

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 17th December, 2020

Special Sitting

*(Convened via Kenya Gazette Notice
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*The House met at the Senate Chamber,
Parliament Buildings, at 2.05 p.m.*

[The Speaker (Hon. Lusaka) in the Chair]

PRAYER

HEARING AND DETERMINATION OF THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF NAIROBI CITY COUNTY

The Speaker (Hon. Lusaka): Hon. Senators and our two parties, welcome back to the afternoon session. The governor's team was on the Floor. Like I mentioned before we went for lunch, you have one hour and fifty minutes to proceed.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): During this last session of the proceedings, we are humbly guided by your guidance as to the question of the remaining period of one hour and fifty minutes.

We only seek two clarifications. One, whether the one hour and fifty minutes includes the county assembly's cross-examination period. Two, during yesterday's proceedings, the key witness who was the Mover of the Motion was cross-examined for two hours and ten minutes by the defence. Therefore, we seek guidance whether we shall also be accorded equal time. The reason being that the witness testifying at the moment, is regarded, in normal circumstances, as the accused safe for the precincts of this hon. House. So, we want to have plenty time with him.

This means that the time that he spends in his re-examination-in-chief be accorded to the same time we spend with him. However, we are conscious that the House needs to break to make its determination.

Much obliged.

The Speaker (Hon. Lusaka): In the meantime, the one hour and fifty minutes will include cross-examination. However, I will come back later in the course of our deliberations to give a final ruling on that.

Let us proceed.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, the governor is out here and is coming. I beg for your indulgence for a minute I confirm. We left for the Chamber together. I do not know what might have happened.

The Speaker (Hon. Lusaka): That is okay.

Sen. M. Kajwang': Mr. Speaker, Sir, we are one hour, fifteen minutes behind schedule. This means that it is inevitable that today's sitting will end anytime earlier than 8.00 p.m.

Mr. Speaker, Sir, would it be in order to seek your indulgence that the one hour fifty minutes that is pending for presentation of evidence and prosecution of the case by the executive start counting at 2.00 p.m. when you took that seat. This is because the delay cannot be off-loaded on the Senate when we were here on time. That kind of ruling will also cause the executive to hasten. We cannot sit and wait here for 15 minutes.

Sen. Murkomen: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): What is your point of order, Sen. Murkomen?

Sen. Murkomen: Mr. Speaker, Sir, I do not agree with Sen. M. Kajwang'. We can sit up to midnight and it will not be the first day to do so. However, most importantly, yesterday we delayed for 45 minutes and the parties indulged us. So, there is no need to go that direction. Considering that it is only 15 minutes, we should not waste wait more time. Let us proceed.

The Speaker (Hon. Lusaka): Hon. Senators are being cautious. His Excellency the Governor for Nairobi City County was a deputy chief whip in the Senate. So, he knows what it means to keep time. So, I welcome him back and proceed.

PRESENTATION OF THE CASE OF THE
NAIROBI CITY COUNTY GOVERNOR

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Thank you, Mr. Speaker, Sir.

By the time we went for lunch there was a clip that was to be played by the ICT team. It was in the public domain and it confirms the unearthing of this bursary scandal. I remind the ICT team to play it.

(A video clip was played)

On page 234, there is a statement for Kobudho Education Centre where Members of County Assembly (MCAs) used to take their cheques and withdraw the proceeds in cash. For example, on page 234, this does not only affect the Nairobi City County, but even the Constituencies Development Funds (CDF) in various constituencies in Nairobi are also victims of this scandal.

As you can see, transaction No.1, this is a cheque that was transacted on 30th June, 2016. It is a cheque from Lang'ata Constituency Development Fund of Kshs56,000, which was credited and on the same day, the same was withdrawn in cash, Kshs54,000, at Karen Branch.

In the interest of time, I will not explain the entire statement because it is self-explanatory, but I will take you to the transactions in the same page for 2016 before I took over as the Governor, the same scandal was on-going. Page 235 reflects the cash deposits from the Nairobi City County bursary fund, withdrawn in cash from Karen Branch, transaction No.4 from the top of page 235. You will find that there is a cheque that was deposited then there is cash withdrawal. I just want to focus on Nairobi City County Government alone.

If we move on to pages 236 and 237, there are the same transactions. A good example is on page 234. I was not the governor then, but the same scenario is witnessed here. For instance, the first transaction of the 17th June, 2017, another cheque from the Nairobi City County Government of Kshs25,000 was deposited in the Kobudho account. The second transaction, another cheque of Kshs25,000 was deposited. In the fourth transaction, there was a cash withdrawal from the Cooperative Bank of Kenya of Kshs125,000, monies meant for poor students withdrawn in cash by proxies for MCAs.

Mr. Speaker, Sir, the scandal did not stop there. My first month in office on page 238, transaction No.1; you can see it there, cheque from Nairobi City County Government of Kshs25,000 deposited to this fake school. There are so many transactions of Kshs25,000.

I want to refer the House to the third last transaction on page 238. On the 6th September, 2017, my first month in office, all these cheques that were deposited as you can see, page 238 from the top to the bottom, in the fourth last transaction, this money was withdrawn in cash by Mr. Job Omondi. I think that he is the Personal Assistant (PA) to the MCA for Karen. He withdrew Kshs449,000 in cash. The following day, he went to a different branch, Cargo Branch and withdrew another Kshs25,000. The statements are self-explanatory.

Let us move on to page 241, again, cheques from Nairobi City County Government, transaction No.1 of 19th September, 2017. You can see the trend. Various cheques from the Nairobi City County Government were deposited in favor of this fake street school and fake account opened by MCAs. You can see that there are several transactions there of Kshs25,000. The same PA to the MCA withdrew the money in cash, Kshs900,000 on 21st September, 2017.

On page 243, the various cheques which the Mover was complaining about, the ones I refused to release, there is a cheque in favor of Kobudho Education Centre of Cooperative Bank, City Hall Branch amounting to Kshs25,000. However, the reason I refused to release any further cheques is because the cheque was dated 26th April, 2017 and it was deposited on 9th September, 2018. They were forging and back-dating these cheques.

The Counsel for the Nairobi City County Governor (Mr. Winfred Nyamu): Your Excellency, you have shown the House various transactions, deposits and withdrawals. Would you say by any means that you have failed to disburse bursaries?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir. At this juncture, there were numerous complaints from parents from various wards that their cheques were issued, but they were not released to the various schools countywide. So, what the Mover did not tell us is the reason why I refused to release the cheques. This was one of the major reasons. The matter was subject to investigations We engaged the Director of Criminal Investigations (DCI) and the Banking Fraud Department and the truth was finally revealed.

The Counsel for the Nairobi City County Governor (Mr. Winfred Nyamu): I will take you to the second clip of the charge of gross violation of the Constitution and the law. It is the Mover's allegation that you, as the Governor of Nairobi City County, have violated Article 10.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, after unearthing this scandal and all the suspects were arraigned in court, we came up with a new law. This is one of the documents that we have been refused to Table and I will just mention it for purposes of the HANSARD. We came up with the Public Finance Management (Nairobi City County Bursary and Scholarship Fund Regulation). I will just mention it, not table.

The Speaker (Hon. Lusaka): There is an intervention.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, we have an objection on the document that the witness is relying on. We do not have the advantage of service of that particular document. So, we have no ability of leading evidence in rebut of it. We highly object with the witness relying on the documents not before this tribunal.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir---

The Speaker (Hon. Lusaka): There is an intervention from one of your counsel.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): We allowed them to refer to communications and documents from their mobile phones. When I rose to object, the response was, raise that in your cross.

Secondly, they served us late with their documents and we are entitled to call a public document because this is in their County Assembly, with respect.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, further, it is common knowledge that each person is expected to know the law. That is a statute; it is not just any other document. The witness is making reference to a statute and that goes to the benefit of everybody, including this House. This indicated that it is one of the documents that we could not produce, but it is the law. The law ought to be placed in public and law can always be cited.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, as long as it is an enacted law, we have no problem. However, we have seen them relying on Bills, which are still pending before these Houses.

Let us be led to the law that the witness is relying on. We will be much obliged to reply as and when our time comes. As long as it is a law that is duly enacted, we have no problem.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, that is a sideshow. We have already made our point that it is a law.

The Speaker (Hon. Lusaka): It is a law. We will look at it later. Proceed.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, the Public Finance Management (Nairobi City County Bursaries and Scholarship Fund) Regulation, Section 10 and 11 states that-

- (a) The Executive Committee shall thereafter issue the necessary bank instructions that shall cause the lump sum payments to be effected by the paying bank to the relevant bank accounts of the beneficiary institutions of learning as prepared by the various County committees.”

This is where the problems between me and the MCAs started.

(b) The relevant details of the successful applicants shall be communicated to the paying bank by the Executive Committee while issuing instructions for payments.”

These are the precautions we raised after discovering that we were losing a lot of money through the release of cheques directly to MCAs.

Mr. Speaker, Sir, the last one; Section 11 says-

“The Executive Committee shall cause preparation of the bursary voucher bearing the following details-

(a) Full name of the institution;

(b) Full name of the students;

(c) Admission number of the students; and,

(d) The bursary amount to be disbursed in favor of the beneficiary students to schools.

These were just measures to curb the misappropriation of funds by MCAs.

Again, I will refer to the statements, which we are not producing because of your Ruling. However, in this statement, we remitted funds to all the schools and all the beneficiary students by Real-Time Gross Settlement (RTGS)---

The Speaker (Hon. Lusaka): What are you referring to? We did not admit it.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, we have 80 copies of each, but the problem is that the officers brought at night.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Let him identify the document for purposes of identification.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, you disallowed us to--- We have the law.

The Speaker (Hon. Lusaka): The law is okay, but if we did not allow---

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): This is a certified statement from the Cooperative Bank of Kenya. We have 80 copies. If we are allowed, we can supply to each and every Senator. Based on your Ruling, we were not able to supply this, but we have them here, certified with today's date.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): In relation to that document, I would request that this House, being a House that deals with matters touching on the county governments have that document for its information at some point, even if it is not going to relate the same to the impeachment proceedings.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): In addition, Mr. Speaker, Sir, even the Mover himself---

(Counsel was consulting)

The Speaker (Hon. Lusaka): Counsel, take your seat. That is what we are discouraging, crossing over.

Proceed, Governor.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, the Mover may hold sideshows to divert attention from this serious issue. All beneficiaries of this bursary fund were from his ward until we unearthed the scandal. We did investigations with the help of the banks and it was found that all the students from his ward benefitted. We have the list of beneficiaries in the witness statement.

The Speaker (Hon. Lusaka): Okay, but we have not admitted it, yet.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, this is for the Hansard purposes.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Your Excellency, I had referred you to the second charge on gross violation of the Constitution and any other law. That is 1(b), where it is alleged that as the Governor of Nairobi City County, you have violated Article 10, 201(b) and (d) of the Constitution by failing and refusing, neglecting to comply with the provisions of Regulation 20 of the Public Finance Management County Governments Regulations 2015.

The failure, refusal and all negligence has compromised the provision of services envisaged under Part Two of the Fourth Schedule of the Constitution inter-alia, most crucial, provision of health services during the raging pandemic.

I would request that you answer the same together with (c) where it is alleged that as Governor of Nairobi City County, you have violated Article 187(2)(a) of the Constitution and Article 5.2 of the deed of transfer by your continued willful refusal to execute the statutory warrants essential for the release of funds from the County Revenue Fund (CRF) which has grounded the provision of services, not only in the County Executive, but of the Nairobi Metropolitan Services (NMS). What do you say?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Chair, these are just sideshows. Pursuant to Article 96 of the Constitution, we appeared before the Senate Committee on Health chaired by Sen. (Dr.) Mbito of Trans-Nzoia County a couple of weeks ago. There was a stalemate on the release of funds.

Mr. Chair, Sir, I would like to refer this honourable House to affidavit marked 10(e) on page 106. There is a letter that the Cabinet Secretary for National Treasury, Hon. Ukur Yatani, wrote to NMS's General Badi and copied to us. The letter is confirming that there was no legal framework for Treasury or the City County Government, to disburse funds to NMS.

Mr. Chair, we are being impeached because we are obeying the law and the Constitution. These people want us to break the law just the way it happened during the Medical Equipment Services (MES) scandal in the Ministry of Health. From our allocations, we were forced to release money directly to the national Government. The money was used to purchase health equipment, some of which were never supplied to counties. In that report, this Senate recommended that some senior officers in Government – CSs and Principal Secretaries (PSs) – should be charged.

I would like to refer the House to page 106 of affidavit no.10.

Sen. Khaniri: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): There is an intervention by Sen. Khaniri.

Sen. Khaniri: Mr. Speaker, Sir, I hate to interrupt the Governor, but I expect the Governor, having been a Member of this House, to know how to address the Chair. He has kept referring to you as “Mr. Chair” and I think that is wrong. The Governor knows the rules of this House. This is the Speaker and not the Chair. So, we must have our records correct.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I apologise for that, Mr. Chair.

(Laughter)

Mr. Speaker, Sir. I thought this is a Committee of the Whole.

The Speaker (Hon. Lusaka): You are apologizing, but you are repeating the same mistake.

Counsel, we are trying to manage time so, try to guide the Governor so that we are able to cover as much ground as possible.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, I am guided. You referred to a letter in a document marked 10(e) from the CS, National Treasury.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, Mr. Speaker, Sir, and hon. Members. Before this letter, there was an---

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): What is the date of that letter?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The letter is dated 30th November, 2020 after my impeachment Motion in the City County Assembly. One of the grounds for my impeachment was that I refused---

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Who is the author of that letter?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, the author of the letter is the CS, National Treasury.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): What is the letter about?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, the letter, which we received on 4th December, 2020 still after my impeachment by the City County Assembly, is addressed to me and Major General Badi, Director, NMS. The reference is “Framework for Financing Transferred Functions.”

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): What does the letter entail?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, in brief and in the essence of time, the CS for National Treasury is admitting that the Attorney-General and his office have now come up with a legal framework and are now advising me to release funds to NMS.

(Loud consultations)

The Speaker (Hon. Lusaka): There is an intervention by Sen. Mutula Kilonzo Jnr. Let us consult in low tones.

Sen. Mutula Kilonzo Jnr.: On a point of order, Mr. Speaker, Sir! Could you clarify because that letter is not in 10(e), Mr. Nyamu.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): It is 10(e).

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, it is in 10(e). I apologise because I think the affidavit is not paginated.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, unfortunately, the document is not paginated and we apologise for that. However, the letter is---

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, count to 10 from the last page and you will find the letter.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, my learned friend is showing me that his is paginated and it is page 106 of the bundle marked 10(e).

What do you say in relation to that letter? Did you have a legal framework as at 26th November, 2020 when the Motion was initiated?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker and Hon. Members. There is another letter which we were also stopped from producing. The CS was telling the Director of NMS not to release any funds. However, in this letter dated 30th November, 2020 and received on 4th December, 2020 after my impeachment Motion, the National Treasury is advising us to release the funds to NMS because they have now come up with legal framework for the release of money which is still contrary to Article 219 of the Constitution.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Now, on the matter touching on execution of warrants to pave way for release of funds for the operations of the Nairobi Metropolitan Services (NMS), were there any hiccups or disputes?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, Mr. Speaker, Sir. There were so many hiccups and disputes. Everybody supporting NMS is always talking about Article 187 1 (a). They are not focusing towards the end of this Article which talks about that transfer of functions. I will read Article 187 2 (b).

In my accusations, in number (b) I am being accused for defying Article 187 1 (a). I am aware that article 187 (1) (a) talks about the functions to be transferred and the funds to be allocated to these functions.

Mr. Speaker, Sir, towards the end of the same Article 187 (2) (b) states that-

“Constitutional responsibility for the performance of the functions or exercise of the power shall remain with the government to which it is assigned by the First Schedule.”

Mr. Speaker, Sir, there were so many illegalities which were being committed by NMS and senior officials at the National Treasury. A very good example is that this was not the first budget. There was a budget of Kshs7 billion which I rejected because I believe in the rule of law. I respect the Constitution.

Mr. Speaker, Sir, a couple of months ago, they brought a similar illegal supplementary budget of Kshs15 billion. I have no problem with the transferred functions; let them take the money of the transferred functions. However, it is wrong for them to interfere with the six functions which I am left with.

On the bursary forms, we used to give poor students between Kshs10, 000 to Kshs20, 000. Now we will end up giving them Kshs800 because they have taken everything including money for disaster, fuel for our fire engines, money for constructing stadiums, social halls and technical universities.

Mr. Speaker, Sir, for the purposes of Hansard, this is one of the documents which we have not produced. For the purposes of records, just allow me to capture---

The Speaker (Hon. Lusaka): Order! If they are not----

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Okay, Mr. Speaker, Sir. That same budget which I refused to assent to, it was passed illegally. There is the two-thirds majority. It was assented, and gazetted by the government printer. I wrote a protest letter to the Solicitor General explaining the illegality committed.

For the first time the Solicitor General concurred with me in his response. I will not table the letter. I took the letter to the Director General in charge of NMS, revenue authorities, Controller of Budget, Cabinet Secretary (CS) for the Ministry of National Treasury and Planning and the government printer. The Attorney-General advised the government that the plea by the governor is right.

Mr. Speaker, Sir, it was degazetted. We were called to the State House. The President himself called me. I told him Your Excellency; you are being misled. These guys have taken everything. I just donated my functions because of the court cases which I am facing. I was told that I am going to be helped. We are going to work together with the President. I was not told that the Attorney General was going to take over these functions.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Your Excellency, are there pending disputes on the question of the warrants or appropriation in relation to NMS?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, there are so many pending disputes. As we are speaking, the High Court vide Petition No. E348 of 2020 before the Justice Mrima suspended the Nairobi City County Appropriation Act, 2020.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Do you have the documents?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, we have the document.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): What page is it?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Page 369 of volume two.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, that is page 305 of file labeled 10H.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It is marked as GM1 of volume two. Court ruling, first ruling delivered on the 7th of December, 2020.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): In which case is that ruling?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): In this case, Nairobi City County Government is the petitioner, suing NMS, AG, General Badi, various generals from the military who have taken over various functions in the county including Gen. Fredrick Leura, Gen. Mbithi, Gen. Nyakundi, Gen. Njoroge, Gen. Biendo, Gen. Musoma, Kangethe Thuku, CS department of National Treasury, department of devolution, Nairobi City County Assembly and the Controller of Budget. The court agreed with us that there was an illegality.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): The witness is referring to the document marked volume 2D; the affidavit of the Governor. The document marked D, volume two, page 369.

What happened in that case?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The entire act was suspended temporarily, pending the hearing and determination of our Petition.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Is there any other dispute that is pending before any other organ?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, there are so many cases which were filed in court by various stakeholders which are awaiting determination and hearing. We also registered a dispute with the intergovernmental---The letter was captured in the ruling of Justice Mrima.

I want to repeat myself. We just donated our functions to the national Government. We have no problem in giving money to the transferred functions.

The only functions we were left with are around six. We wanted as well to be given money to serve Nairobians in other sectors.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Your Excellency, have those matters been concluded for you to proceed.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, the matters are still active in court. They have not been concluded.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): I wish to take you to the fourth limb of the charge on gross violation of the Constitution and the law. That is 1B where it is alleged that you, as the Governor for Nairobi, violated Article 183 of the Constitution as read with the Public Finance Management Act (PFM).

It is stated that you have refused or failed to implement resolutions of the County Assembly or forward the report detailing your inability to do so in line with Article 183 of the Constitution as read together with the Standing Orders 193 with respect to County public debts and debt management under the provisions of section 123 of the Public Finance Management Act.

It has been alleged that the debt for Nairobi City County has now risen to Kshs.76 billion as of 31 December 2019. What did you say?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, and Hon. Members, this is a lie to divert the attention of the real issues.

Why am I saying this? I am the first Governor, or my administration is the first one to form a pending bills committee to address all the pending bills. I vividly remember that we appointed the former Ethics and Anti-Corruption Commission (EACC)

Chairman, Mr. PLO Lumumba, to be the chair. The co-chair was Mr. Eric Mutua. There were various representatives from the Directorate of Criminal Investigations (DCI) and the Supreme Council of Kenya Muslims (SUPKEM).

Mr. Speaker, Sir, I want to refer this honourable House to pages 12 to 13 of my affidavits.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, and Hon. Members, that is 10H. The document marked 10H on pages 12 to 13.

What is on those pages?

Page 12 And 13

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, page 12 talks about the part we played in reducing the huge pending bills Nairobi County was having by the time I was sworn in as the Governor of Nairobi.

This matter, pursuant to Article 86, was also handled by this House. We successfully addressed the issue, and this House was satisfied with how we are addressing this issue.

Mr. Speaker, Sir, at this juncture, I will refer the ICT team to a clip on the pending bills at the Senate.

Can we have that clip, please?

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu): Kindly refer to page 220 of that particular document.

Kindly refer to page 214.

(Video clip was played)

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): ICT team, forward the clip to the end on the final decision of the Chairperson of the Committee.

Mr. Speaker, Sir, in the interest of time, the Committee Chair and the Senators who were sitting in that Committee complimented us for the---

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, the witness, Gov. Mike Sonko, wishes that the clip is forwarded to capture the ruling of this House on this issue.

The Speaker (Hon. Lusaka): You have one hour left and that includes cross-examination.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Very well, Mr. Speaker, Sir.

If that clip could be forwarded to the point where the ruling is.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, the entire Committee concurred with us. We managed to reduce our pending bills.

It was not Kshs.77 billion as alleged by the mover of the impeachment Motion. He was just copy-pasting problems that have already been sorted at the Senate.

We managed to reduce our pending bills after we formed the pending bills committee.

It gives our pending bills after we formed the pending bills Committee. I accompanied the pending bills committee to go and check the projects in the slum areas.

There is an area where it was alleged that there was a bridge and a social hall that were constructed to the tune of Kshs300 million. When we went to the site there was nothing. Even a foundation stone was not put on the site. Because of the process, we managed to reduce our pending bills from Kshs64 billion to Kshs27 billion.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): There is a document appearing on page 214 to 220 in your evidence marked 10H. Would you state what that document is in relation to this particular charge?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, this is a document by the National Treasury and Planning in a meeting that all Governors were invited in State House to address the impact of the COVID-19 pandemic and Government intervention measures and presentation to the national and county governments Coordinating Summit.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Was there reference to pending bills?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, there was reference to pending bills on page 220 of the same report. The Treasury summarized all the pending bills for all the 47 counties, starting with Baringo and ending with Taita-Taveta.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Specifically look at Nairobi.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, if you look at Nairobi, you will find that the mover of the Motion was lying to this House and the public. He was tarnishing my name and destroying my character through false accusations.

As you can see, the pending bills in Nairobi are not Kshs57 billion as the Mover alleged and lied to the world. As you can see, the first column is on eligible pending bills. Nairobi had Kshs11,783,829,000.072.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): How much has been paid so far?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, so far the effort we have made has resulted to the payment of Kshs4,631,491,000.026. This is a summary from the National Treasury.

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu): How much is outstanding?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): We have already paid another Kshs4 billion, which is not captured here. The balance captured by the National Treasury by the time all governors were summoned in State House was Kshs7.1 billion. We have paid another Kshs4 billion, which is not captured. This means that our pending bills by now will be less than Kshs4 billion.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Is that summary by the National Treasury anywhere close the figure alleged to be pending by this particular charge?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No. An important point, in the interest time, because the mover raised grievous allegations. I beg this honourable House to accord us time when handling grievous issues. The national

Government owes us over Kshs300 billion. I want to compliment the Senator for Nairobi, Sen. Sakaja. He was pushing for the release of these funds. I remember vividly that at some point we had a meeting in State House with the President, former Cabinet Secretary Henry Rotich and Principal Secretary Thugge. We have some undertakings and did a document, namely 'Nairobi City County Financial Recovery Plan.'

Mr. Chairman, Sir, at some point, we agreed on a debt swap, meaning that the money that the national Government owes us - statutory debts from various government agencies like Kenya Revenue Authority (KRA) and we have a loan for Kshs4 billion from Kenya Commercial Bank (KCB)--- The Government was ready to pay this money on our behalf, so that we do a debt swap. Unfortunately, before that process was concluded, Cabinet Secretary Henry Rotich and Principal Secretary Thugge had some problems and were fired. This is a clear indication that during my time I had made progress inspecting the pending bills for Nairobi City County.

Pursuant to Article 96 we have—

The Speaker (Hon. Lusaka): What is your intervention, Sen. Wario?

Sen. Wario: Mr. Speaker, Sir, I would like to inform Sen. Sonko---

The Speaker (Hon. Lusaka): It is 'Governor.'

Sen. Wario: I would like to inform Governor Sonko to refer to you as 'Speaker' and not 'Chairman.' He is referring you are 'Chairman.'

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I thought it was a Committee of the Whole. I am sorry for that. I apologize Mr. Speaker, Sir. I will not repeat it again.

The Speaker (Hon. Lusaka): Stick to 'Speaker.'

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, with utmost respect, we hope that we will be given additional 30 minutes because of the interjections.

The Speaker (Hon. Lusaka): It cannot be 30 minutes. Utilize your time properly; that was half a second.

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, we will try.

In summary, your Excellency the Governor, does that particular charge have any foundation?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, because the matter was addressed by the Senate and the national Government.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Does it have any foundation in terms of the allegation made?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): I wish to move to the next charge. It is alleged that you violated Article 227 (1) of the Constitution on procurement of good and services, as read together with the provisions of the Public Procurement and Disposals Act, 2015, by flouting the principles of public finance management in as far as public procurement of goods and services is concerned. This is where the Public Procurement Regulatory Authority faulted the procurement processes for the construction of Dandora stadium. The authority flagged irregularities in the awarding of the tender, alteration of contract specifications and suspected irregularities

in payment and forgery of documents. Despite technical evaluations questioning the quality of the work PPRA indicted the county government for paying Kshs196.87 million for the contractor.

Hon. Governor, are you at any given time involved in procurement matters?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, not at all.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Do you have accounting officers charged with the responsibility of dealing with procurement in your government?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes. Pursuant to Section 103 of the Public Finance Management (PFM) Act, I appointed the County Executive Committee member (CEC) of Finance who also appointed Chief Officers (COs) to be in charge of all the departments within the Nairobi City County Government.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Have you dealt with the procurement in relation to Dandora directly as an accounting officer?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Not at all, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Have you ever signed any voucher towards payment of any monies in relation to Dandora?

The Governor of the Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Have you been involved in the signing of any contract related to Dandora?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Have you ever been summoned by the county assembly in line with the exercise of oversight under Article 185 of the Constitution on the question of contracts in relation to Dandora?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): I will move to the next question. Is this charge sustainable in view of your role as Governor vis-à-vis the roles of the CEC of finance and other accounting officers?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): It is alleged at charge 1(f) that you violated Sections 35 and 45 of the County Governments Act as read with Sections 104 and 148 of the PFM Act, between 2018 and 2019. Contrary to the law, the office of the CEC and CO of Finance were held by the same person, one Winfred Gathangu, which situation occasioned confusion and inefficiencies at the county

treasury hence failing to promote good governance and compromising the doctrine of transparency and accountability in the county government.

What do you say?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker. At this juncture, for any senior officer to act in any acting capacity is not an offence. A good example is when the Cabinet Secretary (CS) for National Treasury, Mr. Henry Rotich was arraigned in court, the President appointed Mr. Ukur Yatani, who was then the CS for Labour and Social Protection, to act as the CS of the National Treasury.

After that, Ms. Winfred Gathungu ceased to act as the CEC of Finance. She was promoted to the position of CEC of Agriculture. I forwarded her name to the County Assembly and they confirmed her to the new position of CEC of Agriculture. I confirm to this House today that we have a substantive CEC for Finance, Mr. Allan Igambi, and the substantive CO for Finance, a position which was also held by Ms. Winfred Gathungu.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): During the time Ms. Winfred Gathungu was acting before she was confirmed by the assembly, was there any loss occasioned to the county government as a consequence of the time that she was acting?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Repeat the question, please.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Was there any prejudice occasioned to the county government during the time she was acting as CEC of Finance before she was confirmed?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Was any issue raised by the county assembly on the same?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): I will move to 1 (g) and 1(h). It is alleged at 1(h) that as the Governor of Nairobi, you violated Section 104 of the PFM Act on the responsibilities and powers of the country treasury.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Proceed.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): It is alleged that by in-action or commission, you continued to preside over a broken public finance management system while the county treasury remains ineffective despite various resolutions of the county assembly urging you to improve efficiency by decentralizing the finance function in the sectors as required by the provisions of Section 148 of the PFM Act. As a consequence of the same, the county continues to operate in contravention of the law.

Do you have COs being the accounting officers appointed as accounting officers by the CEC of Finance in line with Section 148?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Repeat the question.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Do you have accounting officers in place duly appointed by the CEC of Finance?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Is there a breakdown?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Has any breakdown been shown to exist?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir?

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): What do you say about that charge?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, I will again refer this House to the Controller of Budget's report in volume 3 (d). In the essence of time, I will not do a lot of explanations.

The Information and Communication Technology Department (ICT) should prepare a clip where I was standing answering the same question before the Senate. ICT department prepare that clip. It is on page 626.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Page 626 of volume three.

The Speaker (Hon. Lusaka): Counsel, how long do you want to take to conclude the examination-in-chief?

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, I am going to cover two more areas, then I will let my colleague, Mr. Ondieki, take over.

The Speaker (Hon. Lusaka): How long will that be? Answer my question.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): I should take another 20 minutes, then I will hand over.

The Speaker (Hon. Lusaka): There is an intervention there.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, I hope that the 20 minutes that Mr. Nyamu is talking about is within the period that he prescribed. For us to plan, he might want to inform us how much more time they have.

The Speaker (Hon. Lusaka): We are just checking, just proceed, I will let you know.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): I will proceed. I hope that the hon. Members have gotten the document.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): ICT department.

(A video clip was played)

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, in the interest of time, that clip can be stopped.

The Speaker (Hon. Lusaka): Counsel, you have a total of 40 minutes left. So, you must finish the examination-in-chief within 20 minutes.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Your Excellency the Governor, where was the forum for the clip that has been played?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): That was in the Senate. I was explaining the Controller of Budget (CoB's) report and the observations she made. We did well and our revenue increased as per the attached document. There was also improvement in the use of the IFMIS and internet banking and processing financial transactions.

