

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 7<sup>th</sup> September, 2016

### Special Sitting

*(Convened via Kenya Gazette Notice  
No.7174 of 6<sup>th</sup> September, 2016)*

*The House met at the Senate Chamber,  
Parliament Buildings, at 10.00 a.m.*

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

### PRAYERS

## COMMUNICATIONS FROM THE CHAIR

### CONVENING OF SPECIAL SITTING TO CONSIDER THE ELECTIONS LAWS AND OTHER URGENT BUSINESS

**The Speaker** (Hon. Ethuro): Hon. Senators, let me take this opportunity to once again welcome you to this Special Sitting of this Senate, which is the fourth during the current recess. Additionally, we shall tomorrow, Thursday, 8<sup>th</sup> September, 2016, have the fifth Special Sitting during this recess.

Your finding time to come each time you are required is a clear demonstration of your dedication to your duty, and in the service of the people of the Republic of Kenya, and your willingness and readiness to execute the constitutional mandate. I, therefore, urge you to continue in this spirit.

Hon. Senators, today's and tomorrow's Special Sitzings have been convened following a request by the Senate Majority and Minority leaders, dated 5<sup>th</sup>, September, 2016, and supported by the requisite number of Senators, requesting the Speaker of the Senate to appoint Wednesday, 7<sup>th</sup> September, 2016, and Thursday, 8<sup>th</sup> September, 2016 as the days for Special Sitzings of the Senate in order to consider:-

- (1) The Elections Laws (Amendment) Bill (National Assembly Bills No.37 of 2016);
- (2) The Election Offences Bill (National Assembly Bills No. 36 of 2016);

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- (3) The proposed removal from office by impeachment of the Governor of Nyeri County; and,
- (4) Other urgent business pending before the Senate.

Following consideration of the request which the two leaders made, pursuant to Standing Order No.29(1) of the Senate Standing Orders, I was satisfied that it met the requirements of Standing Order No.29(2). It is in this respect that I convene this Special Sitting of the Senate via Kenya Gazette Notice No.7174 of 6th September, 2016.

Hon. Senators, as specified in the Gazette Notice, and in accordance with Standing Orders No.29(5) of the Senate Standing Orders, the business specified in the notice shall be the only business before the Senate during these special sittings, following which the Senate shall stand adjourned in accordance with the Senate calendar or subject to further requests.

I thank you.

Order, Senators, I have a second communication to make.

THE PROPOSED REMOVAL FROM OFFICE, BY  
IMPEACHMENT, OF THE GOVERNOR OF NYERI COUNTY

**The Speaker** (Hon. Ethuro): Honourable Senators, by a letter received in the Office of the Speaker of the Senate on Monday, 5<sup>th</sup> September, 2016, the Speaker of the County Assembly of Nyeri informed the Speaker of the Senate of the approval of a Motion by the County Assembly of Nyeri for the removal from office, by impeachment, of the Governor of Nyeri County. The Speaker of the County Assembly also forwarded the following documents:-

- (1) The Resolution of the County Assembly of Nyeri specifying the grounds for the proposed impeachment of the Governor of Nyeri County;
- (2) The Division list of the County Assembly of Nyeri on the Motion for Impeachment;
- (3) The Motion for impeachment of the Governor of Nyeri County together with signatures of the Members of County Assembly (MCAs) in support of the Motion.

Hon. Senators, in terms of Article 181 of the Constitution, Section 33(3)(a) of the County Governments Act, 2012 and Standing Order No.68(1)(a) of the Senate, the Speaker of the Senate is required “within seven days after receiving notice of a resolution from the speaker of a county assembly, to convene a meeting of the Senate to hear charges against the governor.”

Consequently, Hon. Senators, pursuant to Section 33(3)(a) of the County Governments Act, 2012 and Standing Order No.68(1)(a) of the Senate Standing Orders, I convened this Sitting of the Senate, through Kenya Gazette Notice No.7174, published on 6<sup>th</sup> September, 2016. And now, Hon. Senators, pursuant to Section 33(3) of the County Governments Act, 2012 and Standing Orders No.68(1)(a) of the Senate, I hereby proceed to read the Charges against Hon. James Nderitu Gachagua, the Governor of Nyeri County.

Ground A: Gross Violation of the Constitution of Kenya, 2010, the County Governments Act, 2012, the Public Finance Management Act, 2012 and the Public Procurement and Disposal Act, 2005. Particulars include:-

- (1) Failing to account or make proper disclosure of Kshs352,976,913, contrary to Article 201(a) of the Constitution of Kenya 2010 and Section 104(1)(i) of the Public Finance Management Act, 2012.

(2) Utilizing local revenue at source, contrary to Article 207 of the Constitution of Kenya 2010 and Section 109 of the Public Finance Management Act, 2012.

(3) Irregular procurement contrary to the Public Procurement and Disposal Act, 2005.

(4) Lack of prudence in refurbishment of buildings amounting to Kshs81,384,118.40 in contravention of Article 201(d) of the Constitution of Kenya 2010 and Section 104(1)(i) of the Public Finance Management Act, 2012.

(5) Splitting of tenders contrary to Section 30 of the Public Procurement and Disposal Act, 2005.

(6) Lack of prudence in use of public funds, contrary to Section 201(d) of the Constitution of Kenya, 2010 and Section 104(1)(i) of the Public Finance Management Act, 2012.

(7) Failure to establish the County Budget and Economic Forum as stipulated under Section 137 of the Public Finance Management Act, 2012.

(8) Undermining the Legislative Authority of the County Assembly, contrary to Article 185 of the Constitution of Kenya, 2010 and delaying the budget making process.

(9) Failure to consider and/or assent to County Bills passed by the County Assembly, contrary to Section 30(2)(g) of the County Governments Act, 2012.

#### Ground B: Failure to comply with the law

The County Governor failed to comply with the law in the following ways:-

(1) Violation of Article 41(1) of the Constitution of Kenya, 2010 that ensures every person the right to fair labour practices and Section 19 of the Employment Act by failing to remit and/or delaying the remittance of statutory deductions of county officers, that is, NHIF, NSSF, voluntary pension contributions and political parties remittances.

(2) Contravention of Section 109(4)(b) of the Public Finance Management Act by the County Executive under the stewardship of the Governor by deliberately delaying release of salaries for the month of July, 2016 for MCAs and staff of the County Assembly.

(3) Failure to define the responsibility of every member of the County Executive Committee by notice in the gazette, contrary to Section 30(2)(i) of the County Governments Act.

(4) Establishment of extra sub-counties in Nyeri County in contravention of Section 48(1)(b) of the County Governments Act and without the approval of the Assembly.

(5) Failing to consider gender parity, representation of minorities, marginalized, the community and cultural diversity in composing the County Executive Committee.

#### Ground C: Abuse of Office/Gross Misconduct

The County Governor of Nyeri made several irregular appointments as follows:-

(1) Appointment of a County Secretary (Ms. Alice Njani Wachira) in acting position for an indefinite period of time, contrary to Section 44 and 64 of the County Governments Act. The said Acting County Secretary had, via a resolution of the County Assembly, been found unsuitable to hold the position and further resolved that the County Secretary vacates office, a resolution that was ignored by the Governor.

(2) Appointment of an Acting Secretary of the County Public Service Board (CPSB) from among officers of the County Government who has not been vetted, contrary to Section 58 of the County Governments Act.

(3) Operating for a long duration with perennial acting County Executive Committee Members and acting Chief Officers who have not been vetted by the County Assembly thereby jeopardizing service delivery and accountability in the County.

Hon. Senators, Section 33(3)(b) of the County Governments Act and Standing Order 68(1)(b) of the Senate Standing Orders both provide that the Senate, by resolution, may appoint a Special Committee comprising eleven of its Members to investigate the matter. You will therefore observe that in today's Order Paper, pursuant to these provisions of the law and the Gazette Notice, the Senate Majority Leader will be giving Notice of a Motion for the establishment of a Special Committee. You will also observe that the Motion has, with the approval of the Speaker, been listed on the Order Paper.

Honourable Senators, should the Motion for the establishment of the Special Committee pass, the Special Committee will be required, under Section 33(4) of the County Governments Act and Standing Order 68(2), to investigate the matter and to report to the Senate within 10 days on whether it finds the particulars of the allegations against the Governor to have been substantiated. If, however, the Motion for the establishment of a Special Committee does not pass, the Senate shall proceed to investigate and consider the matter in the plenary. The resolution of the Senate on the Motion by the Senate Majority Leader will therefore determine the manner in which this matter shall henceforth proceed.

It is noteworthy, and I wish to emphasize to all Honourable Senators, that debate on the Motion shall be limited to the substance of the Motion, namely; whether to establish a Special Committee consisting of the Senators listed to investigate the proposed removal of the Governor of Nyeri 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 the merits. It is, therefore, not permissible to divert to any matters other than the Motion before the Senate.

Hon. Senators, I had previously stated in this House and I will do so today, that the hearing of charges for the proposed removal from office of a state officer is one of the most solemn functions of the Senate under the Constitution. I therefore, once again, urge that the Senate rises to the occasion, as they have done previously, and exercise the highest level of responsibility on this matter in Plenary. Also, should the Motion by the Senate Majority Leader pass, proceed as formulated to the Special Committee.

I thank you.

**The Speaker** (Hon. Ethuro): Order, Sen. Murkomen! Order Sen. Kilonzo Jnr! Order, Sen. Murkomen!

*(Sen. Murkomen stood up in his place)*

You have breached the Standing Orders. I am on my feet, freeze where you are standing. Order Sen. Murkomen! I found you there and that is where you should remain for the remainder of the period. Sen. Murkomen, I will allow you to sit.

*(Laughter)*

## MESSAGES FROM THE NATIONAL ASSEMBLY

Order Senators! I have several messages from the National Assembly.

ADOPTION OF THE REPORT OF THE JOINT PARLIAMENTARY  
SELECT COMMITTEE ON MATTERS RELATING TO THE IEBC

Hon. Senators, I wish to report to the Senate that pursuant to Standing Orders No. 40 paragraph (3) and (5), I received the following message from the Speaker of the National Assembly on 26<sup>th</sup> August 2016, regarding the adoption of the Report of the Joint Parliamentary Select Committee on matters relating to the Independent Electoral and Boundaries Commission (IEBC).

“PURSUANT to the provisions of Standing Order No.41 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly.

WHEREAS, the Report of the Joint Select Committee on matters relating to the Independent Electoral and Boundaries Commission (IEBC) was considered in the National Assembly on 25<sup>th</sup> August 2016;

AND WHEREAS, by resolution the National Assembly adopted the said report with amendments whose effect is to delete sub-paragraph (7) of the paragraph (659) on page 215 of the Report;

NOW THEREFORE, in accordance with the provisions of Standing Order 41 of the National Assembly Standing Orders and the Houses of Parliament Joint Sitting Rules, I hereby forward the said decision to the Senate.”

