



THIRTEENTH PARLIAMENT
THE SENATE
OFFICIAL REPORT



Fourth Session

Wednesday, 3rd December, 2025 at 2.30 p.m.

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 3rd December, 2025

Special Sitting

*(Convened via Kenya Gazette Notice
No.17613 of 2nd December, 2025)*

*The House met at the Senate Chamber,
Parliament Buildings at 3.07 p.m.*

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

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

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

We have quorum. You may proceed to call the first Order for the afternoon.

COMMUNICATION FROM THE CHAIR

RULING ON PRELIMINARY MATTERS AND OBJECTIONS RAISED BY THE NYAMIRA COUNTY GOVERNOR'S TEAM

Hon. Senators, ladies and gentlemen, as you will recall, at the commencement of the hearing of the proposed removal from office, by impeachment, of Hon. Amos Kimwomi Nyaribo, the Governor of Nyamira County earlier today, Wednesday, 3rd December, 2025, Counsel for the Governor raised a preliminary objection to the hearing of the proposed removal from office, by impeachment, of Hon. Amos Kimwomi Nyaribo on the following grounds-

(a) That the impeachment Motion, dated 11th November, 2025, failed to attain the constitutional and statutory threshold, and that, therefore, the purported resolution for removal of the Governor, by way of impeachment, was invalid and incompetent, as it

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failed to meet the mandatory threshold under Article 181 of the Constitution and Section 33 of the County Governments Act;

(b) That the concept of proxy voting was alien, illegal, null and void, and the attempt to explain the discrepancy through proxy voting was legally unattainable and compounds the illegality of the proceedings premised on acts of fraud, forgery and misrepresentation.

Hon. Senators, in urging the Senate to find that the threshold of two-thirds of all Members of the County Assembly (MCAs) in support of the impeachment Motion was not achieved, Counsel Elias Mutuma, for the Governor, stated that the County Assembly of Nyamira comprises 35 Members, and that, therefore, the requisite two-thirds majority for a valid impeachment resolution was 24 MCAs.

Counsel further submitted that the official record of the sitting of the County Assembly held on 25th November, 2025, confirmed that only 19 Members were physically present in the Assembly Chamber. Counsel stated that, despite this, the Assembly recorded 23 votes in favour of the Motion, and that this was numerically impossible, and that, to him, this demonstrated that improper and fraudulent voting had occurred.

Counsel for the Governor submitted that the phrase, “all the MCAs” in Section 33(2) of the County Governments Act is not ambiguous and refers to the total composition of the county assembly, as established under Article 177 of the Constitution, and as gazetted by the Independent Electoral and Boundaries Commission (IEBC) after the 2022 general elections.

Counsel contended that, as a membership of the Nyamira County Assembly is 35 Members, and as two-thirds of 35 is 23.33; this can only be rounded off to 24 members. Counsel further submitted that the county assembly's argument that the three vacancies in the assembly reduced “all the Members” from 35 to 32 was legally flawed and absurd. Counsel, therefore, argued that, for these reasons, the impeachment proceedings before the Senate could not proceed and required to be terminated at the preliminary stage.

Counsel for the County Assembly took a different view on this matter. The thrust of their argument in response to the first preliminary issue was that the IEBC, in Gazette No.9956 of 2022, published on 24th August, 2022, set out the names of the elected members of the Nyamira County Assembly, and further, that this was not the limit or absolute number of Members who were required to sit in the Assembly at any given time.

Counsel further noted that when the Constitution and the County Governments Act imposed the requirement of two-thirds, this could only refer to two-thirds of the Members present at any particular time. According to the Counsel, an alternative interpretation would mean that no activity could go on should there be a vacancy or a challenge in filling the vacancy, and further, that any business that has been transacted by the County Assembly of Nyamira on the basis of the members of the County Assembly of Nyamira, at the time, would be null and void. Counsel further stated that this issue was a question of fact that ought to be determined through the examination of evidence during hearing.

On the second limb of the preliminary objection relating to voting by proxy by the four MCAs, Counsel for the Governor stated that this was alien to the county assembly

procedures, illegal, null and void. Counsel further stated that no authority was granted by any Member to vote on their behalf, by proxy, and that the four MCAs in whose names proxy votes were recorded had provided sworn statements confirming that they were neither present in the Assembly nor did they issue an authority written or otherwise for any members to vote on their behalf.

In this regard, Counsel for the Governor referred to Standing Order No.67 of the Nyamira County Assembly Standing Orders, which requires the decision of the Assembly be made by members present and voting.

Counsel argued that the act of proxy voting was expressly prohibited and was a nullity as it contravenes Standing Order No.67 of the Nyamira County Standing Orders and the principles of representative democracy. It was counsel's case that the unauthorised casting of votes in the names of absent Members without authority constituted fraudulent misrepresentation, forgery and impersonation, further vitiating the entire process. As such, the Governor takes the view that the maximum number of voting MCAs would have been 19 MCAs.

The Governor concludes that the required statutory threshold of 24 MCAs to support the Motion was not achieved.

In response, Counsel for the County Assembly stated that the delegation of voting by proxy was carried out in a right manner, and further, that the proxy letters were available as evidence of the said delegation. In support of this submission, Counsel referred to the case of *Mukisa Biscuit Manufacturing Company Ltd. vs. West End Distributors, 1969, EA, page 696*, which set out the threshold for preliminary objection. In particular, counsel stated that the issues raised and in question; that is, the number of persons who voted, was a contested fact that ought not to be argued at the preliminary stage.

He further stated that although the Governor's counsel indicated that there was evidence of affidavits sworn by four MCAs, averring that they did not delegate such authority, the County Assembly would, at the hearing, provide evidence of mobile telephone and email communication to counter this allegation. It was, therefore, not possible for the Senate to make a determination on the matter at the preliminary stage without sharing evidence on the matter.

Counsel further argued that although proxy voting was not expressly provided for in the standing orders, the Speaker of the Nyamira County Assembly had exercised the discretion provided for under Standing Order No.1 of the Nyamira County Assembly Standing Orders to allow for the proxy voting. He further stated that although the standing orders were silent in expressly providing for proxy voting, this did not bar the use of proxy voting in the Assembly.

Hon. Senators, following the oral submissions on the preliminary objection and the responses, Sen. Edwin Sifuna, Sen. Enock Wambua and Sen. (Dr.) Boni Khalwale sought various clarifications from Counsel, including on the relationship between provisions on the Constitution, on vacation of office by Members of Parliament or County Assemblies *vis-à-vis* the provisions of law, as that set out thresholds for voting on a matter; at what point the membership of a County Assembly is determined, after election or whether this is a moving target, and whether it will not be prudent to give the

County Assembly the opportunity to adduce evidence on the matters raised in the preliminary objection in the main hearing. Subsequently, the respective counsel gave their responses to the questions and clarifications sought by hon. Senators. Arising from the preliminary issues canvassed, the following are the issues that require determination by the Senate-

(1) Whether the preliminary objection raised qualifies as a preliminary objection, properly so-called, and whether, therefore, its determination must precede the further progress of the current impeachment process.

(2) If the answer to the first issue is in the affirmative, then whether the two-thirds threshold required for voting on the impeachment Motion of the County Assembly was met.

Hon. Senators, I shall commence with the first question, which is whether the preliminary objection raised qualifies as a preliminary objection, properly so-called, and whether, therefore, its determination must precede the further progress of the current impeachment process.

As you will recall, the Senate has previously been confronted with this question in previous impeachment proceedings. The question of what constitutes a preliminary objection was well set out in the leading *case of Mukisa Biscuit Manufacturing Company Limited vs. West End Distributors*. This is what, in that matter, the Court held.

“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings and which, if argued as a preliminary point, may dispose of the suit. Examples are on the objection to the jurisdiction of the court or a plea of the limitation or submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration. A preliminary objection raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

Hon. Senators, in light of this similar decision, it is now well settled and established in our practice that a preliminary objection does not require evidence to be adduced as proof of its existence. It is limited to points of law and cannot be raised if a fact has to be ascertained by the use of evidence to be adduced.

Reference has been variously made by counsel for the Governor and counsel for the County Assembly to the jurisprudence that has been laid down by this House in the two Kericho impeachment matters, now commonly referred to as Kericho I and Kericho II, in which the Senate arrived at different conclusions on the nature of preliminary objection and the appropriate place at which to make a determination. In fact, there was no contradiction in the determinations made by this House in Kericho I and Kericho II.

In Kericho I, the Senate determined that a classical preliminary objection was one which is purely a matter of law and which required no evidence to be adduced for its determination. In that case, it was not in contention that the number of MCAs who had voted in support of the impeachment Motion was 31. It was also not in contention that the total number of Kericho MCAs was 47. The only question was whether 31 members constituted the two-thirds threshold as required by law.

In Kericho II, on the other hand, the question was whether some of the MCAs alleged to have voted in support of the Motion did actually vote. This was a matter requiring evidence to be adduced, including the examination and cross-examination of the said MCAs. Accordingly, this was not a matter that could be determined at a preliminary level without hearing the evidence. Kericho II was, therefore, ruled to belong to the second category of preliminary objection that can only be reasonably subsumed in the full hearing, but for which, a determination by the Senate would have to be made at the end before the proceedings to vote on the charges. The question, therefore, is whether the current preliminary objection belongs to the jurisprudence of Kericho I or Kericho II.

Hon. Senators, in the current impeachment proceedings, it is not in contention that there were 19 MCAs of Nyamira present and voting at the time of impeachment. Secondly, although there is contestation about the validity of the votes purportedly cast by proxy by another four members, there is no contestation that the total number of members who voted did not exceed 23 members.

The County Assembly, by its own admission, has submitted a list of 23 Members as having supported the impeachment. The Governor's side, on the other hand, object to this impeachment on the basis that the correct threshold should have been 24 members rather than any lesser number. What is in contention, therefore, is whether the threshold of Members required to have voted in the matter is 24 or 23, or any lesser number.

What is additionally in contention is whether in reckoning the two-thirds threshold, the number of MCAs is to be applied as 35 or 32. The legal question in contention is whether the number of legislators of the County Assembly remains fixed and unaffected by any vacancies for the purposes of reckoning thresholds or whether as Counsel Katwa Kigen, for the County Assembly argues, it is a moving target. That cannot be reckoned in advance and depends on the membership of the Assembly at a particular time having subtracted any vacancies existing.

Hon. Senators will appreciate that this is a constitutional and legal question of the most fundamental ramifications, the decision on which reverberate far and wide and well beyond Nyamira County Assembly and possibly including this Chamber, where at various times and for various reasons, we have had vacancies.

The decision the Senate takes on this legal question will no doubt bind us going forward in the manner in which we reckon delegations for purposes of voting when there are vacancies in the Senate.

From this perspective, it is clear to me that even though a number of matters of fact were raised by the County Assembly in their preliminary objections and fundamental legal questions of threshold and whether the correct number of delegations that were required to impeach the Governor of Nyamira County, at the time the impeachment was undertaken was 24 or 23 or any lesser number, is a pure question of law, whose determination by the Senate is necessary before these proceedings can continue. This is a preliminary objection of Kericho I, typology.

Hon. Senators, this legal question goes to the substratum of the impeachment proceedings and has the prospect of terminating the proceedings at this point. Accordingly, as I have guided from this Chair before, this kind of preliminary objection raised by the Governor requires to be determined by a vote of the Senate, which is the

trial court in the impeachment matters. It also obviates the need to answer the second question on whether the threshold was met as this is what will be the subject of the vote.

Now, the manner of proceedings to this vote will be by a Motion moved in the usual manner after the Notice of Motion has been given. Debate will ensue in the usual manner and the vote will be taken upon the conclusion of debate. To this end, I have directed the Clerk of the Senate to prepare and circulate a Supplementary Order Paper containing a Notice of Motion and Motion limited to the preliminary objection on the threshold that was required for this impeachment.

Hon. Senators, the decision on the proposed removal from office, by impeachment, of the County Governor and any consequential or incidental decision thereto are matters concerning counties, as has been previously ruled in all impeachment processes undertaken by the Senate. These decisions are made by the Senate by vote, by county delegations.

Accordingly, the preliminary issue will be upheld only if it is supported by votes of at least 24 delegations. If the preliminary issue is upheld, this impeachment shall terminate forthwith. If, however, the preliminary objection issue is negated, the Senate will proceed to the main hearing of the impeachment proceedings. It is so ordered.

Thank you, Hon. Senators.

(Applause)

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

Hon. Senators, you will be provided with the Supplementary Order Paper that is going to guide us in the proceedings for the afternoon.

(Loud consultations)

(Several Senators stood up in their places)

Order, hon. Senators. Please, let us take our seats and settle down.
Sen. Osotsi, Senate Minority Leader, kindly take your seat.

(Hon. Senators resumed their seats)

Hon. Senators, I believe that all of you now have the Supplementary Order Paper. That is the one that will guide us. Can Sen. Omtatah, Sen. Onyonka, Sen. Fatuma Dullo, Sen. Enoch, Sen. Hamida and Sen. Olekina be supplied with the Supplementary Order Paper, please? It is also available in your iPads. In the event that you do not have the physical copy, you can access a soft copy on your iPads before you.

Clerk, you may proceed to call the next Order.

NOTICE OF MOTION**RESOLUTION OF THE SENATE TO UPHOLD THE PRELIMINARY
OBJECTION ON THE THRESHOLD REQUIRED FOR REMOVAL
FROM OFFICE, BY IMPEACHMENT, OF A GOVERNOR**

The Speaker (Hon. Kingi): The Senate Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I beg to give Notice of the following Motion-

THAT, AWARE that pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on Tuesday, 25th November, 2025, the County Assembly of Nyamira approved a Motion for the removal from office by impeachment, of Hon. Amos Kimwomi Nyaribo, the Governor of Nyamira County;

NOTING THAT, by letter Ref. SPK/CAN/1/2025, dated 25th November, 2025, and received in the Office of the Speaker of the Senate on 26th November, 2025, the Speaker of the County Assembly of Nyamira informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly including the list of 23 Members of the County Assembly that voted in favour of the removal from office, by impeachment, of the Governor of Nyamira County;

FURTHER NOTING that one of the preliminary objections raised by Hon. Amos Kimwomi Nyaribo, the Governor of Nyamira County, was that the requisite threshold for passage of a Motion for the removal of a Governor from office, by impeachment, being two-thirds of the Members of the County Assembly, as provided for in Section 33 of the County Governments Act and Standing Order No.62 of the Standing Orders of the County Assembly of Nyamira is 24 Members of the County Assembly and was not met;

NOW THEREFORE, the Senate resolves to uphold the preliminary objection that the threshold required for removal of a governor from office, by impeachment, contemplated in Section 33 of the County Governments Act and Standing Order No.62 of the County Assembly of Nyamira was not met, and forthwith terminates the hearing on the proposed removal from office, by impeachment, of Hon. Amos Kimwomi Nyaribo, the Governor of Nyamira County.

The Speaker (Hon. Kingi): Let us move on to the next Order.

MOTION**RESOLUTION OF THE SENATE TO UPHOLD THE PRELIMINARY
OBJECTION ON THE THRESHOLD REQUIRED FOR REMOVAL
FROM OFFICE, BY IMPEACHMENT, OF A GOVERNOR**

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I beg to move the following Motion-

THAT, AWARE that pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on Tuesday, 25th November, 2025, the County Assembly of Nyamira approved a Motion for the removal from office by impeachment, of Hon. Amos Kimwomi Nyaribo, the Governor of Nyamira County;

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FURTHER NOTING that one of the preliminary objections raised by Hon. Amos Kimwomi Nyaribo, the Governor of Nyamira County, was that the requisite threshold for passage of a Motion for the removal of a Governor from office, by impeachment, being two-thirds of the Members of the County Assembly, as provided for in section 33 of the County Governments Act and standing order 62 of the Standing Orders of the County Assembly of Nyamira, is 24 Members of the County Assembly and was not met;

NOW THEREFORE, the Senate resolves to uphold the preliminary objection that the threshold required for removal of a Governor from office, by impeachment, contemplated in section 33 of the County Governments Act and Standing Order 62 of the County Assembly of Nyamira was not met, and forthwith terminates the hearing on the proposed removal from office, by impeachment, of Hon. Amos Kimwomi Nyaribo, the Governor of Nyamira County.

