



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – FOURTH SESSION

VOTES AND PROCEEDINGS

SPECIAL SITTING

WEDNESDAY, SEPTEMBER 14, 2016 AT 3.30 P.M.

1. The Senate resumed at thirty minutes past Three 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 of the Governor of Nyeri County

Counsel for the Governor resumed his presentation of the case of the Governor, by leading the following witnesses in presenting their testimony before the Senate –

- i) **Mr. Eliud Muchoki Mureithi, - Vice Chaiperson, Nyeri County Public Service Board**

The witness took oath and was led in his testimony by Counsel for Governor, touching mainly on appointments of public officers in Nyeri County and circumstances leading to many officers holding positions in acting capacities.

The witness was subsequently cross-examined by Counsels for the County Assembly and re-examined by Counsel for the Governor.

Senators also sought clarifications from the witness, following which the witness was discharged.

ii) **Mr. Patrick Mwiti Gitobu - Director of Procurement, Nyeri County Government**

The witness took oath and was led in his testimony by Counsel for Governor, touching mainly on matters relating to procurement and refurbishment of Karsons Building and the alleged splitting of Tenders by the County Government of Nyeri.

The witness was subsequently cross-examined by Counsels for the County Assembly and re-examined by Counsel for the Governor.

Senators also sought clarifications from the witness, following which the witness was discharged.

b) Closing submissions by Counsels of the County Assembly

Mr. Charles Njenga and Mr. George Ng'ang'a, Counsels for Nyeri County Assembly, made their closing submissions and urged the Senate to find all the three charges against the Governor substantiated. They further argued that the Counsel for the Governor and his witnesses had not been able to remove the culpability of the Governor from the charges of impeachment.

They pleaded with the Senate to resolve to remove the Governor from Office.

c) Closing remarks by Counsel of the Governor.

The Governor and his Counsel, Mr. Peter Wanyama, made their closing submissions by stating that the County Assembly had failed to prove their case on the three grounds for impeachment as the threshold for impeachment was so high that the violations if any that were committed could not meet the threshold. They further argued that the Governor was not given a chance to be represented in the County Assembly to answer to the charges.

The Governor and his Counsel also urged the Senate to exercise their constitutional mandate by voting to reject the proposed impeachment of the Governor as all the three charges had not been substantiated.

4. WITHDRAWAL OF ALL MEMBERS OF THE PUBLIC AND THE MEDIA PERSONNEL FROM THE CHAMBER AND THE GALLERIES

The Deputy Speaker ordered the withdrawal of all members of the public, the Governor of Nyeri County and the parties to the impeachment case, and the media personnel to withdraw from the chamber and the galleries.

The Deputy Speaker then ordered that the Senate holds its deliberations in camera.

(The Senate went into camera at 7.15pm)

5. HOUSE RESUMED - at fifteen minutes past eight O'clock
(Speaker - in the Chair)

6. NOTICE OF MOTION (The Senate Majority Leader)

THAT, WHEREAS, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 2nd September, 2016, the County Assembly of Nyeri approved a Motion *"to remove from office, by impeachment,"* the Hon. James Nderitu Gachagua, the Governor of Nyeri County;

AND FURTHER, WHEREAS by letter dated 2nd September, 2016 (Ref. No. CAN/SEN/PMNT/COR/2/ (3) received in the Office of the Speaker of the Senate on 5th September, 2016, the Speaker of the County Assembly of Nyeri 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 Article 181 of the Constitution, section 33 of the County Governments Act, 2012 and standing order No. 68, the Senate heard the County Assembly on the grounds of removal from office by impeachment of the Governor;

AND FURTHER, WHEREAS pursuant to Article 181 of the Constitution, section 33 of the County Governments Act, 2012 and standing order No. 68, the Senate also heard the Governor of Nyeri County on the grounds of removal from office by impeachment of the Governor;

NOW THEREFORE, pursuant to Article 181 of the Constitution, section 33 of the County Governments Act, 2012 and standing order No. 68, the Senate resolves to remove from office by impeachment, the Hon. James Nderitu Gachagua, the Governor of Nyeri County on the following charges; namely:-

1. Gross Violation of the Constitution of Kenya, 2010, the County Governments Act, 2012, the Public Finance Management Act, 2012 and the Public Procurement and Disposal Act, 2005;
2. Failure to comply with the Law; and
3. Abuse of Office/Gross Misconduct.