On page 308, we have observations and recommendations by the CoB. It is stated that the county made progress in addressing some of the challenges previous identified in the implementation of budgets. Some of the progress made included improved compliance to Article 207 of the Constitution of Kenya regarding depositing funds at source in terms of revenue collection into the CRF Account. There is a chart that was provided by the CoB which explains everything.

What I would like to mention, at this juncture is that; that was the report of the CoB and not Sonko, the Governor of Nairobi City County. A total of Kshs20.4 billion was spent on both development and recurrent activities. This expenditure represented 120.3 per cent of the total released from the CRF Account. That was an increase of 19.8 per cent from 88.4 per cent recorded in the FY 2017/2018.

Another one is 311(9) which presents a combined graph but there was also an improvement in development expenditure which recorded absorption of 78.9 per cent, which was an increase from 26.1 per cent attained in the FY 2017/2018. Conversely, recurrent expenditure represented 90.8 per cent of the annual recurrent budget, an increase from 88 per cent recorded in FY 2017/2018. The document is in the public domain.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Would you wish to have that document relied upon by the Senate when it retires to consider this particular Motion?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Before I hand you over to my learned friends, Messrs Ondieki and Kinyanjui, could you confirm that your systems are up and running?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, our systems are up and running.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, at this juncture, I will hand over the mantle to my learned friends to finalise.

The Speaker (Hon. Lusaka): I hope you have noted the timelines I gave.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, as we appreciate that in the doctrine of fair trial and in ensuring that the Governor gets adequate time to defend himself, because he is like an accused person, we urge hon. Members in this House, in view of interjections that were made, to at least give us some additional time.

The Speaker (Hon. Lusaka): You cannot attribute that to interjections because I have also been monitoring. Just use your skills to deliver. Be spot on and cut out a lot of stories that may not add value to what we are prosecuting.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, the documents that were served upon us the day before yesterday are quite many. As it is, for him to deal with those questions and the charges as many as they are, in as much as they are four, they are in limps. We have seen from his testimony that he has been dealing with answers document by document and that has taken quite some time.

Mr. Speaker, Sir, this is an impeachment proceeding where his fundamental rights are likely to be affected and also the democratic rights of the people of Nairobi. So, I urge you to extend lenience in relation to His Excellency the Governor and give him additional time.

The Speaker (Hon. Lusaka): Let us have Counsel Evans to take over.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): Mr. Speaker, Sir, I will apply military precision so that I cover more territory.

Governor, before you conclude what you were doing, I want to take you to pages 582 to 583. We are still dealing with D Volume 3. It actually starts on page 581 through to 583. In fact, if you look at page 583, the World Bank praised you for implementing several projects in the City. Just read one sentence at the bottom of the page. That is the praise you received from the CoB for implementing Government projects.

Start at "The County attained the highest expenditure---"

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, Mr. Speaker, Sir. It reads-

"The counties that attained the highest expenditure in absolute terms were Nairobi City County at Ksh29.4 billion..."

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): You can even stop there. Even the Controller of Budget has appreciated your good work in terms of expenditure. Is that correct?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): Go to the next page. The European Commission (EU) awarded you with the highest distinction for recovering grabbed land that is the Commonwealth Cemetery. Is that correct?

Mr. Speaker, Sir, that is page 584.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): I now take you to page 610 in the same document. You have been accused of facilitating your daughter to travel, pretending that she was a sub-county officer. From whom is that letter?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It is from the Executive office of the Presidency, Head of Public Service dated 7th March, 2015.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): It is written to the CS Madam Prof. Kobia in charge of Public Service.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): What is the instruction?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The instructions from the Head of Public Service CS Ministry of Public Service and General Affairs. The reference is Government Delegation to the 62nd Session of the Commission on the Status of Women (CSW) 2018 in New York.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): Is your daughter referred to anywhere as a sub-county administrator?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No.

The Counsel for Nairobi City County Governor (Mr. Evans Ondieki): So, that is a creation of the Mover of the Motion.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): Your daughter travelled as a part of the Government delegation which met part of the bills. Is that correct?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): The other overheads were also met by the County government. On page 611, you can see the letter from the County to the Embassy.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for Nairobi City County Governor (Mr. Evans Ondieki): So, the Mover of the Motion lied that your daughter travelled as a Sub-county administrator?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): Let me very quickly take you to another area. Go to page 614. Do you confirm that your wife travelled as First Lady of Nairobi City County Government, which is why she was included in the Government delegation?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): You can see the bill at page 614 which is why the last witness took imprest to pay for that because it was an official delegation.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, I wish to confirm to the House that this is an invoice where my wife and daughter stayed in New York at the Dominic Hotel. The callers for the hotel are there at the bottom of page 614. You can see from the receipts and the invoice that the numbers are there for confirmation.

My wife deposited cash at the hotel, not from the Nairobi City County Government although the trip was official and genuine because they were both party of the government delegation as confirmed by State House. There was a cash deposit of USD1200 as deposit credit for rooms and meals. At some point my wife swiped her credit card. That is on page 615 the second last item. She swiped her Visa Card for another USD1500 payment.

On page 616 and also the summary of page 617, the hotel is 246--- New York NY 10013. The Phone Number and physical address are there.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): Governor, are you telling the Senate that the issue was done in an open and transparent and accountable manner?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, I want to bring to the attention of this House that even yesterday we saw on Citizen Television how this was exaggerated. This is just a smear campaign by the system and the cartels in the County who have ganged up against me. I demand an apology from the *Citizen Television* or we take them to court.

They said that my daughter spent Ksh840million. That allegation is not even in the Impeachment Motion. The amount in question is only Ksh2.6 million. I do not know where *Citizen TV* got this figure of Ksh840 million. They say my daughter had choppers, but that is not here. She travelled by air from New York to Philadelphia. Those are just smear campaigns and character assassination to tarnish my good name.

Mr. Speaker, Sir, you can see where the whole story is coming from.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): Okay *Mheshimiwa*. We now move to page 633. I want you to run through page 633-643 in the same document, so that I deal with the issue once and for all. Do you confirm that Mr. Evans Ondieki is one of your lawyers who was dealing with this matter?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): Did you give him instructions to go and file your defense and the Nairobi City County Assembly?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

Hon. Mike Mbuvi Sonko, Including the accompanying documented and evidence, can you confirm from the photos in page 633-643 that he was denied access?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for Nairobi City County Governor (Mr. Evans Ondieki): So, they never gave you a chance to air your side of the story?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, they did not.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): They did not even give you a chance to file your documents?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): I now take you to document No.1. Hon. Senate, this is the affidavit which my colleague was using. Go to page 59. Hon. Governor, could you confirm that much earlier before this Motion was initiated, you had written a letter to the Directorate of Criminal Investigation (DCI) requesting him to carry investigation of the embezzlement of public funds by the County Assembly. If you are on page 59, hon. Senators, you will see that. Had you done that before the Motion, much earlier?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes. The letter was dated Monday, 23rd November, 2020. It was a complaint to investigate

embezzlement of funds in Nairobi City County. The letter is addressed to DCI. It was received on 23rd November, 2020.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): Do you confirm that that is the nexus and origin of your problems that led to this Notice of Motion to impeach you. Can you confirm that?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): Quickly I want to cover one more issue before I donate my minutes to my colleague because I think we have moved quite fast. I want you to respond to this allegation from your heart. I know you are a father, grandfather and father-in-law. You have been accused that you have molested workers and colleagues. I want you, from the bottom of your heart, to answer that straight, whether you have ever harassed any workers.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): So all these sensationalized accusations are meant to besmirch your reputation?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): These are just accusations. In the interest of time, there were clips which we had prepared to be aired for Members to confirm about the true story because of the events that were transpiring in the Nairobi City County.

Mr. Speaker, Sir, during my first month in office, I received some information from a county staff who was supposed to be my witness but because of time and the manner in which we are proceeding, in the interest of time, she was not given a chance to come and adduce her evidence before this hon. House.

My first month in office, I was tipped off that the staff at the cash office were stealing daily between Kshs30 million to Kshs60 million per day. The clips are in the public domain. I personally decided to do an impromptu visit or inspection at the cash office. I walked there with some of the officers, CID officers attached to the county. We also reported the matter to Ethics and Anti-Corruption Commission (EACC). There are officers who also came.

When we were conducting this search we found it was true. We found some county cashiers with money in their socks and suits. We recovered around Kshs30 million in cash. Documents are there, but in the interest of time I will not go to that.

Mr. Speaker, Sir, we were all arraigned in court. They went to the High Court to challenge this decision vide Petition No. 79 of 2017, Labor Relations Court before Justice Hellen Wasilwa. Their case was dismissed. The Judge said the Governor has a right to suspend and terminate the services of any staff because it was a disciplinary action that was being taken. There are so many clips but because of time, we cannot play them.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): Finally, Governor, the third President of the Republic of Kenya, one of the most respected African leaders, *aliambia driver yake "pumbavu wewe, mavi ya kuku."* However, the context was that the driver was reversing a vehicle in public. Clips were played here where people tried to play some remarks you made. Can you clarify to this Senate in what context you made some remarks so that it comes out.

The Speaker (Hon. Lusaka): What is it, counsel? I have not given you---

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): Mr. Speaker, Sir, what I was saying on a light note.

The Speaker (Hon. Lusaka): No, there was a counsel who was standing.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): Mr. Speaker, Sir, I was saying that freedom of speech allows us to speak. It depends in which context you are speaking. I wanted him to clarify some clips that were played here yesterday.

The Speaker (Hon. Lusaka): You have now a total of 15 minutes.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): Mr. Speaker, Sir, I wanted my learned colleague to conclude to cap it up just five minutes. This is a process that is more complex. It is a political process. It is a Siamese twin which is both political, judicial and social. It is a difficult thing to deal with. You saw when they tried to impeach Donald Trump, people were asking where is the evidence? It is good you have given us time and we thank you that for listening to us.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, before we move to the next question, I just want to air a one minute audio. We just want to air one clip by Mr. Paul Kiiru of ICT. It is a similar matter which is in court.

(A video clip was played)

Mr. Speaker, Sir, this is a normal conversation which I had with a staff who was suspected to be corrupt. We normally give them warnings. The manner in which we warn them, they change the story and it becomes that the governor is intimidating staff. This clip was recorded in 2019. It is part of the proceedings in the Kimaiyo case in court.

I have so many clips of my conversations with various people, especially women, senior officers in the county and there is nowhere I have abused or broken the law.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, I will wind up in a few minutes because we have been given 20 minutes and we have split that time with Mr. Ondieki. I will take no more than five minutes.

The Speaker (Hon. Lusaka): Yes.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Your Excellency the governor, when you sent Advocate Ondieki to the City County Assembly to represent you, had you been served the documents now relied upon by the City County Assembly on allegations by the mover of the Motion?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Yesterday we heard from Ms. Ouko, your former CEC for Education, that she had a deposition in this honourable house. That deposition was dated 14th December, 2020. That was two days. Had you been served that deposition?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Nevertheless, had you insulted Ms. Ouko?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Ever intimidated Ms. Ouko?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Ever even called her at 2.00 a.m.?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Did you see any evidence from here that you were doing that?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir. I still have the phone, which has all the communications between her and I since 2018.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): I asked her for *WhatsApp* print out and she had none.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, I have my original phone and I am willing to give it to the House to do further investigations.

The Counsel for the Nairobi City Governor (Mr. Harrison Kinyanjui): Have you been summoned by the Director of Criminal Investigations (DCI) or any other organ that you have abused her?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir. However, when we were investigating this bursary cheque and saw what transpired, I just warned her – she was mentioned in this bursary case – for conspiring with MCAs to get blank cheques, give to junior clerks, type the names and then take to the bank. When I questioned her and these people were arrested, she decided to resign. I even never suspended her.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Yes. We saw your analysis of the funds that were being siphoned from the City County Assembly going to the benefit of MCAs. Was it that the time that Ms. Ouko was the CEC for Education?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, it was the same time when we lost these funds and we proved her wrong because her accomplices were charged. I do not know why to date, the investigating officers have not arrested her but you know her husband is a senior officer at the DCI attached to the United Nations (UN). Therefore, she cannot be touched.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Now, all your evidence touches on paragraph 2(a) of the allegations against you. Now, you were elected by over 885,000 citizens of Nairobi City County. Have any of these people, to your knowledge, been consulted by Nairobi City County Assembly before moving this Motion of impeachment?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Were you supplied with any document on public participation that the members of whichever ward in this City County were consulted to actually impeach you?

The Governor of Nairobi City County (Hon. Mike Mbugi Sonko): No, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Again, you have been accused of discrimination; that you have abused your office. Have you ever discriminated against anybody on the basis of religion?

The Governor of Nairobi City County (Hon. Mike Mbugi Sonko): No, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): On the basis of race?

The Governor of Nairobi City County (Hon. Mike Mbugi Sonko): No, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): On the basis of tribe?

The Governor of Nairobi City County (Hon. Mike Mbugi Sonko): No, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): You have been accused of abusing your office by enriching yourself. Do you recall receiving Kshs50 million in the budget of 2018/2019?

The Governor of Nairobi City County (Hon. Mike Mbugi Sonko): No, Mr. Speaker, Sir. However, at this juncture, there was a confirmation budget of Kshs50 million that was allocated to me by MCAs. We did not use that budget. I think the document is annexed in one of the affidavits. They wanted me to be part and parcel of their scandals in swindling tax payers' money. I refused the Kshs50 million that was allocated to me in the budget and it was returned to the National Treasury at the end of the financial year. I never touched a coin.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): You steered away from touching City County money?

The Governor of Nairobi City County (Hon. Mike Mbugi Sonko): Yes, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): You have allegations made against you that you have stolen county money. Therefore, you are facing two anti-corruption cases. Have you been found guilty in those cases?

The Governor of Nairobi City County (Hon. Mike Mbugi Sonko): No, Mr. Speaker, Sir. At this juncture, I know that we are running out of time, but there is a very sensitive clip. The seconder of this Motion--- I remember the Senate at some point resolved that Jambo Pay Services should be terminated. That is on the affidavit; the Counsel will look for it.

The Seconder of this Motion, the CEO of Jambo Pay, came to my house in Kanamai. It is captured by the Directorate of Criminal Investigations (DCI) because the case was under investigation. The DCI officers came with their recorders, and a certificate was done. They captured the current Nairobi City County Assembly Majority

Leader, hon. Abdi Hassan Guyo and Jambo Pay CEO. The transcript and the audio from the DCI is there. The case is still under investigation.

They told me “*Wewe ni ni mjinga. Hutaki kukula.*” I want that clip to be prepared by the ICT. It was captured by the DCI.

They told me “*Wewe ni mjinga. Hutaki kukula. Sisi na Kidero tumekula Kshs7 billion in five years. Wewe unatukanyagia.*”

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): As they prepare that clip, the Mover of the Motion “*kulad*”. I am sorry. I recall that word.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Towards the end of that clip, they offered me Kshs5 million a day from the county revenue. They gave me staff to work with them. They did not know that I had a DCI recorder. The case is still ongoing, and the file has already been forwarded to the Director of Public Prosecutions (DPP).

I told them: “*sawa*, I am ready.” They told me how they were stealing and how I will be making the Kshs5 million a day. In a month that was supposed to be Kshs150 million and Kshs1.8 billion in a year. I refused, and, therefore, became an enemy of everyone in the Assembly and anyone who was stealing county funds.

In this clip, the CEO of Jambo Pay was telling me: “*wewe umetafutwa sana. Hupatikani. Ni kwa nini hutaki kukula. Wewe ni mtoto wa wapi? Hii pesa ni ya kaunti na sio yako.*”

(A video clip was played)

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Go to where the Majority Leader told me that they stole Kshs7 billion in five years *na mimi sitaki kukula. Mwisho ni ile ya kuchukua Kshs5 million a day.*

(A video clip was played)

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, that is the Majority Leader, a seconder of this Motion. He came to my house with the CEO of the Jambo Pay Services and told me that *mimi sitaki kukula. Tuibe pesa ya umma pamoja.* I refused.

Go towards the end, where they were offering me Kshs5 million a day. Because of time, you cannot air the entire clip.

The Speaker (Hon. Lusaka): Actually, your time is up.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Yes, Mr. Speaker, Sir. I apologize. That clip took a bit longer. They are playing the last bit.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Go to towards the end where I am being offered Kshs5 million a day by the CEO of Jambo Pay Services.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): While they play the clip, let me ask you a few questions.

(A video clip was played)

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir, because of time---

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Let me ask you, Your Excellency, who is this telling about who took Kshs7 billion? Who is the one telling that story or narrative?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): That is the Majority Leader of Nairobi City County Assembly and the seconder of this Motion to impeach me.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): In all the documents and the evidence that you had from the mover, did he present? Did you see? Were you shown a penny moving from the county government coffers to your account?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Any penny? One shilling? Not even a penny?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Let me wind up. As you have addressed the issue of the motivation of this Impeachment Motion, is it not true that on the 23rd of November, 2020, you reported to the DCI that the mover of the Motion had taken Kshs823,324? That is on page 59 and 60 of your Volume 10H. That is the letter that you wrote to the DCI on 23rd of November, 2020, two days before the Impeachment Motion.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes. We annexed all the vouchers and air tickets. The voucher is there on page 60 on how the money was disbursed to his account.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): He acknowledged, so that we save time.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): He said and pleaded that he was going to return the funds?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Now, the question is: Did you receive any documents from the Mover of the Motion in connection with his payment, the refund of this money?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): I wind up by asking you the last question.

The Speaker (Hon. Lusaka): Your time is up.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): My very last question. Your Excellency, you have shown and demonstrated that the motivation of this impeachment Motion is not about your efficiency or lack thereof. Your CECs have been functioning and all departments have been functioning. Have you ever been summoned to the county assembly in the manner that you are now before this honourable Members to answer the questions about the movement of funds, the use of

resources in the Nairobi City County or the abuse that is alleged against you by your CECs to answer any of them?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): How do you plead? How do you plead to these charges? Guilty or not guilty?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Not guilty.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): And you ask these hon. Members to look at that evidence and say ‘no impeachment.’

Thank you, Mr. Speaker, Sir, and hon. Members.

The Speaker (Hon. Lusaka): Thank you. Counsel, before you come, I know that we ran out of time that was given to the Governor. As we all know, the impeachment of a governor is a weighty matter. Therefore, we want to give every party a fair opportunity and chance.

Therefore, I will give you one hour to cross-examine the Governor. Please, try as much as possible, to operate within that one hour because the schedule is long.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Thank you, Mr. Speaker, Sir. As it was placed, we will be asking for latitude and magnanimity from your bench, so that we deal and give justice to this case.

Your Excellency, Gov. Mike Mbuvi Sonko, good afternoon?

The Governor of the Nairobi City County (Hon. Mike Mbuvi Sonko): Good afternoon.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I will be asking you some questions in respect to the proceedings before us.

I believe that you have had an opportunity to look at the charges that have been levelled against you.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yeah.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Before I go to that, Mr. Governor, allow me to ask you whether you are the same person - and you only need to answer yes or no - who appears in the name of Kioko Mike Sonko Mbuvi Gideon. Yes?

The Governor of Nairobi City County (Hon. Sonko): Those are the same names.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mbuvi Gideon Kioko Mike Sonko.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Those are the same names. You are just repeating.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Are you also Mbuvi Gideon Kioko. Yes?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Those are the same names. You are just repeating.

Are you also Mbuvi Gideon Kioko alias Mike Sonko Mbuvi Gideon alias Mbuvi Kioko alias---?

Are you the same person?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): There is no difference.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Yes or no?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): There is no difference. You are just repeating yourself.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Governor, did you have a look at your description in the charge sheet in case number 32 of 2019? Did you?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, I looked at the description.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Just answer yes or no, you have had a look at it.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): That is *sub judice*. That is a matter still in court. I have not been convicted.

Mr. Speaker, Sir---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Governor, I am the one asking you questions. Kindly cooperate.

The Speaker (Hon. Lusaka): I need to follow. Let us have some order.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, I am much obliged.

You read evidence in this Senate in respect to the bursary diversion. Yes?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Which bursaries were you dressing? Which financial were you addressing in your videos?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Two financial years, 2017/2018, 2018/2019 and 2019/2020.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): It is your evidence that the 2019/2020 bursary was never uploaded to your account. Yes? Yes or no?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It was uploaded, but money was never released by the Treasury because of COVID-19; schools were closed. The money was released back to the Central Bank of Kenya (CBK).

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Governor, do you remember showing us a video clip here of a certain girl somewhere in a slum?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): You were demonstrating that she received approximately Kshs.53,000 of the cheque.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): That was for the previous financial year, and not for 2019/2020.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Do you recall or you do not recall?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I recall, but not for that financial year.

The Speaker (Hon. Lusaka): Counsel, take him slow. You are pushing him too fast.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Okay, I will be slow with him. I am mindful of time.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): You just want to annoy me. I will not play your card. Just talk I will be calm.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Do you recall telling us that that is six months ago? Yes or no?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Six months ago---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Do you recall or you do not recall?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Those were allegations by your client. They even said we spent the money for---

The Speaker (Hon. Lusaka): Counsel, what is your intervention?

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, his Excellency the Governor should be given leeway room to answer so that Hon. Members can be clear about the answer to the issues.

The Speaker (Hon. Lusaka): I have already pronounced myself on that.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, much obliged.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, ask the witness to answer the question that is put to him. If I need a yes or no, let him answer so.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No. I am not going to mislead this House like what your client did. I have to give correct answer because I am on oath.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Which financial year were you presenting the cheques in respect to the six months ago?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Six months ago was not about presentation of cheques. Six months ago was about the allegations made by your client that we diverted bursary funds to pay legal fees.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Are you recanting your evidence?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I think you are trying to mislead the House. I cannot go to that angle. I will speak the truth because just two months ago---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Open your big volume, 10H on page 234.

What does that document relate to?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): On page 234 are bank statements.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): For which year?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): From 2016.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Is that the year under trial in the Senate?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): This is the year in which your client swindled taxpayers' money to enrich their families and wives.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): You had a list of advocates that were supposed to represent you in these proceedings. Yes?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Do you remember putting in a notice of appointment? Correct?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Would you grab your notice of appointment?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiru): Would you grab a copy of the same?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes. My lawyers are looking for it. If you have a copy, you can give me.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Would you read the list of the advocates appearing that you intended to present before the Senate?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Evans Ondiek. Wilfred Nyamu. Diana Kethi Kilonzo, who is represented by Dan Maanzo.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Just proceed. I have not asked you for explanation.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): George Kithi, Kwanga Mboya and Cecil Miller.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Good. I want to deal with the last three, Kithi, Mboya and Cecil Miller.

You heard me yesterday making an application for their summons. Yes?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Did you have a look at those summonses that were presented before the Senate?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I was not party to those summons.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I will show you. Look at the persons we sought their summons. Who is No.9?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Kwanga Mboya.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Is that your advocate?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Proceed. Read the next column.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I cannot go to the next column without answering the questions asked. Which number is that?

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Read the next column, Governor.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Kwanga Mboya and Company Advocates to shed light on single payments of up to Kshs80 million deposited in the firm's account in July 2019.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): What documents were we seeking from that advocate?

The Governor of Nairobi City County (Hon. Sonko): The documents for these advocates are here.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, at this juncture, I wish to request to interject on an objection.

Reference to the advocates, Kwanga Mboya and Cecil Miller, is in relation to an issue that arose in the morning and this House rejected. Arousing the same would warrant admission of further documents at this particular point, which is past the hour.

I would urge my learned friend to desist from that line of cross-examination and deal with the issues that are within the House. If he wants us to answer, then we need to have documents admitted so that they may be relied upon the House.

The Speaker (Hon. Lusaka): Are you saying that the documents he has given to the Governor were not admitted?

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, the only way he can answer those questions---

The Speaker (Hon. Lusaka): No, answer me. Are you saying the document as given by the Governor was not admitted? If it was not, then I will not accept it.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): It is only the notice of appointment that is admitted. However, in relation to questions that have been put touching on those firms of advocates, that evidence was rejected by this court in the morning.

Nonetheless, the Governor says he can answer. However, for him to answer, we need to have those documents admitted.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Nyamu, you do not have to be afraid of anything, you will have your time to rebut. It is now my time to bite the cherry

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, on a point of order. Governor, you are my witness.

The Speaker (Hon. Lusaka): Just a minute counsel.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I cannot allow the counsel to proceed in this manner. His client, the Mover of the Motion, made grievous allegations about me and the County Government of Nairobi City. He has made allegations on counsel who are acting for the counties and were paid. There were court orders. On the case of Kwanga—

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I have not put any question to him.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): You have given me a copy which has details of county lawyers who were paid. It is not corruption money. We were allocated Kshs8 billion by the World Bank to construct markets and fire

stations in Nairobi City County. If you look at the brief of the World Bank, they are withdrawing the Kshs8 billion because of land grabbing and they had challenges. There is an encroachment of a 10 storey building by one Musa Chelago Yego, former flying squad commander.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, we seek your guidance. Which question is the witness answering? I have not put a question to him.

The Speaker (Hon. Lusaka): He is clarifying. Order! Order, counsel!

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I just need a minute to finish that. We demolished this building since we did not want to lose funds from the World Bank. We demolished the building and the fire station was constructed and it is complete today. The owner of the building, who is the flying squad commander, retired two months ago, took us to the constitutional court in Petition No.218 of 2018; Petitioner Musa Yego. The respondent is Nairobi City County Government.

We lost the case and the ruling is here. There is a decree; we were forced by the court to pay Kshs80 million which was paid to Kwanga Mboya for transmission to the vendor's lawyer, which we did. In this case the fees for Kwanga Mboya is only Kshs4 million. We have never paid a coin. It is similar to the case for Ruaraka where taxpayer's money of Kshs1 billion was lost. The land for Ruaraka Primary school worth Kshs4 billion was reverted back to the County Government of Nairobi. These are legal fees and court orders.

The Speaker (Hon. Lusaka): Counsel, put your question.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Thank you, Mr. Speaker, Sir. What documents did we seek or were we seeking from them? The next column, what documents were we seeking from that advocate?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Which advocate?

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Kwanga Mboya.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Are you seeing some documents? I am not aware. Explain to me.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, we are going to an arena that we passed in the morning. He is referring to documents that are not admitted. He wants to cross-examine---

The Speaker (Hon. Lusaka): That is the question I asked you. You are just circumlocuting. I asked whether the document given to the Governor was admitted or not.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, that is the letter we wrote to this honorable House. The documents written to this House in respect to a matter become subject of a matter. This is what we call the doctrine of *legestae*, facts otherwise not relevant becoming relevant. These are the summonses that become part of the records.

The Speaker (Hon. Lusaka): Let us proceed.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Thank you, Mr. Speaker, Sir for the protection. Governor, read the documents.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I can read. Where do you want me to read?

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): That column.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The column, 'prequalification by the county government---'

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): What are we asking? What other document were we seeking?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Letter of instruction for the case, fee note, tax compliance certificate and evidence of tax payment and the date of payment.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Is Mr. Kwanga Mboya before this House as your advocate this afternoon?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes. You are also representing your clients. At the end of the day the Assembly is going to pay. There is nothing wrong with that.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Is he present?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, he is not accused.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Let us go to Cecil Miller. What documents were we asking for?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Those are your colleagues, you should have written to them directly instead of asking me these questions. The instructions come from the county attorney not from the governor. I am not supposed to answer to these questions; this is my impeachment.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Governor, you will answer.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Okay.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): If you want to be acquitted by this House you will answer the questions and not choose what to say and what to do. You are a witness. How much did you say Kwanga Mboya was paid?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): He was paid Kshs80 million after a decree that was issued by Justice—the order is here with me.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): How much was he paid?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): He was paid Kshs80 million. The ruling is by Justice Mativo.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Do not take documents that are not before the Senate.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The court order is in public domain. If you google the Kenya Law Reports you will get this order.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): When was he paid that amount? When was Kwanga Mboya paid?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I have got the bank receipts and the voucher with me. Let me just check. Give me a minute, I will answer you right now.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): We are limiting on the documents I have. These are not documents before the Senate. The ones that he is referring to.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): You have answered a question of when he was paid. I have got the bank statement on how the RTGS was paid to him after one hour to transfer the money to the vendor's lawyer. His fees, which he raised to us, was Kshs4 million. He was paid on 16th July, 2019. He is talking about funds being diverted for 2020.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): How much was Cecil Miller paid?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Counsel, let me finish. You have asked the question and I have not finished answering.

The Speaker (Hon. Lusaka): Let him answer.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): *Enda pole pole, wacha speed. Mimi sipelekangwi mbio.* I am a fan of cases.

Mr. Speaker, Sir, the money was paid from the county account on the 16th July 2019 to Kwanga Mboya's account 0113623028200, Kwanga Mboya and Company Advocates. The same day after one-hour, Kwanga Mboya remitted the monies to beneficiary Okoth and Kiplagat and Company advocates who was Musa Yego's lawyer. Based on a decree that was issued by Justice Mativo of the High Court of Kenya vide case number I have mentioned.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, with your kind permission, if I will not be allowed to lead the witness, we will not lead the evidence that we have. The witness will have the risk of going on the frolic of his own as he is now doing.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): You are the one who raised the question, counsel.

The Speaker (Hon. Lusaka): What I want is that you give him time to respond.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, he cannot respond to the question that he has not been asked. That is the purpose of cross-examination.

The Speaker (Hon. Lusaka): Okay, proceed.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): So, when was he paid?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): To the statement again, he was paid on 16th July, 2019.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): How much or what was the invoice that he had raised?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The invoice is here with me. Being payment, this is the legal fee—'being payment of legal fees in respect of Petition No.218 of 2018, Musa Yego versus Nairobi City County Government. The invoice for his fees was Kshs5 million. I have not finished.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): You have answered my question.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): You referred me to the invoice; let me finish the details of the invoice.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): You have answered my question. I am satisfied with the answer.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Kshs6 million is not the total payment we have deducted the taxes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I am satisfied with that answer.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I am not satisfied with my answer.

The Speaker (Hon. Lusaka): Order, Governor! You are not the one who asked the question, so you cannot be satisfied with your own answer. Wait for the next question.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I am on oath; I do not want to give a misleading answer.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir can this witness be controlled?

