

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Monday, 14th October, 2024

Morning Sitting

Special Sitting

*(Convened via Kenya Gazette Notice
No.13179 of 9th October, 2024)*

*The House met at the Senate Chamber,
Parliament Buildings, at 9.00 a.m.*

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

The Speaker (Hon. Kingi): Clerk, do we have quorum?

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

Serjeant-at-Arms, kindly ring the Quorum Bell for 10 minutes

(The Quorum Bell was rung)

COMMUNICATION FROM THE CHAIR

READING OF CHARGES ON THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF KERICHO COUNTY, HON. (DR.) ERICK KIPKOECH MUTAI

The Speaker (Hon. Kingi): Hon. Senators, I have a Communication to make relating to the business of the Senate scheduled for consideration during this Sitting.

You will recall that at a sitting of the Senate held on Tuesday, 8th October, 2024, I appointed today, Monday, 14th October and tomorrow, Tuesday, 15th October, 2024, as

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the days when the Senate will hear the charges for the proposed removal from office by impeachment of hon. (Dr.) Eric Kipkoech Mutai, the governor of Kericho County.

You will also recall that at a sitting of the Senate held on Wednesday, 9th October, 2024, a Procedural Motion to sit today, Monday, 14th October, 2024 and the alteration of the sitting time for Tuesday, 15th October, 2024 was moved and approved to facilitate the impeachment hearing of Dr. Eric Kipkoech Mutai, the governor of Kericho County.

Subsequently, *vide* the Gazette Notice No.13179, I notified the general public that pursuant to Section 33 of the County Governments Act and Standing Order No. 80(1)(b), 2 of the Senate Standing Orders, the Senate resolved to undertake investigation on the proposed removal from office by impeachment of Dr. Eric Kipkoech Mutai, the governor of Kericho County in Plenary.

Hon. Senators, regarding the hearing and determination on the proposed removal from office by impeachment of Dr. Eric Kipkoech Mutai, a programme has been prepared and appended to the Order Paper for today.

As is the tradition and in line with the schedule of activities for an impeachment hearing in plenary, the Senate will hold a closed preparatory session to deliberate on the management of the investigation.

The objective of the preparatory session is to ensure that the process is conducted seamlessly and concluded timeously, and in line with the requirements set out under the County Governments Act and the Senate Standing Orders.

During the pre-hearing, the parties - if they are present - all members of the public and the media, will be expected to withdraw from the Chamber and the galleries and any form of broadcast from the Chamber shall cease forthwith.

Now, in accordance with the hearing programme for an impeachment hearing in plenary, the open session will commence at 10.00 a.m., this morning.

Consequently, I now direct all members of the public and the media to withdraw from the Chamber and the galleries and that any form of broadcast from the Chamber to cease forthwith.

*(All members of the public and the media
withdrew from the galleries)*

(The House went into an in-camera session)

Now, Hon. Senators, we will proceed with the closed session basically to do some housekeeping on how we are going to handle this particular investigation. So, I will allow the Clerk to take us through and, thereafter, if there is any Senator wishing to seek any clarification, you may do so.

Clerk, you may proceed.

The Clerk of the Senate (Mr. Nyegenye): Hon. Senators, good morning and welcome to the pre-briefing Session in the matter of the proposed removal from office by impeachment of the Hon. (Dr.) Eric Kipkoech Mutai, the Governor of Kericho County.

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The purpose of this pre-briefing session is to ensure that all the Senators who constitute the court for the purpose of the impeachment proceedings are clear about all the documentation and are on the same page about where we are in the matter.

Before I begin the briefing, I would like to ask that the document I will be speaking to is circulated, so that you are able to follow.

Serjeant-at-Arms, please, circulate to every Senator.

I will pause for a minute to ensure that every Senator has the document before we proceed.

(Serjeant-at-Arms circulated the document to hon. Senators)

I believe that every Senator has received a copy of the document titled:

“Pre-hearing brief on the proposed removal from office by impeachment of Hon. (Dr.) Eric Kipkoech Mutai, the Governor of Kericho County.”

I will run you through the various paragraphs of this document. As I have stated earlier, the purpose of this briefing and this document is to ensure that you, as the jurors and members of the court have all the documents that you need for the purposes of the hearing. This is so that you are clear about where exactly we are in respect of the processes required under the Standing Orders.

Under paragraph 1, we recite how the matter began, which is by the letter received by the office of the Speaker, from the Speaker of the Kericho County Assembly informing him about the approval of the Motion for Impeachment.

Under paragraph 2, we set out further the letter received from the County Assembly appending certain documents, what we usually call the impeachment bundle. So, the documents which were sent as part of the impeachment bundle are set out at Paragraph 2.

I do not think it is necessary to speak to all of them. All of these documents are in our iPads. So, at Paragraph 2(a), running all the way to page 3 and 4, are documents that were sent as part of the Impeachment Bundle.

It starts with a copy of the approved notice of motion, the copy of exhibits, the order papers for the sittings and the certified HANSARD reports.

On page 2(e) are a copy of various letters, copy of affidavit of service, (G) is the certified copy of form of the verification of signatures; (H) is certified copy of the roll call vote; (I) is an Affidavit of 16 hon. Members who refused to attend or participate in the impeachment proceedings and (J) are the documents that were tabled during the debate on the Motion. Those documents are set out from (i) all the way to (xviii).

At (K), bottom of page 3, is the evidence of public participation and overleaf from (i) to (vii). At (L) on page 4 is a soft copy of the Kericho County Standing Orders. At (M) is the Statement of His Excellency the governor.

At (N) is the Affidavit by Gideon Mutai, at (O) is the Affidavit by Geoffrey Kipkirui Korir; at (P) is the affidavit by John Malel; at (Q) is the Affidavit by George Kipng'eno Kirel; (R) which is at the bottom of page 4 is the Affidavit by Ms. Jacqueline C. Lang'at and at the top of page 5, is the Affidavit by Gillian Soy and Affidavit by Mr. Joseph Rotich.

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As I have indicated, the bundles of these documents are available for reference by Senators in the Chamber iPads.

At paragraph four *via* a letter dated 7th October, we were informed that Messrs. Katwa and Kemboi advocates would be representing the governor of Kericho County in the impeachment matter. We have set out that letter that we received as Annex 1 to this pre-hearing briefing note.

At paragraph five on page five, we also indicate that by letter received on 8th October, we were informed that Messrs. H and K advocates would be the firm representing the County Assembly in this impeachment matter. That letter is Annex 2 in this bundle.

At paragraph six on page five, we also indicate further documentation that has been received by a letter dated 3rd October, 2024, received in the Office of the Speaker on 7th October. The governor of Kericho County informed the Speaker of the Senate that the Motion had grave improprieties.

He set out what he believed them to be. One is that the debate and voting was done despite a stay order by the High Court which stayed and suspended debating, voting and acting on the said notice and motion to impeach him.

Two; that the Motion was accepted by the Speaker as having met the two-thirds threshold with 31 votes out of the total of 47 Members of the County Assembly (MCAs). Therefore, the resolution to impeach is null and void. That letter is attached in this briefing document as Annex 3.

Then at paragraph eight, we recite the processes that have followed. The first of this being the convening of the Senate to hear the charges. We note that the Speaker did a gazette notice on 7th October, pursuant to Article 181 of the Constitution, the County Government's Act and the Standing Orders.

The Speaker of the Senate appointed Tuesday 8th as the sitting convened for the purpose of hearing the charges. That gazette notice is attached as Annex 4.

At paragraph nine, we also have a gazette notice dated 9th October that appointed today, Monday, 14th October, as a date for commencement of hearing and further informed the public that the hearing would run today and tomorrow. That gazette notice is attached as Annex 5.

At paragraph 10 at the bottom of page six, we set out the invitation to appear and the submission of documents by the County Assembly of Kericho. We sent out an invitation to appear and be represented before the Senate to the advocates of the County Assembly on Tuesday, 8th October.

The invitation required them, if they chose to appear before the Senate, to file with the office of the Clerk by 5.00 p.m. on Saturday, a soft copy of 80 hard copies of the documentation and designating the MCAs who would represent them. Number two; indicating the mode of appearance before the Senate.

Hon. Senators, I am at the top of page 7(b), indicating the mode of appearance before the Senate, whether in person or by advocate or in person and by advocate, indicating the names and addresses of the persons to be called as witnesses and specifying any other evidence that would be relied on.

That invitation to appear and the Affidavit of service are attached as Annex 6.

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At paragraph 12, we indicate that on Saturday, 12th October, the office of the Clerk received a response to the invitation to appear by way of a letter dated 12th October from H and K Advocates on behalf of the County Assembly. That letter is attached as Annex 7.

In that letter, they informed the office of the Clerk of various things. One; that the County Assembly would appear in person and by advocate and two; this is paragraph 12 (b) on page seven, the following two MCAs had been designated to attend and represent the County Assembly. They are; Hon. Kiprotich Rongony and Hon. Albert Kipkoech, who are both MCAs.

They also indicated that the team of advocates representing the County Assembly is as set out at the bottom of page seven. They are Kimutai Bosek, Charles Njenga, Sharon C. Mibey and Elias Mutuma, advocate.

Overleaf, from page eight, we have Kiplangat Hillary, Winnie Bett, Langat Geoffrey, Kipkorir Elvis, Brian Lee Maingi, Ian Kiplangat and Kipkirui Jafeth.

The County Assembly also indicated the witnesses they would call. That is paragraph 12(d) on page eight.

At paragraph 13 on page eight, by way of the same letter, the advocates requested the office of the Clerk to avail a Kipsigis translator, who would assist in translating some videos, audio and prints that would be in the Kipsigis language. The office of the Clerk has made arrangements to that effect.

In paragraph 14, the County Assembly *via* the same letter, also forwarded certain documents in various volumes. Vol. I is the Impeachment Motion, Order Papers and HANSARD reports. Vol. II is the public participation documents. Vol. III is the witness statements and affidavits. Vol. IV is tender evaluation reports, committee reports, County Acts and judgments. Vol. V is a flash disk containing documents and videos. Vol. VI is index of videos and bundle of transcripts. Vol. VII is the governor's bundle of documents as received by the County Assembly.

Hon. Senators, at paragraph 15, the Office of the Clerk also received, on Saturday, two letters from Messrs. H. and K. Law Advocates, requesting the Office of the Clerk to make arrangements to secure the anonymity of one of the witnesses, who will testify for the County Assembly by-

(i) coming up with special protective measures that would shield the witness from public view; and,

(ii) using voice distortion technology during the examination of the witness,

(iii) requesting that a statutory declaration sworn by Robert Kiprotich Rono, a certified copy of his commission and a certified copy of the national Identity Card (ID) of the witness, be treated with sensitivity and confidentiality, and should not be shared due to security reasons.

These letters are marked as Annex 8.

At this point, it is important to note that the requests made at paragraph 15 are not capable of being determined by the Clerk of the Senate. The Clerk, for this purpose, is a registry and does not make substantive determinations in this matter. Such a determination would have to be made by the Senate acting as the court. Suffice it to say that we have brought this request and we have set it out in the letters marked as Annex 9.

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(Sen. Chimera consulted Sen. Munyi Mundigi)

At paragraph 17, at the bottom of page 9, is the counterpart invitation to appear and submission of documents by the Governor of Kericho County. Again, we went through the same Motions, sending out---

The Speaker (Hon. Kingi): Sen. Chimera, please take your seat.

The Clerk of the Senate (Mr. Nyegenye): Again, at paragraph 17, on page 9, we set out the counterpart Motions, in respect of the governor, sending out the invitation to appear, requiring them to indicate how they propose to appear, the names and addresses of witnesses, *et cetera*.

At paragraph 18, we set out the invitation to appear and the affidavit of service as Annex 9.

At paragraph 19, we recite the counterpart response by the Office of the Governor, received from Messrs. Katwa and Kemboi on behalf of the governor, informing the Speaker and the Clerk of the Senate about how the governor would appear. The team of advocates representing the governor was set out at B on page 10. At C, that the governor shall, subject to the court orders obtaining, be calling the following witnesses.

Those witnesses are set out as Dr. Eric Kipkoech Mutai, the Governor of Kericho County himself, and he would also be relying on adducing evidence *via* certain affidavits, which are set out at D.

At paragraph 20, at the bottom of page 10, the governor forwarded the following documents in two volumes: Vol.I, about 100 pages, containing various documents and Vol. II, about 522 pages, containing various documents, and, C, a flash disk containing scanned documents.

Hon. Senators, on page 11, paragraph 21; we note that from the documents received, copies of the documents in Vol.I and Vol. II are not consistent in terms of pagination.

Corresponding pages of copies of documents vary in terms of content in most of the copies submitted. The point we want to make is if you find that documents are not flowing and that certain pagination is not correct, this is not attributable to the Secretariat. These are the documents as received.

Paragraph 22, we further note that the flash disk submitted contains documents that are not fully legible and may not correspond to numbering of the documents as contained in Vols. I and II.

Again, we make the point that the Secretariat is not responsible for how legible or illegible the documents are, or for that matter, how any videos provided are. If they are unclear, if they are inaudible, this is the evidence provided by the parties and the parties are responsible for their own interests. This is what they have chosen to put before you.

At paragraph 23 now on page 11, in addition to the previous letter dated 9th October, Messrs. Kemboi informed the Speaker and the Clerk that the governor pleads for leave to raise the following preliminary objections-

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(i) that there is an order made on 3rd October in Kericho High Court Petition No. E011 of 2024 restraining the Senate as a plenary and the Speaker from proceeding with a hearing and determining the Impeachment Motion;

(ii) that there is another order made on 2nd October 2024 in the same case in Kericho High Court Petition No. E011 of 2024 that directed the County Assembly, its Speaker and the mover of the Motion to stay and stop the discussion, debate and decision on the impeachment. The order was breached, leading to the Motion before the hon. House;

(iii) the County Assembly's decision to impeach the governor did not achieve the two-thirds Members of the County Assembly (MCAs) threshold as contemplated by Section 33 of the County Government's Act, CAP 265 and Standing Order No.74 of the County Government of Kericho Standing Orders.

(b) A vote to support the impeachment was 31 MCAs and not 32 of the 47 MCAs. The 31 votes fell below the 31.3, which is the two-thirds votes of all Kericho's 47 MCAs and it did not amount to at least two-thirds of all the county votes.

Paragraph 24 on page 12, is the exchange of documents-

The Office of the Clerk is required to facilitate the exchange of documents. Pursuant to Rule 8 of Part 1 of the Third Schedule to the Standing Orders, on Saturday, 12th October, 2024, the Clerk of the Senate furnished the governor with the documentation filed by the County Assembly on that day.

Similarly, paragraph 25, the Clerk of the Senate furnished the County Assembly with the documentation received by the Governor on that day.

At paragraph 26, we have set out the hearing programme, which is attached as Annex 11. The hearing programme is also set out in the Order Paper for the day.

At paragraph 27, there are the rules of procedure. The rules of procedure applicable for the hearing and termination of the proposed removal from office by impeachment of a governor in plenary are set out under Standing Order No.80 and Part 1 of the Third Schedule to the Senate Standing Orders.

Hon. Senators, it has been traditional to run through the rules of procedure. I draw your attention to the Third Schedule, page 216 of the Standing Orders. It is titled "Rules of Procedure for the Hearing and Determination of the Proposed Removal from Office by Impeachment of a governor. Part 1 - Rules of Procedure when Considering the Proposed Removal in Plenary."

Hon. Senators, I will run through this in about five or six minutes, just detailing how each of these has been complied with.

Rule 1 is that, upon the convening of a meeting of the Senate to hear the charges, the Speaker shall report the resolution of the County Assembly and shall read the charges against the governor. This was done.

