

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 16<sup>th</sup> December, 2020

### Special Sitting

*(Convened via Kenya Gazette Notice  
No.10309 of 9<sup>th</sup> December, 2020)*

*The House met at the Senate Chamber, Parliament  
Buildings, at 3.05 p.m.*

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

### CONSIDERED RULING

#### IMPEACHMENT PROCESS TO PROCEED WITHIN CONFINES OF THE CONSTITUTION AND LEGAL PROVISIONS ON IMPEACHMENT

**The Speaker** (Hon. Lusaka): Hon. Senators, in the course of the sitting before the lunch break, certain matters were raised in respect of which I undertook to make a ruling.

I apologize because we were supposed to meet at 2.15 p.m. However, I had to work on the ruling and do a bit of reading. That is why we have delayed. The issues arose in the context of opening statements by the counsel for the county assembly and counsel for the governor.

The county assembly raised issues relating to their letter Ref. No. NCCA/SPK/12/2020(4) dated 14<sup>th</sup> December, 2020 in which they requested the Senate to summon 11 witnesses to produce evidence and shed light on various matters relating to the charges against the Governor.

Similarly, the counsel for the governor in his opening statement put forward what was essentially a preliminary objection on how the impeachment process was undertaken by the county assembly. Secondly, the counsel alluded to the doctrine of *sub-judice* and that pursuant to Senate Standing Order No. 98, the Senate should not proceed with this impeachment process.

Hon. Senators, in regard to the issue raised by the county assembly, I wish to confirm that their application is on record and already served on the governor.

Rule 19 of Part I of the Fifth Schedule to the Senate Standing Orders on the Rules of Procedure when considering the proposed removal in plenary provides that-

“In presenting its evidence, the Assembly shall not introduce any new evidence that was not a part of the allegations against the Governor by the County Assembly as forwarded by the Speaker of the County Assembly to the Speaker of the Senate.”

Hon. Senators, having perused the request which is on record, I will allow the county assembly to summon not more than three other witnesses excluding the Governor and the Commissioner-General, Kenya Prisons Service (KPS).

I also wish to inform the county assembly that they must canvass their case, including the additional three witnesses, within the allocated time of four hours today and further that they shall not introduce any new evidence.

Accordingly, I direct the counsel for the county assembly to liaise with the Office of the Clerk of the Senate for summons to issue to the three additional witnesses.

While the practicability of this may pose challenges, it should be noted that the hearing is for two days and this request must be made at the hearing.

Hon. Senators, in respect of the governor, the issues that were alluded to by way of the preliminary objection are also on record and they speak to alleged procedural impropriety/non-compliance of laws at the county assembly and live court proceedings in relation to matters before the Senate.

On the procedural and substantive questions raised, it is clear to me that these are matters requiring evidence in order to prove and for which the other side has an opportunity of rebuttal with evidence.

The Senate can only make a fair determination having heard the evidence on both sides. This is the essence of this investigation. The investigation before the Senate is both in respect of procedural, as well as substantive matters.

To that extent and following precedence, it is clear to me, and I so rule, that pursuant to Rule 29 of the Fifth Schedule of the Senate Standing Orders, any preliminary objection, both procedural and substantive should be properly subsumed in the evidence of either party and presented at the time allocated to that party.

On the objection based on *subjudice*, it is important to note the following three things –

- (1) *Subjudice* is a rule of the Senate itself, for its own convenience;
- (2) It is also a rule requiring evidence for it to be invoked; and,
- (3) It is not an absolute rule as Standing Order No. 98(5) of the Senate Standing Orders provides that notwithstanding that Standing Order, the Speaker may allow reference to any matter before the Senate or a Committee, and following the precedents. It is quite clear that the competence and jurisdiction of the Senate to hear a proposed removal from office is a constitutional mandate of the Senate independent of the mandate of the Judiciary or any other organ.

From all the foregoing, I rule as follows-

(1)The county assembly lawyers liaise with the office of the Clerk of the Senate to summon a maximum of three witnesses excluding the governor and the Commissioner-General of the KPS from the list presented to the Senate and served on the governor, which witnesses shall give evidence on matters already presented and served on the other party, and also to note that their evidence must stay within the hearing programme.

(2)All objections raised in respect to procedural, legal or constitutional lapses at the county assembly and all matters relating to the jurisdiction of the Senate shall be urged and canvassed within the time allocated by each party and shall be considered by the Senate and determined together with the substantive issues of the merits of the matter.

Hon. Senators, as per Rule 29 of the Fifth Schedule to the Senate Standing Orders, this ruling is final and we shall now proceed according to our hearing programme.

I, thank you.

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

**The Speaker** (Hon. Lusaka): I have already made a ruling on that.

Proceed, Sen. Murkomen.

Your point of order should not be on the Communication that I have made. Please stick to the rules of the House.

**Sen. Murkomen:** Mr. Speaker, Sir, you have made a ruling, but there is a clarification that is missing.

When a matter is preliminary, it is just that. Someone has contested that they do not want to prosecute a matter because it is *sub judice*. They might suffer double jeopardy especially if you get double orders from the courts giving you certain favourable decisions. However, you have violated the same order.

**The Speaker** (Hon. Lusaka): Sen. Murkomen, unfortunately, you are already challenging what I have said. You are not holding brief for the parties. You are part of the court.

**Sen. Murkomen:** Mr. Speaker, Sir, let me go to the point.

It is not lost on me that this House is surviving because of favourable court decisions. If the National Assembly was to ignore the various court decisions that have been made in favour of this House and make a similar ruling, like yourself, this House would have wound-up a long time ago.

So, for a matter that is weighty and would have disposed the case in total, was it not wiser for the decision to be made by the Senate on a vote instead of the Speaker taking responsibility?

Mr. Speaker, Sir, I am saying this with utmost respect. Tomorrow, if you become the Governor of Bungoma County again and there is another court order or you are brought here for impeachment and you need a court order, are you confident that you can appear before the courts of Kenya and tell them that you ruled to ignore court orders? It would have been safer if it was the decision of the Senate. However, if it becomes the decision of one person, that is where we have a problem.

**The Speaker** (Hon. Lusaka): Order! I have not ruled against any court order and there is no court order. In any case, under Rule 26, you will have an opportunity to say what you are saying and vote at the end.

As a Speaker, I am using what the law gives me to do. I will not interfere with the contributions of the Senate. You will be allowed to vote and you will express what you are saying at the vote.

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

**The Speaker** (Hon. Lusaka): Let us make progress. I now call counsel for the county assembly to give evidence.

*(Loud consultations)*

Order, Members. I have made a ruling as the Speaker. I am also using our Standing Orders.

Proceed, Sen. Cheruiyot.

*(Sen. Murkomen consulted loudly)*

Sen. Murkomen, you cannot shout at me from where you are sitting. Please maintain order.

**Sen. Cheruiyot:** Mr. Speaker, Sir, it will be grossly unfair if we get to a point where Members cannot be allowed to raise point of orders. We are allowed by our Standing Orders to rise and raise any procedural matter that we are dissatisfied with when we are conducting our business. It is within your jurisdiction as our Speaker to say whether that matter is with merit or without.

I just want to seek a simple clarification from you. I agree with your ruling. I know there are people who imagine that I want to protest what you have ruled. However, I want to seek a clarification from you. When we take a determination of this matter, what will be the schedule of questions? You have said that the matters that have been conversed by the parties, of which you have ruled, need to be subsumed in their main arguments.

As a House, we will make a determination at that point. You have said that it will be upon us to have listened to them. Will you then grant us an opportunity to deal with the issues that they had raised as preliminary objection then subsequently vote on the main issues?

If we get to the point of voting and it is confirmed at question number one that this House has established that the County Assembly of Nairobi did not meet the constitutional threshold of impeaching the governor, the matter will end at that point. So it would be important when those questions are listed. That is the first question that is put before us before the rest of the questions. That is the clarification I want.

**The Speaker** (Hon. Lusaka): Okay, Sen. Cheruiyot. In other words, what I have said is that all those matters will be voted for, including the preliminary objection. You

will look at all of them and take one vote at the time of voting, and the charges that have been brought.

Counsel proceed.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, I had an application to make. There are documents that are lying at the Clerk's office---

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Senators. Just a minute. Also listen to me, I am on my feet.

If you look at what I referred to, Rule 24, states-

“After the parties have presented their evidence, the Speaker of the Senate shall allow a closing statement to be made on behalf of the County Assembly and thereafter, on behalf of the Governor.”

Rule No.25 states-

“A closing statement made under Rule 24 shall be for not more than 60 minutes.”

Rule No.26 states-

“After the closing statements have been made, the hearing shall conclude, all the Senate shall proceed into a camera session to deliberate on the issues raised.”

I am saying that it is at that point that we will deliberate on all these things and before you take your vote, you will have said all the things that you are saying.

Please, allow us to proceed. Proceed, counsel.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Thank you, Mr. Speaker, Sir. We have documents lying at the Clerk's office, which were not received because we were served these documents---

**The Speaker** (Hon. Lusaka): You are off the microphone and I said that it was evidenced by the County Assembly.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, we had made an application on behalf of the Governor. There were documents that we had brought and are lying--- We were served with this at 6.30 p.m., in consequence of which we had an affidavit in specific rejoinder to what we were served with. Now, they are lying there at the Clerk's office and were not brought to the attention of the Chamber.

Mr. Speaker, Sir, this is an issue that we brought to the attention of the Clerk via email yesterday evening and for which we are accosted to address. I will be very happy if you could authorize for those documents to be brought because we were served with the documents last evening at 6.30 p.m.

Thank you very much, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): They will be brought in the course of our deliberations.

Counsel for the County Assembly proceed.

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiru): Thank you, Mr. Speaker, Sir. We highly appreciate the wisdom behind the ruling that you have just delivered. We shall endeavor to contain ourselves within the content and the context of that ruling.

We will be presenting our first witness this afternoon, who happens to be the Mover of the Motion that is before the Senate. We have a litany of evidence that has been served upon the Assembly and the Senate, to which documents are contained in various folders. The witness will be relying on that evidence, as and when he will be reading his evidence in chief.

Mr. Speaker, Sir, for purposes of clarity and ease of identification of these documents, allow me to illustrate the same, so that it can be easy for the Senators to flow along the evidence being tendered by the witness.

We have a blue folder that contains the evidence relating to Ground of the impeachment No.1.

*(Loud consultations)*

I am just illustrating, so that we can have a flow. The blue box file contains evidence relating to Ground No.1. It is volume No.1. Again, we also have a voluminous black file. It is labeled as Ground No.1, Volume Two, which relates to gross violation of the Constitution and other written laws.

**Sen. Wetangula:** On a point of order, Mr. Speaker, Sir. It will help a great deal if the Counsel, in addition to saying black or blue folder, tells us what number it is because the files are numbered. This is so that it is easier to identify them since some of us have got several blue folders and blue files.

**Sen. Mutula Kilonzo, Jnr.:** On a point of order, Mr. Speaker, Sir. It may help because I do not know about the lawyer, but the folders we have, one is labeled 9A and another one 9B. What I want to confirm from our Secretariat is, we did this numbering, therefore, for their purposes, they need to number them in a similar fashion as the ones that we have.

**The Speaker** (Hon. Lusaka): Secretariat, kindly give folders to those who do not have.

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiiru): Thank you, Mr. Speaker, Sir, for that guidance. We have been served with these documents-

(1) The blue file labeled as 9A relates to Ground No.1. Details and evidence contained therein relates to Gross Violation of the Constitution and other laws;

(2) The black file labeled 9B is Volume 2 of Ground No.1;

(3) We have a red file labeled 9C. It relates to Ground No.2 of the Notice of Impeachment;

(4) We also have a green file, 9E;

(5) We have a small black file, 9D and, finally, 9F.

Are we there, hon. Members?

If you open file No.9B, you will find an index. It is labeled: “Index for Documentation in Support of the Motion for the Removal from office by way of Impeachment.” That index, the first column indicates the violation---

**The Speaker** (Hon. Lusaka): Order, Counsel, let me guide you. Your entire evidence, cross-examination and everything must fit within the four hours.

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiiru): Correct.

**The Speaker** (Hon. Lusaka): Please take note of that.

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiiru): Senators, you will be able to flow with the entire process following the index Annex thereto.

At this juncture, allow me to introduce my learned friend, Mr. Duncan Okatch to lead the witness in Chief.

**The Senate Minority Leader** (Sen. Orengo): On a point of order, Mr. Speaker, Sir. Just for clarity, the County Assembly has been given four hours, which include the time for cross-examination. Limiting cross-examination is normally very difficult because of the rights of the person who stands charged and yet all of them must fit within those four hours. They are about three to 10 witnesses. There is need to have some guidance because they may take all the four hours. The Governor may not have time for cross-examination or they may have issues that they want to address and if cross-examination is also not limited, then we will end up in a very difficult situation because we are time bound.

The practice in the courts normally is that you are given time to examine a witness and if they want to limit the time to examine the witness, the other side is told they have been given so many hours for cross-examination. This is for purposes of ensuring that anybody who leaves this Chamber will be satisfied that justice has been done to them and they have not been stopped in any way.

I was a little bit afraid that in advancing their case, they may think that they have all those powers to themselves and eating to the time of the Governor to cross-examine because they have to keep that time for cross-examination.

Equally, when the Governor is going to give his evidence, time must be allocated within those four hours for cross-examination. I think that we are getting into a dangerous area where if you do not control the time, we will have a big problem.

The problem with these proceedings is that they are time-bound. If we go beyond the limits, then we will be violating the Constitution because those timelines are donated by Article 181 and the County Government’s Act is a derivative of the Constitution. So those provisions are grounded on the Constitution. I think that they should be made aware that the lawyers on the other side are preparing also to cross-examine in the same way.

**The Speaker** (Hon. Lusaka): Okay, proceed. That is why I alerted you that you must be able to use the four hours properly. We must make progress.

**Sen. Wetangula:** On a point of order, Mr. Speaker, Sir. First, I want to encourage us to make as little interventions as we can.

Secondly, where we make interventions because we may have to at some point, the Clerk should stop the clock against the parties. The four hours that you have given

them may end up being eaten up by ourselves and making it very difficult for them to prosecute or defend their case.

**The Speaker** (Hon. Lusaka): Actually, there should be no interruptions because if you look at the programme, at 6.30 p.m., there will be questions and requests for clarifications by Senators. You will have an opportunity then.

Let us proceed.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, and hon. Members of this House, my name is Duncan Okatch. I am an advocate representing the County Assembly.

With us is the first witness. I beg that he be sworn in so that we can start our examination in chief.

*(The witness for Nairobi County Assembly,  
(Hon. Michael Ogada Okumu) took the oath)*

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Hon. Okumu, start by telling the honourable House what you do for a living.

**Hon. Michael Ogada Okumu**: Thank you, Mr. Speaker, Sir. I am the Member of County Assembly (MCA) for Embakasi Ward in Embakasi East Constituency. I am the Minority Leader for the Orange Democratic Movement (ODM) at the Nairobi City County Assembly. I have served as a Counsellor and for the two terms as an MCA.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Hon. Okumu, there is a statement that is before the hon. Senators. Confirm to the House that, that is your statement because it will guide us in the proceedings?

**Hon. Michael Ogada Okumu**: Mr. Speaker, Sir, the statement before this honourable House is mine. I personally did it in respect to the impeachment Motion against the Governor of Nairobi City County. I presented it to Nairobi City County Assembly and executed it on 3<sup>rd</sup> December, 2020.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Thank you. You have talked about the impeachment Motion. Kindly elucidate about it in brief.

**Hon. Michael Ogada Okumu**: Mr. Speaker, Sir, being an MCA in Nairobi City County Assembly and also the leader of the Minority Party; having also been elected in several occasions, having been there for some time, I was and I am alive to the fact of the on goings in the county.

To my knowledge, I just realised that things were not going on well. As a leader and representative of the people whom they have confidence and faith in, I had no otherwise, but to stand with them and table an impeachment Motion against the Governor. The way he is handling matters and affairs of the county, which according to me and the Members who supported me, have never been and are not satisfied as I speak before you.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): So, you confirm that your Motion is the foundation of these proceedings today?



**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, definitely we are gathering here as a result of the Motion that I tabled and we prosecuted in the Nairobi City County Assembly.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Ogada, kindly tell us the grounds upon which your Motion is based, and these impeachment proceedings?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, and Senators, the Constitution gives us the grounds under which a serving governor may be impeached. We have four grounds that we relied on when we were prosecuting our impeachment Motion against the Governor. These are gross violation of the Constitution or any other law, abuse of office, gross misconduct and crimes under the national law.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Thank you so much. I will take you straight to that because that is the crux of the proceedings. I will lead you to ground number one; gross violation of the Constitution. Kindly, explain to this particular House what you mean by that.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, one of the charges against the Governor that we put across was the gross violation of the Constitution. Article 201 (a), (d) and (e) of the Constitution of Kenya on finance management, Section 154 of the Public Finance Management (PFM) Act of 2012, and the County Allocation of Revenue Act, 2015 on the use of conditional grants were violated.

Mr. Speaker, Sir, we know what we mean by conditional grants. They are ring-fenced grants which we are supposed to use or follow some guidelines and rules when we use them. In that area we realized that the Governor was violating the Constitution, the PFM Act, and the County Revenue Allocation Act by misusing or misdirecting the funds that were allocated for these purposes.

For example, Mr. Speaker, Sir, we have got funds that are clearly ear-marked as Road Levy Funds which are given by Kenya Roads Board (KRB). For the three years that the Governor has been in office, he has never used this money prudently. For example, in the first financial year when he was in office, he was able to divert a total of Kshs622 million which is a Road Levy Fund.

As I speak today, we are not receiving money from the KRB and, therefore, we are not able to function, do the roads and operate within the county as a result of the misdeeds of the Governor.

Item number two is about the diversion of bursary funds, which is also ring-fenced. This has been a very contentious issue because the County of Nairobi City gives bursaries and scholarships. One thing that became strange which MCAs had to stand up and say no to, is when the Governor came into office, he found around 3,000 students who were under full scholarship of the County whereby every financial year, the County was paying for them Kshs53, 000. These students were selected by head teachers from across Nairobi; two students per school were selected by the head teachers. The letters were very particular and specific that the head teacher had to look for bright students who are orphans and disadvantaged. These were 3,000 students.

When the Governor came in, he just instantly stopped. The students were in form three, form two and form one. Do you know what he said? He said he could not continue paying school fees for students who were recruited by his predecessor. He used simple terms that he cannot continue paying school fees for Luos and Luhyas. That was touching to some of us.

I went through that list. If you go through that list, you will find Kenyans in that list, not people from a particular tribe. These students dropped out of school just like that. As a representative of the people and a person who has a human heart, you cannot just sit and watch such a thing happen. Those children are now in the streets. They cannot continue with school. They were orphans. We could not allow that.

Mr. Speaker, Sir, the other issue was about the diversion of the Kshs297 million.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): On a point of order, Mr. Speaker, Sir.

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

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): My point of order is that none of the allegations with respect to the Luhyas and the Luos is contained here. This is the objection that we were making earlier on. This witness is adducing evidence that was not before the County Assembly. It is now self-evident.

Mr. Speaker, Sir, this statement does not reference at all, obliquely or indirectly any Luhyas or Luos being deprived of bursaries in Nairobi City County.

If we allow that sort of thing, you will see it is outside the law.

Thank you, Mr. Speaker, Sir,

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiiru): Mr. Speaker, Sir, if you may grant us---

**The Speaker** (Hon. Lusaka): Stick to what you wrote in your statement.

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiiru): One guidance, in evidence, a witness testifies to the things that he has seen, perceived, what he knows and what he can touch. This House is guided by the Cap.80, the Law of Evidence. That is the evidence that the witness is testifying, unless there has been a prior decision by this House that a witness will only be limited to the content of the statement. That was never given to us. I believe the rules of evidence apply during these proceedings.

Mr. Speaker, Sir, we seek your guidance.

**The Counsel for Nairobi City County Governor** (Mr. Winfred Nyamu): Mr. Speaker, Sir, my name is Mr. Wilfred Nyamu. I am part of the defense team for the Governor. As it is, and with utmost respect to this House, a can of worms has been opened in the sense that if this witness is allowed to proceed the way he is testifying, making allegations beyond his own statement while he is not even under oath, what evidence are we taking in this House? It is a waste of time for this House. This House is seated as an adjudicatory body or authority and not a legislative body. We need to be structured.

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiiru): When this House sits---

**The Speaker** (Hon. Lusaka): Order! I have ruled that you stick to the statement that you gave. As simple as that.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Thank you, for your guidance, Mr. Speaker, Sir. Hon. Michael Ogada Okumu, you were telling this particular House about the Kshs297 million---

**The Speaker** (Hon. Lusaka): Order! There is an intervention from Sen. (Prof.) Kindiki

**Sen. (Prof.) Kindiki**: Mr. Speaker, Sir, I hate to interrupt, but let me just support what the Chair has ruled. Yes, we are adjudicating over this matter in a *quasi-judicial* capacity, but we are the Senate and we are guided by the rules of the Senate. Once the Speaker directs that something of a procedural nature should take place, I think that should be the case.

However, Mr. Speaker, Sir, now that counsel for the county assembly has relied on the Evidence Act, that Evidence Act is the one that prohibits the introduction of new evidence late into the trial and it is Section 146 of the Evidence Act. In matters of judicial proceedings, you stick to evidence that was tabled and adduced at the time of close of pleadings.

**The Speaker** (Hon. Lusaka): Yes, that is what I have directed.

*(Applause)*

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Hon. Michael Ogada Okumu, we will have to demonstrate that we have the evidence and it is your turn. You have indicated that there is an issue about the Kshs297 million. Kindly, explain to the House that particular issue.

**Hon. Michael Ogada Okumu**: Mr. Speaker, Sir, as I had indicated, there was a gross diversion of the resources. These monies were not used for what they were meant for. For example, if you go to pages 77 and 78, you will realize that the two---

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): That will be the file that is labeled 9A.

You can proceed.

**Hon. Michael Ogada Okumu**: Mr. Speaker, Sir, as you look at that file, you will realize that a requisition was made by the county government through the governor to the Controller of Budget (CoB) requisitioning Kshs.297 million to pay bursaries. However, when the money came, it hit the accounts on the 12<sup>th</sup> and on the 14<sup>th</sup> ---

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Just tell the House the dates; 12<sup>th</sup> of which month and year?

**The Speaker** (Hon. Lusaka): Let them proceed. We said we should minimize interruptions. The lawyers are going to cross-examine them.

Ask one of the Serjeant-at-Arms to assist you.

**Hon. Michael Okumu Ogada**: Mr. Speaker, Sir, as Sen. Orengo said, as I will be submitting, I am getting many interjections. I do not know whether my time is being eaten into, but I know you will take care of that.

On 12<sup>th</sup> July 2019, they did request for Kshs297 million and instead of paying school fees for the poor children, they went and started paying lawyers.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Where will we find that in your evidence in terms of when these amounts came in? It is on which page?

**Hon. Michael Ogada Okumu:** On pages 77 and 78.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Kindly guide the House to the specifics so that any Senator that is not with us may be with us.

**Hon. Michael Ogada Okumu:** On the statement that I have, when you check the 12<sup>th</sup> day, that is when that money hit the account. Immediately the money came into the account, they used the money not for the intended purpose, but instead to do other things. Mark you, what they were really paying for were neither in the work plans that were presented to the Controller of Budget nor what it was requisitioned for. Therefore, that was absolute diversion of resources at the expense of the poor children.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Hon. Ogada, kindly advise us which document is this that we are finding on pages 76, 77 and 78.

**Hon. Michael Ogada Okumu:** A statement from the bank.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): It is a bank statement for which particular individual or which particular entity?

**Hon. Michael Ogada Okumu:** The money was paid to some law firms.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, on a point of order. I have an issue about the production and reference to documents.

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

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, I have an issue on behalf of the governor. The photocopies we have are neither certified and the source not notified. The veracity of those documents was the gist and thrust of the earlier objection. I will not overrule or go back there.

I need your direction and ruling on the admissibility of that evidence. It was earlier our issue and since this witness has not sworn any affidavit and has not sworn any statement, we are handicapped. The conundrum that faces us is that we now have four copies of documents. The veracity of which is not verifiable and the thrust of which is then to impugn the integrity of the governor.

