

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 21st January, 2020

Special Sitting

*(Convened via Kenya Gazette Notice
No.118 of 10th January, 2020)*

*The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.m.*

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

PRAYER

COMMUNICATION FROM THE CHAIR

CONVENING OF SPECIAL SITTING OF THE SENATE

The Speaker (Hon. Lusaka): Hon. Senators, Happy New Year.

It is my pleasure and privilege to welcome you back to the Senate for this special sitting. I believe that you have had an opportunity to spend quality time with your constituents and your families during the on-going long recess and that you are re-energized and ready, as always, to conduct the business that is ahead of us.

Hon. Senators, on the request of the Senate Majority Leader and with the support of the requisite number of Senators, I appointed today, Tuesday, 21st January, 2020 as a day for a special sitting of the Senate vide Gazette Notice No. 118 dated 10th January, 2020. The business to be transacted at this sitting shall be -

(a) Hearing of the charges against Mr. Ferdinand Ndung'u Waititu Babayao, the Governor of Kiambu County; and,

(b) Consideration of a request for the extension of the tenure of the *Ad hoc* Committee on Managed Equipment Services (MES).

On the matter of the hearing of the charges against Mr. Ferdinand Ndung'u Waititu Babayao, the Governor of Kiambu County, by a letter dated 20th December, 2019 (Ref: CAK/1/19/10(24) and received in my office on Monday, 23rd December, 2019, the Speaker of the County Assembly of Kiambu informed me that at its 127th and 128th sittings held on Thursday, 19th December, 2019, the County Assembly of Kiambu passed a resolution to impeach the Governor of Kiambu County, Hon. Ferdinand Ndung'u

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Waititu Babayao, pursuant to the provisions of Section 33(2) of the County Governments Act, 2012.

The Speaker of the County Assembly also forwarded to me copies of the following documents –

(a) The Order Papers of the County Assembly of Kiambu for the 127th and 128th sittings both held on 19th December, 2019;

(b) A Notice of Motion on the proposed removal of the Hon. Ferdinand Ndung'u Waititu Babayao from the office of County Governor of Kiambu, dated 2nd December, 2019; and,

(c) Copies of documents containing the grounds and particulars on which the proposal for impeachment was made.

In terms of Article 181 of the Constitution, Section 33(3)(a) of the County Governments Act, 2012 and Standing Order No.75(1)(a) of the Senate Standing Orders, the Speaker of the Senate is required within seven days after receiving notice of a resolution from the speaker of a county assembly to convene a meeting of the Senate to hear charges against the Governor.

Hon. Senators, the letter of the Speaker of the County Assembly of Kiambu and the accompanying documents were received in my office on 23rd December, 2019, while the Senate was on its long recess, following the conclusion of the Third Session on 5th December, 2019.

Hon. Senators, as you may be aware, some concerns have been expressed as to the appropriate date on which the sitting of the Senate to hear the charges against the Governor of Kiambu County ought to have been held, with some commentators suggesting that, despite the Senate being on recess, a special sitting ought to have been convened and held within seven days of the date of receipt of the Resolution from the Speaker of the County Assembly of Kiambu, which would have worked to a special sitting being held on or before 30th December, 2019.

Hon. Senators, owing to the importance of the impeachment process as a tool of oversight and for bringing to account public leaders and the Senate's central role in this process, it is important that I make a brief comment on this matter. The County Governments Act, 2012 and the Senate Standing Orders do not appear to contemplate a situation where the Senate is convened for a special sitting when a Session has ended while a new Session is yet to commence. Provision is however made for the manner in which a special sitting is to be convened where the Senate stands adjourned during a Session.

Standing Order No.30(1) of the Senate Standing Orders provides that-

“(1) Whenever during a Session the Senate stands adjourned, whether or not a day has been appointed for the next meeting, the Speaker may, on the request of the Senate Majority Leader or the Senate Minority Leader, and in each case with the support of at least fifteen Senators, appoint a day for a special sitting of the Senate.”

Hon. Senators, in the absence of specific provisions and taking into account our precedents in previous matters, the Senate leadership consulted appropriately and on the request of the Senate Majority Leader, applying Standing Order No.30(1), with the

necessary modifications and Standing Order No.1, I appointed the present date as the date for this special sitting. I have directed the Procedure and Rules Committee to give careful consideration to this matter as they propose amendments to the Standing Orders.

In terms of the way forward, Standing Order No.75(1)(b) of the Senate Standing Orders gives the Senate two options on how to proceed with the matter.

The Senate may -

(1) by resolution, appoint a Special Committee comprising eleven of its members to investigate the matter; or

(2) investigate the matter in plenary.

In the present case, Hon. Senators will note that at Order No. 2, the Senate Majority Leader will give a Notice of Motion for the establishment of a Special Committee and the Motion thereon is listed in Order No. 5. Should this Motion be carried, the Special Committee will be required, under Section 33(4) of the County Governments Act, 2012 and Standing Order No.75(2) of the Senate Standing Orders, to investigate the matter and report to the Senate on whether it finds the particulars of the allegations against the Governor to have been substantiated.

If, however, the Motion for the establishment of a Special Committee does not pass, the Senate shall proceed to investigate and consider the matter in Plenary. In that event, I will appoint the dates on which the Senate will sit in Plenary to hear and dispose of the matter.

It is noteworthy, and I wish to emphasize to all Hon. Senators, that when we come to the debate on the Motion to establish the Special Committee, the debate shall be limited to the substance of the Motion namely, whether or not to conduct the impeachment trial by way of a Committee. It will not be a debate on the substance of the impeachment or its merits. In that debate, therefore, no matters relating to the substance of the charges or the processes undertaken will be admissible.

Hon. Senators, I wish to emphasize that the Senate stands in the place of a trial court in this matter and is not itself, either as an institution or as individual Senators, party to the matter. Therefore, following the conclusion of this Communication, we will proceed immediately to the next Order, which will be a Motion and then thereafter there will be reading of the charges. Upon the reading of the charges, I also wish to draw your attention that it will not be possible to entertain any question or debate either on the substance of the charges or the processes so far undertaken or to be undertaken. These are all matters for the trial.

Hon. Senators, as has been stated on previous occasions, the hearing of charges for the proposed removal from office of Governor Waititu is one of the most important functions of the Senate under the Constitution. I, therefore, urge that we exercise the highest level of responsibility on this matter.

I thank you.

Next Order.

Sen. Khaniri: Happy New Year, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): A happy new year!

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. I appreciate the Communication that you have just made from the Chair. I have a lot of concerns, which I

think that we should address as a House before we move on to the Motion of whether we are appointing a Committee or looking at this matter in Plenary.

The Senate of the Republic of Kenya has a very good reputation and we all know this. We have worked so hard to give this House a reputation. Out there, we are known as the House that upholds the Constitution; we strictly adhere to our Standing Orders and we also follow the rule of law. I do not want a situation where we will embark on this process and then eventually, the process is negated or invalidated by the courts. You have raised the matter in your Communication, but you said that you will make a brief comment on it. I do not think that is sufficient. We need to deliberate on this matter so that we can establish whether we are doing the right thing or not.

In my opinion, one, I think that we are flouting our Constitution. Secondly, we are---

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

Sen. Khaniri: I am on a point of order, Majority Leader.

Mr. Speaker, Sir, he cannot raise a point of order when I am on a point of order.

The Speaker (Hon. Lusaka): Proceed, Sen. Khaniri.

Sen. Khaniri: Let me express my opinion.

I think that we are flouting both the Constitution and our own Standing Orders. Section 33 of the County Governments Act, 2012 on the removal of a county governor provides that within three days of the passage of a Motion of Impeachment, the Speaker of the County Assembly will communicate the message to the Speaker of the Senate. The record that I am looking at is that first, this Motion of Impeachment was passed on 19th December, 2019 and that communication to you was on the 23rd December, 2019. They did not act within the provided timelines that are in the Constitution.

Secondly---

The Speaker (Hon. Lusaka): Order, Sen. Khaniri---

Sen. Orendo: On a point of order, Mr. Speaker, Sir. This is a substantive issue which should be brought when we are dealing with that Order. The Order that we have dealt with is just reading of a Communication; the Notice of Motion has not been given and so, the matter is not even properly before the House. It has not been moved or seconded. So I think these issues should be addressed at the appropriate time and we are prepared to make responses to them. However, I think that it has been brought at an inappropriate time.

The Speaker (Hon. Lusaka): That is what I was going to say that, one, we must notice that we are the court and the matters that you are raising, like I have said, should be raised by the parties that will be in the matter. As we sit here, we will constitute the court that will hear this matter.

Let us proceed to the next Order.

Sen. Orendo: Mr. Speaker, Sir, I forgot to say that the Hon. Senator for Vihiga is already dealing with matters of evidence. He cannot be seen to be offering evidence and the parties will come here to give that evidence. Unless he wants to join and be a witness!

(Laughter)

Actually, not even a defense lawyer, he should be a witness because during trial, those issues will be canvassed - When were they received? When were the resolutions given? All that is going to be discussed, but I think this is pre-empting the whole issue.

The Speaker (Hon. Lusaka): That is why I have said, Hon. Senators---

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, if I heard your Communication clearly, which I was expecting Sen. George Khaniri, who is known to be a stickler to the rules--- If he was listening to your Communication, which was very clear, in conclusion you said these are issues that will be dealt with in the trial by the Committee or the House, depending on what we will agree on.

Mr. Speaker, Sir, since your Communication is a ruling in itself, it cannot be challenged. Is it in order for Sen. George Khaniri to challenge your Communication?

The Speaker (Hon. Lusaka): Actually, he is out of order and like I have said, as the Senate, we are the court. You are the ones who will hear this, either in plenary or through a Committee that you will appoint like I have said in my Communication. So, the parties that are involved and who are complaining that they have been accused are the ones who will raise issues. If there are any issues, they will be heard and whoever will be listening we will make a determination on that particular matter.

Let us move on to the next Order.

NOTICES OF MOTIONS

EXTENSION OF MANDATE OF *AD HOC* COMMITTEE ON MES

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I beg to give notice of the following Motion-

THAT, AWARE that the Senate resolved to establish a select committee comprising nine Senators to investigate and establish the facts surrounding the leasing of the Medical Equipment, in the now 119 beneficiary hospitals countrywide;

APPRECIATING, that the mandate of the Select Committee lapsed on Thursday, 26th December, 2019;

REGRETTING, that due to heavy workload and sheer magnitude of the assignment, the Committee is yet to table its report in the House and requires more time to conduct a further and thorough inquiry into the subject matter of its mandate;

NOW THEREFORE, the Senate resolves to renew the mandate of the committee by a further period of forty five (45) days to enable it conclude its work and table its report in the House.

I thank you.

The Speaker (Hon. Lusaka): The Senate Majority Leader, continue.

ESTABLISHMENT OF A SPECIAL COMMITTEE TO
INVESTIGATE THE PROPOSED REMOVAL FROM OFFICE,
BY IMPEACHMENT, OF THE GOVERNOR OF KIAMBU COUNTY

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I beg to give this other Notice of Motion-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on 19th December, 2019, the County Assembly of Kiambu approved a Motion “to remove from office, by impeachment,” the Governor of Kiambu County;

AND FURTHER, WHEREAS by letter Ref. No. CAK/1/19/10 (24) dated 20th December, 2019, and received in the Office of the Speaker of the Senate on Monday, 23rd December, 2019, the Speaker of the County Assembly of Kiambu informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order No.75(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order No.75(1)(b)(i), the Senate resolves to establish a special committee comprising of-

- (1) Sen. Cleophas Malalah, MP - Chairperson;
- (2) Sen. Susan Kihika, MP - Vice Chairperson;
- (3) Sen. (Arch.) Sylvia Kasanga, MP;
- (4) Sen. Mohamed Faki, MP;
- (5) Sen. Eric Okong’o Mogeni, SC, MP;
- (6) Sen. Fredrick Outa, MP;
- (7) Sen. (Eng.) Hargura Godana, MP;
- (8) Sen. Aaron Cheruiyot, MP;
- (9) Sen. Anuar Oloiptip, MP;
- (10) Sen. Mithika Linturi, MP; and
- (11) Sen. Iman Falhada, MP;

to investigate the proposed removal from office by impeachment of the Governor of Kiambu County and to report to the Senate within ten (10) days, pursuant to Standing Order No.75(2), of its appointment, on whether it finds the particulars of the allegations to have been substantiated.

**PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT,
OF HON. FERDINAND NDUNG’U WAITITU BABAYAO,
GOVERNOR OF KIAMBU COUNTY**

READING OF THE CHARGES

The Speaker (Hon. Lusaka): Hon. Senators, I now proceed to read the charges and my earlier ruling in my communication still remains. After that, there will be no comments or anything said about this.

Hon. Senators, pursuant to Section 33(3)(a) of the County Governments Act and Standing Order No.75(1)(a) of the Senate Standing Orders, I hereby proceed to read the charges against Hon. Ferdinand Ndung’u Waititu Babayao, the Governor of Kiambu County as contained in the Resolution passed by the County Assembly of Kiambu on 19th December, 2019.

Hon. Senators, please note that this is a full recital of the charges as passed by the County Assembly.

