the subject of investigations. What a Governor who appreciates his role would do is to allow investigations to take course and if that officer is exonerated, then that officer would resume office.

Mr. Chairman, Sir, you heard from the County Secretary that she proceeded on leave. Evidence was tabled by the Governor that he wrote a letter and asked her to step aside. It is when that question was put again and again that the witness beat a hasty retreat and said; "yes I got a letter to step aside". But her initial answer was "I proceeded on leave". Now, proceeding on leave does not mean that you have stepped aside. You are still the substantive holder of that office only that you proceeded on leave. What we have is now a letter that has been adduced before this Committee by the Governor seeking to show that the Governor complied with the resolution of the County Assembly when in real sense that was meant to mislead. The truth came from the witness that she proceeded on leave. That is the sort of Governor who is now before you and wants to show this Committee that he should continue holding office.

Mr. Chairman, Sir, under Article 181 (c), abuse of office or gross misconduct - My reading is that there is no usage of the word gross abuse of abuse. If we are able to demonstrate to you that the actions of the Governor by seeking to exonerate an officer who was under investigation amounts to abuse of office, if you are able to find that from the evidence, then that satisfies one of the grounds upon which you can recommend to the Senate that the Governor is unfit to hold office and he should be removed from office.

Mr. Chairman, Sir, on the issue of responsibility, allow me to use one example. Yesterday's *Nation* newspaper reported a case where the Director of Public Prosecutions has already sanctioned prosecution against the Governor of Central Bank for failing to comply with legal advice to appeal against the decision of the Public Procurement and Review Board with respect to a tender. Governor Njuguna Ndung'u does not sit in the Procurement Committee.

**The Chairperson** (Sen. (Dr.) Khalwale): Order! I would like you to be careful there. You might render that particular paragraph in your submission worthless if you hinge it on reports in the *Nation* newspaper. I would rather you probably said that it came to the public domain because Parliament does not admit things from the media.

**Mr. George Ng'ang'a Mbugua:** Well guided. It came to the public domain that the charges that might be facing the Governor are of abuse of office by failing to comply---

**Sen. Orengo:** Mr. Chairman, Sir, the example he is using is based on an account which we cannot verify and he is trying to use it against the Governor. I think that is not right. Submissions must be based on the material before the Committee.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, relax! You seem to be in a hurry. We have to do this thing well. You see, if the matter you are referring to had been heard by a court of law and determined, then you would use it. But right now, we do not know what will happen. Maybe he will be arrested and then he will win the case after appearing before the court.

**Mr. George Ng'ang'a Mbugua:** The point I am making, Mr. Chairman, is that the fact that procurement matters are considered by a so-called independent tender committee does not exonerate the Governor nor does it take away the Executive responsibility to ensure that procurement of goods and services within the county complies with law. The fact that he does not sit in that tender committee cannot be taken as a justification for procurement laws and regulations to be breached, merely, because he does not sit. We are submitting, as a County Assembly that he must take Executive responsibility.

I have tackled the issue of the County Secretary but allow me to tackle this because it came out very clearly. When he took the action that he took because the letter turned on the affidavit that he swore, in the case of the County Assembly, we are saying that this was a case of complicity. The Governor cannot be allowed to pass it off as if he is beyond reproach. He is not like Caesar's wife. When you swear an affidavit to exonerate someone, then that means – it is our humble submission is that – he abused his Executive authority.

As a matter of fact, he attempted to subvert justice. He attempted to obstruct justice in the investigations that were being carried out by the Ethics and Anti-Corruption Commission (EACC). There was no way of knowing how the investigations would go. They should have allowed that statutory body to investigate and if it unearthed evidence of culpability against the officer that was being investigated, then action would be taken. However, the

Governor obstructed the process and tried to exonerate the officer. He must take responsibility. That amounts to abuse of office.

**Mr. Wilfred Nyamu:** Objection, your honour.

**The Chairperson** (Sen. (Dr.) Khalwale): I would like the lawyers to help me here. Are objections allowed during submissions?

*(Consultations)*

I am advised that we hear what your objection is so that we see if what you are saying is objectionable.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, two hours ago, we were told that Standing Orders of the Senate require that matters that are *sub judice* are not supposed to be referred. As it is, the affidavit that my learned friend is referring to, with respect to the Governor is in respect to a matter that is before court. It is in response to pleadings that are before court in Judicial Review Case No.17 of 2014 at the Nairobi Law Courts.

**The Chairperson** (Sen. (Dr.) Khalwale): Your objection is overruled due to the fact that we are listening to him. He is not going into the merits or demerits of that matter which is before court. You may proceed.

**Mr. George Ng'ang'a Mbugua:** Mr. Chairman, Sir, for purposes of record, the Governor did not deny the averments in that affidavit.

In the Governor's defence, what cut across was; it was not me, it was not me. A person bestowed with trust to lead a county is supposed to demonstrate leadership. That is not negotiable under Article 30 of the Constitution; under Leadership and Integrity. Section 30(3) of the County Governments Act is very clear; that he is supposed to demonstrate leadership in the county governance.

(3) In performing the functions under subsection (2), the governor shall—

- (a) provide leadership in the county's governance and development;
- (b) provide leadership to the county executive committee and administration based on the county policies and plans;
- (c) promote democracy, good governance, unity and cohesion within the county;
- (d) promote peace and order within the county;
- (e) promote the competitiveness of the county;
- (f) be accountable for the management and use of the county resources; and

(g) promote and facilitate citizen participation in the development of policies and plans, and delivery of services in the county.

This is on public officers. Under the Constitution, the Governor is a Public Officer. We are saying that there is a constitutional requirement for him to comply. His actions, indeed, amount to a breach of those provisions.

Mr. Chairman, we urge you to find, as you make your recommendations to the Senate; that the allegations facing the Governor with respect to those two counts; county assembly charge I and II in the charges have been substantiated. Through the evidence that came from the Governor himself – the HANSARD will confirm and I will quote it verbatim – when I was cross examining the Governor, he said; He is updated on matters of procurement and not just matters of procurement but he is updated by the County Executive Committee on the goings-on in the county. He cannot, therefore, feign ignorance. He cannot be allowed, by the Committee to say; it was not me. If it was not him, who was it?

Violation III and IV, on the appointments and creation of offices, it came out through evidence that the offices that were sought to be filled through the advert that was run by the County Public Service Board, the Governor admitted in cross examination that he was consulted by the Public Service Board. He went on to justify why the approval was not sought through the County Assembly and said that the offices had been provided by legislation. That is in his defence.

You will have an opportunity, as you retire with hon. Members, to peruse Sections 50 to 55 and see the offices that have been provided for. You will establish that not all the offices that were sought to be filled are provided by legislation. When he presided over a recruitment of offices that he knew or had reasons to believe that approval of the County Assembly had not been given, then he allowed the law to be breached. The law was breached and to that extent, that amounts to a ground for removal; especially when he goes on to justify that the offices were created by legislation. They were not.

He said and evidence was not led. “These were offices that were created by the TA.” Nothing would have been easier but for the Governor to show us that those offices were created by the TA. The officer from the TA gave evidence that there were interim officers who mid-wifed the transition to county government. They did not create offices. They did not create offices. Officers were seconded to those counties to midwife. They were to leave the scene so that the county government creates offices and fills then in line with the law. So, it cannot be a correct statement that the offices were created by the TA. They were not.

We are submitting that Section 61(2) of the County Governments Act was breached by the Governor by allowing creation and filling of offices without following the law. Another point that came out was lack of financial independence due to lack of an

Accounting Officer who was supposed to be designated by the County Executive Committee that the Governor chairs.

The County Public Service Board is saying that it is frustrated in executing its mandate because an Accounting Officer has not been designated. In the reporting process, the accountability line we have demonstrated, these are matters that a Governor who is in charge, control, alive and aware of his Executive responsibilities ought to have taken intervention. He did not. He violated the law. That amounts to a ground for removal.

The other point, as I close my submission is that the witnesses that were brought by the Governor, one observation that every observer – including members of the public – picked out was the deliberate attempt to shift blame to the so called Chief Officers.

We have demonstrated that in the Executive structure, they have a reporting system that ultimately boils down to the Office of the Governor. That was deliberate. This Committee cannot allow the Governor to pass the buck. By doing so, you will be sending the wrong message; that when Governors are asked to account, they only need to pass the buck. Mr. Chairman, the ultimate responsibility to ensure that systems work, in the county government, must lie with the Office of the Governor.

Mr. Chairman, Sir, just allow me to make a comment on the whole essence of impeachment.

**The Chairperson** (Sen. (Dr.) Khalwale): You have already done 30 minutes. I am not cutting you but you should know that you have started eating into the time of your colleague.

**Mr. George Ng'ang'a Mbugua:** Mr. Chairman, Sir, you will notice that quite deliberately, there are some witnesses that we did not cross examine. The process in which the Motion was tabled before the County Assembly; the process leading to the tabling of the discussions, the voting, the resolutions of the County Assembly has not been impugned in the defence filed by the Governor. So, that is not an issue for determination. So, matters that you will find in that statement, about theatrics that may have surrounded the tabling and the discussions; the manner in which that Motion was tabled and even the resolution that was ultimately forwarded to the Speaker has not been made an issue for determination before this Committee.

I must also proceed to point out that for the Speaker of the Senate to proceed in constituting this Committee, he must have been satisfied that the processes that have been set out in the County Governments Act leading to the resolutions of the County Assembly were duly followed. That is the point I am making. So, the process leading to the submission of that resolution and the supporting documents to the Speaker of the Senate; is a process that has not been contested in the defence filed by the Governor.

As I was reading various decisions on impeachment; the essence of impeachment is to ensure that state officers and the holders of those offices execute their mandate with due

compliance to the Constitution and the law. The execution of the powers or responsibilities of those various offices is about public trust bestowed upon a person who holds a high office like the Governor. By being subjected to a process like the one he has been subjected to before the Senate; the Senate will not be seeking to victimize anybody. The Senate will be doing an inquiry to establish whether the Governor has discharged his mandate in line with the Constitution as envisaged under the County Governments Act and all the other legislation that he is supposed to comply with.

The objectives of the Constitution; that we passed by passing the new Constitution have been realized. If the Governor then fails to act in line with those laws, then he will be making it impossible for the residents of Embu County to realise the benefits of devolution.

The inquiry you are conducting is what I would call; blazing the trail because it is the first time that we are having an impeachment process facing a Governor. This is also a very important moment for standards to be set. These offices were deliberately created by the framers of the Constitution and as voted by Kenyans to create a devolved system of governance so that services are brought closer to the people, development can be brought closer to the people and there can be prudent, transparent and accountable management of public funds. The evidence we have adduced has sought to show that the Governor has betrayed the same objectives.

The case of Nixon versus the United States - as I wind up - this is a case I will be seeking to supply on soft copy. As I sat here, I got someone to send me. It is on impeachment and, probably, we will get another decision to guide the deliberations.

What came out in my reading of that case, Nixon versus United States, 506 US224, is that there is no doubt that the Senate has the authority to try impeachments. The process of impeaching is based on violations. If you obstruct – this was a classic case of, first of perjury – the case facing Walter Nixon was that he committed perjury. This was a federal judge. He lied under oath and that amounted to a ground for impeachment.

In this case, the grounds have been set out under the Constitution. We are saying that the abuse of office that comes out very clearly due to the acts and omissions of the Governor amount to a ground for impeachment and we shall be urging this Committee to recommend to the Senate that the Governor of Embu County is unsuitable to continue holding the Office of the Governor. That way a message of accountability will be sent across; a message that it cannot be business as usual and that you cannot say; it was not me. The buck must stop at the highest office holder of the County Government of Embu who is the Governor.

Thank you for your indulgence, I know that I have surpassed my time but, please, allow my colleague to say one or two things.

Thank you once again.

**The Chairperson** (Sen. (Dr.) Khalwale): You still have three minutes for you to have spent your 45. How do you want me to behave?

**Mr. George Ng'ang'a Mbugua:** I can be benevolent enough and donate them to my learned friend.

**The Chairperson** (Sen. (Dr.) Khalwale): You collectively have a balance of three minutes. I was just asking the new speaker how he wants me to behave.

**Mr. Charles Njenga:** Mr. Chairman, Sir, I think, at some point, there were a few interjections. Therefore, we I need my original ten minutes and I will be through.