Mr. Speaker, Sir, let me first take time to explain what this Motion means. We must celebrate the Senate for how refined our processes have become over time. Previously - by previously I mean before this current Senate of the 13th Parliament - we have had similar situations where a county assembly would come before the Senate and argue that they had impeached their governor and ask us to proceed and listen to the case.

The previous ruling given by the Office of the Speaker, which many of us disagreed with and felt it was a great travesty of justice - the greatest that has ever happened on the Floor of this House - was the ruling that was made back then; that an impeachment process ends at the Assembly and what the Senate needs to look at is the

case and material of it, then make a determination on whether a case has been made for impeachment of that governor or not.

In this present session of the Senate, we have since evolved and refined our processes better to a point where when there is a preliminary objection, the House makes a decision first, which is a good thing. I believe that with the coming of age of our county assemblies, together with us here in the Senate, we will continue to make the case that there is no alternative to the law because the law is the law. We may not agree with it or it may not be in our favour today, but it is that which binds us and keeps us as a civil society. Anything in the absence of the law is anarchy.

In the rule of the jungle, it favours nobody; those in power today or those that do not find the favour of the powers that be. Therefore, we must continue to make the case that in looking into the proceedings such as these, we must first satisfy ourselves as the Senate that the process and procedure went in tandem as ascribed and prescribed in law.

You would want to believe that a plain reading of Section 33 of the County Governments Act, 2012, is something that everybody can easily interpret. In fact, earlier today while listening to the proceedings, I walked to the Clerk and asked what happened to what we used to have back then called the Legislative Summit. I remember attending it in 2016 and the subsequent years because it used to provide a good forum for exchange of ideas on procedures and processes between the Senate and the 47 county assemblies.

Looking at the case of the two impeachments by Kericho and the Isiolo one, it is clear that there is need for this House, as the House that protects the interests of county governments, to set in law the procedure and make it clear in black and white to our colleagues in the county assemblies of what the Senate considers to be a foolproof process of impeachment of a county governor, which when you undertake and bring it here, we go straight to the process of listening to what your dispute is.

This is not to tell the people of Nyamira, through their representatives, that there are no issues in Nyamira because there might be issues. Listening, because I happen to come from the region, I know that there are many issues. Remember in this House, we have entertained and even listened and tried to reconcile two factions of the same county assembly that were sitting in separate parts of the county. That tells you that there is a problem in that county.

Before we get there, unfortunately, we must ask ourselves whether this matter is properly before us, as a House. That is the question and the import of this Motion. Have we been properly invited and has the governor come through the main door or through the windows to get to the Senate?

As a House, we make the point every day that we must remind our county assemblies that we cannot make law, because that is primarily what we do in this House, and then lead the way in violation of the law, unfortunately. As such, when a matter such as this appears before us, we must be satisfied that indeed a proper procedure was followed.

For the past three sessions, and this is the part that we take the blame for also, you know for a fact that we have refused as Parliament to pass the law on the impeachment procedure. I am very intentional about the use of the word “refused”. I have never seen a law as critical as this that has gone round in circles as it has been.

I can recall I do not know as way back as which year that there has always been an attempt but, unfortunately, it never gets to the end. That means we are leaving our colleagues in the county assemblies to guess and try to find their way on how to follow this procedure. These are some of the issues that this Motion is asking us to determine. For example, today, there are matters which if we had set out properly in an Impeachment Procedure Bill, then we would not be debating this. By now, we would be listening to the case by the county assembly and responses from the county governor. Unfortunately, here we are.

It is our country and we must be mindful of it. We have been charged with the responsibility of ensuring that we lead this nation into a state of prosperity by ensuring that people respect the rule of law.

Mr. Speaker, Sir, mathematics is plain and simple. You know that 12 divide by 2 is 6. If you want to get a third of 12, then it is 4. If you want two-thirds, it is 8. You would imagine that in many of our county assemblies, especially following through with the decision that this House made barely a year ago, in the first impeachment proceedings against the Governor of Kericho County, county assemblies will be aware of the decision of this House. This is because this House made the decision that there is no quarter or half a human being. As long as it is a decimal, even if it is a point one, it means that you go to the next whole number.

Mr. Speaker, Sir, because the language of the Constitution is not less than. That tells you that it cannot be below. If it is 12 and you have 12.1, already 12 is less than and, therefore, it cannot qualify. It is for that reason we have said, as long as you have a decimal beyond .00, you go to the next number. That having been the case, and if our colleagues from the County Assembly of Nyamira had taken time to read through the provisions and the ruling that this House made in that matter last year, they would have appreciated that the requisite quorum as prescribed in law would have been 24.

The second thing which I find quite strange is that it is even in their Standing Orders because that is what I heard the Counsel from the Assembly say. With tremendous respect to Advocate Katwa Kigen, because he is a Senior Counsel and someone I respect, a friend of mine, that in the County Assembly of Nyamira, their Standing Orders provide for an alien creature. Alien to any legislature world over has a provision called voting by proxy. I have never heard of such an animal.

Mr. Speaker, Sir, if you follow the proceedings of this House, before we take any vote, the Serjeant-at-Arms, after the Division Bell is rung, always moves around to ensure that all the 67 voting booths, if they are not occupied by an individual voting, then that machine is inactive by removal of the card to prevent exactly that because it is not possible to transfer your delegated role.

It is not also possible to argue and say, "I was away at a funeral and I called my colleague and told him to vote for me in this or another way." I have not taken time to read the County Assembly's Standing Orders of Nyamira. If there is any other county assembly in the Republic of Kenya that has such provisions; please, delete it because it is an illegality and there is no way anyone can take you seriously as a county assembly if you have such provisions in law.

The parliamentary practice is as such that you vote as an individual, and if you have delegated power like in the case of the Senate--- For example, if you are a member of a delegation and the head of your delegation has given you a mandate to vote, then you can vote on their behalf as it happens. This is because, the Senate is unique. We vote by delegations but county assemblies vote by individuals. They do not vote by delegations.

Therefore, that is the second basis upon which we are being asked, as a House, to consider that matter. Therefore, if this House agrees with this Motion as moved, then it means that we have not told the County Assembly of Nyamira that they do not have a case before us. We have only told them that the case is not properly before this House. Should you go back, organise yourselves and get the requisite numbers and bring it, then we shall open the file and listen to your issues.

Mr. Speaker, Sir, they are not the first that this has happened to. I will give the unfortunate example of my county. When they came here the first time, they had a similar issue on threshold. This House sent them back, they did what they needed to do. That is not to say that I am encouraging the County Assembly to go back and do what they did, that is their decision, but matters must be properly before us.

As we speak today, it still pains me when I see two governors, Governor Mike Sonko and Governor Waititu. The truth of the matter is that everyone knows that the threshold was never achieved in those two county assemblies. If you read through the pleadings that were brought before us, it was clear and obvious and yet, back then, this House because of the prevailing political environment of the country at that time, we were told in black and white that we were not the county assembly, “do not count. Proceed and listen to the case.”

Mr. Speaker, Sir, I am happy that, at least, we have refined our processes to the point that county assemblies know that we will come and check. We will have to satisfy ourselves that you followed the procedure before eventually making a determination.

This is my last point because I do not need to belabour this matter. This is a straight-forward matter. I will make my submissions and request my counterpart leader from the Minority Side to second, and then we can listen to our colleagues and make a determination. If our colleagues are satisfied that those two points do not matter, then we can proceed and listen to the case. Otherwise, they can choose to be firm and say that this is the true state of the matter.

Unfortunately, the maxim of law-making is such that you must always remember the law that you passed in the hands of your worst enemy. Colleague Senators, tomorrow, you can be a cabinet secretary, a president, deputy president or even a governor. Will it satisfy you if you know that the procedures of our country are such that, even if five people met and they said they have impeached you, then the processing House will listen and say, it does not matter? Numbers do matter. I do not believe that it was out of lack of something useful to include in our constitutional dispensation that we set a threshold and a limit that must be attained before a governor comes to this House.

Having said that, the last point I wanted to say is that, I hope after this process, we must return the Legislative Summit and I am making this case. One, two and three county assemblies have told us that there is a problem in the county assemblies. We do not seem to be reading from the same script. An impeachment is not just a political tool to be used

on your enemy. It is a procedure of law which, unfortunately, you must attain. If you fail to attain it, there are consequences to it.

Why should we go back to the Legislative Summit? It is so that this House, led by a very competent technical staff, can set out even the charges that need to be brought before us. I do not want to say a lot because I have to balance between the things I say and appearing as if I disagree completely with what the County Assembly is saying. Even in laying out charges before a county governor, we must provide the template as Parliament.

I have listened to almost 20 impeachments in this House, but today's charges were the longest. The charges were read for almost 30 minutes. Even the person being accused, by the time they were rising to plead guilty or not, they had forgotten what the initial charges were. We must do better and develop a template for that.

Mr. Speaker, Sir, I will not say more than that. I have said everything that I needed to say. Colleagues, the decision is yours. I will sit and listen also. That is my perception and what I feel about this matter but, ultimately, the decision is yours. Remember, you are seated as the jury and you have to satisfy yourself before making a decision on whether to proceed and open the case or terminate it because it is not properly before us

With those remarks, I beg to move and request the Leader of the Minority, Justice (Retired) Steward Madzayo, to second this Motion. I thank you.

Kiongozi wa Walio Wachache (Sen. Madzayo): Asante, Bw. Spika. Ninaunga mkono yote aliyosema ndugu yangu, Aaron Cheruiyot.

Kitu cha kwanza, ni lazima tuelewe ya kwamba huu ni mtihani mkubwa sana ambao sisi, kama Maseneta katika hili Bunge, lazima tuzingatie. Kumwachisha kazi ama kuangalia zile taratibu za kumwachisha kazi Gavana wa Nyamira sio jambo jipya kwetu. Lakini, cha kusikitisha ni kwamba katika hizi kaunti zote tunasaidia hapa, masikizano yanakuwa madogo sana.

Ningeomba kitu kimoja, ukiwa gavana, kuwa na taratibu za kusikiza wenzako na kuelewana na wenzako ili uweze kuendesha uongozi wako bila matatizo yeyote. Hivi sasa, kuna mustakabali ambao umeletwa hapa katikati ya kwamba, kesi hii iweze kumalizwa. Ni kweli, tumefanya kesi kama hizi hapo awali, lakini, kesi hii ni ya kunukuu na kuangalia kama ile nambari iliyopeanwa ya 24 inaweza shuka chini au kupanda juu?

Maseneta ndugu zangu, nataka tuangalie, je, hili goli lililo pale, tunaweza litoa? Jibu ni kwamba, la. Swala lililo mbele yetu ni muhimu sana na ni lazima tulijibu na tuchukue msimamo. Nawaomba Maseneta, huu wakati mgumu ambao tunao wa kumuachisha mtu kazi unaweza leta hasara. Watu wa nyumbani kule Nyamira wanataka wasikizane. Sisi tunaweza kusema yote haya lakini kama huko nyumbani hakutakuwa na kusikizana, hata ukirejeshwa, wewe kama gavana unaweza kujipata katika kona mbaya na pia urudi hapa tena.

Kwa sababu hii sio mara ya kwanza, ingekuwa bora zaidi tuchukuwe msimamo ili jambo kama hili lisotokee tena. Naunga mkono aliyosema yote ndugu yangu, Sen. Cheruiyot, ya kwamba, Maseneta waliopo hapa, tumieni akili zetu kuamua hii kesi. Hii ni kwa sababu Wakenya wote sasa hivi popote walipo, watajua ya kwamba Bunge hili

linaweza kuchukua hatua na likate kesi bila upendeleo wa aina yeyote, ili kuonyesha Wakenya ya kwamba Bunge hili liko juu.

Asante.

The Speaker (Hon. Kingi): Hon. Senators, I will now proceed to propose the question.

(Question proposed)

Now, the Floor is open for debate.

Yes, what is your intervention, Sen. (Dr.) Lelegwe?

PROCEDURAL MOTION

LIMITATION OF DEBATE ON MOTION

Sen. (Dr.) Lelegwe Ltumbesi: Mr. Speaker, Sir, I beg to move under Standing Order No.111, that debate be limited to five minutes for each speaker, and that we only have five speakers from each side.

The Speaker (Hon. Kingi): Order, hon. Senators.

Hon. Senators, there is a Motion that has---

(Loud consultations)

Just take your seat.

Sen. Kajwang', do not engage your colleague directly; you have to do it through the Chair.

Now, hon. Senators, there is a Motion that has been proposed to limit the time within which an individual Senator should speak. Now, we may process it in an official manner or through consensus. His proposal is, if you get an opportunity to speak, you do so for not more than five minutes. He has gone further and stated that there should be five Senators speaking from each side of the aisle.

Do we leave it at the five minutes per Senator speaking and see how far we will go with it?

Hon. Senators: Yes.

The Speaker (Hon. Kingi): Very well. So then, if you take to the Floor, speak for not more than five minutes. You do not have to exhaust the five minutes. You can do so even in a minute, so that we can have as many Members as possible---

(Loud consultations)

Hon. Members, let us see how far we can stretch it.

Sen. Cherarkey, Senator for Nandi County, proceed.

Sen. Cherarkey: Thank you, Mr. Speaker, Sir. This is a very interesting Motion. I agree that many people do not know that an impeachment process is a political

process. It can be measured as both civil and criminal, but beyond reasonable doubt and based on probabilities, it is political.

As I was listening to the Senate Majority Leader moving, I remembered the case of Odinga and others versus the Independent Electoral and Boundaries Commission (IEBC) in 2017 in the Presidential Petition. The decision of the court then was not based on the outcome. It was based on the process and procedure that was followed. The Supreme Court of the Republic of Kenya in *Raila Odinga versus others and the IEBC* was solely on how the electoral process was done, from the time a voter's kit was being acquired to how the voting was done.

Therefore, the process and procedure for this issue is very important. That is why I agree with the Mover of the Motion that, as a House, we have slept on our laurels by not ensuring that we pass an Impeachment Procedure Act, as per Article 181 of the Constitution 2010 of the Republic of Kenya. The Supreme Court settled the matter of procedure and the importance of processes; that was decided.

Both the Governor's side and the County Assembly's side agree that 23 people voted. However, if you do the mathematics, it should be 23.33 and when you truncate that, it should be 24. Therefore, the fact that we have agreed that the principle of Section 33 has not been met brings a lot of questions.

The Senate is a trial chamber. Do we then proceed and listen to the matter to full conclusion like in Kericho II or do we proceed and terminate it like in Kericho I, for instance? These are issues that we must ensure we discuss at any given point.

If you remember, I wanted to seek clarification on whether the Senate constituted the County Assembly before we rose in morning. Was there a vacancy? Those were the questions that we needed clarity on.

I can see my light is on, but the question to the County Assembly is based on the principle of maxims equity, which states that he who seeks equity must do equity; or is equity the vigilant and not the indolent? Mr. Speaker, Sir, at least, you are a senior lawyer. Those are principles of maxims of equity that the House and its wisdom will be subjected to, on whether we decide to proceed with the process or not. However, in my opinion, justice should not only be done, but also seen to be done.

The people of Nyamira are looking up to us to go for a full trial and listen to the issues that have been set under Article 181 of the Constitution on the issues of abuse of office, incompetence, corruption and the running of the government. It is a way we can ensure that we enrich the growth of devolution.

