



**REPUBLIC OF KENYA**

**THIRTEENTH PARLIAMENT – (THIRD SESSION)**

**THE SENATE**

**VOTES AND PROCEEDINGS**

**MORNING SITTING**

**WEDNESDAY, OCTOBER 16, 2024 AT 9.00 AM**

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

The Speaker, having counted the Honourable 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 out the Orders of the day.

4. **COMMUNICATION FROM THE CHAIR ON THE CONVENING OF A SITTING OF THE SENATE TO INVESTIGATE 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,

I have a Communication to make relating to the business of the Senate scheduled for consideration during this solemn Sitting.

You will recall that at the sitting of the Senate held on Wednesday, 9<sup>th</sup> October, 2024, I appointed today, Wednesday, 16<sup>th</sup> October and tomorrow, Thursday, 17<sup>th</sup> October, 2024, as the days when the Senate will hear the charges and investigate the proposed removal from office, by impeachment,

of His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya.

Honourable Senators will also recall that at the Sitting of the Senate held on, Wednesday 9<sup>th</sup> October, 2024, a Procedural Motion for the alteration of the sitting time of the Senate for Wednesday, 16<sup>th</sup> and Thursday, 17<sup>th</sup> October, 2024, was moved and approved, to facilitate the impeachment hearing of the Deputy President of the Republic of Kenya. Subsequently, vide Gazette Notice No.13178, I notified the general public that pursuant to Article 145 (3) of the Constitution and Standing Order 78 (1) of the Senate, the Senate resolved to investigate the proposed removal from office, by impeachment of His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya, in Plenary.

Honourable Senators, Ladies and Gentlemen,

Regarding the hearing and determination on the proposed removal from office, by impeachment of the Deputy President, a Programme has been prepared and appended to today's Order Paper.

As is the tradition, and in line with the schedule of activities for an impeachment hearing in Plenary, the Senate will hold a closed-door 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, concluded timeously, and in line with the requirements set out under the Constitution and the Senate Standing Orders.

Honourable Senators, Ladies and Gentlemen,

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 broadcasting from the Chamber shall cease forthwith. In accordance with the Programme for the Impeachment Hearing, the open session will commence at 10.00 am.

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

I thank you.”

Thereupon, the Senate proceeded to an *in-camera* session.

5. **BRIEFING ON THE RULES OF PROCEDURE FOR THE HEARING AND DETERMINATION OF THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HIS EXCELLENCY RIGATHI GACHAGUA, EGH, DEPUTY PRESIDENT OF THE REPUBLIC OF KENYA**

Upon invitation by the Speaker, the Clerk briefed Senators on the Rules and Procedure for the hearing and determination of the proposed removal from office, by impeachment, of His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya.

6. **OPEN SESSION RESUMED** – at fifteen minutes past Eleven O'clock.
7. **COMMUNICATION FROM THE CHAIR ON THE MANDATE OF THE SENATE, RULES OF PROCEDURE FOR THE HEARING AND DETERMINATION OF 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, Ladies and Gentlemen,

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 His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya.

You will recall that by a letter, Ref. No. *NA/DLP/TBO/MTS/2024/ (025)*, dated 8<sup>th</sup> October, 2024, the Speaker of the National Assembly informed the Speaker of the Senate that at a sitting of the National Assembly held on Tuesday, 8<sup>th</sup> October, 2024; pursuant to Article 145 (2) as read with Article 150 of the Constitution, the National Assembly approved a Motion for the removal from office, by impeachment, of His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya.

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

- (i) Copy of the Notice of Special Motion and Affidavit of the Hon. Eckomas Mwengi Mutuse, OGW, MP dated 26<sup>th</sup> September, 2024 and received on 27<sup>th</sup> 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 1<sup>st</sup> October, 2024;
- (iv) Communication from the Chair No. 046 of 2024 issued on Tuesday, 1<sup>st</sup> October 2024.
- (v) Communication from the Chair No. 047 of 2024 issued on Tuesday, 1<sup>st</sup> October 2024.
- (vi) Certified Hansard and Votes and Proceedings for 1<sup>st</sup> October, 2024;
- (vii) Communication from the Chair No. 048 of 2024 issued on 2<sup>nd</sup> October, 2024;

- (viii) Letters of Appointment of Advocates—
  - a) Swanya & Company Advocates for His Excellency the Deputy President;
  - b) Danstan Omari Advocates for Morani Manufacturers Limited;
- (ix) Letter to His Excellency the Deputy President forwarding the Notice of Motion;
- (x) Affidavit of Service on H. E. the Deputy President;
- (xi) Order Paper for 2<sup>nd</sup> October, 2024;
- (xii) Certified Hansard and Votes and Proceedings for 2<sup>nd</sup> October, 2024;
- (xiii) Public participation advertisements of 2<sup>nd</sup> October, 2024, being—
  - a) Daily Nation Newspaper;
  - b) Standard Newspaper; and
  - c) Star Newspaper.
- (xiv) Public participation advertisements of 3<sup>rd</sup> October, 2024, being—
  - 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 4<sup>th</sup> October, 2024;
- (xvii) Public participation advertisements of 4<sup>th</sup> October, 2024, being—
  - a) Daily Nation Newspaper;
  - b) Standard Newspaper; and
  - c) Star Newspaper.
- (xviii) Order issued by the High Court sitting at Kerugoya on Friday, 4<sup>th</sup> October, 2024;
- (xix) Press Statement by the Clerk of the National Assembly on Extension of Public Participation issued on 4<sup>th</sup> October, 2024;
- (xx) Public participation advertisements of 5<sup>th</sup> October, 2024, being—
  - a) Saturday Nation Newspaper; and
  - b) Standard Newspaper.
- (xxi) Public Participation Report tabled on 8<sup>th</sup> October, 2024;
- (xxii) Response to the Notice of Special Motion from His Excellency the Deputy President received on 8<sup>th</sup> 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 Tuesday, 8<sup>th</sup> October, 2024;
- (xxv) Communication from the Chair No. 049 of 2024 issued on Tuesday, 8<sup>th</sup> October, 2024; and
- (xxvi) Certified Hansard and Votes and Proceedings for 8<sup>th</sup> October, 2024.

Honourable Senators, Ladies and Gentlemen,

Pursuant to Article 145 (3) (a) of the Constitution and Standing Order 78 (1) of the Senate, at the sitting of the Senate held on Wednesday, 9<sup>th</sup> October, 2024, the charges against His Excellency the Deputy President, as contained in the Motion of Impeachment by the National Assembly, were read to the assembled Senate.

