



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – FOURTH SESSION

THE SENATE

VOTES AND PROCEEDINGS

SPECIAL SITTING

WEDNESDAY, SEPTEMBER 14, 2016 AT 9.00 A.M.

1. The Senate assembled at Nine O'clock.
2. The Proceedings were opened with Prayer said by the Speaker.
3. COMMUNICATION FROM THE CHAIR ON THE SPECIAL SITTING OF THE SENATE TO CONTINUE CONSIDERATION OF THE MATTER OF THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF NYERI COUNTY

The Speaker issued the following Communication from the Chair-

"Honourable Senators,

Good morning and welcome to today's Sitting.

We shall continue from where we left yesterday guided by today's Order Paper, the programme and Rules of Procedure circulated yesterday.

In accordance with the programme, we shall now proceed with the Presentation of the case of the Governor including presentation of his witnesses if any.

As I invite the Governor, let me emphasize the need to adhere to the stipulated timelines and the urge all of us to abide by the rule of relevance.

I thank you."

4. HEARING AND DETERMINATION OF THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HON. JAMES NDERITU GACHAGUA, THE GOVERNOR OF NYERI COUNTY

The Senate resumed its consideration of the matter of the proposed removal from office, by impeachment, of Hon. James Nderitu Gachagua, the Governor of Nyeri County, as follows –

a) Preliminary applications by Counsel for the Governor of Nyeri County

Mr. Peter Wanyama, Counsel representing the Governor, made two preliminary applications for –

- i) summoning of the Auditor General and the Controller of Budget, to provide further information on the facts giving rise to the charges filed against the Governor; and
- ii) for leave to introduce additional evidence, on behalf of the Governor, in the form of documents and video clips.

Having considered the matter, the Speaker ruled that –

- i) with regard to the first application, the Senate had since invited the Controller of Budget and the Auditor General to appear in the proceedings, and that the two officers would be available to testify and for cross-examination by the parties; and
- ii) with regard to the second application, that admitting the additional evidence, after the County Assembly had concluded presenting its evidence and witnesses, would be prejudicial to the County Assembly's case against the Governor. Consequently, to ensure fairness to both parties, and in accordance with the Rules of Procedure for the Hearing, the additional evidence would not be admitted.

b) Presentation of the case of the Governor of Nyeri County

Counsel for the Governor consequently proceeded to present the case of the Governor, in response to the charges levelled against the Governor by the County Assembly.

Counsel for the Governor further called and led the following witness in presenting his testimony before the Senate –

Dr. Charles Githua Githinji - County Executive Committee (CEC) Member for Finance and Economic Planning, County Government of Nyeri

The witness took oath and informed the Senate that-

- i) All monies raised in the County as revenue in the form of taxes and fees have been accounted for in the county revenue fund.
- ii) The stalemate between the County Executive and the County Assembly was as a result of lack of observation of timelines for the budget making process by the County Assembly and further that the County Assembly had made amendments to the county budget which made it difficult to implement. Communication to the County Assembly was made expressing concern with regard to implementation of the budget and the need for the County Assembly to review the budget.
- iii) Establishment of the County Budget and Economic Forum proved to be a challenge with respect to identifying competent persons to represent the bodies stipulated in the Public Finance Management Act. He informed the Senate that the County Government was working on the same and submit its recommendations for appointment within 3 months.

The witness was subsequently cross-examined by Counsels for the County Assembly and re-examined by Counsel for the Governor.

Senators also sought clarifications from the witness, following which the witness was discharged.

c) Hearing of the Auditor-General and the Controller of Budget

The Senate subsequently heard the testimony of the following witnesses, invited by the Senate to provide further information on the facts giving rise to the charges levelled against the Governor by the County Assembly –

1. Mr. Edward Ouko - the Auditor-General

The Auditor General took oath and informed the Senate that;

- i) Audit reports were submitted to the County Assembly and the Senate and that the audited party were fully engagement in the auditing process before submission of the final report to the Senate and the County Assembly.
- ii) In the transition process to a devolved system of governance, the Transition Authority issued guidelines for use of public funds and posted technical officers for a three-year period to guide county governments on the same. However, county governments were required to account for the use of allocated funds and not the Transition Authority.
- iii) In the report presented by the County Assembly regarding renovation works for Karson House, this was mainly an operational issue for most counties as they were trying to make structures in place for the operations of the county government. However, the caution on

prudence in the use of the resources involved relate to value for money in the long term in that were the funds spread over a five-year period, the county government would have built its own office block.

The witness was subsequently cross-examined by Counsels for the County Assembly and by Counsel for the Governor.

Senators also sought clarifications from the witness, following which the witness was discharged.

2. Mrs. Agnes Odhiambo - the Controller of Budget

The Controller of Budget took oath and informed the Senate that during the Financial Year 2013/2014, Kshs. 454 million was approved for use by the County Government against the subsequent spending of Kshs. 615 million at the end of the Financial Year. This indicates that the County Government spent Kshs. 70 million above the approved released by the Controller of Budget. Initial analysis indicated that amount was used at source without being accounted for in the county revenue account. This matter was brought to the attention of the County Government and it was addressed.

The Controller of Budget also informed the Senate that, further interrogation of the matter revealed that there were discrepancies in the capturing of transactions between the Integrated Financial Management Information System and the Internet Banking System which reported that the county government had overshot its budget by Kshs. 70 million.

The Senate was further informed that the matter has been brought to the attention of the National Treasury and the Central Bank of Kenya in order that the two systems are harmonized for financial operations and eliminate the discrepancy in reporting.

The witness was subsequently cross-examined by Counsels for the County Assembly and by Counsel for the Governor.

Senators also sought clarifications from the witness, following which the witness was discharged.

And there being no other business for the Morning Session, the Speaker adjourned the Senate at thirty five minutes past Two O'clock without Question, put pursuant to the Standing Orders.

5. SENATE ROSE - at thirty minutes past Two O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Wednesday, September, 14, 2016 at 3.30 p.m.*

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