

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Friday, 15th August, 2014

Special Sitting

*(Convened via Kenya Gazette Notice
No.5610 of 12th August, 2014)*

*The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.m.*

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

PRAYERS

COMMUNICATION FROM THE CHAIR

PROCEDURE FOR CONSIDERATION OF REPORT OF SPECIAL COMMITTEE ON PROPOSED REMOVAL FROM OFFICE OF THE DEPUTY GOVERNOR OF MACHAKOS COUNTY

The Speaker (Hon. Ethuro): Hon. Senators, I have the following communication to make relating to the procedure we shall use in relation to the business regarding the consideration of the report of the Special Committee on the proposed removal from office of the Deputy Governor of Machakos County.

As you are aware, hon. Senators, this is not the first time the Senate is conducting business of this nature. We shall, therefore, proceed along similar lines as we have done in the past when Senators received a similar special committee report.

As in earlier cases, the Chairperson of the Special Committee will lay the Report of the Special Committee first. After which, hon. Senators will have time to peruse it. The Report will, therefore, not be debated immediately, but the House will adjourn for one hour in order to allow you, hon. Senators, to go through it. We shall proceed in this manner because the point at which the report will be laid, it will not be known to the rest of us in the House, except maybe for the Committee Members which of the two procedures provided for by Section 33(6)(6) of the County Governments Act and Standing Order No.68(4) will be applied. The contents of the report will determine that.

Hon. Senators, just to refresh your memories, both Section 33(6) of the County Governments Act and Standing Order No.68(4) provide as follows:-

“If the special committee reports that any particulars of the allegations against the deputy governor-

(a) have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation.

(b) have been substantiated, the Senate shall, after according the Deputy Governor an opportunity to be heard, vote on the impeachment charges.”

Consequently, hon. Senators, after you have had the opportunity of perusing the report of the Special Committee and its findings thereof, a notice of Motion on the Report will be given and then later on, the Motion which will be listed in a supplementary Order Paper to be circulated shortly, will be moved.

Hon. Senators, as in earlier instances, if the Special Committee reports that any particulars of the allegations have been substantiated, the Senate will vote on each of the impeachment charges after according the Deputy Governor the opportunity to be heard.

Hon. Senators, arrangements have been made for the Deputy Governor of Machakos County to sit in the gallery during debate on the Motion. At an appropriate time before I put the question on the Motion, he will appear before the Senate either by himself or by his legal representative to be heard by the Senate.

I wish to inform hon. Senators that if the Deputy Governor chooses to exercise his right to appear and be heard by the Senate, the Deputy Governor shall be heard here, either by himself or his advocate in total silence and his speech shall not be followed by any question or comment. The Senate shall thereafter proceed to vote on each allegation found to have been substantiated.

I thank you.

PAPERS LAID

REPORT OF THE SPECIAL COMMITTEE ON THE PROPOSED REMOVAL FROM OFFICE OF THE DEPUTY GOVERNOR OF MACHAKOS COUNTY

Sen. Kagwe: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the House today, Friday, 15th August, 2014.

The Report of the Special Committee on the proposed removal from office of the Deputy Governor of Machakos County.

(Sen. Kagwe laid the document on the Table)

The Speaker (Hon. Ethuro): Hon. Senators, as I have communicated, the Paper has been laid on the Table of the House. We will give you one hour to look at the report or do you want less time?

Hon. Senators: Half an hour!

The Speaker (Hon. Ethuro): Okay, I will give you half an hour contrary to my earlier communication. We will go by the mood of the House. We will resume here at a quarter past three o'clock.

(The Senate adjourned temporarily at 2.40 p.m.)

(The Senate resumed at 3.15 p.m.)

COMMUNICATION FROM THE CHAIR

PROCEDURE FOR CONDUCTING BUSINESS ON THE PROPOSED REMOVAL FROM OFFICE OF THE DEPUTY GOVERNOR OF MACHAKOS COUNTY

The Speaker (Hon. Ethuro): Order, hon. Senators. I wish to make the following communication. The communication relates to the procedure we will use in conducting the business that is now before us in the Supplementary Order Paper which I have authorized to be circulated.

Hon. Senators, before we suspended the sitting of the Senate earlier this afternoon, one paper had been laid on the Table of the Senate by Sen. Mutahi Kagwe, the Chairperson of the Special Committee on the proposed removal from Office of the Deputy Governor of Machakos County. For your recollection, the paper was the report of the Special Committee on the proposed removal from office of the Deputy Governor of Machakos County. At the point at which the paper was laid, the House was not seized of the contents of the Report.

It was, therefore, not known to the House which of the two procedures provided for under Section 33(6) of the County Government Act and the Standing Order No.68(4) will be applicable. Hon. Senators, I have had the benefit of perusing the Report and it is clear that concerning the proposed removal of the Deputy Governor, the special committee, having found that the particulars of certain allegations, have been substantiated, the Senate shall, in accordance with Section 33(6)(b) of the County Governments Act and Standing Order No.68(4)(b) of Senate Standing Orders vote on each of the impeachment charges after according the Deputy Governor an opportunity to be heard.

Hon. Senators, I wish to confirm that arrangements have been made for the Deputy Governor of Machakos County to sit at the Speaker's Gallery during debate on the Motion before the Senate. At the appropriate time before I put the question on the Motion, he will appear before the Senate and be heard by the Senate; either by himself or his representative.

I wish to inform hon. Senators that if the Deputy Governor chooses to exercise his right to appear and be heard by the Senate, the Deputy Governor shall be heard here, either by himself or his advocate in total silence and his speech shall not be followed by any question or comment. The Senate shall, thereafter, immediately proceed to vote on each allegation found to have been substantiated.

Thank you. Let us move on to the next Order.

NOTICE OF MOTION**IMPEACHMENT OF THE DEPUTY GOVERNOR
OF MACHAKOS COUNTY**

Sen. Kagwe: Mr. Speaker, Sir, I give to give notice of the following notice.

Whereas to Article 181 of the Constitution and Section 33 of the County Governments Act 2012, on 23rd July, 2014, the County Assembly of Machakos approved a Motion to remove from office by impeachment the Deputy Governor of Machakos County.

Further whereas by a letter dated 24th July, 2014, Ref. MKACA/ADM/IPDG/Vol.1/6 and received in the Office of the Speaker of the Senate on 25th July, 2014, the Speaker of the County Assembly of Machakos informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded the Speaker of the Senate documents in evidence of the proceedings of the Assembly.

Whereas pursuant to Section 33(3)(b) of the County Governments Act 2012 and Standing Order No.68(1)(b) of the Senate, by resolution may appoint a Special Committee comprising 11 of its members to investigate the matter. Whereas pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order No. 68(1)(b) of the Senate, by resolution on 5th August, 2014 appointed a Special Committee comprising 11 of his members to investigate the matter of the proposed removal from office of the Deputy Governor of Machakos County and to report to the Senate within ten days of his appointment on whether it finds particulars of the allegations to have been substantiated.

Whereas pursuant to Section 33(4) of the County Governments Act, 2012 and Standing Order 68(2) of the Special Committee, the Special Committee has investigated the matter and tabled its report on Friday, 15th August, 2014. Whereas pursuant to Section 33(4) and 6(d) of the County Governments Act, 2012 and Standing Order No.68(4)(b), the Special Committee has found that the particulars of the following allegations against the Deputy Governor of Machakos County have been substantiated; namely,

- (a) Gross violation of the National Cohesion and Integration Act; and,
- (b) Abuse of Office.

Now, therefore, pursuant to Section 33(6)(b) of the County Governments Act, 2012 and Standing Order No.68(4)(b), the Senate, after according the Deputy Governor of Machakos County an opportunity to be heard resolves to impeach the Deputy Governor of Machakos County on the following grounds.

- (a) Gross violation of the National Cohesion and Integration Act; and,
- (b) Abuse of Office.

I beg to move.

The Speaker (Hon. Ethuro): I thought you were giving notice of Motion and not moving?

Sen. Kagwe: Mr. Speaker, Sir, I beg to give notice.

MOTION

IMPEACHMENT OF THE DEPUTY GOVERNOR OF MACHAKOS COUNTY

Sen. Kagwe: Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, whereas, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on 23rd July, 2014, the County Assembly of Machakos approved a Motion to remove from Office by Impeachment the Deputy Governor of Machakos County. Further, whereas by a letter dated 24th July, 2014, Ref.MKACA/ADM/IPIMPDG/Vol.1/6 and received in the Office of the Speaker of the Senate on 25th July, 2014, the Speaker of the County Assembly of Machakos 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.

Whereas pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order No.68(1)(b) of the Senate, by resolution may appoint a special committee comprising 11 of its Members to investigate the matter. Whereas pursuant to Section 33(3)(b) of the County Governments Act, 2012, and Standing Order No.68(1)(b) of the Senate by resolution on 5th August, 2014 appointed a special committee comprising 11 of its Members to investigate the matter of the proposed removal from Office of the Deputy Governor of Machakos County and to report to the Senate within 10 days of his appointment on whether it finds the particulars of the allegations to have been substantiated.

Whereas pursuant to Section 33(4) of the County Governments Act, 2012 and Standing Order 68(2), the Special Committee has investigated the matter and tabled its report on Friday, 15th August, 2014. Whereas pursuant to Section 33(4) and 6(d) and the County Governments Act, 2012, the Standing Order No.68(4)(b), the Special Committee has found that the particulars of the following allegation against the Deputy Governor of Machakos County have been substantiated; namely,(a) Gross violation of the National Cohesion and Integration Act; and, (b) Abuse of office.

Now, therefore, pursuant to Section 33(6)(b) of the County Governments Act, 2012 and Standing Order No.68(4)(b), the Senate, after according the Deputy Governor of Machakos County an opportunity to be heard, resolves to impeach the Deputy Governor of Machakos County;

- (a) Gross violation of the National Cohesion and Integration Act; and,
- (b) Abuse of office.

Mr. Speaker, Sir, hon. Senators will recall that on the sitting of the Senate held on Thursday, 31st July, 2014 the Speaker of the Senate by way of Communication from the Chair informed the Senate that he had received correspondence from the Speaker of the County Assembly of Machakos communicating the approval of a Motion by the County

Assembly of Machakos to remove from office by impeachment of the Deputy Governor of that county.

The Senate Majority Leader gave Notice of Motion on 31st July, 2014 and moved a Motion on the 5th August, 2014 that pursuant to Section 33(3)(b) of the County Governments Act, 2012, and Standing Order No.68(1)(b) the Senate resolves to establish a Special Committee comprising of the following Senators:-

Sen. Lenny Kivuti;
Sen. Mutahi Kagwe;
Sen. Sammy Leshore;
Sen. Abu Chiaba;
Sen. Martha Wangari;
Sen. Ben Njoroge;
Sen. (Prof.) Peter Anyang'-Nyong'o;
Sen. Kennedy Mong'are Okong'o;
Sen. (Dr.) Agnes Zani;
Sen. Daisy Kanainza; and,
Sen. Hassan Omar Hassan;

to investigate the proposed removal from office of the Deputy Governor of Machakos County and to report to the Senate within ten days of its appointment on whether it finds the particulars of the allegations to have been substantiated. Following deliberations on the Motion, the Senate resolved to establish the Special Committee.

Mr. Speaker, Sir, Section 33(4) of the County Governments Act, 2012 and Standing Order No.68(2) of the Senate Standing Orders mandated the Special Committee to do the following:-

(i) to investigate the matter;

(ii) to report to the Senate within ten days on whether it finds the particulars of the allegations against the governor to have been substantiated. The Special Committee, in the execution of its mandate was guided by these provisions of the Act and the Standing Orders of the Senate. The Special Committee held its first meeting on the morning of Wednesday 6th August, 2014 pursuant to Standing Order No.183. At that meeting, the Committee conducted the election of its chairperson and vice chairperson. I was elected unopposed to the position of chairperson while Sen. (Dr.) Zani was elected unopposed to the position of vice chairperson.

Mr. Speaker, Sir, on behalf of the Members of the Special Committee, I thank colleagues and hon. Senators for the confidence and trust they expressed in each one of us by electing us to serve in this Committee. I also thank you for providing us with clear guidelines in respect of the task ahead of us in your Communication from the Chair on 31st July, 2014.

Mr. Speaker, Sir, the Committee further extends its appreciation to the parties to the matter, namely, the County Assembly of Machakos and its advocates, the Deputy Governor of Machakos County and his advocates for their well researched and eloquent submissions in this matter.

The Committee also appreciates the media for the coverage of its proceedings during the course of investigations. The Committee further acknowledges the Members

of the public who expressed great interest in the proceedings sitting through the hearings as they keenly followed the proceedings of the matter.

Mr. Speaker, Sir, before I address myself to the findings of the Committee, allow me to raise some of the issues that the Committee considered. The first issue was the jurisdiction of the Senate over the impeachment of a deputy governor. The Deputy Governor through his lawyer submitted that a deputy governor would not be removed from office because there was no provision in the Constitution for the removal of a deputy governor. Counsel further submitted that if a governor and a deputy governor were removed from office, the national Government would take over the operations of the county which would be contrary to the spirit of devolution. However, the Special Committee disagreed with that argument. Article 182(4) of the Constitution provides that the Speaker of the County Assembly shall act as county governor were a vacancy to occur in the office of both the county governor and the deputy. The Committee's position was fortified by the findings of the High Court of Kenya in two cases where it held that a deputy governor is impeachable using the same procedure as that provided for a governor. These courts are; the High Court in Kerugoya, Constitutional Petition No.5 of 2014, hon. Dorothy N. Mucungu versus the Speaker, County Assembly of Embu and others; the High Court in Machakos, application No.113 of 2014, hon. Bernard Muhia from Kiala Versus the Speaker of the County Assembly of Machakos and four others.

Mr. Speaker, Sir, the second issue was on the proceedings before the County Assembly of Machakos. The Deputy Governor, in his response to the invitation to appear, submitted that the impeachment process before the County Assembly of Machakos was so systematically rushed and stage-managed and that the same did not amount to a fair hearing. He further submitted that the constitutional principles of rule of law, participation of the people and respect for human rights and dignity were breached during the impeachment hearings. The Deputy Governor of Machakos County further complained that the County Assembly of Machakos did not follow its own Standing Orders while impeaching him.

With respect to this issue, Mr. Speaker, Sir, the Committee agreed with the findings of the Special Committee in the impeachment proceedings of the Governor of Kericho County, where the Committee noted that a legislature makes its own rules of procedure and can choose to override the same rules of procedure if the circumstances warrant the same, only a legislator can judge the conformity of its actions with its own rules of procedure. Consequently, the Special Committee would not go behind the resolution of the county assembly to establish the procedural propriety of the county assembly.

Mr. Speaker, Sir, the third matter concerned the threshold for impeachment. The Committee considered the following question: What is the threshold or standard of proof required for a deputy governor to be removed from office? Allow me to cite jurisprudence that emanated from the Senate. During the Senate's consideration of the Report of the Special Committee investigating the removal of the Governor of Kericho on 3rd June, 2014, the Senate adopted the Committee's recommendations that the threshold for impeachment should take into account the following considerations:-

- (i) the allegations must be serious, substantial and weighty;

- (ii) the violation must be flagrant and glaring;
- (iii) there must nexus between violation and the governor;
- (iv) the violation must have led to harm, loss or damage;
- (iv) the violation must have led to the loss of the dignity in the office held, loss of confidence or trust in the person holding the office to carry out the functions of that office with integrity and accountability.

Mr. Speaker, Sir, four charges against the Deputy Governor of Machakos were forwarded to your office by the Speaker of the County Assembly of Machakos. Charge one was gross violation of the provisions of the Constitution; charge two was gross violation of the provisions of various Acts of Parliament; charge three, gross misconduct; and, charge four, abuse of office.

From the evidence received by the Committee - the following charges of the allegations detailed under four charges - the following particulars were found to have been proved.

1. That the Deputy Governor had used language that was derogatory against the people from outside Machakos County;
2. That the Deputy Governor uttered ethnically and regionally divisive and defamatory words during public rallies.
3. That the Deputy Governor used his office to cause anxiety and tension to investors, private sector professionals and members of the public who were non-Kambas and non-Machakos Kambas.

The question before the Committee, therefore, was whether the threshold for impeachment has been met. The majority of the Members of the Committee were of the view that the evidence adduced by the County Assembly on these matters was serious, substantial and weighty. The Evidence centred on use by the Deputy Governor of the word *nguu*, which in the County Assembly's evidence was stated to be a derogatory term referring to non-Kambas and non-Machakos Kambas. The Deputy Governor, in his submission, stated that the term *nguu* was a metaphor in the Kamba language which was used to encourage peace and the need not to spoil for war; and that his utterances at the public rallies were for encouraging peace among residents of the county.

Mr. Speaker, Sir, the majority of the Members of the Committee took the view that the preponderance of the evidence tendered before the Committee on this matter clearly indicated that the word *nguu* was a derogatory term used by the Deputy Governor to refer to non-Kambas and non-Machakos Kambas.

Mr. Speaker, Sir, the Committee received DVD evidence, a transcription and translation thereof authenticated by the Principal Legal Counsel of the County Assembly of Machakos, one Mr. Hillary Muthui, of utterances made by the Deputy Governor on the 7th July at AIC Bomani Church and Masii Catholic Church. The Committee also received affidavit evidence by various persons citing instances where the Deputy Governor had made these derogatory and defamatory remarks in churches and burials. They, therefore, found that the Deputy Governor had blatantly violated the National Cohesion and Integration Act, in particular, Section 3 on ethnic discrimination; Section 6 on harassment on the basis of ethnicity and Section 13 on hate speech. The Committee found that there was a direct link between the Deputy Governor and the utterances complained of.

All these violations, the majority of the Members of the Committee observed, were harmful to the interests of Machakos County. The majority of the Members were of the view that the derogatory utterances of the Deputy Governor were dangerous and divisive. Therefore, it was not in the interest of the Machakos County that the Deputy Governor continues to hold office. The conduct of the Deputy Governor demeaned the Office of Deputy Governor and was a betrayal of the public trust to serve and to protect all residents of Machakos County without discrimination on the basis of ethnicity or regional origin.

Mr. Speaker, Sir, taking these factors into account, the majority of the Members of the Committee held the view that the threshold required for impeachment had been attained. The minority of the Members of the Committee took the view that although the statements attributed to the Deputy Governor were offensive, the statement did not meet the requisite threshold for impeachment. The minority felt that other mechanisms would be employed by the relevant Government institutions and agencies to inquire into and address the matters complained of.

Pursuant to Standing Order No.203/5, the Senate Standing Orders a minority report by Sen. Hassan Omar is appended to the report.

Mr. Speaker, Sir, the final finding of the majority of the Members of the Special Committee is that hon. Bernard Kiala, the Deputy Governor of Machakos County, be impeached on account of:

- (a) Gross Violation of the National Cohesion and Integration Act; and,
- (b) Abuse of office

Mr. Speaker, Sir, as I conclude, allow me to make some personal observations related to the national cohesion and unity. As I have mentioned in the course of the hearing of this matter, the majority of the Members of the Special Committee found that the Deputy Governor had blatantly violated the National Cohesion and Integration Act through utterances and statements that were intended at causing ethnic division and hatred; that this matter cannot and ought not to be taken lightly.

Mr. Speaker, Sir, the history of our country and, indeed, the history of many countries the world over is replete with examples of the consequences of statements and utterances by those in leadership that are intended to cause division on grounds of ethnicity and other divisible ideas. Historical contexts force us to illustrate the risk and results of the use of negative or derogatory ethnic speech.

Mr. Speaker, Sir, the Nazi holocaust did not just begin as a holocaust. Here, I wish to quote my good friend and respected person, Sen. (Prof.) Anyang'-Nyong'o, who told me one morning during the impeachment discussions that fascism has never started in a crowd of people. Fascism is generally started by one person who continues to influence others and eventually causes mayhem.

Mr. Speaker, Sir, the following are some of the statements that were attributed to Adolf Hitler long before the holocaust began, and I quote.

“Hence today, I believe that I am acting in accordance with the will of the almighty creator by defending myself against the Jew; I am fighting for the work of the Lord. The personification of the devil as the symbol of all evil assumes the living shape of the Jew.”

It is no wonder that the Nazi holocaust led to the annihilation of some six million European Jews.

Mr. Speaker, Sir, in the Yugoslav wars, there were ethnic conflicts from between 1991 to 1999 on a territory of former Yugoslavia. The wars were accompanied by the breakup of the country where constitutional republics declared independence. But the issues of ethnic minorities in a few countries, chiefly Serbs in the central part of Bosnia in the south east were left unresolved after those republics were recognized internationally.

Mr. Speaker, Sir, during the International Criminal Tribunal for Yugoslavia, one of the indictments against the Serbian leader, Slobodan Milosevic, was the use of Serbian State's mass media to create an atmosphere of fear and hatred amongst Yugoslavia's Orthodox Serbs by spreading exaggerated and false messages of ethnically based attacks on Bosnian Muslims and Catholic Croats against the Serb people.

Mr. Speaker, Sir, nearer us is the Rwandese example whereby use of words such as *nyenzes* that were translated very ably into cockroaches eventually resulted into the massacre of some 800,000 people. At the start of the use of the word *nyenze*, nobody had been killed. But at the end of the use of the word *nyenze*, genocide had taken place in Rwanda. Words such as "exterminate the cockroaches" had been raised. In Bosnia Herzegovina, the same thing happened and the Bosnian war took place in the context of the dissolution of the former Yugoslavia as a result of the hatred and cleansing of people who were different from others.

Mr. Speaker, Sir, in Kenya the examples will not be complete without making reference to our own history. The post-election violence of 2007/2008 is still fresh in our minds. This was largely attributable to spurring of ethnic divisions and hate speech in all corners of our country, where there have been divisions along ethnic or clan lines. One always finds statements or utterances by those in leadership that have contributed to such divisions and the results are violence, death and displacement.

Mr. Speaker, Sir, leadership is a public trust. Leaders must exercise their leadership functions in a manner that is consistent with the provisions of the Constitution and unites rather than divides our people. Our counties cannot merely be breeding grounds for intra-county disputes; the place where people within a county rise up against those from outside their county or those not of their ethnic extraction. If this is allowed to happen, the principles and objects of devolution will surely be defeated. Where a leader such as the Deputy Governor of Machakos, in churches and burials, urges the removal of *nguus*, meaning non-Machakos Kambas and non-Kambas, the seriousness of his repeated statements cannot be underestimated. We, as Senators, must ask ourselves: What was meant by these statements? How were the *nguus* supposed to be removed? Is it by transferring those in employment in the county government to other places or counties, perhaps? Is it by replacing them with public officers from Machakos County? Do we remove them by buying their houses or land or might it be the more common method in history, where you remove them by forceful ejection, accompanied by death and destruction? The signs in Machakos County seemed to point to the later method.

Mr. Speaker, Sir, we received evidence to the effect that as a result of utterances of the Deputy Governor, medical practitioners at Machakos Level 5 Hospital were

extremely anxious. In fact, one practitioner actually left Machakos and moved to safer ground. Evidence showed that there was great anxiety and tension among *wananchi* who had hitherto co-existed and lived very well in peace. The Senate has a unique role, under Article 96 (1) of the Constitution and that is, protecting the interests of the counties and their governments. This protection must include the protection of the counties from leadership that seeks to disintegrate counties into small sub-units based on ethnicity, clanism or other factors. The Senate cannot shy away from this critically important responsibility. The Senate must pronounce itself with clarity on this matter. Our threshold on matters of national cohesion and unity must be a threshold that protects the interests of the counties and the unity that we profess in the preamble of the Constitution.

The Senate must with one voice pronounce its displeasure on matters of incitement to ethnic division and hatred. Our threshold on matters of ethnic division must be one that communicates to Kenyans how seriously we take this issue. We must ask ourselves a critical question. At what point is this threshold met in matters of ethnic-based incitement and division? I ask my colleagues: Should the Senate wait until public officers, serving in critical positions such as those serving in Machakos Level 5 Hospital and other hospitals, have left in order for us to reach the threshold? Do we wait until an innocent Kenyan or Kenyans have been evicted from their land, so that we now say the threshold has been met? Do we wait until there is actual violence and death? Do we wait until the communities in the county are finally up in arms against each other? I propose that we should not. This House must show confidence in itself and its responsibility in terms of making judgment on this matter.

Mr. Speaker, Sir, in the previous impeachment processes that have taken place in this House, there has never been doubt on which position we should take whenever a matter of this nature has come before us. We must really ask ourselves: As a House, are we at anytime going to set double standards where a person who is on impeachment from my county has got a lower threshold than those of other counties? Are we going at some point to say that if an individual is from my political party, the threshold that I expect is lower than others? We must be clear that on matters that are of this nature, the House must stand together in a non-partisan manner that shows very clearly that Senators will take a position that is guided, not by anything else, but the belief or otherwise of the charges that are before the House. We must ask ourselves whether our actions leave the Senate more united or divided. We must ensure that the message that goes ahead of us to the people of this country is such that they know that the integrity of our House will stay the same; clean and where justice is seen to have been done.

