



REPUBLIC OF KENYA
TWELFTH PARLIAMENT
THE SENATE

VOTES AND PROCEEDINGS – SPECIAL SITTING

WEDNESDAY, DECEMBER 09, 2020 AT 2:30 PM

1. The Senate assembled at thirty Minutes past two O'clock.
2. The proceedings were opened with Prayer said by the Speaker.

3. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications from the Chair-

i. Proposed removal from office, by impeachment, of the Governor of Nairobi City County

“Honourable Senators,

It is my pleasure and privilege to welcome you back to the Senate for this special sitting soon after proceeding on recess because we have to fulfill our constitutional mandate expeditiously.

By a letter, Ref: *NCCA/SPK/12/2020(1)*, dated 4th December, 2020 and received in the Office of the Speaker of the Senate on Friday, 4th December, 2020, the Speaker of the Nairobi City County Assembly informed the Speaker of the Senate that at a sitting of the Nairobi City County Assembly held on Thursday, 3rd December, 2020, the Nairobi City County Assembly had approved a Motion for the removal from office, by impeachment, of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County.

Attached to the letter were the following documents —

- (a) Order Paper of the Nairobi City County Assembly dated Thursday, 3rd December, 2020;
- (b) Notice of Motion by Hon. Michael Okumu Ogada, MCA, dated 25th November, 2020;

(c) Votes and Proceedings of the Nairobi City County Assembly dated Thursday, 3rd December, 2020; and

(d) Signatures in support of the impeachment of Hon. Mike Mbuvi Sonko.

The Motion cites the following as the grounds for the removal of the Governor–

(a) Gross violation of the Constitution or any other law (Gross violation of the Constitution, County Governments Act, 2012, the Public Procurement and Disposal Act, 2015 and the Public Finance Management Act, 2012);

(b) Abuse of Office; and

(c) Gross Misconduct.

Further details on each of the particulars are set out in the Motion.

Honourable Senators,

Section 33 (3) (a) of the County Governments Act, read together with Standing Order 75 (1) (a) provide that within seven days after receiving notice of a resolution from the speaker of the county assembly, the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the governor. It is on this basis that, I accepted and approved the request by the Senate Majority Leader, supported by 17 other Senators, to convene this special sitting. I subsequently gazetted this special sitting vide Gazette Notice No.10308 of 7th December, 2020 contained in a special issue of Kenya Gazette Vol. CXXII-No. 217.

Honourable Senators,

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

Consequently, Honourable Senators, pursuant to section 33(3)(b) of the County Governments Act and standing order 75(1)(a) of the Senate Standing Orders, I hereby proceed to read the Charges against Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County–

A. Gross Violation of the Constitution or any other law (*Gross violation of the Constitution; The County Governments Act, 2012; The Public Procurement and Disposal Act, 2015; and the Public Finance Management Act, 2012.*)

The particulars cited under this ground are as follows-

(a) The Governor of the Nairobi City County has violated Articles 201 (a), (d), (e) of the Constitution of Kenya on principles of public finance management and Section 154 of the Public Finance Management Act, 2012, the County

Allocation of Revenue Act, 2015 on the use of conditional grants from the National Government, by the diversion or negligently causing to be diverted Conditional Funds.