7. MOTION TO REMOVE FROM OFFICE, BY IMPEACHMENT, THE HON. JAMES NDERITU GACHAGUA, THE GOVERNOR OF NYERI COUNTY

Motion made and Question proposed-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 2nd September, 2016, the County Assembly of Nyeri approved a Motion *"to remove from office, by impeachment,"* the Hon. James Nderitu Gachagua, the Governor of Nyeri County;

AND FURTHER, WHEREAS by letter dated 2nd September, 2016 (Ref. No. CAN/SEN/PMNT/COR/2/ (3) received in the Office of the Speaker of the Senate on 5th September, 2016, the Speaker of the County Assembly of Nyeri 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 Article 181 of the Constitution, section 33 of the County Governments Act, 2012 and standing order No. 68, the Senate heard the County Assembly on the grounds of removal from office by impeachment of the Governor;

AND FURTHER, WHEREAS pursuant to Article 181 of the Constitution, section 33 of the County Governments Act, 2012 and standing order No. 68, the Senate also heard the Governor of Nyeri County on the grounds of removal from office by impeachment of the Governor;

NOW THEREFORE, pursuant to Article 181 of the Constitution, section 33 of the County Governments Act, 2012 and standing order No. 68, the Senate resolves to remove from office by impeachment, the Hon. James Nderitu Gachagua, the Governor of Nyeri County on the following charges; namely:-

1. Gross Violation of the Constitution of Kenya, 2010, the County Governments Act, 2012, the Public Finance Management Act, 2012 and the Public Procurement and Disposal Act, 2005;
2. Failure to comply with the Law; and
3. Abuse of Office/Gross Misconduct.

(The Senate Majority Leader)

Debate arising;

There being no other Senator wishing to contribute;

The Mover replied;

Before the Question on the motion was put, and pursuant to Standing Order No. 72, the Speaker informed the House that the Motion affected counties and voting would be by Delegations and further that the House was to vote on each of the charges.

The Speaker directed that electronic voting be taken pursuant to Standing Order 74 (1) and that the Division Bell be rung for two minutes.

After the expiry of two minutes, the Speaker requested Senators to log-in using their cards.

CHARGE 1 -Gross Violation of the Constitution of Kenya, 2010, the County Governments Act, 2012, the Public Finance Management Act, 2012 and the Public Procurement and Disposal Act, 2005;

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

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

Thereupon, the following Senators recorded their votes as **"No"**

1. Sen. Bule Ali Abdi
2. Sen. Kembi- Gitura
3. Sen. Kithure Kindiki
4. Sen. Mutula Kilonzo Junior

Further, Sen. Mutahi Kagwe recorded his vote as **"Abstention"**

The results of the Division were as follows:-

AYES - 1

NOES - 31

ABSTENTIONS - 1

AYES

1. Sen. Khalwale Boni

NOES

1. Sen. Boy Juma Boy
2. Sen. Bule Ali Abdi-voted verbally
3. Sen. Cheruiyot Aaron Kipkirui
4. Sen. Haji Mohamed Yusuf
5. Sen. Hargura Godana
6. Sen. Mohamud Halima Abdille -voted on behalf of Wajir County Delegation
7. Sen. Hassan Omar Hassan
8. Sen. Kajwang' Moses
9. Sen. Karaba Dickson Daniel
10. Sen. Kembi-Gitura- voted verbally
11. Sen. Kimani Paul Wamatangi
12. Sen. Kithure Kindiki-voted verbally
13. Sen. Elachi Beatrice-voted on behalf of Nairobi County delegation
14. Sen. Adan Dullo Fatuma-voted on behalf of Isiolo County delegation

15. Sen. Lesan Wilfred Rotich
16. Sen. Lonyangapuo John
17. Sen. Machage Wilfred Gisuka
18. Sen. Madzayo Stewart Mwachiru
19. Sen. Melly Isaac Kipkemboi
20. Sen. Mositet Peter Korinko
21. Sen. Chelule Liza - voted on behalf of Nakuru County Delegation
22. Sen. Muriuki Karue
23. Sen. Murkomen Kipchumba
24. Sen. Mutula Kilonzo Junior - voted verbally
25. Sen. Mwakulegwa Danson Mwazo
26. Sen. Obure Christopher Mogere
27. Sen. Okong'o Kennedy Monga're
28. Sen. Orengo James
29. Sen. Sang Stephen Kipyego
30. Sen. Wako Sitswila Amos
31. Sen. Wetang'ula Moses Masika

ABSTENTION

1. Sen. Mutahi Kagwe - voted verbally

Question - **negatived.**

CHARGE 2 - Failure to comply with the Law:

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

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

Thereupon, the following Senators recorded their votes as **"No"**-

1. Sen. Bule Ali Abdi
2. Sen. Kembi- Gitura
3. Sen. Kithure Kindiki
4. Sen. Mutula Kilonzo Junior

Further, Sen. Mutahi Kagwe recorded his vote as **"Abstention"**

The results of the Division were as follows:-

AYES - 0

NOES - 32

ABSTENTIONS - 1

NOES

1. Sen. Boy Juma Boy
2. Sen. Bule Ali Abdi-voted verbally
3. Sen. Cheruiyot Aaron Kipkirui
4. Sen. Haji Mohamed Yusuf
5. Sen. Hargura Godana
6. Sen. Mohamud Halima Abdille -voted on behalf of Wajir County Delegation
7. Sen. Hassan Omar Hassan
8. Sen. Kajwang' Moses
9. Sen. Karaba Dickson Daniel
10. Sen. Kembu-Gitura- voted verbally
11. Sen. Khalwale Boni -voted verbally
12. Sen. Kimani Paul Wamatangi
13. Sen. Kithure Kindiki-voted verbally
14. Sen. Elachi Beatrice-voted on behalf of Nairobi County delegation
15. Sen. Adan Dullo Fatuma-voted on behalf of Isiolo County delegation
16. Sen. Lesan Wilfred Rotich
17. Sen. Lonyangapuo John
18. Sen. Machage Wilfred Gisuka
19. Sen. Madzayo Stewart Mwachiru
20. Sen. Melly Isaac Kipkemboi
21. Sen. Mositet Peter Korinko
22. Sen. Chelule Liza-voted on behalf of Nakuru County Delegation
23. Sen. Muriuki Karue
24. Sen. Murkomen Kipchumba
25. Sen. Mutula Kilonzo Junior-voted verbally
26. Sen. Mwakulegwa Danson Mwazo
27. Sen. Obure Christopher Mogere
28. Sen. Okong'o Kennedy Monga're
29. Sen. Orengo James
30. Sen. Sang Stephen Kipyego
31. Sen. Wako Sitswila Amos
32. Sen. Wetang'ula Moses Masika

ABSTENTION

1. Sen. Mutahi Kagwe - voted verbally

Question - **negatived.**

CHARGE 3 - Abuse of Office/Gross Misconduct.

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

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

Thereupon, the following Senators recorded their votes as **"No"**-

1. Sen. Bule Ali Abdi
2. Sen. Kembi- Gitura
3. Sen. Kithure Kindiki
4. Sen. Mutula Kilonzo Junior

Further, Sen. Mutahi Kagwe recorded his vote as **"Abstention"**

The results of the Division were as follows:-

AYES -0

NOES - 32

ABSTENTIONS - 1

NOES

1. Sen. Boy Juma Boy
2. Sen. Bule Ali Abdi-voted verbally
3. Sen. Cheruiyot Aaron Kipkirui
4. Sen. Haji Mohamed Yusuf
5. Sen. Hargura Godana
6. Sen. Mohamud Halima Abdille -voted on behalf of Wajir County Delegation
7. Sen. Hassan Omar Hassan
8. Sen. Kajwang' Moses
9. Sen. Karaba Dickson Daniel
10. Sen. Kembi-Gitura- voted verbally
11. Sen. Khalwale Boni
12. Sen. Kimani Paul Wamatangi
13. Sen. Kithure Kindiki-voted verbally
14. Sen. Elachi Beatrice-voted on behalf of Nairobi County delegation
15. Sen. Adan Dullo Fatuma-voted on behalf of Isiolo County delegation
16. Sen. Lesan Wilfred Rotich
17. Sen. Lonyangapuo John
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21. Sen. Mositet Peter Korinko
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23. Sen. Muriuki Karue
24. Sen. Murkomen Kipchumba
25. Sen. Mutula Kilonzo Junior-voted verbally
26. Sen. Mwakulegwa Danson Mwazo
27. Sen. Obure Christopher Mogere
28. Sen. Okong'o Kennedy Monga're

29. Sen. Orengo James
30. Sen. Sang Stephen Kipyego
31. Sen. Wako Sitswila Amos
32. Sen. Wetang'ula Moses Masika

ABSTENTION

1. Sen. Mutahi Kagwe - voted verbally

Question - **negatived.**

And there being no other business, the Speaker adjourned the Senate at five minutes past Ten O'clock, without Question put, pursuant to the Standing Orders.

8. **SENATE ROSE** - at five minutes past Ten O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Tuesday, October 04, 2016 at 2.30 p.m.*

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