

REPUBLIC OF KENYA



THE SENATE

THIRTEENTH PARLIAMENT

*Right Hon. Speaker  
You may approve for  
tabling.  
30/12/22*

THE REPORT OF THE SPECIAL COMMITTEE ON THE PROPOSED REMOVAL  
FROM OFFICE, BY IMPEACHMENT, OF HONOURABLE KAWIRA MWANGAZA,  
THE GOVERNOR FOR MERU COUNTY

PAPERS LAID	
DATE	30.12.2022
TABLED BY	Chairperson
COMMITTEE	Special Committee
CLERK AT THE TABLE	Z. Magera

30 DECEMBER, 2022

*Approved for  
Tabling  
[Signature]  
Rt. Hon. Speaker  
30/12/22*

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## PREFACE

**Mr. Speaker Sir,**

Honourable Senators will recall that at the sitting of the Senate held on Tuesday, 20<sup>th</sup> December, 2022, the Honourable Speaker of the Senate, by way of a Communication from the Chair, informed the Senate that he had received correspondence from the Speaker of the County Assembly of Meru communicating the approval of a Motion by the County Assembly of Meru to remove from office, by impeachment, the Governor of Meru County.

**Mr. Speaker Sir,**

On Tuesday, 20<sup>th</sup> December, 2022, the Senate Majority Leader gave Notice of the following Motion-

*THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, on 14<sup>th</sup> December, 2022, the Meru County Assembly approved a Motion to remove from office, by impeachment, Honourable Kawira Mwangaza, the Governor of Meru County;*

*AND FURTHER, WHEREAS by a letter Ref. No. CAM/RES/VOL.V/2, dated 15<sup>th</sup> December, 2022, received in the Office of the Speaker of the Senate on Thursday, 15<sup>th</sup> December, 2022, the Speaker of the Meru County Assembly 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, and Standing Order 80(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, and Standing Order 80(1)(b), the Senate resolves to establish a special committee comprising the following Senators: -*

- 1. Sen. (Dr.) Boni Khalwale, CBS, MP;*
- 2. Sen. Jackson Mandago, EGH, MP;*
- 3. Sen. Karungo Thangwa, MP;*
- 4. Sen. Esther Okenyuri, MP;*
- 5. Sen. Roba Ali Ibrahim, EGH, MP;*
- 6. Sen. Peris Tobiko, MP;*
- 7. Sen. Eddy Gicheru Oketch, MP;*
- 8. Sen. Joseph Githuku Kamau, MP;*
- 9. Sen. Edwine Sifuna, MP;*
- 10. Sen. Agnes Kavindu Muthama, MP; and*
- 11. Sen. Johnes Mwaruma, MP.*

*to investigate the proposed removal from office of the Governor of Meru County and pursuant to standing order 80 (2), to report to the Senate, within ten (10) days of its appointment, on whether or not it finds the particulars of the allegations against the Governor to have been substantiated.*

**Mr. Speaker Sir,**

The Senate Majority Leader moved the Motion at a special sitting of the Senate held on Tuesday, 20<sup>th</sup> December, 2022. Following debate on the Motion, the Senate resolved to establish a Special Committee comprising the following Senators –

- 1. Sen. (Dr.) Boni Khalwale, CBS, MP;*
- 2. Sen. Jackson Mandago, EGH, MP;*
- 3. Sen. Karungo Thangwa, MP;*
- 4. Sen. Esther Okenyuri, MP;*
- 5. Sen. Roba Ali Ibrahim, EGH, MP;*

6. *Sen. Peris Tobiko, MP;*
7. *Sen. Eddy Gicheru Oketch, MP;*
8. *Sen. Joseph Githuku Kamau, MP;*
9. *Sen. Edwine Sifuna, MP;*
10. *Sen. Agnes Kavindu Muthama, MP; and*
11. *Sen. Johnes Mwaruma, MP.*

to investigate the proposed removal from office of the Governor of Meru County and to report to the Senate within ten (10) days of its appointment on whether it finds the Particulars of the Allegations to have been substantiated.

**Mr. Speaker Sir,**

Section 33(4) of the County Governments Act, 2012, standing order 80 (2) and rule 2 (Part 2) of the Third Schedule to the Senate Standing Orders mandate the Special Committee to-

*(a) investigate the matter; and*

*(b) report to the Senate within ten days on whether it finds the Particulars of the Allegations against the Governor to have been substantiated*

The Committee, in the execution of its mandate, was guided by the provisions of the law and the Standing Orders.