Honourable Senators, Ladies and Gentlemen,

At this juncture, allow me to remind you of the mandate of the Senate in relation to the proposed removal from office by impeachment, of the Deputy President as provided for under Articles 150 and 145 of the Constitution, as read together with Standing Order 78 of the Senate. In particular, Article 150 of the Constitution states as follows —

*“(1) The Deputy President may be removed from office—*

*a) on the ground of physical or mental incapacity to perform the functions of the office; or*

*b) on impeachment—*

*i. on the ground of a gross violation of a provision of this Constitution or any other law;*

*ii. where there are serious reasons to believe that the Deputy President has committed a crime under national or international law; or*

*iii. for gross misconduct.*

*(2) The provisions of Articles 144 and 145 relating to the removal of the President shall apply, with the necessary modifications, to the removal of the Deputy President.”*

Article 145 of the Constitution, Standing Order 78 and Part I of the Second Schedule to the Standing Orders of the Senate provide for the procedure to be followed in the hearing and determination of the proposed removal from office, by impeachment, of the Deputy President. Specifically, Article 145 (3) (b) of the Constitution and Standing Order 78 (1) of the Senate provide that the Senate may, by resolution, appoint a Special Committee comprising eleven of its members to investigate the matter.

Honourable Senators will recall that at the sitting of the Senate held on Wednesday, 9<sup>th</sup> October, 2024, the Motion for the establishment of a Special Committee was deemed to have been withdrawn pursuant to Standing

Order 70. This therefore paved the way for the investigation on the proposed removal from office, by impeachment of His Excellency the Deputy President of the Republic of Kenya to be held in Plenary.

Honourable 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 the Deputy President in Plenary, the Senate invited the Deputy President to appear and be represented before the Senate during its investigation. The Senate further invited the Deputy President, 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 pm on Monday, 14<sup>th</sup> October, 2024, setting out –

- (i) the Deputy President'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
- (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 the Deputy President in Plenary, the Senate notified the National Assembly of the date for the commencement of the investigation and invited the National Assembly to designate Members of the National Assembly, who shall appear and represent the National Assembly before the Senate during the investigation. The National 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 pm on Monday, 14<sup>th</sup> October, 2024, setting out documentation –

- (i) designating the Members of the National Assembly, if any, who shall attend and represent the National 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.

Honourable Senators, Ladies and Gentlemen,

On 14<sup>th</sup> October, 2024, the Office of the Clerk of the Senate, received a response, Ref. No. *SW/PET/153/VO/en/01/2024* and dated 14<sup>th</sup> October, 2024, to the Invitation to Appear issued to the Deputy President, from M/S Swanya Company Advocates, who indicated that His Excellency the Deputy President had appointed the firm to represent him in the proceedings before the Senate and that the Deputy President would also appear in person and by advocates. The letter also indicated the list of counsel representing His Excellency the Deputy President and the list of witnesses for the Deputy President.

Similarly, on 14<sup>th</sup> October, 2024, the Office of the Clerk of the Senate received a response, Ref. No. *NA/CAN/CORR/2024(562)* and dated 14<sup>th</sup> October, 2024, to the Invitation to Appear issued to the National Assembly, from the Clerk of the National Assembly, indicating that M/S G & A Advocates LLP, had been appointed to represent the National Assembly and that the National Assembly would appear in person and by advocates. The letter also indicated the Members of the National Assembly representing the National Assembly in the proceedings and the witnesses for the National Assembly.

Pursuant to Rule 8 of the Rules of Procedure when considering the proposed removal from office of the Deputy President in Plenary, on Monday, 14<sup>th</sup> October, 2024, the Clerk of the Senate furnished each party with the documentation filed by the other party in accordance with Rules 6 and 7 of the Rules of Procedure.

Honourable Senators, Ladies and Gentlemen,

The Hearing Programme which has been appended to 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 after we have dispensed with preliminary matters today, Wednesday, 16<sup>th</sup> October, 2024, the Charges against the Deputy President, as submitted by the National Assembly, shall be read. Thereafter, His Excellency the Deputy President will be given an opportunity to take a plea on the charges. This will be followed by an opening statement by the National Assembly and by the Deputy President.

After the conclusion of the opening statements, the presentation of the case of the National Assembly shall commence. The National Assembly will have a maximum of three hours for presentation of the case and re- examination,

while the Deputy President will be allocated two hours for cross examination of witnesses after presentation of the case by the National Assembly. Honourable Senators will be given an opportunity to ask questions or seek clarifications from the National Assembly. This should take us up to the end of today's sitting.

At the Sitting scheduled for tomorrow, Thursday, 17<sup>th</sup> October, 2024, His Excellency the Deputy President will present his case before the Senate. The Deputy President will have a maximum of three hours for presentation of the case and re-examination while the National Assembly will be allocated two hours for cross examination of witnesses. Honourable Senators will also be given an opportunity to ask questions or seek clarifications from the Deputy President, following which the closing statements by the parties will be made for a period not exceeding one hour each.

As provided for under Rule 27 of the Rules of Procedure when considering the proposed removal of the Deputy President in Plenary, after the closing statements have been made, the hearing shall conclude and the Senate shall proceed into a camera session to deliberate on the issues raised.

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

In accordance with Article 145 (7) of the Constitution and Standing Order 78(8) of the Senate, the voting shall be by all Senators. The Deputy President shall cease to hold office if at least two-thirds of all Senators vote to uphold any impeachment charge. If, however, the vote in the Senate fails to result in the removal of the Deputy President, the Speaker of the Senate shall notify the Speaker of the National Assembly accordingly.

Honourable Senators, Ladies and Gentlemen,

I now invite Counsel for the National Assembly, to introduce the legal team of the National Assembly and the Members representing the National Assembly, by stating the full name and designation of each person.

Thereupon, Mr. Eric Gumbo introduced himself as a Legal Counsel for the National Assembly and proceeded to introduce the following Counsels –

- i. Hon. James Orengo, EGH, SC (Lead Counsel);
- ii. Mr. Paul Nyamodi;
- iii. Mr. Eric Gumbo;
- iv. Dr. Muthomi Thiankolu;
- v. Moses Mr. Kipkogei Kipkemoi;
- vi. Mr. Peter Wanyama;
- vii. Mr. Kennedy Melly Kipkoech;
- viii. Mr. John Mwangi Kang'u;



- ix. Mr. Alex Mbaya;
- x. Mr. Elias Ouma;
- xi. Mr. Eric Muriuki Mwirigi;
- xii. Mr. Boniface Mwereru Mawira; and
- xiii. Ms. Joan Jeruto.

The following Members of Parliament had been designated to attend and represent the National Assembly in the proceedings –

- i. Hon. (Dr.) Otiende Amollo, EBS, SC, MP;
- ii. Hon. George Gitonga Murugara, CBS, MP;
- iii. Hon. Samuel Chepkong’ a, CBS, MP;
- iv. Hon. John Makali, MP; and
- v. Hon. Zamzam Mohammed, MP.

Honourable Senators, Ladies and Gentlemen,

Similarly, I now invite Counsel for His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya to introduce the legal team representing His Excellency the Deputy President, by stating the full name and designation of each person.

Thereupon, Mr. Paul Muite, SC, introduced himself as Lead Counsel for the Deputy President and proceeded to introduce the following Counsels –

- i. Mr. Paul Muite, SC;
- ii. Mr. Elisha Ongoya;
- iii. Mr. Tom Macharia;
- iv. Mr. Swanya Victor Ogeto;
- v. Mr. Ndegwa Njiru;
- vi. Mr. John Njomo;
- vii. Ms. Faith Waigwa;
- viii. Mr. Amos Kisilu;
- ix. Mr. George Wandati;
- x. Mr. George Sakimpa;
- xi. Mr. Andrew Muge;
- xii. Mr. Eric Naibei;
- xiii. Ms. Juliah Omwamba; and
- xiv. Mr. Willis Echesa.

