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THE SENATE

THE HANSARD

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Special Sitting

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*The House met at the Senate Chamber,
Parliament Buildings, at 2.00 p.m.*

[The Speaker (Hon. Lusaka) in the Chair]

HEARING AND DETERMINATION OF THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF KIAMBU COUNTY

The Speaker (Hon. Lusaka): Honourable Senators, we had a break and, therefore we are going to continue with our programme. According to our programme, I will now invite the county assembly to give evidence.

(Loud consultations)

Let us have the county assembly.

PRESENTATION OF THE CASE OF THE KIAMBU COUNTY ASSEMBLY

Mr. Ng'ang'a Mbugua: Mr. Speaker, Sir, before the County Assembly takes the Floor, I had earlier indicated to my learned colleague on the part of the County Assembly that there will be an application that we will be making before they make their case.

I will be seeking your leave that I make that application at this stage. You recall that in our opening remarks, we made reference to the fact that we shall be making an application for admission of certain critical evidence outside the prescribed time.

Mr. Speaker, Sir, I will be seeking your leave to make that application, of course, noting that under rules of procedure No.13, there is proviso for making an application on a preliminary question.

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The nature of my application will be critical to how this process proceeds. Therefore, I would be urging that you grant me leave to make that application for admission of those documents outside that time that was prescribed at this Senate. If you grant me that leave, I will prosecute that application in very few minutes.

The Speaker (Hon. Lusaka): County Assembly, do you have any objection to that?

Mr. Mbuthi Gathenji: Mr. Speaker, Sir, we do not have an objection to the leave sought to make the application but we will respond substantively to the application once it is made.

The Speaker (Hon. Lusaka): Okay, since the County Assembly has agreed, and this is their case, you may proceed to put the application.

Mr. Ng'ang'a Mbugua: Thank you, Mr. Speaker, Sir. Thank you too, counsel for the County Assembly for the indulgence.

This application is founded under the Fifth Schedule of the rules of procedure of determination of the question of the proposed removal of a governor, and specifically Rule No.29, in which any question on admissibility of evidence and any question incidental thereto shall be determined by the Speaker.

Mr. Speaker, Sir, in determination of the application that we are making, which is admission of the Governor's response at the witness statements and the documents thereto, we are alive to Standing Order No.12 in which any question or issue that has not otherwise been provided for by the Standing Orders shall be determined on the basis of the Constitution, forms and precedents---

The Senate Minority Leader (Sen. Orengo): On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Order. What is your point of order, Sen. Orengo?

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, we had no notice of this application that is being made. We did not have it in our documents. The notice we have in the application raises four issues. Since we are time bound in the work we are doing, if we are going to have preliminary objections one after the other, and suppose each is going to take 30 minutes, if we go by Standing Order No.13, would it not be better for the counsel for the Governor to give indication how many preliminary applications he is going to make?

This is because we have only two days to sit, hear them and make a determination. Could he tell us how many applications he wants to make? Then it may be better for those applications to be handled together or be handled in the process of the proceedings. As they argue their case, they can make those applications. Otherwise, we may find we are going to spend the whole day on these preliminary issues without going to the substance and the time they have for each application here.

Mr. Speaker, Sir, I note that in the notice that they have filed, they raised four issues but when I had the address, it looks like they have many more issues. We need to have some understanding so that our work is done in an orderly fashion. That is not to say that he does not have the right for a hearing. In fact, I am trying to help if he can---

The Speaker (Hon. Lusaka): Let him respond first.

Mr. Ng'anga Mbugua: Thank you very much, honourable Senator. The application we are making: One, I am starting with the admission of the documents and evidence out of time. That is the first application.

The second one is whether the preliminary questions that we fashioned and filed before this Senate should be argued before a merit consideration of the impeachment proceedings.

Third will be a request to summon certain key witnesses. I will cite the relevant provisions that enable this Senate and the Speaker to summon relevant witnesses who may be having evidence material to the questions that are before this Senate. What I wish to point out is that I noticed Rule 13 provides for 30 minutes. For this Senate's comfort, I will not take the 30 minutes. I can consolidate those three questions so that my learned friend has a chance to respond to the three and then a determination can be made.

The Speaker (Hon. Lusaka): Proceed, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, my good learned friend ought to make an election. In his preliminary objection that he has filed, in Ground No. 3, he wants this disposed off first before any other matter. He, therefore, has to be absolutely clear about what he wants to do first. This is because it presupposes that he wants this issue determined first, and, therefore, the other ones will follow by virtue of the decision that will be made by this House on this preliminary objection that is already on record.

Thank you.

The Speaker (Hon. Lusaka): Yes, Sen. Wetangula.

Sen. Wetangula: Mr. Speaker, Sir, my two distinguished learned friends are absolutely right. The learned friend representing the Governor should elect. He has filed a preliminary objection which, if he succeeds, the proceedings will end.

Therefore, the issue of adducing evidence out of time will not arise. He should choose whether to prosecute this application that is on record; that will have far-reaching consequences on the proceedings depending on what we rule. Thereafter, he can seek leave to bring additional evidence. Otherwise, it can be construed that in seeking to bring additional evidence, he is abandoning the objection that is on record; that is saying that, they are improperly before this House.

Hon. Senators: Yes.

The Speaker (Hon. Lusaka): Okay. Sen. Murkomen, proceed before he responds.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I totally agree with the interventions of my learned colleagues. The only thing is that the Standing Orders make it clear that any preliminary objection should only take 30 minutes. For our comfort, it is good that he has given us notice that he will take only 30 minutes for all the three preliminary objections, if the House allows.

Maybe the question that Sen. Wetangula is asking is the sequencing. Should we first hear the one that is in the file? However, bearing in mind that even when he reverts back to making a case on the other objections, in this case he should not exhaust his 30 minutes. This is because the Standing Orders say that for all the preliminary objections, we are going to use 30 minutes. That is my interpretation of the relevant Standing Order.

The Speaker (Hon. Lusaka): Can you respond?

Mr. Ng'ang'a Mbugua: Thank you very much, Mr. Speaker, Sir. The reason why we have started with the admission of documents is because our preliminary objection is largely based on evidence which is in those documents. For instance, there is an issue as to the threshold – whether the minimum number of Members of County Assembly (MCAs) that are supposed to vote and validly pass a resolution to impeach – were present. We have logs which were not attached by the County Assembly showing the MCAs that were present at the Assembly.

I appreciate the comments by my learned colleagues – the Senators – that yes, the preliminary objection is purely on a point of law, but on undisputed evidence. Now, that evidence apparently is not before this Senate by the County Assembly; but it is evidence that we are seeking for admission before this assembly.

Mr. Speaker, Sir, whereas we can urge the preliminary questions first, it is important that such critical evidence is also placed properly before this Senate. That is why I set out that sequence.

Therefore, if you allow, I can urge for the admissibility of documents out of time for three preliminary questions, then, of course, the preliminary question on whether the preliminary objective should be heard first or in what sequence should it be heard? Third, the request I had mentioned about summoning certain persons who are critical in the fair determination of this impeachment question.

Thank you.

The Speaker (Hon. Lusaka): What you do is you use the 30 minutes to plead for all the three that you have put forward, and then we will make a ruling.

Mr. Ng'ang'a Mbugua: I appreciate, Mr. Speaker, Sir. Thank you.

The Speaker (Hon. Lusaka): Yes, Sen. Orengo.

(Sen. Orengo spoke off record)

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, the point which has been made is the point made by Sen. Wetangula. My understanding of the preliminary objection which has been filed is that there are no proper proceedings before us. We do not have jurisdiction. Now, to urge that position; to call in evidence now would mean that we go into a hearing, and that is what we are trying to avoid so that we deal with the question of the preliminary objection.

However, if he wants additional evidence, then I think it will be neater for us to go into the hearing. Allow the County Assembly to bring their evidence, and when it comes to the time for the governor to plead his case, then at that time he can make an application that, "I need additional evidence." That is the way it should be done.

However, if he is doing it this way, then it means that he is going against the application. The notice of preliminary objection should then be withdrawn, and then he can go on with that application. But if he got the point of Sen. Wetangula, I think it is helping his case.

I would want to listen very carefully to what Sen. Wetangula said, which is that either there are proper proceedings before us, or there are no proceedings. He should,

therefore, persuade us that there are no proper proceedings before us. When he is doing that, you do it on the basis of what is on record, which we have already.

The Speaker (Hon. Lusaka): Counsel, you have heard what Sen. Orengo has said. Do you want to respond or should I make a ruling?

Mr. Ng'ang'a Mbugua: Mr. Speaker, Sir, I heard you make a determination that within the 30 minutes, I deal with the three preliminary questions.

The Speaker (Hon. Lusaka): Order! The Senate is a court, and you have heard what they have also said and the issues they have raised. So, the choice is yours to either follow what Sen. Orengo has told you or I make a ruling on how we proceed.

Mr. Ng'ang'a Mbugua: Mr. Speaker, Sir, I can respond to Sen. Orengo's comments. First, we appreciate that there is a preliminary objection that we filed on the law. It will still require your determination as to the order of precedence; whether we should start with that preliminary objection first. It is the case of the Governor that because it touches on the foundation of this impeachment proceedings, that it be heard first.

Having said that, Mr. Speaker, Sir, I have also raised a critical issue; that that argument will be based on material that is not before the Senate which we are seeking the leave of this Senate and the Speaker to admit out of time. So, they are conjoined twins because if we then do not admit the documents as we prosecute the preliminary objection, what shall we be referring to? That is the nature of the request.

Speaker (Hon. Lusaka): Order, Senators. Listening to both sides, you all want to be heard. I think this Senate is there to hear and be fair to all of you.

So, I will apply Rule No. 29 which states that:

“Where on a particular question or matter, including but not limited to questions of evidence, materiality, relevance, competency or admissibility of evidence and any question consequential or incidental thereto, no provision has been made in the Standing Orders or in this Rules, the Speaker of the Senate shall rule on the question or matter and the ruling of the Speaker shall be final.

Therefore, my ruling is that since all of you want to be heard, the county assembly will give their evidence and when your time comes, you will make the request on whether you want more documents to be admitted or not.

So, proceed, county assembly.

Mr. Njoroje Nani Mungai: Thank you, Mr. Speaker, Sir. I believe that the witness needs to be sworn.

(The witness for Kiambu County Assembly, Hon. Solomon Kinuthia Wambui, took the oath)

Hon. Kinuthia, please give the Senate your full name and designation.

Hon. Solomon Kinuthia Wambui: My name is Solomon Kinuthia Wambui. I am an elected Member of County Assembly (MCA) for Ndumberi Ward. I also moved the proposed Motion for Impeachment of Gov. Waititu.

Mr. Njoroje Nani Mungai: Hon. Kinuthia, have you sworn a witness statement in support of the proceedings here?

Hon. Solomon Kinuthia Wambui: Yes, I swore a witness statement on 25th January, 2020.

Mr. Njoroge Nani Mungai: Is that the document that appears in the bundle that was submitted by the county assembly?

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Murkomen? Let us minimize the points of order so that we can proceed.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I am sorry to interrupt. I am doing this on behalf of many of our Members on this side who have asked the same. I want us to be clear. It has nothing to do with the witness who is making a presentation.

We need clarity on whether your earlier ruling is in effect that the question as to the issues on the preliminary objection - as to whether there was an impeachment that took place in the county assembly or not. Is it in your ruling that it has been postponed to be determined? Will we have a question at the end that this House will make a determination on the question of whether an impeachment happened in Kiambu or not, or we are left to make a determination on the charges at the far end? That is the confusing issue about your ruling.

In other words, it means that you have dispensed the preliminary objection which means that he can only use it as point of argument on the charges before us. However, the House will never have the opportunity to make a determination as to whether the issue of an impeachment having taken place in the county assembly happened or not. Will the Speaker dispense of such a serious and weighty matter without an opportunity for the House to vote in future?

The Speaker (Hon. Lusaka): The House will have an opportunity because a Motion will be brought. We will also go in Camera where all the information and issues that have been provided will be raised at that particular point. As you vote, you will be voting with the issues raised in mind. So, you will have an opportunity to interrogate all those things as part of the evidence. This is because some of the issues raised, for example, on whether there was no quorum or not are part of the evidence that will be given and will be looked at when we retreat into camera and make a determination. That is my ruling.