**Mr. Speaker Sir,**

Following its establishment, the Special Committee held its first meeting on Tuesday, 20<sup>th</sup> December, 2022. Pursuant to standing order 203 and rule 3(a) of Part 2 of the Third Schedule to the Senate Standing Orders, the Clerk of the Senate conducted the election for the position of Chairperson and Vice-Chairperson. Senator (Dr.) Boni Khalwale, CBS, MP and Senator Agnes Kavindu Muthama, MP were elected to the positions of Chairperson and Vice-Chairperson of the Committee, respectively.

**Mr. Speaker Sir,**

Section 33(5) of the County Governments Act, standing order 80 (3) and rule 4(a) of Part 2 of the Third Schedule to the Senate Standing Orders provide that the Governor shall have the right to appear and be represented before the Special Committee during its investigations. Rule 4(b) of Part 2 of the Third Schedule to the Senate Standing Orders further accords the County Assembly the right to appear and be represented before the Special Committee during its investigations. Pursuant to these provisions of the law, the Special Committee invited both the Governor and the County Assembly to appear and be represented before the Special Committee.

The County Assembly was represented by Dr. Muthomi Thiankolu, Mr. Jacob Ngwele, Mr. Mwirigi Eric Muriuki, Mr. Mwereru Boniface Mawira, and Abdikadir Sheikh in the proceedings. The Meru county governor was represented by *Messrs* Mr. Manasses Mwangi, Elias Mutuma and Mr. Robert Mutembei.

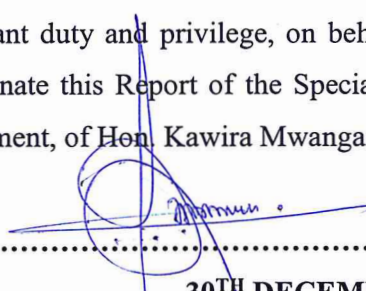
**Mr. Speaker Sir,**

The Special Committee wishes to thank the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee further extends its appreciation to the County Assembly of Meru County and its Advocates, and the Governor and her advocates for their submissions in this matter. The Special Committee also appreciates the media for the coverage of its proceedings during the course of the investigations.

**Mr. Speaker Sir,**

It is now my pleasant duty and privilege, on behalf of the Special Committee, to present and commend to the Senate this Report of the Special Committee on the Proposed Removal from Office, by Impeachment, of Hon. Kawira Mwangaza, the Governor for Meru County.

SIGNED: .....



30<sup>TH</sup> DECEMBER, 2022

SEN. (DR.) BONI KHALWALE, CBS, MP

**CHAIRMAN, SPECIAL COMMITTEE ON THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR FOR MERU COUNTY.**

**ADOPTION OF THE REPORT ON THE PROPOSED REMOVAL, BY  
IMPEACHMENT, OF THE GOVERNOR OF MERU COUNTY**

**We, the undersigned Members of the Special Committee on the Proposed Removal, By  
Impeachment, of the Governor of Meru County, do hereby append our signatures to  
adopt this Report-**

Sen. (Dr.) Boni Khalwale, CBS, MP	-Chairperson	
Sen. Agnes Kavindu Muthama, MP	-Vice-Chairperson	
Sen. Johnes Mwaruma, MP	-Member	
Sen. Peris Pesi Tobiko, CBS, MP	-Member	
Sen. Karungo Thang'wa, MP	-Member	
Sen. Joseph Githuku Kamau, MP	-Member	
Sen. Jackson Mandago, EGH, MP	-Member	
Sen. Roba Ali Ibrahim, EGH, MP	-Member	
Sen. Eddy Gicheru Oketch, MP	-Member	
Sen. Edwine Sifuna, MP	-Member	
Sen. Esther Okenyuri	-Member	



## 1.0 INTRODUCTION

1. Pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, No. 17 of 2012, on 14<sup>th</sup> December, 2022, the County Assembly of Meru approved a Motion “to remove from office, by impeachment,” the Governor for Meru County.

2. Article 181 of the Constitution provides as follows-

### ***Removal of a county governor***

(1) *A county Governor may be removed from office on any of the following grounds—*

*(a) gross violation of this Constitution or any other law;*

*(b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;*

*(c) abuse of office or gross misconduct; or*

*(d) physical or mental incapacity to perform the functions of office of county governor.*

(2) *Parliament shall enact legislation providing for the procedure of removal of a county governor on any of the grounds specified in clause (1).*

3. Section 33 of the County Governments Act provides as follows-

### ***Removal of a governor***

(1) *A member of the county assembly may by notice to the speaker, supported by at least a third of all the members, move a motion for the removal of the governor under Article 181 of the Constitution.*

(2) *If a motion under subsection (1) is supported by at least two-thirds of all the members of the county assembly—*

*(a) the speaker of the county assembly shall inform the Speaker of the Senate of that resolution within two days; and*