Mr. Speaker, Sir, we have an opportunity to act. The County Assembly of Machakos has given us an opportunity to nip this potential disaster in its bud; that may end up being a nasty event in the history of our country. We must not let that be the case and regret later. There are those who now say that they should have done more in a country called Rwanda during the genocide. This Senate must never be put in a position where it says:- “We should have done more and could have done more before Kenyans started losing their lives and property and wondering whether they are in the right place or they will be attacked at night.” That responsibility of ensuring that, that never happens lies today with this august House.

While we must protect the right of freedom of speech, as provided for in our Constitution, utterances and statements that are inflammatory and derogatory, especially when they come from leadership, must be checked. When these words come from the Deputy Governor of Machakos County, they will be read to mean that it is the policy of the Machakos County Government to make such utterances and take the positions that they have taken. It is time, therefore, for the Senate to act and exercise the solemn role as the second Chamber of this country. On these matters, the Senate must act in unity and rise up to this challenge as one.

Mr. Speaker, Sir, I beg to move and request Sen. Kennedy Mong'are Okong'o to second.

Sen. Okong'o: Thank you, Mr. Speaker, Sir, for this opportunity to second this Motion of impeachment. This is one of the toughest challenges when you find yourself in a Committee to fire or retain a person in employment, but this is where we have men and women of knowledge and wisdom; men who have taken oath of office to defend the Constitution of Kenya.

In the previous impeachments in this House, both parties have taken a bipartisan approach. In Wambora I, the House unanimously stood to impeach him. In Wambora II, the House took a partisan approach to impeach Wambora. In the Chepkwony proceedings, the Committee report was unanimously adopted not to impeach him. This is a vote which might bring discord when men and women stand by the principles, experiences and facts before them. In this impeachment of the Deputy Governor of Machakos, we had 24 charges. The Committee sat down to delve into these issues. We spent many hours and found out that many of the charges brought before us were frivolous and fictitious. This charge on which the Deputy Governor of Machakos is supposed to be impeached for is false considering what the Chairman has tabled here.

There were questions of threshold where some Members were arguing about past cases which have been taken to court on hate speech and people have been left to go scot free. Those might not hold water, because we know that the Directorate for Public Prosecution (DPP) in this country is understaffed and, therefore it cannot be a reason to say that if people have not been charged and taken to jail on accusations of hate speech, it is reason not to impeach the Governor.

Mr. Speaker, Sir, first, in the said charge, the Deputy Governor of Machakos uttered the same words not once, not twice or thrice. In those meetings where he uttered those words, he received thunderous applause from the crowds. As a leader who has taken the oath of office, it is wrong to segregate people in a county. We must set standards for public leadership. We are in a new dispensation where we have a new Constitution which requires that we stand firm while performing our duties regardless of which party we belong to. With those reasons, we must set grounds for political impropriety. Some of us have taken the oath of office, which oath of office we have never revisited to read and understand what it stands for and what it states. When I took the oath of office almost 16 months, I was clear in my mind that I will bear true faith and allegiance to the people of the Republic of Kenya. I will obey, respect, uphold, preserve, protect and defend the Constitution of Kenya and I will faithfully and conscientiously discharge the duties of a Member of Parliament.

Each day before we begin our parliamentary proceedings, we start with a prayer and there are some words which always linger in my mind. If I may quote a portion of our daily prayer which says that: “We seek guidance to treat and consider all matters that shall come under our deliberation in so just and faithful a manner as to advance the peace, prosperity and welfare of our country and for those whose interests you have committed to our charge”. This is a prayer which lingers in my mind as I serve this House even in committees. It is among those reasons that when I looked at the charge that we held; which was accepted by the majority as having met the threshold of impeachment, then the question which arose was what the threshold of impeachment was.

Mr. Speaker, Sir, this is the fourth impeachment process we are having but we do not have a standard of threshold. In other jurisdictions, Governors have been impeached for general incompetence. Governors have been impeached for very petty issues, but for this case, this is a very weighty matter. If you look at the genesis of the post-election violence in 1992, 1997, 2007/2008, there were coded utterances which affected the people of this country. It is for this reason that I ask my colleagues in this House to stand up on the oath that they took and the Constitution of Kenya so that we are not held hostage to the whims of political dimensions, where we come from or which language we speak.

With those views, I second.

(Question proposed)

Sen. Hassan: Mr. Speaker, Sir, I want to thank you for according me this opportunity---

The Speaker (Hon. Ethuro): Sen. Hassan, by mutual consent, you are entitled to 15 minutes and the Minority has donated another 15 minutes from his time; a maximum of 30 minutes.

Sen. Hassan: Mr. Speaker, Sir, I want to appreciate the unending generosity of the Minority Leader, Sen. Wetangula, and your kind consideration.

I rise under Standing Order No.203 (5) which states:-

“A report having been adopted by a majority of Senators, a Minority of Dissenting Report may be appended to the report by any Member or Members of the Committee.”

I found it necessary that I codify the issues that I articulated in the Committee, not only about the specific charges that were so substantiated by a majority but also on the procedural fairness of the whole impeachment process.

I want to start by reminding every Kenyan and Members of County Assemblies that this is the Senate of the Republic of Kenya. It shall never be party to internal squabbling, witch-hunt, malice, deficient or any other form of trivialities. This Senate shall only guide itself by facts, by law and by public interest. It is therefore my submission that whatever the impeachment proceedings that were averred to were internal issues of the Machakos County Government and County Assembly. It is in this light that this Senate must address itself to some of the issues. We should improve our processes to have some preliminary way in which we can dispense the application that in

my view or in the view of the Senate is a travesty or a triviality and do not merit the time of the Senate.

Mr. Speaker, Sir, when I was appointed to the Committee, my perusal in the first reading of the impeachment proceedings and documentation provided to me, upon taking my mandate as a Member of the Special Committee pointed to a coordinated and pre-meditated scheme by the County Government and the County Assembly of Machakos to witch-hunt and punish, through impeachment, the Deputy Governor. In this analysis, I find myself incapable, either in conscience or political pragmatism to valid such a scheme.

In my perusal, it was evident that most of the affidavits from the County Executive Members were sworn on the 9th July, 2014 on the same day the County Cabinet had purported to fix the date to discuss allegations of misconduct against the Deputy Governor. I have sifted through these affidavits by a couple of county executives who were listed in this bundle that was submitted by the County Government of Machakos and almost all of them, to the last man, hon. George Kioko Luca, hon. (Dr.) Sunil, hon. Priscillah Mueni Mukunya, hon. Ruth Nduku Mutua, hon. Joshua Nthenge Musili and others were signed on a date when they had decided that they were going to commence proceedings towards the misconduct of the Deputy Governor. Where there were no proceedings either in law or before any authority, why would we be signing or be swearing affidavits unless there was a scheme pre-meditated that did not seek to conclude fully the proceedings that had been initiated by the County Government?

Interestingly, the initial agenda to discuss the misconduct of the Deputy Governor was catalyzed by the Deputy Governor's concern on safety and security he raised in the Cabinet meeting of 7th July, 2014. Ironically, the issues of the safety and security of the Deputy Governor, which constitutes a paramount responsibility of any collegiate--- You do recall that when Sen. Muthama raised the issue of the withdrawal of his security and raised the security of his person and life, this Senate acted in unison to defend and to assert itself. You spoke to that very issue, Mr. Speaker, Sir, that it is not a matter of discretion for Sen. Muthama to have security.

Mr. Speaker, Sir, this Cabinet proceeded, and did not even have the courtesy to discuss the issues of the security of the Deputy Governor as evidenced by the minutes of this particular meeting. An agenda instead towards his misconduct substituted the security concerns. These actions point towards malice. Any process convened or initiated on malice can never have any returns apart from malice. I also reasonably believe that it was following this meeting that the scheme to impeach the Deputy Governor was either hatched or put in high gear. In my view, this explains why the affidavits of the members of the County Executive were sworn on 9th July, 2014 and by the admission of one of the County Executive Member on cross-examination during the hearings, she admitted that these affidavits were signed in the Governor's Office.

Mr. Speaker, Sir, the contents of the affidavits were similar. I have this bundle and many of them have a similar style. They start in the same manner, and I ask every Senator, for you to appreciate the gravity of this matter so that this Senate is never again bogged by this type of triviality, I urge you to get these records and read the affidavits one after another and see a pattern of similarity. This lends credence to my considered

view that these were rehearsed statements intended to actualize the intention to impeach the Deputy Governor. In my view, this validates my assertion about the scheme and further points to the element of coaching of who will be witnesses to the impeachment proceedings.

Mr. Speaker, Sir, most of the evidence provided to us was phone calls, SMSes and so on. In fact, I had never known that SMSes look so nice when they are printed. So, we had SMSs that this man told me this, this man told me, he insisted on this and so on. These were pure and sheer triviality, most of which was discarded by this very Senate. This action is evidence that the said agenda to discuss the misconduct of the Deputy Governor was a mere formality and the County Cabinet did not imbue the element of patience to see through its own proceedings on the misconduct of the Deputy Governor. If they had exhausted this machinery, gone to the County Assembly, then come to the Senate as recourse of final resort--- The Senate must be a recourse of the final resort. There was haste both by the County Government and the County Assembly to impeach the Deputy Governor, a scheme in which I cannot be party to, neither can I recommend to this Senate to approve.

Mr. Speaker, Sir, the scheme to impeach the Deputy Governor seems to have sent the accusers into a fishing expedition. Everything and anything will therefore, do. Dr. Sunil told us that the Deputy Governor went and asked him for a personal private loan, which he eventually paid, and he poses that as part of the grounds of impeachment. Since when – I come to several of you – was going to beseech a person to assist you in a financial matter become a ground or a basis for impeachment?

(Applause)

Mr. Speaker, Sir, this was evidenced by the myriad charges presented before the Machakos County Assembly and eventually to the Senate. The Senate framed 24 trivial charges in which, by consensus, the Senate Special Committee found 21 of the said charges unsubstantiated. I am not one of those--- I also do want to dissent there.

Mr. Speaker, Sir, my view is that the three charges which the Special Committee thinks are substantiated remain unsubstantiated for reasons stated herein under. These charges are trivial; they do not meet the threshold that is set by the Constitution. First and foremost, let me make it very clear that the Senate conducts a trial; the Senate does not just merely inform itself by matters of opinion. In impeachment proceedings the world over, the Senate constitutes itself into a trial court. It, therefore, must allude itself to a certain level of certainty of evidence; a certain degree of judicial fairness so that we can ascertain conclusively and without doubt that a certain crime has been committed. These are not machineries for witch-hunt and we must set up rules and procedures that guide impeachment processes both in county assemblies and in the Senate so that everybody must know, through law, what the threshold is.

Mr. Speaker, Sir, I aver to this Committee and to this Senate that matters of threshold are not matters of opinion; they are matters of law. Thresholds are set by law and it was also set by our regulations. The charges, so substantiated, do not meet the necessary threshold to warrant an impeachment of the Deputy Governor.

Mr. Speaker, Sir, the matter of hate speech are matters of strict proof; this Senate cannot constitute itself into a court and validate a charge of hate speech. There are institutions that are able to undertake these types of investigations beyond reasonable doubt and these are the consequence of criminal proceedings. Just the fact that there is a mere correlation that the Deputy Governor said that he uttered these words is, in my view, an insufficient basis to pass the guilty verdict on account of a criminal allegation of such enormity, which onus of proof is beyond reasonable doubt.

Mr. Speaker, Sir, the Constitution places a threshold of what bars public officers to hold public office on account of criminal allegations and a conviction pursuant to Article 193(2)(f) and 193(3) of the Constitution. It is just not a mere discretion; we do not just say “we think somebody is a murderer” and bring him here for impeachment. The Constitution says you must have been convicted of an offence not exceeding six months of imprisonment and after having been convicted of that offence, you must have exhausted the machinery for appeal. Therefore, this particular charge or these charges, of which are premature, 24 charges out of which 21 were unsubstantiated and three were substantiated just on account of a transcript, because the Senate conducts a trial. If you were to conduct a genuine trial, look at what the Committee on Governor Wambora did; it called the Auditor-General and it called the Public Procurement Oversight Authority (PPOA).

(Applause)

These are authorities in matters of procurement and finance; it is not a matter of discretion. We called no expert, we relied on transcripts and we do not know who translated them. If I was to translate a similar transcript, I could give it a different connotation.

An hon. Senator: Yes!

Sen. Hassan: Therefore, for the transcript, you should have called the person who videotaped it. If it is a trial, then we must ensure that we meet certain standards or expectations of law. These standards and expectations of law were not met. It was simply said “Oh, the Deputy Governor should not have uttered the word “*Nguu*.” But by the admission of the Deputy Governor, his utterance of the word “*Nguu*” had a different connotation. Therefore, it was for us to go an extra mile. We did forum shopping; as we filed the impeachment proceedings, the same people have rushed to the National Cohesion and Integration Commission (NCIC) and to all authorities; it shows a scheme of vendetta and this cannot be one of the fora that was shopped to do this work, in which the Machakos County Governor fails to handle his own Deputy Governor

Mr. Speaker, Sir, it is my considered opinion that not having tried this particular allegations conclusively, it is premature to validate the allegations of hate speech. In my view, it will be my recommendation that such allegations must be dealt with by the necessary agencies and institutions that have the mandate and capacity to conclusively investigate and try allegations herein – the NCIC and the Office of the Director of Public Prosecution, a recommendation in our own report in Article 3, paragraph 344. This Committee has also made recommendations that this type of allegations which were

typical of the allegations and counter allegations be investigated by some of these authorities.

Mr. Speaker, Sir, I come to the philosophical argument. Let me caution this Senate that the very charge of hate speech is often perpetuated by the villain as a weapon against the victim. It bears the very tendency to substitute villain for victim and victim for villain. Unfortunately, this is the situation in Kenya; we are in the realm of hate speech regime. Often, it is targeted at the weak, the victim of victims and it has been really politicized.

Mr. Speaker, Sir, I have heard people alluding to this whole general sense of fear; we have fear-mongered this afternoon that, you see, Rwanda happened like this or Nazi Hitler happened like this. But poor Bernard Kiala is nowhere near Nazi's Hitler!

(Applause)

So, let us not fear-monger; let us give a context that is similar to the context. Let us not try to create a state of paranoia in this country. There is a group of people that has become super paranoid. This is evident in Mombasa, where when you say "*Hawa watu wa Bara wamechukua vitu vyetu*," it does not mean anything; it simply means that the people need more inclusion!

(Applause)

Therefore, you take a political comment and transform it---

Sen. Wamatangi: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. Wamatangi?

Sen. Hassan: I said something in Swahili; do you not understand it in English, Sen. Wamatangi?

(Laughter)

Sen. Wamatangi: Mr. Speaker, Sir, to begin with, I would want to inform the learned Senator for Mombasa that, indeed---

(Several hon. Senators stood up in their places)

Mr. Speaker, Sir, I was rising on a point of order until the Senator asked whether there is a point he said in Swahili and whether I do not understand English---

The Speaker (Hon. Ethuro): Order! Order, Sen. Wamatangi! It is just a procedure---

Sen. Wamatangi: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): You do not rise on a point of order and a point of information.

Sen. Wamatangi: Mr. Speaker, Sir, I am rising on a point of order. Indeed, the Senator is quite right to have his opinion but is it in order that in his contribution, that he

cast aspersions on the opinion of the other Senators, especially the Chairperson by saying that there has been allusion of fear-mongering? That was the opinion of the contributing Senator and I do not think that it is in order.

The Speaker (Hon. Ethuro): Order, Senators!

Sen. Hassan: I think, Mr. Speaker, Sir, that is why it is called a dissenting view---

The Speaker (Hon. Ethuro): Order! Order, Sen. Hassan Omar! For a moment, you assumed you do not apply to the word Senators. I did not say "Sen. Wamatangi," I said "Order, Senators." That applies to you.

Sen. Wamatangi has no point of order.

(Applause)

So, proceed.

Sen. Hassan: Sen. Wamatangi, you are my very good friend and I am a very eloquent guy; you must listen to the very end. You will get a lot of benefit. Even if you might not use it today, you might use it tomorrow when you are in the Opposition. But that said and done, Senator, that was on a light touch, my dear friend.

Mr. Speaker, Sir, we have become very paranoid in this country, since I do not know which other context to give it. For a long time we, the people from the Coast region were stereotyped as "*wale wanaongojea nazi kuanguka*" or those who wait for the coconut to fall. Before long, some friends of mine in the police service were telling me that they had a complaint. So, we said with other leaders from the Coast region: "*Now sisi si wale wa kungojea nazi kuanguka. Sisi ndio wale tunaowatafuta wale wezi wa nazi*. We are the ones who are searching for those who stole the coconut.

We cannot continue to be paranoid. In this country, the regime of hate speech has been used in a political sense. I was philosophically opposed to the regime of hate speech. I have recorded, not once or twice but three times statements about hate speech, but they hardly meet the threshold. Just because something irks you because I called you a "*Nguu*," does not make it hate speech. Fair enough, I have not heard anybody call you a *Nguu*. So, just because---

The Speaker (Hon. Ethuro): Order, Sen. Hassan! Do not draw the Chair into your arguments. You need to withdraw those words.

Sen. Hassan: Mr. Speaker, Sir, I need to withdraw those words because initially I had referred to you and thought that, as decorum, I need to pull back those words. I am apologetic about that matter.

Mr. Speaker, Sir, therefore, the whole regime has been politicized. We have become extra sensitive. That is why I am saying that rather than use our personal discretion to say who has committed an act of hate speech, let us use the institutions that are there to arbitrate over these matters. Just because I have said something which you do not like does not merit it to be hate speech.

But that is not to mean that people must be careless in their utterances or we gag what we call free speech. My contention on this particular matter is that it can be tried before a court of law. It should have been presented to the right authorities, because it is prematurely before the Senate. The Senate cannot transform itself into a court of law to

start dealing with all matters; matters of law, fact or criminality. It must discharge its duty. Impeachable crimes according to authorities in law are offences of a political character. Offences of a political character are those that the bearer, who is a politician, with certain authorities and functions, uses that office in a manner as to undermine the Constitution or a constitutional government.

Mr. Speaker, Sir, let it not misguide you that these one or two allegations, including gross violation of National Cohesion and Integration Act--- Only two charges out of a guess work of four charges were put there. When you hear “abuse of office”, we have used one affidavit from a doctor, Dr. Eric Omondi Obade, of a purported letter that he delivered to the County Government, which is neither stamped nor is there an acknowledgement of receipt. I do believe that when institutions share letters amongst one another, they stamp those letters and have delivery systems. Therefore, we cannot purport that a letter which was written and annexed to an affidavit in itself is conclusive proof. You do not charge people in a vacuum. I asked: “Where is the supporting law?” Just because in your guesswork of three or four charges of abuse of office--- I believe that if the charge of the Deputy Governor influencing tender and jobs to his people had been substantiated, then it would have probably been an abuse of office. Abuse of office means you have contravened the articles of the Constitution. Just because we proved one of the 24 sub-charges does not qualify the entire charge. We should have left it at that specific sub-charge. Therefore, it would be wrong to say that you have---

Sen. Leshore: On a point of order, Mr. Speaker, Sir. I am sorry to interrupt my good friend, Sen. Omar. But is he in order to exhibit emotions and act as if he is the defense lawyer of the Deputy Governor?

(Laughter)

Sen. Hassan: Mr. Speaker, Sir, when I spoke with similar fashion when I was in the Committee, our good Chairman who has known me for over 20 years now, Sen. Mutahi Kagwe, actually did inform Sen. Leshore that this is how I usually speak. I do not know any other way to speak. But in certain instances, when we need to camouflage, I can speak in that manner.

Mr. Speaker, Sir, these charges are not supported by law. For you to come here and be impeached, there must be a charge that is definite under the law or Constitution. So, we cannot have a charge in a vacuum. Abuse of office issues touch on the constitutionality or constitution of Government. I do believe, in that particular instance, that in no way whatsoever does a lawyer or a doctor writing to a Governor constitute an act of abuse of office. In fact, I read his affidavit. He did not say “I heard.” He says “it was reported.” If it was reported, it constitutes hearsay, which cannot be entertained in this Senate.

Mr. Speaker, Sir, I have searched my conscience on this issue and wish that I had any other reason to dissent from this Report or register minority opinion with some of the other Senators. But I have looked purely as a matter of law and fact. One of my elders told me: “It is not in the institution that one is irrelevant. It is what you do that you exhibit irrelevance.” I do believe that the Senate is not the place to arbitrate over matters

between a Governor and his deputy, which they cannot handle in the forum of the county. That is why in the Report, there is intra-management of conflict. Therefore, when you escalate your politics to the Senate, just be sure even if I stand alone, I will use reason of political expediency or pragmatism. I imagine that this is not an issue that this Senate, having spent time because it is constitutional for us and legal, can affirm this recommendation. I think that it is a travesty and mockery. I do believe that if the Deputy Governor is taken through the paces of law, and he sees by that point that the law is turning against him and these matters have been conclusively dealt with, then he has no recourse but to exit that position. But this Senate cannot set itself into motion where we know that the standards of trial and fair hearing, under any judicial or *quasi-judicial* proceedings, were not adhered to. We cannot simply use discretion and opinion to insinuate ill-motive.

Mr. Speaker, Sir, my final comment is that I wrote this knowing that it must go into the annals of our history and permanent records of this Senate that I dissented. Ten or 20 years from today, I can stand shoulder high that I was not party to the intrigues of Machakos County and stayed clear and told them: "Go sort out your problems. If you ran together, then learn how to stick together." I find the position to impeach the Deputy Governor untenable and, therefore, differ with the majority vote for reasons aforementioned to impeach the Deputy Governor of Machakos County, hon. Bernard Kiala, and restate that this is the Senate of the Republic of Kenya.

Sen. Wamatangi: Thank you, Mr. Speaker, Sir. I rise to support this Motion. There are two very critical issues as I get to the threshold of the matters that I would want to rise. When this House receives communication from the county assemblies that a process has been initiated at the county assembly level and that the county assemblies themselves have passed a Motion or a resolution to impeach a Governor or a Deputy Governor, then this House has a duty to conduct its constitutional role of according those parties the hearing of this Senate.

When the charges by the County Assembly of Machakos were received by the Senate, you formed a Committee of 11 Members of this Senate to listen to these charges and allegations. I do not think that either the Senate was wrong or you were wrong in constituting that Committee of eleven Senators to go and look into these allegations and the charges and come up with a report. The question that behoves the Senate right now is that all those Senators who voted for the Report that has been tabled here are seven to four. Do we argue as a Senate that seven of those Senators were wrong and five were right?

Mr. Speaker, Sir, the rule of the majority is the basic rule of democracy. This House has formed precedence just like any other court of law or any institution. As has been said by earlier speakers, all the time when there have been similar cases, we already have formed or have a trend and we also have set precedence.

On the question of whether the hearings which were conducted by the Committee met a reasonable threshold to constitute or to uphold the charges, then I believe that the conscience of seven of those Senators against the decision of the five, then it tells this Senate that there must have been issues that led to that. The Chairperson of that Committee, Sen. Mutahi Kagwe, and the Secunder, the Senator for Nyamira who is a

qualified lawyer are both competent persons. I believe that when this House voted unanimously to endorse that Committee they did that because they had faith in those eleven Senators. I believe that at this point, it is not in our interest and neither is it right that we should cast aspersions on any Senator who sat in that Committee.

Mr. Speaker, Sir, I would like to state clearly that the reason why that process has been set, that after the Senate Committee listens to all the charges, those charges are still brought back to the House, each Senator is given an opportunity to express what their views are, and the Deputy Governor is given another chance to be heard and finally, a vote is taken even after the Senate Committee has made up its decision - that procedure is set in the interest of integrity of the elected Members of this House. The Members of this House have a conscience and they vote according to that conscience. It is my belief that none of all those eleven Senators made a decision because they did not believe that the threshold was met.

As a Senate, we endorsed all the eleven Senators and seven have returned a verdict. Then are we saying or would we argue that then the opinion and the threshold that has been set by the majority will be null and void or it will be accepted? That is the question we should answer. To think otherwise or to resolve otherwise would be saying that what the majority of those eleven Senators who we endorsed have said is incorrect. I believe that this is not the way this House wants to go unless we made a mistake in the first place.

I support.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, thank you for the opportunity to contribute to this Motion.

The Speaker (Hon. Ethuro): Sen. Wetangula, I hope you know that out of your generosity, you surrendered 15 minutes.

The Senate Minority Leader (Sen. Wetangula): Yes, 15 minutes out of my 60 minutes and I intend to use it well.

Mr. Speaker, Sir, I have had to rush back to this Senate from Bungoma where I left at 1.00 p.m., this afternoon to participate in these proceedings. Seven out of eleven Members of the Committee voted to say that three counts have been substantiated.