(1) Gross violation of the Constitution of Kenya 2010, the County Governments Act, 2012, the Public Finance Management Act, 2012 and the Public Procurement and Disposal Act, 2005-

(i) Lack of accountability in the management of county resources by incurring unsustainable debts and other pending obligations to the tune of Kshs4 billion. These pending obligations were never disclosed in the County Fiscal Strategy Paper 2019 thus violating Article 201(e) of the Constitution 2010 and Section 107(2)(e) of the Public Finance Management Act, 2012. The County Executive under the leadership of the County Governor intentionally failed to draft the Medium Term Debt Management Strategy for the Financial Year 2018/2019 in contravention of Section 123 of the Public Finance Management Act, 2012. This places Kiambu County in a highly precarious financial position as it may lead to protracted and costly court battles with the creditors and eventual auctioning of county assets.

(ii) Violation of Articles 176 (1) and 185 of the Constitution of Kenya, 2010 by disregarding the County Assembly as an arm of the County Government and further undermining its three cardinal roles of legislation, oversight and representation through systematic non-remittance of requisitioned funds in the Financial Year 2018/2019.

The Governor diverted funds intended for use by the Assembly to projects where he would obtain personal benefits through irregular procurement. This systematic crippling of the Assembly operations compromises the independence of this Honourable House. This un-written edict of the County Governor violates Article 6 and Article 10 of the Constitution of Kenya, 2010 that engenders the spirit of mutual respect, cooperation and consultation amongst all arms of government.

(iii) Violation of Article 201 (a) and (d) of the Constitution of Kenya, 2010 that sets fundamental principles of public finance and further Section 5 and 130 (1) (b)(i) of the Public Finance Management Act, 2012;

(iv) Violation of the Constitution of Kenya, 2010 Articles 201 (a), (d) (e) on principles of public finance, Articles 227 (1) on procurement of goods and services and

the Public Procurement and Disposal Act, 2005 by failing to adhere to the stipulated dictates of the law in awarding Kshs2.1 billion road tarmacking contracts against as approved total roads, transport, public works and utilities budget of Kshs1.4 billion in the Financial Year 2018/2019. The purpose of the irregular awards was not to provide public roads but was intended to enable the Governor obtain personal benefit through kickbacks.

This has exposed the County to huge losses through potential suits for breach of contract and/or pending bills. Further, it has exposed the County Assembly Members to ridicule in their wards where promises to repair/construct roads were made on promises from the Governor who had no intention of honouring the promises.

(v) Failure to establish the County Budget and Economic Forum as stipulated in Section 137 of the Public Finance Management Act, 2012. As a result, the County Governor has sabotaged public consultation as regards the preparation of the County Plans and Budgets ultimately violating the provisions of Sections 87, 91 and 115 of the County Governments Act, 2012 as well as Article 10 and 201(a) of the Constitution that demands involvement of the public in decision making. The failure was deliberate to create an atmosphere of chaos to facilitate the plunder and loss of public resources.

(Several Senators stood at the Bar)

The Speaker (Hon. Lusaka): Senators, you may come in. Kindly take your seats.

(2) Crimes under the national law

The County Governor committed serious crimes under national law in the following ways-

(i) Violation of Article 40 of the Constitution of Kenya, 2010 on the protection of every person's right to property and Section 155 of the Land Act, 2012 which bars unlawful acquisition and occupation of property through the forceful dispossession of Mrs. Cecilia Njoki Mbugua, a widow, of two prime plots of land within Thika Municipality. The two plots namely Thika Municipality/Block XI/877 and Thika Municipality/878 were part of the widow's inheritance from her deceased husband.

The County Governor promptly facilitated the irregular transfer of the said land totalling to 0.135 hectares on 2nd January 2018 to Mrs. Esther Wamuyu Nyatu a common law wife of and mother of the children of the Governor. The Governor and his wife made admission to the Ombudsman of the irregular acquisition of the land. The Ombudsman is a constitutional body and its findings of fact implicate the Governor in impeachable conduct.

(3) Abuse of Office/Gross Misconduct

The County Governor exhibited gross misconduct in the following ways-

(i) Conflict of interest and contravention of the Public Procurement and Disposal Act, 2005 in influencing the award of lucrative tenders to companies associated with immediate family and close relatives.

(ii) Violation of the Section 74 of the County Governments Act, 2012 by usurping the powers of the County Public Service Board (CPSB) to regulate the engagement of persons on contract, volunteers and casual workers in the County of Kiambu by directly creating directorates and hiring staff on casual basis as Directors and Assistant Directors,

as well as Sub County Administrators and Ward Administrators. Further to this, the County Governor has hired over 600 casuals without the involvement of the Public Service Board. Upon realizing that he had broken the law the Governor caused all the said staff to be fired exposing the County to risk of multiple suits and loss of public funds.

(iv) Violation of Article 226(5) of the Constitution of Kenya, 2010 through the imprudent use of public funds in payment of staff without authorized staff establishment records as required under Section B5(2) of the County Public Service Human Resource Manual. Examination of the Staff records and payroll by the Auditor-General in 2017/2018 audit revealed that the County had employed 706 new employees yet there were no positions advertised in the newspapers declaring vacant positions.

(v) Incurring unsustainable wage bill above the expected threshold of 35 per cent in contravention of Regulation 25(1)(b) of the Public Financial Management (County Government) Regulations, 2015.

The statement of receipts and payments on wages and benefit for public officers serving in Kiambu County Government for the Financial Year 2017/2018 was Kshs5.9 billion while the actual revenue collected during the year under review was Kshs12.6 billion, an indication that the percentage of wages and benefits of public officers to the total revenue was 47 per cent.

The net effect of the above audited scenario is unsustainable bloated wage bill. Therefore revenue collected is used to finance wages instead of financing development projects that enhances service delivery and overall wellbeing of Kiambu County residents.

Honourable Senators, that marks the end of the recital of the charges.

I thank you.

Next Order.

MOTION

EXTENSION OF MANDATE OF *AD HOC* COMMITTEE ON MES

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I beg to move the following Motion-

THAT, AWARE that the Senate resolved to establish a select committee comprising nine Senators to investigate and establish the facts surrounding the leasing of the Medical Equipment, in the now 119 beneficiary hospitals countrywide;

APPRECIATING, that the mandate of the Select Committee lapsed on Thursday, 26th December, 2019;

REGRETTING, that due to heavy workload and sheer magnitude of the assignment, the Committee is yet to table its report in the House and requires more time to conduct a further and thorough inquiry into the subject matter of its mandate;

NOW THEREFORE, the Senate resolves to renew the mandate of the committee by a further period of forty five (45) days to enable it conclude its work and table its report in the House.

Mr. Speaker, Sir, the request by the Select Committee is straightforward and reasonable. I am proud of the Committee that is chaired by Sen. Dullo and deputised by Sen. Wetangula, because they have done a thorough job. I have interacted with them and I know the investigations that they have carried out. If their report reflects the responses that we saw on television and the information that I have gathered from my interaction with the Members of this Committee, then it will get to the bottom of this issue. The report will also inform us on how we will later on treat contracts relating to the lease of equipment. I do not want to go to the substance because I will be going against our Standing Orders.

There are people who are of the view that we should not extend time for this Committee. I believe that only a saboteur or someone who wants to make it difficult for this Committee to nail those who misappropriated public funds or those who flouted the law can say that. At the moment, this Committee cannot even meet to write a report.

We must give them the necessary time and opportunity to get through this process in order for them to bring a fantastic report to this House. Forty-five days is reasonable. That gives us up to early March this year. Therefore, we will have the report for debate and we will also have resolutions that can be implemented by early March.

The Members of the Committee are of the view that a lot of what is going on at the Ministry and the engagements that are taking place between the Ministry and the county governments have been informed by the deliberations that have been put in public domain by the Committee. Anything that is currently happening around the Ministry of Health and the relationship that the Ministry is having with counties has been occasioned by this important Committee.

We have an important agenda coming up and I do not think that we should spend a lot of time on this matter. This is a procedural Motion and we should dispense with it for us to get to the business that brought us here.

I move this Motion and invite the Senate Minority Leader to second.

The Senate Minority Leader (Sen. Orenge): Mr. Speaker, Sir, I do not want to take too much time on this Motion. The request is justified and it is valid. The deliberations and the work of the Committee, which has been done in public, have been impressive. This Committee should, therefore, be given an opportunity to complete its work. We will give them 45 days, but they do not have to use all the 45 days. They can as well use 10 days.

I beg to second.

(Question proposed)

The Speaker (Hon. Lusaka): I can see that there are a number of Members who want to contribute. However, looking at the mood of the House, I think that we have something very important to discuss.

(Laughter)

(Question put and agreed to)

Let us move on to the next Order.

(Loud Consultation)

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, there is a lot of excitement in the House---

The Speaker (Hon. Lusaka): Order, Members! I know that it is the beginning of the year and we have missed each other. However, let us consult in low tones.

Proceed, Senate Majority Leader.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, to be fair to the *ad hoc* Committee on the Medical Equipment Scheme (MES), their main concern is that they were initially justified to take longer in the same subject matter. That is why they want their voice to be heard, but that issue can be conversed outside the issues of the Chamber.

MOTION

ESTABLISHMENT OF A SPECIAL COMMITTEE TO INVESTIGATE THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF KIAMBU COUNTY

Mr. Speaker Sir, I beg to move the following Motion-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on 19th December, 2019, the County Assembly of Kiambu approved a Motion “to remove from office, by impeachment,” the Governor of Kiambu County;

AND FURTHER, WHEREAS by letter Ref. No. CAK/1/19/10 (24) dated 20th December, 2019, and received in the Office of the Speaker of the Senate on Monday, 23rd December, 2019, the Speaker of the County Assembly of Kiambu informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order No.75(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order No.75(1)(b)(i), the Senate resolves to establish a special committee comprising of-

(1) Sen. Cleophas Malalah, MP - Chairperson;

- (2) Sen. Susan Kihika, MP - Vice Chairperson;
- (3) Sen. (Arch.) Sylvia Kasanga, MP;
- (4) Sen. Mohamed Faki, MP;
- (5) Sen. Eric Okong'o Mogeni, SC, MP;
- (6) Sen. Fredrick Outa, MP;
- (7) Sen. (Eng.) Hargura Godana, MP;
- (8) Sen. Aaron Cheruiyot, MP;
- (9) Sen. Anuar Oloitiptip, MP;
- (10) Sen. Mithika Linturi, MP; and
- (11) Sen. Iman Falhada, MP;

to investigate the proposed removal from office by impeachment of the Governor of Kiambu County and to report to the Senate within ten (10) days, pursuant to Standing Order No.75(2), of its appointment, on whether it finds the particulars of the allegations to have been substantiated.

Mr. Speaker, Sir, you enumerated in your Communication how we received the report, communication and charges from the County Assembly of Kiambu; and how we found ourselves in the situation which we are in.

I will abide by the orders in your Statement that we will not canvass anything about the process, both in the County Assembly of Kiambu and the Senate despite the fact that I got a letter copied to me from the Governor of Kiambu, through his advocate, on the process of the County Assembly in Kiambu. You rightfully communicated to the Senate Business Committee (SBC) that such communication will have to be channeled to the Committee to investigate.

I will also not go into the details on the procedure we followed to be here. This is because as you ruled earlier, that is an issue that will be conversed in the Committee. I will address about two or three things about the use of the Committee for investigations.

First of all---

(Loud consultations)

(Sen. Sakaja entered the Chamber)

The Speaker (Hon. Lusaka): Order, Members. Let us consult in low tones. 'Super' Senator, you have entered with a lot of excitement, but let us listen to the Senate Majority Leader because he is making an important point.

The Senate Majority Leader (Sen. Murkomen): Thank you, Mr. Speaker Sir.

First of all, we use a Committee system. As a House that relies on its Committees to transact its business, the SBC came to the conclusion that the House is better advised and guided through a committee process.

Secondly, looking at the listing of charges and the preliminary statements from the parties that were before us, having all the 67 Senators asking questions on those matters would mean that we would need more than the ten days. We might also need more than four hearing sessions to deal with the issues that are involved.

The Senate should benefit from its tradition. Of the eight or so impeachments that we have dealt with, only one impeachment that involved Governor Gachagua was done in

the Plenary. Even then, we had to do it expeditiously because he had been brought straight from the hospital bed to the Chamber of this House. Everyone here was panicking about whether spending a longer time would jeopardise the health of the Governor.

Therefore, Mr. Speaker, Sir, that procedure was expedited and, to a great extent, it became a process such that up to now, we do not have a serious report. This is because we do not have an in-depth analysis of the issues that were dealt with in the impeachment of Governor Gachagua by this Chamber.

Mr. Speaker, Sir, every time a Motion of Impeachment is brought to this House, debate by those who are pursuing a partisan agenda has always been that the Senate is on trial or sometimes they say that the Senate is under watch. There is more important business that we do in this House every day, including the division of revenue and county allocation of revenue. We do not suddenly become more important or this business does not suddenly become so important because a governor is being impeached.

Mr. Speaker, Sir, when the Governor for Taita/Taveta County was brought to this Chamber, there was a lot of lobbying left, right and centre. I can say this as a Leader in this House. There was lobbying by politicians from outside; there was lobbying by citizens from Taita/Taveta; there was lobbying by friends of the Governor, and there was also lobbying by the friends of the County Assembly Speaker.

However, we said in this House that we are not going to do impeachment for the sake of expediency. I want to thank the team that was led by the Senator for Embu, Sen. Ndwiga – and the Senator for Kirinyaga, among others who were there – for a job well done. This is because they did not listen to public pressure, external issues and so on, and so forth. They came here with facts; they looked at the issues and said that they were going to make a determination based on the law.

