

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 4th February, 2014

Special Sitting

*(Convened via Kenya Gazette Notice
No.627 of 31st January, 2014)*

*The Senate met at County Hall,
Parliament Buildings, at 2.30 p.m.*

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

PRAYERS

QUORUM CALL AT COMMENCEMENT OF SITTING

The Speaker (Hon. Ethuro): Order, hon. Senators. We need to determine if we have a quorum.

The Clerk of the Senate (Mr. Nyegenye): Mr. Speaker, Sir, we have 32 hon. Senators in the House. We have a quorum.

The Speaker (Hon. Ethuro): In that case, let us proceed.

ADMINISTRATION OF OATH

*(The Senator-Elect for Bungoma County entered the Chamber
escorted by Sen. Musila and Sen. (Dr.) Khalwale)*

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, it is my pleasure and privilege, on behalf of the people of Bungoma County, to introduce Moses Masika Wetangula as the Senator-Elect for Bungoma County.

(Applause)

The Speaker (Hon. Ethuro): Welcome, Senator.
He may now proceed to take the oath.

The Oath of Allegiance was administered to the following Senator:-

Sen. Wetangula Moses Masika.

(Applause)

The Speaker (Hon. Ethuro): Order, Sen. Wetangula. You have to go back to the bar and come and do that after.

(Sen. Wetangula approached the bar)

(Applause)

The Speaker (Hon. Ethuro): Next order.

COMMUNICATION FROM THE CHAIR

JUSTIFICATION FOR SPECIAL SITTING AND PROCEDURE OF DEBATE OF MOTION TO ESTABLISH A SPECIAL COMMITTEE

The Speaker (Hon. Ethuro): Hon. Senators, I have the following Communication to make.

Pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, No.17 of 2012, on 28th January, 2014, the County Assembly of Embu approved a Motion, and I quote:-

“To remove from office by impeachment, the County Governor and Deputy Governor of Embu County.”

By letters dated 29th January, 2014 and received in the Office of the Speaker of the Senate on 30th January, 2014, the Speaker of the County Assembly of Embu 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 the following documents in respect of both the Governor and Deputy Governor:-

- (1) particulars of the allegations thereon and related annexure;
- (2) the results of the division;
- (3) the signatures in support of the Motion;
- (4) the signatures in support of the Notice of the Motion;
- (5) the Hansard Report in respect of the Motion; and,
- (6) the attendance register.

I have directed that these documents be made available to all Senators. The documents will be available in the Table Office which is located on the ground floor, next to the Senators lounge in this building, County Hall.

Hon. Senators, in terms of Article 181 of the Constitution, Section 33(3)(a) of the County Governments Act and Standing Order No.65(1)(a) of the Senate, the Speaker of the Senate is required, and I quote:-

“Within seven days after receiving notice of a resolution from the speaker of a county assembly to convene a meeting of the Senate to hear charges against the Governor.”

It is in this respect that I convened this special sitting of the Senate by Gazette Notice No.627 of 31st January, 2014, which was carried in a special issue of the Gazette Notice of the same day.

Section 33(3)(b) of the County Governments Act and Standing Order No.65(1)(b) both provide that at this sitting, the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.

Indeed, hon. Senators will observe that at Order No.3 on today's Order Paper, pursuant to these provisions of the law, the Senate Majority Leader will be giving Notice of a Motion for the establishment of a special committee. You will also observe that the Motion has, with the approval of the Speaker, been listed at Order No.4 of the Order Paper. This is the only business we have for this special sitting.

Hon. Senators, should the Motion for the establishment of the special committee pass, the special committee will be required, under Section 33(4) of the County Governments Act and Standing Order No.65(2), to investigate the matter and report to the Senate within 10 days, on whether it finds the particulars of the allegations against the Governor and Deputy Governor to have been substantiated. If, however, - and note this - the Motion for the establishment of a special committee does not pass, it should be known that the default provisions set by law shall then kick in and the Senate shall proceed to investigate and consider the matter in plenary. The resolution of the Senate on the Motion by the Senate Majority Leader will, therefore, determine the manner in which this matter shall hence forth proceed.

It is note worthy, and I wish to emphasis to all hon. Senators, that debate on the Motion shall be limited to the substance of the Motion namely, whether to establish a special committee consisting of the Senators listed to investigate the proposed removal of the Governor and Deputy Governor of Embu County. It is not a Motion on the propriety, prudence or even the constitutionality or the legality of the processes that have preceded the submission of this matter to the Senate. It is not a debate on the facts of the matter or their merits. It is, therefore, not permissible - and I will not hesitate to rule out a Senator to be out of order if he or she veers into any matters other than the Motion before the Senate.

Hon. Senators, the hearing of charges for the proposed removal from office of a Governor or Deputy Governor of a county ranks up there among the most important and solemn duties of the Senate under the Constitution of Kenya, perhaps only coming second in order of importance to the processes of impeachment of a President and or a Deputy President at Articles 145 and 150 of the Constitution respectively. This is, therefore, a very important process that has no precedent in the legislative history of our Republic. All precedents from around the world are testimony to the fact that this is a most solemn process, calling for the highest level of responsibility and circumspection from all the Senators, not only in the plenary, but also, should the Motion by the Senate Majority Leader pass, by those Senators who shall be called upon to serve in the Special Committee. This is as much of a judicial process as it is a political process. Some would probably say that it is a judicial process.

Finally, hon. Senators, this process puts to test our nascent Constitution and the instruments of accountability that we have set for ourselves. I urge that we all conduct

ourselves, that when the narrative of the impeachment processes in this country is written, we shall stand on the right side of history.

I thank you all.

(Applause)

Next Order!

NOTICE OF MOTION

ESTABLISHMENT OF SPECIAL COMMITTEE TO INVESTIGATE
THE PROPOSED REMOVAL FROM OFFICE BY IMPEACHMENT OF
THE GOVERNOR AND DEPUTY GOVERNOR OF EMBU COUNTY

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

THAT, whereas, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on 28th January, 2014 the County Assembly of Embu approved Motions “to remove from office, by impeachment,” the County Governor and the Deputy Governor of Embu County;

And further, whereas by letters dated 29th January, 2014 (Ref: CAE/SCA/1/28 and 29) and received in the Office of the Speaker of the Senate on 30th January, 2014, the Speaker of the County Assembly of Embu informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate documents in evidence of the proceedings of the Assembly;

And whereas, pursuant to section 33(3)(b) of the County Governments Act, 2012 and Standing Order 65(1)(b), the Senate, by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

Now therefore, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 65(1)(b), the Senate resolves to establish a Special Committee comprising the following Senators -

1. Senator Kipchumba Murkomen;
2. Senator Kimani Wamatangi;
3. Senator Zipporah Kittony;
4. Senator (Prof.) Wilfred Lesan;
5. Senator Naisula Lesuuda;
6. Senator Peter Mositet;
7. Senator James Orengo;
8. Senator (Dr.) Boni Khalwale;
9. Senator Boy Juma Boy;
10. Senator (Eng.) Hargura Godana; and
11. Senator Judith Sijeny;

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

The Speaker (Hon. Ethuro): Next order.

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

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

Sen. (Dr.) Machage: Mr. Speaker, Sir, I seek guidance from the Chair on matters of law and our Standing Orders. Standing Order No.65 gives us guidance on how the Governor can be removed from office by the Senate but it is silent on how the Deputy Governor can be removed from office.

Mr. Speaker, Sir, Article 180 of the Constitution also has the same deficiency; it describes how to remove a Governor but it does not give guidance on how to remove a Deputy Governor, unlike the rest of the Chapter on the Executive which shows exactly how to remove the President and the Deputy President from office.

