



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (FIFTH SESSION)

THE SENATE

SPECIAL SITTING

VOTES AND PROCEEDINGS

THURSDAY, MAY 06, 2021 AT 2:30 PM

1. The Senate assembled at thirty minutes past Two O'clock.
2. The proceedings were opened with a prayer said by the Speaker.
3. **COMMUNICATION FROM THE CHAIR ON THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT OF THE HONOURABLE MOHAMMED ABDI MOHAMUD, THE GOVERNOR OF WAJIR COUNTY**

The Speaker conveyed the following Communication -

“Honourable Senators,

By a letter, Ref. No. SPK/WCA/SENATE/4/2021, dated 28th April, 2021, and received in my Office on 29th April, 2021, the Speaker of the Wajir County Assembly informed me that at a sitting of the County Assembly held on Tuesday, 27th April, 2021, the County Assembly approved a Motion, pursuant to Section 33(2) of the County Governments Act, for the removal from office, by impeachment, of Honourable Mohammed Abdi Mohamud, the Governor of Wajir County.

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

- (a) The Order Paper of the Wajir County Assembly dated, Tuesday, 27th April, 2021;
- (b) Notice of Motion, by Hon. Abdullahi Issack, Member of the County Assembly, Elnur/Tula Tula Ward, on the proposed removal from office, by impeachment, of the Governor of Wajir County, dated Monday, 19th April, 2021;
- (c) The Hansard and Votes and Proceedings of the Wajir County Assembly dated, Tuesday, 27th April, 2021; and
- (d) The Roll Call Register indicating the Members in support of the Motion for the removal from office, by impeachment, of the Governor.

Honourable Senators,

In terms of Article 181 of the Constitution, Section 33(3)(a) of the County Governments Act, 2012 and Standing Order 75(1)(a) of the Senate Standing Orders, the Speaker of the Senate is required *“within seven days after receiving notice of a resolution from the speaker of a county assembly to convene a meeting of the Senate to hear charges against the Governor.”*

Honourable Senators,

Pursuant to Section 33(3)(b) of the County Governments Act and Standing Order 75(1)(a) of the Senate Standing Orders, I hereby proceed to read the allegations against the Governor of Wajir County –

(a) Charge 1: Gross Violation of the Constitution of Kenya 2010; County Governments Act, 2012, the Public Procurement and Disposal Act, 2015 and the Public Finance Management Act, 2012:

- i) Failure to account for the financial resources allocated to the county in disregard to Article 201(a), 183(3) of the Constitution and Sections 149 and 166 of the Public Finance Management Act, 2021;*
- ii) Lack of accountability to the County Assembly pursuant to Section 30(2) of the County Governments Act, 2021;*
- iii) Misappropriation of resources through corrupt procurement processes contrary to Section 19 of the Wajir County Disaster Management Act, Sections 82(1)(b), 119(5), 201(a)(d)(e), of the Public Finance Management Act, and Sections 45,46,47, 48, 53, 54, 57, 71 and 74 of the Public Procurement and Disposal Act, 2015;*

(b) Charge 2: Abuse of Office/Gross Misconduct;

Contravention of Article 235 of the Constitution, the County Governments Act, 2021 and the Public Service Act by allegedly constantly reshuffling Chief Officers at the convenience of the Governor’s wife. Exercising nepotism, favoritism and other corruption practices contrary to Article 73(2)(b) of the Constitution. Furthermore, the Governor has allegedly usurped the powers of the County Public Service Board by appointing persons to hold office.

Honourable Senators,

In terms of the way forward, following the reading of the allegations against the Governor, Standing Order 75(1)(b) of the Senate Standing Orders, gives the Senate two options on how to proceed with the matter. The Senate may –

- (a) by Resolution, appoint a Special Committee comprising eleven of its members to investigate the matter; or*
- (b) investigate the matter in plenary.*

As listed at Order No. 2, in the Order Paper, the Senate Majority Leader will shortly give Notice of Motion for the establishment of a Special Committee and the Motion thereon is listed at Order No. 3. Should this Motion be carried, the Special Committee will be required, under Section 33(4) of the County Governments Act, 2012, and Standing Order 75(2) of the Senate, to investigate the matter and to report

to the Senate on whether it finds the particulars of the allegations against the Governor to have been substantiated.