*(b) the governor shall continue to perform the functions of the office pending the outcome of the proceedings required by this section.*

- (3) *Within seven days after receiving notice of a resolution from the speaker of the county assembly—*
  - (a) *the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the governor; and*
  - (b) *the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.*
- (4) *A special committee appointed under subsection (3)(b) shall—*
  - (a) *investigate the matter; and*
  - (b) *report to the Senate within ten days on whether it finds the particulars of the allegations against the governor to have been substantiated.*
- (5) *The governor shall have the right to appear and be represented before the special committee during its investigations.*
- (6) *If the special committee reports that the particulars of any allegation against the governor —*
  - (a) *have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation; or*
  - (b) *have been substantiated, the Senate shall, after according the Governor an opportunity to be heard, vote on the impeachment charges.*
- (7) *If a majority of all the county delegations of the Senate vote to uphold any impeachment charge, the governor shall cease to hold office.*
- (8) *If a vote in the Senate fails to result in the removal of the governor, the Speaker of the Senate shall notify the speaker of the concerned county assembly accordingly and the motion by the assembly for the removal of the governor on the same charges may only be re-introduced to the Senate on the expiry of three months from the date of such vote.*
- (9) *The procedure for the removal of the President on grounds of incapacity under Article 144 of the Constitution shall apply, with necessary modifications, to the removal of a governor.*

*(10) A vacancy in the office of the governor or deputy governor arising under this section shall be filled in the manner provided for by Article 182 of the Constitution.*

4. By a letter dated 15<sup>th</sup> December, 2022, Ref (CAM/RES/VOL.V/2) which was received in the Office of the Speaker of the Senate on 15<sup>th</sup> December, 2022, the Speaker of the County Assembly of Meru informed the Speaker of the Senate of the approval of the Motion for the removal from office of the Governor of Meru County by the County Assembly and further forwarded to the Speaker of the Senate various supporting documents which are together with the letter attached as *Annex 1*.
5. Pursuant to section 33(3)(a) of the County Governments Act and standing order 80 (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 supporting the removal of a governor of the county pursuant to Article 181 of the Constitution-*
  - (a) the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the governor.*
6. In accordance with these provisions of law, at a special sitting of the Senate held on 20<sup>th</sup> December, 2022, the Speaker of the Senate, by way of a Communication from the Chair, informed the Senators that he had received communication from the Speaker of the County Assembly of Meru relating to the approval of the Motion by the County Assembly of Meru for the removal from office of the Governor of Meru County. The Order Paper of that sitting and the Communication made by the Speaker of the Senate on that day are attached as *Annex 2* and *Annex 3*, respectively.
7. Thereafter, the Senate Majority Leader gave Notice of the following Motion-

*THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, on 14<sup>th</sup> December, 2022, the Meru County Assembly approved a Motion to remove from office, by impeachment, Honourable Kawira Mwangaza, the Governor of Meru County;*



*AND FURTHER, WHEREAS* by a letter Ref. No. CAM/RES/VOL.V/2, dated 15<sup>th</sup> December, 2022, received in the Office of the Speaker of the Senate on Thursday, 15<sup>th</sup> December, 2022, the Speaker of the Meru County Assembly 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, and Standing Order 80(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, and Standing Order 80(1)(b), the Senate resolves to establish a special committee comprising the following Senators: -

1. Sen. (Dr.) Boni Khalwale, CBS, MP;
2. Sen. Jackson Mandago, EGH, MP;
3. Sen. Karungo Thangwa, MP;
4. Sen. Esther Okenyuri, MP;
5. Sen. Roba Ali Ibrahim, EGH, MP;
6. Sen. Peris Tobiko, MP;
7. Sen. Eddy Gicheru Oketch, MP;
8. Sen. Joseph Githuku Kamau, MP;
9. Sen. Edwine Sifuna, MP;
10. Sen. Agnes Kavindu Muthama, MP; and
11. Sen. Johnes Mwaruma, MP.

*to investigate the proposed removal from office of the Governor of Meru County and pursuant to standing order 80 (2), to report to the Senate, within ten (10) days of its appointment, on whether or not it finds the particulars of the allegations against the Governor to have been substantiated.*



8. The Senate Majority Leader moved the Motion on Tuesday, 20<sup>th</sup> December, 2022. Following deliberations on the Motion, the Senate resolved to establish a Special Committee comprising the following Senators –

1. *Sen. (Dr.) Boni Khalwale, CBS, MP;*
2. *Sen. Jackson Mandago, EGH, MP;*
3. *Sen. Karungo Thangwa, MP;*
4. *Sen. Esther Okenyuri, MP;*
5. *Sen. Roba Ali Ibrahim, EGH, MP;*
6. *Sen. Peris Tobiko, MP;*
7. *Sen. Eddy Gicheru Oketch, MP;*
8. *Sen. Joseph Githuku Kamau, MP;*
9. *Sen. Edwine Sifuna, MP;*
10. *Sen. Agnes Kavindu Muthama,MP; and*
11. *Sen. Johnes Mwaruma, MP.*

to investigate the proposed removal from office of the Governor of Meru County and to report to the Senate within ten (10) days of its appointment on whether it finds the Particulars of the Allegations to have been substantiated.

