



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (THIRD SESSION)

THE SENATE

VOTES AND PROCEEDINGS

TUESDAY, OCTOBER 15, 2019 AT 2.30 P.M.

1. The Senate assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer said by the Deputy Speaker.
3. **COMMUNICATION FROM THE CHAIR – APPROVAL BY THE TAITA TAVETA COUNTY ASSEMBLY OF MOTION TO REMOVE FROM OFFICE, BY IMPEACHMENT, THE GOVERNOR OF TAITA TAVETA COUNTY**

The Deputy Speaker conveyed the following Communication from the Chair: -  
“Honourable Senators,

By a letter dated 9<sup>th</sup> October, 2019 (*Ref: TTCA/CS/7/Vol. 1(085)*) and received in the Office of the Speaker of the Senate on Friday, 11<sup>th</sup> October, 2019, the Speaker of the County Assembly of Taita Taveta informed the Speaker of the Senate of the approval of a Motion by the County Assembly of Taita Taveta-

*“THAT, pursuant to the provisions of the Constitution of Kenya, 2010, Article 181 (1) (a) and (c) as read together with section 33 of the County Governments Act, 2012, this County Assembly of Taita Taveta resolves to remove H.E. Granton Graham Samboja as the County Governor of Taita Taveta on grounds of Violation of the Law and Gross Misconduct in holding the State Office...”*

The Speaker of the County Assembly also forwarded copies of the following documents-

- a) the Order Papers for the morning and afternoon sittings of the County Assembly of Taita Taveta held on 9<sup>th</sup> October, 2019;
- b) the Hansard of the sitting of the County Assembly of Taita Taveta held on 9<sup>th</sup> October, 2019;
- c) the Motion for Impeachment of the Governor of Taita Taveta County together with signatures of the Members of the County Assembly in support of the Motion;

- d) the minutes of the Taita Taveta County Assembly House Business Committee meeting held on 9<sup>th</sup> October, 2019; and
- e) the minutes of the Speaker's *Kamukunji*, Taita Taveta County Assembly, held on 9<sup>th</sup> October, 2019.

In terms of Article 181 of the Constitution, section 33(3)(a) of the County Governments Act, 2012 and standing order 75(1)(a) of the Senate Standing Orders, the Speaker of the Senate is required "*within seven days after receiving notice of a resolution from the speaker of a county assembly to convene a meeting of the Senate to hear charges against the Governor.*"

Honourable Senators,

Pursuant to section 33(3)(a) of the County Governments Act and standing order 75(1)(a) of the Senate Standing Orders, I hereby proceed to read the Charges against Hon. Granton Graham Samboja, the Governor of Taita Taveta County-

- (1) Misappropriation of funds contrary to section 196 of the Public Finance Management Act, 2012. Particulars include-
  - (a) expenditure on unbudgeted projects;
  - (b) unwarranted formation of taskforces;
  - (c) stalled projects; and
  - (d) failure to prudently implement the development budget;
- (2) Failure to submit to the County Assembly an annual report on the implementation status of the county policies and plans as required by section 30 (2)(j) of the County Governments Act, 2012;
- (3) Failure to deliver the annual state of the County Address as required by section 30(2)(k) of the County Governments Act, 2012;
- (4) Failure to remit statutory deductions to the relevant institutions including the Kenya Revenue Authority (KRA), the National Hospital Insurance Fund (NHIF) and the National Social Security Fund (NSSF) contrary to the Income Tax Act, Cap 470, the National Hospital Insurance Fund Act, Cap 255 and the National Social Security Fund Act, Cap 258, Laws of Kenya;
- (5) Misleading the people of Taita Taveta County contrary to section 19 of the Public Officer Ethics Act, Cap 183, Laws of Kenya as read together with Articles 73 and 260 of the Constitution of Kenya, 2010;
- (6) Misleading the Members of the Taita Taveta County Assembly contrary to section 19 of the Public Officer Ethics Act, Cap 183, as read with Article 260 of the Constitution of Kenya, 2010. The particulars include-
  - (a) the allocation of Ksh. 274 million for casual workers; and
  - (b) the use of Ksh.120 million being road maintenance from the fuel levy equalization funds;

(7) Gross Misconduct

The particulars include-

- (a) failure to adhere to the County Assembly Resolution on the ratification of Mr. Davis Mwangoma as the acting County Executive Committee Member for Finance and Economic Planning;
- (b) misrepresentation of facts to the public with the aim of inciting the public against the County Assembly;
- (c) collapse of County Government devolved structures; and
- (d) failure to provide leadership in the current budget stalemate.