If, however, the Motion for the establishment of a Special Committee does not pass, the Senate shall proceed to investigate and consider the matter in Plenary and in that event, I will appoint the dates on which the Senate will sit in Plenary to hear and dispose of the matter.

Honourable Senators,

It is noteworthy, and I wish to emphasize to all Honourable Senators, that when we come to the debate on the Motion to establish the Special Committee, debate on the Motion shall be limited to the substance of the Motion, namely, whether or not to establish the Special Committee. It will not be a debate on the substance of the impeachment or its merits, propriety, prudence or even the constitutionality or the legality of the processes that have preceded the submission of this matter to the Senate. It is, therefore, not permissible to deviate to any matters other than the Motion before the Senate.

Honourable Senators,

Impeachment is one of the most crucial oversight tools and roles for the Senate to hold state officers accountable. Therefore, in undertaking this mandate, the Senate will be sitting as a quasi-judicial body and will conduct investigations into disputed claims and alleged infractions of the Constitution and the law and will thereafter make its determination. In this regard, it shall be out of order, within the meaning of Standing Order 117, for any Senator to make comments, whether written or spoken, in relation to the conduct of the Governor or the impeachment process, outside the confines of the impeachment proceedings; as such comments may prejudice the just outcome of the process.

I conclude by urging all Senators to exercise the highest level of responsibility on this matter.

I thank you.”

4. NOTICE OF MOTION – ESTABLISHMENT OF A SELECT COMMITTEE TO INVESTIGATE THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HONOURABLE MOHAMMED ABDI MOHAMUD, THE GOVERNOR OF WAJIR COUNTY

(The Senate Majority Leader)

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on Tuesday, 27th April, 2021, the Wajir County

Assembly approved a Motion for the removal from office by impeachment, of the Honourable Mohamed Abdi Mohamud, Governor of Wajir County;

AND FURTHER, WHEREAS by letter Ref. No. SPK/WCA/SENATE/4/2021(1), dated Wednesday, 28th April, 2021, and received in the Office of the Speaker of the Senate on Thursday, 29th April, 2021, the Speaker of the County Assembly of Wajir informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 75(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 75(1)(b)(i), the Senate resolves to proceed on this matter by way of establishment of a special committee to investigate the proposed removal from office by impeachment of the Honourable Mohamed Abdi Mohamud, the Governor of Wajir County.

5. MOTION – ESTABLISHMENT OF A SELECT COMMITTEE TO INVESTIGATE THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE HONOURABLE MOHAMMED ABDI MOHAMUD, THE GOVERNOR OF WAJIR COUNTY

Order read;

Motion made and Question proposed;

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on Tuesday, 27th April, 2021, the Wajir County Assembly approved a Motion for the removal from office by impeachment, of the Honourable Mohamed Abdi Mohamud, Governor of Wajir County;

AND FURTHER, WHEREAS by letter Ref. No. SPK/WCA/SENATE/4/2021(1), dated Wednesday, 28th April, 2021, and received in the Office of the Speaker of the Senate on Thursday, 29th April, 2021, the Speaker of the County Assembly of Wajir informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 75(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 75(1)(b)(i), the Senate resolves to proceed on this matter by way of establishment of a special committee to investigate the proposed removal from office by impeachment of the Honourable Mohamed Abdi Mohamud, the Governor of Wajir County.

(The Senate Majority Leader)

Debate arising;

And there being no other Senator wishing to contribute;

The Mover replied;

Before the Question was put and pursuant to Standing Order 79 (1) the Speaker ruled that the Motion affects Counties.

The House proceeded to a Division;

The Speaker directed that roll call division be taken pursuant to Standing Order 83 (1), and in line with the Guidelines issued by the Speaker for Senate plenary and Committee sittings during the Covid-19 pandemic situation dated 17th April, 2020, and that the division bell be rung for one minute;

After the expiry of the one minute, the Speaker directed that the doors be locked and the bars be drawn;

The names of the Tellers were announced as follows;

1. Sen. Beatrice Kwamboka, MP – AYES
2. Sen. Farhiya Ali Ibrahim – NOES

The Speaker put the Question and directed the Clerk to call out the names of Senators in alphabetical order;

The results of the Division were as follows:-

AYES – 28

NOES – 14

ABSTENTION – 1

AYES

1. Sen. Boy, Issa Juma
2. Sen. Cherarkey, Samson Kiprotich
3. Sen. Cheruiyot, Aaron Kipkirui – voted virtually
4. Sen. Imana, Malachy Charles Ekal – voted virtually
5. Sen. Muthama, Agnes Kavindu
6. Sen. Kajwang' Moses Otieno – voted virtually
7. Sen. Kihika, Susan Wakarura
8. Sen. Kindiki, Kithure