Mr. Speaker, Sir, I seek guidance on the following; could the Act be unconstitutional because it never followed or it introduced issues that were not in the Constitution on matters of removal of the Deputy Governor? Could you, then, invoke Standing Order No.1 to give guidance on how to remove a Deputy Governor in our Standing Orders?

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. (Dr.) Machage, I did not want to cut you short for all the good reasons you know; but the fact of the matter is that the Motion is not here. So, let us entertain the Motion and then I will respond to your issues.

Proceed, Sen. (Prof.) Kindiki.

MOTION

ESTABLISHMENT OF SPECIAL COMMITTEE TO INVESTIGATE
THE PROPOSED REMOVAL FROM OFFICE BY IMPEACHMENT OF
THE GOVERNOR AND DEPUTY GOVERNOR OF EMBU COUNTY

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, 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 28th January, 2014 the County Assembly of Embu approved Motions “to remove from office, by impeachment,” the County Governor and the Deputy Governor of Embu County;

AND FURTHER, WHEREAS by letters dated 29th January, 2014 (Ref: CAE/SCA/1/28 and 29) and received in the Office of the Speaker of the Senate on 30th January, 2014, the Speaker of the County Assembly of Embu informed the Speaker of the Senate of the approval of the Motions by the County Assembly and further forwarded to the Speaker of the Senate documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to section 33(3) (b) of the County Governments Act, 2012 and Standing Order 65(1) (b), the Senate, by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to section 33(3) (b) of the County Governments Act, 2012 and Standing Order 65(1) (b), the Senate resolves to establish a Special Committee comprising the following Senators -

1. Senator Kipchumba Murkomen;
2. Senator Kimani Wamatangi;
3. Senator Zipporah Kittony;
4. Senator (Prof.) Wilfred Lesan;
5. Senator Naisula Lesuuda;
6. Senator Peter Mositet;
7. Senator James Orengo;
8. Senator (Dr.) Boni Khalwale;
9. Senator Boy Juma Boy;
10. Senator (Eng.) Hargura Godana; and,
11. Senator Judith Sijeny;

to investigate the proposed removal from office of the Governor and Deputy Governor of Embu County and to report to the Senate within 10 days of its appointment on whether it finds the particulars of the allegations to have been substantiated.

Mr. Speaker, Sir, I have listened to your communication a few minutes ago and I have paid attention particularly to the need for the purposes of this historic session for us to confine ourselves to the Motion before this House this afternoon. It is for that reason that in moving this Motion, I will stick to the particular issue, which is the establishment of a Committee of this House to investigate the allegations and the charges that have been made by the County Assembly of Embu against the Governor of that County and its Deputy Governor.

Mr. Speaker, Sir, I say so because there are so many other contextual issues arising, not only from Article 181 of the Constitution, but also from Section 33 of the County Governments Act as well as Standing Order No. 65 as read together with Standing Order No.66 of the Standing Orders of Senate. So, in moving this Motion, I will stick to the issue of the establishment of a Committee.

Mr. Speaker, Sir, I want to start by saying that the issue of whether or not this House should establish a Special Committee to investigate the charges against the Governor and the Deputy Governor of Embu is a matter that is provided for in the law. Looking at Section 33(5) of the County Governments Act, I have noted that the language there is permissive; it states that “the Senate may establish a Committee.” Therefore, one of the issues that arise is whether the route of a committee is the route that is appropriate, and that is upon this Senate to decide.

Mr. Speaker, Sir, the second thing I want to say is that given the huge public interest of this matter; given that this is the first instance of impeachment proceedings in the history of the Republic of Kenya; given that this is the first process of this nature under the new Constitution; given that the removal of a Governor of a county touches at

the very root of our constitutional order as well as the system of devolution that many Kenyans are hoping must work; for all those reasons, it becomes important that an issue of this magnitude be placed before a specific Committee, and I say so because even if the Act is permissive, you will see that the intention of the work or the terms of reference of this Committee are actually to prepare ground or, rather, to preside over a very judicial and legal process. It is not a political process and that, in my view, necessitates the need for a special Committee where we can tap into a variety of skills that this House has; legal skills, financial skills, skills relating to public administration, political science and all other relevant matters that need to be addressed through a judicial process or, if you like, a *quasi* judicial process.

So, Mr. Speaker, Sir, the issue of a Committee, therefore, becomes important and it is in that connection that this Motion recommends the establishment of the Committee. We hope that the usual safeguards are in place in terms of representation of various parties; in terms of diversity in our country; in terms of gender considerations as much as it is practicable. I know that, previously, we have dealt with this issue and the Chair has said that sometimes it may not be practical to ensure that all these considerations are realized 100 per cent. So, what is intended is to provide the widest array of diversity in membership in the representation of the country, in political party membership, *et cetera*.

So, Mr. Speaker, Sir, be that as it may, I also want to say that through the work of this Committee, the Senate of the Republic of Kenya will be watched very keenly. So, my appeal is that should this Motion pass, I want to remind our colleagues who will be fortunate to sit in this Committee to make this Senate proud. I have no doubt in my mind that the men and women whose names I have read as I moved this Motion are men and women of character.

(Applause)

They are men and women who place the national interest before personal or partisan interest; they are men and women with a proven track record of objectivity. As much as they are politicians, they are people we can trust; they will not make this Senate the laughing stock of the people of Kenya.

Mr. Speaker, Sir, through this Committee, the Senate of Kenya will be sending a message that, yes, we take our responsibilities seriously; that, yes, we will not shy away from applying the law where there is need for the law to be applied; that, yes, we will not introduce sectarian interest when an issue of this magnitude is before this House. So, I have no doubt in my mind that the Committee will do a good job; I have no doubt in my mind that the choice of membership is extremely rich. All I request is that we restrict ourselves to the issues; let justice be our shield and defender. Let devolution come out of this process stronger.

(Applause)

Let the accountability mandate of Senate come out of this process stronger. Let the recipient of public administration – that is the people of Kenya and the people who pay taxes – let their interest come out of this process even stronger.

Mr. Speaker, Sir, with those few remarks, because today is about the Committee, I beg to move this Motion and request the newest Senator in this House, the Senator for Bungoma County – who used to be the Senate Minority Leader before and who tells me now he is serving his second term – to second this Motion.

(Applause)

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Mr. Wetangula.

The Senator for Bungoma (Sen. Moses Wetangula): Mr. Speaker, Sir, I believe this is my maiden speech and I must be heard in silence by Sen. Murkomen and the likes of him---

(Laughter)

Mr. Speaker, Sir, I beg to second this Motion. But before I do so, allow me to thank the people of Bungoma County for demonstrating very ably their unwavering confidence in yours truly.

(Applause)

Allow me too, Mr. Speaker, Sir, to thank my family, my party, my coalition, CORD, my friends, colleagues in the Senate who, in very many ways, made enormous contributions to enable me serve with distinction that I start today my second term as a Senator.

(Applause)

Mr. Speaker, Sir, I thank my coalition partners; Raila Odinga, Kalonzo Musyoka, and in this House, I single out Senators who stayed with me in the rain and in the dust, depriving themselves of many things – Sen. (Dr.) Boni Khalwale, Sen. (Dr.) Agnes Zani, Sen. Hassan Omar Hassan, Sen. David Musila, Sen. James Orengo, Sen. (Prof.) Anyang’-Nyong’o; the newly nominated Senator – my sister sitting by the door – who even in spite of her physical condition, came to Bungoma and joined the campaign trail.

(Applause)

I thank Sen. Henry Tirole Ndiema, my brother from Trans Nzoia; Sen. Daisy Kanainza and many, many colleagues from the Lower House. Sen. Mutula Kilonzo Jnr, Sen. Catherine Mukite, Sen. Otieno Kajwang, Sen. Johnston Muthama and, above all across the floor, Sen. Gideon Moi, who found it necessary to make a contribution towards my campaigns.