Honourable Senators,

Standing order 75(1)(b) of the Senate Standing Orders, gives the Senate two options on how to proceed with the matter. The Senate may-

- (a) by resolution, appoint a Special Committee comprising eleven of its members to investigate the matter; or
- (b) investigate the matter in plenary.

Honourable Senators the Senate Majority Leader shall shortly be giving Notice of a Motion for the establishment of a Special Committee. Should the Motion for the establishment of a Special Committee eventually pass, the Special Committee will be required, under section 33(4) of the County Governments Act, 2012, and standing order 75(2) of the Senate Standing Orders to investigate the matter and to report to the Senate on whether it finds the particulars of the allegations against the Governor to have been substantiated. If, however, the Motion for the establishment of a Special Committee does not pass, the Senate shall proceed to investigate and consider the matter in Plenary. The resolution of the Senate on the Motion by the Senate Majority Leader will therefore determine the manner in which this matter shall henceforth proceed.

It is noteworthy, and I wish to emphasize to all Honourable Senators, that debate on a Motion to establish a Special Committee shall be limited to the substance of the Motion. It is not a Motion on the propriety, prudence or even the constitutionality or the legality of the processes that have preceded the submission of this matter to the Senate. It is not a debate on the facts of the matter or their merits.

Honourable Senators,

Let me conclude by stating that the hearing of charges for the proposed removal from office of a Governor is one of the most important functions of the Senate under the Constitution. I, therefore, urge that the Senate exercises the highest level of responsibility on this matter.

I thank you.”

4. **PAPER**

The following Paper was laid on the Table of the House: -

Letter by Messrs. Havi and Co. Advocates addressed to the Speaker of the Senate, in connection with the communication from the County Assembly of Taita Taveta, on the proposed removal from office by impeachment of Mr. Granton Samboja as Governor of Taita Taveta County.

*(Sen. Moses Kajwang, MP)*

5. **NOTICE OF MOTION** - (Sen. Aaron Cheruiyot, MP)

THAT, AWARE THAT, the marathon world record holder Eliud Kipchoge wrote his name into history books by becoming the first man to run a marathon in under two hours, in Vienna, Austria on Saturday, 12<sup>th</sup> October, 2019;

FURTHER AWARE THAT, Brigid Kosgei broke the sixteen-year marathon world record for women, to become the new women's marathon world record holder during the Chicago Marathon held on Sunday, 13<sup>th</sup> October, 2019;

RECALLING the stellar performance by the Kenyan athletics team that participated in the IAAF World Athletics Championships held in Doha, Qatar from 27<sup>th</sup> September to 6<sup>th</sup> October, 2019, where the team won five Gold, two Silver and four Bronze medals, and emerged in the second position out of 206 participating countries;

COGNIZANT THAT Kenya has earned international respect in athletics over the years courtesy of the hard work and stellar performance by our athletes in both on and off-field events, which has brought us together as a country and encouraged cohesion in line with our National Anthem;

NOW THEREFORE, the Senate commends: -

- a) Mr. Eliud Kipchoge, for his history-defining fete of achieving the 1:59 target to run a full marathon;
- b) Ms. Brigid Kosgei for her excellent performance in the Chicago Marathon and specifically for breaking the women's marathon world record; and
- c) the Kenyan athletics team that participated in the IAAF World Athletics Championships held in Doha, Qatar from 27<sup>th</sup> September to 6<sup>th</sup> October, 2019 for their stellar performance.