Mr. Speaker, Sir, I remember saying, at that time, that impeachment alone does not become successful because the Governor has been impeached. We have seen from the day we brought the impeachment of Governor Wambora, where I sat in the Committee with Sen. Orenge – and I am glad that we are all in leadership and we now have experience in that matter – that as a result of the pushing of the impeachment of Governor Wambora---I can tell you that if Governor Wambora was honest, he would come and thank this Senate. This is because that process of accountability that took place in this House made him to become more vigilant in his county; to get more vigilant staff and to focus on resolving the problems that were in his county.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Members! Let us consult in low tones.

(Sen. Cheruiyot consulted loudly)

Order, Sen. Cheruiyot!

Hon. Senators, this is a very important matter and I want to appeal to you to follow and listen. If you do not want to listen, then you can take leave, because we want to get some seriousness on the matter.

Let us consult in low tones.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I want to request Sen. (Dr.) Ali---

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

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

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, even as you are asking for order, you know that this side is calmer. There is a long tradition in the Houses of Parliament, at least the ones which follow the Westminster Model, that there cannot be more than two hon. Members standing at any one time. Even now, you can see that there is another Member of Parliament---

The Speaker (Hon. Lusaka): Sen. Cherargei and Sen. Omanga, please take your seats.

*(Sen. Cherargei and Sen. Omanga
remained standing)*

The Senate Minority Leader (Sen. Orengo): You are not allowed to stand when another Member is on his feet. This is to ensure that we are effective in our deliberations.

Therefore, Mr. Speaker, Sir, I plead that these Standing Orders are not there for any other reason, but to make sure that debates are undertaken in a particular way that gives the Senate some decorum.

Sen. Wetangula: On a point of order, Mr. Speaker, Sir. Allow me to add my voice to that. This House is not sitting this afternoon just in its legislative mandate; we are sitting as a quasi-judicial organ. This is now a court. For those who have not been to court, when proceedings are going on, nobody talks, laughs or moves up and down without any proper reason. We want to hear what the Majority Leader is telling us. Somebody's life, future and reputation is on the line. We must give a fair hearing with decorum and in silence so that those of us who will contribute will do so from information that we are listening to. We should not be disrupted by people walking up and down. We know there is excitement because we are from a holiday, but let us keep that excitement out of the Chamber.

The Speaker (Hon. Lusaka): Thank you, Sen. Wetangula. Just to add on to that, you know the whole world is watching us, and we will be judged by how we conduct ourselves.

Proceed, Leader of Majority.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I was at the point where I was saying that Sen. Orengo and myself served in the first impeachment Committee. I was reiterating the fact that even where Governor Wambora survived through court processes throughout his entire first term, he must thank this House. This is because that process of accountability makes them wake up to the reality that things are

not right in their counties and, therefore, they are able to go, sit back and sort out their problems with their county assemblies.

When the impeachment of Hon. Chepkwony of Kericho County came, he was not finally impeached by this House. However thereafter, Governor Chepkwony was elected resoundingly because he went back to his county and put things in order to enable him to impress the people who voted for him.

Mr. Speaker, Sir, the impeachment of the Governor for Taita Taveta County did not succeed in this House; but have you heard any noise from Taita/Taveta County again? We were told that even before the impeachment proceedings ended, the Governor and the Members of the County Assembly (MCAs) quickly convened a meeting and agreed on how to take the budgeting process forward. We now do not hear any more noise from Taita/Taveta County. Sometimes, of course, you can attribute it to other factors, but this House, through impeachment, has effectively demonstrated that impeachment, as a process of accountability, is able to change course and change service delivery in counties.

Therefore, Mr. Speaker, Sir, we are saying here that we are not, as a Senate, on trial from anybody. The people who come here are coming to meet a Senate that is united in resolution to deal what they want to do. Let me confess that when the impeachment of the Governor for Taita/Taveta County came to this House, the Governor and many other characters said that Sen. Murkomen has organized and planned, because he is on the Majority Side, that he must be impeached because of other auxiliary factors and politics out there.

However, I spoke in this Chamber and told this House that since I joined this House as a Senator, this House has always stood firm on matters of accountability and devolution. Every Senator is equally qualified to preside over any issue in this House. Nobody is more special than the other; and sometimes the only preference we have is that because we have the advantage of having lawyers in this House, we usually try to say that out of the 11 Members, at least two or three of them should be lawyers to help others to understand the matters of procedure. However, every Senator who went to school or not; who studied architecture, engineering, law or whatever course, is qualified to preside over the process of accountability and governance in this country.

Therefore, those who are speaking around and saying, "I should have preferred so and so, and not the other one," when we meet in this House, there is no Jubilee or NASA. There is to *Tangatanga* or *Kieleweke*. This is a House of the Senate; this is a Chamber of the Senate. This is where we make laws, protect and oversight counties.

When we fought for money to go to counties, there was no *Kieleweke*, *Tangatanga*, Jubilee or NASA. Every time we do these things, we rise to the occasion. We are capable of trusting ourselves to push for matters.

I urge Members that as we move forward---

The Speaker (Hon. Lusaka): Majority Leader, there is a point of order.

What is your point of order, Sen. (Dr.) Ali?

Sen. (Dr.) Ali: On a point of order, Mr. Speaker, Sir. Is the Leader of the Majority in order to tell us that this House does not comprise of *Kieleweke* and

Tangatanga, yet he said before that that this is a House of the Senate? Why does he have to go that low again? Is that right?

The Speaker (Hon. Lusaka): I think he was just elaborating on being alive to the politics out there.

Proceed, Sen. Murkomen.

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I am sure that Sen. (Dr.) Ali is very much aware of what he is saying. He just wants to contribute and be part of this since the whole country is watching.

(Loud consultations)

I have not had a chance to interact with him, but there is a video going round where someone is chasing grasshoppers with a stick. My first impression was that it was Sen. (Dr.) Ali.

(Laughter)

After a very hard job during the recess, you can be excused to be a bit more excited.

Mr. Speaker, Sir, I am not belittling the efforts of the Government in fighting that locust invasion, but they must do it seriously. I am sure when we come back that will be a matter we will deal with. We are ready to take pictures only that we do not know to whom to send them.

Mr. Speaker, Sir, we must emphasise in this House, and Sen. Orenge will tell you, that during the consideration of Gov. Wambora's impeachment in Windsor Hotel---I do not know if Sen. Mutula Kilonzo Jnr was there. Sen. (Dr.) Khalwale was the Chairperson. We took a walk down to the golf course to make a decision outside the building because we thought that maybe someone was recording us. We made a decision and finished. It never leaked until we were in this Chamber. Everybody, including our colleagues, was running around to find out what decision we had made.

I urge my colleagues who will be part and parcel of this Committee to uphold a high level of integrity and to look at the law and the issues. They should come back with a report that when Kenyans follow the proceedings--- As they make the final decision, let them come back holding the confidence of not only this Senate high, but also their own personal integrity.

Mr. Speaker, Sir, I know that when history will be written about impeachments in this House, I am very proud to have served in the first impeachment Committee. I believe that those who will serve in that Committee will do a good job.

Let us not listen to the noise out there about this and that. Just stick to the law and the facts. Guide this House to make a determination, if need be, on issues that are within the law and rise above all other parochial interests.

Although we cannot quote newspapers in this House, I take exception with those who are hurling around newspaper articles about the Speaker and who the Committee Members are. People are lobbying using newspapers and so forth. However, this House must continue to follow its Standing Orders and procedures, and hold itself in high decorum when dealing with matters of that magnitude.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

Mr. Speaker, Sir, I beg to move and now, therefore, invite the Senate Minority Leader, who is the Senior Counsel, Sen. James Orengo, to second.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I beg to second. As I do so, I refer to the annals of the Senate at the first impeachment trial by this Senate to which the Senate Majority Leader has referred.

Mr. Speaker, Sir, during that debate I brought it to the attention of the Senate why the power for the removal of the President, the Deputy President, the governor and the deputy governor was placed on the Senate. In fact, if you look at the history of the United States of America (USA), there is an explication as to why this important power was placed on the House of the Senate which sits as a jury and a court.

There is an impeachment process now going on in the USA. Part of the rules of the Senate is that during an impeachment trial no Senator is allowed to carry a mobile phone into the Senate chamber; no Senator is allowed to move from his seat to another or to talk to his or her neighbour. This is because it is a power that is exceptional.

In fact, the law courts with jurisdiction can remove a president following an election only. That is the only circumstance, but the Senate can under any circumstances, for the reason stated in the Constitution and the County Governments Act, remove a governor or for the reasons stated in the Constitution and in the Standing Orders, remove the President and the deputy president.

Mr. Speaker, Sir, I am just pleading with the Senate that when we exercise this power, we should be showing the solemnity that should go with this very important duty, which has been delegated to the Senate by the people of the Republic of Kenya. It can be taken to any place or transferred to anybody. However, so long as we fulfil the functions of the people of Kenya who thought that by vesting this very important power on the Senate, we should do it with all the decorum that it deserves.

As I second this Motion, I am convinced that the Committee will do their work in regard to this Motion on impeachment and removal of the Governor of Kiambu County. All the issues should be brought before the Committee, including any preliminary issue. The Standing Orders have given provision that preliminary issues can be addressed in Plenary, but cannot take more than 30 minutes. Therefore, there are other matters which may require evidence, and should be properly given to the Committee to have the time to listen to both sides of the divide in terms of the parties who will appear before the Senate.

Mr. Speaker, Sir, I urge us, and I think this has been spoken, that because of the authority and integrity of the Senate over the period that we have had the Senate, especially the Senate that was created after the promulgation of the Kenya Constitution 2010--- I think overall, we have done a very good job in terms of exercising our authority and power of impeachment and removal of county governors. The difference from other jurisdictions is that we perform a dual role. We prosecute not in terms of taking the places of parties before us and make the decisions. The presiding officer is the Speaker of the Senate.

I would want the public out there--- There may be a lot of stories that will be said here and there, but I believe that overall, we have carried out our responsibility with integrity. On this particular one, let it not be said that any particular issue that should

appear before that Committee of the Senate was disregarded, whether it is procedural or substantive. All those matters should be taken before the senate.

Mr. Speaker, Sir, in conclusion, and I am just saying this in terms of what you said at the beginning during the Communication from the Chair, the Standing Orders of the Senate flow from the Article 124 of the Constitution. In fact, in my view, the Standing Orders have got the same authority of any statute or legislation. The only difference is that they do not receive presidential assent and do not go through the first and second reading. However, they are also subjected to public participation.

In observance of those Standing Orders, it is important to note that the Standing Orders are the ones which provide for what happens when the Senate is in recess, and when it is not in session because of the Calendar of the Senate which is gazetted for public information.

Mr. Speaker, Sir, you do not have power to convene the Senate when we are out on recess in terms of the Calendar of the Senate. The only way you can convene the Senate is by requisition of at least 15 Members, which is triggered by the Senate Majority Leader or the Senate Minority Leader. Therefore, when we are on recess outside the normal Calendar of the Senate, our hands are tied. Members need to be triggered for us to convene.

I know that the Statute says that upon receiving notice, you should convene the Senate. However, when the Senate is on recess following the Calendar at that particular time, you do not have those powers unless that process is triggered by the Senate Majority Leader or the Senate Minority Leader with the support of at least 15 Members. A lot of stories are going around but I think people are not looking at the law and the Standing Orders properly.

Mr. Speaker, Sir, with those remarks, I look forward to the Committee doing the work with integrity and decorum. Finally, the matter should come before the Plenary for debate and determination.

(Question proposed)

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. Regarding the Communication you have made, it is important that you clarify on the timelines.

Maybe you are not aware about this; I have confirmed that Senators do not follow Sen. Murkomen on his twitter handle. Immediately the impeachment happened, he advised Senators to cancel their holidays because we were to sit during Christmas. I am glad that we all defied, otherwise we would have just sat in Nairobi waiting for your communication.

It is important for clarity because there have been speculations all over about the timelines, and that the Senate has abated or aided what would have been the acquittal of the governor in terms of time. Therefore, that clarity is important. In my own view and speaking as a legal practitioner, your ruling should be adopted by the Committee. It should also become part and parcel of the report for future reference. If we amend the Standing Orders, it will offer that clarity.

Secondly, concerning the Members nominated to the Committee, I do not know the wisdom that the Senate Majority Leader used and how some of our colleagues will be

found. However, this is a good year because we are going to have Sen. Loitiptip whom we have not seen in a long time sitting in the Committee.

We will also have Sen. Kihika and Sen. Malalah who have been avoiding these committees. I am glad they will sit until 3.00 a.m., just like the rest of the Senators, to write a report. They may decide to receive telephone calls or switch off their phones. In my view, they have been avoiding such committees and it is time they are involved.

Mr. Speaker, Sir, on the timelines, in the proposals to amend the Constitution previously, we thought 10 days was too short. I am not sure what they were thinking about. I think they wanted to avoid seven days and 14 days. So, they must have come to some element of compromise for 10 days.

All of us who have sat in these committees can confirm that the timelines given are normally too short to do anything substantial but we have worked well. I am glad to have participated in the Governor. (Prof.) Chepkwony's case which set precedent to the standards. In the Constitution, it is clear that in the four provisions of Article 181, any one of them is enough to impeach a governor.

In my stint in this Senate, I hoped that 47 governors would be impeached but I do not think it will happen. Like Sen. Murkomen has said, in all the cases where governors are impeached, including the Deputy Governor of Makueni County, somehow there is order and reason follows. Governor Wambora disappeared and became a good man. It was the same case for Governor (Prof.) Chepkwony, Governor Wa Iria and the Deputy Governor of Machakos County, Mr. Kiala, except Governor Gachagua who left us. In the cases of Nyeri, Murang'a, Makueni and other counties, we have not had these problems.