In conclusion, I want to agree with the Members of County Assemblies (MCAs) that one of the oversight tools under devolution includes impeachment. That is the issue on oversight. You either do an impeachment as part of oversight or any other form of oversight. Therefore, when the voting comes, let us listen keenly. We are the judges, and you know judges only come out with judgment, either concurring or dissenting at that point.

I retreat to my chamber, concede and listen to the wisdom of colleagues or lack of it. I rest my case.

The Speaker (Hon. Kingi): Proceed, Sen. Richard Onyonka.

Sen. Onyonka: Thank you, Mr. Speaker, Sir. I would like your protection from the Majority Leader, who is talking on his phone.

I happen to be in a very unique and complex position as a Member of the Kisii delegation, which is a neighbour to Nyamira, who are our brothers. This matter has been running for as long as I can remember, since I became a Senator in this House.

The MCAs have constantly disagreed over the issues in Nyamira and on several occasions, different individuals have been blamed for the issues and things that have been happening in Nyamira. I do not want to spend a lot of time explaining those things.

Even when that is a very complex and maybe completely political issue which needs to be sorted out, I stand and defend my positions based on the law. If the law is what we have decided to follow as a people who want good governance and administration and to provide services to their people, then we have to agree that we will follow the law.

My wish would have been that we listen to all the charges that have been brought, but then that means that we would have pre-empted the discussions about the issues of the preliminary objections, and indeed, the rest of this case.

My suggestion would be, if Members of this House feel that the threshold was not reached, then we accept that as a position. The problem I was unable to interrogate was that in Nyamira, there were three members of the county assembly who were not there when the by-elections were going on to fill the vacants seats. I am not talking about the ones who travelled. There were about two or three who were having by-elections the other day, and one had passed on. They had not been at the Assembly for close to two years.

So, what many people were asking me, as I sat here, is the fact that these people who have been at the county assembly have only been 23, what does it mean? My worry is if you impeach Mr. Nyaribo with 21 or 22 members of the county assembly and this House convicts, there is a likelihood that the court will refuse to convict.

Mr. Speaker, Sir, I want to encourage my colleagues to follow the law and make a decision. Whether that law is good or bad, my point is that we have set a precedent. The precedent is there on Kericho I and Kericho II.

I also wanted to mention that I was very impressed with Katwa Kigen's argument that when you have those people, if they are 21 or 22 in the county assembly, does the law allow them to then vote because they are the ones who are sitting there or can they then even vote through proxy and continue making the arguments? My argument is that if it is the law that the threshold should have been 24 members of the county assembly - and that threshold was not arrived at - then we should let the matter rest.

Thank you so much.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. At the beginning when I listened to the preliminary objection, I saw it as a straightforward case of 35 times two-thirds. That is what I saw and I was persuaded. However, both parties have invited me to want to hear more; both the Governor and the County Assembly.

What do I mean by that? People watching me in Nyamira now want us to respond to the concerns by the County Assembly. Nowhere in the jurisprudence of this country have we ever tested the issue of who is voting at the two-thirds majority. What do I

mean? You all know that in this House, we have been voting with the threshold of 24, even when our brother, the late Cheptumo was gone.

Now, with what has been brought by the County Assembly, they are telling us, please, remember there were three MCAs who are not in that County Assembly. This is the time for us to prosecute that and, therefore, we should give parties an opportunity to prosecute that matter to see which way it should go. This will ensure that we guide county assemblies and even this Senate on what we should be doing in the event that Members are not in plenary.

Again, parties have invited me on the issue of voting by proxy. You all speak good English. Voting by proxy simply means a member of a team, like the one in the County Assembly of Nyamira, asking another member to vote for him specifically in the same manner he would have voted. Let us not be emotional.

Even in this House, we normally ask the leader of the delegation to tell the appointed member of the delegation to vote exactly in the manner the leader of that delegation would have voted. So, we need to hear submissions from both parties, so that it would help us to know in future how we should handle this kind of issue.

My final point, again invited by both parties, is that they talked about letters. We did not know letters were brought. This is the time for us to allow them to prosecute the matter, to show us these letters, just in the same way we did in Kericho II and those ones who thought this had not taken place were given an opportunity.

Last but not least, the County Assembly has come here looking for justice and so has the Governor. It, therefore, makes us stronger, more credible, more fatherly by hearing both. Let the preliminary objection be determined after we have heard the whole issues, then we make a decision.

I want to defeat in my submission the points raised by the Senator of Kericho, the Leader of Majority; it is bigger than what you think. Kericho I was straightforward, Kericho II was straightforward. This one, both parties are not in agreement. In Kericho I, we all remember, both parties were in agreement about the number of Members of County Assembly (MCAs) who had participated. For your information, the Leader of the Majority, if you go by the presentation by the Governor, it means 23.3 people voted, which we round off to 24. However, if you go by the persuasive argument by the county assembly, it means in the absence of those three, only 21.3 people voted, rounding it---

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

Sen. Wambua: Mr. Speaker, Sir, two or three things. First is to correct the impression by Sen. Boni Khalwale that after we dispense with this Preliminary Objection, we are going to meet it again at the final stage of voting, because that is not the case.

If I heard you right, you remember in Kericho II, the Speaker ruled that the Preliminary Objection should be subsumed into the main hearing. So, when we are voting, we will begin voting with the Preliminary Objection. For now, what the Speaker has asked us to do is to vote on the Preliminary Objection, dispense with that matter here, and we are not going to meet it at another given time. That should be very clear to Members. If we are done with it here, we are not meeting it again.

I asked lawyer Katwa Kigen a question and I wanted to learn from him. I am afraid I did not learn a lot. At what point does a membership of an Assembly determine?

You cannot tell me that a constitutional and legal requirement is a moving target. That becomes very tricky because then it means that because as a Senate, we vote as 24 delegations, if there is a vacancy in one delegation, then we must lower the threshold for voting. It means that because the requirement for a presidential election is at least 24 counties, then if, for some reason, one of the counties does not participate, then we should lower that threshold.

I still need to talk to legal counsel at some point outside this Chamber to understand how legal requirements can be moving targets that we keep pushing up and down depending on the number of Members in the Chamber.

On the issue of the second Preliminary Objection, on proxy voting, again, Sen. Boni Khalwale got it all wrong. The voting in the Senate is by delegates. We do not have delegations in county assemblies. So, it cannot be that a Member of a County Assembly representing one ward can ask another Member of the same county assembly representing a different ward to cast a vote on behalf of that ward. That becomes a bit complicated.

I have listened to the Majority and Minority Leaders as well as to submissions from colleagues, and I have heard one thread that is running across; the search for justice. The county assembly, the Governor of Nyamira and the people of Nyamira in totality are all looking up to the Senate for justice.

As I continue to listen and be persuaded by different Members on the same subjects, I want to ask all of us to ensure that we just do not dispense justice, but let the eyes of the public be seen to have dispensed justice. I submit.

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

Sen. Kinyua: Asante, Bw. Spika, kwa kunipa fursa hii. Kuanzia mwanzo, ni dhahiri shahiri ya kwamba tunachoangazia ni ikiwa kulikuwa na idadi tosha inayotakikana kumtimua Gavana. Inayohitajika kulingana na sheria ni thuluthi mbili ambazo zilipaswa kuzingatiwa. Sheria hii inayonukuliwa ya kusema kuwa tunahitaji thuluthi mbili ni Sehemu ya 33 ya sheria ya Serikali za Kaunti.

Ijapokuwa tutakuwa tukiangazia hayo na vile imesemekana haki ni lazima ifuatwe, Katiba ya Kenya katika Kipengee cha 159(2)(d) kinasema haki itolewe bila kujali mno taratibu za kiufundi vile ambavyo tungelitaka hata ijapokuwa tunazingatia idadi. Tukiangalia vile ambavyo sheria ziko, hii ni sehemu tu ya sheria za kaunti. Katiba ya Kenya inasema tusifuatilie mno taratibu za kiufundi. Kwa sababu Katiba ndiyo sheria ambayo inapaswa kufuatwa ili zile sheria zingine zote zifuatwe, ni sisi hapa tuangazie ya kwamba haki itendeke. Haki inapaswa kuonekana ikitendeka.

Nimeketi hapa katika Seneti hii tulipokuwa tukiangazia wakati Kaunti ya Nyamira walikuwa na vikao katika sehemu tofauti. Kwa hivyo, ningelitaka tusifanye tu mambo hapa tukifuatilia vile nimesikia ndugu zangu wakisema. Tufuate sheria lakini haki inapaswa kuonekana ikitendeka kwa watu wote wa Nyamira.

Mwongozo wetu kama Seneti, Maseneta na kama nchi ni Katiba ya Kenya. Katiba nimeinukuu vizuri katika kile kipengee cha 159. Nasikia Kiongozi wa Wengi anauliza nimenukuu wapi? Nataka kumwambia kwamba haki itolewe bila kujali mno taratibu za kiufundi.

Nashukuru kwa kunipa fursa hii. Nawarai wenzangu wafuatilie ndiyo haki iweze kutendeka. Haki kwa Nyamira ni haki kwa Laikipia na hata Kericho. Tulifanya haya

mambo hapa kwa Kericho tukangoja. Kwa hivyo, hata siku ya leo, tutafanya hiyo hiyo haki na sio kufanya tu, haki inapaswa kuonekana ikitendeka kwa Wakenya wote.

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

Sen. Maanzo: Mr. Speaker, Sir, the maxims of equity also say, he who comes to equity must come with clean hands. The fact that there was Kericho I and 2 was enough to send a message. It is a matter of public notoriety that the threshold is known it be two-thirds and the calculations were then done with experts and that matter has been settled.

When in the same matter in a national election, you said that the presidential elections are 50 plus 1. There is no way you will come up with any other situation. There is no way you will come up with any other situation. If in a presidential election there is no one who garners 50 plus one votes, then there will be a re-run. In this particular case, we should adhere to the law on two-thirds. If there are no two-thirds, there is no case before the Senate. This should go to every county assembly, so that they are very careful. The moment they are not garnering two-thirds majority, then they know they have no business coming to the Senate, because the law is very clear.

Mr. Speaker, Sir, there is also the issue of the standing orders of the county assembly. The law in the country follows the Constitution and the statutes. Whatever is made under the standing orders must conform to those two. You cannot have standing orders which allow a further delegation. The assembly exercises delegated power of the people. A person whose power has been delegated cannot delegate further. It is better that every county assembly in the country learns this.

Impeachments have no time limitation. You can even impeach one week to the general elections. There is always an opportunity for the county assembly to come back. We have seen this with the Kericho I and Kericho II impeachments. The most important thing in the circumstances, is to follow the law because we are all equal before the law. We should do the right thing, so that we can save the Senate's and the Assembly's time.

The Speaker (Hon. Kingi): Proceed, Sen. Thang'wa.

Sen. Thang'wa: Thank you, Mr. Speaker, Sir. Before I became a Senator, I used to follow the proceedings of this House. One Senator for Siaya then, Hon. James Orengo, said that impeachment is a political process. I think so many people took him seriously. You can even hear from Sen. Cherarkey. They still believe impeachment is a political process. The mandate to impeach is sacred and not political. It cannot be used as a political weapon to intimidate or coerce. That is why this House must follow the law from the beginning.

We have heard here, even from the Leader of Majority, it has happened before. We had governors who were impeached by the Senate, yet there was no threshold at their county assemblies when they were impeached. That is the former Governor of Kiambu County, Hon. Waititu and the Governor of Nairobi City County, Hon. Sonko.

We have had two cases of the Governor of Kericho, who is currently in office. In Meru, we also had almost something similar to that and this one.

We have now seen that there are rogue speakers out there in the county assemblies. Do we enhance our Standing Orders to make sure that the speakers stand here, even before the governors stand, to take an oath and say, "yes, I am here, I brought these numbers, and they can be held personally liable?" We do not have to agree with anything that

comes from the speakers from the county assemblies if we are not given an opportunity to scrutinise.

Should we also ask that we be having the HANSARD, live footage and coverage when these impeachments are going on? Should we be asking for signed confirmations by the MCAs who have impeached someone? I will demonstrate that today when it comes to voting, by not voting through the processes, so that I be called over there to go sign somewhere to show how I voted. Can we ask that MCAs, when these impeachments come, that they should sign somewhere to show how they voted, so that we do not eject governors because someone somewhere played politics?

When I listen to this Motion, I ask myself: Do I proceed with this Motion as it is? Do I proceed with the impeachment of the Governor of Nyamira as it is? That is a question I will be answering at the end.

We have heard that some governors are sponsoring their own impeachments, so that they can garner sympathy from their people. Sometimes they collude with the speakers and say “take no numbers in there so that I can be kicked away home and I say, the Senate saved me.”

If I send them home, was it the case that the Governor of Nyamira probably sponsored it? I saw him the other day saying that he has joined the broad-based government. That is trying to coerce the Senate, that “I am now on the side of the Government. I know when I go to the Senate, I am going to be sent back home.” I am asking myself those questions here today.

The best thing is to go full throttle. Let us listen, so that we can also take this opportunity--- I have never met the Governor of Nyamira. Let me see him today speak here. Let us ask those questions that the MCAs are asking. That is something I am thinking about. I might be persuaded when we are done with debate on this issue.

I urge this Senate that we follow the rule of the law when it comes to this process. This is because going forward, we could become governors and we would not want to be brought here by a speaker, probably, who wants to overthrow a governor. The law is very clear that once an impeachment is processed at the county assembly, the speaker of the county assembly shall write to the Speaker of the Senate.

Looking at the wording of that, any speaker, just himself, can go to any lodging or room and just write that to the Speaker of the Senate without the processes being followed. Does that mean that anything the speaker of a county assembly brings is gospel truth? That we can just process it without asking how they attained to that point? I am thinking of how to vote. You will call me there and I will demonstrate how it is done.

The Speaker (Hon. Kingi): Proceed, Sen. Osotsi.

Sen. Osotsi: Thank you, Mr. Speaker, Sir. I support the comments in your ruling, that looking at the circumstances of this matter and the Constitution, the threshold of 24 was not met.

If you look at the Constitution, Article 97, which talks about the membership of the National Assembly and also Article 98 that talks about membership of the Senate, it implies that the Senate and the National Assembly membership is defined in the Constitution.

Article 177, that talks about membership of the County Assembly, also implies the same. We cannot say, and I want to agree with the other Members, that the membership of the County Assembly is a moving target. It can never be.

That aside, I see there is a problem with this Motion. During lunchtime, I listened to these Members. The mood was that they wanted this matter to go to full hearing, so that we process the preliminary objection in the full case. The Motion, as designed, is not giving us that option. It is either we agree to the preliminary objection or reject it.

Mr. Speaker, Sir, we have a danger here because if this Motion is passed as it is, it means we go to full hearing. In the full hearing, the matters that will arise, if they are substantial enough to compel this House to impeach the Governor, then we will have a problem legally. At the same time, if we process this matter as it is now and say yes, then it means we will be moving away from what we had improved on Kericho I, which is called Kericho II.

My wisdom tells me that we withdraw or amend this to allow the Members to make a decision whether they want to process the preliminary objection at this point, they go the Kericho I or Kericho II way.

If we allow this Motion as it is and the vote taken is a “No”, we will be creating a precedent which will be very difficult to heal. I suggest that this Motion be withdrawn or be amended, so that it will reflect what I know Members are thinking about.

Mr. Speaker, Sir, nevertheless, I support.

The Speaker (Hon. Kingi): Proceed, Sen. Wafula.

Sen. Wafula: Asante, Bw. Spika, kwa nafasi hii. Vile vile ningependa kuwashukuru Walio Wengi katika Bunge kwa kunipa nafasi kuongoza kitengo hiki. Lakini ningependa kusema kwamba katika kesi ya mwewe na kuku, ni lazima haki iwepo. Unapomnyorosha mwewe atoroke, ni lazima ukabiliane na kuku kujua mbona alijisalimisha kwa mwewe.