**The Chairperson** (Sen. (Dr.) Khalwale): Since we had a lot of interventions from Sen. Orendo and I, we will give you 15 minutes. We do not want to take anything away from you. This is a very serious process. Senators will be reading especially those who will want to vote, about the decision of this Committee looking for loopholes to water down this exercise. You will end at ten minutes past.

**Mr. Charles Njenga:** Mr. Chairperson, Sir, much of the details have been stated and well summarized by my colleague.

I wish to refer this Committee to the role of the Senate as set out in the Constitution. At Article 96(1) because that is where we must start because we are today and now before the Senate. There is a reason why impeachment proceedings are taken in the Senate and not in the courts. This is because the Senate has a role under the Constitution, if you read Article 96(1), to not only serve but to protect the counties and their governments.

Allow me to particurlay emphasis the word "protect". The word "protect" is not really a legal concept. It is a word deliberately used in that constitutional provision to capture the relationship between the Senate, the Counties and their Governments. Why do counties need to be protected? Because there are obvious challenges of accountability that invariably arise in the execution of the mandate of those bestowed with power in the counties. Where those persons forget or go beyond and above their mandate, this Senate has to rise up to its mandate to protect counties.

Before a case has been clearly made out by the County Assembly--- We asked for letters of appointment to a tender committee. Three days later we have been told there are drafts available somewhere in somebody's computer. That is not in doubt.

The Committee asked for a log book, none has been produced.

It was admitted before this Committee that maize did not germinate in the County of Embu. The answer they got from the Governor is that farmers will be compensated. In fact, the process has not started. It is like "a by the way: Farmers will be compensated. There will be a costing and a process to compensate".

These are people who have availed themselves to the protection mandate of this Senate. The reason why we urge strongly that the Senate has to activate this mandate to protect counties- "counties" here mean the people in the counties - is that governance has been discussed. But the Senate has to set that standard that will be applied across all counties and every executive working in the counties. Do we want to establish a standard of institutions where there are no demonstrable standards as to how they comply with law? Do we want to establish a standard where county executives come here before this Committee to pass the buck? Everybody appearing here, stiff as they looked, all clearly and sufficiently passed the buck. Is that the standard that we want to bequeath to the counties of Kenya? This is the opportunity for the Senate to set a clear standard that there will not be tolerated, even a single instance---. There is no excuse, the resources are available, they have been availed. The people are there. Why are we condoning any excuse at the level of accountability in the management and use of public resources?

The evidence placed before this hon. Committee clearly showed that there was a casualness; a carelessness in the handling of funds within the County of Embu under the watch of the Governor.

The County Assembly and the people of Embu, by way of these Motions, that have now been presented to this Senate Committee and by extension the Senate have refused these standards. They have refused to be subjected to a government that cannot pass an audit by the Auditor-General of over seven instances of irregular awards of contracts and favouritism. You know the details, they are with you. These are the things that by way of this Motion and resolutions that the people of Embu County have refused. We urge that the Senate, by its Committee and Plenary, does not insist upon this standard. It has to prescribe a higher standard, not just for Embu but for all counties.

As we consider the evidence that was tabled before this Committee, we start with the sentiments that came from the Committee; that this is not a trial; it is not a civil or criminal trial. So we are not asking for criminal or civil liability to be ascribed to anyone. But in the matter of whether or not the test of governance has been passed by the County Executive of Embu, we request for a clear verdict. But that is for you to do.

That is all, hon. Members.

**The Chairperson** (Sen. (Dr.) Khalwale): Thank you. He has done exactly six minutes. So, we have nothing to worry about.

I now invite the two counsels for Hon. Wambora. You have 45 minutes for both of you.

**Mr. Peter Wanyama:** Most obliged, Mr. Chairman, Sir. For purposes of HANSARD, my names are Peter Wanyama, counsel for the Governor, making submissions for the Governor in favour of dismissing the charges which have been leveled against the Governor and contained in a letter which was forwarded to this hon. Senate on 29<sup>th</sup> January, 2014.

Hon. Senators, before I go to the charges, first of all, let me explain a few issues. The Governor has respectively attended these hearings unlike in other jurisdictions where they go to court to obtain injunctions to stop the process. The Governor respected this Committee. The mandate of this Committee is provided in the Constitution and the legal framework. That is a factor which I urge you to consider, when you are making your final determination.

Secondly, the Governor is a person of impeccable credentials and track record. Throughout all these proceedings, no evidence has been shown by the County Assembly that money was lost in all these allegations. More importantly, no evidence has been demonstrated or rather adduced to show that the Governor benefited from any of these processes to warrant any of these charges. That is conduct which I urge you to look at when you are making your final determination.

If you do a general assessment on the charges against the Governor, these are charges which are full of sound and fury. The County Assembly must be furious about something. They must be furious about an event which occurred or did not occur. From the proceedings and the evidence adduced, it is very clear that these impeachment proceedings are not about the Governor of Embu but they are about allegations which are principally attributed to the office the County Secretary.

One of the issues which we will be examining is whether in light of the evidence that has been adduced before this Committee; whether any allegations or evidence has been submitted by the County Assembly that directly links the Governor to any of these allegations that have been leveled. That is absolutely important. I urge you to find that, indeed, no evidence or allegations either for gross violation of law and the Constitution or abuse of office has been leveled against the Governor who is a man of impeccable credentials and integrity. The Governor has served this country in very senior positions before. No public record either from the National Assembly or any audit has been raised. No audit query has been raised with respect to the track record of the Governor who is a diligent public officer.

Examining these allegations, because this is where the rubber meets the road, this is not a case about the Senate setting standards or a case about governance, it is a case about the removal of Governor Wambora in accordance with the framework of Article 181 of the Constitution. Indeed, if you look at the charges which have been leveled against the Governor, the letter itself says that the County Assembly says: "The County Assembly of Embu has resolved to remove the Governor for violating the provisions of Article 181 of the Constitution".

**The Chairperson** (Sen. (Dr.) Khalwale): Order. It is good that we get the HANSARD record right. Maybe you do not want to say that this is not an opportunity for the Senate to set a standard. This Committee is not out to set a standard. The standard is already set by the Constitution. I would request that if you do not insist, you recall those words.

**Mr. Peter Wanyama:** Mr. Chairman, Sir, I do not insist. The standards have been laid down in the provisions of the Constitution. I want to proceed to highlight those.

Hon. Senators, Article 181 of the Constitution has clearly stipulated the grounds for removal of a County Governor. It is upon these grounds that this Motion is before this Committee. Therefore, at the very least, in the course of our determination we must make a finding somehow on whether the Governor has breached the provisions of Article 181 which I want to proceed and illustrate so that it is clear for all of us.

Article 181 of the Constitution provides for the grounds for removal of a Governor for, amongst others, gross violation of the Constitution and any other law. Secondly is abuse of office or gross misconduct. These are the two principal grounds upon which the charges are based. In these charges, what we want to see and I will urge you to look in favour of the Governor that no allegations have been leveled against the Governor to warrant a finding that the Governor has breached the Constitution and the law in a gross manner.

Secondly, no facts and evidence have been adduced to demonstrate or lead this Committee to the conclusion that the Governor has abused his office. There is no charge for gross misconduct. I will not concentrate on that. If you examine these charges and if you want to look at specifically where we are coming from, charge number one is: The Governor has been accused of violation of the Public Procurement and Disposals Act of 2005 and the regulations. One of the facts which they used to demonstrate this allegation is that there was no tender committee. What we are begging this Committee to consider is the fact that the evidence which was submitted by an experienced procurement officer, Mr. Munyaka, was very clear that there was a tender committee for the County Assembly of Embu. The record is very clear and, therefore, with that fact alone, that charge collapses.

Can you impeach a Governor based on the facts there was no tender Committee yet there is clear, unshakable and unchallengeable testimony from that particular witness that there was a fully functioning tender committee for the county government of Embu during the period in question? We are saying you cannot impeach the Governor based on that allegation because we have given the evidence that there was a tender committee. So it follows that there is no violation of the Constitution leave alone being gross; there is no violation of the law and the Constitution. It is something which then becomes very clear.

Thirdly, these challenge---

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, I want to agree with you that there was demonstration that there was a tender committee. But can you help us? How shall we deal with the fact that the tender committee of Mr. Munyaka was not the same one of the Governor? They disagreed. Help us on how we should deal with that in your submissions. It will help us.

**Mr. Peter Wanyama:** Most obliged, Mr. Chairman, Sir. Evidence was adduced clearly and the HANSARD can bear me witness that there was a tender committee which was set by the Transition Authority. Mr. Munyaka, the procurement officer, the head of supply chain management then in the county was very clear in his testimony that there were certain transitional challenges here and there. For instance, he was able to demonstrate that there were officers who could not understand that some of the functions were devolved. So, they were appointed and they could not attend meetings. You can see that there were certain challenges in that procurement process with respect to the composition of the Committee. These challenges came out very clearly in his testimony. Therefore, our argument is, given the fact that these challenges had been explained to clear doubts in our minds, can a Governor be impeached because of that fact?

Secondly, the framework of governance which we have adopted creates county governments with full structures. There are institutions which have been set up and they have clear statutory responsibilities. For instance, in the public procurement process, the tender committee is supposed to be designated by a specific officer. Failure to do that can attract sanctions to that officer, for instance, an accounting officer who does not ensure that procurement is done in accordance with rules and regulations, more specifically the Act governing procurement and the attendant regulations is personally responsible. So, what we are saying is that within that framework of governance – of course the Governor has his own responsibilities; providing executive leadership, policy direction and oversight. No evidence has been brought before this Committee to demonstrate that the Governor failed to exercise adequate and sufficient oversight to warrant the collapse of the procurement process in the county. That is really our submission.

We want to urge this Committee to consider the fact that there were challenges in the implementation process. The Governor of Embu is clearly not responsible for some or all of these challenges. It is something which we urge you to consider. Our principal submission on that point is that if there are allegations which have been made with respect to the procurement process, those allegations do not amount to an offence which can impeach a governor. Decisions from other jurisdictions are that you can only impeach a Governor where there is gross violation of the Constitution and law and where the Governor is fully mentioned as a person to have either acted or not acted in a very gross manner. For instance, they cite the impeachment of President Nixon. Of course, he subsequently resigned and, therefore, the impeachment proceedings did not go on. But from the evidence which was collected by the Committee it was clear that the President had interfered personally in the process; for instance, attempting to obstruct justice by denying or coercing witnesses. That is a very clear case of abuse of office.

Hon. Senators, we want to submit that ground number one has not been proved at all. We urge you to dismiss the charges under the provisions of the County Governments Act for the fact that they have not been substantiated.

Secondly, the Governor did not comply with the Public Procurement and Disposal Act and Regulations.

The Governor failed to adhere to the threshold set for procurement as used in the first Schedule of the Regulations. First of all, no evidence has been adduced before this Committee to show that the Governor was involved in the making of the decision in terms of advising the Tender Committee on which method of procurement to use. The evidence which we have and it is recorded in the HANSARD, is that the advice to use restricted tendering in the renovation of the Embu Stadium was given by Mr. Munyaka, who was then the head of Supply and Chain Management in a different set of circumstances.

I want to now make another point there. Despite the findings by the Auditor-General that some of the contractors who were selected to do the work in that particular process were not on the list of registered firms, no evidence has been brought before this Committee by the County Assembly to demonstrate that the contractors who were eventually selected are not in the list of a statutory body known as the National Construction Authority (NSA), which is responsible for the registration of all contractors. It is that admission that it is a burden to prove to make that allegation. They need to bring evidence to demonstrate that these contractors are not in the list.

We did not want to pick that issue with the Auditor-General in the morning because we thought that it is a very clear cut legal position. What we want to submit is that the list of contractors who were selected by the County Assembly is contained in the registered list of NCA. If there is still time we can ask the Authority----

**The Chairperson** (Sen. (Dr) Khalwale): Order! Order, counsel! Was it not your burden to make sure that you demonstrate that those contracts were awarded to people who were registered? Why are you throwing it to us?

**Mr. Peter Wanyama:** Mr. Chairman, Sir, the---

**The Chairperson** (Sen. (Dr) Khalwale): Could you not have helped us?

**Mr. Peter Wanyama:** Mr. Chairman, Sir, even though we have that duty in law, through oral evidence, we are able to demonstrate through unshakeable evidence of the procurement officer that they awarded to the right persons. These were persons who were prequalified and met all the qualifications. The pre-qualification was done by another institution. Therefore, for you to determine whether to award contracts or not, you simply need to go to that particular list. So, there is oral evidence that, on a balance of probability, we are able to demonstrate that they were procured in a proper manner. On a balance of probability, we were able to demonstrate through oral evidence. Even though I agree with you that we could have done better by actually bringing the registered list here, but given the time limitations, we have adduced the evidence which we could have adduced. We urge this Committee to accept the oral evidence of Mr. Joshua Munyaka as evidence that the procurement process was done in a very credible and clear manner. Transparency issues, breach of law and regulations do not arise in this procurement process.