We encourage Members of County Assemblies (MCAs) to continue offering oversight to the governors. Otherwise, I support this Committee entirely.

Mr. Speaker, Sir, we hope that you will call us soon to deliberate on this matter.

The Speaker (Hon. Lusaka): Let us now have Sen. Halake.

Sen. Halake: Mr. Speaker, Sir, while I rise to support, I have questions around the composition of the Committee Members from our side. I know that this is a House of practice which observes the rule of law and it is going to uphold and make sure that the serious matter before us is debated and investigated in a just and competent manner.

I do not know whether we will have a Plenary hearing as opposed to committee hearing. This is because this matter is weighty that Kenyans have entrusted to us. All Senators would like to be part of the process to make sure that justice is served not only to the people of Kiambu but also the people of this country. The Plenary hearing will do more justice than having a few people to investigate the matters.

I have some concerns about some of the Members who have not been around for too long to understand the processes of this House. That is why I request that we have a Plenary hearing, so that all of us participate in the process to make sure that justice is done.

The Speaker (Hon. Lusaka): Sen. Wako, you have the Floor.

Sen. Wako: Thank you, Mr. Speaker, Sir, for giving me this opportunity to speak on this important Motion. This is one of the most important functions of the Senate as per our Constitution. Governance is conferred upon us under the County Governments Act.

It is a coincidence that as we embark on this important exercise, in the United States of America (USA), they will also embark on an impeachment trial of their President today. We could learn one or two things from what goes on in America.

The Senator who spoke just before me requested that we have it in plenary. We have done it once before the plenary. In America, everything is done in plenary because of the importance of the work.

One thing we should copy from America is that when they are exercising this important function, which is a *quasi*-judicial function, they are sworn in. I noticed that whereas the debate on impeachment in America was very casual and highly politicized, as soon as the members were sworn in to perform that duty, things became serious.

President Trump appointed additional lawyers to represent him and took the proceedings there a bit more seriously than he had done before. These are some of the issues that we have to learn.

Looking at what the Committee will go into, it appears to me from what we know that the issue of contracts at the national and county government levels is what we have to go into. We all know that in most counties, most of the contractors are related to the governors or the powers that be. They could be related, friends or political friends of the governor. The allocation of contracts is totally skewed. I commend the County Assembly of Kiambu for bringing this matter here, for consideration.

I also wish to appeal to the other county assemblies, because we know that the allegations that have been made against the Governor of Kiambu County are also what we hear going on in other counties. The county assemblies should be alert and exercise their oversight role a little bit more seriously so that we can ensure that corruption is not also devolved at the county level. As soon as it starts, it must be stopped. We must nip the bud in time.

Mr. Speaker, Sir, on the membership of the Committee, some of the Members are very weighty. The Chairman is the Deputy Minority Leader. The Vice Chairperson is the Chief Whip of Jubilee Party and also the President of the Inter-Parliamentary Union (IPU) Bureau of Women Parliamentarians. The Committee is under some good leadership.

Sen. Sylvia Kasanga is a very well known architect and she has done a lot within the Architectural Association of Kenya (AAK). Sen. Mohamed Faki, my neighbour here, I am glad that he is there. He is the Chairman of the Law Society of Kenya (LSK), Mombasa Chapter. Sen. Eric Okong'o Mogeni is a senior counsel. We are only three senior counsels in this House - Sen. Orengo, Sen. Okong'o Mogeni and myself, but I am the most senior of them all!

(Laughter)

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

Sen. Wako: Mr. Speaker, Sir, I was instrumental in their appointment as the chairperson of the senior counsel.

The Speaker (Hon. Lusaka): Sen. Kinyua, Do you have a point of order?

Sen. Wako: Mr. Speaker, Sir, Sen. Outa and Sen. Aaron Cheruiyot are---

The Speaker (Hon. Lusaka): Order, Sen. Wako! There is a point of order.

Sen. Kinyua: Mr. Speaker, Sir, I just feel it when he starts dealing with Members like that. I think every Member by virtue of being a Senator is competent.

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

Sen. Kinyua: Mr. Speaker, Sir, my point of order is that when he reaches to a Senator who has not been a counsel – because he is dealing with lawyers – how will he describe him and he is just a Senator?

The Speaker (Hon. Lusaka): Order, Members! The Senator is right. He is supporting Members who have been put on that Committee. He is just giving the competencies of the Members who have been put on that committee to justify why maybe they are in that Committee. That is his style of talking.

Proceed, Sen. Wako.

Sen. Wako: Thank you very much, Mr. Speaker, Sir, for protecting and defending me against the onslaught by my friend. He was doing it with a light touch.

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

Sen. Wako: Mr. Speaker, Sir, the Committee---

The Speaker (Hon. Lusaka): There is another point of order from Sen. (Eng.) Maina.

Sen. (Eng.) Maina: Mr. Speaker, Sir, the point that is being raised is very vital. We are in this House as elected leaders. We are not in this House because we are lawyers. The people of Kenya are looking at this House as the House of reason that will hear their voice. This matter has come from Kiambu County and other matters had come from wherever they had come from. The adjudication of this matter cannot be reduced simply to a mere legality. At one time---

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

Sen. (Eng.) Maina: Mr. Speaker, Sir, I am coming to it.

The Speaker (Hon. Lusaka): Sen. (Eng.) Maina, arrive on the point.

Sen. (Eng.) Maina: Mr. Speaker, Sir, I am coming to my point of order. I would wish and I believe that all the Members in this Committee, even if it came to the plenary, would look at the matter. If somebody came in front of this House having stolen a chicken---

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

Sen. Wetangula: Mr. Speaker, Sir, could I invite the distinguished Senator for Nyeri County to read a satire book by George Orwell called *Animal Farm*; that all animals are equal, but some are more equal than others.

The Speaker (Hon. Lusaka): Sen. (Eng.) Maina, have you concluded your point of order?

Sen. Sakaja, what is your point of order?

Sen. Sakaja: Mr. Speaker, Sir, Members are taking too much time on the wrong things. Those points of order are by Members who are worried that Sen. Amos Wako might reach somewhere and get stuck and not say anything. I just urge Sen. Amos Wako, that the way he has colored those he has already mentioned, everyone on this list must also receive such colors. I think that was the worry of Members. Just allow him to continue.

The Speaker (Hon. Lusaka): Order, Members! I also thought so. What is being debated are the names that have been proposed. Sen. Wako was just giving credit and competencies. I am sure all of them have competencies. That is his opinion. Let us not interfere with him until he finishes. If he leaves anybody out---

Proceed, Sen. Wako.

Sen. Wako: Thank you, Mr. Speaker, Sir. I thought the whole purpose of this Motion is to---

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Members! Let us not disrupt the Member.

Sen. Wako: Mr. Speaker, Sir, the whole purpose of this Motion is to approve the Members who have been suggested. So, I am in order to mention the good qualities of the Members whom I have mentioned and I think will add value to the deliberations of the Committee.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Cherargei? I want us to make progress because the interest is so much.

Sen. Wako: Mr. Speaker, Sir, I noticed ---

The Speaker (Hon. Lusaka): Order, Sen. Wako! There is a point of order.

Sen. Cherargei: Thank you, Mr. Speaker, Sir. I just wanted to assist you to move these things very fast. I was requesting---

The Speaker (Hon. Lusaka): No, you are out of order, Sen. Cherargei. You do not have the competence to guide the Speaker.

Sen. Cherargei: My apologies, Mr. Speaker, Sir. What I was requesting, in the interest of time and the way this issue is going, according to Standing Order No.106, we should at least limit the time allocated to each Senator to five minutes so that all Members can canvass this issue.

I thank you.

The Speaker (Hon. Lusaka): That is okay. Sen. Wako, proceed. I will make a ruling on that.

Sen. Wako: Thank you, Mr. Speaker, Sir. In fact, the Vice Chairperson of the Senate Committee on Justice and Legal Affairs, Sen. Mithika Linturi, is also here. He is also one of the Members. The point I am trying to make is that at least the leadership of the Senate has made an effort to put into this Committee very senior and able people. They are people of various experiences. I am sure maybe the next committee, if it relates to contracts, the Senator for Nyeri County may be appointed because I know he is a contractor and everything else.

(Laughter)

However, on this occasion, I am requesting him to approve the Members who have been suggested by the leadership. To conclude---

The Speaker (Hon. Lusaka): Sen. (Eng.) Maina, what is your point of order?

Sen. (Eng.) Maina: Mr. Speaker, Sir, I know that my learned friend is a lawyer.

(Laughter)

The Speaker (Hon. Lusaka): Order Members.

Sen. (Eng.) Maina: Mr. Speaker, Sir, he should stick to the rules of this House. I have been doing big construction jobs and I will continue to do that. However, I am in this House because the people of Nyeri County found it fit for me to represent big ideas about the Statehood of Kenya.

Sen. Wako: Mr. Speaker, Sir, without having made money from your contract jobs, it would have been difficult for the people of Nyeri to know who you are and vote for you.

(Laughter)

The Speaker (Hon. Lusaka): Conclude, Sen. Wako.

Sen. Wako: Mr. Speaker, Sir, in conclusion, ---

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

The Speaker (Hon. Lusaka): What is your point of order, Senate Minority Leader?

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I know Sen. (Eng.) Maina well. He went to Alliance High School which Sen. Wako went to. So, he is not doing badly.

The Speaker (Hon. Lusaka): Conclude, Sen. Wako.

Sen. Wako: Mr. Speaker, Sir, in conclusion, this is a serious mandate. I urge and appeal to Members that we will appoint this afternoon to embark on and discharge their mandate with fairness, objectivity and apply the laws to the facts. They should not bring politics into the work that they will do.

They should not support a person because he or she happens to be their friend. They are Members of this Committee and we are entrusting them to discharge the most important work that the Senate must do. They should apply their minds to it with fairness and objectivity.

With those few remarks, I support.

Sen. Poghio: Thank you, Mr. Speaker, Sir. It is a good day today to wish all Members a Happy New Year. In your ruling, you have said that we should not touch on the substance of the accusations. You have only said that we should rule on whether we will do this in Committee or the plenary. In this case, the Motion is about the Committee. I have a lot of faith in the ability of this Senate to handle any situation---

(Loud consultations)

Mr. Speaker, Sir, can I get your attention? I believe and trust that the Senate can handle any task thrown at it because of the composition of its Members. We should convince everybody to try and vote down the list of Members and reconstitute it so that it shows a good mix.

If you took out the names from the other side, you are left with names from the Jubilee side which is basically divided with names that the Senate Majority Leader has brought here, that is, *tangatanga* and *kieleweke*---

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

The Speaker (Hon. Lusaka): What is your point of order, Senate Majority Leader?

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I take great exception to the comments of Sen. Poghishio, who is a Member of our caucus on this side. Even though he is not a Member of Jubilee., he is a chairperson of a Committee so is his party leader. The only other Member of his party is a vice Chairperson of a Committee while a number of Members of Jubilee are not vice Chairpersons of Committees. So, it is an insult for him to make that kind of argument on the leadership of this House on constitution of Committees.

Sen. Poghishio: Mr. Speaker, Sir, I did not know what I said to make the Senate Majority Leader to recount who makes up Committees. I only said that given the other side has selected theirs, we can have issues on this side because there are teams called *kieleweke* and *tangatanga*. It is not the same on the other side.

Mr. Speaker, Sir, if that was---

(Loud consultations)

The Speaker (Hon. Lusaka): Order Members. I appeal to you to remain focused and not drag these issues of funerals and other forums to this House. I appeal to you to look at the list and stick to the point so that we make progress. Comment on whether you have a problem with the Members then we will make a ruling.

Sen. Poghishio: Mr. Speaker, Sir, I am not the one who brought about the issue of *kieleweke* and *tangatanga*, it is the Senate Majority Leader. So, it is important that we---

Sen. Sakaja: On a point of order, Mr. Speaker, Sir.

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

Sen. Sakaja: Mr. Speaker, Sir, we have Standing Orders in this House which define and describe political parties.

(Sen. Githiomi consulted Sen. Wako)

The Speaker (Hon. Lusaka): Sen. Githiomi, take any seat next to you.

(Sen. Githiomi took a seat)

Sen. Sakaja: Mr. Speaker, Sir, our Standing Orders define and describe parliamentary parties in terms of the number of Senators and the parties that exist. This is the third time we are hearing strange words of *tangatanga* and *kieleweke* being used in this House yet they are not registered political formations. There is no Senator in this House elected on a party ticket of *tangatanga* or *kieleweke*.

Mr. Speaker, Sir, on top of leaving funeral issues to funerals, you need to rule that those are strange and un-parliamentary words that should no longer be used in this House because they are derailing the entire debate.

Sen. Poghiso: Mr. Speaker, Sir, those interferences show you that we are living in denial. Every weekend, groups of people go out in those names. That is what happens.

The Speaker (Hon. Lusaka): Sen. Poghiso, assist this House to make progress. You are a seasoned politician.

Sen. Poghiso: Mr. Speaker, Sir, there is too much interference.

(Laughter)

I leave the rest to examine the list and tell us. My thinking is that we should have time to, first of all, create the scenario and setting of a courtroom that will seriously listen to a case like this. We still have time because most people are new to this process. Some of them have already been given this task and so they need time to understand the process and how to determine cases. If that is the case, I am of the opinion that we expedite the process. Some of the people will need guidance. In that regard, in the 10 days, we must take the first few days to orient Members of the Committee so that they can start a serious court situation.

