

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 17th December, 2020

Special Sitting

*(Convened via Kenya Gazette Notice
No.10309 of 9th December, 2020)*

*The House met at the Senate Chamber,
Parliament Buildings, at 9.00 a.m.*

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

PRAYER

The Speaker (Hon. Lusaka): Hon. Senators, today is a continuation of yesterday. I see one party has come in. So, let us wait for a few minutes for the other party to come in so that we proceed.

Sen. Mutula Kilonzo Jr.: Mr. Speaker, Sir, I have seen two of the legal representatives. I thought we could do something internal about the process *et cetera* so that all of us are clear before all of them come in and have more Members in the House.

The Speaker (Hon. Lusaka): Counsel for the Governor, give us a few minutes we do some housekeeping then you can come in.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank you, very much.

Sen. Mutula Kilonzo Jr.: Mr. Speaker, Sir, I request that you allow us to do a closed door session for about 20 minutes. The parties can wait outside together with the ones who will sit in the---

(Loud Consultations)

Use the microphone behind you. Is that better?

Hon. Senators: Yes.

Sen. Mutula Kilonzo Jr.: Mr. Speaker, Sir, I am applying that we have a closed door session for about 20 minutes, we do preliminary issues and allow the parties to stay outside so that we can discuss our internal matters then they come in.

The Speaker (Hon. Lusaka): That is granted and in order.

We are in a closed session until 9.25 a.m. So, no cameras. Senators can now raise their internal issues.

*(All members of the public and the media withdrew
from the galleries)*

(The House went into camera)

(The House adjourned temporarily at 9.10 a.m.)

(The House resumed at 9.30 a.m.)

The Speaker (Hon. Lusaka): Hon. Senators, if you may take your seats, we want to proceed.

Hon. Senators and the parties, we are back to our open session. We had a brief in-house session to sort out our own things. In order to clarify a few things, the programme today will start at 9.30 a.m. There will be evidence by the Governor, evidence of witnesses, if any, cross-examination and re-examination. All that has been allocated four hours and you should be able to tell us how you want to manage that time, including the cross-examination from the other side, so that we do not run into the problems that we had yesterday. I will be giving you an opportunity to tell us how you want us to manage it.

At 1.30 p.m., we will have questions, requests and clarifications from the Senators after which we will have a lunch break. Between 2.30 p.m. to 3.30 p.m. we will have 60 minutes closing statements on behalf of the County Assembly. From 3.30 p.m. to 4.30 p.m. we will have 60 minutes closing statements on behalf of the Governor. Between 4.30 p.m. and 6.30 p.m. we shall have a closed session. The court will retreat to look at all that has been presented. We hope that by 6.30 p.m. we should be able to take the vote.

Counsel for the Governor, you are welcome. Start by telling us how you want us to manage the four hours.

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

PRESENTATION OF THE CASE OF THE NAIROBI CITY COUNTY GOVERNOR

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Good morning, Mr. Speaker, Sir and hon. Senators. Thank you very much for this occasion and giving us an opportunity to testify.

On behalf of His Excellency the Governor, we will be calling out witnesses to rebut the allegations leveled against him. We will also have the Governor himself testify in order to dispel the notion that he is guilty of the allegations leveled against him. We will be using the affidavits in support.

My first witness is the Hon. Sylvia Museiya. I wish to have her in the dock. I will be within the time that has been prescribed. I presume that you have given us from 9.35 a.m., so then we should finish within the four hours.

The Speaker (Hon. Lusaka): How will you apportion the four hours because you must also accommodate the other side, so that you do not take three and half hours and then they are left with 30 minutes?

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, we will be fair enough. However, the---

Sen. Wetangula: On a point of order, Mr. Speaker, Sir. You have rightly directed that time management is critical. It will be absolutely helpful for the learned lawyer, Mr. Kinyanjui, to tell you and the House, how many witnesses he is calling so that you sequence how they are going to be called, the time he spends examining them, the time you allow cross-examination and re-examination, if any, so that we can have a more orderly and time-bound process.

We do not want a situation where he calls one witness, moves on for three hours and then says that: "I have three others and I have only one hour, I need more time."

The Speaker (Hon. Lusaka): Precisely; that is what I was saying. We need to be very clear from the beginning so that we manage our time.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank you very much, Mr. Speaker, Sir and Hon. Wetangula. Thank you for the concern.

I intend to take a minimum of about five to 10 minutes on every witness. However, for the Governor, on account of the extended accusations that have been leveled against him, I will take the chunk of the time that is going to be outstanding.

The Speaker (Hon. Lusaka): How many other witnesses do you have?

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): In sum, I have seven witnesses. My first witness is Hon. Sylvia Museiya.

The Speaker (Hon. Lusaka): Okay, Counsel for the County Assembly, proceed.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Sorry, Mr. Speaker, Sir. I had addressed you so that we cover the ground and do not come back to it yesterday. The issue had arisen as to the document that I had filed in consequence of the late service of the documents by the County Assembly.

Immediately upon the delivery of your Ruling, pursuant to Rule 29 of the Fifth Schedule, Part I of the Standing Orders, I pleaded and sought for the leave of this House for the admission of the Governor's evidence and it was so admitted. However, you directed that you would confirm with the HANSARD that, indeed, that was it.

I referenced the document when I was cross-examining the chief witness No.1 for the County Assembly. It was submitted and I was given by the Clerk's office the designation as No.10H and 10G, that those were the designations in consequence of your said Ruling.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiiru): Thank you very much, Mr. Speaker, Sir. We are ready to proceed with today's proceedings, but we seem to be constrained of the disclosure from the Governor's side in so far as the question of the witnesses that are being called are in issue.

When you gave us your directions prior to the commencement of these proceedings, it was clear that the proceedings will be guided by Rule 7 of this House.

Most importantly, in the question of the disclosure of the witnesses that the parties are intending to rely with, that has not been done to us. Mr. Kinyanjui is always very fast to cling to the provisions of Article 50 about fair hearing and also abrogates the same when it comes to the part of the prosecutor.

Mr. Speaker, Sir, the statements that Mr. Kinyanjui is now calling the witnesses to rely on have not been furnished. That is why we probably got into this issue. The document that Mr. Kinyanjui is seeking leave to address us on was not part of the document that was served. That will be a very serious miscarriage of justice if we are to prosecute or defend a case that has not been laid bare in advance.

Despite how able advocates might be, despite the team of advocates that one might have, if evidence has not been laid bare in advance, the prosecutor will have serious uphill in rebutting the propositions that will be mentioned.

Allow me to ask Mr. Kokebe just to have a highlight on that issue.

The Speaker (Hon. Lusaka): Yes, Counsel for the Governor.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank you very much, Mr. Speaker, Sir. With tremendous respect, I beg to differ with my learned friend.

The affidavits of all my witnesses have been filed and served, including that of His Excellency the Governor. The document of my first witness is contained in Volume Three of (d). This is termed; Filed on the 15th of December, 2020 at 3.45 p.m., duly served on the County Assembly advocates. Volume Three, on page 654 is there and was duly served. That is my first witness.

My second witness is also there. I have the affidavits annexed and they are in Volume Two, also served on the 15th of December, 2020 at 3.45 p.m. It is running from 200 to 278. We have that evidence and it was duly served.

I think that the objection should be overruled so that I can proceed without any further ado. The lamentation is totally, with respect, misplaced.

Thank you.

The Speaker (Hon. Lusaka): Hon. Senators and Counsel, we want to be fair to everyone. Therefore, for this court to be able to come up with a fair judgment I want us to go into a closed session for another 20 minutes then I call you back.

The Counsel for the Nairobi City County Assembly (Mr. Ndegwa Njiiru): Much obliged.

The Counsel for the Nairobi City Governor (Mr. Harrison Kinyanjui): Thank you very much, Mr. Speaker, Sir.

Sen. Mutula Kilonzo, Jr.: On a point of order, Mr. Speaker, Sir. For good order, the lawyers are referring to documents and we have different references. For example, the Volume Three that my learned friend, Mr. Kinyanjui is referring to is 10D(2). So, for good measure, when we come back, I propose that they use the references that we have. Otherwise, we are getting lost in the volume twos and threes.

Thank you.

The Speaker (Hon. Lusaka): When we come back, let us use the references that we have. The Secretariat can also assist us to check the documents that they are referring to. Let us come back after 20 minutes.

(The House temporarily adjourned at 9.45 a.m.)

(The House resumed at 10.20 a.m.)

The Speaker (Hon. Lusaka): Take your seats; I am on my feet. Unless you want to freeze.

(Hon. Senators took their seats)

Welcome back to our open session. Before we went into a closed session, there was an issue we were dealing with which has been determined by the Senate. That was the admission of seven witnesses. This is what I want to draw the Counsel to; what has informed the decision of the Senate that I will be communicating shortly. That is the Fifth Schedule, Rule No.6 which states-

“Where the Governor chooses to appear before the Senate, the Governor shall be required, within three days of the invitation under Rule 4(a), on a date specified in the invitation, to file an answer to the charges with the Office of the Clerk of the Senate, in which the Governor shall set out-

- a) the Governor’s response to the particulars of the allegations;
- b) how the Governor proposes to appear before the Senate; whether in person, by advocate or in person and by advocate;
- c) the names and addresses of the persons to be called as witnesses, if any, and a statement by each such witnesses; and,
- d) any other evidence to be relied upon.”

From our records, we have no statements from any witnesses by the Governor. We also do not have names provided at the time they were supposed to be provided for the witnesses to be examined here.

Therefore, the Senate, having looked at that and considered that yesterday, as the Speaker and the Senate, allowed some materials to be brought in. Out of the scheduled time, the Senate has ruled that only the Governor will be heard, but the other witnesses will not be heard based on Rule No.6 of the Fifth Schedule. It is so directed.

So, proceed and let us know how you want to use your four hours that start now.

The Counsel for Nairobi City Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, I did attach the affidavit of Hon. Sylvia Museiya. It was also part of the originally filed bundle. I also filed the affidavit of Mr. Emmanuel Kenga as part of the original bundle. It is, in fact, headed---

The Speaker (Hon. Lusaka): We wanted the list of names and addresses of the persons to be called as witnesses, if any, and statements by each such witness.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, a pdf list was sent by e-mail to the Clerk. I conferred with the Clerk yesterday and they confirmed. In fact, even this morning, I did. I also sent a copy to the Clerk of the Nairobi City County Assembly.

At page 654 Volume Three, you will find the statement of the first witness I intend to call.

The Speaker (Hon. Lusaka): Is it the document that we have?

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, yes. This is originally filed and served. It is not introduced in any way.

I also confirmed with the Office of the Clerk that it is, in fact, headed: "Opposing Affidavit on Behalf of H. E the Governor as a Witness". The list was provided as well. So, I am a bit baffled---

The Speaker (Hon. Lusaka): Where is the list? Just a minute.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, the list was served on pdf. This is Volume Three on page 654.

(Mr. Kinyanjui showed the Speaker a document)

(The Clerks-at-the-Table consulted the Speaker)

Mr. Speaker, Sir, you will also notice in Volume Three page 528, my other witness also swore a statement. It was equally served in the original document and it is not a late admission.

(Loud consultations)

The Speaker (Hon. Lusaka): Order! Yes, Counsel, what is it?

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, with your kind permission, let me finish.

The Speaker (Hon. Lusaka): Okay, I will give you an opportunity.

The Counsel for Nairobi City Governor (Mr. Harrison Kinyanjui): Thank you, Mr. Speaker, Sir.

The Counsel for Nairobi City County Assembly (Mr. Kevin Kokebe): Mr. Speaker, Sir, I just want to point out salient issues pursuant to your ruling which was very Solomonic.

(Loud consultations)

The Speaker (Hon. Lusaka): Let us consult in low tones. I need to hear what is being said.

The Counsel for Nairobi City County Assembly (Mr. Kevin Kokebe): Mr. Speaker, Sir, the documents that you have been referred to were produced as affidavits in Petition No.35. They were not intended to be in these particular proceedings. These are in a Petition to which the court has already heard and dismissed the same. Is this Senate going to sit as an appellate court? I doubt so. That is to the effect of the various affidavits that you have been referred to.