I thank you.

PASSAGE OF THE ELECTIONS LAWS (AMENDMENT) BILL  
AND THE ELECTION OFFENCES BILL

Hon. Senators, I wish to report to the Senate that pursuant to Standing Orders No. 40, paragraph (3) and (5), I received the following message from the Speaker of the National Assembly on 2<sup>nd</sup> September 2016, regarding the passage by the National Assembly of the Elections Laws (Amendment) Bill (National Assembly Bills No. 37 of 2016) and the Election Offences Bill (National Assembly Bills No. 36 of 2016).

“PURSUANT to the provisions of Standing Orders 41 and 142 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly.

WHEREAS, the Election Laws (Amendment) Bill, (National Assembly Bills No. 37 of 2016) was published by the Kenya Gazette Supplement No. 141 of the 26<sup>th</sup> August 2016, as a Bill concerning County Governments and seeking to amend the Elections Act, 2011, the Independent Electoral and Boundaries Commission Act 2011, the Political Parties Act 2011, the Supreme Court Act 2011, and the Registration of Persons Act CAP 106 in order to actualise the recommendations of the Joint Parliamentary Select Committee on matters relating to Independent Electoral and Boundaries Commission (IEBC) and the conduct of elections;

WHEREAS, the Elections Offences Bill (National Assembly Bills No. 36 of 2016), was published vide Kenya Gazette Supplement No. 140 of 26<sup>th</sup> August 2016 as a Bill concerning County governments and seeking to consolidate offences relating to elections into one law and to give effect to the recommendations of the Joint Parliamentary Select Committee on matters relating to the Independent Electoral and Boundaries Commission (IEBC) and their conduct of elections;

WHEREAS, the National Assembly considered and passed the two Bills without amendments on Thursday, 1<sup>st</sup> September 2016;

NOW THEREFORE, in accordance with the provisions of Article 110 sub-article 4 of the Constitution and Standing Order 142 of the National Assembly Standing Orders, I hereby refer the said two Bills to the Senate for consideration.”

Hon. Senators, pursuant to Standing Order No.148 that requires a Bill which originates in the National Assembly be proceeded with by the Senate in the same manner as a Bill introduced in the Senate by way of First Reading in accordance with Standing Order No.129, I directed that the Bills be listed for First Reading in today’s Order Paper.

In order to facilitate public participation pursuant to the provisions of Standing Order 130, paragraph (4), I now direct the Standing Committee on Legal Affairs and Human Rights to ensure the exercise is undertaken after the rise of the House today following which the Bills will be considered at Second Reading, Committee of the Whole and Third Reading stages tomorrow, Thursday, 8<sup>th</sup> September, 2016.

I further direct the Committee to submit a report of the Bills at the commencement of the sitting tomorrow.

I thank you.

*(Applause)*

APPROVAL OF THE MEDIATED VERSIONS OF THE LAND LAWS  
(AMENDMENT) BILL AND THE COMMUNITY LAND BILL

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No. 40 paragraph (3) and (5), I received the following message from the Speaker of the National Assembly on 5<sup>th</sup> August 2016 regarding the approval by the National Assembly of the mediated versions of the Land Laws (Amendment) Bill (National Assembly Bills No. 55 of 2015) and the Community Land Bill (National Assembly Bills No. 45 of 2015).

“PURSUANT to the provisions of Standing Orders 41 and 142 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly.

WHEREAS, the Senate on June 15, 2016 rejected the Land Laws Amendment Bill (National Assembly Bills No. 55 of 2015), and the Community Land Bill (National Assembly Bills No. 45 of 2015) at Second Reading, the impact of which the said Bills were referred to a Mediation Committee; and whereas the National Assembly by way of resolution passed on Thursday, August 4<sup>th</sup> 2016, considered the report of the Mediation Committee and approved the mediated version of the said Bills;

NOW THEREFORE, in accordance with the provisions of Article 113 of the Constitution and Standing Order 150 of the National Assembly of the Standing Orders, I hereby convey the said decision of the National Assembly to the Senate”

Hon. Senators, I wish to inform you that the said Bills have since been assented to by His Excellency the President.

I thank you.

APPROVAL OF THE MEDIATED VERSIONS OF THE FORESTS CONSERVATION  
AND MANAGEMENT BILL AND THE NATURAL RESOURCES (CLASSES OF  
TRANSACTIONS SUBJECT TO RATIFICATION) BILL

Honourable Senators, I wish to report to the Senate that pursuant to Standing Order No. 40 (3) and (5), I received the following Message from the Speaker of the National Assembly on 29<sup>th</sup> August, 2016 regarding the approval by the National Assembly of the mediated versions of the Forests Conservation and Management Bill (National Assembly Bills No. 49 of 2015) and The Natural Resources Classes of Transactions Subject to Ratification Bill (National Assembly Bills No. 54 of 2015).

“PURSUANT to the provisions of the Standing Order Nos. 41 and 149 of the National Assembly Standing Orders, I hereby convey the following message from the National Assembly.

WHEREAS, the Forests Conservation and Management Bill (National Assembly Bills No. 49 of 2015) and The Natural Resources (Classes of Transactions Subject to Ratification) Bill (National Assembly Bills No. 54 of 2015) were published on 11<sup>th</sup> August, 2015 and 18<sup>th</sup> August, 2015 respectively to correspondingly give effect to the provisions of Articles 69 and 71 of the Constitution;

WHEREAS, the two Bills were referred to a Mediation Committee on 4<sup>th</sup> August, 2016, pursuant to the provisions of Article 112 (2) (b) of the Constitution and Standing Order No. 148 (b) of the National Assembly Standing Orders;

WHEREAS, on the 24<sup>th</sup> August, 2016, the National Assembly considered and adopted the Report of the Mediation Committee and approved the mediated version of the said Bills in the form developed by the Committee;

NOW THEREFORE, in accordance with the provisions of Article 113 of the Constitution and Standing Order No 149 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate”.

Honorable Senators, as you may recall, the Senate passed the mediated versions of the said two Bills on Wednesday, 24<sup>th</sup> August, 2016 and a Message to that effect sent to the National Assembly. The said Bills have since been assented to by His Excellency the President.

I thank you.

APPROVAL OF THE PROTECTION OF TRADITIONAL KNOWLEDGE  
AND CULTURAL EXPRESSIONS BILL

Honourable Senators, I wish to report to the Senate that pursuant to Standing Order No. 40 (3) and (5), I received the following Message from the Speaker of the National Assembly on 29<sup>th</sup> August, 2016 regarding the approval by the National Assembly of the Protection of the Traditional Knowledge and Cultural Expressions Bill (National Assembly Bills No. 48 of 2015).

“PURSUANT to the provisions of Standing Order Nos. 41 and 148 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly.

WHEREAS, the Traditional Knowledge and Cultural Expressions Bill (National Assembly Bills No. 48 of 2015) was published vide the Kenya Gazette Supplement No. 132 of 11<sup>th</sup> August, 2015 to give effect to the provisions of Articles 11, 40 (5) and 69 (1) (c) of the Constitution relating to culture by providing for promotion and protection of indigenous

knowledge, cultural expressions and intellectual property rights further to which the National Assembly passed the Bill on Tuesday, 15<sup>th</sup> March, 2016 and referred it to the Senate for consideration;

WHEREAS, the Senate's amendments to the Bill were thereafter referred to the National Assembly on Tuesday, 19<sup>th</sup> July, 2016 and were there upon considered and agreed to on Tuesday, 23<sup>rd</sup> August, 2016;

NOW THEREFOR, in accordance with the provisions of Article 112 (2) (a) of the Constitution and Standing Order No. 148 (a) of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate".

Honorable Senators, the said Bill has since been assented to by His Excellency the President.

I thank you.

#### APPROVAL OF THE ACCESS TO INFORMATION BILL AND THE FISHERIES MANAGEMENT AND DEVELOPMENT BILL

Honourable Senators, I wish to report to the Senate that pursuant to Standing Order No. 40 (3) and (5), I received the following Message from the Speaker of the National Assembly on 17<sup>th</sup> August, 2016 regarding the approval by the National Assembly of the Access of Information Bill (National Assembly Bills No. 36 of 2015) and the Fisheries Management and Development Bill (National Assembly Bills No. 20 of 2014).

"PURSUANT to the provisions of the Standing Order Nos. 41 and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly.

WHEREAS, the Access of Information Bill (National Assembly Bill No. 36 of 2015) was published vide the Kenya Gazette Supplement No. 94 of 30<sup>th</sup> June, 2015 to give effect to the provisions of Article 35 of the Constitution relating to the right to information by facilitating access to information held by government ministries and other public authorities through priority publication and dissemination of information;

WHEREAS, the Fisheries Management and Development Bill (National Assembly Bills No. 20 of 2014) was published vide the Kenya Gazette Supplement No. 45 of 4<sup>th</sup> April, 2014 to provide for conservation, management and development of fisheries and other aquatic resources and to establish the Kenya Fisheries Service;

WHEREAS, the National Assembly passed the two Bills on Thursday, 28<sup>th</sup> April, 2016 and on Wednesday, 30<sup>th</sup> September, 2015 respectively and referred it to the Senate for consideration;

WHEREAS, the National Assembly received Senate amendments to the two Bills on Tuesday, 19<sup>th</sup> July, 2016;

FURTHER WHEREAS, the National Assembly by resolution passed on Thursday, 11<sup>th</sup> and Tuesday, 16<sup>th</sup> August, 2016 considered and agreed with the Senate on these amendments on the two Bills;

NOW THEREFORE, in accordance with the provisions of Article 112 of the Constitution and Standing Order No. 149 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate".

Honourable Senators, I also wish to inform you that the said Bills have since been assented to by His Excellency the President.

I have two more to go.

*(Loud consultations)*

I will allow the Members to enter the Chamber. Order Sen. Wako! Do not abuse privilege.

*(Hon. Senators entered the Chamber)*

*(Loud consultations)*

Order Members!

#### APPROVAL OF THE MEDIATED VERSION OF THE WATER BILL

Honourable Senators, I wish to report to the Senate that pursuant to Standing Order No. 40 (3) and (5), I received the following Message from the Speaker of the National Assembly on 17<sup>th</sup> August, 2016 regarding the approval by the National Assembly of the mediated version of the Water Bill (National Assembly Bills No. 8 of 2014).

“PURSUANT to the provisions of the Standing Order Nos. 41 and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly.

WHEREAS, the National Assembly by way of a resolution considered and passed on Wednesday 10<sup>th</sup> August, 2016 the Report of the Mediation Committee and approved the mediated version of the Bill in the form developed by the Mediation Committee of the two Houses on 21<sup>st</sup> July, 2016;

NOW THEREFORE, in accordance with the provisions of Article 113 of the Constitution and Standing Order No. 150 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate”.