9. Sen. Langat, Christopher Andrew – voted virtually
10. Sen. Lelegwe, Ltumbesi
11. Sen. Linturi, Franklin Mithika
12. Sen. Loitiptip, Anuar
13. Sen. Madzayo, Stewart Mwachiru
14. Sen. Malalah, Cleophas Wakhungu
15. Sen. Mbogo, George Ochilo Ayacko – voted virtually
16. Sen. Mpaayei, Phillip Salau
17. Sen. Murkomen, Onesimus Kipchumba
18. Sen. Mutula, Kilonzo Junior
19. Sen. Mwangi, Paul Githiomi
20. Sen. Mwaruma, Johnes Mwashushe – voted virtually
21. Sen. Nderitu, John Kinyua – voted virtually
22. Sen. Olekina, Ledama – voted virtually
23. Sen. Onger, Samson Kegengo
24. Sen. Outa, Frederick Otieno
25. Sen. Poghisio, Samuel Losuron
26. Sen. Sakaja, Johnson Arthur
27. Sen. Wako, Sitswila Amos
28. Sen. Wario, Golich Juma

NOES

1. Sen. Adan, Dullo Fatuma – voted virtually
2. Sen. Ali, Abdullahi Ibrahim
3. Sen. Haji, Abdulkadir Mohamed
4. Sen. Hargura, Godana
5. Sen. Kamar, Margaret Jepkoech
6. Sen. Kibiru, Charles Reubenson – voted virtually
7. Sen. Kirinyaga, Ephraim Mwangi Maina – voted virtually
8. Sen. Mohamud, Mohamed Maalim
9. Sen. Mbiti, Michael Maling'a – voted virtually
10. Sen. Mogeni, Erick Okong'o
11. Sen. Moi, Gideon Kipsielei Towett – voted virtually
12. Sen. Mwinyihaji, Mohamed Faki
13. Sen. Wambua, Enoch Kiio
14. Sen. Wetang'ula, Moses Masika

ABSTENSION

1. Sen. Orengo, James

Question agreed to.

RESOLVED ACCORDINGLY:

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on Tuesday, 27th April, 2021, the Wajir County Assembly approved a Motion for the removal from office by impeachment, of the Honourable Mohamed Abdi Mohamud, Governor of Wajir County;

AND FURTHER, WHEREAS by letter Ref. No. SPK/WCA/SENATE/4/2021(1), dated Wednesday, 28th April, 2021, and received in the Office of the Speaker of the Senate on Thursday, 29th April, 2021, the Speaker of the County Assembly of Wajir informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 75(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

NOW THEREFORE, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 75(1)(b)(i), the Senate resolves to proceed on this matter by way of establishment of a special committee to investigate the proposed removal from office by impeachment of the Honourable Mohamed Abdi Mohamud, the Governor of Wajir County.

6. SUSPENSION OF THE PROCEEDINGS OF THE SENATE

The Speaker suspended the proceedings of the Senate at Three minutes past Five O'clock to allow Senators to consult on the Membership to the special committee to investigate the proposed removal from office, by impeachment, of Honourable Mohammed Abdi Mohamud, the Governor of Wajir County.

7. HOUSE RESUMED – at forty-five minutes past Five O'clock (The Speaker in the Chair)

8. NOTICE OF MOTION - APPOINTMENT OF SENATORS TO SERVE IN THE SPECIAL COMMITTEE TO INVESTIGATE THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HONOURABLE MOHAMMED ABDI MOHAMUD, THE GOVERNOR OF WAJIR COUNTY

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on Tuesday, 27th April, 2021, the Wajir County Assembly approved a Motion for the removal from office by impeachment, of the Honourable Mohamed Abdi Mohamud, Governor of Wajir County;

AND WHEREAS, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 75(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

FURTHER whereas, by a Resolution made on Thursday, 6th May, 2021 (Afternoon Sitting), the Senate resolved to proceed on this matter by way of a special committee, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 75(1)(b)(i),

NOW THEREFORE, pursuant to Standing Order 189, the Senate resolves to appoint a special committee comprising the following Senators –