Fundamentally, when parties appeared herein on 15th between 3.40 p.m. to 3.45 p.m. there was a Senate inventory that was produced. In that inventory, that particular document was marked 10F. That was the last document that was produced. Documents 10G and 10H are new. They are strange to us.

Mr. Speaker, Sir, this is a House of records. Following the Waititu decision, if you do not produce those particular documents, why then should you call this House to give you redress? If this House will be called upon to abrogate on its rules of procedure, what precedence is this House being asked to make? We plead with you and the hon.

Members that documents that were brought outside that particular timeframe be locked out.

Mr. Speaker, Sir, I remember when we appeared here, Dr. Okello advised that even if it was a holding document, let it be filed. These two documents that are now being brought to us were not even produced as holding documents. For that reason, we plead that you follow the precedent that this House has set before.

If you allow me, just before I yield to my learned senior, Mr. Kinyanjui, I was dealing with this with my friend Mr. Okatch. I might have just missed something, but just so that it is clear for the House.

The Speaker (Hon. Lusaka): Proceed, Mr. Okatch.

The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch): Mr. Speaker, Sir, thank you for the opportunity. There is only one germane issue that you ought to consider. Your Rules are very clear, that you have to provide the addresses and names of the persons who are to be called as witnesses in advance.

It is not only for our sake, but for the sake of this House and for planning purposes. It is for the Members of this honorable House to know in advance the nature of evidence that you will be calling in your defense. We complied with that and notified them in advance.

Mr. Speaker, Sir, today, we have affidavits which have not been indicated as witness affidavits. They are just affidavits. Some of them, as we have been told, were filed in an ongoing case in court. This is such that even ourselves, looking at them, they were just mere attachments that maybe the Governor who has filed an affidavit would have referred to.

It will be utterly unfair, not only to us, but even to this House, for these particular affidavits to be introduced and for these particular people to be taken as witnesses against your rules of procedure. Let everyone be bound by that. If this is what they chose, let them lie on the bed that they actually created.

The Speaker (Hon. Lusaka): Sen. Orengo, proceed.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, although you have ruled on this matter, I know the counsel from both sides would ask themselves the question why this particular Rule No. 6 is there in the Standing Orders, and I can glean to.

First, it is because we are time bound. All the information has to reach the Senate before the trial starts. You cannot be making a case in the middle of the case. Secondly, it is to ensure that no side is ambushed.

Mr. Speaker, Sir, I truly plead that what we should do now is substantial justice as opposed to being enslaved with technicalities. That is the spirit of Article 159 of the Constitution, which applies to judicial institutions. I have just seen some of the affidavits. Like on this volume, I think it is Volume 3D (2) on Page 648. There is an affidavit of Mr. Douglas Ouma Nyakach. Prior to that, on Page 644, this is in relation to a certificate of photographic, print and video evidence.

Mr. Speaker, Sir, the point I want to make is that if the witness that they intend to call, the affidavit is found in this volume, and if this volume was filed on time, in order to be seen to be fair and that justice is not only done but is seen to be done, there is no harm in allowing them to call the witnesses whose affidavits were filed on time.

Just in answer to the advocate to the County Assembly, the affidavit that is found on Page 648 gives the name of the deponent, his occupation and address in Nairobi. There is a *jurat* at the end of the affidavit. It was sworn on 13th December, 2020. The heading has nothing to do with any court. It is in relation to these proceedings.

Mr. Speaker, Sir, my position would be that just because they did not provide a list, that should not be used against the Governor because we want to render substantial justice. The other side would not be ambushed because their affidavit is in this volume and they have been served.

In those circumstances, I pray without further delay that if there is an affidavit that was filed on time, those witnesses should be allowed to give evidence. If the counsel from the County Assembly wanted a little time to look at the specific affidavits, they should not be allowed to call anybody. They should say: “We are calling this witness because he swore an affidavit. The affidavit is found on this page and is sworn on this date and only strictly to those persons who have affidavits in these volumes.”

Mr. Speaker, Sir, I pray.

The Speaker (Hon. Lusaka): I will only allow two interventions by Sen. Linturi and Sen. Mutula Kilonzo Jnr. then we proceed.

Sen. Linturi: Thank you, Mr. Speaker, Sir. Briefly let me add to what senior counsel Sen. Orengo has just alluded to. We cannot run away from looking at the effect of that decision that has been made. The reason is because the decision has the effect of trying or infringing on or violating the rights of the Governor to defend himself in such a serious matter.

When we do not admit his witnesses and when it has been proved that there are such affidavits that were filed on time and then denying that opportunity, I think in terms of even how things or matters would be conducted in future, the decision we are taking would have some bearing on how we conduct ourselves in future.

Mr. Speaker, Sir, let us also remember that we are trying to develop precedence and jurisprudence on how impeachments should be conducted because this is a very new phenomenon. In advancing this matter and considering all the issues that have been raised, I do not think anybody will suffer any serious prejudice if there is admission of the evidence of the affidavits that were filed on time. We should really give that opportunity.

As a House, we are not strictly bound by the strict rules of evidence that we cannot accommodate. That is why I think the Standing Orders give you some bit of latitude. I would request you to apply your discretion considering the matter before this House is weighty. We really need to be seen to be very fair in this matter.

The Speaker (Hon. Lusaka): Finally, Sen. Mutula Kilonzo Jnr., then I give direction.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I believe you agreed that we will make this very short, so that we do not appear to be taking positions about the parties.

The sentiments by Sen. Orengo are correct. If these documents were brought in, in advance, we cannot, therefore, turn a blind ear to them. This is because they are already here. The only folly is that, normally Mr. Harrison Kinyanjui is very organized, but he must admit to us that in this case, he was not. This is because at the top of the

documents, he has written affidavit for governor, but in the middle, he has attached other documents.

Mr. Speaker, Sir, lastly for the other witnesses, and for our own purposes, Mr. Kinyanjui should indicate witness number one on page 654, witness number two on page 648, witness number three on page 700. He also owes us a duty as we sit here to be organized.

Thank you.

The Speaker (Hon. Lusaka): Sen. Susan Kihika will be the final one. Time is not on our side.

Sen. Kihika: Mr. Speaker, Sir, I will be very brief. I also agree with my colleagues that given the fact that the affidavit had been filed on time, balancing that with the issue that the opposing counsel would have, in the sense that they would not know who the witnesses would be, they will not be prepared to either cross-examine them or be aware of what they would be coming in here to say. With the affidavits filed on time, then we can say that, that would not be a big issue.

In the interest of justice, and given the very serious case that the governor is facing, I believe that we should allow the affidavits and the witnesses to come in as evidence.

Thank you.

The Senate Minority Leader (Sen. Orengo): Mr. Speaker, Sir, for you to exercise your discretion and for a matter of record, I think the counsels for the governor, Mr. Kinyanjui in particular, should admit that he did not comply with Rule 6 before you can proceed to exercise your discretion.

Otherwise, if he insists that everything has been done in an orderly fashion, how would you be exercising your direction if there is no admission of non-compliance?

For purposes of record, the advocate for the governor must say there has been no compliance. This is important because the Clerk has read a letter that was submitted to them which quoted verbatim, Rule 6 and gave the date and time. I think these matters may not end here.

The Counsel of Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank you very much, Mr. Speaker, Sir. I appreciate the input and the very positive response from the hon. Members.

Mr. Speaker, Sir, I do apologize for that. I do note that the request for the governor to comply with Rule 6 was submitted. Indeed, we attempted and made every effort to comply. However, the issue of the list of the witnesses may have arisen in complication because we named 57 Members of County Assembly (MCAs). My learned friend for the county government may have to proceed. We are calling all the 57 MCAs. We sent that in PDF form by email.

I apologize about not listing pages to be the focus of that specific witness. However, in all of the witness statements that we have filed, I will call only four, so that I do not disabuse them of the notion that we will call 57 MCAs. It is just those that have actually sworn the witness statements. These were served on time.

I thank you.

I, therefore, ask, urge and plead, that your discretion be exercised so that we can proceed. What has been served any assessments can be admitted.

The Counsel of Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, if you may, I do not want to prolong this issue. I want to make it clear that as the advocates appearing for the County Assembly, we have no issues with documents labelled as 10A to 10F. Our bone of contention for purposes of clarity and guiding you as and when you go to issue your discretion is 10G and 10H.

Mr. Speaker, Sir, your discretion is a constitutional discretion because it shall be based on the context of the Standing Orders before you, which by virtue of Article 124 enjoy the presumption of constitutionality. The right that Mr. Kinyanjui is seeking for his client under Article 50 is the same that our clients are craving for.

Mr. Speaker, Sir, in your discretion, kindly, consider the question of fair hearing and fair trial and the indolence of a party who fails to comply with the rules. Rules are made to be complied with, not for breach and not for mercy.

The Speaker (Hon. Lusaka): Hon. Senators and Counsel, we have to make progress. Having listened to all the parties and having looked at the documentation that is before us and using my discretion just the way I used my discretion yesterday to stretch the time, I will allow the four witnesses and the governor to appear.

You will now have to tell me how you want to manage the time. How much time each witness is going to take.

The Counsel of Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank you very much, Mr. Speaker, Sir. I will take about five to 10 minutes on each of the four witnesses.

Probably if they extend in terms of re-examination, 15 minutes factoring the cross-examination.

The Speaker (Hon. Lusaka): Fifteen minutes will be maximum.

The Counsel of Nairobi City County Governor (Mr. Harrison Kinyanjui): I hope so, with tremendous respect.

The Speaker (Hon. Lusaka): Do not hope so. We have to agree so that we manage our time. Your four hours starts now.

Proceed.

The Counsel of Nairobi City County Governor (Mr. Harrison Kinyanjui): My fifth witness is His Excellency the Governor.

Mr. Speaker, Sir, before I commence, my learned friend has said that he will not address documents H and I because they were a subject of your ruling yesterday. It was admitted and it is allowed.

Thank you.

My first witness is Hon. Silvia Museiya.

Mr. Speaker, Sir, hon. Members, hon. Silvia Museiya has a deposition in volume three at page 654 running to the end of the document at page 657.

*(The Witness for Nairobi City County Governor,
(Hon. Silvia Museiya) took the oath)*

The Counsel of Nairobi City County Governor (Mr. Harrison Kinyanjui): Hon. Silvia Museiya, you saw a deposition in these proceedings before this Hon. Senate?

Hon. Silvia Museiya: Yes, I did.

The Counsel of Nairobi City County Governor (Mr. Harrison Kinyanjui): That is found in Volume III of document D at page 654 to page 657.

Hon. Silvia Museiya: Yes, I did.

The Counsel of Nairobi City County Governor (Mr. Harrison Kinyanjui): You are an Hon. Member of the Nairobi City County Assembly.

Hon. Silvia Museiya: Yes, I am.

The Counsel of Nairobi City County Governor (Mr. Harrison Kinyanjui): You are aware that His Excellency the governor is facing impeachment proceedings?

Hon. Silvia Museiya: Yes, I am.

The Counsel of Nairobi City County Governor (Mr. Harrison Kinyanjui): In relation to the said impeachment proceedings before the County Assembly, what do you have to say about the said process?

Hon. Silvia Museiya: I will say that the impeachment process was procured largely by duress and coercion; not so much because of the substance of the impeachment, but the interests of some individuals, especially the leadership of the House.

I will explain this in three ways. One, there was a disciplinary action commenced against me and three others at the Jubilee Party three days to impeachment, which ended up at around 6.30 p.m., and there was a decision by the disciplinary committee in a matter of two hours. That decision was later rescinded and stamped fake. However, two days to the impeachment, on Thursday, there was a communication from the chair, who is the Speaker, suspending three of us from being members of the Jubilee Party for three months and de-whipping us from our committees for six months.