At Rule 2, the Senate determines whether to proceed in plenary or by committee. In this case, the Senate is proceeding in plenary, as we all know.

Rule 3, the Speaker to appoint a date for the commencement of the hearing. The two dates, today and tomorrow, are appointed.

Rule 4, the Senate to invite the governor and also to notify the County Assembly of the date of the investigation as we have gone through the briefing, this was done.

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Rule 5, an invitation under Rule 4 to be under the hand of the Clerk of the Senate and be effected by personal service or by notice in the newspapers. The invitation was under the hand of the Clerk and was served on their lawyers at their request.

Rule 6, where the governor chooses to appear before the Senate, he is required in three days of the invitation to file an answer to the charges. From the briefing, we have indicated that the governor replied and filed a response to the charges and set out all the items required under Rule 6.

Rule 7, where the County Assembly chooses to appear before the Senate, is required to file its response within three days. The County Assembly did and complied with Rule 7.

Rule 8, the Clerk is required to furnish each party with a documentation filed by the other party. We have indicated that we did so.

Rule 9, the documents submitted under Rule 7 and 8 are required to be numbered consecutively and be bound in book form. We have indicated that some of the numbering had some challenges, but this is attributable to the parties.

Rule 10, the Senate may, at the request of the County Assembly or the governor, invite or summon any person to appear and give evidence before the Senate. We have indicated the request that has been made by the County Assembly in respect of a witness.

Rule 11, is in respect of where the County Assembly or the governor chooses not to appear. This is not the case on this occasion.

Rule 12, provides that the hearing of the evidence, once it commences, shall proceed and continue until the Senate concludes the hearing of the matter.

Rule 13, the Speaker of the Senate is required, before the commencement of the hearing of the evidence, to allocate time for the hearing of the case by the governor and the case by the County Assembly. That time has been allocated in the programme that is set out in the Order Paper.

Rule 14, any preliminary question or issue raised by the County Assembly or the governor shall be argued for not more than 30 minutes, unless the Speaker otherwise directs.

Rule 15, the requirement for the administration of an oath or affirmation to every person who appears to give evidence before they give evidence.

Rule 16, at the commencement of the hearing, the Clerk to read out the particulars of the allegations that will happen when the hearing begins.

Rule 17, after the particulars are read out, the Speaker of the Senate to allow an opening statement to be made on behalf of the County Assembly and on behalf of the governor. This will happen when we begin.

Rule 18, an opening statement to be for not more than 30 minutes.

Rule 19, after the opening statements, the County Assembly to present its case within the time allocated and call its witnesses.

Rule 20, is an important one. In presenting its evidence, the Assembly shall not introduce any new evidence that was not 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.

Rule 21, after the evidence on the part of the Assembly closes, the evidence on the part of the governor is to be presented.

Rule 22, a witness is to be led in evidence to be cross-examined and where necessary to be re-examined.

Rule 23, a Senator may, in not more than two minutes or such further time as the Speaker may determine, put a question to any of the witnesses, a party or the counsel representing a party. As has been explained in the past, this is for questions, but the matter is always between the two parties and they are the best judges of their own interests.

Rule 24, no person other than the governor or a person who has been called as a witness by the County Assembly or the governor or a person invited or someone to appear to give evidence, shall give evidence.

Rule 25, after the parties have given their evidence, the Speaker allows a closing statement to be made on behalf of the Assembly and on behalf of the governor.

Rule 26, a closing statement should be not more than 60 minutes.

Rule 27, after the closing statements have been made, the hearing concludes, the Senate goes into a camera session to deliberate on the issues raised.

Rule 28, except as otherwise provided in these Rules or as the Speaker may for exceptional reasons to be determined, the proceedings are to be held in public.

Rule 29, except as otherwise provided in these Rules, the Standing Orders apply.

Rule 30, where on a particular question or matter including but not limited to questions of evidence, materiality, relevancy, competency or admissibility of evidence and any questions consequential or incidental thereto 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 matter and the ruling of the Speaker shall be final.

Hon. Senators and Hon. Speaker, we have gone through the briefing and the Rules and set out where we stand. I believe we have discharged the onus, unless there are any clarifications sought.

The Speaker (Hon. Kingi): Hon. Senators, you have heard the Clerk take you through the whole procedure on how we are going to investigate this matter. If you have any questions or clarifications, you may proceed to seek.

Sen. Methu, proceed.

Sen. Methu: Thank you, Mr. Speaker, Sir, for that very elaborate presentation by the Clerk. There are two requests that have been raised by---

The Speaker (Hon. Kingi): Proceed, Senator.

Sen. Methu: Mr. Speaker, Sir, there is a letter that was received by the Office of the Clerk on paragraph 15, requesting that the Office of the Clerk make arrangements to secure anonymity of one of the witnesses. I would like to know whether you have acceded to that request.

The Speaker (Hon. Kingi): Which one is that?

Sen. Methu: Paragraph 15, page 9, there is a letter, H&K/009/007/2024, requesting the Office of the Clerk to make arrangements to secure the anonymity of one of the witnesses who will testify for the County Assembly. I would want to know whether

that request has been acceded to or what the directions of the Speaker would be. There is also the use of voice distortion technology during the examination of the witness and---

The Speaker (Hon. Kingi): Proceed, hon. Senator.

Sen. Methu: That is what I would want clarified, Hon. Speaker.

The Speaker (Hon. Kingi): Clerk, what arrangements have been put in place?

The Clerk of the Senate (Mr. Nyegenye): Hon. Speaker and Hon. Senators, as indicated before, the Office of the Clerk is a registry for the purposes of receiving documents. We do not make substantive determinations and arrangements of the kind that have been asked for until the application is made before the court and a determination and directions are given to us. So, it puts us on notice, but we do not move.

We will be instructed by the court if the application is made. It has not been made at this point. The hearing has not begun. It may be that the application will not be made or it will not be allowed by the court. So, that is where we are. It just puts us on notice, but it is premature at this point. It will arise in the course of the hearing.

The Speaker (Hon. Kingi): Yes, Sen. Orwoba.

Sen. Orwoba: Thank you, Mr. Speaker, Sir. I have looked at page 1123, No. 3, where it says that the preliminary objections that are going to be raised on the two-thirds Members of the County Assembly threshold, as contemplated by Section 33 of the County Government Act. I have also looked at our Standing Order No.80 on the procedure for removal of governor, where it only prescribes what the Senate should do once they receive certain documents.

For instance, if you read there, it says that the Speaker of the Senate shall convene a meeting as long as the county assembly has given A,B,C,D. Maybe, this is something you should clarify because we have no provision where a motion is brought to the Senate, and then we, as the Senate go back to question whether the procedure from the county assembly was proper or not proper.

Mr. Speaker, Sir, should that be allowed to be raised as a preliminary objection?

The Speaker (Hon. Kingi): Sen. Orwoba, you will make that argument when the matter is raised at the hearing.

Yes, Sen. Crystal.

Sen. Crystal Asige: Thank you, Mr. Speaker, Sir. My question is one: At what point do we vote on the preliminary objections that will be raised? You could guide on at what point, exactly.

The Speaker (Hon. Kingi): Hon. Senators, let us not anticipate debate on these matters. What the Clerk has done is to run through the documentation that has been deposited with the registry. As and when this hearing is ongoing, you will have time to raise such very pertinent matters.

Hon. Crystal Asige, this is just an indication of what one party has said. Maybe at the onset of the hearing, they may not raise anything. So, let us wait until the matter is raised, and then you shall take to your feet to express your views on how we are going to move and then, at that particular time, certainly, directions will be given on how we are going to manage the preliminary objections.

Yes, Sen. Kinyua.

Sen. Kinyua: Mr. Speaker, Sir I was concerned by paragraph 13 on the issue of the translator. I remember during the impeachment of the Meru Governor; we were treated to some of the translators who did not seem to understand their language. So, for the purpose of clarity, so that we do not get ourselves in the same position, there should be no person who does not understand Kipsigis. I am not a Kipsigis person and I may not understand.

The other time I was understanding a bit of Kimeru and from the way he was translating, he was not translating anything close to what was being said.

The Speaker (Hon. Kingi): Very well. If a certified translator is brought on board, we have to abide by their translation. That is why they are certified translators.

Any other clarification? Hon. Senators, are we good to go now?

The Senator Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I just want to raise something with regard to the necessary arrangements to facilitate this process for the County Assembly. County assemblies are our sibling houses, and there is a lot that they learn from us, as a Senate.

I am told that post-COVID, the orderlies of the House limit appearance by Members of the County Assembly (MCAs) to only 15 and you know that MCAs, learn a lot from following our procedures, not necessarily with regard to an impeachment procedure alone, but on how we conduct business. There is sufficient space for them to sit. They do not have to sit at the Speaker's Gallery, but even access the precincts of this House.

Mr. Speaker, Sir, I plead for your kind indulgence for MCAs from Kericho be allowed to access Parliament. There is a good number that has been blocked at the gate and have been told they can only admit the first 15. Therefore, I plead for your indulgence, on their behalf.

The Speaker (Hon. Kingi): Subject to availability of space, the Clerk will make the necessary arrangements.

The Senator for Nairobi County.

Sen. Sifuna: Mr. Speaker, Sir, I was trying to have a conversation with the Senate Majority Leader on how we will conduct ourselves this week. I was pleading and trying to persuade my colleagues that the same atmosphere that was obtaining during the debate on the State of the Nation prevails during this entire week.

(Applause)

I have confirmed that it is not the eyes of the county that are on the Senate. It is the eyes of the world. I was called very early in the morning from Australia.

(Several Senators spoke off record)

The Speaker (Hon. Kingi): Order!

Sen. Sifuna: Mr. Speaker, Sir, you need to protect my marriage.

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The Speaker (Hon. Kingi): Sen. Gloria, what is the excitement all about? Proceed, Sen. Sifuna.

Sen. Sifuna: Mr. Speaker, Sir, I plead with our colleagues as I had also whispered a few words in the ears of the Chair about the need to increase levels of tolerance for each other during this week, so that we are able to execute this role in a manner that will leave this House with the sort of stature and standing that it deserves. That was my plea to my colleagues.

The Speaker (Hon. Kingi): Very well. Just to let Senators know that the Standing Orders will be applied with a lot of firmness this time round. That is all I can say from the Chair.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I support Sen. Sifuna's sentiments with 100 bags of cement. That is street language to mean that 100 per cent. That the dignity of this House is not really on trial *per se*, but people have a lot of hope and faith in us as an institution.

I would like to plead with those colleagues of ours who know they have short fuses and usually get tipped over easily; shout at the Speaker, scream and dramatize. This is not the time. Kindly, let us be at our best of behavior for only four days. It is just today, tomorrow, Wednesday, and Thursday, then we can revert back to our usual short fuses.

The Speaker (Hon. Kingi): That is noted, Senate Majority Leader. Again, I repeat, the Standing Orders will be applied with a lot of firmness, like it has never been witnessed before. Just be guided.

Yes, Sen. Wambua, I know where you are coming from.

Sen. Wambua: Mr. Speaker, Sir, there is a saying about old people and bones, you know, when bones are mentioned in the presence of old people. I am not sure whether the Senate Majority Leader is not trying to make reference to some of us.

However, it is fine when you say that the Standing Orders will be applied very firmly, but you are adding and saying that, like it has never been done before, that sounds like a threat to me. I do not know how we are supposed to now navigate this territory.

I would want to see a situation where when it is time for debate, if there will ever be any debate, then it is really sober debate. As I was saying last night, that is exactly what you are talking about.

(An hon. Senator's phone rung)

The Speaker (Hon. Kingi): Sen. (Dr.) Khalwale, is that your phone?

(Laughter)

Sen. Wambua, proceed.

Sen. Wambua: Mr. Speaker, Sir, that is one of the incidents that the Standing Orders must apply firmly. When people receive calls from Australia, they should mute those calls. When I express an opinion that is not necessarily in line with the opinion of another Senator, hold your horses. You will get an opportunity to say something that you

disagree with. As Sen. Sifuna has said, it is not the country that is watching us; the world is watching the Senate. I thank you.

The Speaker (Hon. Kingi): We will have Sen. Mwaruma then Sen. Oketch Gicheru.

Sen. Mwaruma: Thank you, Mr. Speaker, Sir. I wanted to make an observation on time management. I do not know how we will navigate this. There was a proposal last week that we add our time to three days, but this was impossible given the two impeachment Motions before the House.

Is it possible to give parties two hours and stick to these hours, so that we preserve the time for discussion before we vote at the end? What happened in the last impeachment Motion, meant we did not have time to discuss before voting. I beseech you to see how we navigate this so that the parties, given the time, can stick to it so that, in the end, we can get time to discuss it before voting.

The Speaker (Hon. Kingi): The programme has been circulated to all of us. We will try to stick to those timelines so that we do not have sessions where Senators are supposed to debate, but have limited time on this matter before they cast their vote. We will try to follow the programme as drawn as much as possible.

Sen. Eddy, proceed.

Sen. Oketch Gicheru: Thank you, Mr. Speaker, Sir. On a lighter note, perhaps Sen. Wambua is preparing to misbehave. For him alone, you can suspend Standing Order No.122 in anticipation of his behaviour. This is on a lighter note. I was provoking Sen. Wambua because I wanted to talk about the impeachment of the Deputy President.

It will be tricky to have a number of Senators being sent out for being disorderly.

The Speaker (Hon. Kingi): Sen. Oketch Gicheru, this is a closed session for the purposes of the Kericho County matter. We will have a closed session for the purposes of the other matter. Hold your horses. When we get there, I will give you the Floor.

Sen. Mumma, we are supposed to start the hearing at 10.00 a.m., and it is now 10.03 a.m.

Proceed, Sen. Mumma.

Sen. Mumma: Thank you, Mr. Speaker, Sir. I have flipped through the counts. We have one of the counts where if we move to the hearing, it is not a matter affecting counties. I am wondering whether you have a precedence where you might have a matter that would allow Nominated Members on an issue that arises that does not affect matters relating to counties.

Thank you.

The Speaker (Hon. Kingi): Hon. Senator, as long as it is contained in an Impeachment Motion, it touches on counties.

Hon. Senators, we are good to go. I will share these words with you. This week, as Senators, you have an opportunity to showcase this institution not just to this country, but to the world.

I am happy that it has come from the observation that you need to conduct yourselves with decorum. How we debate will distinguish us from the other institutions. It is all in your hands. We may be looked at as a laughing stock, as a House of no reason

or after this week, the Senate may truly occupy its rightful place. It is all in your hands. That will start right now.

Clerk, you may now take us through the second rim. Are we inviting the parties in, or how do we move from here?

(The Clerk consulted the Speaker)

Serjeant-at-Arms, ring the Bell for five minutes as we await the parties to walk in, the media to take their place, and the members of the public wishing to follow through also take their place.

(The Bell was rung)

(End of in-camera session)

[The House resumed at 10.22 a.m.]

The Speaker (Hon. Kingi): Now, hon. Senators, please, take your seats. We will now resume our open session. Before we do that, I have the following communication to make.

(Sen. Oketch Gicheru stood up in his place)

Sen. Oketch Gicheru, take your seat, please.

(The Clerk-At-The-Table consulted with the Chair)

The Speaker (Hon. Kingi): Hon. Senators, before I allow the Clerk to read the charges, kindly, I have this communication to make.

COMMUNICATION FROM THE CHAIR

HEARING AND DETERMINATION OF THE PROPOSED
REMOVAL FROM OFFICE, BY IMPEACHMENT,
OF THE GOVERNOR OF KERICHO COUNTY,
HON. (DR.) ERICK KIPKOECH MUTAI

The Speaker (Hon. Kingi): Having dispensed with the pre-hearing meeting of Senators, which was a closed session, it is now time to commence the proceedings on the proposed removal from office by impeachment of Hon. (Dr.) Erick Koech Mutai, the Governor of Kericho County.