The Speaker (Hon. Lusaka): Counsel, hold on.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Kshs5 million as per the invoice is not the final legal payment.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): That question was put.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): This was the initial amount and taxes had to be removed. The final legal fee we were supposed to pay Kwanga Mboya is Kshs4 million and not Kshs5 million.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I am also satisfied.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The House was not satisfied.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I now lead you to the blue file. Do you have it? E (1). The big file.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, I can look for it.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Do you have it, Governor? The big blue file.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Go with me very fast to page 77.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I will not go with you. I will just go to page 77. Why should I go with you? Let me look for it. I cannot go with you. I can go alone.

(Laughter)

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, I am looking for the file. Which page, please?

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Page 77. Open with me page 77.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Which volume, please?

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): The blue file. Yes, that one. Governor, are you on page 77?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): That is a copy of the extracts of the Integrated Financial Management System (IFMIS), yes?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I want you to look at the entry labeled 0305. Yes?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It is not visible.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): You will see, Mr. Governor. This one is visible.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Come and show me.

(Mr. Ndegwa Njiru showed him the document)

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Can you read out the details?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Let me put on my torch. I cannot see.

The Speaker (Hon. Lusaka) Is it getting darker?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, it is faint. The font is---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Read that entry. What does it relate to?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): 15th July, 2019?

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): What action is taking place on the next column?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Outward transmission of Kshs80 million.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Yes, who was the recipient?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Apollo Mboya and Company Advocates.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Apollo Mboya and Company Advocates, correct?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Not Apollo Mboya, there is no Apollo Mboya.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Sorry, there is no Apollo. It is Kwanga Mboya.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): You are misleading the House.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Kwanga Mboya, Yes?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Kshs80 million was paid on the 15th against an invoice of Kshs5 million. Yes?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Sorry?

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Kinyanjui, would you let the witness be?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Proceed, Counsel. There was Kshs80 million in favour of Kwanga Mboya.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Look at the entry labeled 3 (i).

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, I am there.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): What does it relate to?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The same date of the 15th?

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Yes.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): 2019, not 2020?

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Yes. What action is taking place?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): A payment of Kshs30 million to Abdullahi Gitari---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): A Real-Time Gross Settlement (RTGS), yes? How much was paid?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): On 15th July 2019, one year ago, he was paid---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): It is okay. I will go to the next page, page 78. Entry 306. Can you see it?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Why are you---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Governor.

The Speaker (Hon.) Lusaka): Order!

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiru): Entry 306.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): 306, yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): What action is taking place? What date and what action?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Repeat yourself, please?

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Entry 306. What date is it?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): This page has no entry 306. There is only 305. Maybe I go to the next page. On page 77, there is only 305. The top is 2018, not 306.

Mr. Speaker, Sir, he is misleading the House.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): You are not referring to the whole document. I told you to refer to page 78.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): You said 77, this is 77.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Page 78.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Give me page 78. You have not given me page 78. Let me look for it, please. You asked for 77, now you are asking for 78.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Yes, 78.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Okay, I will look for 78.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Look at the entry labelled 306.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Okay.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Governor, be mindful of time. Move very fast. What action is taking place in 306?

(Loud consultations)

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I am there, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): What action is taking place?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, there is another transaction on 15th July 2019, not 2020. I do not know where your allegations are heading to. These are payments of Nairobi City County, paying Cecil Miller and Company Advocates.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): How much was paid to Cecil Miller?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Kshs80 million.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Kshs83 million, correct? I want you to confirm that all this amount of money was paid on the same day on 15th July, 2019. Correct?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It is correct, and it is not a big deal when money is reflected to the county account from the Exchequer.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): You have heard us alleging and adducing evidence that that is the money that was meant for the bursary. Yes? Go with me to page one.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, let me answer the question. I cannot go there. Let me answer the question.

The Speaker (Hon. Lusaka): Let him answer, then you will go.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, the lawyer is behaving like his client. He just wants to mislead the House. I was very clear about the bursary funds. These transactions are dated 15th July 2019. The financial year ended in September 2020. There is proof that the funds were transferred back to the Central Bank of Kenya (CBK). They were not used.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Governor, what budget are we questioning in our ground one?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): You are questioning the bursary budget, and I have answered that. I have given you proof that no coin was used from the bursary fund. Go to the CBK statement and see. The money is there.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I hear you. Now hear me. Kindly confirm that the budget that you are dealing with is 2019/2020. Yes?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): There were several budgets for---

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiru): I want you to confirm. Yes, or no.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I referred to three different budgets in these proceedings.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I want you to confirm. I have told you what I am dealing with now. Not those other ones.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): We are dealing with that budget, Mr. Governor.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, Mr. Speaker, Sir. These are problems for the financial year.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): When does the government year begin to run?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Let me see.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): When does it begin to run?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, this is July. It is true, the next Financial Year, 2019/2020.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): That is the financial year that we are dealing with, yes?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Good. I want to refer you to the same file, and now go to page one.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): that is an invoice, correct?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Let me get it first, please. I got it.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): are you there, Governor?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): What does that invoice relate to?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): This is a payment for the transfer of bursary funds. This is a handwritten document, so I do not know the authenticity of this.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): It is okay. It is the same document you referred to.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It is handwritten. It is not an electronic document. The CBK statement.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiru): Governor, how much money is in issue in that invoice?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Sorry?

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): How much money is in issue? How much money are we looking at?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Kshs297,500,000 in 2019, and it went directly to the Co-operative Bank account.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): That is okay. I have not asked where it went. Confirm to this House that that is the money appearing on ground one of the charges.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No. It is a total lie. The money---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I have asked you the figures.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, it is a total lie.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Governor, hear me out. Confirm that Kshs297,500,000 is the money in question or the subject of these proceedings.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Can you allow me to answer you?

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): No, confirm.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I want to answer the question.

The Speaker (Hon. Lusaka): Let him answer.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, as I have said earlier, the allocation for bursary for Financial Year 2018/2019 was Kshs297,500,000. I aired a clip showing the cheque for the same amount. I have a statement showing how this amount was utilised. From the CRF Account, it went to Co-operative Account and we have a list of all the beneficiaries.

The Speaker (Hon. Lusaka): But he is talking about 2019.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): That was 2019. We also allocated a similar amount for Financial Year 2019/2020. That is Kshs297,500,000 for bursary. We have a statement from the CBK confirming that. The funds were not disbursed from the Exchequer in September due to COVID-19 challenges. Since schools were closed, we returned the money back to the CBK and the statements are there.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I hear you, Mr. Governor. However, as much as I hear you, I want you to refer to page 76 of the same document. Are you there?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Give me a minute please.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Kinyanjui, do not coach the witness because he is my witness. You will have time when I yield.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I am the Senate witness and not your witness, please.

Mr. Speaker, Sir, I have got the document.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Are you there?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Governor, look at entry labelled 261. What date is it?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The date is 12th July, 2019.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): What action was taking place?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The action was outward RTGS of---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): RTGS from which account to which account?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): From CBK to the county account. Let me just confirm.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): No, Mr. Governor.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): A second kindly.

The Speaker (Hon. Lusaka): Just hold on. What is your intervention, Sen. Olekina?

Sen. Olekina: Mr. Speaker, Sir, I am not sure whether I am the only visitor in Jerusalem. I have no clue of the documents they are referring to. I am trying to follow but I cannot see. I got lost in between the documents which were introduced and these current ones. If they refer as to the documents, we will follow.

The Speaker (Hon. Lusaka): Counsel, which documents are you referring to?

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): We are referring to this big blue file labelled as 9A. Mr. Kinyanjui, stop coaching the witness.

The Speaker (Hon. Lusaka): Counsel Kinyanjui, you were the one complaining yesterday.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I do not know why he is losing the decorum of a senior counsel.

The Speaker (Hon. Lusaka): Take your seat.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, I was informing His Excellency the Governor---

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiru): You should seek leave of the Chair.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, I raised my hand and you allowed me. I think Mr. Njiru did not see that. Hon. Members, I do not mean any disrespect.

I was whispering to His Excellency the Governor, because Mr. Njiru was addressing another issue, that the file we are referencing are their documents. So, I am taking a little longer to look for them.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Governor, I am assuming that now you have the document? Correct?

The Governor of Nairobi City County (Hon. Mike Sonko): Let me go back to the document because you have somehow confused me. Did you say page 76?

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Look at page 76, entry labelled 261. Which date is that?

The Governor of Nairobi City County (Hon. Mike Sonko): The date is 12th July, 2019. That is RTGS auto-transmission from the CBK to Nairobi County Account. The amount is Kshs297,500,000.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Confirm that this is the account for the Nairobi City County.

The Governor of Nairobi City County (Hon. Mike Sonko): Mr. Speaker, Sir, I confirm.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Confirm that the money in issue came from the CBK.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, to Nairobi County Government Account.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Finally, confirm that the money was Kshs297,500,000.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Then, Mr. Governor, expeditiously explain the manner in which you distributed that money.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): That is a good question.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Listen, Governor. Is this the money you said was returned to the CBK?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiru): Do you have evidence of---

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): A question cannot answer another question. I have given you time.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Confirm that this is the money that was---

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I cannot confirm because an answer cannot answer another answer. Let me give you an answer.

The Speaker (Hon. Lusaka): You answer what he has asked systematically.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Let me refresh.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I do not want you to refresh. I got the question, let me answer.

The Speaker (Hon. Lusaka): This is like a court and we need to follow the proceedings. Let us conduct ourselves in a civil manner.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, allow me to refresh the question for his benefit.

The Speaker (Hon. Lusaka): He says he has heard the question. Let him answer. It does not need to be refreshed.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I have heard the question. Let me answer it. The counsel is repeating himself by the way he is asking questions.

Mr. Speaker, Sir, the counsel is referring to the disbursement of the bursaries for 2019. Immediately after his clients were charged in court---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): That is not the question. I will come to that.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): That is the way I want to answer. You have a way of asking questions and I have got a way of answering. Kindly give me time to answer. I will take less than a minute.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, you gave a ruling yesterday.

The Speaker (Hon. Lusaka): Hold on counsel.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, you gave us directions that when a question requiring “Yes” or “No” is put,— this was confirmed by Sen. Madzayo, — an answer must be given in that nature.

The Speaker (Hon. Lusaka): Counsel, just relax.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The answer is “No” and I have reasons why. So, let me explain. I am on oath and cannot lie to the House. I was once a Senator and know the repercussions of lying.

This House has got powers equivalent to the High Court. I can be charged with perjury---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Proceed.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Just relax and let me answer.

Mr. Speaker, Sir, with all due respect, the counsel is misleading the House. Immediately after his clients were charged in court for stealing taxpayers’ money by directing to their wives accounts, I stopped the process of issuing cheques directly to MCAs. We agreed that all payments should be made through the bank, then the County using its Co-operative Bank account transmits the money through RTGS direct to schools.

Transaction No.261 on page 76 that the counsel is referring to was on 12th July, 2019. This is a genuine transaction. On the same date, this same amount was captured in the statements.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, if you may, may we just speak to the documents before you?

The Speaker (Hon. Lusaka): Governor, are those documents with us?

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): They are not filed.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, this is a statement from Co-operative Bank. The same he is talking about is found in the statement for bursaries for previous years. The money was transferred to Co-operative Bank account and there is a list of all the beneficiaries of over 100,000 students.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, the document is not before you.

The Speaker (Hon. Lusaka): If it is not filed, then you cannot use it. That is the rule.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Correct.

The Speaker (Hon. Lusaka): What is it, counsel?

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui):

Hon. Senators, Mr. Kwanga Mboya sought to produce these documents. He pleaded because he has been negatively implicated by that notice of summons. Please, allow me to produce this whole bunch so that I can demonstrate what has been alleged against him. He has now referred to the documents disputing the alleged receipt of Ksh10million---

The Speaker (Hon. Lusaka): Order. He had asked for that yesterday, but yesterday he was already out of time.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, I am sorry. It was because the summons was sought for by Mr. Ndegwa Njiru. The ruling was delivered by yesterday that he should be summoned and yet he was not originally among the witnesses sought by the prosecuting team.

When the grant was made that summons can be issued he immediately rose and said, "May I have the leave to have the documents brought in? We anticipated although it is wrong to anticipate pursuant to your rules that he could produce these documents in defense of his position.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir---

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): I am closing. I am justifying why because an attack has been made on the Governor, why are you referring to documents you have not brought? They are the authors of this scenario with respect.

They served their notification late. Had they told us in advance on the 15th ---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, Mr. Kinyanjui is eating into our time.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, that is the reason why documents---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): The application is belated. Governor, answer the question.

The Speaker (Hon. Lusaka): Governor, proceed.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Is that the amount of money you said was returned to the CBK?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, the amount of money returned to CBK, yes, it is the same.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Do you have evidence of return?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, I have got the CBK Statement.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Have you tabled that evidence before this House?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, when I was testifying in the morning, I tabled the documents in my affidavit. The amounts in figures are the same in Financial Year 2018/2019 and 2019/2020.

The Speaker (Hon. Lusaka): Let us make progress.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, with all due respect, some of the documents---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Take the next document 9B.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, with your permission, please?

The Speaker (Hon. Lusaka): Yes, Governor.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, as my counsel indicated earlier, the counsel served us with his files and affidavits past 7.00 p.m. the day they were supposed to be filed. We requested for these Statements at cooperative Bank of Kenya. They are very voluminous over 600 pages. We were delayed by the bank in printing of these documents. They were sent to me today in the morning.

With all due respect as a Member of this House, I am requesting, because we made 80 copies. I do not know, if in the interest of time, I can be allowed to serve a copy to the Clerk or to you. The files he is referring to---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, you have pronounced yourself on that issue. Let us proceed, Governor.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I am requesting the House from another angle. You have never been a Senator, my friend. We have our language on which I am appealing to colleagues.

The Speaker (Hon. Lusaka): Governor, I have heard your question. I will respond to that.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Proceed, counsel.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Governor, do you have this volume of document labeled 10 H? It is your document.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, Mr. Speaker, Sir.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiru): Please open with me page 170.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, I am there.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): What is the document that you are looking at?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): These are CBK transactions showing stopped RTGS payments.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): When is it dated?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It is dated 1st September, 2020 and the transaction is for 12th July, 2019.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): How much money is issued?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The same. I have told you the allocation for bursary fund was the same. It is the same for 2019 and 2020.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Is that document indicating a refund or return of that amount?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): This is a refund because it is saying "stopped" and by then there were no allocations from the Exchequer because of COVID-19 challenges.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): When was it refunded?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): This is another financial year. This was refunded---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I am asking: When was that money refunded?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): This document has been authenticated.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Governor, when was the money refunded?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It was not refunded; it was not even available.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): When was it returned?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): All the counties did not have money.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I am looking at the date. When?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It was withdrawn from the IB it does not mean it was returned.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Which date?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): On 1st September, 2020 but the transaction we are talking of 16th July, 2019 is captured in the Statement on the same date. It went to all the schools through RTGS.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I know why I am asking all these questions.

Governor, I am aware that you know the provisions of Section 30 of the County Government Act, yes?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): You know it relates to the functions of the Governor, correct?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I know you are aware that among the functions of the Governor is to be accountable for the management and use of the country resources. Is that one of your functions?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, but in the recent ruling in the Waiguru impeachment proceedings---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I am reading the law. I am putting it to you that Section 30 requires you to be accountable for the management and use of the county resources.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, if I have broken one of those laws but for now I have not broken anything.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Governor, you are aware that the buck stops with you in the management and accountability---

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): In some of the areas and issues but in some of them each officer---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, Counsel Kinyanjui is passing notes to Governor and it is very offensive. Mr. Kinyanjui, be honorable as a senior counsel.

The Speaker (Hon. Lusaka): I want to now caution you now. This is not a market. This is the Senate of the Republic of Kenya sitting here now as a court. If you do not behave with decorum I will have no choice but ask you to leave.

Proceed.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): You are also aware that among the functions that you have is to submit county plans and policies to the County Assembly for approvals. Is that your function, yes or no?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, before I proceed this is a simple note from Mr. Kinyanjui. I will give it to the Serjeant-at-Arms to pass it over to you. He is advising me: "Just be calm, the lawyers will annoy you, respect the hon. Senate."

The advocate is advising me. I can give it to the Serjeant-at-Arms to give to you.

The Speaker (Hon. Lusaka): He knows that is wrong.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): We take that.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, you can consult your advocate during proceedings.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Governor, you are aware that among your functions is to submit the county plans and policies to the County Assembly. Is that so?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I now want to refer you to a file labeled as 9B. Are you there?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Let me look for it.

The Speaker (Hon. Lusaka): No, he needs to be given the file.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): It is the black file. Move with me to page 631. I can share this with you. Are you there?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Before that, move with speed to confirm that that is the tender document relating to Dandora stadium.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, it is.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Could you kindly read out the description of that project where it is highlighted?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Proposed stadia with a 3000 capacity seating on concrete terraces and steel strass light carbon iron sheets.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Correct. What was the stadium to be constructed of?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Concrete.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Concrete terraces. Move with me to page 808.

It is Page 808, governor. You will not be there if you go with that speed. Confirm before we read that letter to whom the project or the tender was awarded.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Scanjet Construction Limited.

The Counsel of the Nairobi City County Assembly (Mr. Ndegwa Njiru): Scanjet Construction, yes.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Look at the letter dated 12th September, 2018. Who is the author?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The Chief Officer, Urban Renewal, Housing and project Management.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiru): Is that your officer?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Is that officer under you?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): She is no longer there with us.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I am not asking the personality. It is the office.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): She is not my officer. She is no longer with us.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): You have an office in your county government structures labeled as Urban Renewal, Housing and Project Management.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): We have that department. We do not have such an officer.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): You have that department, yes?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): What is the content of that letter?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The entire letter?

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Yes, would you read the first paragraph.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Proposed construction and completion of four number stadia within Nairobi.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Yes, read the first paragraph.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): A cite visit conducted on 12th September, 2018 at Dandora established the following: That we have continued to do works that were not in the contract, bills of quantities and drawings, especially the heavily reinforced and expansive concrete terraces.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): What was the company doing?

The Governor of Nairobi City County (Hon. Sonko): Constructing the stadium.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): With what materials?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): But there is an addendum.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): With what materials, governor? We will come to that.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I am not an engineer.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): With what materials were being used; concrete or steel?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): You have deviated from reinforced concrete terraces but it is not me. I am not---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): It is okay, governor. Read. What deviation was done?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): You have deviated from reinforced concrete terraces and preparing grounds for steel terraces.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Leave with me to Page 841. Are you there?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Confirm that, that is a report from Public Procurement and Regulation Authority (PPRA) dated 23rd September, 2019, yes?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): If you are there then move very fast to Page 856.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Would you read entry or Paragraph No. 5.

The Governor of Nairobi City County (Hon. Sonko): Forgery of documents.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Yes, read.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It reads:

“The contract documents appeared to have been forged including a Cabinet Memo to state that the stadium should be steel structures when the work is at 70 per cent complete”.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Continue.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It goes on:

“All the photocopied documents submitted to the authority by the county government of Nairobi were not certified as true copies of the originals as demanded by the authority. Therefore, it was not possible for the authority to conclude that the documents were either authentic or otherwise. It was not able”.

They could have been authentic or not because the documents were not submitted on time.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): The authority is saying there was a variation of the tender terms, yes?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Even there was an addendum done which is okay.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I will come to that.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The world has gone the steel way.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Go to Page 857 and you read entry number 6 or Paragraph 6 (c). What is the content?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It states:

“All the documents submitted to the authority by the county government of Nairobi were not certified as true copies. It was just to certify. They were not certified as the true copies of the originals as demanded by the authority”.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Yes. Proceed to Paragraph (d)

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Which one, (e) of (d)?

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): (d)

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The (d) for dog?

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Yes.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): “The county government paid the contractor an amount of---“ No, this was a lie, it was not.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Read.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): “The county government paid the contractor an amount of Kshs196,876,000 as envisaged by the payment record highlighted herewith.”

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Yes. That is Page 857. How much money was paid, governor?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): This is not a correct figure. What was paid was only Kshs90 million as per the last---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I want you to read what is written, not what was---

The Governor of Nairobi City County (Hon. Sonko): This document did not originate from us. I cannot say this amount was paid. I cannot mislead the House. I am on oath. We have correct figures from our affidavit on how much was paid.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I want you to read what is there not what you know.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, this is not our document. I cannot own it.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I know. I have not asked you to own. I want you to read. How much money is in issue?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): They are alleging that Kshs196 million was paid but this is a lie. It was less than Kshs100 million.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Go to Paragraph 7. Read Paragraph 7.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I am there. It is recommendations.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): What is the content in Paragraph (a)?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): "It is the authority's considered opinion that the subject contract document and the annexures attached to this report should be subjected to more investigations to determine---"

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Should be subjected to investigations.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): But the investigation was still ongoing. It was to determine whether they have been forged or not including cabinet memorandum to state that the stadium should be steel when the work is nearing completion.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Was this report brought to your attention as the Chief Executive Officer (CEO)?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No. They are my juniors who were relevant---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Does that mean that in your governance, it is true what was testified by Ms. Janet Ouko Muthoni that you have a dysfunctional system and that is why this was never brought to your attention?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Was this brought to your attention?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): But there are officers who are---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Was this brought to your attention?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It was brought maybe to my County Executive Committee Members (CECs), County Secretaries, or Chief Officers.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I read the law to you that you are the most and the buck stops with you about accountability.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, you are lying to the House.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Okay. I want to refer you to your Paragraph 48 appearing on Page 12 document labeled 10 (h). It is the Governor's document. Governor, you can have this for purposes of expediency.

The Governor of the Nairobi City County (Hon. Mike Mbuvi Sonko): Which page?

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Governor, I want you to refer to this. Have a look at that.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, I am there.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Would you kindly read that? Confirm that this is your affidavit.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, I deny in total charges in Paragraph---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Confirm that this is your affidavit.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Read Paragraph 45.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I deny in total the charges in Paragraph 1 (e) as I have no role to play in the procurement, which is true, of goods and services. The issue of the construction of Dandora Stadium is being investigated by the authorities.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): By the Ethics and Anti-Corruption Commission (EACC), correct?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I have not finished the statement.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): By the Ethics and Anti-Corruption Commission (EACC).

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): You have told me to read. Let me finish.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Is the matter being--- Governor, we want to save time.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The issue of construction of the stadium is being investigated by other authorities and agencies like EACC

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Good. So, it is within your knowledge from your deposited' documents that the matter is being investigated.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The investigations are maybe still ongoing.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): You have seen your officer saying and advising on the question of the variation, yes?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): That is not my officer.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): You deny your officer.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): She is no longer with us. I do not know her.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I am not asking the person. I am asking the office of that officer. Is it still in existence?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes it is but the current officer has not---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Has Dandora Stadium been completed?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, it is not.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): What was the completion period?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): One and a half years.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): How many years down the line now?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The construction was suspended.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): What has stalled the construction?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): We did an addendum. We wanted to---

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): What has stalled the construction?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The investigations which are still ongoing.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, allow me to yield to Mr. Milimo Benson. He has two or three more limbs. You gave latitude to the other witnesses.

The Speaker (Hon. Lusaka): How much more time do you want because one hour is over.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): We need about 30 minutes only. He has the issue of the daughter flying to the United States of America (USA). He is going to deal with it.

The Speaker (Hon. Lusaka): Okay. I will give you 30 minutes. Time is not a strategy. It will end.

(Laughter)

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): As I go and yield, did you have a look at the videos that were played here yesterday?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No. I was not in the House. My lawyers had a look.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Did they inform you what was played?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Have you rebutted that evidence?

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Mr. Speaker, Sir, Hon. Members, Mr. Milimo is my name. I will take the last few portions of cross-examination of the Governor.

Mr. Governor, I want you confirm that you are the Chief Executive Officer (CEO) of the County Government of Nairobi.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Governor, you are aware that MCAs as well as yourself are both elected leaders.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You agree with me- because we are going to corporate quickly- that both the county assembly members and the governor are independent offices that have independent mandate.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You agree that both the county assembly and the governor are accountable organs of the county government and that none of them has a right to gag the other.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko):: It depends on the circumstances.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Yes. However, generally, you have no right to gag the other.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No. If they divert public funds, I can deal with as provided for in the law.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You agree with me that both the governor and the county assembly must be accountable for all purposes and intends.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Governor, do you agree with me that one of the things that will bring about accountability is the impeachment process that is before you?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I am not aware.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Do you agree with me that you went to court to stop this process of impeachment?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): There was a court case.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Yes. In that ruling, the court denied to stop the process of impeachment.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No. There was an ongoing case.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Was there a ruling at any point delivered on the question whether or not the impeachment will proceed?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I am not aware because I have not been in court. What I know our orders were extended. That was the budget case before Justice Mwarima.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Yes. However, you are aware you filed a case petition number 35 in Employment and Remunerations Court?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The case is still active in court.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Are you aware whether a ruling was delivered on the 9th of December, 2020?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): We were told to go back to court.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): I am asking a question. Are you aware that a ruling was delivered on 9th of December, 2020 on the question of whether or not these impeachment proceedings will proceed?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I will have to confirm with my records because I have not gone to court from that time.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Very well. Are you aware that the court dismissed your request or prayer seeking that these impeachment proceedings be stopped?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Those are normal processes in court. You can---

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Aye you aware?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I am aware.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): All the issues you have talked about relating to court processes, unless you want selective recollection of evidence are things that are not within your knowledge.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The rule is very clear. It does not talk about court orders. It takes about any active matter in court.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You have avoided that question. Nevertheless, we shall proceed.

One of the things I want to ask is that you are aware you were invited when the impeachment proceedings commenced at the county assembly? Were you or were you not?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I was invited. My lawyers proceeded to the assembly with the documents and they were stopped by the serjeant-at-arms. I was aware that---

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Let us go slow. The date you were to appear was on 3rd December 2020. That is the date when the impeachment Motion was tabled. Correct?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Do you remember the advice or direction you were given on your mode of appearance on that day of 3rd December 2020?

The Governor of Nairobi City County (Hon. Mbuvi Sonko Sonko): I do not remember.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You have talked about evidence relating to 2017, 2016 and 2019; you cannot remember something that happened a few weeks ago?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Answer the question. Do you remember the mode you were asked to appear? The mode of appearance.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I do not remember because the service was not properly done.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): There are two ways of appearance. Are you aware that you can appear physically or virtually?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I learnt it from the Senate when the Speaker made the communication.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Do you recall that you were supposed to appear virtually? Yes or No?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You do not recall. Were you advised on how to appear?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): An appearance can even be---

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Were you advised? Did the letter state to you?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): My lawyer came physically.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): It is not about whether your lawyer came. The question is, in that letter, was there a direction of how you would appear?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I do not remember.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You cannot remember.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): So, when you send your lawyer to go to the County Assembly, was it on your own volition or based on the direction from the Assembly?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Sorry. Can you repeat the question, please?

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): When you sent your lawyers to go to the Assembly to appear for you, did you read the letter that invited you there or you did it on your own volition?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): If I am lost, in my legal matters it is up to them to handle the issues. They can represent me on my behalf.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): So, you did not bother whether or not there was any direction in the letter of invitation.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): If the lawyers came, then they knew what they were doing.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): So, that is for your lawyers.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You have said so much about the proceedings of 3 December 2020. You are aware that a County Assembly just as is this Senate is a House of record.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Governor, you also agree that the record of such Assembly or Senate proceedings is a conclusive evidence of what transpired on that particular day or event.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Sorry, come again.

The Counsel for the Nairobi City County Assembly (Mr. Milimo Benson): The record of such a House is the conclusive evidence of what transpired on such a particular event or proceeding.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No. The Senate is respected. They do not break the law like what transpired in the Assembly. So, you cannot compare the Assembly and the Senate.

The Counsel for Nairobi City County Assembly (Mr. Benson Milimo): Yes, but at least the prima facie evidence or the evidence is the record of what transpired.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): For the Senate and the Assembly is very different.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Okay, for the Senate, what is the record? The record is conclusive, correct?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): For the Senate is okay, but for the Assembly they commit many illegalities.

You saw what happened and aware of what transpired. There were no numbers and they have been forging signatures of Members of County Assembly (MCAs). In the Senate, the Speaker or the Clerk not forge signatures of Members. We have some crooks in the Assembly, your clients.

This is a House of integrity. You cannot compare it with people swindling taxpayers' money.

The Speaker (Hon. Lusaka): Governor, stick to what you have been asked. Do not go there.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Mr. Speaker, Sir, I was asking that those words be withdrawn. Those are elected leaders and cannot be labeled as crooks.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): They can be. They have been stealing. It is in the public domain and they have been charged in courts.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Nonetheless, we will proceed.

Governor, you aware that this impeachment process especially referring to the County Assembly has different organs that handle the paperwork and everything at different times.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Does the office of the Clerk have any role to play? Clerk of the County Assembly?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): They do not have a role?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I am not a MCA, so I am not conversant with the Standing Orders of the Assembly.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Does the Office of the Speaker have any role to play in the impeachment process at County Assembly?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Are you aware that for purposes of all the papers that are delivered to the County Assembly, they are normally delivered to the Clerk of the Assembly.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Therefore, the Clerk is the accounting officer for purposes of the papers relating to this impeachment proceeding tabled before you.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You appear to have had a problem with the papers that were delivered to the County Assembly.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): My lawyers will handle that.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Governor, did you at any point in time invite or ask the Senate to summon the clerk of the

County Assembly to answer to any issues relating to the papers that were delivered at the County Assembly?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The witnesses summoned---

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Did you summon or did you not?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The application was in our witness statements so I am not aware. I have not seen the witness statement. We did not read all the volumes of the affidavits.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Did you ask for summons against the Clerk or not?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I will have to consult my lawyers.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You will have to consult your lawyers. You cannot remember?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): The other thing is that you appear to have a problem with the proceedings that commenced, went on and continued at the County Assembly. You appear to have a problem with the impeachment proceedings at the County Assembly of Nairobi.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The law was not followed.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): At any point in time did you ask the Senate to summon the accounting organ of the County Assembly?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): We requested for MCAs to be summoned to testify, but because of time, we were not able to do that.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): So you did not ask the Speaker to be availed to answer to any issues that you would have?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It is not me to request for the Speaker. We have our witnesses, you have your witnesses.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Governor, you referred to a certain document at page 221 Volume 10H which is a letter dated 7th December. All I want you to confirm is that you are the boss of the Nairobi City County Executive.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Confirm to me that this is a letter written by one of your officers to you.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Come again.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You indicated issues relating to the Director of Criminal Investigations. I want to put a direct question: Is this letter emanating from the Director of Criminal Investigations?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): This is an officer from the Criminal Investigations Department (CID). We have a county unit for CID and police officers seconded to us by the National Police Service (NPS).