(Applause)

He even offered me a helicopter to use but I did not take it. I thank him so much. Having said so, I also want to thank those who embraced the “hyena philosophy” and thought the hand was going to fall off but it never did.

Mr. Speaker, Sir, let me now second the Motion. This Motion is simple and straight forward like you guided the House. I support what my learned junior, Sen. (Prof.) Kindiki, has said in moving the Motion that this is indeed a procedural Motion that helps us to set up a Committee. Failing to do so means that we still have to do the same job but through the Senate Plenary. In a matter such as this, those of you who may have been old enough to watch the proceedings of the Nixon trial, that is what we are about to get in; the Water Gate Scandal trial that impeached President Nixon. The Senate Committee will sit as a *quasi-judicial* organ under our Standing Orders, the impeached Governor and his deputy are entitled to appear with their lawyers if they so wish and defend their position and prosecute their case.

I enjoin Sen. (Prof.) Kindiki in stating that the names listed here are names of colleagues who fit the bill. We have good and senior lawyers in this Committee, we have engineers; we have seasoned politicians like Sen. Boy Juma Boy, who was our chief whip in the Seventh Parliament. He used to stand up and speak Kiswahili with a boisterous voice that would shake the House. I would want to encourage everybody to have an open mind and an open attitude. Each and every Senator in this House has the capacity and the ability and would have had the opportunity to sit on this Committee but the rules and statutes provide for eleven Members. So, we cannot all fit. So, those of us who are not in the Committee, we know how House Committees work, you can actually go and attend the meeting if you wish, provided that when there is a vote to be taken you do not vote, but we do not have to do that. We trust that the Committee we are setting in place will discharge the responsibilities and duties bestowed upon them studiously, courageously and with the fairness that is expected from a House of this magnitude and stature.

Mr. Speaker, Sir, as you said, this is the very first case of its nature and its kind in independent Kenya and more so under the new Constitution. I want to encourage the Committee that whatever you do will be precedent setting. You may choose to engage in trivialities and bring an ignominious report that will bring a bad name to this Senate or you may also rise to the occasion and discharge your responsibility to the admiration and satisfaction of everybody so that even those who are aggrieved, if and when a decision is made in one way or another, they will go away saying, I did not get what I wanted but I got justice. That is what justice is all about and I have no doubt that where you find Sen. Orengo, Sen. Murkomen and Sen. Sijeny, they will instantly be able to give the advice required in matters to do with law. Where it requires firmness, you cannot doubt Sen. (Dr.) Khalwale; where it requires emotions, you cannot doubt Sen. Kittony; where it requires courage, you cannot doubt Sen. Hargura; where it requires charm and colour, can you doubt Sen. Lesuuda?

Mr. Speaker, Sir, I want to end by urging the House that we have only ten days to finish the work and report back to the Plenary. If we are in agreement with the names, we should move expeditiously to approve so that they can retreat to constitute themselves into a proper Committee and start their work. With only ten days, given the contention that may arise in the matter, we must give them ample time, and your office must give

them all the facilities they require so that they give us a product that we can all say, it was a pleasure being in this Senate at this time and in this Republic.

With those few remarks, I beg to second.

The Speaker (Hon. Ethuro): Hon. Senators, before I propose the question, I would like to dispose of the issues canvassed by Sen. (Dr.) Machage when he rose on a point of order.

(Sen. Wako consulted loudly)

Order, Sen. Wako! You are making it even more difficult but let me hear you.

Sen. Wako: On a point of order, Mr. Speaker, Sir. Thank you for giving me this opportunity. While responding, I wanted you to also respond to this other point. This is the point that I am seeing in the Motion. I do not know what was before the County Assembly; was it one Motion or were there two Motions or were they approved Motions, which would imply that there was one Motion for the Governor and another one for the Deputy Governor. I want to raise this issue because what we are discussing here is very important; that is, the removal of Governor and his deputy. From what I can see, there is no impeachment process that impeaches two offices at the same time in one sitting. Even in America where my learned friend quoted Nixon, of course, he was wrong to say that he was impeached because when they embarked on the process, he resigned. In America where the President and the Vice-President are elected together, it does not mean that both must go. In other words, the impeachment process was only against the president and not against the vice president.

I am raising this point knowing very well that there could very well be situations in which the facts that relate to the Governor and the facts that relate to the Deputy Governor---- I do not know because we do not know how the proceedings were. For those who have read them, they can guide us. You might as well find that the facts as relates to the Governor are different from the facts as relates to the Deputy Governor. I would not want to say that the Governor or Deputy Governor are prejudiced in any way in their defence of their cases by the fact that their two cases have been joined together in one case. Therefore, I would also want you to comment on that issue and inform us whether they are two offices and should be dealt with together. Will the Committee deal with one office first and then the other or will they handle them together? We need some guidance on this matter.

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. (Prof.) Anyang'-Nyong'o?

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, whereas I appreciate the point being raised by Sen. Wako, I would like to prefer this as something that the Committee itself would clarify to the Senate because the Senate does not have the forest of all the facts to that case. We should give that responsibility to the Committee to clarify those issues rather than try and do it here.

The Speaker (Hon. Ethuro): Hon. Senators, on that note, Sen. (Prof.) Nyong'o has said what I wanted to say. I can form an opinion but I do not want to prejudice the workings of the Special Committee that we will establish today. Those are the issues that would be canvassed before the Committee which will definitely look at the merits and

demerits. As I said in my Communication, this is a formality to ensure that we get a Committee and the Mover and the seconder have stated why we need the Committee. This was for purposes of giving a fair hearing to the Governor and his deputy. There are merits in the issues you have raised and also there are arguments. So, it is up to the Committee to look at them and make their judgment. This is why the documents have been attached. They will still come back to us and convince us the route they took. At that point, they will then make an argument.

The second issue is whether there were two Motions or not. This is a fairly obvious matter but for the benefit of the Senator for Busia, there were two processes of impeachment; one for the Governor and another one for the Deputy. The proceedings of the Committee will also be along the same lines. There will be issues for the Governor and issues for the deputy. So, we will expect the Committee to comment on each one of them separately. That should dispose of that matter.

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

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

Sen. Kajwang: Mr. Speaker, Sir, I am just following on what happened. I know what happened recently when the petition court found that we should go back for the election for the governor for Siaya. What happened is that he left office with his entire government including his deputy. For a while there was no government in Siaya. It would seem that the consequence of what we will decide, for example, if we decide that the impeachment was correct, then there will be no government for Embu.

Hon. Senators: The Speaker!

The Speaker (Hon. Ethuro): I guess Sen. Kajwang has been assisted by the rest of the Senators. So, I am not going to comment on it.

(Sen. Musila consulted loudly)

Order, Sen. Musila! I allowed Sen. Wako to respond or to add to the issues that were canvassed by Sen. (Dr.) Machage. I also allowed professor Anyang'-Nyong'o; his contribution was my own contribution and I said as much. We said that the issues raised by Sen. (Dr.) Machage should be canvassed at the Committee. Sen. Orengo, you are very fortunate because you will actually be in the Committee. I actually have an opinion but I felt I should not prejudice the work of the Committee. We do not want to prejudice the Committee from the Plenary. You can give the information to the Committee and I am sure it will be appreciated more, especially at this stage.

So, let me go ahead and propose the question.

(Question proposed)

Sen. Orengo: Mr. Speaker, Sir, I rise to support the Motion. I just wanted to emphasize what the Senate Majority Leader said earlier. In the year 1801, there were similar proceedings in the USA. When the matters came before the Senate on Saturday, 23rd February, that year, the counsel who addressed the Senate by the name Luther Martin said this, and I quote:-

“I see two hon. Members of this court (Senate) Mr. Dayton and Baldwin, who were with me in the convention who like myself, know perfectly why this power to try for impeachment was placed in the Senate. It was because among all our speculated systems, it was thought that this power could know where it would be less likely to be abused.”