Secondly, there was a de-whipping of Hon. Mark Ndung'u from being the board member representing the Jubilee members. Thirdly, on the material day of the impeachment, 3rd December 2020, the Orange Democratic Movement (ODM) Party sent a letter that was signed by Mr. Sifuna, who is the Secretary General of the Party, fining at least eight members between Kshs500,000 to Kshs1 million for disciplinary actions that had been commenced earlier.

There was a letter purporting to de-whip Hon. Beatrice Waithera and Hon. Ruth Ndumi, both Members of the Jubilee Party because they were not paying party subscription fees. Therefore, all these go towards intimidation of members and alleged party position that the whip denied on public television.

There was threatening. As members, we met to discuss and deliberate on the impeachment at Riverside. Thereafter, we were teargassed by the police, and they followed us to Upper Hill, which is the private residence of the Governor, from which we decided to go to Kwale and follow the proceedings from there.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): How many were you?

Hon. Silvia Museiya: We were about 67 at Riverside. However, at the time we arrived at Upper Hill, due to teargassing and all other issues, we were about 60. Fifty seven of us proceeded to Kwale, and we switched off our phones because they were ringing non-stop. The House leadership purported that there was a party position from His Excellency the President and former Prime Minister, Hon. Raila Odinga, saying that they had sanctioned the impeachment. We have the messages.

Finally, I will speak on the issue of the leadership of the House. The impeachment that has been commenced is of the interest of a few people who hold leadership positions, not so much because of the substance of the impeachment, but because of their selfish interest. They say that it is either their way or you get out of the way.

We have been victims of their abuse of office. The Governor is becoming a victim because if he does not do as they wish, they commence impeachment. Most of these Members in the leadership, from Hon. Guyo Abdi, who is the Leader of Majority and Hon. Ogada, who is the mover of the Motion, without prejudice to who they were, were former councillors. They have alleged that they have a way of running City Hall, and the Governor is interfering with their methodology of doing things. Therefore, this impeachment is not on substance, but because of the interest of a few people. They have used all means of intimidation of Members to procure this impeachment to this stage.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): In Paragraph 4 of your affidavit, you say that there was no lawful virtual casting of votes during the purported voting on 3rd December. Why do you say that?

Hon. Silvia Museiya: It is because of the Standing Orders of the Assembly, like those of the Senate, provide for two ways of voting. One is physical voting and the second one is electronic voting, where we put our cards and vote 'Yes' or 'No,' and it goes to the screen, where you can see that Hon. Silvia has voted 'No,' and another Member has voted 'Yes.' That did not happen.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): In Volume 2 on page 301, is your image there as the people---

There were images of people at Kwale. Do you confirm that yours is No.17?

Hon. Silvia Museiya: I am No.17 in the images out of the 57 of us who were physically in Kwale.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): What do you have to say in terms of what you said in Paragraph 7 of your affidavit? In your affidavit, you say about the resolution that this Senate is dealing with.

Hon. Silvia Museiya: I submit that there was no resolution of two-thirds of the Members to impeach the Governor of Nairobi. They did not have the number during the impeachment notice and at the Motion on 3rd December, which was on Thursday.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): In Paragraph 9, you also allude to the logging into the *Zoom* facility.

Hon. Silvia Museiya: I have to say that on Tuesday, when a communication from the chair purporting to remove or suspend us from the Jubilee Party was done, I did not log in, but my name was logged in. That has happened even before during the budget, where one person logs in once, twice, thrice or four times.

I remember when we passed the budget, we had a total of 138 people in the *Zoom* platform against 121 Members of the County Assembly.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): So, there were actually no 88 people? Mr. Okumu stood there and said that the threshold had been met. From your own testimony, was the threshold met?

Hon. Silvia Museiya: No, there was no threshold met.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): So that I close, the issue of the payment by the county by the Governor, Hon. Okumu said

that garbage collectors and only lawyers have been paid. In Paragraph 12, you refute that allegation.

Hon. Silvia Museiya: I am the Chairperson of the Committee on Education. I moved a motion on payment and outsourcing of lawyers. I remember. I got information from the executive wing, which I have is part of the evidence, on payment of Small and Medium-sized Enterprises (SMEs) about 287, between Kshs1 million to Kshs2 million and another 115 between Kshs5 million to Kshs10 million.

It is my submission that the County Government of Nairobi and Governor of Nairobi have done substantive effort in paying off some of the SMEs against the notion of lawyers.

At the point where we have to pay lawyers, we actually must pay them because they even sue us to ensure that we pay. Therefore, we have to enforce court orders if given.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Yes, a clip was played earlier on here. If I could show her that so that she affirms and confirms that she was indeed at Kwale on that day.

This is exhibit GM14 referenced at Page 112, Volume 1 at paragraph 69.

While you were at Kwale, there was a concurrent meeting at the Nairobi City County Assembly.

Hon. Silvia Museiya: Yes, there was. From the beginning, during the debate and up to the voting.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): It is alleged that some of you voted while at Kwale.

Hon. Silvia Museiya: I can confirm that I did not vote. I can confirm that the people around me did not vote. We have a number of them within the precincts of the Senate. We did not vote. We did not even have the phones to vote.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): So that we can have the clip played for you, I want us to confirm that indeed, you were at Kwale on the material day and the 57 of you at least never actually voted.

I have referenced it at Page 69 of the Governor's affidavit.

(A video clip was played)

Would you confirm that, that is the event that you speak of during the occasion of the impeachment proceedings at the County Assembly?

Hon. Silvia Museiya: Yes, I do.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Would you confirm that, indeed, at the County Assembly you were not able to access the data of the people voting?

Hon. Silvia Museiya: No, we could not access the data.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank you very much. You will be asked questions on cross-examination. Please, be faithful to answer and be as brief as possible.

The Speaker (Hon. Lusaka): Switch off the video.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): Mr. Speaker, Sir, Hon. Silvia, good morning?

Hon. Silvia Museiya: Good morning.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): I did not want to interject when the Hon. Member was giving a statement from the understanding we had from the House yesterday.

You started by saying that you were intimidated by way of suspension, de-whipping and on the material day of impeachment some Members of the ODM Party were de-whipped. Lastly, that there was a de-whipping of Waithera. Is it true?

Hon. Silvia Museiya: I did not mention Waithera. I mentioned Mark Ndung'u who was a County Assembly Board Member.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): Is that material contained in your affidavit? The aspect of suspension, de-whipping and members of ODM being fined?

Hon. Silvia Museiya: It is in paragraph three. I have just gone to the lengths of expounding and explaining it.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): Can you read the specific part in that paragraph that talks about you being threatened and you even said you were teargassed in Upperhill before you went to Kwale?

Hon. Silvia Museiya: Riverside then Upperhill.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): Is that evidence in your affidavit?

Hon. Silvia Museiya: The evidence is not in my affidavit.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): I wanted to bring that as a preliminary issue because I did not want to interject the Hon. Member as she was on her feet.

Hon. Museiya, for how long have you been a Member of County Assembly?

Hon. Silvia Museiya: Since 2017.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): Thank you. So, you are aware of Standing Order No.3 of the Nairobi City County Assembly Standing Orders?

Hon. Silvia Museiya: If you could read it.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): Standing Order No.3 talks about the Mace of the Assembly. Are you aware of that Standing Order?

Hon. Silvia Museiya: Yes, I am.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): Are you aware that where the Mace of the Assembly is, that is where the Assembly sits?

Hon. Silvia Museiya: Yes, I am aware.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): The impeachment Motion was moved on the 3rd day of December where the Mace was. True or not true?

Hon. Silvia Museiya: True.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): Did you get a communication from the Office of the Speaker for this specific day, the third day of December 2020?

Hon. Silvia Museiya: I cannot confirm if I did or not because our phones were off.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): Is it the fault of the Speaker that your phone was off?

Hon. Silvia Museiya: I alluded earlier---

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): Give me a 'yes' or a 'no,' please.

Hon. Silvia Museiya: No, it was not.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): Thank you. Do you confirm that as a Member of the County Assembly, it is your responsibility to oversight, represent and legislate?

Hon. Silvia Museiya: It is.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): And that whatever was happening on the 3rd day of December, 2020 was speaking to one of your roles; that is, the oversight role?

Hon. Silvia Museiya: Right.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): Thank you. You have brought evidence, alluded or testified that as at the time when the Motion was moved on 3rd December, 2020, you had been suspended.

Hon. Silvia Museiya: Yes, I have.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): So, you did not have the capacity to participate in that process?

Hon. Silvia Museiya: I agree.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): Therefore, you cannot be a complainant to complain that you did participate in the process?

Hon. Silvia Museiya: I can be because it is one of the issues I am raising on intimidation of Members. Reducing the number of people who could vote for the Governor or against the impeachment because we are perceived to be 'pro- Governor' which is a statement of fact.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): Listen to my question. Can you participate in the affairs of the House while on suspension?

Hon. Silvia Museiya: I cannot.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): Let us say for argument's sake that you were. On this particular day, you decided voluntarily and deliberately to take yourself to a place that was outside Nairobi. Was it voluntary?

Hon. Silvia Museiya: I had not volunteered to be included in Tuesday session.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): Answer my question. You have said you were in Kwale.

Hon. Silvia Museiya: I have said I was in Kwale.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): You took yourself there?

Hon. Silvia Museiya: I did.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): Can we go through Standing Order No.28 which talks about, 'regular sessions of the county assembly'. Are you aware of that Standing Order?

Hon. Silvia Museiya: I am.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): I want to specifically bring to your attention that it is required of you to be in the Assembly when required. Any MCA is supposed to be there when required. Is it true or not true?

Hon. Silvia Museiya: True.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): On this particular day, without leave of the Speaker you decided to be outside the jurisdiction of where you are supposed to be performing your duties. True or not true?

Hon. Silvia Museiya: The same Standing Order provides that we cannot miss the session eight times consecutively which I have not. I was in the House the week before. It is regular practice for Members not to participate in all House sessions. Refusing to vote is part of my right. That is what we were practicing in Kwale. We abstained from that vote.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): So, you did not participate deliberately?

Hon. Silvia Museiya: We did not participate deliberately.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): Thank you. This will be my last question. I refer you to the County Assembly Powers and Privileges Act. Are you aware of this Act?

Hon. Silvia Museiya: Yes, I am. I have been a Member of the Powers and Privileges Committee. Are you aware of Section 28 of the Powers and Privileges Act?

Hon. Silvia Museiya: If you could be kind to read it for me.

The Counsel for Nairobi City County Assembly (Mr. Ashioya Biko Brian): I will be so kind. Section 28 (1) says-

"A person shall not by fraud, intimidation, force, insult or threat of any kind or by the offer or promise of any inducement or benefit of any kind, or by any other improper means-

(a) Influence a Member in the performance of the Member's function as a Member.

(b) Induce a Member to be absent from a County Assembly or a Committee at a particular time.

(c) Attempt to compel a Member to declare himself or herself in favour or against a matter pending before or proposed or expected to be submitted to a County Assembly.

"(2) A member shall not solicit, receive or accept any fee, compensation, gift, reward, favour or benefit of the kind for the member for another person in respect of-

- (a) Voting in any particular manner or not voting on a matter before the county assembly;
- (b) Promoting or opposing anything pending before or proposed or expected to be submitted to a county assembly;
- (c) Making a presentation to a county assembly;

(3) A person who contravenes this Section commits an offence”

Hon. Silvia Museiya: I am aware of it.

The Counsel for the Nairobi City County Assembly (Mr. Ashioya Biko): You are aware of that particular section?

Hon. Silvia Museiya: Very.

The Counsel for the Nairobi City County Assembly (Mr. Ashioya Biko): A video has been played in which it has been exhibited and you have testified that you were not the only person in Kwale. There was not only two of you, but there was a number. Is it true or not true?

Hon. Silvia Museiya: True.

The Counsel for the Nairobi City County Assembly (Mr. Ashioya Biko): When you went there, you were in the company, or you had the blessings of the Governor? Is it true or not true?

Hon. Silvia Museiya: Not true.

The Counsel for the Nairobi City County Assembly (Mr. Ashioya Biko): It is not true?