The issue about the Bills of Quantities (BQs) were clearly explained by the engineer who was here yesterday, the CEC in charge of infrastructure. There is no evidence which has been brought by the Assembly; no concrete alternative evidence or an expert evidence by an engineer from the Assembly to demonstrate that the BQs were based on false facts or imaginations. So, there is no evidence and the engineer was very much clear about that fact. We do not want to belabour that point, save to say that the procurement of works and the rehabilitation of the Embu Stadium was done in accordance with the law. No money has been lost. The Governor was able to demonstrate that, indeed, no payments have been paid even though the contractor is on site. No payments have been made to that contractor yet. So, where are these allegations about irregular dealings and loss of funds coming in?

So, what we are saying is that there is no gross violation of the law and in particular, the Public Procurement and Disposal Act when it comes to that issue. It is a fact which we have clearly explained, and it goes on to the next bit; not complying with the Act and regulations, which is a general particular. We have demonstrated that there was a tender committee. Even though there were challenges in terms of transiting from the new constitutional framework of devolution and the new legal framework governing public procurement and the transitional framework, there were challenges which we admit. But we cannot specifically bring out the allegations against these officers and, more importantly, for our purposes, against the Governor. Are there allegations which have been attributed to the Governor in this particular process? There is no single allegation at all. We are urging this Committee to consider that as a very, very important issue for us.

They are making allegations that the County Government of Embu procured motor vehicles without following rules and regulations. The Governor and the CEC together with the county secretary and all the witnesses who were asked about this question were able to demonstrate that the Government of Kenya, in accordance with its financial regulations, has signed contracts with the motor vehicle suppliers. So, what you need to do is to, upon communication by the relevant department ascertaining that contract still exists---. So, you just need to procure these motor vehicles. The issue which is irregular and it is contained in the audit query by the Auditor-General is the fact that, that motor vehicle does not have a logbook. That was the only issue which would appear irregular. But, today, we have demonstrated that the motor vehicle is, indeed, registered in the name of the County Government of Embu. There is a copy of the record from the Registrar of Motor Vehicles to that effect. The procurement process was also ably demonstrated by the explanations and we do not find any allegations to warrant the bringing to fore of the Governor in this regard.

Again, we are able to demonstrate that during this particular period – through the testimony of Mr. Makori, the Chief Executive Officer (CEO) of the TA – the accounting officers were actually personally and professionally responsible, in terms of reporting and giving the financial records, to the TA. So, the County Governor, even though he was in charge in terms of the fact that he was an elected Governor, there are certain issues which were determined through law. For instance, consider the Transition to Devolved Government Act, which they had to comply with. There is no way the Governor could

have not worked with the officers from the TA in terms of complying with what they were doing, because it was something which was prescribed through legislation.

So, what we are saying is that if at all there is any culpability in the procurement of motor vehicles in terms of making a finding of whether the process was irregular or not, then the Governor cannot be personally liable to warrant the application of the provisions of Article 181 of the Constitution.

We beg this Committee to consider that.

Secondly, Violation of the Public Financial Management Act; here we need to make a distinction, hon. Senators. The charge says that the County Governor has been carrying out procurement services without a tender committee as a ground to show that we have violated the provisions of the Public Finance Management Act. At a technical level, the provisions with respect to tendering are not contained in the Public Finance Management Act, but they are contained in the Public Procurement and Disposal Act and the County Governments Regulations. So, at the very least, the charge itself is a bit contradictory. But that is not the whole story.

The other part of the story is that the County Assembly proposes, as a further demonstration of the allegation, the interdiction of tender committee members and the Governor refused to follow those recommendations of the County Assembly. No iota of evidence has been brought before this Committee to demonstrate that the Governor refused to interdict members of the tender committee. No evidence has been brought before this Committee to show the specific allegations of misconduct about members of the tender committee. So, they want to link the Governor to a process which is actually not within his docket in terms of compliance. We are saying that, that is a very, very important issue; you are charging the Governor for not listening to your recommendation or acting on your recommendations, yet you have not demonstrated the evidence of the recommendations. The HANSARD will bear me out. There is no evidence at all which they have demonstrated that they recommended the interdiction of Mr. Munyaka, who was the procurement officer and the other tender committee members. There is no evidence at all which has been brought before this Committee.

Thirdly, this is absolutely important because it now goes to the sub-stratum of the County Assembly's case. The County Assembly alleges that the Governor has abused his office by not complying with the provisions of the County Governments Act and the Public Finance Management Act. What is the nature of a charge of abuse of office? Section 46 of the Anti-Corruption and Economic Crimes Act defines what constitutes an abuse of office. So, failure to comply with an Act of Parliament is not an abuse of office. Under Section 46 of the Anti-Corruption and Economic Crimes Act, you abuse your office when you use your office to either confer an improper benefit to yourself or to somebody else. That is what abuse of office is all about.

So, in this evidence which has been tendered by the County Assembly, the abuse of office charge will only arise if at all the County Governor has used his office in

accordance with the framework of Section 46 of the Anti-Corruption and Economic Crimes Act. That is a very fundamental point, hon. Senators. The Governor has been charged for abuse of office, yet no allegations have been made to satisfy the requirements of legislation on the definition of what amounts to abuse of office. So, that is absolutely fundamental. So, in so far as our submissions are concerned, the charge of abuse of office has not been proved at all. So, it does not then fall to us to adduce even evidence where no charge exists, in the first place. Hon. Senators, that is absolutely fundamental.

They have also accused the Governor of breaching the provisions of Section 166 of the County Governments Act with respect to quarterly appointments. We are saying in our submissions that Section 166 of the County Governments Act does not provide for the submission of quarterly reports to the County Assembly by the County Treasury. These reports are supposed to be submitted on an annual basis. This is clearly a matter of compliance with legislation. So, what we are saying here is that the process of submitting the reports on an annual basis, in accordance with the provisions of Section 166 of the County Governments Act, has not been completed; the period required by legislation has not ended. So, under what circumstance would then a Governor be charged with violating the provisions of an Act of Parliament, yet it is supposed to be an ongoing process? So, Article 166, we submit, has not been breached and it is very, very clear from the testimony that, that is a charge which cannot hold water.

Issues have been raised about the report of the Auditor-General, which I have ably explained---

**The Chairperson** (Sen. (Dr) Khalwale): Counsel; I also need to be clear on that issue which you have left of abuse of office. The counsel for the County Assembly tried to convince us that this was through the benefit that the Governor was affording the CS by way of that sworn affidavit. Can you help us on how we should weigh that because you have not spoken to it?

**Mr. Peter Wanyama:** Hon. Senators, that is an important interjection. Let me clarify. The Governor swore that affidavit. He has already explained the circumstances under which he swore that affidavit. He was a party to a court proceeding and for the interest of justice, he was obligated to swear the affidavit to clear the allegations which had been raised in that court proceeding. So, in so far as the swearing of an affidavit is concerned, we are not satisfied at all that the swearing of an affidavit to clear certain issues to enable a court of law to dispense justice is a breach and amounts to abuse of office. This is because under Section 46 of the Anti-Corruption and Economic Crimes Act, it is expressly clear that--. It says:

“A person who uses his office to improperly confer a benefit on himself or anyone else is guilty of an offence.”

Under the Constitution, Article 181, abuse of office is a ground for removal of a Governor. In the charge which they have brought against the Governor, abuse of office exists as one of the charges. So, the question which we are asking ourselves is: What

allegations have been put by the County Assembly to warrant this Committee to make a finding that the Governor has abused his office? And we are saying he has not. If it is that court case, then it can be explained, it is so remote. You can only make an argument that swearing an affidavit in a court case amount to abuse of office, yet the legal position is very, very clear.

So, what we are saying is that we need to satisfy ourselves that the conduct in question amounts to abuse of office strictly in accordance with the legal framework, because we are bound to follow the law. These charges of abuse of office have been clearly defined elsewhere. For instance, the Black's Law Dictionary in the same manner says:-

“a public official uses his office to confer an improper benefit either to himself or to another person.”

The offence of abuse of office is historically traced from one of the watershed cases in English law, the Republic versus Daitham, 1979 1QB722; a very important case in terms of setting of what amounts to an abuse of office. The facts which have been put before this Committee do not meet the threshold which is contained in these cases and, more importantly, the provisions of Section 46 of our own Act of Parliament, which is very clear on what amounts to abuse of office.

So, we urge this Senate Committee to consider the fact that the County Assembly has not proved the charge of abuse of office as required by law. So, this is purely a legal interpretation of what amounts to abuse of office and we urge you to really consider it in our favour.

The other charge which has been mentioned in this charge sheet, I call it a charge sheet because it provides a framework on why the Governor is before this Committee. The CEO of the Transition Authority (TA) was able to explain that the County Principal Finance Officer was accountable to them on the Kshs61 million which was sent by the TA for certain activities at the county in the transitional period. So, I do not need to belabour that point because the records are very clear. The Governor was not responsible. It will be a bit farfetched to tie the Governor specifically to that process in terms of financial control and accountability because the Auditor-General in the morning was very clear in his testimony; that even though the Governor is responsible for the policy directions in terms of financial control *et cetera*, he is not responsible for the actual administration of funds. He is not responsible for the issuance of reports on how you have spent money; he is not responsible for that. It is a resolute and exclusive responsibility of the accounting officer who, in this case in the transitional period, was an officer who had been appointed by the TA. So, I submit that parts of the allegations have not been proved against the Governor.

I will now go to the violation of the County Governments Act. Again, here we do not need to go far to demonstrate that the Governor has not violated the law, because it is a question of interpretation of law. If the County Public Service Board (CPSB) does not submit the names and does not follow the law in terms of submitting certain important

processes for the approval of the County Assembly, a principle question arises. Does that breach of a statutory responsibility by an organ attributed to somebody else become the responsibility of the Governor? So, what we are submitting is that the Governor is not responsible for any breaches, if at all, of the CPSB. In so far as Article 181 of the Constitution is concerned, it is not an offence. You cannot impeach a Governor based on that. It will be a bit ridiculous for the Governor to be impeached because of the allegations made against the CPSB.

But what if the allegations which have been raised by the County Assembly that the County Governor failed to lay down the appropriate structures of communication between the County Assembly and the County Executive, particularly on the recruitment process? Is that an issue you can impeach a Governor on? So, we are saying that the Governor has done his best in so far as the setting up of the Board is concerned. He nominated members of the board, supporting them in terms of making sure that they get what they need by directing the CEC Finance to make sure that they access their own vote head through the structures which had been put up in the County Executive. Therefore, any issues which will amount to violations of law and the Constitution are issues which the County Assembly ought to have interrogated the CPSB before impeaching the Governor. They could have listened to the CPSB. They have powers under Article 157 of the Constitution to summon any person, which includes a member of the Board.

That power is very clear because the County Governments Act goes ahead to exemplify that if a member of the CPSB refuses to honour the summons of the County Assembly, that can be a ground for his removal, because he will be violating the provisions of the Constitution and law. So, we are saying that, that is a very clear issue. The County Assembly has not proved how the Governor then breached those sections of the County Governments Act in so far as those appointments which are contained in the charge are concerned. There is no evidence at all and that is really important for us.

They are saying in their charge that we have not submitted an organogram – an organizational structure – of the County Executive to the County Assembly for approval. The Governor was able to demonstrate in his testimony that he has submitted an organogram to the County Assembly, but it has not approved that organogram. So, do you impeach a Governor on that? The County Assembly has not approved the organogram which the county Governor has submitted for approval. To date, the County Assembly has not acted on the request of the Governor to approve the organogram, so that he can involve the County Assembly in the governmental process. So, we are saying that, that is not a ground to impeach a Governor at all, because there is no violation of the Constitution or law at all. Indeed, the Governor has complied with the law.

Besides that, the County Assembly is alleging that the county Governor does not have a management plan for his county and that he is not running the affairs of the county in a proper manner. We have submitted documents to show that there were performance contracts which have been signed by the CECs. Performance contracting is a very

important method of auditing the performance of a public official. These ones have been signed by the county executive and chief officers in the county government. So, it is not a ground to impeach a Governor. That allegation has not been proved. Instead, the County Governor has disproved those allegations through his own personal testimony. So, we urge this Committee to consider the testimony of the Governor as enough to lead you to dismiss particulars of Charge No.3 and all the particulars which have been listed in that charge.