6. **NOTICE OF MOTION** - (The Senate Majority Leader)

THAT, WHEREAS, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 9<sup>th</sup> October, 2019, the County Assembly of Taita Taveta approved a Motion "to remove from office, by impeachment," the Governor of Taita Taveta County;

AND FURTHER, WHEREAS by letter Ref. No. TTCA/CS/7/Vol.1 (085) dated 9<sup>th</sup> October, 2019, received in the Office of the Speaker of the Senate on Friday, 11<sup>th</sup>

October, 2019, the Speaker of the County Assembly of Taita Taveta informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 75(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 75(1)(b), the Senate resolves to establish a special committee comprising the following Senators: -

- 1) Sen. George Khaniri, MGH, MP;
- 2) Sen. Njeru Ndwiga, EGH, MP;
- 3) Sen. Ochillo Ayacko, EGH, MP;
- 4) Sen. (Dr.) Agnes Zani, CBS, MP;
- 5) Sen. Aaron Cheruiyot, MP;
- 6) Sen. Charles Kibiru MP;
- 7) Sen. Boniface Kabaka, MP
- 8) Sen. (Dr.) Lelegwe Ltumbesi, MP;
- 9) Sen. Beatrice Kwamboka, MP;
- 10) Sen. Farhiya Ali, MP; and
- 11) Sen. (Canon) Naomi Waqo, MP;

to investigate the proposed removal from office of the Governor of Taita Taveta County and to report to the Senate within ten (10) days, pursuant to standing order 75 (2), of its appointment, on whether or not it finds the particulars of the allegations to have been substantiated.

## **7. STATEMENTS**

### **(i) Pursuant to Standing Order 47(1)**

The Senator for Vihiga County (Sen. George Khaniri, MP) made a statement on an issue of general topical concern, regarding alleged inhumane evictions of families in Chepturo Village, Kiptuyo Ward, Chesumeyi Sub-county in Nandi County.

Thereupon, the Senator informed the Senate that the incident of the eviction from a piece of land in dispute happened from the night of Wednesday, 9<sup>th</sup> October, 2019 to the morning of Thursday, 10<sup>th</sup> October, 2019 and that properties and livelihoods of 2000 people were destroyed.

The Senator also informed the House that the contentious piece of land has been a matter before the courts for over forty years and, even though the court has made its verdict numerous times before, the number of people involved and the magnitude of disfranchisement of implementing the orders necessitated an amicable and consultative solution involving both the national and county governments.

The Senator further averred that the Governor of Nandi County had through a statement, confirmed that his administration and the national government were

aware of the matter and were working towards a permanent solution and that the available options were to either find an alternative piece of land to resettle the current occupants of the land or compensate the original owners who had filed the case in court, the most viable of which would have been to compensate the original claimants of the land since the intrigues could not be solved any other way.

The Senator stated that there is need for the government to provide the necessary humanitarian aid and health care to the evicted families to prevent more suffering and outbreak of diseases.

The Senator, in conclusion, informed the House that the issue surrounding the ownership of land has been very sensitive and it's unfortunate that the particular issue had not been handled conclusively more than fifty years on. He called upon the National Land Commission and the Ministry of Lands to streamline the process of acquiring title deeds and remove corrupt officials from their offices.

The Deputy Speaker, thereupon, referred the Statement to the Standing Committee on Land, Environment and Natural Resources and the Standing Committee on Justice, Legal Affairs and Human Rights for consideration, pursuant to Standing Order 47 (3).

(ii) **Pursuant to Standing Order 48(1)**

- a) Nominated Senator (Sen. (Dr.) Alice Milgo, MP) sought a Statement from the Standing Committee on Agriculture, Livestock and Fisheries concerning adoption of conservation agriculture in the county.
- b) The Senator for Marsabit County (Sen. Godana Hargura, MP) sought a statement from the Standing Committee on Land, Environment and Natural Resources on the completion of Badassa Dam in Marsabit County.
- c) The Senator for Marsabit County (Sen. Godana Hargura, MP) sought a statement from the Standing Committee on Finance and Budget regarding the utilization of the Equalization Fund established under Article 204 of the Constitution of Kenya.

