



**REPUBLIC OF KENYA
TWELFTH PARLIAMENT**

THE SENATE

VOTES AND PROCEEDINGS – SPECIAL SITTING

WEDNESDAY, DECEMBER 16, 2020 AT 9:00 A.M.

1. The Senate assembled at Nine O'clock.
2. The Proceedings were opened with Prayer said by the Speaker.
3. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications from the Chair-

(a) **DEMISE OF SEN. BONIFACE MUTINDA KABAKA, THE SENATOR FOR MACHAKOS COUNTY**

“Honourable Senators,

Today, we mourn the death of a colleague and friend, the Honorable Senator Boniface Mutinda Kabaka, MP, the Senator for Machakos County, which occurred on Friday, 11th December, 2020, while he was undergoing treatment at the Nairobi Hospital.

The late Senator Kabaka was indeed a great leader, an astute and articulate debater, a principled legislator and a distinguished man who passionately served not just the people of Machakos County, but Kenya in general.

Honourable Senators,

The Late Senator Kabaka was born on 1st January, 1966 in Kabaa, Mwala Location of Machakos County. His passion for academic excellence was evident at a very early stage in his life and demonstrated by the illustrious awards he received while pursuing degree programmes at the University of Nairobi. These include a Bachelor's degree in Law (1990), Diploma in Law from the Kenya School of Law (1992), Master of Business Administration (2009), Master of Laws (2009), Master of Arts in Diplomacy (2011) and a PhD (Doctor of Philosophy) in Finance Law, which the Senator was pursuing at the University of Nairobi from 2015.

Honorable Senators,

Sen. Kabaka was an advocate of the High Court of Kenya and Senior Partner at the Kabaka and Associates Advocates. He began his career in 1993 as a Legal Officer at the Kenya Railways Training Institute, rising to the position of Assistant Corporation Secretary, by the time he withdrew from the service in 2001, to start his own private legal practice. Owing to his love of education, the Senator worked as a part-time lecturer at the Catholic University of East Africa between 2010 and 2013, as well as consulting editor for the Lawyer Kenya Magazine.

The Senator served as legal consultant to the Governor of Machakos County between 2014 and 2017 and after vying for the position of Senator in the ensuing General Elections in 2017, he was elected to the Office of Senator for Machakos County.

Honourable Senators,

The Late Kabaka, relentlessly advocated for the needs of his constituents and actively participated in community projects aimed at improving the lives and livelihoods of the people of Machakos. He will be fondly remembered as a steadfast leader, an ardent defender of devolution and upholding the rule of law and constitutionalism, who put country before self, as witnessed during the deliberation on the third-generation revenue sharing formula which concluded just recently on 17th September, 2020.

In Committees, he served as the Vice-chairperson of the Sessional Committee on Delegated Legislation, a member of the Standing Committee on Agriculture, Livestock and Cooperatives and a Member of the Standing Committee on Devolution and Inter-governmental Relations.

Honourable Senators,

On behalf of all Senators and the staff of the Senate, and indeed on my own behalf, I wish to take this opportunity to condole with the family of the late Senator Boniface Mutinda Kabaka, MP, the people of Machakos County, and all his friends in this most difficult time. The Parliament of Kenya has indeed lost a diligent and visionary leader.

Honourable Senators,

In honour of our departed colleague, I request that we all stand and observe a minute of silence.

(Thereupon, Senators stood and observed a minute of silence)

May his soul rest in eternal peace.

I thank you.”

(b) **PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF NAIROBI CITY COUNTY**

“Honourable Senators,

Let me take this opportunity to welcome you back for this Special Sitting of the Senate. We shall, today, Wednesday, 9th December, 2020 and tomorrow, Thursday, 17th December, 2020, hold Special Sittings as per Gazette Notice No. 218 of 10th December, 2020, to investigate the matter of the proposed removal from office, by impeachment, of Honourable Mike Mbuvi Sonko, the Governor of Nairobi City County.

Honourable Senators,

You will recall that during the Special Sitting held on Tuesday, 8th December, 2020, I communicated to the Senate the resolution of the Nairobi City County Assembly made on Thursday, 3rd December, 2020 for the removal from office, by impeachment, of Honourable Mike Mbuvi Sonko, the Governor of Nairobi City County.