Fourthly, Violation of the Constitution, the County Assembly has expressly stated in this charge that the Governor has violated the Constitution. Issues about violations of the Constitution in legal circles are treated very seriously. In constitutional jurisprudence and practice, a party who alleged that the other party has breached the Constitution must bring out the specific particulars of the breach of the Constitution. So, if you examine the allegations at No.4, they have said that the Governor has breached the Constitution.

First of all, there is no evidence at all that the Governor has breached the provisions of Article 227 of the Constitution - where the particulars of breach of 227 of the Constitution - which provides the substantive legal framework to anchor a public procurement legislation. What is it that the Governor did to breach the provisions of Article 227 of the Constitution? No evidence has been submitted to that effect.

Secondly, they are saying that the Governor has breached the Constitution by neglecting to stop the rehabilitation of the Embu Stadium and purchase of the maize, some of which eventually did not germinate. That is an issue which does not deal with the breach of the Constitution. Two, the circumstances under which these two were procured and how this was impugned has been clearly explained.

So, as I speak, there is no evidence which has been brought before this Committee to demonstrate the specific particulars of breach of the Constitution. So, I urge this Committee to consider issues about breach of the Constitution in a very serious manner.

The County Assembly is alleging that the Governor has not adhered to the principles contained in Article 10 of the Constitution, as one of the allegations of breach of the Constitution. Examine the provisions of Article 10 of the Constitution very critically because "breach" must be express and very clear. Article 10 of the Constitution contains what I said yesterday to be fundamental principles of governance. This is how it is structured. The national values and principles of governance in this Article bind all State organs, state officers, public officers and all persons whenever they apply this Constitution.

Then, the same Constitution goes ahead to list the fundamental principles of governance, which are listed as follows: Patriotism, devolution, public participation, human dignity, equity, social justice, inclusiveness, human rights, non-discrimination, good governance, integrity, transparency, accountability and sustainable development.

The County Assembly alleges that the Governor has breached these provisions of the Constitution. Where are the specific particulars of breach of the provisions of Article 10 of the Constitution to warrant a negative finding against the Governor? There are none. We are urging this Committee to really examine that issue and make a finding that the county assembly has not proved that allegation at all. If it is their testimony that the Governor is not a man of integrity, then we will need that evidence in accordance with Article 10. If it is their testimony that the Governor is a man who does not observe the principles of the rule of law, disregards the rule of law with abandon, is not democratic, does not involve the people in the governance, does not really follow the principles of human rights *et cetera*, then we will make a finding specifically against the Governor. But there is no evidence, hon. Senators, to warrant a finding that the Governor has breached the provisions of Article 10 of the Constitution. I am saying that because it is one of the most fundamental issues in these proceedings; breach of the Constitution. It is not an issue which we take lightly. That is why we really insist on particulars of breach.

The other point which they have said, again, on the Constitution, is that the Governor has breached Article 232 of the Constitution which provides for observance of high standards and professional ethics in governance. So, where are the particulars of breach? How would you determine that a Governor has not followed the provisions of Article 232 of the Constitution? How do you make that finding? So, you need express and clear particulars on what the Governor did. This is because here they are saying that the Governor went to call a press conference where the county secretary was to be investigated. The Governor was simply explaining an issue to the people so that they understand. When you call a press conference to explain to your people governance issues, does that amount to breach of Article 232 of the Constitution? They have raised issues about the county secretary and the Governor calls a press conference and then explains. Then, an issue arises with respect to breach of Article 232 of the Constitution. So, we need very clear and open singular particulars, so that we can actually call the Governor to account. In the absence of these particulars we cannot find the Governor in breach of the provisions of Article 232 of the Constitution.

They have also said that the Governor has contravened Chapter Six. Chapter Six is a highly contested issue; it is on Leadership and Integrity. The basic import of that is that a Governor is a man who is, probably, corrupt and does not observe the rule of law. All these issues are about leadership and integrity. So, we want the County Assembly to demonstrate how the Governor breached the provisions of leadership and integrity. They have failed to do so through their testimony. Are they making allegations that he has benefited from financial transactions? So, we need clear-cut evidence to meet the constitutional threshold. The particulars which they are saying to warrant that charge is that the Governor procured the refurbishment of Embu Stadium without following procurement procedures. If you have demonstrated that, indeed, procurement procedures were followed it means that, that collapses. Two, they are saying that the Governor organized a trip to Rwanda for MCAs, as an allegation that the Governor does not meet the leadership and integrity test in the Constitution.

Fact No.1: This issue of Rwanda has not been proved in this honourable Committee. The circumstances under which this trip was allegedly organized have not been proved. Two, the County Government of Embu, besides Mombasa, are the counties which have not been mentioned in the report of the Controller of Budget as counties which have undertaken foreign trips. So, for you to make a determination that a Governor has breached the provisions of the Constitution or leadership and integrity, by organizing this trip to Rwanda, you need very specific clear facts. We want to see those facts; the specific particulars on breach. For instance, can we say that the Governor – here, we are only speculating - was using public funds to finance this trip improperly? Was this trip budgeted for? So, we need specific details to illustrate that there was breach by the county Governor on this issue.

Lastly, they say that the Governor has failed to ensure that public money is used in a prudent and responsible way---

**The Chairperson** (Sen. (Dr.) Khalwale): Order, counsel! You have now completed your 45 minutes. Can you give an indication whether your colleague will also have something to say, so that I can see if I can add you extra time?

**Mr. Peter Wanyama:** I will need just ten minutes to highlight now the legal position, then my colleague will address.

**The Chairperson** (Sen. (Dr.) Khalwale): So, you need ten minutes yourself and ten minutes for your colleague?

**Mr. Wilfred Nyamu:** I will take 15 minutes.

**Sen. Orenge:** Mr. Chairman, Sir, these are professionals and when they go to court they are timed. So, we need to instill some discipline. In fact, you should not have told us at the beginning what time we need. You should have just said that it is open-ended. The time is over. So, the best that you can do is that if the two of them still want to speak, they cannot go beyond 15 minutes. As you know, there is this other work that is waiting.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, we are not being too hard on you. We will now add you an extra 15 minutes. Decide how you want to share it with your colleague.

**Mr. Peter Wanyama:** Most obliged, Mr. Chairman, Sir. I will take five minutes to finish my submissions and then invite my colleague. But I want to urge also the Committee to consider the fact that they gave our colleague 15 minutes more.

**Mr. George Ng'ang'a Mbugua:** We kept out time. I think that we even had a balance.

**The Chairperson** (Sen. (Dr.) Khalwale): I gave them 15 minutes, but they used six minutes.

**Mr. Peter Wanyama:** Let me wind up so that I can leave the floor for the subsequent proceedings.

**The Chairperson** (Sen. (Dr.) Khalwale): You are expected to have completed as a team on the hour.

**Mr. Peter Wanyama:** Most obliged, Mr. Chairman, Sir.

The last allegation on leadership and integrity is that the Governor has failed to ensure that public funds are used in a prudent and responsible way. Our response and submission is that the County Government of Embu has an Integrated Financial Management Information System (IFMIS) software which has been installed with the help of Treasury. The use of public funds in the county of Embu is done strictly in accordance with the Government financial regulations. Therefore, no evidence has been brought before this Committee to demonstrate that in the County Government of Embu, the management of funds is done in an opaque manner. This is because, that, then will be an issue which we will need to look at in very critical perspectives.

But now that brings me to the last part of my submissions. In the light of all these allegations, we want to invite this Committee to, again, look at the provisions of Article 181 of the Constitution critically. We want to invite you to interpret the provisions of the Constitution strictly. This is because the Constitution is very clear that the breach upon which you can remove an elected Governor--- The facts which can lead you to remove an elected Governor must be so serious to warrant the removal. The facts must be substantial and speak for themselves. The Governor must have undermined the integrity of his office. The Governor must have used his position in a manner which is not compatible to the holder of public office. There ought to be some kind of a pattern which is created by these facts, to demonstrate the most important ground for impeachment, which is gross violation of the law and the Constitution.

So, the conduct upon which the Governor has been brought before this Committee does not meet the constitutional threshold at all and we urge you to dismiss. We have submitted a decision from the Supreme Court of Nigeria, in the case of Muiywa and Adekele, which is basically the same case which we are facing here; impeachment of a governor. The Supreme Court of Nigeria, on page 132 made very express and clear findings on the allegations of impeachment. The fact that public officials make these allegations means that there is a probability that they can abuse office. So, you need to set the standards so high when it comes to impeachment. That is why we have to follow the provisions of Article 181 of the Constitution. Even though it does not define what amounts to gross violation of the Constitution and law, we really must make a determination in our own minds, whether the Governor has grossly violated the law and the Constitution, in accordance with the finding by the Supreme Court of Nigeria on a similar matter. So, I will urge you to look at this case.

When it comes to questions about standard of proof, I have given out a document, again, to the Clerk, which demonstrates that even though there are no clear-cut guidelines on the

standard of proof, you must in your minds be satisfied that there is gross violation of the law and Constitution. Ultimately it is a question of the individual Senator. Are you satisfied that the Governor has grossly violated the Constitution and law? That is ultimately what we are saying.

We want you to make a finding---

**The Chairperson** (Sen. (Dr.) Khalwale): What document have you given the Clerk?

**Mr. Peter Wanyama:** There is a legal opinion which has been issued by a counsel in the United States Congress on the standard of proof of impeachment. His analysis is very clear. I do not want to read it. But the conclusion which we are drawing, and I agree with him, is that it is ultimately upon the individual Senator to determine whether these facts which have been adduced before this Committee---

**Mr. George Ng'ang'a Mbugua:** Mr. Chairman, Sir, that is a document that has not been disclosed to us. We do not know whether it is an authority.

**Mr. Peter Wanyama:** It is an authority and I have given them a copy.

**The Chairperson** (Sen. (Dr.) Khalwale): That is why I was asking, because if you are giving us a document---

**Mr. Peter Wanyama:** No, it is an authority. I have given them a copy of authority. I gave them earlier. We actually did so at lunch time.

**The Chairperson** (Sen. (Dr.) Khalwale): Maybe, before we completely end this session, we will allow the other counsel to look at the document and concur.

**Mr. Peter Wanyama:** Absolutely. That is perfectly in order, because it is an authority which I have given them a copy. I gave the Clerk and counsel copies of the documents.

**Sen. Orengo:** Mr. Chairman, Sir, I would expect these authorities to be given to us at any time because we have given you very short time to address us. So, anybody with any useful material should avail it for the purposes of the Committee.

**The Chairperson** (Sen. (Dr.) Khalwale): I am not trying to say that those counsel should come and speak to it. However, I want them to be comfortable because we are not allowing them undue advantage by introducing other documents. Once they know that, it is an authority. That is it. We do not want anybody running to the newspapers that the Senate was favouring the Governor, especially in view of the fact that the Governor was my colleague in the Ninth Parliament. Serve them with this and then they will comment on it in due course.

Continue, Sir!

**Mr. Peter Wanyama:** I now finish my submissions by making an important remark which is really the essence of our case; that the allegations which have been made against the Governor do not meet the constitutional threshold at all.

Thank you, hon. Senators for giving me the opportunity. I now invite my colleague to make a few remarks.

**The Chairperson** (Sen. (Dr.) Khalwale): The other counsel, you have got practically five minutes. Your colleague did it in six minutes when he came to supplement.

**Mr. Wilfred Nyamu:** The crux of the matter here is based on Articles 226 and 227 of the Constitution. Article 226 in terms of financial management, where the PFM Act is provided for. Under Article 226(1) (a) is where now the Public Finance Management Act comes in. Based on that, Article 226 (2) talks about an accounting officer. Under the Constitution accounting officers are provided. Those are the accounting officers that are provided for under Section 148.

Hon. Members, in terms of procurement, a framework is introduced, under Article 227 (2) of the Constitution, based on which now procurement procedures are based.

That framework under that Constitution is what is transferred to the procurement law and also procurement procedures under Section 148 and 149 of FMA. As it is, if the Governor tries to interfere with procurement procedures and procurement processes, then he would be violating that Constitution and actually he would be properly impeached. A framework is provided under Article 227(2) that an Act of Parliament shall prescribe a framework within which policies relating to procurement and asset disposal shall be implemented so that now the Governor has to operate within that framework and it is provided.