Therefore, unless we get the direction because this witness has not produced them. This witness just has a bunch of documents and is not sworn.

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiru): Mr. Speaker, Sir, if I can have the bite on the cherry in response to the objection being raised by my senior, Mr. Kinyanjui.

Mr. Speaker, Sir, if I invite you to Section 33 of the County Government Act being the essential guide in these proceedings and most importantly Standing Order No.75 of the Senate, this House is not just sitting as a judicial House; it is also been

called and invited to conduct an investigation. Investigation means collation or correction of evidence.

Mr. Speaker, Sir, Mr. Kinyanjui should not invite you to think that you are only sitting as a judicial officer. You are also sitting as an investigative institution. We are not the ones who drafted the section.

**The Speaker** (Hon. Lusaka): Sen. Olekina, what is your interjection?

**Sen. Olekina:** Mr. Speaker, Sir, I am looking at these documents and this is the Senate of the Republic of Kenya which even under Article 125 has got the power to sit as a High Court.

These documents are not legible and are not certified. It would be important for us to have documents that are certified. My concern is that I cannot see what I am looking at.

**The Speaker** (Hon. Lusaka): Order, Senator. From where I sit, those are some of the things that you will look at when you are making your decision. It is not your turn. You will have your turn.

Counsel, you will have your turn to poke holes in what is being produced in the Senate.

Proceed.

Let me request the counsel to lower your voice. We can hear you.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Thank you, Mr. Speaker, Sir.

For the record, some of these particular entities are the ones we have sought the help of this House in the summons that the House has just issued.

Thank you.

Hon. Ogada, kindly take us through because our time is quickly running out.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, I said that after they received the money on the 15<sup>th</sup> they paid J.O. Magolo and Company Advocates Kshs.8 million that was meant for bursaries.

On the same 15<sup>th</sup>, they paid Abdullahi Gitari Kshs.30 million from the same amounts meant for students. On the same day, they paid Musyoki Mogaka and Company Advocates Kshs.68 million from school fees.

On the same 15<sup>th</sup>, they paid Kwanga Mboya Kshs80 million. They went ahead to pay Miller and Company Advocate Kshs83 million. On the same date, they paid Munika another Kshs250 million meant for school fees.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Thank you so much. In your paragraph 14, you have indicated to this particular House that there is another violation. Kindly explain that to the House.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, on paragraph 14, the Governor violated Article 187 (2)(a) of the Constitution and Article 5(2) of the Deed of Transfer that can be found on page 359.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, page 359 is still on the file that is labeled 9A. Apologies.

Mr. Speaker, Sir, as we proceed, there is an indication that has come from the House in terms of these data particulars. There is a letter dated 14<sup>th</sup> December, 2020 from the Office of the Speaker which I would like you to explain to this House in relation to this particular issue.

**Hon. Michael Ogada Okumu:** Mr. Speaker, sir, the date is on the 14 of December, 2020.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Can you confirm that it is from the Speaker of the Nairobi City County Assembly?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, the letter is from the Speaker of the Nairobi City County Assembly.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): What is the import of that letter?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, it is notification of pre-qualification by the Nairobi City County Government, letter of instruction for the case, fee notes, tax compliance certificate, evidence of tax payment and dates of payment status reports.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Read the first paragraph so that we can know the context.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, it reads-

“I acknowledge receipt of a letter dated 9<sup>th</sup> December, 2020, inviting the Nairobi City County Assembly to appear before the Senate for the purpose of availing evidence with respect to the proposed removal from office by way of impeachment of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County. The County Assembly hereby requests your office to issue sermons to the following persons to appear before the Senate-

1. Mr. Mike Mbuvi;
2. Mr. Justus Gathenge;
3. Mr. Kwanga Mboya;
4. Mr. Cecil Miller; and
5. Mr. Musyoki Mogaka.”

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Can you confirm that the advocates you have named are part of the ones that received these benefits?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, the persons we have invited here are part of the people who received money that was meant for the bursaries.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Let us move to the next issue. You have indicated a violation on Paragraph 15 of your statement. Kindly take the House through that.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, the Nairobi City County Assembly having passed our estimates and Appropriations Bill 2020, it was upon the Governor to ensure that he assented to the Appropriations Bill which he did not assent to, but instead rejected it. The Appropriations Bill was referred back to the Assembly. According to the Constitution, once a Governor rejects and returns a document, we can

go by the advice he offers or we can overturn. Once the county assembly overturns a decision of the Governor, he has no option but to sign.

After overturning the decision of the Governor on the Appropriations Bill, 2020, it was taken back to him. As a requirement by law, the Governor was supposed to have assented to the Bill within seven days failure to which it automatically became law and effective. The Governor has a final say in terms of whether we can access the county's money from the County Revenue Fund (CRF). The Governor was unable to give the go-ahead by way of writing and signing a warrant.

We are December and I am sure that all the Members of this House are aware that budgets are supposed to be made by June to be effective by July. Can you imagine six months down the line, Nairobi City County has no budget? The Nairobi City County cannot pay staff or supply medicine to hospitals. The County cannot pay ECDE teachers simply because the Governor has refused to assent to Appropriations Bill by simply putting a pen on paper even if it is a golden pen.

The Governor was supposed to have put pen to paper so that the people can access services. We cannot do our roads or anything else simply because the Governor has refused to assent to the Appropriations Bill. As some responsible Kenyan citizens where do we go, what do we do? Our doctors cannot be paid their salaries and Personal Protective Equipment (PPEs) cannot be bought simply because a Governor has refused to sign money that is not his! These are taxpayer's monies. What can a responsible Kenyan citizen do?

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Ogada, let us go back to the statement. On Paragraph 18, you have informed us about gross violation of the Constitution in relation to the Dandora Stadium. Kindly elucidate to this honorable House.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, paragraph 18 is about a stadium that was being constructed in Dandora. The procurement process went through and the work started as you will see from pages 808 to 813 in the black bulky file.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Ogada, kindly read paragraph one of that particular document.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, paragraph one of page 631 talks about a proposed stadium that has a capacity of 3,000 sitting on concrete terraces and polycarbonate sheets. The semi-basement area below the terraces shall form changing rooms and wash rooms, offices and stores. A parameter wall shall be constructed in all the sides to secure the facilities and the artificial turf that shall be provided on the playing ground.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Ogada, take us through Paragraph 21 of your statement where you have referred us to additional pages.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, I have referred you to pages 856 and 857 which speak about the authority flagged in the awarding of the tender, alteration of contract specifications, suspected irregular payment and forgery of documents.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Ogada, kindly look at pages 856 and 857 of the same file that you have referred us to. Confirm to us that particular document. What would you like to say to the House on that particular document?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, this is a PPRA report dated 23<sup>rd</sup> September 2019.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Explain to the House pages 856 and 857. What is notable there?

**Hon. Michael Ogada Okumu:** One of the observations is that it has been observed that the County Government has gone ahead to irregularly pay the contractor an amount of Kshs196.8 million, as evidenced by the payment records.

Number five: It talks about forgery of documents. The contract documents appear to have been forged, including a cabinet memorandum to state that the stadium should be steel structures, when the work is already 70 per cent complete.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Read for us Page 857.

**Hon. Michael Ogada Okumu:** The conclusion on the PPRA report, Paragraph C. The contractor for the project M/s Scagent Construction Limited, supported by the officers of the Nairobi City County Government put up steel structures instead of the concrete structure, as initially tendered for by the bidders in a clear contravention of the specifications, terms of the contract and contrary to Section 135 (6) and 139 of the Public Procurement and Asset Disposal Act, 2015.

The County Government paid the contractor an amount of Kshs196 million as evidenced by the payment record highlighted herein. On the recommendations, there should be more investigation on how and the extent to which variation of the materials affected the cost of the contract.

In view of the above, the authority concludes that PE did not adhere to the general provisions of the Public Procurement and Assets Disposal Act, 2015, especially with specific regard to Section 44, 69, 139, 146 and relevant provisions under Section 151 (2), amongst other provisions.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): On Page 858, this document is dated when?

**Hon. Michael Ogada Okumu:** It is dated 23<sup>rd</sup> September, 2019.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Thank you. It is a document from PPRA?

**Hon. Michael Ogada Okumu:** Yes.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): That is the Public Procurement Regulatory Authority, I believe.

**Hon. Michael Ogada Okumu:** Yes.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Is it a Government entity?

**Hon. Michael Ogada Okumu:** Yes, and signed by Francis Kissinger.



**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): I will quickly take you to the next aspect; the issue in Paragraph 25 of your statement.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, in Paragraph 25 of my statement, the Governor violated Section 35(4) and Section 45(1) of the County Governments Act, 2012, as read together with Section 104 and 148 of the Public Finance Management (PFM) Act.

As I speak to this, we were talking about good governance. In this case, I clearly state that the Governor violated this Section by appointing one Ms. Winfred Gathangu as a County Executive Committee (CEC) Member for Economic Planning and acting as the Chief Officer for Finance and the Chief Officer for Economic Planning, knowing very well that one of those offices is under public service and the other one is a public officer. Definitely, it was in contravention of the Act.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Where do we find that evidence as enumerated in your Paragraph 28?

**Hon. Michael Ogada Okumu:** You will find this on pages 881 and 882.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, that is the File No.9A, pages 881 to 882. What is in pages 881 and 882? Read to the honourable House.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, in this respect, we find on the 10<sup>th</sup> April, 2019, one Ms. Winfred Gathangu writes a letter to the County Assembly Clerk inviting them for a workshop.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): What is the date of that letter, Mr. Ogada?

**Hon. Michael Ogada Okumu:** It is 10<sup>th</sup> April, 2019.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): She is writing to who?

**Hon. Michael Ogada Okumu:** To the Clerk of the County Assembly.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): She is writing in which capacity?

**Hon. Michael Ogada Okumu:** As the County Chief Officer for Economic Planning.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): What of the next letter?

**Hon. Michael Ogada Okumu:** It was done on the 9<sup>th</sup> of 2019 to the Clerk of the County Assembly on a supplementary budget. She is writing-

“The County Treasury submitted supplementary budget to the County Assembly vide a letter referenced CEC, on the 25<sup>th</sup>, March, 2018. Further arising from the deliberations by the County Executive Committee on the revised budget submitted vide the above reference letter, it was decided that the supplementary budget as submitted be withdrawn and resubmitted later.”

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): What I want you to tell us is in which capacity she is writing this second letter.

**Hon. Michael Ogada Okumu:** She is writing this letter as the CECM Finance and Economic Planning.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): You are confirming that it is the same person writing a letter on 9<sup>th</sup> April, 2019 and in her capacity as the CECM for Finance and Economic Planning. On 10<sup>th</sup> April, 2019 the same person is writing a letter as the County Chief Officer for Economic Planning. What is the problem with that?

**Hon. Michael Ogada Okumu:** You find that a day before, she is the ‘Minister’ in charge of Finance and Economic Planning and a day after she is the ‘Principal Secretary (PS)’ in the same Ministry.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): What complication would that arise and how then would we blame the Governor for that particular issue?

**Hon. Michael Ogada Okumu:** A PS cannot serve as the Minister at the same time.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): How do we blame the Governor for that? Does he take any blame?

**Hon. Michael Ogada Okumu:** Incompetence and poor governance.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): So, he is incompetent and there is poor governance on that particular aspect? If you look at paragraphs 29 and 30, you have given us an explanation of your statement.

**Hon. Michael Ogada Okumu:** I am aware that the Governor has violated the provisions of Section 104 of the Public Finance Management (PFM) Act on responsibilities and powers of the county treasury through inaction, action, omission and commission to continue to preside over a broken public finance management system. This was despite various resolutions from the County Assembly to the Governor, in order to decentralize the finance sector, which he never did in contravention of Section 148 of the PFM Act.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Thank you. I will take you to paragraphs 32 and 33 of your statement on the issue of tax waivers. Kindly, submit to that.

**Hon. Michael Ogada Okumu:** Article 201 of the Constitution of Kenya on the prudent use of financial resources and Section 159 of the Public Finance Management 2012, together with Sections 5 and 7 of the Nairobi County Tax Waivers Administration Act, 2013, he violated this Act by unilaterally and arbitrarily issuing waivers in total disregard of the law.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): He issued waivers. Where do we find waivers in your evidence?

**Hon. Michael Ogada Okumu:** That is page 1048-1052.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, again, that is in the first file 9 (a)

Mr. Ogada, just go to those pages again; pages 1048 to 1052.

**Hon. Michael Ogada Okumu:** This is the Nairobi City County Tax Waiver's Act on page 1048 all through.

**The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch):** You have also put copies of the advertisements of this Nairobi City County Tax Waiver's Act. Do you have them?

**Hon. Michael Ogada Okumu:** Yes, the copies of the waivers he gave us are there.

**The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch):** Which page?

**Hon. Michael Ogada Okumu:** That is on page 1053. In this case, the issue here was by the County Executive Committee (CEC) Member--- That is the Act.

"The CEC responsible for the finance may, if she deems fit, with concurrence in writing of the Governor, waive payment of any tax fees due to the county government."

**The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch):** Fair enough. We will go to paragraph 35 of your statement on the issue of Nairobi Metropolitan Services (NMS). Kindly, elucidate on that.

**Hon. Michael Ogada Okumu:** One thing that I have not raised about that is, when he was giving the waivers, one of the cardinal requirements is that within 14 days, he is supposed to inform the assembly of the waivers he has given, which he never did on any single occasion.

**The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch):** He never ever gave any information to the county assembly on the tax waivers you have referred to?

**Hon. Michael Ogada Okumu:** Yes.

**The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch):** That is okay. We can go to paragraph 35 on the issues of NMS under Article 5 on the Deed of Transfer.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, the Governor violated the provisions of Article 5 of the Deed of Transfer of functions by purposefully, deliberately, intentionally, arrogantly and irresponsibly sabotaging the transfer of functions. Furthermore, the Governor is yet to provide NMS with crucial and necessary documents to facilitate them.

Mr. Speaker, Sir, as I expound on this, one thing we need to appreciate is that the Governor willfully signed an agreement between the county and the national Government. This function was covered live and done within the State House. We did not see anybody being forced to sign anything. We only saw people parading to be photographed with signed documents. As a county, we were never involved, but when it was brought---

**The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch):** Hon. Ogada, you have a document that you are referring us to on that particular issue on page 1057.

**Hon. Michael Ogada Okumu:** On page 1057, I will be---

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): There is a document on page 1057.

Mr. Speaker, Sir, again, that is the first file, File No. 9 (a).

**Hon. Michael Ogada Okumu:** This one was written by a Mr. Gathenge.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): When is that letter dated?

**Hon. Michael Ogada Okumu:** 29<sup>th</sup> April, 2020; Request for preparation for the handing over and taking over of functions transferred from the Nairobi City County Government to the national Government.

“This is to inform you that I am under firm and clear instructions from His Excellency (H.E) the Governor, as the Chief Executive Officer (CEO) of Nairobi City County Government, not to provide you with any information. This is due to consistent and persistent breach of the terms of the Deed of Transfer.”

It was written to the Director-General of NMS.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Who is this Justus M. Gathenge?

**Hon. Michael Ogada Okumu:** That is the Acting County Secretary.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): You have also indicated that there is a video you wished to adduce? Do I play it?

**Hon. Michael Ogada Okumu:** Yes, that is Video clip number 9.

**The Counsel for the Nairobi City County Governor** (Mr. Wilfred Nyamu): The letter in reference is addressed to the Auditor-General, clear as it is. For that matter, we seek your indulgence to ensure that we are not misled in these proceedings by citing documents and in-putting addresses that are not contained in the letters.

**The Speaker** (Hon. Lusaka): Take note of that, and you will raise it when your time comes.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Hon. Ogada, you had indicated that there is a video.

Mr. Speaker, Sir, at this point, we seek your indulgence to play Video number 9 that hon. Ogada has referred to.

*(A Video clip was played)*

**The Speaker** (Hon. Lusaka): There is no volume.

*(A Video clip was played)*

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): In short, who is that appearing?

**Hon. Michael Ogada Okumu:** That is Governor Sonko clearly requesting H.E. the President to take over the responsibilities that he was given by the citizens of this great county.

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

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

**Sen. Murkomen:** Mr. Speaker, Sir, there is a rule in this House, and I suspect that it is the rule in most of the county assemblies, because their Standing Orders were drafted like ours; that media reports are not referred to in both the Chamber and Committees of the Senate. How are we expected to treat that kind of evidence?

**The Speaker** (Hon. Lusaka): Sen. Murkomen, that is their evidence. You will have time to use whatever we have when we are making a decision. Let us proceed.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Thank you so much, Mr. Speaker, Sir. In brief, who is that, and what is he saying?

**Hon. Michael Ogada Okumu:** It is the Governor of Nairobi City County, requesting H.E. the President to assist him to do the work of Nairobi.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): I will ask you to look at paragraph 31, the letter that you referred to, and that video.

**Hon. Michael Ogada Okumu:** I am aware that H.E. the Governor has broken Article 5 (5) of the Deed of Transfer, that is, on Page 359, by his refusal to hand over the necessary documentation to enable KRA to undertake optimal revenue collection.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Refer that to the letter that you referred to in reference to the Governor's request for assistance, as you have said.

**Hon. Michael Ogada Okumu:** Request for preparation for handing over, taking over of functions transferred from Nairobi City County Government to the national Government.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): I will now refer you to the next ground, that is, Abuse of Office, Paragraph 36 of your Statement. Under Abuse of Office, the Governor violated Section 75 of the Constitution as read together with Sections 11, 13 and 16 of the Leadership and Integrity Act, 2012 on the conduct of state officers.

You also indicated that you have evidence attaching to that in your---

**Hon. Michael Ogada Okumu:** I request that the Speaker allows us to play Audio Clip No.1 and Video clip No.12.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, we request that Audio clip No.1 and Video clip No.12 be played. Just for a general caution, it is not words that we would wish to play in public, but it is our evidence and words by the Governor.

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

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

**Sen. Omanga:** Mr. Speaker, Sir, the clip cannot be played in public. Our proceedings are live and our children are watching. As a mother and a wife, I am cautious that if it is something on what is coming on the screen when my children are watching---

**The Speaker** (Hon. Lusaka): Have you seen it?

**Sen. Omanga:** They have cautioned us. Unless it is in-camera---

**The Speaker** (Hon. Lusaka): You do not know what the caution is all about, and therefore, do not pre-judge.

**Sen. Omanga:** Mr. Speaker, Sir, it might come out while children are watching. It will be too late. Maybe we should go in-camera.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, that is why we need to impeach him and we need to demonstrate that.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, that language is wrong. "That is why we need to impeach him". What is that? That is pre-judging this honourable House.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): That is the position of our clients. That is what they need to demonstrate.

*(An Audio clip was played)*

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Order, Members! He was only mentioning some parts of the body. What is outrageous about that?

Proceed.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Kindly play Video clip No.12.

*(A Video clip was played)*

*(Loud consultations)*

What do you have to say about that?

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

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

**Sen. Iman:** Mr. Speaker, Sir, we could only hear the voice. What evidence is there to show that it is Gov. Sonko?

**The Speaker** (Hon. Lusaka): Order! Let me give further direction. I said that as the Senate you are the jury. Your time will come when you will look at all these things and make a judgement.

Proceed, Sen. (Prof.) Kindiki.

**Sen. (Prof.) Kindiki:** Mr. Speaker, Sir, I agree with you that the parties have a right to adduce the evidence they think will advance their parties. However, as a procedural question, I request your guidance whether it is in order for any kind of evidence to be broadcast. Hypothetically, the party can bring pornographic material as evidence.

I cautiously request a recommendation, where going forward, sensitive material that is of a nature that cannot be shared this way proceed in-camera, if it must proceed. That is what courts of law do.

The Senate cannot be a place for broadcasting profanity or material that could be such. I am not saying there is anything profane, just that we need to be careful. The

leeway is there, but the Speaker may have to guide us, so that we maintain a bit of privacy and contain material that should be consumed by everybody.

**The Speaker** (Hon. Lusaka): What is it, Sen. Kihika?

**Sen. Kihika:** Thank You, Mr. Speaker, Sir. It seems a bit disturbing that as much as counsel here want to bring whatever evidence to prove their case, I do not agree that they can bring anything. I believe there should be some procedure or process where maybe we are even able to authenticate what it is they are bringing in. We need some chain of custody to be able to make sure that the voice we are hearing belongs to whoever they are saying it belongs. We do not know all that.

I do not think they should be just throw in the kitchen sink to the wall and see what sticks.

**The Speaker** (Hon. Lusaka): Let us make progress. These materials were---

**Sen. Olekina:** On a point of order, Mr. Speaker, Sir. It will be proper for us to look at the evidence. Since we have an in-camera session, maybe at that point when we are deliberating, we can listen to such audio and video. It is not fair that our children are listening to this and we do not know the context or have the whole picture.

With a small clip of 30 seconds, we do not know whether it has been edited, so that it suits a certain narrative. We are the jury that is supposed to make the decision. If we are not happy with the way things are proceeding, it is right for us to raise them, so that we do not have to wait until the time when we will be talking.

**The Speaker** (Hon. Lusaka): Those videos were made in public when people were watching. One of them was in the *Nation Television* (NTV) and people were watching.

Going forward, when as you say that we go in-camera, we will be able to look at the evidence brought.

Proceed.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Mr. Speaker, Sir, I also bring it to your attention that we do not have those video clips. They were not served to us in advance. There is going to be miscarriage of justice if video clips are going to be played here that have not been served upon the Governor and his team.

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiru): Mr. Speaker, Sir, as to the question of the service, yesterday we met at the office of the Clerk of the Senate, where we all exchanged documents. We have been candid enough to disclose each evidence being brought forward.

I confirm that we served Mr. Harrison Kinyanjui's clerk with all the relevant evidence.

**The Speaker** (Hon. Lusaka): This is not a market. You have to respect the House. Stand when I give an opportunity.

Let us proceed.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Thank you, Mr. Speaker, Sir. Mr. Ogada, from what you have heard, what can you briefly tell this particular House?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, the concern that I have is the same concern that each and every Member has here. We are saying that some of the things we are hearing of are those that a parent sitting together with the children is not supposed to listen to or watch.

That is the Governor you gave us and those are the things we are watching. That is why we decided that enough is enough. We are not able to continue watching the same things with our children. So, we have made a decision that we impeach him.

**The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch):** Confirm to this House whether we have a certificate detailing where this particular video and audio clips have been procured from and that, that has been filed in this particular House.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, yes, there is a certificate and it was filed with the Clerk of the Senate.

**The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch):** Thank you. I will take you to Paragraphs 37, 38, 39 and 40. Kindly, speak to that particular issue.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, on Paragraph 38, the Governor, hon. Mike Mbuvi Sonko oversaw and authorized the financing of an illegal, irregular, extravagant, exorbitant and flashy trip to New York, USA by his daughter, Saumu Agnes Mbuvi, amounting to Kshs4.6 million.

The daughter was disguised as a Ward Administrator of Nairobi County to purportedly attend the County First Ladies Conference held during the 66<sup>nd</sup> Session of the Commission on the Status of Women in 2018.

**The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch):** Kindly explain that particular aspect.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, that is an absolute abuse of office from the onset, as you look at it. First, here we find him flying his daughter to the USA to attend the First Ladies Conference. The problem here is, one, the daughter is disguised as a ward administrator. If you look at the ward administrators we have in the Nairobi County, the daughter has never been a ward administrator.

Besides that, the daughter flies First Class to New York, costing the taxpayer Kshs840 million, which I know even the Speaker of this House maybe is permitted to travel using First Class, but I doubt. Very few Kenyans are allowed to travel First Class using public funds, but here is a case where they did.

**The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch):** Mr. Ogada, where in Paragraph 40 of your statement can we find the evidence of this exorbitant expenditure?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, it is on Page 1120.

**The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch):** Mr. Speaker, Sir, that is, Page 1120 of the third file. It is 9 (c). It is the red file. It is a dangerous file, and that is why it is red.

Kindly take the House through that evidence on Page 1120 as you explain.