Wakenya wanatazama. Katika kesi ya Kericho, tuliwaona wanateknolojia wa kompyuta na simu za rununu wakitueleza kule walipokuwa wapiga kura. Na pale maji yalipozidi unga, tukaamua ya kwamba kulikuwa na utapeli wa hali fulani na wajumbe hawa wakachukuwa msimamo. Baada ya kuchukua msimamo, Bunge hili halikutoa mwelekeo kwa wale ambao walikuwa wanapotosha umma kwa stakabadhi gushi.

Bunge hili lisiwe eneo la kutumbuiza Wakenya. Watu wameleta stakabadhi hapa. Bw. Gavana, ninashukuru kuwa uko hapa na pia viongozi wa kaunti wako hapa. Ningependa kuomba kwamba wote walioleta stakabadhi na kukiri kwamba walihusika, wapewe nafasi wajisulubishe ama wajining'inize wenyewe.

(Applause)

Iwapo yeyote atapatikana kwamba anahadaa Bunge la Seneti kwa kusema kwamba alipiga kura na wakati huo alikuwa ng'ambo, hata ninashangaa kwamba kuna wale ambao hawajakuwa katika bunge miaka miwili na wamepiga kura. Ni lazima waletwe hapa ili Wakenya waone hawa viongozi gushi ambao ni mashahidi bandia, kesi

bandia, ili Gavana pia ajitete, akitoka hapa awe huru kabisa. Na wale ambao watakabiliwa na mashtaka pia wakabiliwe na mkono mkali wa sheria.

Sasa hapa, mimi sijui kwa nini watu wanaogopa kwamba tukienda kusikiliza kesi, “gavana wangu huyu, tayari kamba iko shingoni; mambo yake yamekwisha.” Hapana! Sio kumaanisha kwamba tukiwapa hawa nafasi itakuwa kama Mohamed Ali, watakabiliwa na Gavana na kabla hajang’amua chochote atakuwa chini. Hapana. Ni kusema ya kwamba mchakato mzima uendelee, tuone wale wanaosema ukweli na walio waongo na Seneti ichukue msimamo ambao utaboresha usimamizi wa kaunti zetu.

Sasa mimi ninaomba Maseneta ambao tuko hapa, huu ni kama ule mchezo wa Manchester United na Arsenal. Umefanya mazoezi muda mrefu lakini wakati wa mchezo kuanza, mtu anasema kuwa hakuna viatu na kanuni hazikubali tucheze bila kuvaa viatu. Huu muda wote ulikuwa wapi? Mbona hukununua viatu kabla uje uwanjani? Hawa wamejipanga na wale wajipange.

Sisi kama mashabiki---

The Speaker (Hon. Kingi): What is your point of order, Senator for Meru County?

Sen. Kathuri: Bw. Spika ninasimama kutokana na Kanuni ya Kudumu Nambari 105---

The Speaker (Hon. Kingi): Take your seat, Sen. Wafula.

Sen. Kathuri: Ninaomba Sen. Wafula, ambaye jana tumemkabidhi uongozi wa Kiranja Mkuu wa Walio Wengi hapa Seneti, ametaja timu ya Arsenal, ya kwamba wanafika uwanjani na kusema kuwa hawana viatu.

(Laughter)

Mimi nimekuwa shabiki wa timu ya Arsenal kwa muda mrefu sana na sijawahi kuwaona Arsenal wakifika uwanjani na kusema kuwa hawachezi. Ni lazima Seneta apeane mifano iliyo halali na ambayo anaweza kudhibitisha. Pia mimi sijui timu yake ni gani.

Kwa hivyo, ni lazima Sen. Wafula awe na kile ambacho katika Lugha ya Kiingereza tunaita *statement of fact* kwa sababu, kutaja timu kubwa kama Arsenal kwa kejeli na hairuhusiwi kabisa.

(Applause)

The Speaker (Hon. Kingi): Order, hon. Senators. Ninafikiri Seneta wa Bungoma alikuwa anapeana tu mfano. Hata hivyo, tumwache amalize hoja yake, tafadhali.

Sen. Wafula: Bw, Spika, ninadhani kuna utapia mlo wa kufuata umaantiki wa hoja zangu. Ningependa kuwaomba tu viongozi wenzangu ya kwamba hawa wote wako huru kujieleza. Tayari tumeona pale palipo na shida lakini tuwasikilize.

Mimi nimekuwa Mwanachama wa Kamati ya Ugatuzi. Hili donda sugu la hawa watu kutengana katika hii County Assembly, hatujalijadili hapa. Tumekuwa tukiwapakata pakata tu. Ninajaribu kutumia lugha nadhifu kidogo.

Leo wamefika hapa na Maseneta wanasema kuwa “sheria haikubali; mkondo, mfumo.” Hapana. Tusiwe matapeli wa kisiasa. Leo wamejileta tukabiliane nao. Tuwapatie nafasi wajieleze, tuwaskize, tuwaulize maswali na aliye na hatia akabiliwe. Lakini wasikuwe na wasiwasi kwa sababu hawa Maseneta wana akili timamu, wamesoma, wanamcha Mungu na wanapenda haki.

Mimi ninawatakia kila la kheri wenzangu. Tuende njia ya kuskiza kesi. Ninaomba Bw. Gavana, usiwe na shida---

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

Sen. Olekina: Thank you, Mr. Speaker, Sir. I rise to support this Motion. I have never been clear in my mind on the direction that I want to take, as much as I am clear today. You can never bend the truth.

I was listening to the legal counsel for the County Assembly, where they made a case that two-thirds is defined as two-thirds of the Members present. When I look at the law, the law has never been bended to a point where it defines two-thirds as the Members who are present. The law is quite clear. It talks about two-thirds of all the Members of the county assembly.

I was listening and this has to be the issue that we must determine. Before, in this very House, we determined what two-thirds means and we all came up with the conclusion that two-thirds, for a human being, will be a whole number.

I have also listened to an argument made by the plaintiff or the county assembly that the Senate votes by proxy. That could not be further from the truth. The Senate does not vote by proxy neither does the county assembly vote by proxy.

If you read Article 123 of the Constitution, it is the only House which is defined that it votes by delegation. Even in this decision that we are going to make here, we have got to decide based on delegations; 24 delegations. So, when we keep on dillydallying on these matters, we will be making a mockery of this House. There is nowhere in the Constitution of Kenya or even the law which is now guiding this impeachment process, because I am still of the view that Parliament has not yet acted on Article 181(2), on coming up with a legislation that defines the impeachment process.

If we say we limit ourselves to the issues of Section 33 of the County Governments Act, there is nowhere that says that as a Member elected by the people of Narok County, I can delegate my vote to the people of Kericho to be able to vote on my behalf. It is absolutely not possible.

We can dillydally, we can pussyfoot, but the fact is when it comes to a preliminary objection, we have to put it into a legal test. The question to ask is, in Nyamira County, what is the number that defines 75 per cent of all the Members elected? I was happy to hear my colleague talking about a moving target. There is absolutely no way that we can say that two-thirds shall be defined as a moving target. It is something which is clearly set.

However, there is something which is a bit confusing to me. In the Senate Standing Orders, Standing Order No.7 talks about the election of the Speaker. It talks about the Speaker being elected by “all Senators”. The question is, when we were electing our Speaker, were the nominated Senators in or they were not in? What does “all Senators” mean?

Mr. Speaker, Sir, I am clear in my mind that two-thirds is 24, and the County Assembly and the County Governor have all attested that the people who voted were 19, yet the County Assembly brought a total number of 23. So, whether you call it two-thirds, using the numbers that you want to create of the people present, the law is quite clear and you cannot bend it.

Mr. Speaker, Sir, as I conclude, because I see that my light is up, we have to ask ourselves whether we want to remain as a House that plays around with the law or we want to become a House that sets the precedence and sends a clear message. This clear message will finally be set when we pass a law in this House that sets the prerequisites of bringing an impeachment process in this House. It must be---

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

Sen. Kisang: Thank you, Mr. Speaker, Sir. I rise to oppose this Motion. In Kericho I, it was as clear as day and light. There were 47 Members of County Assembly (MCAs) in the Kericho County Assembly, but those who voted were 31, and the threshold was supposed to be 32. In Kericho II, in our own wisdom, which I still disagree with, we decided to look for an expert. When we looked for an expert, I expected that when the expert gives an opinion, we would go with the opinion of the expert and not subjecting the same opinion of the expert to non-experts, who is ourselves, Senators. I did not agree with that.

Mr. Speaker, Sir, some of us opposed the 2010 Constitution because we said there was 20 per cent of that Constitution that required to be refined, and we have a referendum at a later date. However, the country at that time said we move on and vote. We voted knowing very well that there was 20 per cent of the Constitution that required some amendments.

Mr. Speaker, Sir, 15 years later, we have not amended the Constitution, yet there are some flaws in it. That is why I agree. When you check this particular county, after elections, there were 35 MCAs. By the time of the Impeachment Motion in Nyamira County, there were only 32 MCAs in that County Assembly. So, as we also look at the Constitution and the law that the Senate Standing Committee on Justice, Legal Affairs and Human Rights (JLHARC) has said they have brought to the House, we need to ask ourselves what is the threshold is? When we check between 32 and 35, the threshold on 32, is 21.3, rounded off to 22. When you go by 35, it is 23.3, which basically is rounded to 24.

We know that there were three vacancies during the time of voting when the County Assembly of Nyamira impeached their Governor. That is why I agree to some extent with the Senior Counsel, Katwa Kigen, until I am convinced, that this is a moving target.

Mr. Speaker, Sir, when we do our general elections, the presidential vote is 50 plus one. It is 50 plus one of the cast votes, not on registered voters. The registered voters in this particular case for Nyamira County Assembly is 35 MCAs. However, the positions that were filled at this particular time were 32.

So, I want to convince my colleagues, or I get convinced, that maybe it is good to give them an opportunity, that we go to full hearing. Let them convince us that there was

no threshold or there is no case. Otherwise, Hon. Members, it is good also to listen to these people.

As the Senate Majority Leader has said, perhaps we need to go back to the summit, so that we can engage closely with our MCAs. Every two years or so, we have been having the Senate summit that we engage with the governors. However, that is a governor's issue. We are likely to go out of this House after five years and come back, without even having an engagement with our MCAs, yet we are their oversight counterparts. The Senate and the county assemblies are the ones who are oversighting the counties. Where are we meeting? We do not even engage at all, apart from when they come to our committees for benchmarking.

Mr. Speaker, Sir, I reserve my vote, but I would like to say that we need an opportunity to hear the full case, and then decide from there.

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

Sen. Mumma: Thank you, Mr. Speaker, Sir. Since I will not be voting, my comment is to bring some issues that in my opinion are very important to our colleagues. It is not straightforward as to what is the number against which we determine the two-thirds. First, we actually have a law on impeachment. The only problem is that the law may not be adequate. Having had devolution for 13 years, we need to revise it, given the experience that we have had.

Mr. Speaker, Sir, Section 33(2) of the County Governments Act says if a Motion under (1) is supported by at least two-thirds of all the Members of the County Assembly, then the Governor will stand impeached.

What we need to determine as the Senate is what does “all Members” mean. Does “all Members” include Members who have passed on? Does it include the vacancies? If that is the case and straightforward, it simply means the number of all possible seats in any County Assembly. However, in the case of Nyamira County Assembly, we had one Member of County Assembly who had passed and another who had resigned. So, we need to determine first the two-thirds. Is it against 35, 33 or 32? Having decided that, the answer becomes straightforward. If it is 35, the threshold was not met. If it comes to 33 or 32, the next question will be, was the threshold met by 19 votes or is it by 23 votes? What is clear before the Senate is that 19 people attended and voted. As to whether the other four people who voted by proxy were valid votes is a matter that we cannot decide at this time. It is a matter that you would have to listen to both sides because one side has contested the validity of those four votes, while the other side has also given evidence of the validity of those votes.

Can we say this is a straightforward matter? In my view, we cannot say so. Since we want to guide and set the precedent right, the key issue to address is when the law says two-thirds of all Members, is it of all Members alive? It does not say so. Is it of all Members contemplated to be in any county assembly, which means the possible maximum number of Members of the County Assembly (MCAs)? Therefore, as we guide, I wish that Members and the House look at this seriously because we want to respect the rule of law and set the correct precedent in this matter.

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

Sen. Mungatana, MGH: Thank you, Mr. Speaker, Sir, for giving me the opportunity to comment on this Motion. This House must have a stand. I take it even back to my own family. Everybody including his brothers knew that my late father would not drink or tolerate alcohol anywhere near him. I was brought up that way and I have passed the same message to my sons and daughters. So, when they approach me or come to my house, they know there are certain things that cannot happen.

Mr. Speaker, Sir, in law, and I urge this House to accept that we are sitting as a court, there is a principle called *stare decisis*. *Stare decisis* means we must stand by what has been held before. There is vertical *stare decisis* where the Supreme Court will give direction and it is followed by the Court of Appeal, the High Court, all the way to the magistrates.

There is also horizontal *stare decisis*. If the High Court has made a certain holding in any decision, then that decision of the court at the horizontal level will continue to be held as a position, unless something changes dramatically, like if society or circumstances have changed totally.

I make this argument. Nothing has changed since this Senate said that the two-thirds must be complete. We cannot proceed on a matter where it is so clear that the law has been laid out and there is a preliminary objection. We have said it in this House and nothing has changed from the time that we made the decisions on Kericho I.

I am pleading with this House that the Senate as a father to all the county assemblies who are looking up to us. There must be clarity on the two-thirds. If they know this is what the Senate said yesterday, then they know it will say the same thing tomorrow and the next day, unless something fundamentally changes. Therefore, let us vote to finish with this matter because the numbers were not attained. A principle is a principle whether we like it or not. This is how society is built; certainty is upheld and we create a society that can grow.

On the question of whether the vacancies created will make the number of 35 go down, I want to ask sincerely from the bottom of my heart. That day we were impeaching the former Deputy President, if for any reason some Members were out, would we really have voted to move the target from the delegation of 24? These can be good arguments because maybe the lawyers have clients to please. However, in reality, can we impeach a President or Deputy President if the Articles of impeachment came here and we are supposed to impeach them, and then reduce the threshold because maybe four members are absent? Surely, will Kenyans even understand us?

Mr. Speaker, Sir, there is no moving target. The number was 35. I am not persuaded by those arguments. I am pleading with this House to be predictable. Let us stand by what we have said. It may not be popular right now, may not be even what you want, but a principle is a principle.

The Speaker (Hon. Kingi): Sen. M. Kajwang', proceed.

Sen. M. Kajwang': Mr. Speaker, Sir, in mathematics, there is what we call a vulgar fraction. It is a vulgar fraction because there is a number at the bottom and a number at the top. The number at the bottom is a denominator and the number at the top is an enumerator. Just like other vulgarities in real life, the number at the bottom is very powerful because it represents the entire population.

The question for us to consider today, in this vulgar fraction of Nyamira, what is the denominator? What is the total population of MCAs to whom the percentages and fractions can be applied? Once we sort that out, this situation in Nyamira will no longer be vulgar. It will be pretty clear on whether we can proceed or not.

Sen. (Dr.) Boni Khalwale raised a very important example. When Sen. Cheptumo was away, the 50 per cent threshold remained 24. It did not reduce to 23. There was a time when we were cooking up some Motion to push you to declare our side the Majority Side. That is the time when Hon. Wetangula resigned to be the Speaker of the National Assembly and Hon. Murkomen and Hon. Soipan Tuya left to join the Cabinet. When we looked at the mathematics and whatever had been lodged with the Registrar of Political Parties, it appeared that our side at that instant was the Majority Side. However, we talked to legal experts and they told us that the denominator, that number at the bottom, must be 67 and it is not a moving target.