Hon. Silvia Museiya: Not true.

The Counsel for the Nairobi City County Assembly (Mr. Ashioya Biko): So, who took you to Kwale?

Hon. Silvia Museiya: We decided to take ourselves.

The Counsel for the Nairobi City County Assembly (Mr. Ashioya Biko): You took yourselves to Kwale?

Hon. Silvia Museiya: Yes, we did.

The Counsel for the Nairobi City County Assembly (Mr. Ashioya Biko): What you are saying is that you were not influenced?

Hon. Silvia Museiya: No, I was not. Not at all.

The Counsel for the Nairobi City County Assembly (Mr. Ashioya Biko): Right?

Hon. Silvia Museiya: Yes.

The Counsel for the Nairobi City County Assembly (Mr. Ashioya Biko): You were not compelled?

Hon. Silvia Museiya: No, I was not.

The Counsel for the Nairobi City County Assembly (Mr. Ashioya Biko): So, you took yourself to Kwale and came back?

Hon. Silvia Museiya: Yes, I did.

The Counsel for the Nairobi City County Assembly (Mr. Ashioya Biko): Very well. That shall be all for this witness.

The Counsel of the Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank you very much. Just two questions on the re-examination. You were asked about your suspension and that you actually took no active part in the county assembly matters. What do you have to say about that?

Hon. Silvia Museiya: As Senators, you know the level of intimidation that can happen when people want to force a decision. We were mere victims by way of suspension and de-whipping, and we urge that the Senate, in its mandate of protecting

devolution, that it shall protect its members towards taking an active democratic and transparent process. This is because the de-whipping had nothing to do with our conduct.

As I said, I am an hon. Member, the Chair of the Committee on Education, and an active participant of the House. I think I have contributed most Motions, Statements, and even two Bills before the House. Therefore, there was no reason for me to be suspended other than to make a statement about the impeachment. It was supposed to cow us, especially nominated Members, so that we vote towards a certain direction. That message was communicated clearly and Members became very fearful.

Finally, as I said, this impeachment is not on the substance of the Motion. It is on the interests of the leadership of the House led by the Count Assembly Minority Leader, Hon. Michael Ogada, the Mover of the Motion.

Thank you.

The Counsel of the Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank you very much, Ms. Museiya. I wish to have you rest, unless the hon. Senators--- Mr. Speaker, Sir, I have my second witness, Mr. Emanuel Kenga.

The Speaker (hon. Lusaka): Order! There is some intervention.

The Counsel for the Nairobi City County Assembly (Mr. Ashioya Biko): Mr. Speaker, Sir, with your very kind permission and permission from my Senior colleague---

The Counsel of the Nairobi City County Governor (Mr. Harrison Kinyanjui): I think my time is being eaten up. Kindly allow me, because the basis of your question has not been---

The Speaker (Hon. Lusaka): Just a minute. I have allowed him.

The Counsel for the Nairobi City County Assembly (Mr. Ashioya Biko): Thank you so much, Mr. Speaker, Sir. The side of His Excellency (H.E.), the Governor, said that they are going to call four witnesses. We are not sure who those four witnesses are. For purposes of preparation, we just want to know who these four witnesses are, so that we can prepare.

The Speaker (Hon. Lusaka): That is fair. Can you provide the names of the four witnesses?

The Counsel of the Nairobi City County Governor (Mr. Harrison Kinyanjui): I had referenced my volume three. My volume three has my witnesses. The witness coming in is Emanuel Kenga. It is on pay 450 of the same volume that were on with Ms. Museiya.

The Speaker (Hon. Lusaka): Why can you not just mention all the four?

The Counsel of the Nairobi City County Governor (Mr. Harrison Kinyanjui): The next witness is Kevin Omari Nyabera, and the last one is Douglas Ouma Nyakach. Mr. Kevin Omari Nyabera is my next witness, and the last witness is the one who has sworn an affidavit to which Sen. Orenge alluded to.

The Counsel for the Nairobi City County Assembly (Mr. Ashioya Biko): What is the name?

The Counsel of the Nairobi City County Governor (Mr. Harrison Kinyanjui): Douglas Ouma Nyakach.

The Counsel for the Nairobi City County Assembly (Mr. Ashioya Biko): There is Mr. Kevin and who else? Who is the third one, please?

The Counsel of the Nairobi City County Governor (Mr. Harrison Kinyanjui):
Mr. Emanuel Kenga.

Mr. Speaker, Sir, hon. Senators, on page 450 of the same volume is the affidavit of my next witness, that is Mr. Emanuel Kenga. Please, introduce yourself.

*(The witness for the Governor of Nairobi City County
(Mr. Emanuel Karisa Kenga) took the oath)*

The Counsel of the Nairobi City County Governor (Mr. Harrison Kinyanjui):
Thank you very much, Mr. Emanuel Kenga. You did swear an affidavit before these proceedings on 13th December 2020. It is located from page 450-527 of volume three.

Mr. Emanuel Karisa Kenga: That is correct, Sir.

The Counsel of the Nairobi City County Governor (Mr. Harrison Kinyanjui):
You can introduce your field of expertise and experience.

Mr. Emanuel Karisa Kenga: Mr. Speaker, Sir, I am a document examiner having trained locally and abroad. I retired from the National Police Service (NPS) in the year 2015. I am currently doing private examination on documents. I have an experience of more than 26 years in the field.

The Counsel of the Nairobi City County Governor (Mr. Harrison Kinyanjui):
Very well. On page 450 is his affidavit. In paragraph seven on page 451, there is a list your expertise. You have been appearing in court cases.

Mr. Emanuel Karisa Kenga: Exactly.

The Counsel of the Nairobi City County Governor (Mr. Harrison Kinyanjui):
As an expert witness?

Mr. Emanuel Karisa Kenga: Yes.

The Counsel of the Nairobi City County Governor (Mr. Harrison Kinyanjui):
According to your testimony, you received a request to examine the signatures which were purportedly signed by the Members of the County Assembly (MCAs) in the Nairobi City County Assembly, and you came to a finding. Please, explain.

Mr. Emanuel Karisa Kenga: I got a request from Ondieki and Ondieki Advocates requesting me to examine some documents involving handwriting and signatures. I did that as requested and came up with my findings which are contained in my report.

The Counsel of the Nairobi City County Governor (Mr. Harrison Kinyanjui):
A copy of the signatures you examined is what was submitted to this hon. Senate by the Speaker of the county assembly. You can confirm that they are located on page 481-894 of volume three. They are contained in your report.

Mr. Emanuel Karisa Kenga: Mr. Speaker, Sir, I marked the bundle as (a). There were some documents attached to the bundle. I had to examine the same. There, we have handwritings and signatures. My findings are as follows.

The Counsel of the Nairobi City County Governor (Mr. Harrison Kinyanjui):
There is report on page 473, which is tied on the foot of the same page, in which you said that you made a finding thereon that there were several signatures there that has been forged or were not genuine. Do you confirm that?

Mr. Emanuel Karisa Kenga: Mr. Speaker, Sir, I examined the handwritings on the entries on serial number 1-88. In my opinion, entry number 3, 4, 9 20, 69, 85 were made by the same author.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, in a nutshell, the list that was given by the County Assembly in alleged confirmation of the majority having voted to impeach the Governor contained forgeries.

Mr. Emanuel Karisa Kenga: Mr. Speaker, Sir, there are some writings which were made by an individual and I have mentioned the entries in my report.

I also went further and examined the signatures on the lists. In my opinion, the signatures had different similarities, meaning that they were made by different authors.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): You confirm the accuracy of your report because you have signed at page 474?

Mr. Emanuel Karisa Kenga: Exactly, Mr. Speaker, Sir. I wish to produce the same report as evidence in this Senate.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank you very much. You will be cross-examined on the same by the other side.

The Counsel for Nairobi City County Assembly (Mr. Brian Biko Ashioya): Can I proceed, Mr. Speaker, Sir?

The Speaker (Hon. Lusaka): Proceed.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko Ashioya): Thank you. I am going to ask just a few questions in two minutes and then I will yield to my colleague Mr. Okatch to proceed.

Mr. Emmanuel Kenga, you said that you are a qualified forensic document examiner, right?

The Witness for the Nairobi City County Governor (Mr. Emmanuel Kenga): Yes, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko Ashioya): And you are a retired commissioner of police?

Mr. Emanuel Karisa Kenga: That is correct.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko Ashioya): Have you attached any documents as exhibits of your qualification as a document examiner in the bundle of documents?

Mr. Emanuel Karisa Kenga: I have not attached my training documents as a document examiner but I have the documents with me.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko Ashioya): Thank you. You said you are a retired commissioner of police.

Mr. Emanuel Karisa Kenga: That is correct.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko Ashioya): Are you a retired commissioner of police, or you were fired from the service?

Mr. Emanuel Karisa Kenga: I was not fired.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko Ashioya): You said from the very onset that you got a request from the firm of Ondieki & Ondieki Company Advocates, right?

Mr. Emanuel Karisa Kenga: Correct.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko Ashioya): Did you get any request to verify any signatures from the Office of the Speaker, Nairobi City County Assembly?

Mr. Emanuel Karisa Kenga: No.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko Ashioya): Did you receive any request from the Clerk?

Mr. Emanuel Karisa Kenga: I received a request from Ondieki & Ondieki Company Advocates.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko Ashioya): You can confirm that the firm of Ondieki & Ondieki Company Advocates was not the author of the documents you were given to verify, right?

Mr. Emanuel Karisa Kenga: No.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko Ashioya): Secondly, you said that you did a forensic analysis of the documents that you were given?

Mr. Emanuel Karisa Kenga: I did an examination on the documents which were forwarded. I did as requested and came out with findings which are in my report.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko Ashioya): Can you kindly be very specific on which documents were given to you for analysis? Kindly provide us with the name of the document that you were given for analysis and, probably, the page it appears in this bundle of documents. Kindly tell us the document you were given to analyse.

Mr. Emanuel Karisa Kenga: Mr. Speaker, Sir, that document is on page 481. The heading is "Requisition of the County Assembly of Nairobi." That is from pages 481 up to 527.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko): You confirm that the document at page 481 is a communication from the Assembly to the Speaker of this House? So, you were also told to verify the authenticity of that document? Is that what you are testifying?

Mr. Emanuel Karisa Kenga: Mr. Speaker, Sir, there is a list in between of MCAs from serial Nos.1 to 88.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko): Which page is that please?

Mr. Emanuel Karisa Kenga: Mr. Speaker, Sir, the list of names from serial nos. 1 to 88 is from pages 491 up to 494.

The Counsel for Nairobi City County Assembly (Mr. Brian Biko): Although it is a bit faint, I presume these are the names of MCAs who may have participated in some activity somewhere because it is a bit faint and I cannot see. Is it true?

Mr. Emanuel Karisa Kenga: Yes, these are MCAs who participated. We have names against their signatures.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko): Thank you so much. Is there any other document that you were given that has their names and signatures?

Mr. Emanuel Karisa Kenga: These are the documents that I worked on.

The Counsel for Nairobi City County Assembly (Mr. Brian Biko): You were never given a document for purposes of comparing. There were no other signatures of

MCAs that you were supposed to compare with the documents contained from pages 491 to 494. Is it true or not?

Mr. Emanuel Karisa Kenga: I never got any signatures from any MCA to compare with whatever I have on pages 491 up to 494.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko): Then how did you arrive to the conclusion that these signatures were forged if you were not comparing with any other signatures?

Mr. Emanuel Karisa Kenga: The request was to examine the handwritings on the list, including the signatures appended against the names.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko): Which other handwritings were you comparing with?

Mr. Emanuel Karisa Kenga: The hand writings on the list.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko): Okay, let us go to your report. Can you open where your report is please? You have highlighted that there are particular handwritings that had been forged. Is it true?

Mr. Emanuel Karisa Kenga: That is not true your honour. I have not said there was forgery. I have said I examined the writings on some serial numbers and the names.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko): Then what was your conclusion?