I am following the impeachment of the President of the United States of America (USA) which is similar. About 100 senators are going to sit in the impeachment proceedings of President Trump. I do not know why we think that we cannot sit as a Plenary yet we are only 67 senators. I believe that we can sit as a Plenary.

Mr. Speaker, Sir, in this Motion we are discussing about the establishment of a special committee to investigate the proposed removal from office, by impeachment, of the Governor of Kiambu County. If we are in agreement on its composition, we can move forward. However, we should live to the realities of the politics of our House. I urge the Senate Majority and Minority Leaders to be in consideration of the way that we are perceived as a House when coming up with such lists.

I thank you.

The Speaker (Hon. Lusaka): There is a lot of interest on this matter. I will give the rest of the speakers five minutes each.

Kindly proceed, Sen. Wetangula.

Sen. Wetangula: Mr. Speaker, Sir, I wish you and the House a happy new year.

My remarks will be brief. This is not the first time that we have a similar issue in this House. I urge the proposed Senators to be thorough in their work and pay fidelity to the law and facts so that we do not have a situation where after reaching a verdict, it is later found out in courts of law that it was flawed in process or in conclusion.

I say this because in the first impeachment matter that came to this House, we acted with a lot of excitement and impeached Gov. Wambora who went to court, stopped the process but the matter was brought back to this House where we impeached him again. Gov. Wambora went ahead to serve a full term as an injunction governor.

Mr. Speaker, Sir, I urge the Committee to do a thorough job. I heard Sen. Wako speak eloquently about each Member of the Committee. However, he forgot to mention

my son, the distinguished Senator for Lamu, Sen. Loitiptip. I am happy that Sen. Loitiptip is a Member of this Committee. I sit with him in the Committee on National Security, Defence and Foreign Relations and for a full year, he attended meetings twice. I, therefore, encourage him to have determination so to speak because we must have serious attention to work. I say this of my son because I have engaged him many times so I know that he is a very brilliant young man. What he does not have is time to do things.

(Laughter)

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

Sen. (Dr.) Langat: On a point of order, Mr. Speaker, Sir. Is it in order for our senior friend, Sen. Wetangula, to condemn the Senator for Lamu not knowing the challenges that he has been facing up to and including when he was hospitalized? I also sit in a Committee with Sen. Loitiptip where he has been rare with reasons. For instance, he was one time beaten by thugs and hospitalized.

Hon. Senators: Where?

(Laughter)

The Speaker (Hon. Lusaka): Order, Hon. Senators! Sen. Loitiptip is here so Sen. (Dr.) Langat should not mourn more than the bereaved. If Sen. Loitiptip had issues with the remarks made by Sen. Wetangula, he would have raised them himself.

What is your point of order, Sen. Khaniri?

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. Not to appear that I am mourning more than the bereaved. Our Standing Orders must be adhered to. Is my elder brother, the Senator for Bungoma County, in order to discuss the character of Sen. Loitiptip without bringing a substantive Motion?

Standing Order No.96 (4) prohibits us from the character of a colleague without bringing a substantive Motion. Sen. Wetangula is in contravention of Standing Order No. 96(4).

Mr. Speaker, Sir, I beg to hear your ruling.

The Speaker (Hon. Lusaka): Hon. Senator, from where I sit, Sen. Wetangula said that Sen. Loitiptip does a lot things but he needs to create more time to concentrate on the task ahead.

Kindly proceed, Sen. Wetangula.

Sen. Wetangula: Mr. Speaker, Sir, my distinguished younger brother, Sen. Khaniri and Sen. (Dr.) Langat, should have seen how brilliantly Sen. Loitiptip was looking at me and smiling as I made the remarks that he is a brilliant young man. I have worked with him so I know his capacity and ability. I am sure that Sen. Loitiptip will do a good job. I just urged him to create a little more time for the task ahead. Sen. Loitiptip is nodding in agreement.

I would like to finish by saying that the impeachment of the Governor of Kiambu has from the general perception been clouded with very negative and unhelpful politics. I urge the Members of the Committee to ignore the politics out there. They should listen to the facts, apply the law and bring us a verdict. If the Committee listens to extraneous

matters, they will end up bringing a verdict that will not hold and if it holds, it will not stand the onslaught in courts.

We do not want this Chamber to look like it continuously does things that cannot stand the test of law. We want to make sure that Gov. Waititu gets his fair hearing and that the Committee listens to the evidence including the technical issues that Sen. Khaniri was trying to bring up.

Mr. Speaker, Sir, if the Committee will need any assistance, this House does not have shortage of people and Members who are distinguished enough to assist the Committee. I agree that every proposed Member to this Committee has the capacity and ability to listen to the proceedings of this nature. For the Members who are taking part in such a Committee for the first time, it is a learning curve in life because we encounter new things every other day. I urge the Committee to be fair, just, listen and bare total fidelity to the facts and the law.

I thank you.

The Speaker (Hon. Lusaka): Kindly proceed, Sen. (Dr.) Mwaura.

Sen. (Dr.) Mwaura: Mr. Speaker, Sir, I thank you for giving me this opportunity.

From the onset, I would like to oppose this Motion. We are living in very interesting times. We have been recalled from recess to discuss an individual who has allegedly and in many ways stolen from the people of Kiambu County.

The Speaker (Hon. Lusaka): Order, Sen. (Dr.) Mwaura.

Sen. (Dr.) Mwaura: Mr. Speaker, Sir, that is somebody who came from Nairobi County, stole money in Kiambu County and took it back to Nairobi County.

The Speaker (Hon. Lusaka): Order, Sen. (Dr.) Mwaura. You are out of order.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Hon. Senators! Sen. (Dr.) Mwaura came in late. I urge him to read what I said in my communication. Please do not discuss the matters here because they will be discussed when the trial starts.

What is your point Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Speaker, Sir. Sen. (Dr.) Mwaura was a Member in the other House. I, therefore, feel that we need to remind him that as a rule of practice, the Senators from the region where impeachments are coming from normally stand down. It is good practice that Sen. (Dr.) Mwaura restrains himself so that he does not make us look like we are a kangaroo court.

Sen. (Dr.) Mwaura should be properly advised just like everybody else has done before where an impeachment comes from their county, we wait for the rest of the Senate to be guided. Sen. (Dr.) Mwaura is, therefore, out of order to go through those accusations. Today it is somebody else, tomorrow it will be you. Kindly remember the advice that Sen. Orenge gave this House in 2017. Kindly Google it if you do not have it.

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

Sen. Wetangula: On a point of order, Mr. Speaker, Sir, every other time that I see Sen. Mwaura arguing very intelligently on television and, I just want to remind him of one simple common law tenet; that everybody is presumed innocent until pronounced

guilty. We are not here to condemn but to hear what case Kiambu has brought to this Senate and if we pre-judge people as a House of reason; as a House of wise people, as a House of reference and as a House that Kenyans look to; people bring Petitions here to get justice and justice presumes innocence until proven guilty.

I want to encourage you my brother, Sen. Mwaura, do not bring parochial politics from Kiambu to this Floor because it will not help us.

The Speaker (Hon. Lusaka): Sen. Mwaura, you remember that I had cautioned that, actually, I gave ---

(Loud consultations)

Order Members.

I had cautioned Sen. Mwaura that, since he comes from Kiambu, it would have been prudent for him to talk last, if he must talk. But I gave him the discretion; please stick to what my ruling was as the Speaker.

Sen. (Dr.) Mwaura: Thank you, Mr. Speaker, Sir. I used the word, 'allegedly', but because there are those of the mob psychology within the precincts of this august House, I think people did not listen to what I said. I said, 'allegedly' because I am very sure that if this Plenary was allowed to canvass on this matter, rather than the Committee, we will be able to get material evidence.

As we speak, because of these proceedings, the people of Kiambu continue to suffer. There is no medicine in hospitals. Appointments cannot be made because of the lacuna in law. This matter is before the investigations of the Ethics and Anti-Corruption Committee (EACC) and the allegations so made are so gross as to occasion the non-service delivery to the people of Kiambu.

When I was listening to the Attorney-General *Emeritus* when he was responding to the distinguished Senator of Nyeri, Sen. Ephraim Maina, he made an allegation that was quite telling and he said that if the Senator had not made money through contracts, he would not have seen the inside of this House. Those are very serious allegations and remember ---

(Sen. Murkomen spoke off record)

Let me have my time please; you cannot be speaking all the time. Let us have some order so that I speak. The Senate Majority Leader always speaks. Can I have my time to also speak?

The Speaker (Hon. Lusaka): He has a right to---

Sen. Mwaura: It is not about monopolization, I need to speak.

The Speaker (Hon. Lusaka): He is on a point of order, Sen. Mwaura.

Sen. Mwaura: No, it is unacceptable.

The Senate Majority Leader (Sen. Murkomen): On a point of order, Mr. Speaker, Sir. I do not know if my colleagues listened to the submissions of Sen. Orengo, Sen. Wetangula and Senior Counsel, Sen. Wako who spoke at length, that all of them avoided anything to do with the charges, the implications of the charges, the conclusions that there is a relationship between the charges and any other issue happening anywhere in this country.

We try to guide the House as lawyers and in real honesty, this Motion is about establishment of a Committee and what the Committee is going to do. It is not about what the charges mean and the implication of those charges and who has been charged. Therefore, if you can guide all of us to stick to that process, we will then not look like we are running amok in the eyes of the public.

The Speaker (Hon. Lusaka): Sen. Mwaura, please stick to what I have said.

Sen. Mwaura: Mr. Speaker, Sir, it is good to have point of orders and not points of arguments.

I really want to say that, personally, when I look at the process and the manner in which this matter has come to this House - because we are being told that we should be guided by lawyers and we have seen the Curriculum Vitae (CVs) of Members being displayed here, personally, I am very worried and extremely worried about the meritocracy that was used. Sen. Poghio has raised very important matters. What is it about? Why were we not called on time?

The issues that have been raised from Kiambu County have not been canvassed. Are we setting ground for this impeachment to fail so that the people of Kiambu---

The Speaker (Hon. Lusaka): You time is up. Sen. M. Kajwang'.

Sen. M. Kajwang': Mr. Speaker, Sir, allow me to welcome Members back from the break. Allow me to also take this opportunity to convey my condolences to the family of Sen. Kabaka who are mourning their father. Allow me also to join the people of northern Kenya who are suffering the locust invasion and I do hope that even though we are on recess, you will allow the Committee on Agriculture to do something about this matter.

Coming back to the issue before us, last night when my spouse heard that this matter was coming to the Senate, she said that that is the end of the matter. Senate has become very predictable, it has become unbelievable and the place where people expect things to die.

(Applause)

We have gone through a number of impeachments in this House and if we continue to do things the same way, then we might not be able to get different results. I do agree with the Senate Majority Leader when he says that---

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Members. Let us give each other some respect.

Sen. M. Kajwang': Mr. Speaker, Sir, I do agree with the Senate Majority Leader who has said that impeachment Motions brought to this House have regulated the conduct of State officers who run our counties.

I think in an impeachment, the ultimate solution or end, the Senate does not always have to agree with the county assembly but it provides an opportunity to examine the issues that are going on in the counties and to come up with resolutions that can help in improving issues in those counties.

I hear the concern of those who have proposed that the matter should be considered by plenary rather than the Committee of the eleven eminent Senators. I have been through this. I have sat in a Committee before and I have sat in plenary when we were considering the matter of the Governor of Nyeri and I will tell you my personal view; that a Committee is much more efficient.

Even in the United States (US) scenario - perhaps the father of Building Bridges Initiative (BBI) will educate us on this - in the impeachment of President Donald Trump that begins today, the Senators will not be arguing; it will be the House managers and the defense team that will be discussing. Therefore, for the purposes of efficiency and to ensure that there is justice, we probably could consider adopting the Committee route.

I want to suggest two things that could enrich this. First of all, any Member of this House has got the right to attend any Committee proceedings. The only thing that they do not have is the power to vote and so, I want to encourage as many Senators as possible, if we indeed approve that we go through the Committee route, that we attend those meetings, let us ask questions, we will not only be able to vote.

Secondly - I want to beg you indulgence on this - many a times, when the Committee finds the allegations not substantiated, that is the end of the matter. It is only when the allegations are found to be substantiated that the matter comes before this House.

I want to beg, pursuant to Standing Order No.1 and bearing in mind that this House has already processed the Impeachment Procedure Bill and it is stuck in the National Assembly, that you allow, in the event - I am not saying that that is what is going to happen - that the Committee finds the allegations unsubstantiated, please give us adequate time for the Committee Chairperson and leadership to come back to this House and tell us the reason why they felt that the allegations were not substantiated.

Finally, let justice be our shield and defender in this particular matter. It is disheartening sitting here and listening to names of political formations that are not parliamentary and I do agree with Sen. Sakaja; let us remember, that as the screens today and in the next couple of days will be on the Senate impeachment proceedings, there will be another parallel screen on the American impeachment proceedings.

I believe that we have matured enough as a Senate and I believe that we can set a good example and that at the end of the day we will also give Members of county assemblies the power to go back and impeach the County Executive Committee (CECs) members and chief officers. The reason why they have to impeach governors is because the power to impeach CECs and (Chief Executive Officers (CEOs) was taken away from them by courts of law.

I support.

Sen. Farhiya: Thank you, Mr. Speaker, Sir, for giving me this opportunity.

First and foremost, I want to state categorically that I am objecting the process of having a Committee deliberate on this matter. The reason why I am saying this is because politics is about perception, whether you like it or not.