## **2.0 METHOD OF WORK**

9. In the execution of its mandate, the Committee conducted several activities which are set out below-

### **2.1 Meetings of the Special Committee**

10. Following its establishment on Tuesday, 20<sup>th</sup> December, 2022, the Special Committee held its first meeting on the same day. Pursuant to standing order 203, and rule 3(a) of Part 2 of the Third schedule of the Senate Standing Orders, at that meeting, the Director of Legal

Services, Dr. Johnson Okello, on behalf of the Clerk of Senate conducted the election of the Chairperson and Vice-Chairperson of the Committee. Senator (Dr) Boni Khalwale, CBS, MP was elected, unopposed, as the Chairperson of the Committee while Senator Agnes Kavindu Muthama, MP was elected unopposed as the Vice-Chairperson of the Committee. Further, pursuant to rule 3(b) of Part 2 of the Third Schedule to the Senate Standing Orders, the Special Committee appointed Tuesday, 27<sup>th</sup> December, 2022 as the date for the commencement of the hearing of evidence for the purposes of the investigations.

11. On Monday, 26<sup>th</sup> December, 2022, the Special Committee held a pre-hearing meeting where members considered the documentation received from the parties, the rules of procedure to be followed by the Committee in discharging its mandate as set out in Part 2 of the Third Schedule to the Senate Standing Orders and the hearing programme. The committee also considered a letter from the Advocates on record for the Governor urging the Speaker of the Senate not to approve the introduction, discussion, deliberation or in any other way act on the impeachment of the Petitioner following the resolution by the County Assembly of Meru, pending hearing and determination of Constitutional Petition No. E024 of 2022 between Hon. Kawira Mwangaza and County Assembly of Meru & another (the Petition). The Minutes of the meetings held by the Committee are attached at **Annex 4**. The committee further approved the sourcing of translation services from the Kenya Broadcasting Corporation (KBC) to translate videos submitted by the two parties which were in Meru language to English language. The identified personnel translated those videos that were in Meru language.

## **2.2 Indicative Programme of Events**

12. At its first meeting, the Committee adopted an Indicative Programme of Events which is attached as **Annex 5**. The Committee observed that, in terms of section 33(4)(b) of the County Governments Act and standing order 80(2) of the Senate Standing Orders, the Committee had only ten days within which to investigate the matter in respect of the allegations against the Governor and thereafter to report to the Senate on whether or not it found the Particulars of the Allegations against the Governor to have been substantiated.

13. It was evident to the Committee that, bearing in mind the nature of the proceedings anticipated in the hearing for the removal from office of the Governor, the Committee had the onerous task of ensuring that the statutory timelines were adhered to.

### **2.3 Invitations to Appear**

14. The Committee observed that section 33(5) of the County Governments Act and standing order 80(3) of the Senate Standing Orders provide that *“the Governor shall have the right to appear and be represented before the special committee during its investigations”*. The Committee further observed that rule 4(a) of Part 2 of the Third Schedule to the Senate Standing Orders provide that *“upon the appointment of a date for the commencement of the hearing of the evidence for the purposes of the investigation, the Committee shall invite the Governor to appear and be represented before the special committee during its investigations”*.
15. The Committee also observed that rule 4(b) of Part 2 of the Third Schedule to the Senate Standing Orders provide that *“upon the appointment of a date for the commencement of the hearing of the evidence for the purposes of the investigation, the Committee shall notify the County Assembly of the date for the commencement of the investigation and invite the Assembly to designate the members of the Assembly, being not more than three members, if any, who shall appear before the Committee to represent the Assembly during the investigation”*.
16. Having made these observations, and taking into account the limited time available, at its first meeting held on Tuesday, 20<sup>th</sup> December, 2022, the Committee resolved to invite the County Assembly and the Governor to appear before the Committee for the hearing of the evidence. Copies of the Invitations to Appear are attached as **Annex 6**.
17. The Invitation to Appear served on the County Assembly required the Assembly, where it chose to appear before the Committee, to file with the Office of the Clerk of the Senate by 5:00 pm on Saturday, 24<sup>th</sup> December, 2022 documentation —