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. Murkomen, you are eating into the time of the House.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, it is extremely important that when the House makes a decision at the end, there is a question on whether an impeachment took place in Kiambu County. I am asking you this because with your ruling, what is left for us is to canvass and deal with the charges. The question that will obviously be dealt with by this House tomorrow is on voting on charge one, two, three and four.

My question is, will this House have an opportunity to first of all, vote on whether an impeachment took place or not? If the governor is guilty of the charges, which I am not saying he is because it depends on evidence and so forth, there still will be a substantive question on whether or not an impeachment took place in the County Assembly of Kiambu. That would have a major implication on the decision that you make on the four charges.

We do not want to confuse that because we raised the caution earlier. If this process will be subjected to further testing out there, we want the country to know what the Senate decides on the procedure of the County Assembly of Kiambu, either a fair hearing or substantively, whether there was a proper voting on impeaching of the governor.

The Speaker (Hon. Lusaka): That is the exact evidence that we are listening to now. So, let us listen to the evidence which will determine whether an impeachment took place or not. You have an opportunity---

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I want the Senate Majority Leader to listen to me a little bit. I find myself in an odd situation because we should not be participating at this time. We also want to make sure that there is fair hearing which is important.

The county assembly has put up a case not just of the charges. They have also given us a record of what happened at the County Assembly of Kiambu, who was there and who was not. So, the question as to whether or not there was an impeachment is important throughout from the moment we start to listen and determine this issue.

The county assembly has filed its papers in support of the fact that there was an impeachment. The governor, in his defence, has said that there was no impeachment and for that purpose he has raised a preliminary objection to say that there was no impeachment. So, during the hearing, that is a question that we have to deal with when we are asked to respond and vote.

(Loud consultations)

The Speaker (Hon. Lusaka): Order Members. I made a ruling. In my understanding the counsel has said that he will need to produce more evidence to support the objection. So, let us proceed.

Mr. Njoroge Nani Mungai: Hon. Solomon Kinuthia Wambui, I asked you a question on whether you had made a witness statement. I want you to identify that witness statement in the bundle. I am referring to the fourth witness statement in the bundle. Please confirm that it is your statement.

Hon. Solomon Kinuthia Wambui: Mr. Speaker, Sir, I confirm that I made that statement on 25th January, 2020.

Mr. Njoroge Nani Mungai: Mr. Speaker, Sir, unfortunately, the paginating of the bundle starts after the statements. There are four statements which end at the beginning of page one. I would like hon. Kinuthia to give the Senate a brief of his qualifications and his role within the County Assembly of Kiambu.

Hon. Solomon Kinuthia Wambui: Mr. Speaker, Sir, I am a Certified Public Accountant (CPA), a Certified Public Secretary (CPS) and a member in good standing of

the Institute of Certified Public Accountant (Kenya) - ICPAK and the Kenya Institute of Management (KIM). I am an Alumnus of the University of Nairobi where I graduated with a Master's Degree in Finance.

Mr. Njoroge Nani Mungai: Mr. Speaker, Sir, hon. Kinuthia indicated that he was the Mover of the Motion in the County Assembly of Kiambu. I would like him to briefly take us through the process that he went through in moving that Motion and direct us to where it is in his witness statement.

Hon. Solomon Kinuthia Wambui: Mr. Speaker, Sir, I filed the Motion for the removal of the Governor of Kiambu County, hon. Ferdinand Ndung'u Waititu, on 3rd December, 2019. I moved the same Motion on the Floor of the Assembly on 19th December, 2019 and it was successful. The resolution of the Kiambu County Assembly was communicated to the Senate and that is why we are here today to dispense this matter as per the law of the land.

Mr. Njoroge Nani Mungai: Mr. Speaker, Sir, I would like you to take us through the allegations that you raised in your statement starting with the first allegation on gross violation of the Constitution of Kenya, 2010. What is it that you allege the Governor did and what evidence you have in support of that?

Hon. Solomon Kinuthia Wambui: Mr. Speaker, Sir, the governor grossly violated the Constitution, the County Governments Act, 2012, the Public Finance Management Act, 2012 and the Public Procurement and Disposal Act. There was lack of accountability in the management of the public finances because the Governor led the Executive in incurring unsustainable pending bills in terms of commitment to contractors.

The Governor went over and above the budget by issuing award letters and contracts for the tarmacking of roads well above the set budget of Kshs1.1 billion under the approved gazetted budget of the 2018/2019 Financial Year. That omission could not have escaped the knowledge of the Governor granted that he had County Executive Committee (CEC) members and all the chief officers in charge of the tendering process report directly to him.

An over commitment of 200 per cent could not have escaped the attention of the Governor. It was safe to presume that it was officially sanctioned by the Office of the County Governor. The contractors were duped into responding to advertisement for tenders and award letters which there was no intention whatsoever to honour them other than gain personal benefit though the mode of kickbacks.

Mr. Njoroge Nani Mungai: Mr. Speaker, Sir, I would like us to drill down to the various allegations. You mentioned that there is a huge pending bill according to Paragraph 13. I would like you to look at the document that starts at Page Three and identify the document attached.

Hon. Solomon Kinuthia Wambui: Mr. Speaker, Sir, the document is an annexure of the Auditor-General's audited financial statement for the County Executive of Kiambu for the year ending June 2018. The purpose of the annexure is to give a brief of the status of the pending bills of the Kiambu County Government at the time the Governor took office.

Mr. Njoroge Nani Mungai: Mr. Speaker, Sir, can hon. Kinuthia give us a summary of the table on Page 21 of the document.

Hon. Solomon Kinuthia Wambui: Mr. Speaker, Sir, the table on Page 21 gives a breakdown of the pending accounts payable, the pending staff payables and other payables as per the audited position of the 2018/2019 Financial Year. You realize that for most of that year, the former Governor was still in office.

Mr. Njoroje Nani Mungai: Mr. Speaker, Sir, hon. Kinuthia, is your allegation of Kshs2.3 billion in pending bills backed by the Auditor-General's report?

Hon. Solomon Kinuthia Wambui: Mr. Speaker, Sir, sure.

Mr. Njoroje Nani Mungai: Mr. Speaker, Sir, I would like hon. Kinuthia to give us a summary of his second allegation listed on paragraph 14.

Hon. Solomon Kinuthia Wambui: Mr. Speaker, Sir, the approved and gazetted development budget for roads, transport, public works and utilities for the 2018/2019 Financial Year is indicated on the third row from the bottom in the table on Page 34.

Mr. Njoroje Nani Mungai: Mr. Speaker, Sir, is that the budget figure based on audited figures?

Hon. Solomon Kinuthia Wambui: Mr. Speaker, Sir, that is the gazetted budget which has been passed and signed by the Governor himself.

Mr. Njoroje Nani Mungai: Mr. Speaker, Sir, hon. Kinuthia, how does your allegation in paragraph 15 relating to the budget that has been passed?

Hon. Solomon Kinuthia Wambui: Mr. Speaker, Sir, we are making a statement of fact that the county executive arm of government made commitments in respect for various road tarmacking tender worth, Kshs3.3 billion whereas it was fully aware that the only money available to cater for the contract was only Kshs1.1 billion thereby committing the county over and above budget to 200 per cent of the approved budget.

Mr. Njoroje Nani Mungai: Mr. Speaker, Sir, hon. Kinuthia, where is the evidence of the awards of tenders worth Kshs3.3 billion.

Hon. Solomon Kinuthia Wambui: Mr. Speaker, Sir, the evidence is in pages 35 to 49. The evidence is proof that the advertisement of the tenders was done in newspapers of national circulation and that we appointed county tender valuation committees to vet these tenders when aware that we did not have a budget for the same.

Mr. Njoroje Nani Mungai: Mr. Speaker, Sir, since hon. Kinuthia, represents the county assembly in these proceedings, will you invite the procurement officer to confirm the documentation that you have alluded to?

Hon. Solomon Kinuthia Wambui: Mr. Speaker, Sir, the Director Procurement will appear before the House confirm the above statements of facts.

Mr. Njoroje Nani Mungai: Mr. Speaker, Sir, I would like hon. Kinuthia to highlight his allegation against the Governor according to Paragraph 21. What is your allegation against the Governor there?

Hon. Solomon Kinuthia Wambui: Mr. Speaker, Sir, as a man of the world and a person who has lived in this country for over 30 years, I am well aware that the only motivation that the Governor would have had to over- commit the county to the tune of Kshs3.3 billion was only to collect 10 per cent kickback from such award.

Mr. Njoroje Nani Mungai: I would like you to go to paragraph 29 of your statement. Please, tell us what that relates to?

Hon. Solomon Kinuthia Wambui: This is a breakdown of various companies which were registered between October 2017 and March 2019. The wife and daughters of the Governor who is taking the stand today participated in the award of tenders from Kiambu County Government without actually declaring interest and they were paid expeditiously for services they provided.

Mr. Njoroge Nani Mungai: In terms of the documentation to support the award letters, contracts and CR 12 to back up this, did you provide this?

Hon. Solomon Kinuthia Wambui: This is the information that was attached to the resolution that came to the Senate on 23rd December. The CR 12s are attached as well as the payment vouchers, which show a time of between 60 to 90 days between the date of registration and the date that the payment vouchers were generated to pay listed companies in this list.

Mr. Njoroge Nani Mungai: If we can move on to paragraph 30 of your Witness Statement, tell us what the allegation was before the County Assembly.

Hon. Solomon Kinuthia Wambui: It was the consensus of the County Assembly that hon. Waititu was in full knowledge that his next of kin in terms of daughters and wife were trading with the county. He never disclosed conflict of interest and neither did he prevent them from trading with the county, contrary to the stated rules, especially on the Public Procurement and Disposal Act, 2015. So, that shows the collusion and conspiracy to benefit from an office held by the Governor. Hence, it was consensus of the Assembly that that is impeachable conduct.

Mr. Njoroge Nani Mungai: Moving away from the procurement questions, if we can go to paragraph 26 of your Witness Statement on Crimes under the National Law, what was the allegation and what was the evidence that was presented by yourself in respect of that?

Hon. Solomon Kinuthia Wambui : Kindly come up again.

Mr. Njoroge Nani Mungai: If you go to paragraph 26, under that, there is Crimes under the National Law which proceeds to the next page. Please tell us what that allegation was and what evidence you presented.

Hon. Solomon Kinuthia Wambui : Under paragraph 26, the issue was failure by the Governor to establish a County Budget and Economic Forum, which was intentional and calculated to ensure that the citizens do not participate in county matters.

Moving on to the other paragraph below, which is Crimes under the National Law, it is about violation of Article 40 of the Constitution and Section 155 of the Land Act, 2012, by unlawful acquiring and occupying property in Thika Town owned previously by Ms. Cecilia Njoki Mbugua.

Mr. Njoroge Nani Mungai: In respect of that allegation, do you have a witness who will come and table the reports of the Commission on Administrative Justice (CAJ) as well as the various transfers that related to that?

Hon. Solomon Kinuthia Wambui: Yes, I do.

Mr. Mbuti Gathenji: Coming to the allegation in respect of employment, there were certain allegations you made about how the Governor conducted himself in regard to employment. What was the allegation there?

Hon. Solomon Kinuthia Wambui: The allegation was that he disregarded the County Public Service Board (CPSB) as an organ created by the County Governments Act, 2012. That is Section 74. He usurped the responsibility of interviewing and hiring county workers without the backing of the law.

Mr. Njoroge Nani Mungai: Do you have a witness who has set out what that procedure is?

Hon. Solomon Kinuthia Wambui: Yes, we do have a witness who has voluntarily rendered a witness statement to that effect.

Mr. Njoroge Nani Mungai: Is that the statement of Mr. Martin Njoroge?

Hon. Solomon Kinuthia Wambui: Yes.

Mr. Njoroge Nani Mungai: If I may take you to the pages 125 through to 127 and also pages 128 through to 138, please tell us the difference between those two bundles.

Hon. Solomon Kinuthia Wambui: The first bundle from pages 125 through to 128 is attached for purposes of contrasting. Ideally, the hiring process should come after an advertisement by the CPSB. Then it should be followed by a sitting.