Pursuant to Section 33(3)(b) of the County Governments Act and Standing Order 75(1)(a) of the Senate, I also read the Charges against Honourable Mike Mbuvi Sonko, the Governor of Nairobi City County.

Honourable Senators,

In the Order Paper for that Special Sitting, a Notice of Motion and Motion for the establishment of a Special Committee to hear the charges against the Governor of Nairobi City County was listed pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 75(1)(b)(i). However, you will recall that during the Sitting, the Notice of Motion was withdrawn pursuant to Standing Order 56(1) and therefore the Motion could not be proceeded with. I therefore ruled that *“A resolution is required only if the Senate seeks to proceed by way of a Special Committee, otherwise the default is the plenary for which Standing Order 75 does not require a resolution. The Majority Leader, having withdrawn or otherwise abandoned the Notice of Motion and therefore the Motion, the route of committee is therefore abandoned and that now means that the Senate will investigate this matter in plenary.”*

Honourable Senators,

As is the tradition, we will hold a closed preparatory or briefing session to discuss the management of the investigation that will be held in plenary in the next two sitting days. This is aimed at ensuring that the investigation process is conducted seamlessly and timeously.

Consequently, immediately following this brief communication, I will direct that all members of the public including the media, to withdraw from the galleries and any form of broadcast from the Chamber will therefore cease. The open session and hearing will commence at 11.00 am, as per the programme appended to the Order Paper.

I thank you.”

Thereupon, the Senate proceeded to an *in-camera* session.

4. **BRIEFING ON THE PROGRAMME FOR THE HEARING AND DETERMINATION OF THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF NAIROBI CITY COUNTY**

Upon invitation by the Speaker, the Clerk of the Senate presented to the Senators the hearing programme for the proposed removal from office, by impeachment, of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County and the Rules of Procedure when considering the proposed removal in plenary.

Thereupon, the Senators deliberated on the programme and the Rules of Procedure.

5. **SUSPENSION OF THE PROCEEDINGS OF THE SENATE**

Upon conclusion of deliberations in camera, the Speaker suspended proceedings of the Senate at twenty-seven minutes past Ten O' Clock until Eleven O'clock.

6. **HOUSE RESUMED** – at Eleven O'clock (The Speaker in the Chair)

7. **SUSPENSION OF THE PROCEEDINGS OF THE SENATE**

Rising in his place on a Point of Order, the Senator for Makeni County (Sen. Mutula Kilonzo Junior) raised concern that the Senate was in violation of the COVID-19 protocols due to the numbers of people that were currently in the House;

Thereupon, the Speaker directed that Senators should comply with the laid down COVID-19 protocols and suspended the proceedings of the Senate for ten minutes to enable compliance.

8. **HOUSE RESUMED** – at forty minutes past Eleven O'clock (The Speaker in the Chair)

9. **COMMUNICATION FROM THE CHAIR ON THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HON. MIKE MBUVI SONKO, THE GOVERNOR OF NAIROBI CITY COUNTY ON THE MANDATE OF THE SENATE, RULES OF PROCEDURE AND HEARING PROGRAMME**

The Speaker conveyed the following Communication from the Chair-

“Honourable Senators, Ladies and Gentlemen, having dispensed with the Pre-Hearing meeting of Senators, which was a closed session, it is now time to commence the proceedings of the Proposed Removal from Office, by Impeachment, of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County.

Honourable Senators, Ladies and Gentlemen, by a letter, Ref: *NCCA/SPK/12/2020(1)*, dated 4th December, 2020 and received in the Office of the

Speaker of the Senate on Friday, 4th December, 2020, the Speaker of the Nairobi City County Assembly informed the Speaker of the Senate that at a sitting of the Nairobi City County Assembly held on Thursday, 3rd December, 2020, the Nairobi City County Assembly had approved a Motion for the removal from office, by impeachment, of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County.

The Speaker of the County Assembly also forwarded copies of the following documents —

- (a) the Order Paper of the Nairobi City County Assembly for the sitting of the County Assembly held on Thursday, 3rd December, 2020;
- (b) a Notice of Motion by Hon. Michael Okumu Ogada, MCA, dated 25th November, 2020 on the proposed removal from office, by impeachment, of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County;
- (c) a list of names and signatures of Members of the Nairobi City County Assembly in support of the removal from office, by impeachment, of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County; and
- (d) the Votes and Proceedings of the sitting of the Nairobi City County Assembly held on Thursday, 3rd December, 2020.