Honourable Senators, Ladies and Gentlemen,

On behalf of the Senate, I welcome the National Assembly and its team, His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya and his team, members of the public and the media, to the Senate and to these proceedings.

Honourable Senators, Ladies and Gentlemen,

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 on the proposed removal from office of a Deputy President pursuant to Article 145 of the Constitution, Standing Order 78 and the Second Schedule to the Standing Orders of the Senate is a matter that has generated immense public interest. The Senate, in this particular hearing, has facilitated the members of the public who are interested in the proceedings to access its galleries. However, I draw the attention of the members of the public who are seated in the galleries, to Rule 28 of the Speaker's Rules which states in part: -

*"..... 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.

Honourable Senators, Ladies and Gentlemen,

Finally, I now invite the Clerk to read the Particulars of the Allegations against His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya.

I thank you."

8. **RECITAL OF THE CHARGES ON THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HIS EXCELLENCY RIGATHI GACHAGUA, EGH, DEPUTY PRESIDENT OF THE REPUBLIC OF KENYA.**

The Speaker directed the Clerk to read to His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya, the particulars of the allegations against him as presented by the National Assembly.

Upon invitation by the Clerk, the Deputy President proceeded to take the stand;

Thereupon, pursuant to Rule 16 of the Rules of Procedure when considering the proposed removal in Plenary, the Clerk proceeded to read out the particulars of the allegations as follows -

“Your Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya, the grounds for your proposed removal from office, by impeachment, as received by the Senate from the National Assembly, are as follows –

**PART A: GROSS VIOLATION OF THE CONSTITUTION OR ANY OTHER LAW PURSUANT TO ARTICLE 150(1)(B)(I) OF THE CONSTITUTION**

Ground 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 Articles 147 (1), as read with Article 131 (2) (c) and (d) of the Constitution.

The Preamble of the Constitution provides (among other things) that the people of Kenya adopted and enacted it—

- (a) being proud of the ethnic, cultural, and religious diversity, and a determination to live in peace and unity as one indivisible sovereign nation; and
- (b) recognizing the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.

The Preamble of the Constitution is supplemented by Article 10 (2) (a), (b) and (c) of the Constitution, which establishes the core national values and principles of governance that bind all State Officers (including the Deputy President).

These values and principles include patriotism, human dignity, national unity, equity, social justice, inclusiveness, non-discrimination, equality, human rights, protection of the marginalized, democracy, and good governance.

Moreover, Articles 73 (1) (a) and (2) (b) of the Constitution establish responsibilities of leadership. They provide that the authority assigned to a state officer (such as the Deputy President) is a public trust to be exercised in a manner that is consistent with the purpose and objects of the Constitution, demonstrates respect for the people, brings honour to the nation and dignity to the office and promotes public confidence in the integrity of the office.

Also, Article 27(4) of the Constitution prohibits all forms of discrimination, including discrimination based on ethnic or social origin, conscience, belief, language and birth.

Further, Article 73(2)(b) of the Constitution provides that decision-making should be objective and impartial and should not be influenced by favouritism and improper motives.

Furthermore, Article 75(1)(c) of the Constitution provides that a State Officer should behave, “whether in public and official life, in private life, or in association with other persons,” in a manner that avoids demeaning the office he holds.

Therefore, as a matter of constitutional compliance, the Deputy President of the Republic of Kenya, who is the principal assistant to the President of the Republic of Kenya, is required—

- (a) to promote the constitutional core values such as peace and unity of all Kenyans in the context of ethnic, cultural, and religious diversity, patriotism, national unity, rule of law, democracy and participation of the people, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised and good governance;
- (b) to respect and uphold representation of Kenya’s multi-ethnic and culturally diverse society through the promotion of equality and affording equal opportunities to all Kenyans in appointments to the public service and allocation of public resources; and
- (c) to make, promote, and implement public policy decisions that do not discriminate against any Kenyan based on conscience, ethnic or social origin, language or birth.

However, on diverse dates throughout the last two years, His Excellency Rigathi Gachagua has persistently made utterances threatening to discriminate, exclude and unlawfully deny sections of the people of Kenya and regions of the Republic of Kenya equal opportunities for public service appointments and allocation of public resources.

Besides, the utterances are highly inflammatory and inciteful and significantly undermine national unity and the peaceful co-existence of Kenya’s diverse communities.

To illustrate, sometime in 2023, at a public forum in Kajiado County within the Republic of Kenya, His Excellency Rigathi Gachagua made highly inflammatory and inciteful public pronouncements to the effect that the ‘Government of Kenya is a company’ and that the allocation of government development projects and public sector jobs are based on ‘shares’ determined by how the populace of the various ethnic communities voted in the 2022 general election. Specifically, he stated as follows—

*“A Government is like a company, there is shareholding. Kuna wale who have invested a lot of shares, kuna wale wameweka kidogo, kuna wale wamekataa, lakini wote ni wakenya. So ndio tukasema, kama wewe*

*umeenda kupanda mahindi, ama wacha nipeane example ya ng'ombe kwa sababu niko Kajiado. Wewe uko na ng'ombe yako ya maziwa, hio ng'ombe imezaliwa ikiwa njau umeichunga vizuri, umepatia majani, umenunulia dairy meal, umepatia chumvi, umepeleka kwa malisho, umepatia maji, imezaa, imeanza kukamuliwa. Wewe unatakiwa kwanza ukuwe mutu ya kwanza kukamua hiyo ng'ombe na kunywa maziwa.”*

His Excellency Rigathi Gachagua emphasised the divisive and inciteful narrative embodied in the above utterances as follows—

*“Haiwezekani mtu ambaye alikua anakupigia kelele ukichunga hii ng'ombe, na kusema hii ng'ombe ni ile ya kienyeji hakuna haja ya kushugulika naye, hii ng'ombe ni bure haiwezi kutoa maziwa, hii ng'ombe ata kipona jicho moja, wachana nayo unapoteza wakati. Saa ile ng'ombe imezaa imetoa maziwa...amekuja na kikombe, amekuja na sufuria, anataka atolewe maziwa. Mimi nikasema hiyo haiwezekani. Nikasema yule mwenye hii ng'ombe na kuichunga na kuitunza, kwanza akamue maziwa, yeye na watoto wake wakunywe, ile itabaki aitie majirani. Ata yule alikuwa anapiga kelele akisema hii ng'ombe ni bure na haiwezekani kama kunayo imebaki pia apewe, kama hakuna imebaki atembe. Si hiyo namna hiyo?”*

His Excellency Rigathi Gachagua made similar remarks at another public forum as follows—

*“A Government is like a company, I did not say it is a company, I said it is like a company. In every company, there are shares: preferential shares and ordinary shares. When there is an AGM, non-shareholders do not vote or attend the AGM. When there are dividends to be divided, they are divided according to the number of shares. That is the truth.”*

His Excellency Rigathi Gachagua continued the inciteful and divisive utterances at yet another forum where he stated as follows—

