



**REPUBLIC OF KENYA**

**THE SENATE**

**ELEVENTH PARLIAMENT – THIRD SESSION**

**VOTES AND PROCEEDINGS**

**WEDNESDAY, OCTOBER 28, 2015 AT 11.00 A.M.**

1. The Senate assembled at Eleven O'clock.
2. The Proceedings were opened with Prayer.
3. **COMMUNICATION FROM THE CHAIR ON THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF MURANG'A COUNTY**

The Speaker conveyed the following communication from the Chair-

"Honourable Senators, I have the following Communication to make.

By a letter received in the Office of the Speaker of the Senate on Wednesday, 21<sup>st</sup> October, 2015, the Speaker of the County Assembly of Murang'a informed the Speaker of the Senate of the approval of a Motion by the County Assembly of Murang'a for the removal, from office, by impeachment, of the Governor of Murang'a County.

In terms of Article 181 of the Constitution, section 33(3)(a) of the County Governments Act, 2012 and standing order 68(1)(a) of the Senate Standing Orders, the Speaker of the Senate is required "*within seven days after receiving notice of a resolution from the speaker of a county assembly to convene a meeting of the Senate to hear charges against the Governor.*"

Honourable Senators, pursuant to section 33(3)(a) of the County Governments Act, 2012 and standing order 68(1)(a) of the Senate Standing Orders, I convened this Sitting of the Senate, through Kenya Gazette Notice No. 8100, published on 27<sup>th</sup> October, 2015.

Honourable Senators, pursuant to section 33(3) of the County Governments Act, 2012 and standing order 68(1)(a) of the Senate Standing Orders, I hereby proceed to read the Charges against Hon. Mwangi wa Iria, the Governor of Murang'a County.

**Ground 1: Gross Violation of the Constitution of Kenya, 2010, the County Governments Act, 2012, the Public Finance Management Act, 2012 and the Public Procurement and Disposal Act, 2005.**

Particulars include —

- (i) Lack of accountability for the management and use of County resources by incurring unsustainable debts to the tune of Kshs. 2.5 billion which were not disclosed in the Debt Management Paper, 2015 and the County Fiscal Strategy Paper, 2015 thus violating Article 201(e) of the Constitution, 2010, section 123 and section 107(2)(e) of the Public Finance Management Act, 2012. Further scrutiny of the debt owing report submitted by the County Executive Committee Member for Finance, I.T and Planning as at 14<sup>th</sup> August, 2015 indicated violation of Article 226(5) of the Constitution of Kenya, 2010, since some programs in the debt report already had an appropriation in the Budget for the Financial Year 2014/2015 only to re-appear in the said debts, a clear indication of misappropriation of funds for the projects, for instance, Gakoigo Stadium under the department of Youth and Sports, was allocated Kshs. 30 Million in the Financial Year 2014/2015, yet, it had incurred a total debt of Kshs. 59 Million and no monies had been paid. This positions the County at a very precarious situation which may lead to auctioning of County Assets.
- (ii) Violation of Article 201(a) and (d) of the Constitution, 2010 that stipulates principles of public finance and section 5 and 130(1)(b)(i) of the Public Finance Management Act 2012: The County Governor allowed misappropriation of County funds by spending public funds in private commercial entities. The report of the Auditor General on the financial operations of Murang'a County Executive for the period 1<sup>st</sup> July, 2013 to 30<sup>th</sup> June, 2014, shows that the County Executive contributed a total of **Kshs.28, 489,800.00** to Murang'a Investment Co-operative Society (*Shilingi-Kwa-Shilingi*). The expenditure was incurred in respect of advertisements to promote the cooperative society and invite the general public to purchase shares in the Co-operative. Further details of the same are contained in the report of the County Assembly on the Murang'a Investment Co-operative Society (*Shilingi-Kwa-Shilingi*).