I thank you.

#### APPROVAL OF THE MEDIATED VERSIONS OF THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL AND THE ENERGY BILL

Hon. Senators, I wish to report to the Senate that pursuant to Standing Order No. 40(3) and (5), I received the following Message from the Speaker of the National Assembly on 29<sup>th</sup> August, 2016 regarding the approval by the National Assembly of the mediated versions of the Petroleum (Exploration, Development and Production) Bill (National Assembly Bills No.44 of 2015) and the Energy Bill (National Assembly Bills No.50 of 2015).

“PURSUANT to the provisions of Standing Order Nos.41 and 149 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly.

WHEREAS, the Petroleum (Exploration, Development and Production) Bill (National Assembly Bills No.44 of 2015) and the Energy Bill (National Assembly Bills No. 50 of 2015) were published on 11<sup>th</sup> August, 2015 to give effect to relevant provisions of the Constitution of Kenya 2010;

WHEREAS, the two Bills were referred to the Mediation Committee on 9<sup>th</sup> and 10<sup>th</sup> August, 2016 correspondingly, pursuant to the provisions of Article 112 (2)(b) of the Constitution and Standing Order No.148 (b) of the National Assembly Standing Orders;

AND WHEREAS on 25<sup>th</sup> August, 2016, the National Assembly considered and adopted the report of the Mediation Committee and approved the mediated version of the said Bills in the form developed by the Committee;

NOW THEREFORE, in accordance with the provision of Article 113 of the Constitution and Standing Order No.149 of the National Assembly Standing Orders, I hereby convey the said decision of the National Assembly to the Senate.”

Hon. Senators, as you may recall, the Senate passed the mediated versions of the said two Bills on Wednesday, 24<sup>th</sup> August, 2016 and a Message to that effect was sent to the National Assembly. The said Bills have since been assented to by His Excellency the President.

Next order!

### NOTICE OF MOTION

#### ESTABLISHMENT OF A SPECIAL COMMITTEE TO INVESTIGATE THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT OF THE GOVERNOR OF NYERI COUNTY

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Thank you, 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 2<sup>nd</sup> September, 2016, the County Assembly of Nyeri approved a Motion “to remove from office, by impeachment,” 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 section 33(3)(b) of the County Governments Act, 2012 and standing order 68(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 68(1)(b), the Senate resolves to establish a special committee comprising the following Senators –

1. Sen. Lenny Kivuti
2. Sen. Peter Mositet
3. Sen. Kimani Wamatangi
4. Sen. Billow Kerrow
5. Sen. Isaac Melly
6. Sen. Joy Gwendu
7. Sen. George Munyasa Khaniri
8. Sen. Stewart Mwachiru Madzayo
9. Sen. Judith Achieng’ Sijeny
10. Sen. Moses Kajwang’

11. Sen. Janet Ong'era;  
to investigate the proposed removal from office of the Governor of Nyeri 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.

Thank you, Mr. Speaker, Sir.

## BILLS

### *First Readings*

THE ELECTION OFFENCES BILL  
(NATIONAL ASSEMBLY BILLS NO. 36 OF 2016)

THE ELECTIONS LAWS (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILLS NO. 37 OF 2016)

*(Orders for the First Readings read- Read the First Time and  
ordered to be referred to the relevant Departmental committees)*

## MOTION

ESTABLISHMENT OF A SPECIAL COMMITTEE  
TO INVESTIGATE THE PROPOSED REMOVAL FROM OFFICE,  
BY IMPEACHMENT, OF THE GOVERNOR OF NYERI 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 2<sup>nd</sup> September, 2016, the County Assembly of Nyeri approved a Motion “to remove from office, by impeachment,” 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 section 33(3)(b) of the County Governments Act, 2012 and standing order 68(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 68(1)(b), the Senate resolves to establish a special committee comprising the following Senators:-

1. Sen. Lenny Kivuti
2. Sen. Peter Mositet
3. Sen. Kimani Wamatangi
4. Sen. Billow Kerrow

5. Sen. Isaac Melly
6. Sen. Joy Gwendo
7. Sen. George Munyasa Khaniri
8. Sen. Stewart Mwachiru Madzayo
9. Sen. Judith Achieng' Sijeny
10. Sen. Moses Kajwang'
11. Sen. Janet Ong'era;

to investigate the proposed removal from office of the Governor of Nyeri 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.

Mr. Speaker, Sir, this is the fifth impeachment proceedings that have found their way to this House. There have been others in the last four years which were attempted, but never succeeded in being delivered from the respective county assemblies to this House. We had the first impeachment process in Embu County. I do not want to repeat what happened because this House is aware that it unanimously adopted the recommendations of the Committee to impeach the Governor of Embu County. That matter has been in court ever since and the matter is still pending before the Supreme Court, awaiting determination 11 months to the next general election. The Governor of Embu County continues to serve courtesy of the Judiciary.

Mr. Speaker, Sir, during that impeachment process, I am told that the Judiciary attempted to serve us with summons, which was odd. We made our position known at that time - which we still maintain - that one cannot injunct Parliament. You can declare products of a parliamentary process unconstitutional or otherwise unlawful, but you cannot injunct Parliament from doing its work and compel Parliament to pass a legislation. No institution can compel Parliament, for example, to pass a legislation in the way that, that institution, including the Judiciary, thinks it should be passed. It can make a declaration, but the authority and sovereignty of Parliament under the doctrine of separation of powers remains.

Mr. Speaker, Sir, after that, we had other counties. We had the issue of the Deputy Governor of Machakos which came to this House. The House decided that there were no adequate grounds to impeach him. There was also an impeachment process regarding Kericho County and this Senate upheld that the grounds for impeaching the Governor of Kericho County had not been substantiated.

Thereafter, there was an attempt by the County Assembly of Makueni to impeach the governor. He went to court and it purportedly issued an injunction. For one reason or another that matter took a different turn. Eventually, the impeachment process mutated into an attempt to dissolve the County Government of Makueni. That effort was defeated somewhere along the process when the President rejected the request on the grounds which he stated then. Finally, we had the issue of Murang'a County a few months ago. This Senate, through a Special Committee found that the grounds for impeaching the Governor of Murang'a County had not been substantiated.

I am happy that out of those five impeachment processes, it is only in two of them that the Judiciary attempted to interfere with the sovereign authority and mandate of this House to deal with impeachments, through injunctions. I am glad that after some reflections and this House making it clear that, that was something we would not look upon kindly--- After certain institutional engagements, I see a lot of reluctance of late by courts to interfere with the processes of this House. I commend the Judiciary for that approach.

Mr. Speaker, Sir, in the case of Murang'a County, the governor rushed to court and it declined to issue any injunctions. That is also what has happened in the present case. The governor had gone to court, but it declined yesterday to grant any injunction. The Court's position is very clear; that it believes, now and even in the time of the Murang'a County impeachment process, that the rights of all parties, including the accused and those who bring the charges – in this case the Assembly – will be upheld because the Senate is not a lynch mob. The Judiciary should be encouraged to continue interpreting the law in the correct manner.

Secondly, Standing Order 61 of our Standing Orders presupposes that the House can proceed through either a special Committee, like in the proposed Motion, or by way of Plenary. That option remains open and it is upon Senators to decide how best this House thinks that this matter can be adjudicated upon.

Thirdly, I assure the country, specifically the people of Nyeri County, that this House has the requisite experience, expertise and sobriety to do justice as quickly as possible, to ensure the people of Nyeri Country continue enjoying the advantages of their Government and the facilities of the county government as enshrined in the Constitution and the law. In any case, the County Governments Act, as well as the Constitution, has provided very strict timelines. Therefore, within the next two weeks or so, this matter, one way or the other, should be behind us.

This impeachment process is a quasi-judicial process. I believe that both parties, in this case, the Assembly and the Governor of Nyeri County, will be accorded a fair hearing. In the event that this Motion is approved, they will be given time to be listened to, present their case, call their witnesses, if possible cross-examine the witnesses on the opposite side, *et cetera*; in accordance with our Constitution and the tenets of natural justice.

Even if the impeachment processes are quasi-judicial processes, they also have political implications, because politicians are impeached. I hope the political aspects of this process will be managed. I thank my brother, the Senator for Nyeri, Sen. Kagwe, because he tried very hard to politically deal with this matter. However, somehow the Members of the County Assembly (MCAs) had their way, and it is within their right as MCAs because the law provides that they can proceed with impeachments where they feel there is a case for impeachment. I thank Sen. Kagwe for his efforts as the Senator for Nyeri. Going forward, whichever way this matter is resolved, he still has a job to do in that county; to steer the county and ensure that both the governor and the MCAs forge forward for the remaining year or so and manage the politics of their county for the wellbeing of their people.

Mr. Speaker, Sir, we have just seen how ferocious impeachments can be. Two or three weeks ago the Senate of Brazil removed from office, with an overwhelming majority, the President of Brazil. She was not just the President but the first female President in the history of Brazil and also a very strong leader of her party, which has been in power for close to two decades. However, after the impeachment there have been a lot of street protests by her supporters. The kind of political upheavals that are anticipated in Brazil should get us concerned. What the Senate of Brazil did was not bad, but as we go through this quasi-judicial process, we must be alive to the fact that there are political implications. Therefore, we should moderate the political utterances that we make, not only generally as the Senate, but also particularly the politicians who come from that county, so that they do not derail the county by politicising an otherwise largely quasi-judicial process anchored in the law.

Lastly, I have full confidence and trust in the abilities of the proposed colleagues who have been cited here. I see a lot of diversity, gender and regional representation and a mix of expertise in terms of those who have been involved in the past and others who have not sat in

this process before. All that mix is important to ensure that this process is watertight. Therefore, I have no doubt, whatsoever, that the House will find that the selection that has been done by both the Majority and the Minority sides are people who can help this House and dispense with this matter as soon as possible, in the most judicious and legitimate manner. We do not want the legitimacy of this House to be questioned. Neither do we want this House to fall into the hands that have befallen other institutions where people do not have faith in the processes that we undertake.

Mr. Speaker, Sir, I do not want to belabour more than I have done because this Motion is limited to one issue. The issue is whether or not to establish a Committee and whether or not the nominees to this Select Committee should be approved by this House.

With those few remarks, I beg to move and request my brother, the Senate Minority Leader, to second this Motion.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir, for the opportunity to second this Motion. This is a culmination of almost a year of public altercations and wrangles in Nyeri County between the Governor and the Assembly. I say so because all this has been a matter of public knowledge in the media, everywhere.