On page 125, you can see they referred to a memo referred to as CPSB/ST/7/ii/VOL.IV/49/MW dated 3rd April, 2019, where a post of Chief Driver, Job Group “H” was advertised. The terms of service and the pay grades are itemized and signed below by the County Secretary. Ideally that is what should happen. There should be a sitting by the CPSB and a resolution and then a memo communicated to the CPSB, so that the hiring process is effected.

Mr. Njoroge Nani Mungai: What about the letters on pages 128 to 137?

Hon. Solomon Kinuthia Wambui: What is on pages 128 through to 137 shows the prevailing situation in Kiambu where the Governor designs a vacancy and conducts hiring himself in complete disregard of the CPSB.

Ultimately he signs the letter and directs various officers in the Payroll Office and the County Secretary’s Office who is the Head of Public Service to recognise that hiring decision.

Mr. Njoroge Nani Mungai: When you look at those letters, if I can just refer to one or two of them, do you know the fate of these people who were hired by the Governor directly?

Hon. Solomon Kinuthia Wambui: Upon a random inquiry by the Ethics and Anti-Corruption Commission (EACC) about hiring decisions, they were fired via a memo drafted by the County Secretary. Instructions were given to the Director of Human Resource (DHR) to stop their salaries. Those who were affected were 26 in number. The same fate befell the casual workers who were hired without proper regard to the labour procedures.

Mr. Njoroge Nani Mungai: Hon. Solomon, were you present during the impeachment proceedings?

Hon. Solomon Kinuthia Wambui: Yes, I was.

Mr. Njoroge Nani Mungai: Can you tell the House how the proceedings proceeded?

Hon. Solomon Kinuthia Wambui: The proceedings were robust as you would expect of such a Motion which is important to the county. The MCAs both in support and in complete opposition to the Motion were present. There was a group that chose to retreat away from the Assembly's premises. All the same, we proceeded under the guidance of the administrative wing of the Assembly which is led by the Clerk and the Speaker. We voted towards 6 o'clock in the evening. The side that was amenable to the impeachment of Gov. Waititu carried the day.

Mr. Njoroge Nani Mungai: Now, if I can refer you to the Standing Orders of the County Assembly of Kiambu, can you confirm to the House what method of voting was utilised at the impeachment? I can see that you have electronic voting, voting by acclamation, roll call voting--- What was the method that was utilised for voting?

Hon. Solomon Kinuthia Wambui: We used roll call voting, where each side of the divide had an appointed teller by way of consensus, and we also had clerks assisting in terms of tallying.

Mr. Njoroge Nani Mungai: Now, if you may look at your Standing Order No.97, is that the one that governs the procedure for roll call voting?

Hon. Solomon Kinuthia Wambui: Yes.

Mr. Njoroge Nani Mungai: If you look at Standing Order No.98, which makes provision for correction of errors during the roll calling voting itself, was there any time that the governor or any member raised an issue as to confusion or error in the roll call voting, under the said Standing Order?

Hon. Solomon Kinuthia Wambui: No, I do not recall any member raising concern about confusion or errors.

Mr. Njoroge Nani Mungai: You are still a Member of the County Assembly?

Hon. Solomon Kinuthia Wambui: Yes.

Mr. Njoroge Nani Mungai: Now, after the voting had been done and the resolution sent, are you aware whether anyone has invoked Standing Order No.99 asking that whatever it is that had been determined by the roll call should be corrected in the manner provided for under that Standing Order No.99?

Hon. Solomon Kinuthia Wambui: I am not aware of efforts within the assembly emanating from Standing Order No.99.

Mr. Njoroge Nani Mungai: That would be all for this witness, and he is available for cross-examination.

Mr. Ng'ang'a Mbugua: Thank you very much, Hon. Speaker and hon. Senators. I will begin the cross-examination of this witness and then yield the Floor to my learned colleagues.

Mr. Njoroge Nani Mungai: Mr. Speaker, Sir, I am sorry. With your indulgence, I have just one more question. Do you wish to produce your witness statement and the documents that you have produced here to the House?

Hon. Solomon Kinuthia Wambui: Yes, I do.

Mr. Ng'ang'a Mbugua: Mr. Kinuthia, I want us to start with what exactly transpired on the Floor of the Assembly on the 19th of December. First, can you confirm that the totality of the Members of the County Assembly of Kiambu is 92?

Hon. Solomon Kinuthia Wambui: Yes, it is public knowledge.

Mr. Ng'ang'a Mbugua: Kindly just answer the question the way I have asked; whether it is public knowledge or otherwise is not the question.

Can you confirm, Mr. Solomon, that out of the 92 members, 30 members were not present in the assembly on the 19th of December?

Hon. Solomon Kinuthia Wambui: I am not aware of the abstentions and the attendance of members. Administrative support is provided by the Clerk's office and I chose to adopt the position taken by the clerk and the speaker.

Mr. Ng'ang'a Mbugua: Were you present on the Floor of the assembly on the 19th?

Hon. Solomon Kinuthia Wambui: Yes, I was present.

Mr. Ng'ang'a Mbugua: The question is: Are you aware? If you are not, that is fine. Kindly do not give us stories.

Are you aware that actually 35 members were not present on the Floor of the assembly on the 19th? If, no, it is okay; we will proceed.

Hon. Solomon Kinuthia Wambui: No, I am unaware.

Mr. Ng'ang'a Mbugua: You are aware that one of the issues the governor is raising is the threshold and that the assembly was served with a preliminary objection saying that the minimum threshold of MCAs were absent on the 19th. Was the assembly served by the Clerk of the Senate with that preliminary objection?

Hon. Solomon Kinuthia Wambui: Yes, I have come to learn of that letter.

Mr. Ng'ang'a Mbugua: So, they were served. So, you knew that there will be a question or issue of numbers that would be up for determination by this Senate. Did you not?

Hon. Solomon Kinuthia Wambui: It is debatable, the Senate ---

Mr. Ng'ang'a Mbugua: No, answer my question. Was the assembly aware that there would be a question of numbers that this Senate would be called upon to determine in these proceedings?

Yes or no?

Hon. Solomon Kinuthia Wambui: It is part of what we are here to determine.

Mr. Ng'ang'a Mbugua: Mr. Speaker, Sir, I think it is important that this witness does not prevaricate. I am asking a very direct question. I am asking the question whether the assembly was aware that the question of numbers or threshold of the MCAs that were present on the 19th would be a question for determination by the Senators; yes or no?

Hon. Solomon Kinuthia Wambui: We received a copy of your preliminary objection---

Mr. Ng'ang'a Mbugua: You did receive; thank you.

Hon. Solomon Kinuthia Wambui: Yes.

Mr. Ng'ang'a Mbugua: When you looked at the preliminary objection, you noticed that the governor was contesting the actual number that was present and voted on the 19th of December. Did you not?

Hon. Solomon Kinuthia Wambui: Yes, I did go through.

Mr. Ng'ang'a Mbugua: Now, when you notice that, can you just look at the document you have produced before this Senate. Number one, shows, if at all, the actual attendance of MCAs on the 19th of December when the vote is said to have been taken.

Do you have any such evidence? Yes or no. That is a document that was prepared by the assembly, hon. Solomon. Just so that we move faster; it is either you have it or you do not? Do you have an attendance list of the MCAs who attended on the 19th?

Hon. Solomon Kinuthia Wambui: I do not have it.

Mr. Ng'ang'a Mbugua: You do not have it. Do you have a good answer why you do not have it or you were seeking to suppress evidence from the Senate as to the actual number of people that were present on the 19th?

Hon. Solomon Kinuthia Wambui: My work was to move the motion and lobby members to support it, which I did successfully. The rest are statutory laws and each party; the Senate and the speaker of the assembly – everybody has his role, and it is not in my purview to keep records for the assembly. If it was, I would have brought the records here.

Mr. Ng'ang'a Mbugua: It is okay. We will move on. We know that it is not your work to keep records. So, we will take it that the evidence is just your oral evidence, yet you knew that, that would be a question that was in issue.

Is this evidence or material present before the assembly either at the clerk's office or any other office to the assembly--- Is the information regarding the records of those who voted and those that were absent available at the assembly?

Hon. Solomon Kinuthia Wambui: The County Assembly of Kiambu is a public institution.

Mr. Ng'ang'a Mbugua: Excuse me, Mr. Solomon. We know it is a public institution. My question is very direct and specific. Is this evidence as to those who voted available at the County Assembly of Kiambu? Yes or no?

Hon. Solomon Kinuthia Wambui: All information at the assembly is public, and you can make a specific request to the assembly to grant you that information.

The Speaker (Hon. Lusaka): Order, Solomon! You will assist this House by answering questions directly the way you are asked. Do not take us into a lot of circumlocutions.

Hon. Solomon Kinuthia Wambui: Thank you. Much obliged, Mr. Speaker, Sir.

Mr. Ng'ang'a Mbugua: So, the question is this; and I put it to you, Mr. Solomon: You are the mover of the motion and had a direct interest in the motion. The governor is contesting the threshold. I am asking you: is information or evidence regarding who attended, who voted 'nay' and who voted 'yes' available at the County Assembly of Kiambu? Yes or no?

Hon. Solomon Kinuthia Wambui: Yes.

Mr. Ng'ang'a Mbugua: But that evidence, you confirm while in oath, is not before this honourable Senate?

Hon. Solomon Kinuthia Wambui: I am the one on oath and I am not aware of what the Speaker sent here to the Senate.

Mr. Ng'ang'a Mbugua: I have asked you the question and will pose it again. As you testify, you can confirm that this is not evidence that is before this Senate. Yes or no.

Is it evidence before this Senate?

Hon. Solomon Kinuthia Wambui: I would assume no, because ----

Mr. Ng'ang'a Mbugua: Do not assume, the answer is no; there is no such evidence. Are you aware that under Section 33 of the County Governments Act, for a valid resolution to be passed to impeach a governor, a minimum of two thirds of the membership of the assembly has to vote 'yes' for that resolution?

Hon. Solomon Kinuthia Wambui: Yes.

Mr. Ng'ang'a Mbugua: But we do not have evidence of whether that two-thirds was actually met. Before this Senate this afternoon, that evidence is lacking. Yes or no, Solomon? It is not about thinking because we need to move a bit faster, so that we can save on time. That evidence is not before this Senate. Is it?

Hon. Solomon Kinuthia Wambui: If you say so.

Mr. Ng'ang'a Mbugua: Not if I say so, it is not there. Thank you. Let us move on, that is as far as now.

I want you to look at the documents that you have produced. First of all, are you aware that under the rules of procedure, the assembly cannot rely on any other additional material than the material that was the basis of the allegation before the assembly? Are you aware that you cannot introduce any new material at the Senate, which was not part of the allegations?

Hon. Solomon Kinuthia Wambui: We received a correspondence from Senate--

Mr. Ng'ang'a Mbugua: I am asking: are you aware? Let us go sequentially. Are you aware that the assembly cannot produce additional material that was not part of the allegations before the assembly?

Hon. Solomon Kinuthia Wambui: Yes, that I am aware.

Mr. Ng'ang'a Mbugua: I want you to quickly just skim through the documents that you have relied on. Do you have the documents that were served on the Hon. Governor when the notice of the motion at the assembly was given and the documents, if any, that was supplied to the governor?

Hon. Solomon Kinuthia Wambui: Yes, I do.

Mr. Ng'ang'a Mbugua: Do you have them with you? I just want us to compare. Just a very short exercise; we compare what is now before the Senate and what the governor was actually supplied with. I want to just make this exercise very easy for you. I want to start with some of the documents that you have attached. For instance, you have attached documents. Hon. Senators, let us start with page one, which is a letter to the Commission on Administrative Justice (CAJ), the Ombudsman. Was that letter supplied to the governor?

Hon. Solomon Kinuthia Wambui: No, it was not.

Mr. Ng'ang'a Mbugua: So, the governor is seeing these documents at the Senate for the first time. Correct? Anyway, you have said it was not.

Go to page two. Was that evidence supplied to the governor at the assembly level?

Hon. Solomon Kinuthia Wambui: Yes, I would assume it was.

Mr. Ng'ang'a Mbugua: Not you would assume. Do you have evidence? It is not an assumption, Solomon, this is a very serious House; it is an impeachment court. Is

there evidence that the letter on page two was ever served on the governor, or this is the first time it is being tabled before the Senate?

It is either you do not know; yes or no, so that we move on. We need to move a bit faster.