- (b) The Governor of the Nairobi City County has violated Article 10, Article 201 (b) and (d) of the Constitution by failing, refusing and/or neglecting to comply with the provisions of Regulation 20 of the Public Finance Management (County Governments) Regulations, 2015, which failure, refusal and/or negligence has compromised the provision of services envisioned under Part II of the 4th Schedule to the Constitution 2010, *inter alia* most crucial provision of health services during the raging pandemic;
- (c) The Governor of the Nairobi City County has violated Article 187(2)(a) of the Constitution and Article 5.2 of the Deed of Transfer, by his continued willful refusal to execute the statutory warrants essential to the release of funds from the County Revenue Fund, which has grounded the provision of services of not only the county executive, but of the Nairobi Metropolitan Service (NMS) and its exercise of the transferred functions. This action violates the provisions of Article 187(2)(a) of the Constitution and Article 5.2 of the Deed of Transfer, whence the County Assembly duly adopted the Budget for the Financial Year 2020/2021 and enacted the Nairobi City County Appropriations Bill, 2020.
- (d) The Governor has violated the provisions of Article 183 of the Constitution as read together with Standing Order number 193 and Section 123 of the Public Finance Management Act, 2012 by undermining the authority of the County Assembly, whence the Governor has refused and or failed to implement resolutions of the County Assembly or forward a report detailing his inability to do so in line with Article 183 of the Constitution as read together with Standing Order number 193, with respect to County public debt and debt management under the provisions of Section 123 of the Public Finance Management Act, 2012. Failure of which the County has been unable to control and manage County Public debt. The result is unmitigated accrual of debt which has ballooned the County's overall debt to unmanageable levels, rising from Kshs56 billion when he assumed office in 2017 to Kshs Sh76.794 billion as at 31st December 2019 hence further violating the provisions of Article 201 of the Constitution.
- (e) The Governor has violated *Article 227(1)* of the Constitution on procurement of goods and services as read together with provisions of the Public Procurement and Disposal Act, 2015 by flouting the principles of public finance management in as far as public procurement of goods and services is concerned.
- (f) The Governor violated Section 35(4) and Section 45(1) of the County Governments Act, 2012 as read together with Section 104 and Section 148 of the PFMA whence between 2018 and early 2019, and contrary to the law, the Office of the County Executive Committee Member for Finance and that of the Chief Officer for Finance were held by the same person, one Ms. Winfred Gathagu, which situation occasioned confusion and inefficiencies at the County Treasury, hence failing to promote good governance, and

compromising the doctrine of transparency and accountability within the County Government.

- (g) The Governor has violated the provisions of Section 104 of the PFMA on the *Responsibilities and Powers of a County Treasury*, whence through inaction, action, omissions and commissions he continues to preside over a broken Public Finance Management System, whence the County Treasury remains ineffective. Despite various resolutions of the County Assembly urging the Governor to improve efficiencies by decentralizing the finance function to sectors as required by the provisions of Section 148 of the Public Finance Management Act, 2012, the County continues to operate in contravention of the law.
- (h) The Governor has violated the provisions of Article 5.5 of the Deed of Transfer of Functions, by his refusal to hand over the necessary documentation to enable Kenya Revenue Authority (KRA) to undertake optimal revenue collection under the Transferred functions.
- (i) The Governor grossly violated Article 201 of the Constitution on the prudent use of financial resources and Section 159 of the Public Finance Management Act, 2012 as read together with Section 7 of the Nairobi City County Tax Waivers Administration Act, 2013 by unilaterally and arbitrarily issuing waivers in total disregard of the law.
- (j) The Governor has violated the provisions of *Articles 201(d)* of the Constitution on principles that guide all aspects of public finance in the Republic, and *227(1)* on Procurement of public goods and services, and the provisions of the Public Procurement and Disposal Act, 2015 by willfully interfering in the award of the tender for the construction of the Dandora Stadium as established by the PPRB, leading to loss of public funds in overseeing payments despite concerns by technical officers.
- (k) The Governor has violated the provisions of *Articles 201* of the Constitution and the Public Finance Management Act, 2012 on principles that guide all aspects of prudent use of public finance where either intentionally or negligently he presided over massive loss and theft of County public funds in the three years he has been office, as evidenced by the Auditor General's Report of 2018/2019, which raised the red flag over city's stalled Sh204.2 million projects, as well as failure by the county government to meet its revenue targets.
- (l) The Governor has violated the provisions of Article 5 of the Deed of Transfer of functions by sabotaging the transfer of functions. The Governor is yet to provide NMS with crucial information necessary in aiding the carrying out of the transferred functions.

B. Abuse of Office

The particulars cited under this ground are as follows-

- (a) The Governor has abused his office by Violating Article 75 of the Constitution as read together with Section 11 and 13 of the Leadership and Integrity Act, 2012, on the conduct of State officers, where the Governor has persistently intimidated, harassed and molested officers of the County Executive, including blackmailing his County Executive Committee Members and Chief Officers with one-year contracts, whose renewal he has undertaken arbitrarily, leaving the Officers jittery about their employment and creating a climate of fear, uncertainty and despondence.
- (b) The Governor has abused his office by violating Article 75 of the Constitution as read together with Section 16 of the Leadership and Integrity Act, 2012 by unlawfully using public funds to pay for his daughter's travel to New York, USA, to allegedly attend the County First Lady's Conference, held during the 62nd Session of the Commission on the Status of Women 2018.