Before I go into the substance, I would like to advise our colleagues from the National Assembly from Nyeri County. I saw a grouping of them making unhelpful statements about the Senate and demanding that the Senate must uphold the impeachment of their Governor. This Senate is not a rubberstamp and they should be told that the impeachment will be upheld if there is evidence and rejected if there is none. I saw the same grouping of Members of Parliament (MPs) hurling insults at the distinguished Senator for Nyeri and telling him to keep off and not interfere with the process in this House. My distinguished colleague is across the Floor but I stand here to defend him; that even if he intended to do so, he has no capacity. This is because this House cannot be interfered with. The person and character of the Senator for Nyeri that we know, coupled with his decency and public knowledge, cannot allow him to descend to a level where he can interfere with proceedings in this House.

We want to set up a Committee. I have consulted with the Senate Majority Leader. In fact, we talked on phone when he was in his county. When I asked him what he was doing, he said that he was busy mapping out streets and allotting the names. That is with a light touch. I asked him whether he could name one “Weta Street”.

Mr. Speaker, Sir, we have a task to discharge. Only last week, the President of Brazil, whom I have the distinct honour to have known personally, was sent out of office. She was not impeached because she was corrupt; she was beyond reproach. She was not impeached because she had stolen money; nobody accused her of theft. She was impeached because of a charge exactly similar to the first charge on these allegations: That she falsified the budget. That was enough to send her home. I am not inviting anybody to send the Governor of Nyeri home because there will be a hearing. I do not want to prejudge anything. However, that is how my good friend, Dilma Rousseff, who was a personal assistant to President Lula da Silva and who succeeded him was sent home and haunted out of office and the Senate of Brazil voted overwhelmingly.

We have had several cases of impeachment in this House. In each case, we have set up Committees which did commendable work and brought their reports here. Like my brother said, in two of those cases, the High Court interfered. This time, you as our Speaker and your corresponding Speaker in the National Assembly made it clear to all and sundry that the High Court can shoot down what we have passed. However, it has no capacity to injunct us from

discharging our constitutional function of representation, legislation and oversight. That is insulated and it should be so known. Of course, when we look back, we have the sad case of the Governor of Embu who was impeached twice and who is now serving the remainder of his time as an “injunction governor”. This is not very helpful for the relationship between institutions in the country but we leave that for another day.

Mr. Speaker, Sir, the Senators that we have set out are all distinguished men and women of this Senate. We have no doubt in our consultations that if this list is approved, they will discharge their functions in hearing the evidence and bringing it here after making a decision fairly. I assure the country that first, this Senate, like I said, is not a rubberstamp. Two, it is not vindictive. It will only act according to the facts placed before it. It must show the country that when county assemblies reach a level where they act in a manner that several of them have acted and send their outcome here, we are quasi-judicial and we sit more or less as an appellate structure, because we are dealing with what has already been dealt with at the County Assembly. More importantly, we also have original jurisdiction to hear the matter before us and make a finding in the facts.

Mr. Speaker, Sir, in the previous similar cases, particularly the Murang’a County matter that was chaired by Sen. Musila, the Report was Tabled late in the House. It was tabled late because of the time constraints and the Members were not given the opportunity to properly read, digest and understand it. Be that as it may, we approved what the Committee advised.

We do not want to take too long on this matter. By looking at the charges, some are serious and others are not. For example, in the indictment number nine, I do not understand why it is there. The Governor is accused of failing to assent to the Bills yet the law is clear. When the Bills are forwarded to the Governor for assent, if a 14 day period lapses before assenting, the Bill automatically becomes law. Therefore, there is no violation. The Governor cannot be indicted for failing to assent to Bills. He can be cautioned for being lazy but not violating any law. If he does not assent to Bills, they automatically become law after a period of 14 days. So, the assembly would not have acted in vain. However, that is a matter for the Committee to determine if we establish one to hear it.

Mr. Speaker, Sir, this House must solve problems. Solving problems is part of our calling as a Senate. Last night, I re-read Chinua Achebe’s book “Things Fall Apart”. People read the Bible daily and we cannot ask why one is reading a Bible again. I came across a statement which I think is a worth quote to this House. This is what Chinua Achebe said:-

“A man who calls his kinsmen to a feast, does not do so to redeem them from starving. They all have food in their own houses. When we gather together under the moonlight in the village ground, it is not because of the moon. Every man can see it in his compound. We come together because it is good for kinsmen to do so. Let us find time to come together physically and enjoy the power of togetherness.”

Mr. Speaker, Sir, this is the important one.

“Let us smile not because we do not have problems but because we are stronger than the problems.”

We are here because we are stronger than the problems and we can solve them. Chinua Achebe was apt in saying so. We could have sat in our homes because we are on recess and send our decisions via emails after reading the charges. We have to come here because together as an institution of this country, an ‘upper House’ and as a House that if there were an impeachment of the President, we will have the final word, we come here because we are stronger than any

problem that faces the country. Together as representatives of the people and defenders of counties and their governments, we are here to act as such because we are stronger than our problems.

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

I urge Members that this is another milestone in the discharge of the responsibilities. Please act without any fear, favour and prejudice.

Thank you.

*(Question proposed)*

**Sen. Khaniri:** Mr. Speaker, Sir, thank you for the opportunity to contribute to this Motion. The matter before us is whether or not to approve the names and appoint a Special Committee. I am glad that in the Communication from the Chair, you made a ruling that at this stage, we are not debating on the merits and demerits of the grounds that have been advanced by the County Assembly of Nyeri on the removal of the Governor of Nyeri County.

From the outset, I oppose this Motion.

*(Applause)*

Mr. Speaker, Sir, first, I thank the Senate Minority Leader and my coalition for having confidence in me by proposing my name as a Member of the Special Committee to look in to the matter. I thank him very much for having confidence in me.

However, Standing Order 68 which the Chair referred to gives the House two options. The Standing Order 68 (1) (b) provides that:-

“The Senate by resolution may appoint a Special Committee comprising of eleven of its Members to investigate the matter.”

Mr. Speaker, Sir, the wording here is ‘may.’ In the Chair’s Communication, it was clear that we have an option. However, if we do not choose to establish a Special Committee, then there is another option of disposing the matter through the Plenary.

We have had four impeachment cases before this House, namely; from Kericho, Embu, Machakos and Murang’a Counties. In all these four cases, as a House, we unanimously decided to determine them by committing them to a Special Committee.

Mr. Speaker, Sir, the disadvantage with the establishment of the Special Committee is that when the Committee finds that the allegations by the county assembly have not been substantiated, then it ties the hands of the House completely and we cannot do anything. We have to live by the decision of the Committee.

Mr. Speaker, Sir, having had that experience of going through the Committee in the four cases, I want to plead with Members of this House that we should try and go the Plenary way this time round. Since you have read the charges and the allegations by the county assembly to this House, give Members two or three days to look at the charges. We should then come back here, debate and take a vote. The Committee way gives us ten days and I believe we still have the ten days if we decide to go the Plenary way. I remember the case of Murang’a County where Members had very strong feelings. The Committee, led by my good brother, Sen. Musila, came up with a contrary opinion to what most Members had thought at that particular time. Sen. Musila was condemned strongly by some of us.

**Sen. Musila:** Unfairly.

*(Laughter)*

**Sen. Khaniri:** Mr. Speaker, Sir, I do not want my ten colleagues and I to go through that. Going the Plenary way will give Kenyans an opportunity to follow the debate. We want Kenyans and the people of Nyeri County at large to follow the debate. I am sure that the debate will be live on both radio and television, so that they can be informed of the goings-on.

Although the names that had been put together by both the Senate Majority Leader and the Senate Minority Leader consist of able Members who have a lot of experience and expertise, I stand to oppose the formation of this Committee, so that we can look at this matter as the Senate in the plenary.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I rise to oppose this Motion. My opposition is fortified by the Standing Orders and the County Governments Act, which are the same, word for word. In Law we call it ‘on all fours’. Standing Order No. 68 (1) (b), for avoidance of doubt, reads as follows:-

“The Senate, by resolution, may appoint a special committee comprising of eleven of its Members to investigate the matter.”

The word ‘may’ is optional. Under Standing Order No. 68 (1) (a), the Speaker is required to summon us and convene a meeting of the Senate to hear the charges. That one is mandatory. I implore Members of this Senate to agree with the proposal that the Plenary of the Senate conducts this trial of the Governor of Nyeri County.

I want to repeat what my colleague, Sen. Khaniri, has said; that we were criticized by both the print and other media. I recall that I am one of the people who opposed the findings of the Committee by Sen. Musila.

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. I am sorry to interrupt my colleague, the ‘duke’ of Makueni, Sen. Mutula Kilonzo Jnr. Am I in order to request that we reduce the time allocated to a Member, since everybody wants to speak? Considering the business that we have, can we reduce the time---

*(Loud Consultations)*

**The Speaker** (Hon. Ethuro): Order, Members!!

**Sen. Murkomen:** Mr. Speaker, Sir, I have seen the requests at the Clerks’ desk. Could we reduce the time to five minutes, so that everybody can speak before the rise of the House at 12.30 a.m.? That will enable us to consider the Bills when we come back. Otherwise, if everybody is to speak, based on the requests made, we might need the whole day. Could we do a reasonable five minutes, because we will have another chance on the same subject matter?

**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, is Sen. Murkomen in order to mislead this House that he has seen a list of requests, whereas we know that he is not the Speaker? He is also not at the Secretariat’s Table and has no communication with the computer at the Speaker’s Chair. Is he in order?

**The Speaker** (Hon. Ethuro): Order, Members! Sen. Murkomen is perfectly in order to ensure maximum participation by the membership, first, as a Member of the House; two, as the Deputy Majority Leader and three, as a former Temporary Speaker. He does not need to adduce evidence. More importantly, I can confirm that he came to look at my screen. I can also confirm

that the interest is more overwhelming and it is not in my business to exclude any person. Under that consideration, I direct that each contributor should not take more than four minutes. This order does not apply to the current speaker, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. It appears that the Senate has discretion, under Standing Order No.68 (2), of agreeing to a special Committee. Therefore, I implore my colleague to agree to the proposal by Sen. Khaniri, who is a distinguished Member of this Senate and part of this Committee, so that all of us are given an opportunity to interrogate this matter in detail.

Secondly, I agree with Sen. (Prof.) Kindiki that the High Court has done justice to this matter to the extent that it rejected the injunction that was sought by the lawyers of the governor. The impeachment Motion against the governor of Makueni County has not been determined here and the court also has not determined the matter that questioned the impeachment process. That in itself is an illegality and a violation of the Constitution. Therefore, the High Court must be congratulated for following the law.

There is yet another issue. I shared the report of the Nyaoga Commission on the dissolution of Makueni County with Sen. Kagwe. This matter needs to come out in the public so that some of the issues that are in Nyeri County that were addressed by the Nyaoga Report on the disputes between county assemblies and county executives can be addressed here. I suspect that most likely this is the last Committee that will sit on the impeachment of any governor. Therefore, we must come up with legislative amendments.