Hon. Solomon Kinuthia Wambui: The letter was not supplied because---

Mr. Ng'ang'a Mbugua: It was not supplied, thank you.

Hon. Solomon Kinuthia Wambui: It came after the notice of motion.

Mr. Ng'ang'a Mbugua: Let us move on. The Auditor General's Report on page three all the way to page 33, signed by Auditor General, Edward Ouko. Was that Auditor General's Report supplied to the governor at the assembly level?

Hon. Solomon Kinuthia Wambui: The Governor is the one who was being audited.

Mr. Ng'ang'a Mbugua: No, as to who was being audited or not, is not the question. Was that document supplied to the Hon. Governor?

Hon. Solomon Kinuthia Wambui: No, we did not.

Mr. Ng'ang'a Mbugua: You did not. So, the governor is seeing it for the first time.

Mr. Solomon, page 34 is a supposed summary of expenditure. Is there any evidence that the document on pages 34, 35 and 36 was supplied to the governor at the county assembly?

Hon. Solomon Kinuthia Wambui: Yes, this one was supplied to the governor.

Mr. Ng'ang'a Mbugua: This one was. Do you have evidence of receipt of that document by the Office of the Governor?

Hon. Solomon Kinuthia Wambui: It is part of the bundle I handed to the Clerk's office.

Mr. Ng'ang'a Mbugua: You must have retained a copy, did you not?

Hon. Solomon Kinuthia Wambui: Yes.

Mr. Ng'ang'a Mbugua: Evidence of receipt by the governor of that particular document?

Hon. Solomon Kinuthia Wambui: I have the received notice of motion.

Mr. Ng'ang'a Mbugua: Do you have it?

Hon. Solomon Kinuthia Wambui: I can provide it to the Senate.

Mr. Ng'ang'a Mbugua: But you do not have it with you.

Let us go the report of CAJ, from the Ombudsman on page 50. Do have evidence that that report was again, which is what you are relying on to prosecute a charge of a crime committed against national law; evidence that the report from Ombudsman was supplied to the governor during his impeachment at the assembly?

Hon. Solomon Kinuthia Wambui: Yes, this one has.

Mr. Ng'ang'a Mbugua: Receipt of that document by the governor?

Hon. Solomon Kinuthia Wambui: It is in the bundle we gave to the Clerk.

Mr. Ng'ang'a Mbugua: But you do not have it with you here.

Hon. Solomon Kinuthia Wambui: Yes.

Mr. Ng'ang'a Mbugua: Now, you have touched some title documents. Hon. Senators, pages 64 to 74 is a certificate of lease for some property, which bears the name,

Cecilia Njoki Mbugua. Is there any evidence that, that certificate of lease was served on the governor before he was supposedly impeached by the assembly? Do you have that evidence?

Hon. Solomon Kinuthia Wambui: This came after.

Mr. Ng'ang'a Mbugua: So, the governor was seeing this document yesterday when he was supplied with this document by the Clerk of the Senate?

Hon. Solomon Kinuthia Wambui: This came from the public participation that we held at the assembly.

Mr. Ng'ang'a Mbugua: But the public participation, I presume, if any was conducted, was before a vote was taken?

Hon. Solomon Kinuthia Wambui: Yes, in the intervening period between---

Mr. Ng'ang'a Mbugua: So, there was opportunity for this material to be served on the governor, because public participation precedes the voting?

Hon. Solomon Kinuthia Wambui: He was also a part of those who were invited.

Mr. Ng'ang'a Mbugua: As to whether he was part is not the question; there was opportunity for the assembly to provide material that came up during the public participation. Was there not?

Hon. Solomon Kinuthia Wambui: Yes, there was.

Mr. Ng'ang'a Mbugua: But you confirm that even after that information came to the attention of the assembly, it was not served on the governor?

Hon. Solomon Kinuthia Wambui: It was served through the Senate recently.

Mr. Ng'ang'a Mbugua: Yes, the question is not whether it was served by the Senate recently--- I am concerned about the service before his impeachment at the assembly? It was not.

Answer 'yes' or 'no,' we need to move a bit faster, Solomon.

Hon. Solomon Kinuthia Wambui: We did our part in discovery of this material and remitted it to the Clerk.

Mr. Ng'ang'a Mbugua: It was not served on the governor, that is the question. Mr. Solomon, these are not questions you need to think about. It is a question of whether you know or you do not, so that we move on.

Hon. Solomon Kinuthia Wambui: It was not served between the 3rd and 19th, but it was served---

Mr. Ng'ang'a Mbugua: It was not served between the 3rd and the 19th, when the governor was supposedly impeached by the Assembly. Is it not?

Hon. Solomon Kinuthia Wambui: Yes, but it was served on the 27th.

Mr. Ng'ang'a Mbugua: Thank you very much. Now, let us just spend a bit of time on the allegations; that is, on the process.

Let us go to some very sensationalized--- You have said about pending bills at paragraph 13, that one of the charges, that is, gross violation of the Constitution, Public Finance Management (PFM) Act and Public Procurement and Disposal Act has to do with pending bills. First of all, you are aware that the issue of pending bills is a national issue and is not unique to Kiambu. Is it?

Hon. Solomon Kinuthia Wambui: We are demonstrating here---

Mr. Ng'ang'a Mbugua: No! No! Answer my question; it is not about demonstrating. Are you aware that this is a national issue that is bedeviling all the counties in this country?

Hon. Solomon Kinuthia Wambui: It is very unique to Kiambu?

Mr. Ng'ang'a Mbugua: So, it is only Kiambu that has pending bills? Is that your evidence?

Hon. Solomon Kinuthia Wambui: Arising out of over commitment.

Mr. Ng'ang'a Mbugua: As to how it arose is not the question. Is it your testimony that only Kiambu has pending bills out of the 47 counties we have in this country?

Hon. Solomon Kinuthia Wambui: I am an MCA in Kiambu. I am well aware of matters Kiambu County.

Mr. Ng'ang'a Mbugua: I did not ask you that. Mr. Solomon, can you just answer the question?

Mr. Speaker, Sir, let this witness not take this Senate for granted. It is a very important investigative exercise.

The Speaker (Hon. Lusaka): But I think the answer he has given is adequate. He said he is aware of Kiambu, because he belongs to Kiambu County and not any other county. I think he is right to say that he knows only about Kiambu.

Mr. Ng'ang'a Mbugua: Thank you, Mr. Speaker, Sir. Out of the Kshs2.3 billion pending bills, do you have a breakdown to show which of these bills may have been incurred during the previous regime? Do you have evidence of, first, a breakdown? You are talking of Kshs2.3 billion. Out of this Kshs2.3 billion, which ones were incurred by the previous regime?

Hon. Solomon Kinuthia Wambui: If you allow an explanation---

Mr. Ng'ang'a Mbugua: No! No! I am asking: Out of this Kshs2.3 billion pending bills, let us see when they were incurred. This is because you are aware that the governor on trial came in after the 2017 elections.

Hon. Solomon Kinuthia Wambui: He was sworn in August, 2017.

Mr. Ng'ang'a Mbugua: Yes, he was sworn in. What I am asking is: out of the Kshs 2.3 billion, which part of those bills, if any, were inherited from the previous regime or do you have a breakdown to show when they were actually incurred and by whom? From your documents, just answer whether you have that evidence from your documents then we move on.

Hon. Solomon Kinuthia Wambui: We have not provided that breakdown.

Mr. Ng'ang'a Mbugua: You have not provided that. Okay. Are you aware of any provision under the Public Procurement and Assets Disposal Act that treats pending bills as a crime or a violation?

Hon. Solomon Kinuthia Wambui: Yes, Section 135.

Mr. Ng'ang'a Mbugua: Just read for us. Do you have it? Is it Section 135 of Public Finance Management (PFM) Act?

Hon. Solomon Kinuthia Wambui: Yes. It prohibits expenditure above set ceilings.

Mr. Ng'ang'a Mbugua: It prohibits expenditure. You have made reference to Section 35 of the PFM Act. Is that correct? Is Section 35 where you have pegged that particular charge because Section 35 is on stages of budgeting?

Hon. Solomon Kinuthia Wambui: Counsel, please pay interest. I said Section 135.

Mr. Ng'ang'a Mbugua: No, it is not about paying interest. Let us see that Section 135.

Section 135 marginal notes are: "County governments to submit county assembly supplementary budget in certain circumstances." My question is on these pending bills; it is not about submissions of estimates and budgets. First of all, what criminalizes pending bills, because that has been treated as a crime under the charges proposed? Which section of the law criminalizes pending bills?

Hon. Solomon Kinuthia Wambui: I am aware with the Chief Officer---

Mr. Ng'ang'a Mbugua: Just tell us because you are the mover of the Motion. You drafted the charge sheet and must have read the law. Which violation?

Pending bills is what you have treated as a violation. I am interested in which Section of the law that you now rely on to say was violated by the governor because of incurring these bills that you could not even demonstrate when they were incurred? Do you have that, so that we can move on? First, tell us whether you have that section in the charges.

Hon. Solomon Kinuthia Wambui: Yes, we are going with Section 135 of the PFM Act.

Mr. Ng'ang'a Mbugua: Section 135 is your basis?

Hon. Solomon Kinuthia Wambui: Yes.

Mr. Ng'ang'a Mbugua: Section 135 from my Statute, because yours could be different, is on submission of supplementary budgets and not what you are refereeing to.

Let us move on, Hon. Solomon. You have referred to the approved budget---

Hon. Senators, this is Paragraph 15 of the witness statement. There were award letters for road tarmacking amounting to Kshs3.3 billion. You have made reference from pages 43 to 49.

Let us start with page 43. Just confirm, Hon. Solomon, that page 43 is referring to invitation to tender. Is that what your document talks of?

Hon. Solomon Kinuthia Wambui: I made reference to 35 through to 49.

Mr. Ng'ang'a Mbugua: Hang on. I am referring to 43. I will go to that document that you are referring to. From page 43 to 49, they are actually invitations to tender and not the actual tender awards or contracts. Is that what you notice from your bundle? Those are invitations to tender.

Hon. Solomon Kinuthia Wambui: When I was---

Mr. Ng'ang'a Mbugua: Excuse me! We need to move a bit faster. On page 43, just tell us whether from your bundle, those are invitations to tender and not the actual tender documents.

Mr. Njoroge Nani Mungai: On a point of order, Mr. Speaker, Sir. I think the Counsel needs to let the witness answer. He is misrepresenting the testimony that the witness had given. The witness is trying to correct him and he is trying to bulldoze him.

He has quoted the wrong pages that were cited in respect of the schedules, and the witness is trying to answer that. If you ask a question, let it be answered.

Mr. Ng'ang'a Mbugua: Mr. Speaker, Sir, I am referring to specific pages because in cross-examination, I am supposed to ask a direct question. I am referring the witness--- First and foremost, in cross, I am not limited to even what came out in exam-in-chief. This is cross-examination; a question or material relevant to the issue at hand can be raised.

Mr. Speaker, Sir, I am raising a question touching on - there is an allegation on award of tenders by the governor, and I am referring the witness to a document. So, I will know the nomenclature of that document. Is it a tender, an invitation to tender or what is it? We cannot misrepresent certain facts. It is either an invitation to tender, a tender document or the contract.

Mr. Speaker, Sir, my question is premised on the documents that this witness has produced. I believe that question is proper and in order during cross-examination.

The Speaker (Hon. Lusaka): Kindly proceed.

Mr. Ng'ang'a Mbugua: Thank you. Therefore, Hon. Solomon, go to page 43, a very quick exercise. Can you confirm that from what is there, that is an invitation to tender?

Hon. Solomon Kinuthia Wambui: Yes, this is an invitation to tender.

Mr. Ng'ang'a Mbugua: Therefore, what I would be interested in--- You have referred to that between October 2018 and 2019, the county issued award letter for road tarmacking amounting to Kshs3.3 billion. This is a notification of award of tender. Can you point to us from the documents this notification of award of tender that the County Government issued?

Hon. Solomon Kinuthia Wambui: On pages 35 and 36, there is a summary of---

Mr. Ng'ang'a Mbugua: Therefore, let us go to page 35. Stop there. Hon. Senators, this witness is saying that, that is what constitutes the letters of award of tender. Do you confirm that what we have is a list that has not been signed and, therefore, not authenticated, and we cannot tell its source? That, that is what is being relied on to say that there was award of tenders of Kshs3.3 billion. That, that is what you have and that is what you want this Senate to take as evidence of award of those tenders; a schedule unsigned, unauthenticated, whose sources and origin cannot be established.