From where I sit and I am sure the other Senators can notice that this list is from a specific side of our political divide. Let us be honest with each other. If the process is not objective, then the verdict whether it will be wrong or right, it is wrong from the

beginning. It is a predetermined process. Let us either reject this list or change it to at least include two Members from the other side, so that people feel confident that---

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, Sen. Farhiya is a Member of the delegation of Nairobi County. Ordinarily, for her to vote as a delegate from Nairobi County, the main man of Nairobi County was elected with 800,000 votes, super Sen. Sakaja, would have to give her permission from a list of another six Senators to vote.

Sen. Sakaja has said categorically that in the team he leads as part of his delegation and on the side where we are, he is not of any side, except Jubilee Party just like I am and many others.

Is it in order for a Member of our political party who depends on the leader of delegation Sen. Sakaja to apportion Members to which side to vote if they have not apportioned themselves?

(Loud consultations)

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Speaker, Sir.

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

(Loud consultations)

Order, Members! I will give you an opportunity. Please, let us cool our heels. Relax. Everybody will be given an opportunity to express his or her opinion or feelings. Let us not excite the House.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I am begging you to save this side of the House where we have sat calmly, and listened carefully about the internal management of the Jubilee Party. That is one.

Secondly, this issue arose in the last session and the Speaker issued directions that the internal issues of a political party are not matters of this Floor. We cannot determine your internal issues on this Floor. They cannot be brought on this Floor and they should not bother us with them.

Mr. Speaker, Sir, you must be clear so that we can make progress. At some point, they can have a party caucus fight, but do not bring it here.

(Laughter)

Sen. Wambua: On a point of order, Mr. Speaker, Sir.

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

Sen. Farhiya: Mr. Speaker, Sir, I hope you will add my time. People are eating into my time.

The Speaker (Hon. Lusaka): Order, Sen. Farhiya!

Sen. Wambua: Thank you, Mr. Speaker, Sir. This morning, the minority side sat and agreed on the list that was tabled before this House. Therefore, it is our expectation that the debate that we are having today is about the list that has been agreed on by both sides of the House.

The issues of divides on the majority side or Members belonging to certain formations, we are not interested in those formations. We are interested in debating the list that was tabled before this House. That is the matter that we are discussing.

The Speaker (Hon. Lusaka): Hon. Members, I would like to say the following; both sides of the House have leadership. If you have issues with the list presented by your leader, you have a right to caucus and agree on what you want. Do not drag the House into political party matters. I will not preside over that. I want to caution you to put your houses in order.

On this particular matter, you are going to have a choice to vote against or for the list presented. That is where you will express your feelings on the issues.

Kindly proceed, Sen. Farhiya.

Sen. Farhiya: Thank you, Mr. Speaker, Sir. I hope you will add me more time. First of all, I wish to thank Sen. Wambua for saying that their side was consulted. I was not consulted. That was already one sided.

(Loud consultations)

When Sen. Wambua was talking about consultation, nobody talked. Why are people booing? Mr. Speaker, Sir, protect me.

The Speaker (Hon. Lusaka): Kindly proceed, Sen. (Dr.) Mwaura, you are out of order.

Sen. Farhiya: Mr. Speaker, Sir, when the Senate Majority Leader was proposing this Motion, he mentioned about these issues and nobody commented on them. Why is it a problem when another Senator comments on them? This is unfair.

The Speaker (Hon. Lusaka): Sen. Farhiya, you are wasting more time talking about irrelevant things. Just go to the substance of what you want to say. Kindly, proceed.

Sen. Farhiya: Mr. Speaker, Sir, thank you for your information and your support.

Before I was interrupted, I was saying that objectivity and confidence in the process are important. Some of us on this side are not happy with the list that was presented today. For that reason, I object to it because some of us were not consulted whereas everyone on other side was consulted. Either let us have a meeting for Jubilee Party so that we can agree on the list or let the whole plenary discuss this issue. This matter seems to be a predetermined outcome. We are not here to rubberstamp a process that is already predetermined.

I thank you.

(Applause)

Sen. Olekina: Mr. Speaker, Sir, I thank you. I also rise to support the Motion of establishing a select Committee to hear the matter of impeaching the Governor of Kiambu County.

What we are witnessing today is very interesting. I would like to request the Hon. Members, the distinguished Senators from the majority side to be able to listen because Kenya is watching. Like my colleagues had stated earlier, impeachment is about someone's life on the line. We will have an opportunity to determine whether to approve this Motion or not.

Mr. Speaker, Sir, earlier on, I felt that it was necessary to have this process in the plenary, but I was convinced otherwise. When Senators are speaking to this matter because it is very emotive, they should be given an opportunity to express themselves. There is no point of us gagging Members who want to express their views. At the end of the day, we will be able to express our views through the vote. Our Standing Order No.76 is very clear.

Earlier on, I was listening to the submission made by Sen. Mwaura and I felt that some of the issues he raised could be prejudicial. That is my view. We are not here today to determine the merits or demerits of the impeachment process, but to approve a list that has been tabled before this House. We are here to approve the list. We either adopt a Select Committee or we do it in plenary.

*(Several Senators stood up in their places
and consulted loudly)*

Mr. Speaker, Sir, please, protect me.

The Speaker (Hon. Lusaka): Order, Members! Take your seats. Continue, Sen. Olekina.

Sen. Olekina: Mr. Speaker, Sir, this is a very emotive matter. My time is being interrupted by a lot of consultation.

I appeal to the Members, who have been proposed to serve in this Select Committee, that integrity is not bought. You either have it, or you do not have it. This is a very important task. If this House approves them to serve in that Committee, then they should determine the matter of impeaching Governor Waititu with integrity. They should not allow anything else to confuse them during that process. Instead, they should preserve the integrity of this House.

The issues of Jubilee, independent candidate or KANU, can be dealt with by the majority side. This is a House of reason and we should prove that to the 47 million Kenyans. We should show them that we stand for a fiducial responsibility and not personal interest or political party's interest.

Sen. Sakaja: Thank you, Mr. Speaker, Sir. I do agree with you that this is one of the most important duties of this House. I have heard a Senator say that one person's life or career is on the line. He forgets that what is on the line is the interest of the millions of Kiambu residents.

From the outset, I want to state that I oppose this Motion of setting up of a select Committee. I have full confidence in the leadership of Jubilee in the House though there are cases where I have not concurred with the decisions of the leadership of Jubilee, ODM or even NASA. I have publicly stated that I do not agree with the leadership of this

House representing governors. That is my opinion. I might be wrong, but that is what I feel. I feel that there is an irreconcilable conflict.

On this specific issue, the names that have been selected---

Sen. Cherargei: On a point of order, Mr. Speaker, Sir.

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

Sen. Cherargei: Mr. Speaker, Sir, I apologise for interrupting Sen. Sakaja. You have made a ruling on party formations by stating that the Senators who have issues with party formations should consult their party leaders. Sen. Sakaja is pursuing a dangerous trajectory by going back to the party formations.

The Speaker (Hon. Lusaka): Proceed, Sen. Sakaja.

Sen. Sakaja: Mr. Speaker, Sir, I do not know when Sen. Cherargei became a prophet for him to predict what I want to say. He should know better. Generally, I chose to be very objective in politics.

This matter is not about who has been put in the Committee. All the Members in the list, from the Jubilee side, are Members of our party. Therefore, it is wrong for us to paint some in whichever manner. However, I have a fundamental problem with us moving in this manner. Sen. M. Kajwang' has said that his own spouse told him that this matter will die if it comes to the Senate. She knows that her spouse is a man of integrity, but that is how she felt. There is a general feeling that the outcome could be predetermined, or the Senate has not been acting in full support as it should be.

Today, we are sitting as a quasi-judicial House. I do not know what will happen if a case is brought about my Governor because we do have his three lawyers in this House. My question is; will they come here as his lawyers or as Senators? I do hold that as conflict of interest.

Standing Order No. 75(1)(b) states that;-

(b) the Senate may-

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

If we go the Committee way, we will have 11 Members who can end the matter if they feel that it is not substantiated. This is a matter of great magnitude. We are not just looking at the interest of Kiambu County, but also the standing of the Senate. The majority of that Committee will be six Senators and they can stop this process tomorrow. If this matter is discussed in plenary, we will all be able to sit as a Senate and it will take 24 county delegations to make a stand on this issue. We all have the wherewithal, the stamina and the aptitude to concentrate and listen to the issues.

I base my argument on the threshold and the magnitude of what we are looking at. This matter should be decided by a majority of county delegations and not six Senators at the Committee. Traditionally, we have handled impeachment in the Committee and in plenary. It is possible that the previous proceeding was not efficient when we handled it in plenary, but it does not make sense to say that any Member can attend the Committee sessions, but only have six Members make the decision. We should allow all the Members to attend the plenary and have 24 county delegations make the decision on

Kiambu, the perception of devolution and the standing of the Senate when it comes to this matter.

I oppose this Motion.

Sen. (Dr.) Ali: Mr. Speaker, Sir, a lot has been said here. When Sen. Wako talked of pending bills and corruption, he talked of issues affecting one of the judges yet he should not have talked about it.

Every Member in this House is here by right and we have been brought here by our electorates. There is no Senator who is more special than the other. I do not have a problem with the Members of the select Committee, but I would prefer that we discuss the matter in plenary. The delegations should determine this matter.

The issue of Kiambu County is already a political issue. We have perceptions outside there and that is the same thing that is happening in the United States of America (USA). The USA Senate is believed to be supporting Trump. Do we want to go the same way? What is stopping us from discussing this issue in plenary? We should not condemn other Members or assume that we are more qualified than others. We all have the right to be here.

We should discuss this matter in plenary. I oppose this Motion.

Sen. Madzayo: Asante, Bw. Spika, kwa kunipa muda kuchangia Hoja hii. Leo tunaangalia wale waliochaguliwa kuketi katika Kamati. Maseneta hawa wamechaguliwa ili kuchunguza hali ya ufisadi inayoendelea ama iliyoendelea; ama mambo ambayo hayafai kutekelezwa katika Kaunti ya Kiambu. Wamepewe nafasi hii kujadiliana ili kuhakikisha kwamba wale waliochaguliwa waketi katika hiyo Kamati na watekeleze wajibu huo.

Bw. Spika, wote waliochaguliwa ni Maseneta; na hakuna Seneta aliye bora ama bingwa zaidi ya mwingine. Kila Seneta hapa ana uwezo. Ninamuunga mkono alivyosema Mkuu wa Sheria aliyestaafu, kuwa wote waliochaguliwa wana uwezo wa kuketi na kuamua kesi hii. Kulingana na Kanuni za Bunge, kila Seneta ana uwezo wa kuketi katika kamati yoyote atayochaguliwa kukaa na kutekeleza wajibu wake.

Bw. Spika, Wakenya wanaangalia vile tunavyofanya kazi yetu hapa. Katika Bunge la Kumi na Mbili, hakukuwa na mtafaruku kama huu wa watu kupinga, kutokuwa na amani na Kamati, na kutaka Seneti nzima kutekeleza wajibu huu.

Bw. Spika, hawa Maseneta waliochaguliwa kuketi katika Kamati hii wako na uwezo. Vile vile, kulingana na hadhi za sheria, hakuna mtu yeyote anayeweza kufanyiwa uamuzi bila ya kusikizwa. Kwa hivyo, kuna umuhimu wa hawa watu tunaosema kwamba tutawachagua ama tumewachagua wapewe nafasi kusikiza ushahidi na kuangalia stakabadhi zitakazoletwa mbele yao, ili waweze kuwa na uamuzi mwafaka.

(Loud consultations)

Bw. Spika, ningependa unitetee kwa sababu naona sasa itakua kama vile Sen. Olekina alivyokuwa akiongea na Maseneta walikuwa wanapita mbele yake na kuongea vile wanavyotaka, na mambo hayaendi hivyo.

The Speaker (Hon. Lusaka): Order! Members! Take your seats.

Sen. Madzayo: Bw. Spika, lazima kuwe na heshima ndani ya Seneti.

Naunga mkono Hoja hii. Sisi sote hatuwezi kuketi hapa na kuuliza maswali watu wa pande huu na ule. Tunafaa tuwapatie watu kidogo nafasi ya kukaa, kujadiliana, kuuliza maswali, na kuangalia makaratasi yale. Hatimaye, watakuja hapa na kuambia *plenary session* yote ya Seneti kuwa, “haya ndio tuliyoyapata katika uchunguzi wetu.”

Hata Kamati hiyo ya watu 11 wakileta hiyo ripoti na kusema kwamba wameua, lazima Seneti hii iko na haki ya kuuliza, “ni kwa sababu gani mumeua hii.” Iwapo hatutatosheka, tutawaambia wakae kando, na tuchukue Kamati nyingine. Nasema hivi kwa sababu naona mtafaruku ambao hautatupeleka kwa njia ya kisawasawa.

Bunge lote la Seneti likiwa hapa halafu walete ripoti, sisi tutaichambua hiyo ripoti ili kujua yote waliyosema. Tutaangalia zile stakabadhi watakazokua nazo ili kujua kama yale yote watakayoyasema ni ya ukweli au la. Kwa hivyo, hakuna hofu kabisa kuwa na hii Kamati ya hawa watu 11 kuangalia kwanza, halafu---

(Sen. Madzayo's microphone went off)

The Speaker (Hon. Lusaka): Muda wako umeisha.

Sen. Wario: Asante, Bw. Spika, kwa kunipatia nafasi hii ili nami nichangie Hoja iliyo mbele yetu.

