



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – (THIRD SESSION)

THE SENATE

VOTES AND PROCEEDINGS

WEDNESDAY, OCTOBER 09, 2024 (MORNING SITTING)

1. The Senate assembled at thirty Minutes past Nine O'clock.
2. The proceedings were opened with Prayer said by the Speaker.
3. **QUORUM OF THE SENATE**

The Speaker, having counted the Hon. Senators present at the commencement of the Sitting and confirming that there was no Quorum, directed that the Bell be rung for ten minutes, pursuant to Standing Order 40;

And there being a Quorum before the expiry of the ten minutes;

The Speaker invited the Clerk to call the Orders of the day.

4. **MESSAGE FROM THE NATIONAL ASSEMBLY – APPROVAL OF A SPECIAL MOTION FOR THE REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HIS EXCELLENCY RIGATHI GACHAGUA, EGH, DEPUTY PRESIDENT OF THE REPUBLIC OF KENYA**

The Speaker conveyed the following Message from the National Assembly –

“Honourable Senators,

I wish to report that I have, pursuant to Article 150(2) of the Constitution as read with Article 145(2) of the Constitution and standing order 46(3) of the Senate Standing Orders, received a Message from the Speaker of the National Assembly regarding the approval of a Special Motion for the removal from office, by impeachment, of His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya.

Honourable Senators,

I did, *vide* Kenya Gazette No. 13170 Vol. CXXVI – No. 157, dated 9th October, 2024 appoint today, Wednesday, 9th October 2024, at 9.30 a.m. as the Sitting convened

for the purpose of hearing the charges in the matter of the proposed removal from office, by impeachment, of His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya.

Honourable Senators,

The Message, dated Tuesday, 8th October, 2024, was received in my office on Wednesday, 9th October, 2024 and indicated that the National Assembly had resolved, with the support of 282 Members, being at least two-thirds of all the Members of the National Assembly, that, pursuant to the provisions of Articles 145(2) as read with 150(1)(b) and (2) of the Constitution, His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya be removed from office, by impeachment, on the following grounds:

1. Gross violation of Articles 10 (2)(a), (b) and (c); 27 (4), 73 (1)(a) and (2)(b); 75 (1)(c), and 129 (2) of the Constitution and Article 147 (1), as read together with Article 131 (2)(c) and (d) of the Constitution;
2. Gross violation of Articles 147 (1) and 152 (1) of the Constitution by undermining the President and the Cabinet and the effective discharge of the national government's executive mandate;
3. Gross violation of Articles 6 (2), 10 (2)(a), 174, 186 (1), 189 (1) and the Fourth Schedule to the Constitution by undermining Devolution;
4. Gross violation of 160 (1) of the Constitution on the Institutional and Decisional Independence of Judges;
5. Gross violation of Articles 3 (1) and 148 (5)(a) of the Constitution on the fidelity to the Oath of Office and Allegiance;
6. Serious reasons to believe that H. E. the Deputy President has committed crimes under sections 13 (1)(a) and 62 of the National Cohesion and Integration Act;
7. Serious reasons to believe that H. E. the Deputy President has committed gross economic crimes under sections 45 (1), 46, 47A (3) and 48(1) of the Anti-Corruption and Economic Crimes Act and sections 2, 3, 4 and 7 of Proceeds of Crime and Anti-Money Laundering Act;
8. Serious reasons to believe that H. E. the Deputy President has committed crimes by continuously misleading members of the public through false, malicious, divisive, and inciteful remarks that are contrary to the provisions of section 132 of the Penal Code and section 29 of the Leadership and Integrity Act;
9. Gross misconduct that is incompatible with the high calling and dignified status of the Office of the Deputy President and a member of the Cabinet and

the National Security Council. H. E. the Deputy President has publicly attacked and undermined the work of the National Security Intelligence Service and its Officers;

10. Gross misconduct by openly or publicly insubordinating the President, who is the Head of State and Government; and
11. Gross misconduct by persistently bullying state and public officers.