Hon. Solomon Kinuthia Wambui: The tender numbers are serialized in the official documents of the county.

Mr. Ng'ang'a Mbugua: I did not ask you about the tender numbers but in that list, those tenders are not there, and the actual letters of award of those tenders are not there.

Hon. Solomon Kinuthia Wambui: We provided this information on the Floor of the Assembly and there is no rebuttal from the governor's side.

Mr. Ng'ang'a Mbugua: Excuse me! As to whether there was no rebuttal, that is not the question.

Hon. Solomon Kinuthia Wambui: We did not attach it here, because we assumed that the silence is consent.

Mr. Ng'ang'a Mbugua: Thank you. You did not attach. That is fine. We will take that to be your answer. Let us move on. Let us go to page 35. From pages 35 to 49, do you have contracts that were signed between the County Government of Kiambu and these contractors for those tenders?

Hon. Solomon Kinuthia Wambui: Yes, I would be willing to produce them today.

Mr. Ng'ang'a Mbugua: It is not about willing. You knew that you had been invited to supply evidence to this Senate when you received the invitation to appear.

Hon. Solomon Kinuthia Wambui: I have the contracts with me. I will be willing to table them.

Mr. Ng'ang'a Mbugua: Where are they? Do you have them in the document that you filed before the Senate?

Hon. Solomon Kinuthia Wambui: They are here in this file.

Mr. Ng'ang'a Mbugua: That will not assist us because you knew that--- Just like we had a challenge in filing our documents, all this time, from the time you gave the notice on 3rd of December, 2019. You gave a notice of impeachment touching on award of tender and knew you had those documents, but decided not to supply those documents. Now, you want this Senate to take that; what you have just done, raising a hand and saying: "Oh yes, here it is, but Hon. Senators, it is not before you."

Let us move on. Let us go to paragraph 21 of the witness statement. Now, you have stated that the purpose of the irregular awards of these tenders was not to provide public roads, but intended to enable the governor obtain personal benefits through kickbacks. First, we have not seen evidence of those tenders. What I am interested in is: Hon. Solomon, you stated that, in fact, the purpose was that so that the Governor can get a tithe; you said 10 per cent. Did you not?

Hon. Solomon Kinuthia Wambui: Yes, I gave a range of 10 per cent.

Mr. Ng'ang'a Mbugua: That is fine. Do you have evidence of these kickbacks from these so called contractors that were given these tenders? We need evidence that there was 10 per cent paid to the governor by these contractors. Is that evidence in your documents?

Hon. Solomon Kinuthia Wambui: Not at the moment.

Mr. Ng'ang'a Mbugua: It is not there. Alright, let us move on. You have fashioned an allegation to do with---

You have raised an issue of procurement because award and tendering is about procurement. Does the governor sit in the tender committee? Is he a member of the tender committee of the County Government?

Hon. Solomon Kinuthia Wambui: He has proper representation.

Mr. Ng'ang'a Mbugua: As to whether he has proper representation is a question of argument. The question is: is he one of the members or persons who sit in the tender committee that awards tenders?

Hon. Solomon Kinuthia Wambui: He is not.

Mr. Ng'ang'a Mbugua: Does he sit in the evaluation committee?

Hon. Solomon Kinuthia Wambui: He is represented.

Mr. Ng'ang'a Mbugua: No. Does he sit as a person, as a governor?

Hon. Solomon Kinuthia Wambui: No, he does not.

Mr. Ng'ang'a Mbugua: He does not. Does the governor award tenders?

Hon. Solomon Kinuthia Wambui: He does from his *modus operandi*.

Mr. Ng'ang'a Mbugua: Oh, he does. *Modus operandi* is a flowery term. Just show us where from the evidence that you have adduced the governor issued a notification of award of tender in his own hand.

Hon. Solomon Kinuthia Wambui: Refer to paragraph 29.

Mr. Ng'ang'a Mbugua: I am interested in the evidence. What is the page number?

Hon. Solomon Kinuthia Wambui: It is paragraph 29 of the witness statement.

Mr. Ng'ang'a Mbugua: What is the page?

Hon. Solomon Kinuthia Wambui: It is on page 7.

Mr. Ng'ang'a Mbugua: Is that a notification of award of tender in the hand of the governor?

Hon. Solomon Kinuthia Wambui: That is the family tree of the governor and the companies that they own.

Mr. Ng'ang'a Mbugua: Mr. Speaker, Sir, I did not ask him about the family tree. He is fashioning his own question and answering it. Mr. Solomon, this is a very serious process. I am asking you a question. You said that the governor issues tenders or awards. My question is: from the documents that you have, can you point out one letter of notification of award of tender by the governor to any of the contractors who may have benefitted from the Kshs3.3 billion tender?

Hon. Solomon Kinuthia Wambui: From paragraph 29, I am persuaded to think--

Mr. Ng'ang'a Mbugua: It is not about persuasion. I have asked you for evidence, a document. Mr. Solomon, if you are referring to a letter of notification of award of tender, point us to one signed by the governor awarding a contract to whichever contractor. Do you have a single document?

Hon. Solomon Kinuthia Wambui: I do not have.

Mr. Ng'ang'a Mbugua: You do not have it. Thank you. Let us go to the question of failure to establish the County Budget Economic Forum. Are you aware that there is a County Budget Economic Forum in Kiambu?

Hon. Solomon Kinuthia Wambui: There is not.

Mr. Ng'ang'a Mbugua: There is none. Okay. When did you learn that Kiambu County Government does not have this important forum called the County Budget Economic Forum?

Hon. Solomon Kinuthia Wambui: There was no involvement of the County Budget Economic Forum in budget formulation for two budget cycles. Their names are not gazetted---

Mr. Ng'ang'a Mbugua: What intervention, if any, did the County Assembly undertake in its oversight capacity? Did you ever summon the governor and if so, when to question him on failure to constitute that forum?

Hon. Solomon Kinuthia Wambui: The record will show that we raised this concern.

Mr. Ng'ang'a Mbugua: Show us the record that shows when he was summoned. It should state something like; "this is the question that we are raising and we want you to appear before the Assembly for you tell us the reason you have not established this particular forum?"

Hon. Solomon Kinuthia Wambui: We summoned the County Executive Committee Member (CEC).

Mr. Ng'ang'a Mbugua: When did you summon him? Do you have evidence of the summons when you summoned the CEC to answer to that question?

Hon. Solomon Kinuthia Wambui: It can be provided.

Mr. Ng'ang'a Mbugua: It can be provided, but you do not have it. Have you ever summoned the governor himself because the person who is standing trial is the governor for failure to establish this forum? Do you have any summon to the governor by the assembly in its own oversight capacity questioning why he has not?

Hon. Solomon Kinuthia Wambui: The standing orders do not provide for members to summon a governor.

Mr. Ng'ang'a Mbugua: They do not provide. So, in a sense you are saying that the only recourse you would have had is impeaching the governor because he has not established this forum? Does it mean that there are no other oversight mechanisms that can be deployed?

Hon. Solomon Kinuthia Wambui: Mr. Speaker, Sir, we have canvassed this issue with his officials, but they are adamant. So, we had no option.

Mr. Ng'ang'a Mbugua: Have you ever thought of going to court to get a *mandamus* order to compel him to constitute this forum because of failure to comply with a statutory obligation? Has the Assembly ever filed a suit to compel the governor?

Hon. Solomon Kinuthia Wambui: We filed a full suit---

Mr. Ng'ang'a Mbugua: Oh, you did. What are the particulars and when?

Hon. Solomon Kinuthia Wambui: On the supplementary budget in April.

Mr. Ng'ang'a Mbugua: Not the supplementary budget. I am talking of the issue of the County Budget Economic Forum.

Hon. Solomon Kinuthia Wambui: The outcome---

Mr. Ng'ang'a Mbugua: I am asking about the question of failure to establish the County Budget Economic Forum. Is there any suit by the assembly to compel the governor? The assembly feels very strongly that this is a serious violation. Was there any attempt by the assembly to file a suit to compel the governor to establish this? Was that ever done? Has that ever been done by the assembly?

Hon. Solomon Kinuthia Wambui: We exercised the other option that we had in law, which was to impeach him.

Mr. Ng'ang'a Mbugua: So, you have never gone to court though that was an option that was available to you. You could have gone to court to compel the governor.

Hon. Solomon Kinuthia Wambui: The totality of these charges was compelling.

Mr. Ng'ang'a Mbugua: Let us move on. We will look at the issue of the so called abuse of office. Are you aware that the governor is currently facing criminal prosecution touching on the issue of conflict of interest?

Hon. Solomon Kinuthia Wambui: Yes, with a different set of facts---

Mr. Ng'ang'a Mbugua: I will go there. Are you aware that there is actually a pending criminal prosecution touching on the issue of conflict of interest.

Hon. Solomon Kinuthia Wambui: Yes, I am aware.

Mr. Ng'ang'a Mbugua: In the charges, there is also a charge of conflict of interest touching on award of tenders. Is that correct?

Hon. Solomon Kinuthia Wambui: They are different companies and different circumstances.

Mr. Ng'ang'a Mbugua: As to whether they are different companies; it is touching on the issue of award of tenders.

Hon. Solomon Kinuthia Wambui: Yes, it does.

Mr. Ng'ang'a Mbugua: Thank you. Let us go to the so called immediate family members. Do you have any evidence of the relationship between Susan Wangari Ndung'u and the honourable governor?

Hon. Solomon Kinuthia Wambui: Yes. I am a family friend and---

Mr. Ng'ang'a Mbugua: No. I am asking you if you have evidence. We could also be family friends to the governor. The question is: do you have evidence of this familial relationship between Susan Wangari Ndung'u and the governor?

Hon. Solomon Kinuthia Wambui: Going by the principle of holding out---

Mr. Ng'ang'a Mbugua: Do you?

Hon. Solomon Kinuthia Wambui: She is a common law wife of the governor.

Mr. Ng'ang'a Mbugua: It is not common knowledge. It is not about taking judicial notice. The governor pleaded not guilty.

Hon. Solomon Kinuthia Wambui: Counsel, I said common law wife.

Mr. Ng'ang'a Mbugua: Excuse me! You are saying common law wife.

Hon. Solomon Kinuthia Wambui: By habit and repute.

Mr. Ng'ang'a Mbugua: Do you have evidence or somebody who will come and say: "I was there when the governor was paying dowry to this common law wife and, therefore, this is the wife of the governor?" Do you have that evidence before this Senate?

Hon. Solomon Kinuthia Wambui: Yes, I attended the traditional dowry negotiation---

Mr. Ng'ang'a Mbugua: Do you?

Hon. Solomon Kinuthia Wambui: It was in Dundori.

Mr. Ng'ang'a Mbugua: Do you have that evidence?

Hon. Solomon Kinuthia Wambui: I was among the invited guests.

Mr. Ng'ang'a Mbugua: Do you have that evidence before this Senate?

Hon. Solomon Kinuthia Wambui: Granted reasonable time, I will produce photos of me when I joined the family for *ngurario*.

Mr. Ng'ang'a Mbugua: Mr. Solomon, I am sure you know that a certificate of marriage can actually be issued even in customary marriages. Do you have a certificate of marriage? It is either we do not or we do not. As to who was present or not, that is not evidence before this Senate. You are saying that Susan is related to the governor by virtue of being husband and wife. The question is: Do you have a marriage certificate showing that Susan Wangari Ndung'u, Identity Number this, is the wife of the governor?

Hon. Solomon Kinuthia Wambui: I do not, but I retreated to the traditional *ngurario* ceremony.

Mr. Ng'ang'a Mbugua: Thank you. Let us go to Monica Njeri Ndung'u. There is Monica Njeri Ndung'u and Diana Wangoko; their so called daughters. Do you have any evidence that these persons listed there--- They only appear in a CR12. Mr. Solomon, your evidence is that there is a lady known as Diana Wangoko Ndung'u without 'Mo,' who shares the name Ndung'u with the governor, and that is the only link that you have between the governor and this so called daughter. Is that the only evidence that you have?