Sen. Hassan: On a point of information, Mr. Speaker, Sir.

The Senate Majority Leader (Sen. Wetangula): Please inform me.

Sen. Hassan: Mr. Speaker, Sir, please, I want to inform Sen. Wetangula that it was deliberate of this Committee not to state the way the vote went or who voted in which direction to maintain the bi-partisanship nature of this House. It is curious to know how Sen. Wamatangi knows how the vote went. I wish to inform Sen. Wetangula that the Chairman decided not to vote after he went round the table. So, six members said they were for impeachment and four said they were not for it. It was agreed that the Chairman does not vote but it was curious to know how he came up with the numbers.

The Speaker (Hon. Ethuro): Order, Sen. Hassan. That information is completely unnecessary to the extent in which Sen. Wetangula has made his submissions. He was just referring to what is on record. What Sen. Wamatangi did was to refer to the same numbers. He did not refer to individuals. To the contrary, you have actually gone ahead; one, to name yourself in your 30 minute submission; two, to name your Chairman---

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, if you allow me, I can proceed.

The Speaker (Hon. Ethuro): Proceed, Senator.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, this is a very critical Motion for this Chamber. It may easily turn out to be a trial of this Senate. The new Constitution has brought on board new expectations, new responsibilities, and new associations. It can be likened to Ghana where because a President has a running mate tied together like Siamese twins, when you enter office, you cannot sack your deputy and you must work together. What happened in Ghana is that President Jerry Rawlings, having been unable to push out his deputy, resorted to routinely boxing him in Cabinet meetings with a hope that he would resign and go home. The deputy declined to resign and hang on to the end of the term.

Mr. Speaker, Sir, in Malawi, the President even expelled his deputy from the party with a hope that she would get frustrated, resign and go. As fate would have it, a few months later, the President died in office and the mistreated deputy became the President. Here in Kenya, our governors must be advised that where you took a running mate, you took him or her for good or for worse, you will sit and work together for five years. We see a situation where a governor who does not like his deputy can easily resort to underhand manouvres to engineer an impeachment so that he can get somebody he can work with. This Senate will be failing if we rubberstamped this mischief. The case of Machakos is an open page. In law, we say, you can take judicial notice. In the Bible Jesus said, the signs of the times are clear, those with eyes can see, those with ears can hear and that is Machakos for you today.

We have listened to the distinguished Senator for Mombasa and I quickly flipped through this Report but with a lot of care. While I thank the Committee and its Members for agreeing to take the task of the House and sitting for long hours to bring a report to the House, we did not expect them to bring any report. We expected them to bring a report; a report that gives a clear reasoned analysis of evidence placed before it, taking into account the judicial notice that I have talked about and inform the House of their reasoned conclusion.

I want to inform my good friend, the distinguished Senator for Kiambu, that the Committee is an agent of the House and it does not bind the House. The decision belongs to this House. We can agree or disagree with the Committee because it is our entitlement as the Senate of the Republic of Kenya. The conduct of the Governor of Machakos has not helped this case either. I talked to one of the distinguished Members of the Committee and he told me what was on trial did not turn out to be whether the Deputy Governor should be impeached but the exposition of the rot that is Machakos County. This Senate has a duty and we must discharge it. Since when, and this is uncontroverted, would witnesses in an impeachment proceedings go, depone and execute affidavits in the office of the Governor? That stinks. Even if the Governor wanted to knock out his deputy, not through the Rawlings way, but in the manner he chose to do, he could have been more tactful. He could have done things differently. Since everybody knows that the Governor was the engineer and architect in chief of this impeachment, why did he not come to testify before the Committee?

In law we say, the Senate is entitled to infer an adverse inference on the conduct of the Governor that indeed if his evidence came on record, perhaps we would have not reached this verdict. That is law. When a situation such as this comes to this House, the first question we must ask ourselves is; as a *quasi-judicial* body because when we sit as an impeachment court, we are not legislating, we are not over-sighting nor are we representing. We are a *quasi-judicial* sitting. A *quasi-judicial* sitting, must conduct its affairs, its hearings, its evaluation of evidence and its conclusions in a manner that is consistent with judicial proceedings. The Committee had a duty, not just to listen to witnesses presented before them but to go even further and demand for witnesses to come before them. That is the law.

What we are hearing are charges that are laughable. Some of the allegations as the Committee rightly said are unsubstantiated. When you look at page 82, the Deputy Governor is arraigned before a Committee that he called a person of Indian origin a *Mhindi*. Honestly, how can that be offensive? How can that be a charge? If you are a person of Indian origin, it is not derogatory to be called a *Mhindi*. It cannot be. I have so many friends of Indian origin who feel very nice when I refer to them as such.

Sen. Murungi: On a point of order, Mr. Speaker, Sir. I would not like to interrupt the very eloquent presentation by the Leader of the Minority but being an eminent lawyer who knows the Constitution from cover to cover, can we allow him to mislead Kenyans and this House that calling somebody a *Mhindi* - and we know it can be said in a derogatory manner and it is a racist remark - to trivialize it in the manner in which he is doing and saying that it is nothing. This is a serious racial slur. I would like the Leader of Minority to apologize for misleading the House.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I am reliably told and even from these proceedings, Dr. Sunil Kumar Dhall; nowhere does he complain that he felt slighted when he was called a *Mhindi*. A Member of the Committee informs me - and I believe him - that, indeed, even before the Committee, he did not complain that he was called a *Mhindi*. How can that be a charge that can be brought before the distinguished Senate of the Republic of Kenya to arbitrate?

Mr. Speaker, Sir, it is with this that I keep on agreeing that Sen. Murkomen---

The Speaker (Hon. Ethuro): Sen. Wetangula, except that I think you need to be fair to the Committee also. If you look at paragraph 262 and 263, it says:-

“Although this matter was raised in the Grounds and Particulars of Allegations as forwarded by the County Assembly of Machakos, no evidence whatsoever was adduced by the County Assembly in support of this allegation.”
In paragraph 263, it says:-

“The Committee, therefore, unanimously found the allegation was not proved and was, therefore, not substantiated.”

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, you have just said what I was going to say!

(Laughter)

Because I was at paragraph 261, and you have gone ahead to look at paragraphs 262 and 263. I was only demonstrating the triviality of the charges that were formed against this Deputy Governor; the content and the conclusion notwithstanding. That, in fact, a charge like this was placed before the Senate; it is the height of triviality. I had read those two paragraphs. You can even see from my record that they are heavily underlined.

(Laughter)

Mr. Speaker, Sir, then comes the *Nguu* charge; that the Deputy Governor is found to have made remarks that are contrary to the provisions of the National Cohesion and Integration Act. I want to remind this Senate that the Supreme Court has ruled in the case of Fred Outa *versus* Okello from somewhere in Nyanza that a civil court – and this is a *quasi-civil* court – has no capacity to sit and preside over a criminal issue and purport to pass a verdict of guilty without a trial.

(Applause)

Mr. Speaker, Sir, in the Outa case, an allegation was made that Outa had committed a criminal offence in an election process and the trial court purported to convict him without a criminal trial. The Supreme Court said that this is not tenable. The allegations against the Deputy Governor are that he violated the provisions of the National Cohesion and Integration Act, which gives rise to criminal responsibility. What our House can do, where there are such transgressions, is to recommend to the Director of Public Prosecutions (DPP) to investigate and prosecute. That is what this House could have done. Until and unless the Deputy Governor – I do not know whether he is called Kyalo or Chalo; I do not know how to pronounce the Kamba names – has been arraigned before a court of law, prosecuted for hate speech and convicted, it cannot be a ground for removal from office on the basis of exaggerations, alarmist statements and fear mongering that helps nobody.

Mr. Speaker, Sir, I feel saddened to sit here in this Chamber and listen to one of us drawing irrelevant parallels between what the Deputy Governor is alleged to have said, which he denies the derogatory meaning in it and explains what he meant and is on record, and the happenings in Rwanda and the happenings in Hitler's Germany, the disjoinder of even alleging in this House that the 2007/2008 post-election violence was triggered by utterances. Everybody knows that the 2007/2008 clashes were caused by the bungling of elections by the Electoral Commission of Kenya (ECK); not by utterances by anybody, although they eventually took some ethnic fault lines in the conflict. To tell us that for the Deputy Governor to say *Nguu* can trigger genocide – because Rwanda was not an ethnic conflict, it was genocide – or that Hitler gassing Jews on trains in Germany in the 1940s could have been triggered by a remark as frivolous as this is to stretch our imagination too wild and too far. We must be true to ourselves.

Mr. Speaker, Sir, the English say "Give a dog a bad name and hang it." I do not think the Senate is ready to give this dog a bad name and hang it. This Senate must listen to this dog and give it its day before the altar of justice.

Sen. Wamatangi: On a point of order!

The Speaker (Hon. Ethuro): What is it, Sen. Wamatangi?

Sen. Wamatangi: Mr. Speaker, Sir, I really would not want to disrupt the flow of the thought line of the Senate Minority Leader, but---

The Speaker (Hon. Ethuro): But now that you have done it---

Sen. Wamatangi: Yes, Mr. Speaker, Sir. Is it in order – now that I have done it, as you say – for the Senate Minority Leader to mislead the county that he is unaware or ignorant of the fact that the 2007/2008 clashes were caused by utterances by people in this Republic which caused ethnic tension, eventual fight and confrontation? That, I think, is out of order in my opinion.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, in those elections, there was no Luhya contestant, and Sen. (Dr.) Khalwale can tell you that we probably lost the largest number of people in that conflict. The conflict was caused by a bungled election by the Electoral Commission of Kenya and not by outbursts by people. There was a peaceful campaign and elections, but bungled results, triggering a conflict. If you live in this country, you do not need to be reminded.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. I did not want to interrupt the Senate Minority Leader, but is it his argument, therefore, that actually the post-election violence was not pre-planned? It seems that he is perpetuating that direction.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, even if I said in the affirmative, it is unlikely to help any trial anywhere.

(Laughter)

Mr. Speaker, Sir, I will now go to paragraph 280.

The Speaker (Hon. Ethuro): Sen. Wamatangi, are you still insisting? You are on a point of order.

Sen. Wamatangi: Mr. Speaker, Sir, I insist on the point of order.

The Speaker (Hon. Ethuro): Except the issue of 2007/2008 post-election violence---

Sen. Wamatangi: Mr. Speaker, Sir, I am not on that one. I had raised that point of order, so that the nation is not misled. Is it in order for the Senate Minority Leader to insinuate to a Senator whom he knows that he is elected in the County of Kiambu, that “if you live in the Republic of Kenya, then you should know that?” He knows that Kiambu is in Kenya.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I can say what I know you are about to say, that English is a foreign language.

The Speaker (Hon. Ethuro): Order! Order, Sen. Wetangula! You know that I cannot say so. So, you are imputing improper motive on my part. Two, I am actually on record, under similar circumstances, saying that English is an official language according to our Constitution. So, the excuse about being foreign no longer applies.

I see Sen. Wamatangi still persisting. Let me just confirm. Sen. Wamatangi, just listen to me. I think that you must appreciate the way Members debate. If he said: “You,

Senator So-and-So do not live here, that is a different proposition from making a generic statement to everybody in the nation, unless you are the only stranger in Jerusalem who does not know what happened. I understood it in that context.

The Senate Minority Leader (Sen. Wetangula): I salute you, Mr. Speaker, Sir. I will invite my brother and very great friend, to pass by the nearest bookshop and buy a book called “The Trouble with Nigeria” by Chinua Achebe and read it very carefully. Chinua Achebe says that recently he heard President Shehu Shagari saying that corruption in Nigeria has not yet reached alarming proportions. He goes ahead to say that anybody who makes a statement of that nature is either a fool, a crook or does not live in Nigeria. He went on to say: “I know that President Shagari very well; he is not a fool. I also know that he is not a crook. The only conclusion that I can draw is that even if he is our President, he does not live in Nigeria.” That is the book that is a-must-read for many of us.

Mr. Speaker, Sir, paragraphs 280, 281 and 282 run through allegations that the Deputy Governor made utterances that were derogatory to non-Kambas, non-Machakos Kambas and so on. Then, they go on to conclude that they found it substantiated and it is hate speech. First, the Committee has no capacity to conclude that it was hate speech, unless it is has gone through a trial. Secondly, I it is not an ethnically-laced speech, even if the Deputy Governor was talking about non-Kambas and Kambas who do not come from Machakos. Lest we forget, apart from professional cadre, the purpose of devolution is to strengthen, build capacity and help residents of each county, to the extent that it will be unjust to go and pick a Wanyonyi in Bungoma and employ him to clear the Governor’s office in Turkana. This is because a Wanyonyi in Bungoma can be employed to clean the Governor’s office in Bungoma. That is why *ugatuzi* came to help people. Where you have doctors and engineers, they can work anywhere. What this man is saying, which is not hate speech, is: “*Tafadhali, haya mambo hayasaidii watu wetu.*”

The Speaker (Hon. Ethuro): Order! Order!

The Senate Minority Leader (Sen. Wetangula): It was a quote, Mr. Speaker, Sir. It means:- “Please, help our people. Employ our people.” This is happening in all counties. We are fighting to increase the amount of money going to counties, so that they can put up factories, industries and employ people, to arrest urban migration and create wealth. How can this amount to impeachment? I want to urge this Senate to rise to the occasion, because the whole country is watching. Either we distinguish ourselves into ignominy as a House of trivial or we rise to the occasion and show Kenyans that we are not a pawn in political maneuvers and games engineered by Governors who want to punish and knockout their deputies. The day that this House---

Sen. Muthama: On a point of information, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. Wetangula, do you wish to be informed by Sen. Muthama?

The Senate Minority Leader (Sen. Wetangula): Yes, he is my Whip.

Sen. Muthama: Mr. Speaker, Sir, I just wanted to inform my leader that Article 174 (d) of the Constitution speaks volumes. It says that the objects of the devolution of government is to recognize the right of communities to manage their own affairs and to further their development.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, the beauty of civic awareness in this country nowadays is that great constitutional knowledge is not limited to us lawyers. I thank Sen. Muthama for the information.

Mr. Speaker, Sir, when the Deputy Governor was asked what “*nguu*” means, he explained to the Committee that what he wanted to tell people was to live in harmony. I have gone out of my way to ask Sen. Musila, who is the much older person here from Ukambani than Muthama and Sen. Mutula Kilonzo Jnr., and he has told me--- There is no doubt that Sen. Musila is a very respected person in this House. He was a District Officer, District Commissioner, Provincial Commissioner, Member of Parliament, Deputy Speaker of the House, an Assistant Minister for Defence and he is our Commissioner. Above all, he is not a man prone to extravagant language or exaggerations. He has told me that the use of the word “*nguu*” in Kikamba is very common and it is not offensive and does not mean what we are being told it means. I believe him because he has no reason to mislead me.

I want to urge this House that let us not fall into a trap of malice, witch-hunt, trivial and spending our energy negatively and above all, portraying ourselves to Kenyans as a House which if a Governor cannot box his deputy, he brings it to the Senate to box for him. That will be a very sad day for this House. I want to say to all the Governors---

Sen. Njoroge: On a point of order, Mr. Speaker, Sir. I stand to wonder which Governor is being referred to by the Senate Minority Leader as having brought the Deputy Governor into this House to be impeached. He has repeated it time and again and as we went through the proceedings, I never saw anywhere where the Governor of Machakos wrote an affidavit wanting the Deputy Governor to be impeached. So, that is misleading information and I think for him to continue misleading this nation, it is very wrong because he is a leader who should be speaking the truth at all times. Is he in order to mislead the House?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, it is obvious in my response to the distinguished Nominated Senator that he was not listening from the beginning because I started where Sen. Hassan left, that all the affidavits placed in the Committee in which the distinguished Senator said were deponed or signed in the office of the Governor. It is on record and we were told by the distinguished Senator for Mombasa whom I have no reason to doubt.

Sen. Njoroge: On a point of order, Mr. Speaker, Sir. I would like the Senate Leader of Minority just to refer to one affidavit which was taken at the Governor’s office. Who said that an affidavit has a specific area and place where it should be signed? I think and I believe that even if it is taken on the floor, it does not matter; it should be considered as an affidavit. The affidavit having been signed at the Governor’s office does not mean that the Governor wanted the Deputy Governor to be impeached. Is he in order?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, the most difficult undertaking you can ever attempt to take is to defend the indefensible and you will not succeed, Sen. Njoroge.

The Speaker (Hon. Ethuro): Sen. Wetangula, I think Sen. Njoroge has raised good points which in the first instance, you dismissed him as if he was not listening and I wonder how he could make interventions without listening and now you are so

dismissive to the extent that you are now saying that he cannot defend the indefensible. Why do you not respond to him first and then reach that conclusion?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I have been informed and I have no doubt that it is true that CECs who appeared before the Committee on cross examination and this includes one Sheila Mueni Mukunya - It is in the proceedings – admitted before the Committee that they deponed the affidavits in the office of the Governor.

Sen. Hassan: On a point of information, Mr. Speaker, Sir.

The Senate Minority Leader (Sen. Wetangula): Inform me.

The Speaker (Hon. Ethuro): Order! I had informed you on the right procedure.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I will take the information.

The Speaker (Hon. Ethuro): I think I am not going to allow information that is really not necessary to help your case. I mean I have heard information which is just repeating what you have said. Of what value is that? I will only admit this after I have heard it so that you can respond.

Sen. Hassan: Mr. Speaker, Sir, when we sat in the Committee, one of the Ministers in charge of Trade, Economic Planning and Industrialization, a Ms. Sheila Mueni Mukunya was asked by the defence lawyers where specifically she swore her affidavits--

The Speaker (Hon. Ethuro): Is it in the proceedings?

Sen. Hassan: Yes, it is in the proceedings.

The Speaker (Hon. Ethuro): Where?

Sen. Hassan: Mr. Speaker, Sir, in terms of the report, it is in the bundle of documents that we were given but it is not in the actual report. It is in the information shared to us by the County Assembly of Machakos.

The Speaker (Hon. Ethuro): Order, Senators! These matters are very easy. If it came as supplementary information, then you would easily find a minute to that effect which are usually attached to the report.

Sen. Hassan: It is in the HANSARD.

The Speaker (Hon. Ethuro): If it is in the HANSARD, then get a copy. The responsibility is on your part to prove.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. Without interrupting the Senate Minority Leader – I have already interrupted anyway – this is a serious matter, and if I may request the House that we minimize interruptions so that we can hasten this issue in the usual manner which I do not want to say because the whole country is watching, you know what is needed to ensure that a vote takes place in this House. If we can allow it to flow a little bit, it will allow some of us to make contributions before we vote.

The Speaker (Hon. Ethuro): I think that is a good appeal but I still reserve the right because if a Member really feels aggrieved, he or she has the right to get proper information and whoever is making the assertion has also the obligation to prove it.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I want to encourage Members of our Committee whom we have already thanked, that having

brought the Report to the House, you are under no duty to defend your position; you let us ventilate on the Report. That is how democracies work and we work that way.

Mr. Speaker, Sir, when I was interrupted by a point of order, I was paying tribute to advice given to me by Sen. Musila and I was informing the House that, in fact, if you look back to the previous proceedings of impeachment, in the Wambora case, the Committee summoned the Controller and Auditor-General and the Director of Public Procurement Oversight Authority to give them professional advice. In this particular one, instinctively, none of the distinguished Senators in the Committee was from the Kamba community to the extent that we could say that they had the benefit of knowing the language. One would have expected that they could have called a respected person with a wide knowledge of the language to come and tell them what this meant. As a true African, you know that there is not a single word in any of our languages that has a pigeon hole meaning. In my language, there is a word *Kukhu* which means grandmother and when you just twist the pronunciation a bit, it means a huge firewood. You can give it a third meaning and so on and so forth. Also, if you have a last born daughter, you call her the same but she does not become your grandmother.

I want to urge the House, bipartisan, that we are defenders and protectors of devolution. We should not be cheerleaders, neither should we be catalysts or fan fires where there are conflicts going on in county management structures.

I was finishing by telling our Governors who may be listening and watching, I was told by my former President and boss, Hon. Mwai Kibaki, when one of us was very agitated in expressing extravagant views against people that we thought we did not like, he told us that life is not about people you like, life is about people you live with. Those who think that they will only live with people they like may have to move to the next planet. If you want to live in this country--- there are many things that I like about my distinguished brother from Nakuru and there are many things that I may not like about him, but I must live with him and he must live with me. In law, we say take your victim as you find him. We must live with each other and I want to tell my good friend, the Governor of Machakos, that this aura of a great performer, of doing incredible things better than others can crumble like a pyramid of cards with this kind of manouvres.

Sen. Mungai: On a point of order, Mr. Speaker, Sir. I would like to seek a small clarification on Chapter 280 of this particular Report. It refers to the word “*nguu*”. I understand the Kamba Language and I speak it. When you talk about a “*nguu*”, you are talking about something that walks slowly because it is a tortoise. So, when it is reported here that the Deputy Governor referred to outsiders as “*nguu*”, personally that does not make sense at all to me because---

The Speaker (Hon. Ethuro): Order, Sen. Mungai.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, he may be out of order but he was arguing very intelligently and I salute him.

In law, we have what we call illegally obtained evidence. Illegally obtained evidence can still lead to conviction. I thank the distinguished Senator from Nakuru because he has told us exactly what Sen. Musila told me.

My time is up.

I beg to oppose this Motion and that the impeachment of the Deputy Governor cannot stand and cannot be sustained and we must dismiss the Motion.

Sen. Muthama: On a point of order, Mr. Speaker, Sir. Sen. Mungai, a good friend of mine, is out of order to imply---

The Speaker (Hon. Ethuro): Order, Sen. Muthama. That matter is already gone and more importantly Sen. Mungai did not actually have the Floor.

Proceed, Sen. Murkomen.

Sen. Murkomen: Mr. Speaker, Sir, this is another very sad afternoon in the Republic of Kenya and the history of devolution. The reason is that we are again, the fourth time, presiding over an impeachment of a public officer in the person of a Deputy Governor of Machakos. The first one was the Governor of Embu, then we dealt with the Deputy Governor of Embu, then we moved all the way from Mt. Kenya region to the land of tea to deal with the impeachment of the Governor of Kericho, then we are now back to the other end, the dry areas of Machakos to preside over the impeachment of a Deputy Governor. Perhaps because it is Machakos and Ukambani area is a little bit dry that tortoises become the subject of this impeachment.

Mr. Speaker, Sir, personally, as the Chair of the Committee on Devolution whose mandate is to foster good relationship between the county government, the national Government and also among institutions of governance in the county, presiding over about four impeachments in just about one year and a few months is a sad state of affairs. There must be something going wrong in terms of people obeying the law, in terms of looking at alternative dispute resolution mechanisms, looking for people trying to live by the law or living amongst themselves in good relations.

As a Chair of the Committee on Devolution, I feel that we are drifting everyday from the aspirations of our Constitution in Article 174. It says that the objective of devolution was to have self-governance of people so that they can make decisions that are going to affect them and further their own development. The people of Machakos, the people of Embu, the people of Kericho and the people of this Republic of Kenya are looking for services and for those services to be delivered, the leadership in that county must focus more on fostering inter-leaders relations in terms of those leaders abiding by the law or them trying to work with everybody else to attract investment in the counties.

Mr. Speaker, Sir, when this Motion was being moved, I said that I have a lot of sympathy on the position of the Deputy Governor and the reason is simple. The position of the Deputy Governor is very unique in the Constitution because apart from Article 179 saying that the Governor shall be the chief executive officer and the deputy shall be the deputy, when we come to the County Governments Act, particularly Section 33 where it is talking about the functions of the governor, nothing is said about the deputy governor. Nothing at all is allocated to the deputy governor. Today, we are presiding over the impeachment of a deputy governor and it is important for us to sit down and think through: What is the position of other deputy governors in this country? I have sat with them. The Embu one was chased to one kilometre away, given an isolated office where she could not do anything in that county. When she was brought to our Committee which was Chaired by Sen. (Dr.) Khalwale and I was the Vice-Chair, they said that she is being punished for being co-superintendent. This term has not been debunked. I am saying this

because I have sat with many deputy governors, discussed with them and most of them, just like in Nigeria and the United States of America (USA), where one would come to the office, read a newspaper, then walk out and go.

This House, even as it presides over the impeachment of the Deputy Governor of Machakos seated up there, we must think through and say, how do we turn this position to be more valuable so that they can be respected by the governors and move devolution forward?

(Loud consultations)

Mr. Speaker, Sir, I know why my friends are very excited because it has not reached the position where we are making a decision. I am just making submissions for the record.

The Speaker (Hon. Ethuro): Order, Sen. Murkomen. I can help. You said that the Deputy Governor of Embu was accused of co-superintendent and that word has not been debunked. I am wondering whether it will ever be debunked.