I perfectly concur with these sentiments. The events of this trial would show that we could not have disposed of that power. In contradiction, a Member of the House of Representatives, who was among the members who were contributing before the Senate, said this:-

“We have performed our duty; we have bound the criminal and dragged him to your altar”

So, we are going to make a choice and I think the wisdom and the sentiments of both the Leader of the Majority and the Leader of the Minority that this power was donated to the Senate in the constitutional arrangement is something that we cannot ignore. In fact, I wanted to mention to the Senate that in the proceedings to impeach the president or to remove the president because of incapacity, the president would not appear before the National Assembly and I think that is for a good reason. In these proceedings if there were similar impeachments, the president would have an opportunity to appear before both the Committee and the Senate. There are very good reasons for this because Senators are very honourable men and women.

Similarly, you can see that from Section 33 of the County Governments Act, the Governor was not given the opportunity to appear - I am talking not from the facts but from the law - he is not by law guaranteed to appear before the county assembly, but in the Senate, he is. Again, he is entitled to appear before both the Committee and the Senate and that is for a good reason. What I would plead with my colleagues - because of this momentous occasion historically and because of this very honourous duty, I would urge the House that at whatever stage that we deal with this matter, we do so as Senators and brethren. If you belong to any party or any organization, you should not look at this case as a partisan issue but on the basis of what the Speaker pronounced earlier; that this is a judicial process, although there are political intonations.

I hope that by the end of this process and I am privileged to be in the Committee, at the end of the day, as I saw in the dailies the Senate was rated highly by the Kenyan people, that we will be rated even higher on the basis of how we would have handled these proceedings.

For those reasons, I beg to support.

Sen. Billow: Mr. Speaker, Sir, I also rise to support this Motion. As the Mover and the other Senators have said, this is a very important Motion. The question of impeachment is one of the fundamental responsibilities of the Senate. We have a responsibility to do what is in the best interest of this nation. It is a fundamental constitutional mandate and in my view, of checks and balances, that this Senate is mandated to undertake impeachment process. Checks and balances are very important in our system of governance. It is in this context that I would urge those Members who have been proposed to sit in this Committee to do what is fair and just.

Article 181 of the Constitution is very clear on the grounds on which this impeachment can succeed. It is my understanding that the county assembly has already

done some files and it is the duty of this Senate to convict or to acquit based on the evidence that will be placed before them.

I want to quote Alexander Hamilton of the USA Constitutional Convention that Sen. Orengo mentioned. This is how he described what impeachment is about:-

“Impeachment is a method of national inquest into the conducts of public men”

It is not that whatever has been brought here is already a conviction. It has given us the opportunity to carry out investigations. We have a duty to the people of Kenya, to the Constitution and to all concerned to ensure that we carry that out, as fairly as possible.

Mr. Speaker, Sir, I know that we have a country with 47 counties. This is the first time that we have started this system of government. It is not an easy exercise. When I did a bit of research in the USA, with all its history, it has only handled about 19 impeachment cases and out of those, they only had convictions in nine of them. This is a process that requires a lot of work to be done.

I would like to support the Mover and the seconder that the people whose names are here are distinguished men and women who are equal to the task. From my own Committee for Finance, Commerce and Economic Affairs, I have some very serious people included here and I have no doubt that if there are issues regarding procurement, finance or impropriety of whatever nature, we have capable minds which can handle this. I think it is a very important task and we all look forward to their report. One thing that has come out clearly from the presentation given earlier is that our Constitution allows the governor and his deputy to be heard. I think that it is important that they not only be heard, but be given an opportunity to actually appear, present their evidence, bring their witnesses, come with their lawyers and argue their case. I think that, that is really a very important thing in terms of determining whether the facts support the conviction.

Mr. Speaker, Sir, I support the names and rest my case.

Sen. (Dr.) Machage: Thank you, Mr. Speaker, Sir. This Motion comes at a time when for some reason governors have sought not to read the Constitution, understand it and appreciate the powers of the Senate. It comes at a time when governors have intentionally refused to acknowledge and accept summons sent to them by our committees. It also comes at a time when their own houses are burning at the grassroots. Like the Swahili saying goes – and I quote – “*usione simba amenyeshewa ukafikiri ni paka*”---

Sen. Abdirahman: On a point of order, Mr. Speaker, Sir. With due respect to Sen. Machage, we were very much guided this afternoon following the very first Communication from the Chair. We are not going to prejudice this process. It is important for Members to really keep to what we agreed. The basic discussion this afternoon must only be the establishment of the Committee and nothing beyond this. Is the hon. Senator in order to actually discuss issues beyond what you had expected us to do this afternoon?

(Applause)

The Speaker (Hon. Ethuro): Order! Sen. (Dr.) Machage, please, desist from other issues. I would actually have stopped you, but I heard your language. You said: “It comes

at a time.” So, when you are describing a context, it becomes a bit difficult to stop. But I am glad that Sen. Abdirahman has quickly intervened. You can gauge from the applause to the remarks by Sen. Abdirahman that the mood of the House is not in that direction.

Sen. (Dr.) Machage: Mr. Speaker, Sir, indeed, I appreciate Sen. Abdirahman’s comments and actually what you had commented, but these are facts. I will try very much to ignore what is known in the public domain.

(Laughter)

Mr. Speaker, Sir, you had hitherto ruled on my concern regarding some deficiency in the Constitution on matters that have been raised in the House and I believe the Committee, as so ordered, will address and try to enlighten us on these deficiencies. It cannot be ignored that the former Attorney-General has also indicated the truth of the matter on the legitimacy of having one Committee to actually address two cases. But notwithstanding the law and our own Standing Orders’ deficiency in addressing the situation, I believe that there is a way forward and that lacuna will not in any way prevent this House from making a historical ruling.

Mr. Speaker, Sir, my introductory remarks were actually meant – if I was not curtailed from continuing with the same – to request the Committee not to look at what is going on now and the attitude of governors towards Senators. Our humility that has been expressed very openly to the Republic of Kenya and the Kenyans, and more so to the governors, should continue and be a guiding factor in their deliberations on this matter and decision. I fully support this Committee that is of historical nature. I wish that I was in the Committee, but there are only 11 Members but we believe that they are up to the task.

Mr. Speaker, Sir, I support.

Sen. Elachi: Thank you, Mr. Speaker, Sir. I also rise to support the formation of this Committee. Indeed as we consider the names, Kenyans are also looking at everyone’s responsibility in terms of what they have done for the country over the years. Indeed, some of the Members have been seasoned politicians and know what they are required to do to ensure that we take care of the dignity of this House.

Mr. Speaker, Sir, indeed as much as this is happening for the first time, we should know that Kenyans are also following very closely. We know that a different county is facing the same predicament, but they decided to go to court. Therefore, while the people of Embu are watching, they would want to see the Committee and this House rise above our own politics and follow the law. The Committee will be like a court and in the end, it will either show that this House – like Sen. Orengo has said – indeed deserves to deal with the article on impeachment, or Kenyans will wish that it should never be in the hands of the Senate. I believe that the Committee will make us proud on that.

Mr. Speaker, Sir, I beg to support.

Sen. Wako: Thank you, Mr. Speaker, Sir, for giving me once again the opportunity to speak on this very important subject.

Mr. Speaker, Sir, indeed, you, the Senate Majority Leader and the Senator for Bungoma have correctly stated what these proceedings are all about. It is *quasi-judicial* proceedings. It is almost like a hearing of the court, with all the safeguards that pertain to

the hearings of the court; with every opportunity given to – as it were – the accused persons, having their own advocates, questioning witnesses and so on. To that extent, therefore, it should be approached without any prejudices or biases.