You will recall that by a letter reference number KCA/SP/3, Vol. 1(34), dated 2nd October, 2024, the Speaker of the Kericho County Assembly informed the Speaker of the Senate that at a sitting of the Kericho County Assembly, held on Wednesday, 2nd

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October, 2024, and pursuant to Article 181 of the Constitution, Section 33 of the County Governments Act, and Standing Order No.74 of Kericho County Assembly, the County Assembly approved a Motion for the removal from office, by impeachment, of Hon. (Dr.) Erick Koech Mutai, the Governor of Kericho County.

The Speaker of the Kericho County Assembly forwarded the following documents to the Senate, being the record of proceedings of the County Assembly and the evidence adduced in support of the impeachment Motion:

(1) A copy of approved Notice of Motion dated 23rd September, 2024, and laid on the Table of the Assembly on Tuesday, 24th September, 2024, during the Morning Sitting.

(2) A copy of exhibits laid on the Table of the Assembly on Tuesday, 24th September, 2024, Morning Sitting.

(3) Order Papers for the Assembly sittings of Tuesday, 24th September, 2024, Morning Sitting, and Wednesday, 2nd October, 2024, Morning Sitting.

(4) Certified HANSARD Reports for the Assembly sittings of Tuesday, 24th September, 2024, Morning Sitting, and Wednesday, 2nd October, 2024, Morning Sitting.

(5) A copy of letters dated 24th and the 30th September, 2024, reference numbers KCA/SP/3, Vol. 1 (31), and KCA/SP/3, Vol. 1(33), respectively, inviting the Governor of Kericho County to respond to the tabled impeachment Motion.

(6) A copy of an affidavit of service by Ms. Sharon Chemetich-Mibey, serving His Excellency the Governor of Kericho County, with an invitation letter and a copy of the laid Notice of Impeachment Motion, together with evidence and another letter for supplementary evidence, a memorandum on behalf of the Speaker of the Kericho County Assembly.

(7) A certified copy of a form of verification of signatures for Members in support of the Motion for Removal of the Kericho County Governor by impeachment, dated 2nd October, 2024, made pursuant to Standing Order 745 of the Kericho County Assembly Standing Orders.

(8) A certified copy of the roll call vote on the Motion for Impeachment of His Excellency the Governor of Kericho County, held during the Assembly sitting of Wednesday, 2nd October, 2024.

(9) An affidavit of 16 Hon. Members who refused to attend or participate in the impeachment proceedings on 2nd October, 2024, or any other date.

Documents tabled during the debate of the Motion for removal of the Governor of Kericho County by impeachment being the following-

(i) Invitation to tender, dated 14th December, 2023.

(ii) A bundle of appointment of tendering committee tender opening records and tender evaluation report.

(iii) Kericho County Revenue Administration and Management Act, 2019.

(iv) Kericho County Rating Act, 2019.

(v) Kericho County Finance Act, 2023.

(vi) A bundle of single business permits and business invoices.

(vii) Ad Hoc Committee Report on *Kazi Mtaani* Project.

(viii) Report of the Auditor-General on Receiver of Revenue, statement for the year ended 30th June, 2023.

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(ix) Kericho County Revenue Streams, *vis-a-vis* performance as of 30th April, 2024.

(x) Londiani Accident *Ad Hoc* Committee Report on Investigations of the Londiani Victims Fundraiser, held on 4th July, 2023.

(xi) Replying affidavit, sworn by Mr. Gideon Mutai in High Court Petition No. E-014 of 2023.

(xii) Judgment of the Courts in Kericho ELRC Petition No. E-001 of 2023; Sang' vs. Governor, Kericho County, and others.

(xiii) A bundle of letters from the Governor to the Speaker, dated 20th August, 2024 and the Speaker's response, dated 3rd September, 2024.

(xiv) A bundle of advertisements for vacancies by Kericho County Public Service Board (CPSB), and a letter from the Governor to the Speaker of Kericho County Assembly, dated 27th May, 2024.

(xv) An affidavit supporting the Motion, sworn by Mr. Josiah Kiplagat Kogu on 23rd September, 2024, and their annexures, including a bundle of photographs and judgment of the Court in Kericho ELRC Petition No. E-001 of 2022.

(xvi) An affidavit supporting the Motion, sworn by Mr. Erick Koech on 23rd September, 2024, and their annexures thereto, including an M-pesa statement.

(xvii) Two flash disks, each containing video clips in a sealed white A-5 envelope marked KCAV, Exhibit 1 to 8.

(xviii) Affidavit in support of the Motion, sworn by Kericho's Daughter (KD) not her real name.

Evidence of public participation being the following-

(i) An extract of *The Standard* newspaper, advertisements for public participation, on the Notice of Motion for removal of Hon. (Dr.) Erick Kipkoech Mutai, the Governor of Kericho County, by impeachment.

(ii) Links to Facebook, memorandum submissions received in response to the Notice of Motion for removal of Hon. (Dr.) Erick Mutai as Governor of Kericho County, as well as public mobilization by the County Executive.

(iii) Scanned copy of the memorandum in an accompanying flash disk, copy of a letter dated 25th September, 2024, of reference number KCA/SP/3, Vol. 1(32) informing the governor of the public participation exercise.

(iv) Register for collection of compact disks by a Member of County Assembly (MCA) personnel that had information related to the Notice of Motion of Impeachment of His Excellency, the governor, Hon. (Dr.) Erick Kipkoech Mutai, and public participation forms from the respective wards.

(v) Soft copy of the Kericho County Standing Orders contained in the accompanying flash disk.

(vi) Statement of His Excellency, the governor, Hon. (Dr.) Erick Kipkoech Mutai, opposing the impeachment of the Governor by his Counsel, Katwa Kigen.

(vii) An affidavit by Mr. Gideon Mutai, an affidavit by Mr. Geoffrey Kipkurui-Korir, an affidavit by Mr. John Malel, an affidavit by George Kipng'eno Kerer, an affidavit by Ms. Jacqueline C. Langat, an affidavit by Ms. Gillian Soi and an affidavit by Mr. Joseph K. Rotich.

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Hon. Senators, ladies and gentlemen, pursuant to Section 33(3)(b) of the County Governments Act and Standing Order No.80(1)(a) of the Senate Standing Orders, at the sitting of the Senate held on Tuesday, 8th October, 2024, the charges against the governor of Kericho County, as contained in the Motion of Impeachment, by the County Assembly of Kericho, were read to the assembled Senate.

Hon. Senators, allow me to remind you of the mandate of the Senate in relation to the proposed removal from office, by impeachment, of a governor, as provided for under Article 181 of the Constitution, as read together with Section 33 of the County Governments Act and Standing Order No.80 of the Senate Standing Orders.

In particular, Article 181 of the Constitution states as follows-

“(1) A county governor may be removed from office on any of the following grounds -

- (a) gross violation of the Constitution or any other law;
- (b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;
- (c) abuse of office or gross misconduct; or
- (d) physical or mental incapacity to perform the functions of office of county governor.

(2) Parliament shall enact legislation providing for the procedure of removal of a county governor on any of the grounds mentioned in Clause (1).”

Section 33 of the County Governments Act, Standing Order No.80 of the Senate, and Part 1 of the Third Schedule to the Senate Standing Orders provide for the procedure to be followed in the hearing and determination on the proposed removal from office, by impeachment, of a county governor.

Specifically, Section 33(3) and Standing Order No.80(1)(b) of the Senate provide that the Senate may, by resolution, appoint a Special Committee comprising eleven of its Members to investigate the matter, or investigate the matter in plenary.

Hon. Senators will recall that at the sitting of the Senate held on Tuesday, 8th October, 2024, the Motion for the establishment of a Special Committee was defeated. This, therefore, paved the way for investigation on the proposed removal from office, by impeachment, of Hon. (Dr.) Erick Kipkoech Mutai, the Governor of Kericho County, to be held in plenary.

Hon. Senators, ladies and gentlemen, by way of a status update, pursuant to Rules 4(a) and 6 of the Rules of Procedure when considering the proposed removal of a governor in plenary, the Senate invited the governor to appear and be represented before the Senate during its investigation. The Senate further invited the governor, if he so chooses to appear before the Senate, to file an answer to the charges with the Office of the Clerk of the Senate by 5.00 p.m. on Saturday, 12th October, 2024, setting out-

- (i) the governor’s response to the particulars of the allegations;
- (ii) the mode of appearance before the Senate; whether in person, by advocate or in person and by advocate;
- (iii) the names and addresses of the persons to be called as witnesses, if any, and witness statements containing a summary of the evidence to be presented by such witnesses before the Senate; and,

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(iv) any other evidence to be relied on.

Pursuant to Rules 4(b) and 7 of the Rules of Procedure when considering the proposed removal of a governor in plenary, the Senate notified the County Assembly of the date for the commencement of the investigation and invited the County Assembly to designate Members of the County Assembly (MCAs) who shall appear and be represented before the Senate during the investigation.

The County Assembly was further invited, if it so chooses to appear before the Senate, to file with the Office of the Clerk of the Senate by 5.00 p.m. on Saturday, 12th October, 2024, setting out the following documentation-

(i) designating MCAs, if any, who shall attend and represent the Assembly in the proceedings before the Senate;

(ii) indicating the mode of appearance before the Senate; whether in person, by advocate, or in person and by advocate;

(iii) indicating the names and addresses of the persons to be called as witnesses, if any, and witness statements containing a summary of the evidence to be presented by such witnesses before the Senate; and

(iv) specifying any other evidence to be relied on.

Hon. Senators, ladies and gentlemen, on Saturday, 12th October, 2024, the Office of the Clerk of the Senate, received a response, Ref. No. 1/816/24/1 dated 9th October, 2024, to the invitation to appear issued to the Governor of Kericho County, from M/S Katwa and Kemboi, who indicated that the governor had appointed the firm to represent him in the proceedings before the Senate and that the governor would also appear in person and by advocates. The letter also indicated the list of counsel representing the governor and the list of witnesses for the governor.

Similarly, on Saturday, 12th October, 2024, the Office of the Clerk of the Senate received a response, Ref. No. H&K/009/007/2024, dated 12th October, 2024, to the invitation to appear issued to the County Assembly of Kericho, from M/S H&K Law Advocates, indicating that the firm had been appointed to represent the County Assembly. The letter also indicated the advocates are representing the County Assembly and the witnesses for the County Assembly.

Pursuant to Rule 8 of the Rules of Procedure when considering the proposed removal of a governor in plenary, on Saturday, 12th October, 2024, the Clerk of the Senate furnished each party with the documentation filed by the other in accordance with Rules 6 and 7 of the Rules of Procedure.

Hon. Senators, ladies and gentlemen, the Hearing Programme which has been appended in today's Order Paper, details the various activities in the hearing and determination of the matter and the time allocated to each activity. It will be crucial that all the parties comply with the time allocated. The parties will be notified of the balance of time on each activity through the Clerks-at-the-Table.

In summary, the programme states that today, Monday, 14th October, 2024, after we have dispensed with preliminary matters, the charges against the governor as submitted by the County Assembly shall be read. The governor will be given an opportunity to take a plea on the charges. This will be followed by an opening statement by the County Assembly and thereafter by the governor.

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After conclusion of the opening statements, the presentation of the case of the County Assembly shall commence. The County Assembly will have a maximum of three hours for presentation of the case and re-examination, while the governor will be allocated two hours for cross-examination of witnesses presented by the County Assembly.

After presentation of the case by the County Assembly, the cross-examination by the governor and re-examination by the County Assembly, hon. Senators will be given an opportunity to ask questions or seek clarifications from the County Assembly. These activities will proceed until conclusion of today's sitting.

At the sitting scheduled for tomorrow, Tuesday, 15th October, 2024, the governor will have an opportunity to present his case before the Senate. Similarly, the time allocation will be three hours for the governor's case, including re-examination, and two hours for the County Assembly for cross-examination. Hon. Senators will also be given an opportunity to ask questions or seek clarifications from the Governor, following which closing statements by the parties will be made for a period not exceeding one hour each.

The Senate shall thereafter proceed to a debate on a Special Motion prior to voting on each of the charges. At that stage, a Supplementary Order Paper will be issued to facilitate the debate.

In accordance with Section 33(7) of the County Governments Act and Standing Order No.80(6) of the Senate Standing Orders, voting shall be by county delegations. The Governor shall cease to hold office if a majority of all county delegations vote to uphold any impeachment charge.

However, if the vote in the Senate fails to result in the removal of the Governor, pursuant to Standing Order No.80(7) of the Senate, the Speaker of the Senate shall notify the Speaker of the County Assembly of Kericho accordingly.

Hon. Senators, ladies and gentlemen, I now invite counsel for the County Assembly of Kericho to introduce the legal team of the County Assembly and MCAs of Kericho representing the County Assembly, by stating the full name and designation of each person.

Before the counsel for the County Assembly proceeds to introduces his team, let us hear from Sen. Fatuma.

Sen. Dullo: Mr. Speaker, Sir, on Wednesday, you said that you are going to give a decision on a matter concerning Isiolo County. I am sure the people of Isiolo are also waiting for your decision on the matter.

This is a weighty matter and it is good if the House gives direction because as I speak, the people of Isiolo are suffering. We are not getting service delivery at all. The people who are in hospital, including those who are on oxygen, are sent home. There is no service delivery at all.

Mr. Speaker, Sir, kindly give us direction on this.

The Speaker (Hon. Kingi): Sen. Dullo, I will give my communication in the course of the day.

counsel for the County Assembly, please, proceed.

INTRODUCTION BY THE KERICHO
COUNTY ASSEMBLY TEAM

Mr. Joel Kimutai Bosek: A very good morning, Mr. Speaker, Sir, and Hon. Senators. For the Kericho County Assembly, the representation is as follows:

1. Mr. Kimutai J Bosek - Lead Counsel
2. Mr. Charles Njenga - Advocate
3. Ms. Sharon Mibeyi - Advocate
4. Mr. Elias Mutuma - Advocate
5. Mr. Kiplagat Hillary - Advocate
6. Ms. Winny Bett - Advocate
7. Mr. Lang'at Geoffrey - Advocate
8. Mr. Kipkorir Elvis - Advocate
9. Mr. Brian Maingi - Legal Assistant
10. Mr. Ian Kiplangat - Legal Assistant
11. Mr. Kipkirui Japheth - ICT Technician

Mr. Speaker, Sir, and Hon. Senators, witnesses for Kericho County Assembly are as follows:

1. Hon. Kiprotich Rongony - MCA, Sigowet Ward
2. Hon. Albert Kipkoech - MCA, Soliat Ward
3. Mr. Josiah Kogo.
4. Mr. Erick Koech

Lastly, we have a lady whom we have given a pseudonym because of the sensitivity of the evidence she will be adducing. We will call her Kericho Daughter.

5. Kericho Daughter.

After the introduction by our colleagues on the other side, we will request that we make some application.

Thank you.

The Speaker (Hon. Kingi): Counsel for governor, you may now introduce the legal team representing the governor.