The society is registered under the Co-operative Societies Act [Cap 490, section 6(3)] of the Laws of Kenya. The Society is an autonomous body independent of the County Executive and according to the Auditor General's report; it was not clear therefore the circumstances under which the County Executive was funding it. This was in contravention of Section 5(1) of the Public Finance Management Act, 2012 as the society was not a declared county corporation.

- (iii) Violation of the Constitution of Kenya, 2010, Articles 201(a), (d), (e) on principles of public finance and Article 226(5) on audit of public entities, Article 227(1) on procurement of goods and services, and the Public Procurement and Disposal Act, 2005, by failing to adhere to the principles of public finance management and procurement of public goods and services: In the Financial Year 2014/2015, as stated in the County Governments Budget Implementation Review Reports of the Controller of Budget, the County Executive under the stewardship of the County Governor incurred advertisement expenditure amounting to **Kshs. 247 Million** against an approved budget of **Kshs. 7 Million** as at 31<sup>st</sup> March 2015 *i.e. **Kshs. 114 Million** and **133 Million** in the Half year* and third quarter report respectively; thus further undermining the Principles of Fiscal Prudence as stipulated in Article 201 (d) of the Constitution Of Kenya 2010 and section 107 (2) of the Public Finance Management Act of 2012.
- (iv) Violation of Article 183 (2), (3) of the Constitution of Kenya 2010 and Section 30 (3) (b) of the County Governments Act 2012, through failure to provide leadership to the County Executive Committee on the generation of county policies, plans, legislations and full and regular reports, regarding key programs such as the, **the Nappier Grass, A.I Crushes, among others.**
- (v) Failure to establish the County Budget and Economic Forum as stipulated under Section 137 of the Public Finance Management Act 2012; as a result the County Governor has failed to consult with the public over the preparation of county plans, budgets, economy and financial management at the county level thereby violating the provisions of sections 87, 91 and 115 of the County Governments Act, 2012 and more importantly Article 10 and 201 (a) of the Constitution that require public participation in decision making.
- (vi) Violation of Articles 176 (1) and 185 of the Constitution of Kenya 2010 by disregarding the County Assembly as an arm of the County Government and undermining its legislative authority, through requisition of monies and not remitting the same, hence crippling the operations of the Assembly and undermining the independence of the latter. This by extension violates Article 6 and Article 10 of the Constitution of Kenya 2010 that underpins the spirit of mutual respect, cooperation and consultation on all governance structures. This is evident from requisitions made in the following periods and were never remitted;
  - (a) Kshs. 44,347,764 in FY 2013/2014 (annexed);
  - (b) Kshs. 28,779,000 in FY 2014/2015 (annexed); and
  - (c) Kshs. 51,843,000 in FY 2015/2016 (annexed).

This misappropriation and misdirecting of funds indicates lack of good intentions towards the Assembly and creating a monarchy system, an endeavor to curtail the oversight role of the Assembly violating Article 73 (b) of the Constitution of Kenya 2010 which requires a state officer to serve the people and not power to rule over them. This further, violates Article 174 of the Constitution of Kenya 2010, which requires County Government to promote democratic and accountable exercise of power.