Mr. Speaker, Sir, the Committee Members should be completely immune, as it were, to what is going on around them. Again, they should also be aware of the fact that it is on them that these important constitutional safeguards will be realized in this country. This is because if people know – and they are now going to know – that we have the powers to impeach, then every important public official, be it Governor, Deputy Governor, President or Deputy President will be obligated to act in accordance with the Constitution. This, to me, is more of a deterrent power. By the fact that we are now having this, people will know that this deterrent power is there and, therefore, it gives a warning to everybody else to act in accordance with the Constitution, rule of law and propriety in the discharge of their functions.

Mr. Speaker, Sir, to the extent, therefore, that this is a *quasi-judicial* process, whereas I accept that every Senator--- In fact, we could have just picked the top eleven Senators and said: “Go there!” This is because we are all men of repute. But the eleven had to be chosen, but to the extent that---

The Speaker (Hon. Ethuro): Order, Sen. Wako! You have said that we are all men of repute. Are you oblivious that there was a woman next to you?

Sen. Wako: No, Mr. Speaker, Sir. In fact, ladies are people of more repute than even men, if I may say so.

Mr. Speaker, Sir, therefore, to the extent that this is a *quasi-judicial* function, honestly, I would have preferred that there be one or two more lawyers in the Committee. For example, in my Committee, we have very many good young people. My Vice-Chair, for example, is very good. Mutula Kilonzo Jnr. here is very good and I would have preferred him to also be in the Committee, to the extent that this is really a *quasi-judicial* function, as distinct from other Committees that this Senate approves.

Mr. Speaker, Sir, having said that, I accept that this is a Committee that can deliver. This is a very important function. Whereas the Chairman of the Committee on Finance, Commerce and Economic Affairs said that there have been 19 impeachments in America, in actual fact, there are 19 because in America, even a lesser official can be impeached. But when you come to the level of the President, ever since 1801 which my learned friend referred to, there have only been four impeachments. Of those four, it began in the House of Congress and now came to the Senate. Two of them escaped very narrowly with only one vote. Of course, President Nixon, as soon as it commenced, saw the light of day and resigned. Of course, we know that President Clinton escaped narrowly by one vote, when it came to voting.

Mr. Speaker, Sir, I am mentioning this just to show you the gravity and heavy responsibilities that are now on the shoulders of the 11 persons. We are going to hear some preliminary objections, part of which may be what I have raised today and so on. I know that according to your ruling, all these issues are going to be canvassed there, yet we have to do all these things within ten days. Timelines are important. We were told in the Supreme Court ruling that in our case, time is so important sometimes that they can miss out on getting a bit of evidence here and there, just to keep the timelines and so on. I

suggest that you do not go that way. You should sit long hours, up to very late, to ensure that evidence is taken, everything is done and you deliver on time.

I can only wish you good luck as you discharge this very important responsibility of sitting in an impeachment process of a Governor and Deputy Governor. If you do it well then I am sure that the Governors and every person who holds an important office in this country will now be very keen to do whatever is in accordance with the Constitution and laws. Therefore, to that extent, our Constitution will have been better implemented.

Thank you, Mr. Speaker, Sir.

Sen. Kagwe: Thank you very much, Mr. Speaker, Sir, for giving me this opportunity as well to support this Motion and, indeed, echo the fact that the Senators who have been selected for this task are up to it.

Mr. Speaker, Sir, in supporting the Motion, I also want to urge that, as the Senate Majority Leader said, let only justice be our defender. I urge the Members who are going to be selected to this Committee to ignore a lot of the issues that will come to them. I can foresee canvassing that will come from various quarters. I would urge that the Members ignore that. Since we cannot gag the other members of the public from discussing this matter, there will be many comments and commentaries in the media. It will be important for the Committee to ensure that the opinions that are expressed in the media and elsewhere will not be the basis upon which they will make a decision. Only the facts in front of them should be the determining factor, whether indeed, the matter before them will go one way or another.

Mr. Speaker, Sir, it is instructive that we have got 11 Members of the Committee, just one short of the 12 that are in the Bible. It is only that they are not a “Jesus committee” and that is the only reason that they are 11, otherwise, they would have been 12 Members. But I have no doubt in my mind that these people hold the whole Senate in their hands, in terms of the image that the Senate will carry from now henceforth. The Senate is under test. The test is going to determine whether the future Governors and Deputy Governors, the people of Embu and Kenya will have faith in the House. Indeed, the decision that we are going to make and the manner in which we make it is going to impact on not just the system that we have in our country, but in Kenya as a respected nation and country where due process and law reign supreme.

Mr. Speaker, Sir, in the United States of America, when they form a jury, sometimes they ask it to go into a session where they can read or hear nothing. We are simply asking our Select Committee to act as a jury and close their ears to anything else that can influence their decision. They should not listen to the politics that might be around the decision, but only the facts that might be around the decision. They should not look at the impact of their decision on politics, but on justice only, so that when the decision comes to us, at the end of the session that they will have had, we will have made a decision that carries the weight that is higher than that 11 people who are in that Committee. It is a significance that is so high, that we must be very careful as we proceed forward as a Senate.

Mr. Speaker, Sir, I also urge the Members that will be approved to be in this Committee to ensure that even if this is a *quasi-judicial* process, as my colleagues have said, there are also other very important matters, as raised by Sen. Billow, that will inform the decision that will be made, particularly in matters of finance and propriety as

far as procurement and other matters are concerned. This will ensure that the Committee makes an all-round decision that will have considered all matters in front of them and only ending in the respect of the Constitution.

Mr. Speaker, Sir, in addition to the 11 people, let us not lose sight of the fact that there are 67 other wise people who sit in this House. These people will impact the decision that the 11 people will make. So, this is not a decision of 11 people but of 67 people. It is the image of the 67 people that we must guard.

With those few remarks, I beg to support.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. When this matter first became public, we were in Mombasa for a retreat as Senators. It immediately became clear that this was a matter of grave national importance. We had an important press conference and immediately thereafter people wanted us to state our position on this matter. We told them only one thing; that due process would have its way.

Mr. Speaker, Sir, having listened to your communiqué, it is clear that due process is not set by you. It is there in black and white. Therefore, what the Senate Leader of Majority is addressing this House on has to be given a shot at the Committee Stage before we come to the whole House. That is part of the due process that we promised Kenyans.

I, therefore, support this Motion. What I saw in Mombasa--- I was being taken round by my taxi driver and he asked me to assure him that this Senate is capable of handling a matter of such magnitude. He was not alone. I have received many messages especially after the television footage flashed my name as part of the Committee of the 11. Many of them are expressing the same sentiments. I have received messages from a young man from Kisii called Clifton Okeno, Mr. Bitiko from Vihiga, and Mr. Simiyu from Bungoma.

(Laughter)

I am talking about accurate information that is in my phone among other things.

I want to take this opportunity to join those who have spoken before me to emphasise that we should be the reason why Kenyans should have faith in the new Constitution. There are those who thought that the new Constitution was a piece of paper. This is the time for us to remind them that the new Constitution is alive and well and that it will offer justice both to those who are complaining as well as those who stand accused.

Since I am a Member of this Committee, I want to assure the Governor of Embu and his Deputy that they have nothing to fear. If anything, what I have seen in media coming from the two of them – they have been saying that they were not heard – should not worry them because this is a *quasi judicial* process. They should see what happened in Embu as a case of first incidence. What will take place here is a case of second incidence where they will have an opportunity to be heard just like you would be heard in a court of appeal.

I would like to end by saying that if Michael Kijana Wamalwa was alive, he would have said that what the County Assembly of Embu did was merely to cast the die. The die has now been cast. The Governor and Deputy Governor should remain cool. They should come with their best lawyers. They will meet 11 patriotic Kenyans who will

constantly tread on the support of Senators. We will deliver justice. Nobody is bigger than the Constitution of Kenya and nobody is bigger than the money that the public expects to use to develop their areas.