INTRODUCTION BY THE KERICHO
COUNTY GOVERNOR'S TEAM

Mr. Katwa Kigen: Good morning, Mr. Speaker, Sir, and Hon. Senators. On the side of the Governor who is present, he is represented by:

1. Mr. Katwa Kigen - Advocate
2. Mr. Manasseh Tunen - Advocate
3. Ms. Doris Ng'eno - Advocate
4. Mr. Vincent Sagini - Legal Assistant

Mr. Speaker, Sir, we will be flagging out the fact that there are orders in respect to these proceedings. However, when the proceedings need to proceed, we intend to call the following witnesses:

1. Hon. (Dr.) Erick Kipkoech Mutai - The Governor

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2. Mr. Gideon Mutai
3. Mr. George Kerer
4. Ms. Jackline Lagat
5. Ms. Gillian Soi
6. Mr. Joseph Rotich
7. Hon. John Malel
8. Mr. Geoffrey Korir

Mr. Speaker, Sir, we had sent a communication to your office that we propose to raise a preliminary objection. That is one---

The Speaker (Hon. Kingi): Counsel for the governor, at this juncture, you just introduce the legal team and take your seat.

Mr. Katwa Kigen: Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Hon. Senators, ladies and gentlemen, on behalf of the Senate, I welcome the County Assembly team, the governor's team, members of the public and the media to the Senate and to these proceedings.

As you are aware, Article 118 of the Constitution mandates Parliament to conduct its business in an open manner, and that its sittings and those of its committees shall be open to the public. The hearing of the proposed removal from office of the County Governor, pursuant to Section 33 of the County Governments Act and Standing Order No.80 of the Senate, is a matter that generates immense public interest.

The Senate, in this particular hearing, has facilitated the members of the public who are interested in these proceedings to access its galleries. However, I draw the attention of the members of the public who are seated in the galleries to Rule No.28 of the Speaker's Rules, which states as follows:

“Visitors in the galleries shall remain seated and shall not applaud, comment audibly, make signs, eat, sleep, read books, newspapers, or other matter, except the Order Paper for the day, or create any disturbance”.

I request the members of the public to observe the aforesaid Rule. Any member of the public who contravenes the Speaker's Rules will be inviting stern action against them, which includes expulsion from the precincts of Parliament. The office of the Clerk of the Senate is directed to ensure compliance with the Speaker's Rules.

Hon. Senators, Ladies and Gentlemen, finally, I now invite the Clerk to read the charges against Hon. Dr. Eric Kipkoech Mutai, the governor of Kericho County.

READING OF THE CHARGES ON THE PROPOSED REMOVAL
FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR
OF KERICHO COUNTY, HON. (DR.) ERICK KIPKOECH MUTAI

The Clerk of the Senate (Mr. Nyegenye): Hon. (Dr.) Eric Kipkoech Mutai, the Governor of Kericho County, please, take the stand.

(Hon. (Dr.) Eric Mutai) took the stand)

Hon. (Dr.) Eric Kipkoech Mutai, the Governor of Kericho County, the grounds for your proposed removal from office, by impeachment, as received by the Senate from the County Assembly of Kericho are as follows-

Ground One: Gross violation of the Constitution and other laws:

Gross Violation of:

1. The Constitution of the Republic of Kenya, 2010
2. The County Governments Act, 2012
3. The Public Procurement and Asset Disposal Act
4. The Public Finance Management Act, 2012
5. Kericho County laws.

The particulars of this Ground are as follows-

Allegation 1: Misappropriation, Misallocation, and Illegal Drawings of County Revenue and County Finances.

That, on various occasions since his election as a governor and subsequent assumption of office, the Governor has engaged in various acts of gross violation of Articles 10, 183 and 201 of the Constitution, Sections 102 and 109 of the Public Finance Management Act, Cap 412A and the provisions of the Kericho County Rating Act, No. 5 of 2019 as follows:

(a) Presiding over an administration which has deliberately refused, failed, neglected and omitted to automate revenue collection thus opening up the county's Own Source Revenue (OSR) to pilferage, misappropriation and theft.

(b) The County Government advertised for the procurement of the Integrated County Revenue Management System *vide* an advertisement dated 14th December, 2023. Despite the tender being responsive and a compliant tenderer being proposed by the tendering committee for the award of the tender, there is evidence that the governor frustrated the award of the said tender.

(c) The absence of the automated payment system has adversely impacted on the revenue raising ability by the county through deliberate undercharging of business permits fees and mis-categorisation of zones where businesses are actually situated. For instance, single business permits are issued to the business owners at zones B and C which attract less charges when the actual business is situated at zone A to avoid payment of the actual charges. Similarly, properties situated in areas that attract higher rates are mis-categorised, charged and issued clearance certificates for areas that are zoned for lower rates, thus perpetrating revenue leaks.

(d) The governor presides over an administration that has totally disregarded the Valuation Roll prepared and passed by the County Assembly in 2019 pursuant to the Valuation and Rating Act, Cap 266 thus the county continues to collect property rates under the old Valuation Roll occasioning the county substantial revenue losses.

(e) The revenue leaks and losses have seen the county miss revenue targets for two consecutive financial years whereby the revenue collections fall short of the projected revenue by more than 50 per cent.

(f) The governor has violated the provisions of Section 104 of the Public Finance Management Act, 2012 whence through his acts of omission, commission, and inaction,

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he continues to preside over a broken public finance management system which has made the County Treasury ineffective.

(g) There is a nexus between the disappearance and/or loss of the county revenue and the governor's opulent lifestyle since he was elected. Indeed, within two years since his election, the governor's wealth has grown exponentially, so much so that he can now afford to contribute up to Kshs1 million in a single harambee. Indeed, in one church function, the governor was captured bragging that whereas he did not have the resources when he first vied, "ra ko mi tuguk" loosely translating to "this time I have enough resources".

2. On or about 31st August 2023, the governor engaged in gross violation of Articles 10, 183, 201, 207 and 208 of the Constitution, and Sections 102, 109 and 110 of the Public Finance Management (PFM) Act 2012, by launching a programme dubbed, Equalizer Kazi Mtaani Initiative, and drawing county funds towards the initiative, without a legislation to anchor the initiative, public participation, prior approval of the County Assembly and the Control of Budget, and prior approval of the Budget and Appropriation Committee.

3. The present and former Chief Executive Committee Members (CECMs), and Chief Officers, have variously reported coercion by the Governor, to make financial allocations for the Governor's own use, from the funds allocated to their respective departments, and which funds they were required to remit, through the Governor's personal assistant;

4. Violation of Articles 201(a), (d) and (e) of the Constitution of Kenya 2010, on principles of Public Finance Management, and Article 226, as read with Article 227 of the Constitution, by presiding over glaring irregularities, evidenced by-

- (a) irregular award of contracts and evasion of accountability,
- (b) wilfully interfering in the procurement processes, and the award of tenders;
- (c) skewed tender awards to various contractors at inflated rate and in collusion with fraudulent contractors and suppliers;
- (d) irregular implementation of various programs in the county; and,
- (e) intentionally and negligently presiding over a massive theft of county public funds as evidenced by the Auditor-General report for the financial year ended 30th June, 2023, which raised red flags over various projects.

5. On 15th August 2023, the governor compensated the victims of Londiani accident from the County Emergency Fund to cover up for the funds raised by the public and misappropriated by a committee he had formed to steer the funds drive and without a cogent explanation of how the funds publicly raised for the victims had been expended.

2. Misappropriating and/or Abetting Misappropriation of Publicly-raised Funds

1. That on various occasions, on various dates between 4th July 2023 and 9th July 2023, the governor grossly violated the provisions of Articles 10, 73 and 75 of the Constitution of Kenya and Sections 29 and 34 of the Leadership and Integrity Act 2012 by:

(a) overseeing misappropriation of the funds raised for the victims of the horrendous Londiani Junction accident tragedy in which over Kshs9 million of publicly raised funds were lost;

(b) reneging on his undertakings to implement the report of the County Assembly's *ad hoc* Committee formed to probe the misappropriation of funds meant for the victims of the accident. There is evidence that the governor filed a suit and or supported a suit by those implicated in the report of the County Assembly's *ad hoc* Committee in Kericho ELRC, Petition No. E006 of 2023, Dr. Wesley Bor, and five others versus the Governor, Kericho County Government, and others, and Kericho ELRC, Petition No. E01 4 of 2023; Victor Tum and others versus the Governor of Kericho County and others;

(c) being personally and directly complicit in the flawed award of direct tenders for service providers during the fundraiser and the requiem mass of the victims of the accident;

(d) the County governor has, in this regard, committed numerous and various acts in the course of his duties that are contrary to and in violation of the Constitution and the laws of Kenya. These include:

(i) the authenticity of various payments made cannot be confirmed. The fact that the exact amount of money expended from the sum collected during the fundraiser points to impropriety and suggests a clear fraud on those whom the funds ought to have benefited;

(ii) a total of Kshs13,682,660 was collected at the fundraiser. A sum of Kshs423,000 was purportedly expended as pastors' facilitation, transport refund, fuel preparation, lunches and refreshments, printing, publishing and radio announcements. Other payments that were approved from the fund were; Kericho County Referral Hospital - Kshs2,037,524; Londiani Hospital - Kshs1,534,190, SuperTix Limited - Kshs2,945,000; Supershine Limited - Kshs411,000; Rays Memorial Hospital - Kshs100,000; County Commissioners Fuel - Kshs300,000 *et cetera*.

(iii) that when from all walks of life voluntarily made contributions to aid the victims of the tragedy, it was never intended or anticipated that the funds would be misappropriated with the blessings of the governor who had a higher calling to ensure the money was accounted for to the last coin and on whom the people bestowed their trust;

(iv) the governor has issued contradictory statements, in so far as the use of the funds is concerned, the contradictory statements point to his being complicit in the matter; and,

(v) while the governor is on record indicating that the medical bills for all the victims would be waived and taken care of by the county government, it is not clear why money had to be paid out from the fund collected to various public hospitals against the express and unequivocal representations of the governor;

(e) by his acts of omission and commission, the governor has grossly violated the provisions of Article 75 of the Constitution, which demands that a state officer shall,

“Whether in private or in public, behave in a manner that avoids conflict of interest between personal interests and public or official interests, or compromises public interest in favor of personal interests.”

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(f) by overseeing the misappropriation of the funds aimed at assisting the victims of the accident, the governor violated Article 73(2), which demands from him selfless service based solely on public interest, demonstrated by honesty in the execution of his duties, accountability to the public for decisions and actions, and discipline and commitment in service;

(g) by allowing himself to be a master of doublespeak in such a grave matter that shook the conscience of the nation, the governor violated Article 7(a)(a)(ii) and (iii) of the Constitution, which demand that he at all times demonstrates respect to the people and brings honor and dignity to the office he holds;

(h) by allowing himself and senior officials close to him to benefit from the funds, the governor violated Article 76(2)(b) of the Constitution of Kenya, which prohibits a state officer from accepting a benefit in circumstances that compromise the integrity of the state officer; and,

(i) by failing to ensure that decision making in the executive office of the county governor are not influenced by corruption, nepotism, and other callous and improper motives, the governor has failed to exercise objectivity and impartiality, thus violating Article 73(2)(b) of the Constitution of Kenya 2010.

The Hon. (Dr.) Eric Kipkoech Mutai, how do you plead to Ground 1, guilty or not guilty?

The Governor of Kericho County (Hon. (Dr.) Mutai): Mr. Speaker, Sir, I am not guilty.

The Clerk of the Senate (Mr. Nyegenye): Mr. Speaker, Sir,

2: Abuse of Office

The Particulars of this Ground as are as follows:

1. Illegal Appointments, Unlawful Dismissals and Transfers, and Usurpation of the Constitutional and Statutory Functions of County Public Service

THAT the governor has variously engaged in -

(i) gross misconduct, and (ii) gross violations of Articles 10, 73, 75, 232, 235 and 236 of the Constitution, (iii) gross violation of section 17 of the Public Officer Ethics Act, Sections 55, 59, 59A, 60, 62, 63, 64 and 65 of the County Governments Act, Section 4 of the Public Appointments (County Assemblies Approval) Act, 2017, and variously abused his office by:

(a) illegally appointing Mrs. Alice Bett, now Judge of the High Court, as the County Attorney when there was a substantive office holder, an act which the Employment and Labour Relations Court, the Hon. Lady Justice Wasilwa, affirmed was irregular, unprocedural and unlawful in the case of Sang vs Governor Kericho County and 2 others (Petition E001 of 2023). In that case, the governor was found by the court to be in gross violation of Articles 73 and 232 of the Constitution, his actions found to be illegal and unconstitutional and ordered to pay costs of Kshs2,000,000 and costs personally. The governor has therefore been already adjudged to be in gross violation of the law and all the Assembly and the Senate are called upon to do is to remove him by impeachment;

(b) causing the advertisement of the positions of doctors, nurses, Early Childhood Development Education (ECDE) teachers just to endear himself politically when he knew

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the county government did not have capacity to hire. The applicants were subsequently not shortlisted nor the alleged vacancies filled up;

(c) illegally deploying health staff vide the Notice dated 22nd July, 2024, without any justification, authority and involvement of County Service Board, thus creating a crisis in the health sector; and,

(d) illegally appointing Mr. George Kipng'eno Kerer as the Chief Officer for Finance and forwarding his name to the County Assembly for vetting and approval when there was a substantive officeholder in the name of Ms. Jackline C. Langat and the vacancy had not arisen.

2. Subversion, Discrediting and Impeding of the Oversight Role of the County Assembly

On 3rd September, 2024 the Governor engaged in gross misconduct and grossly violated the provisions of Articles 10, 73, 75, 174 and 185 (3) of the Constitution, and abused his office by writing to the Speaker purporting to direct the Speaker on, *inter alia*, the timeliness the Speaker should give the chief officers who are summoned by the Assembly for questioning in exercise of the Assembly's oversight mandate.

Hon. (Dr.) Erick Kipkoech Mutai, how do you plead to Ground 2, guilty or not guilty?

The Governor of Kericho County (Hon. Mutai): Not guilty.

The Clerk of the Senate (Mr. Nyegenye):

3. Gross Misconduct

The particulars of this ground are as follows-

1. Bullying, Incitement, Vilification and Indecent Sexual Conduct

On various occasions, the Governor has repeatedly engaged in

(i) Gross misconduct.

(ii) Gross violation of the provisions of Articles 10, 73 and 75 of the Constitution, and sections 29 and 34 of the Leadership and Integrity Act by:

(a) publicly vilifying the residents of Kericho County with divergent views. A case in point is a Mr. Marwa from Londiani who, while attending an event in Londiani on 4th March, 2024, the governor publicly disparaged, demeaned and undermined and even threatened to use the services of the police officer assigned to him to manhandle him. Similarly, on 24th August, 2023, the governor, while commissioning a Renal Unit and a Bulk Liquid Oxygen Plant at Kapkatet Sub-County Hospital, the governor openly vilified, slighted, and berated Hon. Amos Birir, the Member of the County Assembly (MCA) Kapkatet Ward who had not attended the event describing him as "mentally blind" and "stupid";

(b) Further, on 15th August, 2023, while addressing the Press to counter the findings of the *Ad Hoc* Committee of the County Assembly on Londiani Accident, the governor spitefully referred to the Members of the said *Ad Hoc* Committee as "the funeral committee";

(c) The Governor has been operating with impunity as though he is above the law. On the second day of being sworn in to office, the governor led a mob to invade a private land owned by Mr. Joseah Kiplangat Kogo within Kericho Town and tore down the fence. The governor has since designated the subject land as an illegal dumpsite operated

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by the County Government without the consent of the registered proprietor, the National Environment Management Authority (NEMA) approval, gazettelement by the county designating the parcel as a dumpsite and in total disregard of a court order issued by the Environment and Land Court in Kericho in *ELC Petition No. E001 of 2022; Joseah Kiplangat Kogo vs. County Government of Kericho*.

The Governor has also obstructed the enforcement of the orders by the Administration Police. The actions are illegal, contemptuous to the authority and dignity of the court and the rule of law, unethical and demeaning the office the governor holds. Further, as a result of the illegal actions of the governor, the county was condemned to pay the costs.