Honourable Senators,

Annexed to the Message conveying the said resolution of the National Assembly are the following documents:

- i) Copy of the Notice of Special Motion and Affidavit of the Hon. Eckomas Mwangi Mutuse, OGW, MP dated 26th September, 2024 and received on 27th September 2024 running from page 40 to 42;
- ii) Electronic evidence relating to the Special Motion contained in a flash disk;
- iii) Order Papers for 1st October, 2024;
- iv) Communication from the Chair No. 046 of 2024 issued on Tuesday, 1st October 2024.
- v) Communication from the Chair No. 047 of 2024 issued on Tuesday, 1st October 2024.
- vi) Certified Hansard and Votes and Proceedings 1st October, 2024;
- vii) Communication from the Chair No. 048 of 2024 issued on 2nd October, 2024;
- viii) Letters of Appointment of Advocates—
 - a) Swanya & Company Advocates for H. E. the Deputy President;
 - b) Danstan Omari Advocates for Morani Manufacturers Limited;
- ix) Letter to H. E. the Deputy President forwarding the Notice of Motion;
- x) Affidavit of Service on H. E. the Deputy President;
- xi) Order Paper for 2nd October, 2024;
- xii) Certified Hansard and Votes and Proceedings for 2nd October, 2024;
- xiii) Public participation advertisements of 2nd October, 2024—

- a) Daily Nation Newspaper;
 - b) Standard Newspaper; and
 - c) Star Newspaper.
- xiv) Public participation advertisements of 3rd October, 2024—
- a) Daily Nation Newspaper;
 - b) Standard Newspaper;
 - c) Star Newspaper; and
 - d) Taifa Leo.
- xv) Public Views Template (English & Kiswahili);
- xvi) Memo to Constituency/County Office Managers dated 4th October, 2024;
- xvii) Public participation advertisements of 4th October, 2024—
- a) Daily Nation Newspaper;
 - b) Standard Newspaper; and
 - c) Star Newspaper.
- xviii) Order issued by the High Court sitting at Kerugoya on Friday, 4th October, 2024;
- xix) Press Statement by the Clerk of the National Assembly on Extension of Public Participation issued on 4th October, 2024;
- xx) Public participation advertisements of 5th October, 2024—
- a) Saturday Nation Newspaper; and
 - b) Standard Newspaper.
- xxi) Public Participation Report tabled on 8th October, 2024;
- xxii) Response to the Notice of Special Motion from H. E. the Deputy President received on 8th October, 2024 at 4.00pm;
- xxiii) Electronic evidence by H. E. the Deputy President relating to the Special Motion contained in a flash disk;
- xxiv) Order Paper for 8th October, 2024;

xxv) Communication from Chair No. 049 of 2024 issued on 8th October, 2024; and

xxvi) Certified Hansard and Votes and Proceedings for 8th October, 2024.

Honourable Senators,

This impeachment Motion is unique and unprecedented as it is the first ever to propose the removal from office, by impeachment, of a Deputy President of the Republic of Kenya. This moment calls for deep reflection on the critical responsibility of the Senate in investigating such proposals for removal of State Officers from office.

The impeachment process is a fundamental tool of legislative oversight and a crucial aspect of the constitutional mechanism for checks and balances. The process is invoked by legislatures and in particular, in our case, Parliament and county assemblies to safeguard good governance and integrity in public service.

Honourable Senators,

As you are well aware, the Senate has been entrusted by the Constitution with the singular role to sit as a *quasi*-judicial body to investigate any proposed removal from office, by impeachment, of the President, Deputy President, County Governors and Deputy County Governors and to make a determination on the alleged infractions of the Constitution and other laws.

As this matter comes before you, I cannot underscore enough the immense public interest that this matter has elicited and for good reason. This is yet another opportunity for the Senate to demonstrate its fidelity to the Constitution and to live up to its reputation. It therefore behoves the Senate as the trial chamber to maintain integrity and impartiality in this administration of justice and to make a determination on this matter purely based on its merits.