Hon. Solomon Kinuthia Wambui: These are the members listed as beneficiaries in the National Hospital Insurance Fund (NHIF) documents.

Mr. Ng'ang'a Mbugua: Do you have that NHIF document?

Hon. Solomon Kinuthia Wambui: With the leave of the Chair, we will provide.

Mr. Ng'ang'a Mbugua: Do you have it? You knew that, that would be a material question, because the governor has denied these charges. Do you have evidence that these have been listed as beneficiaries by the governor?

Hon. Solomon Kinuthia Wambui: With the leave of the Chair, we will produce that document.

Mr. Ng'ang'a Mbugua: You do not have it. Let us move on.

You made reference to the recruitment of casual labourers and said that just because the governor issued a letter, the recruitment was not proper. Is that your evidence, Mr. Kinuthia? Do you have evidence by a member of the County Public Service Board (CPSB) saying that these persons were actually not recruited by the board, and that the governor proceeded to issue appointment letters on his own motion?

Hon. Solomon Kinuthia Wambui: Yes, we do have a statement to that effect sworn by the member of the board.

Mr. Ng'ang'a Mbugua: That is okay. Let us go to that statement. Point us to where it says: "As far as these casuals were concerned we, as a board, did not recruit?" Just show us that statement. I will quickly refer you to it, because it is attached in your document. I believe that this is the one on page--- Which page is it?

Hon. Solomon Kinuthia Wambui: On page 1 through to pages 2 and 3 of the bundle, by Martin Njoroge Njeri.

Mr. Ng'ang'a Mbugua: Just show us the paragraph from that statement that says that these letters were issued without recruitment by the County Public Service Board. Take us to the paragraph that says: "We, as a board, did not recruit, but the governor, nonetheless, proceeded to issue letters of appointment to these casuals."

Hon. Solomon Kinuthia Wambui: Paragraph 6 and 8 would---

Mr. Ng'ang'a Mbugua: What does paragraph 6 say? It says that pursuant to Section 59 (2) and Section 74 of the County Governments Act, the board approves appointment. It just says what the board does. My question is a direct averment in that witness statement; that "We, as a board, or, I as a member of the board, am aware that we did not recruit these persons, and that the governor proceeded to issue appointment letters to those persons."

Hon. Solomon Kinuthia Wambui: Section 74 of the County Governments Act together with paragraph 8 of the statement would---

Mr. Ng'ang'a Mbugua: I will read to you paragraph 8 of the statement. "That, I am aware that during the tenure under investigation, a number of appointments were done in compliance with the laid procedure." Is that what paragraph 8 of your statement reads?

This witness is actually confirming that the appointments were done in compliance with the laid procedure, unless you are reading a different statement.

Hon. Solomon Kinuthia Wambui: Continue to the other part.

Mr. Ng'ang'a Mbugua: "During the debate on the impeachment Motion, I was made aware that a number of appointments within the county were made outside the knowledge and involvement of the board."

He says that he was made aware. This is not the board saying that the recruitment was not done in compliance with the law. It is saying that the assembly made him aware. Other than that statement saying that he was allegedly made aware, where is the actual evidence that, that recruitment was not done in compliance with the law?

Mr. Kinuthia, this member of the County Public Service Board is saying that he was made aware by the assembly. It is not the board saying that the appointment was irregular. It is actually the assembly alleging. This now puts the ball directly into your court. As the person alleging and bringing to the awareness of this member to this alleged invalid appointment, where is the evidence that these casuals were actually not recruited in line with the law?

Hon. Solomon Kinuthia Wambui: If you go to page 128 of the bundle, there is no reference to any minute of the board or an official memo from the board conveying the decision to appoint such an officer.

Mr. Ng'ang'a Mbugua: Does any appointment letter in the hand of the governor have to make reference to the minute of the board?

Hon. Solomon Kinuthia Wambui: Section 74---

Mr. Ng'ang'a Mbugua: Excuse me! Are you saying that any appointment letter issued in the hand of the governor must refer to the minutes of the County Public Service Board?

Hon. Solomon Kinuthia Wambui: With the exclusion of provisions printed by the Transition Authority for personal staff. Any other appointment should make reference to a board sitting and reference of the memo conveying the same appointment to the County Secretary for appointment. The governor has no role there whatsoever.

Mr. Ng'ang'a Mbugua: Where is that in the law under the County Governments Act?

Hon. Solomon Kinuthia Wambui: Section 74 gives the exclusive mandate for hiring.

Mr. Ng'ang'a Mbugua: Wait a minute. Let us go to Section 74. Are you saying that Section 74 mandates the governor to refer to minutes any time he is issuing an appointment letter? I will quickly look at Section 74 of the County Governments Act.

Hon. Solomon Kinuthia Wambui: Section 74, not 174.

Mr. Ng'ang'a Mbugua: "The County Public Service Board shall regulate the engagement of persons on contract, volunteer and casual workers, staff of joint ventures and attachment of interns in its public bodies and offices."

My question is very direct. It is not how the County Public Service Board conducts its affairs. I have asked you for a provision in law that says that when the governor is issuing a letter of appointment to whoever, he must refer to the minutes of the County Public Service Board that recruited that person.

Hon. Solomon Kinuthia Wambui: Counsel, I answered that.

Mr. Ng'ang'a Mbugua: I have asked you a question as to which Section, then you can explain, kindly, Mr. Kinuthia.

Hon. Solomon Kinuthia Wambui: Section 74 gives exclusive mandate to the board save for positions that were mandated by the Transition Authority (TA).

Mr. Ng'ang'a Mbugua: That is not my question. My question is not on Section 74.

Hon. Solomon Kinuthia Wambui: 123 is an admission of guilt on the part of the governor and the county secretary.

The Speaker (Hon. Lusaka): Order! Counsel, you will need to manage time, because we are already over one hour, and you have a maximum of four hours for all the other witnesses. Therefore, let us manage time.

Mr. Ng'ang'a Mbugua: That is okay. I am almost done.

Those are the letters. You could not show us any evidence of any Section of the law violated because of not referring to the minutes. Let us move on, so that I can give the Floor to my learned colleagues.

You have made reference to how the voting was actually done. My learned friend asked you whether there was any correction of errors. Mr. Kinuthia, on the floor of the assembly on the 19th, you are aware that the tellers are supposed to be selected on the basis of who are voting 'Yes' and who are voting 'No', correct? There is a teller for 'No' and a teller for 'Yes.'

Hon. Solomon Kinuthia Wambui: Each party should--- It is by consensus of voting.

Mr. Ng'ang'a Mbugua: Yes, by consensus. Who was the representative of the 'Nay' tellers?

Hon. Solomon Kinuthia Wambui: Hon. Nyutu Wamwere.

Mr. Ng'ang'a Mbugua: Confirm that Hon. Nyutu Wamwere, who was representing the 'Nay' tellers actually voted 'Yes.'

Hon. Solomon Kinuthia Wambui: He voted 'Yes.'

Mr. Ng'ang'a Mbugua: Can you confirm that the only 'Yes' teller, who is Hon. Ikonya from Kiambu town--- Hon. Ikonya, who was initially representing the 'Nay' tellers was actually ejected from the assembly chamber by the Speaker during the voting.

Hon. Solomon Kinuthia Wambui: He was disorderly. He defied the Speaker.

Mr. Ng'ang'a Mbugua: He was actually ejected.

Hon. Solomon Kinuthia Wambui: The Speaker had no recourse but to eject him.

Mr. Ng'ang'a Mbugua: The one who represented the 'Nay' teller was actually not representing the "Nay" side, but actually representing the 'Yes' voters?

Hon. Solomon Kinuthia Wambui: Hon. Nyutu Wamwere was a 'Nay' person, but he had a moment---

Mr. Ng'ang'a Mbugua: No, he voted 'Yes', but was allegedly representing the 'Nay' teller.

Hon. Solomon Kinuthia Wambui: Voting was on conscience. If his conscience pricked him and he voted 'Yes', we cannot reprimand him.

Mr. Ng'ang'a Mbugua: You have made reference to intervention by the Ethics and Anti-Corruption Commission (EACC) that led to the firing of these casuals. Do you have these letters from the EACC directing the governor or raising an issue as to the recruitment of these casuals, and that supposedly now led to the hiring of these casuals by the governor?

Hon. Solomon Kinuthia Wambui: 17th June was all---

Mr. Ng'ang'a Mbugua: No, I am asking you if you have that letter from the EACC?

Hon. Solomon Kinuthia Wambui: I do not, but---

Mr. Ng'ang'a Mbugua: No, you do not. Mr. Speaker, Sir, I will yield the Floor for my learned colleagues to take up further questions in cross-examination.

Thank you, Mr. Speaker, Sir.

Mr. Charles Njenga: *Mheshimiwa*, I only have one question and then we shall rest.

On the day of moving of the Motion on 19th December, are you able to confirm that the Governor was represented by two advocates who indicated by way of a letter that they were attending on his behalf the Assembly proceedings?

Hon. Solomon Kinuthia Wambui: Yes, the Speaker acknowledged their presence.

Mr. Charles Njenga: You were there in the course of proceedings. Is it not?

Hon. Solomon Kinuthia Wambui: Yes, I was.

Mr. Charles Njenga: Is there a moment or an instance when the Speaker gave them a chance to represent the Governor, make representations, answer to the evidence and make submissions in support of the Governor's case? Did he invite them?

Hon. Solomon Kinuthia Wambui: The Speaker---

Mr. Charles Njenga: Did he invite them in the course of the proceedings at any one incidence?

Hon. Solomon Kinuthia Wambui: In the communication from the Chair, the Speaker indicated that they were there to watch brief for the Governor and not to make representations. This is because our Standing Orders are a bit constrained and we do not admit anybody in the plenary other than the Senator and the Governor. Therefore, we were a bit constrained and they were only able to watch brief for the Governor.

Mr. Charles Njenga: Therefore, in the impeachment proceedings for the Governor, we are also not Senators and we are in the Senate. We have been invited to speak to the Governor's case.

In the Assembly, you confirmed that the Speaker refused despite notice to invite the Governor's advocate to defend him on the Floor and answer to the allegations and to the motion and instead proceeded to call the vote?

Hon. Solomon Kinuthia Wambui: We were expecting the Governor and we had made a reservation for where he was to sit in line with the Standing Orders. However,

when he sent the lawyers, they requested to watch brief and they were given a designated place to watch brief for the suspended Governor.

Mr. Charles Njenga: Therefore, to that question, your answer is that the Assembly did not hear the Governor's lawyers at all?

Hon. Solomon Kinuthia Wambui: The Assembly was technically constrained by the Standing Orders to admit lawyers in the plenary.

Mr. Charles Njenga: Whether because of the Standing Orders or otherwise, they were not heard at all. They were told go to the gallery and watch like everybody else.

Hon. Solomon Kinuthia Wambui: In line with the Standing Orders, we had designated a place for the Governor on the right hand of the Speaker but he failed to appear.

Mr. Charles Njenga: That is okay. We know you are evading the question but it is a question of fact.

It is good that you have acknowledged that the Speaker acknowledged that two counsel had been sent to represent the Governor.

Hon. Solomon Kinuthia Wambui: To watch brief.

Mr. Charles Njenga: Whatever you want to call it. They were there as the Governor's representatives.

Mr. Speaker, Sir, I may need your direction on this. In the course of the cross-examination, there has been an admission that part of the documents that are being relied upon by the County Assembly were actually not documents that were available to the Governor or in the proceedings before the County Assembly.

Rule 19 of the 5th Schedule of the Standing Orders expressly states that no additional documents should be adduced by the County Assembly. The directions we seek is that no further reference should be made to those additional documents because they are highly prejudicial to the Governor's case.

Mr. Njoroge Nani Mungai: On a point of order, Mr. Speaker, Sir. The counsel was cross-examining and once he is done, we will need to have an opportunity for re-examination. If he then wants to address the question of admissibility of documents, he needs to make an application which we can respond to. However, he cannot do that in the course of the cross-examination.

Mr. Charles Njenga: Very well. We shall reserve our application for further time.

Mr. Njoroge Nani Mungai: Mr. Speaker, Sir, the Standing Orders do allow very limited re-examination for clarification. I just have three questions for clarification.