Hon. Senators, as it is where there is violation by a CEC member, if a CEC member misbehaves for any reason, the county government under Section 31(b) has power and authority to decide and make a resolution by which now the Governor shall have to dismiss that particular CEC. All these issues we were being talked about, the issues touching on procurement, if there was any problem, then before the County Assembly gets to the Governor, it ought, first, to deal with the CEC under Section 31 of the County Governments Act where it has mandate.

Hon. Senators, under Article 226(5) which talks about matters touching on financial management and it says that if the holder of a public office, including a political office, directs or approves the use of public funds contrary to the law, the word is “directs” or “approves”. Now here, throughout the proceedings and the evidence that has been tendered here, it has not been shown that the Governor directed that non-germinating maize be procured. Actually, on matters of procurement, he deals with them the same as a matter of policy; as projects. When they sit at the CEC, they approve projects then implementation on issues touching on the project is a procurement matter to be dealt with by accounting officers where the Governor has no role.

What I would urge the hon. Senators to consider is this fact; there may be thorny issues within the county, I am not saying that there are, there may be certain problems in the county which may be teething problems, but to resolve such problems, it would be improper to take such drastic measures. It would be like dealing with a problem where a child has a problem and taking a gun to discipline the child. This is a drastic measure – impeachment - on the basis of matters where it has not been shown that the Governor directly acted in a certain manner.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, you have done your six minutes, but I will allow you because there is something which is disturbing me. The county secretary who draws authority from the county executive committee, chaired by the Governor has submitted evidence here. There is a document here, where she ordered for procurement. So, how do we treat that document because it is evidence?

**Mr. Wilfred Nyamu:** That particular county secretary, and actually, I took her through that position, she procured as an accounting officer, where under the law in terms of her duties, where there is no chief officer in any particular docket, she sits in as the accounting officer. She fills the gap. That is what has been happening all along. She has actually been performing procurement roles as an accounting officer and not as a county secretary. So, as a matter of policy they agreed that they are going to embark on projects like maize and the refurbishment of the stadium, but that did not mean they said that go and procure non-germinating maize or go and employ improper tender processes and all that. Provision is made for them to be directly accountable if there is a problem. What I am saying is that by the time the County Assembly gets to the Governor, it ought to exhaust all its avenues. It has not demonstrated that it has done so.

Lastly, Mr. Chairman, Sir---

**The Chairperson** (Sen. (Dr.) Khalwale): Your time is up! We have given you an extra five minutes so your time is up.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, I am just submitting a document; the County Public Service document. There is a document that we have forwarded to you, kindly consider to ascertain as to whether this circular applies to all counties. We have it here and we have taken it round. Consider the fact that the county public service board is a corporate organ under Section 57 of the County Governments Act so that it is autonomous of the Governor and the Governor cannot have any direct control over the CPSB. I urge you to apply the law of evidence, especially on the burden of proof: He who alleges must prove. So, the County Assembly had the opportunity and had the burden of proof, proving all those allegations, including allegations touching on press statements at *Wimwaru* FM. That is all.

**The Chairperson** (Sen. (Dr.) Khalwale): Before you go, the document you have given me is not headed and is not signed anywhere. So, it does not pass the admissibility test. Therefore, I invite you to take it back.

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, this is an investigatory process. Ascertain from this particular document, which you have not referred to whether or not this document cuts---

**The Chairperson** (Sen. (Dr.) Khalwale): Listen counsel. The senate has standards, indeed, very high standards. This document has no heading and no signature. In fact, the nearest somebody has tried to attribute it to TA, is written by handwriting and yet this is a typed document.

Please, take it back.

**Mr. Wilfred Nyamu:** I will take it back, but I am sure this Committee will not turn a blind eye to obvious facts, including investigating as to whether there is such a circular.

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

**Mr. Wilfred Nyamu:** Mr. Chairman, Sir, we have tender committees and we have demonstrated.

*(The Governor of Embu County (Hon. Wambora)  
consulted with his counsel)*

Mr. Chairman, Sir, the Governor insists that I tell you something.

**Mr. Chairperson** (Sen. (Dr.) Khalwale): Order! Can both of you sit down, then I will make a decision?

Counsel for County Assembly, are you satisfied that this is an authority?

**Mr. Charles Njenga:** Yes, it is an authority.

**The Chairperson** (Sen. (Dr.) Khalwale): Thank you. So, it is an authority and it will be treated as such. Hon. Members, I would now like to invite the Clerk to read the charges of the Deputy Governor.

**Mr. George Ng'ang'a:** Mr. Chairman, Sir, just exactly one minute on this authority. I just want to make a comment on the standard. Just a distinction I wanted to draw---

**The Chairperson** (Sen. (Dr.) Khalwale): It is an authority, let it stay.

The Deputy Governor, if you can come.

*(The Governor stood up in his place)*

Order, Governor! Can you be seated?

Deputy Governor, could you please go and sit there? She has not yet been sworn in yet. They are reading charges to her then she will be sworn in when she now comes for evidence. Was that not the procedure?

I am guided by the programme which reads “Charges”.

I am advised that in a proceeding like this, they are called charges. The institutional memory of the Senate is through the Secretariat. Hon. Members of the Committee, whether they are lawyers or not, they are bound by that institutional memory.

Proceed.

### **CHARGES FOR THE DEPUTY GOVERNOR**

**The Clerk of the Senate** (Mr. Nyegenye: Hon. Dorothy Nditi Muchungu, on 30<sup>th</sup> January, 2014, the Speaker of the Senate received from the Speaker of the County Assembly of Embu a letter communicating the resolution of the County Assembly of Embu that you be removed from the Office of Deputy Governor of Embu County for gross violation of the Public Procurement and Disposal Act, 2005 and of the County Governments Act, 2012 and the Public Finance Management Act, 2012 and of the Constitution of Kenya, 2010.

#### **PARTICULARS OF VIOLATIONS**

##### **(i) Violations to the Public Procurement and Disposal Act, 2005 and Regulations, 2013**

- (a) Lack of procurement committee for the county executive as outlined in Section 26(4) of the Public Procurement and Disposal Act, 2005 and Regulation 7 – The Public Procurement and Disposal (County Governments Regulations, 2013)
- (b) Failing and/or neglecting to observe the threshold set for the procurement method used as set out in the First Schedule of the Regulations.
- (c) Commencement of procurement for works for rehabilitation of Embu Stadium without ensuring that there are sufficient funds set aside in the budget to meet the obligations, contrary to Section 26(6) of the Public Procurement and Disposals Act, 2005.
- (d) Not complying with the Act and regulations as outlined in Section 27(1) of the Public Procurement and Disposals Act.
- (e) Superintending over procurement of motor vehicles without evidence of adherence to procurement procedures.

##### **(ii) Violation of Public Finance Management Act, Section**

###### **(a) Section 121**

Under this section, the county government is required to carry out all procurement of goods, services and disposal of assets in accordance with Article 227 of the Constitution and the Public Procurement and Disposal Act. The county executive has been carrying out all their procurement services without a tender committee in place. When the Assembly committee proposed interdiction of members of the tender committee, no one was interdicted as there were no holders of such offices. This indicates that all procurement at the county executive where the Governor and his deputy are head and deputy head respectively, have been on going without this crucial committee. This is blatant abuse of office and these officers are liable under Article 226(5) of the Constitution and Section 196 of the Public Finance Management Act, 2012. These officers in addition, do not deserve to hold any public office as they do not pass the integrity test.

(b) Violation of Section 166

Since inception of operation of the County Government of Embu, the County Assembly has never received any quarterly report from the county treasury. The county deputy chief executive officer has always been aware of has done nothing to effect submission of these reports.

(c) The Report of the Auditor-General on accounts of County Government of Embu for the period March to June, 2013 is a serious indictment on the state of affairs in the management of finances of the county government. Pages 27 to 63 of the report contain instances of gross violation of the Public Finance Management Act and the Public Procurement and Disposals Act.

**(iii) Violation of County Government Act, 2012**

(a) Appointments/advertisements for the positions in the county executive that have not been approved by the County Assembly in contravention of Section 62(2) of County Governments Act, an action taken by the county service board on the instructions of the Office of the Governor. The filling of most of the positions resulted in termination of services of staff seconded by the Transition Authority in accordance with the Transition to Devolved Governments Act, 2012.

(b) The report of the county service board for the period ended December, 2013 shows that some people were appointed without its approval and some had not even applied for respective posts. The report goes on to enumerate purported office holders.

(c) Failing and/or neglecting to develop for the approval of the county executive Committee the organization of the county government and its various departments, contrary to Section 46 resulting in management confusion in the entire county executive arm.

(d) Failing and/or neglecting to sign and cause to be published notice of all formal decisions by the county executive committee or the governor contrary to Section 30(2)(l) making it difficult for the public to put the Government to account.

(e) Failure to design or cause to be designed a performance management plan in accordance to Section 47 resulting in poor delivery of public services contrary to Section 116(2) and Section 117.

(f) Disregard of provisions of Section 4(2) of the County Governments Act by authorizing the use of county symbols that have never been approved by the County Assembly.

#### **(IV) Violation of the Constitution**

The county deputy governor is the deputy chief executive officer of the county as per the provisions of Article 179(4). Members of the County Executive Committee are accountable to the deputy governor and the governor for the performance of their functions and exercise of their powers. The County Assembly has thus held the county deputy governor responsible for:-

- i. Non-adherence to the provisions of Article 227 of the Constitution of Kenya, 2010, that is, failing and/or neglecting to ensure that contract for goods or services are issued in accordance with a system that is fair, equitable, transparent, competitive and cost effective.

Particulars:-

On diverse dates in 2013, the deputy governor, being the deputy chief executive officer, failed and/or neglected to stop the rehabilitation of Embu Stadium and purchase of maize seeds without adherence to the lawful procurement procedure. Almost every county contract has been secured by one company since county inception and the deputy governor has always been aware of this.

- ii. Disregarding the national values and principles of governance contrary to Article 10 of the Constitution of Kenya, especially the rule of law, accountability and transparency.

Particulars:-

Failing to ensure that the necessary laws are adhered to and, in particular, procurement laws, the County Governments Act and the Public Finance Management Act.

- iii. Contravention of Chapter Six on Leadership and Integrity by failing to ensure that all the necessary laws are adhered to thereby eroding public confidence in the integrity of the office.

Particulars:-

(a) Procurement of works for Embu Stadium and purchase of motor vehicles without following the laid down procedures and recruitment of county directors in various portfolios contrary to Article 73(2)(a).

(b) Organizing, together with the Governor, a county delegation on study tour to Rwanda. This was organized in anticipation of the impeachment proceedings/Motion to buy honourable Members against the Motion.

This is an absolute abuse of office and use of public funds to actuate personal interest.

1. Failing and/or neglecting to provide full and regular reports on matters relating to the county, contrary to Article 183 (3).
  - a. Failing and/or neglecting to ensure that public money is used in a prudent and responsible way, contrary to Article 201.

Particulars:

Failed or neglected to stop the procurement of goods at inflated prices. The lawful procurement procedures were also not followed.

**(V) Abuse of Office**

The Deputy Governor by virtue of the provisions of Section 39(1) is the deputy overall accounting officer and has such failed to advise the Governor to interdict the County Secretary as per the recommendations of the County Assembly. In disregard to this, the Deputy Governor went on to do nothing when the Governor was defending his County Secretary through his affidavit, his press statement in which the Deputy Governor was aware of. She did not object to paying for air time in a local media station *Wi Muaro* to defend the County Secretary.

**The Chairperson** (Sen. (Dr.) Khalwale): At this stage, we would like to have a break of about 30 minutes---

**Mr. Kibe Mungai:** Mr. Chairman, Sir, if I may be allowed on that, we expect the session to be a four hour session and it is already very late. I would rather I do one hour so that we can rest a little bit and have some energy to--- Yesterday we only slept for two hours. As a matter of fact, all of us are very tired.

**The Chairperson** (Sen. (Dr.) Khalwale): We are not taking it away. We are just having a bite---

**Mr. Kibe Mungai:** We would like if it is possible so that we have a small break so that when we come back for the trial, then we do not have such a long period. If we could be allowed to do this one hour now, it would really help us.

**The Chairperson** (Sen. (Dr.) Khalwale): I know you are raring to go, but you are overruled. So, let us go and have a bite. We are coming soon and you will address us.