**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, there is an affidavit to that effect of the officer who was basically entrusted to make sure that it happens.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, I think that witness can testify on that. We can go to Paragraph 41 then.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, on the same trip, apart from using First Class, we find the Governors' daughter being hired for a chopper at a cost of Kshs220,000 to go round New York City to see how beautiful the city was using public funds. She goes ahead to have an offsite party at a cost of 260 using public funds.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): That is 260 what? Tell us which currency?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, that is Kshs260,000. The same lady is transferred from the first ladies conference to Philadelphia at a cost of Kshs60,000. As she was in Philadelphia, she went to visit tourist sites at a cost of Kshs120,000 using Kenyan money.

She was accompanied by the media. Those media people were paid Kshs120,000. While she was around that place, they were able to spend around Kshs300,000 on ground transport. However, you remember she was flown at a cost of Kshs60,000 to Philadelphia, but ground transport within Philadelphia cost Kshs300,000.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): The documents that you have referred to, do they demonstrate where these colossal amounts came from? Who paid for that?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, it was paid for by the County Government.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Was that payment a valid payment? Was it supposed to be paid, and was she supposed to have received such particular benefits?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, part of the money was given direct to the airline through the agent who procured the tickets. On the *per diem* of Kshs2.6 million, a junior officer from the county was forced to go and withdraw using her name in a company of a bodyguard of the Governor. After withdrawing the cash, the bodyguard walked away with the Kshs2.6 million.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): On this, you have indicated that there is evidence that you wanted to be played. That is in Paragraph 40 of your statement. There is a video you wanted to be played.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, I have clip seven.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, maybe clip seven can be played. With your comfort, it does not have any derogatory remarks.

*(A video clip was played)*

Mr. Speaker, Sir, it is a party mode, I believe.

*(Laughter)*

I will take you to Paragraphs 41 and 42. Kindly explain to the House. Kindly explain to us because it is a bit funny. Who is that? I may not know him. What was he doing?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, you remember as the children of Nairobi were going home without food, others were out of school as a result of the diversion of their school fees, the Governor was in France doing party after party at the expense of service delivery in the County of Nairobi.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, thank you. Proceed to Paragraphs 41 and 42 of your statement, kindly.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, this is about persistent harassment and intimidation of officers and the County Executive Committee (CEC) Members. This includes blackmailing his CECs and Chief Officers (Cos) with one-year contracts, whose renewal he undertakes arbitrarily, leaving the officers jittery about their employment and creating a climate of fear, uncertainty and despondence.

To put this to perspective, the governor failed to renew the contract of 23 Chief Officers in May, 2019. This is a serious problem we have in the county. As MCAs, we have really tried to talk about it.

You will appreciate that the Nairobi City County is where 90 per cent of officers are in acting capacity. For example, I isolated the Finance Department. You remember that since the elections, we have been in office for about 40 months. You will be shocked that during this time in the finance docket alone, we have had 10 CECs. That is within three years. We have had eight Chief Officers in the same docket.

Mr. Speaker, Sir, that clearly talks about poor governance.

**An Hon. Senator:** On a point of order, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Continue. You will have your time to cross-examine

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, in regard to that, we will have one witness who will speak to that once I am done.

Mr. Speaker, Sir, with your permission, we have Video No.3.

*(A video clip was played)*

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): What was happening in that video clip, if it is within your knowledge?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, that is Ms. Janet Ouko, the then CEC for Education in the County, clearly describing the environment in which she was working.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): You will confirm that she is also a witness in this matter.

**Hon. Michael Ogada Okumu:** Yes.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, kindly let us go to Paragraph 43 of your statement. What are you telling us in short?

**Hon. Michael Ogada Okumu:** The Governor has not only sexually molested female Members of the County Executive, including his CECs and Chief Officers, as shall be demonstrated later, but has extended his detestable behavior to our women, including female leaders, by publicly exposing them to ridicule, odium contempt and embarrassment. For example, in Video No.1.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, with your permission, Video No.1 can be played.

*(A video clip was played)*

Kindly explain that embarrassing situation.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, that was brought in order to show how H.E. the Governor treats fellow leaders, especially women.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): I will take you to Paragraph 44.

**Hon. Michael Ogada Okumu:** The Governor violated Article 73 of the Constitution by failing to promote public confidence in the integrity of the Office of the Governor following his arrest and being charged for conspiracy to commit an offence of corruption to Section 47 (a) (3), as read together with Section 48 of the Anti-Corruption and Economic Crimes Act for knowingly conspiring to commit an offence of corruption, namely, embezzlement of public funds in the sum of Kshs357 million.

As a consequence, the Governor has been barred from accessing his office.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): What do you have to demonstrate to that? Is it in your evidence?

**Hon. Michael Ogada Okumu:** It is on Page 1154 and 1155.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, that is on the file labeled 9D. On page 1155 and 1156, kindly, explain to us quickly what you find in that particular document.

**Hon. Michael Ogada Okumu:** Those are charge sheets as evidence of him having been charged.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Read for us the particulars of the offence in Page 1154. Who has been charged?

**Hon. Michael Ogada Okumu:** The Governor---

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Kindly just read the names on Page 1154.

**Hon. Michael Ogada Okumu:** We have Kioko Mike Sonko Mbuvi Gideon alias Mbuvi Gideon Kioko Mike Sonko alias Mbuvi Gideon Kioko alias Mike Sonko Mbuvi Gideon Kioko---

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): That is okay. Who are those people?

**Hon. Michael Ogada Okumu:** One and the same person.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Who is that person with all those names in relation to these proceedings?

**Hon. Michael Ogada Okumu:** They are referring to the Gov. Sonko.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Which is the charge; Count No.1, on the same page?

**Hon. Michael Ogada Okumu:** Conspiracy to commit an offence of corruption.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): I will take you to the next page. That is Page 1158. On Count No. 4, what is the statement of offence?

**Hon. Michael Ogada Okumu:** Conflict of interest contrary to Section 42 (3) as read together with Section--- Particularly, the name is Kioko Mike Sonko Mbuvi Gideon alias Mbuvi Gideon Kioko Mike Sonko alias Mbuvi Gideon Kioko alias Mike Sonko Mbuvi Gideon Kioko alias Mbuvi Gideon Kioko Sonko.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Okay. Count No.11, what is the statement of offence? It is on Page 1161.

**Hon. Michael Ogada Okumu:** Money laundering.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Again, who has been charged?

**Hon. Michael Ogada Okumu:** Kioko Mike Sonko Mbuvi Gideon alias Mbuvi Gideon Kioko Mike Sonko alias Mike Sonko Mbuvi.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): That is okay. Page 1162, Count No.13. What is the statement of offence?

**Hon. Michael Ogada Okumu:** Acquisition of proceeds of crime contrary to Section 4 of the proceeds.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Who has been charged?

**Hon. Michael Ogada Okumu:** Kioko Mike Sonko Mbuvi Gideon alias Mbuvi Gideon Kioko alias Mbuvi Gideon Kioko alias Mike Sonko Mbuvi.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Who is this who has been charged in relation to these proceedings?

**Hon. Michael Ogada Okumu:** The Governor of Nairobi County.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Go to Page 1154. Kindly, state the court case number on the top left, the third sentence.

**Hon. Michael Ogada Okumu:** Case No.32 of 2019.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Which date?

**Hon. Michael Ogada Okumu:** 9<sup>th</sup> December, 2019.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Confirm that, that is a period that the Governor was still serving as the Governor of this particular county.

**Hon. Michael Ogada Okumu:** Yes.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Go back your statement, Paragraph 45. You wanted this particular House to do what?

**Hon. Michael Ogada Okumu:** He is incapable of performing his functions under Article 179 (4) of the Constitution as read together with Section 30 of the County Governments Act.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): I am referring you to Paragraph 44. There is a video clip that you intended to be played.

Speak to the microphone.

**Hon. Michael Ogada Okumu:** Video clip No.8.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, kindly allow video clip No. 8 to be played with your permission?

*(A video clip was played)*

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Who is the flashy person in that particular video?

**Hon. Michael Ogada Okumu:** That is the Governor of Nairobi City County.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Thank you. I will refer you to Paragraph 46. It speaks for itself.

**Hon. Michael Ogada Okumu:** The governor has further violated Article 73 of the Constitution and Section 8 and 11 of the Leadership and Integrity Act, 2012 on Public Trust and Professionalism, where he is on record admitting that he was intoxicated (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 his own words, he did say:

*“Hawa watu wa State House walini-confuse na pombe. By the time I was meeting the President for that signing, I was just seeing zigzag”.*

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Do you have anything to demonstrate that? Do you have any video to be played on Paragraph 46?

**Hon. Michael Ogada Okumu:** Yes, we have Video No. 5.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Thank you. Mr. Speaker, Sir. With your permission, kindly, allow Video No.5 to be played.

*(A video clip was played)*

We need volume, kindly.

It is not over. It was a better quality, but that is what it is.

Hon. Michael Ogada Okumu, what was that particular clip speaking to, very briefly?

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): It was of better quality, but that is what it is.

Hon. Ogada, what was that clip speaking to?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, what I see is a sober person sitting comfortable and signing a document in front of you, Mr. Speaker, Sir, and His Excellency the President.

I hope you will not confirm to us that he was actually drunk when you were standing behind him.

**The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch):** In terms of the words, I know it was not very clear. We can pack that for now.

Let us go to paragraph 48.

**Hon. Michael Ogada Okumu:** The Governor has always been unavailable even before he was charged in the law courts and barred from accessing the office.

In the earlier days, it can be confirmed that he was conducting his activities from his home based in Machakos, which is outside the jurisdiction of the County of Nairobi. He was elected to represent the people of Nairobi, but he was conducting the affairs from Mua, which is outside the county.

We refer to Video no. 4.

**The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch):** What is the violation in terms of gazettelement? I can see you have indicated ‘gazetted county boundaries.’

**Hon. Michael Ogada Okumu:** It is outside the gazetted county boundaries.

**The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch):** Mr. Speaker, Sir, with your permission, Video No.4, a few videos are remaining.

*(A video clip was played)*

That speaks to itself; it is self-evident. Let us go to Paragraph 50 of your statement.

**Hon. Michael Ogada Okumu:** The Governor has on account of locations violated Article 73 and Article 75 of the Constitution and Section 8 of the Leadership and Integrity Act 2012 on public trust, where he has constantly used his position to abuse public trust in county government by persistent use of abusing, embarrassing, inappropriate and unprintable words, which undermines and greatly demeans the office.

**The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch):** What do you have to demonstrate that?

**Hon. Michael Ogada Okumu:** Video 6.

**The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch):** Mr. Speaker, Sir, Video 6, with your permission.

*(A video clip was played)*

Kindly explain what you can hear and what you know about that video.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, that is basically about the language of the Governor, who should be setting a good example to the citizens of this county. In that clip, you will hear Hon. Kalembe Ndile saying, “*wewe sio mwewe*”

*unapewa kuku ya bure.*” Hon. Kalembe Ndile was claiming that the Governor refused to pay for the food he has been consuming in the same place.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Let us go to Paragraph 54 as we wind up.

What do you generally speak about that paragraph?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, it is in the public domain that the Hon. Governor was once convicted at the Mombasa Law Court in Criminal Case No.1675/1997, charge of failure to attend court; that was Mbuvi Gideon Kioko.

Secondly, he was charged on Case No.1727/1996, charge of failure to attend court. The other one is Case No.1584/2000, charge of obtaining money by false pretense under the name Mike Norual Muoki Mboo. Case No.4, 2464/2000, charge of conspiracy to defraud in the name of Michael Muoki.

The last one is Case No.630/98 sentenced and committed to imprisonment in Shimo la Tewa under the prison number in Mombasa. It is also on record that the Governor admitted that he escaped from lawful custody following his admission at the Coast General Hospital. That escape could only be unlawful.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): What do you have to demonstrate on that particular issue?

**Hon. Michael Ogada Okumu:** Video No.10.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, that is the last video.

*(A video clip was played)*

What do you have to say about that bragging post by the Governor?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, based on the evidence that we can see, we can clearly see that the Governor is used to being in custody. Basically, it is nothing strange to him.

I hope that is not the best of examples that we need to set for our children. The only thing that we request this honourable House is to help and save Nairobians to have focused leadership.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): I will refer you to the documents on the affidavit. You can look at it.

**Hon. Michael Ogada Okumu:** Yes.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Kindly, speak to that.

**Hon. Michael Ogada Okumu:** These are documents dated 1<sup>st</sup> October 2010 from the Office of Vice-President and Minister of Home Affairs.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): On which date?

**Hon. Michael Ogada:** 1<sup>st</sup> October, 2010.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Read it for us.

**Hon. Michael Ogada Okumu:** Confidential report on Ex-Kamiti Prisoner, Mbuvi Gideon Kioko. The above referred person was a prisoner at this institution, during the period between 2000 and 2001, specifically as a convicted prisoner and a remand prisoner. From our archives, we have been able to compile the person's records at this institution as given below. True certified copies of the record are enclosed herein as well.

Mr. Speaker, Sir, from the documents before us, I can see that the date of escape from the Shimo la Tewa Prison is 16<sup>th</sup> April, 1998.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, that is the date of escape of who and from where.

**Hon. Michael Ogada Okumu:** That date indicated, 16<sup>th</sup> April, 1998, is the date of escape from Mike Mbuvi Gideon Kioko from Shimo la Tewa Prison. There is also a date of recapture indicated as 17<sup>th</sup> November, 2000.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, Mr. Ogada has elucidated a lot about the grounds of your accusation. To that extent, I would like to ask you in passing about the diversion of funds meant for bursaries. Why do you blame the Governor for that?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, the Governor is basically the CEO of the county and oversees everything that takes place within the county.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Ogada, how do you connect the Governor to the issue of Dandora Stadium and the indictment by the PPRA? How do you connect the Governor to that particular indictment?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, the Governor is the CEO and has several advisors, both from the technical team and the PPRA. The only thing that he could do to save Nairobians is to make sure that the stadium was done according to specifications without giving in to the so called cartels, by allowing them to change and vary documents at will.

Verification was done when the stadium was downgraded from the concrete terraces, while the cost of the tender remained the same. The Nairobi City County Government in the end lost colossal amounts of monies.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Ogada, in short, what would be your closing remarks based on the evidence that you have adduced?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, mine is to request this honorable House as the defenders and the protectors of devolution to rise to the occasion and ensure that devolution is defended and protected. The only thing that this House can do to assist the residents of Nairobi County who have been groaning is by ensuring that the monies being transferred for devolved functions are being used for the same functions that they have been made for.

The one thing that I would like to put across is that we have put our case with very good pieces of evidence. The only thing we request of this honorable House is to rise to the occasion because devolution is the business of this House. The Nairobi City



County Assembly has done its part. We have ensured that the Governor is held accountable.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Ogada, what can you say about documentary evidence that you have referred to? Would you want those to be adduced as evidence in this particular Motion as your personal evidence?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, I would want all the evidence we brought yesterday to be admitted as evidences, including the documentary evidences.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, that will be end of examination-in-chief.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, before the closure of the examination-in-chief, I would like to go on record that we have objected to the production of those documents.

**The Speaker** (Hon. Lusaka): Proceed to cross-examination.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, did Mr. Ogada swear an affidavit before this Senate to affirm that what he is telling this honourable Senate is the truth, the whole truth and nothing but the truth?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, yes, I swore an oath.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Where is your oath, Mr. Ogada? The longer we take on this issue the more time we waste. Do you have an oath that you can pinpoint that you took?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, I have my witness statement clearly indicated and filed.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, the fact is that Mr. Ogada has not sworn an affidavit. Mr. Ogada clearly stated in his evidence-in-chief that he made the statement on 3<sup>rd</sup> November, 2020. Is that right? In his introductory remarks, Mr. Ogada said that he made his witness statement on a certain date. Is that right?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, I stated that we prosecuted the impeachment Motion on 3<sup>rd</sup> December, 2020.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, that means that the statement that Mr. Ogada is relying upon is not dated. Is that correct?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, I think that once a personal statement is signed, that is good enough.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): The statement is not dated.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, the statement is signed.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Answer my question.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, the statement is signed.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Do you have an equivalent statement, an affidavit or witness statement that you made

before the Nairobi City County Assembly before, on or subsequent to 3<sup>rd</sup> December, 2020.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, what I had in the Nairobi City County Assembly was a Motion that---

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Ogada, show some respect to this honourable House and the Nairobi City County Assembly. Did you or did you not have a similar witness statement before the county assembly on, before or immediately subsequent to 3<sup>rd</sup> December, 2020?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, I had a Motion.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, this witness is being dodgy and the longer we take with these sort of responses, the more difficult it is for us to make useful time of what it actually---

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiru): Mr. Speaker, Sir, it would be important for the witness to be protected from harassment. He has answered that question several times.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): May I ask you, Mr. Ogada. Did you or did you not have a witness statement before the Nairobi City County Assembly?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, I have said that I did a Motion and that is the procedure. We do not do statements in the Assembly.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Ogada, I will come to the Motion. Do you or do you not have a statement?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, it is not the procedure of the county assembly to have statements. We do Motions.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Ogada, which Standing Order are you relying on? Please, do not waste time. I am asking you because you are a witness and your advocates are assisting you. You want the Governor to lose his seat on account of your evidence. Please, listen to my question.

I would like to demonstrate utmost respect to your seat and honourable Members. If he does not answer the question, the longer it takes for us to move forward because it is relevant to the Governor because he lamented that he has never been served with any statement of a similar nature. I will take it that the witness has declined to answer the question, which bears relevance.

Mr. Ogada, if you look at your Statement, it is addressed to the Senate and the hon. Speaker.

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

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

**Sen. Nyamunga:** Thank you, Mr. Speaker, Sir. As we continue with the proceedings, the lawyer for the Governor should be addressing you and not the witness because that is a bit of intimidation. The procedure of the House is addressing the Chair is to address the Chair.

**The Speaker** (Hon. Lusaka): Okay. Proceed.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, hon. Member, I did not mean to intimidate you because counsel was looking and addressing the witness of Nairobi City County Assembly. Are you familiar with Standing Order No.67 of the County Assembly Standing Orders?

**Hon. Michael Ogada Okumu:** Yes, that is the procedure for removal of Governor.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): I am asking whether you are aware.

**Hon. Michael Ogada Okumu:** Yes, I am.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): It is required that the Notice of Motion shall be signed by the Member who affirms that the particulars of allegations contained in the Motion are true to his knowledge, and the same verified by each of the Members consisting at least a third of all the Members of the County Assembly.

**Hon. Michael Ogada Okumu:** Yes, Sure.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): You look at the Motion dated 25<sup>th</sup> November, 2020. Did you sign it?

**Hon. Michael Ogada Okumu:** Yes, sure.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Did you sign it?

**Hon. Michael Ogada Okumu:** The Notice of Motion to the Speaker was signed by me.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Does it contain an affirmation that the particulars of allegations contained in the Motion are true to your knowledge. Does it contain that?

**Hon. Michael Ogada Okumu:** Yes, it has.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Show us where it contains that. There is nowhere in your Notice of Motion containing that affirmation.

Mr. Okumu, you have not answered my question. You are being dodgy. Is it not true that His Excellency the Governor on 23<sup>rd</sup> November complained about you embezzling Nairobi City County Funds on account of a trip that you were to make to Dubai, but you did not travel.

**Hon. Michael Ogada Okumu:** That is an irrelevant question.

**The Counsel of Nairobi City County Governor** (Mr. Harrison Kinyanjui): Answer the question; Yes or No?

**Hon. Michael Ogada Okumu:** Listen to me when I am talking. Those are irrelevant things, they are sideshows. I said he was paid Kshs300 million in the county.

**The Speaker** (Hon. Lusaka): Order! If you speak at the same time, I will not follow what you are saying. Be systematic.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): I beg that this witness is asked all manner of questions. The only interruptions were implicating, before you no more than four interruptions. Instead of the witness answering,

he is saying we are being dodgy. Is he in a particular way aware that this was lodged against him? If he can answer, we will be brief. Let me repeat my question so that we can save time. It is true that there was in fact a complaint made against you by His Excellency the Governor on 23<sup>rd</sup> November, 2020 with the Directorate of Criminal Investigation (DCI) that you had received money in purported travel to Dubai, but you never travelled.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, that is a sideshow and an irrelevant issue to this House. Number one, he understands the issue of imprests. It is totally outside what we are doing here. It is irrelevant.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, this is a relevant question which goes to motive and character. Sorry---

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

**Sen. Linturi:** Mr. Speaker, Sir, I am kindly asking you to protect the lawyer of the Governor when he is asking questions to make sure they answered. The questions being raised have a serious dimension on his character and integrity. If he can do that, how is the Senate required to trust and believe what he is saying? It is important for him to answer.

**The Speaker** (Hon. Lusaka): Okay. Witness, try to answer what you are asked as precisely as possible.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, on the issue he is raising of a trip to Dubai, I have been an MCA for donkey years, starting from being a councillor and nothing has been raised against me. I have never been involved in any criminal activities, neither have I been arrested. In any case, an imprest of a safari in the month of December, I was prosecuting this case so that I can travel. However, they are trying to make it look like I did not travel, which is not the case. We understand the issue of imprest. According to the policy, you have to surrender it within 12 months. Within a week---

**Sen. Olekina:** On a point order, Mr. Speaker, Sir

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

**Sen. Olekina:** Mr. Speaker, Sir, this is the Senate of the Republic of Kenya and we are performing an important function. We are here to defend the interest of counties and their governments. It would be proper that when the witness is responding to questions to substantiate. I have heard the witness say that he is supposed to surrender imprest within 12 months. However, the PFM Act is clear. You surrender imprest within seven days on return from a trip. If the witness can respond to the question asked by the lawyer, it will help us. We are listening and would like to follow.

First, I want to know whether the statement was signed. I am still lost. It would be proper for us to know the character of the witness to determine whether this is true. We can be fabricating things here or be confused in following the procedures. I would like to request that you direct the witness to respond to questions as asked, so that we can follow. We are not able to make notes.

**The Speaker** (Hon. Lusaka): That is what I have directed. In any case, whatever answer he gives, it will assist you to make an opinion on how the witness is. If he is not responding to what has been asked, take note and you will raise it when the time comes and we are making the judgement.

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiru): Mr. Speaker, Sir, on behalf of the County Assembly, we will seek your indulgence and guidance as to when the character evidence is called into question. The rules of evidence are clear. The Evidence Act bears us witness. For the moment, you open up to the character of a witness it also invites your character to be put into question.

We were told and you gave a ruling that we shall not have an opportunity of cross-examining the Governor. Where shall we rebut the character evidence of our witness if we shall not have the Governor on the stand? There must be equality of arms if character evidence is called into question, we must be given an opportunity to rebut it.

**The Counsel of the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Hon Members, this hon. House was treated to an array of clips and audio tapes. This witness said that we look at the character of the Governor and assault him on that score, but he is not prepared to answer the issue about his own conduct at the county assembly being referred to by the Director of Criminal Investigations (DCI) on account of his embezzlement of money. He says that this is a side show. That is his response. Like they say, we must have equality of arms.

Thank you.

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

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

**Sen. Wetangula:** My learned friend, Mr. Harrison Kinyanjui, is a very experienced lawyer. I would want to encourage him to cross examine the witness; do not engage in arguments with him. He should ask him questions, wait for an answer, and move on. When you engage in an altercation with a witness, both of you look like you are not in a court of law. So just ask him questions and do not bother drawing conclusions for us; we shall draw them. You are here to ask questions to the witness and find out what you want to find out, to help the House.

**The Speaker** (Hon. Lusaka): Counsel?

**The Counsel of the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Let me proceed.

Hon. Ogada, is it true that you received Kshs823, 324 to travel to Dubai on a trip on 23<sup>rd</sup> October, 2020? Is that correct?

**Hon. Michael Ogada Okumu:** That is very correct.

**The Counsel of the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Hon. Ogada, did you receive from Nairobi City County Assembly Kshs823, 324 shillings to travel to Dubai?

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Just answer. Just answer, is it yes or no?

**The Counsel of the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Hon. Ogada, did you travel to Dubai? Mr. Ogada, did you travel to Dubai?

**The Speaker** (Hon. Lusaka): Your microphone has a problem, because we cannot---

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, what I am saying is that we are engaging in a side show. That is a side show.