Mr. Solomon, you were asked by the first counsel whether you had received the notice of preliminary objection. The question I want to ask you is, did you receive the notice of preliminary objection before or after the County Assembly had filed its record?

Hon. Solomon Kinuthia Wambui: After the filing.

Mr. Njoroge Nani Mungai: Therefore, by the time the County Assembly was filing its evidence as required by the rules and the Standing Orders, you were not aware that the question of quorum as is alleged was going to be raised?

Hon. Solomon Kinuthia Wambui: I only became aware after receiving preliminary objection.

Mr. Njoroge Nani Mungai: You were asked a question around appointments and not given an opportunity to respond.

I would like you to look at page 123. Can you tell us what that is and if you can read the first paragraph of that memo? Who is it from?

Hon. Solomon Kinuthia Wambui: It is coming from the County Secretary and the Head of Public Service.

Mr. Njoroge Nani Mungai: What does it say?

Hon. Solomon Kinuthia Wambui: It goes to the Director of Human Resource Management.

Mr. Njoroge Nani Mungai: Just read the paragraph.

Hon. Solomon Kinuthia Wambui: The stoppage of salaries.

Mr. Njoroge Nani Mungai: Read the first paragraph there.

Hon. Solomon Kinuthia Wambui: The following officers were appointed by His Excellency Governor and issued with appointment letters signed by him contrary to the laid down procedures. In view of this, therefore, urgently stop any further payments of salaries.

Mr. Njoroge Nani Mungai: Therefore, there is evidence that one of the required officers actually identified that breach.

Hon. Solomon Kinuthia Wambui: Yes

Mr. Njoroge Nani Mungai: You were also asked about conflict of interest and whether you are aware of criminal cases against the Governor. Are you aware of any criminal case against the Governor that touches on allegations of conflict of interest that you have raised in these proceedings?

Hon. Solomon Kinuthia Wambui: Yes, counsel. I am aware of one case where he is charged jointly with Susan Wangari Ndung'u.

Mr. Njoroge Nani Mungai: Is it in respect of the charges here or is it a separate matter?

Hon. Solomon Kinuthia Wambui: That is a separate matter relating to a special purpose vehicle formed for the purposes of benefitting from Kshs588 million road tenders.

Mr. Njoroge Nani Mungai: That is not what you have took before the County Assembly?

Hon. Solomon Kinuthia Wambui: That is separate. It is not related with any of this.

Mr. Njoroge Nani Mungai: In paragraph 29 in your witness statement, you have referred to various people as relatives of Hon. Waititu, the wife and the daughters. Do you personally know Governor Waititu's wives?

Hon. Solomon Kinuthia Wambui: Yes, I personally know both Susan Wangari Ndung'u, who occupies the Office of the First Lady Kiambu and Esther Wamuyu.

Mr. Ng'ang'a Mbugua: I have an objection because this is re-examination.

I did not ask this witness whether he has personal knowledge of those persons. I asked of evidence, documentary evidence, so that my learned friend will be extending the purview of that question; reopening that question or revisiting areas I did not touch. If I

had posed the question whether he has personal knowledge, then it would be in order for my learned senior to re-examine this witness on that question.

This will be reopening that question and I was very specific, and I limited the scope of my question in cross-examination. This is the re-examine if I understand it, is on clarification on an issue that arose. Therefore, it has to be pegged on the question that I asked.

As to personal knowledge, if - and the HANSARD can bear me out - if I raised a question regarding his personal knowledge or otherwise, then it will be open for my learned senior, with due respect, to re-examine this witness on that question. I invite you to give directions on that.

Mr. Njoroge Nani Mungai: My learned friend's objection is based on a false premise. The premise that he brought and he was trying to be a little too clever with the witness is to say that evidence is documents; that is not true. Evidence is not documents. Personal testimony is also evidence. Therefore, he asked him whether he has any evidence that this lady is the wife of the Governor, then he quickly followed it up to say do you have documentary evidence.

You have brought the question of whether there is evidence that Susan Wangari Ndung'u is a wife of Ferdinand Waititu. That is the question that he has a right to respond to. When he told you, he was there for the *Ngurario*, you quickly ran away from the question.

(Laughter)

The Speaker (Hon. Lusaka): Okay, proceed.

Mr. Njoroge Nani Mungai: Just one last question, you were referred to Rule No.19 of the Fifth Schedule which are the rules of procedure of this House and you were asked whether you have introduced any new evidence that was not a part of the allegations.

So, the question that I want to ask you, Solomon, is this; all the documents that were identified and which you confirmed were additional evidence, were they evidence of additional allegations or did they relate to the allegations that you had dealt with?

Hon. Solomon Kinuthia Wambui: Not at all. They all relate to the allegations that were presented on the Floor of the County Assembly on the 3rd December, 2019.

Mr. Njoroge Nani Mungai: In respect of the allegations on the land, is there a witness who is coming to testify on that?

Hon. Solomon Kinuthia Wambui: Yes, there is.

Mr. Njoroge Nani Mungai: I have no further re-examination.

The Speaker (Hon. Lusaka): Next witness.

Mr. Njoroge Nani Mungai: The next witness is Mr. Erick Kiriko.

The Speaker (Hon. Lusaka): Manage your time, because you have two hours to go.

Mr. Njoroge Nani Mungai: Mr. Speaker, Sir, we were directed that the witnesses would be in a holding room, and we had asked that they be called as we are approaching.

*(The witness for Kiambu County Assembly,
Mr. Erick Kiriko, took the oath)*

Mr. Njoroje Nani Mungai: Mr. Kiriko, please, give the House your full names, your profession and tell us what you do.

Mr. Erick Kiriko: Mr. Speaker, Sir, I am Erick Kelvin Kiriko. I work for the County Government of Kiambu as the Legal Advisor to the Acting Governor.

Mr. Njoroje Nani Mungai: What is your training, Mr. Kiriko?

Mr. Erick Kiriko: I am a lawyer. I have an LLB from the University of Hull in the United Kingdom (UK), and also a master's degree from the same university.

Mr. Njoroje Nani Mungai: Have you provided a witness statement in these proceedings?

Mr. Erick Kiriko: Yes, I have, and it is particularised and paginated as No.1 in the bundle of documents.

Mr. Njoroje Nani Mungai: I think each witness statement starts at page one, so it is the third witness statement.

Mr. Erick Kiriko: Yes. I am sorry; I was referring to my letter which I had written to the Commission on Administration of Justice (CAJ); that was No.1.

Mr. Njoroje Nani Mungai: Mr. Kiriko, can you tell us the gist of your testimony; what it is that you have put in your witness statement?

Mr. Erick Kiriko: Essentially, I wrote to the CAJ and I had asked for further particulars on certain information which was in the public realm. I wrote a letter dated 30th October, 2019, and got a response dated 19th November, 2019, from the CAJ. I was asking for information in respect to some property. This was part of a press release by the Chairlady of the CAJ. It essentially alluded to some property in Thika which had been transferred to one Esther Wamuyu Nyatu. The essence of the report was that this property had been transferred improperly.

Mr. Njoroje Nani Mungai: What documents did you receive from the CAJ?

Mr. Erick Kiriko: I received a bundle of documents. It is from page 58, which was in response to my letter. There was a bundle of documents which, amongst other things, included the press statement which had been released and which I alluded to on the 26th. It also contained a certificate of lease. It also contained documentation which showed the property had been transferred to one Esther Wamuyu.

Mr. Njoroje Nani Mungai: In the report that you received from CAJ – and I want to refer you to page 70, because we do not need to go through all of it – can you tell us what the Commission's conclusions and recommendations were, as contained in that Report?

Mr. Erick Kiriko: Actually, the findings and conclusions are on page 57, No. 3, where they said that the recommendations of the office was that---

Mr. Njoroje Nani Mungai: Let us start with the conclusions, and then come to the recommendations.

Mr. Erick Kiriko: Okay. Basically in the conclusion, if I may read out, it says:-

“That the investigations looked into the alleged irregular transfer of ownership of the plots and abuse of power by officers involved in the transfer process.

Based on the foregoing, the investigation confirmed that the two plots - and they are referred to there – belonged to Mrs. Cecilia Njoki Mbugua, and that they were irregularly transferred to Ms. Esther Nyatu Wamuyu.”

It then concludes that, “The plots have since been reverted to the rightful owner, a Mrs. Cecilia Mbugua.” That was the conclusion.

Mr. Njoroge Nani Mungai: What were the recommendations of the Commission?

Mr. Erick Kiriko: The Commission said that the Office of the Director of Public Prosecutions (ODPP) should institute prosecution against Ferdinard Waititu; the Governor of Kiambu County, for abuse of power and fraud; and that the County Government of Kiambu should expedite the long overdue approval of the development plans to enable Mrs. Mbugua to embark on her projects.

The Commission also called upon the land registrars to exercise due diligence while conducting land transfers, including inviting all interested parties for consent.

Mr. Njoroge Nani Mungai: If you look at page 54, which is really just a reproduction of Article 59(4), can you confirm what the mandate of the CAJ is, as relates to the charge that had been levelled?

Mr. Erick Kiriko: It says that the Commission has been mandated under Article 59(4)(2) H and J of our Constitution and the Commission of Administration of Justice Act, 2011, to *inter alia* investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government and complaints of abuse of office, unfair treatment or manifest injustice of unlawful, oppressive, unfair or unresponsive official conduct.

Mr. Njoroge Nani Mungai: You are familiar with the Constitution; you told us you are a lawyer?

Mr. Erick Kiriko: Yes.

Mr. Njoroge Nani Mungai: Do you know the provisions of Article 39 with the right to correction of errors in reports?

Mr. Erick Kiriko: Yes. I am particularly aware also of Article 40, which also talks about someone enjoying the right of their property. I will have to refer to 39.

Mr. Njoroge Nani Mungai: So, to your knowledge, when did you say that you learnt about the press statement by the CAJ?

Mr. Erick Kiriko: It was about the end of September. It was widely circulated. It was in the press; both print and broadcast. I actually got it on the news and the newspapers the day after.

Mr. Njoroge Nani Mungai: To your knowledge, do you know whether Gov. Waititu ever made a petition to have any of the findings of the CAJ deleted, revoked, or in any way retracted?

Mr. Erick Kiriko: I am not aware of that.

Mr. Njoroge Nani Mungai: You are not aware. Thank you.

Mr. Speaker, Sir, that is all for this witness.

Mr. Ng'ang'a Mbugua: Thank you, Mr. Speaker, Sir, and hon. Senators. I just have a few questions in close examination, then I leave the Floor to my learned colleagues.

Mr. Kiriko, just confirm that you assumed the position of legal advisor on 27th August 2019 after the Governor had already been barred from accessing office owing to the charges that he is currently facing?

Mr. Erick Kiriko: Yes, I confirm that.

Mr. Ng'ang'a Mbugua: So, when the matters that you have alluded to took place, you were actually not serving in the stated capacity. Is that correct?

Mr. Erick Kiriko: What happened? Please, repeat.

Mr. Ng'ang'a Mbugua: The matters that are the subject of this report by the Ombudsman. They were matters that took place prior to your assumption of office as the legal advisor.

Mr. Erick Kiriko: Yes. If you look at the press statement, we started on the investigations on 5th March 2019. At that time, I was not in that capacity.

Mr. Ng'ang'a Mbugua: That is fine. You have made reference at paragraph 4 of the charges that you became aware of. It says "that I became aware of the charges leveled against the Governor of Kiambu County sometimes on the 22nd September 2019." Which charges are you referring to? Are they the charges before this Senate which are the subject of this impeachment?

Mr. Erick Kiriko: No, they are not these charges.

Mr. Ng'ang'a Mbugua: Which charges are you referring to?

Mr. Erick Kiriko: I was actually referring to the press statement which was released by the Ombudsman.

Mr. Ng'ang'a Mbugua: So, the press statement is a charge. That was a charge against the honourable governor?

Mr. Erick Kiriko: It was not a charge, but they made recommendations.

Mr. Ng'ang'a Mbugua: Okay. You said that "I am aware the complaint with respect to the properties belonging to Cecilia Njoki Mbugua is one of the charges. First and foremost, Mr. Kiriko, because it appears you have some keen interest in this particular transaction. I am sure that, perhaps as part of your investigation, you may have taken a statement from the victim of this alleged fraud who is Cecilia Njoki. Did you get a statement from her? You seem to be the one investigating this matter. That is why you even wrote to the Ombudsman. Did you take a statement from this lady who is the alleged victim of this fraud?"