*“Sisi lazima tungeangalia nyinyi. Hii serikali ni kampuni na ni ya shares. Sindio? Ni ya shares. Kuna wenye kampuni, wale wako na shares mingi, wale wako na chache. Kuna wale hawana. Sasa nyinyi muli invest kwa hii kampuni ya William Ruto na Rigathi Gachagua; sasa lazima mvune. Yule ambaye alipanda, atafanya nini? Si mulipanda? Si muliamuka mapema?”*

At another forum in Nandi County, His Excellency Rigathi Gachagua continued the same divisive and inciteful narrative as follows—

*“Rais ako pale niko hapo. Huyu Felix ako hapo...Mimi mnanijua msimamo wangu. Ya kwamba watoto wakiwa wengi, kuna wale kwanza ya kuangaliwa. Si mnajua? Sasa huyu Felix ako pale, ndiye kuunganisha mawaya. Mambo yenu tumepanga. Mambo iko sawa. Chakula iko jikoni,*

*karibu kuiva. Watoto ni wengi, chakula ni kidogo. Iko watoto ya nyumbani, iko wa Jirani. Iko namna hio. Na nyinyi mtulie. Chakula ikiiva, sisi ndiyo wenye kupakua. Na Watoto tunawajua kwa sura na kwa msimamo. Hatuwezi kuwa confused. Kuna mtu hajui watoto wake? Na wiki inakuja, tutatangaza hatua kali ile tutachukua, na ile maneno tumepanga...”*

In addition, in September 2024, during a public rally in Nairobi, His Excellency Rigathi Gachagua made public utterances that incited other communities against the ethnic communities that live around the Mt. Kenya region by stating as follows—

*“Na mimi mkaniambia nimsaidie Rais kwa kazi! Lakini nikiwa hapo kwa serikari, nikue pia nikichunga mambo ya watu wa mlima! Niendeleo kuchunga mambo ya mulima, ama nisichunge? Sasa hio kuchunga mambo ya mulima, inaniletea matatizo. Ati naambiwa mimi ni mkabila! Mimi ni mkabila kweli? Nikichunga mambo ya watu wa mlima, hiko makosa? Hiko makosa?”*

His Excellency Rigathi Gachagua’s utterances throughout the past two years undermine the promotion of national unity in the context of Kenyan society’s multi-ethnic demography and multi-cultural diversity. In addition, they have the potential to alienate, isolate, and create disharmony among the various ethnic communities of Kenya.

In Summary, His Excellency Rigathi Gachagua’s abovementioned utterances over the last two years are impeachable offences to the extent that they grossly violate 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 with Article 131 (2) (c) and (d) of the Constitution. Specifically, His Excellency Rigathi Gachagua’s divisive and inciteful public utterances over the last two years —

- (a) are incompatible with the high calling and dignified status of the office of the Deputy President of the Republic of Kenya.
- (b) can stir ethnic hatred and promote ethnic balkanisation of the Republic of Kenya.
- (c) falsely alluded to a non-existent government policy to discriminate and marginalize the populace of the regions and tribes that did not vote for the current administration in the 2022 general elections.

Ground 2: Gross Violation of Articles 147 (1) and 152 (1) of the Constitution

Article 147 (1) of the Constitution provides that the Deputy President “shall be the principal assistant of the President and shall deputise for the President in the execution of the President’s functions.”

In addition, Article 152 (1) of the Constitution states that the Deputy President is a member of the Cabinet.

On various dates throughout the last two years, His Excellency Rigathi Gachagua undermined the President and the Cabinet and the effective discharge of the national government's executive mandate by making unilateral public statements that were inconsistent with policy positions collectively adopted by the Government.

To illustrate—

- (a) on or around 30<sup>th</sup> April 2024, the Cabinet passed a resolution for the evacuation of people residing along the Nairobi River.
- (b) shortly after that, His Excellency Rigathi Gachagua made a public statement opposing the Nairobi River Riparian Evacuation Orders, which the Cabinet had sanctioned for public safety and climate change mitigation. His Excellency Rigathi Gachagua made contradictory public statements despite being a Member of the Cabinet and being assigned the function of superintending the Nairobi River Riparian Evacuation Order.

In addition, His Excellency Rigathi Gachagua has on several occasions throughout the last two years, made public statements contradicting the President on critical matters of governance and the exercise of the President's function as a symbol of national unity.

To Illustrate—

- (a) in March 2023, at a public forum in the Nyanza region, the President said Kenya belongs to all, notwithstanding how people voted in the 2022 general elections, and that he would ensure the government does not discriminate against anyone. However, His Excellency Rigathi Gachagua, speaking after the President at another public forum, contradicted him by saying that Kenya is a company in which the provision of government services is based on shares.
- (b) His Excellency Rigathi Gachagua has made numerous other utterances at public forums, where he publicly restates the divisive narrative that Kenya is a company in which the rights of citizens are based on shares determined by how various ethnic communities voted in the 2022 general elections.

His Excellency Rigathi Gachagua's unilateral, divisive and inciteful public statements are impeachable offences to the extent that—

- (a) they undermine the effective discharge of the national government's executive mandate.
- (b) they violate the doctrine of collective responsibility.

- (c) they are equivalent to insubordination of the President, which is incompatible with his constitutional status as the Principal Assistant to the President of the Republic of Kenya.

Ground 3: Gross Violation of Articles 6 (2), 10 (2) (a), 174, 186 (1), 189 (1) and the Fourth Schedule to the Constitution (Undermining Devolution)

Article 10 (2) (a) of the Constitution provides that devolution is a fundamental national value and principle of governance. In addition, Article 6 (2) of the Constitution provides that governments at the county and national levels are distinct and interdependent and shall conduct their mutual relations based on consultation and cooperation. These provisions are supplemented by Article 189 (1) of the Constitution, which provides that governments at each level shall perform and exercise their powers “in a manner that respects the functional and institutional integrity of government at the other level...”

Under paragraph 7 (a) of Part 2 of the Fourth Schedule to the Constitution, county governments are responsible for trade development and markets as an exclusive function. Moreover, the Deputy President chairs the Intergovernmental Budget and Economic Council, an essential organ for consultation between the two levels of government.

On or around 20<sup>th</sup> September 2024, His Excellency Rigathi Gachagua, recklessly unmindful of the high calling and dignified status of the Office of the Deputy President of the Republic, unlawfully interfered with the running of Nairobi City County Government by holding a public rally in which he incited citizens against lawful directives of the Nairobi City County Government on the planning and relocation of markets.

Further, His Excellency Rigathi Gachagua publicly disparaged the leadership of the Nairobi City County Government and its decisions. Moreover, His Excellency Rigathi Gachagua has interfered with the proper discharge of county governments' constitutional functions regarding alcohol control and regulation.

His Excellency Rigathi Gachagua's inciteful and demeaning public statements and conduct are impeachable offences to the extent that—

- (a) they undermine devolution.
- (b) they undercut the functional and institutional integrity of county governments.
- (c) they unjustifiably vilify and ridicule the leadership of county governments, especially the Nairobi City County Government.