Sen. Keter: Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute. On the outset, I support this Motion 100 per cent. The establishment of the Committee is the best way forward for us as a Senate. This will help us know whether the issues raised by the Embu County Assembly are true or not and, therefore, make an informed decision on behalf of the people of Kenya. The survival of this Senate is pegged on how we handle this first case.

I urge my colleagues, not only the 11 Senators but the whole Senate to have collective responsibility. We should all work hard. All of us, one way or another will contribute because the Committee will make a resolution. It will be upon this House to vote on those resolutions and to agree. Since this is the first case ever, we should handle the case across the entire political divide. I say so because if we play politics with these issues, we, as a Senate will have lost. I want to urge the 11 Senators – they are capable because I know them – to handle this case without political parties in mind. I want to urge political parties to give us a chance to handle the matter. We are handling it as the Senate on behalf of the people of Kenya. We are not handling the case on behalf of Jubilee or CORD. Give us the opportunity because the decisions we will make will affect this country in one way or another.

Public funds must be secure. The President has been in the lead in saying that public funds must be safeguarded. It is upon that precedence that we are here on a Special Sitting to appoint a Special Committee. As I come to an end, I would like to suggest that after the ten days are over, after we resume, I will expect Dr. Khalwale to come here and say; “oh, here, oh, here”; after which we will make an informed decision.

Sen. Ong’era: Thank you, Mr. Speaker, Sir, for giving me an opportunity to support this Motion. Let me also begin, like the Senator for Busia, in stating that the women and men in this Committee are people of high integrity. They will be bringing a wealth of experience. I note that we have lawyers in this Committee; we have doctors, engineers, women of great wisdom and other considerations of youthful Senators. This is a good selection. I am pleased that we have tried to meet the gender consideration. I would have been very happy if we had four women in this Committee. However, as it is, we will make it with the three women that we know are highly experienced Senators. They also bring a wealth of experience to this Committee.

The Speaker (Hon. Ethuro): By the way, Sen. Ong’era, since you have repeated what Sen. Wako said – I was trying not to disrupt you – out of 11, we have three non-lawyers. We have three lawyers, Sen. Murkomen, Sen. Orengo and Sen. Sijeny. I also want to add that the proceedings of this Committee will be clerked by the Clerk himself who is also a lawyer; leave along the legal Directorate of the Senate. Therefore, I would like to assure the Chair of the Committee on Justice and Legal Affairs that we were kind enough to ensure that your kind of ideas - I will not call them fears for now - were factored in.

Proceed, Sen. Ong’era.

Sen. Ong’era: Thank you, Mr. Speaker, Sir. I would like to further tell this Committee that they must be men and women who are beyond reproach just like Caesar’s

wife because the integrity of this Senate lies in the decisions that they make. Many a times, we have heard that legislators take kickbacks. I know that this is a Committee of men and women of high integrity and that they must fly the flag of the Senate. I hope that they will remember that the Senate is the guardian of devolution.

In their deliberations, I would like to join other Senators who have said before that they must take a bipartisan approach. They must leave their party considerations at home as they deliberate on these issues. Let us put politics aside. Let us show that this is the House of wisdom, the Upper House, in the way that the Committee will handle this matter. Kenyans are watching. Kenyans want justice. Let justice be the guiding criterion for this Special Committee. No other consideration should be looked at. I beg that they take that into consideration.

I end by saying that the Senate, as the guardian of devolution, should look into this matter in a very careful and respectful way. I speak this from my heart because we must know that the outcome of this Committee and what this Senate decides will set an example and of how devolution matters will be managed in this country in future. We do not want to open a Pandora box that will bring this Senate down on how we deliberate.

With those few remarks, I beg to support.

Sen. Mutula Kilonzo Jnr: Thank you, Mr. Speaker, Sir. First of all, I would like to say something about the 12 and inform my colleague, Sen. Mutahi Kagwe, that there is a reason why the framers of the Constitution thought they should be 11. In fact, it is fair that you know that in all court proceedings of this nature, the numbers are always odd and that is why we have 11 and not 12.

With regard to my contribution, first, I would like to agree with the Senators who have stated that the persons who have been selected are people of integrity. I agree entirely. I would, however, like to add that Article 181 of the Constitution has provisions that appear to be criminal in nature. Therefore, in its determination, the Committee must be aware that, that might lead us to other court processes against the Governor and the Deputy Governor.

Secondly, it is fair for them to know that constitutional lawyers in Kenya will be waiting at the door to sue the Senate for many reasons, constitutional or otherwise, if they do not follow the law, rules of natural justice or in any event or if they consider extraneous matters that are not before them or worse, if they do not frame charges against these two.

Sen. Murungi, I and Sen. Fatuma Dulo took a trip to the Australian Senate. We found out that these people have a good practice which we should adopt. That practice is that where we have Members in a Committee like we do, in case one of them disagrees, that person ought to have a separate report included in the main report. They call this a minority report. This makes people know that in their consideration, just like any other court, there was a dissenting voice of somebody who disagreed or agreed. As we debate these issues, we should also address the minority report like any other court which determines matters of this nature.

Sen. (Dr.) Machage has raised certain fundamental legal issues and like any other court, since we are lawmakers, where there appears to be a lacuna or what we call in legal terms *casus omissus*, we should come here and have a separate report on provisions of law which ought to be amended or included so that we guide the country in knowing

what to do in case of impeachment of a Governor or a Deputy Governor. We should know what legal frameworks exist. If there are any lacunas, we should cover them so that we are not challenged by the constitutional lawyers who cannot wait to take this matter to the High Court and make a mockery of this.

There is, in the County Governments Act, a provision which says that after this Special Committee addresses this issue, the Governor will be heard again. So, it is fair, as they deliberate on this, to consider whether the two hearings that are contemplated under that Act constitute of two or one hearing. It is fair that they check that in all provisions, except the one of setting out this Special Committee, all the words used are followed by the word “shall” so that after the ten days, there “shall” and the hearing “shall” and even the case of calling the Governor should be “shall.” Therefore, it is mandatory that they comply with those provisions so that we are proud of the 11 Senators.

I dare say that this is most likely the largest hearing because the Supreme Court has less, the Court of Appeal has less and the last time that a court of this nature sat was during the petition of Sen. Abu Chiaba. I had a privilege of appearing before this one and here we had nine. So, we are the largest. It would be fair to say that we are setting precedence in more ways than one. I urge this Committee to make us proud; not only in terms of conducting a fair hearing following the rules of natural justice--- Since the senior counsel are present, they should comply with the burden of proof in matters which appear to be criminal in nature and not use a balance of probability. Where it is beyond reasonable doubt, give us a finding and a report that we will put on our shelves and say that this is the HANSARD of the impeachment of the Governor of Embu as precedence to be followed, not only in Kenya but also in other jurisdictions.

I beg to support.

Sen. Wangari: Thank you, Mr. Speaker, Sir, for giving me this chance to add my voice to this Motion. From the outset, I support this Motion. I congratulate the Whips for giving us a balanced proposed special Committee in terms of expertise, regions and gender. I am sure the women in this Committee will do a good job. I fully support my friend, Sen. Ong’era because she would be very useful in this Committee. I would have loved to see four women in the Committee. However, the three will definitely add, not only colour and charm, but also brains to the whole process.

Mr. Speaker, Sir, I am sure in 2063 when we will be celebrating 100 years after Independence, this process will be one of the landmark issues to appreciated in many years to come. It will be read by the children who are growing up today and passed on to the next generation. It is a landmark process. I know the people of Embu County would have loved to be in the news for different reasons apart from this. They would have loved to see devolution bringing services closer to them and their county government working well. I note with admiration that the drafters of the Constitution had anticipated this. They had good reasons to place this noble responsibility on the Senate. This responsibility is a preserve of this House.