Mr. Speaker, Sir, there was a time also in this House when we were passing the Elections (Amendment) Bill, 2021. It was very contentious. We only needed one vote. I thank God that the Government did not resort to trying to play around. That vote was from the Kisii delegation. The then Senator was Sen. Chris Obure. However, there was a Member of that delegation called Sen. Hosea Onchwangi. He was sought and found somewhere in River Road and came to this House panting. He cast a vote and the Elections (Amendment) Bill, 2021 was passed.

When we were fighting over the formula in the last Parliament, it would have been easy for the Government to reduce the denominator, so that the two-thirds could be achieved. However, they realised that was going to be dangerous. The Government of the day resorted to intimidation of Sen. (Dr.) Lelegwe Ltumbesi, Sen. Langat and Sen. Malala, even though Sen. Malala was a willing accomplice.

Mr. Speaker, Sir, if we can sort out this denominator, we will have clarity. However, there is a problem in Nyamira County, which we must agree on, even as we discuss the preliminary objection. This is not the first time we are debating a matter with regards to Nyamira County on the Floor of this House, be it in the Devolution or Public Accounts Committee.

We also take judicial notice that there have been several attempts to have this Motion come to this House. Whereas I congratulate the MCAs for playing their oversight role, we must also call them out regardless of the direction this matter will take. The County Assembly of Nyamira is split right in the middle. The people of Nyamira are not getting the services that they deserve. Nyamira County, sitting in the league of counties, will be at the bottom. While other counties are making progress, they are busy infighting. This Senate will stand for the Constitution, protect the weak and make sure that we provide justice to everybody.

Mr. Speaker, Sir, looking at the conversation and the public interest in this matter, I will perhaps invite you to consider invoking Standing Order No.66(3) on deferring putting of the question until a later time. The Standing Order allows you. There is nothing that says that this Motion must be voted on at this present moment.

Standing Order No.66(3) provides that option because I would like us to expose people who swear false affidavits. It is becoming a problem having impeachment after

impeachment. People come here and disown their affidavits. The only way to catch them is to proceed into full trial and ensure that someone is taken into custody for perjury.

Mr. Speaker, Sir, I submit.

The Speaker (Hon. Kingi): Proceed, Sen. Murango.

Sen. (Dr.) Murango: Asante sana, Mstahiki Spika, kwa kunipa nafasi hii kuchangia Hoja muhimu iliyo mbele yetu. Awali nilikuwa Mwakilishi wa Wadi na vile vile Kiongozi wa Wengi katika Bunge la Kaunti ya Kirinyaga. Kwa hivyo, nilihusika pakubwa kumng'oa aliyekuwa gavana wakati huo.

Ningependa kusema kuwa kumfikisha gavana hapa ili kujibu mashtaka katika Seneti kupitia Wawakilishi wa Wadi ni jambo moja gumu. Inafikia mahali hata maisha ya Wawakilishi wa Wadi yanakuwa hatarini.

Nimesikia watu wakizungumza sana kuhusu theluthi mbili ya wale ambao wanafaa kupiga kura ili kumng'oa gavana. Hii theluthi mbili ni ya nini? Ni kuni, wanyama ama watu? Kama theluthi mbili inayohitajika ni Wawakilishi wa Wadi ambao ni watu, hiyo ni kusema kuwa ni Wawakilishi wa Wadi waliochaguliwa. Kama hawakuwa, basi hawangehusika kwa sababu ili kuwa Mwakilishi wa Wadi, lazima uchaguliwe na ule kiapo. Tukisema kuwa Bunge la Kaunti ya Kisii lilikosea, itakuwa sawia na kuchinja bata kwa sababu ya kuharisha ilhali bata wote huharisha.

Ningependa kusema jambo lingine. Tunapochangia jambo hili na kusema kwamba linawiana na muktadha wa kung'olewa kwa Gavana wa Kericho, tutakuwa tunakosea kwa sababu tulipokuwa tunaongea mambo ya Kericho, Wawakilishi wa Wadi ambao walihusika walikuweco wote. Hakuna hata mmoja aliyekosekana. Tuling'amua mbivu na mbichi kwa sababu tuliwaita wataalamu kutueleza kwa undani. Tukisema kwamba tufanye uamuzi dakika hii bila kusikiliza na kujua kile kilichoendelea, naona kama haki haitakuwa imetendeka.

Kwa hivyo, Mstahiki Spika, nilikuwa nakuomba kwamba kama inawezekana, jambo lililo mbele yetu lije baada ya kusikiliza pande zote mbili ili tuwe na uwiano. Itakuwa vizuri kufanya hivyo. Uamuzi ambao tutafanya siku ya leo utakuwa uamuzi wa Maseneta wote katika Seneti. Hii ni kwa sababu katika msako wa nyani, ngedere hawezi kuhepa. Kwa hivyo, tukifanya uamuzi siku ya leo, ni vizuri tuhakikishe kwamba haki imetendeka kwa Wawakilishi wa Wadi na pia Gavana wa Nyamira.

Kwa kumalizia, ni kweli kwamba kumekuwa na mambo ambayo yamekuwa yakiendelea katika Kaunti ya Nyamira. Tukiwanyima nafasi ya kuwasikiliza, tutakuwa tumekosea. Kama tutafanya uamuzi ambao utafanya Wawakilishi wa Wadi wahisi kwamba wanachukuliwa kwa urahisi kama bei ya chumvi, itakuwa rahisi sana katika siku zijazo kwamba hata kama gavana atakuwa amekosea, tutakuwa tayari tumewavunja moyo na hawatachukua hatua ambayo wamepewa kikatiba ya kuleta gavana wao hapa ili tuweze kusikiliza na kung'amua mbivu na mbichi.

Kwa hivyo, Mstahiki Spika, naomba jambo moja tu. Ikiwezekana kwa nguvu ulizopewa, kwa sababu una uwezo, tushughulikie swala hili mwisho ili kila mtu apate nafasi ya kusikiliza na kung'amua ukweli. Itakuwa rahisi hivyo. Ikiwa hiyo haitawezekana, mimi kama Seneta wa Kirinyaga sitakuwa na budi kupinga kwa sababu sitakuwa nimeridhishwa na matamshi niliyosikia hapa leo.

Mstahiki Spika, siku hizi najua ni vigumu sana kumshawishi mbwa kwamba asali ni tamu kuliko mfupa. Nitaachia hapo.

The Speaker (Hon. Kingi): Sen. Omtatah, you have the Floor.

Sen. Okiya Omtatah: Thank you, Mr. Speaker, Sir, for the opportunity to comment on this Motion. I want to begin by associating myself with what Sen. Osotsi said, that we run the risk of the House putting this Motion to a vote, and vote to defeat the Preliminary Objection. For all practical purposes, it is turning out to be an application and not a preliminary objection because if you listened to the county assembly, they disputed the facts that required a hearing.

Much as we may not agree, what I look at are two issues which are being conflated. There is the question of quorum. When is a House quorate to conduct business? There is also the issue of threshold when voting. Vacancies can only affect quorum of a House.

We are living in days when people are being abducted. If we had a serious Motion on the Floor of this House and half of Members, that is, 24 Senators, were abducted and 23 remained, they will still have the quorum to conduct business. However, the threshold that there should be a super majority, which require 33 Senators, would have that Motion automatically defeated. Therefore, I think we have confused the question of quorum and the threshold to be achieved.

Where there is no requirement for a super majority, like in this House, 15 Senators would sit and transact business because the quorum of this House is 15 Senators. If it is the National Assembly, the quorum is 50 Members of Parliament (MPs). They would sit and transact business. However, when there is a requirement for a super majority, it is a super majority of the whole House. It does not matter whether there is a seat that is vacant or not. Even if you go to the law and the interpretation of statutes and stuff, you will find that a vacancy on a board or in a House, for as long as that vacancy does not affect, that House is quorate to conduct business. The challenge of the quorate House is to realise the threshold for passing a Motion.

If you look at Article 121 of our Constitution, it addresses quorum while Article 122 addresses threshold. For us to ventilate this question well, I would associate myself with Sen. Osotsi to request that the current Motion, which is putting us in a straitjacket, be withdrawn, so that we are allowed to ventilate on this matter the way we did with Kericho II. We should hear the entire Motion then the preliminary objection is placed after people have understood issues. We should vote first on the preliminary objection and if it is sustained, the governor is acquitted. If it is defeated, then we go and vote on the merits of the impeachment.

Listening to the mood of the House, right now we run the risk of the preliminary objection being thrown out then we shall be forced to go to that Motion and vote without consideration of whether the threshold required for the Motion to be in this House to give us jurisdiction to address that Motion was achieved or not. It is slightly dicey.

Mr. Speaker, Sir, I pray that we either amend this Motion or withdraw and re-draft it because given the straitjacket that I find myself in, I am persuaded to defeat the Motion, yet on the other side I feel that the governor has a very strong case that he is bringing out. I would only defeat the Motion because you have seen people asking and

they would like Senior Counsel Katwa Kigen to be heard on his claim that he is a moving target. He has not argued his case. Let him argue his case. Let the other parties argue their case. After we have heard the whole thing, we just vote on the merits. People have also observed that this Motion, having found itself here and the issues down in Nyamira, it is a quasi-judicial process. It must uphold all those principles. It is also a political process.

That is why it is a trial by peers. I would request that we do not run the risk of putting ourselves into a corner, and by reading the mood of the House, people would like to ventilate the issues. People would like the issues of Nyamira to come out, but also keep the Governor's rights protected. If the Governor's case is that he has been dragged here through the window and not through the front door, as the Senate Majority Leader put it, then we still have the opportunity to listen to that argument in detail.

I hoped that this issue should have come as an application and not as a preliminary objection because it does not fit the description of a preliminary objection. However, since we have argued it, it looks like an application for dismissal. We could look at the application for dismissal after hearing the parties.

I thank you, Mr. Speaker, Sir, for the opportunity.

The Speaker (Hon. Kingi): Sen. Veronica Maina.

Sen. Veronica Maina: Thank you, Mr. Speaker, Sir, for this opportunity. I join my colleagues in opposing the Motion that is on the Floor of this House because impeachment proceedings are serious proceedings. We have two warring parties at the County Assembly, the Governor and the people of Nyamira. Some of the people in Nyamira will support the impeachment and there is another group that will be against the impeachment proceedings.

What has been brought before the Floor of this House are allegations based on factual positions. There is the allegation that four or three Members voted for the impeachment proceedings using proxy. Affidavits have been filed to demonstrate that this was not the position and that they never signed for this impeachment.

I am asking myself, if this matter is determined based on the preliminary objection, how will we scrutinise the affidavits that have been brought to oppose some of the signatures that were purportedly signed in favour of these proceedings? We need to help the counties and the county assemblies to take responsibility for every proceeding they undertake, especially proceedings for impeachment because the consequences of these impeachment proceedings succeeding is taking the Governor out of office where he was voted in by a large majority in Nyamira County.

The only way to hold these county assemblies responsible is to allow a scrutiny of those signatures that were supposedly done through proxy and question why they were being done through proxy and whether they actually signed on behalf of the MCAs. Also, whether that was available to those Members of the County Assembly. That is why I join my colleagues who have insisted that the putting of the question, just like in the case of Kericho County impeachment proceedings, must be deferred until that evidence is scrutinised by the Senators, so that the people of Nyamira feel and know that the Senate has listened to both sides.

Mr. Speaker, Sir, the principles of fair trial demands that both parties be guaranteed a right of being heard. Some of these issues, if they are swept under the carpet

in such serious proceedings which are going to the permanent record of this House, how will the Senate explain itself later that these issues have been canvassed, considered and Members have determined after listening through to all the evidence that is available?

I would oppose this Motion and beg that because we created a precedent using the impeachment proceedings from Kericho County against the current Kericho Governor, we follow and abide with the same precedent and defer the putting of the question in line with Standing Order No.66(3) and allow this matter to be heard, so that we can then determine whether the threshold was met or not met.

Mr. Speaker, Sir, I agree with my colleagues who have insisted that the two-thirds threshold cannot be a moving target. That two-thirds threshold, if the Assembly chooses to conduct impeachment proceedings when three seats are vacant, it behoves on them to really make sure that they get the support of those who are available within the House, if it is the 32, to still meet the constitutional threshold. You will notice that threshold has not been given exceptions.

Therefore, if it is a moving target, how then will you be determining that threshold? Does it mean if Members are in the EALA Games and we have impeachment proceedings---

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

Sen. Faki: Asante Bw. Spika, kwa kunipa fursa hii kuchangia Hoja ya kuondoa mashataka yanayomkabili Gavana wa Nyamira kupitia kwa pingamizi ya kimsingi.

Kwanza najiunga na wenzangu kusema Hoja hii iliyoletwa na Kiogozi wa Wengi imetuweka kwa njia panda kwa sababu, ijapokua alisema kwamba tayari tumeweka *precedent* au historia kuhusiana na maswala haya, amekiuka historia hiyo kwa kuleta Hoja ambayo, iwapo tutautupa, ina maana kwamba tutaenda mbele na kumbandua mamlakani, Gavana Amos Nyaribo.

Hoja hii kwanza ina makosa. Ninakubaliana na Sen. Omtatah na Sen. Osotsi kwamba Hoja hii inatakikana kufanyiwa marekebisho ama sivyo, utumie mamlaka yako kama Spika kupitia Kanuni Namba 66(3) kwa swala la kupigia kura Hoja hii iwekwe mpaka mwisho baada ya kusikiza kesi hii.

Jambo la pili ni kwamba, kuna mambo ambayo yamezunguzwa hapa na pande zote mbili na yanahitaji ushahidi. Kwa mfano, kumeambiwa kuna viapo vya Wabunge wa Kaunti ya Nyamira wanne kusema hawakuhudhuria wala kutoa idhini ya kupigiwa kura katika Hoja ile.

Vile vile, kuna ushahidi upande wa Assembly ulioletwa kwamba, wale wanne walikuwa wameandika barua na kusema wameruhusu wale waliopiga kura kuwapigia kura hizo. Tumesema kwamba sote tunakubaliana kwamba, pingamizi ya awali, yaani *preliminary objection* ni lazima iwe ni maswala ya kisheria peke yake. Hii ina maswala ya sheria na ya ushahidi na kwa hivyo, haiwezekani sisi kufanya uamuzi ambao utatoa haki pande zote mbili bila kusikiza ushahidi upande ule mwingine na wa Gavanai ili kuona kwamba haki imetendeka.

Tuko hapa kutenda haki na kufuata sheria. *It is not an equity tribunal*, ni sheria ambayo inatuhusu sisi kuskiza maswala ya *impeachment* kulingana na Katiba na ile sheria inayo simamia serikali za kaunti.

Kwa hivyo, Bw. Spika, napinga Hoja hii ilivyowekwa kwa sasa na kwamba tutapiga kura kukataa kutamatishwa kwa Hoja hii wakati huu. Lazima tuskize ushahidi ambao utaletwa kwa pande zote. Tumeacha kazi zote ambazo tungefanya leo na kesho ili kuskiza kesi hii.

Asante Bw. Spika kwa kunipa fursa hii.

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

Sen. Abass: Thank you, Mr. Speaker, Sir. As you are aware, these businesses of preliminary objections have become too much in this House. We had a problem in Isiolo County, Kericho II and now Nyamira County. It seems that the assemblies have some gaps in terms of the legal knowledge. Every time they come here with very senior legal counsels, it would be good for them to put their houses into order before they come here.

Every time we have a preliminary objection, it is because of threshold business. That should not be happening because the kind of people that represent the assemblies such as Kigen should sort that kind of problem before they come to this House.

Mr. Speaker, I have had an interaction with Nyamira County especially the Assembly and there was a problem. You remember we brought the report here. The former Speaker of Nyamira County Assembly was forcefully removed from office. The current Speaker was there illegally for some time before he was later on approved. He appointed himself a Speaker while he was still a Member of the County Assembly (MCA).