(d) There are numerous complaints of governor's indecent and unnatural sexual behavior by female partners who accuse the governor of, for instance, forcing them to unconsented anal sex, dangerous and unprotected sex, *et cetera*.

(e) The governor has persistently intimidated, molested, harassed county officers who do not sing to his tune leaving officers jittery and creating an atmosphere of fear, uncertainty and despondency in the county and thus creating a toxic work environment. This violates the provisions of Sections 11 and 13 of the Leadership and Integrity Act, 2012.

(f) The governor has persistently used divisive and unbecoming language which undermines the office he holds contrary to Section 8 of the Leadership and Integrity Act, 2012.

(g) The governor has violated Article 75 (1) of the Constitution by drawing hefty allowances and a salary while failing to diligently report to work to the huge detriment of the discharge of his mandate as a governor and the performance of his functions.

(h) The acts of the governor enumerated above have collectively brought dishonour and disrepute into the Office of the Governor in violation of Chapter 6 of the Constitution and the Leadership and Integrity Act, 2012.

Hon. (Dr.) Erick Kipkoech Mutai, how do you plead to ground 3; guilty or not guilty?

The Governor of Kericho County (Hon. Mutai): I plead not guilty.

(There was a Technical Hitch)

Mr. Elias Mutuma: Thank you, Mr. Speaker, Sir. For record purposes, my name is Elias Mutuma appearing for the County Assembly of Kericho. I have two applications to make on preliminary basis. You will notice from the presentations and charges made that one of our witnesses is a young lady who will be appearing before the Senate to testify on instances of sexual exploitation, molestation to the extent of being forced into anal sex by the Governor.

Mr. Speaker, Sir, to protect the integrity of the witness, we have made an application to have this witness protected, so that she is not exposed to the world. We have written a letter to the Speaker where we have disclosed her true identity and even attached a copy of her ID. We have no problem with the witness being confronted by the

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governor. We are requesting this House to allow that witness to testify in an environment where the world is not watching or where the world is not able to identify who she is.

To that extent, we can allow counsel and the governor to meet the witness prior to the testing to provide her testimony so that they are able to know who the witness is. That application is made pursuant to Rule 28 of the Third Schedule.

The second application, is that on Saturday at around 6.45 p.m., we were served with a response from the governor and we noted that they have raised two preliminary issues. The first one is on whether this Motion met the threshold that is being supported by two-thirds of the composition of the County Assembly of Kericho, and secondly, of a purported order that barred the proceedings from taking place.

We have taken the liberty to prepare an affidavit on just those two issues. We have filed that application. We have served the same to my learned friend, Mr. Katwa Kigen, and we have also taken time to prepare enough copies for all the Senators. We humbly seek that that affidavit dated 13th October, 2024 be deemed as properly on record.

That is all. I thank you.

Mr. Katwa Kigen: Thank you, Mr. Speaker, Sir, and hon. Senators. We, first of all, take exception at the statement made by my colleague for the County Assembly saying as if it is a statement of fact, that there were sexual excesses. That is an issue for the courts and probably for this Senate, and so we take exceptions at the attempt to make it as if it is a statement of fact. For avoidance of doubt, we wish to say that there is no police report and there is no determination of that issue.

I have three preliminary issues to request your audience on, and the Senate. The first one, is that we did file our documents and a flash disk on Saturday, the 12th. However, it turned out that they were not properly paginated and we have done a properly paginated set of documents and properly arranged the flash disk.

Mr. Speaker, Sir, we kindly request and plead with you and the Senate to allow us to replace the improperly paginated documents with a properly paginated one. The contents and the substance remains the same and the same was served on my colleagues.

I have had the occasion to have a word with my colleagues for the County Assembly and the general understanding is that subject to your ruling, we are in agreement that we are not contesting the affidavit that they have just introduced - the one dated 13th October, 2024 that my learned friend has referred to. In exchange, they are not contesting the replacement of the wrongly paginated bundle that we filed on Saturday and we brought the corrected one on Sunday the 14th.

Mr. Speaker, Sir, other than that, I had indicated that we proposed to raise a preliminary objection to these proceedings and we flagged out three issues we wanted to argue. I kindly request for your audience on that application.

The application to raise the preliminary objection is based on your Rule 14 and Rule 30, on issues of materiality and competence of the Motion before you. I pray that you allow us audience on that preliminary objection. As my colleague has already indicated, they are aware of our preliminary objection and they are also ready to argue it.

Mr. Speaker, Sir, as an aspect of that application, we are aware that Rule 14 says that if you are to allow us to raise the preliminary objection, the time within which we can argue that is 30 minutes. Our preliminary objection, at least in our estimation is very

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substantial. There is a rider in that Rule 14 that you can adjust the time within which it can be allowed.

With that in mind, we plead that you allow us one hour to raise the preliminary objection as opposed to the 30 minutes. Mr. Speaker, Sir, if you must although we pray that you do not, we are prepared to forfeit part of the time allotted to us for purposes of cross-examination of the witnesses for the County Assembly and for presenting our evidence the three hours thereafter.

I rest my case there.

The Speaker (Hon. Kingi): Counsel for the governor, just exhaust the 30 minutes first, and if at the end of the 30 minutes you still need time, you will make that application. Do not make it at this juncture.

You may now proceed to raise your preliminary objection.

Mr. Katwa Kigen: Thank you, Mr. Speaker, Sir. I trust you will allow me audience on the issue of the protection of the witness when it comes to that.

The preliminary objections we wish to raise are three. The first one, is that we wish to draw the attention of this hon. House and your attention that there is an order that was made on 3rd October, 2024 which was served to this hon. Senate, both the Senate as an institution and the Speaker. That order had the effect of asking that the Senate should not discuss this impeachment until the court has expressed itself.

Mr. Speaker, Sir, in the face of that order which was duly served, we pray that you consider standing down this impeachment until the court has entertained and determined that issue. The substance of that is that we have availed the pagination of the case that is filed in Kericho. We also served you with both the petition, application and the order. For that reason, then, as a first preliminary issue, we pray for two things; that you do consider standing down this impeachment in the face of that order.

The second preliminary objection that I raise is that it is our argument that this impeachment is not---

The Speaker (Hon. Kingi): Counsel, is everything you are saying contained in your bundle?

Mr. Katwa Kigen: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): You can help the Senators by referring to the bundle and the pages, so that you can flow with them.

Mr. Katwa Kigen: Mr. Speaker, Sir, the bundle and the order that I am referring to is on page 387 of our bundle. It relates to Kericho Constitutional Petition No. E-011/2024, Dr. Eric Mutai *versus* the County Assembly of Kericho, the Speaker of the County Assembly, hon. Rogony, the Mover of the Motion, the Senate and the Speaker.

The order is at page 387 to 388. Vol. II.

The Speaker (Hon. Kingi): Counsel, talk closer to the microphone so that the Senators can hear you.

Mr. Katwa Kigen: Hon. Senators, I am referring to Vol. II, page 387 to page 514, which contains the filings in Dr. Eric Mutai *versus* the County Assembly of Kericho, the Speaker of the County Assembly, hon. Rogony, the Mover of the Motion, the Senate as the fourth respondent and the Speaker as the fifth respondent and the order is at page 387 to 388.

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It states in paragraph (5) as follows-

“Pending interparty hearings of the Motion dated 2nd October, 2024, an order is issued to restrain the Senate and the Speaker from receiving or acting or presenting to the plenary of the Senate or allowing for debate at the Senate---

(Sen. Chesang’ stood in his place)

(Loud consultations)

The Speaker (Hon. Kingi): Hon. Senators, can the counsel be heard in silence? Sen. Chesang, take your seat. If you want to consult, we have the Senate lounge. It is empty as we speak, so you may want to make use of it.

Mr. Katwa Kigen: Thank you, Mr. Speaker, Sir. I will read the order again. The order which is material to this session states that:

“Pending interparty hearings of the Motion dated 2nd October, 2024, an order is issued to restrain the Senate and the Speaker from receiving or acting or presenting to the plenary of the Senate or allowing for debate at the Senate as a plenary or at any other Senate Committee, or discussing or making any decision or resolution in regard to the impeachment of the petitioner the Governor of Kericho County on 2nd October 2024.”

What I have read is the relevant bit.

(Sen. Orwoba spoke off record)

Mr. Speaker, Sir, may I explain? At the start of my presentation, I indicated that the first bundle was improperly paginated. There is a second bundle that has corrected pagination. I apologise for that.

The Speaker (Hon. Kingi): Counsel, hold on until we confirm the position.

Mr. Katwa Kigen: Mr. Speaker, Sir, the second bundle is like this. Can I use the first volume? It has the same order. It is easier to track it on page 23 of volume one. Vol. one is the smaller one.

The Speaker (Hon. Kingi): Counsel, so that the Senators can follow your arguments, indicate the bundle, the page and then proceed.

Mr. Katwa Kigen: Thank you, Mr. Speaker, Sir. If we all have Vol. I, it is on page 23. The rest of the pleadings in respect to that Motion are in volume two is from page 387 to page 514 as I indicated. I would like to move on to the second preliminary objection.

The Speaker (Hon. Kingi): Counsel for governor, a minute. Sen. Ali Roba, proceed.

Sen. Ali Roba: Thank you, Mr. Speaker, Sir. On both volumes, the pages being referred to, are not there. It seems like some of us have the right document while others do not; making it difficult to follow. We must be all on the same page in terms of having the right documents before we proceed.

The Speaker (Hon. Kingi): Sen. Sifuna, proceed.

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Sen. Sifuna: Mr. Speaker, Sir, from the onset, I am extremely disappointed in terms of the sort of filing that has been done by the governor's team.

Perhaps at the inception of these hearings, all the parties need to introduce us to the documents they have filed. I say this with the greatest respect because the hon. Katwa Kigen is a litigation lawyer of no mean repute. However, I must say that this is below standard.

First, introduce us to the documents you have filed. Indicate what colours are on your document, I am being told by the ladies that the colour on this document is peach. The men should abstain from this discussion.

The Speaker (Hon. Kingi): Sen. Sifuna, proceed.

Sen. Sifuna: Mr. Speaker, Sir, the volume that the counsel is referring to as volume one is not paginated. He had indicated that he had filed a separate volume that was properly paginated. Let us allow him to withdraw the documents that are not properly paginated and give us the volumes that are properly paginated. This exercise will be extremely painful if we proceed in the manner that we are proceeding. Let each party introduce their documents and substitute the ones they want so that we can proceed in a bit easier manner.

The Speaker (Hon. Kingi): Sen. Omogeni, proceed.

Sen. Omogeni: Mr. Speaker, Sir, I fully understand and sympathise with the agony that hon. Senators are finding themselves in while trying to get the pagination. I also sympathise with the counsel. He has made eight bound copies for 67 Senators. The copy I have is well paginated.

He was making reference to pages 386 and 387, which seem to have a properly paginated bundle, which my colleague, Sen. Wambua, has paginated, which reads 374 and 375. This is not an easy task. I plead that for those of us who have the right copies; it is easy to make reference to the page. The ones with a copy with a problem, we find the page.

(Loud consultations)

The Speaker (Hon. Kingi): Order, Hon. Senators! Can Sen. Omogeni be heard in silence? Sen. Orwoba, we do not raise our hands. You know what to do.

Sen. Omogeni: Mr. Speaker, Sir, it is not easy to prepare all these bound documents. Let us know which Senators do not have the right copies. As I said, the one I have is well paginated. The ones who do not have the bundle that is not well paginated can draw the attention of the clerk, then they can swap, or the counsel can supply another copy. It seems some of us have well-paginated documents while others do not.

The Speaker (Hon. Kingi): Hon. Senators, so that we make progress. Counsel---

Mr. Katwa Kigen: Mr. Speaker, Sir, can I identify the ones that are correctly paginated with the colour, so that we are on the same page.

The Speaker (Hon. Kingi): Counsel, wait for my directions. So that we make progress and carry all the Senators along. First, what are your documents? Introduce your documents first as you introduce them, hon. Senators, confirm that they have that bundle. Proceed.

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Mr. Katwa Kigen: Mr. Speaker, Sir, the first volume is bound with a blue cover.

The Speaker (Hon. Kingi): Counsel, what is the title of that bundle?

Mr. Katwa Kigen: Mr. Speaker, Sir, it is titled: "Statement of Defence by hon. (Dr.) Eric Mutai to the Senate Impeachment Proceedings."

The Speaker (Hon. Kingi): Okay, I will stop you there. Hon. Senators, do we have that bundle? Counsel, some have the same bundle, but in a different colour.

Mr. Katwa Kigen: Mr. Speaker, Sir, as I explained, I had initially filed one which did not have proper pagination.

The Speaker (Hon. Kingi): The one that is not blue is not the correct bundle.

Mr. Katwa Kigen: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): So, should we withdraw that?

Mr. Katwa Kigen: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Okay, hon. Senators withdraw the bundle---

Mr. Katwa Kigen: Vol. I other than the blue one.

The Speaker (Hon. Kingi): Hon. Senators, I am informed that we have the correct bundles. The Secretariat can now bring them in. Clerk, can you arrange to distribute those documents immediately?

You are going to be given a whole set of documents. So, just withdraw what you have.

Clerk, you have five minutes to do that so that we make progress.

(The Clerk distributed the new set of documents to hon. Senators)

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

The Speaker (Hon. Kingi): Yes, Sen. Boni.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I am rising to request for guidance and clarity. This is a time bound process---

(Technical hitch)

Thank you.

(Technical hitch)

The Speaker (Hon. Kingi): Hon. Members, allow time for the system to be fixed so that we can proceed. Just a few minutes.

(Technical hitch)

(Loud consultations)

Clerk, is the system back? Hon. Senators, please take your seats. Sen. Mandago, Sen. Wafula, Sen. Seki and Sen. Chesang.

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(Several Senators sat in their seats)

Now, as we are struggling to restore the system, we will use the two microphones that are placed on the Dispatch Box. Any Senator willing to say anything will have to walk to the Dispatch Box so that we save on time. We cannot wait until the system is fixed.

I want to believe that all hon. Senators have been given the correct bundles. Is that the position? Do we have the correct bundles?

Hon. Senators: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): As you may have noticed, we have lost considerable amount of time. As Sen. (Dr.) Khalwale has correctly stated, this is a time-bound process. According to our Standing Orders, we are supposed to give only half an hour to preliminary objections and we have gone beyond that. So, I seek your indulgence, hon. Senators, so that we move with speed.

I will allow the counsel to proceed and conclude raising his preliminary objection. Thereafter, I will allow the County Assembly team to respond. The Plenary will then have an opportunity to respond, make any intervention or rather debate the preliminary objections as raised by both sides. Counsel, you had done 10 minutes before the confusion on documentation arose. Therefore, you have 20 minutes to conclude.

Mr. Katwa Kigen: Thank you, Mr. Speaker, Sir. First of all, I thank you, hon. Senators, for the accommodation you have extended to me. I appreciate the point made by Sen. Sifuna that I fell below what is expect of me. I profusely apologise.

The second order I was referring to is found on page 22 in Vol. II. The effect of that order was that it stopped the county assembly from engaging, discussing and making any resolution on the impeachment. That notwithstanding, they proceeded to engage in discussing it and made a resolution, attendant to which it was forwarded to the Senate.

It is our position that, having acted in violation of the court order, the impeachment Motion before you, within the meaning of the rule of law, should not have been forwarded. The relevant part of that order is order number 5 in which the Senate was told that, pending in the interparty hearing, the Motion dated 1st October, interim conservatory orders are issued against the respondents jointly and severally suspending and staying the debating, considering or acting upon the notice tabled on 23rd September, 2024, and Motion moved on 24th September, 2024 for the removal of the applicant Governor from office. Those are my first two preliminary objections.