Mr. Speaker, Sir, lastly, I have no doubt on the competence and ability of the eleven Members suggested or proposed in the Order Paper, but we will leave their nomination for another day. For now, I oppose the select Committee and implore my colleagues to agree to the proposal. By virtue of the fact that it appears that we have not made rules on a Plenary sitting of an impeachment Motion of a governor under Standing Order No. 68, I implore you to give direction substantively, under Standing Order No. 1, which gives you the right and jurisdiction to rule on matters that are not expressly provided for under the Standing Orders, particularly on directions on how this matter will be heard here in the Plenary.

Let Governor Gachagua come here. We are capable. We will deal with this matter substantively and objectively. Kenyans will soon have confidence in us.

**The Speaker** (Hon. Ethuro): Order, hon. Senators. Before I call the next speaker - Sen. (Dr.) Khalwale - you do not have to be at pains to explain your position. It is provided for.

Proceed.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, allow me to congratulate the 11 Members from this House who would be sitting in this Committee to guide us on how best to make a decision. I have no doubt that my young brother; Sen. Khaniri will be there in the same capacity. With the talents he has demonstrated in the County Public Accounts and Investments Committee (CPAIC), he will come up with an impeccable verdict.

However, I oppose this Motion. I remember two people. The first one is the late Vice President of the Republic of Kenya hon. Michael Kijana Wamalwa who at a time like now would have spoken to what he used to call “the doctrine of the common sense” of the House. If I could go back to that doctrine as coined by the late hon. Michael Kijana Wamalwa – when we were debating the impeachment of the Governor for Murang’a, the common sense of this House was that we were not comfortable with the Committee’s decision. We wanted to be allowed to play a bigger role than the Committee had forced us to do.

Mr. Speaker, Sir, because the Standing Orders and the County Governments Act allows us, let us explore the alternative as provided for in law so that we can also respond to the challenge which is ahead.

If we go to plenary to prosecute this matter, how shall we do it so that the governor and his team of lawyers have a chance to be heard in depth in the same manner that they are given in the Committee? This will allow Members of this House to interrogate without being limited to speaking to a Motion only once. You might want to interrogate this matter again and again. So, we would like to challenge the office of the Speaker, through the Clerk, to come up with a procedure through which the plenary will handle this matter.

The second person I remember is the former President of Brazil, Ms. Dilma Rousseff. I followed her impeachment proceedings. It was so serious that all the Senators were involved until 61 against 21 Senators then said that she should leave office. It gave it the seriousness it deserves.

Mr. Speaker, Sir, my third reason why I would like to oppose this route is the contempt with which the Council of Governors (CoG) has received the decision of the County Assembly of Nyeri. The Chairman of the Council was very contemptuous. He said, “any institution, be it---

*(Technical hitch)*

It was extremely annoying to see the Chairman of the CoG belittle the county assemblies and the Senate. He said that, in the normal way, they would go to court. I appeal to the Judiciary to come to the reality that in an impeachment process, once a decision is made by the Senate, it is done with finality. There is no room for appeal. I do not know where they got these gymnastics that people can be allowed to challenge the final decision on impeachment of the Senate. I do not know which international practice they are using.

Mr. Speaker, Sir, before the election of 2014, Ms. Dilma Rousseff manipulated the reports of budgetary deficit of the budget of the Government of Brazil. She interfered with the records of the accounts. That is all that she did. A whole President is gone! We demand from the Judiciary that they should not allow themselves to be used by governors. We want one, two, three or four governors to go so that Kenyans can know that oversight and accountability is a norm under this Constitution.

I would like to speak to our two coalitions; Jubilee and CORD. In the CORD coalition, we must be disturbed that so far none of our county assemblies has ever attempted to impeach our governors. This can only point to one thing; that in our coalition, the governors are managing our Members of County Assembly (MCAs.) but on the Jubilee side, the MCAs are carrying out oversight. This message must go out clearly. The Senate Minority Leader is listening. I am sure he will do something about it. I would like to give one example.

**The Speaker** (Hon. Ethuro): I allow you two more minutes.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I would like to give just one example. How can we have a governor on the CORD side who refuses invitations to come to the Senate, defies summons and goes to courts and blocks the Senate from asking him questions of oversight while he has worse allegations in the books of the Auditor-General that are worse than what I have heard from Nyeri? You look bad. The office of the auditor looks horrible. Senators look helpless because Governor Oparanya has defied all of us. It is not right! This is about public funds. People must respect public funds. Jubilee MCAs are doing well. The only problem is the Jubilee national Government.

**The Speaker** (Hon. Ethuro): Order, Sen. (Dr.) Khalwale. Unfortunately, today you will not have that kind of latitude.

*(Laughter)*

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, I stand guided. Please allow me to complete my sentence so that it does not hang.

**The Speaker** (Hon. Ethuro): Order, Senator. I allowed you two minutes. You have exceeded.

**Sen. (Dr.) Khalwale:** Mr. Speaker, Sir, with those few remarks, I beg to oppose strongly.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, given the two options that have been cited in our Standing Orders, we have tried the first way of interrogating the impeachment. However, there is no harm in trying the second option where we deal with it here in the plenary. For that reason, I join my colleagues who are for the second option. Hence, we must defeat this Motion for us to deal with it on the Floor of this House. It does not mean that the impeachment process will be dealt a blow if we do not approve this Motion. It means that the option of establishing a Committee will be done away with if this Motion is thrown out.

Mr. Speaker, Sir, we have sat faithfully for almost one and a half months as the Public Accounts and Investments Committee (PAIC) looking at the accounts of the county assemblies and county governments for the Financial Year 2013/ 2014. You will be shocked and, indeed, surprised at the manner in which public funds are misappropriated in counties. I think the ultimate goal for most of the counties is to squander as much as possible and nobody is ready to take responsibility for misappropriation of public funds.

We have heard one classic example where a governor has refused to take responsibility, and yet the Constitution says that accountability is not optional. As long as you are in charge of funds, you must be able to be accountable and answer queries as raised by the Auditor General. Imagine over Kshs1.5 billion cannot be accounted in Kakamega County. Why should that governor continue serving in that county if he cannot take responsibility?

Mr. Speaker, Sir, it does not mean that we, as a Senate, do not to interrogate this impeachment process as it was initiated by Nyeri County Assembly. We will interrogate it properly considering its merits and demerits.

Mr. Speaker, Sir, I watched how the Nyeri County Assembly Members (MCAs) slept in their Chamber for fear of being arrested or denied an opportunity to exercise their democratic rights of debating the impeachment Motion. This should not be allowed at all in a democratic society. Leaders should not fear to exercise their rights as they are enshrined in the Constitution. Are there policemen in this country who are willing to interfere with the work of MCAs? I do not think so. If so, then strange things are happening in the counties.

I saw on television some of our colleagues from the National Assembly storming the Nyeri County Governor's office. The Senate is here to stay. We will stand with our colleague, Sen. Kagwe. We will consider the impeachment Motion objectively and give a fair hearing to everybody as we did with the other cases.

Lastly, it is a pity that the Senate recommended the removal of one of the governors from office but he is still serving, courtesy of the courts. This governor is supposed to come before a Committee of this House to answer audit queries, but he has never appeared. It looks like we are unable to summon him. We will confirm all those charges and anything else that has gone wrong in Embu County Government.

**The Speaker** (Hon. Ethuro): Senator, you have one minute to conclude.

**Sen. (Prof.) Lonyangapuo:** Mr. Speaker, Sir, unfortunately, there is no option in this one. As long as he continues to serve in that office whether legally or illegally, he will have to answer all audit queries raised by the Auditor-General. For that reason, this plenary will have to approve things never seen before. If he does not appear before us, we will confirm all allegations.

I beg to oppose this Motion.

**The Speaker** (Hon. Ethuro): Sen. Mutahi Kagwe.

**Sen. Kagwe:** Mr. Speaker, Sir, I start by referring to the matter that was raised by the Senate Minority Leader and alluded to by the Senate Majority Leader as well. My job as Senator is very clearly defined in the Constitution. It is unfortunate that the county I represent is the subject of debate here today. It would have been better had we never gotten to this stage. However, it is what it is now.

My major role, before and after, the decision that will be taken by this House will be to unify the county. As for individuals who may want to direct me from in or outside this House, I beg that we forgive them. It is what in psychology they call “projection error”, where you are sitting in a position and you imagine that in similar circumstances, you would either be trying to influence or be influenced by others. It is a position that does not apply to me. If it applies to them, then I would just forgive and pity them. However, the voice of reason must reign supreme in Nyeri County.

In that county today, the cows are being milked. After the hearing and the decision of this House, coffee will still be picked. Even other activities that the people of Nyeri involve themselves in will continue in the manner that they have always done. I have total and complete confidence in this House. Kenyans and “Nyerians” have complete and total confidence in the ability of this House to make a decision whether they do so, as a Committee, or as plenary in the House.

Mr. Speaker, Sir, my only concern and urge is that: One, a deviation from what we are going to do or what has been done in the past, should be properly explained so that individuals out there do not have some suspicion as to why we deviated from what is normally done in this House.

Secondly, in interrogating the individuals who are going to come before the plenary or the committee, we must ensure that it does not look like we are lynching anybody in view of the many numbers that will be involved in carrying out the investigations.

Thirdly, at the end of this process, justice must not only be done, but must also be seen to have been done. Only in so doing can the people from Nyeri feel that justice was done for them. The decisions of this House become a personification of how such decisions should be done.

*(Applause)*

**Sen. (Dr.) Machage:** Bw. Spika, napinga Hoja hii kwa dhati. Si kwamba sifurahii kupendekezwa kwa majina ya waheshimiwa 11 wa Bunge hili ambao wamependekezwa na vyama kusudi wawe wanachama wa Kamati hii. Vile vile, sina tashwishi na utu wa kila mmoja wa hao waliopendekezwa. Hata hivyo, wakati umefika tujaribu kutafunia upande mwingine wa meno. Ukitafunia upande wa kulia usikie umechoka kidogo, una haki ya kupindua utafunie upande mwingine. Hii ni kwa sababu sheria na desturi za Bunge hili zinaruhusu. Kipengele Cha

68(1)(b) cha Kanuni zetu kinatupa nafasi hiyo ya kuamua kwamba Bunge hili liketi kama Kamati Kuu na kujadili jambo lolote kwa kina kirefu na kutoa uamuzi mwafaka.

Tumejaribu kutumia Kamati ya Maseneta 11 kwa vipindi vinne. Nashukuru kwamba Kamati zote zilitekeleza wajibu wao ipasavyo, lakini wengine wetu, kwa sababu moja au nyingine, hawakufurahia. Kwa hivyo, kila Seneta apewe nafasi ya kujitapa na kutoa mapendekezo yake kwa jinsi ambayo mwenyewe anafikiria yanahitajika Nyeri.