Honourable Senators,

In terms of the way forward, the manner of disposing of this impeachment Motion will not be significantly different from how the Senate has previously investigated and determined the proposed removal from office, by impeachment, of County Governors and Deputy County Governors.

Standing order 78(1) of the Senate Standing Orders as read together with Articles 150(2) and 145(3)(b) of the Constitution provide the Senate with two options on how to proceed with such a matter.

The Senate may –

- i) by resolution, appoint a special committee comprising eleven of its members to investigate the matter; or

ii) investigate the matter in Plenary.

In this regard, the Senate Majority Leader will, at an appointed time during this sitting give a Notice of Motion and move a Motion for the establishment of a special committee. Should the Motion be carried, the special committee will investigate the matter and report to the Senate on whether it finds the particulars of the allegations against the Deputy President to have been substantiated.

In the event that the Motion for the establishment of a special committee does not pass, the Senate will proceed to investigate the matter in Plenary. Consequently, I will appoint a date for the commencement of the hearing of the evidence for the purposes of the investigation.

Honourable Senators,

I wish to emphasize that the debate on the Motion for the establishment of a special committee shall be confined to the matter of the Motion, that is, whether or not to establish the special committee. It shall be improper and out of order to debate the substance of the impeachment, its merits, propriety, prudence or the constitutionality or legality of the processes that have preceded the submission of the matter to the Senate.

In the meantime, and during the pendency of this impeachment process in the Senate, I wish to caution Honourable Senators to desist from publicly commenting on the merits or demerits of the impeachment Motion. Doing so would amount to anticipation of debate, which is an infringement of standing order 99 of the Senate Standing Orders.

Honourable Senators,

To make it clear, it shall constitute gross disorderly conduct within the meaning of standing order 122 for a Senator to make comments, whether written or spoken, in relation to the conduct of the Deputy President or the impeachment process which is outside the confines of the impeachment proceedings as such comments may prejudice the just outcome of the process.

As I conclude, I urge all Honourable Senators to stay true to their oath of office and exercise the highest level of responsibility on this matter.

I thank you.”

5. **NOTICE OF MOTION – ESTABLISHMENT OF A SPECIAL COMMITTEE TO INVESTIGATE THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HIS EXCELLENCY RIGATHI GACHAGUA, EGH, DEPUTY PRESIDENT OF THE REPUBLIC OF KENYA**

(The Senate Majority Leader)

THAT, WHEREAS, pursuant to Article 150 (1)(b) and (2) and Article 145 of the Constitution and the National Assembly Standing Orders 64 and 65 on 8th October, 2024 the National Assembly approved a Special Motion for the removal from office, by impeachment, of H.E Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya;

AND FURTHER, WHEREAS by letter Ref: NA/DLP/TBO/MTS/2024/ (025) dated 8th October, 2024 and received in the Office of the Speaker of the Senate on 9th October, 2024, the Speaker of the National Assembly informed the Speaker of the Senate of the approval of the Special Motion, by the National Assembly, and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the National Assembly;

AND WHEREAS, pursuant to Article 145 (3) (b) of the Constitution as read together with Article 150(2) of the Constitution and Standing Orders 78(1) and 79 of the Senate Standing Orders, the Senate may, by resolution, appoint a Special Committee comprising eleven of its members to investigate the matter;

NOW THEREFORE, pursuant to Article 145 (3) (b) of the Constitution as read together with Article 150(2) of the Constitution and Standing Order 78(1) of the Senate Standing Orders, the Senate resolves to constitute a Special Committee to investigate the proposed removal from office, by impeachment, of the His Excellency Rigathi Gachagua, EGH, the Deputy President of the Republic of Kenya.