Consequently, His Excellency Rigathi Gachagua has grossly violated Articles 6 (2), 10 (2) (a), 174, 186 (1) and 189 (1) of the Constitution as read with the Fourth Schedule to the Constitution.

Ground 4: Gross Violation of 160 (1) of the Constitution (Undermining the Institutional and Decisional Independence of Judges)

Article 160 (1) of the Constitution provides that the Judiciary “shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority.” Many international law instruments, treaties, and principles require the guarantee of the judiciary's independence and require all government officers and institutions to respect and observe it.

In 2023, His Excellency Rigathi Gachagua, recklessly unmindful of the high calling and dignified status of the Office of the Deputy President of the Republic of Kenya and the need to respect, protect and uphold the independence of the Judiciary, made a scathing public attack against the Honourable Lady Justice Esther Maina, Judge of the High Court of Kenya, and falsely threatened to file a petition for the removal of the said Judge in gross violation of Article 160 (5) of the Constitution.

The Honourable Judge had presided over a case in which His Excellency Rigathi Gachagua was a party and had, in the lawful performance of her judicial function, ordered His Excellency Rigathi Gachagua to forfeit to the State the sum of Kshs. 200 million, which she had found to be proceeds of corruption and money laundering.

His Excellency Rigathi Gachagua’s public attacks against the Judge are impeachable offences to the extent that they undermine the functional and decisional independence of judges.

Ground 5: Gross Violation of Articles 3 (1) and 148 (5) (a) of the Constitution (Breach of the Oaths of Office and Allegiance)

His Excellency Rigathi Gachagua’s actions and utterances outlined in Grounds 1, 2, 3 and 4 constitute a gross violation of Article 3 (1) of the Constitution, which requires every person to respect, uphold and defend the Constitution. Further, the actions and utterances of His Excellency Rigathi Gachagua grossly violate Article 148 (5) (a) of the Constitution, which prescribes the Oath of Allegiance of the Office of the Deputy President that obligates the Deputy President to obey, preserve, protect and defend the Constitution and all other laws.

**PART B: SERIOUS REASONS TO BELIEVE THAT THE DEPUTY PRESIDENT HAS COMMITTED A CRIME UNDER NATIONAL LAW PURSUANT TO ARTICLE 150 (1) (B) (II) OF THE CONSTITUTION**

Ground 6: Serious reasons to believe that His Excellency Rigathi Gachagua has committed crimes under sections 13 (1) (a) and 62 of the National Cohesion and Integration Act

Section 13 of the National Cohesion and Integration Act provides that it is an offence for any person to use threatening, abusive or insulting words or behaviour where the person intends to stir up feelings of ethnic contempt, hatred, hostility, violence or discrimination. The section also makes it an offence to use such words or engage in such behaviour when, having regard to all the circumstances, ethnic hatred is likely to be stirred up.

Besides, section 62 of the National Cohesion and Integration Act states that a person commits an offence when the person makes statements that are intended (or are likely) to stir up feelings of ethnic contempt, hatred, hostility, violence or discrimination.

His Excellency Rigathi Gachagua's persistent inflammatory, reckless, inciteful public utterances over the last two years, the details of which are set out in Grounds 1, 2, 3 and 4, establish serious reasons to believe that he has committed crimes under section 13 (1) and 62 of the National Cohesion and Integration Act.

Ground 7: Serious reasons to believe that His Excellency Rigathi Gachagua has committed 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 the Proceeds of Crime and Anti-Money Laundering Act

For the past two years, His Excellency Rigathi Gachagua has inexplicably amassed a humongous property portfolio estimated at KShs.5.2 billion, primarily from proceeds of corruption and money laundering.

The value of the property and wealth that His Excellency Rigathi Gachagua has acquired over the last two years is incompatible with his known legitimate income (i.e., KShs.Twelve Million per annum or thereabouts).

His Excellency Rigathi Gachagua has acquired the abovementioned property and wealth using his two sons, Kevin Rigathi Gachagua ('Kevin Gachagua') and Keith Ikinu Rigathi ('Keith Ikinu') and other close family members and associates as proxies.

His Excellency Rigathi Gachagua and his proxies (especially the two sons) have used the following companies to massively launder money, conceal proceeds of crime, corruption, and benefit from influence peddling—

**(No. 108) WEDNESDAY, OCTOBER 16, 2024 (MORNING SITTING) (2067)**

S/No.	Company	Date of Incorporation	Shareholders
1.	Spirit Way Limited (PVT-Y2ULDMKY)	14/11/2023	Dorcas Wanjiku Rigathi – Director/ Shareholder/ Beneficial owner – 100 shares
2.	Fortis Vis Group Limited (PVT-MKUMAKEE)	14/02/2023	Kevin Rigathi Gachagua – 50 shares  Keith Ikinu Rigathi – 50 shares
3.	Grand Bypass Apartments Limited (PVT-5JUZEKL8)	11/01/2024	Rigathi Gachagua – Director  John Mwai Mathenge (7676931) – Director  Peter Njoroge Regeru (4686103) – Director
4.	Kuruwitu Properties Limited (PVT-EYUBKG83)	26/04/2023	Vipingo Beach Resort Limited (C.159289) – Shareholder – 1 share Vipingo Beach Resort Limited (C.159289) – Shareholder – 1000 shares  John Mwai Mathenge
5.	The Anansi Collective (BN-JRCG76AG)	29/03/2021	Keith Ikuni Rigathi
6.	Biovet (K) Limited (CPR/2009/4880 )	10/06/2009	Rigathi Gachagua – 200 shares  Dorcas Wanjiku Rigathi – 200 shares
7.	Calvary Creed International Limited (CPR/2015/186154)	16/04/2015	Rigathi Gachagua – 50 shares  Dorcas Wanjiku Rigathi – 950 shares

**(No. 108) WEDNESDAY, OCTOBER 16, 2024 (MORNING SITTING) (2068)**

S/No.	Company	Date of Incorporation	Shareholders
8.	Cosmere Venture Limited (PVT-Q7ULE6Z)	26/02/2018	Herman Thuita Maina – 200 shares  James Mwangi Kagotho – 50 shares  Kevin Rigathi Gachagua – 250 shares  Keith Ikinu Rigathi – 50 shares  Irene Nyanjau Wachira – 250 shares  David Kipkemboi Muthamia – 200 shares
9.	Crystal Kenya Limited (CPR/2009/4898 )	12/06/2009	Kevin Rigathi Gachagua – 200 shares  Keith Ikinu Rigathi – 200 shares
10.	Delta Merchants Limited (CPR/2009/4874 )	09/06/2009	Rigathi Gachagua – 200 shares  Dorcas Wanjiku Rigathi – 200 shares
11.	Vipingo Beach Resort Limited (C.159289)	05/08/2008	Kevin Rigathi Gachagua – Director  Keith Ikinu Rigathi – Director  Estate of the deceased James Nderitu Gachagua – Shareholder – 10,000 shares
12.	Rigathi Gachagua Foundation (CLG-XXFXRG)	11/11/2022	Rigathi Gachagua
13.	Dorcas Rigathi Foundation (CLG-G9FV2G)	19/10/2022	Kevin Rigathi Gachagua