Sen. Murkomen: Mr. Speaker, Sir, I have published a Bill and I hope this House will sit down and give meaning to the position of the deputy governor so that in future even as we preside over, we will be looking at the functions *vis-à-vis* the expectations of the people of that county.

In working on that Bill, I have read about Nigeria. The story of Nigeria in the first few years shows very clearly that most governors were impeached. That impeachment was related to matters of accountability. That issue is still going on in the County Public Accounts and Investments Committee. Most of them were sent home because when they came to the office, they suddenly realized that they have enormous resources. In the situation of Kenya, one of the inductions the governors underwent in Naivasha was the “big man induction”. They were told you will be called “Your Excellency”, you will have a siren, you will have a flag and so on.” That is the one thing we are still struggling with in the County Public Accounts and Investments Committee.

Be that as it may, the later years of devolution in Nigeria became the years of impeaching deputy governors. The reason was this, in Nigeria, the deputy governor is suffering for many reasons, some of which are related to succession, power control, competition for political space and political parties. The Nigerian situation is unique because they do not have the opportunity to appeal against impeachments to another level. In Nigeria, at the state, once the governor has succeeded in removing the deputy governor, he just takes it to an equivalent of the county assembly and the deputy governor goes home.

Luckily in this Republic, we have a second look by the Upper House; the most important Chamber in this Republic on matters of impeachment. And as we preside over exclusively an impeachment of a Deputy Governor where the Governor is not in the proceedings, we must remember and have that in mind that issues of impeachment of Deputy Governors put them in a very awkward situation and I leave the rest of that statement to be filled by your imaginations.

Mr. Speaker, Sir, we are sitting here as well to ensure that devolution succeeds. We do not condone people who are going to deal with matters of hate. We want devolution--- In fact, Article 174 says that devolution must lead to the unity of this Republic. It says that because resources have gone to the local level, devolution gives an opportunity of equalization of this nation so that marginalized areas can feel like they are home; they can feel that they have a government they can call their own government; that the locals can see opportunities that were impossible to access because the centre was too concentrated and congested by a few men and women who felt like they are controlling Nairobi. So, the people of Kenya said let these jobs go to Elgeyo-Marakwet County; let these contracts go to Machakos County; let these opportunities go to the local level so that, at least, the people at the local level can pride themselves that they have an opportunity to see a person being hired at the local level; to see a person working within and among the community and see that if you can work for the Machakos County, you can work for the national Government because it becomes an escalated opportunity from the local to the national level.

So, Mr. Speaker, Sir, as we sit here, it will be sad if we were to say “Oh, we are condoning hate speech or we are condoning tribalism.” We hate tribalism and hate speech. But in the same manner, we must be convinced that when we are dealing with matters that affect an individual, the evidence provided before us must be convincing enough so that as a House, when we make the decision, we make a decision that is nearly unanimous.

Mr. Speaker, Sir, I am shocked that the Committee has come to the House divided. It is a little bit shocking. I feel like because the whole country is watching, it is not only Mr. Kiala who is on trial; it is the Senate also which is on trial. As we retreat back to think through and make a decision, we must make a decision that will assist the whole House to move together. If it was possible for us to make a joint decision, it would be a happy moment. But it seems like the court in Kirinyaga made a very valid decision, which I agree with and which agrees with my submissions in the Wambora situation; that the decision of impeaching a public officer by this House is the decision of individual Senators, sitting as a Senate, thinking as a Senate and imagining as a judge in this situation – and which we shall do this evening – whether the charges that are before us are convincing enough to make that decision.

Mr. Speaker, Sir, the reason why I am standing here is to tell the country that as a Senate, we will remain mature enough to make decisions for posterity that will not put our House into shame. Even if the decision was to be taken to court, it will not put this House into disrepute for someone to imagine that I will go to the Senate of the Republic of Kenya and get injustice. So, I will retreat back to my seat; I will listen there and give a chance to the Deputy Governor, because I was not in the Special Committee. When he makes his final submission, I will make a small prayer and make up my decision.

With that, Mr. Speaker, Sir, I conclude and I thank you.

(Applause)

The Speaker (Hon. Ethuro): Sen. (Dr.) Agnes Zani.

Sen. (Dr.) Zani: Thank you, Mr. Speaker, Sir. As Sen. Murkomen said, when devolution came to the counties, there was a real promise, especially from the common citizen, that there would be a difference about the way we do things; and that devolution will not be about power and power struggles between various people at various levels within the counties. It was expected as a result that social, economic and cultural development would actually take place. Therefore, we have to put into context this impeachment. For the other impeachments, the socio-cultural implications have not really been there. But for this particular impeachment, the subjective nature of the charges makes it very mandatory for us to relook at the scenario and the context of this particular impeachment.

Mr. Speaker, Sir, these impeachment proceedings started with a meeting that was called at the Machakos County for the County Executive Committee (CEC) Members and in a seemingly usual meeting, suddenly, the issue became something else. In that particular meeting, the Deputy Governor, who was present at that meeting, raised an issue about his security, and all this has been very well explained in the affidavits. Upon raising that specific issue about his security, the next thing is that the agenda was changed so that it was his conduct that was going to be discussed and he was requested to leave the room. The next thing we have is a series of affidavits; therefore, this impeachment actually started with the Cabinet and not with the County Assembly, even though it ended with the County Assembly. After the resolution that was made from the County Assembly to proceed with this impeachment, then from there, the Deputy Governor was actually impeached and his case, therefore, came to us as the Special Committee.

Mr. Speaker, Sir, one of the things that came out at that particular meeting was that an issue arose about the criminal records. It was clearly seen from the evidence that we have that a particular case that was put into place – that he actually had a criminal case – was finally dismissed. From that point onwards, a letter was written by the County Secretary (CS) for the Deputy Governor to appear in that particular committee that had been set up. By the 9th of July, the Speaker of Machakos County Assembly received notice of a Motion to remove the Deputy Governor by impeachment. On 11th July, a letter was given to the Deputy Governor to appear before the *ad hoc* Committee.

Mr. Speaker, Sir, it is paramount to indicate here that the Deputy Governor, one, was not given sufficient time so that he could actually go to the County Assembly and defend himself and, therefore, the final view that was presented by the County Assembly does not include the input from the Deputy Governor at that particular point. Everything happened so fast and it was almost impossible for the Deputy Governor to really catch up with the process and defend himself. On the 23rd of July, the Motion for impeachment was raised.

Mr. Speaker, Sir, it is very clear that when somebody reads through all these affidavits – which have been mentioned already – that they are very common in content and similarity to the point that they were all written and pre-thought at the same time is very evident; and that became very evident even as we met during the meeting. This whole issue raises a real important aspect for us to look at in terms of the relationship between the Governors and the Deputy Governors. It has already been alluded to that in most of the counties, if you ask what the Deputy Governors are really doing, it is almost

impossible to capture the role and the responsibilities that they have in these particular counties, yet they came there for a particular reason. Even during the election process, there was a reason why the selection of the Deputy Governors was done. For various reasons, they came on board so that they could contribute.

Mr. Speaker, Sir, we ask ourselves the question:- What do we do with proactive Deputy Governors who would like to do a little bit more for their counties or talk a little bit more about the development in those counties? They are there for a reason and want as much as possible to be able to do a lot. They are not there just as a show to be seen and not to be heard.

Mr. Speaker, Sir, in our case, the Deputy Governor raised various key and important issues that had to do with employment of staff at the county, revenue collection and how that money was banked and other very critical issues within the counties. For us to understand this impeachment trial, we must be able to understand that background. It is that background that is very critical in terms of the accusations that have been leveled against the Deputy Governor.

Mr. Speaker, Sir, I was a Member and, indeed, the Vice-Chair of this Committee. We had a total of 24 charges. Everything went well in so far as not substantiating 21 charges. But when it came to the specific three charges, the key question that we had to ask ourselves was whether the very high threshold that we had set would actually be attained. We had set this particular in advance. We had said, for example, that the allegations must be serious, substantial and weighty. We agreed that there must be a sense that the violation was flagrant and glaring and there was a nexus and connection between the violation and the person being accused for it. At the end of the day, we really expected that even though these specific issues had been highlighted, when it came to the actual discussion of the threshold, we would be able to look at this threshold in detail.

Mr. Speaker, Sir, I want to be very specific about the three charges that were substantiated within this Committee, that is, Charges 10, 13 and 24. This is the basis---

PROCEDURAL MOTION

EXTENSION OF SITTING TIME PURSUANT

TO STANDING ORDER NO.30 (3)

Sen. Elachi: Mr. Speaker, Sir, pursuant to Standing Order 30 (3) (a) and 4, I beg to move that the Senate resolves to extend its sitting time until the conclusion of business appearing in the Supplementary Order Paper.

The Speaker (Hon. Ethuro): Order! Order, Members! The import of this is that 30 minutes before normal closure, we should be able to extend time if we want to conclude this business today. If we do not do so by 6.30 p.m., it will go to another day. So, I would like you to understand. I feel that the mood of the House is that we try to conclude today.

Looking at also the requests before me and if we are going to extend time, it means that we might also have to reduce the time allocated to the individual contributor. What is it, Sen. Omar?

Sen. Hassan: On a point of order, Mr. Speaker, Sir. I just want to seek your guidance, whether we can support a Motion that has a specific time, for example, that we can end the business by 7.30 p.m.

Hon. Senators: Until we finish!

Sen. Hassan: Okay, I guess that is the mood of the House.

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Speaker, Sir. I stand to support the extension of time but I think that it should be left until we finish business. This is a very important issue and I do not think that the Members' time for contribution should be shortened. We should be able even to go up to midnight, to make sure that this issue is properly dealt with. This is because impeaching an individual is not a light matter.

The Speaker (Hon. Ethuro): Sen. (Prof.) Anyang'-Nyong'o, if we shorten by five minutes only, you will remain with ten minutes. You might wish to go up to midnight, but how many Members can you sustain up to midnight? If you do not get the requisite number for voting, you will not take a vote. So, you have to balance all these things.

Sen. (Prof.) Anyang'-Nyong'o, I have the requests before me which might guide us. I have eight requests. So, if you speak even for ten minutes, we are talking of about one hour and twenty minutes. That would be reasonable.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I agree with you. I think that, that is reasonable. I think that within ten minutes, a reasonable human being should make points.

The Speaker (Hon. Ethuro): Order! Order, Senators! I, therefore, wish to put the question.

(Question put and agreed to)

(Debate on the Impeachment Motion resumed)

The Speaker (Hon. Ethuro): The next contributors after Dr. Zani will have ten minutes each.

Proceed, Sen. Zani.

Sen. (Dr.) Zani: Mr. Speaker, Sir, I want to directly go to the specific issues, especially the issue of threshold. It was important for us, as a Committee, by the time we actually said that these are charges that should lead to an impeachment, that we adduced very clearly that the evidence given really supports the charge as put across.

The first charge was that he used derogatory language against the people of Machakos. I had an opportunity to talk to a friend that I had not talked to in a long time. Without even her knowing exactly what we were doing at that particular moment, she mentioned that she is a Kamba from Machakos. Therefore, I proceeded to ask her: What does the word “*nguu*” mean? If it was a word that was used so commonly in a particular derogatory way, she would have quickly told me exactly what it meant. She took time

and finally said: “It refers to a tortoise.” In all the contexts that this word has been used – and I have gone through every evidence very carefully – there is no time that it has been used to refer to any public. We are using the word “*nguu*” but we have to put it in a particular context that was used all the times. If you refer to the transcripts that have been mentioned, that were not validated or confirmed by a Kamba speaker, in a section where the Deputy Governor speaks about development in his country and makes reference to the non-Machakos people, there is no time in any of the evidence where he says “*these nguus*.” In fact, his usage of the word “*nguu*” is so specific. If I am to refer to the first usage, in the evidence that came to us through social media, on Tuesday night, he says:-

“I was threatened with death by someone calling himself Joseph Kyuma from Makueni County. He claimed to be an aid of *nguu*.”

In that context, *nguu* cannot refer to the public or anybody else, but an individual or a specific person. When we go to evidence No.2, after he has been talking about the development that is needed and the way that the county should be run--- We have already said that in this country, we need to place the context of the Deputy Governors and the role that they are meant to play. If we leave them without a role, then it means that they will not be able to do anything. In that particular context, he refers to a specific scenario where he says:-

“You cannot get an important tender before talking to the tortoise. Your children cannot be employed if you have not gone through the tortoise. The tortoise is the one who has brought all the problems in Machakos County.”

To me, that refers to a very specific scenario and people. There are two things that apply to us. “There is a water project from Masinga to Kitui and when we say how we are supposed to move forward with the project, he destroys it.” It is not “they” or the public that is alluded to. It is very wrong for us to correlate and say that the word “*nguu*” has been used to address the public, that now we have posters during public rallies. Indeed, in the evidence that we have of the one transcript is at one meeting at a church. There is no other reference that has been made to any other public rally, apart from maybe having spoken it in different contexts. We only have a transcript for one particular public rally, but cannot put two incidences together; one, of somebody saying “*nguu*” and another of posters appearing, and conclude that there is causality. In politics, especially, if somebody wants to allude that I have done something, definitely, they will put those posters, because they know that it will then be used to refer to me.

The third piece of evidence is in another transcript where he talks about development and he points out that: “I see a dangerous hole that is likely to hurt someone and I have decided that I would rather report it to you before danger strikes so that I do not get blamed by anybody any other time. I know you have heard me at different settings saying that a pool of water that has been infested by a tortoise never settles”.

Mr. Speaker, Sir, by all these references made to *nguu*, it is within a particular context and referring to particular people and never did you find any evidence that it actually refers to a specific public. He talks of outsiders but there is no specific place where he refers to them directly as *nguus*. So, as we talk about *nguu*, we have to look at the content, the context, the correlation and be able in our mind to have no doubt that this

has actually been attained, if we are actually able to reach the very high level of threshold.

For the charge of uttering ethnically and regional divisive and defamatory words in public, there is legislation to ensure that a certain percentage which is 70 per cent of jobs have to remain in the county and 30 per cent from without. The correlation that this in itself can actually create a situation where people can move into a hostile scenario has not been proved at all in this particular case. These are all subjective and have been presented in a manner that does not really allow us to prove exactly what has happened.

Mr. Speaker, Sir, the last allegation is that the Deputy Governor used his office to cause anxiety and tension. There is no evidence on this at all and the one letter that has been alluded to from Mr. Abande---

The Speaker (Hon. Ethuro): Senator (Dr.) Zani, your time is up.

Sen. Kajwang: First of all, I must thank you, Mr. Speaker, Sir, and the Clerk of the Senate for extending my travel abroad this afternoon to tomorrow so that I could attend this sitting. It is important because if I did not, I would have been disturbed. I am not very intimately knowledgeable about the proceedings like those which were in the Committee. I have read it rather sketchily towards what I consider to have been the resolutions.

Impeachment is a very, very serious matter. In fact, it is an offence greater than most of the crimes that we know. This is an offence that can make the whole United States of America remove their President whom they have elected by a majority from office. It is not a joke. In fact, this Constitution while referring to impeachment was very specific. Sen. (Dr.) Zani who has just spoken talked of the threshold which I believe is in the Constitution. In Article 181 which seems to have been referred to in the proceedings, the Constitution did not leave us in doubt as to what is the threshold. It said in Article 181 (1) (a) "Gross violation of this Constitution" and not just a violation of the Constitution because you can violate the Constitution. In fact, this Constitution seems to accept that you can actually violate the Constitution, but to bring you to impeachment, it must be gross. So, this must be a very serious matter. Then it also says that it must be a violation of any other law, although I think they made a mistake by saying that the real offence is gross violation of national cohesion. You cannot grossly violate an Act of Parliament; you can only violate a section of an Act of Parliament. You should have told us exactly what this Deputy Governor violated.

If it is ethnic discrimination, you must give us evidence which supports the view that he actually committed what is called ethnic discrimination or is it like it is said in Section 6; harassment on the basis of ethnicity and then you give us evidence that supports the fact that the Deputy Governor actually harassed people on the basis of ethnicity or you come to hate speech and tell us that the Deputy Governor said "a" "b" "c" "d" which is hate speech. Hate speech is not against individuals. In fact, it is not an offence to hate you. What is an offence is to hate a community. You can even hate them but to speak with hatred against a certain community, that is what is covered here because it is likely to bring ethnic conflict. That is what we were dealing with when we wrote these things into law. When I listened to Sen. (Dr.) Zani saying that a *nguu* is mostly referred to as "he" rather than "they", then I thought, then the Governor is the *nguu*.

(Laughter)

So actually, in the arrangement of the Machakos County Government, the Deputy Governor has referred to his own Governor as a *nguu*. So what if I call the Governor *nguu*; does it amount to hate speech? I can even abuse him in some more unpalatable words which do not amount to hate speech. Merely because I hate an individual and probably because they come from the same community, so there is no community conflict or likely community conflict.

Sen. Njoroge: On a point of order, Mr. Speaker, Sir. I feel disturbed. Is it in order when the Senator is insinuating that the Deputy Governor was actually referring to the Governor as *nguu*, when in the proceedings it was very clear that the Deputy Governor referred to non Machakos Kamba and Kikuyus?

Sen. Kajwang: Mr. Speaker, Sir, we should not just disturb other people's trail of thought because you do not agree with them. If you do not agree with them, you will get your time to say what you want to say. There is nothing out of order—

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Is it in order for the distinguished Nominated Senator to bring ethnicity on the Floor of the House when the proceedings that he has brought to us simply says that *nguu* was said to mean that there were too many Kambas and non-Machakos Kambas. Where is he getting the Kikuyu? These are the kind of statements that do not help the country.

Sen. Njoroge: Mr. Speaker, Sir, I was in those proceedings and I think it is quite unfair for the Senate Leader of Minority to just pick one line. When I attended those proceedings, in one of the bundles, we have the document where the non-Machakos Kambas and Kikuyus were referred to.

The Speaker (Hon. Ethuro): Order, all of you. Let us not be excited about these things. Let me just confirm that the language we have is about non-Kambas and non-Machakos Kambas. Let us not introduce others that are not there.

Sen. Kajwang: Mr. Speaker, Sir, after looking at the recommendations of the Committee, earlier on, I was of the view that the recommendations would be bipartisan and unanimous because if really somebody has created a crime, then it should be unanimous that there is a crime and if somebody has killed another one, then it should also be unanimous. However, immediately I saw that there was a vote taken, then I knew that there is something more in this thing than meets the eye. What was the real charge? It is on Page 20, paragraph 29 allegation No.1, because usually, you put the most grievous allegation first. Now, the allegation No. 1 is that the Deputy Governor conducted himself in a manner that undermined his position as a member of the Machakos County Executive by antagonizing the Governor.

The Speaker (Hon. Ethuro): Order Sen. Kajwang. Are you putting first a matter of your own practice or what actually happened in the Committee?

Sen. Kajwang: Mr. Speaker, Sir, that is my view and that is what I am stating; that this, in my view, was the real allegation. Members of the Machakos County Executive Committee undermined the collective responsibility of the county executive as

contemplated in the Constitution, Article 79 (4) (5) (6). This, in my view, was the real allegation. The other allegation why this case has been brought here is because the Deputy Governor does not agree with Governor. This is a matter of management

If you cannot manage your cabinet, you do not bring it to the Senate. We are very serious people and we did not come to this Senate to joke around. We swore to defend the interest of those governments and not the interest of the governors. The government of Machakos County is not the governor. It is his government, including his deputy and his appointed officers. Imagine he mobilized the entire cabinet, let me use that word “cabinet” for lack of a better word, including the county secretary to swear affidavits against the Deputy Governor. Whether it was in his office or under a tree, it was the entire cabinet. This Deputy Governor must be a very bad man for every executive officer to say the he has wronged them, he has undermined, he has borrowed me money or if she was a woman, she would likely say she was harassed.

(Laughter)

Mr. Speaker, Sir, we cannot deal with this kind of things. Then we sit here and listen to the chairperson of this very serious and Special Committee provided in the Constitution, telling us about the holocaust. He comes here and talks about the Rwanda genocide on matters of management where the governor cannot manage his Deputy Governor, *shauri yake*. Why did he appoint him to be his running mate? He is tied to his neck until the end of the term. In fact, it is easier to divorce a wife than to divorce a Deputy Governor. If he cannot manage him, please, do not bring him to us. This was the charge. In my view, all these other things were an after-thought or fishing expedition, witch-hunt or tactics of getting rid of someone whom he did not like. If we allow this to happen, there will be no Deputy Governor in this country because nobody wants anybody who is his deputy to also be nosing around. Even if I had a Deputy Governor who is nosing around, I would sack him. Unfortunately, that is what the Constitution provides; that the governor and the Deputy Governor are elected together, they must stay and work together. If you choose to be a governor, you must choose to have a deputy who will be there for the entire term.

The Speaker (Hon. Ethuro): Your time is up!

Sen. (Prof.) Anyang’-Nyong’o: Mr. Chairperson, Sir, thank you very much for giving me the opportunity. First of all, I really want to thank my Chairperson---

The Speaker (Hon. Ethuro): Order! Your Chairperson is not here.

Sen. (Prof.) Anyang’-Nyong’o: My apologies, Mr. Speaker, Sir. I would like to thank the Chairperson, the Vice Chairperson, the Committee itself and all Members of staff who worked on this report. The distinguished Senator from Nyeri has presented the report in the spirit in which the Committee discussed it. I would like to inform the House that when the Committee decided to submit a majority and a minority views, it is purely on the impeachment article. It was a very weighty issue because of what Sen. Kajwang says; that it is a major contravention of the Constitution. Personally, I spent a sleepless night just thinking what that means. Is it really possible to send a Deputy Governor home with the consequences of what impeachment means on this particular issue?

As we read the affidavits, the word *nguu* was used in different ways and different contexts. I remember a text message which the Deputy Governor had sent to somebody who referred to the *nguu* as one person. I said that we never had the opportunity to bring before us a Kamba vernacular specialist to inform the Committee so that we are well-informed. We were unfortunate enough not to get the chief executive officer of the National Cohesion and Integration Commission which could have given us a professional interpretation of this word.

Mr. Speaker, Sir, nonetheless, we were not unconscious of the danger of using such words in a derogatory manner. The Chairperson is right to quote as having said that fascism usually begins from a single person or context. That was right, but I was wondering that in the context of Machakos where this Deputy Governor had been rendered kind of inoperative by his governor. There is a saying that says that an idle mind is a devil's workshop. Surely, if your governor makes you idle, you are unfortunately inadvertently a candidate for the devil to carry out carpentry. This is unfortunate. It means that we need to have an approach other than impeachment because we are dealing with a context where problems can occur because of failure of management. I remember right from the beginning, I said that the problem in Machakos is a problem of management. There is a failure of administration.

Mr. Speaker, Sir, as a Senate, since our responsibility is to serve counties and their interest, let us use an approach that will help and not necessarily punish one individual. That was a very difficult decision for me to make because I also understood as my Chairperson said that when these words are said repeatedly, they could be dangerous. In the case of Machakos, the Deputy Governor used these words differently in different contexts. So, you could not really get a trail of thought that he was being malicious and was all the time using those words to cause ethnic hatred. There was no evidence of that continuity from the files.

Fourthly, Mr. Speaker, Sir, I was kind of disturbed because the Deputy Governor did not take to the witness stand. I wonder why the lawyers said so. Then I went to the notes I had taken and I found that at one point, the lawyers said that these affidavits translated have not been certified. I remember the lawyer on the other side for the County Assembly saying "yes, we shall make sure that they are certified." But I did not receive those certified copies in the Committee. So, during the night when I was going through systematically why we must make this decision, I found certain loopholes that made it very difficult for me to arrive at the conclusion that we should impeach the Deputy Governor on that count.

Fifth, Mr. Speaker, Sir, I also felt that there was a premature handing over by the Executive to the County Assembly. The word I use is that I felt as if the Executive was "outsourcing" its problems to the County Assembly. Rather than deal with problems, they outsource this problem there so that it becomes an impeachment process and then you bring it to the Senate prematurely. So, I was disturbed by this process. Are we dealing more with a political problem because the County Executive is not properly managed? Or are we really dealing with an individual whose mind has been made the devil's workshop because he is idle?

Mr. Speaker, Sir, to me, gross violation of the Constitution became a very difficult conclusion notwithstanding the fact that some harm had been done by this kind of behaviour. However, I felt that then there is a proper institution in Government that should deal with the problems. This is the National Integration and Cohesion Commission (NCIC) because they have the expertise and the time. They will save the Senate the agony we went through. Bringing something here when the Senate has neither the time nor the opportunity to go through all the necessary evidence, is to undermine this House.