Mr. Emanuel Karisa Kenga: My conclusion is that for Serial Nos. 3, 4, 9, 26, 29 and 85, the writing was made by the same author.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko): What becomes of the other serial numbers? You need to help the Senate arrive at a conclusion. What is it that you want the Senate to know?

Mr. Emanuel Karisa Kenga: Mr. Speaker, Sir, the examination was on the handwritings of the names.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko): What about the names? That is what this House needs to know.

Mr. Emanuel Karisa Kenga: The request I got was to examine the handwritings of the names and whether they were made by different people or the same author. The finding is that for the serial numbers I have given out, according to my opinion, those names were made by the same author.

The reason is that I got some peculiar individual characteristics on the writings. I gave a few characteristics on the capital "M", capital "K", 2 and 6. That means that the serial numbers I have mentioned in the report were made by the same author.

The Counsel for the Nairobi City County Assembly (Mr. Brian Biko Ashioya): Thank you, very much.

Mr. Speaker, Sir, I would like to end, but with a closing remark that if a distinction has to be made, there must be two documents. My colleague Mr. Okatch will take the stand.

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

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank you, very much, Mr. Speaker, Sir.

(Counsel Interjections)

The Speaker (Hon. Lusaka): Only one person can speak at a time.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): My learned friend who was previously cross-examining my witness asked for two minutes. He has taken 10. That is why the orange light is on because their time is almost up. Therefore, they cannot expand their cross-examination through this added scope.

The Counsel for the Nairobi City County Assembly (Mr. Duncan Okatch): Mr. Speaker, Sir, we have just been notified that we have five minutes. I think it is best that we stick to our roles. There is someone keeping the time. I will just take three minutes on one issue.

Sir, I will ask you one or two questions. You have indicated that you are retired.

Mr. Emanuel Karisa Kenga: Yes, I retired from the police service.

The Counsel for the Nairobi City County Assembly (Mr. Duncan Okatch): In this aspect of yours, you were working from the National Police Service (NPS).

Mr. Emanuel Karisa Kenga: Exactly.

The Counsel for the Nairobi City County Assembly (Mr. Duncan Okatch): Do you know about a petition that you filed challenging your dismissal from service?

Mr. Emanuel Karisa Kenga: Yes, that was through vetting.

The Counsel for the Nairobi City County Assembly (Mr. Duncan Okatch): Is it true that you were fired because of producing two contradictory reports?

Mr. Emanuel Karisa Kenga: That is not true, Mr. Speaker, Sir. I am ready to explain.

The Counsel for the Nairobi City County Assembly (Mr. Duncan Okatch): It is not about explaining. Are you saying that is not true?

Mr. Emanuel Karisa Kenga: It is not true.

The Counsel for the Nairobi City County Assembly (Mr. Duncan Okatch): I will refer you to paragraph 25 of that Petition. I will just read it so that it can rest. Is it true or false that you were the second petitioner?

Mr. Emanuel Karisa Kenga: Mr. Speaker, Sir, I cannot remember whether I was second because we were four in the Petition.

The Counsel for the Nairobi City County Assembly (Mr. Duncan Okatch): You are not sure whether you were the second petitioner?

Mr. Emanuel Karisa Kenga: I am not very sure whether I was second, third or fourth.

The Counsel for the Nairobi City County Assembly (Mr. Duncan Okatch): The second petitioner goes by your names in this matter. This is what the court said-

“The second petitioner responded to the charges denying the allegations and explaining the facts surrounding the two complaints. The second petitioner was vetted on 7th of March, 2014 and a decision dismissing the second petitioner from service was made on the 22nd of May, 2014 on grounds that he exhibited professional negligence in submitting contradicting reports to the court and further that he lacked financial probity for failing to explain how he acquired his assets.”

Are those words new to you?

Mr. Emanuel Karisa Kenga: Those words are in the petition. Allow me to explain. When you ask me another question---

The Counsel for the Nairobi City County Assembly (Mr. Duncan Okatch): There is time to explain. I only have two minutes. Are they referring to you?

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

The Counsel for the Nairobi City County Assembly (Mr. Duncan Okatch): Just one minute.

Mr. Emanuel Karisa Kenga: Those allegations were false that is why I was acquitted. I was to be reinstated, but I had attained the age of 60 years. I went home honourably.

The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch): That is all, Mr. Speaker, Sir.

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

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): My intervention was that my learned friend was referring to a document which the hon. Members do not have. I think that is an ambush on the House. Allow me now to re-examine in a minute.

Mr. Karisa, you can confirm that by virtue of the fact that you have five names with a similar handwriting, therefore, it is only one person in lieu of five who wrote that.

Mr. Emanuel Karisa Kenga: According to my opinion, the writings in the entries I mentioned in my report were made by the same author.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Therefore, instead of the list you have of 88 Members it reduces by 5 to 82. Is that correct?

Mr. Emanuel Karisa Kenga: Yes, Mr. Speaker, Sir.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): What were you to examine? If you look at page 471, it is clearly stating that the scope of your investigation was to the 88 names. Could you refer that?

Mr. Emanuel Karisa Kenga: My mandate was to examine that list from Serial No. 1 up to Serial No. 88.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): What were you then supposed to do? Read that line. To ascertain whether it was generated by the same person. Is that not the scope of your instruction from Mr. Ondieki?

Mr. Emanuel Karisa Kenga: My mandate was to ascertain and examine whether the documents were generated by the same persons.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): And you did exactly that.

Mr. Emanuel Karisa Kenga: I did as I was requested.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Lastly, you were told that you were fired from the Department of Police. Therefore, you had 'a', 'b' or 'c' wrong. You have been a professional witness in court cases that have even gone to the Court of Appeal and your document examination been confirmed, affirmed and taken in convicting criminals.

Mr. Emanuel Karisa Kenga: Mr. Speaker, Sir, I have been in this for the last 27 years. I have given my expert opinion in all courts in here in Kenya. I have been to Dar-es-Salaam and Kampala on the same business.

I have done all I can in this police service. I have done my best and I have not had any complaints so far.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Very well. We have copies of some, not all of those because they are too many to bring before the Senate. We have copies of Court of Appeal and High Court decisions convicting criminals even for murder owing to your expertise evidence. Confirm that we have that on page 454-470 in the same Vol. 3.

Mr. Emanuel Karisa Kenga: That is correct.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): So, your work is professionally recognized.

Mr. Emanuel Karisa Kenga: Well recognized.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Do you confirm that the number of MCAs allegedly signing did not.

Mr. Emanuel Karisa Kenga: They were signed by several people in the document.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): My time is up. Thank you very much.

I can have my next witness, Mr. Speaker, Sir. He is Mr. Douglas Ouma Nyakach on page 653 of the same volume.

As we prepare, I beg that clip produced as Exhibit 13 which we saw yesterday, be played in silence mode as the witness testifies so that we do not interrupt you by again taking too much time on it.

The video about the County Assembly delivery of the documents be played as Mr. Nyakach takes to podium.

*(The Witness for the Governor of Nairobi City County
(Mr. Douglas Ouma Nyakach) took oath)*

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Nyakach, you have sworn an affidavit in furtherance, defending the governor against the accusations of impeachment. The affidavit is found from page 648 to 653 of Volume 3 of the governor's bundle of documents marked D. Do you confirm that?

Mr. Douglas Ouma Nyakach: Mr. Speaker, Sir, it is true.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Could you tell this honourable House what you do for a living?

Mr. Douglas Ouma Nyakach: I am a driver in one of the law firms in Nairobi City County; Ondieki & Ondieki Company Advocates, located in Corner House, third floor.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Now, the events of 3rd December, 2020 are recorded in your affidavit in detail and you say that you went to Nairobi City County Assembly on that day at 2.00 p.m. Do you confirm that you have said that in paragraph two?

Mr. Douglas Ouma Nyakach: Mr. Speaker, Sir, true.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Do you also confirm that you were in the company of Mr. Ondieki and Madam Cecilia Naliaka and Mr. Moses Okerosi on that day? What had you go to do?

Mr. Douglas Ouma Nyakach: Mr. Speaker, Sir, as a driver, I was instructed by my boss to stand by. I did not ask the reason why because as a driver, you do not need to ask so many questions.

Later, I was instructed that by 2 p.m. we were supposed to take documents to Nairobi City County Assembly to the Speaker of the City County Assembly at City Hall. I was ready to do so as a driver.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Now, the events of what transpired were captured in a video. After you arrived at the Assembly, would you confirm that, that is what you have testified about in paragraph Nos.5, 6, 7 and 9?

Hon. Members, I will refer you to the same Volume, paragraph Nos.5, 6, 7, 8, 9, 10, all the way to 25 of the affidavit.

(The video clip was played)

Mr. Douglas Ouma Nyakach: Yes, Mr. Speaker, Sir. It is true and it was more serious than that. You can even see me there standing adjacent to my boss, Mr. Ondieki, the lawyer.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Could the clip just go a little bit back where someone is flushing their hand?

(The clip was replayed)

Mr. Douglas Ouma Nyakach: Yes, Mr. Speaker, Sir, that man walked almost 120 metres thrice as if he was---

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Is that you? Pause right there.

(The video clip was paused)

Is that you in a brown, cream-ish suit?

Mr. Douglas Ouma Nyakach: Mr. Speaker, Sir, it is me standing there in a suit and a mask.

(Laughter)

I was standing there overseeing the circles. It was more serious. It was like I was not in Kenya. It was unprofessional.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Okay. Let us save time. Now that event you are witnessing, was the County Assembly gate accessible?

Mr. Douglas Ouma Nyakach: The main entrance was only for the Members of the County Assembly (MCAs). It is because at that gate, there was someone wearing a coat, the same as those of the City Council workers.

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

Yes, go ahead.

(The video was played)

Mr. Douglas Ouma Nyakach: Yes, that is me. Inside, there were police men and we were outside. It was terrible.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui):
What are the documents we can see over there with you and Mr. Ondieki?

Mr. Douglas Ouma Nyakach: Mr. Speaker, Sir, those are documents I was ordered to carry. They are now being unloaded.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui):
Can we see you behind there?

Mr. Douglas Ouma Nyakach: I am standing there. That is my job as the driver.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui):
Okay, the documents are being offloaded?

Mr. Douglas Ouma Nyakach: Yes, they are being offloaded from the vehicle by that person who is walking in and out---

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

Mr. Douglas Ouma Nyakach: Yes, the County Assembly. It was about two to three hours. It is a short man, a little fat and not slender like me.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui):
Did you witness Mr. Ondieki being given access?

Mr. Douglas Ouma Nyakach: It was not easy. Mr. Ondieki was denied access. He even said, "I am very sorry. I am a lawyer." Mr. Ondieki was shouting. "I am a lawyer, why deny me entry and that is my job. I can serve anywhere in Kenya or the world because I am a lawyer." It was terrible.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui):
To your knowledge, he was going to do what at the County Assembly?

Mr. Douglas Ouma Nyakach: He was going to serve the Speaker of the County Assembly as required by law because he was aware.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui):
We can see there Mr. Ondieki is holding the documents.

Mr. Douglas Ouma Nyakach: Mr. Ondieki is arguing with somebody. He is that short man from the Assembly.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui):
Very well. That is the event you have narrated about on the 3rd December, 2020. You have captured the time in Paragraph 5 to be a few minutes to 2.00 p.m. At what time did you leave? Before I come to that, in Paragraph 22, Page 651, you say something there. You were there and what happens eventually?

Mr. Douglas Ouma Nyakach: I was there after a long argument. There was a police officer. There is a difference between a police officer and an administration officer. Those are two different things. There were about seven administration officers. I

heard them say: “*Kwani ni nini, wacha tu apeane. Muache tu apeane.*” That is in Kiswahili.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): What do you understand to “*apeane.*”?

Mr. Douglas Ouma Nyakach: “*Wacha apeane* documents.” ‘Just give him a chance.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Did you see the documents enter into the Nairobi City County Assembly?