**(No. 108) WEDNESDAY, OCTOBER 16, 2024 (MORNING SITTING) (2069)**

S/No.	Company	Date of Incorporation	Shareholders
			Keith Ikinu Rigathi
			Dorcas Wanjiku Rigathi
			Nancy Wambui Kangethe
14.	Heartland Supplies Limited (CPR/2009/4881 )	11/06/2009	Rigathi Gachagua – Director/ Shareholder – 200 shares
			Dorcas Wanjiku Rigathi–Director/ Shareholder – 200 shares
15.	Karandi Farm Limited (C.94303)	25/06/2001	Rigathi Gachagua – Director/ Shareholder – 700 shares
			Dorcas Wanjiku Rigathi – Director/ Shareholder – 100 shares
16.	Morani Manufacturers Limited (PVT-8LU7Q8GD)	13/10/2021	Dorcas Wanjiku Rigathi – Director/ Shareholder – 200 shares
			Keith Ikinu Rigathi – Director/ Shareholder – 200 shares
			Joshua Karianjahi Waiganjo – Director/ Shareholder - 600 shares
			Grace Wachuka Mwangi – Beneficial owner
17.	Mothers of the Land Limited (CLG-55FD3B)	01/12/2021	Louiza Njeri Wanjiru – Director/ Member
			Caroline Jepkemboi Waiyaki – Director/ Member

**(No. 108) WEDNESDAY, OCTOBER 16, 2024 (MORNING SITTING) (2070)**

S/No.	Company	Date of Incorporation	Shareholders
			Lucy Njuguni Mutegi – Director/ Member
			Dorcas Wanjiku Rigathi – Director/ Member
18.	Pioneer Medical (K) Limited (CPR/2009/4910 )	09/06/2009	Rigathi Gachagua – Director/ Shareholder – 200 shares
			Dorcas Wanjiku Rigathi – Director/ Shareholder – 200 shares
19.	Ridor Furniture Mart Limited (C.141876)	18/07/2007	Rigathi Gachagua – Director/ Shareholder – 500 shares
			Dorcas Wanjiku Rigathi – Director/ Shareholder – 500 shares
20.	Royal Crimson Ventures Limited (PVT-LRU2QZL)	26/02/2018	Kevin Rigathi Gachagua – Director/ Shareholder - 400 shares
			Keith Ikinu Rigathi– Director/ Shareholder – 400 shares
			Peter Kangangi Githaiga – Director/ Shareholder – 200 shares
21.	Technical Supplies and Services (K) Limited (CPR/2009/4895 )	06/06/2009	Rigathi Gachagua – Director/ Shareholder – 400 shares
			Francis Muchiri Wanguo – Director
22.	Wamunyoro Investments Limited (C.93670)	23/04/2001	Kevin Rigathi Gachagua – Director/ Shareholder – 1 share

S/No.	Company	Date of Incorporation	Shareholders
			Keith Ikinu Rigathi – Director/ Shareholder – 1 share

To illustrate—

- (a) in November 2023, Crystal Kenya Limited (number 9 in the above table), a proxy company of His Excellency Rigathi Gachagua, purchased Outspan Hotel, situated at Nyeri Municipality Block/1/1669, from Aberdare Safari Hotels for KShs.535,000,000.00. The Directors of Crystal Kenya Limited are the sons of His Excellency Rigathi Gachagua, namely Kevin Gachagua and Keith Ikinu. Sometimes, in August 2024, His Excellency Rigathi Gachagua publicly admitted that his family had acquired this property.
- (b) in November 2023, Kevin Gachagua and Keith Ikinu, the proxies of His Excellency Rigathi Gachagua, acquired Treetops Lodge, a high-end hotel situated in Nyeri County. Sometimes, in August 2024, His Excellency Rigathi Gachagua publicly admitted that his family had acquired this property.
- (c) His Excellency Rigathi Gachagua and his proxies also acquired Olive Gardens Hotel and Queens Gate Serviced Apartments in Nairobi.
- (d) His Excellency Rigathi Gachagua acquired Vipingo Beach Resort, in Kilifi County.
- (e) His Excellency Rigathi Gachagua acquired a parcel of land known as Ruguru/Kiamariga/1223 in Mathira East Constituency, where he constructed a helicopter landing facility.
- (f) His Excellency Rigathi Gachagua acquired approximately 40 acres of land in Kakuret in Kamburaini in Nyeri County.
- (g) His Excellency Rigathi Gachagua acquired 80 acres of land in Meru County.
- (h) His Excellency Rigathi Gachagua acquired a dairy farm in Nyandarua County.
- (i) Additionally, His Excellency Rigathi Gachagua used his office of Deputy President to exert influence and connive with unscrupulous Ministry of Lands officials to issue an allotment letter to Wamunyoro Investments Limited, a company that he owns to acquire L. R. 209/12077 and LR 90923, situated at Embakasi in Nairobi whose value is estimated at KShs.1.5 billion or thereabouts. After that, this company used the fraudulently acquired documents to support a court case at the expense of the legitimate owner of the property.
- (j) moreover, companies associated with His Excellency Rigathi Gachagua and his proxies were involved in the KEMSA KShs.3.7 billion irregular procurement of Malaria nets that put the lives of millions of Kenyans at risk.
- (k) in addition, His Excellency Rigathi Gachagua has used the office of Deputy President to corruptly influence unnecessary and expensive

renovation of his official residence in Karen and Mombasa running into millions of shillings. In essence, His Excellency Rigathi Gachagua has chosen personal comfort, extreme luxury, and pomposity at the expense of service delivery to the people of Kenya.

- (l) images of some of the properties that His Excellency Rigathi Gachagua has acquired from proceeds of corruption, influence peddling, and money laundering have been provided and relate to the following—

S/No. Name and address

1. Treetops Hotel, located in Nyeri.
2. Outspan Hotel, located in Aberdare Ranges.
3. Olive Gardens Hotel, Argwings Kodhek Road.
4. Vipingo Beach Resort.

Additionally, His Excellency Rigathi Gachagua has the following proxy companies to trade with the office he holds:

- (a) AgroBriq Investment Limited

It is a private limited company incorporated in Kenya on 28th May 2017 under certificate number PVT-RXUP6E. The company deals in building and construction. The company's directors/shareholders are—

- (a) Rudani Mayurkumar Mahendrabhai.
- (b) Patel Ankitkumar Hasmukhbhai, a non-Kenyan national.

The company operates a bank account (number withheld for data protection reasons) at Sidian Bank, opened on 19<sup>th</sup> February 2022, with the company directors as the account signatories. On 18<sup>th</sup> October 2022, Bhavika Nathalal Hirani was added as an account signatory and given full mandate to operate the account. Bhavika Nathalal Hirani is a proxy of His Excellency Rigathi Gachagua.

On 23<sup>rd</sup> January 2023, the company account received a transfer of KShs.47,015,367.75 from the Executive Office of the Deputy President. The payment was supported by—

- (a) Notification of Award Letter Ref ODP/ADM.1/57 Vo.IV (70) dated 16<sup>th</sup> December 2022 from the Office of the Deputy President to Agrobriq Investment Limited for the proposed Refurbishment of Deputy President's official residence at Karen, at a cost of KShs.55,559,520.00.
- (b) Payment Voucher of KShs.55,133,265.92 was received on 10/01/2023 as the 1st Interim payment in respect of the contract ODP/RT/001/2022-2023.



