



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – FOURTH SESSION

THE SENATE

VOTES AND PROCEEDINGS

SPECIAL SITTING

TUESDAY, SEPTEMBER 13, 2016 AT 2.00 P.M.

1. The Senate assembled at Two O'clock.
2. The Proceedings were opened with Prayer said by the Speaker.
3. HEARING AND DETERMINATION OF THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HON. JAMES NDERITU GACHAGUA, THE GOVERNOR OF NYERI COUNTY

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

a) Presentation of the case on the charges against the Governor of Nyeri County.

Counsel representing the County Assembly stated that–

- i) The County Executive failed to disclose Kshs. 352,976,513 in its budget implementation report to the County Assembly for the Financial Year 2014/2015 and that the said amount may have been misappropriated by the County Executive amounting to a violation of the Public Finance Management Act.

The Senate was informed that there was an admission of this fact by the County Executive and that Some of the items included construction of buildings and purchase of equipment which ought to have been disclosed in the budget implementation report to the County Assembly but were not.

Further, the County Executive stated that Khs. 4.84 billion had been released to the County Government but the Controller of Budget indicated that Kshs. 5.6billion had been released to the County Government which meant failing to disclose Kshs. 749 million and leaving the said amount unaccounted for.

- ii) The County Executive was in contravention of Article 207 of the Constitution which provides for a revenue fund for each county where all monies collected or received on or behalf of the county government are deposited. The Counsel cited the Office of the Controller of Budget Report on County Budget Implementation for Financial Year 2014/2015 where the County Government of Nyeri spent Kshs. 70 million above what was released from the Exchequer.
- iii) The County Government of Nyeri had failed to establish a County Budget and Economic Forum as required under Section 137 of the Public Finance Management Act although the Commission on Revenue Allocation had advised the County Executive on the need for the forum.
- iv) There were numerous complaints from contractors on non-payment for works done and that no procurement procedures were followed in awarding the tenders. The County Assembly took action and established an *Ad-hoc* Committee to investigate the matter on 21st October, 2015.
- v) The County Executive contravened Article 185 of the Constitution with respect to assent to Bills passed by the County Assembly because the Governor had failed to assent to or return Memoranda on Bills from the County Assembly.
- vi) The composition of the County Executive Committee did not meet the two thirds gender threshold as out in the Constitution because Out of the ten County Executive Committee Members, only 1 was a woman. Further, senior officers in the county public service were serving in an acting capacity for inordinately long periods of time. These officers included the County Secretary, County Executive Committee Members and Chief Officers in key portfolios in the County Government.
- vii) The Governor had appointed two additional sub-county administrative areas contrary to the provisions of the County Government Act. In so doing, public resources were being channeled to entities that did not exist in law amounting to wastage of public resources.

b) Witness for the County Assembly, Hon. George Baragu, MCA, Nyeri County Assembly

The witness took oath and informed the Senate that-

- i) the County Assembly had not engaged the County Executive Committee Member with regard to expenditure of Kshs. 70 million at source without accounting for it in the county revenue fund because the summons to appear before the County Public Accounts Committee were not honoured.
- ii) The County Assembly formed an *Ad Hoc* Committee to investigate irregular procurement and queries by contractors. However, efforts to investigate the matter were frustrated by the County Executive which refused to release information to the Committee.
- iii) Although the Acting County Secretary Ms. Alice Njamiu Wachira, was approved by the County Assembly for the position of Chief Officer she not suitable for the position of County Secretary and that no efforts had been made by the County Executive to recruit a competent County Secretary.

c) Clarifications Sought by Senators

Senators sought clarifications relating to the following aspects, among others-

- 1. Alleged failure by the Governor to assent to laws passed by the County Assembly;
- 2. Alleged wrongful appointments by the Governor and failure to comply with gender parity in appointments;
- 3. Areas of the Constitution of Kenya and various statutes that the County Assembly alleged to have been violated;
- 4. Whether the County Assembly had interrogated the Governor about his alleged wrong doing;
- 5. Whether the Assembly had followed the right procedure in impeaching the Governor;
- 6. Statutory dues not remitted;
- 7. Road works;
- 8. Whom the Governor had appointed acting Governor in the absence of the Governor whenever he was away; and
- 9. Refurbishment of County Executive offices.

And there being no other business for the Afternoon Session, the Speaker adjourned the Senate at fifty minutes past Five O'clock without Question Put, pursuant to the Standing Orders.

4. SENATE ROSE – at fifty minutes past Five O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Wednesday, September 14, 2016 at 9.00 a.m.*

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