Mr. Douglas Ouma Nyakach: No, still it was chaotic. It was as if it was war.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): So, we can conclude that the document that you had there. On page 535, this is a copy of the document you had gone to deliver with Mr. Ondieki? I just want to address the witness and show him. It runs all the way to page 572. Is that part of the document that we saw you?

Mr. Douglas Ouma Nyakach: It is true.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): The document running from page 535 to 572. Is that part of the documents you took?

Mr. Douglas Ouma Nyakach: Yes.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): That is it. Your last remark on what you witnessed and what we have seen on that clip. What would you say?

Mr. Douglas Ouma Nyakach: I have seen the documents outside the entrance.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): No, just about that event. What transpired?

Mr. Douglas Ouma Nyakach: What transpired was terrible. Ours was very simple. It was just to deliver the documents inside there for about two to five minutes, for them to be stamped as required by law. I wondered as a driver. As you know, in Nairobi if you are canning your child, people come very first as if there is a tug of war.

What I saw there was not professional. It was as if we are not in this country where there is law and order, and people follow the law. There was no law there from inside the Speaker’s office because he was the one who ordered us not to present those papers. I have one.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): What time did you leave? My time is up.

Mr. Douglas Ouma Nyakach: I need even six minutes.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): No. What time did you leave?

Mr. Douglas Ouma Nyakach: We stayed for more than three hours like statues.

The Counsel for the Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank you. Mr. Speaker, Sir. I will rest at that point. You will be asked questions now by the lawyers of the County Assembly.

Mr. Douglas Ouma Nyakach: I am ready to answer.

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

The Counsel for the Nairobi City County Assembly (Duncan Okatch): Mr. Douglas Ouma Nyakach, confirm to this particular honourable House whether you are a court process server.

Mr. Douglas Ouma Nyakach: I am a driver.

The Counsel for Nairobi City County Assembly (Duncan Okatch): Just confirm whether you are a court process server.

Mr. Douglas Ouma Nyakach: No.

The Counsel for Nairobi City County Assembly (Duncan Okatch): Thank you so much. Your duty is actually just to drive the boss.

Mr. Douglas Ouma Nyakach: My duty is to drive and if there is any luggage that I am supposed to deliver, it is 100 per cent that I am granted to remove from the trunk to where it is supposed to be delivered.

The Counsel for Nairobi City County Assembly (Duncan Okatch): Thank you. You have confirmed that on that particular day you were driving Mr. Evans Ondieki to the premises of the Assembly.

Mr. Douglas Ouma Nyakach: Not Mr. Evans Ondieki only. We were with some lawyers; Ms. Naliaka, Mr. Ekorosi and I. I was driving people and not a person.

The Counsel for Nairobi City County Assembly (Duncan Okatch): In the video that you have shown us, confirm that you have said that, that was Mr. Ondieki. Do you confirm? Just answer 'Yes' or 'No.'

Mr. Douglas Ouma Nyakach: Yes.

The Counsel for Nairobi City County Assembly (Duncan Okatch): Thank you. Do you know that Mr. Ondieki has not deposed any affidavit confirming the events that you have indicated today?

Mr. Douglas Ouma Nyakach: Being a driver, mine is to carry the luggage. To confirm what was inside the documents was not my job.

The Counsel for Nairobi City County Assembly (Duncan Okatch): That is okay. Just listen to my question. Is it within your knowledge whether or not Mr. Ondieki, as you were doing this affidavit, whether your boss, whom you were with, also filed or signed an affidavit confirming the said facts that you have told us?

Mr. Douglas Ouma Nyakach: Signed inside or at the Assembly? They are two different things. Signed in his office or inside the Speaker's office?

The Counsel for Nairobi City County Assembly (Duncan Okatch): Where did you sign this particular statement that appears on Page 652?

Mr. Douglas Ouma Nyakach: I was the one who signed it. It was not at the Speaker's office.

The Counsel for Nairobi City County Assembly (Duncan Okatch): Where did you sign it?

Mr. Douglas Ouma Nyakach: I can sign that one in the law firm or any place.

The Counsel for Nairobi City County Assembly (Duncan Okatch): Where did you sign it? The question is where.

Mr. Douglas Ouma Nyakach: In the office.

The Counsel for Nairobi City County Assembly (Duncan Okatch): Which office? Your office, I believe? Kindly, answer my question. You signed this particular affidavit on Page 652.

Mr. Douglas Ouma Nyakach: Yes.

The Counsel for Nairobi City County Assembly (Duncan Okatch): Kindly advise us whether you can remember where you signed this affidavit.

Mr. Douglas Ouma Nyakach: I signed it at Mr. Ondieki's office.

The Counsel for Nairobi City County Assembly (Duncan Okatch): Was Mr. Ondieki aware that you were signing this affidavit?

Mr. Douglas Ouma Nyakach: Yes.

The Counsel for Nairobi City County Assembly (Duncan Okatch): Thank you. You have indicated that there should be law and order. Is that true?

Mr. Douglas Ouma Nyakach: Yes, it is true.

The Counsel for Nairobi City County Assembly (Duncan Okatch): On that particular day, do you know what was to happen at the County Assembly?

Mr. Douglas Ouma Nyakach: I did not know. Mine was to deliver and unload as a driver.

The Counsel for Nairobi City County Assembly (Duncan Okatch): That is okay. Did you know whether Mr. Ondieki had any invitation to appear there?

Mr. Douglas Ouma Nyakach: That one was not my job to know.

The Counsel for Nairobi City County Assembly (Duncan Okatch): You do not know. Do you know that for you to appear, you had to give prior notice to the Clerk of that particular Assembly?

Mr. Douglas Ouma Nyakach: As a driver, I cannot know that.

The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch): The only thing you know is that a lawyer can enter any premises at any time because he is a lawyer.

Mr. Douglas Ouma Nyakach: Yes, if he is a professional lawyer. We have court servers who are trained to serve anybody. As a lawyer, that is his work from which he gets his daily bread. That is what I know.

The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch): Therefore, all lawyers in this country can come to these particular proceedings today and no one should stop them.

Mr. Douglas Ouma Nyakach: Mr. Ondieki was not mad to deliver these huge documents to the Speaker without instructions.

The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch): In your document, show us the instructions that Mr. Ondieki had to appear on behalf of the Governor on the third day.

Mr. Douglas Ouma Nyakach: Mr. Speaker, Sir, Mr. Ondieki appeared for the Governor just like any other lawyer in the world. He was picked by the Governor to appear on his behalf.

The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch): I have asked you a very straight forward question. Do you have any letter by the Governor saying that Mr. Ondieki will appear on the 3rd of December, 2020 on my behalf? Do you have it or have you seen it?

Mr. Douglas Ouma Nyakach: I do not know. That is not my work to know.

The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch): Have you ever seen such a document?

Mr. Douglas Ouma Nyakach: That is not my job. My job is to deliver the documents as instructed.

The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch): Do you know that on this particular day, the Governor had been invited to appear virtually? Was it within your knowledge?

Mr. Douglas Ouma Nyakach: Mr. Speaker, Sir, Mr. Ondieki can answer that, but not me as a driver.

The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch): You have told us that you appeared in a brown suit on that day. Confirm that your face was not visible in that video.

Mr. Douglas Ouma Nyakach: You can see me. I am slender and tall.

Mr. Speaker, Sir, can it be replayed?

The Speaker (Hon. Lusaka): No. We saw you in your suit.

Mr. Douglas Ouma Nyakach: If you were not keen, you could not see me properly. If your eyes cannot see, you can use glasses. I can offer to take you there one day.

The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch): On this particular video that we have, does it tell us the date that this video was taken?

Mr. Douglas Ouma Nyakach: The date in the world, learned person---

The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch): Just answer the question, does it tell us the date?

Mr. Douglas Ouma Nyakach: Mr. Speaker, Sir, protect me from harassment. I need protection from the counsel. He is harassing me.

The Speaker (Hon. Lusaka): You are protected.

Mr. Douglas Ouma Nyakach: Thank you, Mr. Speaker, Sir.

The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch): Mr. Speaker, Sir, you gave a direction yesterday that there can be a 'yes' or 'no' answer. The same should apply to save my time. That is the only issue I am concerned with.

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

The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch): Because of that.

The Speaker (Hon. Lusaka): It is actually up.

The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch): Thank you, Mr. Speaker, Sir. On this particular video, you are the one who took that video?

Mr. Douglas Ouma Nyakach: Hon. Senators come from different areas and constituencies. My work was specifically different and assigned by my boss. I know the person who took the video, but it was not my work to take the video. We were all there.

The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch): Thank you. Confirm to me as I finish the documents that you were taking? Is there anywhere in that particular video that you have demonstrated that these are the documents that you were taking?

Mr. Douglas Ouma Nyakach: Yes, Mr. Speaker, Sir. It was demonstrated very well. They are there. You can see my car. I was there. What next?

The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch): To that particular extent, you have indicated that the Speaker of the Assembly denied you access. What proof do you have for that?

Mr. Douglas Ouma Nyakach: I have said and I will repeat in this honourable Senate, we were denied access. “We”, I was not alone.

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

The Counsel for Nairobi City County Assembly (Mr. Duncan Okatch): Thank you, Mr. Speaker, Sir.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank you, Mr. Speaker, Sir. One question.

Mr. Douglas, in paragraph three of your affidavit, did you read it before you signed? It says:

“On the midmorning of the 3rd December, 2020, Mr. Evans Ondieki, Advocate, had informed me that he would require me to be on standby to drive him, Mr. Aliaka, advocate, and Mr. Moses to represent His Excellency hon. Mike Sonko Mbuvi during the proceedings on the said date slated at 2.30 p.m.”

Mr. Douglas Ouma Nyakach: Yes, Mr. Speaker, Sir, it is true.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): That is what you know you had gone to do on that day.

Mr. Douglas Ouma Nyakach: Yes, Mr. Speaker, Sir, it is true.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank you very much. *Asante*.

Mr. Speaker, Sir, my fourth witness is Mr. Newton Munene in Volume IV, marked D.

Mr. Douglas Ouma Nyakach: Thank you, Mr. Speaker, Sir, enjoy your holiday.

(Laughter)

The Speaker (Hon. Lusaka): Thank you.

Counsel, is Mr. Newton Munene one of the witnesses you said you will call?

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Yes. Then I will call the Governor. I had said out of the other seven I was to call---

The Speaker (Hon. Lusaka): You said you will call four witnesses.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): I had said four and then I call the Governor. I said so. This is the last other witness then I call the Governor.

The Counsel for Nairobi City County Assembly (Mr. Kevin Kokebe): Mr. Speaker, Sir, if I may, the witnesses that we were told were to be called were Mr. Douglas Ouma Nyakach, hon. Silvia Museiya and Mr. Kevin Omari Nyabera.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): I am sorry. I read the wrong name. I apologize. It was Mr. Newton Munene.

The Counsel for Nairobi City County Assembly (Mr. Kevin Kokebe): Mr. Speaker, Sir, if I may, it will only be fair that we know who is coming. Where is the document in question for the Senators to follow? Abrupt wake up and telling us this

witness is also confusing the Senate to follow. Kindly, let us be candid and practice fair as referee. This House should be an arbiter.

The Speaker (Hon. Lusaka): What you gave us was Mr. Kevin Omari Nyabera. What has happened?

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): The name of my last witness was to be Mr. Newton Munene Njiru. I read the wrong page. I confused that.

The Counsel for Nairobi City County Assembly (Mr. Kevin Kokebe): Mr. Speaker, Sir, this will be harassing the County Government and this House. Let us stick to what we speak to. If that is not what he stated, let him withdraw that witness, let him present His Excellency the Governor.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, I would like to clarify because this witness had produced this way back in time. The issue has arisen because I had original seven witnesses. When I called out that name from our original list, in that step, I had mix up. I apologize. There is prejudice.