C. Gross Misconduct

The Particulars under this charge are —

- (a) The Governor has violated Article 73 of the Constitution by failing to promote public confidence in the integrity in the office of the governor following his being charged before the Anti-corruption court, thus prejudicing and or compromising the social contract and trust bestowed upon him by the people of Nairobi by virtue of Article 1 of the Constitution.
- (b) The Governor has violated Article 73 of the Constitution and Section 8 and 11 on the Leadership and Integrity Act, 2012 on public trust and professionalism, where he is on record admitting that he was intoxicated and thus not in the right frame of mind when he signed the Deed of Transfer for the transfer of certain functions of the county to the national government in February, 2020.
- (c) The Governor has violated Article 73 of the Constitution and the Leadership and Integrity Act, 2012 on the *responsibilities of leadership*, by failing to professionally perform his Constitutionally sanctioned duties owing to his constant absence from office, even before he was formally restrained by the Courts from accessing his Office due to corruption charges, whence the Governor remained constantly unreachable in person or on his phone for inordinately longer periods of time, to the huge detriment of the performance of the functions of the County Executive.
- (d) The Governor has violated *Article 75(1)(c)* of the Constitution as read together with Section 11 of the Leadership and Integrity Act, 2012 in respect of conduct of State Officers by drawing a salary and hefty allowances and enjoying the privileges of the Office he holds, while failing to diligently report to work and being perennially absent, even before he was formally restrained by the Courts from accessing his Office due to corruption charges.

- (e) The Governor has violated Section 8 of the Leadership and Integrity Act, 2012 on *Public Trust*, where he has constantly used his position to abuse public trust in the County Government, by exercising the powers of his Office in a manner detrimental to prudent public service delivery, by persistent use of divisive and unbecoming language which undermines the Office he holds and the County administration.
- (f) The Governor has violated *Articles 73 and 75* of the Constitution on conduct of State Officers that is demeaning to the offices they hold and Section 11 of the Leadership and Integrity Act, 2012 by persistently and willfully using, publicizing and publishing abusive and unbecoming words and language, as evidenced by his social media posts and numerous rants, in which he has hurled abuses and conducted himself in a manner that undermines and demeans the Office of the Governor.

D. Crimes under National Law

There are serious reasons to belief that the Governor has committed crimes under National law, specifically the Anti-corruption and Economic Crimes Act, which crimes he has been charged for in the Anti-Corruption Court.

Honourable Senators,

Standing Order 75(1)(b) of the Senate Standing Orders, gives the Senate the option of investigating this matter by appointment of a Special Committee comprising eleven members or in plenary.

The Resolution of the Senate on the Motion by the Senate Majority Leader in today's Order Paper will therefore determine the manner in which this matter shall henceforth proceed.

It is noteworthy, and I wish to emphasize to all Honourable Senators, that debate on the Motion shall be limited to the substance of the Motion. It is not a Motion on the propriety, prudence or even the constitutionality or the legality of the processes that have preceded the submission of this matter to the Senate. It is not a debate on the facts of the matter or their merits. It is, therefore, not permissible to deviate to any matters other than the Motion before the Senate.

Honourable Senators, the hearing of charges for the proposed removal of office of a Governor is one of the most important functions of the Senate under the Constitution. I therefore urge that the Senate exercises the highest level of responsibility on this matter.

I thank you.”

ii. Holding of a hybrid Sitting during the Special Sitting of the Senate to consider the proposed removal from office, by impeachment, of the Governor of Nairobi City County

“Honorable Senators,

The Sitting today is Special in several ways. Special because it’s a Sitting that is convened after we have gone on recess. Secondly special because this is the first Sitting where we will hold a hybrid sitting as provided in our Senate Standing Orders, Part XXIXA. According to the interpretation of the Senate Standing Orders, a hybrid virtual sitting is a sitting that entails, a sitting or meeting consisting of Senators who are physically present at the location of the sitting or meeting and Senators who participate in the sitting or meeting virtually from a remote location through the use of technology.

Honorable Senators,

The prevailing COVID-19 pandemic has affected each one of us in one way or the other. Noting that its prevalence continues to increase and in line with the COVID-19 guidelines on keeping safe, I have determined that it is indeed imperative that we hold a hybrid virtual Sitting to accommodate our colleagues who are not in a position to attend and participate physically.