8. **MOTION – ADOPTION OF THE REPORT OF THE SESSIONAL COMMITTEE ON COUNTY PUBLIC ACCOUNTS AND INVESTMENTS ON ACCOUNTS OF COUNTY EXECUTIVES FOR FINANCIAL YEAR 2013/2014**

Order read;

Motion made and Question proposed-

THAT, the Senate adopts the Report of the Sessional Committee on County Public Accounts and Investments on the Inquiry into the Financial Operations of Nandi, Elgeyo Marakwet, Baringo, Laikipia, Machakos, West Pokot, Tharaka Nithi, Siaya, Embu and Nairobi City County Executives for Financial year 2013/2014 (1<sup>st</sup> July, 2013 to 30<sup>th</sup> June, 2014), laid on the Table of the Senate on Wednesday, 9<sup>th</sup> October, 2019.

*(Chairperson, Sessional Committee on County Public Accounts and Investments)*

**Adjournment of debate Pursuant to Standing Order 105(1)**

Motion made and Question proposed;

THAT, pursuant to Standing Order 105, debate be now adjourned.

*(The Senate Majority Leader)*

There being no Senator wishing to contribute;

Before the Question was put and pursuant to Standing Order 79, the Deputy Speaker ruled that the Question did not affect counties.

Question put and agreed to.

9. **MOTION - ESTABLISHMENT OF A SELECT COMMITTEE TO INVESTIGATE THE PROPOSED REMOVAL FROM OFFICE BY IMPEACHMENT, OF THE GOVERNOR OF TAITA TAVETA COUNTY**

Order read;

Motion made and Question proposed-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 9<sup>th</sup> October, 2019, the County Assembly of Taita Taveta approved a Motion “to remove from office, by impeachment,” the Governor of Taita Taveta County;

AND FURTHER, WHEREAS by letter Ref. No. TTCA/CS/7/Vol.1 (085) dated 9<sup>th</sup> October, 2019, received in the Office of the Speaker of the Senate on Friday, 11<sup>th</sup> October, 2019, the Speaker of the County Assembly of Taita Taveta informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 75(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 75(1)(b), the Senate resolves to establish a special committee comprising the following Senators: -

- 1) Sen. George Khaniri, MGH, MP;
- 2) Sen. Njeru Ndwiga, EGH, MP;
- 3) Sen. Ochillo Ayacko, EGH, MP;
- 4) Sen. (Dr.) Agnes Zani, CBS, MP;
- 5) Sen. Aaron Cheruiyot, MP;
- 6) Sen. Charles Kibiru MP;
- 7) Sen. Boniface Kabaka, MP
- 8) Sen. (Dr.) Lelegwe Ltumbesi, MP;

- 9) Sen. Beatrice Kwamboka, MP;
- 10) Sen. Farhiya Ali, MP; and
- 11) Sen. (Canon) Naomi Waqo, MP;

to investigate the proposed removal from office of the Governor of Taita Taveta County and to report to the Senate within ten (10) days, pursuant to standing order 75 (2), of its appointment, on whether it finds the particulars of the allegations to have been substantiated.

*(The Senate Majority Leader)*

Debate arising;

And there being no other Senator wishing to contribute;

Before the Question was put, and pursuant to Standing Order No. 79(1), the Deputy Speaker informed the House that the Motion did not affect counties.

Question put and agreed to.

**RESOLVED ACCORDINGLY:**

THAT, WHEREAS, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 9<sup>th</sup> October, 2019, the County Assembly of Taita Taveta approved a Motion “to remove from office, by impeachment,” the Governor of Taita Taveta County;

AND FURTHER, WHEREAS by letter Ref. No. TTCA/CS/7/Vol.1 (085) dated 9<sup>th</sup> October, 2019, received in the Office of the Speaker of the Senate on Friday, 11<sup>th</sup> October, 2019, the Speaker of the County Assembly of Taita Taveta informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 75(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