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): The letterhead on page 221 is for which organ?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): That is for Nairobi City County.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Nairobi City County, correct?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Any matters pertaining to investigations are being handled by the CID officers attached to the County.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Let us go slow. Is there anywhere that somebody is saying here that this is an officer attached to county?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Where is it?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The Director Investigation and Information analysis, we do not own the charge sheet. It is from the National Police Service.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Am asking, in the document I have referred you to, this is at page 221, confirm to me that the document is under the letterhead of your County Government.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, these are CID officers from the DCI office attached to the County Government of Nairobi to do investigations.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Yes, the second question is, this letter is written to you as their boss. Correct?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, this is a memo because there were ongoing instructions. So they were briefing me they have succeeded in arresting the suspects and they now wanted funds to go to Homa Bay and others to Rift Valley, to gather for some more evidence.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Very good. Of course you agree with me that your officers have no right of the county to arrest any person.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): These are CID officers attached to the County.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): I am talking about the County officers and not the CID.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): They have a right to arrest.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): On a criminal charge?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Under which law?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The National Police Standing Orders---

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): I am talking about county officers.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): These are Criminal Investigation Department (CID) officer attached to the county.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You have no evidence of that attachment, correct?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The ones who conducted the arrest, not the county officers.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): No problem, let us go on, Governor. You shall recall that this letter had specific purpose that you have not disclosed to this House. I want to refer you to the last paragraph on page 222 of the same documents. The next page.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Page 222?

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Yes. Look at the last paragraph. What was this officer seeking? This is a director of investigation information analysis. What is he seeking in that paragraph?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Once our CID officers---

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Read it. What is he seeking?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The case.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): What is he seeking?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): You have told me to read. Let me read. You cannot ask two questions at the same time.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): That is okay, Governor.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The case requires traveling because we have witnesses in Homa Bay. There are schools which are there and students are going to receive bursaries.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): So, what is he seeking?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): There are letters which were written. He says, in Homa Bay County and some areas of Rift Valley. Therefore, we require urgent facilitation like fuel." If they spend there three or four days, accommodation, money for food and facilitations to enable us prove---

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Very good. Thank you, Governor. This person is seeking for money.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Facilitation.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Facilitation in terms of money to go and do whatever they were supposed to do. Correct?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Fuel, accommodation--- I can say yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): The long and short of it is money. Is that not?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Imprest, yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): The reason why you put a lot of flower and juicy information in this is so that you can top the money?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): There is nothing like “flower.” They are poor students and they were being denied bursary funds.

The Counsel for Nairobi City County Assembly (Mr. Benson Milimo): I put it to you that all that language was so that you then release more facilitation to this officer?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No. This habit has been there. The scandal has been there since 2016. We are the ones who stopped it.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Thank you, Governor. First, is the Mover of the Motion that brought you here among the people who have been charged with all these charge sheets that you have read out? Is he among any of those who have been charged?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, he has not been charged, but he is among the people who are supposed to be charged any time from now. Even check for his constituency which has a court case.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Of course, you are not the Director of Criminal Investigation (DCI).

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, I am not an investigator. I just do the investigation report.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You have no power to arrest yourself, correct?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I cannot.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You have talked about diverted cheques by Members of the County Assembly (MCA). I will refer you particularly to page 229 of the same document.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Page 229?

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Yes, page 229 of the same document.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, I am there.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): This is a document that you referred to. The simple thing that I want to ask you is, is there any MCA who has been charged in respect to this alleged investigations?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The Personal Assistants (PA), wives--- There is no MCA.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Is there any MCA?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): There is no MCA who can open a fixed school account in his name, but their proxies like wives and PAs---

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Let us go to the next question, Governor. There is no MCA who has been charged. You also referred to a certain document---

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): There are proxies who have been charged.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You cannot say that. You have no mandate to say that.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It has been said in the investigation report. The PA to the MCA of Karen and the wife to the PA. These are proxies of MCAs.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): That is okay.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): In fact, in your letter, that is your proxy.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): That is okay. You have also referred to many documents. There is a document you referred to at some point that had not been admitted to this. You said so many things. You said that it is for Hansard purposes. You mentioned names, you called in a lot of evidence that relates to this. All I want to confirm to you is that the information you were reading is from that document that was not admitted by this House, but you said that it is for Hansard purposes.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, I requested. The synopsis behind that was not properly explained. For instance, the bank statements were very voluminous. They were over 1000 pages. We went and certified this morning. By the time we were bringing them to the House, were time barred. I have renewed that application to the hon. Speaker, so we will wait to see if he will allow it, especially the one for the Kshs297, 500, 000

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Thank you, Governor. All I am asking is that that document was not admitted.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I leave that to the Speaker to---

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Secondly, are you aware that such information that all you said from that document is not admissible because the document is not before the House? Yes, or no. Are you aware?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Of what?

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You are not aware?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The document has been authenticated. It has been certified.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): That is okay. Thank you, Governor. I will go to one of the most sensitive issues that you

have been referred to. Seeing that you opened up yourself, I want to open up, I want to quickly refer you. You have a daughter by the name of Saumu?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): We have children.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimu): This issue has been contentious. You agree that it is your daughter?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, she is my daughter.

The Counsel for Nairobi City County Assembly (Mr. Benson Milimu): You agree with all of us that your daughter has never been employed as a county officer in Nairobi City County?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): She has never been employed as a county officer.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimu): Thank you so much. Nevertheless, you agree with us that your daughter travelled at some point to the US?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It is true.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimu): All I would want this House to know is the capacity she travelled in.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): As a woman and part of the delegation. Even the President and governors travel with their families and the costs are met by the Government.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimu): Therefore, all that we are interested to know is that she went as part of the delegation.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): That was confirmed and we have that letter

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimu): That is okay. All we are interested to know is whether any money was spent on her travel by Nairobi City County Government.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Nothing was transferred to her account. We can even bring the statement to prove. We catered for some of the expenses even for my wife such as accommodation.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimu): The County Assembly respects your wife, so do I. I do not want to go to your family. All I am asking is whether any of Nairobi County Government money was spent on your daughters subject travel.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Come again on that question.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimu): Was there any money from the County Government of Nairobi that was spent to facilitate or otherwise be utilised by your daughter to travel to the US?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimu): There was no money spent?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Apart from the air ticket.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimu): Was the air ticket paid for by the county?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I think for my wife, it was paid by the county. That was in 2018/2019 and I cannot remember everything but nothing was transferred to my wife or my daughter. If you need proof, we can bring that statement for you to confirm.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimu): That is okay. You have answered that it was paid.

Governor, I want to refer you to your own document that you produced to us here. It is written D10 Volume 3 of your documents starting from pages 423 to 657. Look at page 612.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Which page have you said?

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimu): Page 612.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I am there.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimu): Of course you agree that these are your own documents. Is that so?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): But I am not the author of that document.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimu): Okay, but these are your own documents because you are the one who brought them here. You can see there are two names. I want to avoid the first name. I want to go to the second person named there. With a lot of respect, just read the name of that person written there.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It is not clear.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimu): It is your document.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It is our document which we were to use to cross-examine the witnesses who were supposed to come. This is not a county document.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimu): But you are the author of that document.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No. You can check the author. It is a company called Premium Agency.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimu): But you brought it yourself.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): We were supposed to cross-examine a witness on it. There is a reason why this document is in my affidavit.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimu): Then I will allow you to read it together with our 9C if my learned can refer you to it.

If my colleague is not ready, I can hand over the same document to the Governor. It is the same document 9C which is at page 1126. Governor, I am requesting that you do for us one question only.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Proceed.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Thank you, Governor. You can see there are two names indicated or stated in that document. I am interested in the second name. Kindly just read. I am sorry it is actually 1128, which is the same document you referred us to. Kindly read the second name there which is the same document that you referred us to.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Premier Plan, the name is Salome Agnes Mbuvi who is my daughter.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): What is the designation of that?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It is written ward administrator but my daughter is not a ward administrator. I am not the author of this document.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Of course, you brought it to us.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): We brought it so that we can question. We had come to testify but we were not given a chance.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): No problem. Thank you, you have answered the question.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It is not me, not my daughter, not my wife. There is a company called Premier Plan.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Very well. Of Course, in the same document I want to refer you quickly to page 1133. I am interested in the seventh line. This is a document of imprest warrant. Do you agree with me?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): What is the nature of the duty that is being stated in that document?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I do not know where you are referring to.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): It is handwritten.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Being imprest for---

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): "Being imprest" for what? Can I read it for you? The document reads:-

"Being imprest for county first lady and ward administrator to travel to USA."

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): That is what the document reads.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): This is a document from your institution. Is that correct? It is an imprest warrant, do you agree? What is the amount stated up there? “Apply for---“

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The amount is Ksh2.6million payable to Joyce Kinyanjui and not my wife or my daughter or myself.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Thank you. We have stated what that is. Thank you, up to that level.

We go next very quickly. There is a letter that you referred to at page 59 Volume 10H. Confirm that that letter is dated 23rd November, 2020.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Confirm that that letter is dated 23rd November, 2020.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Yes, and that is a letter that is written by yourself.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): My office, signed by myself.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Signed by yourself. So, when was the impeachment Motion tabled at the County Assembly?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I think on 26th.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): On 26th November, 2020, correct?

The Governor for Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): So, the date of your letter is 23rd, correct?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Was this letter at any point in time copied to the Mover of the Motion?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, because he is under investigation.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): It was not copied to him.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): So that you wrote this letter, not copied to him and you want to allege that the reason for tabling of the Motion was because of this letter?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): But he is aware because he was summoned by the Directorate of Criminal Investigations (DCI). His name appears.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Very well. I want to put it to you, governor, that you wrote this letter after you got wind of the intended impeachment proceedings to blackmail.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I disagree with you because the letter was received on the same date.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Okay, thank you.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Again also your client is mentioned in the Auditor-General's report swindling the county Kshs3 million and he is supposed to refund that money in the 2018/2019 Auditor-General's report.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Thank you, Governor. You mentioned something about Ms. Janet who was your former officer. Of course, unfortunately you referred to her with very strong words. I want to ask you, governor, do you have any evidence?

The Speaker (Hon. Lusaka): What is your intervention, Counsel Harrison?

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank very much Mr. Speaker, Sir, and honorable Members. I noted that the red light is on and on account of your assignment to me a strict timeline, I thought the same should apply to him as well. I stuck to your timeline. He should do so.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Mr. Speaker, Sir, five minutes only.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, I was not given five minutes.

The Speaker (Hon. Lusaka): No. I gave you a lot of latitude. I have leant backward for you on many things. Let me also just execute my duty.

Proceed.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Mr. Speaker, Sir, thank you. Governor, I just want to establish one thing whether you understand where the trial of impeachment proceedings takes place whether it is at the county assembly or at the Senate.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Come again, please.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Do you know where the trial of impeachment proceedings takes place; whether it is in the County Assembly or it is in the Senate.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): In both Houses. First it takes place---

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Do you know what is a trial?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Do you know where the trial takes place?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It starts at the Assembly and ends at the Senate.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): The trial. Do you know what a trial is?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Do you know where it takes place?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Is it at the Senate or at the Assembly?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It starts at the Assembly.

The Counsel for the Nairobi City County Assembly (Mr. Milimo Benson): It starts at the Assembly according to you.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): What I am asking you is that you asked whether the evidence that has been tendered before here was tendered at the County Assembly. I want you in ten seconds to show me any provision that requires the County Assembly to table evidence at the time of tabling and debating the Impeachment Motion at the County Assembly.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I am not conversant with the Standing Orders. Give me a minute. I have that law somewhere. Let me read the Assembly Standing Orders.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Do you have any provisions? If you do not have, then we will move on.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It is Standing Order No. 72 (2) of the County Assembly.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Standing Order No. 72 (2). Kindly just quote the direct part that states that impeachment at the County Assembly must be accompanied by or done by way of evidence. The Standing Orders are here. Just read to me where it says that in impeachment proceedings, before the County Assembly, you must table evidence and that the trial takes place at the County Assembly. Are you able to read any of those?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Standing Order No. 72 (2) of the Nairobi County Standing Orders states that-

“If a Member has sufficient reasons to convince the Speaker that the member is unable to substantiate the issues instantly, the Speaker---”

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): My colleague is interfering with the witness.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Sorry.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Please, proceed.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Standing Order No. 72 (2) of the Nairobi County Standing Orders states that-

“The person being removed from office shall be availed with the report of the select committee together with any other evidence adduced and such note or papers presented to the committee at least three days before the debate on the Motion.”

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Is there anywhere where it is stated that an impeachment---

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I was not furnished with evidence even before.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Does that relate to an impeachment Motion? I asked about an impeachment proceeding. Do you know that impeachment proceeding is a unique proceeding?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes. The person being removed from the office shall be availed with the report of the select committee together with any other evidence adduced and such notes or papers presented to the committee at least three days before the debate on the Motion.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You confirm that what you have read relates to select committees and so forth. Confirm that this was not---

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): There is 67 (7) of the same Standing Orders.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): It is okay. You have confirmed that the issues you are reading relate to select committees.

Hon. Governor, you also showed us some audio clips of persons with whom you were interacting. I want to ask you a question. All of us seated here, would we know who the other person is from that audio clip?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): It depends on the authenticity. There is a certificate of that clip. It was used as evidence in the anti-corruption case.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): From the audio, are we able to know?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Do you have a monopoly of knowing the voice of each and every person in this country?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You have a monopoly.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Are you an expert in voice identification? Do you know that is---?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): There is an officer who had the gadget recording that clip. There is also a certificate and it was filed.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Do you know that voice identification is a scientific process?

The Speaker (Hon. Lusaka): Counsel, you should be winding up.

The Counsel for Nairobi City County Assembly (Mr. Benson Milimo): Lastly, governor, I want to refer you to Volume 9D; the last question on page 1187.

Governor, this is *Twitter* handle.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You were addressing a fellow---

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): This is not my *Twitter* handle. This is a fake one.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): You had answered the question. The person being addressed here is a fellow leader in this country.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): There are various *Twitter* and *Facebook* handles bearing the name Mike Sonko, Mike Mbuvi Sonko. There are so many, and I have reported to the DCI.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): One question. The person being referred to in this *tweet* is one Millie Mabona Odhiambo. Correct?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): This is not mine.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): No. The person being referred to---

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The document you have presented to me says that.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Correct. For avoidance of doubt, I would not want to read the words. Those words are unprintable. The words that have been used in this *Tweet* are unprintable, are they not?

Do you want to read it?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Which words?

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Do you want to read it?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I am not the author. Why should I read and I am not the author of this?

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Just read it. It is part of the evidence in the Senate. Kindly read it loudly.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I am not the author of this.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): This document is part of the documents that were submitted. This is 9D.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I am not the maker of this.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Just read 9D. You will have time to---

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I cannot read. I am not the maker of this.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Kindly read it.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The document has abusive language. There are women I respect here.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Governor, let me put to you a question. Governor, you know how to read. Kindly read that document.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I cannot read this document.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Do you know how to read?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I am not the author of this document. It has abusive content.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): We are the ones who produced it. Just read the document. Read it as it is.

The Speaker (Hon. Lusaka): Counsel, what is your intervention?

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, we object. The document he is being asked to read is not a document that is authored by him. It is not a document that he has brought here. It is a document that has been brought here by the County Assembly itself. I think the County Assembly has run out of questions. Their time is over. I think we need to close.

The Speaker (Hon. Lusaka): You do not have to direct. This is my direction; that since that is not a document brought by the governor, you cannot force him to read it.

It is so directed.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Mr. Speaker, Sir, I will read it myself as I put it to the governor.

The first line says, "My sister Millie Mabona Odhiambo."

Does it state so?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): No, that is not me. I am not the author of that.

That is you insulting her.

(Laughter)

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): The second line reads as follows:

"In as much as I fight for the rights of the silent majority women who are always major victims in such cases, my response to you is simple, you just said you love sex. Whoever you may have it with, is none of my business, but you miss my point just as the way you have opened your mouth wide in this picture. I am longing for the day you shall open wide your legs to give birth to a child so that you experience the pain that mothers I am defending go through."

That will be all.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): My friend, you are looking for sympathy.

The Speaker (Hon. Lusaka): Thank you very much. Governor, you should sit down. You have been standing for long. Governor, you can take your seat.

The next step is if there are any questions and requests for clarifications by Senators.

Sen. Olekina: Mr. Speaker, Sir, I just want to seek some clarifications in regards to the trip to New York. The first clarification is on the approvals of the trip to New York, which document has been tabled, that it was approved by State House. I have seen the signature of the Head of Public Service. If that can be clarified, I will be happy.

Secondly, I seek clarification on the issue of the bursary fund, which a document has been tabled indicating clearly that, that was stopped. I want to know at what point the Real-Time Gross Settlement (RTGS) was stopped.

The Speaker (Hon. Lusaka): Sen. Olekina, you know you must direct the question to somebody.

Sen. Olekina: Mr. Speaker, Sir, I want to seek clarifications on two things. I am directing my clarification to the County Assembly because they are the ones who have brought up the case.

First, were you able to look at the documents and were you satisfied with the documents that the trip to New York was actually approved by State House and not by the County Executive?

Two, can you tell us where you got those documents that you presented showing the transactions of the Kshs297.5 million for bursaries because they were not certified to have come from a bank?

Finally, on the issue of stoppage of the funds, were you able to provide other statements to indicate how the Kshs297 million was spent? The last question, which I am directing to the governor is on the spending of the Kshs297.5 million, which you have indicated in your statement that it was stopped. What happened to that money at that particular time? Did it remain at Central Bank or at the County Revenue Fund?

If you can clarify those, I will be happy.

The Speaker (Hon. Lusaka): You will take note of all the clarifications and questions then you will respond at once.

Sen. (Dr.) Mwaura, proceed.

Sen. (Dr.) Mwaura: Thank you, Mr. Speaker, Sir. I have two clarifications. First clarification is about some assertion that was made by the witness Janet Muthoni Ouko that the governor was on many and various occasions molesting women who have been working under his jurisdiction. What does that molestation mean?

Number two, in the cross-examination by the counsel of the County Assembly I did not clearly get if the assertion was to the effect that the letter written to investigate the Mover of the Motion was only written when the Motion was drafted and served. I would like to get that clarification.

Sen. Linturi: Thank you, Mr. Speaker, Sir. I will be brief. The clarification I seek is from the County Assembly. The requirements for removal of a governor are clearly stipulated in the Constitution, the law and the Standing Orders.

I want to understand, because I have looked at the submissions and the signatures in the list accompanying the Motion, I did not find one important document, which I need to know whether it is by way of omission or in another document I have not traced or where it could be.

This relates to the logs and documents from the County Assembly of Nairobi City showing that 88 Members of the County Assembly voted in the affirmative to remove

Governor Sonko. This is what I am seeking. I will be glad to get the list of the Members of the Assembly who voted in support of this Motion.

The Speaker (Hon. Lusaka): As we proceed, the counsel for the teams will respond when I give you time for closing statements, so that we save on time because you have one hour. Note the issues being raised then address them when giving your closing statements.

Sen. Pareno, proceed.

Sen. Pareno: Thank you, Mr. Speaker, Sir. My question is to Governor Sonko. I would like him to clarify whether he knew this lady who received the money on behalf of the wife and the daughter while they were travelling to the United States of America (USA).

I know he confirmed that what he was looking at was an imprest warrant in their favour.

Also, we would want to know whether this money ended up in the hands of the wife and daughter, and why this lady would receive the money on their behalf. I hope he will be able to tell us who this lady is

The Speaker (Hon. Lusaka): Sen. Kang'ata.

Sen. Kang'ata: Thank you, Mr. Speaker, Sir. We have heard the witnesses supporting the case of the governor. We have also heard the witnesses supporting the case by the county assembly. We heard from the Minority Leader from the Assembly, we also heard from the former County Executive Committee Member (CECM) of Education.

However, I urge the Assembly to do a little bit of clarification on the third witness, in the sense that there was no examination in chief. They only urged us to adopt the statement, then we immediately went for cross examination and finally re-examination.

I urge the Assembly to highlight the major highlights of that statement, particularly, taking into account---

It is true that we will read that statement and know the nature of the evidence, but I would imagine that those out there who do not have the opportunity to read that statement, or even some Senators who for one reason or the other will not be able to read that document, understand the gist of witness number three of the Assembly.

Thank you.

The Speaker (Hon. Lusaka): Sen. Wambua.

Sen. Wambua: I thank you, Mr. Speaker, Sir, for this opportunity. First of all, I want to apologize to you and to the House because I have been walking in and out. You know that I am also chairing the Committee that is planning the burial of our colleague, Sen. (Dr.) Kabaka.

I will need two clarifications from the County Assembly. Mine is on a matter of threshold. Are they convinced that the threshold for impeachment has been arrived at in terms of the numbers of the MCAs who voted for the impeachment of the governor, and in terms of the process as captured in their own Standing Orders for the impeachment of the governor? Are they convinced, and can they clarify to this House that the threshold for impeachment was arrived at?

Secondly, this may sound trivial, but it is very important. When they played video clips, I am trying to link one of the video clips to the accusations for impeachment and I

do not see any correlation on the clip of the governor dancing to the tune 'party after party'. I wonder whether the county assembly of Nairobi City is inviting the Senate of the Republic of Kenya to impeach a governor for dancing.

Thank you.

The Speaker (Hon. Lusaka): Sen. Cheruiyot.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir. I just have a clarification. I need the Assembly to point us through; I have gone through the list of the documents that they supplied to us. For my own good, and maybe for a few of the Members who may be having questions on a few things, it will be sufficient for me if they tell me, "the document you need appears on such and such a page." That will be enough for me.

Number one is a copy of the invitation letter for the governor to appear before the Assembly for his impeachment process.

Secondly, a copy of the HANSARD that confirms the callout for the governor to appear before the County Assembly. Just like when we have witnessed appearing before our committees when we investigate different matters, you call them out for the first, second and third time. We need a copy of the HANSARD to confirm that, indeed, they afforded the governor a chance to appear before them and he waived that opportunity as they allege.

Lastly is what two or three of our colleagues have asked. We need a copy of the HANSARD with the list of names of the 88 who voted to impeach the governor.

I thank you.

Sen. Omogeni: Mr. Speaker, Sir, having listened to my colleagues, there is an issue that I want us to handle with a lot of care. If you remember, sometimes in the US, when there was a trial of O.J. Simpson and the jury was taken through a process of confirming whether some gloves that were allegedly used by O.J. Simpson could fit his hands, on that ground alone, he was off the hook.

I know the County Assembly has very experienced advocates. There is one who appeared before the Committee that tried governor Waiguru and I know they are very experienced. Many of our Members are lay people. An issue can be brought up that can create a lot of doubts or confusion in the House. We have also had a situation before where decisions of this House have been challenged by courts of law after we have impeached.

I appeal to my colleagues to address with caution and care this clarification that is being sort by Sen. Linturi.

Looking at the record, you have done well. I was able to pick the names of people who were in support of the Motion. I just want you to go through your records so that you do not leave any doubt in our minds that you met the threshold.

I have listened while both here and outside, to the allegations against the governor and I will make my decision as a lawyer. So, just pinpoint to us the other processes that took place during the hearing at the County Assembly, so that you do not mess up our record. Whatever decision we pass here today should not be challenged in court on a technicality.

Mr. Speaker, Sir, I hope that the people appearing for the County Assembly can pinpoint to us the process that took place at the Assembly, more so the Division, so that we do not go to court with a case that can put us in trouble.

I thank you.

Sen. (Prof.) Onger: Mr. Speaker, Sir, I have two clarifications. First, the counsel for governor Sonko took the material to serve the County Assembly. Under the normal process of serving the notice, did you pin it on the door or the wall and can you provide that evidence?

To the counsel for the County Assembly, you indicated and gave us a list of the people who voted for this Motion. Did you have any version of electronic voting that you may provide for this House to see?

Sen. Faki: Mr. Speaker, Sir, I also have two clarifications to seek. One is from the County Assembly on whether the governor was furnished with notice of his impending impeachment and the grounds thereof before 3rd of December, 2020.

Governor, why did you find it fit not to appear before the County Assembly for that particular impeachment?

Thank you.

Sen. Cherargei: Thank you, Mr. Speaker, Sir. I would like to seek two clarifications. One, is from the governor. You gave us some documents on the issue of bursary. I did not see the status update of the investigations that you are talking about that some MCAs were being investigated by the DCI and EACC.

We just saw letters, which you told us had been written by the DCI and EACC on the misappropriation of bursary funds. Would you be kind enough to tell us if you can, how far, or is there any status update?

Secondly is to the county assembly on this allegation that has been made regarding diversion of bursary. In your role of oversight, did it come to the attention of the County Assembly?

Mr. Speaker, Sir, in line with what my colleagues have asked about service and notice to the governor to appear before the County Assembly pending this Motion, was the procedure followed? Were you aware that the governor tried to access the premises to be able to tell his side of the story as it appears by the principles of natural justice?

Sen. (Dr.) Ochillo-Ayacko: Thank you, Mr. Speaker, Sir. I want to ask questions to both sides; the prosecuting side and the side defending. We have listened to you for nearly two days. When you get opportunity to conclude your submissions can you sharpen what the case is about and can the side responding sharpen what the defense is about.

There are so many things and waves in this issue and we have to make a determination that is summarized and accurate. If we are left to navigate through this pile of documents, we are likely to make the wrong decision at least for most of us. For me who has a legal background, I may do something good. However, remember it is the totality of vote.

The Speaker (Hon. Lusaka): I had said, finally we must also be realistic that we have been sitting for a long time. We still have quite some time to go so that the law of diminishing returns is coming in. I will only allow Sen. Nyamunga and Sen. Madzayo.

Sen. Nyamunga: Thank you, Mr. Speaker, Sir, for giving me this opportunity. From the governor's presentation, it was very clear that he is concerned with the education of the children of Nairobi. For purposes of continuity, it would be very good for us to have a clarification as to whether the students who had been slotted to be given

bursaries by the former governor Hon. (Dr.) Kidero, Hon. governor Sonko continued with them or was that totally abandoned and then he started on another list or set of students? It is important for purposes of good governance.

The Speaker (Hon. Lusaka): I had said finally but the Senate Minority Leader will close.

Sen. Madzayo: Asante Bw. Spika. Kwa upande wa mashtaka, kuna stakabadhi zimetolewa hapa. Ingekuwa vizuri kama wanaweza kufafanua zaidi, kwa upande wa mashtaka. Je, yule aliyeshitakiwa Bw. Gavana, alipewa nafasi ya kusikizwa? Kama alipewa nafasi hiyo, je alipopeleka stakabadhi zake zilichukuliwa ama hazikuchukuliwa?

Kwa upande wa gavana, je alipewa nafasi hususan na Kaunti kuweza kupeleka hizo stakabadhi? Na hatimaye kupewa fursa nzuri sana ndani ya Bunge la Kaunti kujitetea kama hivi walivyojitetea hapa. Nafikiria pande zote mbili wangepafanua, ingekuwa vizuri kwetu sisi.

Asante.

The Speaker (Hon. Lusaka): Sen. Orengo, proceed.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I am just standing up in the interest of time because the counsels have got opportunity to make their closing remarks.

In closing their remarks, the County Assembly knows the case they want to make out of these proceedings. The governor's team knows the case that has been made against them.

In terms of clarification, we may get into the danger of having submissions being tendered at this stage. I would encourage that there are very specific questions like the one Sen. Omogeni has asked, which is a matter of evidence.

Mr. Speaker, Sir, when you have been asked to pinpoint, please, pinpoint instead of giving an explanation. We can explain the same ourselves. Otherwise, we may get to a situation where you address for one hour on a matter, which has nothing to do with evidence. That time is coming later on.

The Speaker (Hon. Lusaka): Sen. Murkomen, proceed.

Sen. Murkomen: Mr. Speaker, Sir, 30 seconds. The County Assembly has given us several video clips. The governor also gave us a number of video clips from the County Assembly to facilitate the very important question that has been asked by almost everybody.

You saw some of our colleagues who are going to participate in these proceedings via Zoom. They will vote via Zoom and we will see their faces and hear their voices.

Did you share with us a similar vote in terms of the video clips for the Members of the County Assembly (MCAs) who were not inside the Chamber but voted to add to the 88 to facilitate all of us to deal with this problem? We are being told that the electronic vote was corrupted, hacked or people's voting pins were used without their permission.

If you can give us similar evidence to the ones that we would use today for our colleagues who will not be here where the face of the MCA is seen and the voice of the MCA is heard, we would really appreciate. It will help us make a decision on the threshold.

The Speaker (Hon. Lusaka): Thank you honorable Senators and our two teams that were here. We are now getting to the tail end of our two-day session. Like I said, impeachment of a governor is a weighty matter in this country. It is a very serious responsibility for this Senate. That is why we have been patient. We have listened. Clarifications have been sought.

I now want to give you an opportunity. You have 60 minutes each side. It is one hour each. That is the rule. That is the maximum. If you can use less than that, the better because these are very intelligent people. They have listened, they have heard. They are processing what you have said.

They are experienced, like the Attorney-General *Emeritus*, Sen. Wako. So, please also avoid repetitions and things that do not add up to your case just like they have said.

The first to go will be closing statements on behalf of the County Assembly.

CLOSING STATEMENT ON BEHALF OF THE
NAIROBI CITY COUNTY ASSEMBLY

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Thank you, Mr. Speaker, Sir. My name again is Mr. Ndegwa Njiru. We want to thank you for the opportunity you have given us to prosecute this case before you and for the time that you have taken. I will begin by giving clarifications and at the tail end; I will share my time with my colleagues.

Mr. Speaker, Sir, my senior learned friend, my teacher, Sen. Murkomen, has sought to know whether the county has provided the video clips of what transpired at the county assembly.

When I was under him, teaching me the ropes, he told me that rules of procedures are followed as they are legislated. To that effect, the rules of procedure guiding this House are the Standing Orders, and most importantly, Standing Order No.75.