Pursuant to section 33(3)(a) of the County Governments Act, 2012 and standing order 75(1)(a) of the Senate Standing Orders, on Wednesday, 9th December, 2020, a Special Sitting of the Senate to hear the charges against the Governor of Nairobi City County was held.

Thereafter, on the request of the Senate Majority Leader and with the support of the requisite number of Senators, I appointed today, Wednesday, 16th and tomorrow Thursday, 17th December, 2020, as days for Special Sitzings of the Senate to investigate, in Plenary, the matter of the proposed removal from office, by impeachment, of Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County.

Honourable Senators, Ladies and Gentlemen, allow me to remind you of the mandate of the Senate in so far as it relates to the removal of a Governor from office as provided for under Article 181 of the Constitution as read together with section 33 of the County Governments Act, 2012 and standing order 75 of the Senate Standing Orders. In particular, Article 181 of the Constitution provides as follows—

- (1) A county governor may be removed from office on any of the following grounds—*
- (a) gross violation of the Constitution or any other law;*
 - (b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;*
 - (c) abuse of office or gross misconduct; or*
 - (d) physical or mental incapacity to perform the functions of office of county governor.*
- (2) Parliament shall enact legislation providing for the procedure of removal of a county governor on any of the grounds mentioned in clause (1).*

Section 33 of the County Governments Act, 2012, standing order 75 of the Senate Standing Orders and the Fifth Schedule to the Senate Standing Orders provide for the procedure to be followed in the hearing and determination of the proposed removal from office, by impeachment, of a Governor.

Honourable Senators, Ladies and Gentlemen, by way of a status update, pursuant to rules 4(a) and 6 of Part 1 of the Fifth Schedule to the Senate Standing Orders, the Senate invited the Governor to appear and be represented before the Senate during its investigation. The Senate further invited the Governor, if he chose to appear before the Senate, to file an answer to the Charges with the Office of the Clerk of the Senate by 4:00 pm on Tuesday, 15th December, 2020 setting out –

- (i) the Governor's response to the Particulars of Allegations;
- (ii) the mode of appearance before the Senate; whether in person, by advocate or in person and by advocate;
- (iii) the names and addresses of the persons to be called as witnesses, if any, and witness statements containing a summary of the evidence to be presented by such witnesses before the Senate; and
- (iv) any other evidence to be relied on.

Pursuant to rules 4(b) and 7 of Part 1 of the Fifth Schedule to the Senate Standing Orders, the Senate notified the County Assembly of the date for the commencement of the investigation and invited the County Assembly to designate Members of the County Assembly, being not more than three Members, if any, who shall appear before the Senate to represent the County Assembly during the investigation. The County Assembly was further invited, if it chose to appear before the Senate, to file with the Office of the Clerk of the Senate by 4:00 pm on Tuesday, 15th December, 2020, documentation –

- (i) designating the Members of the County Assembly, being not more than three Members, if any, who shall attend and represent the Assembly in the proceedings before the Senate;
- (ii) indicating the mode of appearance before the Senate; whether in person, by Advocate, or in person and by Advocate;
- (iii) indicating the names and addresses of the persons to be called as witnesses, if any, and witness statements containing a summary of the evidence to be presented by such witnesses before the Senate; and
- (iv) specifying any other evidence to be relied on.

Honourable Senators, Ladies and Gentlemen, on Tuesday, 15th December, 2020, the Office of the Clerk of the Senate received a response to the Invitation to Appear issued to the Governor from M/s J. Harrison Kinyanjui & Co. Advocates who indicated that the Governor had appointed the firm to represent him in the proceedings before the Senate and that the Governor would appear in person and by Advocates. To the response were attached various documents, including a Notice of Preliminary Objection.

The Office of the Clerk of the Senate also received a response to the Invitation to Appear issued to the Governor from M/s Nyamu & Nyamu Company Advocates setting out a response to the Particulars of Allegations and providing evidence to be relied on.