- (a) designating the Members of the County Assembly, being not more than three, if any, who would attend and represent the Assembly in the proceedings before the Special Committee;
  - (b) indicating the mode of appearance before the Special Committee; whether in person, by Advocate, or in person and by Advocate;
  - (c) indicating the names and addresses of the persons to be called as witnesses, if any, and witness statements containing a summary of the evidence to be presented by such witnesses before the Committee; and
  - (d) specifying any other evidence to be relied on.
18. The Invitation to Appear served on the Governor required her to indicate whether she would exercise her right to appear before the Committee. If she chose to exercise that right, the Governor was informed that she would be required, to file an answer to the charges with the Office of the Clerk of the Senate by 5:00 pm on Saturday, 24<sup>th</sup> December, 2022 in which the Governor would set out-
- (a) the Governor's response to the Particulars of the Allegations;
  - (b) how the Governor proposed to appear before the Special Committee; 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 witness statements containing a summary of the evidence to be presented by such witnesses before the Committee; and
  - (d) any other evidence to be relied on.
19. Following the service of the Invitations to Appear, the County Assembly filed a Response to the Invitation to Appear on 24<sup>th</sup> December, 2022, to which was attached various annexures and which is marked as *Annex 7*.
20. The Governor filed a Response to the Invitation to Appear on 24<sup>th</sup> December, 2022 to which was attached various annexures and which is marked as *Annex 8*.



#### **2.4 Hearing**

21. The Committee met on 27<sup>th</sup> and 28<sup>th</sup> December, 2022 to hear evidence for the purposes of the investigations in accordance with its Hearing Programme which is attached at *Annex 9*. The Hansard record of the hearing is also attached as *Annex 10*.
22. The parties were represented at the hearing as follows-
  - (a) Dr Muthomi Thiankolu, Mr. Jacob Ngwele, Mr. Mwirigi Eric Muriuki, Mr. Mwereru Boniface Mawira, and Mr. Kenson Mutethia, appeared on behalf of the County Assembly; and
  - (b) Messrs Mutuma Gichuru & Associates Advocates, Mr. K.M Mwangi, and Mr. Robert Mutembei appeared on behalf of the Governor.

#### **3.0 THE CONFERENCE OF PARTIES**

23. The Committee convened a Conference of the Parties on 27<sup>th</sup> December, 2022 at 10.00 a.m. This provided an opportunity for the formal introduction of the members of the Special Committee and the Counsel for the County Assembly and the Counsel for the Governor.
24. During the Conference of Parties, the Chairperson of the Committee made the Opening Remarks where he recited the Mandate of the Special Committee. The Communication by the Chairman is attached as **Annex 11**.

#### **4.0 READING OF THE CHARGES**

25. Pursuant to rule 15 of Part 2 of the Third Schedule to the Senate Standing Orders, at the commencement of the hearing, the Clerk read out, verbatim, the Particulars of the Allegations against the Governor. The Charges appear as *Annex 12*.

#### **5.0 WORKING RETREAT**

26. The Committee held a Working Retreat on 29<sup>th</sup> and 30<sup>th</sup> December, 2022 where it considered the charges, the particulars of allegations and documentation received in regard to the matter. The Committee also considered the submissions of the County Assembly and the Governor. The Committee subsequently drafted, considered and approved its Report.

## **6.0 PRELIMINARY ISSUES**

27. The Counsel for the Governor made an application seeking to produce a Supplementary Affidavit in support of the response and an affidavit of electronic evidence. Counsel for the Governor submitted that during submission of the documents to the Special Committee, the wrong flash disk that did not have all the videos cited in the Response of the Governor was produced and therefore sought to produce the correct flash disk with all the videos that the Governor intends to rely on.
28. In response, Counsel for the County Assembly opposed the application indicating that the County Assembly shall not have sufficient opportunity to respond to the additional evidence. Counsel submitted that the Governor ought to have filed responses and evidence before the County Assembly during deliberation of the motion for removal. In addition, it is the County Assembly's submission that where a party could have exercised due diligence to produce documents and evidence and fails to do so, the party ought to be denied an opportunity to produce such evidence. Counsel therefore urged the Committee to reject the application for production of new evidence.
29. In rejoinder, Counsel for the Governor urged that the Committee upholds the Governor's right to fair hearing under Article 50 of the Constitution and allow the application with a view to establishing the truth and proper facts as a quasi-judicial committee. Counsel cited Rule 20 of Part 2 of the Third Schedule of the Senate Standing Orders which bars the County Assembly from introducing additional evidence that was not part of the allegations forwarded by the County Assembly to the Speaker of the Senate.
30. Having heard the parties, the Special Committee deliberated on the question of whether to allow the Governor's application for new evidence and directed that-
  - (a) The Committee was bound to uphold the Constitution and had a duty to investigate the matter and seek to establish the facts of the matters raised herein.
  - (b) The Committee was cognizant of the rules of evidence, the protection of the right to fair hearing set out in Article 50 of the Constitution and remained alive to the fact that to sufficiently carry out the mandate bestowed to it by the Senate, it may

call for any information, document or person that would shed more light on the matters that had been raised.

