



REPUBLIC OF KENYA

TWELFTH PARLIAMENT

THE SENATE

VOTES AND PROCEEDINGS – SPECIAL SITTING

WEDNESDAY, DECEMBER 16, 2020 AT 3:00 P.M.

1. The Senate resumed at Three O'clock.
2. **COMMUNICATION FROM THE CHAIR – RULING ON ISSUES RAISED BY PARTIES DURING RESPECTIVE OPENING STATEMENTS ON THE PROPOSED REMOVAL, BY IMPEACHMENT OF HON. MIKE MBUVI SONKO, GOVERNOR OF NAIROBI CITY COUNTY**

The Speaker conveyed the following Communication from the Chair-

**“Honourable Senators,**

In the course of the sitting before the lunch break, certain matters were raised in respect of which I undertook to make a ruling. The issues arose in the context of opening statements by the counsel for the County Assembly and counsel for the Governor.

For the County Assembly, they raised issues relating to their letter *Ref. No. NCCA/SPK/12/2020(4)* dated 14<sup>th</sup> December, 2020 in which they requested the Senate to summon eleven (11) witnesses to produce evidence and shed light on various matters relating to the charges against the Governor.

Similarly, the Counsel for the Governor in his opening statement put forward what was essentially a Preliminary Objection on how the impeachment process was undertaken by the County Assembly and secondly the Counsel alluded to the doctrine of *sub-judice* and that pursuant to Standing Order 98 of the Senate Standing Orders, the Senate should not proceed with this impeachment process.

**Honourable Senators,**

In regard to the issue raised by the County Assembly, I wish to confirm that their application is on record and already served on the Governor. Rule 19 of Part I of the Fifth Schedule to the Senate Standing Orders on the Rules of Procedure when considering the proposed removal in plenary provides that-

*“In presenting its evidence, the Assembly shall not introduce any new evidence that was not a part of the allegations against the Governor by the County Assembly as forwarded by the Speaker of the County Assembly to the Speaker of the Senate”.*

**Honourable Senators,**

Having perused the request which is on record, I will allow the County Assembly to summon not more than 3 other witnesses excluding the Governor and the Commissioner-General, Prison Service. I also wish to inform the County Assembly that they must canvass their case, including the additional 3 witnesses, within the allocated time of 4 hours today and further that the County Assembly shall not introduce any new evidence. Accordingly, I direct the Counsel for the County Assembly to liaise with the Office of the Clerk of the Senate for summons to issue to the 3 additional witnesses.

While the practicability of this may pose challenges, it should be noted that the hearing is for 2 days and this request must be made at the hearing.

**Honourable Senators,**

In respect of the Governor, the issues that were alluded to by way of the preliminary objection are also on record and they speak to alleged procedural impropriety/non-compliance of laws at the county assembly and live court proceedings in relation to matters before the Senate.

On the procedural and substantive questions raised, it is clear to me that these are matters requiring evidence in order to prove and for which the other side has an opportunity of rebuttal with evidence. The Senate can only make a fair determination having heard the evidence on both sides. This is the essence of this investigation. The investigation before the Senate is both in respect of procedural as well as substantive matters. To that extent and following precedence, it is clear to me, and I so rule, that pursuant to rule 29 of the Fifth Schedule to the Senate Standing Orders, any preliminary objection, both procedural and substantive should be properly subsumed in the evidence of either party and presented at the time allocated to that party.

On the objection based on *sub-judice*, it is important to note the following three things –

- (1) *Sub-judice* is a rule of the Senate itself, for its own convenience;
- (2) It is also a rule requiring evidence for it to be invoked; and
- (3) It is not an absolute rule, as standing order 98(5) of the Senate Standing Orders provides that, notwithstanding that standing order, the Speaker may allow reference to any matter before the Senate or a Committee and, following the precedents, it is quite clear that the competence and jurisdiction of the Senate to hear a proposed removal from office is a constitutional mandate of the Senate independent of the mandate of the Judiciary or any other organ.

From all the foregoing, I rule as follows-

1. The County Assembly lawyers liaise with the office of the Clerk of the Senate to summon a maximum of three witnesses excluding the Governor and the Commissioner General of the Prisons Service from the list presented to the Senate and served on the governor, which witnesses shall give evidence on matters already presented and served on the other party, and also to note that their evidence must stay within the hearing programme.
2. All objections raised in respect to procedural, legal or constitutional lapses at the county assembly and all matters relating to the jurisdiction of the Senate shall be urged and canvassed within the time allocated by each party and shall be considered by the Senate and determined together with the substantive issues of the merits of the matter.

**Honourable Senators,**

As per Rule 29 of the Fifth Schedule to the Senate Standing Orders, this ruling is final and we shall now proceed according to our hearing Programme.

I thank you.”

3. **EVIDENCE BY THE NAIROBI COUNTY ASSEMBLY ON THE PROPOSED REMOVAL, BY IMPEACHMENT, OF HON. MIKE MBUVI SONKO, GOVERNOR OF NAIROBI CITY COUNTY**

The Senate proceeded to hear evidence by the Nairobi City County Assembly. Whereupon the Senate heard evidence from the following witnesses under oath: -

- i.) Hon. Michael Ogada Okumu, MCA – Leader of Minority party;

- ii.) Ms Janet Muthoni Ouko - Former County Executive Committee Member for Education, Youth and Sports; and
- iii.) Ms Joyce Kinyanjui – Former Director Inter-governmental Relations, Nairobi City county government.

Thereupon, the respective witnesses were cross examined by Counsel for the Governor and subsequently re-examined by Counsel for the County Assembly.

And the business for the afternoon session having been concluded, the Deputy Speaker interrupted the proceedings and adjourned the Senate at fifty- five minutes past eight O'clock without Question put, pursuant to the Standing Orders.

- 4. **SENATE ROSE** – at fifty- five minutes past Eight O'clock.

**M E M O R A N D U M**

*The Speaker will take the Chair on  
Thursday, December 17, 2020 at 9.00 a.m.*

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