Ninashukuru kwamba mahakama, kwa mara ya kwanza, imekaa kando kidogo, sio kama vile ilivyotekeleza wajibu wake hapo awali kuhusu jambo la kung'atuliwa mamlakani kwa Gavana wa Embu. Kwa kujenga historia ya Seneti, natumai kwamba matokeo ya kamati itakayoundwa yatakuwa ya kupendeza na kukubalika na watu wa Nyeri.

Bw. Spika, nashukuru.

**Sen. Wako:** Mr. Speaker, Sir, thank you for giving me this opportunity to speak on this topic. From the outset, allow me to say that I support Sen. Khaniri and Sen. (Dr.) Khalwale in opposing this Motion. I oppose it because under our Standing Orders, an impeachment process is not supposed to be handled by a committee but the Senate itself. There are very good reasons for giving priority to the Senate to hear the petition. It is upon the Senate to permit or allow, by resolution, formation of a committee to hear it on its behalf. The committee should then report back to the full House but the priority is to the Senate itself. This is a priority which we see in other jurisdictions.

In Brazil, when the matter went to the Senate, it is the Senate as a whole which carried out the hearing. The Chamber of Deputies which is the Lower House may form a special committee but the work of that committee is not to hear the petition but to decide on the issues of admissibility. Once admissibility has been done, it goes to the Senate which is the Upper House which does it as a whole.

We are coming to the final end of our tenure and we have had an experience of having special committees. Now, it is time to have the experience of a full Senate. This particular case is particularly appropriate for a full Senate because we have been following what has been going on in Nyeri. Our Senator has been very good at playing out his role in trying to reconcile the parties and I know that. This is the third case I have witnessed MCAs actually sleeping in the Chamber in order to vote because they fear they might be kidnapped. That is an issue and it is a serious matter. This is the only case where I have seen Members of the National Assembly from that area going to the Office of the Governor and telling the workers there that they are safe but the Governor should not continue going to his Office after the County Assembly has done its job. Therefore, it shows the seriousness with which this matter is being undertaken in Nyeri County. Because of the seriousness, sensitivity and emotionalism that has gripped the people of Nyeri, I think it is only fair that the people of Nyeri have the entire Senate doing the hearing of this particular matter. Therefore, I oppose and plead that the Senate hears it.

Mr. Speaker, Sir, according to Standing Order No.1, you have very many precedents on how an entire House---

*(Sen. Wako's microphone went off)*

**The Speaker** (Hon. Ethuro): Order, Senator, you are at liberty to come to my Chambers for those finer details.

**Sen. Musila:** Mr. Speaker, Sir, I stand to oppose this Motion. In opposing this Motion, I want to say that this House has full confidence in the distinguished Senators who have been

nominated to serve in this committee. You have heard references being made to a committee that I chaired that was meant to impeach the Governor of Murang'a. I have also heard someone say; "commonsense of the House". In my own interpretation, it means that the House had already made up their mind as to the guilt of the Governor of Murang'a.

I remember when I came to this House to present the report, one Senator told me that if there is no impeachment, we do not want the report. That means that the House had already condemned the Governor of Murang'a even before hearing evidence. Therefore, this now gives us the reason why we must allow this House to conduct this hearing, so that they can pass a decision that is informed. I say this because I have been watching and following the interest that this matter has created in the whole county of Nyeri and, indeed, the whole of the former central province and Kenya at large. Therefore, it will be only fair that this House listens to the evidence that will be adduced, debate it and take a decision, so that we can say that we made a decision as a Senate. This is because the matter of the committee of a House deciding the impeachment of a governor has been very divisive. I want to imagine that this should be the last impeachment Motion that is coming before this House. Therefore, it must be done by a whole House so that everyone takes responsibility.

Mr. Speaker, Sir, I thank you.

**Sen. Murkomen:** Mr. Speaker, Sir, first of all I have listened to the mood of the House. Being the Deputy Senate Majority Leader, I should have supported the Motion but because of the mood of the House, I totally agree that it is important for us to have--- Perhaps this is the last impeachment that we will have before we finish our term. It is also better for us to test a new system where the whole House will have an opportunity listen to the allegations.

Mr. Speaker, Sir, I want to remind the House that in the Senate of the United States of America (USA), during an impeachment process, charges against any president or leader who is to be impeached are done by the House of Representatives but it is the Senate that conducts the trial. If you look at the Senate of the USA, you will see that they do not have an option for a committee. The whole Senate, presided by the Chief Justice, sits to carry out a trial. In this case, we need to try and see how it will work. For those who are saying it will be chaotic and difficult, there is already a precedent. It is not that the US Senate has not used it. They used it during the time of President Johnson and President Clinton. So, this is an opportunity for us as the Senate of Kenya to borrow from the procedures and the precedent of the American Senate. We need to sit down and try the Governor because it is a trial process. That is why I said this last time when the court overruled the directive to impeach the Governor of Embu; that even the American Courts have decided that they will not interfere with impeachment processes because it is a political question.

Mr. Speaker, Sir, the trial of impeachment in our Constitution is the same as the American Constitution is in the Senate. For the courts to abrogate themselves that responsibility of determining whether--- One judge in the High Court is trying to determine whether our own Senate, sitting on trial to judge a Governor, was wrong or right. This is wrong because this is the final House. This is the jurisprudence we need to build. Unfortunately, I still believe our Judiciary has been compromised. I do not say they have been paid or they have been given anything, but there is an element of compromise whether by inducement or by decision by the Judiciary to just become selfish when it comes to its jurisdiction; for them to try to interfere with the impeachment process.

I feel sad that we are sitting here and there is a Governor of Embu who is supposed to be home and we are sitting here again debating another impeachment process. I am not saying that

the Governor of Nyeri is guilty; it may be that the Senate will find him innocent, but the Senate will have the opportunity to be able to look at the issues and look at them soberly.

Mr. Speaker, Sir, this House cannot be dictated to by the Lower House which has absolutely no jurisdiction. One Member or more of the Lower House cannot dictate to this House how we are going to carry out impeachment proceedings. It must be clear to them that they do not have that jurisdiction. We are the only House--- if in future there is a President to be impeached this is the only House that will carry out trial. They must respect the jurisdiction of this House and they must respect the procedure. It is very sad that most of those leaders I watched on TV are my friends, I find it demeaning for them to carry themselves in the manner they did by going to ransack the office of a governor whose trial has not been carried out by this House. In the same manner, the County Assemblies and the governors cannot also dictate to us what we need to do.

I want to say that neither the Council of Governors, who are the creation of a law that this House passed, nor the county assemblies, can sit down and dictate to this House how we are going to carry out this procedure. In doing so we are *quasi-judicial* and we cannot be interfered with by anybody outside the jurisdiction of this House. When we sit down finally because I am seeing that is going to be the procedure we will revert to---. In fact in the United States of America (USA) they take an oath before the trial. We will convert ourselves to a *quasi-judicial* body. I believe that this House will make the right decision.

Thank you.

**Sen. Cheruiyot:** Thank you, Mr. Speaker Sir, for giving me this chance. From the very onset I would also like to make it clear that I am opposed to this Motion. I do so with clear reasons. This morning when I was watching one of our local channels, one of the distinguished panelists who were discussing the topic, proposed that as a way of the country moving forward and our political process, that given a chance, he would abolish the Senate. I further listened to his argument and I could clearly understand that he suffers from what I have seen so many other Kenyans suffer from; they fall into the same trap of misunderstanding the duties of this House. I feel that given the fact that we are still a new House, we are yet to be properly understood by this country.

We now have a chance because this is a sacred duty as protectors and custodians of devolution. In doing our oversight duties, I believe this path that Members want to propose will give us an avenue to be understood why a majority of Kenyans feel that this House is perhaps not so useful. The men and women in this House are persons of great distinction. I have enjoyed, in the few months that I have spent in this House, listening to the Members; it is of great pleasure. Unfortunately, it is a privilege that not many Kenyans have had. They have not had this opportunity. I believe that given the chance to carry out this trial in full glare of the nation, people will begin to appreciate the sacred duty of the Senate and how important our duty is.

Secondly, Mr. Speaker Sir, this is not for a common reason but perhaps a selfish one; that a good number of Senators in this House have already declared that they are not coming back to this House next year. Some want to be in State House and others want to go elsewhere. For us who are still happy to be here as long as mwananchi can allow us to be, I think it will be good for purposes of institutional memory to be given a chance. We never know when we will have such an opportunity again to exercise this law. We do not want to be like someone who has bought a brand new PVR decoder from Multi-Choice but only ends up limiting themselves to watching the local channels and they never get to test the full powers of it. We have many powers as a House. So, give us the opportunity to utilise this chance.

Thank you.

**Sen. Sang:** Mr. Speaker, Sir, I arise to oppose this motion since, from the onset we have had the opportunity to try to the Committee way. I have had the opportunity to sit in two of the previous impeachment committees. It is important for us to try all the provisions of our Constitution, the provisions of the County Governments Act and also the provisions of the Standing Orders. Therefore, this time round, let us go the Plenary way and try the Governor in this House and conclude that matter.

However, I want to raise a concern over the behaviour by the Members of the National Assembly who apparently did not understand what the County Governments Act says in terms of a governor whose process of impeachment has started. The impeachment process of the Governor of Nyeri has just started. We have not concluded that process and, therefore, he remains the Governor as provided for by the law. For Members of the Lower House to storm into the office of the Governor was a display of such ignorance that this country should not be able to witness from elected Members. Therefore, I want to call upon Members of the National Assembly, Members of the County Assembly and Kenyans at large to appreciate that the process of impeachment has started and we are still within the provisions of the law. Until we conclude such a process, Gov. Nderitu Gachagua remains the Governor and he has to continue executing his responsibilities as the Governor until such a time that this House will conclude with that process.

I also hope that, as Members of the Senate, we will continue to exude maturity in the way we will handle this process. We should resist the temptation to behave in a funny way when we conduct a trial as a House; we should be able to display maturity as the relevant processes commence. We should engage this Governor in a mature manner so that the respect that this House has earned among Kenyans should be able to be maintained.

Mr. Speaker Sir, I therefore oppose this Motion and propose that we go with the option provided for by the Standing Orders; that we have a plenary trial on this matter.

Thank you.

**Sen. Obure:** Thank you, Mr. Speaker, Sir. So far, we have been faced with four cases of impeachment. In all the four, the Senate decided to deal with them by way of establishing Special Committees. I have had the privilege to be the Chair of the Special Committee that dealt with the impeachment charges against the Governor of Kericho County. Given the experience gained, I oppose the Motion to appoint another Special Committee to deal with the Nyeri County impeachment matter.

The impeachment of the Nyeri Governor has attracted a lot of public interest, not just from the people of Nyeri and the Mt. Kenya area, but throughout the Republic. We are therefore obligated as a Senate to give the public a chance to follow the proceedings. This can only be done through a debate in the Plenary. I am convinced that this will be in the interest of transparency and openness as opposed to doing it through a special committee which raises suspicions and leaves many questions unanswered.