Mr. Speaker, Sir, I would like to move on to the third preliminary objection which is to the effect that this Motion before you, does not meet the two-thirds threshold. The absolute facts upon which I wish to raise that preliminary objection are these. I know I am out of time, so I will be as fast as possible.

Hon. Senators, Kericho County has 47 Members of County Assembly (MCA)s----

(Loud consultations)

The Speaker (Hon. Kingi): Hon. Members, so that we make progress, can we have silence? Proceed.

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Mr. Katwa Kigen: Thank you, Mr. Speaker, Sir. Kericho County has 47 MCAs; that is 30 elected and 17 nominated. All of them are functional in the sense that there is no vacancy or situation where there is any vacancy that is not occupied. Now, Section 33 of the County Government's Act requires that an impeachment Motion must muster at least two-thirds. I put emphasis on the use of the word 'at least'.

Kericho County Assembly is constituted of 47 MCAs and two-thirds is achieved when the vote comes to 31.3.

(The Serjeant-at-Arms changed the Counsel's microphone)

I am being asked to change the microphone.

Mr. Speaker, Sir, and hon. Senators, in the case before you, the impeachment was passed with 31 votes. Therefore, we argue that 31 is not the same as 31.3. If you combine the use of the word 'at least' in Section 33 of the County Government Act, with the threshold being 31.3, when you scale down to 31 as opposed to 31.3, then you have fallen short of the requirement of the statute, requiring at least two-thirds.

A total of 16 of the MCAs as per the HANSARD proceedings which have been availed to you, in volume one, pages 82 to 161 did not support the impeachment of the governor. The significant pages would be pages 160 to 161. The Speaker of the county assembly then, wrestled with the question, whether 31 amounts to two-thirds. He then went on to say, on page 160-

"My position is fathomed by the fact that we have customarily and by practice since the inception of the devolution, taken one-third of the Members of this Assembly, Kericho Assembly, to be 16, meaning the balance of the Members being two-thirds is equivalent to 31."

Mr. Speaker, Sir and hon. Senators, I will show that the Speaker of the County Assembly was wrong and misrepresented the facts.

Having said that it is only 31 out of 47 who---

(Sen. Maanzo and Sen. Kajwang' consulted loudly)

The Speaker (Hon. King): Sen. Manzo and Sen. Kajwang', please let us hear the counsel in silence so that we can make progress.

Mr. Katwa Kigen: Mr. Speaker, Sir, with that in place, it is my argument that if the hon. Senators were to abstract for one moment, the argument of the provisions of Section 33 of the County Governments Act and imagine that you draw a line at the point at which two-thirds falls, you would be drawing a line at the point at which you are achieving 31.3.

If you come to 31.2 or 31.1 or 31, you have fallen short of the provisions of Section 33 of the County Governments Act, saying it must be 'at least' 31.3. We argue that this Motion could only have succeeded if it had 31.3 and above. When it scaled down to 31, it immediately fell short of the provisions of Section 33 of the County Governments Act and Kericho County Standing Order No. 74.

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Mr. Speaker, Sir, I would also like to invite the attention of this Senate to the events that have happened previously in the County Assembly of Kericho.

On the 20th of September, 2022, as can be seen in volume one, from page 34 to page 45, an impeachment Motion was taken out against the previous sitting governor. Particularly on page 34.

Mr. Speaker, Sir, may I make a correction? The impeachment is on page 34 to page 36. It will be noted that those impeachment proceedings of the previous governor that took place on the 14th May, 2014, ten years ago, the hon. Speaker then, indicated as follows:

“I wish to notify the Members that there is a constitutional requirement and Standing Orders that for this Motion to pass, there should be two-thirds of the Members present in the House. So, Clerk, before the Motion is moved, kindly confirm that we have 32 Members.”

It is clear that, 10 years ago, that the Kericho County Assembly was clear in its mind that in any impeachment, the threshold of two-thirds requires 32 out of 47.

I would like to cite another example that happened two years ago. That is on page 37. I have particular reference to what is contained on page 42 of that bundle.

Mr. Speaker, Sir, and hon. Senators, on page 42, this was the election of a Speaker, but not just any speaker, but this specific Speaker. In that discussion on whether he could take office or not, it was discussed to this effect when it was being presided by the Clerk.

The Clerk said:

“Thank you, hon. Members. Before we proceed to count the votes, I have an important message to communicate. Please note that the person shall not be elected as a speaker of the county assembly unless supported by two-thirds of the Members of the county assembly; that is two-thirds of 47. We need 32 votes or more, and if we do not get that, then we will have to repeat the elections.”

Mr. Speaker, Sir, I would like to also play the video clip upon which this specific Speaker who presided over these proceedings was elected and which reflects those 32 votes.

I request your Information and Communication Technology (ICT) Department to play Video No.2.

(A video clip was played)

Hon. Senators, that is not video No.2. Video number two is one where the Clerk is presiding over the process of elections. It is the video submitted by the governor as opposed to the one submitted by the county assembly. Please, play Video No.2.

Mr. Speaker, Sir, can I proceed and then we come back to the video when it is found, so that we save on time?

(Hon. Kingi spoke off record)

Yes, Mr. Speaker, Sir.

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(Hon. Kingi spoke off record)

I am sorry, Mr. Speaker, Sir. I did not hear you.

(Hon. Kingi spoke off record)

Yes, Mr. Speaker, Sir, he is gone. He has just left.
Can I argue the other points and then I come back to it?

(Hon. Kingi spoke off record)

Thank you, Mr. Speaker, Sir.

Hon. Senators, apart from relying on those two instances; the 2014 criteria by Kericho County Government determining that 32 is the required threshold to meet two-thirds for purposes of the impeachment of the predecessor of hon. Dr. Erick Mutai and the criteria also applied when the current Speaker who approved of this Motion was elected, it was also decided that the two Members of the MCAs required to vote in support to amount to two-thirds. I wish to also refer to the events of the National Assembly.

Mr. Speaker, Sir, your colleague, the hon. Moses Wetangula, in a ruling which was in the public domain, made on 1st of October, and which I pray, you take judicial notice of, discussed the issues that have been raised by a number of Members of Parliament (MPs), being, whether two-thirds is mustered by 116 MPs or 117.

Mr. Speaker, Sir and hon. Senators, a relevant situation is that in the National Assembly, one-third of the total number of Members of the National Assembly, being 349, came to 116.33. So, there is a similarity in our case being 0.3 in the 31.3.

The Speaker was very categorical; he said that for purposes of one-third to approve the Impeachment Motion against the Deputy President, it would require 117 Members. Therefore, you should move a step further. You do not scale down to 116, but up to 117. That ruling by hon. Moses Wetangula is dated 1st October, 2024 and it is in the public domain.

We pray that the criteria used to elect the Speaker, the criteria used to impeach hon. Chepkwony, the criteria used to consider the impeachment of the Deputy President, which has not happened here, and the criteria used to approve the impeachment of the Deputy President in the National Assembly should apply here.

They used one formula being that you should move a step further because you cannot have a fraction of a person. That criteria should not change in the case of Dr. Erick Mutai. If you scale down because it is him, our argument will be that it is discriminatory.

The last incident that I wish to cite are the events in Nyamira County Government. In that county government, there are 34 MCAs. Out of the 34, there are 14 nominated and 20 elected. One-third was found to be 11.3. We again find the same 0.3 in the case of Nyamira.

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In that case, the County Assembly of Nyamira adopted the approach that 0.3 requires that you scale up to 12 as opposed to 11 people. For that reason, I insist that it will be discriminatory to deem the Motion that has been brought to this Senate as being competent to the extent to which it fell short of 31.3.

Mr. Speaker, Sir, I am aware that my colleagues are restless to make the argument that this is an issue that does not quite squarely rest on your hands under the provision of Rule 30. It is my argument that it clearly falls within your hands.

Rule 30 states that where on a particular question or matter, including but not limited to the question of evidence, materiality, relevance, competency, or admissibility of evidence, any question consequential or incidental thereto, where no provision has been made in the Standing Orders or in these rules, the Speaker of the Senate shall rule and your decision will be final.

Mr. Speaker, Sir, it is my argument that this issue falls squarely in your hands. It is my argument that when Rules 14 and 30 were being drafted, they must have contemplated a situation like this where you need to make a decision on a matter such as the competence of this Impeachment Motion before the Senators. The consequential question is whether we should go on or not and all the related aspects of the competence of this Impeachment Motion.

It is my argument that the Senate, in a certain sense, is on trial as to whether it will maintain the requirements of Section 33 on at least two-thirds and the attendant aspect of the rule of law and whether or not there is observance of that requirement.

Mr. Speaker, Sir, I request for 7 minutes to play a video clip to make reference to a decision made by Justice Manani. That is in volume one, pages 60 to 78. In that case, the learned judge said that where a committee requiring a certain threshold, in that case one-third--- They had sat on a proceeding that fell short of one-third. That is from paragraph 90 onwards. It is found on page 71.

The judge said; it is perhaps also necessary to point out that Standing Order No.68(8) uses the mandatory term “shall” when directing that an *ad hoc* committee be set up and should comprise one-third. He went on to say that if they do not amount to one-third, then it does not meet the threshold.

Mr. Speaker, Sir, it is a significant point that the Speaker of the County Assembly of Kericho used. You will find this reasoning on pages 160 to 161 with reference to that case of Michael Nkaduda *versus* County Assembly of Tana River. He went on to say that you should round off.

It is our argument that you can never round off to fall below the line or less than one-third. If you are to do so, you would be acting in contravention of the law.

Mr. Speaker, Sir, having said so, I request that the video clip be played. After that, I will request for five minutes for my colleague, Mr. Tunen to finalise on the preliminary objection.

(A video clip was played)

Mr. Speaker, Sir, that was during the election of the Speaker who made arguments that I have just referred to. He said that since it was 31.3, you should round off to the next---

The Speaker (Hon. Kingi): Counsel, we have listened to the video clip.

Mr. Katwa Kigen: Thank you. Mr. Speaker, Sir, in closing, it is my submission that there are two issues that both yourself and this Senate need to address. The first issue is the meaning of 'at least' in Section 33 of the County Governments Act.

When you apply the calculation in respect to Kericho, does it mean 31.3 and above or it can be scaled down to 31? Therefore, the first issue is the meaning of 'at least' in Section 33 of the County Governments Act as read together with Standing Order No.74 of Kericho County Assembly Standing Orders.

The second question is how you should treat a fraction where it relates to human beings. When it is 0.3, do you dismiss it and scale it down to 31, or that 0.3 represents a person? This is very significant.

Mr. Speaker, Sir, looking at the situation of these proceedings, there were 47 MCAs in Kericho County; 16 said they would not attend because they do not support the Motion. The other 31 MCAs were present and they supported the Motion.

Following the tradition of both the Senate and the National Assembly, it is always the case that when members have not voted in favour of, it is deemed that that vote was not in favour of. So, the 16 must be treated as having opposed the Motion. It cannot be given conjecture that the 0.3 could exist in the 16.

It is my argument, therefore, then, that clearly it did not meet the threshold. I wish to say that considering the precedent from your colleague from the National Assembly, we pray that for purposes of consistency, unless you have a very strong reason to disagree with him, you adopt the reasoning that he has applied for consistency and clarity of law.

Secondly, that if the criterion is used differently from Nyamira County Assembly, from the National Assembly, from the election of the Speaker, from the impeachment of hon. Chepkwony, then it would amount to discrimination.

Mr. Speaker, Sir, I had requested for just a little latitude. I had said five minutes. Could you allow him just two minutes, kindly?

The Speaker (Hon. Kingi): Counsel, your time is up. You kept repeating yourself on the same argument in different form. So, you may want to rest your Preliminary Objection (PO) there.

Maybe I need to ask you a question. In response to a preliminary matter raised by the county assembly. Do you have no problem with the affidavit dated 13th October, 2024, being admitted and being part of the record?

Mr. Katwa Kigen: Mr. Speaker, Sir, I confirm that I have no objection. We have discussed both of us and subject to the Senate and you, Mr. Speaker, Sir, we have agreed that they accept our replacement documents, properly paginated and we would have no objection to the affidavit.

The Speaker (Hon. Kingi): The application for as far as the witness is concerned?

Mr. Katwa Kigen: Mr. Speaker, Sir, we strongly object. However, as I said, we have this restraint of the order and we want to be very measured, not to seem to be violating the order that we already have in our favour.

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The Speaker (Hon. Kingi): Counsel for the County Assembly, you may now proceed to respond to the PO as raised by the Council for the Governor (CoG).

Mr. Elias Mutuma: Thank you, Mr. Speaker, Sir, and hon. Senators for the opportunity. The two preliminary objections are opposed by the county assembly and to that effect, we will be asking you to allow a copy of the affidavit to be supplied to Senators because we will be making reference to the same. It is already with the Secretariat and marked as volume eight.

If that can happen, Mr. Speaker, sir, with your permission, I could proceed.

The two preliminary objections---

(Loud consultations)

The Speaker (Hon. Kingi): Where is it contained?

Mr. Elias Mutuma: Mr. Speaker, Sir, it is yet to be supplied, but it is with the Secretariat, pending your ruling.

Can we have that done?

The Speaker (Hon. Kingi): Which affidavit are you referring to, counsel?

Mr. Elias Mutuma: Mr. Speaker, Sir, it is volume eight of the county assembly's documents,

The Speaker (Hon. Kingi): Are you referring to the Affidavit of 13th October, 2024?

Mr. Elias Mutuma: Yes, indeed, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Is it contained in any of the volumes or is it a standalone?

Mr. Elias Mutuma: Mr. Speaker, Sir, it is a standalone Volume, titled, Volume. VIII and I can confirm that it is with the secretariat.

The Speaker (Hon. Kingi): So, can the Vol.VIII be made available to hon. Senators?

Mr. Elias Mutuma: Mr. Speaker, Sir, I could proceed because I will not be making reference.

The Speaker (Hon. Kingi): You may proceed.

Mr. Elias Mutuma: Thank you, Mr. Speaker, Sir. We object to the two POs on the ground that the very nature of a PO is that it has to be on a pure question of law. What the counsel for the governor is inviting you to do at this juncture, is to consider matters that are disputed; matters of fact. It is set of law that if an issue is contested or in dispute, that can only be determined by way of evidence.

When you look at the issue of existence or nonexistence of the court orders, the county assembly has strongly opposed that line of argument and has brought evidence to show that there were not court orders.

In fact, the county assembly is arguing that those court orders are either forged or a manipulation of the judicial system. That evidence can only be tested if we bring a witness before you to be able to clarify on that issue. That cannot be done by submissions from the bar.

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On the issue of whether the impeachment Motion met the threshold - the two-thirds rule - again, you will note that this is an issue that has been contested. We will be producing evidence before you to indicate indeed that, that threshold was met. How then, hon. Senators, are you able to make a determination without listening to the evidence or looking at the materials that both parties are relying on?

We submit that the only way to do so is to allow this matter to proceed on merit and then you can question the validity of a certain fact by cross-examination, examination in chief and questioning the witnesses that will be relying or rather seeking to produce those particular evidences.

I note that the counsel has sought to rely on Rules 14 and 30 of your Rules here, to make an assertion that the decision on the two PO lies with the Speaker. We beg to differ on the following reasons.

First, today the Senate sits not as a legislative House, but as a quasi-judicial body. So, any decision to be made must be made in your capacity as a quasi-judicial body. So, the question then is; who is sitting to hear the matter of impeachment of the governor? Is it the Speaker or an individual Senator? My summation is that it is the House that is seeking to listen and give a determination on the question of the impeachment of a governor. A judicial authority is usually aimed at settling a dispute between two parties.