1. Sen. Sakaja Johnson, CBS,MP;
2. Sen. Mwangi Githiomi,MP;

3. Sen. Christine Zawadi Gona, MP;
4. Sen. Susan Kihika, MP;
5. Sen. Mithika Linturi, MP;
6. Sen. (Eng.) Hargura Godana, MP;
7. Sen. Okong'o Mogeni, SC, MP;
8. Sen. Fredrick Outa, MP;
9. Sen. Agnes Muthama, MP,
10. Sen. Petronilla Were, MP; and
11. Sen. Issa Juma Boy, MP;

to investigate the proposed removal from office by impeachment of the Governor of Wajir County and to report to the Senate within ten (10) days of its appointment, pursuant to Standing Order 75(2), on whether it finds the particulars of the allegations to have been substantiated.

9. MOTION – APPOINTMENT OF SENATORS TO SERVE IN THE SPECIAL COMMITTEE TO INVESTIGATE THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HONOURABLE MOHAMMED ABDI MOHAMUD, THE GOVERNOR OF WAJIR COUNTY

Order read;

Motion made and Question proposed;

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on Tuesday, 27th April, 2021, the Wajir County Assembly approved a Motion for the removal from office by impeachment, of the Honourable Mohamed Abdi Mohamud, Governor of Wajir County;

AND WHEREAS, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 75(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

FURTHER whereas, by a Resolution made on Thursday, 6th May, 2021 (Afternoon Sitting), the Senate resolved to proceed on this matter by way of a special committee, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 75(1)(b)(i),

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8. Sen. Fredrick Outa, MP;
9. Sen. Agnes Muthama, MP,
10. Sen. Petronilla Were, MP; and
11. Sen. Issa Juma Boy, MP;

to investigate the proposed removal from office by impeachment of the Governor of Wajir County and to report to the Senate within ten (10) days of its appointment, pursuant to Standing Order 75(2), on whether it finds the particulars of the allegations to have been substantiated.

(The Senate Majority Leader)

Debate arising;

And there being no Senator wishing to contribute;

Before the Question was put and pursuant to Standing Order 79(1), the Speaker ruled that the Motion did not affect counties.

Question put and agreed to.

RESOLVED ACCORDINGLY:

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, 2012, on Tuesday, 27th April, 2021, the Wajir County Assembly approved a Motion for the removal from office by impeachment, of the Honourable Mohamed Abdi Mohamud, Governor of Wajir County;

AND WHEREAS, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 75(1)(b) of the Senate, the Senate by resolution, may appoint a special committee comprising eleven of its Members to investigate the matter;

FURTHER whereas, by a Resolution made on Thursday, 6th May, 2021 (Afternoon Sitting), the Senate resolved to proceed on this matter by way of a special committee, pursuant to Section 33(3)(b) of the County Governments Act, 2012 and Standing Order 75(1)(b)(i),

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6. Sen. (Eng.) Hargura Godana,MP;
7. Sen. Okong'o Mogeni, SC,MP;
8. Sen. Fredrick Outa,MP;
9. Sen. Agnes Muthama,MP,
10. Sen. Petronilla Were,MP; and
11. Sen. Issa Juma Boy,MP;

to investigate the proposed removal from office by impeachment of the Governor of Wajir County and to report to the Senate within ten (10) days of its appointment,

pursuant to Standing Order 75(2), on whether it finds the particulars of the allegations to have been substantiated.

10. THE CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020

Order read;

Motion made and Question proposed;

THAT, the Constitution of Kenya (Amendment) Bill, 2020 be now read a Second time.

(The Senate Majority Leader –28.04.2021 - Afternoon Sitting)

Raising a Point of Order, pursuant to Standing Order 105(1), the Senate Minority Leader claimed to move-

“THAT the debate be now adjourned”

And the Speaker, acceding to the claim;

Motion made and Question proposed;

THAT the debate be now adjourned

(Senate Minority Leader)

There being no Senator wishing to contribute;

Before the Question was put and pursuant to Standing Order 79(1), the Speaker ruled that the Motion did not affect counties.

Question put and agreed to.

RESOLVED ACCORDINGLY:

THAT the debate be now adjourned.

There being no other Business and the time being three Minutes past Six O'clock, the Speaker adjourned the Senate without Question put, pursuant to the Standing Orders.

11. SENATE ROSE – At Three Minutes past Six O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Tuesday, May 11, 2021 at 10:00 am*

--X--