The same thing could be happening to the Governor also. We need to intervene and help them in tackling the lacuna in the Assembly in terms of meeting the threshold and process in these matters. As it is, every time there is a preliminary objection, the problem could be threshold.

Another thing is that there were three by-elections for MCAs in Nyamira County. I do not understand because a member died and it took so long for this country to constitute the IEBC. Therefore, the question is, what happens to the Assembly? Must you wait for that threshold or they can still do their business with the people they have? That also needs to be answered.

This matter requires serious legal interrogation. We also need to know what we are going to do in case someone dies when the IEBC is not there and elections cannot be done. What happens? Should you suspend the business of the House? This House needs to discuss on how to handle the matter.

Mr. Speaker, Sir, the people of Nyamira deserve to hear this matter to its conclusion whether the preliminary objection is there or not. I believe they require to listen and hear both sides of the story. Therefore, I advise the County Assembly and their legal team to be given time to also prosecute their case, so that you do not get these kinds of problems always.

With those few remarks, I oppose the preliminary objection Motion.

The Speaker (Hon. Kingi): Sen. Kavindu Muthama, proceed.

Sen. Kavindu Muthama: Thank you, Mr. Speaker, Sir, for giving me this opportunity. To me, this Motion is a bit complicated because the threshold was not met according to the numbers given. We are given 35 MCA's and 24 should have voted to meet the threshold, but then, we did not get that number.

From the charges that were read, I know there are issues in Nyamira. However, if we go ahead and listen, like some of us have said, and we find the Governor guilty at the end and we have not dealt with this, what will happen? Will we impeach the Governor without the MCA's meeting the threshold?

If the County Assembly has a case, with the 32 Members of the County Assembly, they still would have gotten the 24; the threshold for impeaching the governor. So that we do not repeat the same mistake that was done in this House by impeaching Waititu and Sonko without meeting the threshold because of some pressure from somewhere, like the Senate Majority has said, we should be very clear in what we are doing in this House. Let them go back and bring the needed threshold.

I support this Motion.

The Speaker (Hon. Kingi): Sen. Mo Fire, proceed.

Sen. Mo Fire: From the onset, I oppose the Motion. Kenyans hold this House in very high esteem. The Senate has been described as the soberest House for the last few years that I have been around. We have gained a lot of respect across the country and internationally. We are the guardians; the people who are supposed to check on devolution, especially, our young brothers in the county assemblies.

As a Senate, I do not want us to create a precedent that could be a bit untidy where we seem to be a stumbling block for the county assemblies to process their oversight responsibilities in their respective counties. If you look at these allegations leveled against the Governor, some of them are so gross. It would be very unfortunate for us, as a House, to terminate the hearing of the entire process at this stage.

As much as impeachment comes along with very many causalities, it is a lifetime issue that can curtail somebody's career. At the same time, as custodians of devolution, we must be very alert and make sure that we are not condemned or regarded as a stumbling block to devolution and oversight.

Mr. Speaker, Sir, I suggest that we put on hold the voting of this Motion before us until we investigate the allegations. I have just captured that there are some allegations that some people swore an affidavit that they never voted. We even need to have a document examiner and an expert to verify whether those allegations that have been brought by those who allege that never voted are true.

We have processed three preliminary objections. We must be very clear on what we are doing. Let us be very frank and fair on both sides because we also need to protect the career of the Governor and the oversight responsibility of the county assemblies across the country.

Mr. Speaker, Sir, from the onset, I oppose the Motion.

The Speaker (Hon. Kingi): Sen. Shakila Abdalla, proceed.

Sen. Shakila Abdalla: Asante, Bw. Spika. Nasimama kupinga Hoja hii. Katika hili Jumba, tumeletewa kesi tatu ambazo tulizitupa. Ya kwanza ilikuwa Isiolo ya pili Kericho na hii sasa ni ya tatu. Tunataka kuzitupa ama tumezitupa kwa vigezo vya vizingiti; ambapo vizingiti zinapigiwa kura yake na kesi zinapigiwa kura yake?

Kwa nini tusisikilize hii kesi tukahakikishe tumewapatia haki watu wa Nyamira ili wajihisi kwamba wamesikilizwa na wamepata haki? Hii ni bora kuliko kusema tuitupe hii kesi kwa vigezo vya vizingiti kabla kesi haijasikizwa.

Imekuwa mtindo hapa sasa na inaonekana itaendelea kuwa mtindo. Hii ni kesi ya tatu kutupwa kwa vigezo vya vizingiti bila kusikiliza kesi zenyewe ambazo watu wako na *issues* huko mashinani ambazo imewafanya wazilete hapa Seneti.

Ikiwa huo ndio mtindo, magavana wanaweza kuwahonga wale Members of County Assembly (MCAs) ambao walipiga kura na kuwaambia waseme hawakupiga kura ama kitu chochote kifanyike ikiwa watajua hicho ndicho kigezo ambacho kitawaokoa hapa. Lakini wakijua hicho kigezo hakitawaokoa hapa na kwamba kesi itasikizwa, basi itakuwa ni lazima kesi isikizwe na haki ipatikane kwa kaunti husika.

Kwa hivyo, naomba hii kesi isikilizwe mpaka mwisho na watu wa Nyamira wapate haki yao. Usiwe ni mtindo kwamba kesi za *impeachment* zikiletwa hapa, zinatupwa kwa vigezo vya vizingiti.

Asante sana.

Sen. Chute: Thank you, Mr. Speaker, Sir. Allow me to say a few things here. Number one, I support this Motion. When I came to this House the first time, I was told this is a House of records. If we will follow the records, a House of records means that if we do something today, we do not need to change our minds tomorrow.

In Kericho I and Kericho II, we looked at the evidence and the threshold was not there. Even the Majority Leader was here and when we said that they must go back and meet the threshold; our Majority Leader was not happy with us. We said we must follow the law. I do not understand when this---- Some months ago, we looked at the issue of Kericho and we said, "Please, go and meet the threshold and come back here."

It is not the responsibility of this House to add them two or three persons, so that they can meet the threshold. No, it is not our job. Go and do your work, we will not do this work for you. Do not come to our doorstep bringing an unfinished product. Bring the finished product here. We will listen, look at the evidence and decide.

Mr. Speaker, Sir, I am not a lawyer. Sometimes when these two lawyers are talking, we get confused about who is saying what. However, the issue is very simple mathematics. Even a class one pupil can do the mathematics. As a Senate, we need to tell the county assemblies, please, do not bring issues of unfinished products to this House. The people out there will look at us and say, on Kericho I and II, they asked the Governor to go back and asked the County Assembly to do their work. If we change today and say this must continue, what is the purpose of having a House of records here?

County assemblies bring cases here and in some instances, we sit in this House up to midnight. It is tiring and exhausting. What we need to do is ask the MCAs, please, do not to bring things here and think we will sit here and waste time to listen or look at something that has not met the threshold. We do not want to waste our time in this House.

Go back and do your homework well. You can come back even after a week or six months, that is not a big issue. However, do not crucify someone because you have issues with that person. Do not use this House to crucify someone without meeting the threshold.

Thank you very much.

The Speaker (Hon. Kingi): Clerks, if a Senator has spoken, kindly remove their name from my dashboard because my dashboard is still very much clogged. I can see the names of hon. Senators who have actually contributed.

Proceed, Sen. Kamau.

Sen. Githuku: Asante sana, Bw. Spika. Nasimama kupinga Hoja hii kwa sababu wakati kunapotokea fursa katika mabunge zetu, kuanzia bunge za magatuzi ya kaunti ama county assemblies, Senate au National Assembly; kukitokea nafasi kwamba mtu amefariki ama ameziuzulu, unachukuwa fursa ya kutangaza na kusema kwamba kiti hicho hakina mwenyewe. Kwa kingereza tunasema *the seat is vacant*.

Bw. Spika, katika *impeachment* ambayo iko mbele yetu, tuko na habari kwamba watu watatu hawakuhusika katika upigaji wa kura kwa sababu mmoja; wao aliaga dunia, mmoja *aka-resign* na mwingine kutolewa kupitia njia ya mahakama.

Hatuwezi kulazimisha kusema kwamba ni lazima wabunge 35 wangepiga kura. Watu wa Nyamira wanataka haki. Kuna mambo ambayo yameorodheshwa kwamba gavana amefanya kinyume na sheria. Tungependa Bunge hili la Seneti liweze kusikiliza mambo hayo kwa sababu yanahusiana sana na mambo ya watu wa Nyamira.

Bw. Spika, kuna mambo ambayo county assembly imeona kwamba gavana amefanya kinyume; na gavana anasema hajafanya kinyume. Kwa hivyo, tukitaka haki itendeke kwa watu wa Nyamira tuhakikishe kwamba Bunge la Seneti limesikiliza mahitaji na kilio cha watu wa Nyamira.

Tunapozungumza, watu wa Nyamira hawapati maendeleo. County Assembly ya Nyamira imetuletea sisi kama majaji tuweze kuamua na kuona kwamba huyu gavana amefanya makosa. Tukimrudisha na makosa hayo, watu wa Nyamira wataendelea kupata shida.

Kwa hivyo, ninaunga mkono kwamba tuendeleo kusikiza hii kesi ili tuwapatie watu wa Nyamira haki yao. Gavana anafaa atuambie ni wapi hakufanya makosa na county assembly ituambie gavana alifanya makosa gani. Katika njia hiyo, tutakuwa tunafanya haki na tutaingia katika vitabu ya kumbukumbu kwamba hii ni Seneti ya haki na inalinda ugatuzi.

Bw. Spika, kuna jambo ambalo limejitokeza hapa kwamba kuna watu wengine ambao waliandika *affidavit* wakisema wapigiwe kura na wenzao. Mimi nilikuwa mwakilishi wadi katika Kaunti ya Lamu. Hiyo sio jambo geni; huwa linafanyika. Sisi katika Seneti hii ndio tunatuma pesa mashinani na yale yanayotendeka huko mashinani, hatuletewi wakati yanafanyika kulingana na vile wao wanataka. Lakini leo hii wametuletea kwa sababu jambo hili limefanyika kinyume na vile ambavyo wangehitaji lifanyike.

Nachukua nafasi hii kuwarai Wabunge wa Seneti hili ya kwamba tufanye haki kwa watu wa Nyamira. Sisi tulichukua kiapo hapa kwamba tutailinda Katiba na kuizingatia. Kwa hivyo, njia moja ya kazi ambayo tumepewa ni kupeleka pesa katika gatuzi zetu 47. Tukipeleka hizo pesa katika gatuzi zetu 47, tuhakikishe zimefanyia wale wananchi kazi. Kwa sasa, Nyamira, hakuna kazi inayoendelea. Wacha twende *full hearing* tusikize matatizo ambayo watu wa Nyamira wanayapitia.

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

[The Deputy Speaker (Sen. Kathuri) in the Chair]

The Deputy Speaker (Sen. Kathuri): Sen. Miraj Abdillahi, please, proceed.

Sen. Miraj: Asante Bw. Naibu wa Spika, ningependa kuchangia Hoja ambayo imewasilishwa na Kiongozi wa Walio Wengi katika Bunge hili la Seneti. Napinga vikali kusimamishwa kwa kusikilizwa kwa Hoja hii ya kumtimua madarakani Gavana wa Nyamira. Hii ni kwa sababu haiwezekani ya kwamba *Members of County Assembly* (MCAs) wanatimiza malengo yao ya kikatiba ya kuona kwamba haki inatendeka katika gatuji zao halafu inapofika katika Bunge la Seneti, tuwe sisi tunatumia vizingiti kukwamisha juhudi ambazo wabunge wa gatuji wamefanya kule mashinani.

Nataka ieleweke ya kwamba Bunge hili la Seneti linakaa kutetea Hoja na haki na kusimamia Katiba yetu ya Kenya. Ndiposa nasema, kama tulivyofanya awali, kwa sababu sisi wabunge wakuteuliwa na vyama vya kisiasa hatuna kura kujieleza kusema kwamba ndio, makosa yameonekana ama hayakuonekana, ni vyema basi, na sisi tuweze kusikiza mashtaka yaliyosomwa.

Kwa kusema ukweli, tangu nianze kukaa katika Bunge hili mwaka wa 2022, sijawai kusikia mashtaka yamesomwa mengi kama yale ambayo yamesomwa leo na Gatuji ya Nyamira. Ni dhahiri shahiri ya kwamba sisi ni wananchi ambao tunatunga sheria ili ziwe muongozo na sio tofauti ya hivyo. Haiwezekani ya kwamba kila siku tutakuwa tunawacha kusikiliza malalamishi ambayo yametoka kwa wananchi kupitia wawakilishi wadi wao kusema ya kwamba hapa kuna *threshold* haijakamilika.

Nataka niungane na viongozi wenzangu Maseneta kusema ya kwamba ipo haja ya Bunge la Seneti kusikiza kwa ukamilifu malalamishi yaliyoletwa na Bunge la Nyamira ili tuweze kuamua ni lipi mbaya na lipi nzuri. Kama kuna haja, basi kwanza tuweze kuamua kama walifikisha *threshold* ama hawakufikisha. Lakini itakuwa vigumu kila siku ma MCA--- Ukiangalia gatuji zetu sita kutoka pwani, MCA wetu wameogopa hata kubuni *Motion* ya kuleta magavana hapa kwa sababu wana hofu. Hiyo ni kwa sababu kama wewe mwakilishi wadi umehusika katika kumuondosha madarakani gavana, kunakuwa na matatizo mengi ambayo unapitia katika bunge.

Ningeomba nikishirikiana na wajumbe ambao wameongea mbeleni ya kwamba, ningependa kusikiliza mashtaka ili Gavana aweze kujitetea au la. Asante.

The Deputy Speaker (Sen. Kathuri): Sen. Mwaruma Johnes, please proceed.

Sen. Mwaruma: Thank you Mr. Deputy Speaker, Sir, for this opportunity to comment on the preliminary objection by the Governor. We have been given an opportunity to interpret the law and the Standing Orders of Nyamira County Assembly. On the first leave, Standing Order No.62(7) states that a Motion passes when two-thirds of all the Members of the County Assembly have voted for it.

Now, what we are called to determine, as the Senate, is what it means by all the Members of the County Assembly. If today you were told to bring all the Members of the County Assembly on the day of voting, would you bring 35 or 32? My view is you would bring 32 Members because three were not there. Therefore, the threshold would be two-thirds of 32.

We have dealt with the issue of decimals in dealing with the impeachment of Kericho. When you have decimals, you cannot have a third of a human, so you round up. I heard Sen. Cherarkey saying that we truncate. As a student of Mathematics, truncation means something very different; that we do away with that decimal part. However, here we are told that because you cannot have a decimal of a person, then you round up to the nearest human being.

So, if we had 35 people, then two-thirds would be 23.33. Rounding up would get 24. There is nowhere in the statute and in the Standing Orders where we have that magic number 24 explicitly stated. It is not there. My view and my interpretation is that it is two-thirds of the members of the county assembly and at the time of voting, they were 32.

The next limb of this Preliminary Objection is to determine whether or not it is allowable or completely disallowed to vote through proxy. I have had arguments here that we have never voted through proxy in this House. In the last Parliament, while voting, I cannot remember which standing committee we were allowed to vote by proxy. Members who were absent wrote letters and indicated how they wanted to vote for particular chairs and vice chairs of standing committees. So, if it happened, then that precedent was set.

I would like to say, lastly, for a clear law on impeachment of Governors, Deputy Governors and other state officers, then let us listen to the second limb, especially whether or not the Standing Orders of the County Assembly of Nyamira, the relevant statutes and the Constitution completely disallow voting by proxy. Why can we not listen to the whole motion and also try to see if we can subsume this second part, then we could have a clearer view of this matter and make our decision.