Mr. Speaker, Sir, I am opposing this Motion not because of the Members proposed whom I have full confidence in, but I think transparency and openness is more important in this case. I, therefore, oppose this Motion and propose that we deal with the matter in the Plenary.

**Sen. Mohamud:** Mr. Speaker, Sir, thank you for giving me this chance. From the onset, I would like to oppose the Motion not because of the membership, but it is now the time to explore an alternative as provided for in the Standing Orders. I know the Members are equal to the task and are competent. It is good that we explore the alternative of going to the Plenary.

Mr. Speaker, Sir, I would like to applaud the Nyeri County Assembly Members for doing what they thought was right and I urge other county assemblies to follow suit so that they secure the county governments. There are so many things going wrong in the counties and since they are the first people who do oversight, I appeal to all county assemblies that they should do whatever they feel is good for them.

Thank you.

**The Speaker** (Hon. Ethuro): Sen. M. Kajwang, if you follow the precedence set by your sister, that will be very good.

**Sen. M. Kajwang:** Mr. Speaker, Sir, I will do so. First, I would like to congratulate the Murang'a County Assembly for taking this bold ---

**The Speaker** (Hon. Ethuro): Order, Sen. M. Kajwang!

**Sen. M. Kajwang:** Mr. Speaker, Sir, I now have my bearings back. I have just come from Western Province.

I wish to congratulate the Nyeri County Assembly Members for taking this bold decision. I, however, oppose this motion. I am one of those who have been proposed to sit in this Select Committee and I oppose this Motion, not because I have doubts about my own capability but the experience I gathered when we sat during the impeachment of the governor for Murang'a tells me that we need to try a different approach to this impeachment business.

Mr. Speaker, Sir, it is on record that a Bill has been presented to this House; the Impeachment Procedure Bill by Sen. (Eng.) Muriuki and it is a Bill that as a House we need to take seriously because this questions will keep on coming up.

Mr. Speaker, Sir, I want to lay out some fears that might be there. One, this House should not be used as lynching ground for the governors. We should afford them a fair hearing and comfort them that when they come before the Plenary, we will not lynch them or hang them out to dry. I also do pray that Members of this Senate which is highly regarded will not resort to some of the tactics we have seen in other assemblies within this nation where people are invited for lunches in Karen, along State House road or at Eurobond Towers in Pangani and when they come to this House, they come with a different view of matters.

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

**Sen. Sang:** On a point of order Mr. Speaker, Sir. I have been a resident of this town for quite a while now and I understand the topography around Pangani but I have not seen a Eurobond Towers. Could the Senator confirm which tower he is talking about?

**The Speaker** (Hon. Ethuro): Order! Sen. M. Kajwang, you do not need to respond to that. Sen. Sang needs to understand that there are many ways of communication.

*(Laughter)*

**Sen. M. Kajwang:** Thank you Mr. Speaker, Sir. Going forward and ignoring Sen. Sang, even though I want to assure him that on Saturday, Eurobond Towers will be unveiled.

**The Speaker** (Hon. Ethuro): Order! Now, that is more dangerous. Before, you were okay.

*(Laughter)*

**Sen. M. Kajwang:** Mr. Speaker, Sir, the final point is on this conservatory orders. Sometimes, I wonder as Parliament, how is it that we get outwitted in the courts of law? We

must find a way of making Senate have the final say on impeachments, especially for leadership of the counties so that we reflect what happens in other jurisdictions.

Otherwise, it will be an exercise in futility if we do this and the next day the governor goes to the high court and the thing meanders in the corridors of justice until the next elections.

I oppose.

**The Speaker** (Hon. Ethuro): Order Members! The interest is still there and I see we still do not have much time. I am inclined to reduce the time rather than extending the sitting time. In any case, we can be accused of being repetitive. That will mitigate against extending our normal timing. Let me reduce it two minutes and you will give me the discretion to allow-- if I see a more interesting one I will add an extra minute. If you are not, then you will be subject to the rule.

Sen. Ndiema!

**Sen. Ndiema:** Thank you Mr. Speaker, Sir. I also stand to oppose but not because of the membership of the proposed Committee. I have confidence in all the Members that have been proposed. I am of the view that we try the first option of the Plenary. So far, we have been using the committee procedure and I have no issue with that. Since we are setting precedence and traditions, it is also good for this Senate to try a new procedure.

Mr. Speaker, Sir, I have personally not had the opportunity to be a Member of the previous committees and this will be an opportunity for me and others who have not previously had the opportunity to interrogate to do so.

The county assemblies are doing a nice job. By the time matters come to this stage, these things should be taken seriously. Of course, there are benefits to go the committee way and there are also the difficulties that we may experience when we go to Plenary; the rules of the House must be such that Members are allowed to interrogate fully without being constrained by the regulations as on the time to speak, how many questions to ask and how many times you can interrogate. I hope that we shall do it if it was to be done in a manner that operates like the Committee of the Whole so that---

**Sen. Njoroge:** Mr. Speaker, Sir, I also want to join my colleagues in opposing this Motion. When I saw on television some Members of the National Assembly storming the office of the Governor of Nyeri County, it became clear to me why they denied the Senate Kshs1 billion for oversight role. To me, they wanted to play that role without involving us.

I believe some of my good friends who stormed that office will live to regret their actions. This is because the matter which they interfered with was already under investigation and had been forwarded to the Senate. I wonder what will happen if what Governor Gachagua claimed is true; that they took with them some vital documents which he intended to use to defend himself before the Senate. The manner in which they stormed that office was more of harassment and very un-procedural than their grievances. I wonder whether they did the right thing or they would have waited for the Governor to have an opportunity to defend himself before this Senate. I believe until he is proven guilty---

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

**Sen. Omondi:** Thank you, Mr. Speaker, Sir, for the opportunity. I want to oppose this Motion. I do not oppose the list of the Hon. Members here, but I am of the opinion that we use the plenary way so that we all get an opportunity to discuss the issues. If the allegations will be proven to be true, then I want to say that it is so unfortunate that this country is being taken to the dogs simply because---

**The Speaker** (Hon. Ethuro): Order, Senator! I was very clear on what you are going to contribute to. Do not anticipate debate.

**Sen. Omondi:** Mr. Speaker, Sir, I oppose and I support that we use the plenary way.

**Sen. (Eng.) Muriuki:** Thank you, Mr. Speaker, Sir, for giving me the opportunity to contribute on this important Motion.

From the onset, I join my colleagues to oppose this Motion. I was one of the Members who were in the impeachment trial for the Governor of Murang'a. After the whole thing was over, all manner of rumours came up and it was said that the Members were given envelopes. I heard about it later on though I thought we had done our work diligently. It is out of that that I sat down to draft the Bill which Sen. Kajwang has cited. In the course of drafting that Bill, the legal team that was helping me identified a challenge with the plenary which I support. If it is plenary, will we have the Speaker seated or will it be the Committee of the Whole with the Chair? I think this is an opportunity for us to test that system even as I look forward to the debate.

Thank you, Mr. Speaker, Sir. I oppose.

**Sen. Orengo:** Mr. Speaker, Sir, I stand under Standing Order No.98(1) to ask that the Mover be now called upon to reply. I wanted to speak, but given what is coming from the Floor, the case has already been concluded. Would I be in order to ask that the Mover be called upon to reply?

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

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move.

**The Speaker** (Hon. Ethuro): Hon. Senators, we will now go to Division. The Division Bell will be rung for one minute.

*(The Division Bell was rung)*

**The Speaker** (Hon. Ethuro): Order, Senators! The one minute has elapsed. I direct that the doors be closed and the Bar drawn.

*(The doors were closed and the Bar drawn)*

Before I pronounce myself on the question before us, I would like to refer you to Standing Order 72; voting on a matter other than a Bill. It states:-

- (1) "When the Senate is to vote on any matter other than a Bill, the Speaker shall rule on whether the matter affects or does not affect counties.
- (2) The Speaker's ruling under paragraph (1) shall be made after conclusion of the debate on the matter but before the question is put.
- (3) When the Senate votes on a matter that does not affect counties, each Senator has one vote."

I wish to declare that this is a matter affecting counties. The position of a governor is very important in terms of devolved governance. More importantly, it affects the people of Nyeri and must be voted as a matter affecting counties.

Let me also advise that when we were preparing the Order Paper, there was an issue of whether or not it should be Plenary. The most important thing is that once the Motion to form a committee is defeated, the default position is plenary.

You may now commence voting.

*(The Senators proceeded to vote)*

**Sen. Sang:** On a point of Order, Mr. Speaker, Sir. We have had many Bills in this House. We have always voted 'Yes' in a number of Bills. Today, my intention was to vote otherwise, but I got confused and voted 'Yes'. I have been trying to change my vote to 'No.' Is it possible to change?

**The Speaker** (Hon. Ethuro): Order, Members. Points of order are not entertained during voting. All Members must be seated in their respective places. However, for whatever it is worth, Sen. Sang and all Senators indeed, know the value of voting. Voting has a defined timeframe. You cannot change your mind after the event.

## DIVISION

### ELECTRONIC VOTING

*(Question, that the Senate resolves to establish a Special Committee to investigate the proposed removal from office of the Governor of Nyeri County, put and the Senate proceeded to vote by County Delegations)*

**AYES:** Sen. Chiaba, Lamu County; Sen. Karaba, Kirinyaga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. Leshore, Samburu County; Sen. Melly, Nandi County Sen. (Eng.) Muriuki, Nyandarua County; and Sen. Wetangula, Bungoma County;.

**NOES:** Sen. Boy Juma Boy, Kwale County; Sen. Cheruiyot, Kericho County; Sen. M. Kajwang, Homa Bay County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Lesan, Bomet County; Sen. (Dr.) Machage, Migori County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Mutula Kilonzo Jr., Makueni County; Sen. Ndiema, Trans Nzoia County; Sen. Njoroge, Nakuru County; Sen. Obure, Kisii County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; and Sen. Wako, Busia County;

*(Loud consultations)*

*(Sen. Boy Juma Boy spoke off record)*

**The Speaker** (Hon. Ethuro): Order, Senators! Sen. Boy Juma Boy, that language is extremely strange to the Chair. Never try it even on a light moment. It is very serious.

*(Sen. Boy Juma Boy bowed to the Speaker)*

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

Ayes: 7

Noes: 18

Abstentions: Nil

The Motion has been negatived.

*(Question negatived by 18 votes to 7)*

*(Applause)*

Now, therefore, I will make a substantive ruling on the way forward tomorrow because this is new and unprecedented. However, I must express my satisfaction with the mood of the House. As your Speaker, my job is to listen to the mood of the House and ensure that it has been realised. I think that is what Sen. (Dr.) Khalwale called “the principle of the common sense”, which I know is not always common. I am extremely delighted that it has been common today.