The Speaker (Hon. Lusaka): Counsel, we cannot allow that. You either produce Mr. Kevin Omari Nyabera or you step him down and call His Excellency the Governor. We cannot keep taking the House forth and backwards. Produce Mr. Kevin Omari Nyabera, step him down and produce His Excellency the Governor.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): I will call Mr. Kevin Omari Nyabera. That is okay.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, for purposes of preparing for the next witness, Mr. Kinyanjui might want to tell us the document he is relying on so that we can prepare.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Volume 3. The certificate for production of the video we have just seen and the photographic evidence.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, I did not get the description clearly from Mr. Kinyanjui as marked by the Senate.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Volume 3, audit 2 on page 644.

The Speaker (Hon. Lusaka): Is that okay?

Proceed now.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, so that he save time, I could request that we have that video clip playing so that we can close on that aspect of the evidence.

(The Video clip was played)

*[The Witness for the Governor of Nairobi City County
(Mr. Kelvin OMari Nyabera) took oath]*

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Please, tell the court what you do.

Mr. Kelvin Omari Nyabera: I am the personal assistant to Evans Ondieki, the lawyer who is representing the Governor.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): There is that clip that we have seen. Would you confirm that what the events we are seeing recorded therein reflect the events you witnessed?

Mr. Kelvin Omari Nyabera: Yes.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Would you confirm that those are the events of which date?

Mr. Kelvin Omari Nyabera: They refer to 3rd December 2020.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Would you confirm the time?

Mr. Kelvin Omari Nyabera: 2 p.m.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Between 2:00 p.m and what time?

Mr. Kelvin Omari Nyabera: 2 p.m. to 5 p.m.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): What place was that?

Mr. Kelvin Omari Nyabera: This was at the door outside the County Assembly.

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

Mr. Kelvin Omari Nyabera: Yes.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): So, you were able then to take those images.

Mr. Kelvin Omari Nyabera: Yes. I took those images.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Do you confirm that that is the video clip?

Mr. Kelvin Omari Nyabera: Yes.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): And the certificate, which you produced at page 644 and page 645 of volume 3, is reflective of that accurate recording?

Mr. Kelvin Omari Nyabera: Yes.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Would you like that to be admitted as evidence?

Mr. Kelvin Omari Nyabera: Yes.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): My last question. Since you state there that you had the events of the 3rd December 2020, were you in any way induced to take that video recording?

(A Video clip was played)

Mr. Kelvin Omari Nyabera: No, I was not induced in any matters regarding to this taking of the pictures because we came out of the office from our daily duties.

We went with the lawyer to the Assembly where I took the office phone and took the pictures of what was happening at the door of the county assembly because there was commotion. So, I took those photos and videos personally using the office phone.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank you very much.

Did you say the office phone? Did I hear you right?

Mr. Kelvin Omari Nyabera: I said Ondieki and Ondieki's Office phone.

The Counsel for Nairobi City County Assembly (Mr. Kevin Kokebe): You are an employee at Ondieki and Ondieki?

Mr. Kelvin Omari Nyabera: Yes. I am the personal assistant.

The Counsel for Nairobi City County Assembly (Mr. Kevin Kokebe): Thank you.

Your purpose of that visit was to present the documents?

Mr. Kelvin Omari Nyabera: My purpose of the visit was to go with Evans Ondieki who is my employer, to the designated meeting point because my work duty is to help Evans Ondieki in his daily to day in day out duties.

The Counsel for Nairobi City County Assembly (Mr. Kevin Kokebe): So, you only duty in that place was to take photos and that was all?

Mr. Kelvin Omari Nyabera: No. We carried documents from the office, which were going to be presented to the County Assembly.

The Counsel for Nairobi City County Assembly (Mr. Kevin Kokebe): Mr. Speaker, Sir, I do not have further question. I will probably give my learned senior, Mr. Ndegwa to conclude.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiiru): I have only one question.

You certified this video in what capacity, in terms of the taking of the video? Limit yourself to the video itself. What capacity?

Mr. Kelvin Omari Nyabera: Come again.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiiru): Other than the Personal Assistant to Mr. Ondieki, what other capacity did you take in terms of your qualifications for photos or photography?

Mr. Kelvin Omari Nyabera: I took those photos because during the presentation of documents at the County Assembly there was commotion.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiiru): Address the professionalism in issues of photography. Limit yourself to that.

Are you a professional photographer? Are you trained?

Mr. Kelvin Omari Nyabera: I am not trained to perform those works, but I took the photos.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiiru): What was the magnification of the camera that you used?

Mr. Kelvin Omari Nyabera: The phone I used---

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiiru): The magnification for purposes of clarity because that video is not clear to us.

The magnification, address the question of the specifications of the camera that you used.

Mr. Kelvin Omari Nyabera: Let me explain.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiiru): You do not know.

Finally, you say that you edited this through a desktop. Correct?

Mr. Kelvin Omari Nyabera: Yes.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiiru): Which desktop was that, where was it and who is the owner?

Mr. Kelvin Omari Nyabera: The office desktop.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiiru): Okay, no further questions.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank you very much, Mr. Speaker, Sir. I do not have any further questions to this witness.

I will now call his Excellency the Governor to testify. I would like to yield to my learned friend, Mr. Nyamu, as he takes up the evidence after which I will then resume thereafter as we proceed.

Mr. Speaker, Sir, if I may get your direction. So far, what is my time bank? We do not want to offend you, Mr. Speaker, Sir, and Hon. Members.

I would like to operate within the timeline.

The Speaker (Hon. Lusaka): I will tell you in a short while.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Thank you very much, Mr. Speaker, Sir, I will be patient.

The Speaker (Hon. Lusaka): You have two hours and thirty-five minutes.

The Counsel for Nairobi City County Governor (Mr. Harrison Kinyanjui): Mr. Speaker, Sir, as I indicated, I will yield the time to Mr. Nyamu.

The Speaker (Hon. Lusaka): We shall break for lunch at 1.00 p.m. Then resume so that we keep our program. Proceed.

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, Hon. Members of the Senate, I will lead evidence of His Excellency the Governor. I do not know the issue my learned friend has.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiiru): Only one issue—

The Speaker (Hon. Lusaka): Hold on. There is a point of order from, Sen. Wambua.

Sen. Wambua: Mr. Speaker, Sir, we are trying to follow these proceedings. It cannot be that a counsel will decide to address the House through you without your permission. The counsel on the Floor is Mr. Nyamu. If there is another counsel who wants to address the House through you, they should seek your permission.

The Speaker (Hon. Lusaka): That is true. Proceed Mr. Nyamu.

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, much obliged and Hon. Member for Kitui. The documents we shall initially use are the documents marked 10E which I believe Hon. Members have. This is the document that bears response to allegations made in the Motion. It has documents filed with it. The other document we are going to use is the document marked 10H. I believe

this document that the County Assembly have issues with, they have been resolved so that we may use it.

The Speaker (Hon. Lusaka): Those are the ones I allowed yesterday?

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

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

Sen. Madzayo: Mr. Speaker, Sir, it looks like we do not have 10H with us. Document 10E and 10G. If 10H can be availed to us, it will be much better.

The Speaker (Hon. Lusaka): Check if the documents are present. Those who do not have you can give them. There is an intervention from counsel. Let us hear him.

The Counsel for Nairobi City County Assembly (Mr. Ndegwa Njiru): Thank you, Mr. Speaker, Sir. I do not want to ask for directions from this hon. House again. Our understanding when we raised this issue in the morning was that the documents he is now referring to were locked out as documents that were lately filed.

Mr. Speaker, Sir, you might want to refresh my memory on your ruling because that is the understanding of the County Assembly.

The Speaker (Hon. Lusaka): I allowed them yesterday. Let us proceed.

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu): Thank you, Mr. Speaker, Sir. I knew that was the issue and that is why I sought clarification before he stood. As I indicated, those are the documents that we are going to use initially.

The Speaker (Hon. Lusaka): What is your point of intervention? Let us minimize interruptions.

Sen. (Dr.) Ali: Mr. Speaker, Sir, please allow me. We have been told severally that this is a court. Hon. Members are interfering from every side. Can the Members wait for their time? They are complaining when one of lawyers talk, when another speaks, this is not right. Let us wait.

The Speaker (Hon. Lusaka): Order! Order! I think our sugar levels are beginning to go down, but we will address it soon. Counsel, proceed.

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir, at this juncture, with your permission I will ask His Excellency the Governor for Nairobi to take the stand.

*(The Governor of Nairobi City County
(Hon. Mike Mbuvi Sonko) took the oath)*

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu): Mr. Speaker, Sir and Hon. Members, in our evidence we are going to move step by step, charge by charge for ease of proceedings.

Your Excellency, you have been charged in the impeachment proceedings with violation of laws, gross misconduct, abuse of office and crimes under national law. On the first charge, you are charged with gross violation of the Constitution and other laws.

In 1(a) it is alleged that as governor of Nairobi you have violated Article 201 (a), (b) and (e) of the Constitution on the Principal of Public Finance Management and Section 154 of the Public Finance Management Act. It is alleged that the County

Allocation of Revenue Act has also been violated on the use of conditional grants from the national Government by diversion or negligently causing to be diverted funds.

For instance, on the use of Roads Levy and bursary funds to pay for garbage collection and lawyers contrary to bursary funds regulations and the approved budget. While you requested for Kshs297 million for bursaries from the Controller of Budget the funds were illegally used to pay garbage contractors and lawyers.

Your excellency, what would be your response to that?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Thank you, Mr. Speaker, Sir and the hon. Members. In the essence of time, I wish to go directly to my responses. I will refer the House to my affidavit on Pages 167 to 172.

The Counsel for the Nairobi City County Governor (Mr. Wilfred Nyamu): That is the document marker 10 (h), Mr. Speaker, Sir.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, on page 167 we have a voucher drawn in favour of Nairobi County Bursary Account 2019, being the payment of transfer of bursary funds totaling to Kshs297,500,000.

I think this is the Financial Year 2019/2020. In the previous year, 2018/2019, we also allocated the same amount of Kshs297,500,000. The voucher is self-explanatory. It is not stamped 'paid.' All vouchers prepared for payment are stamped 'paid' when the process is complete. So, it is true that this amount was never paid.

Mr. Speaker, Sir, I will again refer the House to Page 168 of the Vote Account No.R5318 on Nairobi City Education. This is the Bursary Vote Account. It is highlighted and marked that the Kshs297, 500, 000 for the Financial Year 2018/2019 as at the period of July 2019 to June 2020, this amount was availed for the payment of bursary.

On page 169 of my annexures in the affidavit, we have the Authority to Incur Expenditure of Kshs297,500,000 for bursary funds. The letter is also self-explanatory. In the last paragraph, the purpose of this memorandum is to request the money to be transferred to the Bursary Fund Account.

Mr. Speaker, Sir, on Page 170 the Real-Time Gross Settlement (RTGS) payment from the Central Bank of Kenya (CBK) is also a self-explanatory document. These funds were not released and they were intact towards the end of the Financial Year. That is in the last box on stock reason on the end of the financial year.

During the Coronavirus Disease (COVID-19) period, there were so many challenges. Schools were closed. This document is a clear confirmation that the Mover of my Impeachment Motion is dramatizing the entire process. He is playing politics and doing character assassination, because the transaction reference number in Box one is clearly marked and indicated.

The processing reference is there. The letter Ref. No.619 is there. This is the CBK; the amount of Kshs297,500,000. The CBK stopped RTGS payments. The bank code and the account number are there. The name of the county holder is Nairobi City County.

Mr. Speaker, Sir, the status stopped. The date is 1st September, 2020. They say that we spent this money during the financial year. This is towards the end of the financial year. The CBK confirms that these funds are intact and were transferred back to the CBK account. They are very intact.

What the Mover is not telling us--- He said that I refused to release the cheques of the students who used to benefit from my predecessor. However, he is not telling the House what the reason behind my actions was.

Mr. Speaker, Sir, I will now refer the House to Page 221-360 of my affidavit. Before I move there, I wish to clarify something. I want the Information and Communication (ICT) department to play the clip on bursary release of Kshs297,500,000 for the previous Financial Year. Can we have that clip, please?