Mr. Speaker, Sir, I do hope that when the Deputy Governor takes the stand here, him and his lawyer will make this thing much clearer to us so that we are better informed. I do not think we should worry about differences in the Senate on interpretation of these issues. This is why we are here. We should not take it as if we are dividing ourselves; no. We are reasoning so that we can come to a good conclusion in the interest of the individual and the nation because, mind you, justice must begin with the accused. The accused must feel and be convinced that the process of meeting justice, if it ends in being found guilty, it was fair and just itself. So, I would like to say that in this regard, I find it heavy to make such a major decision when there are too many lacunas in the process.

Mr. Speaker, Sir, I also remember discussing in my Committee that we were faced with a similar situation in Kisumu; everybody was going to impeach everybody else. I called the Governor, the Deputy Governor, the Speaker and the Majority Leader. They sat for about four hours. I was there telling them that if they go like this, we will not have a government. I met the County Assembly twice and you know about this because I informed you. I told them that we cannot do this; impeachment is not a solution to our problems. We must sit down and have a dispute resolution mechanism and that we should discuss this thing. We are all capable of making mistakes. We are all capable of having a slip of the tongue. We are all capable of venting our anger in public so that we feel as if we are trying to offend other people. But, then, as a political scientist, I must look at the etymology of these problems. What are the causes of these problems? Sometimes it is said that if appearances coincided with reality, science would be superfluous. So, we should not, most of the time, make conclusions from appearances. We should make conclusions for scientific investigations and inquiries.

Mr. Speaker, Sir, in this regard, we need to be very careful that the body that has the time to do proper inquiry into this issue and make a sound judgment is the NCIC. It is a process that I think came to us prematurely. I think the County Executive outsourced its administrative and management problems to the County Assembly. The Executive was too eager to hang the Deputy Governor on the nearest tree. Surely, the Senate should not be that tree.

Thank you, Mr. Speaker, Sir.

(Applause)

Sen. Leshore: Thank you, Mr. Speaker, Sir, for giving me this time to contribute to this very important Motion. I was honoured by this House to become one of the 11

Members nominated to sit in this Committee. I feel privileged for having sat for ten consecutive days up to past 6.00 p.m. in the evening.

Mr. Speaker, Sir, when I first entered the Committee, I prayed that “God, let my conscience be guided to the rule of law, the Constitution, the wish of the people of Machakos and Kenyans generally.” This is because this House has been mandated by our Constitution to look into those issues. I feel betrayed if I do not fulfill my duties as per my conscience. I have not been directed by any political party to take the direction I have taken.

Mr. Speaker, Sir, I feel disturbed to sit here and hear my colleagues, most of them who are lawyers, come and divert the quasi-judicial and quasi-political process to be a court of law. They should differentiate those two. There will be those people who will be impeached not because of any evidence found. One of the governors in Nigeria was impeached because he could not form a cabinet. There are different positions about the impeachment of the Deputy Governor. But thank God because the court in Kirinyaga and Embu gave the Senate those powers.

Mr. Speaker, Sir, I, as Sen. Leshore, the elected Senator from Samburu, think that this issue should have been resolved down there in Machakos or in the Wiper party. However, it is here before us and we must take a stand as the Senate either to impeach this Deputy Governor or not.

(Applause)

Mr. Speaker, Sir, the Senate Minority Leader has said that Jesus said “you have eyes, see; you have ears, hear.” When Jesus said in his last supper with his 11 disciples; “One of you will betray me,” he did not mention the name. After a while, when he came back, one of them slid out. I would have advised my brother, the Deputy Governor of Machakos, to have followed Judas Iscariot’s steps and quit because he is not going to be happy with the people of Machakos although he might not have made an offence when he went to four places and used the word *nguu*. But now if you allow him to go back to continue using the word *nguu*, you will see what will be coming from the people of Machakos.

(Applause)

Mr. Speaker, Sir, I think that my friends from Makueni and Kitui are also included in the word *nguu*.

(Loud consultations)

I will say it loud to my colleagues; those who are lawyers will interpret what the word means. Even in 1991 and 1992, the word “lie low an envelope” was all about us. But when elections approached or immediately after the elections, you lie low like an envelope. It was restricted to mean you remove the non-Narok people or the non-Maasais out of Narok. I believe my good friend, Sen. Hassan, was in Kenya and would have

known what transpired. I beg this House to take the interest of the people of Machakos as a first priority. If today we say “let this Deputy Governor go back to Machakos,” what will happen tomorrow? He will not give peace to the government of Machakos, and we are here to protect the government of Machakos. The government consists of the Governor, the Deputy Governor, the entire County Executive Committee (CEC) and the County Secretary (CS). They say one potato can do what? Let us send our good friend, the Deputy Governor, home.

Let us tell our good friend, the Deputy Governor and his lawyers to create an exchange, so that, that gentleman will leave Machakos. If he wants to campaign to come back, it is only three years to the general elections.

(Loud consultations)

The Speaker (Hon. Ethuro): Order! Order, Sen. Hassan! When you were making your contribution the whole House was very attentive.

Sen. Leshore: Sen. Hassan, you are a lawyer and you know that impeachment sometimes does not need to prove--- We found that most of the offences are misconduct, but not gross. The lawyers and the Senate must come up with a law which will guide us on threshold. This is because they say that threshold is left to the individual member. Some of us might say that threshold means something different. We need some guidance in law, so that we know the parameters of threshold.

Mr. Speaker, Sir, with those few remarks, I support.

Sen. Abdirahman: Thank you, Mr. Speaker, Sir, for allowing me to contribute to this very important Motion.

Mr. Speaker, Sir, I want to start by saying that what we have witnessed part of this afternoon and even in the early hours, is an impression that has been wrongly created that this Senate acts in a manner that affects its integrity. This is not the very first Motion of impeachment that we have had in this House. Ordinarily, this House has a bipartisan approach. We do not support or oppose an individual because of his party affiliation. Our starting point must be looking at the merits and demerits of each of the cases as they come. It is important that all of us get to understand that the reputation of this House is far greater than anything else. It is a House that is viewed as the voice of reason. It is a House that has created hope amongst Kenyans. I do not just want to support Bernard Kiala or the supposed factors who may be engineering his removal, but I stand here speaking my mind based on what the Committee has presented and any other factual information which will help us achieve the right decision this evening.

Mr. Speaker, Sir, one can have a dissenting voice from the Committee that he or she is a Member of. But I think that it is important that the individuals who also want to differ with the Committee that represents this House look at issues objectively. We must address the issues rather than personal issues. That should be the starting point. The issues that have been raised are weighty. There were quite a number of issues, but I ran through some of these and decided to look at the two major ones that have been zeroed down on by the Committee. There is one that relates to the abuse of office and the other that relates to the derogatory remarks supposedly made by the Deputy Governor. These

are issues that the Senate alone or its Committee, as it sits, will not be able to judge exhaustively. We do not have a yardstick to measure, for instance, issues that relate to national cohesion. This is because it will take a length of time to be able to investigate and get facts regarding the times when these things were committed and, probably, pin down with sufficient evidence, which this House is not able to do this evening.

Mr. Speaker, Sir, much more than this is the fact that devolution is something that is in its infancy stage. A number of things must be demystified. County governments are only headed by executives who are referred to as Governors and their deputies. But many a times this has been construed to mean that Governors or their deputies alone, are the people who man county governments. In Mombasa County, for example, I said that we are all managing public affairs. When you are managing public affairs you must always relate with the people who are affected by the decisions that individuals take; whether it is the Senator, Member of the National Assembly, Deputy Governor, Governor or any other person who has been given duties to discharge with regard to certain functions that affect the people. We are now bound to protect county governments from Governors themselves and even their deputies because many a times the only thing that they do is to listen to the Governors. Things are really going to be bad or move from bad to worse if we allow the way devolution is now taking shape in our country.

Mr. Speaker, Sir, a number of times the people who are entrusted with responsibilities have failed to appreciate the provisions of this Constitution and the relevant laws that govern matters that relate to county governments. I do not know how long people will take to understand some of these things. Many a times, if you do not know it is good to learn. Not all of us are lawyers, but we take time to read and understand. We internalize these issues. The issue of saying that the lawyers are the only people who understand should not be the case. They are not the only people who understand. As long as you understand English very well and are able to read and interpret for yourself, then there are quite a number of people in this House who are able to grasp issues that relate to law without necessarily going through a law school. This is something that people must also understand. Those who brag around many a times should know that medical doctors, economists and professionals in other sectors of development which some of us have come from, have a good grasp of law. That includes administrators like the former Provincial Commissioner (PC), the Senator for Kitui.

Mr. Speaker, Sir, it is important for us to internalize the provisions of this Constitution. Governors themselves have not understood and are yet to come to terms with some things that exist. That is why there is defiance when they are asked to appear before a Committee of this House. I want to thank Governor Mwangi wa Iria from Murang'a County, if he is hearing this. He should hold his head high. He has nothing to be worried about. He has observed the rule of law and we are there to protect devolution. The only way that we can protect it, is to demystify and get together to work as a team.

Mr. Speaker, Sir, I want to conclude by saying that the practice in this House has been that of cohesion and understanding. We have Members from both Jubilee and CORD, but those should not be the guiding factors. The guiding factors in this House must be the Kenyan interest. We should absolve anyone who is brought to this House

based on the merits and demerits of a particular case. I will rest my case there and wait for the verdict, so that I can cast my vote based on my independent thinking.

Sen. Murungi: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it Sen. Murungi?

Sen. Murungi: Mr. Speaker, Sir, our Committee was a fact finding Committee and the final decision whether to impeach or not to impeach the Deputy Governor is a personal one made by each of the Senators.

I think we have now read the report and heard the views. Would I, therefore, be in order to call the Mover to reply so that we can exercise our right?

The Speaker (Hon. Ethuro): Order Senators! You remember we had actually taken a decision that we are extending time and that we limit it to the ones who are on the screen. We have actually exhausted that number and we are going on with others. I see three requests here. The one of Sen. (Dr.) Khalwale seems to have disappeared. So those will be four. So, I think if all of you took five minutes each, that will be good and then we will call upon the Mover to reply.

Sen. Njoroge: Mr. Speaker, Sir, I stand to support the impeachment Motion of the Deputy Governor of Machakos, that is after noting the Report by the Special Committee which was given the mandate by this Senate to go and deal with the matter of impeaching the Deputy Governor. I remember out of eleven Committee Members, without naming names, only two found the charges not to be substantiated.

Mr. Speaker, Sir, nevertheless, I would like to say that if the offender is left unpunished, it means that the impeachment process will become valueless and meaningless. If we take sides on party lines or on ethnic considerations, the process will remain a fraud. To be very clear, personally why I believe that the Deputy Governor should be impeached is because of the evidence that was testified in the proceedings that at one time he said that the *nguus* should leave Machakos. He was very categorical and that the *nguus* he meant were non-Machakos Kambas and Kikuyus.

Sen. Muthama: On a point of order, Mr. Speaker, Sir. Would I be in order to tell my brother Sen. Njoroge to kindly desist from mentioning names of communities in this House. We are talking about Kenya and he has kept on talking about Kikuyus. Where is he taking this House to? Is he in order to continue inciting and misleading this House? We are a serious House.

Sen. Njoroge: Mr. Speaker, Sir, without contradicting myself, I think the document which was tabled in this House at some point has some evidence stating what I am saying. I know every Member in this House has that document and I do not think I am cooking anything. This issue should not be taken out of proportion because I am just repeating what the witnesses said.

Sen. Kajwang: On a point of order, Mr. Speaker, Sir. When a Member who was in the Committee alleges a certain fact as evidence and the fact is so serious as to say that *nguu* referred to non-Kambas and Kikuyus, he must bring that affidavit or evidence and read it to us. He must tell us that it is paragraph this and this. He cannot come here and make funny allegations.

The Speaker (Hon. Ethuro): I think the point has been made by Sen. Kajwang. Sen. Njoroge, could you respond?

Sen. Njoroge: Mr. Speaker, Sir, because all the Senators opposing me are my seniors and good friends, I am in a lot of trouble because I cannot keep arguing over this. I might end up violating the rules. I do not want to continue on that line and so I drop it.

The Speaker (Hon. Ethuro): Sen. Njoroge, by the way, it is not a matter of being persuaded. According to our Standing Orders, you have a responsibility to give accurate information. So, you either have it or you do not. If you do not have it, apologize and move on.

Sen. Njoroge: Mr. Speaker, Sir, as a matter of fact, I would say without contradiction that what I said here before this Senate is in this document. If you gave me five minutes, I can produce it and read it to this House. If they persist asking me to give the evidence, I will do so.

Sen. Musila: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order, Sen. Musila! I thought your name was being floated by one Sen. Wetangula for all the good reasons and one of them which I heard was that you were a former Deputy Speaker and, indeed, the Chairperson of the Standing Orders Amendment Committee and I know that for a fact.

The current Standing Orders allow a Member to even seek time to substantiate not later than the next day. He has only asked for five minutes and that is not too much to ask. Conclude your submissions, I will give you the five minutes, you produce it or you suffer the consequences.

Sen. Njoroge: Mr. Speaker, Sir, considering the seriousness of people issuing ethnic related threats and the reference we have heard before of the consequences, whichever way the voting will go, I wish to make it clear that, that should not be let go without punishment.

The Speaker (Hon. Ethuro): Your time is up.

Sen. Wangari and remember you have five minutes.

Sen. Wangari: Five or ten?

The Speaker (Hon. Ethuro): Five.

Sen. Wangari: Mr. Speaker, Sir, I want to, first of all, thank the Committee under the chairmanship of the Senator of Nyeri County, Sen. Kagwe. I thank the secretariat for the work and hours they put to make sure that this report was presented to this House.

Mr. Speaker, Sir, from the outset, I support this report because I know there are some things in this country that we take to be normal. When we were listening to the submissions of this case, and we sat for long hours, listening to accusations and counter accusations, we were in agreement on many of these issues. The fact that we brought a majority and minority report should tell this House that we did a good job. It was also expected that we do not always agree on everything. However, just because we brought a majority and minority report does not mean that we were wrong because we were inconsistent like the others that have gone before us. Since we did not agree on every issue, it does not mean that we, as a Committee, were wrong.

Mr. Speaker, Sir, there were many issues that were raised. In fact, as you heard from the Members who have spoken before me, there were 24 charges that were presented to our Committee. Personally, I was only convinced on three and very strongly on one on derogatory language and issues that could cause ethnic tension.

Mr. Speaker, Sir, in this country, it was only as recent as 2008 that we had the new law, the National Cohesion and Integration Act. But the history we had, all the issues that have happened in this country regarding tension, ethnic tension and cleansing have been preceded by very strong statements from leaders.

I have been cautious on many other issues because I have said it that we, as leaders, must be accountable for what we talk. We must take responsibility for every word that we utter because every person out there who elected us and is watching these proceedings, amongst the 40 million Kenyans, has a piece of every person who is in leadership position. That means that every utterance we make as a leaders is not taken to be a normal Sen. Wangari statement. How I would have made a statement last year or last year but one, before I came to the office of Senator is not the same. I have to be more careful on what I say now because I have a constituency that is watching.

That brings me to the issues that were brought on our table. Personally, it may look like it is a small issue, but as a woman, knowing what fights and war do to women and children, I cannot sit back and I do not want to be judged by history as someone who did nothing. Albert Eisten said there are two kinds of evil people; there are those who commit the evil deeds and there are those who sit and do nothing.

Mr. Speaker, Sir, there were many issues that were raised at the Committee level. Apart from that, some issues were really substantiated after documents were produced before us. There is also an issue that we really toiled with in the Committee. This is something that we need to look into in the future after we are done with these proceedings. A deputy governor runs on the ticket of the governor. If he goes ahead and undermine him every day and insubordinates him, it is something that we need to evaluate in terms of prosperity. I believe as a governor, I should be able to sack the deputy because of insubordination. That is my view. I am sure we captured it in the report.

I hope that we will be able to look at the interests of the people of Machakos and the people of Kenya. We do not want to always talk after people have lost their lives. At what point do we intervene as leaders? Do we wait until people lose their property and then say: "If we had done this earlier then several people would not have lost their lives or if we had taken care of what people talked about to the run up to the elections of 2008--

The Speaker (Hon. Ethuro): Order, Sen. Senator! Your time is up, five minutes have elapsed.

Sen. Njoroge.

Sen. Njoroge: Mr. Speaker, Sir, if you could allow me because I believe we are on live proceedings, I would like to refer to page 40, paragraph 93 up to page 43, paragraph 105.

The Speaker (Hon. Ethuro): Can you be specific, we cannot go through all those paragraphs. I have already read paragraph 93 which talks about non Kambas and non-Machakos Kambas. Just tell me where those others are mentioned.

Sen. Njoroge: My time was very little. Can I apologise and withdraw?

The Speaker (Hon. Ethuro): That is an option available to you. I think that is the right thing that you should do.

Sen. Njoroge: Thank you, Mr. Speaker, Sir. I apologise and withdraw because of the limited time.

Sen. Muthama: On a point of order, Mr. Speaker, Sir. If the Chair so directs, since I was the last person who was supposed to speak, I wish to donate my five minutes to Sen. (Dr.) Khalwale, for him to have at least ten minutes.

The Speaker (Hon. Ethuro): It is unnecessary, but if it pleases you, it is so directed.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I rise to oppose the report of this committee in its conclusion. I would like to share a word of caution that I have given myself, namely, that we should not lose the fact that the deputy governors, in all our 47 counties, have no jobs prescribed to them. The governor might very well visit injustice to the deputy governor. I have also cautioned myself that if we do not navigate this case very well, and treat it casually, we should not be surprised, in the hot politics of Kenya, if in the fullness of time, the same frivolous and vexatious accusations can visit the Deputy President of Kenya and you find he has also lost his job.

I want to thank Sen. Kagwe. He is going to turn on only the issue of hate speech. I would have expected that the Chairperson would lead the Committee in bringing to this House evidence to support that particular conclusion. I have gone through the file and here is the evidence.

The first one is a photocopy of Short Message Services (SMSs) messages purportedly from Safaricom. I want this House to find that this is not evidence. It is not admissible by the standard evidence and parliament for the reason that this evidence preferably should have been authenticated at the very least, but at the best, should have been introduced by Safaricom itself. There is nothing that could have stopped somebody from taking a photocopy in the Governor's office in Machakos and purporting that this is *bona fide*. It is not evidence. This is a photocopy of some placard about *nguu toka*. This is a mere photocopy, it is not authenticated. It might have as well been taken in River Road. This is not evidence. This is another so-called poster of *nguu Toka*. Again, it is not evidence. It could have been done on the back streets of Kakamega Town.

Mr. Speaker, Sir, the next one is a speech that is attempting to translate the words uttered by the Deputy Governor. It is not evidence because it becomes evidence if it is signed. It is a piece of paper. The next so-called evidence is a speech by the Deputy Governor from Masii Catholic Church. The best they could have done---

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, I hope your time is limited. You can only produce documents to illustrate a point and then you move on to the next one.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, this is not evidence. I am, therefore, disputing everything that the Committee has tried to persuade us to be evidence. It is not evidence, they are pieces of paper.

The next point I would like to make is in respect to the Deputy Governor. When you go through this evidence, the Deputy Governor is actually the hunter who became the hunted. If anything, the Deputy Governor should be receiving commendation from this House and, especially from my Committee of the County Public Investments and Accounts. This man is being hunted because of him pursuing issues of transparency and

accountability. In this file I have marked, the Deputy Governor told this Committee and I do not know why they did not listen that he was being hunted because of matters relating to governance and corruption within the county.

The Deputy Governor has gone further and said that he was being hunted because of matters of nepotism. He has even gone further and given evidence showing the nepotism in this particular government. There is the Chief Officer, Public Service, Mr. Musyoka Kala, he is the one who I have confirmed from Mama Grace Yakobo, from Machakos, that this is the man who, in fact, the Deputy Governor was referring to as *nguu*. *Nguu* in Kikamba language means very many things, including a very respected word for blessings. If a Kamba tells you “may you live long like a *nguu*.” That cannot possibly be hate speech. I have confirmed this. There is a SMS text that has come in from none other than the EALA Member of Parliament representing Kenya in Arusha, hon. Peter Matuki that this is a blessing. So, how on earth can this Committee tell us---

The Speaker (Sen. Ethuro): Order! You are moving on a very dangerous trend. You know how documents are admissible in the House.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I, therefore, find that there is no hate speech whatsoever---

Sen. Elachi: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it Sen. Elachi?

Sen. Elachi: Mr. Speaker, Sir, I would wish my Senator to show us the documents because we do not have them. I am wondering if they are part of the report.

The Speaker (Hon. Ethuro): She is absolutely right. For you to table those documents, the Chair must see them and confirm whether they are the ones that were presented.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I have simply pulled them from this for ease of reference. They are actually part of the documents and paginated.

Mr. Speaker, Sir, on the allegations that the Deputy Governor was trying to suggest in any way that people who do not come from Machakos or people who do not come from Kambaland should not take the lion’s share of the opportunities in Machakos, that is perfectly constitutional. That is what I see every Senator fight for in his county. So, if the poor Deputy Governor was observing Article 10 of the Constitution which in Article 10(2) provides as follows:-

“There must be equal and social justice”

If the people of Machakos County, for 50 years have not been enjoying access to opportunities, now it is up to the Governor and his deputy to ensure that they have access. This Deputy Governor by making that exposure, he was actually giving effect to Article 10(2)(a) which says that a public officer should have patriotism, sharing, devolution and the rule of law. If the Deputy Governor is so patriotic that he is a whistle-blower as is found in this evidence, I beg that at the end of this particular exercise, the House and the County Government of Machakos waits for the report of the County Public Accounts Committee on Machakos because we are working on the findings of the Auditor General. These issues raised by the Deputy Governor have actually been tabled in this House and passed over to our Committee for determination. If anything, this Deputy Governor should be equated to the character in the book called *The Enemy of the People* by Henrik

Ibsen where this man was the only man remaining standing in a corrupt local authority in England. The Deputy Governor is the only man remaining standing for purposes of good governance in the County Government of Machakos.

Mr. Speaker, Sir, Ukambani is not short of gurus. We know many gurus including the former Minister---

Sen. Okong'o: On a point of order, Mr. Speaker, Sir. Is my good friend in order to mislead this House that the Deputy Speaker is the only corrupt-free man in Machakos County? Could he substantiate and table documents to support his opinion?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, indeed, the Deputy Governor on oath has submitted all these documents and when you go to through, and I expect Sen. Okong'o as a Member of the Committee to have gone through, he has demonstrated how he is fighting corruption. What greater patriotism would Sen. Okong'o be asking from this gallant son of Machakos.

We have great gurus in Ukambani and some of us are old enough to know them. We have former Minister, hon. Titus Mbathi, retired Chief Philip Waki, the father of Justice Waki, hon. Kiala Mwendwa, former Minister and his brother Mr. Ngala Mwendwa. The Committee could have invited any of them or all of them to speak to the issue of Kamba language. I fear to be before your Committee on a matter requiring interpretation from the Luhya Community. As Sen. Wetangula told you *kukhu* might mean your grandmother and it can also mean your small little girl who your wife has given birth to and whom you love the way you loved your grandmother.

Finally, the Governor of Machakos and all other governors must accept forever to live for five years with their deputies because it is like in the Luhya culture, the lady after a few days after marriage ran home to tell the mother that I am walking out because my husband snores. The mother told her that your husband will soon discover that you----

(Off record)

(Laughter)

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, your time was up and I am glad you said that off record.

(Laughter)

Sen. Elachi: Mr. Speaker, Sir, today I stand before this House to say that the main issue that came from the Committee is about gross violation and hate speech, looking at the National Cohesion and Integration Act being violated. This country has walked a long journey. As much as we would want to be emotional or as much as we would want to look at it politically the way we are trying to do, this Senate must address how we will ensure that the 30 per cent in every county who will be experts from other counties is adhered to. Coming from a situation where we used to call people *madoadoa*, coacraoches, grass and so on, we must ask ourselves if that is the direction we want to take this country. This Committee should also in future look and reflect without looking

at the politics how we will ensure counties are accountable to Kenyans first without employing negative ethnicity. It is for us in this Senate to be very honest in what we are doing. When we talk about impeachment, at one point we say it is a political process and at another point we bring in the legal part. It is up to this Senate to look at its own image and tell the country whether we deal with impeachment as a political process or as a legal process. If, indeed, we say it is a political process, then we must have consequences in what we decide.

When I look at the report and I do not want to go into it, but I want to deal with the two allegations that were brought on the Floor. Indeed, then, we must say yes; there is an allegation in terms of national cohesion and equal opportunities. For those who are in that Committee, I would recommend that you must go back again to Machakos now and look at the issue from the point of view of the Committee; to establish, indeed, are these violations correct? If so, how do we deal with it?

I do not want to dwell on the issue of *nguu* because in 2007, we decided to call people *madoadoa* and some went to The Hague because of *madoadoa*. Let us not joke around it because those who suffered when they were being called *madoadoa* and being thrown out, they did not know whether *madoadoa* is that *nguu* or what. So, it is the way you use that word; you can use it in a positive way or you can use it in a negative way. But for us, we need to go back now, as the Committee on National Cohesion, and ask ourselves: Was the word used to violate others? Was it used in a manner that was positive that you can use any slang, but in a positive manner? It is very important because for us, communication is very key here. Machakos has now become more independent, cosmopolitan; it is not the Machakos that was there before.