**The Speaker** (Hon. Lusaka): Just answer the question so that we are able to make progress.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, as the Vice Chairperson of the Budget Committee, the members of the Budget Committee and I was given trip to travel for study to Dubai. Due to the engagement, I did a letter to the Chief Officer Finance telling him that I will attend the next meeting because I was totally engaged in the case in front of us. So I did not manage to travel, but we agreed that I would travel for the next training.

**The Counsel of the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Hon. Ogada, those are public funds that you received for a specific trip. While standing there, you have accused the Governor of misusing public funds. He allegedly pocketed public funds. He is allegedly facing criminal offences with regard to public funds. You, yourself, have you returned a penny of that money for not travelling?

*(Mr. Ndegwa Njiiru consulted loudly)*

Mr. Speaker, Sir, we have all these whispers going on there with Mr. Njiiru. I beg your indulgence.

**The Speaker** (Hon. Lusaka): Order!

**Sen. Olekina:** On a point of order, Mr. Speaker, Sir. I want to repeat this. This is a very important process in the Senate of the Republic of Kenya. The question is, should a witness be assisted by the attorney? In every question, the witness is seeking clarification from the lawyer on how to answer the question. Should we proceed like that?

**The Speaker** (Hon. Lusaka): The attorney is there to assist the witness---

*(Loud consultations)*

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

**The Speaker** (Hon. Lusaka): Yes, Sen. (Dr.) Langat.

**Sen. (Dr.) Langat:** In order for us to move on, I tend to think that some questions require only a “yes” or a “no” answer. It is so simple. That does not require any consultation from somebody. These are the kinds of question where a “yes” or a “no” answer will do. It is so simple.

**The Speaker** (Hon. Lusaka): Witness, I have directed that you answer the questions that you are asked. Give any answer and leave the conclusions to the court. This is being recorded on the Hansard. We will look at your responses and that will assist us in arriving at a conclusion. So, just answer what you can answer. What you cannot answer, say that you are not able to answer, so that it is also on record.

**Hon. Michael Ogada Okumu:** I am much obliged.

**The Counsel of the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, I beg that during cross examination, my learned friend, Mr. Njiiru, should stay put. He will assist his witness in re-examination, if any. I have only asked four questions in a space of 22 minutes.

Hon. Ogada, have you returned a penny of that money?

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

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

**Sen. Omogeni:** Mr. Speaker, Sir, you know we are doing ---

**The Speaker** (Hon. Lusaka): Your microphone is off.

**Sen. Omogeni:** Mr. Speaker, Sir, as Sen. Orengo rightly put it when we began these proceedings, these are time-bound proceedings. Looking at the demeanor of the witness, if it takes five minutes to answer one question which requires a “yes” or “no” answer, these proceedings may never come to an end. I urge you to remind the witness that we do not have the luxury of time. If you ask me whether I have refunded money, I will either tell you yes or no, then the Senate will draw conclusions. He should not take five minutes to answer a very simple question. It is not fair.

**The Speaker** (Hon. Lusaka): Let us proceed. Let us minimize the interventions.

**The Counsel for the Nairobi City County Assembly** (Mr. Ndegwa Njiiru): Only one guidance, Mr. Speaker, Sir, that Mr. Kinyanjui should not appear to approbate the witness so that the witness can stick to the relevancy of the question before the assembly.

**The Counsel of the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, the relevancy will come in submissions. I think Mr. Njiiru is interrupting me endlessly and I stand guided.

Have you returned a penny of the money that you took from the county assembly?

**Hon. Michael Ogada Okumu:** No.

**The Counsel of the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Hon. Ogada, you have therefore unlawfully appropriated Kshs823, 000 from the city county assembly. Is that correct?

**Hon. Michael Ogada Okumu::** No.

**The Counsel of the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Hon. Ogada, is it true that you have been summoned by the DCI to answer on these issues?

**Hon. Michael Ogada Okumu:** No.

**The Counsel of the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Hon. Ogada, are you aware that the alleged Motion which you based your impeachment proceedings upon was not a live Motion because there was an earlier Motion by Hon. Peter Imwatok dated 20<sup>th</sup> February, 2020, to impeach the Governor?

**Hon. Michael Ogada Okumu:** This is a totally different Motion. It is not the same one.

**The Counsel of the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Look at the date of your Motion. What is it dated?

**Hon. Michael Ogada Okumu:** The Motion was on 3<sup>rd</sup> December.

**The Counsel of the Nairobi City County Governor** (Mr. Harrison Kinyanjui): The Motion is dated 25<sup>th</sup> November, 2020. Is that correct? Is that correct?

**Hon. Michael Ogada Okumu:** That is the Notice of Motion. The Motion was done on 3<sup>rd</sup> December.

**The Counsel of the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Did that Notice of Motion have any other document accompanying it when you lodged it?

**Hon. Michael Ogada Okumu:** Yes, we had the signatures of the members.

**The Counsel of the Nairobi City County Governor** (Mr. Harrison Kinyanjui): The signatures of the members?

**Hon. Michael Ogada Okumu:** Yes.

**The Counsel of the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Do you have a copy of that before this hon. Senate?

**Hon. Michael Ogada Okumu:** Yes.

**The Speaker** (Hon. Lusaka): Yes, Sen. Omogeni.

**Sen. Omogeni:** Mr. Speaker, Sir, maybe I should assist counsel for the governor so that we do not waste a lot of time. All those documents are in this file including the signatures and the dates.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): I wanted the witness to affirm that because that came from the Speaker of the Nairobi City County Assembly. I wanted him to pinpoint to us his own document.

Mr. Speaker, Sir, there are two sets of signatures required in an Impeachment Motion, which is why I am asking. The first set is for the one third and the second set for the two thirds majority.

Hon. Ogada, do you have your Impeachment Motion accompanied by any other document other than itself?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, the procedure for a Notice of Motion is a third of the Members, which we duly did and forwarded to the Speaker. We met the threshold. The rest is for the County Assembly.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Hon. Ogada, are you familiar with Standing Order No. 67(5) of the Nairobi City County Assembly Standing Orders, which requires signatures in support of a Motion for removal of a governor by impeachment to be provided?

**Hon. Michael Ogada Okumu:** Yes, I am aware.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Do you have an open space against each name for the purpose of appending signatures?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, mine was to forward a Notice of Motion. The rest is basically the work of the Speaker of the County Assembly. He looked at it and we met the threshold. The requirements as per the Standing Orders were met. That is why we prosecuted our Motion in the County Assembly.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Did you furnish The governor with you evidence?



**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, to the best of my knowledge, the governor was furnished with all the necessary documents he required at that time.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Are you familiar with standing Order No. 72(2) of the County Assembly Standing Orders? Read it.

**Hon. Michael Ogada Okumu:** It says-

“The person being removed from office shall be availed with the report of the Select Committee together with any other evidence adduced and such note or papers presented to the Committee, at least three days before the debate on the Motion.”

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Did you have a select Committee on your Motion dated 25<sup>th</sup> November 2020?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, I have just answered and said that I met the requirements. All the other procedural issues were done.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Do you have a special Committee report?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, all the documents from the County Assembly were forwarded to them and others were forwarded to the Senate.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Is it your supposition that what Mr. Speaker has is a sum of the documents in totality for the Impeachment Motion from the Nairobi City County Assembly? Is that correct?

**Hon. Michael Ogada Okumu:** Having met the requirements and procedures---

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Please answer ‘yes’ or ‘no’.

The totality of the documents which were submitted by the Speaker of the Nairobi City County Assembly are all that there is concerning your Motion?

**Hon. Michael Ogada Okumu:** Because that---

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): No, no, no. Please. Sen. Omogeni has said---

**The Speaker** (Hon. Lusaka): Order. Let us not talk at the same time.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, it is good if he allows me to answer. Once a Motion mover has met the requirements and the threshold and has done it in the County Assembly, the issues of communicating with the Senate is basically the work of the County Assembly Speaker.

Whichever documents he forwarded are the correct ones.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Hon. Ogada, so you have no proof that the documents you allege were served on the Speaker in compliance with Standing Order No. 72(2) of the Nairobi City County Assembly Standing Orders were served?

**Hon. Michael Ogada Okumu:** I do not need to have proof.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Listen and say ‘yes’ or ‘no’ kindly. Do you have any proof?

**Hon. Michael Ogada Okumu:** The Senate and the County Assembly know the requirements.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Hon. Ogada, do you have proof?

**Witness for the County Assembly** (Hon. Ogada): That is the work of the Speaker.

**The Speaker** (Hon. Lusaka): Counsel, allow him to respond.

**Hon. Michael Ogada Okumu:** That is basically the work of the Clerk of the County Assembly, the Speaker of the County Assembly, the Clerk of the Senate and the Speaker of the Senate. It is not my work.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Hon. Ogada, you have referenced all these documents. For example, look at your ground one, Vol. 1, bundle 5; the thick blue file. Did you furnish the governor this bundle?

*(The Counsel for the Nairobi City County Assembly  
(Mr. Ndegwa Njiru) rose in his place)*

**The Counsel for the Nairobi City County Assembly** (Mr. Ndegwa Njiru): Which page are you referring to?

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): No, no, no. Give him and sit down.

Did you furnish the governor with your Vol.1, bundle 5?

**Hon. Michael Ogada Okumu:** Yes, we did and that is why---

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): No, no, no. Not for these proceedings. We are still at the County Assembly proceedings.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir---

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Listen to my question so that we save time. Did you furnish the governor with this bundle?

**Hon. Michael Ogada Okumu:** We gave the governor all the necessary documents.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Do you recall when you gave him?

**Hon. Michael Ogada Okumu:** That is in the records of the County Assembly.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): So, you have no proof that you gave him? As at the time you were making your Impeachment Motion, these were supposed to have been accompanying your own file. Is that correct?

**Hon. Michael Ogada Okumu:** That is why I talked about them because they were there.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): You recall that your Motion is dated the 25th of November, 2020.

**Hon. Michael Ogada Okumu:** Look at page 404, Volume I and 405. It is perjury, wrong and against God's will and dictates and commands to lie. Therein is a copy of Court Order in Petition E/371 of 2020. Would you confirm that it is dated the 30<sup>th</sup> of November, 2020?

I am sorry it is page 404 and 405.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Do you confirm that is an order issued by the High Court in Petition E /371 of 2020?

**Hon. Michael Ogada Okumu:** Yes, I can see.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): It is a lie when you allege that on the 25<sup>th</sup> of November 2020, you lodged these documents and furnished the governor with them. Please answer the question as per the Speaker's direction so that we move forward

**Hon. Michael Ogada Okumu:** Yes, I can confirm that we gave the governor all the documents he required.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): I am referring to page 404.

**The Speaker** (Hon. Lusaka): Order. What is your intervention, Sen. Wako?

**Sen. Wako:** Thank you, very much, Mr. Speaker, Sir. I think we should all remember that this is not a court of law although it is a *quasi-judicial* proceeding. Therefore, we should confine ourselves to the issues at hand.

The line of questioning, I am now hearing that you should first of all establish whether this witness, under Standing Orders of the County Assembly--- Is what he is asking a responsibility of this witness, the Clerk or the Speaker of the County Assembly? It ought to be questioned whether that document is there or not, and so on.

Mr. Speaker, Sir, to my understanding, the Leader of Minority, you normally leave it to the Speaker and Clerk to forward the documents up here. When they come here, you can again bring them on that rule.

The fourth one, in order to save time, is that on some of the issues whether a document is there or not, the documents speak for themselves. It is something that can be mentioned in submissions. I am just saying this because of the time factor. I know that my learned friend can question you for two or three days.

Mr. Speaker, Sir, if you can just limit to the issues at hand and realize that these are quasi-judicial proceedings and not the proceedings in a court of law. These are not criminal proceedings, if I may say so or civil proceedings. It is quasi-judicial, which more or less says that without undue regard to technicalities, focus on the issues at hand.

**The Speaker** (Hon. Lusaka): Yes, that is true.

Sen. Cherargei, what is your point of intervention? A brief one because we have less than one hour.

**Sen. Cherargei:** Mr. Speaker, Sir, just a brief one. I think my learned senior, the Attorney General *emeritus* should have followed the thought of questioning. If I heard correctly, the counsel for the Governor was questioning just before at the level of the County Assembly. He was not questioning at the tail-end why it is here. It is important that we also follow, so that we do not get misled.

Thank you.

**The Speaker** (Hon. Lusaka): Sen. Halake, proceed.

**Sen. Halake:** Mr. Speaker, Sir, we need your guidance. This being a quasi-judicial process, perhaps, there is what you need to remind ourselves, as Senators and

from your Chair. The kind of interruption and vested interests would have disqualified us to be even near as jury. Since we are being watched, it is for us to show impartiality as we listen, so that our vested interest do not seem to come to the fore as it is doing now.

Thank you.

**The Speaker** (Hon. Lusaka): Order! We need to---

*(Sen. Cherargei spoke off record)*

**The Speaker** (Hon. Lusaka): You are off record. You do not have the microphone. Order! Take your seat.

Hon. Senators, I did mention---

*(Sen. Cherargei spoke off record)*

I have not even said anything. I want to say something and you are saying "I cannot allow." How do you know what I am going to say?

As I did indicate in the morning, we are a jury and must try as much as possible to do a lot of listening then, we will have our opinion when we meet. We will look at the evidence that we would have gotten from the listening.

Let us try to minimize the interjections. As I said, we are time-bound. Proceed, Counsel.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): Why do we not allow the Counsel? What is your point of order?

**Sen. Kinyua:** Mr. Speaker, Sir, we are here to listen. That is why we want the questions to be asked, so that we can follow. Somebody should not assume any role. We are here to listen. You learn a lot by listening. That is why I am here keenly listening.

Any question that they can ask, we are here to listen and that is why we set this day to listen, so that we can be clear in what is being discussed. We will make a decision after listening. However, nobody should insinuate sinister motive about anything that somebody asks. We are here to listen.

**The Speaker** (Hon. Lusaka): Let us listen.

**Sen. Kinyua:** Mr. Speaker, Sir, even watching videos, we can still watch videos.

**The Speaker** (Hon. Lusaka): Okay. Let us listen.

Counsel, proceed.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, thank you very much. Just in a second, with tremendous respect to my very able legal senior, Sen. Wako. The basis and the contextual order in which I was asking that question is because the Speaker made a ruling pursuant to your Rule No.29.

I had made a request for invocation of Rule No.19 for rejection of these documents. The thrust, therefore, of my cross-examination is to demonstrate using their

own evidence by the County Assembly. It was not feasible to have a document dated 30<sup>th</sup> November on the 25<sup>th</sup> November to proceed with the impeachment.

Mr. Speaker, Sir, therefore, I have supported that and that was the basis and the context. In other words, the subsuming of my preliminary objection into the main hearing is indifference to your ruling. I do not wish to vex you; I beg your patience.

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiru): Mr. Speaker, Sir, only one thing. The evidence that Mr. Kinyanjui is seeking to lead the witness to is actually placed contextually in a preliminary objection. You did give your direction in the morning that these matters shall be argued concurrently.

When Mr. Kinyanjui coerces a witness in that manner---

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, I am not coercing. Allow me to proceed, with respect.

**The Counsel for the Nairobi City County Assembly** (Mr. Ndegwa Njiru): I am on my feet, Mr. Kinyanjui, if you may.

The whole aspect is the question and context of the matter before us. That is what the witness is addressing. Mr. Kinyanjui is not even giving time to the witness to answer, even when the witness is candidly answering the question. He is just coercing him. We seek for the protection of our witness.

**The Speaker** (Hon. Lusaka): Okay. Proceed.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, I have been very patient with this witness. As a record, the honourable Members will bear me out. Let me proceed. You do confirm that you also have other documents that are subsequent to in their dating the 25<sup>th</sup> November, 2020 in your bundles.

**Hon. Michael Ogada Okumu**: Mr. Speaker, Sir, as I had said, filing documents with the Senate is basically the work of the Clerk of the County Assembly, and they did file the documents which were necessary.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): You are aware that you have orders that were actually in consequence of the proceedings in the High Court touching and implicating the Nairobi Metropolitan Services (NMS). Is that right?

**Hon. Michael Ogada Okumu**: Yes.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Those orders were issued subsequent to your Motion of Impeachment. Is that correct?

**Hon. Michael Ogada Okumu**: Mr. Speaker, Sir, since I am not the legal officer in the County Assembly, I might not know the cases which are in court. I was basically prosecuting---

**The Speaker** (Hon. Lusaka): There is an intervention from the Senate Minority Leader.

**The Senate Minority Leader** (Sen. Orenge): Mr. Speaker, Sir, I am standing up because of what I had raised earlier. For the case of the County Assembly, they have hardly one hour and they have got two witnesses. Mr. Kinyanjui, the way I look at the evidence which is on record, probably he needs another two hours to cross-examine.

The problem is that we did not have a pretrial process, so that there are agreed documents. For Mr. Kinyanjui, may I suggest that if you find at the tail-end he has not dealt with the substantial issues and take all his time on procedural issues.

Mr. Speaker, Sir, in a trial of this nature, I wanted to propose to you that even the Evidence Act does not apply. The Evidence Act clearly states where that statute applies. Even in quasi-judicial proceedings, like the commissions of inquiry, you will find most of the time, they state clearly that the Evidence Act will not apply.

In the Senate, the most important rule is the Rule of Relevance. That is a substantial rule. So long as you are relevant, even you, Mr. Speaker, Sir, cannot stop me. However, because we are time-bound---

I pity both sides because the case before us is neither being made out nor being rebutted. We are just dealing with issues that have got no substance. Article 159 of the Constitution talks about substantial justice as opposed to technicalities.

As the Attorney-General emeritus has said, these are not judicial proceedings. In fact, I may say, what we are addressing here is basically a political question. Like they say in the United States of America (USA), impeachments address political questions. That was said even in the Gov. Wambora case.

So, I would urge that we use the time usefully so that there is quality of arms. I know that we have only two hours. I guess if Mr. Ndegwa also takes the same time cross-examining the other side, by 6.30 p.m., we will be complaining that let have another day or two more hours. However, we are time bound and you cannot do it. You must report the outcome of these proceedings by Friday.

**The Speaker** (Hon. Lusaka): Okay. Sen. Wetangula, take two minutes so that we proceed.

**Sen. Wetangula:** Mr. Speaker, Sir, there is a book called *The Imaginary Invalid* by Moliere, where he says in many situations, patients die out of complications arising out of the treatment they get other than the ailments they have.

I want to encourage my distinguished learned juniors at the Bar, that you have issues placed before this House. Attack those issues, discount them if you can. Mr. Kinyanjui, your preliminary objection was a matter for submission and not for evidence. The witness has given evidence. Attack the evidence. You know the allegations that have been brought here. You will end up exhausting your time like Sen. Orengo said, and you have not discounted a single allegation against your client.

**The Speaker** (Hon. Lusaka): Sen. Ochillo-Ayacko, one minute.

**Sen. (Dr). Ochillo-Ayacko:** Thank you, Mr. Speaker, Sir. I must declare my interest. Counsel Kinyanjui and I were in the same university at the same time and in the same class.

I suggest and propose to him that you do not have to insist on yes or no. Just note that there was no answer for it. It will enable us progress so that if the witness is slow, it could be to the disadvantage of the people presenting through that witness. That way, we will be able to utilize this time effectively and efficiently.

**The Speaker** (Hon. Lusaka): Sen. M. Kajwang, proceed.

**Sen. M. Kajwang:** Mr. Speaker, Sir, when we are considering impeachment by way of a Committee, it has been established that the presentation of evidence in the four hours available, we have traditionally given three hours for the evidence in chief, 30 minutes for cross-examination and 30 minutes for the re-examination.

I think that is the point that Sen. Orengo has been attempting to canvas since morning. Since we did not have that clarity, we must find a way of making a judicious decision that will guide us tomorrow. This is because tomorrow the Executive is supposed to present its evidence.

To avoid this kind of situation, you may want to consider how to deal with today but give guidelines for tomorrow in line with the tradition that has been there in Committees.

**The Speaker** (Hon. Lusaka): Sen. Wamatangi, proceed.

**Sen. Wamatangi:** Mr. Speaker, Sir, this is an issue that I have raised every time this House has had to consider impeachment of any governor. I have raised it consistently. Even the last time, I insisted that this House must address itself to Standing Order No.75(2). In addressing itself to that Standing Order, then we shall find the answer to what Sen. Orengo has raised all the time.

Standing Order No.75(2) provides that

“The Senate sitting in Plenary or Special Committee appointed under (1), shall within 10 days,

- (a) Investigate the matter
- (b) In the case of a special Committee or even plenary, report to the Senate on whether it finds the particulars of the allegations against the governor to have been substantiated.”

Mr. Speaker, Sir, I raise this matter because consistently, we have put ourselves in a straight jacket that we limit ourselves all the time. We always limit ourselves to gazetting two days. The Standing Orders are very clear that after viewing such bundles of documents and listening to the evidence, we are supposed to investigate the matter and then report even when we are sitting as a Committee of the whole House.

As the matter is raised by Sen. Orengo, if we do not address ourselves subsequently to this issue, in my view, we shall never be able stand up and say that we have the matter the adequacy of time and address that it requires. We need to address that.

**Sen. Murkomen:** Mr. Speaker, Sir, before I raise the issue I want to raise, I suspect Sen. Wamatangi has misapplied himself on the provision of Standing Order No.75 because the 10 days are cumulative. That includes exchange of documents, preparation of votes and so on. Therefore, 10 days are not for the hearing. We are time bound like Sen. Orengo has ably canvassed here for the better part of these proceedings from morning.

I want to suggest a practically solution to the counsel. We have only one hour and eight minutes to complete the four hours. To the counsel for the county Government, if it is okay with you to give, I will give him a suggestion on how he will share the remaining

one hour and eight minutes between his two witnesses then he can allocate for cross-examination certain number of minutes to the counsel for the Governor.

For the comfort of the counsel of the Governor, he needs to know that we are not in a fully court process. All the information need not to come through cross-examination. It can even come from a way of closing submissions. For as long as the information gets to these Senators, nobody is so *stricto sensu* following the issue of procedure, so that we save time.

We are not a court of law where you follow whether the witness statement was verified or not. For as long as the information is submitted on both sides, it will be achieved.

Mr. Speaker, Sir, we have only one hour and seven minutes because I have already taken one minute. How can they divide that time among themselves so that we are sure that by 7.20 p.m., when the four hours are over, they will have finished?

**The Speaker** (Hon. Lusaka): Lastly, let us hear the Senator Majority Leader. We are going to what we said that we shall end up talking.

**The Senate Majority Leader** (Sen. Poghiso): Mr. Speaker, Sir, just practical things. I have seen that there is a string of Senators who want clarification of questions. There is a time allotted at the end of 30 minutes or so, assume that that has been subsumed also because we are free to interrupt any time. We can run that programme concurrently, so that we do not have to wait at the end.

**The Speaker** (Hon. Lusaka): Yes, Sen. Wamatangi. Please, we must proceed.

**Sen. Wamatangi**: Mr. Speaker, Sir, I will be very brief. I do not understand when Sen. Murkomen says that I have misapplied myself to that Standing Order. That is something very simple. I have been a Member of two Committees that have participated in the impeachment of a governor. If we gave this process to a Committee, it would have had 10 days.

**The Speaker** (Hon. Lusaka): I think you are not getting it right. That is not the position.

Sen. Olekina, kindly, proceed.

**Sen. Olekina**: Mr. Speaker, Sir, I do not wish to differ with the Senator Majority Leader, but I want this corrected. Although this is a political process, Article 96 mandates us to protect the interest of counties and their governments.

The line of questioning should be relevant on procedures. If there are things that are clearly being flouted, we need to note them. So that when we sit down, we can do our job properly by taking all matters into consideration.

Mr. Speaker, Sir, so the line of questioning should be relevant on procedures so that we can do our job properly by taking all matters into consideration.

On the second issue, the point of order raised by Sen. Wamatangi is quite clear. It says investigate. What time do we have to investigate? This information has to be substantiated so that when we are making a decision, it helps us.