- (c) an agreement letter dated 22<sup>nd</sup> December 2022 between Office of Deputy President and Agrobriq Investment Limited for the proposed renovation of Deputy President's official residence in Karen. Bhavika Nathalal Hirani signed the document as a Director of Agrobriq Investment Limited.

On 23<sup>rd</sup> January 2023, the funds were suspiciously transferred through a transfer of KShs.45,000,000.00 to a related entity (i.e., Vaghjiyani Enterprises Limited).

Shockingly, the account had been dormant for around nine months before it received the payment from the office of the Deputy President, adding to the reasonable suspicion that it was a special-purpose vehicle to siphon funds for His Excellency Rigathi Gachagua.

(b) Lusona Events Limited

This is an events management company that was registered on 30<sup>th</sup> October, 2012 under certificate number CPR/2012/87037. The company directors are—

- (a) Esther Wanjiru Njenga.  
(b) Cecilia Muthoni Njenga.

The company operates two bank accounts at the SBM Bank, which it opened in 2015. The company's directors are account signatories. Ian Njuguna Gitata was also introduced as an account signatory and is the sole account operator, pointing to the likelihood that he is the beneficial owner.

Between 1<sup>st</sup> January 2024 and 11<sup>th</sup> July 2024, the account at SBM Bank received a total of KShs.100,262,821.43 from the Office of the Deputy President, characterized by the receipt of multiple transfers.

On 2<sup>nd</sup> July 2024, the Deputy President's Office paid Lusona Events Limited part of the abovementioned proceeds of corruption and money laundering in eight transactions in a single day as follows—

S/No	Date	Amount
1.	2-JULY-2024	2,946,900.00
2.	2-JULY-2024	4,806,639.00
3.	2-JULY-2024	4,679,130.00
4.	2-JULY-2024	2,955,450.00
5.	2-JULY-2024	3,374,400.00
6.	2-JULY-2024	5,451,912.40
7.	2-JULY-2024	3,582,536.50
8.	2-JULY-2024	3,840,625.60

A substantial portion of the KShs.100,262,821.43 was used for luxurious largesse and unnecessary expenditure for carpets, etc., laid down for the Deputy President's functions.

Some of the funds were utilised as follows—

- (a) Ian Gitata made KShs.22,800,000.00 in cash withdrawals. Some of the withdrawals were declared as cash to pay undisclosed beneficiaries. It was suspicious why they preferred cash payments as opposed to bank transfers.
- (b) Kshs.4,000,000.00 transferred to a law firm.
- (c) Kshs.26,993,350.00 Investment in fixed-term deposits as follows—
  - (i) on 27<sup>th</sup> May 2024, Kshs.9,993,350.00
  - (ii) on 11<sup>th</sup> July 2024, Kshs.17,000,000.00

The utilisation of funds was reasonably believed to be an act of corruption and money laundering, as most of the money was withdrawn in cash rather than bank transfers, which is the custom for huge payments. His Excellency Rigathi Gachagua is reasonably suspected to be the principal beneficiary of these dubious transactions.

(c) St. Nicholas Rehabilitation and Industrial Training Institute Limited

The company was incorporated on 8<sup>th</sup> April 2021 under registration number PVT-AAACMO4. It deals with student rehabilitation and industrial training, trading as St Nicholas Rehabilitation Centre and Psychiatric Hospital. The sole company director is Nicholas Mugambi Maingi. The company operates an account at Equity Bank, opened on 18<sup>th</sup> August 2017, with the company director as the sole account signatory.

Between 1<sup>st</sup> March 2024 and 5<sup>th</sup> June 2024, the account received a total of Kshs.21,060,000.00 from office from the Office of the Deputy President. The funds were suspiciously utilised as follows—

- (a) Kshs.2,000,000.00 was allegedly used to purchase a white Toyota Prado from Umarali Motors Limited for KShs.8.5 million.
- (b) another Kshs.4,000,000.00 was suspiciously transferred to Nicholas Maingi's account. A cash trail in the personal account revealed that upon receipt of the funds, Nicholas made a transfer of Kshs.4,660,000.00 to Umarali Motors Limited on 21<sup>st</sup> March 2024. The purported payment to Umarali Motors Limited using two routes raises reasonable suspicion of corruption and money laundering.

Further, prior to receipt of the two payments from the Office of the Deputy President, the account was transacting in minimal accounts, raising suspicions that the entire transaction was a conduit used by His Excellency

Rigathi Gachagua to siphon public funds. The payment scheme used typifies money laundering transactions.

From the matters outlined in the preceding parts, it is patently clear that there are serious reasons to believe that His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya, using his state office has committed gross economic crimes, namely conflict of interest, abuse of office, conspiracy to commit crimes under—

- (a) sections 45 (1) (a), 46, 47A (3), and 48 (1) of the Anti-Corruption and Economic Crimes Act.
- (b) sections 2, 3, 4, and 7 of the Proceeds of Crime and Anti-Money Laundering Act.

Ground 8: Serious reasons to believe that His Excellency Rigathi Gachagua, EGH, has committed crimes under section 132 of the Penal Code and section 29 of the Leadership and Integrity Act

His Excellency Rigathi Gachagua has continuously misled 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.

To illustrate—

- (a) sometime in January 2024, His Excellency Rigathi Gachagua made a sensational but false accusation that Hon. Justice Esther Maina, Judge of the High Court of Kenya, had engaged in corruption. He publicly said he would present a petition for the removal of the said judge (which he has not done to date), leading to the inevitable conclusion that he knew his allegations were false.
- (b) on or around 26<sup>th</sup> June 2024, His Excellency Rigathi Gachagua recklessly and unmindful of the high calling and dignified status of the Office of the Deputy President of the Republic and his membership to the National Security Council, both being positions that require one to be a discrete and tempered leader, especially during moments of national crisis, addressed Kenyans on live television in Mombasa County and publicly made sensational statements against the National Intelligence Service (an essential national security organ), its Director General, and officers. The following is an excerpt of part of his speech:

*“The Director General of the National Intelligence Service, Noordin Haji, was a junior officer in the National Intelligence Service before he was appointed as DPP. When he was appointed to the office of the Director General, because of his*

*inferiority complex, he chased away all the people who were senior to him when he was in the Service, therefore, crippling the capacity of that service and making it dysfunctional. Three Directors were chased away and reassigned to desk jobs in Ministries across Government. Thirteen Assistant Directors, men and women with proven track record of intelligence collection and analysis, were removed from the National Intelligence Service, leaving a shell under a clueless Director General who has no capacity to run the organization. And that is why the security sector was caught off guard by the intensity, the anger of the Kenyan people, the agitation of the Kenyan people, the resilience of the Kenyan people.”*

PART C: GROSS MISCONDUCT PURSUANT TO ARTICLE 150 (1) (B) (III)  
OF THE CONSTITUTION

Ground 9: Gross Misconduct (Public Attacks on the National Security Intelligence Service and its Officers)

The phrase “gross misconduct” generally refers to behaviour that is “very unpleasant,” “disgusting,” or “very rude” (Oxford Advanced Learners Dictionary). Therefore, public attacks against an essential national security organ in circumstances that require one to be discreet and tempered constitute gross misconduct.