Mr. Speaker, Sir, I beg to support.

The Speaker (Hon. Ethuro): I have the last two contributors; Sen. Mutula Kilonzo Jnr. and then, finally, the Senate Majority Leader.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. First of all, I must declare my interest; that I have represented both Governor Mutua and his deputy successfully in their election petition. Therefore, while I speak about this impeachment, I will stick to the law.

Mr. Speaker, Sir, I am greatly appalled by the references given to the word *nguu* because my late father, in doing conservancy, left over 300 of them in Machakos.

(Laughter and applause)

Therefore, I wish this Committee went to see those peaceful animals we call *nguu* in Kikamba so that, then, any references – derogatory or otherwise – would give those nice, beautiful animals called *nguu* in Kikamba, that we keep at Maanzoni Ranch, a different meaning.

Thank you.

Secondly, Mr. Speaker, Sir, I am extremely concerned about how the Committee wanted to handle the question of Sections 3, 6 and 12 of the National Cohesion and Integration Act. Particularly on how they determined allegations, under part 4 on whether or not this met the threshold of beyond reasonable doubt. To me, that does not appear to

be in this report. Therefore, I have great difficulty in understanding this report in terms of the words used and the evidence given to suggest that there was tension about investors, private sector professionals, members of public, *et cetera*. I am one of those members of public and professionals in Ukambani and Machakos. I would like to see whether or not there was evidence given in this report to suggest that there was tension in Machakos.

Lastly, Mr. Speaker, Sir, this Senate is like the House of Lords in England.

(Applause)

We are not just a conglomeration of politicians; we are the House of Lords in Kenya. The House of Lords in England, when it makes a decision, that decision is followed to the village. When we stand in a court of law and say “Lord so-and-so in the House of Lords said x,” that decision or that finding is followed everywhere in the world. Therefore, when we, today, pass judgment based on this report, we must ask ourselves the question whether this House of Lords called the Senate of the Republic of Kenya is not cutting corners so that we satisfy narrow interests.

The paranoia I have seen exhibited about questions of people being called this or the other is something that we must address. In my legal practice, I have not seen any person who has been convicted under Sections 3, 6 or any other section under the National Cohesion and Integration Act. In fact, most of the people, including one of the Senators here, ended up either apologizing or like another person who has been appointed to be an Ambassador---

An hon. Senator: Dr. Machage here!

Sen. Mutula Kilonzo Jnr.: Sen. (Dr.) Machage was acquitted---

Sen. (Dr.) Machage: On a point of information, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. (Dr.) Machage?

Sen. (Dr.) Machage: Mr. Speaker, Sir, may I inform the hon. Senator that the arbitration of the case took one-and-a-half years and I won the case!

(Applause)

Sen. Mutula Kilonzo Jnr.: Thank you for the information.

Mr. Speaker, Sir, although we cannot condone – and I wish when Deputy Governor comes here, he apologizes because it is not in Kamba custom to insult people. If that is what he did, he should apologize. However, if he was making, like we do in every Kamba parable – Kamba’s are famous for parables. We like parables because they describe things. It is possible that if you are not a Mkamba, you will not understand a Kamba parable and you will get lost. So, we should ask this gentleman to come here and explain what he meant. If it was an insult---

The Speaker (Hon. Ethuro): Order! Except that, hon. Senator, by the way, this did not just come straight to the Senate. I want to believe that a majority of the Members of County Assembly (MCAs)---

Sen. Mutula Kilonzo Jnr.: Are Kambas.

(Laughter)

Sen. Mutula Kilonzo Jnr.: Yes; thank you for that, Mr. Speaker, Sir. But I want--

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir. I will be brief. I have listened with great admiration to the various contributions that have been made by my colleagues this afternoon.

Mr. Speaker, Sir, I want to start by thanking the Committee for doing a good job because in the tradition of this House on the matter of impeachment and even on other matters that we have had to deal with, we have relied overwhelmingly on the trust, confidence and expertise that our Committees have displayed. So, I want to go on record as thanking every Member of this Committee; those who supported the majority report and those who supported the minority report because we are not here as robots. If you are not careful, we might push this bipartisan thing in the wrong direction. The reason we are here is because every Senator has a right to arrive at a conclusion so long as you justify why you have arrived at that conclusion. So, I am grateful to every Member; those who supported and even those who dissented.

Having said so, Mr. Speaker, Sir, I want to agree also with Sen. Mutula Kilonzo Jnr. that this is an apex body for devolution and we have a lot of work to do in the coming months and years. The only small area I disagree with him is when he says that this is like the House of Lords in the UK; and that when we make a decision, it is followed in the village. With due respect to him, that is not true. In the House of Lords in Great Britain, colleagues, that House is both a House of Parliament and it is a court of law. In our Constitution, the Senate of the Republic of Kenya is not a court of law; it is a House of Parliament. So, that difference needs to be brought out.

Thirdly, Mr. Speaker, Sir, I want to say that I heard my brother, the Senate Minority Leader while he was contributing saying "Oh, we are a quasi-judicial institution;" that is also not true. This is not a tribunal; this is not the Liquor Licensing Board. This is the Senate of the Republic of Kenya. We are Senators!

(Laughter)

Mr. Speaker, Sir, what we are doing here, and that is my fourth point is that impeachment is not an academic exercise. It is not a judicial exercise, but it is a political process. That does not mean that we cannot be fair. By being a political process, we can still be fair. However, we need to set the record straight that this is not a court process. That is why we have had issues with courts once in a while when they have not understood what we do here every time we are dealing with impeachment.

Mr. Speaker, Sir, fifth point is that I have also listened with horror and disbelief as some of my colleagues, with due respect, have tried to trivialize some of the things that have been enumerated by the Committee. I am very proud that the Committee found some of the charges not substantiated. That is good enough. But at the same time, the Committee found that one of the charges was substantiated. That is also good enough. Section 33 of the County Governments Act says "if any of the charges is substantiated."

It is not about quantum or about substantiating only one charge out of ten charges. I have listened with deep shock and sorrow to some of my colleagues trivializing something called hate speech. It seems like Kenyans never learn. Some things that appear casual and routine are things that can bring great discontent and civil disorder in our society.

Mr. Speaker, Sir, Section 3 (a) of the National Cohesion and Integration Act says:-

“For purposes of this Act, a person discriminates against another person if on ethnic grounds, he treats that person less favourably than he treats or would have treated other persons.”

Section 13 of the same Act says:-

“A person who—

(a) uses threatening, abusive or insulting words or behaviour, or displays any written material;

(b) publishes or distributes written material;

(c) presents or directs the performance the public performance of a play;

(d) distributes, shows or plays, a recording of visual images; or

(e) provides, produces or directs a programme,

which is threatening, abusive or insulting or involves the use of threatening, abusive or insulting words or behavior commits an offence if such person intends thereby to stir up ethnic hatred, or having regard to all the circumstances, ethnic hatred is likely to be stirred up.”

In other words, the intention is there, but there is also the likelihood test that this Section talks about.

Mr. Speaker, Sir, finally, Section 62 (1) of the same Act says:-

“Any person who utters words intended to incite feelings of contempt, hatred, hostility, violence or discrimination against any person, group or community on the basis of ethnicity or race, commits an offence and shall be liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or both.”

As I have said, this is not a court of law or criminal trial. I am satisfied that any person holding the office of a public officer in the Republic of Kenya, who publicly directly or indirectly suggests that any other person who is in a certain part of the country ought not to be there, breaches the law and if he is a public officer of impeachable categorization, he must be impeached.

Mr. Speaker, Sir, with those few remarks, I beg to support.

The Speaker (Hon. Ethuro): I now call upon the Mover.

Sen. Kagwe: Thank you very much, Mr. Speaker, Sir. From the outset, I want to thank all Senators. This is because the fact that we hold different views does not seem to affect the relationship between the various Senators.

Mr. Speaker, Sir, I also want to particularly thank the Committee that dealt with this issue. On many nights we argued and disagreed on these issues and eventually agreed on most of them. In fact, out of a line of 24 issues that we were supposed to discuss, we agreed on all of them, except three. Therefore, the fact that we did disagree on those three issues does not mean that the Committee did not work together.

Mr. Speaker, Sir, I also want to say that at no time during those discussions, even when there were heated matters, did we deviate from issues. At all times, I can report, the team from this Senate behaved in a manner that befits being called hon. Senators. I did say during the discussions and debates that we had that we must remain not only respectful of each other, but even of the parties involved. I specifically proposed that as opposed to something that was practiced here on this Floor before, we should not at any time mention any personal matter related to Bernard Kiala. We agreed that even as we discussed the issue, we should maintain respect for Mr. Kiala as an individual, leader in the community and family man.

Mr. Speaker, Sir, it is said often that the hallmark of a civilized society is to have the ability to agree to disagree. Sometimes we have to get to that point. But when we get to that point, we must sustain the aspect of us being a civilized society. Amongst the recommendations that this Committee made, if you look at the document, you will see that we said that it is necessary for this House to consider how in future matters such as the one in front of us, can, probably, be debated and negotiated further at lower levels than before this House. Otherwise, we will end up dealing with a lot of issues from all over the country. However, we also did say that once a matter gets into this House, it must be dispensed with, with respect and all consideration that is brought to us by the various houses, lest we seem like we are dismissive of the houses of the county assemblies. We also, in fact, said that we should bring to this House legislation that can, probably, be looked at for use, so that there is a uniform way of dealing with these matters and carrying out impeachment processes at the county governments' levels. That is something that we can do.

Mr. Speaker, Sir, as I sat there, I listened to a lot of good debate and also a few things that were not factual. For example, there was a notion that we did not seek and do not know what the word *nguu* means. In my opening remarks, I said very clearly that in the document that you have, we have a transcript and translation thereof authenticated by the Principal Legal Counsel of the County Assembly of Machakos. I am, in fact, also informed that the National Cohesion and Integrity Act are also looking into this matter.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Is the Chairperson of the Committee in order to misinterpret our contribution? It is not that we doubted his words, but we were insisting that he confirm to us whether, indeed, that legal officer is an expert and authority on the Kamba language. We gave you various alternatives, including interpretations by leaders from that community who have been communicating with us. Is he in order to mislead?

Sen. Kagwe: Mr. Speaker, Sir, I want to tell my friend, Sen. Boni Khalwale, that if he reads that particular affidavit, one of lines reads:-

“I confirm that I am an expert in Kikamba language.”

Sen. (Dr.) Khalwale clearly is not an expert in Kamba language, just as much as I am not. Therefore, when I am told, in a sworn affidavit, that somebody knows the language, I presume that he knows it. I have no otherwise.

Mr. Speaker, Sir, if you look at---

Sen. Kajwang: On a point of order, Mr. Speaker, Sir. I have heard my good friend from Nyeri suggest that this was a legal officer of the county government. After

looking at the proceedings, I saw that this fellow could be the prosecutor. So, have you made the prosecutor interpret the word to mean what he wants it to be?

The Speaker (Hon. Ethuro): Chairman, would you like to be informed?

Sen. Kagwe: Yes, Mr. Speaker, Sir, let me give the professors a chance.

Sen.(Prof.) Anyang'-Nyong'o: On a point of information, Mr. Speaker, Sir. My Chairman is right in the sense that it is the guy from the County Assembly who did the translation, but the lawyer to the Deputy Governor, I think raised the issue that he wanted an independent translation from somebody else because since the County Assembly was party to the process, the prosecution wanted another independent authentication of the translation. I think that is where the difference is.

Sen. Kagwe: Mr. Speaker, Sir, be that as it may, we were sitting as eleven people in a House, out of who each one of those eleven people is a respected and able individual to make a decision. We were not sitting in a court of law as has been adduced in many instances. We were sitting in a committee of the Senate; *quasi* judicial, *quasi* political. In the United States, when a jury retreats to go and make a decision on a matter that is before the court, they do so on the basis of two things; law and the understanding of the individual who is there. The majority of the individuals sitting in the Committee were convinced, given the evidence that we were given, that *nguu* does not mean anything to do with peace. It means everything except anything to do with peace.

Even as we debate this matter, one of the things we should really not do is slight the feeling of those people who felt affected by the use of that word and the understanding that was given by the majority of the people.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order Senators. The Mover is just replying. I take note that when Sen. (Dr.) Khalwale and Sen. Kajwang were contributing, they had lean interruptions. I think it is only fair that you treat him in the same way unless there is something really burning, which is not the case.

Sen. Mutahi Kagwe: Mr. Speaker, Sir, I really---

The Speaker (Hon. Ethuro): Sen. Muthama, if your colleagues dismiss the opinion of the legal counsel of the County Assembly on the basis of where he comes from, do you think they will take yours? Proceed, Chairman.

Sen. Kagwe: Mr. Speaker, Sir, finally I just wanted to point out something as I sit down. That because of the nature of the impeachment process which is *quasi*-judicial, *quasi*-political, I think it is important for us to look at precedent as far as the impeachment processes are concerned and they are there in the Report including the dismissal of the Oklahoma Governor who after being cleared of many charges, he was dismissed for general incompetence. That is enough for us to do what we did. If the Committee were to say that there was general incompetence on this individual, it would have been enough. Therefore, even as we try to restrict ourselves to issues of law *et cetera*, let us remember that the Committee in its wisdom can recommend impeachment as long as it is convinced that the continuing holding of office by the Deputy Governor does not help the Machakos County. We are convinced that the future of Machakos County is the most important—

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Is it in order for the distinguished Senator for Nyeri who has done a very good job for this Committee to tell this House that the Committee can recommend impeachment by feeling that continuing to be in office of the Deputy Governor will not help Machakos County? That is a feeling. We are dealing with facts and evidence and not feelings.

Sen. Mutahi Kagwe: Mr. Speaker, Sir, I normally understand Sen. Wetangula, but this one time, I do not know whether he heard me wrong. You cannot raise an issue of objection by imagining, you cannot rise on a point of order by imagining. I did not talk about feelings. I said and I would like to repeat it that Governors have been impeached by precedent in the past not just on the basis of the charges that have been given to the Committee but on consideration of the Committee and coming to the conclusion that it is in the interest of the county that the Deputy Governor does not continue to hold office.

As I said, we have tremendous respect for the people of Machakos County and for the Senator who represents Machakos County and he has been wise in the manner that he has behaved throughout this process, but, however, we considered very many aspects both judicial and political and wondered to ourselves, if we sent back Bernard Kiala, what happens then to the stability of the Government of Machakos County, to the well being of Machakos County and what happens if he continues with the issue of *nguu*? We made a decision on this matter, not a personal decision but a decision based on facts and on the consideration that we would like to see a prosperous and well run county government.

In our Report, we pointed out that there are issues that were raised during the deliberation on the impeachment process, there were issues of governance that were raised in a general way both within the Deputy Governor's office as well as the County Assembly and the other institutions within the County Assembly of Machakos establishment. We recommended that some of these issues should be subjected to other Committees of the Senate to investigate and see where those issues lie and the truthfulness or otherwise of the same. We did all this because at the back of our minds was the importance of the people of Machakos; that we want to see peace and prosperity in Machakos County. It is the consideration of the Committee that that is going to happen when we impeach the Deputy Governor.

Mr. Speaker, Sir, it is also imperative that this House considers these matters from a very non-partisan manner. I want to recommend that we do so because if this argument of political parties is pushed to its conclusion, this may well be the last impeachment process that will take place here because if we ever take partisan positions, what will happen then is that at every impeachment process, political parties will take their position, defend their people and in so doing, kill the entire stability---

Sen. Muthama: On a point of order, Mr. Speaker, Sir. The Chairman of the Special Committee is misleading the House by saying that political party positions are at play here, because since the debate started here, no one has talked about political parties. Where is he getting this from? Is he in order to mislead the House?

The Speaker (Hon. Ethuro): He is perfectly in order because he did not name the party. He was just guiding that the direction in which you should vote. That is his contribution and opinion.

Sen. Kagwe: In fact, I was making an appeal but having said that, I have been to school and I have two eyes and two ears. I can see and I can hear and expecting you to pretend that I cannot do that is completely out of order. We can try and bury our heads in the sand like the proverbial ostrich but when you come out, the fire will still be there. So, let us not hide and say that there are no considerations that relate to political considerations. I admitted that this is a *quasi-judicial* and *quasi-political*. Therefore, to deny that it is a matter not in front of this House is frankly lying to ourselves. You might want to do it yourself but I am sorry I am not going to do so.

Mr. Speaker, Sir, let me once again appeal to the House that let us walk united, let us make decisions in a united manner.

The Speaker (Hon. Ethuro): Conclude.

Sen. Kagwe: I thank you, Mr. Speaker, Sir.

(Loud consultations)

The Speaker (Hon. Ethuro): I am afraid the Minority Leader does not have such luxury.

Order, hon. Senators. I think we have now concluded the debate and before we go to the next stage of voting, I had stated earlier in my Communication that we will give the Deputy Governor the opportunity to put his case before the House. Is he or his lawyer around?

*(The Deputy Governor of Machakos County (Hon. Bernard Kiala)
was ushered into the Chamber, accompanied by
his lawyer, Mr. Harun Ndubi)*

Hon. Senators, now that we have the Deputy Governor of Machakos, Hon. Bernard Kiala, present, pursuant to Section 33(6) of the County Governments Act, the Special Committee of the Senate having found that some of the impeachment charges against you have been substantiated and before the Senate votes on the charges, you have a right to be heard by yourself or through your counsel. You have 30 minutes to do that after which the Senate will vote. You may utilize the full 30 minutes by yourself or you may share it with your counsel. You may begin now.

(Hon. Benard Kiala before the Senate)

The Deputy Speaker of Machakos County (Hon. Bernard Kiala): Thank you, Mr. Speaker, Sir. I propose to share my time with legal counsel who is present. I wish to record my respect to the Senate and the Committee. I have had a chance to listen to the charges against me. I was never given a chance to defend myself at the county level

because the process was rushed. I confirm to the Senate that the proceedings facing me today are initiated and sponsored by the County Government of Machakos.

Out of all the 24 charges against me, the only one I would plead guilty to, although it is not among the 24 charges, is being accused of blowing the whistle against impunity, corruption and nepotism. In my statement at the Committee level, I stand by what I said. I know the Senate would want to see devolution succeed, to see the Governor and the Deputy Governor working harmoniously and to see the Governor and the Deputy Governor agree. It is very hard for me to agree with my Governor where there are issues of nepotism, impunity and corruption. These issues point to him and he has taken no action whatsoever. In my statement in the Committee, I documented all these. It is because of this and the desire for my Governor to want to impeach me that he had to craft very many charges with a hope that maybe one of them would be substantiated. It is like they used the principle of a fisherman; “thou shall cast your nets far and wide hoping thou shall catch some fish”.

Mr. Speaker, Sir, I am innocent of all the charges. This Senate has belaboured so much to define the word “*nguu*” and what I meant. It hurts me as the Deputy Governor when my call for affirmative action of people being given 30 per cent of procurement and government tenders in the county and it hurts me when my call for the 70 per cent of all positions to go to the local community as is required by law is twisted to refer to hate speech.

The Speaker (Hon. Ethuro): Deputy Governor, I will remind you that you deal with allegations that have been substantiated and they are two; one, gross violation of the National Cohesion and Integration Act; and two, abuse of office.

The Deputy Governor of Machakos (Hon. Bernard Kiala): Mr. Speaker, Sir, I want to submit that I have not abused my office and that never have I at any one time given a hate speech. My fight for equality and affirmative action has been twisted to mean something different. I want to state that I wish the Committee had invited a Kamba speaking expert to give meaning to the word “*nguu*” because in our community, we have many idiomatic expressions and metaphors. We do not have a word like “*nguus*”. I heard the word “*nguus*” in the Committee. We only have “*nguu*” and “*ngu*”. There is a time I talked about “*ngu*” meaning slow space when you are driving along bad roads in our county and which need to be fixed. There are times when I talked about “*nguu*” when I was referring to people eating in the government; the fact of corruption, the face of impunity and the face of nepotism in our county. Never have I at any one given time used the word “*ngu*” or “*nguu*” to refer to a specific community either within Machakos or elsewhere. I have always used those parables in a very positive way; calling for peace and unity.

I know the Senate will use its position to protect devolution and counties. Irrespective of the outcome of today’s verdict, I still request that you get an expert to give a correct transcription of my speech because I know it has been quoted out of context so that it may try to confirm some charges that have been leveled against me.

With those remarks, I now wish to invite my legal counsel, Mr. Ndubi, to pick up from there. Thank you.

Mr. Harun Ndubi: Thank you, Mr. Speaker, Sir and distinguished Senators. It is, indeed, a pleasure for me to appear in this august House. It is a pleasure that I enjoy with a measure of regret because as you know, outside there, legal practitioners like my friend, hon. Sen. Madzayo or the Senate Majority Leader, Sen. (Prof.) Kindiki, Sen. Murkomen and the Senate Minority Leader know. We are referred to by the specialty of law we practice; you will hear about constitutional lawyers; you will hear about commercial lawyers; you will hear about environmental lawyers. I hate it. I dread the day we shall have impeachment lawyers.

(Laughter)

I hope that we shall be slow---

The Speaker (Hon. Ethuro): Order, lawyer! They also practice here something called “Senator So-and-so.”

(Laughter)

Mr. Harun Ndubi: They are all my friends here.

Mr. Speaker, Sir, there is a saying in Kiswahili which I am sure many of you will know which says “*Baniani mbaya, kiatu chake dawa.*” You may not like me; I may not like you, but we must respect each other and benefit each other so that – again if I may use the Swahili expression – “*Undugu sio kufanana ila kufaana.*” I am saying this as expressions to deal with the background of the problem that has brought us before this venerable House this evening for the whole day. If you look at the record of the proceedings before the Committee and the record of the affidavits and statements filed by the County Assembly before this Senate, certain things become apparent. The first is that there is unanimity in Machakos County Executive or Machakos County Government that the Deputy Governor, Bernard Kiala, is bad. There is also the silent unanimity from those records that everything in Machakos is good except Bernard Kiala, the Deputy Governor, because nowhere in those myriad of affidavits do you find anybody saying anything positive about Bernard Kiala – not even his name – and there is nothing negative or no problem is described about Machakos except Bernard Kiala.

Mr. Speaker, Sir, we do remember that in recent history, Machakos has been in the news for many other reasons. Machakos has been in the ears and lips of Kenyans because of the ambitious launch of the Machakos Modern Techno City; Machakos has been in our ears and lips about the Konza City; Machakos has been in our ears and lips about the ambulances; Machakos has been known for the many police cars; Machakos has been known for the fastest building or construction of a road; Machakos has been known a little bit ignominiously over the incidences of the Masaku 7s. Machakos has not been known in our ears and lips, even in national circulating media, about expulsion of people from different communities – whether from other counties other than Machakos or ethnic communities other than those originally resident in Machakos. This we got to hear it for the first time before the Committee and it is curious.

Mr. Speaker, Sir, whereas I heard the presentation of the report by the distinguished Senator and Chairperson of the Special Committee, Sen. Mutahi Kagwe, who is my friend, say that the Committee considered and deliberated on the question of whether the Senate or the Committee as a delegate of the Senate, has the mandate to look back into the merit of the processes and procedures followed by the County Assembly, that question was considered and a decision was taken that it was not going to be taken. But it is important, knowing that impeachment proceedings are, indeed, accusatorial proceedings; they are accusations; they are proceedings like those of a trial; the Committee was invited by ourselves – and I did invite the honorable Senate to look at Article 25 of the Constitution which says “A fair trial is one of the non-derogable rights of a citizen.” Article 50(2) gives conditions that would amount to a fair trial. The process and proceedings at the County Assembly of Machakos are a very distant off the mark of fairness. Why? On the 7th of July, 2014, the Deputy Governor complained to his colleagues in Cabinet that there was a deliberate lapse of his security and he felt that he was in danger. That Cabinet meeting decided immediately to amend the agenda; rather than discussing the complaint by Mr. Bernard Kiala, they decided to discuss the conduct of the Deputy Governor. It is noteworthy that at the end of the deliberations of that day, the Executive decided to write him a letter which I would equate to a notice to show cause. It was delivered to him on 8th of July, requiring him to come the following day, 9th of July, to explain himself. On the 9th July, indeed, he attended and requested for more time. They told him “All right, we will give you more time; come on 16th July,” which is 7 days afterwards.

Curiously, Mr. Speaker, Sir, on that 9th of July – and I do not know how it was managed – on the one hand, the Cabinet is telling Mr. Kiala that he has 7 days to reply to those allegations, and on the same 9th July, they were busy swearing affidavits against him unbeknown to him –they did not tell him. The affidavits are all dated 9th except for two or three affidavits – actually two affidavits; the one for the matatu driver and the conductor, which are dated later on; and I think one other.