Mr. Speaker, Sir, there is no point of sitting here and rushing everything---

**The Speaker** (Hon. Lusaka): You know---



**Sen. Olekina:** Allow me to finalize. There is no point of us rushing everything as if our minds have already been determined. It is proper for us to be able to do our job as we have been sent here by people who elected us.

**The Speaker** (Hon. Lusaka): Order Sen. Olekina. You are talking and annoying yourself for nothing.

*(Laughter)*

You are annoying yourself for nothing. The Standing Orders are very clear. We may appreciate that the time given to handle this kind of matter is not enough. To address that, you must then look at the Standing Orders and maybe change the timings. However, for now we are time-bound.

**Sen. Omogeni:** Mr. Speaker, Sir, I want to make reference to the Fifth Schedule. Under Rule 22, time for Senators to ask questions is limited to two minutes. However, if you go to Rule 21, there is no capping of time for cross-examination. Mr. Speaker, Sir, there is a lacuna there and we need your intervention.

Mr. Speaker, Sir, my proposal is that you invoke Rule 29 and limit time for cross-examination. Rule 29 says:-

“Where no provision has been made in the Standing Orders or in these rules, the Speaker of the Senate shall rule on the question or the matter and the ruling of the Speaker shall be final.”

Mr. Speaker, Sir, unless you manage these proceedings, we will not be able to do it within the time permitted by the Constitution. I urge the Speaker that the way we are managing time for presentation of evidence, you also cap time for cross-examination so that we are able to do this proceedings within the constitutionally permitted time.

Thank you.

**The Speaker** (Hon. Lusaka): Counsel, you have to wind up in the next 10 minutes so that we get the other witnesses.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, with all tremendous respect, this witness took so much time and yet he covered grounds that I have not had to cover on account of his intransigence, failure to answer, diversion, intervention of his counsel. It will be, with tremendous respect, unfair to the Governor. He needs to demonstrate that this process is driven by something other than the truth.

I beg you to allow me, 10 minutes will truncate in unfairness. I beg because I am not the author of that eventuality, it is the witness. The documents contained herein rebut his own case and I was pointing those documents when he does not want to refer to them.

Mr. Speaker, Sir, if I may with your kind permission have an enlargement of that time. Otherwise, it will be unfair because my learned friends had issues to cover. If you note, this witness was taken paragraph by paragraph almost reading his own statement.

**The Speaker** (Hon. Lusaka): Okay proceed. I will give you---

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, I think our law and the Constitution has been built out on experience. In the United Kingdom,

impeachment became very unpopular. There was a governor of Bengal in India who was impeached in parliament for seven years. The two parliaments had to sit through an impeachment process for seven years.

Mr. Speaker, Sir, in the United States of America, impeachment took a similar direction because they preferred the Plenary as we have now. However, out of practice, they have recognized that in order to do justice they do it through committees because Counsel would want to ask a lot of questions and then report to the House although the rules demand that they do it through Plenary.

When we sit as a House, everybody is agitated and each one of us wants to undertake an intervention. If every lawyer has to take the time that he or she wants to make, then it will make a mockery of the rules and the County Governments Act. We are time bound. It reminds me of the petition of hon. Martha Karua which was delayed in the High Court and the Court of Appeal and by the time he was appealing to a superior court, they said that he took too long and that he was too late. I beg that we do justice to both parties. What we are doing right now is just rumbling and the Nairobi City County Assembly will say that they still have three more witnesses.

What is the Nairobi City County Governor also take the same kind of time, then this proceeding will go beyond Friday? I insist that the Speaker should give timelines but it is unfortunately too late for that now. The Counsel of the Governor should be given more time considering the fact that the counsels for the Nairobi City County Assembly took a lot of time which they will pay for because the other witness will not have any time. The Nairobi City County Assembly have consumed all their time on one witness.

This is a question of case management. These are very senior lawyers who now have a case before the Court of Appeal. They have given us direction that we are not going to hear you. They are given a written submission of 15 pages and we are not being allowed to address the court because of case management. We cannot be rumbling and saying that we are a court. I do not think we look like a court anymore because of the interventions we are making. It is very difficult to refrain from showing where your interests lie that is why I encourage the Members of the Senate to refrain from asking questions because their interests are coming out and they are going to be the judges at the end. You cannot be a judge, a prosecutor and the executioner. It does not work that way.

Let the Counsel bring their question then the witnesses give their evidence because we have the last word not even the Speaker. It is us, Senators, with the last word. I ask that we proceed in a more orderly fashion.

**The Speaker** (Hon. Lusaka): Counsel, I give you 20 minutes.

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiru): Mr. Speaker, Sir, as you allocate Mr. Kinyanjui time, kindly consider giving us time for re-examination.

**The Speaker** (Hon. Lusaka): Counsel, you took a lot of time with your witness.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, allow me to congratulate the hon. Members of this House. Allow me 30 seconds to make a very weighty comment to what Sen. Orengo, who is my very senior colleague, has said. I had made reference alluding to the Impeachment Bill of 2018 and

took time to look at the HANSARD where Sen. Mutula Kilonzo Jnr, made a commentary about that. I noted that had the Impeachment Bill of 2018 pursuant to Article 181(2) being legislated, hon. Members, all these would be completely gone because I would have invoked Section 16 as read with Section 14 of that Bill.

But alas, the governor has been deprived that instrumentality of the law yet Schedule 5 gives 18 months from 2010 to pass that law. Having said that, I continue so that I can conclude my cross examination. Mr. Ogada do you acknowledge that you have documents dated beyond the 25<sup>th</sup> of November, 2020 that could not have been tabled before the Assembly?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, what I said is, once we gave Notice of Motion, the other documents are tabled in the Assembly during the Motion, which was on 3<sup>rd</sup> December, 2020. The documents he has been showing me were documents of November 2020. We had the documents when I was prosecuting the issue.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Ogada are you aware that the governor is entitled to a hearing before the Assembly?

**Hon. Michael Ogada Okumu:** Yes, I do.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Are you aware that having not been accorded a hearing it is unfair to him?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, I can confirm that he was accorded a hearing and a link was sent to him which he opted not to attend.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, we have a video attached to the affidavit of the governor marked 'd' indicating that we had the governor's lawyer go to---If I could ask the Information Communication and Technology (ICT) technicians to play that video while I ask the next question. As we wait for the video clip to be played, are you aware that the accusations you have levelled against the governor concerning the NMS are subject of a constitutional petition? Please answer 'yes' or 'no', you heard the Hon. Members.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, I am not aware about the constitutional interpretation needed by the governor from the court.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): You are not aware? Have you not annexed a single order in your documents; the ones you are referring to?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, he asked what I am doing.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Have you annexed any documents about the orders in the NMS case?

**Hon. Michael Ogada Okumu:** When the governor first went to court about the legality or trying to withdraw from the Deed, I think Justice Wasilwa lifted that order. There was no order. If you went to appeal that is not---

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Are you aware that Petition E348 exists in the constitutional court about the NMS and its legality?

**Hon. Michael Ogada Okumu:** I am not aware.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): You are not aware? Have you not annexed any document in connection to that?

**Hon. Michael Ogada Okumu:** I am not aware about any case.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Look at page 402 of your volume 1. There is a copy of a court order from the Hon. Justice Wasilwa dated 6<sup>th</sup> November 2020. Would you confirm that at page 402 and 403? Please confirm that an order was issued in Constitutional Petition E348 of 2020.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, I am not party to all the issues he is raising. What I can confirm to this hon. House is that, I raised the issue of him not signing the warrant because we have the transferred functions, which have to be funded whether you are in court or not. Staff must be paid whether in court or not. It is not the issue of constitutionality.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Let me finish. We had asked for the video clip of the governor to be played in his witness statement from Mr. Moses Okerosi.

*(There was a technical hitch while playing a video clip)*

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Would you confirm that, that video has been in reference to an appearance before the county assembly?

**Hon. Michael Ogada Okumu:** No, I do not know. I cannot confirm.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Volume 3 of the documents served on you on behalf of the Governor--- At Page 535 to 572, there is a response from the Governor to your allegations to the county assembly, in precision rebutting all the allegations. In the document marked (d), has Volume 1, 2 and 3. It has a blue cover; on page 535. The response on behalf of the Governor is dated 30<sup>th</sup> November, 2020; on page 535 to 572 of Volume 3. That document is signed by Ondieki Advocates.

**Hon. Michael Ogada Okumu:** Yes, it is there.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Thereafter, you will see images on Page 633 to 643. You can see that the person who took the images has sworn an affidavit to confirm that he was actually there on the material date, that is, 3<sup>rd</sup> December, 2020. That is on Page 535-573 of Volume 3 of the statements. The images are on Page 633 to 643; Volume 3. Therefore, it is not true to allege that the Governor did not make an attempt to come to the county assembly on 3<sup>rd</sup> December, 2020.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, what I cannot confirm is what was transpiring on that particular day, because, one, the video was not audible. I could not hear. The other thing is that if he attempted to appear, then he must have had the notice and was invited.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Have you seen the affidavit of Moses Okerosi, which is along the same Volume 3? Have

you seen it? Have you also seen the affidavit immediately after Page 643 in Volume 3, affirming that indeed they were there from 2.00 p.m. up to almost 5.00 p.m., and were denied access to the Nairobi City County Assembly?

Sorry, we go to Volume 3; Page 633. There are images showing them being blocked outside the Assembly.

**Hon. Michael Ogada Okumu:** I can see the photographs.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): You can see them?

**Hon. Michael Ogada Okumu:** Yes.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): If you go to Volume 3, Pages 450 to 522, there is a report of an expert in handwriting refuting the signatures you were adducing that they had attained the majority. On page 450 is the affidavit of Emmanuel Kenga, a forensic document examiner, who has impugned your signatures. Have you seen that?

**Hon. Michael Ogada Okumu:** I have not seen it.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Look at page 450 of Volume Three. There is a sworn affidavit by Emmanuel Kenga, a forensic document examiner. He has said that he examined your signatures and he impugned them, some of which are a forgery. Have you seen that affidavit?

**Hon. Michael Ogada Okumu:** At page 450? I can see it.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Now, go to page 528, there is an affidavit of Moses Okerosi, who swears that he took that document to the County Assembly on behalf of the Governor and he was denied access. Have you seen that?

**Hon. Michael Ogada Okumu:** Yes I can see it.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): So, you can see His Excellency the Governor made every effort to be there on the material date, but he was denied access or audience.

Now, you also allege that the Governor went to New York and got some payments made on his behalf. He has sworn an affidavit. At page 614, can you see a document there---

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, for the record---

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): I want to conclude this. You will have an opportunity to be re-examined. Have a look at that document.

**The Speaker** (Hon. Lusaka): Order, let us hear him.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, one thing I cannot confirm is what the photos speak to. I cannot confirm that he tried to come. Secondly, I have not said the Governor was in New York.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Okay, you alluded to his wife and daughter being in New York.

**Hon. Michael Ogada Okumu:** That is not the Governor. I talked about the daughter.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): All right. At Volume Three, page 614, do you see the document there?

**Hon. Michael Ogada Okumu:** Yes, I can see it.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Are you aware that the approval for the travel was actually from the Government of the Republic of Kenya? Yes or no?

**Hon. Michael Ogada:** For an imposter---

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): No, are you aware that was sanctioned?

**Hon. Michael Ogada Okumu:** The letter that went to the Government was that, that was a sub-county administrator and yet the lady is not working for the county.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Do you have proof of that?

**Hon. Michael Ogada Okumu:** Yes, we have documents.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): You do not have anything you can pin point.

**Hon. Michael Ogada Okumu:** We have documents to that effect.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Let us look at Volume Two of the Governor's response affidavit, so that we save time. Let us look at page 297 running all the way up to page 311. Are you there?

**Hon. Michael Ogada Okumu:** Which page?

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Page 297. Can you see that?

**Hon. Michael Ogada Okumu:** Yes, I can see.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): You can see those are images of your colleagues, hon. Members of the Nairobi City County Assembly?

**Hon. Michael Ogada Okumu:** I can see some people.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Up to the last page 311, there are 57 of them in number. You can confirm that. You know that those Members of the County Assembly (MCAs) have each sworn an affidavit to say that they did not vote for the Motion to impeach the Governor.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, one thing we need to appreciate is that voting was online. So, if any Member swore such an affidavit, then they were playing you.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): You can see at page 200 there are single affidavits running all the way up to page 277. Each of them has sworn an affidavit to say that they did not vote on that day. Can you see that?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, I can see and we also have affidavits of the same people saying these are not their signatures.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): You do not have that evidence before this---

**Hon. Michael Ogada Okumu:** We have affidavits here of these people who---

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): On page 278, this was reported to the Kwale Police Station as impersonation. Do you see they reported that? It is OB No.55 of 3<sup>rd</sup> December, 2020. Do you see that? Just confirm yes or no. Do you see evidence of reporting that?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, I really do not know how to answer yes or no. I need to be given time to explain myself. One thing that you need to appreciate is that the said Members of the County Assembly (MCAs) actually also reported to the police that they were kidnapped. They were invited to a house in Runda. Prados came and they were being forced two-two into a Prado. You could not alight.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): I would like to play a video.

**The Speaker** (Hon. Lusaka): Let him finish what he is saying.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, the same MCAs are saying they were invited to Runda and we have affidavits that they were going to be given Kshs500,000 each. With this kind of dry season, nobody could really resist--- When they went the gates were locked and Prados started coming and MCAs were being forced into a van.

They were all being forced into vans because there were people who were really forcing them to enter. Affidavits are there to that effect. Actually them being in Kwale was against their wish. That is why you can see most of them were tagged and given these numbers. Nobody could accept to carry a tag if there was no threat.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Ogada, none of these is in your statement. Mr. Speaker, Sir, I would like to play a YouTube clip that I have requested the ICT on deep fakes. This witness played clips there on someone resembling Gov. Mike Sonko without a certificate of authenticity. Deepfakes from YouTube, I have requested so that then I can get more time.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, the certificates are there. Besides that, the affidavits are on 9 (f).

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Let me see those affidavits you are talking about.

**Hon. Michael Ogada Okumu:** You have the copy of the yellow document there.

**The Speaker** (Hon. Lusaka): You said you were playing a video clip.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, these are not dated. I have seen them in Volume 1 and some of them are not dated. Some of them are not even having the names. I would like to draw your very kind attention to just one single of those affidavits so that we disabuse these honorable Members of the allegations that there are sworn statements. There are no such legally sworn affidavits.

Unfortunately, the pagination is not proper. I cannot see the pagination.

The honorable MCAs are here as well so that they can see. There is the affidavit of Mr. David Ayoyi. Do you have it there with you? You see it is not even dated. It is on Page 14. Ms. Elizabeth Nyambura is here and she has said that she never even affixed to

such alleged signature. She did not. I am seeing Mr. Alvin Palapala also. These are honorable MCAs.

Mr. Speaker, Sir, I wanted to play that clip in their presence. Those honorable MCAs are here. I wanted to play a clip to negate those video clips. I beg for an enlargement just of some little time. It was unfortunate. Kindly, Mr. Speaker, Sir, and honorable Members, bear with me.

The clip that I have with the ICT, I had requested that they play the video clip from YouTube only from Deepfakes which is the source of it. Mr. Speaker, Sir, can I get your authority?

**The Speaker** (Hon. Lusaka): Yes.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, thank you. ICT, I had sent a link from YouTube Deepfakes.

**The Speaker** (Hon. Lusaka): It is like they are not able to play it.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, while they are checking it, let me just ask two questions. Mr. Ogada, you are aware that the County Government mandates public participation. You must give five days between the notice and the event. Are you aware of that? It is in the County Governments Act.

**Hon. Michael Ogada Okumu**: I am aware. It was done and put in the dailies.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Do you have proof of that?

**Hon. Michael Ogada Okumu**: They are in the dailies.

**The Counsel of Nairobi City County Governor** (Mr. Harrison Kinyanjui): Do you have proof of that?

**Hon. Michael Ogada Okumu**: There was.

**The Speaker** (Hon. Lusaka): Counsel, whom did you give the clip? Our records indicate that we do not have any clip from you.

**The Counsel of Nairobi City County Governor** (Mr. Harrison Kinyanjui): It was a link.

**The Speaker** (Hon. Lusaka): Whom did you send to?

**The Counsel of Nairobi City County Assembly** (Mr. Ndegwa Njiru): Mr. Speaker, Sir, for purposes of record, we were never served with that link and clip. That is new evidence being introduced on the bar.

**The Counsel of Nairobi City County Governor** (Mr. Harrison Kinyanjui): With tremendous respect, I have referred to the link in my volume---

**The Speaker** (Hon. Lusaka): It ought to be part of your evidence.

**The Counsel of Nairobi City County Governor** (Mr. Harrison Kinyanjui): Yes, the video clip is part of the evidence. This is provided by His Excellency the Governor. There is the link of TV47 on page 15, volume one, paragraph 69. The link is provided there.

Mr. Speaker, Sir, I want to confirm with you and hon. Members that I am not so dishonourable as to cite a link that I have not provided. I did provide. It is cited in paragraph 69, page 15 of volume one. I also provided the clip.



Mr. Speaker, Sir, as we wait for that clip, allow me to pursue that issue of public participation. You have seen the affidavit of Mr. Newton Munene, supplied with his documents.

Mr. Newton Munene, the Information Communication Technology (ICT) officer of the Nairobi City County Government refuted and disputed there was public participation as you suppose.

I refer to his affidavit which we had filed and supplied. Mr. Newton Munene, in paragraph one says, "I am the current CEC in charge of ICT Department." He has sworn to it.

**Hon. Michael Ogada Okumu:** For the purposes of public participation, did we have to go through the Chief Executive Committee (CEC) Member in charge of ICT? That was meant for the public. It was not for the CEC in charge of ICT.

**The Counsel of Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, we are having challenge with that issue.

I wanted to refute the allegation that there was a majority of the Nairobi City County Assembly Members who voted for the purported impeachment. The threshold set in law was not met. That was the purpose of the clip.

As I was winding up, the clip is there and the link is provided. Unfortunately, I find myself accosted with this handicap.

**The Speaker** (Hon. Lusaka): They are working on it.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): While they are working on it, allow me to yield to my learned friend, Mr. Nyamu, so that he can---

**The Counsel for the Nairobi City County Assembly** (Mr. Ashioya Biko Brian): Mr. Speaker, Sir, you had accorded them an additional 20 minutes. We did not complain. It is our time that they are eating into. By yielding, it is abusing that accommodation that you gave them.

**The Speaker** (Hon. Lusaka): Counsel, you have gone beyond the 20 minutes.

**The Counsel of Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, sir, the occasion has arisen because hon. Members wanted clarity. Hon. Members are so respectable. I would not want to override that desire for clarity.

Mr. Speaker, Sir, I am so subservient to your leadership. However, His Excellency the Governor is pressed to demonstrate in refuting the allegations against him. He has not stolen the money. In fact, the bursary funds were stolen by MCAs. That documentation is here. That was necessary to be provided.

**The Speaker** (Hon. Lusaka): That is what you should have started with.

**The Counsel of Nairobi City County Governor** (Mr. Harrison Kinyanjui): The witness did not answer my questions. The witness was evasive.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, I was never asked about the bursary.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): The clip is playing now.

*(A Video clip was played)*

Thank you, Mr. Speaker, Sir.

You can see from that video clip you and your Honourable colleagues on the material day 3<sup>rd</sup> December 2020. Do you confirm?

I had requested that they mute so that the witness can see and confirm that that was the event he spoke of at the County Assembly contemporaneous with what was happening with the other MCAs that have I have said.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, one thing I can confirm is that I know several members who are talking there. Alongside, you can see me also prosecuting that case. That was actually not during voting. During voting, they were not talking. That is when they were voting. When they were shouting, I was talking.

Therefore, you can see. During voting, they were not shouting. If they would have been shouting during voting, that would have been a different case, but there you see me arguing my case there as they shout. After they finished shouting, they started voting. That is how it happened.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Do you confirm that you have no evidence that they voted?

**Hon. Michael Ogada Okumu:** There is enough evidence. We have got the HANSARD and everything else. We have got enough evidence.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Do you confirm that there is no HANSARD before this House?

**Hon. Michael Ogada Okumu:** We have enough evidence within this House.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, allow me to have two minutes with Mr. Nyamu to ask about the Dandora issue.

**The Counsel for Nairobi City County Assembly** (Mr. Ashioya Biko): Mr. Speaker, Sir, with your permission, you directed. Let us not abuse the privilege.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, they took so much time.

**The Speaker** (Hon. Lusaka): Let me give Mr. Nyamu five minutes.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Mr. Speaker, Sir, we have split the minutes into two and three. I will ask a few questions, and then my colleague will conclude.

Hon. Ogada, I know that you are a very hard-working officer. I am giving you a document, the Auditor-General's report for 2018/2019. Look at that report, Hon. Ogada. Go to page three of the Auditor-General's report.

Hon. Ogada, read paragraph 2.0. What is the heading of paragraph 2.0 on page 3 at the bottom? Read the recommendation on page 3.

**Hon. Michael Ogada Okumu:** I can only see a list of Members of the County Assembly.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): I am asking you to look at page 3.

**Hon. Michael Ogada Okumu:** A list of county assembly members. All members of the county assembly.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Page 3 at the bottom.

**The Counsel for Nairobi City County Assembly** (Mr. Ashioya Biko): Mr. Speaker, Sir, we might be informed of the document that is---

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Read Paragraph 2.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, this document was not availed to us. It is a document being given to our client for the first time. It does not even emanate from our client. It emanates from the Office of the Auditor-General. It will be unfair for the witness to be asked questions or read a document that he is interacting with for the first time

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Mr. Speaker, Sir, you made a determination that you would be flexible in terms of the rules of admissibility so that we move on. This is a report of the Auditor-General of Kenya where he has indicted the witness because he was paid Kshs1.2 million irregularly.

**The Speaker** (Hon. Lusaka): Counsel, what they are raising is that you had not submitted that document to them?

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Mr. Speaker, Sir, the evidence was submitted yesterday in our bundle of documents. I would just like to confirm that his name is there.

*(Loud consultations)*

**The Speaker** (Hon. Lusaka): The Counsel of Nairobi City County Assembly says that they are seeing the document for the first time now. Can you confirm that is true?

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, there is an attempt to derail this case so that time continues running. You have given a ruling to which I propose that as you wisely stated, where the examination-in-chief is one hour then for purposes of cross-examination, we only have half that hour for the other party.

You are gracious enough to let the part present their case and they are only taking us round in circles and circus. We do not have the document they are relying on and we cannot confirm the same. I, therefore, urge this House to do that which is honourable. Least of which, this House will have to go around the same circus. I beg to yield so that we get direction.

**The Speaker** (Hon. Lusaka): The Secretariat will check for the document in question and report whether it was received before today.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Mr. Speaker, Sir, we stand guided. I would like to ask him about the bursaries.

**The Speaker** (Hon. Lusaka): The Secretariat has confirmed that we do not have the document. Move on that is noted.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Mr. Speaker, Sir, I would like Mr. Ogada to go to Page 157 of that documents where he states that the bursary lost.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, the affidavit of the Governor served us ends at page merely Page 62.

**The Counsel for Nairobi City County Governor** (Mr. Nyamu): Mr. Speaker, Sir, they are in volumes.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, the document I have is what was served as at yesterday when the documents were being exchanged. We are being taken round circus. My learned seniors should come clean on what they want to prosecute. They are not prosecuting the witness. They are prosecuting the Motion before this House. It is not perjurying the witness.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Mr. Speaker, Sir, the Counsel of Nairobi City County Assembly served us new documents late at 6.00 p.m. We put in an affidavit in response and that is the one we are talking about. It was delivered to the Office of the Clerk of the Senate. We sought leave.

**The Speaker** (Hon. Lusaka): Counsel, proceed.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Mr. Speaker, Sir, looking at Page 167, you will see a voucher for Kshs297 million that is being talked about in bursaries.

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiru): Mr. Speaker, Sir, we will run into serious problems here when counsel seeks to rely on documents that have not been served. We have no such documents served upon us and neither does this Senate have the opportunity of examining these documents because they are not before you. It will do us a great favour if we restrict ourselves to the documents served. We have no such documents.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Mr. Speaker, Sir, these documents will help the Senate appreciate issues that have been said that are lies.