- (c) On the request therefore, it was clear to the Committee that these were matters requiring evidence in order to prove and for which the other side had an opportunity of rebuttal. The Committee could only make a fair determination having heard the evidence on both sides. This was the essence of the investigation. The investigation before the Senate was both in respect of procedural, as well as substantive matters.
- (d) The Committee therefore allowed the request on the basis that the wider mandate of the Committee was to exercise its oversight function and flows from the powers in Article 125 of the Constitution.
- (e) Based on the foregoing, the Committee found and held that the facts and issues therein could only be determined after the substantive hearing of both parties on the basis of all relevant material and evidence on the matter and that it was in the interest of justice that the Governor's application that the supplementary affidavit and the flash disk be admitted to the record.
- (f) In the interests of fairness, the County Assembly was allowed time and allowed the opportunity to cross-examine and rebut the evidence during the course of these proceedings. The County Assembly was thereby permitted to file and serve any response by close of business on that day.



**7.0 THE CHARGES AGAINST THE GOVERNOR FOR MERU COUNTY, HON.  
KAWIRA MWANGAZA**

**CHARGE 1: NEPOTISM, ILLEGAL APPOINTMENTS, UNLAWFUL DISMISSALS,  
AND USURPATION OF THE CONSTITUTIONAL AND STATUTORY FUNCTIONS  
OF COUNTY ORGANS**

The particulars of this charge are as follows—

**Ground 1: Appointment of Husband to County Offices**

31. On or around 30<sup>th</sup> September 2022, the Governor engaged in (i) gross misconduct, (ii) grossly violated Articles 10, 232, 235 and 236 of the Constitution, (iii) grossly violated section 17 of the Public Officer Ethics Act, (iv) grossly violated sections 55, 59, 59A, 60, 62, 63, 64 and 65 of the County Governments Act, (v) grossly violated sections 6 and 11 of the Meru County Youth Service Act, 2018 and grossly violated section 4 of the Public Appointments (County Assemblies Approval) Act, 2017 by:
- (a) appointing her husband to the non-existent position of the Patron of the Meru Youth Service before conducting a transparent and competitive recruitment process;
  - (b) appointing her husband to the non-existent position of the Meru Hustlers Ambassador before conducting a transparent and competitive recruitment process;
  - (c) disregarding the criteria for the establishment of offices within the County Public Service;
  - (d) failing to submit her husband's name for approval by the Assembly before making the impugned appointments;
32. The County Assembly submitted video and transcript and English Translation of utterances made by the Hon. Kawira Mwangaza, the Governor of Meru County, at the County Government Headquarters on Friday 30<sup>th</sup> September 2022 (Annex 2 and Volume 1, page 50 of the County Assembly documents). In the video and transcript, the Governor is quoted conferring on her husband the position of the patron of Meru Youth Service and Meru Hustler Ambassador where he was to work for free and without any allowances and that



he will be reporting to the Governor. The Governor is quoted as ending her speech by congratulating her husband for the new appointment.