Unless Standing Order No. 75 is amended to incorporate the new emerging concept of proceedings in a Westminster Parliament, it does not require us to file such kind of proceedings. That is the rule that is there.

However, keeping in tradition with the custom of the Westminster Parliament, we brought the evidence of the HANSARD. This House speaks through the HANSARD. This is not my making. I was taught by my teacher, unless I was under the wrong hands, which I doubt.

(Laughter)

Mr. Speaker, Sir, clarification has been sought as to whether we actually invited the governor. I confirm that the governor was invited to appear before the Assembly *vide* the Speaker's letter dated 1st December, 2020. The same was served upon him at 10.42 a.m. The place of service was the governor's office at City County. There is an affidavit of service in the bundle of documents served upon you, deployed by Javan Loriko Nang'eyo. The same was deployed on 10th December and the same has not been controverted.

What does it say? It is an invitation. To who? To hon. Mike Mbuvi Sonko. Did he appear? No. Where was he? He was taking a sand bath at Mombasa.

Finally, as I sum up, there is a question as to the issues of quorum. The quorum was there. It even exceeded the quorum. The total MCAs who participated were about 90 and 88 of them returned a positive verdict. That positive verdict of the 88 MCAs cannot be disputed because it is premised on Article 1 of the Constitution in respect of the exercise of the sovereignty of the people of Kenya.

If there is one doctrine in the Constitution that has been protected, more importantly under Article 257, it is the doctrine of sovereignty. You cannot even amend that doctrine without involving the people of Kenya.

Eighty eight MCAs appeared, voted and as they were voting, they were voting in consonance with the dictates of the Constitution. Therefore, the action of the MCAs who voted cannot be disputed because reputation has not been put into question.

Finally, on issues of clarification, there was a communication that was sent by the hon, Speaker of the county assembly to this House. What was he saying? He was returning a verdict of a resolution. To who? To the Speaker of this honourable House. The Speaker of the County Assembly is a State officer, who is bound by the provisions of Article 10 in so far as abiding with the rule of law is concerned.

An Hon. Senator: Point of Order!

The Speaker (Hon. Lusaka): I am really reluctant to give interventions because we will not move. You can see the mood of the House. Just read the mood of the House with due respect.

Kindly, proceed.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, I was about to say that the conduct of the Speaker of the County Assembly who communicated this to the Speaker of the Senate has not been impugned.

To cast aspersions on a man of high integrity that he can seek to mislead this House in such a big manner in a matter of this high level sensitivity would only not do injustice to that Speaker, but also would to lower his reputation in the standings of a right thinking member of the society.

The speaker communicated candidly and that communication was not disputed or reputed by the defence.

Finally, on the issue of the quorum, it is being brought as a shield to make sure that this House does not interrogate what is before it. Why do I say it was brought as a shield? Mr. Kinyanjui, my senior, understands and knows the import of Article 47 and more so the Provisions of Administration of Actions Act, that if any person is unsatisfied with the decision of an administrative body or organ, the jurisdiction for challenging that process is not before this House, but before the courts of law.

Further, it says that any person who has doubts with the decisions of a body like the County Assembly, the procedure would have been that of judicial review. The same was not availed. He never took that opportunity so as to bring that issue as a second thought.

Finally, on the issue of the quorum, this House is guided by Article 181 as read together with Section 33 of the County Government Act. Section 33 of the County

Government Act as read together with Standing Order No.75 of the Senate, does not put this House as a prefect to my client. It only says:

“Upon receipt of a resolution of this nature, the House will convene to hear that particular resolution, whether it stands the taste of time to impeach the governor.”

Section 33 of the County Government Act does not say that this House can prefect another constitutional organ. The reason being that in the constitutional equilibrium, these two organs are exercising their constitutional functions. The only person mandated to question the constitutionality of the process is the High Court under Article 165(5) where it says, “The High Court has power to interrogate whether anything said to be done has been done in accordance with the provision of the Constitution.”

I, therefore, submit with respect that the question of quorum cannot be raised as a shield and an afterthought.

[The Speaker (Hon. Lusaka) left the Chair]

[The Deputy Speaker (Sen. (Prof.) Kamar) in the Chair]

Madam Deputy Speaker, I am not a parliamentarian, permit me if I go wrong, but I will now adjust.

There is a question that has been put as to the question of the letter dated 23rd November 2020. The letter is a purported complaint by the person facing the charges. The person facing very grievous charges involving the embezzlement of public funds, misuse of public funds and failure to abide by Article 201 on the question of prudent use of public resources.

The question of integrity involving a person of a public office of the nature of a governor, if a daughter has to take a tour and needs to spend public resources, there must be a disclosure. That person is the one coming to impute and puncture holes at a witness who has brought a Motion to rescue the 4 million members of Nairobi City County.

We must then look at the conduct of the person who brings such kind of allegations. The letter was done as a means of attempting to cajole and intimidate, harass and to embarrass the witness.

This is why to date there is no action that has been taken by the bodies that are mandated to take action in so far as the question of investigations is an issue.

We have to question the motive of that letter. It was not brought in good faith or has been brought by a man with clean hands. The man does not require any favor before the eyes of equity. The hands are dirty. They are so dirty in the sense that equity cannot aid.

Clarification was sought on the issue of the witnesses, whether the threshold was met. Yes, both the arithmetical threshold in terms of quorum and the constitutional and statutory threshold were all met. If they were not met, having or enjoying the experience of my senior Mr. Kinyanjui the first day the resolution was done, he would have been in court to challenge the same.

Suffice to note that even the application that was brought to challenge the processes in the High Court, case No.35 of 2020 was dismissed yesterday by Judge Mathew Nduma Nderi, even as we were in these proceedings. What does that tell you? It

tells you that another constitutional organ has pronounced itself as to what transpired in the County Assembly.

If the High Court, established by the Constitution has made a verdict and dismissed Mr. Kinyanjui's application dated 30th November, who are we to question the processes? The only forum that it can be questioned is the forum that has been created by the Constitution and that is the High Court of the Republic of Kenya.

Madam Deputy Speaker, on the clarification on the question of the "party after party clip", we cannot look at the clips in isolation. We are looking at the clips in a holistic manner so that one can piece them together to the conduct of this particular person.

While analyzing these clips one must go to the provisions of Article 75 of the Constitution. One must seek leave in the provisions of Article 76. These Articles speak to the conduct of a public officer or a State officer, either in private or public.

Why do they speak? They speak in a manner that the conduct of that State Officer must breathe confidence in the office that he holds. A man comes to his office, dances to 'party after party', the man is supposed to go to France and explore as to whether Nairobi can reach the status of Paris, but he decided to go dancing. What does he say, 'party after party'?

We send the governor to France to expend public finances, but he goes joy riding. Is that a person who requires the mercy of this House? That is not a person who requires the mercy of this Senate.

Madam Deputy Speaker, you must look at the evidence that was brought here. Before I go to that, there was a question on whether the governor was furnished with the notice. I have addressed that. There is a question of the diversion of the bursaries.

Evidence has been adduced. It is contained in our document file labeled 9A. When put to task, the governor could not substantiate whether the money, the governor could not divert or deviate or avoid the fact that the money was domiciled in the County Government account.

He alleges that the money was refunded back to Central Bank. Has he provided any evidence? None! Is that fact and ground rebutted? No rebuttal. That is a score.

Madam Deputy Speaker, I have dealt with the issues on clarifications. Permit me to give a small address as to the question of the evidence that was provided, then later address my senior learned friend, Sen. Omogeni.

Sen. Omogeni has sought to know and asked us to assist the Members of the Senate to understand the evidence. We have files ranging from 9A, 9B, 9C, 9D and 9E. All that evidence is critical to the proceedings before the Senate. Most importantly---

Sen. Olekina: On a point of order!

(Loud consultations)

The Deputy Speaker (Sen. (Prof.) Kamar): This is his submission. Sen Olekina, you can read the mood of the House. Switch off, Sen. Olekina.

Order, Senator!

(Sen. Olekina spoke off record)

Sen. Olekina, your first bell was on a request to speak. In fact, you are still on a request to speak. We have noted that you requested to speak at this stage.

Sen. Olekina, it may take us a very long time. The reason I pointed it out and told you to switch off is because you are not even on a point of intervention, you are on a request to speak. I am saying that we are going to have time for all of us to speak. I would rather that all of us write down whatever comments we have and we will give you ample time. We have all the time.

Thank you.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): Thank you, Madam Deputy Speaker. File No.9 (a) contains the flagrant misuse of public resources by the governor of Nairobi City County. It gives evidence on how money that is meant for bursaries is diverted to pay lawyers.

We have demonstrated that the money came to the account on the 11th of July 2019 and the same money, on the 15th July, advocates were paid millions and millions of shillings. This was money meant for our children. A question was asked whether those children were able to be put through school. How would those children go to school when their money has been used for the wrong purpose? They cannot go to school. That is why we ask this House to stand up to the occasion, and rise and rescue the people of Nairobi.

Governor Mike Mbuvi Sonko operates the 'Sonko Rescue Team'. We must use this House to now rescue the people of Nairobi City County from governor Sonko. The rescuer is the person we need to be rescued from.

Members of this hon. House, we have evidence that a stadium that our sportsmen, sportswomen, and youth are supposed to utilize for sports was given a particular clarification of a particular specification. What did we get in return? We got scrap metals being used to put up a stadium. Has that been rebutted? No.

What does the governor say? The governor says in a manner that I would not want to describe, so that I will not be accused of being disrespectful. He said that it was not his officer. The officer left the office. He does not even have the guts or the ability to realize that Section 30 of the County Government Act enjoins him as the sole person who has the responsibility of protecting the public resources.

What does the Public Procurement and Regulations Authority (PPRA) say? They say that the money was not put into proper use. What does Article 201 of the Constitution say? It says that there must be prudent use of public resources. Prudent use means that Kenyans should not lose even a single shilling. A single shilling matters to a Kenyan. Why? They are the taxpayers. Why? They own the money.

There should be no excuse for all purposes and intent to excuse a flagrant person. Evidence has been read that we did not get value for the money when it came to the question of the construction of the Dandora Stadium.

In Paragraph 15 of his affidavit, the governor himself has acknowledged that the EACC is investigating that process. If the process was beyond reproach, why would have the EACC swung into action?

The fact that a constitutionally or statutory established organ has swung into action punching holes to the entire process of construction of that stadium tells you that there is smoke. Where there is smoke, there is fire. How do we put out the fire? This

House must extinguish the fire. If the fire is not extinguished by this House by upholding the impeachment of governor Sonko, it will not only consume this but also the future generation.

What do Article 10 and the Preamble to the Constitution speak to? They speak to us to uphold and utilise our natural resources, be it finances or whatever, in a manner that is prudent, so that we promise the intra and extra-generational equity.

Intra and extra-generational equity is a principle that says that the person in charge of today's resources must be prudent so that those resources can be available for utilisation by the future generation. How will the future generation benefit when a stadium that was supposed to be done with concrete is now mere scrap metals?

I believe wherever Catherine Ndereba, Kipchoge Keino, and our athletes who are alive are---

Those who have departed must be turning in their graves. They must be saying that the time for the governor to go is now.

Hon. Members, I must remind you that we have brought evidence. Governor Sonko has acknowledged that imprests were paid for the wrong reason. He has not denied that the daughter belongs to him. He has said she is his biological daughter. I regret that.

At times, we leaders do not have to subject our children to this kind of torture. We leaders as Kenyans, as and when we execute our public responsibilities, let us keep our families from these embarrassments. Why is the young girl under crucifixion today? Why is she being prosecuted in absentia? She is being prosecuted because of the actions of her father.

Her father is negligent. Her father is not capable of running a public office. That is why we have to invoke Agnes Saumu. Otherwise, as a parent of two sons, I would not want to be pointed out that I utilised money to feed and fly my young boy Njiru Jnr. to the UK. Can you imagine somebody using public resources? Imprests were given. Can you imagine putting someone on a chopper for a tour of the New York City?

Hon. Senators, I know you are capable. How many of you have flown over the Nairobi City just for sight-seeing? Is that not extravagance? Is that not "party after party"?

Hon. Members, each action must be treated with the weight it requires. I said yesterday that this is a governor who has gone rogue. He is a governor competing with extravagance of the Monarch of King Louis XVI of the 17th Century.

Why was King Louis punished? He was punished and thrown out of the monarchy because of the actions of extravagance of his wife. Has that time come for governor Sonko to pay for his sins? Yes, time has come for him to pay for his sins. He must pay for the sins of extravagance. It happened in 1679 in France, why should it not happen on 17th December, 2020 in the City of Nairobi? It should happen.

Hon. Members, as I yield to my colleagues, evidence has been led before this House.

The Deputy Speaker (Sen. (Prof.) Kamar): Please lower your voice.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiru): I am sorry, Madam Deputy Speaker. I think my lungs are good. I will reduce.

What is the threshold for impeachment of a governor? It is what in legal sense is referred to as the standard of proof. The standard of proof of an impeachment is not

beyond reasonable doubt. Why? Because this is not a criminal trial where every document and everything must be proved

This has been determined in the case of Hon. Wambora the Civil Appeal No. 194 of 2014. Justice Vishram, Justice (Prof.) Ondiek and may the Lord rest his soul in peace - Justice Martha Koome gave the standards. They said that it is not the standard that is beyond reasonable doubt and it is not on the balance of probability. It is there at the middle.

Have we established this balance of probability, have we established this standard? Yes, we have. Has the case been rebutted? No, it has not been rebutted.

On the question of the threshold, what does Section 33 of the County Government Act require? It requires that the only thing the prosecutor, the County Assembly, has to do is to substantiate. Those that are good in English will tell you that substantiating is not proving.

Substantiating is establishing the existence of a case in a manner that those other penal justice systems like the office of the DCI and the EACC would ordinarily in normal circumstances say, "Yes, we have heard that there is evidence that may lead to a trial."

That is why when we were prosecuting Governor Waiguru, this House through its Committee that was led by able Member Sen. Malalah observed that there were people who were culpable and made a recommendation to the DCI for further investigations. Why? Because we had established and substantiated a case.

Hon. Members substantiating a case does not require a watertight proof. It only requires creating the nexus that the Governor authorized his daughter to be put on a chopper for a tour to New York and that public money was used for this. He has testified on oath and that has not been rebutted.

As I yield to my colleagues, let this person require mercy before you. Is he the person who this Senate can close its eyes to? I urge you, hon. Members to rise to the occasion and put it in black and white so as to save our future generations from such kind of embarrassment.

I yield to my colleagues to sum up.

The Counsel for the Nairobi City County Assembly (Mr. Kevin Kokebe): Madam Deputy Speaker and the hon. Members, on 16th of December and this particular fateful day present yet an opportunity for this House to do that which is honorable. That which is honorable is but one: sending the person of Mike Mbuvi Sonko home.

We were asked by the good Senator, Sen. Omogeni, if it does not fit, acquit. The question that we will ask in the inverse is: Does it fit? We do answer in the affirmative; yes, it does.

Mr. Speaker, Sir, it perfectly fits the definition of substantiation. It perfectly fits, for the reasons that you have been told of a person who has derelicted all his duties, forgotten that there is an instrument in this country called the Leadership and Integrity Act, which he once was a legislator, unless he tells us that today he was zig-zag and probably did not know what he was seeing, then he can disown that one Primrose and one Ms. Agnes Mbuvi were not of his own.

Hon. Senators, Section 16 of that particular legislation defines what is conflict of interest, and when will a personal interest attach? It attaches if a spouse or child is involved. Is this the evidence of the governor? In his own affidavit, he then proceeds and

tells us: “You know what? The First Lady chose to travel with the daughter, so, the impostor that you saw irrespective does not really sound.

Pumwani is reeking. The streets are rotting. The sweet waters of Nairobi flow no more, but then, someone has the audacity to tell you that apart from the air ticket, there is nothing that is really wrong. That is what we have been told.

Mr. Speaker, Sir, and Members of the Senate, evidence has been read before you that there was plunder. It is not only in Dandora, which the Public Procurement Regulatory Authority (PPRA), an institution of this country--- Probably, if the roles were to turn, the Senate would take that role. However, I do not want it to go that line. It has indicted the whole process of the Dandora project.

The governor is on record telling us: “Look here, concrete is too old fashioned. So, we should think of steel.” Steel forges metal but steel equally shatters glass. He has used that very process to shatter Nairobi.

Mr. Speaker, Sir, the 4.5 million of Nairobians are crying to this Senate. Will you rise to the occasion and tell us that, that decision that we did, some have said it was out of impunity. I argue not. It was not; it was our choice. It has a consequence.

The consequence that we had is one Hon. Mbuvi Sonko. Should we proceed with this particular person as the Governor? I leave it to you. Your wise council shall steer us through.

Hon. Senators and Members of this particular House and the Speaker, Nairobians are watching. I do remember yesterday, the good Senator for Narok County lamented. Can I even watch or listen seated or at the sitting with my daughter or children? I leave it to you, honorable Senators.

Mr. Speaker, Sir, that disrepute that has been brought to the office, it is a public office. He could not stand it. I am a father too. When my daughter grows of age, will I tell her that once there was a man, and that man was Sonko, who uttered words without due care.

Hon. Senators, the person that has been brought before you by the County Assembly has chosen to act in reckless abandon to public funds. He has chosen to disabuse the notion that humanity is equal. He has chosen to trample not only on us persons seated here, but equally our mothers, daughters and sisters.

You were shown a clip and I did hear one of the Senators ask us to correlate. We relate and tell you that on the 12th December, 2020, Jamhuri Day, a public holiday for that matter, a leader of this House, probably he is in the National Assembly was told, “*Mimi sio bwana yako. Kwenda.*” It was in the public glare. This is the disrepute that has been brought to the office.

As we seat here today, probably the Senate has been auctioned or not. He had the audacity to sign a document and turn around and tell us; “I was seeing zigzag at the time I appended my signature on the Deed of Transfer of some of Nairobi City County functions.” I hope he is not in that stupor any more.

It is time that this House stamped its authority for the governor to continue with his party, but not with the public resources. For him to continue with his fluke, but not with the monies that Sen. Sakaja fight so hard to go down and cure Dandora, Mukurweini and have a better Nairobi.

You will be told that the threshold was not met. You will be told that the allegations that were levelled have not been proved. I stand to beseech you. The allegations were not rebutted; not one of them.

When the governor took stand to answer, he took us on a rally of how he had to audit his predecessor. That was not the charge before this Senate. When he stood, he told us that there were these disputes, there was payment of bursary, it was totally in a different financial year.

Even if it were, he tells us, this money was requisitioned, but I took it back to the consolidated fund one year and two months later. That is the evidence that was laid.

Hon. Senators, as I yield to my two colleagues, you are reminded of the good book of Solomon, Ecclesiastes. There is a time for everything. We are equally reminded that the wage of sin is death. We are not asking you to kill the good. I do not also think in the land of good, but not so honourable.

We are not going to kill him, but we are only telling you to save Nairobi. The only County that does not need to die is Nairobi City County. As I take my seat, I leave you with this question, where does the arc of moral universe bend? Someone told me and I remember, I am also guided by my mentor that the arc of moral universe bends towards justice.

Justice for Nairobi City County, Hon. Mike Mbuvi Sonko, must go. Justice for Nairobi, and I yield. It is Marie Antoinette issue of the 1789 where you will ask for bread and you are told go and buy cakes.

Someone dances and tells us party after party. Sad is the day that the people of Nairobi lined up to elect a governor who runs on the account that I am fighting for the poor, but uses the poor to amass him wealth.

For the advocates and jurists who are here, you will remember that it is also immoral for you to amass wealth rudimentarily. That is the rudimental nature that Nairobi has been run. Should we continue? I say no.

Whatever you will be told, when you later close our case, we invite you. It is time to take the count. Let us take the count. The count is "Sonko must go."

The Counsel for the Nairobi City County Assembly (Mr. Duncan Okatch): Madam Deputy Speaker, I will respond to the question that was asked by Sen. Olekina in a very brief statement.

There are certain dates that you have to keep in mind. The first date or period is March, 2019. That is the date that these funds were requisitioned. The second date that we must keep in mind is the 12th July, 2019. That is the day that these funds hit the account of the County Government. The third date you have to keep is 15th July, 2019. That is the day that these funds left the account. Within a fraction of three days, the money went to lawyers' accounts and garbage collectors.

The last date that then gives the answer that will tell you and demonstrate that this was illegal was September, 2020. That is the date that the Governor has told you that these funds---They realised that these funds were there and these funds were stopped. The question that begs is that it tells you that from this particular period of July, 2019 to September, 2020, it cuts across two financial years. What miracle happened that these funds were not transferred at the end of that financial year? These funds are supposed to be surrendered if they have not been unutilised. Was that done? It was not done.

These funds were to be utilised to pay bursaries. Let us assume that schools were not opened in July and they went to vacation in August. We have August and September when schools were on and schools fees was payable. We have January, 2020 when schools were on and fees was payable. Why was this money not utilised? The simple reason is that it was not there. It had long gone and had been utilised illegally. An orphan somewhere did not go to school because of this action. So, it is not a trivial issue.

You will also notice that you have been told that the only reason that these funds were not utilised was because it was the COVID-19 period. Everyone knows and takes judicial notice that COVID-19 was declared at the first instance in Kenya in March, 2020. From July, 2019 to March, 2020, was there COVID-19 before? Could that arise as a defence for the Governor? It is actually using a pandemic to justify an illegality and embezzlement. If that does not strike your conscience, nothing else can strike it. You have been told straightforward.

To that particular extent, I will delve straight into these submissions, as I will be yielding to my senior in a few minutes. You have been told that there is a time for everything. The framers of our Constitution designed it in a perfect way that gives this particular House the powers to deal with this instance. When the will of the people is being subverted you cannot wait for the social contract to last for five years? You have been given the constitutional power to deal with it.

Nicolo Machiavelli said, 'God is not willing to do everything and thus take away our free will, that share of the glory he will not take away because it belongs to only us.' Today that power is bestowed upon this particular Senate. It is you to act. God will not act for us. He has given us the powers in our hands. You have heard when we were showing the videos that when there was direct publication of an abuse expletives, the Governor himself could not read that. We have demonstrated that this came from him.

The good Book of Matthew, written by Matthew the evangelist told us, 'if they have called the master of the household Beelzebul how much more will they malign those of his household?' Hon. Senators, you belong to the household of leaders. If leaders are not having integrity and are using these expletives, today it was Millie Mabona, the other day was Hon. Shebesh, then Hon. Esther Passaris, tomorrow, it will be you.

The reason for that is because you have decided to belong to a WhatsApp group with people of character that only language is to abuse any other person in that WhatsApp group. We call upon you to remove these particular characters from your WhatsApp group failure to which you will also be maligned. You will lose the right to complain tomorrow after you make a decision today that the same has applied to you.

The good Book in verse 26 says, 'have no fear of them for nothing is covered that will not be revealed or hidden that will not be known. What I tell you in the dark say in the light and what you hear whispered, proclaim on the house tops.

These publications are being done in broad daylight. Our children, I saw Sen. Omanga complaining that our children have read and seen this. When St. Matthew the evangelist was writing this he thought evil could be done only at night and in darkness.

If today he would rise and see what is happening, he would amend this particular verse because we have permitted evil to be done in broad day light. Unless we take action today, Chapter six will be defined with the actions that you take today. If you cannot to listen to these clips with your daughter, sister, mother and mother-in-law, impeach!

For the employees; you have heard that they are working for the County Government in fear; are crying to you to impeach. For the husbands of those female employees in the County Government, they are asking for one thing in a loud voice that you cannot hear, 'impeach'. It will affect families from today if you do not impeach.

Families will be broken down; female employees may have to resign but the decision is on you. I call upon you to impeach. We have demonstrated beyond peradventure the character of the Governor and if that alone was not enough, you saw it for yourself when he took the witness stand. It is in your hands, make the decision consciously to a point where you can go home and sit with your families and be proud of the decision you made today. If you do not make the right decision, one day and one time, they may tell you, "Daddy, mummy, that decision was not a good decision."

I yield to my colleague.

The Counsel for Nairobi City County Assembly (Mr. Benson Milimo): Madam Deputy Speaker, my name is Milimo. I will take a few minutes to sum up the county assembly's case before you.

The Deputy Speaker (Sen. (Prof.) Kamar): Bear in mind that you have 11 minutes.

The Counsel of the Nairobi City County Assembly (Mr. Benson Milimo): Thank you, Madam Deputy Speaker. Before you, there is a Motion that in itself is constituted by charges that I will highlight for ease of understanding.

I will start by the first violation that was indicated to be a gross violation of the Constitution or any other law. That is the first ground in the Motion that was passed by the county assembly.

I am interested in ground 1(a), where it was stated that the governor, indeed, misappropriated an amount of Kshs296 million. The question is: Is it, or is it not true that it has been substantiated before this House that, that amount was paid for purposes other than bursaries, including payment of lawyers?

The answer is in the affirmative. We have tendered overwhelming evidence that indeed lawyers were paid millions of shillings, instead of the intended purpose of the bursary to the needy children of Nairobi.

The other ground that I will highlight is ground 1(e), which was to the effect and touching on the most talked about Dandora Stadium. The question was that the Governor is the Chief Executive Officer (CEO) of Nairobi County. That is not disputed.

Again, it is not disputed that there was a variation as to the materials that were being used at Dandora Stadium from the concrete that had been stated in the tender document and bid document, to steel. That evidence has been tendered and not disputed. To that effect, there is a report by the Public Procurement Regulatory Authority (PPRA) which was to the effect---

Madam Deputy Speaker, I will just need to read that report. This is what the report says:

"In the findings of the PPRA) report, it sets the contractor for the project, Ms. Scanjet Construction Ltd, supported by the officers at the city county of Nairobi, put up steel structures instead of the concrete structure as initially tendered for by bidders in a clear contravention of the specifications and terms of the contract, and contrary to Sections 136(6) and 139 of the Public Procurement and Assets Disposal Act."

This is a finding made by a State organ. This finding has not been set aside to date. The State organ has adversely made a finding that there was a variation on matters Dandora Stadium. Unless and until that finding is set aside, the County of Nairobi, as headed by the Governor himself remains as guilty as the report states. Therefore, the question of whether or not we have substantiated ground 1(c) and 1(e) of the Motion as tabled and passed by the county assembly can no longer be a matter of debate.

The other ground that I will just mention in passing is ground 1(j) which again was to the effect again touching on the Dandora stadium. I do not need to repeat that. I will rely on the same report that I had indicated that there was a contravention of the laws of this country.

The other ground that I will invite the Members' attention to is Ground No.2 (a). There was a lot of intimidation, harassment and molestation of officers of Nairobi City County Executive.

Madam Deputy Speaker, you will recall that when Janet Ouko testified before this House, her evidence was not only moving but, indeed, embarrassing. That is the situation that the county officials are going through under the leadership of the governor, who is charged before you today.

Ground No.2 (b) was in respect of the daughter's travel. A lot of overwhelming evidence has been tendered before this House to show that indeed there was unlawful use of county or public funds to facilitate the travel of the governor's daughter to USA. Has that charge been proved? Yes, it has been proved overwhelmingly.

I will refer you to Ground No.3 (b) which was in relation to the question of the state of mind at the time the governor was signing the Deed of Transfer to the NMS. In his own words, he said:

"Hawa watu wa State House walini-confuse na pombe kwanza. By the time I was meeting the President for the signing, I was just seeing zigzag."

If that is not gross misconduct? I have absolutely no idea then what gross misconduct will amount to.

Ground No.3(c) was the question of whether the governor has been performing his duties continually outside his office. There was a perfect example that was tendered before this House that demonstrated that the governor held his Executive Committee meeting at his private residence at Mua Hills in Machakos County.

If that is not being absent from office and doing your work away from your official office, then there could be no other demonstration beyond that. We proved that point.

Ground No.3 (e) was about persistent use of divisive and unbecoming language as read together with Ground No.3 (f) on publishing abusive and unbecoming words and language. We have demonstrated more than enough evidence. Audios and videos have been tendered here and *Twitter* accounts have been placed before this House showing use of words that are not only unbecoming but also unprintable.

Madam Deputy Speaker, there was also the question particularly Ground No.4 (a) which was to the effect that the County Assembly had the belief that the Governor has committed crimes under national law. It is not disputed that, indeed, the governor has been charged with an anti-economic crime offence.

It is also not in dispute that the governor, through a court order of the Anti-Corruption Court, has been barred from accessing his office. Based on those grounds, the County Assembly has sufficient reasons to believe that the Governor has committed a crime.

The issue here is about a belief, which is not equivalent to proof beyond reasonable doubt that the Governor has committed that crime. All that the County Assembly is supposed to demonstrate is that there is a belief. That anti-corruption case and orders that have been placed before you are enough to constitute a belief.

Madam Deputy Speaker, we are asking this Senate to implement the law and discharge its function. This is the Capital City of Nairobi and there is no way we can take chances on matters management, leadership and accountability of this county.

I now want to call my last learned colleague, the only lady we had in our team, to just say one word as she makes the closing remarks.

The Deputy Speaker (Sen. (Prof.) Kamar): It is only one minute.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): One minute, Madam Deputy Speaker. We had one of our juniors who worked with us throughout the night.

The Deputy Speaker (Sen. (Prof.) Kamar): You are wasting the one minutes. Okay, Members have pleaded for you. I will give you three minutes.

The Counsel for Nairobi City County Assembly (Ms. Cynthia Sheunda): Thank you, Madam Speaker and Hon. Senators. The evidence unpacked and presented before this House has not only met the legal threshold for the impeachment of the governor but has surpassed the same.

We created a nexus of the governor to his office *via* Section 33 of the County Government Act. Pursuant to Article 96, we the Nairobi City County Assembly urge you to please allow this Motion; Impeachment of His Excellency the governor and let him go home peacefully.

I thank you.

(Applause)

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. That is time well utilized. Thank you, counsel to the County Assembly. Now we turn to the counsel of his Excellency the governor.

You have 60 minutes. Look for ways of dividing amongst yourselves so that we are on time.

CLOSING STATEMENT ON BEHALF OF THE
NAIROBI CITY COUNTY GOVERNOR

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank you, Madam Deputy Speaker and Hon. Members. The first thing H.E the governor of Nairobi City County would like to do is to thank this honorable House and each of you Senators for taking time to listen so patiently even at this very advanced hour in the day.