Honourable Senators, Ladies and Gentlemen, on Monday, 14th December, 2020 and Tuesday, 15th December, 2020, the Office of the Clerk of the Senate received a

response to the Invitation to Appear issued to the County Assembly from Hon. Benson Mutura, MCA, the Speaker, Nairobi City County Assembly, which provided-

- (a) the names of three members of the County Assembly designated to attend and represent the County Assembly in the proceedings before the Senate and also stated that the County Assembly would appear in person and by a team of Advocates led by Mr. Ndegwa Njiru, Mr. Duncan Okatch and Mr. Ashioya Biko Brian, to be assisted by four other Advocates;
- (b) a list of three witnesses;
- (c) a list of eleven persons whom the County Assembly requested the Senate to summon to appear; and
- (d) further evidence to be relied on.

Pursuant to Rule 8 of Part 1 of the Fifth Schedule to the Senate Standing Orders, on Tuesday, 15th December, 2020, the Clerk of the Senate furnished each party with the documentation filed by the other party.

Honourable Senators, Ladies and Gentlemen, the Hearing Programme which has been circulated, details the various activities in the hearing and determination of the matter and the time allocated to each activity. It will be crucial that all the parties comply with the time allocated. The parties will be notified of the balance of time on each activity through the Clerks at the Table.

In summary, the Programme states that today, Wednesday, 16th December, 2020, after we have dispensed with preliminary matters, the Charges against the Governor, as submitted by the County Assembly, shall be read to the Governor. This will be followed by an Opening Statement to be made on behalf of the County Assembly. Thereafter, an Opening Statement shall be made on behalf of the Governor. After the conclusion of the Opening Statements, the presentation of the case of the County Assembly shall commence and should take us up to the end of today's Sitting.

At the Sitting scheduled for tomorrow, Thursday, 17th December, 2020, the Governor will have an opportunity to present his case before the Senate. This will be followed by a Closing Statement on behalf of the County Assembly and a Closing Statement on behalf of the Governor.

The Senate shall then proceed to a Closed Session for deliberations prior to voting on each of the Charges. In accordance with section 33(7) of the County Governments Act, 2012 and standing order 75(6) of the Senate Standing Orders, the voting shall be by county delegations. The Governor shall cease to hold office if a majority of all county delegations of the Senate vote to uphold any impeachment charge. If, however, the vote in the Senate fails to result in the removal of the Governor, pursuant to standing order 75(7), the Speaker of the Senate shall notify the Speaker of the Nairobi City County Assembly accordingly.

Hon. Senators, Ladies and Gentlemen, this hearing is being conducted at a very challenging time when the Covid-19 pandemic is with us. As has been the practice in the sittings of the Senate since the start of the pandemic, the sittings shall be conducted in strict compliance with the Covid-19 guidelines issued by the Ministry

of Health and in various Communications from the Chair. I therefore implore you, Honourable Senators, ladies and gentleman, to observe and abide by the Covid-19 guidelines throughout the sittings. As I conclude, I would like to assure you all that the Senate is cognizant of the gravity of the matter with which it is seized and that it shall accord the parties a fair hearing.

Honourable Senators, Ladies and Gentlemen, I now invite Counsel for the Nairobi City County Assembly, to introduce the legal team of the County Assembly and the Members of the Nairobi City County Assembly representing the County Assembly, by stating the full name and designation of each person.”

Thereupon, Mr. Ndegwa Njiru introduced himself as Lead Counsel for the County Assembly of Nairobi City County, and proceeded to introduce the following: -

- i) Mr. Duncan Okatch – Advocate;
- ii) Mr. Brian Biko Ashioya – Advocate;
- iii) Mr. Kevin Kokebe – Advocate;
- iv) Mr. Benson Milimo – Advocate;
- v) Mr. Michael Sakwa Osundwa – Advocate; and
- vi) Mr. Ndegwa Mwangi – Advocate.

“I now similarly invite Counsel for the Governor to introduce the legal team representing the Governor and the Governor, by stating the full name and designation of each person.”

Thereupon, Mr. J. Harrison Kinyanjui introduced himself as Lead Counsel for the Governor, and proceeded to introduce the following: -

- i) Mr. Wilfred Nyamu – Advocate;
- ii) Mr. Kwanga Mboya – Advocate; and
- iii) Hon. Daniel Maanzo – Advocate.

“On behalf of the Senate, I welcome the County Assembly’s team, the Governor’s team, members of the public and the media to the Senate and to these proceedings.

I now invite the Clerk to read the Charges against Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County.

I thank you.”