There are two ways of making that determination; the first one is on a technicality or on a preliminary basis. The second is through hearing on the merits of the case and making a determination. Either way, that decision can only come from the fact finder, from the judge, from the jury.

So, the invitation that the Speaker - sitting in his capacity as a Speaker - can make this determination. This means that the decision of impeaching a governor or not impeaching a governor shall have been made by the Speaker alone who does not have the legal mandate to listen individually to an issue pertaining impeachment of a governor.

On that basis then, I invite my learned friend, Mr. Njenga, to take you through the merits of the two objections.

Mr. Charles Njenga: Thank you, Mr. Speaker, Sir, and hon. Members. I will go straight to the objections because of time.

In addition to the argument made by my learned friend, I invite the Hon. august House to consider the import and purport of Rule 2 of the Third Schedule of the Standing Orders, which grants express jurisdiction to the Senate on two things:

- (a) to investigate the matter; and,
- (b) to make determination on the particulars of the allegations.

It is our submission that the power to make the determination, even on issues of law, remains always with the Senate and it cannot be derogated by the application or by the interpretation of Rule 30.

Rule 30 is clear. It is only on admission, competence and any other issue regarding evidence, but not the competence of the entire Motion.

I proceed to respond to the question of the court orders that I have been referred to by the Counsel. In making this response, I refer entirely to Vol. Eight, which is the replying affidavit of the County Assembly. I will add three quick points on that because

of time, so that I can allow my colleague to refer to the last limb of the preliminary objection.

First, we refer you to paragraphs eight to 13 of that replying affidavit that speaks to the validity of the orders. The County Assembly's position is that those orders are invalid and cannot be validated in the manner that is provided for by the Judiciary. They cannot be validated from the Judiciary CTS portal. Once you interrogate them against the practise directions of the High Court and all courts that we have already supplied a copy of, then you will find that there is no means to verify as a House whether those orders indeed, were issued from the court. You will find the particulars at paragraph 13. We have annexed a copy of the said orders.

Interestingly, you will see as Annex in our Affidavit, for example, the first order was purportedly issued on the 2nd October when the Motion was being debated before the House. The parties to that order were the County Assembly and the Speaker of the County Assembly, but it appears that the orders mutated a day after, without any reference to the procedure allowed and known to all of us as provided for under Rule 18 of the Mutunga Rules as to how you can amend a Petition and a Motion before the House. They mutated on the 3rd October to thereafter bring the Senate and the Speaker of the Senate as parties to the order. How did they mutate? How was the Senate and the Speaker brought to the same matter within a day without its participation?

You will see that we have referred to the screenshots that made the County Assembly aware of these orders. The County Assembly has taken the position that it was not served with those orders. That is on paragraph nine of the replying affidavit. That is an issue of fact that shall require strict proof. We have not been led to any affidavit of service by counsel to indicate whether those orders were served. It is straight law that an order that has not been served is inoperative for all intents and purposes, including these proceedings.

The orders appear to have been circulated as early as 11.50 a.m. if you look at the stamp on top, but when you go to the CTS portal of the Judiciary, the application that yielded these orders was filed at 12.10 p.m. I am referring to page eight of this Volume. We have a situation where an order is issued before even the application was filed. That is for the Senate to consider. We have escalated that matter as an issue of investigation before the Judicial Service Commission (JSC). We have annexed a very comprehensive letter that I do not wish to reiterate its contents on before this House.

Secondly, as I finish, without prejudice to those arguments, I want to make reference to paragraph 19 of the replying affidavit. We have argued on the import of these orders. Are they applicable to the Senate to the intent of stopping the Senate from hearing this impeachment proceedings? We have referred to the decision by the Supreme Court in the Justice Kariuki multimatter. This decision is annexed for the benefit of Senate.

It is a decision that I had the pleasure of arguing in the Supreme Court together with Sen. (Prof.) Tom Odhiambo Ojienda, who is seated here, where the Supreme Court was quite explicit that a court cannot restrain a constitutional organ that is operating within its time-bound constitutional limits. That I refer to the holding of the Supreme Court at paragraph 11, which you will find at page 20 of the volume. The import of that

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holding to this House is that the two orders referred to by counsel for the County Governor cannot have the effect of stopping the proceedings before this House.

Finally, as I sit down, this Senate has already taken a position in that matter. I will do nothing more than refer the Senate to page 59. This will be the last document I refer to because of time. I am yielding the floor to my colleague. Page 59 is a position taken by the Senate in these proceedings, in this matter. The Senate has said, by way of a preliminary objection, that we are not bound by that order. It has told the High Court in no uncertain terms that we are not bound by that order to the extent that it does not comply with a settled jurisprudence by the Supreme Court, which has been followed with approval by the Court of Appeal in the Hon. Kawira Mwangaza case and in many other cases, including decisions of the Senate, specifically in the Hon. Mike Sonko matter and also in the Wambora II, matter, which decisions are within the House.

I yield the floor to my colleague to urge the issue of the number threshold.

I thank you.

Mr. Hillary Kiplangat: Mr. Speaker, Sir and honourable Members, for the record, my name is Hillary Kiplangat. I will address the third preliminary objection; which is the question of whether the threshold of two-thirds required by Section 33 of the County Governments Act, 2012 was met in the impeachment of Governor Hon. (Dr.) Erick Kipkoech Mutai.

Section 33 of the County Governments Act, 2012, indeed, requires the County Assembly to satisfy a threshold of two-thirds of its Members to pass a Motion for the impeachment of the governor. The controversy in this case is that 31 Members voted in support of the Motion and in the humble submissions of the Speaker, as per the HANSARD of that day, that constituted two-thirds of the members of the county assembly.

Mr. Speaker, Sir, in his ruling, the Speaker of the County Assembly in page 131 of volume one of our documents allowed himself to be guided by a decision of the High Court and that is the case of Michael Justine Nkaduda *versus* the County Assembly of Tana River and four others, KELRC 1605, in which a judge of the High Court by the name Justice Manani had held that when it comes to matters rounding off, one rounds off to the nearest whole number. So, when it came to that determination, the Speaker of the County Assembly was guided by a constitutional position which had been determined by the High Court in that particular case which I have cited. That position is in volume one of our documents at page 131. You will find the ruling of the Speaker in which he cited the case of Justin Nkaduda *versus* the County Assembly of Tana River.

Mr. Speaker, Sir, the decision of Justice Manani is an application of elementary mathematical rule of rounding off; in which numbers are ordinarily rounded off to the nearest whole number. The same formula has been applied in various other decisions of courts.

A case in point is the case of Adrian Kamotho Njenga *versus* the Judicial Service Commission, which interrogated the composition of the Supreme Court, in compliance with the requirements that no more than two-thirds of the same gender shall be in that appointive position. In that case, the High Court and the Court of Appeal were clear that when it comes to rounding off, you round off to the nearest whole number.

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The reigning jurisprudence which has been handed down by our courts is that one rounds off to the nearest whole number. In this case, there are 47 members of the County Assembly of Kericho. To achieve two-thirds of 47, it will give you a number of 31.33. The nearest whole number to 31.33 is 31 and not 32. That is in keeping with the jurisprudence, which has been settled by our courts.

Mr. Speaker, Sir, suffice to note, in the County Assembly of Kericho, there are 30 electoral wards. Out of the 30 electoral wards, 29 men and one woman were elected as MCAs. The IEIBC, in constituting the gender quotas for purposes of nominations, nominated two additional men, making the number to be 31 men against 15 nominated women. Thus, the number of nominated women in the County Assembly is 16.

Therefore, 31 men in the wisdom of IEBC - and it is important to note that IEBC is a constitutionally mandated body that can ascertain gender quotas as per the law, in their wisdom, two-thirds is 31 and that is why at the County Assembly of Kericho today, we have 31 men and 16 women MCAs.

Mr. Speaker, Sir, even if we were to convert these figures to percentages, you will realize that if we were to argue that 32 was two-thirds, it would yield a percentage of 68.05 percent and in actual sense, two-thirds would be a percentage of 66.67. One can see that variance even if you convert those figures into percentages. In any event, if one was to argue logically that two-thirds is 32 and a third is 16, we would be having a figure of 48 MCAs in the County Assembly of Kericho, which is not the position because we have 47 MCAs.

Hon. Members, this is a constitutional question, which has been settled by the courts in Kenya and in keeping with the doctrine of *stare decisis*, which provides that, bodies adjudicating on disputes which touch on the Constitution or the law are bound by the decision of the high court or superior courts. The decision in the case of Justin Nkaduda *versus* the County Assembly of Tana River as well as Adrian Njenga Kamotho *versus* the Judicial Service Commission is binding in this House.

It does not matter how many times the county assemblies or parliament has applied a different formula. The only time when this matter has come up for determination is before the High Court. The High Court has given a finding that you round off to the nearest whole number when you are confronted with an issue which requires numbers to be rounded off.

Mr. Speaker, Sir, those are our submissions in respect of the third preliminary objection unless my learned senior, Mr. Bosiek, has to add and you could give him a minute or so.

The Speaker (Hon. Kingi): Clerk, how much time is still available to the County Assembly?

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

Mr. Joel Bosek: Mr. Speaker, Sir, just to add a few more points, the HANSARD that has been supplied by my learned friend, Katwa Kigen is not certified and is not complete as well. I wish to also point out that when you look at what is purported to be the HANSARD, there is a disclaimer that: "This electronic version of the official

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Mr. Speaker, Sir, hon. Senators, we have not been furnished with any document that shows that the same are certified by the HANSARD Editor. In fact, we have not seen any input from the HANSARD Editor. Having said that, we therefore stand to say that whatever that has been produced, purported to be from the Kericho County Assembly; just like the documents which were purported to have been produced from the High Court in form of orders, did not go through the process of certification and, therefore, they are of no propertive value.

On that basis, we urge the hon. Senators to look at them and to also question why Counsel will produce documents, which are in themselves self-defeating.

I thank you.

The Speaker (Hon. Kingi): Thank you. Before I allow Senators to make the intervention, counsel for governor, you may make your rejoinder.

Mr. Katwa Kigen: Thank you, Mr. Speaker, Sir. The first and the point I want to emphasize for the hon. Governor is that we place a lot of premium on the contention that the two-thirds was not met. As a starting point in response to what my colleagues have said, it can be taken as an absolute fact that 31 people voted and yet, what was required was that 31.3,

That leaves the question, which we had already posed, when you scale down to 31 as my learned friend Mr. Hillary Kiplangat has said, you round off to the nearest number, whether you would still be meeting the requirements of Section 33 being at least two-thirds.

The second argument in response to the argument is the question of whether this is a question of fact. They said it is a question of fact and they will call a witness to say that, but we are all in agreement on what the bottom line is. It is governed by Section 33 of the County Governments Act and Section 74 of Kericho County Government's Standing Orders. The Members of the County Assembly are 47. Those who voted are 31 and the requirement is 31.3. Those are absolute facts and they are not in contention. No witness can change them one way or the other.

Mr. Speaker, Sir, and hon. Senators, the issue is ripe for your determination. It is ripe for your determination as to whether you can scale down 31.3 to 31.

My colleague, Mr. Bosek, has said that the HANSARD we have relied on have not been certified. We wish to point out that the HANSARD on their face says that they are for information purposes. We are happy to rely on them to the extent to which they represent information. It is significant that they do not deny that those are accurate representations of what happened in the county assembly during the impeachment of the predecessor of Governor Eric Mutai, Hon. Paul Chepkwony. They do not contest that it was the criteria used to elect the Speaker.

There is the contest about the orders. We take this Senate seriously. We cannot have come up with forged orders. We are astounded that advocates of the magnitude and standing of the county assembly could say that the orders were forged.

There is a specific allegation that the orders were not served. Vol. II, page 487, shows that the orders were served, and there is an affidavit of service. You will see from

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the HANSARD brought by the County Assembly that the affidavit of service shows the service was effected between 9.10 a.m. and 10.00 a.m. The voting for purposes of impeachment was done at 2.00 p.m., as can be seen in the HANSARD that was produced by the county assembly on page 160. On page 161, it shows that they completed their process of impeachment at 2.18 p.m. Clearly, service was effected long before they voted.

It is also significant that they say there was a forgery. My good friend Mr. Hillary filed a notice of appointment to come into that case the day after that 3rd October, 2024. If they are saying there were no orders, what were they doing getting into that case and participating in it by representing the county assembly and challenging the orders obtained? We take exception to the allegations made about the orders not being proper.

With that I would like to rest my response and request for your indulgence for one minute for my learned friend, Mr. Tunen to say one thing then we rest our case.

Mr. Manasseh Tunen: Mr. Speaker, Sir, for record purposes, my name is Mr. Manasseh Tunen. I rise to respond to one issue. This is the issue of two-thirds, as indicated by my learned colleague Mr. Hillary. The issue of two-thirds is not a mathematical question in this instance. It is a legal question. At 31.3, a line of thresholds was drawn. The law states in mandatory terms, it should be at least 31.3. This means that you will have to scale up the numbers to meet that threshold. If you reduce the numbers to 31.1 or 31, it means you have fallen below the threshold that is provided by law.

As you are aware, even in the Standing Orders of this House, in the election of the Speaker, the House is composed of 67 Senators. Two-thirds of this number is a decimal point. As you can recall, during your election, the numbers scaled up and not down. This means that you do not reduce the number below what the law provides. The House debates on that, considering that 0.3 of a person needs to be completed. You do not negate or remove that person. In our submission, we hold the position that the threshold was not met.

Another issue that Mr. Hillary raised contained the issue of gender in the County Assembly of Kericho. The issue of gender in Kericho is not the same and is not captured under Section 33 of the County Governments Act. We urge the House to look at what the law provides. Let this House not be the one that sets precedence that you can play with numbers. Let the House be firm on its decision and uphold the rule of law.

The Speaker (Hon. Kingi): Thank you, counsel for the county assembly and counsel for the governor. I will allow hon. Senators to make interventions in this regard. Hon. Senators, you will notice that this is not the ordinary preliminary objection that we have dealt with before. This is a preliminary objection of a fundamental nature. It may or may not terminate these proceedings.

Therefore, as you make your intervention, have that in mind. I will start with Sen. Sifuna.

Sen. Sifuna: Mr. Speaker, Sir, allow me to put a question to the counsel for---

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

The Speaker (Hon. Kingi): Senator for Meru, certainly you cannot stand on a point of order. I do not see anything disorderly from the Senator for Nairobi City. Unless you are seeking an intervention.

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Sen. Kathuri: Mr. Speaker, Sir, the Senator for Nairobi City is in order. However, I was seeking your guidance on time. Guide us on the minutes a Senator can contribute on the Floor.

The Speaker (Hon. Kingi): Hon. Senators, if we strictly apply the rules of procedure, then you will have two minutes.

Sen. Sifuna, proceed for two minutes.

Sen. Sifuna: Thank you, Mr. Speaker, Sir. My question goes to the counsel for the governor. I would like to refer him to volume one of his documents. On page seven, paragraph 20, there is an averment made by the governor that, in fact, there was a holding of the High Court, and this is in reference to Malindi ERC petition number E006, page seven of the bundle in paragraph 20. Counsel, Vol.I of the governor's bundle, page seven.

For heaven's sake, my time is being wasted by things I have already said.

The Speaker (Hon. Kingi): Proceed.

Sen. Sifuna: Mr. Speaker, Sir, I am referring to bundle Vol.I of the governor's bundle on page seven.

The Speaker (Hon. Kingi): Sen. Sifuna, you can only repeat if I tell you to.