Honorable Senators,

In order to ensure decorum, effective and efficient conduct of the hybrid sitting, I hereby wish to guide the House as follows-

Log-in

1. The online platform to be used during the sitting will be Zoom Video Communications.
2. Earlier on today, I issued guidelines on the hybrid virtual sittings where I informed Senators who intended to participate in the Sitting virtually to contact the Office of the Clerk of the Senate, at least thirty minutes before the Sitting commences to enable the Secretariat to facilitate them with the log-in credentials.
3. Senators participating virtually must log-in using their full names and their video must be on.

Powers and privileges

4. A Senator shall enjoy and exercise the powers, privileges and immunities bestowed on Parliament by the Constitution, the Parliamentary Powers and Privileges Act, 2017 and any other written law.

Attire and decorum

5. Pursuant to Standing Order 251D(2), a Senator participating virtually shall adhere to the standards set out under the Speaker’s Rules on attire and decorum.

6. A Senator participating in the Sitting virtually shall participate from an environment which is non-political, professionally appropriate and not distracting to other Senators.
7. A Senator shall not participate in a virtual sitting of the Senate while in the Chamber.
8. A Senator participating virtually must have their microphone on mute and un-mute ONLY when called upon by the Presiding Officer to speak.
9. A Senator shall be visible to the Presiding Officer in order to be counted for the purpose of establishing a quorum, taking a decision or voting on a matter.
10. A Senator experiencing a technical problem while participating in the proceedings virtually shall inform the Presiding Officer through the Clerk on mobile number: +254 722453239.

Quorum and voting

11. Pursuant to Standing Order 251E, whenever a sitting of the Senate is held virtually the quorum requirements shall be as specified under the Constitution and these Standing Orders; and a Senator who has accessed the sitting virtually shall be deemed present for the purposes of establishing a quorum, taking a decision or voting on a matter.
12. Voting during a virtual sitting shall be as specified under Part XVI (Voting and Divisions). Notwithstanding this, voting shall be by roll call.

Transmission of documents

13. Pursuant to Standing Order 251H (1), any document required to be tabled, issued or submitted during the Sitting, will be tabled, issued or submitted electronically, through: senatetableoffice@gmail.com.

Broadcasting

14. Pursuant to Standing Order 251I(1), a virtual sitting of the Senate will be live-streamed and the proceedings published by the Hansard and broadcasted pursuant to standing orders 237 and 239.

I urge all Senators participating at this Sitting to adhere to these guidelines strictly and wish us all a successful first hybrid virtual sitting.

I thank you.”

4. **MESSAGE FROM THE NATIONAL ASSEMBLY ON THE PASSAGE OF THE TEA BILL (SENATE BILLS NO. 36 OF 2018)**

The Speaker conveyed the following message from the National Assembly -

“Honourable Senators,

I wish to report to the Senate that, pursuant to Standing Order 41 (3), I have received the following Message dated 7th December, 2020 from the Speaker of the National Assembly regarding the passage, by the National Assembly, of the Tea Bill (Senate Bills No. 36 of 2018). Pursuant to the said Standing Order, I now report the Message-

“Pursuant to the provisions of Standing Order 41 (1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly: -

WHEREAS, the Tea Bill (Senate Bill No. 36 of 2018) was passed by the Senate on Wednesday, 12th June, 2019 with amendments and referred to the National Assembly for consideration;

AND WHEREAS, the National Assembly passed the said Bill on Thursday, 3rd December, 2020 with further amendments attached herewith;

Now, therefore, in accordance with the provisions of Article 110 of the Constitution and Standing Order 41 (1) and 144 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.”

Honourable Senators,

Article 112 (1) (b) of the Constitution provides that *if one House passes an ordinary Bill concerning counties and the second House passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration.*

Honourable Senators,

In this regard, I direct the Standing Committee on Agriculture, Livestock and Fisheries to deliberate on the National Assembly amendments and report to the Senate. Further, pursuant to Standing Order 159 (1) of the Senate Standing Orders, I direct that the National Assembly amendments to the Tea Bill (Senate Bill No. 36 of 2018) be circulated to all Senators.

I thank you.”