10. **READING OF THE CHARGES ON THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HONOURABLE MIKE MBUVI SONKO, GOVERNOR OF NAIROBI CITY COUNTY**

The Speaker directed the Clerk to read to the Honourable Mike Mbuvi Sonko, the Governor of Nairobi City County, particulars of the allegations against him as presented by the County Assembly of Nairobi City.

Thereupon, pursuant to Rule 15 of the Rules of Procedure for the hearing and determination of the proposed removal from office by impeachment of a Governor

(Part 1), the Clerk proceeded to read out the particulars of the allegations, as follows:

-

1. Gross Violation Of The Constitution Or Any Other Law

(Gross violation of the Constitution; The County Governments Act, 2012; The Public Procurement and Disposal Act, 2015; and the Public Finance Management Act, 2012)

- (a) The Governor of the Nairobi City County has violated Articles 201 (a), (d), (e) of the Constitution of Kenya on principles of public finance management and Section 154 of the Public Finance Management Act, 2012, the County Allocation of Revenue Act, 2015 on the use of conditional grants from the National Government, by the diversion or negligently causing to be diverted Conditional Funds, for instance in the use of the road levy and bursary funds to pay for garbage collection contractors and lawyers, contrary to Bursary fund regulations and the approved budget. While the Governor requested Kshs 297 million for Bursary from the Controller of Budget, these funds were illegally used to pay garbage contractors and lawyers.
- (b) The Governor of the Nairobi City County has violated Article 10, Article 201 (b) and (d) of the Constitution by failing, refusing and/or neglecting to comply with the provisions of Regulation 20 of the Public Finance Management (County Governments) Regulations, 2015, which failure, refusal and/or negligence has compromised the provision of services envisioned under Part II of the 4th Schedule to the Constitution 2010, *inter alia* most crucial provision of health services during the raging pandemic;
- (c) The Governor of the Nairobi City County has violated has violated Article 187(2)(a) of the Constitution and Article 5.2 of the Deed of Transfer, by his continued willful refusal to execute the statutory warrants essential to the release of funds from the County Revenue Fund, which has grounded the provision of services of not only the county executive, but of the Nairobi Metropolitan Service (NMS) and its exercise of the transferred functions. This action violates the provisions of Article 187(2)(a) of the Constitution and Article 5.2 of the Deed of Transfer, whence the County Assembly duly adopted the Budget for the Financial Year 2020/2021 and enacted the Nairobi City County Appropriations Bill, 2020.
- (d) The Governor has violated the provisions of Article 183 of the Constitution as read together with Standing Order number 193 and Section 123 of the Public Finance Management Act, 2012 by undermining the authority of the County Assembly, whence the Governor has refused and or failed to implement resolutions of the County Assembly or forward a report detailing his inability to do so in line with Article 183 of the Constitution as read together with Standing Order number 193, with respect to County public debt and debt management under the provisions of Section 123 of the Public Finance Management Act, 2012. Failure of which the County has been unable to control and manage County Public debt. The result is unmitigated accrual of debt which has ballooned the County's overall debt to unmanageable levels, rising from Kshs 56 billion when he assumed office in 2017 to Kshs Sh76.794 billion as at 31st

December 2019 hence further violating the provisions of Article 201 of the Constitution.