Sen. Sifuna: Thank you, Mr. Speaker, Sir. Counsel, you have presented the averments at paragraph 20(a) as a holding of the court. That, in fact, the paragraphs you have superimposed there were a finding of the court. You are a lawyer of great repute, and reading a judgement, you can ascertain what a finding of the court is as opposed to an analysis of the presentation of the parties. The judgement referred to is on page 70 of that same bundle.

I want the counsel for the governor to confirm to this House that, in fact, the paragraph quoted at 20(a) is not a finding of the court on the question of what two-thirds means and what should happen when there is a decimal. He quoted from paragraph 83 that it cannot be a holding of the court. In fact, the holding of the court should be at paragraph 86 of that judgment.

So, my question to him is this; is it proper for you to present an analysis of the case by the learned judge as a finding of the court?

The Speaker (Hon. Kingi): Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. My comment on this will be limited to what I had begged the House to adopt in order for us to help this country. This is a very serious matter. It is already on record that no court can injunct Parliament. So, the first preliminary objection should collapse. A decision has already been made.

My second comment is on the question of numbers. Counsel Mutuma, what would you like the governor to prove? This is a scientific fact that 47 divided by two-thirds is 31.3. As you guys say in law, *res Ipsa loquitur*. It proves itself. What do you want him to prove? It is not possible for a human being to be a fraction.

I urge the counsel, that on this one, let us agree to give it to the governor because you also have a responsibility to grow the philosophy of impeachments. We give him the fact that a fraction of a human being does not exist. Next time, come with full numbers then we will listen to you.

Finally, Mr. Mutuma, you are very experienced in this process. Listen to what the Speaker of the National Assembly said about the same thing. The County Assembly of

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Nyamira said the same thing. The County Assembly of Kericho said the same thing about numbers during elections. So, why do you invite joyriders to disagree with all of them? Is it to please you or to allow for proper jurisprudence?

The Speaker (Hon. Kingi): Sen. Olekina.

Sen. Olekina: Thank you, Mr. Speaker, Sir. I want the counsel of the governor to clarify for me something. The counsel for the Assembly has presented facts that this matter had already been determined by a court. In their volume one, page 131, there is a finding of the court that when it comes to the issue of two-thirds, it is not an issue where you determine the question of a human being able to be fractioned, but rather, it is scientific.

Are you then, in your submission, questioning, or rather, have you challenged, or has anyone else challenged that finding of the court in the matter of Michael Justin Dunda with the County Assembly of Tana River? That is a point that I would like you to clarify because this is a finding of the court.

Secondly, on that issue, is the finding on the matter to deal with the Judicial Service Commission (JSC), where the court according to the facts presented by the Assembly, stated that you round off to the nearest whole number. What would be the nearest whole number in a matter which is 31.3? Is it 31 or is it 32?

Thank you.

The Speaker (Hon. Kingi): Senator for Nandi County, Sen. Samson Cherarkey?

Sen. Cherarkey: Mr. Speaker, Sir, you need to protect me from the Senate Majority Leader. I just want to agree with my colleagues. In the history of this Parliament, no one can injunct Parliament. So, that aspect of an injunction of Parliament or court order before the National Assembly or the Senate does not hold water. I would, therefore, advise the governor's defense team to stop pursuing that line.

Secondly, on the issue of two-thirds, my concern is on Section 33 of the County Governments Act and Article 181 of the Constitution on the removal of a governor. In the decision of Raila Odinga versus Independent Electoral and Boundaries Commission (IEBC) in 2013, the Supreme Court pronounced itself that when the process has started off, and I want to extrapolate that when the process has taken off as envisaged in that ruling before the Supreme Court, that process is time-bound.

The fact that you read the charges means that the process is ongoing. When you look at Rules No.14, 16 and 30 on the Removal of a Governor, the process is already ongoing; the train has left the station. So, the question should be if the process has already begun, as per Section 33 with the genesis of Article 181 of the Constitution on the removal of the governor, what happens?

I agree that in scientific proof, you cannot have a fraction of a human being. However, for some of us who are not very good at mathematics, there is also the principle of truncation. You must balance both, so that at the end of the day, we give justice to the County Assembly, the governor, any other person and the people of Kericho County. Since the train has left the station, let us go ahead and listen to the merits and demerits of the case then we determine.

I submit.

The Speaker (Hon. Kingi): Sen. Kajwang'?

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Sen. M. Kajwang': Mr. Speaker, Sir, the issue of limits of judicial authority on independent institutions has been settled. I think we have seen some precedents that have been presented to us.

Secondly, we need to make a distinction between procedural fairness and procedural technicality. Procedural fairness demands that we give the governor of Kericho County an opportunity to defend himself because he has been accused of gross misconduct. All sorts of allegations have been made against him. This is, therefore, his opportunity to defend himself against those allegations. There should be procedural fairness as required in our Constitution.

The other aspect is procedural technicality. If we were to be obsessed with procedural technicality, if you recall, in 1992, John Harun Mwau would have been the President of Kenya. He went to court and said he was the only one who presented his petition in a foolscap, rather than on an A4 paper. We are getting different interpretations to the ruling that has been referred to by both parties.

On this matter, we should not go with Rule No.30 of the Standing Orders, which empowers the Speaker to make a decision. I want to encourage us to do what we did in the case of the Governor for Nairobi City County, Hon. Sonko. Some affidavits were sworn by Members of the County Assembly (MCAs) that discredited the outcome of the vote. The Speaker ruled that we should allow all parties to prosecute their case then the Senate, sitting as a jury, would make a decision on the ultimate day of voting.

I would propose, and I would urge Mr. Speaker, Sir, that you do not refer to Rule No. 30 of the Standing Orders, but allow the House to proceed and ensure that there is procedural fairness in the matter of Kericho County.

The Speaker (Hon. Kingi): Sen. Kathuri.

Sen. Kathuri: Thank you, Mr. Speaker, Sir, for giving me the two minutes to comment on this very important matter. As we are here, many Kenyans are watching us. They are glued to their television because many Kenyans are now sensitive to devolution and governance.

So, preliminary objection number one is dispensed off naturally. On the second preliminary objection, the High Court pronounced itself that you go to the nearest whole number. When you do so, you land at 31.

The other argument now is about the threshold that was put in Kericho County when they were electing the Speaker of the County Assembly. This matter is about Mathematics. As other colleagues have put it, I would request we hear these cases. We should give Kericho County Assembly and Kericho County Governor time to prosecute their matter before this Senate. If we determine this matter in any other way, rather than listening to the parties, then we will not be giving justice to the good people of Kericho County and the country at large

If we do that, the Senate will be a House that cannot protect devolution. In my submission, I wish that we listen to both sides. We are judges. This is a High Court sitting. We will make our determination in one way or the other.

I thank you.

The Speaker (Hon. Kingi): Sen. Wambua, proceed.

Sen. Wambua: Thank you, Mr. Speaker, Sir. Two things; One, I do not know why my colleague and friend, Sen. (Dr.) Khalwale, would want to pick and choose on court rulings. A precedence has been set in the court on the matter of suppression of powers and he has quoted it; 'No court can injunct a Parliament in its deliberative roles'.

Preliminary Objection No.1; everybody agrees it falls on its face.

Preliminary Objection No.2; what the lawyers on both sides are asking these judges here to do is a very complicated matter. It is a matter of determining a fraction of a human being. What is 0.3 per cent of a human being? Is it the head? What is it? However, again, the courts have pronounced themselves on that matter. In the case of Tana River County, they have said that in a matter like this, then you round off to the nearest whole number, which is 31.

Mr. Speaker, Sir, there are substantive matters for determination in this Motion that this House needs to be engaged in. If you ask me, as Sen. Cherarkey has said, the train has already left the station. We are already in motion. Let us hear this case and make a determination one way or the other. I submit.

The Speaker (Hon. Kingi): Sen. Cheruiyot, proceed.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir. The people of Kericho County have quarreled, and we have come before this House to seek justice. We pray for nothing less than justice in the interest of the people of Kericho.

I want to make two quick observations: One is unanimous by what colleagues have said, that point of order number one has not only been determined by Parliament itself, but none other than the Supreme Court of the Republic of Kenya in the case of Wambora *versus* Meru County Assembly and 37 others of 2015; where it has been firmly established on what you do with a Parliamentary process either in Parliament or at the county assembly once an exercise has commenced. Therefore, on that count, I plead that the counsel for governor notices and appreciates that particular issue.

Second and most important, is on this issue - I wish my good friend Sen. (Dr.) Khalwale listens keenly to this - there is what you call the hierarchy of law, where the Constitution reigns supreme and sits at the top. When a matter is not sufficiently addressed in the Constitution, you look for it in a statute or legislation that you have passed here. Where there is none, what follows after that, is checking if there is an already established case in law.

The Speaker of Kericho County Assembly in his affidavit, and it is hereby presented in volume eight of the documents from the Assembly, cited court decisions that have been made on this particular issue. Therefore, I do not know on what basis you would want to fault the Assembly. I have listened to counsel for governor, and there is no citation whatsoever on their part other than the application of mathematics and this theory we are being told that there is no half or quarter of a human being.

I thought that being a House of procedure, we would establish a practice that has been established in our courts of law. What I find extremely curious though is a very dangerous invitation that the counsel for the governor is sending out to you. I listened to him. He wants to lead you to make a decision that has never been made by any other

Speaker in this House. He wants you to make a determination on appeal and dismiss this case altogether---

The Speaker (Hon. Kingi): Have a seat. Hon. Senators, it is now 1.04 p.m. We can only, during a morning session, prosecute business up to 1.00 p.m. Therefore, allow me to invoke Standing Order No.34(2)(a) to extend the time for 15 minutes. Thereafter, we shall rise for a break. We will come back at 2.30 p.m. and prosecute this matter because it is of such a fundamental nature. I will give you one minute to conclude.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, you are being invited to a very dangerous path. Previously, before this House, in the case of Mike Sonko *versus* Nairobi City County Assembly and also in Ferdinand Waititu *versus* Kiambu County Assembly, such appeals have been raised. What did your predecessors do? They let the jury, which is all the 47 delegations, make the determination.

Mr. Speaker, Sir, do not accept the invitation being passed on you to make a determination on your own. The Constitution, our Standing Orders and other legislations, never envisioned a situation where the Speaker can terminate such proceedings purely on a point of order. Therefore, I humbly request, that just as we do in legislation, let us make a determination on this preliminary objection.

If it comes to voting, let it be the case. However, let it be on your own motion. In the interest of justice for the people of Kericho County, allow us to listen to this case and eventually make a determination one way or the other.

I thank you.

The Speaker (Hon. Kingi): Sen. Omogeni, proceed.

Sen. Omogeni: Thank you, Mr. Speaker, Sir. I heard my classmate, Mr. Katwa Kigen invite you to invoke Standing Order No.30, to make a final determination on this impeachment.

The Speaker (Hon. Kingi): It is the Rules of Procedure, not Standing Orders.

Sen. Omogeni: Okay, under the Third Schedule, under the Rules of Procedure. My understanding is the moment an impeachment lands on the Floor of the Senate, it becomes the property of the jury, who are the Senators. If these proceedings were being conducted by a special committee of 11 members, you would never be invited to make a determination on the issue of whether a two-thirds was reached. That decision would be made by that committee of 11 members.

By extension also, the right person or persons to make a determination as to whether the threshold of two-thirds was reached during impeachment, is the House sitting as the Senate.

Mr. Speaker, Sir, I do not think, you will be setting the right precedent by taking that power away from the elected Senators. Counsel can invite Senators to listen to that issue and make a determination, but I do not think, it is right for you to be asked to make that determination as our Speaker.

I agree with those who have spoken before me, that precedent was set during Sonkos' hearing and other similar matters that arose before us on issues of quorum. However, the Speaker then ruled that those issues were to be argued as part of the defense of former Governor Sonko and the Senators were to make a determination. I invite you to be extremely reluctant to take a seat as the jury in making a determination to

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either acquit or convict the governor for Kericho County. That is a mandate reserved for us Senators.

The Speaker (Hon. Kingi): Sen. Ali Roba proceed.

Sen. Ali Roba: Thank you, Mr. Speaker, Sir. Listening to both sides, there is alleged evidence of a court ruling that has been shared by the counsel for the governor, and a citation of court rulings shared by the counsel for the County Assembly. As my colleagues have shared, there is a question of common practice globally that deals with the issue of fractions and then there is the law.

The matter before us is not an easy one that can be prosecuted by making a simple decision of, for example, what you have been requested in the preliminary objection to make; that of, in the words of the counsel for the governor, on the basis of the argument of the threshold, to determine that there is no case to be heard by this Senate.

It is important that the Senate, sitting as a jury and a quasi-judicial setting, to make that decision themselves, so that it also becomes a precedent-setting case, as mentioned by various colleagues of mine in the House, of governors appearing before this same Senate. Can you allow this Senate to make that decision by way of voting, so that it becomes a precedent-setting rule, rather than taking the burden of making that decision? The people of Kericho County are expecting, the issue before this Senate to be listened to and adjudicated over by the entire Senate as to---

The Speaker (Hon. Kingi): Sen. Mumma, please proceed.

Sen. Mumma: Thank you, Hon. Speaker, Sir, for giving me an opportunity to contribute to this.

I wish to support sentiments by previous speakers, but wish to point out a very important issue when it comes to the Preliminary Objection Motion on the threshold. I would like to point out that in the past, when the threshold has been about gender, the math to round off to below the figure has sufficed.

A point to demonstrate this is the County Assembly of Kericho. I wish to call upon our colleagues, to take note that the Kericho County Assembly has 47 Members, but only 16 are women. So, even as you make a decision, depending on what decision you make, we may have to nominate one more.

I also wish to point out that in the bundle of evidence by the governor's team, they indicate that the Speaker was appointed by 31 votes to 16. It is something that you need to take note of.

Thirdly, take note that the first Supreme Court of Kenya was not nullified, on the basis of the two-thirds gender rule. In fact, it was rounded off and actually allowed to sit, even though it had not reached the threshold of two-thirds gender. So please consider all these and let us not, when it is a gender issue, conveniently round it off the other way, but not on the other---

The Speaker (Hon. Kingi): Sen. Nyutu, please proceed.

Sen. Joe Nyutu: Thank you, Mr. Speaker, Sir. I would like to give my contribution to the effect that all those that have spoken before me have said that the matter, number one, has already been settled and I need not address it.

In reference to rounding off numbers, this is something that we were taught in the first lessons of numeracy, when we went to school. It is obvious, unless our teachers were

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wrong, that we round off to the nearest number. So, 31.3 can only be rounded off to 31. I therefore support the argument by the counsel for the Assembly, that the Assembly was properly constituted.

Mr. Speaker, Sir, I would like to ask this House not to be invited to an exercise of splitting hairs. We should not be sitting here, arguing whether we should round off to the nearest number or not, because that is something, like I have said, that was sorted out many years ago, during our numeracy lessons.

Regarding the validity of the court orders that were issued, and that have been cited by the counsel for the governor, the validity has been questioned. I do not know what then should be done before you make a ruling, but this matter is before the Senate.

Like those that have spoken before me have said, it is only this House that can determine whether we are going to admit these preliminary objections and not you, Mr. Speaker.

So, I would like to ask you, that you may rule that at the end of it, we may vote on this matter, so that we, as Senators, the members of this jury, decide by a vote, whether this matter should proceed or not.

Mr. Speaker, Sir, please do not allow yourself to be the one making this decision, because if it were a committee, like Sen. Omogeni has said, you would not be sitting there---

ADJOURNMENT

The Speaker (Hon. Kingi): Hon. Senators, it is now 1.15 p.m., and having concluded the business for which I extended the hours of sitting, pursuant to Standing Order No.34(2)(a), the Senate stands adjourned until today, Monday, 14th October, 2024, at 2.30 p.m.

The Senate adjourned at 1.16 p.m.