5. **NOTICE OF MOTION - ESTABLISHMENT OF A SELECT COMMITTEE TO INVESTIGATE THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF NAIROBI CITY COUNTY**

(The Senate Majority Leader)

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on Wednesday, 3rd December, 2020, the Nairobi City County Assembly approved a Motion for the removal from office by

impeachment, of the Honourable Mike Mbuvi Sonko, Governor of Nairobi City County;

AND FURTHER, WHEREAS by letter Ref. No. NCCA/SPK/12/2020(1), dated Friday, 4th December, 2020, and received in the Office of the Speaker of the Senate on Friday, 4th December, 2020, the Speaker of the County Assembly of Nairobi City informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly;

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

NOW, THEREFORE, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 75(1)(b)(i), the Senate resolves to establish a special committee comprising –

- 1) Sen. Samson Kiprotich Cherarkey, MP;
- 2) Sen. Charles Reubenson Kibiru, MP;
- 3) Sen. (Eng.) Hargura Godana, MP;
- 4) Sen. (Dr.) Abdullahi Ibrahim Ali, CBS, MP;
- 5) Sen. (Dr.) Alice Chepkorir Milgo, MP;
- 6) Sen. Christine Zawadi Gona, MP;
- 7) Sen. Eric Okong’o Mogeni, SC, MP;
- 8) Sen. Mwinyihaji Mohamed Faki, MP;
- 9) Sen. Judith Ramaita Pareno, MP.
- 10) Sen. Petronila Were Lokorio, MP; and
- 11) Sen. Fredrick Otieno Outa, MP;

to investigate the proposed removal from office by impeachment of the Governor of Nairobi City County and to report to the Senate within ten (10) days of its appointment, pursuant to Standing Order 75(2), on whether it finds the particulars of the allegations to have been substantiated.

Pursuant to Standing Order 56(1) the Mover withdrew the Notice of Motion.

6. **SPEAKER’S RULING ON WITHDRAWAL OF NOTICE OF MOTION FOR THE ESTABLISHMENT OF A SELECT COMMITTEE TO INVESTIGATE THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF NAIROBI CITY COUNTY**

The Speaker gave the following Ruling concerning the withdrawal of Notice of Motion -

“Honourable Senators,

I wish to note that the Leader of Majority in whose name the Notice of Motion at Order No. 3 in today’s Order Paper has failed to give Notice of the Motion set out at Order No. 4.

As a result, both orders become the subject of Standing Orders 56 and 59 respectively. Standing Order 56 (1) provides as follows and I quote:

56(1) A Notice of Motion may be withdrawn by the Senator who gave the notice.

Standing Order 59 on the time for moving Motions provides as follows:

- 1) *The Senate Business Committee shall allot time and sequence of the publication in the Order Paper of every Motion approved by the Speaker.*
- 2) *Save for a Special Motion, a Senator who has a Motion in his or her name may authorize, in writing another Senator to-*
 - a) *Move that Motion in the Senator's stead; or*
 - b) *On conclusion of debate and before the question is put, to reply in the Senator's stead*
- 3) *Where no Senator moves a Motion at the time specified by or under the Standing Orders, such Motion shall not be published again in the Order Paper during the same session except with the leave of the Speaker.*

Honourable Senators,

As I earlier explained, Standing Order 75 provides only two (2) options for the Senate when it has to investigate the matter of a proposed removal from office by impeachment, of a governor of a county. The two options are either-

- a) by a Special Committee appointed by the Senate by resolution; or
- b) by the Senate in Plenary

A resolution is required only if the Senate seeks to proceed by way of a Special Committee, otherwise the default is the plenary for which Standing Order 75 does not require a resolution.

The Senate Majority Leader having withdrawn or otherwise abandoned the Notice of Motion and therefore the Motion, the route of special committee is therefore abandoned and that now means that the Senate will investigate this matter in plenary.

At its meeting held yesterday, Tuesday 8th December, 2020, the Senate Business Committee agreed on provisional dates for this investigation in the event that the matter was to be investigated in plenary. I therefore wish to inform you that I will

be *gazetting* Thursday 17th December, 2020 and Friday 18th December, 2020 as the dates for which the Senate shall undertake the investigation of this matter in Plenary.

Honourable Senators, this being a Special Sitting, and there being no other business, the Senate stands adjourned.”

And there being no other Business, the Speaker adjourned the Senate at thirty one Minutes past Three O'clock without Question put, pursuant to the Standing Orders.

7. **SENATE ROSE** – at thirty one Minutes past Three O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Tuesday, February, 09, 2021 at 2:30 p.m.*

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