**Mr. Kibe Mungai:** That is okay.

*(The Committee adjourned temporarily at 10.25)*

*(The Committee resumed at 11.10 p.m.)*

**The Chairperson** (Sen. (Dr.) Khalwale): Order everyone. Counsel for the Deputy Governor, can you now go to the podium?

*(Mr. Kibe Mungai took to the podium)*

Before you begin, counsel for the County Assembly, do you have any opening remarks before you prosecute the charges?

**Mr. Charles Njenga:** Mr. Chairman, Sir, if I may propose I have seen the filled response by the Deputy Governor and it raises, first, a very fundamental issue of law.

**The Chairperson** (Sen. (Dr.) Khalwale): Then go and take the podium. Mr. Kibe Mungai, you can briefly go and sit where you were.

*(Mr. Kibe Mungai stepped down from the podium)*

*(Mr. Charles Njenga took to the podium)*

**Mr. Charles Njenga:** Thank you, Mr. Chairman, Sir, I will be very brief in my opening remarks so that we can get to the substance. By way of highlight, the case of the County Assembly against the Deputy Governor, Embu County as set out in the charges now read to the Deputy Governor is basically – I derive that from the Notice of Motion that is set out on the first page of the charge –

THAT, pursuant to standing orders as read together with Article 181 of the Constitution Section 33 of the County Government Act, the County Assembly resolves to remove from office the Deputy Governor of Embu for co-superintending over gross violations over Public Procurement and Disposal Act.

So, this sums up the case of the County Assembly against the Deputy Governor. In the commission and in the happening of all the particulars of the violations set out in the charges, the Deputy Governor assumes as equal a responsibility as the Governor according to the context and the import of the office of the Deputy Governor in law. In our case, when we rise to argue the charges, we shall show that the functions of the Deputy Governor cannot in law be alienated or divorced from the functions of the Governor to the extent that she is enjoined in law as a deputy to the Governor. In fact, the law expressly provides that her roles are to deputize the Governor and such other roles as may be assigned from time to time by the Governor.

We shall demonstrate before this Committee by way of an affidavit sworn by the Deputy Governor that she does admit that she has never been assigned any particular role by the Governor. So, we shall make the case that during the subsistence of her term thus far, she has for all purposes and intents been deputizing the Governor in the position and in the manner anticipated for in the law. We shall show that in that position, she then assumes equal liability, equal culpability as will be demonstrated against the office of the Governor under the provisions of the law set out and under the provisions of the Constitution. That shall be basically the summary of our case.

We shall refer extensively because as you can see the charges are almost copy, word for word, with the ones against the Governor, but with the modification that this is culpability and liability arising more from omission to execute the office. We shall show

that under the law, the office of the Deputy Governor is enjoined to advise and to counsel the office of the Governor in the execution of the mandate of that office.

So, at the time that we shall rise to make that case, we shall demonstrate this by taking the Committee through the applicable provisions of the law together with the facts as set out in the charges. I wish to rest there for the opening.

**The Vice Chairperson** (Sen. Murkomen): Thank you counsel. Counsel for the Deputy Governor, Mr. Kibe Mungai!

**Mr. Kibe Mungai:** Mr. Chairman, Sir, upon service of summons to the Deputy Governor, we filed a response which I believe copies have been supplied to the Members of the Committee. In that response, hon. Members will notice that the profound question that the response raises relates to whether the Deputy Governor is properly before this Committee, whether the Constitution permits the impeachment of a Deputy Governor and, therefore, whether this Committee and the Senate are properly seized of this matter for purposes of adjudicating it. It is in these circumstances, therefore, that the various issues of law that arise from that fact, we thought that we could use a bit of our time to be able to demonstrate that if the law does not allow the impeachment proceedings against the Deputy Governor, really all these charges that have been preferred by the County Assembly will neither be here nor there because the position of law is that before the Senate and its Committee – that applies to the County Assembly as well – can properly proceed on any matter, it must, first of all, assure itself that the law permits it to deal with a specific matter. We shall be referring later to specific provisions of the law in order to demonstrate that single fundamental issue that we are raising.

By this opening statement, therefore, there are three things that we wish to demonstrate. The first one is this: That the constitutional power of impeachment is limited to the high offices of the President, the Deputy President and the County Governor. The second issue that we wish to demonstrate by way of this opening statement is that the constitutional power of impeachment is not available against the holder of the State office of Deputy Governor in the exercise of the functions of a Deputy Governor.

The third issue that we seek to demonstrate is that the provisions of impeachment under the Constitution of Kenya are complete, coherent and efficacious and they do not need any interpretations beyond what plain English under plain readings of this provision mean in order to dispose of the simple question: Is the honourable Dorothy Muchungu properly before this Committee or not? It is a matter disposable on the plain reading of this matter.

Why is this matter of profound significance now? When this matter arose and the Senate was seized of jurisdiction, on instructions of the Deputy Governor, we did write a letter, I believe dated 2<sup>nd</sup> February, 2014 to the Speaker of the Senate, in which, amongst other things we pointed out the serious concern that the Senate has no jurisdiction over the Deputy Governor and in which we humbly requested the Senate that in view of these clear provisions of the Constitution, it may be important that the Senate should decline

jurisdiction. But the service of the summons means that we were not able at that stage to convince the Senate that it should decline jurisdiction. We are willing to assume, as we must, that the County Assembly having submitted impeachment proceedings for consideration by the Senate, that, probably, the Senate had no choice other than somehow to deal with the matter.

We take it, therefore, that even though the Senate has not one way or the other determined the issues of jurisdictions, it is still open for the Deputy Governor. In this case, through the right of hearing before this Special Committee to be able to persuade you that the recommendation that must be made to the Senate when you report on Friday is that there is no jurisdiction to consider impeachment proceedings against a Deputy Governor.

Why do we say all these? We say this for a number of reasons which we now commence on. The question is now settled that the Constitution of Kenya 2010 provides for a Presidential system of Government. The major feature of this Presidential system is the separation of the legislative and the executive arms of Government. In such a system in which there are these distinctions of the functions of the Government between the executive and the legislature, Parliament plays an important role.

Which is that role? Article 94 (4) - it states that Parliament shall protect this Constitution and protect the democratic governance of the Republic. It is the argument of the Deputy Governor that the constitutional procedure of impeachment is one of the principal devices in which the legislature in a Presidential system of Government ensures that the Executive is held to accountability. Therefore, we are submitting that in express terms, the Constitution of Kenya provides for three instances in which the constitutional power of impeachment may be exercised.

Article 95(5) of the Constitution provides that the National Assembly reviews the conduct in office of the President, the Deputy President and other state officers - can initiate the process of removing them from office. What is not mentioned in that particular one is that the equivalent of the National Assembly being the County Assembly initiates that when it comes to the County Governor.

In similar vein, Article 96(4) of the Constitution, provides that the Senate participates in the oversight of state officers by considering and determining any resolutions to remove the President or Deputy President from office in accordance with Article 145.

As regards County Governments, Article 185(3) provides that the role and authority of the County Assembly includes the following;

A County Assembly, while respecting the principles of separation of powers may exercise oversight over the County Executive and any other Executive organs.

Expressly pursuant to this, Article 181 provides that a County Government may remove a Governor from office through the procedure of impeachment. Therefore, in so far as the

Constitution is concerned, there is zero doubt that it is only three offices that can be subjected to this.

However, despite the clarity of the Constitution – here we have to defend the Deputy Governor for Embu – hon. Members of this Committee. It is not an accident or oversight that our Constitution limits the applications of the constitutional powers of impeachment to the President, Deputy President and the County Government.

There are three reasons for these submissions. The first one is this.

Under Article 1(3)(b), and 1(4) of the Constitution, the sovereign power is delegated to the National Executive and the Executive structures in the county governments and it is exercisable at the national and at the county levels.

The second reason is that under Article 131(1)(b) of the Constitution, the President exercises the executive authority of the Republic with the assistance of the Deputy President. Article 147 provides for the functions of the Deputy President. It is important at this stage that we state that under the oaths of office of the President and the Deputy President prescribed in the Third Schedule of the Constitution, they take the oath of allegiance to protect the sovereignty of this country and defend the Constitution. Therefore, the institution of the Presidency as the Supreme Court has said, means the President and the Deputy President. So, constitutionally, there is no doubt that the presidency includes two offices, the one of the President and the other one of the Deputy President. But we will proceed.

Under Article 179(a) of the Constitution, the executive authority in a county vests in the Executive Committee headed by a Governor. This provision should be read with Sections 30 and 31 of the County Governments Act. Specifically, Sections 30(2) of the County Governments Act provides that the powers of the Governor include diligently executing the functions and exercising the authority provided in the Constitution and legislation.

Equally, Section 31(d) provides that the Governor shall have such powers as may be necessary for execution of the duties of the Office of the Governor.

Therefore, it is our submissions that from the stand point of the Constitution, it is because the County Governor exercises the ultimate constitutional power just as the President and the Deputy President at the national level that the Constitution specifically requires that a person exercising that office may be removable through the constitutional procedure of impeachment. The powers of the Governor, according to the clear provisions of the County Governments Act, Sections 31(a), 39 and 40; those critical powers are not shared by the County Governor with anybody else. They are exclusively the powers of the County Governor.

I go to the issue which I will cast as a question. If the idea was to be made that if we can remove a County Governor, and then is a Deputy Governor removable? Is the holder of the Deputy Governor's Office removable by impeachment? The answer to this is "no" and "yes."

Why is it no? It is no because the Constitution expressly says that as long as the County Governor is exercising the powers of a Deputy Governor, he is not removable by way of impeachment. But there is a yes. There are certain circumstances where a Deputy Governor may be removable by way of impeachment. Which are these? This is only under the circumstances of Article 179(5) when the Deputy Governor is acting as the Governor. You are impeached, not because you are a Deputy Governor, but because you are exercising the functions and powers of a Governor. However, that is something that must happen expressly. Under 175, you are, indeed, at that time acting as the Governor.

We will go to the next issue.

Is there a legal mechanism to remove the Deputy Governor from office in the capacity of a Deputy Governor? Again, there is. Under Chapter 6 of the Constitution and in particular Articles 75 and 80 which ultimately provide for the Public Officer Ethics Act, there is a procedure in which anybody who does not comply with it may be removable for the kind of failings that are being alleged before this Committee of the Senate. We go to the next issue. The point here is that all state officers can be removed and there are procedures to remove them provided they are state officers. You can remove the Speaker, you can remove a Minister by a resolution. The representatives of the people can be removed through the right of recall or during periodical elections. The point is that the constitutional power of impeachment is limited and it is limited expressly to two offices. That must never be mistaken. This is because if it is mistaken, it would make a mockery of the reasons why constitutional states have the powers of impeachment, in the first place.

I will now go to the important question. In this regard, I would like to draw the attention of this hon. Committee to two Articles in order to underscore the point I am making. Under Article 2(2) of the Constitution, the exercise of the state power of impeachment must be authorized by the Constitution.

As Members of the Senate, you swear an oath to uphold and protect the Constitution. The Constitution, in express terms requires that before any action is taken for purposes of 2(2), it must be authorized by the Constitution. There is no express authority, by the Constitution to have the Deputy Governor subjected to the impeachment proceedings. For purposes of Article 3(1) of the Constitution, it is the obligation of this Special Committee to respect, uphold and defend the Constitution of Kenya. To defend and uphold the Constitution of Kenya amongst other things would require this Special Committee to say that they were wrongly seized of jurisdictions in certain matters and cannot act because the Constitution does not permit them to take a certain course of action.

The issue of impeachment – I was here and I thought it would arise in submissions – is a power that has existed in England historically. It is one that was made famous, most recently, in the US during the Watergate Scandal. For us to understand, in plain language, impeachment, at the end of the day, as it is and as all the authorities I have read suggest, is a trial in which politicians subject holders and exercisers of important state power to

accountability in which you get convicted. You get convicted not so that you are taken to Kamiti or to prison, but you get convicted so that you are relieved of the high office of trust that has been conferred upon you. So that it would be our arguments that for purposes and drawings of lessons from the Watergate Scandal is that the persons that you hold to account, you do not hold them to account in the sense that you are a court; and whether you can convict them for theft. No, on the contrary, it may well be possible that Mr. President presides over a Government that is full of theft and corruption. The reason you may impeach the President may not be because a President has stolen a cent, but because the Government that he presides over has thieves and bad administration. So, what is the point we are making?