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiru): If that was the intention, they should have been served.

**The Speaker** (Hon. Lusaka): Order! Was the document served?

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Mr. Speaker, Sir, we delivered all the documents to the Office of the Clerk which were served electronically to every party because of time constraints.

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

**Sen. Olekina:** Mr. Speaker, Sir, I remember very clearly that you gave a directive that documents be brought to this House. If the counsel of the governor is referring to those documents, then we would like to have the documents. When they made an application, you stated that the documents be brought. If we can be given the documents, he can clarify.

I remember discussing with my colleague, Sen. Orengo and saying that if the Speaker has accepted documents to be introduced in the House, can we have those documents so that we proceed? You allowed the documents to be introduced.

**The Speaker** (Hon. Lusaka): Did I? No.

**Sen. Olekina:** The HANSARD can bear me witness.

**The Speaker** (Hon. Lusaka): Which documents did I allow?

**Sen. Olekina:** Mr. Speaker, Sir, when I listened to the counsel of the governor submitting, they indicated that they were served with the documents at 6.30 p.m., and they requested to be allowed to submit their responses to those submissions.

**The Speaker** (Hon. Lusaka): If my memory serves me right, the documents were taken to the wrong place, then they were brought back later out of the time. This is when the Secretariat allowed documents. The documents they are asking for now, were they served? Were they part of the documents delivered later after delivering in the wrong place?

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Mr. Speaker, Sir, it was one continuous bundle.

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiru): Mr. Speaker, Sir, we are the ones who received the bundles of documents. I believe your directions were only in respect to the documents that were served. The directions were in respect of the documents that were received not any other introduction of new evidence. You gave a ruling. We ask you to overrule.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Mr. Speaker, Sir, you guided us.

**Sen. Cheruiyot:** Mr. Speaker, Sir, to help us, this is a simple and straightforward matter. To help us make way out of the dispute between the Assembly and the governor, the counsel of the governor should refer to all the documents presented to us as numbered. It will make sense every time they refer the counsel of Assembly to a particular document, they mention, so that we also confirm that this is the set of documents we have. That will end this dispute and we will easily understand whether they were served or not.

**The Speaker** (Hon. Lusaka): What number is that document? Senator for Kericho says it will assist us.

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiru): Mr. Speaker, Sir, all the documents served from the governor's office are labelled as 'D', the document being referred to is labelled '1'. These are the documents that the clerk forwarded to us and had annexed it at the time of the service. This is an alien document.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, I am sorry, I had gone to the bathroom. I need to clarify that issue. If you need a record from the HANSARD, immediately upon your ruling, you asked that we proceed and I said I have a further plea. Now that the documents were served late at 6.30 p.m, and the HANSARD will record that, you said they can be accepted. I liaised with the staff and from the Clerk's office. I showed the email that I did communicate on that account and then you said you granted me.

I am surprised that my learned friend is alleging they are strange documents. I did put the documents to this witness that are here. For instance, the payment to Nairobi City County Assembly that resulted in his refusal to answer. The documents about the Nairobi Metropolitan Services (NMS) are here. The more reason---

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiiru): No objection was raised.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): I did refer. I said go to page such and such, and he went.

**The Speaker** (Hon. Lusaka): Order!

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Sorry, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): I will check the HANSARD and get exactly what I said.

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiiru): Again, if he was referring to documents that were not served, then that evidence should be expunged because we are not aware of this evidence.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Mr. Speaker, Sir, when it suites them, they say that this is an inquisitorial process. Now that we are presenting evidence before the honourable Senate, they say that they are objecting. This must be rejected.

**The Speaker** (Hon. Lusaka): Counsel, proceed.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Thank you so much, Mr. Speaker, Sir. Hon. Ogada, I want you to go to Page 167 of that document, please.

**The Senate Minority Leader** (Sen. Orengo): On a point of order, Mr. Speaker, Sir. I agree with Sen. Cheruiyot that any documents that the county assembly or the Governor wants to use in prosecuting their case must be documents that are before us. If they are before us, they should refer us to those particular documents. If they are having a discussion between the two of them and we do not have those documents, it is highly irregular.

I think that in the future, any document we receive must be stamped to signify the fact that they came to us. Part of the problem is that we did not stamp the documents. I really urge that either side should not ambush the other. If there are documents that they are referring to, they must be documents that are with us. They can then refer us to those documents. Otherwise, it is going to end up as a private discussion between the two of them.

**The Speaker** (Hon. Lusaka): That is true. The hon. Senators do not have that document, and so they cannot refer.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): The document is with the Clerk. It is here; they can give it to the Senators. We delivered it yesterday.

**The Speaker** (Hon. Lusaka): The documents came late. The advice that I have is that you can apply and refer to the documents tomorrow when you are presenting your case. Is that okay?

Let us then proceed.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, I am sorry to interrupt. That application is what I made immediately and before Mr. Njiru addressed you, and you said that it is okay; that they can be brought. I liaised with your Clerk.

**The Speaker** (Hon. Lusaka): The documents are not here with the hon. Senators yet.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, they are here. I liaised with the Clerk and was given the affirmation. In fact, I can check the time that I sent the message.

**The Speaker** (Hon. Lusaka): The Senators do not have it. Can we use them when you present your case tomorrow?

**The Counsel of Nairobi City County Governor** (Mr. Wilfred Nyamu): That is better.

**The Speaker** (Hon. Lusaka): This is so that the Senators can also look at the document. When you are presenting your case, you can refer to that document, which the Senators would have looked at.

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

**The Speaker** (Hon. Lusaka): Sen. Cherargei.

**Sen. Cherargei**: Mr. Speaker, Sir, the implication of that is that they will have to stand down the witness as of now, so that when we have those copies and that information sufficiently available to us, it will be easy to refer to as the Counsel of the Governor will be prosecuting that matter. I think it will mean that you need to stand down the witness as at now, so that we can proceed tomorrow.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): That is fair and just.

**The Speaker** (Hon. Lusaka): Sen. Orengo.

**The Senate Minority Leader** (Sen. Orengo): Mr. Speaker, Sir, since we do not have time, let them cross-examine the witness to the extent that they can and that level, the witness can be stood down only for that reason tomorrow, so that we do not open the witness again to other matters.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): That is fair, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): That is what I was going to say, on that particular one only. Let us proceed. We have eaten into the time I gave you.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Mr. Speaker, Sir, I will very briefly put questions to this witness with regard to procurement at Dandora, which is Ground No.1(J) where it is alleged that the Governor violated the Public Procurement and Disposal Act in relation to the contract at Dandora.

Hon. Ogada, the document that I will ask you questions on is marked 9B. Kindly move to page 809, Ground 1(J).

*(Somebody consulted Hon. Ogada)*

Could you kindly get off that stand? I am waiting for you to get out of there. You have no business standing there.

Hon. Ogada, as an MCA of Nairobi City County Assembly, do you know who are the accounting officers of the respective county government entities?

**Hon. Michael Ogada Okumu:** I know.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Who are the accounting officers of the respective county government entities and who appoints them?

**Hon. Michael Ogada Okumu:** We may have several, but one particular one is the Head of the Treasury.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Who appoints accounting officers of the respective departments?

**Hon. Michael Ogada Okumu:** The County Executive Committee Member for Finance.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): You confirm that is under Section 148 of the PFM Act?

**Hon. Michael Ogada Okumu:** That is true.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): You are aware that under Section 149 of the PFM Act they are the ones charged with the responsibility of procurement of goods and services? Right?

**Hon. Michael Ogada Okumu:** That is true.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): In your allegation Ground No.1 (J), you alleged that the County Governor has violated the procurement law. Is that right?

**Hon. Michael Ogada Okumu:** Yes, as the CEO, he oversaw the violation.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): You appreciate that the Governor does not deal with procurement matters.

**Hon. Michael Ogada Okumu:** He does not deal with procurement matters, but I have said as the CEO, he is in charge and the buck stops with him.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Are you holding the Governor liable vicariously?

**Hon. Michael Ogada Okumu:** Yes, any mess that happens to the Nairobi City County Government, he is personally---

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): So, are you saying that if a Nairobi City County Government *askari* commits a mistake out there, the Governor is the one to blame?



**Hon. Michael Ogada Okumu:** As a County Assembly, we will watch the footsteps of the Governor. If he does not take any action against a City County Government *askari*, then we will hold him personally accountable.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Are there situations whereby officers of the county Government have been charged with offences relating to their act or omissions and the Governor is not charged?

**Hon. Michael Ogada Okumu:** That is true.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): In the documents that you have brought, which begin at page 809--- Hon. Speaker, I am referring to the black file marked 9B page 809. I will refer to page 809 all the way to page 811.

Looking at Page 809, you look at that letter?

**Hon. Michael Ogada Okumu:** Yes.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): To whom is that letter addressed?

**Hon. Michael Ogada Okumu:** To Scanjet Construction.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Who is the author of the letter?

**Hon. Michael Ogada Okumu:** Mr. Abdi Mutalip Ibrahim.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): What position does he hold?

**Hon. Michael Ogada Okumu:** County Chief Officer for Youth and Sports.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): You confirm that the same is in relation to the stadium, right?

**Hon. Michael Ogada Okumu:** Yes.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): That is the Dandora Stadium, right?

**Hon. Michael Ogada Okumu:** Yes.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Is that not a copy to the Governor?

**Hon. Michael Ogada Okumu:** Just as I have said---

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Is it copied to the Governor, yes or no?

**Hon. Michael Ogada Okumu:** That is their administrative issues which I cannot--

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Answer my question. Is that letter copied to the Governor? Yes or no?

**Hon. Michael Ogada Okumu:** The way they work is an administration issue.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Mr. Speaker, Sir, our time is limited. That question calls for an answer in terms of yes or no.

**Hon. Michael Ogada Okumu:** It is copied to the County Secretary.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Is it copied to the Governor?

**Hon. Michael Ogada Okumu:** It is copied to the County Secretary who is the Chief Officer and generally the head of the public service with the Governor's government.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): I am asking you whether the Governor is copied that letter. Yes or no?

**Hon. Michael Ogada Okumu:** It is not copied to him but he is personally liable for the actions of his people.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): That is period. Now move to Page 810. This is your document. What does that particular document speak about? It speaks about Dandora Stadium. Is it not?

**Hon. Michael Ogada Okumu:** Yes, it is about Dandora Stadium.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Does it mention the Governor anywhere?

**Hon. Michael Ogada Okumu:** I think I have just told you the Governor is the Chief Executive Officer (CEO) of the county. All the bucks stop with the Governor as the CEO of the county.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Answer my question.

**The Speaker** (Hon. Lusaka): Witness, you should just answer. It saves time.

**Hon. Michael Ogada Okumu:** Yes. His name is not there.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): The name of the Governor is not there.

**Hon. Michael Ogada Okumu:** Yes.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Has he participated in the authorship of that document?

**Hon. Michael Ogada Okumu:** I cannot confirm that about the authorship.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): But you have not seen his involvement in that document, right?

**Hon. Michael Ogada Okumu:** I have not seen a letter copied to him.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): That particular document is by project architect Nairobi City County, right?

**Hon. Michael Ogada Okumu:** Yes.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): You will agree with me that the construction of that stadium falls under a certain department where there is a county government accounting officer, right? That department is youths and sports, right? Why are you perusing? It is on Pages 810 and 811. The Dandora Stadium is a project under a county government entity. That is youths and sports. Did you confirm that?

**Hon. Michael Ogada Okumu:** That is true.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): There is an accounting officer for purposes of procurement, right?

**Hon. Michael Ogada Okumu:** Yes. That is true.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Now, if there were any anomalies in relation to the procurement at Dandora Stadium, as a MCA of Nairobi, you have powers and authority to oversight and even call witnesses under Article 185.

Is that an objection?

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiru): Mr. Speaker, Sir, while I do not want to interrupt Mr. Nyamu, my senior, kindly indicate to us how much more time he has. He seems to have expended the five minutes you gave them between him and his brother, Mr. Ondieki. He does not have the luxury of time.

**The Speaker** (Hon. Lusaka): Proceed, I will give direction on that.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Mr. Speaker, Sir, maybe it is because I am asking questions that are pertinent. Hon. Michael Ogada Okumu, do you know and appreciate that you have powers and latitude under Article 185 of the Constitution to oversight officers of the county?

**Hon. Michael Ogada Okumu**: Mr. Speaker, Sir, that what we have been doing and it is extension of why I am here. We are oversighting.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Have you ever sought to summon the accounting officer for that particular department?

**Hon. Michael Ogada Okumu**: Several times. That is why we have to deal with the master.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Do you have any records in these proceedings?

**The Speaker** (Hon. Lusaka): Counsel, Mr. Wilfred Nyamu, I will give you five minutes.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Very well, Mr. Speaker, Sir. I appreciate.

While Mr. Ndegwa is trying to coach you, hon. Michael Ogada Okumu, do you have any evidence here that you exercise the power to oversight such an officer and now that you have to go for the master?

**Hon. Michael Ogada Okumu**: We have overwhelming evidence of summoning the officers.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Do you have it here?

**Hon. Michael Ogada Okumu**: We have overwhelming evidence. That is why we decided since the buck stops with the boss, as a City County Assembly, we had no option, but to deal with the boss.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Do you have it on record in these proceedings?

**Hon. Michael Ogada Okumu**: Basically, that is not a matter---

**The Speaker** (Hon. Lusaka): Sen. Madzayo, what is your intervention?

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): That is not a matter before us.

**Sen. Madzayo:** Thank you, Mr. Speaker, Sir. Normally when a lawyer is cross-examining and he asks you a question, just say 'yes' or 'no.' I believe the witness should do so instead of trying to be evasive from whatever angle. It does not save time. Could you be kind enough to guide the witness to reply with a 'yes' or 'no' answer? That is exactly what the witness should do. I do not think we need any extra issues.

**The Speaker** (Hon. Lusaka): I have said that more than 50 times. The witness should save us time on that. Let us proceed.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Do you have any evidence of exercise of your oversight role as an MCA in relation to these particular projects against the accounting officer or the departmental head?

**Hon. Michael Ogada Okumu:** Yes, we have.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Do you have it here?

**Hon. Michael Ogada Okumu:** That is under the ability of the Governor.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): I am asking you whether or not you have it. Say 'yes' or 'no'?

**Hon. Michael Ogada Okumu:** We are prosecuting the Governor.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Do you confirm that you do not have any evidence of summoning or raising any questions in relation to these projects to any departmental head?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, I have said we have done that. There is a report from the Committee.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Do you have it?

**Hon. Michael Ogada Okumu:** There is a report.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Do you have it in these proceedings? Yes or no?

**Hon. Michael Ogada Okumu:** Yes, we have it.

**The Counsel of Nairobi City County Governor** (Mr. Wilfred Nyamu): Where is it? Appendix?

Mr. Ndegwa is guiding him and interfering with my cross-examination. With utmost respect to my fellow counsel.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, when he asks for a document, we are the ones with the documents on this side. It is only fair that we retrieve them and hand them over to him. This is because we have been asked whether the documents are there. The documents are there. He cannot extract the documents from where he is standing.

**The Speaker** (Hon. Lusaka): What is your intervention, Sen. (Prof.) Kindiki?

**Sen. (Prof.) Kindiki:** Mr. Speaker, Sir, for purposes of you giving direction, it is not the counsel who is giving evidence. It is the witness.

Secondly, the only assistance that a counsel can give the witness is purely mechanically or logistical, but nothing to do with the substance.

Thirdly, where the counsel who is cross-examining - and that will apply even when the laws are reversed - if the question requires a 'yes' or 'no' answer, it should just be answered by a yes or no and that is it. The idea of hunting each other is not helpful.

**Sen. Halake:** Thank you, Mr. Speaker, Sir. Can the good Professor of law tell us what constitutes a 'yes' or 'no' answer? Does it mean that if the lawyer says 'yes' or 'no,' then it becomes 'yes' or 'no' answer or is it that there are certain questions that by virtue of the way they are asked, they do not lend themselves to 'yes' or 'no.'

**The Speaker** (Hon. Lusaka): What they are saying is that you will end up circumlocuting, going round, then you say 'yes' or 'no.' What they are saying is save on time. If you know that in all your statements you will end up saying yes, just say yes so that you save us on time.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Hon. Ogada, have you seen the contract in relation to the Dandora stadium project?

**Hon. Michael Ogada Okumu:** We have the report you are asking for from committees.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): No, I am asking about the contract.

**Hon. Michael Ogada Okumu:** You asked for the document first. The confirmation we have is No.812 and 813.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): What is that? That is the section of the committee report, is it not?

**Hon. Michael Ogada Okumu:** Yes. That is the oversight. That is what they do.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Did you take any steps towards making any reference to the Governor on whatever findings you made?

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, our work is to---

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Did you ever approach the Governor on this?

**The Speaker** (Hon. Lusaka): Counsel Nyamu, unfortunately your time is up.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Mr. Speaker, Sir, I was interjected. I only have two questions then I finish.

I have asked you about the contract that was issued to the contractor in relation to the Dandora Project. Have you seen anywhere where the Governor has signed that contract? There must have been a contract. Are you aware of any contract in relation to the Dandora project that the Governor has signed?

**Hon. Michael Ogada Okumu:** Contracts are not signed by governors, but they are overseen by the governor.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Has he signed any payment voucher?

**Hon. Michael Ogada Okumu:** That is basically his work.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Has he signed any payment voucher that you can show?

**Hon. Michael Ogada Okumu:** You know he is not supposed to sign, but he is supposed to oversee.

**The Counsel of Nairobi City County Governor** (Mr. Wilfred Nyamu): What are you saying is that you do not exercise or have any role over other county officers? Do you know of your role under Article 195 of the Constitution?

**Hon. Michael Ogada Okumu:** That is what I have just shown you here on page 8-12 that we summoned the officers. We interrogated and realized that there was misappropriation of funds and actions were taken. The implementation committee has done really good---

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Are there any sanctions that you employed on that officer?

**Hon. Michael Ogada Okumu:** Which the Governor does not really ensure that they go through.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): May I put it to you that you are only in exercise of vendetta trying to drag the Governor into an arena that he is not involved when you have the machinery, material and remedy to deal with the officers that you perceive to have committed any acts of omission.

**Hon. Michael Ogada Okumu:** Mr. Speaker, Sir, I have no vendetta against anybody. I am simply doing my work.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): That is all.

**The Speaker** (Hon. Lusaka): Okay, Senators---

**The Counsel for Nairobi City County Governor** (Mr. Kwanga Mboya): Mr. Speaker, Sir, with your kind permission, I have been mentioned adversely by Hon. Ogada.

My name is Mr. Kwanga Mboya.

**The Speaker** (Hon. Lusaka): No, we are constrained by time.

**The Counsel for Nairobi City County Governor** (Mr. Kwanga Mboya): I am seeking leave to supply documents in response to his allegations that my law firm was paid Kshs80 million so that tomorrow they do not say that we did not serve them.

**The Speaker** (Hon. Lusaka): You will get the opportunity to do that tomorrow.

**The Counsel for Nairobi City County Governor** (Mr. Kwanga Mboya): The amount that was paid was digital sum it was not legal fee. Allow me to supply the documents so that tomorrow they do not raise objection because my name has been maligned that I was paid Kshs80 million.

**The Counsel for Nairobi City County Assembly** (Mr. Ndwega Njiiru): Mr. Speaker, Sir, we have done summons to the witnesses that we require. If Mr. Apollo Mboya is our witness, you gave us the latitude to choose the witness that we need, we shall call him to the dock.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, I would like to inform Mr. Apollo Mboya, that Mr. Ogada is our witness. You gave us the latitude to choose the witnesses that we need. We shall therefore call him to the dock. Let him rest his peace.

**The Counsel for Nairobi City County Governor** (Mr. Apollo Mboya): Mr. Speaker, Sir, I have been maligned out here and told that I was paid Kshs80 million yet I have not been paid a single coin. I need to produce documents to hon. Members of the Senate so that tomorrow, they see that was an amount that was meant for a client. We transferred the Kshs80 million to Kiplagat and Associates. Mr. Ogada, a very honourable MCA, purports to mention me adversely here as having been paid Kshs80 million yet I have not even been paid my fee note to date. My fee note was assessed by the court at Kshs300 million, but it has not been paid by the Nairobi City County Government to date.

I really want to produce this document so that they look at them. This is very critical because I am already receiving messages from *Twitter* were allegations of me----

**The Speaker** (Hon. Lusaka): Order! You are not on trial!

There is a point of order from Sen. Wetangula.

**Sen. Wetangula:** On a point of order, Mr. Speaker Sir. I would like to give unsolicited advice to the learned gentleman. He is not on trial here. Not everybody mentioned will run here with documents. You will lose sight of your client's case. You are not here to defend yourself. You have been mentioned and many others will be mentioned. Not everybody mentioned will run from Koinange Street to bring documents here.

**The Counsel for Nairobi City County Governor** (Mr. Apollo Mboya): Mr. Speaker, Sir, I apologize.

**The Speaker** (Hon. Lusaka): There is a point of order from Sen. Murkomen.

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. I think the person facing impeachment is Gov. Sonko and not his lawyers. We will not be interested in making any report or recommendation against any lawyer unless the amount we are discussing is related to any impropriety on the part of the Governor that can be brought out by way of cross examination to the person who has brought it as evidence. Any allegations which do not touch on the Governor are better ignored so that we do not start another trial within the trial itself.

**The Speaker** (Hon. Lusaka): The court has advised you well. I will now give the Counsel for the Nairobi City County Assembly 40 minutes for the two witnesses. I urge them to manage their witnesses within the 40 minutes.

**The Counsel for Nairobi City County Assembly** (Mr. Duncan Okatch): Mr. Speaker, Sir, we will not call our other two witnesses. We take note that we have not been granted an opportunity to re-examine that witness despite how crucial it is. I will call my learned friend Mr. Kokebe to take on the next witness.

**The Counsel for Nairobi City County Assembly** (Mr. Kevin Kokebe): Good evening Mr. Speaker, Sir, and hon. Members of the Senate.

*[The Speaker (Hon. Lusaka) left the Chair]*

*[The Deputy Speaker (Sen. (Prof.) Kamar in the Chair)]*

Before I call the two witnesses that we have lined up, we have an application to make. This communication was made to the Senate. There is a witness whom we intend to call whose testimony we requested that it be taken in camera and off sight.

Madam Deputy Speaker, the reason for that application is premised on the fact that the witness we intend to call is not only apprehensive of his security but it is informed that there has been in the run up to us coming to this honorable House, there have been a number of scares to the advocate including the person who has just left this podium. incidences we would not like to speak to on impropriety on any case but based on the incidences and how they happened we felt that the witness in question will only be proper that the statement be taken in camera and off sight.

As Madam Deputy Speaker goes on to consider that fact, we will be calling a witness by the name Janet Muthoni, her testimony will be led by my learned friend Mr. Ashioya. I will be waiting to hear the Speaker's ruling on our application for the witness to appear in camera. As we wait for the advice, we will be ready to produce the next witness.

*(The witness for Nairobi County Assembly,  
(Ms. Janet Muthoni Ouko) took the oath)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you. Now that we have finished swearing, I will hold it there for a minute because there is a request that has been put before this Senate.

Senators, we have heard the request that has been given by the counsel for the Assemble that there is a witness requesting for evidence to be given away from here and in camera. I know we do not have any other place apart from here. We can do the camera session here. What they are requesting for is a sitting away from here because of the security of the individual. Where I am sitting now, I cannot give my opinion. I am asking for opinion from Members, we have heard that request.

Sen. (Prof.) Kindiki.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Madam Deputy Speaker, with respect so that honourable Members can consider both sides as we weigh in on the request. I will take under a minute.

Madam Deputy Speaker, Hon. Members, we are handicapped on our side not having seen other documents other than the letter of request of this particular witness to be in camera. Even under the Witness Protection Act, a justification has to be made. It is not enough for a lawyer with tremendous respect to my colleagues to say by a mere letter to you, there is a threat posed. To me there is a threat of a certain natured posed, but we cannot juxtapose. That is not documented on the side of the Governor. That is number one.

Number two, beyond the request that this should be in-camera, the justification for that evidence in-camera has not been proffered, tabled, cited or alluded to. What we are hearing is threats. The net effect of that plea based on that justification, all you need is that there are threats coming from His Excellency (H.E.) the Governor.