(A video clip was played)

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): I think you can stop there in the essence of time.

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu): Could you give the background of that particular video, your Excellency?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Mr. Speaker, Sir, we have over a thousand beneficiaries for bursaries disbursed to various beneficiaries in schools countrywide. However, because of time, we cannot play the entire clip.

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu): When was this documentary taken?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): This documentary was taken and aired in various media stations about six months ago.

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu): In relation to bursary, would you like to state anything in terms of your relationship with the MCAs?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Yes, but before I go to that, I wish to mention about a document, which I will not table, but for the sake of the HANSARD.

This is a certified bank account statement from Co-operative Bank showing that funds amounting to Kshs297,500,000 were transferring from the County Revenue Fund (CRF) Account to Co-operative Bank Account in the FY 2018/2019. It clearly explains and shows all the beneficiaries; that is, the schools and the students.

Since we were denied a chance of producing this document, I will just talk about it. We have 80 copies as advised by the Office of the Clerk.

Mr. Speaker, Sir, the Mover of the Motion was trying to divert from the real issues. He said that there are cheques that I refused to release. It is true that there are cheques we refused to release because there are some MCAs who opened a fake educational institution at River Road. That has been happening since 2019. It started during my predecessor's time.

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu): Which year did you say?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): From 2013 to 2017 when my predecessor was in office. I unearthed that scandal in 2018. It is a sad story.

The directors of the fake school are wives and relatives of MCAs. They even get cheques from the National Government-Constituencies Development Fund (NG-CDF) from various constituencies countrywide and also in Nairobi.

To prove those allegations, on page 221, we have a memo---

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu): That is page 221 of 10(h).

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): We have a self-explanatory memo from an officer from the Directorate of Criminal Investigations (DCI) at the county offices. That is superintended Eunice Maingi. The letter is self-explanatory. I will quickly go through it in the essence of time.

The memo was addressed to me after I complained to the DCI that we needed to investigate Kobudho Education Centre. The memo is dated 7th December, 2018. The Reference number is 11A/2/4/5/VOL.3(99) 2018.

A police file was opened by the DCI. The police file number is 111548/2018 and there is a court file because the suspects were arrested and arraigned in court and that matter is ongoing.

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu): What is the document on page 221?

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): The court case file is 1992/2018, giving details of the offence. It is about forgery of official documents contrary to Section 345 as read with Section 349 of the Penal Code. Accused are Job Omondi Mark Imboko and three others. I will not read the entire letter.

Paragraph 2 says-

“During the month of September, 2018, information was received to this office that there is a Community-based Organisation operating in the name and style of Kobudho Education Centre. It was defrauding the County Government by forging bursary cheques.

Investigations commenced and the investigators obtained court warrants to investigate the accounts of the community-based organisation housed at Co-operative Bank of Kenya Limited and the County Government Development Account housed at Co-operative Bank, City Hall Branch.

In the course of investigations, we establish that the directors of Kobudho Education Centre are as follows-

1. Job Mark Omondi Imboko – This is a county government staff I inherited from the previous administration working under the Department of Water.
2. Francis Odhiambo Ouma – A Personal Assistant (PA) to the MCA who is the ODM Chair for Karen.
3. Quinster Adhiambo Ouma – Wife to the PA of the MCA.
4. Nancy Nasimiyu – Wife to the first accused.”

This is from the DCI and not Sonko.

“In the course of investigations, we established that Francis Ouma is the PA of the MCA for Karen. Investigations were extended to both Co-operative Bank of Kenya and Equity Bank and we obtained original cheques, image cheques, account opening documents for Nairobi County Government and those of the suspects.

In Equity Bank, we obtained 77 original cheques; the ones the Mover complained why I have not released them. The cheques were drawn by Nairobi City County Government. Looking at them critically, they were all forged. I will come to that.

In Co-operative Bank, we obtained 129 image cheques drawn in favour of this fake school, which does not exist called Kobudho Education Centre. Investigators further established that suspects obtained money from the County Government up to the tune of Kshs4.5 million.”

Mr. Speaker, Sir, I will just go to the main points in the essence of time.

After establishing the identity of the suspects, we involved the services of criminal intelligence personnel from DCI Headquarters. On the fifth day of October, at 3.00 a.m., we apprehended the accused persons. We conducted searches in their houses and recovered 67 original cheques drawn in favour of different schools within the county, 113 bursary application forms in the names of different applicants within Karen Ward and two payment vouchers originating from Nairobi City County Government.

Mr. Speaker, Sir, after investigations the suspects were charged. The handwriting and specimen signatures of the four suspects were taken and forwarded to the document examiner at the Directorate of Criminal Investigation (DCI) headquarters to ascertain whether the accused persons were the authors of the cheques. We are yet to receive the report.

These are some of the witnesses. The Directorate of Criminal Investigation (DCI) officers wanted to bring them to testify, but in the interest of time the report is here. Authenticated suspects and court charge sheets are there. Since this is a very important memo, let me just finish because I am on the last paragraph.

The suspects - the relatives of MCAs - were arraigned in court on 8th October, 2018 and pleaded not guilty to all the charges. They were released on a cash bail of Ksh400,000 or alternative surety of Kshs500,000. The case was marked for mention at Milimani Law Court No.5 on 5th January, 2019, with a view of fixing a hearing date, which was fixed.

Mr. Speaker, Sir, the DCI is putting a note in my memo of 7th December, 2018. She said-

“The case requires travelling because we have witnesses in Homa Bay County and some areas of Rift Valley. Therefore, we require urgent facilitation to enable us move with speed and cover what is remaining before the hearing date.”

Moving to the next page 233, these proxies of MCAs were charged, as I said before. The case Police file Number is 11/54H/2018. Details of the suspects are there. The relatives of MCAs are there with their description, gender and tribe; Male, Luo; Female, Luhya. The offences are self-explanatory.

(1) Conspiracy to defraud contrary to Section 317 of the Penal Code.

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu):
Number two.

The Governor of Nairobi City County (Hon. Mike Mbuvi Sonko): Let me first go to the details of the charges.

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu): Perhaps, Your Excellency, in the interest of time, we would wish to refer to the document appearing on Page 223, all the way to 228. What document is that?

The Governor of Nairobi City County (Hon. Mike Sonko): From page 223 to 226 are various charges which were preferred.

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu): What document is that appearing on page---

The Governor of Nairobi City County (Hon. Mike Sonko): Charge sheets with so many counts.

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu): There are other documents referred to at Page 227 and 228.

The Governor of Nairobi City County (Hon. Mike Sonko): I think before go there, I have a pertinent message to raise.

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu): Carry on.

The Governor of Nairobi City County (Hon. Mike Sonko): These the details of the charges. We already have the names of the accused. On diverse dates between 30th May, 2016--- Before I became Governor of Nairobi City County Government, this scandal was there. Taxpayers' money was being swindled in Nairobi City County Government.

On diverse dates between 30th May, 2016, during my predecessor's time, and 13th September my first month in office in 2017, meaning that I was the one who stopped the scandal during my time. It was ongoing and we were losing government funds during the last administration's time.

Between 30th May, 2016 and 13th September, 2017 at an unknown place within the Republic of Kenya, jointly with others not before court--- There were even some MCAs who were supposed to be charged with these suspects--- I do not know why to date they have not been arrested. We have current MCA and 10 more who have not been arrested and charged, due to political interference.

I proceed with details of the charges. It reads-

“Jointly with others not before court by deceit and fraudulent means conspired to defraud Nairobi City County Government a sum of Ksh3,225,000 by forging bursary cheques, purporting them to have been issued by Mr. Ekaya Almasi who was our Chief Officer for Finance and Martha Wambugu an accountant working with the Nairobi City County Government, a fact you knew to be false.”

That is Count No. 1. I will not go to all the counts, but all these offences started during the previous administration's time. However, I think there are some important details; maybe Members will read for themselves. They were charged with eight counts according to Page 226-228.

Mr. Speaker, Sir, there is also another count, which is No. 9. Some charges are extremely important to this case. Since yesterday there were some grievous allegations, which were made by the mover of this motion, you will also allow me to do a clarification on the scandal by MCAs who were diverting public funds for poor students, to benefit themselves and their wives and families.

Allow me to do a clarification because after banking these cheques to their fake school, they used to withdraw the money in cash from various bank branches in Nairobi City County. There are some charges where these proxies, who are wives of MCAs, used to withdraw this money. I think I will find it in one of the counts which are here.

The Counsel for Nairobi City County Governor (Mr. Wilfred Nyamu): Look at Page 234 of that document.

The Governor of Nairobi City County (Hon. Mike Sonko): There is a bank Statement, but I wanted first that we move systematically, page by page as we reach there because we want to prove our case belong reasonable doubt.

Mr. Speaker, Sir, on page 227 are cheque numbers of the diverted cheques which were drawn by the County, diverted and banked to this Kobudho Educational Centre account. Since this scandal involved various bank withdrawals and we needed to save the county from being swindled of bursary fund, we had to involve the Central Bank of Kenya (CBK). We have a DCI department at the CBK.

I refer the House to Page 229, where we have a letter from Banking Fraud Investigations Department; Ref: DCI/BFI/SEC/4/ 4. Vol. 308/ 25, dated 14th August, 2018.

The letter is addressed to us, County Secretary, County Government of Nairobi and attention to the Chief Officer for Finance and Chief Officer, Legal Department; Ref. BFID, Inquiry Number 479 of 2018. It says-

“Suspected fraud in respect of this fake school, Kobudho Educational Centre, which was opened by MCAs purposely to divert bursary funds to benefit themselves.” This was ongoing from the previous administration. I do not want to repeat myself. I stopped this scandal.

Mr. Speaker, Sir, the letter is self-explanatory. The members of the public do not have this document. You will just allow me to take the public through this document.

“This office is investigating a fraud case where the above institution through its Equity Bank Account No.1250168255007 was issued with multiple Nairobi City County Government development cheques, which were later cleared and paid through the above quoted account.

To enable us complete our investigations, please, furnish us with the following, of which we did-

- (i) official list of bursary applications and beneficiaries for the period between May 2016 - before I became the Governor of Nairobi City County - 2017 and July 2018;
- (ii) certified copies of counter files for the cheque numbers as per the attached account statement;
- (iii) an officer whose duty is to disburse the funds to record statement to the effect; and,
- (iv) any other information that can assist the investigations.

Thanking you for your continued support.”

The letter is signed by Mr. Tobias Obondi for Director, Banking Fraud Investigation Department.

Mr. Speaker, Sir, Page 231 is also a summary of investigations. There are various letters written to various schools. For instance, the Directorate of Criminal Investigation (DCI), there is a letter she wrote to Mulinge High School. It was on investigation on theft of bursary funds of Nairobi City County Government.

“This office is investigating a case of theft. It is alleged that some officers of Nairobi City County Government in conspiracy with other members of the public stole

funds meant for bursary allocation issued by the Nairobi City County Government. It is on record that some students in those schools are beneficiaries of the said bursary allocations.

This is, therefore, to request you that you grant the bearers of this letter corporation in their investigation.”

It is signed by Eunice Maingi.

Mr. Speaker, Sir, at this stage, I wish the ICT department to play the clip because the story was in the public domain. Before I go there, there is a response from the Principal of this school. He has signed to it as reference Nairobi City County bursary cheque purported for Mulinge High School.

It says-

“The above matter refers. Kindly, note that the school did not receive the said cheque.” Secondly, the name indicated is not the name of the school. Thirdly, the school has not had any student by the name indicated.”

It is signed by the school.

At this juncture, I request the ICT to play. The scandal was in the public domain when we were unearthing it. Can you play that *Citizen TV* clip?

ADJOURNMENT

The Speaker (Hon. Lusaka): Hon. Senators, ladies and gentlemen, it is now 1.00 p.m., time to interrupt the proceedings. The Senate stands adjourned until this afternoon, at 2.00 p.m. The Governor’s team will have a balance of one hour and fifty minutes when we resume.

The Senate rose at 1.00 p.m.