Bw. Spika, kama unavyojua, watu wa Kiambu wako katika shida kwa sababu hawapati huduma ambazo wanafaa kupata kwa sababu Gavana wao yuko katika matatizo. Sisi leo tumeitwa katika kikao hiki ilituamue ni njia gani tutafuata ili kuwasaidia watu wa Kiambu.

Bw. Spika, Maseneta walioweka katika orodha hiyo wanaweza kukaa na kuzungumzia mambo hayo katika kamati. Kwa hakika, yeyote aliyejipata katika matatizo hayo kama ya Gavana wa Kiambu anahitaji kufanyiwa upelelezi, akae mbele ya Kamati iliyochaguliwa, ajitetee, na pia atoe stakabadhi zake ili watu wa Kenya wajue ukweli.

Bw. Spika, Bunge letu linaheshimiwa na Wakenya wote. Wanaagalia Bunge hili kutoa mwelekeo. Kuja kwetu hapa leo ni siku muhimu. Hii ni kwa sababu watu waliochaguliwa kuketi katika Kamati hii wapitishwe wakae na kuongea ili tujue hali ya Kiambu itakuwa namna gani. Hii ni kwa sababu hatuwezi kuangalia Kiambu ikizama ndani ya maji.

Bw. Spika, naunga mkono ili Kamati hii iongee mambo ya Kiambu, ili tuwezekupiga hatua. Tupitishwe orodha jinsi ilivyo na tuendeele mbele.

Asante, Bw. Spika, kwa kunipatia nafasi hii.

Sen. Kang'ata: Thank you, Mr. Speaker, Sir, for affording me this opportunity to give my contribution to this very good Motion. I understand the good work that my brother, the Leader of the Jubilee Party (JP), Sen. Murkomen, has been doing in this House. I understand that coming up with a list in which everyone would most likely want to be part of, is quite hard. Therefore, Sen. Murkomen did a fairly good job to try and ensure that everyone came on board.

Mr. Speaker, Sir, I have looked at the following cases involving Hon. Wambora I and Hon. Wambora II; Hon. Chepkwony, Hon. Mwangi wa Iria, the former Deputy Governor of Machakos, Hon. Kiala; Hon. Gachagua, Governor of Taita Taveta County and now this case of *Baba yao*--- In total, Senate has handled 8 matters. When you look

at all these cases and the kind of jurisprudence that those cases have been giving this good House, you understand one point. It is important to ensure that when you constitute the Committee, there is what we call regional balance. It is a constitutional concept.

Mr. Speaker, Sir, I heard the Chief Whip of the Senate Minority saying a very good point. It makes sense for those of us who come from Kiambu to stand down. However, when I look at that list, I noted that the entire former Central Province region does not have a single representation. On that score, I thought it was quite unfair.

Secondly, Mr. Speaker, Sir, I also thought that it would have been better if we could have taken into account the whole idea that there is a difference between a trial and a report that is being brought. When you are looking at witnesses, you are able to make better judgments in terms of their demeanour. Therefore, if we could bring all these witnesses to us, as Senators, we will be able to probe them. That way, every Senator will be able contribute, as opposed to forming a small committee that is only looking at those issues.

Mr. Speaker, Sir, I will be compelled to oppose this Motion. Notwithstanding the fact that I have no problem with these Senators who are here in person, but when the witnesses are here we will be able to ask them questions and look at the demeanour, as opposed to when we just look at a report that has been made by a small Committee.

On that score, allow me to depart a little bit for the first time with my leader – and I have never done this before – and strongly oppose, and argue that my brother would have considered at least one Senator from the Central region. Secondly, he should have ensured that every Senator here gets an opportunity to look at the demeanour of witnesses.

Sen. Cherargei: On a point of order, Mr. Speaker, Sir. Sen. Kanga'ata is part of the House leadership on the majority side. Is it in order for him to depart from the decision that has been made by the House leadership led by our able leader, Sen. Murkomen? Is it in order?

The Senate Minority Leader (Sen. Orenge): Mr. Speaker, Sir, what we are debating is really important. I think it will be wrong for me to disregard the views coming from the Floor. This is because if we go into it without some kind of some consensus, the process will be wrong right from the beginning.

The people who are objecting to this list; it also tells a story. I am saying this because when we were in Kitui County, we had an agreed list on the question of the medical equipment. We moved it and the House disagreed with us. We then went back and came with a list that was acceptable to this Plenary.

I am not saying that we change the list. However, very serious matters have arisen in the course of this debate. I ask you under Standing Order No.105 that we adjourn debate for 10 minutes.

(Applause)

As leadership, we should not be afraid. Even on my side, if there was a problem with a list, I would not gag anybody from saying that there is something wrong with the list. What is going on may be tantamount to stopping people from expressing their

disagreement. However, the extent of that disagreement is now a matter of concern. I do not want us to approach the Kiambu issue as a divided House.

Mr. Speaker, Sir, I do plead with you, under Standing Order No.105, that nothing is lost. Let us adjourn for 10 minutes and do further consultations. You heard what Sen. Sakaja said and I am persuaded that we cannot disregard those views that have been stated from the Floor.

I beg to move.

(Applause)

The Speaker (Hon. Lusaka): Who is seconding?

Sen. Olekina: Mr. Speaker, Sir, I second.

(Question proposed)

(Question that debate on the Motion be now adjourned put and agreed to)

The Speaker (Hon. Lusaka): We will now adjourn for 10 minutes.

(The House temporarily adjourned at 5.05 p.m.)

[The House resumed at 5.30 p.m.]

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

The Speaker (Hon. Lusaka): Sen. Kang'ata, you were on the Floor. Please continue.

Sen. Kang'ata: Mr. Speaker, Sir, I strongly oppose this list because it is not fair. I was not consulted as the Deputy Senate Majority Whip, but I ought to have. It is unfair for my views not to be taken into account.

I respect the leader of the party in this House, the Senate Majority Whip and everyone else in Jubilee Party leadership. However, as the Deputy Senate Majority Whip, at least I should have been asked to propose some names and give my suggestion.

So to the extent---

Sen. Wetangula: On a point of order, Mr. Speaker, Sir.

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

(Several Senators walked into the Chamber)

Sen. Wetangula: Mr. Speaker, Sir, allow me a minute for Members to settle. We were watching the proceedings from the lobby and you acceded to an application to temporarily adjourn the House for 10 minutes for consultations. The House adjourned and we have been out for about 20 minutes.

I find it difficult that we have come back and the debate continues unabated as if nothing happened. The least the House should expect is to be told the outcome of the consultations, who consulted who on what, and what they want to inform the House.

In the alternative, you should allow a few of us, to your discretion, to speak to the kind of confusion that I am seeing in these proceedings, so that we do not allow the image of this House to be dented because of unprocedural or uncoordinated activities that Members are seeing. This is because even the proposed Members of the Committee have reputations to protect. Those who say that they do not support also have reputations to protect. So, we must find a middle ground.

Mr. Speaker, Sir, if you give direction, I will seek that you give me the first bite at the cherry.

The Speaker (Hon. Lusaka): Before the point of order, you sought for an adjournment or a break. Those are party matters. Therefore, I do not care what was discussed and where. That is why we just proceeded when we came.

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, we took advantage of the break to consult, have tea and interact and bond. We came to the conclusion that the Motion continues and we vote at the end. If the “Ayes” are more, they should carry the day as usual. If it fails, then it means we will do it in plenary.

I thank you.

The Speaker (Hon. Lusaka): Conclude, Sen. Kang’ata.

Sen. Kang’ata: Mr. Speaker, Sir, it is quite sad that I will be compelled to urge my colleagues to reject this Motion because of the way it is drafted. We are not rejecting it on the basis that those who have been nominated are not competent, but on several grounds.

First, we feel that the more the number of Senators who will consider this matter the better. We have six Senators vis-à-vis 24 delegations. We also feel that it would have been better to have at least one Senator---

Sen. (Dr.) Langat: On a point of order, Mr. Speaker, Sir.

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

Sen. (Dr.) Langat: Mr. Speaker, Sir, linguistically, it is wrong for the Senator to generalise all of us by saying, “we”. He should talk for himself. He should have used the word “I” because we have not reached the conclusion of the direction that we will take as a whole.

The Speaker (Hon. Lusaka): Sen. Kang’ata, speak for yourself.

Sen. Kang’ata: Mr. Speaker, Sir, I will reject the Motion on that ground. Also, at least one Senator from Central Kenya ought to have been in this list, but there is none.

I also feel that it is also fair for other Senators who have never served in such *ad hoc* or impeachment committees to be featuring. The idea of having Senators who have previously served in such impeachment---

Sen. Linturi: On a point of order, Mr. Speaker, Sir. I have been listening to what the distinguished Senators are saying with regard to this matter and I have been trying to

get an opportunity to speak on it. Since this is not the opportunity, I would like to ask Sen. Kang'ata to briefly describe or tell us the boundaries of this country in terms of demarcating where Central Kenya is. This is because whenever there are issues that relate or touch on Central Kenya, I am meant to be part of them.

They are saying there is nobody from Central Kenya when Sen. Linturi is in the Committee. For that matter, it is like Sen. Linturi is no longer part of the people of Central Kenya. Let me understand the extent to which or where the boundaries of Central Kenya are because it appears that I do not exist in this arrangement.

The Speaker (Hon. Lusaka): Order, Sen. Linturi! I think he talked about Central Kenya based on the former provincial boundaries. Let us leave it at that and have Sen. (Prof.) Ongeru on the Floor.

Sen. (Prof.) Ongeru: Thank you, Mr. Speaker, Sir. I must say I am very disappointed today because before us is a very serious Motion which has been transmitted by one of our county assemblies and we should give direction on how this should happen.

The whole country is watching us and expecting that at the end of the day, we will pronounce ourselves in a manner which is reasonable and acceptable.

Mr. Speaker, Sir, I draw my inspiration from Standing Order No.75 on the Procedure for the Removal of a Governor. Appropriately you have read before us, as a Communication from the Chair, the decision of the County Assembly of Kiambu. This House is entitled to make a decision one way or the other which is predicated upon either through Plenary or Committee. What is before this House is a Committee which has been proposed. I have great admiration for each and every Member who has been put in that Committee.

Mr. Speaker, Sir, I have a problem when I read Standing Order No.75 (4) (a). It states-

“If the Special Committee reports that the particulars of any allegation against the Governor have not been substantiated no further action shall be taken under this section in respect of that allegation.”

I find that this particular section excludes me from giving my opinion as a delegation of Kisii County on a matter which has been brought before this plenary.

Since I feel excluded, I would like to feel included in the final decision. I do not know the way the decision will go, either way I would like to feel that I have fully participated in the decision process. Therefore, in order to avoid controversy, fortunately the Standing Orders have given us alternatives; either the committee way where should they find no substantive allegations the process ends at the committee level. Therefore, I will have no opportunity to have recourse to the deliberations of the committee on why they arrived at that decision.

In order to be enjoined as a delegation in this argument, I would rather prefer we go the big way. I want as a plenary to be involved in this decision. Therefore, my submission at this stage, at the committee level, it would have been prudent and quicker, but there is so much controversy and we do not need rocket science to see it. There are divisions on that matter. We are clear on our side on the issue of the committee.

Mr. Speaker, Sir, I want to submit that it might be safer for the Senate to go the plenary way.

Thank you, Mr. Speaker, Sir.

*(Sen. Wamatangi moved to the Dispatch Box
carrying the Laws of Kenya)*

The Speaker (Hon. Lusaka): Sen. Wamatangi, you are arriving with a lot of drama.

(Laughter)

Sen. Wamatangi: Mr. Speaker, Sir, when this Motion is on the Floor, the Senator for Kiambu must speak. When he speaks, he must do so not only correctly, but also lawfully and authoritatively.

Before I make a few points as the Senator representing the people of Kiambu in this House, and because of the route we have taken today, I believe for posterity, there is an issue that came up when I served in the first Committee that impeached the Governor for Embu County - "Wambora I". I raised this matter during the first hearing. This is the provision of the County Governments Act Section 33(3)(a).

Mr. Speaker, Sir, I believe you called the Senate sitting here today pursuant to that provision of the law which clearly states that within seven days after receiving the notice of resolution, the Speaker will convene the Senate to 'hear'. The question I have been asking myself is: "When we convene as we have today and the communication from the County Assembly is read by the Speaker to the House, does that constitute to a hearing? The law provides that after that, the Committee either appointed or the House in plenary will investigate the matter. This is not until we make clear what the requirement of that law is and whether what we did today constitutes a hearing.

Mr. Speaker, Sir, on this process we have had, the disagreement is based on where Senators feel they have not been given an opportunity or they will get an opportunity to speak. I urge you, in future, to make known to this House in a communication what constitutes a hearing when you have read what you got from the county assembly and is sufficient to lead the process of either appointing the committee or going for plenary for purposes of the investigations.

As their representative, having said that, the people of Kiambu brought this matter here because they have confidence in the Senate. I can tell this House and the country is listening that every time I have gone around Kiambu, the people have been telling me: "Sen. Wamatangi now the matter is in the Senate and we expect justice." There is no one time when I have gone to any sitting or forum when anyone has expressed doubt that what will come out of this process will render that justice.

As a result of what we have discussed and the things we have said here then the question abounds loudly in our heads after all the contributions, push and pull and disagreements we have had, including the adjournment, whichever process we take---

Mr. Speaker, Sir, I believe that when Sen. Orenge was asking you under Standing Order No.1, with the powers given to you to make decisions under extraordinary

circumstances, you might be forced to make that decision again. The question that this House will have to answer is: After this afternoon's process, even if we go the committee way by resolution because that is what the law requires, will the outcome of that committee however it is constituted rise to the threshold of the expectations of the people?