Madam Deputy Speaker, with tremendous respect, that imputation is what is intended to achieve a negative impression on you. This is with respect, hon. Members. I know that you can conclude independently on your own. However, the net effect and the conclusion is that any reasonable person out there will be: Why the Senate go into camera? Were there threats? Connect the dots; it is prejudicial to my client, H.E. the Governor.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you.

Sen. (Prof.) Kindiki.

**Sen. (Prof.) Kindiki:** Madam Deputy Speaker, the request for the hearing of a witness offsite, which I understand to mean outside here, is not possible because the sitting of a House of Parliament is gazetted, and the legal process of moving that site will take days, which we do not have. In the court of law, where the Judge is where the court sits, so long as the judge would like to move for purposes of doing something. It is not practical for us to sit outside where we are seated. That effort will take several days, and we do not have that time. That is number one.

Number two, the request to hear a witness in-camera is allowed by the law and in our Standing Orders. By this, it means that only Senators and the parties will access the proceedings. I hope that, that is what is meant by in-camera. So, in-camera is allowed. Offsite would be allowed, but it would not be practical because of the strict constitutional timelines that we have. It would involve gazetting a sitting outside this Chamber, which is the official recognized sitting of the Senate under the Constitution.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Halake.

**Sen. Halake:** Thank you, Madam Deputy Speaker. Whenever one is feeling threatened, no matter who else is involved, the person's threat should be the number one consideration, in my view. I think that the person is justified. We do not want to be in a situation where we then--- The person that is asking is not thinking of the other parties. They are thinking of the treat to themselves.

If that is the case, we have allowed other things that are digital. Perhaps we could allow digital evidence gathering. I do not know if that is a possibility, but that said, I think that is something that needs to be considered knowing that sometimes some of these things can be very sensitive, especially for women. What if she wants to show something that looks at certain privacies that need to be given to her?

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Murkomen.

**Sen. Murkomen:** Madam Deputy Speaker, while I sympathize with an application for such a procedure to be heard in-camera, especially if it is a criminal proceeding, I find myself in a very difficult situation, in such a very public process of impeachment for a possibility of this House locking out the members of the public.

First, I ask myself, was the witness a witness at the county assembly level? Number two, if there are threats to the life of the witness, who is my friend or someone I recognize as a public figure. The point is that if there are those threats, the first thing is to report to the authorities, because that threat cannot be extinguished only by us going into camera.

In fact, the biggest challenge is that once she gives her testimony, this House has no power to expunge it from the HANSARD. So, any person who was trying to pursue her would still have to refer to the HANSARD because it is a permanent public record and everything she says here will be captured by the HANSARD.

Madam Deputy Speaker, my take would be that weighing the public interest on this matter and the gravity of the decision we are going to make, we are being asked to nullify the election of a governor who manages 10 percent of the country in terms of the population.

Weighing this *vis-à-vis* the question of personal concerns of the witness, I would live comfortably with a situation where the witness is withdrawn and denied an opportunity to make a testimony, in protection of her interest than a situation where her interest is favored beyond the one of the public in terms of an impeachment process.

I think it would be very difficult and problematic if, as a Senate, we establish a precedent where in future impeachments, which are a public process, will be carried out in-camera, out of the public glare and, eventually, tell the citizens of the republic that we overturned their decision through an in-camera process, of a person they elected through universal adult suffrage. This will be very difficult.

**The Deputy Speaker** (Sen. (Prof.) Kamar: Thank you, Senator. Proceed, Sen. Kang'ata.

**Sen. Kang'ata:** Madam Deputy Speaker, I will raise two issues, the first being a procedural one. I think once an application has been made by a certain party, there ought to be a response as has happened. The lawyer representing the Governor has done a response and then finally the lawyer who originally made that application should be given the final right of reply. Consider that issue procedurally.

On the substantive application, I urge you to look at the prejudice test. What would be the prejudice that will be suffered either by this House or by the lawyers representing His Excellency the Governor if the approbation is allowed? We need to consider whether it is possible for the Senate to provide facilities outside this House, for instance, the microphone or the evidence is going to be recorded? If that is possible maybe you can consider that application positively.

Secondly, shall we be able to cross-examine, re-examine and ask questions, notwithstanding that the witness will be away? Thirdly, we need to consider whether that witness is available as of now or the application is being made for that person to appear later.

If we are able to satisfy that set of criteria, it may be important because the key consideration is getting evidence. As long as no prejudice will be suffered by the other party, maybe that application is meritorious.

I have heard my eminent professor mention something concerning a *Kenya Gazette*, as to whether that sitting is gazetted. Yes, it is a fairly well taken point, but allow me, with all due respect, to say that I am not persuaded. The reason is that we have seen Senators, for instance, contributing outside these premises notwithstanding they are in places which are not necessarily gazetted. Some are in offices and other places.

I would imagine that application being made by the counsel representing the County Assembly is contemplating such kind of a situation. If facilities can be rendered by this House to that witness wherever the witness will be, maybe that application is meritorious.

**Sen. Olekina:** Thank you, Madam Deputy Speaker. I will have a problem with that because this Senate will now be invited to make a determination on whether that evidence which will be provided in-camera will be published. I believe that everything that happens in this House must have a record. This House must have a record. I think in determining whether that witness can be cross-examined in-camera, we must make a determination. Once we receive that information, are we able to keep that information within the precincts of Parliament or is it open to the public?

Madam Deputy Speaker, this is because the threat which is being alluded to by the counsel for Nairobi City County Assembly can only be fully substantiated if there is a way that we can protect that information so that it is not available out in public.

I think we may need to rethink because it is an application that has been made. We have to make a decision whether the counsel without any other witnesses and only the Senators and the Clerk can then call that witness here, put of the cameras so that this process can actually appear to be open.

Madam Deputy Speaker, if we cannot be able to make that decision, then I would advise the Nairobi City County Assembly to withdraw that witness another witness so that this process can be seen to be open and not a process where people leave and say that they are under threat.

This is a matter that we have to consider ourselves in this Parliament, first, on how to treat any in-camera witness testimonies. I remember when we had the Director of Public Prosecutions (DPP) appearing before a Committee. The only thing we did was put off the cameras. We did not make it public. However, it remained as a record of this House so that in future it can be considered.

Madam Deputy Speaker, since it is something new. Although I have heard my sister talk about use of technology, even our own Standing Orders are still very clear. Whichever means we use, they must be secure and accountable.

We cannot just venture into new territories by allowing a witness to appear from wherever they are. This is because you would not know whether that witness would be coached to answer questions in a certain way.

Madam Deputy Speaker, we cannot also take the staff of Parliament because if that threat is imminent you never know who it might take. Even the staff of Parliament might end up falling victim. I beseech the Assembly to withdraw that witness and bring in someone else.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you. Sen. Kihika, proceed.

**Sen. Kihika:** Thank you, Madam Deputy Speaker. I would also begin first by being very sympathetic to the dilemma that would be facing the witness. I also say that as a woman, there may be issues that she would perhaps feel not very comfortable coming out here to present in the open.

However, on the other hand---

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Omanga, we do not have points of interjection. If you have a point of order, yes. What is not in order?

*(Sen. Omanga spoke off record)*

**Mr. Kevin Kokebe:** Madam Deputy Speaker, if I may help the House and the Chair, this is the very person who made the application so that we save the time. She is not. I have been advised---

**The Deputy Speaker** (Sen. (Prof.) Kamar): Counsel, can you please explain? Is this the witness?

**Mr. Kevin Kokebe:** Madam Deputy Speaker, this is not the witness. However, I wanted to save the House time because the witness in question that we made application has reconsidered the position and we now invoke the provisions of the Witness Protection Act and she will be able to testify. I believe this will now put that to rest so that we take the next witness and we save the time. Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you so much. We do not need to belabor but let me allow Sen. Kihika because she was halfway in her statement. Now you know.

**Sen. Kihika:** Madam Deputy Speaker, now I know and I am well guided. Thank you very much.

Given the very sensitive nature of this matter and no new evidence has been tabled before this Senate, I want to know if that evidence had been tabled before Nairobi City County Assembly. If that was the case, the opposing counsel would be aware if that had been done.

Madam Deputy Speaker, in the interest of justice and given the very serious charges that are facing the governor and the very strict timelines, I think it may appear to be more impractical. However, now that things have taken a different turn, maybe you will rule differently.

I thank you.

**The Deputy Speaker** (Sen. Prof. Kamar): Thank you, hon. Members. That has been sorted out. Your contributions were helping me to arrive to the same conclusion.

Let us go back to the witness that we have on the Floor. She has already taken her oath. Who is going to lead her? Kindly go ahead.

**The Counsel for Nairobi City County Assembly** (Mr. Ashioya Biko Brian): Thank you so much, Madam Deputy Speaker and hon. Senators.

Kindly introduce yourself; what your name is and what you do a living as at now.

**Ms. Janet Muthoni Ouko:** Madam Deputy Speaker and hon. Members of the House, my name is Ms. Janet Muthoni Gichuki also known as Ms. Janet Muthoni Ouko. I am currently consulting, but I am passionate about education rights advocacy. That is what have done for life.

I am the immediate former CEC Member for Education, Social Services, and Sports at Nairobi City County.

**The Counsel for Nairobi City County Assembly** (Mr. Ashioya Biko Brian): During your stint at the Nairobi City County, did you only undertake duties as a CEC Member for Education, Gender, Culture and Sports or are there any other services that you rendered to the county?

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiru): Madam Deputy Speaker, would you kindly indicate the amount of time that we have for this process?

**The Deputy Speaker** (Sen. Prof. Kamar): You have 40 minutes for all your witnesses.

**The Counsel for Nairobi City County Assembly** (Mr. Ashioya Biko Brian): Do you mean for the two witnesses?

**The Deputy Speaker** (Sen. Prof. Kamar): Yes. You have 40 minutes for the two witnesses. Please keep the time.

**The Counsel for Nairobi City County Assembly** (Mr. Ashioya Biko Brian): Very well. Could we get an indication on how much time will be given to cross-examine, so that we are clear from the onset.

**The Deputy Speaker** (Sen. Prof. Kamar): It is 40 minutes from now. It is now 8.00 p.m. By 8.40 p.m., you should be done with the two witnesses.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Thank you very much counsel. Madam Deputy Speaker---

**The Deputy Speaker** (Sen. Prof. Kamar): Sorry. There is a point of order, from Sen. Orenge.

**The Senate Minority Leader** (Sen. Orenge): Madam Deputy Speaker, I am just beginning from where I started. You have said 40 minutes for the two witnesses. The planning was that you give Nairobi City County Assembly the time they need to prosecute their case.

The question of two witnesses is not good enough. They should be told the time they have to prosecute their case whether they are two or three witnesses. We are revising and reviewing our position so many times.

*(Loud consultations)*

Madam Deputy Speaker, if we conduct these proceedings in the manner we are proceeding, where all the sides have to avail their documents is to curtail the time we spend in giving evidence and cross-examination.

Otherwise, we will just call witnesses, they speak and we do not know what they are going to say. This process requires that everybody has to file their statements in advance.

In fact, I want you to borrow from what they do in the election petitions. They normally ask: "Is this is your statement? Do you adopt it?" Then they sit down and cross-examine it, thereafter.

I think the right way to go is to tell the County Assembly that, “you do not have 40 minutes for two witnesses”. Give them time to present their case, whether it is 40 minutes, one hour or two hours. Also, give the other side.

I was proposing that if you give each witness 20 minutes, then you can tell them how long they have to cross-examine.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, Sen. Orengo.

We normally have four hours for each side. What we meant to say and let me clarify now is that you have 40 minutes for your case to be over, 40 minutes for the four hours to be over. We were elastic at some point.

For the 40 minutes, we expect you to present your witnesses, allow your witnesses to be cross-examined and finalise. It is all in 40 minutes because that is the remaining time for the four hours to lapse.

Please, if your witnesses will take less time, the better for you so that you can have time for cross-examination.

**The Counsel for Nairobi City County Assembly** (Mr. Ashioya Biko Brian): Madam Deputy Speaker, much as we are guided, I am just looking at the witness statement that was recorded by the witness that has taken the stand. That statement is five pages. I am asking myself silently whether I am going to properly take the witness-in-chief on a five-page statement within 40 minutes, which would be inclusive of cross-examination and re-examination.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Counsel, I hope you listened to Sen. Orengo that we have the information and have read the information. These Senators have not slept because of this case. Therefore, they know everything.

What we need to do is to pick issues that you want the witness to clarify, otherwise the information is here.

Sen. Linturi, you are requesting to speak, you are not requesting for an intervention. Go ahead.

**Sen. Linturi:** Madam Deputy Speaker, probably to assist in saving time because of the strict nature of these proceedings and having heard the counsel confirm that the statements are with us, why can we not suggest or propose that you adopt the statement, it is cross-examined and then re-examined. I think that will have saved 10 or so minutes.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you. I think you have given good advice.

Do whatever you can to make sure that you have got the real gist of what the witnesses are presenting. I can assure you that these Senators have read.

**The Counsel for Nairobi City County Assembly** (Mr. Ashioya Biko Brian): Madam Deputy Speaker, I am directed.

Janet, at one point you were a County Executive Committee Member (CECM) for Education, Gender, Culture, Youth Sports and Social Services, right?

**Ms. Janet Muthoni Ouko:** That is right.

**The Counsel for Nairobi City County Assembly** (Mr. Ashioya Biko Brian): You will be addressing Madam Deputy Speaker, because this needs to go on HANSARD.

When were you employed at the county?

**Ms. Janet Muthoni Ouko:** Madam Deputy Speaker, I joined the County in October 2017 and I exited 2019 early January.

**The Counsel for Nairobi City County Assembly** (Mr. Ashioya Biko): You have done a statement.

Madam Deputy Speaker, I am making reference to the statement that is contained in in our file that is labeled 9F. You did an affidavit in support of the removal of governor from the office. Is it true?

**Ms. Janet Muthoni Ouko:** That is right, Madam Deputy Speaker.

**The Counsel for Nairobi City County Assembly** (Mr. Ashioya Biko Brian): You have highlighted your relationships with the various organs of the Nairobi City county government as enumerated under paragraph five.

**Ms. Janet Muthoni Ouko:** Madam Deputy Speaker, that is right.

**The Counsel for Nairobi City County Assembly** (Mr. Ashioya Biko): Madam Deputy Speaker, because of the constraint of time, we will not go through your relationship with fellow County Executive Committee (CEC) Members because it is well captured and I get comfort in the direction from the Speaker that the Senators have gone through the Statement. I will also not take you through the relationship with the Nairobi City County Assembly, the national Government and the international community.

I will be very specific as to what is before the Senate this evening. Can you in a nutshell describe the work relationship between yourself and Gov. Mike Mbuvi Sonko?

**Ms. Janet Muthoni Ouko:** Madam Deputy Speaker, I would like to begin by stating that I am not a vindictive person. I am here because Article 3 of the Constitution gives me a mandate as a citizen of this Republic to defend and uphold the Constitution of Kenya and protect it at all times and that is why I feel that it is very important for me to come here, especially for my conviction to give breathe to Chapter Six of the Constitution of Kenya.

I would like to speak about my former boss, a man I respect so much, Gov. Mike Mbuvi Sonko. I would describe our relationship as sporadic so that this House gets to understand some of the issues that you have seen coming up.

You might think that I was the CECM for Education but I would like to state that I was never the CECM for Education. I could not move even this phone from one place to another. That is the dilemma that many of the officials of the Nairobi City county government find themselves in, today.

When IU was listening to questions that the governor did not sign documents on the stadium. He could not have signed. Nobody in the Nairobi city county government operated out of their technical ability or technical know-how. They were simply instructions that are mostly unwritten. I would like to dare all the written instruction from the office of the Nairobi City County Governor to be produced but they will not because all instructions are on phone.

I would like to describe a relationship of blackmail and intimidation.

**The Counsel for Nairobi City County Assembly** (Mr. Ashioya Biko Brian): Sorry for cutting you short but I would like us to go systematically.

**Hon. Senators:** *Umeharibu!*

**The Counsel for Nairobi City County Assembly** (Mr. Ashioya Biko Brian): My apologies for that!

**The Deputy Speaker** (Sen. (Prof.) Kamar): The hon. Members want you to save time. Since she is already flowing, allow her speak.

**The Counsel for Nairobi City County Assembly** (Mr. Ashioya Biko Brian): Kindly proceed, Ms. Muthoni.

**Ms. Janet Muthoni Ouko:** Madam Deputy Speaker, I would like to discuss a relationship of blackmail. I will give an account of my experience; what I felt, what I saw and what I heard as a former CECM. Every instruction I took was instructed on phone and if you looked like you are not co-operating, there were many abuses. The House has seen a cross section of what a CECM would be told accompanied with statements such as, *'Nitakufuta kazi, nitakufuta kazi kesho'*

Madam Deputy Speaker, many people who work under the Nairobi City county government have families. Nobody would put their job on the line. Many of them are servicing loans and have children in schools. It is human instinct to first of all want to defend your job. Therefore, a lot of the actions and omissions that were taken by several officials that you see as the Nairobi City county government they are technically a notch higher, so it can only be described as something different.

I am here as an example that when it was time for us to do bursaries, I am supposed to advise His Excellency the governor on how best to implement a bursary program. You sit down, do a very good note, indicating that you want to give bursaries to every public primary school. Going to the governor with that proposal, he will tell you to wait until you are elected the governor for you to make your own decisions.

**The Counsel for the Nairobi City County Governor** (Mr. Apollo Mboya): On a point of order, Madam Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Counsel, hon. Members I would like Ms. Ouko to finish that point before interrupting her. I will give you a chance to intervene.

**Ms. Janet Muthoni Ouko:** Thank you, Madam Deputy Speaker. I am noting that the House is constrained for time, so I am trying to give as much as I can so that we help each other.

I am here today because there are so many other Members of the County Assembly, probably staff members that cannot stand here and say what I am saying. They are interested in seeing value.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Madam Deputy Speaker---

**The Deputy Speaker** (Sen. (Prof.) Kamar): Please take your seat, she is giving her evidence, we will allow you---

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): It is an objection Madam Deputy Speaker.

She is expanding her evidence beyond her affidavit. She is becoming a politician and an orator before this Honorable House. She ought to confine herself to the affidavit.



**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiiru): Is it a problem being an orator? It is no problem being an orator.

**The Counsel for Nairobi City County Governor** (Mr. Wilfred Nyamu): Address the Speaker. Do not address me.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Order. I want the counsels to allow; she only has one last one minute to give. Let her finish her summary, which is her submission. Earlier today, we agreed that whatever evidence you have how you articulate is personal to you. Allow her to articulate the last line.

Sen. Cheragei, what is your point of order?

**Sen. Cheragei:** Madam Deputy Speaker, earlier on, you had ruled that any witness that appears before us must constrain himself or herself within what has been provided before us. We are not interested in gerrymandering or any other issues outside the ambit that has been provided.

The ruling has been made; the precedent is in your sit. You had directed that anything that comes out before this must---

*(Loud Consultations)*

Madam Deputy Speaker, you need to protect me from this gender activist. You had ruled and there is a precedent, that you must constrain yourself within what you are provided for either in evidence or in affidavit. Do not go outside that ambit because you are involving us in a rat race.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Cheragei, you only need to tell us specific things she is gerrymandering. I will allow Sen. Mpaayei. Who is using his card?

Sen. Kinyua.

**Sen. Kinyua:** Asante Bi. Naibu Spika. Nimesoma ushahidi wote ambao tulipewa, lakini mambo ambayo ninasikia sasa ni hekaya na historia. Tulipenda tufuatilie ushahidi tuliopewa. Tumeusoma usiku kucha, halafu yale tunayosikia sasa ni hekaya. Tufuatilie ushahidi ulioko hapa.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you. Sen. Halake, proceed.

**Sen. Halake:** Madam Deputy Speaker, is my colleague in order to state that he wants 'to be protected from the gender activist?' What does gender activism have to do with this? I do not see one thing out of the affidavit. What she is referring to is what was on the television. We have a right to be gender activists.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you. Sen. Orengo.

**The Senate Minority Leader** (Sen. Orengo): Madam Deputy Speaker, one of the things that I was taught---. If there is any lawyer we have in the House who has got experience is the lawyer called Mr. Nyamu.

In fact, in matters Petitions relating to impeachment he has contributed to the relevance of the law, to two impeachments. He has argued these cases to the Supreme Court. What is worrying, is the counsels for the governor. My starting point if I was cross

examining this witness is to show her the statement and say: ‘What you are saying is not in the statement but an afterthought’.

These are all material for cross-examination. The moment you stand up and down the story is lost and even your case is lost. If you want to create an impression to us---. That is why I am saying if she is relying on the statement, that is where you begin: ‘Janet, I have your statement, did you include the evidence you are saying now in your statement? Why did you not include it? Is it an afterthought?’ Then, we build up a case on character and integrity of the witness. However, I think that the way we are jumping up and down, the 20 minutes will not work.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Counsel, I had told you that I wanted her to finish that part of the statement so that I give you a chance. It is only better and you will be heard better if you actually get a chance to dispute that they are not in the statement.

Sen. Shiyonga, then I will come back to you.

**Sen. Shiyonga:** Thank you, Madam Deputy Speaker. I was going to speak to what the Counsel has said. We are not here to waste time, but to manage time. We need to hear even more than what we are listening to here. We need exactly what we have in the books here, not stories. We want to have executive summaries that can make the investigations more reliable than just stories. If we can confine ourselves where we want to go and get evidence that will help us summarize this case, then it will be good for us.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Sen. Madzayo, although you are not on a point of order. You are speaking at the wrong place.

**Sen. Madzayo:** Bi, Naibu Spika, nilikua nimesimama hapo awali. Nilitaka kusema kwamba, ushahidi ambao--- Mshahidi mwenyewe ajiangalie katika yale yalioandikwa pale, ndio aweze kutuambia.

Wakili amepitwa kidogo kwa sababu akijaribu kuuliza atashindwa ule wakati wa kuuliza maswali. Kwa hivyo, ni vizuri angojee mshahidi atoe ushahidi wake. Akimaliza, yeye atapata nafasi nzuri sana ya kumweleza kwamba amefanya makosa hapa na pale. Hio itakua sababu nzuri ya yeye kumsaidia mteja wake.

Asante.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Finally, Sen. Wetangula.

**Sen. Wetangula:** Madam Deputy Speaker, I do not know why some of our colleagues are becoming hyper. This witness has a statement. If you have read her statement, what she has been saying is actually in her statement. Why do you not leave the lawyers to do their work?

I want to encourage my learned colleagues that they will do so well in cross-examination rather than shooting up to interrupt a witness. This is because sometimes it also creates prejudice against you, if we are among the jurors. Just listen to the witness.

I have read that statement over and over. What she started saying is not outside the statement, and we had asked her to paraphrase what is in her statement.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Witness, please, guard your territory. Express yourself, because people express themselves differently, but do not bring in new

things. I hope that you are only going to take the last minute, because there is a need to reduce time.

**The Counsel for Nairobi City County Assembly** (Mr. Ashioya Biko Brian): Madam Deputy Speaker, we were unfairly interrupted. I pray that we be given three minutes, please.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Let her continue, we will see.

**Ms. Janet Muthoni Ouko:** Thank you very much, Madam Deputy Speaker. I know that the Members of this House have this statement.

I will summarize by saying the reason I stand here today is to defend Chapter Six of the Constitution. I feel sad that all the employees of Nairobi City County have not given Nairobi County the value that they needed. All of them did not exercise their technical value because the governor of Nairobi is the one who has been controlling everything.

A lot of things have been said. For example, if you read my statement, you will see the questions that are coming up about Dandora. You cannot and have no ability to make one decision. I will be challenged here and will answer. I feel the lost time for the value and the right decisions that were supposed to be made that were not made, just because many colleagues that are supposed to make that decision were blackmailed into submission.

Many of them are harassed. We had people in the county assembly who have actually been beaten in our presence at the county. That is bodily harm. What do you make of your boss that calls you at 2.00 a.m. in the night? What is that, apart from harassment? They want you to answer questions, and you do not know whether they are in their right frame of mind. They are surrounded by people who are laughing at you. He is hurling all manner of insults at you. You are not able to do your duties because you are frightened.