33. The County Assembly also submitted a letter dated 19<sup>th</sup> October, 2022 from the Ethics and Anticorruption Commission to the Governor in which the Commission acknowledged receipt of various complaints raised against the Governor (Volume 1, page 59 of the County Assembly documents). Among the complaints was an allegation of the appointment of Mr. Murega Baichu as the County Youth Patron and Hustlers Ambassador. The County Assembly also alleged that Mr. Murega Baichu was attending official County meetings and issuing directives to County employees. The Commission noted that the allegations constituted serious ethical issues that if true would amount to a serious breach of chapter 6 of the Constitution, Leadership and Integrity Act, 2012, and the Public Officer Ethics Act, 2003. The Commission therefore requested the Governor to respond to the allegations.
34. The County Assembly further submitted a witness statement (Volume 5, page 14 of the County Assembly documents) by Father Elias Kinoti, a priest of the Catholic Diocese of Meru and Chaplain of Meru University of Science and Technology. In the statement, Fr. Elias Kinoti states that he is also an inaugural member of the Meru Youth Service Board. He states that he has personal knowledge of the allegation and as a member of the Board, he is aware that the Meru Youth Service Act has not established the position of Patron to which the Governor purported to appoint her husband.
35. In further support to this allegation, the County Assembly called Hon. Dennis Kiogora, a member of the Meru County Assembly who is also the Minority Chief Whip of the Assembly and the mover of the motion for the removal from office of the Governor. The witness stated that the power to establish such a position is constitutionally vested in the County Public Service Board and not the Governor. The witness also testified that as a result of the appointments, the first gentleman has been meddling with the affairs of the County Government and thereby undermining the functions of the statutory established bodies. When placed on cross examination however, the witness stated that the positions to which the first gentleman was appointed do not attract any salary or allowances.
36. In her response, the Governor stated that she never made any appointments as alleged and that her husband has never drawn any benefit from the county resources. The Governor further stated that she has been involved in various charitable activities for a long time with the support of her husband who earned the title of a 'cultural ambassador' in Meru County. She stated that in continuing with the charitable work she announced her husband as an ambassador for hustlers and patron to the youth.
37. The Governor stated that there was no evidence that she ever formally appointed her husband to any of the alleged positions. She further stated that the positions she appointed her husband to were ceremonial with no benefits. She stated that she was relying on the Affidavits ostensibly sworn on behalf of the Meru County Public Service Board, the

Department of Legal Affairs and Public Service Management and Administration. She however did not submit any such affidavits.

38. The Governor further stated that for a charge of nepotism to stand there has to be a benefit drawn and opportunity denied to more deserving members who are not relatives and therefore such a charge cannot arise when a person volunteers to help the needy.
39. She stated that her predecessors in the office of the Meru County Governor involved their spouses with use of public resources without attracting similar consequences. She made reference to a Gazette notice dated 18<sup>th</sup> May, 2018 (Volume 2, page 27 of the Governors documents) which, in the appointment of the Meru Twaweza Program Board, the then Meru County Governor, Hon. Kiraitu Murungi appointed his spouse, Mrs. Priscilla Kathuguchi Murungi – as Patron of the Board. She also made reference to a video and transcription (Annex KMS6B and Volume 2, Page 28 of the Governor's documents) where Hon. Kiraitu Murungi is quoted as stating that Mrs. Priscilla Murungi who was the first lady was among the women appointed to the Board.
40. The Governor urged the Committee to take judicial notice of the unofficial roles played by the various first ladies and first gentlemen in Kenyan leadership. She made reference to the Facebook page of the County First Ladies Association (@ CFLAkenya) indicating various roles played by County first ladies in Kenya (Volume 2, page 31 of the Governor's documents). She also made reference to a paper 2956 ostensibly presented during the 41<sup>st</sup> WEDC International Conference, Egerton University, Nakuru, Kenya, 2018 and written by Nazi Kivutha (Makueni County First Lady), Christine Mvurya (Kwale County First Lady) and a Virginia Kamowa (Phd) on "County First Lady champions in transformative partnerships for MHM advocacy and integration" (Volume 2, Page 35 of the Governor's documents).
41. During the hearing, the Governor testified that she runs a charity programme known as Okolea that is separate from her roles as the Chief Executive Officer of the Meru County Government and indicated that the positions of Ambassador of Hustlers of Meru and the Patron of Meru Youth Service were not positions in the County Government and that, in appointing the First Gentleman to the position of patron of Meru Youth Service, she did not intend to overshadow the mandate of the Meru Youth Service Board, rather she stated that the role of the First Gentleman as the patron of the Meru Youth Service entailed offering moral and financial support to the youth of Meru County. However, during cross-examination, the Governor indicated that the appointment of the First Gentleman as the patron of Meru Youth Service was done as part of the Okolea programme.
42. During cross examination by the Counsel for the County Assembly, the Governor's Chief of Staff, Mr. Harrison Gatobu Gitonga in his testimony, affirmed the Governor's averments that the Positions of the Meru Hustlers Ambassador and the Patron of Meru Youth Service are not positions within the County Government. He further maintained that the First



Gentleman does not draw any benefits from the County Government of Meru from these positions.