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- 4) Sen. (Dr.) Agnes Zani, CBS, MP;
- 5) Sen. Aaron Cheruiyot, MP;
- 6) Sen. Charles Kibiru MP;
- 7) Sen. Boniface Kabaka, MP
- 8) Sen. (Dr.) Lelegwe Ltumbesi, MP;
- 9) Sen. Beatrice Kwamboka, MP;
- 10) Sen. Farhiya Ali, MP; and
- 11) Sen. (Canon) Naomi Waqo, MP;



to investigate the proposed removal from office of the Governor of Taita Taveta County and to report to the Senate within ten (10) days, pursuant to standing order 75 (2), of its appointment, on whether it finds the particulars of the allegations to have been substantiated.

10. **PROCEDURAL MOTION – EXTENSION OF THE SITTING OF THE SENATE PURSUANT TO STANDING ORDER 31(3)(a) and (4)**

Motion made and Question proposed;

THAT, pursuant to Standing Order 31(3)(a) and (4), the Senate resolves to extend its sitting until the conclusion of business listed as Order No. 8 in today's Supplementary (No. 2) Order Paper.

*(Sen. Moses Wetang'ula, MP)*

And there being no Senator wishing to contribute;

Before the Question was put, and pursuant to Standing Order No. 79(1), the Temporary Speaker (Sen. (Dr.) Lelegwe Ltumbesi, MP) informed the House that the Motion did not affect Counties.

Question put and agreed to.

11. **MOTION - COMMENDATION OF ELIUD KIPCHOGE AND OTHER KENYAN ATHLETES FOR OUTSTANDING PERFORMANCE**

Order read;

Motion made and Question proposed-

THAT, AWARE THAT, marathon world record holder Eliud Kipchoge wrote his name into history books by becoming the first man to run a marathon in under two hours, on Saturday, 12<sup>th</sup> October, 2019, in Vienna, Austria;

FURTHER AWARE THAT, Brigid Kosgei broke the sixteen-year marathon world record for women, to become the new women's marathon world record holder during the Chicago Marathon held on Sunday, 13<sup>th</sup> October, 2019;

RECALLING the stellar performance by the Kenyan athletics team that participated in the IAAF World Athletics Championships held in Doha, Qatar from 27<sup>th</sup> September to 6<sup>th</sup> October, 2019, where the team won five Gold, two Silver and four Bronze medals, and emerged in the second position out of 206 participating countries;

COGNIZANT THAT Kenya has earned international respect in athletics over the years courtesy of the hard work and stellar performance by our athletes in both on and off-field events, which has brought us together as a country and encouraged cohesion in line with our National Anthem;

NOW THEREFORE, the Senate commends: -

- a) Mr. Eliud Kipchoge, for his history-defining fete of achieving the 1:59 target to run a full marathon;
- b) Ms. Brigid Kosgei for her excellent performance in the Chicago Marathon and specifically for breaking the women’s marathon world record; and
- c) the Kenyan athletics team that participated in the IAAF World Athletics Championships held in Doha, Qatar from 27<sup>th</sup> September to 6<sup>th</sup> October, 2019 for their stellar performance.

*(Sen. Aaron Cheruiyot, MP)*

**Adjournment of debate Pursuant to Standing Order 105:**

Motion made and Question proposed;

THAT, pursuant to Standing Order 105, the debate be now adjourned.

*(Sen. Aaron Cheruiyot, MP)*

There being no Senator wishing to contribute;

Before the Question was put and pursuant to Standing Order 79(1), the Temporary Speaker (Sen. (Dr.) Lelegwe Ltumbesi, MP) ruled that the Question did not affect counties.

Question put and agreed to.

And the time being ten minutes past Seven O’clock, the Temporary Speaker (Sen. (Dr.) Lelegwe Ltumbesi, MP) adjourned the Senate without Question put, pursuant to the Standing Orders.

12. **SENATE ROSE** – at ten minutes past Seven O’clock.

**M E M O R A N D U M**

*The Speaker will take the Chair on  
Wednesday, October 16, 2019 at 2.30 p.m.*

--x--