- (e) The Governor has violated *Article 227(1)* of the Constitution on procurement of goods and services as read together with provisions of the Public Procurement and Disposal Act, 2015 by flouting the principles of public finance management in as far as public procurement of goods and services is concerned, where the Public Procurement Regulatory Authority (PPRA) faulted the procurement process for the construction of the Dandora Stadium. The authority flagged irregularities in the awarding of the tender, alteration of contract specifications, suspected irregular payments and forgery of documents. Despite technical evaluators questioning the quality of work, the PPRA indicted the county government for paying KSh196.87 million to the contractor.
- (f) The Governor violated Section 35(4) and Section 45(1) of the County Governments Act, 2012 as read together with Section 104 and Section 148 of the PFMA whence between 2018 and early 2019, and contrary to the law, the Office of the County Executive Committee Member for Finance and that of the Chief Officer for Finance were held by the same person, one Ms. Winfred Gathagu, which situation occasioned confusion and inefficiencies at the County Treasury, hence failing to promote good governance, and compromising the doctrine of transparency and accountability within the County Government.
- (g) The Governor has violated the provisions of Section 104 of the PFMA on the *Responsibilities and Powers of a County Treasury*, whence through inaction, action, omissions and commissions he continues to preside over a broken Public Finance Management System, whence the County Treasury remains ineffective. Despite various resolutions of the County Assembly urging the Governor to improve efficiencies by decentralizing the finance function to sectors as required by the provisions of Section 148 of the Public Finance Management Act, 2012, the County continues to operate in contravention of the law.
- (h) The Governor has violated the provisions of Article 5.5 of the Deed of Transfer of Functions, by his refusal to hand over the necessary documentation to enable Kenya Revenue Authority (KRA) to undertake optimal revenue collection under the Transferred functions. For instance, by the end of June 2020, the County had collected just about Kshs. 8.4 billion, against a projected revenue target of Kshs 17.05 billion, which was partly due to failure by the County Government to facilitate the KRA to hit its optimal potential as the revenue collection agent appointed pursuant to the Deed of Transfer of functions.
- (i) The Governor grossly violated Article 201 of the Constitution on the prudent use of financial resources and Section 159 of the Public Finance Management Act, 2012 as read together with Section 7 of the Nairobi City County Tax Waivers Administration Act, 2013 by unilaterally and arbitrarily issuing waivers in total disregard of the law. The Governor was aware that the law provides that waivers should be granted by the CECM for Finance.
- (j) The Governor has violated the provisions of *Articles 201(d)* of the Constitution on principles that guide all aspects of public finance in the Republic, and *227(1)*

on Procurement of public goods and services, and the provisions of the Public Procurement and Disposal Act, 2015 by willfully interfering in the award of the tender for the construction of the Dandora Stadium as established by the PPRB, leading to loss of public funds in overseeing payments despite concerns by technical officers.

- (k) The Governor has violated the provisions of *Articles 201* of the Constitution and the Public Finance Management Act, 2012 on principles that guide all aspects of prudent use of public finance where either intentionally or negligently he presided over massive loss and theft of County public funds in the three years he has been office, as evidenced by the Auditor General's Report of 2018/2019, which raised the red flag over city's stalled Sh204.2 million projects, as well as failure by the county government to meet its revenue targets.
- (l) The Governor has violated the provisions of Article 5 of the Deed of Transfer of functions by sabotaging the transfer of functions. The Governor is yet to provide NMS with crucial information necessary in aiding the carrying out of the transferred functions. For instance, failure to facilitate NMS with data on ongoing projects, pending bills and staff payroll details on transferred functions has greatly derailed the performance of these functions to the detriment of the public good.

2. Abuse of Office

- (a) The Governor has abused his office by Violating Article 75 of the Constitution as read together with Section 11 and 13 of the Leadership and Integrity Act, 2012, on the conduct of State officers, where the Governor has persistently intimidated, harassed and molested officers of the County Executive, including blackmailing his County Executive Committee Members and Chief Officers with one-year contracts, whose renewal he has undertaken arbitrarily, leaving the Officers jittery about their employment and creating a climate of fear, uncertainty and despondence. For instance, in May 2019, the Governor failed to renew the contracts of all twenty-three

(23) Chief Officers, instead directing they hand over to Directors, greatly affecting the continuity of service delivery and accountability in the County.

- (b) The Governor has abused his office by violating Article 75 of the Constitution as read together with Section 16 of the Leadership and Integrity Act, 2012 by unlawfully using public funds to pay for his daughter's travel to New York, USA, to allegedly attend the County First Lady's Conference, held during the 62nd Session of the Commission on the Status of Women 2018.

3. Gross misconduct

- (a) The Governor has violated Article 73 of the Constitution by failing to promote public confidence in the integrity in the office of the governor following his being charged before the Anti-corruption court, thus prejudicing and or compromising the social contract and trust bestowed upon him by the people of Nairobi by virtue of Article 1 of the Constitution.

As a consequence, therefor, the governor has been barred from accessing his office vide a Court order and thus incapable of performing his functions under Section 30 of the County Governments Act, 2012.