Mr. Speaker, Sir, it is instructive that if you look at those affidavits in the record, they show that they were drawn and drafted by two firms of lawyers; B.N. Musau and Company Advocates, who represented the County Assembly of Machakos before the Committee. Some are also drafted by Nyamu and Nyamu Advocates, who were also representing the County Assembly before the Committee. The addresses given in those affidavits are Nairobi addresses. For B.N. Musau & Company Advocates, it is Reinsurance Plaza; and for Nyamu & Nyamu Advocates, it is in a building on Ralph Bunche Road, Nairobi. But they were sworn in the Office of the Governor by the admission of several witnesses on that day of 9th July, 2014. It is important to note that the firm of Nyamu & Nyamu Advocates, while acting for the County Government in drafting the affidavits accusing the Deputy Governor, billed the County Government. There is a fee note on record from the statement filed by Mr. Kiala with the said firm, that firm of lawyers asked the County Government of Machakos to pay them an amount of Kshs5,040,000 for the services they had rendered. They come around to represent the County Assembly before you or before the Committee but that is not the most important point.

Mr. Speaker, Sir, on 9th July, 2014, as the affidavits are being sworn, and if you look at the affidavits, they state: “The matter of Bernard Kiala” when there was no matter. This was somebody filing a Motion before the County Assembly for impeachment of the Deputy Governor. According to the interim Standing Orders of the County Assembly of Machakos which are applicable in every county assembly across the country, Standing Order Nos.60, 61 and 62 provide that once a notice is given, the Clerk satisfies himself that it conforms with the law and once he has satisfied himself, he gives it to the Speaker who admits it, upon admission, the Mover gives notice of that Motion for seven days after which it shall be put on the Order Paper.

What happens instead? A Notice of Motion is filed with the Clerk on 9th July, and on 11th July, Mr. Kiala is given Notice of that Motion and is asked to appear before the County Assembly *ad hoc* committee on 14th July. Remember the seven days the County Assembly had given M. Kiala would lapse on 16th July, but the County Assembly is giving Mr. Kiala four days to appear before an *ad hoc* committee on 14th July. There is no record from the proceedings of the County Assembly present before you that would show how even the *ad hoc* committee of the County Assembly of Machakos was appointed. First forward, there were legal proceedings which did not last too long and Mr. Kiala was proposed to be impeached. That is how the matter came before you. There was no hearing and no right to a fair trial afforded to Mr. Kiala.

Mr. Speaker, Sir, it is noteworthy that the affidavits used at the County Assembly are the same affidavits that were used before the Special Committee and they are the same affidavits deposed to by the Executive Committee of Machakos in the Governor’s office on 9th July. Is it a coincidence? Is it right that the Senate of this country does not inquire into fairness because fairness is a right within Article 10 of the Constitution? Article 259 says that the Constitution must be interpreted so as to give meaning to the entire Constitution. That it must be interpreted as a living and speaking document to us, talking about fairness and justice; that is, fairness of a trial whether in a court of law or in a political process such as through the county assembly as well as the Senate.

Mr. Speaker, Sir, if I left that aside, I will answer one question that I think many of you may be curious about. Why did Mr. Kiala not take the witness stand before the Special Committee? As we have sat here listening, that question seems to pop in the debate from the distinguished Senators. Allegations made against an individual remain allegations whether they are made on oath, are just statements or are verbalized. They remain allegations and nothing more. Our legal system is that the person who alleges has the duty to prove. He or she who alleges must prove. The duty of proving is on the County Assembly. It was not incumbent upon Mr. Kiala to disapprove the allegations which no evidence had been tendered for. The Report suggests that the Special Committee considered certain material including transcripts especially related to the two issues that are said to have been substantiated. The HANSARD will bear me witness that we raised objection to admitting the statements purporting to be transcripts of a speech which statement there was no evidence as to who transcribed it into paper to Kamba Language so that this is an independent person who is an expert who understands Kikamba. That person did not give a certificate to say that he is the person who has transcribed it and translated it into English. Because there was no such evidence, we had

no duty to come and say whatever these allegations are saying, tender an *alibi* or say anything else. I have only heard it as we listened to the Chairman, Sen. Kagwe saying that the Special Committee received a certification or authentication of those allegations of the transcripts from a person working as a Principal Legal Secretary from Machakos.

Mr. Speaker, Sir, you have a House full of accusers; you have a County Assembly of Machakos as one bloc of accusers who over and above anything, they have tendered hearsay evidence, then a legal officer from there is purporting to translate material of a speech that was made at a place he does not allege that he was present nor does he tell us who taped or recorded that speech and whether it was edited. There are many questions that we would ask that would lead to a finding that that certificate or authentication cannot have been proper. You needed, just like in a court of law when there is a dispute within a culture or a custom, for example, the S.M. Otieno case, experts were called from amongst the Luo Community to come and explain to the court what the Luo Culture was and meant in terms of burial of Luos and others.

The Speaker (Hon. Ethuro): You have five minutes left.

Mr. Harun Ndubi: Thank you, Mr. Speaker, Sir. I will try my level best.

The Speaker (Hon. Ethuro): It is not trying, you have to conclude within five minutes.

Mr. Harun Ndubi: Thank you, Mr. Speaker, Sir. The fact that no expert witness was called in respect of those two allegations is important material to allow the Deputy Governor resume his duties as Deputy Governor of Machakos. Secondly, the allegations are clogged in a very nebulous way. I do not mean disrespect to the Special Committee which found that they were substantiated, but when you say that you have substantially offended one statute or another, each of those statutes contain different offences. Which one is it that Mr. Kiala is supposed to have committed?

There is another offence that says that he caused anxiety to individuals. I think reference was made to the annexure to the affidavit of one Dr. Obade who did not testify before this Committee. That is just a letter dated some day in May 2014 or April 2014, raising concerns generally, not specifically talking about Bernard Kiala but saying: "Can you assure us that members of staff working here are safe?" I want to invite all of you to recall that early this year, there were even threats by medical professionals to strike on account of this question of devolution. Some wanted to be devolved and others did not want. So, this was an illegitimate inquiry unrelated to the Deputy Governor, but it is now being used as though the Deputy Governor was the cause.

Mr. Speaker, Sir, remember that whatever the allegations, including those matters that were not substantiated, some of those actions like the SMS, borrowing of money and others are things that happened in January and March, nothing happens in between, but somehow around 7th July, they become matters of consideration for seeking to impeach the Deputy Governor. Then what happened in that letter of April, the text messages of January and March, the borrowing money of about that same period of March, where does the anxiety come from where we are now being told that people from outside of the county are anxious; that they are living in anxiety and fear yet – this is, for me, very important – no person or independent witness was brought to testify before the Committee to say that I have heard this; there is a preponderance of this *nguu* statement

that people of Machakos out there believe that we are supposed to be chased out and so I am afraid. There are no reports made to the police stations to say that people are afraid that they will be chased away from Machakos County unlike before the famous *Saba Saba* rally, there were reports in newspapers of people running away from places in the Rift Valley and there were reports made to the police stations about that issue. Have you heard one single report to a police station in Machakos that people from around Machakos have attempted to migrate because of fear? None.

I, therefore, ask this Senate to stand above the politics of differentiation in Machakos. As I conclude, these allegations remind me of the Kenya of the past where if you disagreed with the chairman of a party even on a petty thing, you would be expelled from the party. That is the unity that the Governor and the executive of Machakos are looking for; where you must toe the line and not have an opinion different from that of your leader.

The Speaker (Hon. Ethuro): Order, Senators. That brings us to the end of this debate. It will now be time for voting. I order the Division Bell to be rung for five minutes.

(The Division Bell was rung)

The Speaker (Hon. Ethuro): Order, Senator. The Bell has stopped, draw the bar, close the door and then we will put the question.

Sen. Elachi: On a point of order, Mr. Speaker, Sir. Looking at the number of delegations, I stand on a point of order to ask you to defer putting of the pursuant to Standing Order No.54 (3).

The Speaker (Hon. Ethuro): Where are the whips? Do we have the delegations? I need to know the issue of delegations.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir.

The Speaker (Sen. Ethuro): I need to know the issue of delegations first.

Sen. (Dr.) Khalwale: I want to speak on her point of order.

The Speaker (Hon. Ethuro): I know you want to speak but as you do, I also want to have some basis. We have 21 delegations.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, according to Sen. Elachi, pursuant to Standing Order No.54(3), she is requesting you to move to another date the putting of the question and her reason is that we have less than 24 delegations. I would like her to guide us, which point of order in the Standing Order requires that before we take today's vote, we must have 24 delegations present. Could she kindly direct us to that point of order in these Standing Orders before you give assent to her request? My submission is that if she fails to direct us to that kind of order, we should proceed accordingly. The process of voting is spoken to in these Standing Orders under No.68 (5), No.72 (1) and No.73 (1) and at no point, do they demand that we should have 24 delegations before a vote is taken.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, our vote in this House should be guided by the rules of quorum. Our quorum for the House is 15 Members. As it is, we are more than 15 delegations. To do anything different or to fall

into the request by the distinguished Nominated Senator and Chief Whip is to rubberstamp an unorthodox conduct in this House. We have been sitting here and upon your order that the Bell be rung, we saw Senators who have been here and contributed to the Motion, who should have the dignity and courage to vote yes, no or abstain, including the Senate Majority Leader, whipping people to walk away--- We saw it and probably from where you are seated, you did not but we saw it happen. I urge you that the House be guided by the rule of quorum. Quorum of the Senate or of a Committee of the Whole shall be 15 Senators. That is Standing Order No.34.

This is a designated day, you called us for this Special Sitting, you gazetted it and we have a duty to be here. We are here in obedience to your gazette notice and the duty that we have. I also say that we have quorum. That is the guiding spirit and we urge you to overrule Sen. Elachi's point of order and let the House cast the vote either way.

Sen. Mositet: On a point of order, Mr. Speaker, Sir. I heard the Leader of Minority saying that our Standing Order state that our quorum is 15 Members but it is also our tradition that we always say we have a delegation of 24 Members. It is also good that we honour what the leadership of this House had agreed before. We had agreed that whenever we are less than 24 Members, we defer the voting.

Sen. Kajwang: On a point of order, Mr. Speaker, Sir. At his particular moment, we are in division. If you look at our own Standing Order No.36, it is quorum during voting or division. That one is specific. It says that if from the number of Senators taking part in electronic or roll call division, it appears that the Senators do not themselves constitute a quorum, then the vote or division shall be invalid. This means that it is up to us, if it appears to us, that there is no quorum. Then the question is; what is the quorum? The quorum of the Senate or a Committee of the Whole shall be 15 Senators. So, as long as 15 Senators or delegations are present in this House, the quorum is achieved. In fact, the application before us is very mischievous. In fact, those who want to get this Motion passed are not 24 but they say that since they cannot get 24, the House must adjourn. That is *shauri yako*. If you cannot raise 24, then the matter dies.

The Speaker (Hon. Ethuro): Order, Sen. Kajwang. This is the second time you are using that phrase "*shauri yako*".

Sen. Kajwang: I am sorry. I do not know much Kiswahili.

The Speaker (Hon. Ethuro): I want to include that phrase especially in the way you have used it, in what may be considered unparliamentary language.

Sen. Kajwang: I am sorry, I withdraw and apologize.

Mr. Speaker, Sir, the burden of getting this report approved by this Senate is on the people who want it approved. It is on the Committee and those who support it. I know as a matter of fact that for you to get this thing approved, you need at least a minimum of 24 delegations supporting it. If you do not have 24 delegations supporting it or you suspect you may not have, you do not adjourn. Why should we suffer because you cannot raise the numbers?

The Speaker (Hon. Ethuro): Order!

Sen. Kajwang: I oppose the recommendation.

Sen. Hassan: Mr. Speaker, Sir, my little knowledge of law tells me that tradition only comes into play where there are no express provisions. But when you do it

deliberately, that you walk away willfully, and I saw it, some of us have hardly come into this politics for the last one-and-a-half years. We cannot continue to stomach this kind of deceit. In fact, I was struggling not to wake up here. We cannot subject that young man to our politics. It is just not right, it is just not fair. They say it as a maxim in law: Justice delayed is justice denied. I was struggling not to wake up because I was so incensed by subjecting hon. Bernard Kiala – he is a human being and an elected leader like any of us. You cannot just stroll away because you have a general sense that the Motion might not succeed. We are not here to hang anybody. If you cannot fit, you just have to acquit. It just makes me feel so struck by emotion. That you subject a person who has been brought before us to this conduct; this is like a judge walking away at the time of making a decision and hopes that the accused person will come back again because of his conviction.

Mr. Speaker, Sir, in your judgment, I ask you to exercise compassion because compassion is part of the things that make this country what we are. It is not right and fair to subject the Deputy Governor---

The Speaker (Hon. Ethuro): Order, Sen. Hassan! While sympathy may be called for, we will remain level headed.

Yes, Sen. Mutula Kilonzo Jnr.

Sen. Mutula Kilonzo Jnr: Mr. Speaker, Sir, for those who have doubt, this process that we have carried out is under the Constitution at Article 181. In particular, Article 181 (2) where the Constitution of Kenya required that Parliament shall pass legislation in order to give effect to Article 181 which is the exercise we have carried out.

I want to refer this House to Section 33 and in particular Section 33(4) of the County Governments Act which states, and I repeat on record:-

“A special committee appointed under subsection 3(b) shall:-

(a) Investigate the matter and;

(b) Report to the Senate within ten days on whether it finds the particulars of the allegations against the governor to have been substantiated.”

If the Committee led by my Chairman of the ICT Committee, Sen. Kagwe, has followed this procedure and the ten days have already lapsed, when Sen. Elachi says: “Please defer this question,” you are being requested to extend time under Section 33(4)(b) which you have no jurisdiction to do. In fact, if you read the section all the way to subsection (10), there is no provision where the Senate is required by law to consider an extension of time. Therefore, if the law has conferred a specific time for us to conduct this business and that last day is today, I am sorry, we must finish today and go home.

Sen. Keter: Mr. Speaker, Sir, I want to be on record that my Majority Leader has not whipped anybody outside. If, indeed, he did that, I would have been the first one because I was seated with him. Therefore, I think it is good because some of us came running to exercise our responsibility which we were voted for. Therefore, I want to make that clarification so that everybody is not condemned. If people walked out, it is on their own volition, nobody was whipped out.

I, however, want to seek clarification on the following: The quorum is 15, which is mandatory, for the business of this House to be transacted. For now, we qualify because we are more than 15. In fact, we are 23 here. The reason we have been saying we

need 24 Senators and we have been deferring some of the Motions and Bills is because we have been trying so that we do not lose those Motions or Bills. Otherwise, we would have been going directly to vote and the results would be announced to say that we voted, for example, “Ayes, 10”, Noes, 5, Abstention may be 6” and, therefore there is no threshold which is constitutionally mandatory, which is 24. Therefore the Motion or the Bill is lost at that point.

I am seeking this clarification so that we follow the law to the letter, so that when we vote, whether we are voting “Yes”, “No” or “Abstention”, even if we are 20, the results will be announced and, therefore, if we do not meet that threshold of 24, then automatically the Bill or Motion is lost. What is the meaning of that? You interpret the meaning of losing that Motion.

The Speaker (Hon. Ethuro): Very briefly, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, the distinguished Senator for Kericho County has raised a very important issue. For a Motion or Bill affecting counties to go through, those that do not require what I ordinarily call a “noisy vote”, “Ayes” or “Nays”, where we require a division vote, for it to go through, we must meet the threshold of 24 voting for it. But for you to go to a vote, you require the quorum of 15. If, for example, if we go to a vote, like I know we are going, all you require to have are 15 delegations in this Chamber. Those who are agitating to send that gentleman home must bring 24 Senators to vote “Yes”. Those who vote “No”, even if we were 24 delegations, which is half of our numbers and the half voted differently, then the Motion would be lost. So, we are properly constituted. We have a proper constitutional quorum meeting the requirements of Standing Order Nos.34 and No.36 and the Constitution. Nobody can challenge or impute the vote we are about to have because we are voting within the context of the legal instruments that established us.

Sen. Obure: Mr. Speaker, Sir, I just want to raise a point in respect to the timing of the point of order raised by Sen. Elachi regarding Standing Order No.54(3). I know we have applied that Standing Order on several occasions before. But I have also noticed that where we have it before, it has been immediately after the Speaker has put the question. On this particular occasion today, the Speaker has put the question, the bars have been drawn and we are virtually ready to go to division. Therefore, in my view, that particular Standing Order cannot be raised.

The Speaker (Hon. Ethuro): Sen. Murkomen, very briefly, not a treatise on law.

Sen. Murkomen: Mr. Speaker, Sir, I am no longer in law class.

The first thing I want us to appreciate is that we are here on a special gazetted day. Being a special gazetted day, we are sitting on a Friday, it is not even the normal sitting day because we had to beat constitutional or legal timelines. Standing Order No.54(3) says:-

“Despite paragraph (2) the Speaker may, on the request of a Senator, defer the putting of the question to the following day, in which case the Speaker shall thereupon nominate a time of which the question shall be put.”

The following day would presuppose, in my personal opinion, and I may be wrong, that the next day that the Senate is sitting and we are in a normal sitting time. This is so that, even Friday, if we were sitting in a House and we were not bound by time, we

should not have sat on a Friday, we could have actually sat on a Tuesday or Thursday and so forth. But there is a point Sen. Keter has put across and is a very weighty one. You ruled this in a previous ruling. The reason why we said that we need to have 24 Senators before we go to vote is because we said we must have a consensus in the House, that if we have matters for Bills or decisions on Division of Revenue Bill or County Allocation of Revenue Bill that affect the counties, we must work for a consensus to reach the number 24.

Mr. Speaker, Sir, this is important. The Speaker is assisting to facilitate the passing of that Bill or Motion. If you were to extend, because you are enjoying your discretion and I really want to say this as you listen because you are about to make a very weighty judgment and I have always said that you are the Lord Denning of this House, therefore, as you make that decision, you will have the opportunity to consider my arguments. So, I will wait.

(The Speaker consulted with the Clerk of the Senate)

I want the Speaker to listen to this last point so that I can sit down.

If you were to make a ruling under Standing Order No.54(3) and say you are postponing the day to assist the House because in your previous ruling, you are trying to assist the House to either pass a Bill or a Motion that is critical for the counties---. Now if you were to make that decision today to postpone, it would be concluded that you were trying to assist the passing of the Motion to impeach the Deputy Governor, which I think is not your intention. You are not planning or working hard to ensure that the Motion for impeachment succeeds. I am saying this for posterity no matter how I will vote. You will be excused if someone imputed a motive in you during a Bill on Division of Revenue or a Motion affecting counties that you are assisting to pass it. The common good here is to assist the counties move forward. The common good here is about the rights of an individual who has been subjected to a process that he cannot even sleep so as to know what is happening.

The last thing I want to say is that if I do not want to be recorded as having voted either in the three ways, I would walk out because not being in the House is part of a decision. It is a choice. So, forcing people to stay here so that we can be together is like saying you will actually ensure that you procure people to come and vote on a matter that does not benefit in moving forward the counties.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale, you had not made the intervention? You are the one who started.

Sen. (Dr.) Khalwale: I want to thank you for accommodating me. For the record, I want to speak to the issue of constitutional and legal timelines. Under Standing Order No.54 (3) where it is anticipated that the question can be taken to the following day, on this occasion, there is no following day because this day started and must end today at midnight. The second point which I would like you to weigh heavily is that there is a parallel. The constitution itself says that the decision of the Supreme Court on the matter of presidential election should be decided within seven days. You can imagine from that

parallel, if the Supreme Court was to face the country and say that the seven days are over and we are not going to make a determination but moving to another day, would we have a stable country? I would like you to remember that in this particular case because of shortage of time, the Supreme Court was forced to make a three minute judgement and tell the country that the details of the written account will come later.

Therefore, I want to appeal to you to find that you are bound to make a decision today based on the outcome of the vote on whether Hon. Bernard Kiala will continue being the Deputy Governor or not.

The Speaker (Hon. Ethuro): Sen. Ndiema, last one.

Sen. Ndiema: Mr. Speaker, Sir, in the past, we have actually postponed voting by consensus and today, you have already ordered that the Division Bell be rung, it has been rung, the bars have been drawn and the doors locked. There is no time that we have postponed voting after all that process. We have always done it before. If we go by tradition, then it means we should actually continue.

The Speaker (Hon. Ethuro): That was the last one.

Senators, first, I want to agree with Sen. Murkomen on the fact that there is the discretion of the Chair for any Senator to request for putting of the question to be deferred. It does not mean you co-relate with other Standing Orders. It means that the Speaker can nominate another day. That must be made abundantly clear.

Secondly, Sen. Obure, I have not put the question, I was about to.

Thirdly, the presidential judgment may have been right but if you take our own example when we took the Division of Revenue Act to the Supreme Court, we were given a date. I remember I travelled purposely for that hearing only for it to be put off when we were already assembled. So, the Supreme Court has done that before. The timelines of the Constitution that we all seem to be eloquently enunciating just because we are equally interested parties and to borrow from Sen. Mutula Kilonzo Jnr., Article 181 led to county governments. The one you read says that a Special Committee appointed under sub-section 3(b) shall investigate the matter and report to the Senate within ten days on whether it finds the accusations against the governor to have been substantiated.

We put today Friday because it is the tenth day. Once it is reported, it is subject to the procedures of the Senate.

(Sen. Hassan interjected)

Sen. Hassan, just read with me, it is plain English. I am not a lawyer, you are the lawyer but I invite you to read English. The English is; report to the Senate within ten days on whether it finds the particulars of the allegations against the governor to have been substantiated. They have dismissed some and found some to have been substantiated. That is the report. It is subject to the debate of the House. We extended time, we could as well have ended at 6.30 p.m. and spilt to the other day. We were trying to redeem the situation.

On the issue of 24 Senators, we have always without any fear of contradiction because any matter to be voted by delegations, we wanted the requisite number. It is not

for purposes of ensuring that a particular position is taken but ensuring that we have sufficient numbers for whatever position. If you want to vote in favour, you will get it and if you do not want to, you will get it. So, it was giving everybody a fair chance. I cannot purport to be playing favourite to any side. I would rather be consistently wrong than to be appearing to be playing some games at any one particular time. If the tradition of this House has been that if there is a Motion requiring 24 delegations, we have always granted and I would grant the same today. Quorum for prosecuting business is 15 but quorum for voting, so far nobody has challenged that, this is the first time we are challenging.

So far, nobody has challenged that; this is the first time you are challenging it. I see the argument between 24 and 15; that is the same number that exercised me in many other issues I am dealing with. However, in terms of really voting, I would really want to give everybody an opportunity---

(Loud consultations)

Order, Senators! Just because it is not favourable to you, it does not mean you do not listen to me. You need to listen to me. I will give everybody an opportunity, but this is my chance. I have heard you; I appreciate the arguments, but I make the judgment.

Two, for purposes of and for the benefit of Sen. Hassan Omar; maybe he was not in Parliament then; and Sen. Wetangula and others will bear me out, you know what we did during the constitutional crisis. It is true that I did not see who walked out. Some actually even walked in and I can look at that direction without naming. Do we penalize them for saying they are just waiting for the voting? I want us to be fair to each other. That is my plea to this House. That is how we have been doing our business. One more day, at a time we can agree with the consultation with the leadership, I have no problem.

(Several hon. Senators stood up in their places)

Even if you want more, so be it! Order! Order! On this one, I am a bit determined on the basis of consistency.

(Loud consultations)

Order! Order! I do not have to please everybody every time. Sometimes I please, sometimes you get disappointed. More fundamentally, in terms of justice---

(Loud consultations)

Order! Order, Sen. Omar! I can shout louder than you can!

Sen. Hassan: But, Mr. Speaker, Sir---

The Speaker (Hon. Ethuro): Order! The Deputy Governor is not out of the job. So, he will not suffer any damage for the next couple of days. My ruling is that we will give this another chance. If again they do not give us the numbers that we are talking

about – remember even the voting in the election of the Speaker and the Deputy – you start by saying this number; if in the second vote you do not get it, you go by the simple majority. That is the way I will borrow on this particular case.

I have listened to Sen. (Dr.) Khalwale time and again. This is a decision I must make so that we can make progress. All of us are responsible leaders---

(Loud consultations)

Order, Senators! Order, Senators! Order, Senators! All of us are respected leaders because we respect each other.

(Several hon. Senators stood up in their places)

(Sen. Hassan spoke off record)

I really do not want to open this. I usually hear you and I have heard so many people on points of orders. This is not even a matter that we usually debate; what purpose will it serve?

Let me allow three more.