We express deep gratitude for your patient indulgence and taking of every submission.

The Deputy Speaker (Sen. (Prof.) Kamar): Sorry to interfere but the young lady was given three minutes and forgot to introduce herself for the record.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank you, Madam Deputy Speaker. I yield.

The Deputy Speaker (Sen. (Prof.) Kamar): Just give us one-minute counsel.

The Counsel for the Nairobi City County Assembly (Ms. Cynthia Sheunda): My apologies hon. Speaker and hon. Senators. I am Cynthia Sheunda.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you, very much. These Members might be giving you their personal jobs soon.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank you, Madam Deputy Speaker and my learned friend for introducing herself. It is a pleasure.

So that we map a way forward without confusing hon. Members and so that you have an expectation of what is to be done, my learned friend, Mr. Nyamu, will address the issues raised as he also touches on the questions that hon. Senators have raised.

My learned friend, Mr. Ondieki, will follow for another 20 minutes and then I will close. We have equally divided the time and so we request. I yield.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Madam Deputy Speaker and hon. Members, I may have to introduce myself to the Deputy Speaker. My name is Wilfred Nyamu, part of the team for the governor.

Madam Deputy Speaker, on our part, we endeavored to address this House on the question of the charges that have been preferred and proceed to convince this House that those charges have not been substantiated.

If you allow us, we have authorities from courts of law which though not binding upon this House, would guide the manner in which this House delivers its decision. We do request that we be allowed to supply the same. We have copies with us. There are two authorities on the question of impeachment has dealt with by both this House and the High Court and the Court of Appeal.

Madam Deputy Speaker, before we begin, we would request that we be allowed to supply those authorities.

The Deputy Speaker (Sen. (Prof.) Kamar): Sorry, repeat. What do you want to supply and for what purpose?

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Madam Deputy Speaker, those authorities, we wish to supply them to the House. This is so that as we submit, the House may consider the authorities when it retires to deliver its decision.

The Deputy Speaker (Sen. (Prof.) Kamar): That is not our procedure. Our procedure is that your last submission is your verbal submission. The Members have been reading all your submissions for the last few days. They have formed their opinion.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Madam Deputy Speaker, with due respect, I believe my senior honourable Justice Sen. Madzayo would bear me out. When you have submissions, it would be important to use legal authorities, being decisions of courts or even this House that would guide this House even as it considers those submissions. Our submissions are based to some extent on those authorities.

The Deputy Speaker (Sen. (Prof.) Kamar): Counsel Mr. Nyamu, unless Sen. Madzayo would like to comment on this, I wanted to just guide you that there will be nobody to lead us in those submissions. We have closed submissions. They were closed a few days ago, and nobody will be able to guide us on them. It is better that to be fair to both sides; we do not introduce anything. Just go ahead and give us your closing statement.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Madam Deputy Speaker, very well.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Pareno would like to say something.

Sen. Pareno: Madam Deputy Speaker, we would stand guided better. Unless the other counsels have a problem with us being given authorities, these being past decisions that have been done before, it can guide us as a House as to how other impeachments have been handled. It would also be good for us to be informed. Even if we have already followed up all the proceedings, and probably, by now we have made up our minds, it is still good practice to have authorities accompany those submissions. They will not be of any harm, unless there is an objection from either side.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Wetangula, proceed.

Sen. Wetangula: Madam Deputy Speaker, ordinarily and in good practice, counsel for both parties exchange documents, including but not limited to authorities. This is what they should have done.

Being where we are and determining a matter of this weight, good practice would enjoin us through you, Madam Deputy Speaker, to allow the two authorities that the lawyer wants to cite. This is on the understanding that fairness requires that you will give counsel for the Assembly an opportunity to comment on them after they have been cited and quoted to support the case for the Governor.

However, the counsel should have known that these are part of documents they ought to have exchanged and filed with the Senate in the course of or at the beginning of the proceedings.

Madam Deputy Speaker, lastly, it is a matter that we encourage you to bend backwards and accommodate a man whose life in politics is on the line. Give an opportunity for the lawyers on the other side to comment. It is good practice. We do not need to waste a lot of time on this; exercise your discretion. Bend towards justice and let us move on.

The Deputy Speaker (Sen. Prof. Kamar): Sen. Wetangula, before you leave, I want you to comment on at what point are we going to listen to those.

Se. Wetangula: Madam Deputy Speaker, the authorities do not have to hold the proceedings by circulating documents to everybody. All he needs to do is to say, 'I have the case of Wambora versus the Republic or the case of so and so versus so and so,' and what he is going to cite.

In the process, if there are any Senators who will need the copies to look at. When you will give us that hour for us to make comments, we can make comments. However, the first bite will be the colleagues across the Floor, who will be given an opportunity to comment on those authorities.

The Deputy Speaker (Sen. Prof. Kamar): Okay. Before I even ask them to make a comment on admissibility of that, Sen. Madzayo, kindly, proceed. Senior Counsel, Sen. Omogeni, will contribute after Sen. Madzayo.

Sen. Madzayo: Asante, Bi. Naibu Spika. Hakuna makosa yeyote kwa wakili Nyamu kutupatia sheria zilizowekwa hapo mbeleni ambazo zinaweza kuweka ushawishi mwema kwa Bunge letu la Seneti kufikia uamuzi wa haki.

Sioni shida yeyote, Anaweza kuwapatia stakabadhi hizo akiendelea kuongea ili wazipitie. Sio lazima asome yote, lakini pale mahali ambapo alikuwa anataka kusema. Aende kwa ile aya ambayo anataka kusema aiseme, aiwache hivyo, apatie mwenzake aifafanue tu kidogo alafau awachie hapo. Hii ni kwa maana wakati mwingine tunaweza kupita mpaka.

Asante, Bi. Naibu Spika.

The Deputy Speaker (Sen. Prof. Kamar): Sen. Omogeni, kindly, proceed. We are eating into their time.

Sen. Omogeni: Thank you, Madam Deputy Speaker. If the authorities will assist this House in ensuring that the process that we are undertaking will not be in breach of the Constitution or any statute, it is only fair and in the interest of fairness and justice that those authorities be supplied to this House.

Madam Deputy Speaker, as you have heard from the lawyers of the County Assembly, this process is quasi-judicial. It is subject to the supervisory jurisdiction of the High Court under Article 165.

Guided by our own Fifth Schedule and Rule ordered 24, it is only fair that we allow both parties to present their case to their satisfaction, so that they do not leave this House feeling that they were denied a hearing.

What is of importance is that counsel of the Assembly should be given a few minutes to comment on those decisions. That way, we will be seen to be fair to both parties.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Madam Deputy Speaker. We are operating under very strict timelines, and I also believe that the lawyers are entitled to rely on the authorities.

The tidier thing to do is for them to make reference to those authorities and share copies with their counter opposing counsel. They do not need to consume more time by giving it to us. When we are making our decisions as a House, those who may be at sea when it comes to law can consult any of the lawyers that they think are able to advise them properly. However, taking time to distribute to us will occasion a long sitting, which is unnecessary.

The Deputy Speaker (Sen. (Prof.) Kamar): I think you have heard. The majority think that there was no negative consequence to you, but I give you the right of reply to that.

The Counsel for the Nairobi City County Assembly (Mr. Benson Milimo): Thank you, Madam Deputy Speaker. Under our practice, such authorities ought to have been availed to us before we commenced the proceedings. We have already closed our case. It is very difficult for me to comment when senior legal minds led by Sen. Wetangula have already taken a position on the same.

Madam Deputy Speaker, I request that you give us time to reply, if you are to rule that my learned colleague refers to those authorities time after they have concluded their submission, that we can also refer and make comments on those authorities. Ordinarily, we would have been given an opportunity for us to come with counter authorities to the same. However, due to the strictness of time, it will be very difficult for us. Let that disadvantage go on record; that we were disadvantaged at the instance of the Governor.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Malalah, do you have a different opinion? I had closed that matter.

Sen. Malalah: Madam Deputy Speaker, I do not want to be technical about our approach to this matter. In the fairness of time, we have sat here for two days, we have heard and I want us to be very frank with each other, that in as much this is a quasi-judicial process, it is a political process.

We might want to sit here, speak a lot of English, but a decision has been made. If we can save time and wind up because a decision will be made through a vote. If we can save time, whether or not we quote authorities at this time, reply or not, we are going to vote. Some of the people who are coming to vote and make a decision whether Governor Sonko is going to be impeached or not are not even listening to those authorities you are quoting.

We are wasting a lot time. We would rather just find a way of concluding this matter and then go direct, so that we save time.

The Deputy Speaker (Sen. (Prof.) Kamar): There is a point of order from Sen. Pareno.

Sen. Malalah: I am on a point of order, and so, it cannot be a point of order. I am concluding.

The Deputy Speaker (Sen. (Prof.) Kamar): Were you on a point of order or you were contributing?

Sen. Malalah: Madam Deputy Speaker, it was a point of order.

I want to remind ourselves that we are going to vote 11 times. We are going to vote on every charge. Therefore, if we take long, we shall leave here at 2.00 a.m. That will be in the morning.

With all fairness, we have elderly people seated in this House, who will not manage to sit up to 2.00 a.m. Therefore, if you can find a way of concluding, so that we can go straight to the vote, it will be fair enough and convenient to this House.

The Deputy Speaker (Sen. (Prof.) Kamar): Finally, Sen. Pareno.

Sen. Pareno: Madam Deputy Speaker, I think it is not proper if it goes on record that this Senate is saying that the counsel here, by trying to make their case, are wasting time by producing or giving us authorities. I think that is not a fair comment.

We have been here for the last two days to hear them on whatever case they have from both sides. For some of us, the learned colleagues, we would not want to say that authorities are a waste of time. There are best practices out there that we need to learn from.

That is unfortunate. I think it is not fair to have that comment on record.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you. I thought you were on a point of order, but you have contributed further.

Sen. (Dr.) Mwaura, proceed, so that I can close this. Sen. Mutula Kilonzo Jnr. is the last person, then I make a decision.

Sen. (Dr.) Mwaura: Thank you, Madam Deputy Speaker. This matter is quite dicey. If you were to give an opportunity to introduce authorities, when already the counsel for the County Assembly have made their closing statement, they may not have an opportunity to rebut. I do not agree. I agree with the counsel that this matter should rest. The Counsel for the Governor should make their closing remarks. It is unfortunate to hear my colleague, Sen. Malalah, allege that a decision has already been made. It has not been made. We are a House of reason and are here to be persuaded for or against. We are exercising our constitutional duty and we owe it to Kenyans to do so. I know that it has been long and tedious, but let us hear everybody out and make a decision based on those submissions. Kenyans believe that the integrity of Senators is beyond reproach.

I submit that those authorities may not be admissible at this point in time.

The Deputy Speaker (Sen. (Prof.) Kamar): Sen. Mutula Kilonzo Jnr., proceed.

Sen. Mutula Kilonzo Jnr.: Madam Deputy Speaker, I have heard some of the comments while I was in the corridor. The statements by Sen. Malalah are unfortunate. That can easily lead to the impression that we have made a decision. I have said this before and want to repeat that the Plenary session is unlike the committees because in the Committee report, it is the first time, I am dealing with an impeachment without my big volume. There is always precedent that we have followed.

Ms. Eunice Gichangi is here, our very good Deputy Clerk who has assisted us in various impeachment proceedings using legal authority. For purposes of legal authority, it is not like you are introducing evidence. This gentleman, my learned friend for the Assembly, talked about threshold and our duty. One of them mentioned that there were nexus, which is legal authority. I do not think there will be any prejudice if he cited an authority with regard to impeachment proceedings, provided also that the lawyers of the Assembly can respond. Even then, since Mr. Nyamu is a senior lawyer, it is only fair that at the very least those authorities should have been availed to his junior counsel long before, so that we avoid this idea that you are ambushing them with legal authority.

The idea of submitting authority is that your colleagues should have an opportunity to counter that authority. You are disadvantaging them to some extent because they are going to comment on your authorities, as opposed to producing counter authorities. There is really no harm because we have set precedent and there is legal authority, but the only objection---

In future, we are going to request counsels to do written submissions with their authorities, so that then non-lawyers can benefit from the wisdom of these authorities. Some of us might understand these legal authorities, but not everybody is a lawyer in this Chamber. I hope with the wisdom of Sen. Wetangula, who is our senior and more senior than anybody else except Sen. Wako, there is reason in trying to balance it, so that nobody says that they were not given an opportunity. We have sat here for a whole day; I do not think the authority will take one hour.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you Senators. Everybody is leaning towards allowing them to introduce. Whoever would like to use the authorities will use them. Priority will be given to the counsel for the County Assembly. Please, read them. I will give you 10 minutes to react to the authorities at the end of their submissions.

That takes me back to withdraw, sympathize and give you the 60 minutes due to you. I will not reduce anything except the point of order from Sen. (Prof.) Ongeru.

Sen. (Prof.) Ongeru: Madam Deputy Speaker. I want your guidance, when we allow the authorities to be quoted in this Session it will appear in the HANSARD and I am mindful of the fact that the legal counsel on both sides have the liberty to move to higher court for further interpretation.

How will the records of this House read if it is one sided where the authorities have been quoted and the other side has not had ample time to peruse through those authorities and give a counter proposal. In the interest of equity and fairness it will appear that it is only fair that when the authorities are being quoted the other side will have adequate time to reply so the records in the HANSARD will reflect accordingly what has transpired in this Session.

The Deputy Speaker (Sen. (Prof.) Kamar): You are tempting me to give Sen. Wako.

Sen. Wako, in your point of order, please, respond to what Sen. (Prof.) Ongeru has asked, because those of us who are not lawyers may not understand the way you understand.

Sen. Wako: Thank you, Madam Deputy Speaker. First, according to the practice that I used to know before when I was practicing in court, authorities are submitted the day before the hearing and also given to the other side so that they all prepare. However, it does appear that the advocates for Nairobi City County Assembly have been taken unawares.

Two, although Nairobi City County Assembly and this House have been taken unawares, I think that the point that Sen. Malalah said - though he put it very crudely, with utmost respect - is that we have to decide tonight. In other words, we do not have the luxury of retiring for one or two days, reading through the documents, the evidence and whatnot and then coming back to vote.

We have to decide tonight. That is why you have made a very good decision for the other side to have at least five minutes to respond. Ordinarily, it would still be unfair, but in the circumstances of this matter, I believe I heard the advocate say that the authorities he is going to quote are authorities of the High Court and the Court of Appeal of Kenya.

I believe that in this House, we have people who are aware of all those authorities, so that even if he does not quote some authorities, we are aware of all the authorities. They have passed through us, particularly those who are now serving a second term. Therefore, it may not be all that inconveniencing.

I would, however, advise you because of the time factor, not to quote too much. Just make a small reference and move on, so that you can shorten the time of submission. In other words, this is not a court of appeal where you will take one hour on just one authority, distinguishing this and that. Be very brief on it, because time has gone, and I believe that Members would want to exercise their right to vote and we finish the matter.

Thank you.

The Deputy Speaker (Sen. (Prof.) Kamar): Thank you very much. The most senior of the senior lawyers in the House has spoken and almost tilted the balance again, because of how it can be referred. Just for avoidance of the eventuality of one group

going to court, and I think the counsel for the county assembly has said they would like it to be on record. Is that right? He has already said that they would like it to be on record.

I think what we need to do is just proceed and cite them; do not distribute them, the Members will know where to find them. This is because if we proceed as earlier said, we could still have to carry a baggage of this decision, not just now, but as precedence.

My ruling now is that we rule against distribution of any new introduction of authorities that were not introduced on time. You can cite them; they will be able to refer to them. Please, we have no time. Let us proceed. Your 60 minutes run from now.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu):
Much obliged, Madam Deputy Speaker.

Madam Deputy Speaker and hon. Members, I wish to submit that in the first place, this honourable House is charged with a serious and noble responsibility by the Constitution that none of the legislatures has been bestowed with. The task of dealing with the question as to whether an elected person shall continue to hold office is a noble task and serious responsibility that warrants a serious and well-thought decision.

Madam Deputy Speaker, a governor is elected pursuant to the exercise of democratic rights of the citizens of this country. Although a CEO, he is elected by the citizens of this country within a certain county. In this case, Nairobi City County elected Gov. Mike Sonko overwhelmingly because he had over 800,000 votes. The County Assembly, through the Mover of the Motion, in exercise of powers under Article 181 of the Constitution and Section 33 of the County Governments Act, is now threatening to remove him from office.

I urge this honourable House to consider the writing in Article 1 of the Constitution on the Sovereignty of the People of Kenya and Supremacy of the Constitution when considering this particular matter. I urge this House to consider the provisions of Article 259 of the Constitution, wherein it is provided that the Constitution shall be considered holistically and no provision of the Constitution shall be looked at in isolation.

I wish to refer the House to Article 1 on Sovereignty of the People and Supremacy of the Constitution, where the people of Kenya have the power and right to exercise their democratic rights, either directly or indirectly. In this case, they elected Gov. Sonko in exercise of their democratic rights to govern themselves and delegated that power to him to govern them.

The Governor has, as a matter of political rights envisaged under Article 38(3) of the Constitution, the right to seek election to hold a public office, and if elected, to hold that office. That right should not be interfered with in any case without substance.

Madam Deputy Speaker, I submit that these proceedings before this House were initiated at the County Assembly under powers bestowed upon the County Assembly under this Constitution.

At that moment, the first thing was that there was a court order, which was ignored. In that regard, I refer this House to the first documents, that is, the affidavit of the governor marked Volume 1 at page 96. We note that there was an order in force that was issued by Justice Nzioki wa Makau.

It is incumbent upon all State actors by virtue of Article 10 of the Constitution on the doctrine of the rule of the law and promotion, protection of the Constitution, to respect all authority under the Constitution.

One of the authorities is that bestowed upon the Judiciary under Article 159. It is provided under Article 159 that judicial authority is derived from the people of Kenya and vests in and shall be exercised by courts and tribunals established by or under this Constitution.

Madam Deputy Speaker, that court order was derived from our court of law established under this Constitution which courts are part of the Judiciary and which order was issued under the judicial authority under Article 159. The same ought to have been respected. The County Assembly ought to have deferred its Motion, obeyed the court order instead of proceeding despite the court order.

This is not the first time that is happening. That issue was settled in the case of Gov. Wambora, where impeachment proceedings were taken out despite a court order. The proceedings were eventually set aside by a court.

I urge this House to disregard that impeachment process for being a nullity and in violation of the Constitution and hence, devoid of any efficacy.

Madam Deputy Speaker, I also point out that before the Mover of the Motion took the step that he took in proceeding with the Motion, it was incumbent upon them to first exercise avenues within their precincts before inviting this honorable House. That remedy is under Article 185.

Madam Deputy Speaker, we have been taken through these proceedings, where it has not been shown that before initiating an impeachment Motion they ever made any attempts at even excising their powers under Article 185. That is the power to oversight the Governor or any state officer, which they never did. They also have power under Article 195 to summon, which they never did.

As it is and all the world over, impeachment appears with a fundamental rights of an individual, it ought to be the last resort. Nothing in those allegations and the charges could not have been cured through the exercise of oversight under Article 185 of the Constitution.

Madam Deputy Speaker, I would urge this honourable House to find that this process was premature, and that the Assembly or the Mover of the Motion had not exhausted all the available machinery to them before invoking their powers under Article 181.

In that regard, I would wish to quote an authority in relation to Gov. Wambora, that is, the Court of Appeal Case No.194 of 2015. That is Mr. Martin Nyagah Wambora versus the County Assembly of Embu, wherein the courts at Paragraphs 19, 20, all the way to 25, has opined that impeachment ought to be an act of the last resort.

Madam Deputy Speaker, in this particular case, at Paragraph 20, the court said that it is common knowledge that Kenya is bestowed with politics. Politics is polarized between the County Government and Members of the County Assembly (MCAs). This undermines the objects of the Constitution on devolution, which is in these nascent stages.

However, this in turn polarized public opinion. Do powers of the county assemblies to impeach governors constitute a sword of damascenes that might undermine

democratic governance and emasculate devolution? Do governors have to look over their shoulders all the time to ensure that they do not rub the MCAs the wrong way lest they incur the wrath through impeachment?

Madam Deputy Speaker, if so, is this healthy for devolution? How will the expectations of the Constitution be better safeguarded and met? It is based on this particular pronouncement by the Court of Appeal that I wish to submit that these particular proceedings were premature in the first instance.

Again, looking at the charges, we have gone through the Motions of looking at the evidence that was presented before the House. The Governor has given evidence.

Madam Deputy Speaker, none of documents that have been presented here in a case where the governor is alleged to have committed or violated the Constitution and the law, and more specifically the County Governments Act, the Public Procurement and Disposals Act and the Public Finance Management Act. No nexus has been shown to exist. There is no connection between the Acts and the violations alleged to have been committed with the governor. No document has been shown that has been signed by the governor and no collusion has been demonstrated to have occurred between the governor and any officer.

Madam Deputy Speaker, I wish to refer this House to Article 179 (1) of the Constitution that there shall be a county executive committee.

Madam Deputy Speaker, it is the County Executive Committee that sits and formulates policies. The governor does not sit and unilaterally make a decision. The governor makes or formulates policies collectively with the county executive committee. That particular provision of the Constitution is complemented by Section 30 of the County Governments Act.

Madam Deputy Speaker, there is a misconception which has been laid before the House by the county assembly through their counsel that the buck stops with the governor. At no time does the governor make a decision alone. He is bound by law. It has not been shown that the governor unilaterally formulated a policy without the CEC Members.

Madam Deputy Speaker, as the CEO, Section 30 (L) of the County Governments Act the governor signs or causes to be published in the county gazette notice of all important or formal decisions made by the governor or by the CEC. When it formulates policies, the governor gazettes.

Madam Deputy Speaker, it was aired by this House a few months in the case of the Governor of Kirinyaga County, Her Excellency hon. Ann Waiguru, that the governor cannot be curiously held liable for anything that goes wrong within the county government.

Madam Deputy Speaker, we have been taken through charges. It has been alleged that Public procurement and Disposal Act and Public Finance Management Act have been violated.

Madam Deputy Speaker, when I stop talking it is because I am used to addressing the courts.

As it is, nexus or a connection has to be shown between the Act complained about and the governor, especially when it comes to matters procurement and Public Finance Management Act.

When the Mover of the Motion was being cross-examined, he admitted that there were accounting officers appointed in the County Government of Nairobi City.

(The light at the Clerk's Table was switched on)

The Deputy Speaker (Sen. (Prof.) Kamar): Mr. Nyamu and counsel, that light tells you that your first 20 minutes are over. We are trying to help you manage your time. You are now in the next 20 minutes, but it is how you agree.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): Madam Deputy Speaker, thank you. Through cross-examination, it was admitted that there are different county accounting officers. That takes us to Section 148 of the Public Finance Management Act (PFM). In Section 148 of the PFM Act, it is provided that the County Executive Committee Member (CECM) for Finance appoints county accounting officers. In this case, they are heads of different departments. Under Section 149 of the PFM Act, those particular accounting officers are appointed to deal with matters procurement.

The CECM Finance being head of Treasury is the one that deals with matters public finance. The Governor would only deal with such matters at policy formulation level and not directly. Through these authorities, you will notice that a Governor cannot be held precariously for any mistakes or violations of the law by officers of the county government.

It was incumbent upon the Mover of the Motion to proceed and have any officer whose department he has a query, for purposes of oversight and asking any question or seeking for any information. This was not done, and, therefore, the same cannot be visited upon the Governor.

Madam Deputy Speaker, as it is, it was indicated through these proceedings that there are matters that are pending in court. I would urge this honourable House to consider disregarding the charges that have been referred in relation to matters that are before court. It has been shown contrary to what has been submitted by the county assembly--- It has been demonstrated clearly by the Governor that no money meant for bursaries was transferred towards payment of any contractors or lawyers. Nothing has been shown that money that was meant for bursaries was paid to lawyers or contractors.

Although this House is not bound by--- It is incumbent upon this House to be very cautious, especially when it deals with the rights of a Governor under Article 38 of the Constitution and the rights of the people of Nairobi City County who elected the Governor. This House should consider not punishing the people of Nairobi who elected the Governor simply because one individual has decided to move the Motion.

This Motion was moved out of malice. We urge this honourable House to find that none of those charges has been substantiated against the Governor and to discharge the Governor of all the charges.

Madam Deputy Speaker, at this level, I would urge my learned friend, Mr. Ondieki, to come in and deal with the details in relation to the charges.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): Madam Deputy Speaker, Hon. Members, allow me because of my age to speak without the mask.

Before you is a Motion that will go to the annals of history because you are no longer sitting as Hon. Members but as judges. I wish to give 10 reasons this Motion should fail. In the process, I will also answer the concerns raised by the Hon. Senators for various counties.

Number one, there is no proper service. From the Senate to the Governor, there is a process server who served. But from the County Assembly to the Governor, there is no proper service. They have already told us that the Governor was locked out of the office and they served him in his office. They have not disclosed which office. Already, we know that he was barred from going to the office. This is ground one why this Motion must fail. By necessary extension, I am answering the concerns raised by Sen. Madzayo that the Governor was not accorded a fair hearing.

If you look at Article 50(2) (b) and (c) it says that any charges must be served upon the other respondent in good time, so that they have a chance to prepare their case and know what charges they are facing. If this is a removal on integrity, then when you interrogate the process that was used to remove the Governor, it was not transparent, accountable, verifiable and does not comply with the principles of good governance. It violates each and every value of Article 50(2) (a) up to (f) of the Constitution.

If you look at the architects of this Constitution, they made sure that they separated roles put at the national Government and County Government because they wanted to emphasize the doctrine of separation of powers. That is the essence of Article 174 (i) on checks and balances and separation of powers between the County Executive and the County Assembly, which has not been complied. Since we are all Muslims, Christians and the other religions, we believe in certain values.

The Governor is a human being. We are not angels who live in heaven. People may make mistakes, but I am submitting that the mistakes highlighted here do not constitute impeachable offences. Impeachment constitutes serious crimes and misdemeanors, if you look at all constitutions of the world. There are no serious crimes highlighted here. If it is outburst of freedom of speech where people have spoken folly, they can be forgiven. These are our children but it is not a ground of impeachment.

Sen. Nyamunga, the Governor continued with giving bursaries to everybody and has never discriminated. This is a Governor who carries bodies once people die, from Nairobi to all parts of Kenya. Not many people can do that. He gives people water in the slums. He listens.

Madam Deputy Speaker, I submit that suspicion, no matter how serious, cannot be the basis of impeachment or conviction on impeachment. I wish to highlight to you that in this age of technology, *WhatsApp*, *Instagram* and all the others; you see a lot of things on the internet, but they are not criminal in nature.

That is a social challenge. That is why we now have artificial intelligence to address some of those issues, but we have not (*There was a technical hitch*) some of these emerging challenges of artificial intelligence. Therefore, let us not measure the standards of this Governor to be so high, yet when we go to our homes, our own children watch all those things and we do nothing. Let us be fair. Before we remove the speck from other people's eyes, let us remove the log---

(There was a technical hitch)

I am sorry, it is the microphone, but I am moving.

The third reason this should fail, and this will answer the concerns raised by Sen. Orenge and Sen. (Dr.) Ochillo-Ayacko, is that we crystalize the issues. The question that calls for answers is whether the conduct of the county assembly met the threshold to remove. Our submission is that it never met.

Let me tell you, by 2022, half of you will be governors. In 2024, we will be here defending you when you are being impeached. The question you must ask yourself is: Will the law be followed, because the most experienced people who can be the next governors are (*inaudible*).

We do not want a situation where devolution is undermined because of whims (*inaudible*).

(Mr. Evans Ondieki spoke off record)

Madam Deputy Speaker, you will add me three minutes because movement---

The Deputy Speaker (Sen. (Prof.) Kamar): I think they will spend half a minute to change your microphone.

Just a second. We want you to be on record in everything.

The Counsel for the Nairobi City County Governor (Mr. Evans Ondieki): I am going to crystalize six issues very quickly in secession because of time constraints. I will answer Sen. Orenge and Sen. (Dr.) Ochillo-Ayacko, who asked what 'crystalized' means.

Madam Deputy Speaker, number one. Article 2(4) of the Constitution says that any action or omission done in contravention of this Constitution is invalid. The moment they failed to meet the legal threshold in an open, transparent and accountable manner, which could be verifiable---

Up to now, we have asked them, where are the videos of voting, but they cannot furnish us. We have asked them: where is the proper list and affirmation which will accompany the notice of the Motion, they have nothing. I submit that adding nothing to nothing equals to nothing. You cannot bring a lot of nothing and cumulatively say that you have added a lot of things, which amounts to nothing.

I submit that whatever they have done--- The invalidity of this entire process is that in the initial beginning the notice of Motion has no grounds. I mean, it has grounds, but no affirmations, proper list and video confirmation, because voting was through partly through virtual technology. Therefore, the process is not verifiable. We cannot ascertain what happened. In view of that uncertainty, I beseech you, as hon. Members of the Senate, to reject this Motion as premature.

The second reason it should succeed is that if you look at Article 10 of the Constitution, it enjoins all State organs, and the county assembly is a State organ, and individuals and State officers to ensure that the rule of law, constitutionalism and due process is followed.

If they breach the same Constitution and values, then they should not expect any protection when they come to the Senate. This is because the Senate's primary objective is to protect devolution, the rule of law and due process. That is another reason it should fail.

Thirdly, when you look at Article 20(4) (a) and (b), it is provided that any action must be justifiable in a democratic society and in the spirit of human rights, fair play and the rule of law. So, the enduring value in our constitutionalism is the rule of law, democracy and fairness. It is all working when you look at it. We are Christians and should speak the truth. Gov. Sonko may be having challenges, but they are not impeachable. He has to be forgiven and we move on.

Fourthly, looking at Article 47(1) and (2), it is provided that if there is administrative action, it must be fair, lawful and procedurally correct. This process fails in all those ingredients in Article 47(2). That is the fourth ground why this should not succeed. I believe that I have crystallised in big terms why this Motion should fail.

Finally, on the issues raised by the Senators. Sen. Cheruiyot sought a copy summoning the Governor and a copy of the HANSARD. This is a transparent process. We have engaged in activities and can go to the HANSARD and verify what transpired. There is nothing we can lay our hands on to ascertain what happened. The rest of the issues will be dealt with by my learned colleague.