6. QUESTIONS AND STATEMENTS

QUESTIONS

- i) **Question No. 099** by Sen. Edwin Sifuna, MP to the Cabinet Secretary for Foreign and Diaspora Affairs on staffing levels at Kenya Diplomatic Missions in the United States of America was answered by the Cabinet Secretary.
- ii) **Question No. 091** by Sen. Julius Murgor, MP to the Cabinet Secretary for East African Community (EAC), the ASALs and Regional Development on socio-economic activities carried out by the Kerio Valley Development Authority (KVDA) in West Pokot County was deferred in the absence of the Cabinet Secretary.
- iii) **Question No. 049** by Sen. George Mbugua, MP to the Cabinet Secretary for Health on agreement between Kenya and Cuba concerning the exchange programme for doctors was deferred in the absence of the Cabinet Secretary.
- iv) **Question No. 075** by Sen. Peris Tobiko, MP to the Cabinet Secretary for Health on status of Linda Mama initiative, the Edu Afya insurance scheme and services available to NHIF members was deferred in the absence of the Cabinet Secretary.

- v) **Question No. 076** by Sen. Jackson Mandago, EGH, MP to the Cabinet Secretary for Health on shortage of childhood vaccines in the country was deferred in the absence of the Cabinet Secretary.
- vi) **Question No. 086** by Sen. Agnes Kavindu, MP to the Cabinet Secretary for Health on roll-out of a medical programme for subsidized treatment to surviving Kenyan Victims of the 1998 bombing of the United States of America Embassy in Nairobi was deferred in the absence of the Cabinet Secretary.
- vii) **Question No. 087** by Sen. Joyce Korir, MP to the Cabinet Secretary for Health on early diagnosis and proper treatment of endometriosis in Kenya was deferred in the absence of the Cabinet Secretary.
- viii) **Question No. 105** by Sen. Hamida Kibwana, MP to the Cabinet Secretary for Health on welfare of medical interns was deferred in the absence of the Cabinet Secretary.

7. **MOTION – ESTABLISHMENT OF A SPECIAL COMMITTEE TO INVESTIGATE THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HIS EXCELLENCY RIGATHI GACHAGUA, EGH, DEPUTY PRESIDENT OF THE REPUBLIC OF KENYA.**

Order read;

Motion made;

THAT, WHEREAS, pursuant to Article 150 (1)(b) and (2) and Article 145 of the Constitution and the National Assembly Standing Orders 64 and 65 on 8th October, 2024 the National Assembly approved a Special Motion for the removal from office, by impeachment, of H.E Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya;

AND FURTHER, WHEREAS by letter Ref: NA/DLP/TBO/MTS/2024/ (025) dated 8th October, 2024 and received in the Office of the Speaker of the Senate on 9th October, 2024, the Speaker of the National Assembly informed the Speaker of the Senate of the approval of the Special Motion, by the National Assembly, and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the National Assembly;

AND WHEREAS, pursuant to Article 145 (3) (b) of the Constitution as read together with Article 150(2) of the Constitution and Standing Orders 78(1) and 79 of the Senate Standing Orders, the Senate may, by resolution, appoint a Special Committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to Article 145 (3) (b) of the Constitution as read together with Article 150(2) of the Constitution and Standing Order 78(1) of the Senate Standing Orders, the Senate resolves to constitute a Special Committee to

investigate the proposed removal from office, by impeachment, of the His Excellency Rigathi Gachagua, EGH, the Deputy President of the Republic of Kenya.

(The Senate Majority Leader)

And there being no Secunder;

Motion withdrawn pursuant to Standing Order 70 (1).

8. **COMMUNICATION FROM THE CHAIR – MODE OF HEARING ON THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HIS EXCELLENCY, RIGATHI GACHAGUA, EGH, DEPUTY PRESIDENT OF THE REPUBLIC OF KENYA**

The Speaker conveyed the following Communication from the Chair: -

“Honourable Senators,

You will note that Senate Majority Leader has moved a Motion, pursuant to Article 145 (3)(b) of the Constitution and Standing Order 78 (1) for the establishment of a Special Committee to investigate the proposed removal from office, by impeachment, of His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya. The Motion has however failed to get a seconder. Standing Order 70 (1) states as follows –

“The question on any Motion shall not be proposed unless it shall have been seconded and any Motion that is not seconded shall be deemed to have been withdrawn and shall not be moved again in the same Session, unless with the permission of the Speaker.”