Sen. Keter: Thank you, Mr. Speaker, Sir. I do not intend to challenge your ruling. For posterity, you have touched on it, but I want you to elaborate. If we come back again let us, say, on Monday, and we are faced with the same situation we are in today, can we get the clarification so that we know what we will do at that time. Suppose we will not have the quorum at that time again, what will happen? That is what I wanted clarified.

The Speaker (Hon. Ethuro): That is correct.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I want to implore you because those who are lawyers will tell you that there was a time Lord Denning had a criminal trial. After he finished, he wrote the judgment and went home to have lunch with his wife. He was going to deliver the judgment in the afternoon. At the lunch table, he recited evidence to his wife. The verdict he had reached, and he had left his secretary transcribing the judgment for him to come and deliver.

The wife gave him a different variable to his thinking. You can find this in one of his books. He left the lunch on the table and drove straight back to court, called his secretary and dictated a new conclusion to the judgment.

Mr. Speaker, Sir, V.I. Lenin the founder of Russia once said that some minds are like concrete; all mixed up, but permanently set. We know that you have a very flexible mind and have always been on the side of the express provisions of the law. Traditions, usage and precedents are only relevant to the extent that there are no express provisions of law. I want to urge that you see the point; that the threshold of 24 is to make a decision affecting counties and have a validity of the vote when it is won. But you do not need 24 to vote. I cannot put it any better eloquently than Sen. Murkomen put it; that we canvass.

Mr. Speaker, Sir, in fact, we always tell hon. Senators who bring Motions here that on the voting day they should ensure that they have 24 delegations if the Motions affect counties. So, they will make frantic calls to friends and colleagues and say:

“Please, come and support my vote, because without 24, it will collapse.” It is never provided for in the Standing Orders, as a prerequisite to go to vote. The prerequisite to go to vote is in the express provision of the Standing Orders and the Constitution.

Mr. Speaker Sir, this is a Special Sitting day which you gazetted and called us. I personally spent Kshs800,000 to hire a helicopter to come to Bungoma and pick me to come for this debate and vote. It is not because I like that man, I do not even know him, but I am here on the side of justice. The Constitution says that justice shall be dispensed expeditiously. The agony that we are giving to that gentleman, his family and friends, notwithstanding the fact that he is in office--- He is not even in office. What office are you in when you have a dagger hanging on you for impeachment?

The Speaker (Hon. Ethuro): Finish up, Sen. Wetangula. It is not a Motion.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I want to urge you to go back to the express provisions of the Standing Orders. They are more powerful and carry more legal potency than our traditions, usage and precedents and take the House to a vote. I have represented many cases in court challenging validity of parliamentary votes on the basis of only one thing; quorum. You can challenge anything else, including the constitutionality of the law, if it has been passed. The question is: Did the House have quorum at the time they voted? Yes, we have quorum. Yes, we can vote. Yes, we have the capacity to vote and are properly constituted. You are properly in the Chair and I salute you. Since you sat there, you have not even responded to the call of nature. You have sat there diligently guiding the House through the debate. I urge you to diligently guide the House to the conclusion of today’s business.

Mr. Speaker, Sir, I implore you and have no doubt that a good idea will always give way to a better idea. A better idea will always give way to the best idea. The best idea is in this book.

*(Sen. Wetangula waved a copy of the
Standing Orders)*

The Speaker (Hon. Ethuro): Order, Senators! I think that I have given what we would call the two sides another opportunity. That will be an odd number. I think that two is good, representing the divide. There are many points of order, but we must stop somewhere.

Let me start with the one of Sen. Keter. I had actually indicated that if we give another opportunity and do not get the numbers, then we will proceed, because we will have given sufficient notice. Secondly, I still believe that we cannot operate on a minimalist approach. Sen. Otieno Kajwang is present in the House. There was a time that he brought a serious Motion of no confidence against the late Prof. George Saitoti. Sen. Kajwang, then a Member of Parliament for Mbita, actually came very late when the next Order had been called. The Speaker then, hon. Francis ole Kaparo was a friend to the late Prof. Saitoti, but he still allowed hon. Kajwang to proceed. If he went by the prescriptions of the Standing Orders, he would have barred him from proceeding, but that issue was of immense interest. To me, this issue is of immense public interest. It is important to the Senators. My recommendation is that we will agree on two days. It you

want us to meet tomorrow, which is the earliest opportunity, we can. If you want us to meet on Monday, then we can, but not today.

Sen. Kajwang, since I mentioned you, maybe you have a---

Sen. Kajwang: Mr. Speaker, Sir, you have put me in the biggest dilemma of my life. Before I spoke, I had said actually that I should have travelled, but because of your generosity and that of the Clerk, you extended it for one day, so that I finish this business of voting today and travel tomorrow. So, I was very happy. Sen. Ndiema and Sen. Kiraitu are coming along with us. Now that the law as read is that we have the quorum and we should vote, but your own feeling is that this would be unfair – I do not know to who – would it not be even unfair if the day you appoint, I will not have not come back, because we are travelling for 12 days? On that day, Sen. Ndiema and Sen. Kiraitu will not be there. If we lose, how will I feel? Even this gentleman is feeling like he is waiting for a guillotine on his neck. Are we waiting for some people to organize themselves, so that they can then deliver what they had planned to deliver? It is going to be the most unfair thing to postpone this voting.

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Senators! Let Sen. Kajwang finish.

Sen. Kajwang: Mr. Speaker, Sir, I would have even been happier if, probably, we would be travelling at night, because we could do it even in the morning. But we will not be here by 10.00 a.m. So, it means that when this vote is taken and I do not know which date it will be, probably, I will not be here. Likewise, probably our other brothers and sisters will not be here. If we lose by one vote, how will we explain to our constituency why we lost, when actually in law, in the Constitution and Standing Orders, we are in order to proceed now? This would be the worst judgment ever made.

Thank you, Mr. Speaker, Sir.

Sen. (Dr.) Machage: Bw. Spika nimekaa hapa kwa utulivu nikisikiza mawaidha ya Maseneta wezangu kuhusu mashtaka ya Bw. Naibu Gavana. Kuna mnyama anayeitwa fisi. Mnyama huyu anapenda sana kula nyama. Aonapo nyama ya tumbo lake mwenyewe, anaanza kuikula mpaka anakufa kwa sababu ya tamaa yake. Seneti hii haifai kuwa hivyo. Tusifikiri kwamba kwa sababu kuna shida, kuna nafasi ya kula na kuchafua jina la Bunge. Mkuki kwa nguruwe ni mtamu lakini kwa binadamu ni mchungu. Huyu nguruwe, kwa mfano, labda ni Naibu wa Gavana ambaye yuko hapa leo.

Bw. Spika, kwa hivyo uamuzi wako ni lazima uwe wa hekima siku ya leo. Hii ni kwa sababu itaandikwa kwa historia ya Seneti na kusomwa, kwamba Spika wa Seneti, ambaye kwa miaka karibu miwili ametoa uamuzi wa haki, hivi leo ameamua vingine. Haijulikani kura zetu zitaenda wapi. Wao wanahesabu tu na kuamua kuwa wale walioko upande wa kushoto ni wapinzani. Je, unajua ningepiga kura vipi? Wangevumilia chuma kiive. Lakini sasa kwa sababu wamedhihirisha na kuthibitisha uoga hadharani, mbele ya vyombo vya habari na Kenya nzima--- Wakenya wamesoma na wanaona kile kinachoendelea katika Seneti hii hivi sasa.

Bw. Spika, kwa hivyo nakusihi kwa hekima yako, ukiwa kiongozi wetu tunayempenda, kwamba ingawa umetoa hukumu hapo awali kwamba tungoje siku

ifuatayo kupiga kura, uzingatie kwamba jambo ambalo tuko nalo si la kawaida. Ni jambo ambalo limeitisha kikao cha dharura. Nakusihi upige moyo wako konde na uamuru kuwa tuipige kura hii leo. Labda ni bahati ya mshtakiwa. Hata zamani wakati watu walikuwa wananyogwa kwa kamba, ungebahatika kama kamba hiyo ingekatika na uwe hujakufa, ungeachiliwa. Kwa hivyo, labda ni bahati yake. Nakusihi usilichafue jina lako.

The Speaker (Hon. Ethuro): Sen. (Dr.) Khalwale! Hon. Senators, we should be building more consensus now.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, in our culture during hard times like now, when you want to appeal to your age mate, you normally refer to the pain you felt when you went to the river on your way to circumcision and thereafter.

Mr. Speaker, Sir, for the first time since you became Speaker, I want not only to disagree with you, but I want to disagree with you very strongly. I want to beg you to remember the years you and I have worked together, especially in the last Parliament during the Grand Coalition Government. It is during those days that we did many other things, including working on these Standing Orders.

Mr. Speaker, Sir, I want to say the first bad thing to you and that is that these Standing Orders not only apply to me and the rest of the Members, but they also apply to you as our Speaker. Therefore, I want to agree with you that you have the power of that discretion. However, because of the love that I have for Parliament, I want that discretion to have a basis in law. To me, that discretion you are exercising under Standing Order No.1 – this Standing Orders states that; in all cases where matters are not expressly provided for in these Standing Orders or by Orders of the Senate, any procedural question shall be decided by the Speaker. Since this is the only Standing Order under which you can make that decision, you will then be contravening Standing Order No.34 because the problem today raised by Sen. Elachi is the issue of quorum and Standing Order No.34 has determined that there is quorum this afternoon.

Mr. Speaker, Sir, in the many years you and I have been in Parliament, you have never seen that Bar drawn and then you open the doors without the vote being taken. Never! Even during the days of former Speaker, hon. ole Kaparo, when we were dealing with constitutional issues, he used to go out of his way to establish from the orderlies that the prerequisite numbers are in the House. If you move the way you are moving, you are training the young Senator for Kakamega wrongly as far as we are concerned. She stood for guidance and, therefore, she is properly guided. If she was not standing up for guidance, the Speaker should have told us that she was being frivolous. We love Kenya. There can be no Kenya without order. This thing has very serious ramifications.

Sen. Kanainza: On a point of order, Mr. Speaker, Sir. I rise to speak as the youngest Member of Parliament in Kenya if not in the world. I was a Member of this Committee though I have not done law, but I know that this is a special day that has been gazetted and the Committee was given ten days to conclude our duty. I remember last week on Thursday we stayed late so that we could ensure that we finish business. We agreed and you gave direction that today, 15th August, the Senate will be holding a Special Sitting. Now that today is a special gazetted day, it means that the work done by this Committee must come to a conclusion. The conclusion can only be done by us casting a vote.

I am a young person and I do not want to be part of this bad precedence being set in this House. People have been here and they have not contributed because they do not see a case in this matter. Instead, they have walked out. The Standing Orders stipulate that the quorum is 15 Members of the Senate. If we do not attain 24 delegations that means that the report will die. I can also add we all got a communication from the Clerk of the Senate that we should avail ourselves today at 2.30 p.m.

The Speaker (Hon. Ethuro): Order Senator! You have put your case. Sen. Murkomen!

Sen. Murkomen: Mr. Speaker, Sir, my position is known and we cannot go back to that. The danger here is that you have made a ruling. However much we may not agree with your ruling, it can only be varied another day, although Sen. Wetangula, referring to Lord Denning, had eloquently expressed a possibility of one changing his mind even midway. That day may not have come today.

Mr. Speaker, Sir, considering that you have made your decision so that we can move forward, and you have never let us down in the past, so that even the day we disagree with your decision, we have a soft spot for you. I want to make an honest appeal to my colleagues that because you gave us a window in your ruling on deciding the day, I want to suggest and request my colleagues that the vote be put tomorrow at 9.00 a.m.

Hon. Senators: No! No! No!

Sen. Murkomen: Mr. Speaker, Sir, the only basis I made that decision is so that instead of the earlier ruling that we sit until we finish the business, we use the Standing Orders to say that the business that was going on continue tomorrow so that we do not have to go through the rigors of gazetting. Although you made your ruling at 5.53 p.m. today to extend the sitting of the House until we conclude business, I suggest that we make a decision under the Standing Order No.99, that the House do now adjourn until tomorrow morning as part of continuation so that we do not have to gazette the sitting.

Mr. Speaker, Sir, tomorrow, I am supposed to travel to the last county of this country and I was to leave very early in the morning.

Sen. (Dr.) Machage: On a point of information, Mr. Speaker, Sir.

Sen. Murkomen: Mr. Speaker, Sir, I am willing to be informed by our co-panelist, Sen. (Dr.) Machage.

Sen. (Dr.) Machage: Mr. Speaker, Sir, I want to inform Sen. Murkomen that legally we are on recess. Therefore, the Standing Order he is trying to use may not work.

Sen. Murkomen: Mr. Speaker, Sir, because you gave us your window and because it is important for us to progress and we are the Senate; and decisions are made in this House; they do not have to wait for gazette to take effect. The gazette is a notice to the public. The people to be given notice are seated there and this House can make that decision now without being invited to come here with a gazette notice. I am requesting my colleagues that we make the decision to vote tomorrow at nine and get finished with this matter. What is the point of a deputy governor staying for another one week, imagining all those issues?

I want Sen. Hassan to second me on this.

Sen. Hassan: Mr. Speaker, Sir, first and foremost, if you would allow me, it is the same Sen. Elachi who asked for an extension of time until we finish the business of this

Senate. After knowing very well that Members have walked away, she gets up and raises the issue of the minimum number to vote. This is a travesty. I am getting SMSs, emails and tweets on my account. The respect of this Senate is in real jeopardy. I am hearing the whispers of Sen. (Dr.) Machage who is travelling out of the country tomorrow and also Sen. Kanainza. I can see people postponing their trips because of this and I do not know how we would contain the interests of Senators. This House can only convene when each and every single Member has the convenience because we are seeking not to be unfair to others. So, we must not be unfair to these people here. Unless we find that time and date when all these people are around and I do not know when that time is---

(Sen. Wetangula consulted loudly)

What are you saying, Sen. Wetangula?

Sen. Wetangula is saying tomorrow morning at 9.00 a.m. I think it might be difficult for us to move back on your decision now. In terms of making progress, let us see how best we can accommodate the situation we are in.

(Loud consultations)

No. I am not bending over.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I have been really wanting to speak for a long time, but maybe there was something wrong with the gadget. What I am going to say is very weighty. For one, you were right that the issue of 24 Senators has been more of a tradition rather than by law. That is a fact. Another fact is that the issue of whether we are going to be 24 Senators or not, has always been raised before the bar is drawn. It is something that we consult ahead of Division so that when we come to it, we are not embarrassed.

Mr. Speaker, Sir, the third fact is that the whips of both sides of the divide are responsible for whipping their Members to make sure that we have a quorum in the House. My dear sister and Sen. Elachi stood on a point of order to extent the sitting of the House today to which we agreed. It means that it was incumbent upon her to whip her Members to be here so that the business of the House is completed.

The fourth fact is that there is something in English which is called "malice aforethought". If, indeed, Sen. Elachi had asked for extension of time, she should have taken the time to find out whether we are 24 Senators or not, but she did not. Instead because we are human beings with God given senses, we watched as she walked out with Senators who were sitting here and when she came back, she was minus some of them. At a time when she should be whipping them to come in, instead, malice aforethought forced her to let them go away.

Mr. Speaker, Sir, we are hon. Senators and we should speak the truth to each other. Should I stop going to Kisumu tomorrow because my old mama is sick just because somebody by malice aforethought wants to punish me again not to fulfill a personal or family responsibility when I knew that a special day had been dedicated to

this discussion, but malice aforethought forces us to go to another day. This is not fair. My solution is the following and I want you to listen to me very carefully.

Mr. Speaker, Sir, in order to accommodate malice aforethought, you can adjourn the meeting and request Sen. Elachi to pick up the phone and call all those Members who deliberately walked away to come back here within half an hour. We who are here will sit down, accommodate malice aforethought, so that after half an hour, they would have repented and come back to the House. *Bwana Yesu asifiwe.*

(Consultations)

The Speaker (Hon. Ethuro): Order, hon. Senator! I think I have been persuaded by Sen. (Prof.) Anyang'-Nyong'o and Sen. Kajwang who is travelling, but not Sen. Hassan.

First, I want to make it absolutely clear that my proposal still remains the best under the circumstances. I will have an occasion in the future to give you more citations based on what has happened not only in this Parliament of the Republic of Kenya, but elsewhere under similar circumstances. That one you can take home.

Secondly, Standing Order No.1 is not an issue because if you look at Standing Order No.1 (2), it says that even if a matter is not provided for, you go by the practices. The practices of the Senate of the 11th Parliament have been that under these circumstances we do 24. This is the first time this matter is arising. So, we also need to be fair to ourselves. The job of the Speaker is to ensure that predictability is maintained in the way we conduct our business.

Under the circumstances and the mood of the House is quite determined---

An hon. Senator: Bullish!

The Speaker (Hon. Ethuro): Order! I would not want to use the word "bullish" because if I determine that you are bullish, you know I would send you out. So, I would not say you are bullish, but persistent and consistent.

The Senate must demonstrate to the country that we accommodate each other and we are a responsible House. You can add as many words as you wish. I would, therefore, allow the Bell to be rung for one hour for purposes of ensuring we have more Members.

If Sen. Elachi, what you have been accused of is true, since you did not respond, and given that you are also a Whip, then this is your opportunity to whip as many Members as possible. In the event we do not get the numbers, we will confirm that your whipping capacity is highly constrained and we will proceed on the minimum of 15 Members.

Draw the bar and open the door.

(The Division Bell was rung for one hour)

(The session resumed)

The Speaker (Hon. Ethuro): Let us get an indication of the number of delegations.

The Senate Minority Leader (Sen. Wetangula): It is still a reasonable minimum! We have 25 Senators in the House.

(Laughter)

The Speaker (Hon. Ethuro): Order, Senator! I appreciate your Minority role, but it does not include counting delegations. But we appreciate your assistance.

(Laughter)

Hon. Senators, please note that this is a matter affecting counties. We shall undertake an electronic vote. I will reduce that period to zero because already we had the Division Bell ringing for an hour. We also have the requisite number of 24 delegations. So, how many seconds do I give you to prepare for the voting?

(Hon. Senators logged in)

Hon. Senators: We are ready!

The Speaker (Hon. Ethuro): I am hearing the readiness from one side and not across the House.

Hon. Senators: We are all ready!

The Speaker (Hon. Ethuro): Okay, if you are all ready, we will be voting on item “a” first and once those results are out, we will vote on item “b”. Please note that there are two votes because there are two allegations that have been substantiated. I hope I am clear.

We will start with the first one which is “Gross Violation of the National Cohesion and Integration Act.” As the practise is, let us try the one minute. If we do a good job with that one minute, we will reduce in the second vote.

Hon. Senators, you may now start voting.

The Senate Majority Leader (Sen. Wetangula): Are there any assisted voters?

The Speaker (Hon. Ethuro): I suppose the assisted voters know what to do; register at the Table. Vote “Yes” if you approve the allegation and “No” if you are against the allegation. Of course, you still have the vote of abstaining too. However, it is gross misconduct if you do not vote either way.

DIVISION

ELECTRONIC VOTING

GROUND A – GROSS VIOLATION OF THE NATIONAL COHESION AND INTEGRATION ACT

(That, pursuant to Section 33 (6) (b) of the County Governments

Act and Standing Order 68 (4) (b), the Senate resolves to impeach the Deputy Governor of Machakos County for gross violation of the National Cohesion and Integration Act)

(Question put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Kagwe, Nyeri County; Sen. Mbuvi, Nairobi County; Sen. Okong'o, Nyamira County; Sen. Mungai, Nakuru County and Sen. Wamatangi, Kiambu County.

NOES: Sen. Abdirahman, Wajir County; Sen. (Prof) Anyang'-Nyong'o, Kisumu County; Sen. Hassan, Mombasa County; Sen. Hargura, Marsabit County; Sen. Kajwang, Homa Bay County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Muthama, Machakos County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Wetangula, Bungoma County and Sen.(Dr.) Zani, Kwale County.

ABSTENTIONS: Sen. Bule, Tana River County; Sen. G.G. Kariuki, Laikipia County and Sen. (Eng.) Muriuki, Nyandarua County.

The Speaker (Hon. Ethuro): Hon. Senators, I wish to announce the Division on charge one:-

AYES: 5

NOES: 17

ABSTENTIONS: 3

So, we had 25 delegations and not 24.

(Question negated by 17 votes to 5)

The Speaker: Hon. Senators, we shall now proceed to take the second vote. Hon. Senators, we will use 45 seconds to vote. You may now begin.

Hon. Senators: *Bado.* Systems are not set.

The Speaker (Hon. Ethuro): Okay, let the systems be first set. You have 45 seconds to vote. Of course, assisted voters you know what to do.

Proceed.

DIVISION

ELECTRONIC VOTING

GROUND B – ABUSE OF OFFICE

(That, pursuant to Section 33 of the County Governments Act and Standing Order 68 (4) (b), the Senate resolves to impeach the Deputy Governor of Machakos County

for abuse of office)

*(Question put and the Senate proceeded
to vote by County Delegations)*

AYES: Sen. Bule, Tana River County; Sen. Kagwe, Nyeri County; Sen. Mbuvi, Nairobi County; Sen. Okong'o, Nyamira County; Sen. Mungai, Nakuru County and Sen. Wamatangi, Kiambu County.

NOES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang'-Nyong'o, Kisumu County; Sen. Hassan, Mombasa County; Sen. Hargura, Marsabit County; Sen. Kajwang, Homa Bay County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. (Dr.) Machage, Migori County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Muthama, Machakos County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Wetangula, Bungoma County and Sen. (Dr.) Zani, Kwale County.

ABSTENTIONS: Sen. G.G. Kariuki, Laikipia County and Sen. (Eng.) Muriuki, Nyandarua County.

The Speaker (Hon. Ethuro): Hon. Senators, the results for charge "B" are as follows:

AYES: 6

NOES: 17

ABSTENTIONS: 2

The Speaker (Hon. Ethuro): Hon. Senators, I wish to announce the results of the Division

That is again, 25 delegations.

(Question negatived by 17 votes to 6)

Hon. Senators, I want to bring your attention to Standing Order No.68(5) which says:-

"If a majority of all the county delegations of the Senate vote to uphold any impeachment charge, the Governor shall cease to hold office.

Here you read "Governor" as "Deputy Governor."

Further, Standing Order No.68(6) says:-

"If a vote in the Senate fails to result in the removal of the Governor, the Speaker of the Senate shall notify the Speaker of the concerned county assembly accordingly and the Motion by the assembly for the removal of the Governor on the same charges may only be reintroduced to the Senate after the expiry of three months from the date of such vote."

So, the reading of this is that none of these have sustained the impeachment charges. The Motion is, therefore, lost.

(Applause)

An hon. Senator: Therefore, issue notice!

The Speaker (Hon. Ethuro): Order! This is the Senate. There is no better authority than the Standing Orders, better than myself. I read to you what the provisions state; as they are.

The Senate Minority Leader (Sen. Wetangula): Well done, Mr. Speaker, Sir.

(Applause)

The Speaker (Hon. Ethuro): Sen. Kagwe, as the Chairperson of the Special Committee.

Sen. Kagwe: Thank you, Mr. Speaker, Sir. From the outset, I once again, want to thank and congratulate both the Committee and the House. The Committee did what it was charged to do by this House and made the recommendations it was supposed to make. The House has made a decision and clearly they have made a decision that was contrary to that of the Committee, but the Committee must clearly, as other Senators, whether they voted “Yes” or “No”, respect the decision of the House.

Mr. Speaker, Sir, in a night of political long knives like tonight, we will experience many aspects of politics. We will see the politics of unity as we have witnessed here. We will also see the politics of purpose, even the politics of betrayal as Joe Khamisi once said, come to bear. It is the nature of the animal which we deal with.

Mr. Speaker, Sir, at this moment, I want to congratulate the Deputy Governor of Machakos County and to tell him that the decision of the House, as Sen. (Dr.) Machage said, has saved him. Paramount should be the unity of Machakos County. In that regard, I seek the intervention of both the Senator of Machakos County as well as those from the neighbourhood who are well meaning to work at ensuring that the Governor and the Deputy Governor should start working together.

(Applause)

Mr. Speaker, Sir, I hope that this experience will also be a lesson to many people in the country that even though the Senate has ruled that the threshold for abuse of office and the threshold for hate speech has not been met in this particular case, I think nonetheless, it is an area that we would like to hold very highly for the purpose of the unity of this country.

In congratulating, Mr. Kiala, I just want to say that he ran away from the word go.

(Laughter)

(Several Senators stood in their place)

The Speaker (Hon. Ethuro): Order hon. Senators! Standing Order No.85 states:-

“No Senator shall speak to the Question after the Question has been put by the Speaker”

I think it is time I asserted my authority. I gave him the discretion as the Chairperson and I think rightly so.

ADJOURNMENT

Hon. Senators, it is now time to adjourn the proceedings of the House. The House, therefore, stands adjourned until Tuesday 23rd September, 2014 at 2.30 p.m.

The Senate rose at 11.07 p.m.