- (vii) Violation of Section 4 of the County Governments Act, 2012, that requires the County Executive Committee to develop legislation on County Symbols, for example the Murang'a County Symbols Act; after the Murang'a County Symbols Bill was passed in the Assembly and consequently gazetted into an Act, the County Executive so far have failed to implement the approved symbols in all their communication artefacts.
- (viii) Violation of Article 227 (1) of the Constitution of Kenya 2010 on procurement of goods and services by state organs and public entities and Section 135 (1) of the Public Finance Management Act 2012, by disregarding cost effectiveness and overspending in the departments of Finance, IT and Economic Planning, Transport, Energy and Infrastructure, Public Service and Administration among others as indicated in the Third Quarter Budget Review Implementation report for the FY 2014/15 from the Office of the Controller of Budget. Such expenditure should have been ratified through a Supplementary Budget or justified by the respective departments.
- (ix) Violation of Article 186 (1), Article 189 (2) and 226 (5) of the Constitution of Kenya 2010, by approving/directing /diverting public funds to non-devolved functions contrary to schedule four part two of the Constitution of Kenya 2010 for example Construction works at Kahuhia Girls that were split 9 times amounting to Kshs. 31 million, conversion of Public primary schools into boarding schools among others.
- (x) Violation of Article 227 (1) of the Constitution of Kenya 2010 and Section 30 of the Public Procurement and Disposal Act, 2005, through splitting of tenders with different LPO numbers for the same contractor, for instance proposed opening of Kahuruko-Ngatho Junction, under the department of Transport and Infrastructure, was split 11 times with different LPO numbers according to the debt owing report from the CEC Finance, IT and Planning as at 14<sup>th</sup> August, 2015.
- (xi) Violation of Articles 10, 183 and 201 of the Constitution of Kenya 2010 on priorities through public participation, legislative framework and fiscal prudence and accountability respectively and section 29 of the Public Procurement and Disposal Act 2005, through evading of open tender method by purchasing, of land along Kenol-Kabati Road, worth

Kshs. 340 Million through request for quotations, without stipulated reasons for using alternative procurement procedure in writing by the tender Committee. Fraudulent procurement procedures of the AI crushes under the livestock development program amounting to Kshs. 61.69 million, among other goods and services.

- (xii) Contravention of Article 201 (a) and (e), of the Constitution of Kenya, 2010 on principles of public finance in regard to accountability, responsible finance management and clear fiscal reporting and Section 155 (5) of the Public Finance Management Act, 2013, by failing to ensure that an internal Audit Committee is established. This has exposed the County Executive operations to lack of checks and balances in financial controls especially in the County Treasury, and lack of decentralized payment systems particularly at the departmental level. This is evidenced by irregular practices such as opening of unauthorized bank accounts contrary to the guidelines of the Transition Authority, lack of maintaining of cash books for some accounts, un-surrendered imprests, lack of adherence to the budget implementation, among other irregularities also highlighted in the report of the Auditor General 2013/2014 and the Controller of Budget Third Quarter Report 2013/2014. This heightened impunity on the part of the County Governor has resulted to continued loss of Public Funds.

## **Ground 2: Crimes under National Law**

The County Governor committed serious crimes under National Law in the following ways;

- (i) Violation of Article 212 of the Constitution of Kenya 2010, and section 58 of the Public Finance Management Act, 2012 by borrowing a loan of **Kshs. 200 Million** from Kenya Commercial Bank without guarantee by the National Treasury; the said loan was not factored in the Debt Strategy Paper of the County Government of Murang'a over the medium term expenditure framework, contrary to section 140 (1) (d) of the Public Finance Management Act..
- (ii) Contrary to Article 201(d) of the Constitution of Kenya 2010 that requires public money to be used in a prudent and responsible way, the County Executive irregularly purchased Hay for cows at the controversial Mariira Farm, further investigations reveals that there was no documented evidence for release and delivery of the 20,000 bales of Hay, resulting to loss of public funds amounting Kshs. 4 million. This criminal undertaking is clearly substantiated in the Auditor General Report for the period 1 July 2013 to 30 June 2014.

- (iii) Contravention of Articles 201(d) and 227(1) of the Constitution of Kenya 2010 that require a state organ or any other public entity to contract goods or services in accordance with a system that is fair, equitable and cost effective and violation of Section 29 of the Public Procurement and Disposal Act, 2005, by incurring exorbitant costs of advertisement amounting to Kshs. 247 Million, glaringly inclined to one Company in the name of 'Top Image Media' according to the Controller of Budget report for FY 2014/2015.

This spells gross irregularity in operations of the County Executive, in procurement of media services, intentionally skewed towards one particular company. Further scrutiny by the County Assembly reveals that the County Executive has continuously evaded the use of open tendering in procurement of goods and services.