In Watergate, this was a simple burglary as the Press Officer of State House stated. However, at the end of the day, when all facts came out, it was noted that the burglary was supposed to help the Republicans to harass the democrats. At the end of the day, the President was, somehow, implicated. President Nixon was not a burglar himself. President Nixon did not break the Watergate House or the apartments of the Democratic Party. However, Members of the administration were involved in such affairs and he was held to account because of the political and legal powers vested in him.

From the point of view, of commonsense; of these powers of impeachment, you are tried for impeachment not because a certain provision of the Constitution says that you are a Deputy of the true wielder of power; no. You are tried because when all is said and done, the buck stops with you. When the Government does some good, it is your good. If the Government engages in evil, you are held accountable for that evil. So, make no mistake. You cannot get into a situation where this can be shared. This cannot be shared because in express terms of the law, we are told who wields this power.

There is no provision of the law that has been cited to show that this power is shared. It is an exclusive power. The Constitution makes no mistake. The President is Head of Government and Head of State. The Governor is Head of the County Government and executes the law. There should be no mistake about that. It is not interlinked. There is no concept of co-governance. There is no concept of co-presidency. If there was, it would be possible to understand the concept under which the Deputy Governor is before you, of course, superintendence.

As you have heard my learned colleague trying to persuade this Committee here, according to them, there is equal responsibility. Equal responsibility arises because you have been given equal power and equal mandate. If there is no equal mandate, then the concept of equal responsibility cannot arise. As a legal issue, that needs to be sorted clearly and not just for purposes of Dorothy Muchungu, the hon. Deputy Governor for Embu, but for purposes of all instances subsequent to these proceedings. We will now go to the next issue.

It is our submission that a finding of impeachment is a political rather than a legal verdict. What do we mean by this? We mean this to make one point. That in the system that accountability is ensured impeachment being a political process, there will always be

some significance in which the process could be malicious, by way of abuse of power, so that, at the end of the day, this kind of process has to be safeguarded. That is the reason it needs to be understood.

The County Assembly passed the resolution to impeach. The Senate will try the impeachment of these officials. That is why we are here for the purposes of the investigations. I urge the Committee to understand that under Section 33 of the County Governments Act, this Committee exercises an important power. It is the most important safeguard that can ensure that this thing is real, malicious and if we have the wrong persons before you, you do not go to the actual court.

The actual court is the Senate when, like a jury; a vote is cast to say whether you are innocent or guilty for purposes of either keeping or losing your high political office. Therefore, in this particular case, it is our argument that the impeachment of the Deputy Governor - assuming that you have any doubt after the presentations we have made this far - would be absurd as a matter of law and fact. This absurdity would become clear when you hear the evidence that will be tendered in the support of the case against the Governor.

Why is it absurd? Under the County Governments Act, Section 39(1), the Deputy Governor is a subordinate of the Governor. Alongside other Members of the Executive Committee, she is collectively and individually responsible to the Governor. If the law creates the relationships of a principal and the subordinate, it would become absurd for anybody to come and convince the Senate that despite the law, it is possible for the subordinate to be equally responsible for a certain action with the Governor.

There is a second reason that arises from common sense. Section 32(2) of the County Governments Act says that the role of the Deputy Government is to deputise the Governor in the execution of the Governor's functions. If I assist you in prosecuting whatever your functions are, then I am your assistant. I am not the principal. If that happened, it would be absurd to say that the responsibility of my assistant is the same one that I have as the principal. This is a matter of commonsense, both in law and as a question of facts.

Under Section 32(3) of the County Governments Act, the Governor may assign responsibility to the Deputy Governor. Again, if one person assigns responsibilities to the other one, the law says that one acts on the basis of the instructions of the other one and the directions of the other one. Under the First Schedule to the County Governments Act, the Deputy Governor swears an oath that she will advise the Governor faithfully and truthfully. Where in this world is an advisor responsible the same way as the principal that she or he advises?

By logic, advice can either be taken or rejected. This is the nature of our work every day. My client is a principal. I am the advisor. More importantly, for purposes of the structures of accountability, there is no law that, for example, requires the members of the County Executive Committees to account to the Deputy Governor. There is no law that allows

the County Secretary to account to the Deputy Governor and no pretence has been made in the presentations of facts before this Special Committee.

Therefore, it is my submission that when all this is considered, it is not possible and it would be to stretch common sense to say that with regard to the affairs of Embu County Government, the buck could have stopped either with Dorothy Muchungu or jointly on her desk alongside that of the Governor. It is still not possible.

We go to the notion of co-superintendence, it is on the basis upon which we come before this Committee. In this, of course, I would be requiring the clear understanding of this concept. I am sorry we have to deal with this as a legal issue. The notation of co-superintendence for purposes of liability for wrongs or crimes is a legal absurdity. In law, there are basis in which you are liable under civil law; breach of contract, negligence and such actions.

**Sen. Orengo:** Mr. Kibe, do you not think it is better to deal with that particular point when the County Assembly have dealt it? They have not put a case as yet. Just do it briefly.

**Mr. Kibe Mungai:** I will do it briefly. The reason I am raising this issue is because when they will be saying that this is the basis of liability I want it to be understood in a certain context by the Members. I am only commenting in order to be able to say that for purposes of criminal liability, the Criminal Procedure Act says how you can be liable; aiding and abetting a crime, colluding or such like issues. These are clearly spelt out. Civil liability is also clearly spelt out. The point we are making here and we do not have to be long on this is, that in order to hold the Deputy Governor accountable in this matter, the County Assembly has come with a unique or previously non-existent basis for liability that is called co-superintendence of crimes and wrongs. It is not defined anywhere, it is existing for the first time in these particular proceedings. That is the background against which I want that to be understood.

Let me move on to the next point. I will come to that one later. When you come to the responses, because we have been served with responses, they have tried to make a certain explanation on page 10 to 11 of why we are here. As I said, we need to understand why we are here under this doctrine. What have they come up with? They have said that, invariably, any liability accruing to the Governor in the course of exercise of his office under the law must, as matter of course, also lie with the Deputy Governor save where the such a Deputy Governor demonstrates that he or she took proactive steps to either correct any act or omissions or breach of law and regulations issuing from the office of the Governor.

Against this background, it is obvious to say that if you say that liability would be joined-- If you look at Article 181 of the Constitution it talks of gross misconduct, abuse of power, violations of the law or incapacity, physical or mental. I will extract all that I will use from my three hours – all these basis of liability are personal in nature.

**The Chairperson** (Sen. (Dr.) Khalwale): Counsel, you are doing very well, just a small indication. How many more minutes?

**Mr. Kibe Mungai:** I am about to finish. I believe in ten minutes I will be done. I said three hours, I will subtract it from any other time. I am also very tired.

**The Chairperson** (Sen. (Dr.) Khalwale): Ten minutes is fine.

**Mr. Kibe Mungai:** But it is important that I finish with this.

What I am saying is, first of all, the circumstances under Article 181 are personal to the holder of an office. These include issues of violation of the law, misconduct, you are either unable or something like that. These cannot be co-shared even by the provisions of the law. They are personal to you.

The second important issue that should be understood - when my learned colleague came here he said that these are acts of omissions. We have heard the evidence being tendered. The evidence that was tendered for close to 25 hours, when we have been here, points out to the issue. We have not heard how the Deputy Governor was involved, how she connived with the facts that are the basis for these allegations. Therefore, if the case of the Deputy Governor is as it has been submitted, it is our submission that to allow the County Assembly to turn around and say these state of facts suddenly can hold somebody else liable, when we are not hearing: "You did not inform Dorothy Muchungu, you did not copy any letter to her, you did not say how she bought a car for herself" and you say she is still equally liable, it is to permit engagement in an absurdity. I urge the Senate of this country not to engage in an exercise in absurdity.

I go to three fundamental questions of law. The first one is this: Whether impeachment proceedings can be conducted simultaneously, for the Governor and Deputy Governor. It is my submission that impeachment proceedings cannot be held, even assuming it was provided for, simultaneously. Let me start with the simple example which is expressly provided for in the Constitution. The Constitution provides that you can impeach the President. The Constitution further provides for the consequences of impeachment of the President.

**The Chairperson** (Sen. (Dr.) Khalwale): Mr. Kibe, so that we are clear, up to where we are now, has the investigation into the Governor and Deputy Governor been held simultaneously or they are being held separately?

**The Vice Chairperson** (Sen. Murkomen): I think I understand what he is saying, that you cannot render the two offices vacant at the same time. That is the point here; that you cannot do something that will ensure that the Governor and Deputy Governor go home.

The Chair is concerned about whether we have conducted the process simultaneously. That is not what he means.

**Sen. Orenge:** But Vice Chair I am correcting him that the Constitution contemplates the two offices can be vacant.

**The Vice Chairperson** (Sen. Murkomen): I have no problem with that. We are not answering him yet. We are just understanding what he wanted to say.

**Mr. Kibe Mungai:** Mr. Chairman, Sir,---

**The Chairperson** (Sen. (Dr.) Khalwale): Do not rush about finishing. We have to get it right. Simultaneously would mean that we are moving both matters together. But we are doing this one consecutively. We are not doing it simultaneously or in a joint manner.

**The Vice Chairperson** (Sen. Murkomen): That is not what he means. He is talking about the vacancy of the office. That is what you mean, Mr. Kibe?

Let him continue.

**Mr. Kibe Mungai:** Mr. Chairman, Sir, one of them relates to what you were saying. I have not said it because it has been pre-empted. The first one is that, when to use the phrase that Sen. Orenge was using the other day, the scheme of law in a certain issue. There is also a certain scheme of law that the provisions for impeachment presupposes. Which ones are these? Let us start with the Deputy President. If you go for the Deputy President and you create a vacancy in the office of the Deputy President, the Constitution provides for how Parliament can ensure that there is another person who would occupy the office of the Deputy President. The Constitution also provides that, if by way of impeachment, you get rid of the President then the Deputy President takes over. If the Deputy President in the course of it is impeached or if there is another problem, then the person who has been nominated or elected by Parliament, whatever the phrase they use would take over.

So, that the issue is this, the device of impeachment is not supposed to interfere with the term of office that is granted by the people of Kenya because that is the mandate. It is not supposed to interfere with the mandate unless people who should otherwise exercise that mandate have been removed lawfully from exercising the powers, in terms of exercising presidential powers. That is why the Constitution says: "These are the powers of the President." If he messes in exercising the powers of the President, he can be impeached. The Constitution says: "These are the powers of the Deputy President." It also says: "He can be impeached under these circumstances." It also deals the same case with the Governor.

This is where emphasis is necessary. Article 181 of the Constitution provides for impeachment of the Governor. Article 182(2) provides for the consequences of the vacancy that may be created in the office of the Governor namely; the Deputy Governor would take over. That Deputy Governor can subsequently be removable by way of impeachment if he or she exercises the powers of a Governor. There are no provisions under the laws of Kenya for the time being, how you can replace the Deputy Governor.

What is the point? If the office of the Governor and the Deputy Governor through consequential provisions of impeachment renders both of them vacant, then an election would be held.

Mr. Chairman, Sir, what has happened from the County of Embu is this, the allegations against the Governor are being visited on the Deputy, whom there is not a single allegation, has exercised the powers of a Governor. That is prohibited. If you are to sanction such kind of an application of the law, then I am sad to say that the Senate would effectively be missing the whole point of why impeachment exists, in the first place, to remove a political executive who has failed in order that the other one who may not have exercised that power may be able to discharge those functions. It is only when they fail in that position that they can be impeached.

In short, therefore, I am saying as the first point, you cannot simultaneously create vacancies in order to have an election. You will be rendering Article 182 of the Constitution meaningless. By the actions of the Senate, you will have amended the Constitution of Kenya.

The same argument would apply if on the same actions somebody was to pretend that the President has done this, co-superintend him, the Deputy President is also liable for that. That is not permitted under the Constitution of Kenya.

Mr. Chairman, Sir, I move on to the second issue which you are interested in. It is my submission and in making this submission, I am referring to Section 33, that the impeachment hearings by this Special Committee permitted under Section 33 contemplates the Governor. The ten day right of hearing is a ten day right of hearing for the Governor. If the law permitted the hearing of a Deputy Governor, he or she would be entitled to hearing before a Special Committee and a ten day period and the rights that accrue to it. So that the notion that at the tail end of impeachment hearings of the Governor where the Deputy Governor is given three or four hours, which you do not know what may turn to, might lose office, and under the provisions of Chapter Six becomes disqualified to hold public office at least for ten years. This is not permitted by the Constitution.