One of my main concerns is that throughout the other processes we have undertaken, sometimes governors have had to come to this House to retrieve the HANSARD to go to court and argue whether they got fairness or not in the Senate. It is of absolute concern that, indeed, if somebody came here and asked for the proceedings of this House this afternoon they can go to court and claim that they have not got a fair hearing.

Mr. Speaker, Sir, as you noticed, I took my time. I decided to wait until Members made their contributions. I did that purposely because as the Senator of the county concerned, I should not be seen to be unnecessarily influencing the decisions of the House.

Mr. Speaker, as the Senator for Kiambu County could I request that you give me another one or two minutes to conclude?

The Speaker (Hon. Lusaka): One minute, please.

Sen. Wamatangi: Mr. Speaker, Sir, the one issue I want you to help this process achieve is the main reason that this matter was brought here. My view at this point is that if we decide and unless you lead this sitting into first dealing with the mess that happened earlier, this process and whatever outcome may not meet the threshold that we and the people of Kiambu expected to be a process that is above board. This is because doubts have been cast.

Mr. Speaker, Sir, I would be urging that if we decide to go the Plenary way, that plenary must give every Senator here the opportunity to completely ventilate. It must have a thorough investigation and those issues must come out. We have the names right now.

If I go to Kiambu tomorrow and tell the people of Kiambu that finally, after all that brawl – I am sorry to use the word ‘brawl’ – but after all the disagreements and arguments that you saw, we finally agreed that this Committee is the one that is going to render justice. I doubt, at this point in time, that that is going---

The Speaker (Hon. Lusaka): Conclude, Sen. Wamatangi.

Sen. Wamatangi: Mr. Speaker, Sir, I urge that this House rises to the level and threshold that is required. I do not want to carry the shame to the people of Kiambu after this process. I want to go proudly, as the Senator, and say, “The way you have trusted us and what you saw us doing is what we did in Plenary;” if that is that is what a majority of the Members feel.

My final point is this; the requirement is by resolution. My proposal, as the Senator, is that let us vote. Once we vote on the Motion that is on the Floor, it can be said that it is by resolution and vote that that decision was taken. That way, the people of Kiambu would say that we got justice.

Mr. Speaker, Sir, I sit in Committees in this House whereby issues of Kiambu have arisen before. It will be demeaning to me, as the Senator of Kiambu County, to go with an answer to the people that does not satisfy the wishes of the people of Kiambu.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Proceed, Sen. Shiyonga.

Sen. Shiyonga: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to the Motion on the establishment of this Committee. I want to speak with passion.

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

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

The Senate Minority Leader (Sen. Orengo): Whether we like it or not, the Senate is on trial; the basis of it is on trial. When we are on trial, we are better on trial as the whole or section of the Senate. We have heard all the arguments this afternoon. There is no argument that we are adding into whether we have a Plenary or not.

Mr. Speaker, Sir, I called upon you because it is now 6:00 p.m., and there is no Motion that is in place before you to extend the Sitting. I propose that the Mover be called upon to reply, because the people of Kiambu are waiting; the people of Kenya are waiting. But I will have to say this; if at all there is a day we are going to make a decision on a matter as weighty as this, and my voice is not heard at the end, that would be an exercise in which fairness and justice of Senate, sitting as a court, would not have been met.

The Speaker (Hon. Lusaka): Minority Leader, fortunately, you are making a very good point; but unfortunately you had already spoken.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I am on a point of order. The Majority Leader has spoken too, but if you count the many times he has spoken and risen on points of order, it is so many times. I am normally always very calm; I watch things. If you recall what has happened today, my advice during the day and you have seen what has happened, if only you cared to listen, we would not be here now.

(Applause)

If you listened to what the Speaker said, we would not be here now. We are becoming a ridicule to the Nation. Let us agree we go to the Plenary, we vote, we hang together or go home together. That can only be decided if we take a vote. Extending this debate any longer is not going to serve any purpose. Those who want the Committee will vote for it.

Mr. Speaker, Sir, I seconded the Motion. Those who are against it can vote against it. Let us bring this matter to an end. The Kiambu people are waiting for us to deal with the case. They want us to deal with the case and not to deal with peripheral matters.

Mr. Speaker, Sir, I urge that the Mover, the Majority Leader, be called upon to reply; and then we can take a vote.

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

Sen. Wetangula: Mr. Speaker, Sir, Sen. Orengo is very right. However, what we are now being treated to is a Motion moved by the Majority Leader and seconded by the Minority Leader. This Motion has run into serious turbulence, if I can pick that word from somebody behind me. It is not making us look good if, indeed, this is the direction we want to go. Earlier on, time was sought for consultations; it will be very decent and none of you will get out with a rotten egg on the face if you withdraw this Motion, other than subjecting it to defeat then ask the Speaker to gazette a new sitting day even tomorrow.

We will come and constitute this House as a trial chamber. We hear the case the way we did the Nyeri case of Gov. Gachagua – may his soul rest in peace – who that time was ailing but he left this Chamber with a beaming face because justice had been done. He sat here, listened to everybody, listened to cross-examinations and rebuttals. When the verdict was made, I did not hear even a single voice from Nyeri saying that justice had not been done.

Mr. Speaker, Sir, I urge that the Mover and Secunder of the Motion consult with you and the Clerk on what the Standing Orders, say and see whether we can get out of this unnecessary fix and proceed accordingly. We are time-bound and we do not have a lot of time to waste.

The Speaker (Hon. Lusaka): Okay, as consultations continue, let us have Sen. (Dr.) Lang'at.

Sorry, Sen. Shiyonga was on the Floor. Proceed, Sen. Shiyonga.

Sen. Shiyonga: Mr. Speaker, Sir, I was wondering if I had been overtaken by events. Thank you very much for giving me this opportunity. I would have “scooped” somebody at the end of the day.

Mr. Speaker, Sir, whichever way the process takes, we are looking at this House as a House that will give a verdict to ensure the best life for the people of Kiambu. Kiambu people are quietly watching us. Kiambu people have over 2,000,000 voters. They are quietly looking at their screens and looking at each verdict that is going to be passed in this House. Worrying does not empty tomorrow, as Martin Luther King says, but it affects the troubles. It implies that we need to make today a better day to make us strong.

I believe that what we are going to pass here, as a House of Senate, shall relieve the livelihoods of Kiambu people who are within and outside its borders. Whichever way we take, this House will have spoken. We need to listen to everyone's opinion. I have seen the House extend past midnight. Therefore, what is wrong for us to have a Motion past midnight so that we do the best for the people of Kiambu?

The Committee was well constituted, but the majority side is confused and is not in agreement. We are, therefore, taking that advantage of going the plenary way. I stand to oppose the Motion. Let us go the plenary way because the majority side is confused.

Sen. Cherargei: Mr. Speaker, Sir, having listened to all the submissions made by colleagues, I request that the Mover of the Motion be called to reply so that we vote and dispense justice to the people of Kiambu County.

(Question, that the Mover be now called upon to reply, put and agreed to)

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I have listened to the contributions and we have had a back and forth. The essence of democracy is divergence of opinion, which is not confined to one side of the political divide. This is a good Motion. I am not changing my mind. The best way to deal with impeachments is through Committee. Like I said when moving the Motion, I believe in all the Senators whose names I proposed to this House, including those from the minority side. I do not believe that their names should be sacrificed today because of expediency.

Mr. Speaker, Sir, out of eight impeachments, seven went through Committees, and they went well. I know how politics of this House operate. I keep it to myself because it will be for our memoirs why we are in the situation we are in today. However, I will stand to be counted; even if I will be the only person to vote for this Motion today, I will do it.

The process of impeachment will still go on and we will be here next week. Some of the people who are saying that we must go the plenary way will not come here. Just like Sen. Amos Wako said, I have one hundred per cent trust in the people who were nominated to sit in this Committee. I believe that through the Committee process, justice will be done.

Mr. Speaker, Sir, I urge this House and those who do not want to support the Committee process to support it. However, if they are in a position not to support it, it would not matter, because we would have left an important precedence.

When Sen. (Prof.) Kindiki brought the Motion last term about the late Gov. Gachagua, it was defeated on the Floor of the House, and Senators went to the Plenary. Later, Senators came back and said that the Plenary is not the best way to do it. However today, because of the environment of the moment, Senators feel that we should go to the Plenary way. Let us go to Plenary, but I will stick to the Committee process because that is where the issues that are before us will be canvassed and found in detail. I have one hundred per cent faith in the Senators that I nominated and those who were nominated by Sen. Orenge to the Committee to make a decision on behalf of this House. If I have faith in these people, I have faith in all the Committees in this House and the *ad hoc* Committees we will form in future. This is because all Senators are equal.

Mr. Speaker, Sir, I leave it to the House to make a determination. I am voting in support of the Committee process. I am voting to stand with those who have been proposed to this Committee. I am voting for posterity and with my conscience. I have not changed my mind since I came to this House and there is nothing convincing me to change my mind.

Mr. Speaker, Sir, I know that many people on the side where I sit have also made up their mind to support the Committee process. However, they are democrats enough. Should we lose in voting and supporting these Members of the Committee, I want Sen. Kihika, Sen. Cheruiyot, Sen. Oletiptip, Sen. Iman, Sen. Linturi and all the Members, together with Sen. Malalah, Sen. Omogeni, who sacrificed today to go to the Supreme Court on our behalf; Sen. Faki, who is my senior in the legal profession; and Sen. Outa, who is my senior politically, to know that even if this Motion is defeated today, I have

one hundred per cent faith in them. There will come a time we will come back to this debate and you will tell me that I was right.

Mr. Speaker, Sir, I beg to reply.

The Speaker (Hon. Lusaka): Hon. Senators, the hour has come. This is a voice vote. I will put the question.

(Loud consultations)

Hon. Senators, let us follow our procedure. We will have a voice vote and if it is not clear, we will go for Division.

(Question put and negatived)

The Senate Majority Leader (Sen. Murkomen): Mr. Speaker, Sir, I propose that we go for Division.

The Speaker (Hon. Lusaka): You have to be supported by 15 Senators.

(Several Senators stood up in their places)

Hon. Senators, I can see that we have the requisite numbers. The Division Bell will be rung before we go to Division to confirm the results that we have from the vote by acclamation.

Take your seats Hon. Senators. We will have two tellers; one for the Ayes and the other for Noes. Sen. Cherargei will be the teller for the Ayes while Sen. Shiyonga will be the teller for the Noes.

Let the Division Bell be rung for three minutes.

(The Division Bell was rang)

The Speaker (Hon. Lusaka): I now direct that the doors be locked and the Bar drawn.

(The Bars were drawn and the doors locked)

(Loud consultations)

Order, Hon. Members, you have consulted enough.

Order, hon. Senators! The two tellers for the Ayes and the Noes are now here. For the Ayes, we have Sen. Cherargei and for the Noes we have Sen. Shiyonga.

Your names are going to be called out to vote. I invite the Clerk to call out the names and you will be voting either Ayes or Noes.

(The Senators proceeded to vote)

DIVISION

ROLL CALL VOTING

(Question, that the Senate establishes a Special Committee to investigate the proposed removal from office by impeachment of the Governor of Kiambu County, put and the Senate proceeded to vote)

AYES: Sen. Cherargei; Sen. Cheruiyot; Sen. Dullo; Sen. Iman; Sen. (Prof.) Kamar; Sen. Kihika; Sen. (Dr.) Langat; Sen. (Dr.) Lelegwe; Sen. Linturi; Sen. Loiptip; Sen. (Dr.) Mbitio; Sen. Murkomen; Sen. Omanga; Sen. Seneta; Sen. (Rev.) Waqo; and Sen. Wario.

Teller of the Ayes: Sen. Cherargei.

NOES: Sen. (Dr.) Ali; Sen. Faki; Sen. Farhiya; Sen. Halake; Sen. M. Kajwang'; Sen. Kang'ata; Sen. Kibiru; Sen. Kinyua; Sen. Kwamboka; Sen. Madzayo; Sen. (Eng.) Maina; Sen. Malalah; Sen. Mugo; Sen. (Dr.) Musuruve; Sen. Mwangi; Sen. (Dr.) Mwaura; Sen. Nyamunga; Sen. Olekina; Sen. Omogeni; Sen. (Prof.) Ongeru; Sen. Orenge; Sen. Outa; Sen. Pareno; Sen. Poghishio; Sen. Sakaja; Sen. Shiyonga; Sen. Wako; and, Sen. Wamatangi.

Teller of the Noes: Sen. Shiyonga.

The Speaker (Hon. Lusaka): Order, Members. The results of the Division are as follows:

AYES: 16

NOES: 28

ABSTENTIONS: Nil.

The "Noes" have it.

(Question negatived by 28 votes to 16)

You may take your seats as I make another Communication.

Order, Members! Let the Bar be drawn.

(The Bar was undrawn and doors unlocked)

Hon. Senators, as I mentioned in my Communication when we started, we had two options. One option was to go the Committee way, and the other was to go through the Plenary. We have discussed and canvassed. Everyone who got a chance has spoken, and we have taken a vote. Democracy dictates that the majority have their way and the minority have their say.

In this case, I wish to announce that we will go the Plenary way. I will gazette a date when we will have the Plenary sitting. Once I gazette it, we will reconvene then.

ADJOURNMENT

As for now, the House stands adjourned.

The Senate rose at 6.35 p.m.