Mr. Speaker, Sir, if this Motion is adopted today, and I am sure this will happen, we can be sure that the expectations of not only the people of Embu County, but the whole country are weighing on our shoulders. We will definitely come back here to interrogate that report. The 56 of us who are not in that Committee will be relying on

them to shine and make our name. This House must be respected. This process will place us where we belong.

Mr. Speaker, Sir, I do not know if my friend Sen. Kajwang remembers, but at one time, he narrated to me a story of how he was sent away from the university. He was walking along the streets of the University of Nairobi when he was told that he had been sent home without being given a hearing. This was contrary to the provisions of law. The law states that the gentleman and lady of Embu County will be given a chance to be heard. As Sen. Kagwe has said, we may not be able to gag what the public says or what goes to the media. As we hold our side of dignity and ensure that this process is respected, we would like to appeal to the said Governor and Deputy Governor to also do the same from their end. I know they have been in the media. Last night, we saw them on television stations addressing the media. I hope that this time they will respect this process. I also appeal to them not to behave like members of the public who can say anything on this issue. They will be accorded an opportunity to express themselves in the Committee. Let them give this Committee the respect and support it deserves. We will, in ten days, be able to interrogate this report and give a direction to this country and the people of Embu County.

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

Sen. Murungi: Mr. Speaker, Sir, noting the fact that this Committee will only have ten days and from what we are hearing from various hon. Senators, the message is very clear. The Senate is on trial and hon. Senators have to deal with this issue professionally, impartially and objectively. Hon. Senators seem to be repeating themselves. Would I be in order to call the Mover to reply?

(Applause)

The Speaker (Hon. Ethuro): I will allow a few hon. Senators to contribute to the Motion. But I plead with you to be brief. You have noted the mood of the House. I will allow two from either side and give you not more than five minutes each. That is 20 minutes then I will put the question.

Sen. (Prof.) Anyang'-Nyong'o has been on his feet for a while.

Proceed.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I will be very brief. I plead with Sen. Kiraitu to allow us at least to speak during this first impeachment debate.

First, to Sen. Kagwe, I think the number 11 is very appropriate. We left out the 12th disciple because he was a traitor, Judas Iscariot!

(Laughter)

Secondly, the number 11 also is a good football team which will score and win. A very good reason for having that number 11.

Having said that, hon. Members of the Senate say that we must desist from listening to noises coming from elsewhere. In other words, debate in the public or the press. This is a matter that only concerns the Senate and those who are being impeached

in Embu County. The process should be insulated from influence from elsewhere. That is very important.

Secondly, let us be skeptical and let me repeat this, let us be skeptical regarding what appears to be the truth. Karl Marx once said that:-

“If appearances coincide, reality would be superfluous.”

There are a lot of things out there which appear to be the truth which may not be the truth. Therefore, let us be rather skeptical of that so that the people being impeached can have a very fair and objective trial and hearing.

Thirdly, it has been said that this first experience will be a lesson to county assemblies and governors. I must say that having interacted with county assemblies and governors there seems to be a little bit of understatement or misunderstanding of what due process is. There are many things which are being done without respecting the law. We have seen it in many county assemblies and among some governors. It is important, therefore, that this process demonstrates that there is something called due process which should be observed if devolution is going to work.

Finally and very important, Mr. Speaker, Sir, humility is important, especially for office holders. I must say that the element of humility is rather lacking in some office holders at the devolved government level. This might have led to conflict between governors and county assembly members. After this incident, the element of humility, of holding office in public interest, not holding office for individual ostentation will, perhaps, begin. Therefore, this is a very important experience that will help us, as a Senate, bring that element of humility amongst certain office holders.

Mr. Speaker, Sir, we, as a Senate, are simply passing certain words of caution to the Committee as our representative. This means that they will be representing us. We would like that our feelings, ideas and input be represented by them effectively. They should avoid canvassers. A lot of people will appear to begin canvassing for the two people and trying to influence the Committee or the Senate on this issue. We should avoid these canvassers because they will simply spoil the due process of law and seek to bias the hearing for their own selfish reasons.

Mr. Speaker, Sir, having said that, I beg to support.

Sen. Kajwang: Thank you, Mr. Speaker, Sir. First, let me thank the members whose names have been set out in this Motion.

(Consultations)

The Speaker (Hon. Ethuro): Order, hon. Senators! This is a Motion affecting counties, so it is important that you are all represented.

Proceed, Sen. Kajwang.

Sen. Kajwang: Mr. Speaker, Sir, I believe that the membership is consultative, inclusive and diverse. For that reason, I support.

I also wish to say that we are exercising a certain power that has been donated to us by the people of Kenya. This is because all sovereign power belongs to the people of Kenya and can be exercised by this Senate on behalf of the people of Kenya. I want to urge that as this Committee sits and hears the evidence, they will not have any

consideration for Embu, because this is not a matter for Embu County, although the specimen comes from Embu County.

(Laughter)

The exhibits can also come from Embu County. The real issue is that this is a matter for Kenya. People will be watching very carefully. We are walking a very tight rope because we are supposed to protect devolution. But at the same time, we are also supposed to oversight that devolution. So, we should be seen to be doing both at the same time and walk that tight rope. We should convince Kenyans that we have done it justly. If we do it justly nobody will blame us because we will be doing our job.

But there will definitely be huge public interest in this matter. People will be accusing us of trying to roll back devolution because of threatening governors, trying to compete for power and so on. As we do all this, we should be sensitive to the fact that people will be watching and commenting about the interplay which we have seen in the press or who is more powerful than the other and all sorts of things.

The responsibility that has been given to us is a heavy one. It is a weighty matter. I have been looking at Article 181 of the Constitution. I have noted this is a very serious matter. It is either a violation of the Constitution or a crime, abuse of office, which is also a crime or gross misconduct which I am not so sure about. That is where the skills and the experience of the hon. Members will be required. If the issue amounts to gross misconduct, what is gross misconduct? That is a grey area on which we will need direction and help. But I pray that this Committee deals with this issue in the interest of Kenya.

After this, we might, of course, end up having an avalanche of this in all counties. We might be overwhelmed by so many impeachment proceedings if we treat this issue lightly. But if we set the benchmarks correctly, then it will tell the other assemblers whose responsibility it is to oversight the executive at that level that it is not every other resolution that impeaches a governor. Then we will have governors, assemblies and the Senate acting correctly.

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

Sen. Murkomen: Mr. Speaker, Sir, from the outset, I wish to say that I support this Motion. I thank my colleagues and particularly the leadership of this House for putting me to be part and parcel of this Committee.

Mine is basically to let the nation, the Governor and Deputy Governor of Embu County to know what the Bible says in Proverbs 21:15. It says:-

“When justice is done, it brings joy to the righteous, but terror to evildoers”

Being guided by that verse, we will ensure that justice is not only done, but seen to be done.

I have heard and listened to my colleagues. The responsibility upon our shoulders is huge. As Sen. Kajwang said we are walking a tight rope between protection of the county governments and, at the same time, providing oversight.

There is a very interesting issue I wish to point out. When I was a member of the taskforce on devolved government I contributed to the drafting of the County Government Act. What is interesting is that the person who ensured that I was appointed

in that taskforce is Sen. Orenge. I never knew that in less than one year as Senator, myself and Sen. Orenge would have this serious responsibility of presiding over the first impeachment, if this House agrees. I believe we will be true to the requirements of the law to protect the integrity of this House and devolution. I have faith in my colleagues that we will discharge this function before us. What we only ask the nation and this House is to give us the maximum support in terms of presentation of whatever documents you think is useful for us. I would like to tell Sen. Kajwang: "If you remember any precedent, even the one you studied in first year, please, make sure you give it to this Committee." This way we will ensure that we do justice to the nation.