That is what I wanted to present to his honourable House, so that the questions that are coming up such as: "Have you seen the governor's signature on that?" will not be there.

Ladies and gentlemen, that is the situation. That is how the Nairobi City county government works. By the time I was working, I only had a one-year contract that was subject to blackmail of "*Wewe sita renew contract yako.*" Literally people were operating in that kind of environment.

I began by saying that a lot of them are men that are heads of households. They have children and loans. It is only a natural instinct to protect where you get your bread because that is most important than making decisions that contradict your boss and then you get yourself into problems.

Thank you.

**The Counsel for Nairobi City County Assembly** (Mr. Brian Biko Ashioya): Madam Deputy Speaker, with your permission, I just want to ask her two questions that are related to her statement, if you may allow.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Okay, proceed.

**The Counsel for Nairobi City County Assembly** (Mr. Brian Biko Ashioya): Madam Janet, I want you to make reference to two paragraphs. One is paragraph No.14, where you say that the governor was always paranoid. You have given an example of when you were summoned to the Senate. Can you tell the Senate what happened?

**Ms. Janet Muthoni Ouko:** Madam Deputy Speaker, the governor of the Nairobi City County was summoned to the Senate. Other colleagues and I accompanied him. Sen. Moses Kajwang', who is a comrade, who we were with at the university made a very general comment. He said: "Your Excellency, why do you seem like you are making a lot of errors yet you have people here like Madam Ouko, I know her."

That was supposed to be a compliment, but it caused me problems the whole time that I served. I was told: "*Wewe una peleka maneno Senate.*" You do not know what else to do. I did not order Sen. Moses Kajwang' to compliment me, but this totally messed up my life. I wish he could have withdrawn that statement because it seemed like I had a private arrangement that I could call him so that--- That is how he worked.

**The Deputy Speaker** (Sen. (Prof.) Kamar): The point has been taken.

**The Counsel for Nairobi City County Assembly** (Mr. Brian Biko Ashioya): Thank you. Turn to paragraph No.16 at the very tail end, the last two paragraphs. The line starting: "He would later display his disrespectful nature when he described me on national television as a pig that is horny." Kindly give us that information.

**Ms. Janet Muthoni Ouko:** Madam Deputy Speaker, one of the things is that His Excellency the governor could sometimes call you up and just tell you--- However, this was very unfortunate because it was on national television.

He described me as a horny female pig. This is not proper. It is harassment on gender. I am just describing for you the conditions of work for myself and other women. Many comments have been made about them yet they have families. Such comments as "*Wewe toka hapa nimelala na wewe.*" This is not right. It is sad to say such things in public. However, this is our linen, we have to wash it.

Thank you.

**The Counsel for Nairobi City County Assembly** (Mr. Brian Biko Ashioya): Lastly, do you wish to produce this affidavit in support of the Motion for the removal of the governor from office?

**Ms. Janet Muthoni Ouko:** That is right, Madam Deputy Speaker.

**The Counsel for Nairobi City County Assembly** (Mr. Brian Biko Ashioya): That shall be all. Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you. May I now invite the Counsel for the governor to cross-examine the witness? We only have 15 minutes. If you could only take five minutes, that will be good.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): I will try, Madam Deputy Speaker.

Madam Janet, when did you swear this affidavit, which you have asked this Senate to consider?

**Ms. Janet Muthoni Ouko:** I believe I am making this submission---

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Hon. Members, this is the issue, we are not getting a direct answer. I have asked her a direct question: “When did she swear it?” Janet, when did you swear this deposition?

**Ms. Janet Muthoni Ouko:** Let me refer to the date here.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Please, confirm it is the 14<sup>th</sup> December, 2020.

**Ms. Janet Muthoni Ouko:** Yes, you are right.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Please, confirm that the impeachment resolution was done to your knowledge, if you do know, on the 3<sup>rd</sup> December, 2020.

**Ms. Janet Muthoni Ouko:** That is right.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Please, do you confirm that this deposition was not available to the governor, earlier than at least when you swore it on 24<sup>th</sup> December, 2020?

**Ms. Janet Muthoni Ouko:** I was probably not the one. I am not really able to comment on the exact time that he was served and probably counsel will do that.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Very well, but do you confirm that at least on the 3<sup>rd</sup> December, 2020, you had not sworn in?

**Ms. Janet Muthoni Ouko:** I did that and I already confer.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Thank you. Did you sue to communicate with His Excellency the governor *via* your WhatsApp messages?

**Ms. Janet Muthoni Ouko:** When? What span are you talking about when I affirmed?

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): I am cross-examining you. Did you ever?

**Ms. Janet Muthoni Ouko:** Yes, I did.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Do you have any evidence of any threat to you posted to your WhatsApp messenger?

**Ms. Janet Muthoni Ouko:** Any what?

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Do you have any threat posted to your WhatsApp messenger by the governor?

**Ms. Janet Muthoni Ouko:** I do not have.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Do you have any incident you can name in your deposition, one single incident on a date, a time, the year that the governor threatened you?

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiru): Madam Deputy Speaker, if you may, the counsel needs to restrict himself to the materials before us.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): This is what we are facing. This is what has been lamented about. Mr. Njiru sees that he should interrupt.

**The Counsel for Nairobi City County Assembly** (Mr. Ndegwa Njiru): Mr. Kinyanjui, I was on my feet.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): I was on my feet before you mentioned Madam Deputy Speaker. I apologize.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Counsels, let us get the clarifications done. Please, do not exchange between yourselves. You must talk to the Speaker.

**Ms. Janet Muthoni Ouko**: Yes, I am aware of a threat. I was threatened to be sacked in the middle of the night. I have not kept the dates but that was a threat.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Please, answer my question. Do you have in your entire affidavit a named date, time, or the year? You said in your affidavit Paragraph 3, that that is when you were employed.

**Ms. Janet Muthoni Ouko**: No.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Do you confirm that in Paragraph 3 that that is when you were employed?

**Ms. Janet Muthoni Ouko**: No.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Do you confirm in Paragraph 3 that that is designating your appointment? That is what you have deposed.

**Ms. Janet Muthoni Ouko**: Yes.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Ms. Janet, I am trying to avoid looking at you because I do not want to be accused of threatening you. I am looking steadily at Madam Deputy Speaker.

Ms. Janet, do you acknowledge that the appointment power is different from that one of an employee by hiring?

**Ms. Janet Muthoni Ouko**: I do.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Do you confirm that His Excellency the governor has the powers to dismiss you?

**Ms. Janet Muthoni Ouko**: I also have rights.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Hold on. Let us confine ourselves to save the time. My time is constricted. Ms. Janet, you do confirm that on all the occasions you have mentioned that His Excellency allegedly demeaned you and attacked you, you have not named?

**Ms. Janet Muthoni Ouko**: I have not what?

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): I mean this allegation was made when I was at Dandora or in Nairobi. Do you confirm?

**Ms. Janet Muthoni Ouko**: I have really rushed through my statement. I want you to give me time. I can locate the statement that you want here if you require me to do that.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): To save time, Paragraph 16, for instance, you said, 'I had a problem with the disrespectful

nature with which the governor would address me'. You have not mentioned the occasion, the event, place, time or even the date.

**Ms. Janet Muthoni Ouko:** From time to time---

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Hold on. Even from that time to time, you still generalized. That bordered on molestation. I ask, have you mentioned the nature of the molestation? You have not in that paragraph. You say 'and urge to humiliate and blackmail me'. You confirm you have not named the nature of your blackmail there that he blackmailed you. Do you confirm?

**Ms. Janet Muthoni Ouko:** Counsel, please guide me and give an example of how you would describe the nature of blackmail.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Blackmail is that unless you do this for me or in my favor, I would take this or that action against you. In that paragraph, you have not mentioned it.

**Ms. Janet Muthoni Ouko:** It is here.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Okay. You have not cited.

**Ms. Janet Muthoni Ouko:** I will sack you. I will not renew your contract.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Let us look at Paragraph---

**The Deputy Speaker** (Sen. (Prof.) Kamar): Your time is up.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Madam Deputy Speaker, allow me to ask the last question.

If you look at your paragraph 15, for instance----

**The Deputy Speaker** (Sen. Prof. Kamar): Your one minute is over.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): I am sorry, Madam Deputy Speaker. She has not answered. When I address her to refer---

**Ms. Janet Muthoni Ouko:** Is there a question on the Floor?

**The Deputy Speaker** (Sen. Prof. Kamar): Counsel, you had your five minutes.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Madam Deputy Speaker, I was interrupted by her lawyer. Let me just say this, you were the CEC Member for Education, have you produced any documentation material before this honourable Senate in proof of your allegations?

**Ms. Janet Muthoni Ouko:** Yes, they have been produced.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Paragraph 2 says "Enclosed here with, please find all supporting documents marked PMN1." You confirm there is nothing here to the affidavit.

**Ms. Janet Muthoni Ouko:** There is a lot. Not on this paper---

**The Deputy Speaker** (Sen. Prof. Kamar): Thank you. As we said, the Senators are listening and they will make up their minds out of that. Any other intervention?

**The Counsel for Nairobi City County Assembly** (Mr. Kevin Kokebe): Madam Speaker, could I be given a chance reexamine?

**The Deputy Speaker** (Sen. Prof. Kamar): Thank you very much, witness. We stand you down. We want the next witness to come in.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): I am sorry, Madam Deputy Speaker, there were documents in which the Speaker of the Senate had said that we will address tomorrow. Her documents are slotted to be addressed tomorrow. If I may beg to recall her for about 10 minutes, in furtherance of that, so that hon. Members can have---

**The Deputy Speaker** (Sen. Prof. Kamar): Are you saying you have seen the documents?

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): I say that implicitly because 14<sup>th</sup> of December, is when the affidavit was sworn.

**The Deputy Speaker** (Sen. Prof. Kamar): Counsel, you are going back to what you were against. Earlier on, you said the documents were there when they were not there.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): No. I am saying what I have seen in the affidavit.

**The Deputy Speaker** (Sen. Prof. Kamar): You asked her whether she had documents and she told you she had them. Unfortunately, you had not looked at them. It will not be upon the Senate to make sure that you look at all your documents. I defer that. I will not give you that ruling now. We have a very short time and we do not want to lose the last witness.

The last witness has only five minutes.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): What I meant to say is that tomorrow is a time---

**The Deputy Speaker** (Sen. Prof. Kamar): Please, I have ruled because it was up to you to look at the documents. You cannot come back and say----

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): It is the affidavit, which I had not seen.

**The Deputy Speaker** (Sen. Prof. Kamar): You said you had not seen it. Hold on. If there is any ruling that we will give, we will do it later.

Can we get the last witness? Thank you very much, Ms. Janet Muthoni Ouko.

**Ms. Janet Muthoni Ouko:** Thank you, Madam Deputy Speaker.

**The Counsel for Nairobi City County Assembly** (Mr. Ashioya Biko Brian): Madam Deputy Speaker, we shall be calling our next witness who is outside.

**The Deputy Speaker** (Sen. Prof. Kamar): You have only six minutes. We hope the witness will take three minutes and use the three minutes for cross-examination.

**The Counsel for Nairobi City County Assembly** (Mr. Ashioya Biko Brian): Madam Deputy Speaker, our next witness will be taken over by my learned friend Mr. Kokebe through the process of examination-in-chief. Mr. Kokebe, kindly, proceed.

**Sen. Kang'ata:** On a point of order, Madam Deputy Speaker.

**The Deputy Speaker** (Sen. Prof. Kamar): There is a point of order from the Senator for Murang'a County. Please go ahead.

**Sen. Kang'ata:** Madam Deputy Speaker, we only have five or six minutes before we close this Session. It will be very unfair on the part of the lawyers representing His



Excellency the governor if the witnesses just come, give evidence and they do not get adequate time to cross-examine that witness.

I am seeking your direction as to whether you can add this witness 10 minutes beyond 8.40p.m., so that His Excellency's lawyers get an opportunity to cross-examine the witness. I will now put the Question, that the House does extend its sitting beyond 8.40 p.m.

*(Question put and agreed to)*

**The Deputy Speaker** (Sen. (Prof.) Kamar): We shall have an extra 10 minutes to enable the Counsel for the governor to cross examine properly.

The witness has five minutes to give evidence after taking oath.

*(The witness for Nairobi County Assembly,  
(Ms. Joyce Kinyanjui took the oath)*

**The Counsel for Nairobi City County Assembly** (Mr. Kevin Kokebe): Madam Deputy Speaker, I will take at most five minutes in the examination-in-chief. I also request my learned friend takes half of those minutes so that we re-examine that witness thereafter.

I invite this House to the red file marked 9(c). I request Ms. Joyce Kinyanjui to go to page 1120 of the red file marked 9 (c). I would like Madam Kinyanjui to confirm that this declaration sworn on 23<sup>rd</sup> November 2020 was sworn by her.

**Ms. Joyce Kinyanjui:** Madam Deputy Speaker, yes, I agree.

**The Counsel for Nairobi City County Assembly** (Mr. Kevin Kokebe): Madam Deputy Speaker, I would like Ms. Kinyanjui to confirm that the information she is producing *vide* this statutory declaration to be admitted as her testimony before this honourable House.

**Ms. Joyce Kinyanjui:** Madam Deputy Speaker, yes, I agree.

**The Counsel for Nairobi City County Assembly** (Mr. Kevin Kokebe): Madam Deputy Speaker, I call upon my learned friend to do the cross examination and then I will re-examine.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Proceed, Counsel.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Madam Deputy Speaker, Ms. Joyce Kinyanjui has stated that there was a request made to Shades of Africa in paragraph seven, which is a pre-qualified travel agency by the Nairobi City county government. What is the issue about the \$17,260 that you talk about there?

**Ms. Joyce Kinyanjui:** Madam Deputy Speaker, as far as I am concerned, the \$17,260 was meant to pay for the tickets of the First Lady and her entourage to the United States of America for the 62<sup>nd</sup> Commission on the Status of Women (CSW).

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Was that visit officially approved for the First Lady of the Nairobi City county government?

**Ms. Joyce Kinyanjui:** Madam Deputy Speaker, yes, it was.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): So the trip had nothing to do with the governor. Let me take you to Page 1133. Is that your imprest?

**Ms. Joyce Kinyanjui:** Madam Deputy Speaker, yes it is.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Is there any money that you received from the Nairobi City county government that you are not entitled to? I urge Mr. Njiru to stay away so that we can save time.

**Ms. Joyce Kinyanjui:** Madam Deputy Speaker, the money was not entitled to me.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Did you receive any money from the Nairobi City county government that came to your own direct possession?

**Ms. Joyce Kinyanjui:** Madam Deputy Speaker, I received the money being the imprest for the First Lady of the Nairobi City county government and ward administrator to travel to the USA.

**The Counsel for the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Did you surrender that money?

**Ms. Joyce Kinyanjui:** Madam Deputy Speaker, yes, I did.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): You surrendered it?

**Ms. Joyce Kinyanjui:** Yes, I did.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): But, how much money did you receive?

**Ms. Joyce Kinyanjui:** I received Kshs2.6 million less the Kshs5,000.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Now, you refunded how much?

**Ms. Joyce Kinyanjui:** I did not refund. I surrendered the imprest.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Was there any penny of that money that you allege attributable to the governor, going to his pocket?

**Ms. Joyce Kinyanjui:** I said the money was meant for the First Lady and the Ward Administrator who were travelling to the United States of America for the conference.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): Was the visit approved officially?

**Ms. Joyce Kinyanjui:** Yes. The visit was approved.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): When you come to your statement, let me take you back to your affidavit on page 1121. Is there anywhere that you attribute the execution of any of those documents to the governor?

**Ms. Joyce Kinyanjui:** No, I do not.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): You have stated in paragraph 12, 1121, that you compiled all the documents with respect to the trip, which includes the air tickets, boarding passes as well as accommodation. You did omit from your compilation of documents the documents relating to your money, which you took from the county.

**Ms. Joyce Kinyanjui:** I surrendered all the documents.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): I am saying when you were compiling the documents, you omitted the documents that prove you took the money from the county government.

**Ms. Joyce Kinyanjui:** Pardon?

**The Deputy Speaker** (Sen. (Prof.) Kamar): Please come out clearly because even me, I am not clear on what you are asking.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): I said that she mentioned that the trip was authorized but the documents that she has tendered do not show that. She says that she had Kshs2.6 million which she took and refunded but there was US\$5000, but there is no evidence of that. The completion of the documents is what she says.

**Ms. Joyce Kinyanjui:** Madam Deputy Speaker, I want to correct my statement and say that the counsel is misquoting me. I have put it clearly that the Kshs2.6 million I that I took, if you go to document 1125 it is Authority to Incur Expenditure signed by me to the County Secretary.

The Authority to Incur Expenditure is Her Excellency the First Lady will be accompanied by the others to the mentioned conference in New York, United States of America scheduled to take place from 12<sup>th</sup> to 23<sup>rd</sup> March, 2018.

The people who were to accompany Her Excellency the First Lady were Ms. Janet Muthoni Gichuki of passport No. B174362 who was then a County Executive Committee Member for Education, Youth Gender and Social Services and one Ms. Saumu Agnes Mbuvi of passport No. B168652.

That authority was approved by the County Secretary. After that, the procedure is, it goes to the paymaster who completes the per diems before the document goes back to the accountant for the preparation of the payment vouchers to the beneficiaries.

**The Counsel for Nairobi City County Governor** (Mr. Harrison Kinyanjui): I was ending my question. All that documentation of the approvals, the vouchers and everything you have not included.

**Ms. Joyce Kinyanjui:** All the documents are here. There is no document that I did not submit.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you. Any other?

**The Counsel for Nairobi City County Assembly** (Mr. Kevin Kokebe): Madam Deputy Speaker, it is my turn to re-examine the witness.

Ms. Kinyanjui, you have been referred to your testimony from the special declaration. You have referred this hon. House to the document on page 1125.

**Ms. Joyce Kinyanjui:** Yes.

**The Counsel for Nairobi City County Assembly** (Mr. Kevin Kokebe): In that document, what was the designation of the person, Saumu Agnes Mbuvi?

**Ms. Joyce Kinyanjui:** I did not fill any designation when I was doing the Authority to Incur Expenditure because I did not have her designation. I, however, indicated the designation of the County Executive Committee Member (CECM).

**The Counsel for Nairobi City County Assembly** (Mr. Kevin Kokebe): That is fair enough. Later on, you got an invoice. It has been asked that you received some Kshs2.6 million. Is it so?

**Ms. Joyce Kinyanjui:** Yes, I received an invoice.

**The Counsel for Nairobi City County Assembly** (Mr. Kevin Kokebe): Hon. Senators, the invoice in question is on page 1126 – 1127.

**The Counsel of the Nairobi City County Governor** (Mr. Harrison Kinyanjui): Sorry to interject, Madam Deputy Speaker. This is a redoing of the case, with tremendous respect. The documents that are being referred to, they did not take her through.

**The Counsel for Nairobi City County Assembly** (Mr. Kevin Kokebe): Madam Deputy Speaker, my learned Senior knows well that he has referred to Kshs2.6 million. The Kshs2.6 million he is referring to is in that invoice. I am further laying evidence before this court that he has referred to a Kshs2.6 million, which is in here.

Madam Deputy Speaker, hon. Members, to the next point, I refer you to yet another document that is on page 1133, which again, is where Mr. Kinyanjui began. Hon. Senators, if we are all there, Ms. Kinyanjui, kindly read what the purpose for this money on 1133 was on. What was the purpose for that money?

**Ms. Joyce Kinyanjui:** Nature of duty being imprest for the County First Lady and Ward Administrator to travel to the United States of America (U.S.A.)

**The Counsel for Nairobi City County Assembly** (Mr. Kevin Kokebe): A ward administrator that you did not know at first? Is that so?

**Ms. Joyce Kinyanjui:** I was not given the designation.

**The Counsel for Nairobi City County Assembly** (Mr. Kevin Kokebe): Thank you. You also referred to an issue that you received money. Who did you give this money? How did it leave your account?

**Ms. Joyce Kinyanjui:** On the morning of 19<sup>th</sup> March 2018, I was in the office, and one Christopher Mbwaga Obuso, who was then a security detail to the governor called me and asked me where I was. I told him that I was in the office. Then he told me that he was coming.

Within a short while, because I was on the same floor as the governor, he came and found me in the office. He told me, *twende ukatoe pesa ya* First Lady. We went down to Co-operative Bank, City Hall Branch. I withdrew the money and gave that money to Christopher Mbwaga Obuso. It is important to say that after which, because it was an imprest warrant---

*(Loud consultations)*

**The Counsel for the Nairobi City County Assembly** (Mr. Njiiru Ndegwa): Madam Deputy Speaker, there was a question about the money and how she expended it. She is expounding on that point in re-examination. We have a right to rebut that proposition. It is in her document. It is in evidence. It is on page 1134. That is what she is referring to.

**The Deputy Speaker** (Sen. (Prof.) Kamar): That is alright. I think that question actually came from the counsel of the governor. He raised a clear exposition of that Kshs2.6 million, so we are all trying to follow it. Please, enable us to follow it because the judgement is tomorrow and things should be as clear as they should be.

Last question, please. You have only one minute.

**The Counsel for Nairobi City County Assembly** (Mr. Kevin Kokebe): Thank you, Madam Deputy Speaker. I beg that I take two minutes on the last question because this is an issue that was raised.

Ms. Kinyanjui, how was that money to be spent? How did it leave your account?

**The Counsel of the Nairobi City County Governor** (Harrison Kinyanjui): That has been answered already.

**The Deputy Speaker** (Sen. (Prof.) Kamar): She has already answered that one. I agree. She has already said that there was a security guard who came and took the money. I heard it myself.

**The Counsel for Nairobi City County Assembly** (Mr. Kevin Kokebe): Madam Deputy Speaker, it will be prejudicial to my client that---

*(Loud consultations)*

Madam Deputy Speaker, kindly protect me from my learned friends.

Hon. Speaker and Members of this honorable House, the question was asked and I am only referring to it.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Which question---

**The Counsel for Nairobi City County Assembly** (Mr. Kevin Kokebe): The question that I am putting to the witness is as simple as what it is: How was the money to be expended based on the evidence that is there?

Hon. Speaker, I invite you to look at 1143.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Counsel, I am looking for the shortest time for Members to seek clarifications. The clearer you are the better. I will only have 10 minutes for Members after you have finished. Answer that question precisely, and that is the last.

**Ms. Joyce Kinyanjui**: Before I go to 1143, I want to start from 1126 for which I received the invoice from Premier Plan Agency. It is H.E. County First Lady, Nairobi City County, Ms. Primrose Mweru Mbuvi, attendance to CSW conference New York, 14 days; international private airport transfer chauffeur driven, accommodation in New York for nine days and conference side events/ meetings. There was also local transport cost, set-up and side meetings, hall space bookings, local tourist sites and museum costs and miscellaneous.

**The Deputy Speaker** (Sen. (Prof.) Kamar): By the way we have those details.

**Ms. Joyce Kinyanjui:** Then the other cost was for---

**The Deputy Speaker** (Sen. (Prof.) Kamar): We have those details. So, let us not repeat because Members have already read your statements.

**The Counsel for Nairobi City County Assembly** (Mr. Kevin Kokebe): Thank you. I am glad the House has taken note of that.

I will be yielding, Madam Deputy Speaker and the honourable Members.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, we had promised that we would allow you a few minutes in case you have question or clarification to all the witnesses of the County Assembly.

**An hon. Senator:** Imetutosha

**The Deputy Speaker** (Sen. (Prof.) Kamar): Addiction to the Kiswahili dictionary is landing even on this Chair. Hon. Members, are we all satisfied?

**Hon. Senators:** Yes.

**The Deputy Speaker** (Sen. (Prof.) Kamar): Thank you, very much, Senators.

### ADJOURNMENT

**The Deputy Speaker** (Sen. (Prof.) Kamar): Hon. Senators, it is now time to interrupt the business of the Senate. The House, therefore, stands adjourned until tomorrow, Thursday, 17<sup>th</sup> December, 2020, at 9.00 a.m.

The Senate rose at 8.55 p.m.