Sen. (Prof.) Ongeru of Kisii County is my church elder. He wanted to know whether the County Assembly denied the governor access, and that has a constitutional implication. We went to represent the Governor, but they rejected. That has a constitutional implication of the right to be represented by a counsel of your choice. That is an issue you must determine.

Finally, the Senator for Nandi wanted to know whether the due process was followed. The entire process whether constitutional, legal or regulatory was ignored by the County Assembly. They cannot come and talk about the rule of law and due process when they did not follow the rule of law and due process from the beginning.

On those grounds and others that will be added by my learned colleague, we pray that you reject the Motion as premature, return it to the County Assembly and dismiss it.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Madam Deputy Speaker and hon. Members, I humbly request this honourable House to consider the implications of an impeachment, whose foundation has not been established.

Five Senators, in their inquiries, asked the County Assembly to avail us with the evidence that there was proper voting, the impeachment process was fair to the Governor and that there was compliance, but none was provided.

Madam Deputy Speaker, in reference to the question asked by Sen. Madzayo, I beg to have a rejoinder in Kiswahili. *Swali ambalo Sen. Madzayo ameuliza ni muhimu sana. Tegemeo kwa Seneti ambayo ina heshima ni kwamba utaratibu wa sheria utafuatwa kabla Gavana hajang'atuliwa kutoka kiti ambacho aliteuliwa kulingana na utaratibu wa sheria. Tegemeo la wakaazi wa Nairobi ni kuwa sauti yao itasikika.*

Sen. Madzayo akaagiza kuelezwa na Bunge la Kaunti ya Nairobi: 'Je, mlitekeleza wajibu wenu kulingana na utaratibu wa sheria au mnatueleza twendelee kumg'atua Gavana wa Mji Mkuu wa Nairobi kiholela?'

Shahidi ambaye angethibisha ukweli wa maswala ambayo Waheshimiwa wa Seneti hii waliagiza na kuuliza ni Spika wa Kaunti ya Jiji la Nairobi. Hakuitwa. Bunge la Kaunti ya Nairobi badala yake wakamwita mtekelezi wa Mswada.

Je, yeye alitimiza agizo la sheria? Je, mkaazi wa Nairobi ambaye anapaswa kuhusishwa katika utaratibu huu alihusishwa? Hakukuwa na uhusishwaji wa Umma,

yaani public participation. *Hakuna ushahidi kuwa Seneta hata mmoja kutoka kwa wadi ya mtekelezaji wa Mswada huu. Hakusema alitembea kwa wadi yake na kuwauliza maswala yao na kama mwakilishi wa wadi wangependa atekeleze hayo. Hamna ushahidi huo.*

Je, Maseneta Waheshimiwa mkiwa hapa mmeridhika? Hakuna ubainifu wa utaratibu wa sheria kufuatwa ambao umemakinika kwa kuwa utakuwa ni ushahidi mkamilifu wa nyinyi kumg'atua gavana wa Nairobi.

Nawasihi muangalie ushahidi huo na mkiridhika ya kwamba umekosekana, hamna kamwe kutelekeza ombi kama hilo. Ninadhani nimejibu Seneta Madzayo. Kwa heshima kubwa aliagiza ajibiwe.

Hon. Pareno asked if there was a nexus between Joyce Kinyanjui, who was a witness from the County Assembly and His Excellency the Governor. In her own evidence, which was tendered in support of the issue of the Ksh2.6 million that allegedly moved from the county to the governor's daughter, she had this to say in description of herself: This is Volume 9C page 1120-

"I Joyce Nungari Kinyanjui was an employee of Nairobi City County Government in the position of Director Inter-Governmental Relations and Head CEC Secretariat."

In that capacity she says-

"I received a letter from the CEO Council of Governors, dated 30th November, 2017 and received on 1st March, 2017, inviting First Ladies of various counties to attend to the 62nd CSW Conference in New York."

Hon. Members, this did not originate from the governor. It came from the national Government. There is a formal invitation. His Excellency has sworn an affidavit saying: "I did not have a penny of that money move from the County Assembly into my daughter's account."

These is a notion that His Excellency has used county resources to hire a helicopter. Where is the evidence? Where is the evidence that the governor's daughter was moving from this or other place using county funds? Nowhere!

[The Deputy Speaker (Sen. (Prof.) Kamar) left the Chair]

[The Speaker (Hon. Lusaka) in the Chair]

It was requested by hon. Murkomen: Where are the Zoom face and voice recordings? Where is the evidence that voting took place at the County Assembly as alleged by the Nairobi City County Assembly, such as it would meet the threshold of the two-thirds Members of the County Assembly (MCAs)?

Honourable Members, I urge, beg, and request. When you consider these realities, which go to the practical threshold, you will be disappointed that the County Assembly has not availed you that material.

Mr. Speaker, Sir, on the issue requested by Ms. Nyamunga about the bursaries. Were they continued? It is Sen. Nyamunga. I apologize. Please, accept my apologies. I tender my apologies; no disrespect meant.

She asked: Were the bursaries disbursed after that suspension? Madam Speaker--- Mr. Speaker, Sir, ooh my goodness. I am sorry; I apologize. You did not hear a rejoinder from the County Assembly; not any evidence to rebut the issue of diverted bursary funds.

Mr. Speaker, Sir, money meant for children in Nairobi County in the slums of Mukuru Kwa Njenga and Mathare was being diverted by MCAs. Those MCAs of Nairobi City County Assembly now want you to say that impeach His Excellency the Governor.

Sen. Nyamunga, on account of that illegal action by the MCAs, the stoppage was done, but it was revived after the payment came through because of the financial year. That is in the affidavit of His Excellency.

Mr. Speaker, Sir, you were told that money went in the sum of about Kshs260 million away from that fund. The question is: Is there a shred of evidence that you were shown that money moved from the County Assembly fund into the Governor's account? You are being told allegedly that it went into the hands of lawyers.

No nexus was demonstrated between these lawyers receiving these funds for cases prosecuted and the Governor allegedly ostensibly receiving this money and pocketing it. There was none.

Mr. Speaker, Sir, a question was asked by Sen. Haji. The question was to the Governor, if he was furnished with the impeachment evidence and proceedings before 3rd December, 2020. The second to that was: why did the Governor not appear before the Assembly? The rejoinder is that there was no evidence tendered to the Governor such as he would have responded to, by reason of which he was handicapped. How can anyone respond to that which has not been furnished on him?

You can see the events which His Excellency has demonstrated. He laments about the Mover of the Motion from the County Assembly and said:

“You have embezzled Kshs823,000. You were supposed to go to Dubai and you did not go.”

He admitted on the Floor as he testified.

Mr. Speaker, Sir, and honourable Members, would you close your eyes to that; that consequent upon that complaint, in a flurry of movement? This also answers Sen. Madzayo's question in relation to that.

Bw. Spika, kumjibu Sen. Madzayo, ni kama kimbunga kilimkumba Gavana aliposajilisha katika idara ya Directorate of Criminal Investigations (DCI) lalama ya kwamba huyu MCA kuna pesa za Kaunti ambazo alikuwa asafiri aende Dubai na akakubali. Hakusafiri kwenda Dubai. Gavana akaagiza uchunguzi ufanywe, lakini siku mbili baadaye akavamiwa. Hakupewa Ushahidi. Hakupewa nafasi ya kusikizwa. Hakupewa majina ya MCAs waliopiga kura. Hivi leo, juu ya jitihada zake akasema na akaagiza mimi staki kuwa mlafi wala mlaghai.

The Speaker (Hon. Lusaka): Counsel, sorry to interrupt you. Our Standing Orders require that you use one language. Since you started speaking with English, you can only use Kiswahili language when you are responding to somebody who has responded in that language. I have ruled.

Kindly, proceed.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, I apologize.

(Loud consultations)

The Speaker (Hon. Lusaka): Let him finish what he was saying. I have made a ruling. Let him proceed. Since you are good in both languages, kindly, proceed.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, it was in deference in sheer respect. The ruling from Madam Deputy Speaker was that in our submissions, we have the rejoinder to the specific questions that were raised by hon. Members. In deference to that ruling, I had to switch to Kiswahili. I meant no disrespect. Thank you very much.

So that I can conclude that remark in rejoinder, may I finish in Kiswahili, so that I can wind up.

Sen. Madzayo, wakati ule, jina la huyu MCA lilikuwa limepelekwa kwa Idara ya DCI na gavana. Hapo awali, gavana alishuhudia pesa nyingi ambazo alikuwa amelikwa ili atumie pesa za umma na wao, lakini gavana alikataa. Sasa ikawa hii hoja umeidhinishwa dhidi yake. Katika haraka ile, akajikuta kama amepigwa na kimbunga. Hapewi ushahidi. Hamna ushahidi.

Mr. Speaker, Sir, I have answered that. Let me wind up. Sen. Linturi and Sen. Cheruiyot asked very important questions. The list of documents supplied to this honourable House does not include and show where those specific votes came from. Who voted? How did they vote? All we are being told is that 88 MCAs voted. However, His Excellency the Governor called a witness, an expert in handwriting, who impugned five of those alleged votes.

That goes to the threshold. You do not have the threshold sufficient to give you this impeachment. It must fail.

Hon. Members, let us consider Kenya, specifically Nairobi. Let us just for a moment introspect and ask ourselves: if we were to impeach the governor, does that provide a solution to Nairobi City County? If we were to impeach the governor, is that the most expedient action we should take?

Hon. Members, I invite you to also consider Nairobi City County as a peculiar attitude. The lack of a deputy governor is informed by the pendency of five court proceedings. Immediately upon the resignation of the Deputy Governor who was elected with the governor, unfortunately, not even a week after, a case was filed in High Court. Upon its filing, the governor was then stopped from appointing a deputy governor.

As I speak, Petition one of 2020 is pending before the High Court. What are we accosted by? Where will we leave devolution? Is this an opening for the executive to take over Nairobi? We must consider which is the lesser evil. Let the Members of County Assembly (MCAs) sit down with their Governor. You have the opportunity to say: "We want to pull you to line. We want to have you comply." Let them even file a report with you every month.

Have you complied with our demands that the Ethics and Anti-Corruption Commission (EACC) investigates these issues? We have a report. We know rather than taking Nairobi back to the ballot or by the formation of a commission. The formation of a commission would lead us nowhere else, but in the hands of the Executive. Hon. Members, where is devolution going to end?

Mr. Speaker, Sir, his Excellency the Governor stood here under oath and said that he is being attacked for his being a stickler to the law. He is accused of not releasing

money to the Nairobi Metropolitan Services (NMS), but has shown that a court process has stopped it. He is being blamed. The Governor says that money should not be stolen from the bursary kit, but he is being accused. He is saying that MCAs should work, but he is being accused.

Hon. Members, I know that you have in you a heart to give devolution effect. I ask you as I close that the issue of 88 MCAs whose vote is in question *vis-a-vis* the future and the fate of Nairobi, where do we stand?

Vote “No” because tomorrow there can be another impeachment Motion that follows the law, based on facts or based on evidence. However, if you impeach the Governor in our current economic situation, the hardships of the common Nairobi being experienced, him or her not being consulted over this, where are we headed? Where are we taking Nairobi? Let that impeachment, if it be founded, it can always be done later, but not with this. There is nothing to enable us.

Thank you, Hon. Senators. For those Hon. Members that I have not been able to elucidate your query, I apologise. On behalf of His Excellency, let us think about Nairobi. There is another chance. If impeachment comes, let it be without doubt. I beg.

Thank you, Hon. Members and Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Thank you so much.

Hon. Senators, our two parties, the Nairobi City County Governor’s team and the County Assembly team, let me take this opportunity to thank you for your submissions. The Senators have listened. They have been very patient and now the hour of reckoning has come.

Therefore, the next step according to our programme is to release you briefly so that the Senate goes into a closed session.

The bell will be rung for voting, which will be open. At that point, you are free. If you want to attend, you are welcome. If you do not want to attend, it is optional.

On behalf of the Senate, I want to release you so that we have a brief closed session before we get into voting.

Thank you so much.

(The House went into Camera)

(End of in-camera session)

(The Senate resumed at 9.15 a.m.)

[The Speaker (Hon. Lusaka) in the Chair]

The Speaker (Hon. Lusaka): Let us take our seats! Let us take our seats! Order, Members! Take your seats! We have a Supplementary Order Paper. We are now back to open Session. The cameras can now come back.

Order, Members! Let me call the clerk to read the next order.

NOTICE OF MOTION

RESOLUTION TO REMOVE FROM OFFICE, BY IMPEACHMENT,

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Senate.*

THE GOVERNOR OF NAIROBI CITY COUNTY

The Senate Leader of Majority (Sen. Poghisio): 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 Wednesday, 3rd December, 2020, the Nairobi City County Assembly approved a Motion for the removal from office by impeachment, of the Honorable Mike Mbuvi Sonko, Governor of Nairobi City County.

AND FURTHER, WHEREAS, by letter Ref. No. NCCA/SPK/12/2020(1), dated Friday, 4th December, 2020, and received in the office of the Speaker of the Senate on Friday, 4th December, 2020, the Speaker of the County Assembly of Nairobi City informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to Article 181 of the Constitution, Section 33 of the County Governments Act (2012), and Standing Order 75 of the Senate, the Senate heard the County Assembly on the grounds of removal from office by impeachment of the Governor;

AND FURTHER, WHEREAS pursuant to Article 181 of the Constitution, Section 33 of the County Governments Act (2012) and Standing Order No. 75, the Senate also heard the Governor for Nairobi City County on the grounds of removal from office by impeachment of the Governor;

NOW THEREFORE, pursuant to Article 181 of the Constitution, Section 33 of the County Governments Act (2012) and Standing Order 75, the Senate resolves to remove from office by impeachment, the Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County on the following charges-

- (1)Gross Violation of the Constitution or any other law;
- (2) Abuse of Office;
- (3) Gross Misconduct; and
- (4) Crimes under National Law.

MOTION

RESOLUTION TO REMOVE FROM OFFICE, BY IMPEACHMENT,
THE GOVERNOR OF NAIROBI CITY COUNTY

The Senate Leader of Majority (Sen. Poghisio): Mr. Speaker, Sir, I beg to move

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for the removal from office by impeachment, of the Honorable Mike Mbuvi Sonko, Governor of Nairobi City County.

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- (1)Gross Violation of the Constitution or any other law;
- (2) Abuse of Office;
- (3) Gross Misconduct; and
- (4) Crimes under National Law

Mr. Speaker, Sir, the matters here are straightforward. It is a constitutional duty of this Senate to take up this matter. We shall neither shy from it nor be intimidated. We must move in this direction and make decisions. We have heard evidence for the last two days. We have listened. Mr. Speaker, in your own words, you called it “some boring session.” It will be boring, but we heard.

I thank all the Senators. The numbers proved to you that Senators paid keen attention to the presentations on both sides. Everybody has been given a chance to be heard. Therefore, this a time of reckoning. I would like to ask Members, you have heard; you made the decision, and now the time has come to put it to a vote. I want to encourage Members that this is your duty and you must act.

I thank the Speaker and everybody for the way that you conducted this business. I think we may have to reconsider certain things about how we run this business, but the time has come. I will not take long. I am going to move and ask the Leader of Minority to second.

I beg to move.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, I ask that order be kept while we are having the proceedings. As you know, there are Senators who are up standing, and that is not allowed at all.

The Speaker (Hon. Lusaka): Honestly, take your seats.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, strictly speaking, I have one hour to second the Motion, but being cognizant of the importance of this Motion, I beg to second. I want to make the following remarks.

The question of removal is not a question that can be made by any one single Senator, but on account of the aggregate vote of all the Senators as an expression of the resolution of the Senate.

Mr. Speaker, Sir, I want to place before you certain matters which are in the Constitution to draw a distinction---

(Loud consultations)

If the Attorney-General emeritus and the Judge---

The Speaker (Hon. Lusaka): Order, Senators! Emeritus, please. Just make it easy for him to second.

The Senate Minority Leader (Sen. Orengo): The Judge is on his feet, and he is supposed to judge. I do not know how he is going to judge.

This is probably the only power under the Constitution that has remained intact throughout our constitutional dispensation. It is a power which is onerous that I believe any time we are faced with an impeachment, we should give the whole country the feeling that anybody who appears before the Senate is assured not only of justice being rendered but even in terms of our conduct. Justice will not only be done, but manifestly seen to be done. That goes not just from what we say as a Senate collectively and individually, but even in the way we conduct ourselves during such proceedings.

Mr. Speaker, Sir, for purposes of seconding this Motion, I just want to draw two issues to the attention of the Senate. The first one is on the principles of how an impeachment should be carried out and the standard of proof that is required in an impeachment. That is a matter that has been well settled by the courts in the various decisions that have been made here. I plead to the Senate to also be consistent.

There is a time I tried to urge the Senate that under the principle of legality and committee of institution, we should respect what the courts do in as much as what we want the courts to do. That is still a matter of debate because we seem to be shifting goalpost in other matters.

For example, in the Governor Samboja case, people said that we should never be compelled to obey court orders. In these particular proceedings, we are being urged that this matter is before the court and therefore we should not deal with it.

Having said that, I would like the Senators to look at Article 99 of the Constitution in relation to disqualification of Members. When you are charged in a criminal court and convicted, you cannot be removed as a Member of this House.

Article 99(2) (h) of the Constitution states that you must have been found, in accordance with any law, to have misused or abused a state or public office or in any way have contravened Chapter Six of the Constitution. That is why it is possible for a Member of Parliament, who has been convicted of an offence, to continue being a Member of the House until the appeal process is exhausted. I think we have examples in the National Assembly.

When it comes to a county governor, the words there are very different in contradiction to what is contained in Article 99. Article 181(1) states as follows-

“A county governor may be removed from office on any of the following grounds-

- (a) gross violation of this 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;
- (d) physical or mental incapacity to perform the functions of office of county governor.”

They are saying that this was the instrumentality of parliament to control those who would act in abuse of power. That if they waited for court processes, that undermining of the delegated authority from the sovereign authority, which is the people, would have to wait until the four or five years of tenure is over.

Mr. Speaker, Sir, the standard of proof is very different as the courts have borne out in the many appeals we have been referred to but the finding as to whether there has been a violation of the impugned conduct as stated in Article 181 of the Constitution is really a political question. We need to have a threshold because they are set out in the Constitution. In my view, it is still a political question.

At the end of the day, all that I want to say in conclusion is that, this is a very important instrument that is donated to this House. We must revise these rules. We must look at the Act again. My belief is that, so far, we have not given the solemnity to this process. Imagine, probably, the next time it is the President of the Republic of Kenya that we will be impeaching, contrary to the mandate they are given by the people of Kenya.

Everybody in the world will be watching us. It may be the governor now but if it was the President of the Republic of Kenya, the whole country would be watching. I believe that we must revise the rules, amend the County Government Act in relation to the impeachment.

I want to persuade the House that a Committee process is probably better. In the USA, they did not have a provision for the Committee system. What they have in the law is plenary but they have found out over time that plenary does not do justice to the grounds and the seriousness of grounds, which normally those who have been impeached face.

Mr. Speaker, Sir, with those remarks I beg to second.

(Question proposed)

The Speaker (Hon. Lusaka): What is your point of order, Sen. Malaah?

PROCEDURAL MOTION

LIMITATION OF DEBATE TIME

Sen. Malalah: Mr. Speaker, Sir, I stand under Standing Order No.106 on limitation of debate which clearly says that-

“The Senate may, on a Motion made by any Senator in accordance with the Standing Order, impose a limit in respect of debate or any particular Motion or Bill by allocating a limited period of time for such debate or by limiting the time during which Senators may speak in such debates or by imposing such limitations.”

Standing Order No. 106 (2) clearly says that such a Motion may be moved without notice.

I beg to move the Procedural Motion that this debate be limited to three minutes per speaker, so that we save time. I want to call upon Sen. Khaniri to second this Motion.

Thank you.

Sen. Khaniri: Mr. Speaker, Sir, I second the Procedural Motion.

The Speaker (Hon. Lusaka): It is seconded. Therefore, I will just give three minutes.

Sen. Sakaja, proceed.

Sen. Sakaja: Mr. Speaker, Sir, thank you. I would like to---

The Speaker (Hon. Lusaka): Sen. (Prof.) Kindiki, proceed.

Sen. (Prof.) Kindiki: Mr. Speaker, Sir, the Senator for Kakamega County has moved a procedural Motion and properly so, which has been seconded by the Senator of Vihiga County. However, with tremendous humility, I believe that the Speaker of the House must take a vote, a *viva voce* vote to ascertain whether that Motion has been passed before we can progress.

This is because I am of the opinion that talking about removal of a governor is not a small matter. As many Senators as possible should be able to speak for at least five minutes, to say something. That is the minimum. With three minutes by the time one rises up, time will be over.

Mr. Speaker, Sir, I am begging, but if it is the opinion that we do three minutes by majority, I will abide by the decision of the House.

The Speaker (Hon. Lusaka): Okay. A Motion has been proposed to limit the time of the Motion and seconded. Now I will propose the question.

(Question proposed)

(Question put and agreed to)

The Speaker (Hon. Lusaka): Sen. Sakaja, proceed.

Sen. Sakaja: Mr. Speaker, Sir, I seek your indulgence. I know that Members want us to dispense with this matter quickly. However, as the Senator representing Nairobi City, I beg your indulgence that I speak for five or six minutes, kindly.

The Speaker (Hon. Lusaka): Okay. You have five minutes.

Sen. Sakaja: Mr. Speaker, Sir, thank you. Sen. Olekina is saying ten minutes. I do not need ten minutes. As I speak to this Motion---

(Loud consultations)

Kindly, advice Senators not to address me, but you. You are asking a point of order to the Speaker and not me. Unless you are given, I keep speaking. In speaking to this Motion---

The Speaker (Hon. Lusaka): What is your point of order, Sen. Murkomen?

Sen. Murkomen: Mr. Speaker, Sir, first of all, I know that I cannot raise a point of order against you. However, you only proposed the question. You did not put the question on the time we are supposed to debate here. It is just that it is out of procedure, but that is water under the bridge.

The real tradition that has been established in this House from the time impeachment started is that the Senator of the county where the governor is from speaks last. Generally, there is always indulgence to give him or her more time. There is a reason why he should speak last, so that he can sum up everything.

I want to beg my friend, Sen. Johnson Sakaja, to wait for the other Members to contribute first so that he can follow.

The Speaker (Hon. Lusaka): Sen. Sakaja, is that okay?

Sen. Sakaja: Mr. Speaker, Sir, I acknowledge tradition. This is a House of rules and tradition. I have much to say. I will abide and speak last. I hope that what I wanted to say will not be clouded by what Members will say. I urge that even if I speak last, you will still give me an extension of time when I speak.

Sen. (Dr.) Mwaura: Mr. Speaker, Sir, you caught me off-guard. I want to listen to Sen. Sakaja. However, the whole process of impeachment is a far much better improved version than the way in which we impeached the Governor of Kiambu County, Hon. Ferdinand Waititu.

I saw a lot of civility from Senators and the cross-examination from the counsel. That is something very commendable. However, we really need an impeachment procedure law, so that we are very clear that it is not whimsically possible to just make a determination as to whether we have a case for a Plenary or for the Committee based on what may have happened by a certain Committee or certain persuasions of the moment.

Mr. Speaker, Sir, having said that, it is my opinion that, indeed, the Governor has a case to answer. I was moved personally by the charges against him, especially around gross misconduct and issues to do with variation of tenders.

There is a topic I keep on talking about called development corruption where you use development money meant to help poor Kenyans and divert it by compromising on the standards of a project, so that those monies end up in people's pockets.

It was clearly demonstrated to us by the county assembly that a lot of monies were actually diverted from a stadium project. Further, quite pungently and sad that monies meant for bursaries have been diverted to pay lawyers. This is very clear conduit for self-enrichment of legal fees that would not otherwise be quantifiable - I do not whether it is the amount of English; today, we have had a lot of it - that will amount into hundreds of millions of shillings that have been diverted.

Mr. Speaker, Sir, we owe it to this country to have governors having the highest threshold of decorum. We want people who when they look at our televisions, they will see that these are honourable leaders who have been elected to office to serve.

In my opinion, Governor Mike Mbuvi Sonko has not presented himself in a such a manner. In my opinion, he is a very good example of someone who should not have been

elected as Governor of Nairobi City County. I ask that this honourable makes its considered opinion, so that we----

Sen. Olekina: Thank you, Mr. Speaker, Sir. I rise to oppose this Motion with the following reasons. I have sat here for the last two days and listened very carefully to the allegations by the County Assembly. In my view, which I wish to convince my colleagues within three minutes, these allegations have not been substantiated.

Mr. Speaker, Sir, we were told that bursary money was diverted to pay for lawyers. We were told that the county's money was used to pay for other services, but the evidence which was presented by the Governor spoke differently. We were given documents from the Central Bank of Kenya (CBK) that showed that was stopped. What happens normally when you process a payment, it leaves the Integrated Financial Management Information System (IFMIS) and goes to Internet Banking (IB). At the end of the financial year, if that money has not cleared from IB, it goes back into the County Revenue Fund (CRF).

With my two minutes left, the issues that we have been entertained here with revolve around three particular issues. The first one is Article 187(2)(a) and (b). This is a matter that this House must sit seriously and consider because when it says that arrangements shall be made to fund transferred services, it does not say that the national Government should put together a legal framework to transfer those services. This is a threat to devolution and we must be alive to this.

The second issue has to do with the relationship between the Treasury, the County Assembly, the County Executive and this new entity called the Nairobi Metropolitan Services (NMS). We will be violating Article 219 if we agree with the County Assembly that the NMS should get money directly from the exchequer.

Mr. Speaker, Sir, I have 50 seconds. I want to beseech you, my brothers and sisters, that this is a very tough time for devolution. If we agree to violate Article 187(2)(a) and (b) and Article 219 of the Constitution, we will be doing us a disservice.

In the last few seconds, I would like to end with a quote from the Bible. Proverbs 12:22 says-

“Lying lips are abomination to the LORD: but they that deal truly are his delight.”

I wish to beseech you to deal fruitfully and truthfully.

Thank you, Mr. Speaker, Sir.

Sen. (Dr.) Langat: Thank you, Mr. Speaker, Sir, for giving me this chance to say something. I want to deeply oppose this Motion. The first reason is due to procedure. If we are not careful as a House, the irregularities that are happening in the county assemblies are likely to translate to this House. It was not very clear up to this time if the threshold was met in the County Assembly.

Unless we are careful, sooner than later, this House will be converted by the Members of County Assembly (MCAs) as a lynching ground for governors. Governors are now under fear. They fear their MCAs because they may be brought here to be lynched.

We need to protect devolution. We may not have substance on what the Governor gave, but the procedure is faulty. You could see that it is not clear to all of us here if those MCAs who were in Mombasa voted. A faulty process produces faulty results.

We must be careful with the procedures taking place in the county assembly or else we risk this House becoming a lynching ground for the MCAs who have a lot of unrealistic demands on governors.

I beseech this House that if only we could send this case back to the MCAs, so that the procedure is followed effectively, we have no problems with results. However, a faulty process leads to faulty results. I beg this House to reconsider this matter with the seriousness it deserves as a way of protecting devolution.

I thank you, Mr. Speaker, Sir.

Sen. Omogeni: Mr. Speaker, Sir, this is the fourth impeachment that we, as Senators, are handling in less than three years. For those who have served more than one term they would be more.

We are sitting as a jury, as a quasi-judicial proceeding; as a court of law. It is important that in the eyes of anybody who comes before us to see that not only has he or she been subjected to a process that is fair, but that he or she has also received justice.

The way we conduct these proceedings needs to be reviewed going forward. If you go to the United States of America (USA), an impeachment of a President is done under serious investigation. During the impeachment of Richard Nixon, Hillary Clinton was one of the attorneys assisting with gathering evidence against the then sitting President.

As we speak here today, you have seen that there are many instances where we are not able to get proper assistance from advocates who appear for the respective parties. We asked issues touching on whether orders were served. When we tried to get proper records from the Assembly, we were told we ought to have summoned the Clerk to appear before us to give us further evidence. We must put in place a body that should review the way we conduct this inquiry so that parties and Kenyans in general can have confidence.

Mr. Speaker, Sir, this is like when you face an election petition when you have received the mandate of the people to be their leader and you are taken to an election petition court, you expect fairness, justice and the verdict passed against you should be one that enjoys the confidence of the people that voted for you.

In conclusion, our governor must also know going forward that if you violate the Constitution or any law, then you may risk losing your seat. President Johnson was impeached for violating the tenure of office act, a simple act of sacking the way Minister Edward Santon provoked an impeachment Motion which was passed. Any Governor must know that if you violate---

The Speaker (Hon. Lusaka): Sen. Murkomen, you have the Floor.

Sen. Murkomen: Thank you, Mr. Speaker, Sir. I thank both counsel for the Governor and the County Assembly for the work they did. I want to agree with many of our colleagues who said that an impeachment process though legal has a lot of political implication. This House is presiding over the fourth impeachment procedure this term. Unlike last term, this term of the fourth impeachment process, three have an element of State sponsorship. Two particularly have a full support of the State, including this one. I have a problem with that because if the national Government will use its machinery, both security machinery and resources given to the people of Kenya to impeach a governor, then there lies the danger.

Article 96 of the Constitution was not established by accident. It says that the Senate shall protect counties and county governments. It was put in place because it was known that there is a danger that county governments are facing. Where is the danger from? There might be other quotas where county governments may face danger from, but the most primary institution that threatens county governments is the national Government because of the competition between the national and county governments.

Today, from the witnesses and testimony we have heard from the Nairobi City County Government, all this is about control of the 10 per cent of the country in term of its economy. Nairobi is 60 per cent of the Gross Domestic Product. This is about power, about the transfer of functions agreement and the establishment of the Nairobi Metropolitan Services (NMS). It is about interests that are competing and particularly commercial interests. For that reason, this House must rise to the occasion to defend devolution and ensure that counties and county governments have the confidence of the Senators. With those comments, this House must tonight demonstrate that they have the level of consistency that can be believed by the people of Kenya.

I beg to oppose.