- (iv) Violation of Article 41 (1) of the Constitution of Kenya 2010 that stipulates the rights of every person to fair labour practises and Section 19 of the Employment Act, 2012, through failure to remit statutory deductions of the defunct local authorities, which have continued to attract interest and penalties to a tune of Kshs. 131,615,210.00.

### **Ground 3: Abuse of Office/Gross Misconduct**

The County Governor of Murang'a exhibited gross misconduct/abused his Office in the following ways:-

- (i) Violation of Article 75 (1) of the Constitution of Kenya 2010 on conduct of state officers and Section 13 of the Leadership and Integrity Act using public funds to brand his name that is evident in the enormous advertisements in a vernacular radio station and bill boards erected along the roads and at Ihura Stadium gate; the Governor has continued to misappropriate public funds for personal branding in every advertisement made by the County. For instance, the front page of the printed examinations cited 'Murang'a County Post Mock Examinations' for the year 2014 and 2015 bear the name of the Governor insinuating that, he is the sole sponsor of the program and not the County Government.
- (ii) Pretentious realignment of Departments and programs within departments, that had not exhausted their budgets hence disregarding avenues that have been provided for by law, as manifested during supplementary budget for FY 2014/15 , thus causing confusion and hindering effective budget implementation of programs particularly in the departments of Trade, Industry, Commerce, Agro Marketing, Cooperatives, Agriculture and Livestock.

- (iii) Appointment of Mr. Christopher Ngera, as the Chief Officer for Education and Technical Training department, who had been rejected by the County Assembly contrary to Article 185 of the Constitution of Kenya 2010 and Section 45 (1)(b) of County Governments Act 2012; thus defrauding public funds through payment of allowances/salaries to the said Chief Officer, for the period he was illegally in office.
- (iv) Use of personal portraits in County funded projects contrary to Article 73 (1) (a) (i) and (iv) on public trust, Article 75 (1) of the Constitution of Kenya 2010 and section 13 of the Leadership and Integrity Act.
- (v) Loss of public funds, through payment of 80 ghost workers, and lack of a precise inventory of the staff establishment, as indicated in the Report of the Auditor General 2013-2014 contrary to Article 226 (5) of the Constitution of Kenya 2010.
- (vi) Failure to appoint a substantive Chairperson of County Public Service Board and allowing the Vice chairperson to occupy the said office for undefined period contrary to Section 64 (2) of the County Governments Act, 2012.
- (vii) The Governor failed in his duty to Gazette all the County Executive Members whom he appointed on different dates in accordance with Section 30(2)(i) of the County Governments Act, 2012.
- (viii) Contrary to the provisions of section 30(2)(j) of the County Governments Act, 2012, the County Governor, since inception of the County Government has never submitted to the Murang'a County Assembly any implementation status report of county policies and plans;
- (ix) The County Governor has continuously displayed negligence on his duties, by failing to issue Gazette notices of all important formal decisions made by him and/or the County Executive Committee, pursuant to section 30(l) of the County Governments Act, 2012.

Honourable Senators, section 33(3)(b) of the County Governments Act and standing order 68(1)(b) of the Senate Standing Orders both provide that the Senate, by Resolution, may appoint a Special Committee comprising eleven of its members to investigate the matter.

Honourable Senators will observe that in today's Order Paper, pursuant to these provisions of the law, the Senate Majority Leader will be giving Notice of a Motion for the establishment of a Special Committee. You will also observe that the Motion has, with the approval of the Speaker, been listed on the Order Paper.

Honourable Senators, should the Motion for the establishment of the Special Committee pass, the Special Committee will be required, under section 33(4) of the County Governments Act and standing order 68(2), to investigate the matter and to report to the Senate within ten days, on whether it finds the Particulars of the Allegations against the Governor to have been substantiated. If, however, the Motion for the establishment of a Special Committee does not pass, the Senate shall proceed to investigate and consider the matter in Plenary. The Resolution of the Senate on the Motion by the Senate Majority Leader will therefore determine the manner in which this matter shall henceforth proceed.