I am extremely clear that the two-thirds threshold was met and so I oppose this Motion.

The Deputy Speaker (Sen. Kathuri): Sen. Seki Lenku? Sen. Methu John Muhia, please proceed.

Sen. Methu: Thank you, Mr. Deputy Speaker, Sir, for this opportunity to also weigh in on this matter. I look at Nyamira through a special lens from where I sit. This is because in this very House, there was a report that was made by the Committee on Devolution and Intergovernmental Relations, which we were discussing, of a county assembly that had two leaderships and two Speakers. We were even being invited to make a decision between these two warring groups regarding which one is legitimate.

Therefore, in my mind, Nyamira is not any other county. That is why I have been persuaded by the arguments of my colleagues who have said that we have not been invited to decide on the removal from office by this particular Motion. What we have been invited to do is to make a determination on the Preliminary Objection by the defence.

We shall take this decision. I join my colleagues who have actually made that plea. The plea we are making is that we can make this decision, not now, but at the very tail end, after listening to the substance of the materials that have been brought and the evidence that has been adduced by the Members of the County Assembly.

We must also be careful in the way we prosecute these matters of impeachment because we derive this mandate from Article 96 of the Constitution of Kenya on

oversight. We must be careful not to be seen to be superintending on how county assemblies carry out their business. We cannot be seen to be the ones that are discouraging county assemblies from carrying out oversight mandates over their governors. A county assembly may just say; “if we take these impeachment matters to the Senate, these people will not look at the documents that we will avail or the evidence that we will adduce. They will throw out our case on technicalities of threshold and numbers.”

Mr. Deputy Speaker, Sir, I agree with my colleagues that numbers are a constitutional requirement. There is a requirement that a certain threshold must be met. Even as it is a requirement, the baby is in the Senate. Why do we not just go to full hearing, listen to the case as it is because we shall be called to make a determination on this Motion?

If Members of this House carry that Motion to say that the threshold was not met, then we will not take the evidence into account when making that decision. We need to encourage our county assemblies. That is why I was also persuaded by the Mover of this Motion that we need to revive the Legislative Summit that was there two or three years ago, so that we can share experiences with our colleagues in the county assemblies.

Mr. Deputy Speaker, Sir, the responsibilities of county assemblies are oversight, representation and legislation. It is just the same thing that we do, although we are doing it at the national level.

I would want to persuade my colleagues, let us allow this team from the county assembly to come and tell us why they feel that Governor Nyaribo is not fit to lead the County of Nyamira. The defence team of the governor will tell us why they think that there is witchhunt and about the evidence that they shall bring, so that we listen to all the issues that will be canvassed in this House. We cannot make it our habit of killing impeachment motions at the inception. Just when people come here, the first thing that we deal with is a preliminary objection then we tell people to just go back. We shall discourage even MCAs from carrying out their business.

There are people who have put their minds together in preparing the documents that are before us. What is the problem in us listening to them? What is the problem in the evidence being laid before this House? If anything, it is only two days, today and tomorrow. I am sure most of the Senators who are here are ready to take business.

You know, I have seen Senators that are in this House, because I have been here, prosecuted business until very late in the night. Nobody is in a hurry to be told that we go to the preliminary objection and go home. Go where? We prosecuted the matter of Meru impeachment around Christmas time. We can carry out this business for as long as we are required. The Senate is an agile House and has been. It has proven itself, time and again, that we can make sound decisions. There are people of Nyamira who would want to know why their Governor was taken to the Senate. How will they know if we just vote out this matter at the preliminary level?

Let them get to hear the accusations. Even if we shall vote to say that the threshold was not be met, the people of Nyamira will know the issues that were raised and whether the MCAs were just witchhunting their governor.

I want to persuade my colleagues that we proceed to a full hearing. Nobody has been asked, at this point, to vote for the removal of Governor Nyaribo. We are only being asked to make a decision and a determination on a technicality. We ask that we just listen to the entire matter and then we can make the decision thereafter.

Mr. Deputy Speaker, Sir, I do not agree with the colleagues who have actually said that this Motion is defective and should be amended. The Motion is straightforward. You are being asked to make a decision on whether the threshold was met or not. There is nothing to be amended on this Motion, and we shall make that decision.

The only thing that we are saying is that you can allow us to make this decision after we have heard the proceedings from both parties.

[The Deputy Speaker (Sen. Kathuri) left the Chair]

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

Sen. Wamatinga: Thank you, Mr. Deputy Speaker, Sir. Many a times we have seen impeachment Motions brought before this House and we have taken decisions based on the preliminary objection.

The question that has been left in the minds of Kenyans is what has led to the impeachment of the Governor. How they wish that we would give them a chance to listen to the accusations. The technicalities may not be a language that will be understood by the ordinary citizen.

I agree, it is a decision that ought to be made. However, there is a bigger question that begs, even a moral obligation. Should we give Kenyans an opportunity to listen to the accusations that have been forwarded before this august House? Should we not give the MCAs, even from the other counties, maybe to learn and benchmark with what has been going on in other counties?

I am of the conviction that our decision on the preliminary objection and stopping the impeachment at that point has eroded the very democratic space that we want to expand.

Mr. Deputy Speaker, Sir, I concur with those colleagues who say that we should listen to the matter and the MCAs. Let Kenyans listen to the accusations that have been levelled against the Governor. It is not a verdict whether the Governor is guilty or not. It is also an opportunity that we must not deny Kenyans to learn how to do things the right or wrong way.

For this House to be seen to be delivering on its mandate, it is imperative that we give county assemblies the opportunity to also execute their mandate without having to gag them on arrival. Killing an impeachment Motion on preliminary objection is declaring the baby dead on arrival.

It is the high time that we, as a House, give the MCAs an opportunity to be heard. It is the high time that we give Kenyans an opportunity to see the accusations that are being levelled against the governors. It is also the high time that we show those governors, who are listening, the things that they should do, how they should do it and what they should not do.

It is my deep conviction that this House will be doing a great disservice to the nation and the county assemblies if we terminate this matter on preliminary objection. Yes, we have done it before. There were contentions, but I keep on asking myself; “did we do fellow Kenyans injustice by terminating the matter prematurely without them even getting an opportunity to know what the accusations were and maybe even learn from that?”

I am looking at this as somebody who in the future would want to be a governor. I want to listen to the things that the Governor did right or wrong and maybe things that I want done differently.

I see this as an opportunity; an open book where Kenyans can get to listen and interrogate. Most importantly, the county assembly and the executive, in prosecuting the matter, will listen to themselves and even ask questions such as; “what is it that we could have done differently for us to avoid coming to this august House?”

Mr. Deputy Speaker, Sir, some of them are not lawyers, but you do not need to be a lawyer to listen to things that brought a governor up to this point. It is my humble submission that we should let this matter go to full hearing so that we get an opportunity to see what is most important and lessons learned. For those aspiring, especially the young leaders, who in the future would want to be great leaders in this country, should know what is it that they ought to do differently.

Terminating the matter on the preliminary objection will have failed in the sense that we will have not given these young Kenyans and the MCAs an opportunity to present their case. Most importantly, the executive, to say why they committed or omitted. We need to make Kenyans feel that justice has been served.

Sen. Tabitha Keroche: Thank you, Mr. Speaker, Sir, for giving me this opportunity. I have listened to all the other colleagues Senator and what they are suggesting.

Any time we see MCAs bringing their governor on impeachment charges, we know the effort they have put in. When I listen to what is being said on the Floor of the House, I think we should ask ourselves whether the threshold was met. I have heard some Senators saying that we should listen to the whole process and see whether there were enough grounds for the impeachment of the Governor of Nyamira.

I know our work is to impeach. Immediately after the MCAs bring the Motion for impeachment of a governor, it is for us to ensure that we listen and find out whether there are enough grounds for impeaching the governor. Now, the problem is the suggestion I am hearing, that we all listen to the process and then, at the end of it, determine whether they met the threshold or not.

The public outside there will not know the difference. They will only know that the Governor of Nyamira County did this and that, but the Senators said that the MCAs did not meet the threshold. So, when the Governor goes home and we did not do the right thing that was supposed to be done--- I do not know what Senators are saying.

I would suggest that we listen and ensure that if there are enough grounds to impeach the governor, I think the governor should be sent home. However, if there are not enough grounds, then we can now debate the two.

I would like to congratulate the MCAs for making an effort to check what is happening in their county and ensuring that they brought the governor here. We come from counties where there is a lot of misappropriation of the funds and yet, the MCAs have never even made the effort to bring the governor on impeachment at the Senate.

Thank you, Mr. Speaker, Sir.

Sen. Kathuri: Thank you, Mr. Speaker, Sir, for giving me an opportunity to comment on this Motion on the Floor of this Senate. We have a clear mandate as the Senate. Under Article 96(1), the role of the Senate is to represent the counties, to serve and protect the interests of the counties and their governments.

Nyamira County is in Intensive Care Unit (ICU). This is the county which has operated two county assemblies. This is the county which has impeached the governor for the third time, if I am not wrong. In the first two impeachments, the threshold was a bit low, but in this one, the threshold is less by 0.7. If there is anything the Senate can do - whether we vote one way or the other - is to assist the Committee on Devolution and Intergovernmental Relations led by Sen. Abass.

When I listened to the preliminary objection, the argument from the governor's side and submissions also from the county assembly side, both sides have an arguable case. If the threshold according to the legal counsel for the Governor is 35, for sure, the arithmetic becomes 23.3, which is 24 MCAs. If you listen to the other side, counsel representing the county assembly; if three MCAs are not around and the MCAs in the county assembly are now 32, still their case is arguable. So, this threshold lacuna is a bit tricky.

I represent Meru County and my former Governor was impeached three times. I know how Nyamira County is feeling. I know the feeling of the County Assembly of Nyamira. Actually, I do not even want to urge the Members to wait until we hear the full case and then make determination of the preliminary objection at the end of the hearing. I want to ask Members to mobilize themselves and vote now, so that this preliminary objection can be defeated and then we go to the full hearing. After the full hearing, we vote now for the real matters that have been submitted to us.

When this case was brought to the Senate, I am the one who actually read this case on this Floor for almost 30 minutes without taking a break. So, the issues which have been raised by the County Assembly of Nyamira are many and are grave. The only thing we can do is to listen to these issues.

The Senate should not be dwelling so much on the preliminary objection, but the substance matter of the impeachment. We could have done so much by this time if we went that way. All the same, let me request hon. Senators; let us save Nyamira County. Let us listen to the issues raised by the Nyamira County residents through their representatives in the county assembly.

Mr. Speaker, Sir, without much ado, because I have made up my mind on how I will vote, I will urge my colleagues, that technically, we can proceed with this hearing by voting---

(An hon. Senator spoke off record)

I should guide them because when you are an elder, sometimes you give advice to the junior Senators. Let us vote in a way that we will proceed to the full hearing and vote for the counts that have been submitted to this Senate.

Mr. Speaker, Sir, I thank you.

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

(Sen. Omogeni spoke off record)

Oh, you have already taken to the Floor.

Sen. Omogeni: No, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Then, you may proceed.

Sen. Omogeni: Mr. Speaker, a doctor cannot treat himself. As the Senator for Nyamira, I have sat here and listened keenly as my colleague Senators provide wisdom in a manner that balances the interests of my county assembly and the interests of my Governor.

Having sat the whole morning and this afternoon, I have no doubt that the matter before you is fairly complex, but it requires Solomonian wisdom. If we are not careful, we may end up damaging the reputation of this House.

In 2013, Chief Justice Willy Mutunga was faced with an application by the late Prime Minister, Raila Odinga, to introduce evidence before the court to be heard before the Supreme Court before a decision is made. Raila Odinga was denied that chance. Up to today, Chief Justice Willy Mutunga has not recovered.

If we were to apply some delicate balance and make a decision that is just, measured and creative in ensuring that we are seen to be a House that dispenses justice--- Let us allow the Members of the County Assembly to present their case, they be heard and then the Senators will be given an opportunity to pass a verdict.

Remember, in law, we normally say there should be parity in reasoning. I am sure the MCAs of Nyamira were watching on TV when we were faced with similar situations, with the situation in Kericho, my neighboring county. You ruled and said, let us deal with the preliminary objection after hearing evidence from the County Assembly of Kericho. That is what you directed.

Mr. Speaker, Sir, I urge you, and my colleague Senators, let us apply the same standard for the County of Nyamira. The way Kericho was heard, the way the Governor was given a chance to prosecute his preliminary objection and a vote is taken, will be the fairest decision to the people that I represent, the people of Nyamira County. We respect this House and we will all walk tall. However, if we reduce this impeachment to a matter where you can lock it through legal technicalities, we may risk damaging the reputation of this House.

Finally, Mr. Speaker, Sir, remember that we are guided by our Constitution. If you read paragraph 2A of the Third Schedule, the obligation that is placed on this House is, the moment you receive an impeachment before this House, your obligation as Senators is to investigate into the matter. Investigating a matter includes enquiring whether the threshold was met. Remember, we have our Constitution on fair hearing.

Mr. Speaker, Sir, Article 50 of our Constitution says-

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”

Mr. Speaker, Sir, we are an impartial tribunal. Let us be fair to both parties. Let us hear the county assembly as well as the Governor, after which, all of you will be invited to make a decision, which will be respected by the people of the great County of Nyamira.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): The Senate majority leader, as the Mover of this Motion, you may now proceed to reply.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker, Sir. I thank my colleagues who have taken their time to speak to this important matter, which is not light. It involves the impeachment of a governor and a county assembly that has taken a position, not once, twice, but allegedly three times. On two occasions, that matter never got to this House. This time, the matter is before us.

Mr. Speaker, Sir, I will try and be brief, but also try and explain some of the things which I agree and disagree with my colleagues. For example, a case is being made here that because in Kericho II, we subsumed the preliminary objection into the main matter, therefore, that ought to be the same principle that applies this time. Many of my colleagues have advanced that argument. However, it is important to draw a distinction between Kericho I and Kericho II.

Mr. Speaker, Sir, in Kericho I, we were dealing with a point of fact or a point of law, whether the threshold was 33 or 32. We made the determination in this House, that we need to make that determination whether the threshold is 32 or 33. I had explained earlier in my moving notes, how we arrived at that particular decision.

In Kericho II, it was not possible to terminate the hearings at preliminary objection level because it was an argument on matters that were material to the case; whether individuals voted or not. There was no question of quorum. Remember, we had affidavits from Members of the County Assembly, and the same Members had affidavits in the governor's case. Therefore, it was important for us to listen to the material evidence that had been presented before us, so that we establish whether these Members voted or not.

Mr. Speaker, Sir, I dare say, because I listened to the counsel for the Governor, in raising this preliminary objection, instead of arguing for both, because if you see the bundle of documents, and I took time to read the documents that have been shared with us, he anchored his preliminary objection on only one item, instead of the two.

There is a dispute in this Nyamira case on whether these four MCAs voted or not. There are affidavits here claiming that they did not. However, that matter is not yet before this House. I believe, should we get to the point where we go to full trial, then we will take the time to ascertain whether they voted or not. However, this preliminary objection is precisely on the point of Quorum. Is it 35 or is it 32? We have made the case, that the Senate is what it is today because of the magical 24.

The most difficult thing to achieve. That is why, for 10 straight weeks, a government combined together with opposition, under what was then referred to as the

‘handshake’ administration, could not make it to pass a retrogressive formula against the people of Kenya. That issue of threshold is extremely important. It will be unfortunate if, on the same Floor of the House, today, we tell our county assemblies that it does not matter; that this constitutional principle varies. That, because at the time of voting you are only 32, therefore quorum can shift.