Sen. (Dr.) Ochillo-Ayacko: Thank you, Mr. Speaker Sir. I can hear some people talking about “my goodness.” I do not know whether they did not expect me to speak.

We are converged here as a jury. My understanding of a jury, the practice that has evolved in senior jurisdictions is that they are sequestered. They are kept somewhere where they cannot be influenced by many people and opinions that are external to the facts. You will notice that many of us do not want to speak here because we do not want to be influenced. This is a very serious duty. In future, I think that we should introduce sequestrations so that we do operate in a manner that we may be influenced.

Having said that, I also want to say that if you look at our legislation, the foundation of which this Motion is brought, it requires that we investigate. If we are to defend our counties, if we are to apply Article 96 of the Constitution and achieve the objective of that Article where we defend counties, then we must not rely on arguments that are made by county assemblies and arguments that are made in response by county governments alone.

We should be able as a body to go out there and find out the facts for ourselves. This is because in matters that are adversarial, those who are better equipped and prepared will become persuasive. That is the dilemma in which we find ourselves in. I will express my opinion by voting.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Sen. Wamatangi.

Sen. Wamatangi: Thank you, Mr. Speaker, Sir. I will begin by appreciating. I think that it is important for members of the public, because there has been that debate all along whether if we conduct our business in plenary or through the Committee process, which way is justice served?

I think it is important that members of the public who have been following these proceedings understand that this House is above reproach. Whichever way we prosecute these matters when they come, at the end of the day, Senators make a conscientious decision that eventually will give the verdict of what each Senator is convinced has happened.

Mr. Speaker, Sir, there are just two quick issues I would like to address that I think are pertinent in the future. First, I believe we need to re-address the procedure of how we deal with these impeachment processes because we might run the risk of compromising a very important tenet and virtue of this process, and that is believability.

If these processes continue and then eventually it is clear to somebody who is following that we are not able to prosecute the matter to its detail because of lack of time, such that there is even no time to question the veracity of evidence and look at the authenticity of documents when they have been presented, that eventually would eat into the solid foundation of this House as one that is given that constitutional duty.

Mr. Speaker, Sir, secondly, I believe that what we are seeing when these processes start is not what is intended in the Constitution. At one point in the process, it ended up being a contest between MCAs. If this side brings an MCA and they are trying other MCAs on the other side, is this a contest between members of the same county assembly that have come here to say this one said and this one this did not do this?

Indeed, it almost reduced to a contest between lawyers. You would find one lawyer questioning the authenticity and integrity of the other one.

I believe that when a decision is made at the county assembly level, if it was made correctly, when the matter arrives here, it should virtually be the accused against the allegations, for the Senate to listen to but not a contestation on whether there was a lying MCA and a truthful one.

We should be asking ourselves whether this process serves devolution by the way we prosecute it. I believe we will make it fine and better if we qualify the process by ensuring---

(Sen. Wamatangi's microphone went off)

Sen. Wambua: Mr. Speaker, Sir, I hope the final decision as to whether or not to impeach the Governor of Nairobi City County will be based on facts and evidence. I will prosecute it with few arguments in opposing the impeachment Motion against Governor Sonko.

The first one is the issue of the threshold that I raised with the lawyers on the Floor. Even the lawyers could not confirm to this House that the threshold for impeachment has been reached. The only thing they said is that the determination of threshold is the province of the High Court. To the extent that there is doubt on threshold even on the side of the lawyers, I must say to us that if the threshold was not met, there is no justification, whatsoever to impeach the Governor of Nairobi City County.

What I find very interesting is the motivation of this process. Why do I ask about the motivation? We are told that Dandora Stadium project is still under active investigations. At the end of the day, the investigation agencies will apportion blame and say so and so is responsible for doing "A", "B", "C" and "D". Why is the Nairobi City County Assembly in such a hurry to impeach the Governor on account of a matter that is still under active investigation?

Lastly, I thank the Governor of Nairobi City County for stopping a cartel that used to receive bursary funds to a phantom school. Unfortunately, on that same count, he is being accused of not issuing bursary funds. This House is being called upon to make a decision based on facts and evidence adduced on the Floor of this House.

With those remarks, I oppose.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir, for this chance. We are being invited to make a very simple decision. I call it simple because the legislation we are relying on to make a determination whether the threshold was reached at the County Assembly was passed by this Parliament.

Nairobi City County Assembly appeared before us with a lead counsel. They had an opportunity for two days to present evidence before us confirming whether that particular threshold was reached. When they did not do it, this afternoon, we were given an opportunity to seek clarifications.

I rose on a point of order and asked a specific question to the lead counsel to furnish this House with the names of the MCAs because he purported that 88 of them supported the impeachment process against the Governor. That would have allowed me to look into the further details of all these issues such as mistreatment of staffers, issues of governance and the rest. However, he scatted around the issue and could not produce that particular list.

We will be setting a very bad precedent if tonight we confirm to the entire country that it no longer matters if two MCAs meet, so long as they bring a list and a letter to this House and they are able to flex their political muscles. As a House, we will be failing in our constitutional responsibility of ensuring we are defenders of devolution.

For that reason; for the simple fact that is so obvious and bears for anybody who cares to listen, that the County Assembly of Nairobi City County never achieved the threshold of impeaching Hon. Governor Mike Sonko. I oppose this Motion.

Mr. Speaker, Sir, if it is about failure of duties, honestly, between the national Government and the Nairobi City County Government, which one needs the services of NMS? It is the national Government.

I oppose.

Sen. Wako: Thank you, Mr. Speaker, Sir, for giving me this opportunity to speak to this very important Motion. We have had four impeachment Motions. We have gathered experience and I believe we are improving in the way we are handling these petitions. You may recall that I said we have a very important mandate. It would be worthwhile taking into account the experience we have had to look at the procedures, so that everybody including the Governor feels that they have had a fair deal, if I may use that word.

When you look at it, it is a very simple thing. If we just stick to that simple thing which is to have the particulars given on various matters being substantiated and we do not look at how they came here because they will come here in many ways--- It maybe two MCAs or the Government or some people who are interested in ensuring that devolution does not work. Let us focus more, not on how they have come here, because if, in my opinion, we focus too much on that, we may be derailed

Let us focus more on what we have before us. The particulars that have been given pursuant to the reasons to remove the Governor, which are set out in Article 181 of the Constitution. Have those particulars been substantiated? That is all. If they have not been substantiated, the petition does not succeed. If they have been substantiated, it succeeds, but the petition should not fail or succeed because of how it found its way here.

There will be many ways followed by these types of petitions coming here. To me, let us focus more on the issue of substantiation.

Mr. Speaker, Sir, we are developing jurisprudence. Let us also ensure that our jurisprudence on this matter is also consistent. For example, I can see that our jurisprudence on the issues of procurement and imprest are now developing. If we have to be consistent, we have to ensure that the way we decide those issues in one case, should guide us on how we decide on the same issues in this case.

As we look at the procedures---

The Speaker (Hon. Lusaka): Your time is up. Proceed, Sen. Kihika.

Sen. Kihika: Thank you, Mr. Speaker, Sir. I also rise to oppose this Motion. Part of the reasons is that I was not convinced that the process that was followed at the County Assembly level as far as the threshold is concerned was followed properly. I think it is important because the way it got here must also be important and considered.

Once they were here and were stating the grounds, I felt that they were very flimsy. When they come here talking to us about impeaching Governor Sonko because he dines to party after party in France, I feel that is not a good enough reason. When Hon. Sonko was elected by over 800,000 voters in Nairobi City County we all knew him to be flamboyant, exuberant, and flashy, for us to now want to pigeon hole him into a suit and tie and expect him to just sit in the corner somewhere and sign off warrants and give kickbacks. If not, then be impeached. I feel that is not the way to defend devolution.

Mr. Speaker, Sir, as the Senate, one of our very primary duties is under Article 96 (1), which is to defend devolution. From what I have seen in the past year or so, we seem to now have become some rubberstamp puppets who will do anything to help those from the national Government who want to mess with devolution and kill it by removing anyone who does not toe the line. We want to help them get there.

However, is it really worth it to have a by-election in Nairobi City County, which as 10 per cent of the population of this country, just because they want maybe to transfer, as we have seen previously, to the military, the functions of the county illegally? Maybe the Governor has refused to sign over some roles to an illegal entity. Here we are helping them by giving them a hand to get there.

Mr. Speaker, Sir, but anyhow, at the end of the day, my colleagues, I want to appeal to your conscience. Let us not impeach Gov. Sonko on such flimsy grounds. I feel that the allegations were not substantiated and as such, I oppose the Motion. I hope that most of you, if not all of you, will do the same.

You will do the right thing and follow your conscience. You will uphold the law and follow the Constitution that we swore to uphold. However, as things are going, I fear for devolution in this country, if it is in the hands of this Senate.

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

The Speaker (Hon. Lusaka): Sen. Wetangula, proceed.

Sen. Wetangula: Thank you, Mr. Speaker, Sir. I will also be very brief. I think we have heard in the last two days a lot of material. Going forward, we should improve the process of hearing impeachment processes in this House.

I think those who have been dealing with bettering our Standing Orders should create a structure for a sought of pretrial conference between the parties; proper exchange of documents; not just through emails flying around but sitting together.

Probably our Committee on Justice, Legal Affairs and Human Rights can be involved if the Clerk's Office is overwhelmed. This is so that when parties come here, we give them a proper hearing without contestation as to whether some documents came here rightly or wrongly.

Mr. Speaker, Sir, secondly, every time an impeachment matter comes here, it is obviously devolution on trial because we are going to truncate, by a vote if it is positive, the will of the people. However, it also sends a message to our Governors that abiding by the law and procedures set out in management of public affairs are not options. They are cardinal requirements in managing public affairs.

I urge Members not to vote because so and so has told you to vote; you are voting because you have been influenced. Vote because you have heard the evidence as it was given here.

Mr. Speaker, Sir, unfortunately, these bulky documents were brought as we started the hearing of the case. Some Members may not even have gone through these documents. Unfortunately, that is the situation. I urge us to be as just and fair as we possibly can, knowing that the future must be improved in this process.

Thank you.

The Speaker (Hon. Lusaka): Sen. Omanga, proceed.

Sen. Omanga: Mr. Speaker, Sir, I stand to oppose this Motion. These are interesting times to live in. When I heard the Member of the County Assembly (MCA) talk about intimidation, it was closer home because you know the kind of intimidation that even Members of this House have gone through.

(Loud consultations)

The Speaker (Hon. Lusaka): Let us consult in low tones.

Sen. Omanga: Mr. Speaker, Sir, you know that even in this House, even leadership or Chairpersons of committees, are not there by merit. It is because maybe they are robots to orders from above, from the Executive.

Mr. Speaker, Sir, because of time, I just want to read one thing. We lost a colleague. I am actually mourning Sen. (Dr.) Kabaka. The last message Sen. (Dr.) Kabaka wrote on our WhatsApp group, three hours before he went to the hospital---

Sen. Farhiya: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): There is a point of order from Sen. Farhiya.

Sen. Farhiya: Thank you, Mr. Speaker, Sir. We have been puppets and robots. These allegations need to be substantiated. Otherwise, the Member should withdraw and apologize to the House.

I thank you, Mr. speaker, Sir.

An Hon. Senator: How do I substantiate the obvious?

Sen. Omanga: Mr. Speaker, Sir, I cannot substantiate the obvious.

I want to read the last message Sen. (Dr.) Kabaka wrote on our WhatsApp group.

The Speaker (Hon. Lusaka): Order! Do not just plough through. Make sure your people are listening to what you are saying. This is just a word of caution. Remember that we are sitting here as a Senate. Whichever name you use, you cannot stand out of this

Senate and appear like you are not part of it. If you say we are horses, cows, dogs, know that you are one of them.

(Laughter)

Let us be careful about what we are saying.

Please, wind up.

Sen. Omanga: Thank you. I am guided, Mr. Speaker, Sir. I want to read the last message Sen. (Dr.) Kabaka wrote on our social group to plead with Members. If want Sen. (Dr.) Kabaka to rest in peace, let us rest him in peace by granting him what he requested on our WhatsApp group. I will read---

(Loud consultations)

The Speaker (Hon. Lusaka): order! Order, Senators! You are out of order. You cannot use the misfortune that has befallen us. We are still mourning our brother. You are completely out of order! Order Senators! Wind up. Your time is up.

What is your point of order, Sen. Kang'ata?

Sen. Kang'ata: Thank you, Mr. speaker, Sir. It is now 17 minutes past 10.00 p.m. We shall vote on each and every allegation. Tomorrow is not a gazetted day. We have a statutory deadline. Section 33 of the County Governments Act has clear set out timelines. Therefore, if for any reason we spill over up to tomorrow beyond midnight today, we will be breaching the law taking into account that voting will be by roll call. I seek your directions on how we will proceed going forward.

Mr. Speaker, Sir, I propose we call the Mover to reply.

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators! Hold on. Order! I have not even talked. Do you know what I am going to say? You are not an expert in reading body language!

(Laughter)

Order, Senators! I want to give this opportunity to the Senator for Nairobi City County whom I had given an opportunity to talk last so that because of time, I will put the question so that we vote.

Sen. Sakaja: Thank you, Mr. Speaker, Sir, for this opportunity to speak to this Motion. Following your guidance that I speak last---

Mr. Speaker, Sir, I ask that you direct---

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators. Let us listen to Sen. Sakaja. Remember that we have to vote.

Sen. Sakaja: Mr. Speaker, Sir, for the past two days, as I have sat here, I have held myself together not to speak because I speak a lot in this House. However, I acknowledge the tradition of this House, which is that the Senator of the county---

(Loud consultations)

The Speaker (Hon. Lusaka): Order, Senators. Why are you not listening to the Senator of Nairobi City County? That is just confirming that we are tired. Let us listen to the Senator of Nairobi City County.

Sen. Sakaja: Mr. Speaker, Sir, the tradition of this House has been that the Senator of the county in question, when there is an impeachment, ideally keeps quiet. Ideally, when a vote comes, they should normally abstain, unless it is a casting vote. That is exactly what I am going to do today.

Mr. Speaker, Sir, allow me to just to give some history. One, I am privileged and honoured to be the one member in this House elected by Nairobians representing 4.3 million people of this county, and who has sworn an oath to protect the interests of the people of Nairobi and those of the Nairobi City County Government.

Based on that solemn oath that we all took, I have numerously brought Statements, questions and raised issues to do with Nairobi City County in this House. Without blowing any trumpet, and I know you said that sometimes you blow your own if it is complicated, I think of all Senators, concerning their counties, I have brought the most issues. In fact, it is almost poetic that last year, at a time like this, and I shared this on our group recently, I brought a request for a special sitting to discuss Nairobi City County because at that time the Governor had a case and there were issues. The then Majority Leader refused to call a special setting. A year later, we are discussing an impeachment.

Mr. Speaker, Sir, this city of Nairobi is literally the hub of this continent in terms of economic opportunities. Nairobi ideally should be Africa's New York. If you look at the geo-politics of this continent, if you go to the West, Nigeria, which is just mineral-based, investors do not want to go there. If you look at the South, it is imploding. Look at what is happening in Ethiopia. The frontier for the economic development of this continent is Nairobi. That is why the issues of Nairobi must be taken seriously and we must look at them keenly.

I acknowledge and I want to say in front of everyone, because I always put my cards on the table, that since 2017, of course, we campaigned together with the Governor. We worked together initially and I think it is not lost on anyone that we have had our run-ins. We have not seen eye to eye on a number of issues.

Mr. Speaker, Sir, I insisted that every time I brought a question of oversight, it has not been about personal interests or a political contest, but about the interests of the people of Nairobi and I continue to do that.

When the Governor's impeachment came up, many people including media houses, Members of County Assembly (MCAs) and different actors asked me to comment on it. However, I believe in grace such that it is wrong to kick someone when he or she is down. That is why I have resisted to gleefully dance on anybody's grave. I have resisted the urge to celebrate, but to empathise with the people Nairobi. It is for that

reason that the last two days and last months that he has been going through this, I have offered an ear to him and to those who are accusing.

At the end of the day, I am the father of devolution in this county. I am the Senator of Nairobi City. Whichever way it goes the Senate will speak. When the Senate speaks, the voice will be heard. I see the need for leadership at this time. I will have to, as a Senator, in case this Senate decides to impeach the Governor of Nairobi City, we will need to provide leadership because it will be uncertain times. In case this House does not impeach the Governor, there is need for reconciliation.

Mr. Speaker, Sir, when I look at the gallery, I feel bad. On one side, I see MCAs opposed to the Governor and on another side, I see MCAs supporting him. We have all been elected by the same people. If we keep playing to the parochial politics, the person who suffers is the woman in Mutuini, the cobbler in Kayole and the common person we fight for everyday in this House, and so we need to be reconciled. This role must be played. I urge my colleagues, as you make your decision, which will be respected, let us look at the depth of the issues. Let us look at justice, truth and the best interest of the County of Nairobi City. We shall abide by the decision that is made.

Once it is made, I will urge this House to give clarity to the issues of intergovernmental transfers. I supported the transfer of functions which I still support because at that point, we know what the court said about a governor facing charges. There is need for that clarity as to why we actualize whether it is the NMS of whatever other entity. Whoever becomes governor of Nairobi City in 2022 or later will have the same challenges. When Governor Kidero was Governor, myself and Governor Sonko said things about him that he is going through today. This city cannot be about individuals.

I want to thank Sen. Orengo, Sen. Mutula Kilonzo Jnr. and Sen. Wetangula because they stood with me when the Building Bridges Initiative (BBI) document as released the functions of Nairobi had been transferred away from Nairobi. We pleaded with the President and the former Prime Minister and the three Members who I and the people of Nairobi thank. At that time, I fought alone. My MPs did not support me and they said no comma should be changed. Article One of the Constitution says that the sovereign power is with the people and is exercised at the national level and at the county level. The people of Nairobi were going to be disenfranchised not to exercise that power at the county level. I am glad that the document we have now, Nairobi remains a county.

As I conclude I want to give Nairobians hope. I know Francis Bacon said that 'hope is a bad breakfast but a good supper.' But I want to give the people, of Nairobi and the people of Kenya hope that Nairobi can work and thrive as a county. When Nairobi works all of your counties will be able to work. Please support Nairobi City County.

To the Governor of Nairobi City, my friend whom we have had a love hate relationship; I do not know where the scales lie whether it is more love or more hate. He is a brother, and I want to give him the words of William Pen-

“No pain, no palm; no thorns, no throne; no gall, no glory; no cross, no crown.”

Senators, make a judicious decision.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Lusaka): Hon. Senators, Order! Order! I still have a long list of Senators who want to speak. I know we are elected to speak, but we must come to a

close. All of you who are listed here have said something between today and yesterday. I seek your indulgence that I now put the question which is that,

(Sen. Omanga stood up in her place)

Order, Sen. Omanga!

I am on my feet. I now put the question, which is that the Mover be called upon to reply. It is a procedural Motion.

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

The Senate Majority Leader (Sen. Poghisio): Mr. Speaker, Sir, I beg to reply.

Mr. Speaker, Sir, there is not much I can add. We have had a good two days. We have had the brilliance of lawyers speak to each other in arguments and counter arguments. Members have been given opportunities to make these judgments, and the time of reckoning has come.

Mr. Speaker, Sir, I just want to thank you for steering this House very well during the last two days. I must congratulate you for that. Many times, we urged you to be strong and firm. I thank these Members. The Members have played out their role as Senators. I want to say thank you to all parties. Now, whatever you have heard in the last two days, you have formed an opinion; put it to a vote.

Mr. Speaker, Sir, I beg to reply.

The Speaker (Hon. Lusaka): Hon. Senators, I now wish to put the question as follows-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act (2012) on Wednesday, 3rd December, 2020, the Nairobi City County Assembly approved a Motion for the removal from office by impeachment, of the Hon. Mike Mbuvi Sonko, Governor of Nairobi City County;

AND, FURTHER, WHEREAS by letter Ref. No. NCCA/SPK/12/2020(1), dated Friday, 4th December, 2020, and received in the Office of the Speaker of the Senate on Friday, 4th December, 2020, the Speaker of the County Assembly of Nairobi City informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly;

AND, WHEREAS, pursuant to Article 181 of the Constitution, Section 33 of the County Governments Act, 2012 and Standing Order 75 of the Senate, the Senate heard the County Assembly on the grounds of removal from office by impeachment of the Governor;

AND, FURTHER, WHEREAS pursuant to Article 181 of the Constitution, Section 33 of the County Governments Act, 2012 and Standing Order 75, the Senate also heard the Governor for Nairobi City

County on the grounds of removal from office by impeachment of the Governor;

NOW THEREFORE, pursuant to Article 181 of the Constitution, Section 33 of the County Governments Act, 2012 and Standing Order 75, the Senate resolves to remove from office by impeachment, the Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County on the following charges -

- (1) Gross Violation of the Constitution or any other law;
- (2) Abuse of Office;
- (3) Gross Misconduct; and
- (4) Crimes under National Law

Like I guided earlier, we will vote on each charge. I, therefore, direct that the bell be rung for two minutes. Let us also get the names of the Tellers.

(The Division Bell was rung)

The Speaker (Hon. Lusaka): Hon. Senators, take your seats so that we start voting. For the record, this is a matter affecting counties and, therefore, voting will be delegations.

Clerk, if we may proceed.

The Clerk of the Senate (Mr. Nyegenye): This is a vote on the First Charge which is-

Gross violation of the Constitution of Kenya 2010; the County Governments Act ,2012; the Public Procurement and Disposal Act, 2015 and the Public Finance Management Act, 2012.

(Hon. Senators proceeded to vote)

(Sen. Omanga moved to the Clerk's Table)

The Speaker (Hon. Lusaka): Sen. Omanga, why do you not take your seat? We need to maintain social distancing. Besides, we have enough Tellers.

(Voting in progress)

The Speaker (Hon. Lusaka): Okay. Order, Senators! We have to move with speed. Take your seats. Let us move on to voting on the next charge.

Clerk, proceed.

The Clerk of the Senate (Mr. Nyegenye): Hon. Senators, this is Charge Two; Abuse of Office.

(Hon. Senators proceeded to vote by Roll Call voting)

The Speaker (Hon. Lusaka): We are now going to vote on the third charge. Let us maintain order so that we conclude. We have two charges to go.

Clerk, proceed.

The Clerk of the Senate (Mr. Nyegenye): Hon. Senators, the third charge is Gross Misconduct.

(Hon. Senators proceeded to vote by Roll Call voting)

The Speaker (Hon. Lusaka): Hon. Senators, we are now on the final vote; charge No.4

Clerk, let us proceed.

The Clerk of the Senate (Mr. Nyegenye): Hon. Senators, Charge No.4 is on Crimes under National Law.

(Hon. Senators proceeded to vote by Roll Call voting)

The Speaker (Hon. Lusaka): Order, Senators. This the summary of the results of the Divisions.

DIVISION

ROLL CALL VOTING

(Question, that the Senate resolves to remove from office by impeachment, the Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County, for Gross Violation of the Constitution of Kenya, 2010, the County Government's Act, 2012, the Public Procurement and Disposal Act, 2015, and the Public Finance Management Act, 2012 put and the Senate proceeded to vote by County delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen.(Eng.) Hargura, Marsabit County; Sen. M. Kajwang', Homa Bay County; Sen.(Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Madzayo, Kilifi County; Sen. Malalah, Kakamega County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Moi, Baringo County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita/Taveta County; Sen. Ndwiga, Embu County; Sen.(Dr.) Ochillo-Ayacko, Migori County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orenge, Siaya County; Sen. Outa, Kisumu County; Sen. Poghiso, West Pokot County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and, Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Kwamboka.

NOES: Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen.(Prof.) Ekal, Turkana County; Sen. Kihika, Nakuru County; Sen.(Prof.) Kindiki, Tharaka-Nithi County; Sen. Kinyua, Laikipia County; Sen.(Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen.(Eng.) Mahamud, Mandera County; Sen. Mpaayei, Kajiado County; Sen.

Murkomen, Elgeyo-Marakwet County; Sen. Olekina, Narok County; Sen. Wambua, Kitui County; and, Sen. Wario, Tana River County.

Teller of the Noes: Sen. (Dr.) Lagat.

ABSTENTIONS: Sen. Mutula Kilonzo Jnr., Makueni County and Sen. Sakaja, Nairobi City County.

The Speaker (Hon. Lusaka): Order, Senators. Hon. Senators, the results of the Division on the first charge are as follows-

AYES: 27

NOES: 16

ABSTENTIONS: 2

The 'Ayes' have it.

(Question carried by 27 votes to 16)

(Applause)

DIVISION

ROLL CALL VOTING

(Question, that the Senate resolves to remove from office by impeachment, the Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County, County, for Abuse of Office, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. (Eng.) Hargura, Marsabit County; Sen. M. Kajwang', Homa Bay County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Madzayo, Kilifi County; Sen. Malalah, Kakamega County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Moi, Baringo County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita/Taveta County; Sen. Ndwiga, Embu County; Sen. (Dr.) Ochillo-Ayacko, Migori County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orenge, Siaya County; Sen. Outa, Kisumu County; Sen. Poghiso, West Pokot County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County; and, Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Kwamboka.

NOES: Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen.(Prof.) Ekal, Turkana County; Sen. Kihika, Nakuru County; Sen.(Prof.) Kindiki, Tharaka-Nithi County; Sen. Kinyua, Laikipia County; Sen.(Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen.(Eng.) Mahamud, Mandera County; Sen. Mpaayei, Kajiado County; Sen. Murkomen, Elgeyo Marakwet County; Sen. Olekina, Narok County; Sen. Wambua, Kitui County and Sen. Wario, Tana River County.

Teller of the Noes: Sen. (Dr.) Lagat.

ABSTENTIONS: Sen. Mutula Kilonzo Jnr., Makueni County and Sen. Sakaja, Nairobi City County.

The Speaker (Hon. Lusaka): Order, Senators. Hon. Senators, the results of the Division on the second charge are as follows-

AYES: 27

NOES: 16

ABSTENTIONS: 2

The 'Ayes' have it.

(Question carried by 27 votes to 16)

(Applause)

DIVISION

ROLL CALL VOTING

(Question, that the Senate resolves to remove from office by impeachment, the Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County, for Gross Misconduct, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen.(Eng.) Hargura, Marsabit County; Sen. M. Kajwang', Homa Bay County; Sen.(Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Madzayo, Kilifi County; Sen. Malalah, Kakamega County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbiti, Trans Nzoia County; Sen. Moi, Baringo County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita/Taveta County; Sen. Ndwiga, Embu County; Sen.(Dr.) Ochillo- Ayacko, Migori County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghisi, West Pokot County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Kwamboka.

NOES: Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen.(Prof.) Ekal, Turkana County; Sen. Kihika, Nakuru County; Sen.(Prof.) Kindiki, Tharaka-Nithi County; Sen. Kinyua, Laikipia County; Sen.(Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen.(Eng.) Mahamud, Mandera County; Sen. Mpaayei, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Olekina, Narok County; Sen. Wambua, Kitui County; and, Sen. Wario, Tana River County.

Teller of the Noes: Sen. (Dr.) Lagat.

ABSTENTIONS: Sen. Mutula Kilonzo Jnr., Makueni County and Sen. Sakaja, Nairobi City County.

The Speaker (Hon. Lusaka): Order, Senators. Hon. Senators, the results of the Division on the third charge are as follows-

AYES: 27

NOES: 16

ABSTENTIONS: 2

The 'Ayes' have it.

(Question carried by 27 votes to 16)

(Applause)

DIVISION**ROLL CALL VOTING**

(Question, that the Senate resolves to remove from office by impeachment, the Hon. Mike Mbuvi Sonko, the Governor of Nairobi City County, County, for Crimes under National Law, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. (Dr.) Ali, Wajir County; Sen. Boy, Kwale County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen.(Eng.) Hargura, Marsabit County; Sen. M. Kajwang', Homa Bay County; Sen.(Prof.) Kamar, Uasin Gishu County; Sen. Kang'ata, Murang'a County; Sen. Khaniri, Vihiga County; Sen. Kibiru, Kirinyaga County; Sen. Madzayo, Kilifi County; Sen. Malalah, Kakamega County; Sen. (Eng.) Maina, Nyeri County; Sen. (Dr.) Mbito, Trans Nzoia County; Sen. Moi, Baringo County; Sen. Mwangi, Nyandarua County; Sen. Mwaruma, Taita Taveta County; Sen. Ndwiga, Embu County; Sen.(Dr.) Ochillo- Ayacko, Migori County; Sen. Omogeni, Nyamira County; Sen. (Prof.) Ongeru, Kisii County; Sen. Orengo, Siaya County; Sen. Outa, Kisumu County; Sen. Poghiso, West Pokot County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Kwamboka.

NOES: Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen.(Prof.) Ekal, Turkana County; Sen. Kihika, Nakuru County; Sen.(Prof.) Kindiki, Tharaka-Nithi County; Sen. Kinyua, Laikipia County; Sen.(Dr.) Langat, Bomet County; Sen. (Dr.) Lelegwe, Samburu County; Sen. Linturi, Meru County; Sen. Loitiptip, Lamu County; Sen. (Eng.) Mahamud, Mandera County; Sen. Mpaayei, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Olekina, Narok County; Sen. Wambua, Kitui County and Sen. Wario, Tana River County.

Teller of the Noes: Sen. (Dr.) Lagat.

ABSTENTIONS: Sen. Mutula Kilonzo Jnr., Makueni County; and, Sen. Sakaja, Nairobi City County.

The Speaker (Hon. Lusaka): Order, Senators. Hon. Senators, the results of the Division on the fourth charge are as follows-

AYES: 27

NOES: 16

ABSTENTIONS: 2

The 'Ayes' have it.

(Question carried by 27 votes to 16)

(Applause)

The Speaker (Hon. Lusaka): Hon. Senators, the effect of the vote is that pursuant to Article 181 of the Constitution, Section 33 of the County Governments Act and Standing Order No.75 of the Senate Standing Orders, Governor Mike Mbuvi Sonko of Nairobi City County stands impeached.

(Applause)

ADJOURNMENT

The Speaker (Hon. Lusaka): Hon. Senators, having concluded the business of the day, it is now time to adjourn the House. The Senate, therefore, stands adjourned until Monday, 21st December, 2020 at 2.30 p.m., when we will have a Special Sitting.

The Senate rose at 11.25 p.m.