It is noteworthy, and I wish to emphasize to all Honourable Senators, that debate on the Motion shall be limited to the substance of the Motion, namely; whether to establish a Special Committee consisting of the Senators listed to investigate the proposed removal of the Governor of Murang'a County. It is not a Motion on the propriety, prudence or even the constitutionality or the legality of the processes that have preceded the submission of this matter to the Senate. It is not a debate on the facts of the matter or their merits. It is, therefore, not permissible to deviate to any matters other than the Motion before the Senate.

Honourable Senators, I have previously stated in this House that the hearing of charges for the proposed removal from office of a State Officer is one of the most important and also most solemn functions of the Senate under the Constitution. I therefore urge, once again, that the Senate exercises the highest level of responsibility and circumspection on this matter in Plenary and also, should the Motion by the Senate Majority Leader pass, in the Special Committee.

I thank you".

4. **NOTICE OF MOTION** - (The Deputy Senate Majority Leader)

**THAT, WHEREAS**, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 21st October, 2015, the County Assembly of Murang'a approved a Motion *"to remove from office, by impeachment,"* the Governor of Murang'a County;

**AND FURTHER, WHEREAS** by letter dated 21st October, 2015 (Ref. No. MCA/SPK/08/CON/3) and received in the Office of the Speaker of the Senate on 22nd October, 2015, the Speaker of the County Assembly of Murang'a 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;

**AND WHEREAS**, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 68(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;



**NOW THEREFORE**, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 68(1)(b), the Senate resolves to establish a special committee comprising the following Senators -

1. Sen. Billow Kerrow
2. Sen. Abu Chiaba
3. Sen. (Prof.) John Lonyangapuo
4. Sen. Muriuki Karue
5. Sen. Stephen Sang'
6. Sen. Fatuma Dullo
7. Sen. Janet Ong'era
8. Sen. David Musila
9. Sen. Catherine Mukiite
10. Sen. Stewart Madzayo
11. Sen. Moses Kajwang'

to investigate the proposed removal from office of the Governor of Murang'a County and to report to the Senate within ten (10) days of its appointment on whether it finds the particulars of the allegations to have been substantiated.

5. **MOTION ON THE ESTABLISHMENT OF A SPECIAL COMMITTEE TO INVESTIGATE THE PROPOSED REMOVAL FROM OFFICE OF THE GOVERNOR OF MURANG'A COUNTY**

Motion made and question proposed -

**THAT, WHEREAS**, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 21st October, 2015, the County Assembly of Murang'a approved a Motion "*to remove from office, by impeachment,*" the Governor of Murang'a County;

**AND FURTHER, WHEREAS** by letter dated 21st October, 2015 (Ref. No. MCA/SPK/08/CON/3) and received in the Office of the Speaker of the Senate on 22nd October, 2015, the Speaker of the County Assembly of Murang'a 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;

**AND WHEREAS**, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 68(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

**NOW THEREFORE**, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 68(1)(b), the Senate resolves to establish a special committee comprising the following Senators -

1. Sen. Billow Kerrow
2. Sen. Abu Chiaba
3. Sen. (Prof.) John Lonyangapuo
4. Sen. Muriuki Karue
5. Sen. Stephen Sang'
6. Sen. Fatuma Dullo
7. Sen. Janet Ong'era
8. Sen. David Musila
9. Sen. Catherine Mukiite
10. Sen. Stewart Madzayo
11. Sen. Moses Kajwang'

to investigate the proposed removal from office of the Governor of Murang'a County and to report to the Senate within ten (10) days of its appointment on whether it finds the particulars of the allegations to have been substantiated.

*(The Deputy Senate Majority Leader)*

Debate arising;

And there being no other Senator wishing to contribute;

Mover replied.

Before putting the Question, the Speaker, pursuant to Standing Order 72 ruled that the Motion affected counties and that voting will be by delegations.

