



REPUBLIC OF KENYA

TWELFTH PARLIAMENT

THE SENATE

VOTES AND PROCEEDINGS

SPECIAL SITTING

WEDNESDAY, JANUARY 29, 2020 AT 9.00 A.M.

1. The Senate assembled at Nine O'clock.
2. The Proceedings were opened with Prayer said by the Speaker.
3. **HEARING AND DETERMINATION OF THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF KIAMBU COUNTY**

The Senate resumed its consideration of the matter of the proposed removal from office, by impeachment, of Hon. Ferdinand Ndung'u Waititu Babayao, as the Governor of Kiambu County;

And, the presentation of evidence on the part of the County Assembly of Kiambu having been concluded the previous day, Counsel for the Governor of Kiambu County was invited to present the Governor's case;

Thereupon, the Counsel for the Governor informed the Senate that they wished to argue the following preliminary objections, pursuant to the Notice of Preliminary Objection to the Invitation to Appear, duly filed on 25th January, 2020: -

- a) That, the resolution of the County Assembly of Kiambu made on the 19th December 2019, proposing the removal from office of Hon. Ferdinand Ndung'u Waititu Babayao as the Governor of Kiambu County, under the provisions of Article 181 of the Constitution, was invalid, irregular and unlawful for want of compliance with the number threshold of two thirds majority provided for under Section 33 of the County Governments Act;
- b) That, the present proceedings of the Senate were unlawful and untenable for effluxion of a statutorily prescribed timeline;

- c) That, the County Assembly of Kiambu, in passing the underlying resolution made on the 19th December 2019, failed to conduct any public participation as required by Article 196 of the Constitution; and
- d) That, the County Assembly of Kiambu, in passing the said resolution, failed to comply with its own Standing Orders.

Additionally, Counsel for the Governor of Kiambu County sought leave to file evidence on behalf of the Governor outside of the time prescribed in the Invitation to Appear.

Counsel for the Governor of Kiambu County proceeded to make arguments in support of the preliminary objections raised;

Subsequently, Counsel for the County Assembly proceeded to make arguments in opposition to the said preliminary objections, and the application to file evidence outside of the time prescribed in the Invitation to Appear;

The Speaker directed that the Senate proceed to consider, in camera, the preliminary objections and the application by the Governor to file evidence outside of the time prescribed in the Invitation to Appear, and the arguments submitted on behalf of the parties;

Thereupon, the Senate proceedings continued in **camera**.

4. **CONSIDERATION AND DETERMINATION OF THE PRELIMINARY OBJECTIONS AND THE APPLICATION BY THE GOVERNOR FOR KIAMBU COUNTY TO FILE EVIDENCE OUTSIDE OF THE PRESCRIBED TIME**

The Senate considered, in camera, the preliminary objections raised on behalf of the Governor, as well as the application by Counsel for the Governor to file evidence out of time, and the arguments submitted thereof on behalf of the parties;

Motion made and Question Proposed;

That, the Governor of Kiambu County be allowed to file evidence out of time.

(The Senate Majority Leader)

Debate arising;

The House proceeded to a Division;

The Senate thereupon, upon a Division, made a determination not to allow the application.

5. **SUSPENSION OF THE PROCEEDINGS OF THE SENATE**

Upon conclusion of deliberations in camera, the Speaker suspended proceedings of the Senate until Eleven O'clock.

6. **HOUSE RESUMED** – at Eleven O'clock (The Speaker in the Chair)

7. **COMMUNICATION FROM THE CHAIR ON AN APPLICATION BY THE GOVERNOR OF KIAMBU COUNTY TO FILE EVIDENCE OUT OF TIME AND FOR SUCH EVIDENCE TO BE ADMITTED BY THE SENATE**

The Speaker conveyed the following Communication from the Chair-

'Honourable Senators, the Parties, Ladies and Gentlemen, welcome back to the open Session.

When we adjourned to go into camera Session, the Senate retreated to make a determination on the application by the Governor of Kiambu County to be allowed to file evidence out of time and for such evidence to be admitted by the Senate.

The ruling on this matter is as follows: The application has not been allowed and is hereby denied.

The effect of this is as follows:

- a) That the Governor shall now proceed to put forth and argue his defence;
- b) That the Governor's defence shall be limited to the case filed by the County Assembly and the evidence put forward by the Assembly including any matters which arose in examination and cross-examination of the witnesses;
- c) The Governor is also at liberty to canvass all the matters raised in his preliminary objection as was filed;
- d) At the conclusion of the case for the defence, the parties shall each make their closing statements as appears on the hearing programme and the Senate shall retire to a closed Session and afterwards to make a decision; and
- e) The programme is adjusted accordingly and the Governor is invited to commence his defence and will have the original time of not more than 4 (four) hours that was allocated.

We will however break at 1:00 PM for lunch.

Honourable Senators, the Parties, Ladies and Gentlemen, please note that in accordance with rule 29 of the Impeachment Rules, this Ruling is Final.

Counsel for the Governor, please proceed.

I thank you!

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

Hearing of the proposed removal from office, by impeachment, of the Governor of Kiambu County resumed;

Thereupon, Counsel for the Governor proceeded to put forth the Governor's defence, and to canvass the matters raised in the preliminary objection as was filed;

And the time being One O'clock, the Speaker interrupted the Business of the Senate without Question put.

9. **SENATE ROSE** – at One O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Wednesday, January 29, 2020 at 2.00 p.m.*

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