Mr. Erick Kiriko: I did not take a statement from her.

Mr. Ng'ang'a Mbugua: But you appreciate that she is a victim of the fraud and not the Assembly?

Mr. Erick Kiriko: Yes.

Mr. Ng'ang'a Mbugua: You confirm that she has not filed a statement. There is actually no statement from the victim of this fraud before the Senate to say this is what the Governor did or did not do.

Mr. Erick Kiriko: I think if you look at the letter that was written to me by the Ombudsman---

Mr. Ng'ang'a Mbugua: It is on which page?

Mr. Erick Kiriko: Give me a second.

Mr. Ng'ang'a Mbugua: Which page?

Mr. Erick Kiriko: There is an affidavit which is there. This is not my bundle. I think I can have it if I have my bundle. I have seen it. If you look at page 98, you will find an affidavit from the lady Cecilia Njoki Mbugua. This was part of the documents which were sent to me by the Ombudsman.

Mr. Ng'ang'a Mbugua: If you look at this affidavit. It is a very short affidavit. She is saying that she is a legal and *bona fide* owner of that piece of land. She is still in possession of that land. She has not sold that land to anybody. She has conducted a search and was surprised to find some name. Though I signed the transfer documents, I signed them under duress from officials of the County Government of Kiambu. Is that correct?

Mr. Erick Kiriko: Yes.

Mr. Ng'ang'a Mbugua: And paying rates *ex cetera*. In that particular affidavit which is allegedly signed by Cecilia Njoki Mbugua, does it say who these officials or officers are? Does it say that the Governor unduly influenced her to sign a transfer of her property from this affidavit?

Mr. Erick Kiriko: It does not say that specifically.

Mr. Ng'ang'a Mbugua: Thank you.

Mr. Erick Kiriko: But if my learned---

Mr. Ng'ang'a Mbugua: It is okay. You will have a chance to be reexamined by your counsel. I am just interested in the content of that.

You have confirmed that Cecilia Njoki Mbugua is not one of the witnesses who have been lined up to appear and testify before this Senate?

Mr. Erick Kiriko: Yes.

Mr. Ng'ang'a Mbugua: It was opened to the Assembly given that this is a very critical charge to get this lady to come and testify before this Senate.

Mr. Erick Kiriko: Yes.

Mr. Ng'ang'a Mbugua: And that the Assembly, in fact, did not find it necessary to get this lady to come and testify before this Senate.

Mr. Erick Kiriko: I believe you can ask that question to the Assembly.

Mr. Ng'ang'a Mbugua: But she is not one of the witnesses lined up.

Mr. Erick Kiriko: Yes.

Mr. Ng'ang'a Mbugua: Thank you. Let us move on. You realise, Mr. Kiriko, as a lawyer, that this is a case of alleged fraud.

Mr. Erick Kiriko: Yes.

Mr. Ng'ang'a Mbugua: Are you aware of any investigations by DCI on account of these facts?

Mr. Erick Kiriko: In respect to this issue of the Ombudsman?

Mr. Ng'ang'a Mbugua: In respect of this issue of a lady who was allegedly defrauded of her property by the Governor. Are you aware of any investigations in that respect?

Mr. Erick Kiriko: I am aware of recommendations for investigations, but I am not aware of any investigations.

Mr. Ng'ang'a Mbugua: So, your answer is that you are not aware that there has been any investigations by DCI on account of this complaint? Are you aware whether, perhaps, the Governor is facing charges again on account of this alleged fraud in any court in this country?

Mr. Erick Kiriko: I am aware that he has been charged.

Mr. Ng'ang'a Mbugua: No, on account of fraud or defrauding this lady called Cecilia Njoki Mbugua.

Mr. Erick Kiriko: I repeat what I said. I am aware that there are recommendations.

Mr. Ng'ang'a Mbugua: You appreciate, as a lawyer, there is a difference between recommendation and actual charge.

Mr. Erick Kiriko: Yes.

Mr. Ng'ang'a Mbugua: So, my question is whether you are aware if the Governor has been charged in any court of law on account of this alleged fraud.

Mr. Erick Kiriko: I am not aware.

Mr. Ng'ang'a Mbugua: Thank you very much. You said that you wrote a letter to CAJ on 30th October 2019. What may have prompted you to write this letter –you as Kiriko – the legal advisor to the Deputy Governor? What may have prompted you?

Mr. Erick Kiriko: When I heard about it, I did not have all the particulars. So, I thought I could get better information from the body which reported it and investigated it.

Mr. Ng'ang'a Mbugua: What was the motivation? You appreciate that you are not an investigator, are you?

Mr. Erick Kiriko: That is why I asked the right body to give information.

Mr. Ng'ang'a Mbugua: The question is what could have motivated you? Obviously, you cannot just wake up one morning and decide to write to the Office of the Ombudsman, not on any other matter, but on a matter touching the Governor. What could have been the motivation, if any?

Mr. Erick Kiriko: I think I will be a dereliction of my duties if I did not ask for any information on something which was pertinent to our county.

Mr. Ng'ang'a Mbugua: Is that part of your job description as the legal advisor to the Deputy Governor to write letters touching on alleged private matters between persons? Is it part of your job description?

Mr. Erick Kiriko: First of all, I think I will answer that question by saying it is not a private matter. It is a matter which pertains to governance. This was the Governor of the County.

Mr. Ng'ang'a Mbugua: But you appreciate the question I posed and you seem to be prevaricating on that question. What was the motivation? Why this particular matter touching on the Governor and not any other matter being dealt with by the Office of the Ombudsman?

Mr. Erick Kiriko: If you look at my letter which I wrote, I referred to myself as a voter of Kiambu.

Mr. Ng'ang'a Mbugua: Where is that letter? On what page, kindly?

Mr. Erick Kiriko: Just go to page one.

Mr. Ng'ang'a Mbugua: Are you referring to Page one of the document?

Mr. Erick Kiriko: Yes.

Mr. Ng'ang'a Mbugua: So, you are saying that you submitted this request in the spirit secured in the Constitution in respect of public access of information. So, what do you want to do with that information?

Mr. Erick Kiriko: Mr. Speaker, Sir, it is important to know what the Governor is doing because I am a voter in that county.

Mr. Ng'ang'a Mbugua: So, in all matters that the governor does, you write letters to the Ombudsman to inquire about them?

Mr. Erick Kiriko: No, they gave information in respect to this matter.

Mr. Ng'ang'a Mbugua: Let us move on. You have substantially referred to this report.

First and foremost, when you requested for it, I presume that the Office of the Ombudsman does some investigation before writing a report. They write to persons of interest asking for statements and comments in furtherance of their rights to be heard. Were you served with the official transcript of the proceedings that took place before the Office of the Ombudsman in which the Governor is said to have admitted the matter forms the basis or content of the report of the ombudsman? Do you have any official transcript from the Office of the Ombudsman that state the day they conducted the proceedings, the Governor appeared in person and what is stated? Just like the way the court transcript is recorded, did you get it so that we can see what exactly the Governor is said to have said with respect to these matters?

Mr. Erick Kiriko: There is no transcript but they allege to what he had said.

Mr. Ng'ang'a Mbugua: You appreciate that the transcript is what would tell us what exactly the Governor admitted to? There must have been some recorded proceedings? This is an investigative office which investigates complaints. So, you appreciate that the transcript would be there but you did not ask for it.

Mr. Erick Kiriko: I did not ask for it.

Mr. Ng'ang'a Mbugua: In fact, from the documents that you have produced, do you have a statement in the hand of the Governor admitting to this alleged fraud with respect to the land that belonged to the widow?

Mr. Erick Kiriko: I do not.

Mr. Ng'ang'a Mbugua: In essence, you are telling the Senate that the only evidence you have of this alleged commission of a crime under national law which you have fashioned as fraud is just a report from the Office of the Ombudsman, there is no transcript, evidence or admissions in the hand of the Governor. Is that your evidence?

Mr. Erick Kiriko: The evidence is what I have attached here.

Mr. Ng'ang'a Mbugua: If you look at those leases and transfers, can you point out to a transfer from the name of this lady, Cecilia Njoki Mbugua, to one Ferdinand Ndung'u Waititu babayao?

Mr. Erick Kiriko: There is none.

Mr. Ng'ang'a Mbugua: There is no single document other than reference to the report of the Ombudsman that shows that the Governor obtained any interest over land or those properties that you have referred to.

Mr. Erick Kiriko: Yes.

Mr. Ng'ang'a Mbugua: I yield the Floor to my learned colleagues to ask a few questions to this witness.

Lastly, Mr. Kiriko, could you kindly confirm that you were employed by the Deputy Governor?

Mr. Erick Kiriko: Yes, I confirm.

(Loud consultations)

Mr. Muthi Gathenji: That is all for this witness. Do you wish to produce your witness statement as evidence?

Mr. Erick Kiriko: Yes, I do.

Mr. Muthi Gathenji: We have realised that the testimony of the other witness that we were supposed to call, Mr. Edwin Njuguna, was adequately covered by Hon. Solomon. We will, therefore, not call any further witnesses and that in terms of evidence, that is the close of the County Assembly's case.

The Speaker (Hon. Lusaka): Hon. Senators, it is time for requests or clarifications. You have two minutes. Kindly, say whom you are addressing the question to. This is now open for Senators.

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Murkomen?

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, to the best of my knowledge, the witnesses are not here although the first witness is. Is it in order for you to call the witness who has just finished so that we can ask those clarifications?

The Speaker (Hon. Lusaka): Let the witness come back.

Sen. Olekina: Mr. Speaker, Sir, I am curious whether we are only restricted to seeking clarification from the witness or we can look at the entire submissions including the opening statements made by the Governor because it forms part of the submissions and argument. That is what I want clarification on, if we are only restricted to seeking clarification from the witnesses, it is good to bring the witnesses back.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, therefore, a direction should be given that the County Assembly has not closed their case. If they have closed their case, we are reopening it. The rules will be that if Senators ask a question which needs clarification, every question that is asked, after it is completed, lawyers must re-examine it with their witnesses. Therefore, it is important to make that clear.

(The Speaker consulted with the Clerk-at-the-Table)

Mr. Speaker, Sir, I need your ear and eye. Can I proceed?

The Speaker (Hon. Lusaka): Yes, proceed.

Sen. Mutula Kilonzo Jnr.: That direction on how the questions will be asked and whether all of them will be asked and then re-examination is done on either side is important so that we know how to proceed.

The Speaker (Hon. Lusaka): Rule No.22 states that:-

“A Senator may, in not more than two minutes or such further time as the Speaker may determine put a question to any of the witnesses, a party or the counsel representing a party.

Sen. Wetangula: Mr. Speaker, Sir, that rule is applicable in the course of proceedings. When a witness is still on oath and on the stand, any Senator who had any issue to clarify would have been entitled to do that. The relevant counsel would re-examine the witness before we step him down. We have already heard the two witnesses and the case is closed. We cannot start to reopen the case unless we reopen the hearing again to the extent that if any witness is called back for any Senator to ask a question, each of the two lawyers plus the Governor would be entitled to ask questions again. That does not look neat at all and it is not procedural. If we find that this is not way to go, I ask that you move us to the next level.

The Speaker (Hon. Lusaka): There is provision for that already so you do not have to ask.

Kindly, proceed, Sen. Murkomen.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, we are going to re-open a Pandora’s Box if we go that way. It will be a circus by itself. If we call the witnesses back on the stand, the Members will ask questions and we will wonder whether the lawyers of both sides will have a right to ask the same questions. We will go round in circles. If the House is in agreement, we should let the matter lie there but in the next stage, if one needs clarification, it should come at the stage where the examination has been done and cross-examination is being done. You can give us a chance to seek clarifications before you stand the witness down so that in re-examination, the lawyer of the County Assembly in this sense will have had the opportunity to respond.

The Speaker (Hon. Lusaka): Hon. Senators, as I had mentioned, all that is in our Standing Orders but you do not have to ask. Reading the mood of the House, we will not ask for clarifications at this point in time.

ADJOURNMENT

The Speaker (Hon. Lusaka): The House now stands adjourned to tomorrow at 9.00 am

The Senate rose at 4.25 p.m.