Honourable Senators,

As I communicated earlier today during this sitting, by way of Message, on the resolution of the National Assembly, Article 145 (3) (b) of the Constitution as read together with Standing Order 78 (1) provides that the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.

The Motion having been deemed to be withdrawn pursuant to Standing Order 70 (1), the proposal for a Special Committee is defeated. The Senate will therefore proceed with the investigation on the proposed removal from office, by impeachment, of His Excellency, Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya, in Plenary.

Honourable Senators,

In line with the schedule of activities for an impeachment hearing in Plenary, I hereby give the following directions –

- a) The Clerk to issue Invitations to Appear to the Deputy President today, Wednesday, 9th October, 2024;
- b) The Clerk to issue Invitations to Appear to the National Assembly today, Wednesday, 9th October, 2024;
- c) The Parties to file their responses with the Office of the Clerk of the Senate by Monday, 14th October, 2024, by 5:00 p.m.;
- d) The Clerk to circulate documents received from the Parties, including the Plenary Hearing Programme, to all Honourable Senators upon receipt on Monday, 14th October, 2024; and
- e) The Senate shall then investigate the matter in Plenary on Wednesday, 16th and Thursday, 17th October, 2024.

The Senate is accordingly guided.

I thank you.”

9. **SUSPENSION OF A SENATOR FOR DISORDERLY CONDUCT PURSUANT TO STANDING 121(2)(b)**

Pursuant to Standing Order 121(2)(b), the Speaker ordered the Senator for Kitui County (Sen. Enoch Wambua, MP) to withdraw from the precincts of the Senate for the remainder of the sitting day for disorderly conduct.

Thereupon, the Senator withdrew from the Chamber.

10. **PROCEDURAL MOTION – RESOLUTION TO HOLD SITTINGS ON MONDAY, 14TH OCTOBER, 2024 AND ALTER THE HOURS OF MEETING ON TUESDAY, 15TH OCTOBER, 2024**

Order read;

Motion made and Question proposed;

THAT, notwithstanding the Resolutions of the Senate made pursuant to Standing Order 32 on 15th February, 2024; 26th June, 2024; 19th August, 2024; and 17th September, 2024, on the approval of the Senate Calendar (Regular Sessions) for the Third Session, 2024, the Senate resolves –

- i) pursuant to Standing Order 34 (4) (c), to hold sittings on Monday, 14th October, 2024 starting at 9.00 am to 1.00 pm and 2.30 pm until conclusion of Business listed in the Order Paper of the day;
- ii) pursuant to Standing Order 34 (4) (b), to hold a morning sitting on Tuesday, 15th October, 2024 starting at 9.00 am to 1.00 pm; and
- iii) pursuant to Standing Order 34 (4) (a), to extend its sitting time on Tuesday, 15th October, 2024 (afternoon Sitting) until conclusion of Business listed in the Order Paper of the day.

in order to investigate the proposed removal from office, by impeachment, of the Honourable (Dr). Erick Kipkoech Mutai, the Governor of Kericho County.

(The Senate Majority Leader)

Debate arising;

And there being no more Senators wishing to contribute;

Before the Question was put and pursuant to Standing Order 84(1), the Deputy Speaker ruled that the Motion does not affect counties.

And the Deputy Speaker having ascertained that there was Quorum, pursuant to Standing Order 42 (1);

Question put and agreed to.