- (b) The Governor has violated Article 73 of the Constitution and Section 8 and 11 on the Leadership and Integrity Act, 2012 on public trust and professionalism, where he is on record admitting that he was intoxicated and thus not in the right frame of mind when he signed the Deed of Transfer for the transfer of certain functions of the county to the national government in February, 2020. In his own words, "*Hawa watu wa State House waliniconfuse na pombe kwanza by the time I was meeting the President for the signing I was just seeing zigzag.*" This allegation of impropriety on the part of State House imputes improper motive on the Office of the President, and brings disrepute, ridicule, hatred and contempt to the Office of the President and of the Governor.
- (c) The Governor has violated Article 73 of the Constitution and the Leadership and Integrity Act, 2012 on the *responsibilities of leadership*, by failing to professionally perform his Constitutionally sanctioned duties owing to his constant absence from office, even before he was formally restrained by the Courts from accessing his Office due to corruption charges, whence the Governor remained constantly unreachable in person or on his phone for inordinately longer periods of time, to the huge detriment of the performance of the functions of the County Executive. Indeed, the governor purported to execute the functions of the County government from his home in Mua hills, Machakos County.
- (d) The Governor has violated *Article 75(1)(c)* of the Constitution as read together with Section 11 of the Leadership and Integrity Act, 2012 in respect of conduct of State Officers by drawing a salary and hefty allowances and enjoying the privileges of the Office he holds, while failing to diligently report to work and being perennially absent, even before he was formally restrained by the Courts from accessing his Office due to corruption charges.
- (e) The Governor has violated Section 8 of the Leadership and Integrity Act, 2012 on *Public Trust*, where he has constantly used his position to abuse public trust in the County Government, by exercising the powers of his Office in a manner detrimental to prudent public service delivery, by persistent use of divisive and unbecoming language which undermines the Office he holds and the County administration.
- (f) The Governor has violated *Articles 73 and 75* of the Constitution on conduct of State Officers that is demeaning to the offices they hold and Section 11 of the Leadership and Integrity Act, 2012 by persistently and willfully using, publicizing and publishing abusive and unbecoming words and language, as evidenced by his social media posts and numerous rants, in which he has hurled abuses and conducted himself in a manner that undermines and demeans the Office of the Governor.

4. Crimes under National Law

There are serious reasons to believe that the Governor has committed crimes under National law, specifically the Anti-Corruption and Economic Crimes Act, which crimes he has been charged for in the Anti-corruption Court.

Honourable Senators, that marks the end of the recital of the charges.

I thank you.’

Thereupon, the Governor pleaded ‘Not Guilty’ to the charges.

11. **HEARING AND DETERMINATION OF THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HONOURABLE MIKE MBUVI SONKO, THE GOVERNOR OF NAIROBI CITY COUNTY**

Pursuant to the Standing Orders, the Speaker invited the parties to make their opening statements for not more than thirty minutes each;

Thereupon, the opening statement on behalf of the County Assembly of Nairobi was made by Counsel on record;

Subsequently, the opening statement on behalf of the Governor was made by the Counsel on record;

12. **RULING ON APPLICATIONS MADE DURING THE OPENING STATEMENTS MADE BY BOTH THE COUNTY ASSEMBLY AND THE GOVERNOR ON CERTAIN APPLICATIONS**

“Honourable Senators,

In the course of their opening statements both the County Assembly and the Governor have made certain applications.

In respect of the County Assembly, an application has been made requesting the Senate to issue summons for eleven named individuals to appear before the Senate. That application was made vide a letter dated 14th December, 2020 but which could only be canvassed in the first instance before the Senate after the commencement of this hearing today. The letter in issue appears at serial number 8 in the documents before the Senate.

On behalf of the Governor, an objection has been raised on a preliminary basis that certain requirements precedent to the process of impeachment at the County Assembly were not met and that pursuant to *rule 19 of Part I of the 5th Schedule* of the Standing Orders bars us from proceeding.

Honourable Senators, rule 29 of the rules of procedure for this hearing in plenary provides as follows and I quote-

“Where on a particular question or matter including but not limited to questions of evidence, materiality, relevancy, competency or admissibility of evidence and any questions consequential or incidental thereto, no provision has been made in the

Standing Orders or in these Rules, the Speaker of the Senate shall rule on the question or matter and the ruling of the Speaker shall be final.”

Honourable Senators, pursuant to Rule 29, I will make my determination on the applications made when the Senate resumes after the lunch break.

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

13. **SENATE ROSE** – at five minutes past One O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Wednesday, December 16, 2020 at 2.15 p.m.*

--x--