With those remarks, I beg to support.

Sen. Njoroge: Thank you, Mr. Speaker, Sir. Nitazungumza kwa Lugha ya Kiswahili ili wale ambao hawako karibu nasi na wanafuatilia Hoja hii waweze kuelewa vizuri.

Ninaunga mkono Hoja ambayo iko mbele ya Seneti siku ya leo. Pia ninaunga mkono majina yote ambayo yameletwa hapa. Hawa ni watu wenye uwezo na maarifa mengi. Ingawa akina mama na vijana wameshirikishwa katika kamati hii, ningependa pia walemavu katika Seneti hii wapewe nafasi ya kutoa mchango wao. Hata hivyo, ninaunga mkono wanachama wa kamati hii ambao wamependekezwa. Nimependekeza walemavu wahushishwe katika kamati kama hii siku zijaazo ili walemavu wengine ambao wako nje ya Kenya wajue ya kwamba Sen. Godliver, Leshore na mimi tunawakilisha vilivyo katika Seneti hii. Sisi tuna uwezo wa kufanya hivyo.

Bw. Spika, kwa hayo machache, ninaunga mkono.

The Speaker (Hon. Ethuro): Order, hon. Senators! I want to give a special recognition to our senior. Hopefully, longevity has some advantages.

Sen. G. G. Kariuki, you should be the last contributor to the Motion.

Sen. G. G. Kariuki: Mr. Speaker, Sir, first, I would like to thank you for having noted that I am here and the fact that I am more senior than anybody in this House. A lot has been said. In fact, I had just given up, that I was not going to speak. But I am lucky that, finally, I did catch your eye.

Mr. Speaker, Sir, I would like to say a few things on this issue. We have been saying that the Senate is on trial. But what is on trial today is not the Senate. It is the Committee that we will appoint. They will be in a very serious trial because if the recommendations will be rejected by this House we will have no alternative, but to blame them forever. The Committee must be very serious in dealing with this matter. Let us not see as if this matter is so big that it has never happened elsewhere. It has happened elsewhere. This is just a process. We are fulfilling our mandate as Senators. There is nothing new that we are doing. It is what is entrenched in our Constitution. A time will come when the Senate will be called upon to deliberate on a situation like this one. We have had a lot of misunderstandings out there, whether the Senate has any job to do in this country. Some have been recommending that the Senate should go. I respect Kenyans because they are patient people.

Finally, they have realized that it is the Senate which is going to maintain devolution the way it is supposed to be. In fact, the Senate is not for anything else other than supporting and protecting the counties. By protecting the counties, it is not that we

are going to protect county assemblies or the Governors. We are protecting the institution that is known as the county government because we are the heart of these institutions.

Mr. Speaker, Sir, this process needs to be handled with a lot of care, especially considering that Kenya is an open society these days. If the Committee is not careful, it will find itself messed up by the press. But it is not the press which is going to start the process of messing them up; it is them failing to keep their mouths shut, especially after the deliberations of any Committee meeting. Things can really go wrong if other people start talking about this Committee.

Mr. Speaker, Sir, we have been saying that we have nominated Members of very high integrity to this Committee. I want to assure this House that any Member of the Senate is a person of high integrity; it is only that we could not all become Members of this Committee. Therefore, I appeal to those who are involved, through the Chair, that what is going to be presented on this Table in 10 days' time must be a document that people will read and be satisfied that we really tried as a Committee of the Senate. I am not a Member of this Committee, for example; nobody will use me or any other Member who is not a Member of the Committee if the Committee will not report what we think is good for this nation. This must be understood from the beginning.

Mr. Speaker, Sir, once again, thank you very much for allowing me to speak.

(Applause)

The Speaker (Hon. Ethuro): Order, Senators! I know there are some Senators who think that because they may be among the youngest, they should have the same equal opportunities like the senior most. Unfortunately for the younger ones, you are quite a number and you have already had an opportunity. I will, therefore, put the Question which is that the Mover be now called upon to reply.

(Question, that the Mover be now called upon to reply, put and agreed to)

(Applause)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir. I know we are pressed for time, but I think it is not courteous if I do not thank my colleagues for the contributions they have made in support of this Motion.

Having done so, Mr. Speaker, Sir, it is my humble privilege and duty to move this Motion.

Mr. Speaker, Sir, I beg to move.

(Applause)

The Speaker (Hon. Ethuro): Order, Members! I, therefore, wish to put the Question. Again, this is a matter affecting counties; so, the voting shall be by county delegations. Ring the Division Bell for eight minutes.

(The Division Bell was rung)

(Several hon. Senators stood up in their places)

Order Senators! May you resume your seats? Close the doors and draw the bars!
Order, Senators! We will now take the roll call vote and the Tellers are as follows;
for the Ayes, Sen. Ben Njoroge; for the Noes, Sen. Daisy Nyongesa.
Proceed, Mr. Clerk.

DIVISION

ROLL CALL VOTING

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

AYES: Sen. (Prof) Anyang'-Nyong'o, Kisumu County; Sen. Boy Juma Boy, Kwale County; Sen. G.G. Kariuki, Laikipia County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Kivuti, Embu County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County and Sen. Wamatangi, Kiambu County.

Teller of the Ayes: Sen. Njoroge.

NOES: Nil

Teller of the Noes: Sen. Kanainza.

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

AYES: 33

NOES: Nil

ABSENTIONS: Nil

We have, therefore, met the requirement of 24 and above. So, the "Ayes" have it.

(Question carried by 33 votes to nil)

You may now open the door.

(The door was opened)

COMMUNICATION FROM THE CHAIR**COMMENCEMENT DATE OF FIRST MEETING OF SPECIAL COMMITTEE**

The Speaker (Hon. Ethuro): Hon. Senators, I have the following Communication to make. As you are aware, under Standing Order No.181 of the Senate Standing Orders, the Clerk is required to appoint a place, date and time for the first meeting of a Select Committee within seven days of its constitution by the Senate or such further period as the Speaker may approve; and as soon as the Committee is present the Clerk shall by a secret ballot conduct the election of the Chairperson and vice-chairperson of the Committee.

Pursuant to this Standing Order I have, therefore, directed the Clerk to appoint today 4th February, 2014 as the date of the first meeting of the Special Committee. This meeting is to be held here, in this Senate Chamber, 30 minutes after the rise of the Senate.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir. The Act requires that this Committee reports within ten days. When do the ten days start running?

The Speaker (Hon. Ethuro): Order, Senators! I am wondering whether Sen. Murkomen is doing any justice to the robust petition by Sen. Amos to include more lawyers.

(Laughter)

According to the interpretation the first day is not counted. So, the ten days start running tomorrow.

Sen. Murkomen: Mr. Speaker, Sir, it is not because I did not know. It is because it was not obvious to everybody.

The Speaker (Hon. Ethuro): Order, Sen. Murkomen! I appreciate that, but I want to give you now the opportunity to respond, if you so wish.

Sen. Murkomen: Mr. Speaker, Sir, we had a debate a little bit earlier with my colleagues and it was for the benefit of everybody that a decision comes from the Chair. I do not think that there is any provision in the law that would have allowed me to communicate that without raising it from a point of order. So, I did this for the benefit of everybody.

The Speaker (Hon. Ethuro): Thank you. I think that everybody is fully aware.

ADJOURNMENT

The Speaker (Hon. Ethuro): Hon. Senators, that brings us to the end of the business as it appears on the Order Paper. I have already communicated that the Committee meets 30 minutes after the rise of the House. The Senate, therefore, stands adjourned until when it shall next be convened by Notice in the Kenya Gazette to receive the report of the Special Committee.

The Senate rose at 5.05 p.m.