On that basis, of course, the mood of the House also means that the Speaker reads it correctly and reads necessary documentation including the liberal interpretation of Standing Order No.1. More importantly, it will also require Members to be available to discharge the responsibility that they have given themselves this afternoon. That might require a commitment of your time the whole of next week. Just be forewarned. I will give the details tomorrow.

**Sen. Murkomen:** On a point of order, Mr. Speaker, Sir. I hope it only helps that because of the possible misconceptions out there about the defeat of the formation of the Committee, it must not be understood that it means that the Senate will not deal with the matter. There is a gap between now and tomorrow when you give a substantive procedure and so forth. It only helps members of the public who are unable to read the law or follow the procedure that instead of using a Committee, the Senate has just decided to use a different procedure.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I also join in appreciating the decision that has been made. Of course, I cannot celebrate the demise of my Motion but I am happy I am not alone. On this one, we have collapsed together with my brother. I think for the first time, we are leading from behind.

*(Laughter)*

**The Speaker** (Hon. Ethuro): Open the doors and draw the bars.

**The Senate Majority Leader** (Sen. (Prof.) Kindiki): For purposes of the record and what the public gets out of this, it should be clear that the decision by the Senate – in my view and that is why I need the guidance from the Chair – is by no means an indictment on the committee system of this House. We have used the committee system before in this process. I am happy that the various committees did a good job. I think it is only fair for us to say that this time round, we are trying to do this thing differently and it is within our rights as a House.

We should also appreciate that the committee option remains optional in appropriate cases in the future, where the House might think that a committee will still do a good job on this matter. In other words, each matter being considered on its on merit ---

**Sen. (Dr.) Khalwale:** On a point of order, Mr. Speaker, Sir. The Senate Majority Leader, in private and public, has been asserting the issues of high standards of democracy. He remembers that only recently, the Prime Minister of Great Britain, David Cameron, resigned as a result of resounding defeat. Could I invite the Senate Majority Leader to confirm to the House that in view of this resounding defeat, whether or not he still wishes to continue holding office?

*(Laughter)*

**The Speaker** (Hon. Ethuro): Order, Members! From where I sit, which is an exalted position, the Senate Majority Leader is absolutely under no obligation to respond to that. First and foremost, if we are going to make Members do certain things, then we will be killing democracy. The democratic credentials of a Parliament are such that the majority will have their way, the minority will have their say and the outcome is what is important. Nobody will be blamed for the outcome or failure of certain outcomes. That is my guidance.

Secondly, Sen. (Dr.) Khalwale did not come in good faith. Those who seek equity must be willing to do equity and come with clean hands. From my communication, this was a Joint Motion by the leadership of the entire House, both the Majority and the Minority sides. Therefore, for you to seek to expose one and not the other can only mean that you are not acting in good faith.

Sen. Wetangula, proceed.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, allow me to also appreciate the right of the House to decide in the manner that they deem fit like they have. I also defend the integrity and efficacy of the committee system. I always take pride in the fact that the late hon. (Dr.) Bonaya Godana, hon. Julius ole Sunkuli, hon. Henry Obwocha and myself are the fathers of the committee system in our parliamentary system. We will stand everywhere to defend the committee system.

Mr. Speaker, Sir, be that as it may, I encourage all the Members that the task ahead will demand that we sacrifice what is humanly possible to be present in the House when the Chair directs so. This will prevent any hitches. We do not want cameras of the national television to be beaming on empty seats when Members are supposed to be present discharging their responsibility to hear, for the first time in Plenary, an impeachment process.

Finally, on a light note, I expected only two votes on the yes page. However, since some Members have been synchronised and tuned to vote yes all the time, they erroneously voted yes. Some Members attempted to recant the votes only to realise that once you leap from the diving board, you must touch the water.

**Sen. sang:** Mr. Speaker, Sir, for avoidance of doubt, I voted “No”.

**The Speaker** (Hon. Ethuro): Order Sen. Sang. It was your confession.

*(Laughter)*

**Sen. sang:** Mr. Speaker, Sir, I later realised that the voting machines that are provided in the House allow a window to confirm the vote. When I confirmed my “No” vote, the system picked it. It can be confirmed from the print out.

**The Speaker** (Hon. Ethuro): Order Sen. Sang. Kindly clarify that the voting machines you are referring to are the equipment or the non-human factor.

*(Laughter)*

**Sen. sang:** Mr. Speaker, Sir, I confirm. I am on a point of order. Last week when Members of the National Assembly passed the various electoral laws, there was a wide misconception by members of the fourth estate that the Bills had been passed and that they were awaiting presidential assent.

Some of these misconceptions could be taken out of hand especially with regard to the vote that we have just taken this afternoon. Will I be in order to ask the Chair to make a brief Communication as to the impact of what we have done today? This being an important matter, the people of Nyeri County should understand that the process is still on.

**Sen. Orenge:** Mr. Speaker, Sir, I associate myself to what the leadership of the House has said about the passing of this Motion. In reference to the manner in which they have taken the results of the vote, it is mature and encouraging. The leadership of the House can bring a Motion and not necessarily expect the House to vote their way. This is the way forward because in Africa, it is difficult to vote like that. I hope in their ambitions out there, they can live with the results of the elections and not expect people to do things the way they say.

Finally, on the misconception issue, the discretion is with the Senate. It is the Senate that forms the committees. It was not another body but us who used the powers provided under the Constitution, the County Governments Act and the Standing Orders. When we decide not to form a Committee, it is also the discretion of the House. At the end of the day, whether by Plenary or Committee, the Senate should take the responsibility. Whereas I agree that this should be explained, it should never be lost on us that there is a discretion that we have. We should utilise it as we deem fit. Each circumstance should be seen in its own merits.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I wish it were contemporaneous with the response of Sen. Sang. It vindicated my assertion here. Where Sen. (Dr.) Khalwale, Sen. Khaniri, Sen. Wako and I come from, we have a common saying. Seven Senators voted yes yet I expected only two votes; mine and that of the Senate Majority Leader. I thought those others may have been driven by their synchronisation but none stood up except Sang. Sang. Where I come from, there is a saying that, when one is standing next to a pack of dogs and you lift your stick, the thief among them will bark and run away but the rest will remain.

*(Laughter)*

Mr. Speaker, Sir, that is on a light touch. This is to bring some humour to the House.

*(Sen. Murkomen stood up in his place)*

**The Speaker** (Hon. Ethuro): Order, Sen. Murkomen! Let the Senate Minority Leader conclude and I will allow you to give examples from where you come from. Sen. Murkomen, you do not come from where the Senate Minority Leader comes from. That is the simple reason.

*(Laughter)*

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, finally, I assure Sen. Khaniri that my confidence in him is past, present and future continuous.

**Sen. Wako:** Mr. Speaker, Sir, I just wanted to say what I did not say. I have confidence in all the Members who had been proposed to the Committee. However, it points to whether we really carry on board the leadership of the House and if we carry out adequate consultations before Committees are appointed. The person who moved this Motion is none other than my dear brother---

**The Speaker** (Hon. Ethuro): Order Sen. Wako! The burden on your part is greater than any individual in this House; that you should know better. You cannot impute an improper motive on another Member and more so the leadership of the House.

**Sen. Wako:** Mr. Speaker, Sir, I am not imputing any ill motive on Sen. Khaniri. I said the leadership of the House ought to have consulted a little bit more on this issue so that it would not have been necessary to have this Motion.

**The Speaker** (Hon. Ethuro): Order Sen. Wako! I have deliberately made it clear that this Motion is “two in one”; if I may borrow that expression. We considered all the possibilities and we felt it is easier to go the Select Committee way. If the Select Committee is approved we would have a Committee. If the Motion is defeated, then we have the option of the plenary. Do not introduce extraneous factors here.

**Sen. Wako:** Mr. Speaker, Sir, holy things are not a two-way traffic; they are normally in trinity. What is the third one?

*(Laughter)*

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, this matter presents a unique position. I am pleading with you to state in your Communication that we take this matter seriously as Senators. I have no doubt that you do not want to become a Judge, but plead that you agree to sit as the Chair of the Committee of the Whole for the ten days, so that the rest of the Senators can understand how serious this matter is. We can offer you the opportunity to be the high priest.

**The Speaker** (Hon. Ethuro): I have no intention to be the high priest even if you offered me, but I will deal with the other issues as you wish.

Sen. Murkomen, you wanted to raise an issue on the cultural customs of where you come from.

**Sen. Murkomen:** Mr. Speaker, Sir, my point of order is overtaken by events considering that the person I was raising the point of order against is already seated. However, for the record, if the Senate Minority Leader had heard, Sen. Sang expressed his wishes as he wanted to. For avoidance of doubt, he just wanted to raise the concern around voting; the possibility that the voting equipment that we use gives an opportunity to clarify and confirm his vote.

More importantly, the Communication regarding the plenary issue will fall within the rules that the Standing Orders allow. When you give your Communication tomorrow, we should be able to get all those issues. We cannot give you directions on that. Based on your comment, is it automatic that if this Motion fails, the other option falls automatically or would it require that we come up with a Motion stating ‘that the Senate considers the issue of Nyeri County in plenary,’ so that it is captured in your Communication? I am sorry that I did not consult the relevant section *per se*, but the Standing Orders state that the two options are available. The “Shikuku” of our time, Sen. Khaniri, has confirmed to me that it is in the Standing Orders.

**The Speaker** (Hon. Ethuro): Order, Members. I will, definitely, make a substantive ruling tomorrow. But just to give information- which I do not think is my job - because it is a matter of public interest. First, we will make a ruling on the way forward tomorrow. So, whoever is listening out there must know that the matter is not yet dispensed; they should not celebrate. More importantly, ignorance of the law is not an excuse. The law is clear that the Governor of Nyeri County is still the governor until this House determines so or otherwise; that is clear. For all of us who are committed to the rule of law, physical assault and battery should not be entertained in a civilized democracy.

I want the public to know that the Senate has today decided on the mode of prosecution. As to whether the prosecutor should be the select Committee, the Senate has said “no.” We have tried that before and it has its own merits and demerits. It is now an opportunity to try another method, which is prosecution by the Committee of the Whole. That is our position. This matter is now alive before the Senate. The Senate has not concluded it; it has only determined the way in which it will proceed with the matter. I will give a Communication tomorrow on the issues of timelines and the rest.

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

**The Speaker** (Hon. Ethuro): Order Members. We cannot exhaust everything here. There are many other things out there that will still need to be done.

#### ADJOURNMENT

**The Speaker** (Hon. Ethuro): Hon. Members, the Senate stands adjourned until tomorrow, Thursday, 8<sup>th</sup> September, 2016, at 10.00 a.m.

The Senate rose at 1.05 p.m.