I wish to make a more important issue at the third element of these submissions, the constitutional prohibition. This arises from Article 50 of the Constitution. What is this issue about Article 50 of the Constitution? There is such a thing known as *ex post facto law*. This means crimes that become crimes after they have been committed. What do we mean here? The Constitution of Kenya does not make or at least prior to the resolutions to the County Assembly of Embu did not say that you can remove the Governor on the basis of these crimes and omissions before that resolution was passed. But after the resolution was passed, she is being held to account. The Constitution, as it existed before the County Assembly passed its resolutions, did not permit impeachment against the Deputy Governor.

If you read the Constitution to mean that it permits the impeachment of the Deputy Governor that would be what is known as an *ex post facto* law. It is prohibited under the Constitution of Kenya. How was it done? It was under Standing Orders No.61 and 62 of the Embu County Assembly. Those Standing Orders presume that you can remove the Deputy Governor by way of impeachment to the extent that they pretend to do so when the Constitution does not support that. Those Standing Orders are bills of attainder. Bills of attainder as they existed in England, is whereby somebody has not committed a wrong that was previously known before the wrong was committed. Suddenly, you pass legislation and hold that person into account. That is what the resolution of the County Assembly is. It is a bill of attainder. Even in England, they had to prohibit it. It is against due process and Article 50 of the Constitution.

Mr. Chairman, Sir, the last point is the clear issue of jurisdiction. I have submitted; you do not have jurisdiction. Where is this jurisdiction coming from? The only express place where it has been given is Standing Orders No.61 and 62 of the County Assembly of Embu. I beg this Special Committee not to permit this very serious constitutional attack of the rule of law in this country.

I thank you very much. We shall be returning to a bit of this latter.

**Sen. Orenge:** I am not asking this question because I do not want you to answer it right now, but it is because you have raised a very fundamental issue which may push us one way or the other.

In your address later on I want you to consider why Article 145 of the Constitution specifically talks of the removal of the President by impeachment and when you come to Article 181 of the Constitution, it talks about removal of a County Governor; the mechanism is not spelt out. The characteristic of that process is not characterized as an impeachment. Why is it that deliberate? Why is it called removal instead of impeachment; removal over impeachment, and this one is silent?

The second question I want to ask you to consider when you reply is; you are characterizing the Deputy Governor as if the Deputy Governor has no functions. Under Article 179(2), the County Executive Committee (CEC) consists of the County Governor and the Deputy Governor separately and distinctly. And then when you go to Article 179(4), it says: "The County Governor and the Deputy County Governor are the chief executive and deputy chief executive of the county respectively." So, the Constitution seems to suggest that the two positions are separate and distinct.

My final point is the point when you say that the removal of the Deputy Governor has no constitutional basis, I want to ask you this question. Since the Constitution does not bar Parliament from enacting legislation to make it possible for the removal of the Deputy Governor, is it wrong for Parliament to create procedures for the removal of the Deputy Governor? I am saying this because if you look at Article 40 of the Constitution, it says:- "Parliament shall not enact a law that permits the State or any person---" So, where the Constitution does not want Parliament to enact a law of a particular nature, it says so. But

when it comes to the removal of the Deputy Governor, there is no such prohibition in the Constitution. What the Constitution does not bar Parliament, Parliament can always do. So, I want you to think about this---

**The Vice Chairperson** (Sen. Murkomen): In fact, I thought you were going back to--- Just that flow of thought is that you would go to Article 200, where Parliament is expressly given the permission to actually enact that legislation for removal of the Deputy Governor.

**Sen. Orengo:** Yeah.

**The Vice Chairperson** (Sen. Murkomen): Article 200 of the Constitution actually gives the permission to Parliament to enact legislation for that removal.

And then, consider also these clauses that say – I think Clause 146 – in the absence of the President and Deputy President, the Speaker shall take over. So, the same for the Governor and Deputy Governor in Article 185--- Is it Article 185? I think so. Then the other, the Speaker of the County Assembly will act. So, you are trying to say that there is no possibility. Just go through all those points that you raised because it is not now---

**Mr. Kibe Mungai:** I can deal with them now.

**The Vice Chairperson** (Sen. Murkomen): We do not want you to deal with them now because we know you are coming in substantially. So, we just want to hear you substantially when you come in later, addressing yourself to these issues because it makes sense when it comes to the argument you are talking about jurisdiction.

Sorry, it is not Article 185, but Article 182 (4):-

“If a vacancy occurs in the office of county governor and that of deputy county governor, or if the deputy county governor is unable to act, the speaker of the county assembly shall act as county governor.”

**Mr. Wamatangi:** Mr. Chairman, Sir, I also have an issue, probably, along the same lines that the senior counsel has intervened. Because I was also very concerned, counsel, with that, especially why you finished, because I would imagine that the Constitution would not envisage a scenario whereby it creates an office that cannot be either punishable or where the holder of that office cannot be removed even for wrong doing. Just, for example, because you clearly pointed out that one of the roles of the Deputy Governor is to advise the Governor. Supposing, under circumstances like the ones we are dealing with, there was clear evidence, just for example, that those acts of wrong doing have consistently been perpetuated because of misadvice of a Deputy Governor, are we saying that, then, it is impossible or that there is no way of removing that person even that time if they were wrong?

My last issue is this: Are you advancing a line of thought or argument that as long as there is a Governor sitting in office, the Deputy Governor is a sitting duck? As long as there is somebody who is sitting in the Office of the Governor, the Deputy Governor has no duty? Because I would also find that to be curious, but I would certainly need your advice. I had something else, but when it comes along, I will bring it up.

**The Chairperson** (Sen. (Dr) Khalwale): Yes; I do not know whether I am observing right for myself and for a few Members; the fact that we slept at 2.00 a.m. is starting to have a toll on us. Tomorrow, we really must be alert. I was proposing that we retire. We step you down, you go, you come tomorrow with those answers. We deal with your case, probably, by 10.00 a.m., when we can go on to the other things. Hon. Senators, I want you to guide me on this issue. The quality of attention is very poor.

**Sen. Orengo:** The case is being presented by the County Assembly, how long---

**The Vice Chairperson** (Sen. Murkomen): You can also allow the Senator---

**The Chairperson** (Sen. (Dr) Khalwale): Yes. Counsel, step down. Sen. Orengo, you can see clearly---

**Sen. Orengo:** If you are very tired, Mr. Chairman, Sir, your Vice Chairperson can---

**The Chairperson** (Sen. (Dr) Khalwale): I am speaking for myself and the Committee. So, if we say we should go on, then we go on.

**Mr. Kibe Mungai:** You are also speaking for me; I am very tired.

**The Chairperson** (Sen. (Dr) Khalwale): It is not easy.

**Sen. Orengo:** But what about if---

**The Vice Chairperson** (Sen. Murkomen): Let us just ask, first, for a word from---

Mr. Chairman, Sir, let me assist you; that is why I am here. How much time would you need, County Assembly?

**Mr. Charles Njenga:** Because it is really more like a submission on issues of law that have arisen, probably about 45 minutes. But I also share the sentiments by counsel because we have also been going through the motion of the case by the Governor the whole day; we are not so sure that we can do justice to the few issues that---

**The Vice Chairperson** (Sen. Murkomen): That is okay. I just want to know how many minutes you needed. And then, counsel, in your final submissions, you would need how long?

**Mr. Kibe Mungai:** Actually, that is why I was saying that if we are going to answer the questions on law, because I will only be answering to the issues that have been raised by the other side--- They have already been raised; first the issues of evidence as we understand them, because we have charges. We shall be responding to the specific charges and whether those circumstances incriminate us, assuming you have jurisdiction. So, that is what we were reserving for the second part of the engagement, and I had indicated--. She will speak, I believe, for about 20 to 25 minutes maximum. I believe I can do the remainder of what I can between one and one-and-a-half hours. Therefore, we are going to stick to our three hours, despite the fact that we would have been entitled to more.

**The Vice Chairperson** (Sen. Murkomen): Excellent! So, that means that you would take in total two hours?

**Mr. Kibe Mungai:** Yes, the balance of two hours.

**The Vice Chairperson** (Sen. Murkomen): You have a balance of two hours.

**Mr. Kibe Mungai:** Yes.

**The Vice Chairperson** (Sen. Murkomen): And then they need 45 minutes; so, two hours, 45 minutes; is that right?

**Mr. Charles Njenga:** Maybe, Mr. Chairman, Sir, for guidance---

**The Vice Chairperson** (Sen. Murkomen): I thought once they are done for two hours, and then they will reply again.

**Mr. Charles Njenga:** What we do not understand is; counsel says that the Deputy Governor will speak. I do not know whether that is the way of an opening statement or it is by way of evidence? So that if it is an opening statement supplementing the one made by counsel, she can do that first, then he can just reply and finalize.

**Mr. Kibe Mungai:** She will speak first. She will speak before me.

**The Vice Chairperson** (Sen. Murkomen): Before them?

**Mr. Kibe Mungai:** No; after them.

**The Vice Chairperson** (Sen. Murkomen): Then that will be like she is giving evidence or something.

**Mr. Kibe Mungai:** Then she will speak before.

**The Vice Chairperson** (Sen. Murkomen): Otherwise, unless she wants to be a witness.

**Mr. Kibe Mungai:** That is okay.

**The Vice Chairperson** (Sen. Murkomen): Okay.

**Sen. Orengo:** If she speaks later as a witness, then she will take more time because we have to ask her questions.

**Mr. Kibe Mungai:** My understanding was this; that in the summons, we were asked to specify how we are going to participate. We indicated that we are going to participate, her alongside her advocate; and we are not going to give evidence. Therefore, it is my understanding that even assuming that for some reason I was not here tomorrow, she would be entitled to speak and she would not be a witness for that purpose.

**The Vice Chairperson** (Sen. Murkomen): Agreed. So, in other words---

**Mr. Kibe Mungai:** She is entitled to hear the evidence against her and speak and she will not be a witness for purposes of that.

**The Vice Chairperson** (Sen. Murkomen): Agreed; that is fine. You appear in person and with your advocate.

We need to make a decision now here; not tomorrow. We have ahead of us about three-and-a-half hours. We need to agree.

**Sen. Orengo:** Mr. Chairman, Sir, I am really pleading. If tomorrow again we start the way we have started, the way I am seeing it, we are not going to have a report. So---

**The Vice Chairperson** (Sen. Murkomen): Our biggest challenge is also the lawyers.

**The Chairperson** (Sen. (Dr) Khalwale): So, let me understand this, Mr. Vice Chairman. Counsel Kibe is saying he is tired. That has been echoed by again the counsel for the County Assembly.

**The Vice Chairperson** (Sen. Murkomen): And you can understand.

**Sen. Orengo:** And tomorrow we will be tired again.

**The Chairperson** (Sen. (Dr) Khalwale): You know it is because most people slept at 2.00 a.m. So, tomorrow when we start, we start on a clean slate and then we proceed with the other business.

**The Vice Chairperson** (Sen. Murkomen): Let us just do 9.00 a.m. to 11.00 a.m.

**Mr. Kibe Mungai:** I hope we can even start at 8.30 a.m.

**The Chairperson** (Sen. (Dr) Khalwale): No, no; at 8.30 a.m. there is traffic all over.

**Sen. Orengo:** As for me, I beg that if tomorrow we are going to start, it still has to be 10.00 a.m.

**The Vice Chairperson** (Sen. Murkomen): 10, 11, 12, 1, 2---

**Sen. Orengo:** And it is also out of experience, because every time I come here---

**The Chairperson** (Sen. (Dr) Khalwale): Although you came late today---

**Sen. Orengo:** No! Today, I came right on time.

**The Vice Chairperson** (Sen. Murkomen): Let us try 9.00 a.m. tomorrow, counsel.

**Mr. Kibe Mungai:** Then she will speak after them. She says she will speak after them.

**Sen. Orengo:** No; I am saying in terms of tomorrow. Are we going to be able to do the balance of the work?

**The Chairperson** (Sen. (Dr) Khalwale): So, now I can see we are deciding on two hours of starting; either at 9.00 a.m. or at 10.00 a.m. So, the majority is what?

**The Vice Chairperson** (Sen. Murkomen): 10.00 a.m.; it will be practical.

**The Chairperson** (Sen. (Dr) Khalwale): Members, it is 10.00 a.m.? Okay; 10.00 a.m. it is.

So, we adjourn until tomorrow at 10.00 a.m.

The Committee adjourned at 12.22 a.m.