The House proceeded to a Division;

The Speaker directed that electronic voting be taken pursuant to Standing Order 74 and that the division bell be rung for two minutes;

After the expiry of two minutes, the Speaker directed that the doors be locked and Senators asked to log-in using their cards;

The Speaker put the Question and directed Senators to cast their votes by pressing either the **"Yes"**, **"No"** or **"Abstain"** button;

Before the results of the Division were announced and pursuant to provisions of Standing Order 74 (5), the Speaker allowed two Senators to record their votes verbally.

Thereupon, the following Senators recorded their votes as **"Yes"**.

1. Sen. Kisasa Mshenga Mvita - on behalf of Kilifi County delegation
2. Sen. Okong'o Kennedy Mong'are

Following the Division, Question **agreed to.**

The results of Division were as follows:-

AYES – 30NOES – 0ABSTENTIONS – 0**AYES**

1. Sen. Adan Dullo Fatuma - on behalf of Isiolo County delegation
2. Sen. Billow Adan Kerrow
3. Sen. Boy Juma Boy
4. Sen. Haji Mohammed Yusuf
5. Sen. Hargura Godana
6. Sen. Hassan Omar Hassan
7. Sen. Kajwang' Moses
8. Sen. Kariuki Godfrey Gitahi
9. Sen. Kembi-Gitura James
10. Sen. Keter Charles Cheruiyot
11. Sen. Kilonzo Mutula Junior
12. Sen. Kimani Paul Wamatangi
13. Sen. Kisasa Mshenga Mvita - voted verbally on behalf of Kilifi County delegation
14. Sen. Leshore Sammy Prisa
15. Sen. Mohamud Halima Abdille - on behalf of Wajir County delegation
16. Sen. Moi Gideon Kipsielei Towett
17. Sen. Mositet Peter Korinko
18. Sen. Murungi Kiraitu
19. Sen. Musila David
20. Sen. Mutahi Kagwe
21. Sen. Ndiema Henry Tiole
22. Sen. Ntutu Stephen Kanyinke
23. Sen. Nyong'o Peter Anyang'
24. Sen. Obure Christopher Mogere
25. Sen. Okong'o Kennedy Mong'are - voted verbally
26. Sen. Omondi Godliver Nanjira - on behalf of Kakamega County delegation
27. Sen. Orengo James
28. Sen. Sang' Stephen Kipyego
29. Sen. Sijeny Judith Achieng' - on behalf of Nairobi City County delegation
30. Sen. Wetang'ula Moses Masika

**RESOLVED ACCORDINGLY**

**THAT, WHEREAS**, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 21st October, 2015, the County Assembly of Murang'a approved a Motion *“to remove from office, by impeachment,”* the Governor of Murang'a County;

**AND FURTHER, WHEREAS** by letter dated 21<sup>st</sup> October, 2015 (Ref. No. MCA/SPK/08/CON/3) and received in the Office of the Speaker of the Senate on 22<sup>nd</sup> October, 2015, the Speaker of the County Assembly of Murang'a 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;

**AND WHEREAS**, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 68(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

**NOW THEREFORE**, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 68(1)(b), the Senate resolves to establish a special committee comprising the following Senators -

1. Sen. Billow Kerrow
2. Sen. Abu Chiaba
3. Sen. (Prof.) John Lonyangapuo
4. Sen. Muriuki Karue
5. Sen. Stephen Sang'
6. Sen. Fatuma Dullo
7. Sen. Janet Ong'era
8. Sen. David Musila
9. Sen. Catherine Mukiite
10. Sen. Stewart Madzayo
11. Sen. Moses Kajwang'

to investigate the proposed removal from office of the Governor of Murang'a County and to report to the Senate within ten (10) days of its appointment on whether it finds the particulars of the allegations to have been substantiated.

There being no other business, and the time being thirty five minutes past Twelve O'clock, the Speaker adjourned the Senate without Question put, pursuant to the Standing Orders.

6. **SENATE ROSE** - at thirty five minutes past twelve O'clock.

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

*The Speaker will take the Chair today,  
Wednesday, October 28, 2015 at 2.30 p.m.*

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