RESOLVED ACCORDINGLY

THAT, notwithstanding the Resolutions of the Senate made pursuant to Standing Order 32 on 15th February, 2024; 26th June, 2024; 19th August, 2024; and 17th September, 2024, on the approval of the Senate Calendar (Regular Sessions) for the Third Session, 2024, the Senate resolves –

- i) pursuant to Standing Order 34 (4) (c), to hold sittings on Monday, 14th October, 2024 starting at 9.00 am to 1.00 pm and 2.30 pm until conclusion of Business listed in the Order Paper of the day;
- ii) pursuant to Standing Order 34 (4) (b), to hold a morning sitting on Tuesday, 15th October, 2024 starting at 9.00 am to 1.00 pm; and
- iii) pursuant to Standing Order 34 (4) (a), to extend its sitting time on Tuesday, 15th October, 2024 (afternoon Sitting) until conclusion of Business listed in the Order Paper of the day.

in order to investigate the proposed removal from office, by impeachment, of the Honourable (Dr). Erick Kipkoech Mutai, the Governor of Kericho County.

11. **MOTION – REPORT OF THE 9TH INTER-PARLIAMENTARY UNION (IPU) GLOBAL CONFERENCE OF YOUNG PARLIAMENTARIANS HELD IN HANOI, VIETNAM FROM 15TH TO 17TH SEPTEMBER, 2023**

(Sen. John Methu, MP)

THAT, the Senate notes the Report of the 9th Inter-Parliamentary Union (IPU) Global Conference of Young Parliamentarians held in Hanoi, Vietnam from 15th to 17th September, 2023 laid on the table of Senate on Tuesday, 5th March, 2024.

Order read;

Order deferred.

12. **MOTION – REPORTS OF THE KENYA DELEGATION TO THE 147TH AND 148TH ASSEMBLIES OF THE INTER-PARLIAMENTARY UNION (IPU) AND RELATED MEETINGS HELD IN LUANDA, ANGOLA FROM 23RD TO 27TH OCTOBER, 2023 AND IN GENEVA, SWITZERLAND FROM 23RD TO 27TH MARCH, 2024**

Order read;

Motion Made in an amended form, pursuant to Standing Order 62, and Question proposed;

THAT, the Senate notes the Reports of the Kenya Delegation to the 147th and 148th Assemblies of the Inter-Parliamentary Union (IPU) and related meetings held in –

- i) Luanda, Angola from 23rd to 27th October, 2023, laid on the Table of the Senate on Thursday 29th February, 2024; and
- ii) Geneva, Switzerland from 23rd to 27th March, 2024, laid on the Table of the Senate on Thursday, 30th May, 2024.

(Sen. Catherine Mumma, MP)

Debate arising;

And there being no more Senators wishing to contribute;

Mover replied;

Pursuant to Standing Order 66(3), the Mover requested for the deferment of the putting of the Question to a later date;

And the Temporary Speaker (Sen. Abdul Haji, MP), acceding to the request, deferred the putting of the Question to a later date.

13. **MOTION – REPORT OF THE KENYA DELEGATION TO THE EXTRAORDINARY SESSION OF THE SIXTH PARLIAMENT OF THE PAN-AFRICAN PARLIAMENT (PAP) HELD AT THE GALLAGHER CONVENTION CENTRE, MIDRAND, SOUTH AFRICA, FROM 20TH TO 27TH MARCH, 2024**

Order read;

Motion Made and Question proposed;

THAT, the Senate notes the Report of the Kenya Delegation to the Extraordinary Session of the Sixth Parliament of the Pan-African Parliament (PAP) held at the Gallagher Convention Centre, Midrand, South Africa, from 20th to 27th March, 2024, laid on the Table of the Senate on Wednesday, 24th April, 2024.

(Sen. Danson Mungatana, MP)

Debate arising;

And the time being One O'clock, the Temporary Speaker (Sen. Abdul Haji, MP) interrupted the proceedings and adjourned the Senate without Question put, pursuant to the Standing Orders.

14. **SENATE ROSE** – at One O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Wednesday, October 09, 2024 at 2.30 p.m.*

--x--