Mr. Speaker, Sir, somebody made a very good argument that for the past 10 months, we have had 46 delegations in this House instead of 47 because of the unfortunate demise of our colleague, Sen. Cheptumo. Until yesterday when we saw the new Senator, we have been voting, but how have we been voting? I do not recall a time where we have passed any item, 23 of us. We have still insisted that the constitutional principle, of at least, half the counties, which is 24, has been applying. Surely, what will we be telling county assemblies today if we turn our backs and tell them that if for one reason or the other you are lesser than the constitutional threshold of what is a quorate number of your county assembly, you can vote and impeach a governor and just bring it here? Honestly, good people, in good conscience, I cannot support such a position.

That is not to say that there are no serious issues in Nyamira. I made a case earlier that, unfortunately, this House can only preside over a matter when it is properly before it. This matter, in all honesty, is not proper before us. This is because, number one, there is even a dispute about the issue of proxy voting. However, that matter has not been raised as yet. We will get to it, should we get to that particular matter.

(Sen. Kathuri consulted loudly)

Mr. Speaker, Sir, I did not know that the Deputy Speaker can be a heckler.

(Loud consultations)

The Speaker (Hon. Kingi): Order, hon. Senators!

Senator for Meru County, when your colleague is speaking, do not engage them unless you engage them through the Chair.

The Senate Majority Leader (Sen. Cheruiyot): He is shouting in my ear.

The Speaker (Hon. Kingi): Proceed to conclude. Hon. Senator for Kericho County, that word---

The Senate Majority Leader (Sen. Cheruiyot): I withdraw the word “heckler” and apologise to my good friend, Sen. Kathuri Murungi.

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

(Sen. Kathuri consulted loudly)

Senator for Meru County, the Senator for Kericho County has apologised and withdrawn. That is good enough.

Proceed and conclude.

The Senate Majority Leader (Sen. Cheruiyot): He is an elder and sometimes he brings me very nice things from Meru, which I do not want him to deny me now that we are about to go on recess.

Anyway, the point I was trying to make is that I have also listened to people make the argument on why should we not hear the entirety of this particular matter, so that eventually we will decide, having been informed of all the facts that are before us. However, unfortunately, the law is the law. I believe there is a problem in almost every county. The reason your governor is not here is perhaps because the few MCAs, who maybe have seen those issues and are speaking about them, know that they are yet to achieve the threshold that is needed to bring a governor before this House.

Mr. Speaker, Sir, I would like to plead with our colleagues, that this matter is before us. However, as I say that, I am conscious of the fact that serious points of law have also been raised, and I will not be dismissive of my colleagues who hold a contrary view. That, perhaps it will make more sense if we took time to consult first as a caucus or jury, then come back to make a decision.

There has even been suggestion, I think from the Senator for Homabay County, who argued that we should invoke the provisions of Standing Order No.66(3) and hold the putting of a question. The unfortunate thing is that in your earlier Communication, you made it clear that we must cross this bridge before we get to the case. So, even if we invoke that Standing Order, it means we rise today, go home, then begin from the same place when we meet tomorrow at 9.00 a.m.

I wish to propose something which, if my colleagues agree, we can attempt. I also want to be further persuaded by colleagues who hold a contrary view to mine, since perhaps due to the exigencies of time, they were not able to explain themselves fully. Why not retreat as a House and reflect?

Mr. Speaker, Sir, in line with the provisions of Standing Order No.66 (3), I request that you defer the putting of the question for one more hour. Let us retreat as a House, consult, listen to each other---

(Loud consultations)

The Speaker (Hon. Kingi): Order, hon. Senators. That request has not been made to you. It has been made to me, so I will rule on it.

Proceed, Senate Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, the decision of the application of Standing Order No.66 (3) is to the Speaker of the House. That is why I am making this appeal to you. If during the consulting session Members think otherwise, we will come back and report to you whether we are ready to vote or not. We will then take a decision and see what is good for the country and Nyamira County.

With those many remarks, I beg to reply. I request that Standing Order No.66 (3) be applied for the next one hour for us to consult.

I thank you.

The Speaker (Hon. Kingi): Now, Hon. Senators, if you look at the Gazette Notice, we gazetted two days to hear and determine this matter. That is today and

tomorrow. Today has been expended on the preliminary objection. It means, therefore, that in the event that this preliminary objection is overruled, we have to conclude this matter. We need to start the case today, go all the way to midnight, come back tomorrow at 9.00 a.m, push it all the way to even 4.00 a.m. or 6.00 a.m. on Friday morning. This is because those are the only days that have been gazetted.

Therefore, Senate Majority Leader, we have to determine this preliminary objection today. We cannot determine this preliminary objection tomorrow. I will, therefore, accede to your request and defer the putting of the question for one hour.

(Putting of question on the Motion deferred)

After one hour, we will reconvene and I will put the question on the Motion. We will then determine it. If it is upheld, then the proceedings terminate immediately. If it is overruled, then we will start hearing the opening statements, after which, the county assembly will be given five hours to put their case and then we will rise. In the event that it is overruled, we will push it until midnight today. Tomorrow, we will have to take it beyond midnight because we need to conclude this tomorrow, even if it means going all the way to 3.00 a.m., 4.00 a.m. or 6.00 a.m. So, I will suspend---

Yes, Sen. Boni.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir, for the opportunity. We find ourselves in the same situation as before; that when the time comes for critical decisions to be made, we begin rushing in the interest of time. Since you have acceded to that request, I ask that you consider the possibility of making further gazettelement, so that the people of Nyamira---

The Speaker (Hon. Kingi): Sen. Boni, you are anticipating debate. Since we do not know the outcome of this preliminary objection, I cannot prepare for another gazette notice. Let us cross the bridge when we get there. In the event that you overrule this preliminary objection, then you can rise and put that proposal to the Chair.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Hon. Senators, kindly arise. This session is suspended for one hour. We shall, therefore, come back here at exactly 7.30 p.m.

(The Senate adjourned temporarily at 6.30 p.m.)

(The Senate resumed at 7.40 p.m.)

The Speaker (Hon. Kingi): Hon. Senators, let me take this opportunity to welcome you back after a short suspension of the proceedings. We are now proceeding straight to division, so that we take a vote on the Motion that is before us. I, therefore, direct the Serjeant-at-Arms to ring the Division Bell for five minutes.

(The Division Bell was rung)

Serjeant-at-Arms, you may now draw the Bars and close the doors.

(The doors were closed and Bars drawn)

Hon. Senators, the exercise we are about to undertake is an extremely weighty and important one. Therefore, I will take two minutes to explain so that I bring clarity before you cast your vote.

The vote you are going to cast is on the Motion that is before us by the Governor. The Motion says that the number supposed to be used in determining a threshold is the number of the total MCAs in a county assembly. It is the Governor's contention that that number in Nyamira County is 35, and because it is 35, the threshold can only be 24. Hence, the 23 that voted did not meet the threshold. That is the preliminary objection that is before you; that the total number of MCAs is 35 and the threshold of the two-thirds is 24.

If you vote "No" to this Motion, this is what you will saying, so that we are very clear. If you vote "No," you will be saying that the number to be used to determine the threshold is not actually 35. You will have to agree with the County Assembly that that number is a moving target. It changes with circumstances and, therefore, the counsel for the Governor is wrong in saying that the number that is used to determine the threshold is actually determined at 35.

For those who will be saying "Yes," they are saying that the number to be used to determine the threshold is actually 35. For those who will be voting "No," they are saying the number to be used to determine the threshold is a moving target. Also, because there were vacancies when this vote was taken in the County Assembly of Nyamira, those vacancies ought not to have been used to determine the number and the threshold.

Therefore, that is the clarity I want to put before you. In your arguments and comments, you have also indicated because the decision you are going to make here will also bind the Senate. I pray it never happens, but in the unlikely event that we have an incident like what we had for Baringo County, then, we will have to lower our threshold to 23. It is a decision that will also affect this House; that, in the event that there is a vacancy in this Senate, then we will not use the number 24, but a different number. This is for those who are saying that the number is a moving target. Let us be very clear before we---

(Loud consultations)

Order, hon. Members.

As the Chair, I am duty bound to put this before us, so that you do not say that "I wish I knew, I would not have gone this route or the other". The decision is yours, Sen. Omtatah. I will guide you as my good Senators, so that you make the right decision.

Hon. Senators, having explained this matters to you, we will now proceed with the division, which shall be done electronically, so that we save on time. Since voting will be done electronically, I ask all hon. Senators to pull out the cards from the delegate units.

Serjeant-at-Arms, kindly go round and pick any card that is unattended. Once you are done, let me know.

Hon. Senators, I am told that the unattended cards have been collected by the Serjeant-at-Arms. I will, therefore, proceed to put the question and immediately I am done, you will log in and proceed to vote.

(Sen. Wafula and Sen. Cherarkey stood in their places)

Sen. Wafula and Senator for Nandi, kindly take your seat.

(Sen. Gataya Mo Fire stood in his place)

Sen. Mo Fire take your seat. No! You cannot sit on your colleague.

(Laughter)

(Sen. Gataya Mo Fire sat at his place)

Hon. Senators, I will now proceed to put the question.

(Question put)

Now, you may log back in and proceed to vote.

(Hon. Senators proceeded to vote)

Senator for Busia County, Senator for Taita Taveta County, Sen. Mwaruma and Sen. Karungo Thang'wa, Senator for Kiambu County, proceed to the Dispatch Table and register your vote.

(The hon. Senators proceeded to register their votes)

Sen. Omtatah and Senator for Nandi, kindly take your seats.

DIVISION

ELECTRONIC VOTING

(Question, that the Senate resolves to uphold the Preliminary Objection that the threshold required for removal of a governor from office, by impeachment, contemplated in Section 33 of the County Governments Act and Standing Order 62 of the County Assembly of Nyamira was not met, and forthwith terminates the hearing on the proposed removal from office, by impeachment, of Hon. Kimwomi Nyaribo, the Governor of Nyamira County, was put and the Senate proceeded to vote by County delegations)

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AYES: Sen. Abass, Wajir County; Sen. Boy, Kwale County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Chute, Marsabit County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. Githuku, Lamu County; Sen. Thang'wa, Kiambu County; Sen. Kathuri, Meru County; Sen. Kavindu Muthama, Machakos County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kiprono Chemitei, Baringo County; Sen. Kisang, Elgeyo Marakwet County; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lomenen, Turkana County; Sen. Maanzo, Makueni County; Sen. Madzayo, Kilifi County; Sen. Mandago, Uasin Gishu County; Sen. Methu, Nyandarua County; Sen. Mungatana, MGH, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. (Dr.) Murango, Kirinyaga County; Sen. Mwaruma, Taita Taveta County; Sen. M. Kajwang', Homa Bay County; Sen. Oketch Gicheru, Migori County; Sen. Okoit Omtatah, Busia County; Sen. Olekina, Narok County; Sen. Onyonka, Kisii County; Sen. Osotsi, Vihiga; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi City County; Sen. Tabitha Keroche, Nakuru County; Sen. Wafula, Bungoma County; Sen. Wakili Sigei, Bomet County; Sen. Wamatinga, Nyeri County;

NOES: Sen. Joe Nyutu, Murang'a County; Sen. Kinyua, Laikipia County; Sen. Mariam Omar, Mandera County; and, Sen. Omogeni, Nyamira County.

ABSTENTIONS: Nil

The Speaker (Hon. Kingi): Hon. Senators, the results of the Division are as follows-

AYES: 38

NOES: 4

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 38 votes to 4)

COMMUNICATION FROM THE CHAIR

EFFECT OF VOTE ON MOTION ON PRELIMINARY OBJECTION

Hon. Senators, I have a Communication to make regarding the effect of the vote on the Motion on the Preliminary Objection.

Hon. Senators, the Motion having been approved, the hearing on the proposed removal from office, by impeachment, of Hon. Amos Kimwomi Nyaribo, Governor of Nyamira County, is hereby terminated.

Further, as you will recall, the Senate, at the Sitting held on Tuesday, 2nd December, 2025, resolved to alter its hours of meeting on Wednesday, 3rd December, 2025 and Thursday, 4th December, 2025, in order to investigate the proposed removal from office, by impeachment, of the Governor of Nyamira County.

In these exceptional circumstances and pursuant to Standing Order 1, I direct the Clerk to circulate a further Supplementary Order Paper containing a Procedural Motion on the hours of sitting for tomorrow, Thursday, 4th December, 2025.

Hon. Senators, you will note that you passed a Motion here that you were to sit for two days, that is, today, Wednesday, and tomorrow. We were to sit tomorrow from 9.00 a.m. until conclusion of business. Having passed this Motion, we need not sit tomorrow in the morning, but we need to do that through a Motion.

That is why a Supplementary Order Paper has been circulated, for us to pass that Procedural Motion, so that instead of coming here tomorrow at 9.00 a.m., we come here tomorrow at 2.30 p.m., and treat it just like a normal Thursday Sitting.

I will, therefore, direct the Serjeant-at-Arms to withdraw the bar and open the doors. However, kindly do not leave. Let us discharge with this Motion before we leave. Thank you.

(The Bar was undrawn and doors opened)

The Speaker (Hon. Kingi): The parties can leave at your own pleasure. If you wish to continue listening to the proceedings as a member of public---

(Loud consultations)

They have to leave, and if they have to listen to the proceedings, they either go to the Public Gallery or the Speaker's Gallery, but not from where they are now, because we are done with them.

Clerk, kindly call the first Order on the Supplementary Order Paper.

The Speaker (Hon. Kingi): The Senate Majority Leader, please proceed.

PROCEDURAL MOTION

ALTERATION OF THE HOURS OF SITTING

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I rise to move the following Procedural Motion-

THAT, notwithstanding the Resolution of the Senate made on Tuesday, 2nd December, 2025, to alter the hours of meeting for Wednesday 3rd and Thursday, 4th December, 2025; and aware that on Wednesday, 3rd December, 2025, the Senate resolved to terminate the investigations on the proposed removal from office, by impeachment of Hon. Amos Kimwomi Nyaribo, Governor of Nyamira County;

NOW THEREFORE, the Senate resolves to rescind its resolution made on Tuesday, 2nd December, 2025, in respect of the morning sitting of Thursday, 4th December, 2025, and to revert to the sitting hours provided under Standing Order No.34 of the Senate.

Mr. Speaker, Sir, this is self-explanatory. You have explained everything, hence, I do not need to explain further. By dint that we do not have this process going beyond the stage it has reached, tomorrow we shall revert back to original sittings.

Members, tomorrow is the last day. We have very critical business. We have the Senate Mediation Committee on The Coffee Bill, 2023. We have delayed this Bill for more than a year. I believe you all appreciate what our farmers are going through, and that is the final stage. If we pass it, then it is signed into law.

Therefore, I request that let us be here tomorrow at 2.30 p.m. We finish strong because tomorrow is the last day of the year. I release you to go to the East African Legislative Assembly (EALA) to deepen, tighten, integrate and broaden as well.

With those few remarks, I ask Sen. Ledama to second. Thank you.

Sen. Olekina: Mr. Speaker, Sir, I second that we alter the calendar of the Senate and revert back to the normal sitting days. I look forward to seeing all of you here tomorrow at 2.30 p.m., so that we can dispense off the Order Paper. After that, we can go merry, hang out and have fun.

Thank you.

The Speaker (Hon. Kingi): Hon. Senators, I will now propose the question.

(Question proposed)

Now, Hon. Senators, the Floor is open for debate. With your concurrence, I may proceed straightaway to pose the question. Do I have your concurrence?

Hon. Members: Yes.

The Speaker (Hon. Kingi): Hon. Senators, I will proceed to pose the question.

(Question put and agreed to)

Hon. Senators, kindly arise.

ADJOURNMENT

The Speaker (Hon. Kingi): Now, Hon. Senators, having concluded the business in the Supplementary Order Paper, the Senate stands adjourned until tomorrow, Thursday, 4th December, 2025, at 2.30 p.m.

The Senate rose at 8.13 p.m.