On or around 26<sup>th</sup> June, 2024, His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya, unmindful of the high calling and dignified status of the Office of the Deputy President of the Republic and his membership to the National Security Council, both being positions that require a leader to be discreet and tempered, especially during moments of national crisis, addressed Kenyans on live television in Mombasa County and made a scathing attack on the National Intelligence Service (an essential national security organ).

His Excellency Rigathi Gachagua extended the extremely reckless personal attacks to the Director General of the institution.

With the unprecedented acts, His Excellency Rigathi Gachagua, EGH, acted in a manner that is incompatible with the high calling and dignified status of the Office of the Deputy President and member of the Cabinet and the National Security Council.

The attacks against the National Intelligence Service and its Director General constitute gross misconduct and an impeachable offence to the extent that—

- (a) they are incompatible with the high calling and dignified status of the Office of the Deputy President of the Republic of Kenya.

- (b) they undermine national security from both internal and external points of view.
- (c) they are incompatible with the effective discharge of the delicate and sensitive mandate of the National Intelligence Service.
- (d) they had the potential, given the circumstances prevailing in the country at the time, to significantly diminish public confidence in the viability of the Kenyan state and its ability to protect the lives and properties of its citizens.
- (e) they go against the constitutionally prescribed oath of allegiance of the Office of the Deputy President under Article 148 (5) (a) of the Constitution, which requires the Deputy President to obey, preserve, protect and defend the Constitution and all other laws.

Ground 10: Gross Misconduct (Insubordination)

As stated in Ground 9, the phrase “gross misconduct” generally refers to behaviour that is “very unpleasant,” “disgusting,” or “very rude” (Oxford Advanced Learners Dictionary). Therefore, open or public insubordination of the President, who is the Head of State and Government under our constitutional framework, is gross misconduct.

As stated in the preceding parts, Article 147 (1) of the Constitution designates the Deputy President as the principal assistant of the President who shall deputise for the President in the execution of the President’s functions.

His Excellency Rigathi Gachagua, EGH, has persistently undermined, demeaned, and committed insubordination instead of assisting the President in executing the State executive mandate. Instead, he has opted to run a smear campaign against the presidency for political expediency.

Further, whereas Article 147 (2) of the Constitution requires the Deputy President to perform the functions conferred by the Constitution and any other functions that the President may assign, His Excellency Rigathi Gachagua, EGH, is openly sabotaging the State’s efforts in agriculture, including the coffee, tea, sugar and milk sectors which the President tasked him to oversee.

To illustrate—

- (a) His Excellency Rigathi Gachagua has connived with cartels in the tea sector to block the Kenya Tea Development Agency from implementing guaranteed minimum returns that would benefit smallholder tea farmers.
- (b) His Excellency Rigathi Gachagua has influenced his family members, allies, associates, and proxies to take control of a local cooperative society (name withheld) in Mathira, which they are financially haemorrhaging.

Ground 11: Gross Misconduct (Bullying)

As stated in Ground 9, the phrase “gross misconduct” generally refers to behaviour that is “very unpleasant,” “disgusting,” or “very rude” (Oxford Advanced Learners Dictionary).

Section 34 of the Leadership and Integrity Act provides that a State officer shall not bully any person. "Bullying" includes repeated offensive behaviour that is vindictive, cruel, malicious or humiliating and is intended to undermine a person.

For the past two years, His Excellency Rigathi Gachagua has persistently bullied state and public officers.

To illustrate—

- (a) His Excellency Rigathi Gachagua bullied Kenya Medical Supplies Agency officials into awarding a tender for the supply of mosquito nets to Crystal Limited, his proxy company. Crystal Limited had submitted a fake bid bond with the sole intention of fraudulently acquiring public property.
- (b) His Excellency Rigathi Gachagua routinely bullies public officers in national security organs, whom he subjects to public attacks and humiliation.
- (c) His Excellency Rigathi Gachagua routinely summons procurement officers in ministries and state institutions and instructs them to direct the procurement of goods and services in a specific manner.
- (d) in the presidency, His Excellency Rigathi Gachagua identified public officers who he thinks stand in his way of creating dominance within government and political kingship, and he has severely threatened, intimidated, and harassed them.
- (e) in 2023, His Excellency Rigathi Gachagua used his position as the Deputy President to intimidate public officers and a contractor and divert materials meant for the construction of the Kilifi—Malindi Road to tarmac a private road to Vipingo Beach Resort, a hotel associated with him.
- (f) His Excellency Rigathi Gachagua uses his constitutional power as Deputy President solely to implement sectarian, parochial, and personal interests that seek to profit him.

Taking of plea:

The Clerk of the Senate invited the Deputy President to plead to the particulars of the allegations as read;

Thereupon, the Deputy President pleaded ‘Not Guilty’ to all the charges.

9. **HEARING AND DETERMINATION ON THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HIS EXCELLENCY RIGATHI GACHAGUA, EGH, DEPUTY PRESIDENT OF THE REPUBLIC OF KENYA**

Before commencement of the hearing for the Proposed Removal from Office by Impeachment of His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya, the Speaker invited the counsels for the parties to submit any preliminary objections.

Thereupon, Counsel for the Deputy President, Mr. Ndegwa Njiru, submitted a preliminary objection to the proceedings as follows –

1. That the appearance of Hon. James Orengo, SC, Governor of Siaya County, for the National Assembly, if allowed, would be prejudicial to the Deputy President and violate Article 260 of the Constitution, as read together with Section 26 (2) of the Leadership and Integrity Act, which bars a State Officer from engaging in any other gainful employment. The Counsel, therefore, sought to have Hon. James Orengo, SC barred from representing the National Assembly.
2. That the National Assembly had on Monday, 14<sup>th</sup> October, 2024 submitted an affidavit sworn by Mr. Peterson Njomo Muchira and a document marked as “Volume 8(a): responses from various government agencies” which were not part of the bundle of documents of the National Assembly that were served on the Deputy President on Wednesday, 9<sup>th</sup> October, 2024. The Counsels sought to have the introduction of the two documents barred, as they constituted new evidence in terms of Rule 20 of the Rules of Procedure when considering the proposed removal of the Deputy President in Plenary.

Pursuant to Rule 14 of the Rules of Procedure when considering the proposed removal of the Deputy President in Plenary, the Speaker allowed Counsels for the parties to make arguments on the preliminary objection following which Senators sought clarifications on the preliminary objection.

And the time being fifteen minutes past One O'clock, the Speaker interrupted the proceedings and adjourned the Senate pursuant to Standing Order 34(2A), in line with the Hearing Programme.

10. **SENATE ROSE** – at fifteen minutes past One O'clock.

**M E M O R A N D U M**

*The Speaker will take the Chair on  
Wednesday, October 16, 2024 at 2.30 p.m*