#### **Committee Observations**

43. Evidence adduced demonstrated that the Governor made public pronouncements at the County Headquarters appointing the Meru County First Gentleman as the patron of Meru Youth Service and the Meru Hustler Ambassador where he was to work for free, without any allowances and be required to report to the Governor.
44. Article 260 of the Constitution defines public office as “*an office in the national government, a county government or the public service, if the remuneration and benefits of the office are payable directly from the Consolidated Fund or directly out of money provided by Parliament*”.
45. Section 2 of the County Governments Act defines a county public officer as “*any person appointed by the county government and holding or acting in any county public office whether paid, unpaid, or on contractual or permanent terms but does not include a person engaged on a part-time basis in a county public body paid at an hourly or daily rate*”.
46. Evidence adduced demonstrated that the Meru County First Gentleman did not draw any salary or benefit from the Meru County Government.
47. Evidence adduced indicated that the Meru County First Gentleman was not on the County Government payroll.
48. The positions the Meru County First Gentleman is alleged to have been appointed to are non-existent in the structure of the Meru County Government. In addition, the witnesses for the County Assembly acknowledged that the positions do not exist in the structure of the Meru County Government.
49. In any event, no evidence was submitted to prove any of the alleged county office appointments by the Governor.

#### **Ground 2: Reappointment of Mr. Rufus Miriti**

50. On or around 30<sup>th</sup> September 2022, the Governor reappointed Rufus Miriti as the County Secretary without approval of the County Assembly in violation of Articles 10, 232, 235 and 236 of the Constitution, section 17 of the Public Officer Ethics Act, sections 55, 59, 59A, 60, 62, 63, 64 and 65 of the County Governments Act, section 6 and 11 of the Meru County Youth Service Act, 2018 and section 4 of the Public Appointments (County Assemblies Approval) Act, 2017.
51. The County Assembly submitted a video and transcript with translation (Kiswahili to English) of utterances made by the Governor at the County Government Headquarters on Friday 30<sup>th</sup> September, 2022 (Annex 2 and Volume 1, page 53 of the County Assembly

documents). In the video and transcript, the Governor is quoted as stating that she had retained Mr. Miriti Rufus as the County Secretary. She stated that Mr. Miriti Rufus served in the previous government and that she had retained him to hold the same office so that he could continue with his diligent service.

52. The County Assembly also submitted a screenshot of a Facebook post by the Governor (Volume 1, page 62 of the County Assembly documents). In the post, the Governor is quoted as stating that her appointment of Rufus Miriti as the County Secretary has taken many by shock. She stated that she appointed Mr. Rufus Miriti to accommodate everyone in government and congratulated him for the appointment.
53. In support of this allegation, the County Assembly called as its witness Hon. Dennis Kiogora, a Member and the Minority Chief Whip of the of the Meru County Assembly and the mover of the Motion for the removal from office of the Governor in the Assembly. The witness stated that the appointment of Rufus Miriti required the approval of the County Assembly which was ignored by the Governor in the appointment. The witness further testified that there are two case laws affirming the position (Volume 2, page 170 of the County Assembly documents).
54. The Governor denied the reappointment of the County Secretary as alleged and stated that the County Secretary was appointed in the previous regime, with the approval of the County Assembly, and his appointment extended severally including by the Former Governor therefore the County Assembly could not fault an extension that they have accommodated all along. She stated that in the evidence provided to support the impeachment motion, she merely expressed a desire to continue working with Mr. Miriti Rufus upon the conclusion of his term. The Governor further stated that her actions were within the law as she did not make any fresh appointment requiring vetting by the County Assembly.
55. In his testimony, the Chief of Staff in the Office of the Governor, Mr. Harrison Gatobu Gitonga, stated that the position of the County Secretary did not require any approval by the County Assembly. He stated that the extension of the contract for Rufus Miriti as the County Secretary was meant to facilitate a smooth transition from the outgoing county regime to the current one.

### **Committee Observations**

56. From the evidence adduced, the Governor did make public pronouncements reappointing Mr. Rufus Miriti as the Meru County Secretary.



57. Section 44(2) (b) of the County Governments Act states that “the County Secretary shall be nominated from persons competitively sourced under paragraph (a) by the governor and, with the approval of the county assembly, appointed by the governor”.
58. Pursuant to section 2 and 4 of Public Appointments (County Assemblies Approval) Act as read together with the stated section 44(2) (d) of the County Governments Act, the reappointment of a County Secretary requires approval of the County Assembly.
59. From the evidence adduced, the Governor did not seek the approval of the County Assembly in the reappointment of the County Secretary.

**Ground 3: Appointment of unqualified persons to hold County offices, namely Munene Samaritan, Ernest Mutembei, Henry Mzungu and Hilary Sandi**

60. On or around 30<sup>th</sup> September 2022, the Governor appointed unqualified persons to hold County offices without undertaking a transparent and competitive recruitment process in violation of Articles 10 (National values), 232, 235 and 236 of the Constitution, section 17 of the Public Officer Ethics Act, sections 55, 59, 59A, 60, 62, 63, 64 and 65 of the County Governments Act, section 6 and 11 of the Meru County Youth Service Act, 2018 and section 4 of the Public Appointments (County Assemblies Approval) Act, 2017. The unqualified persons allegedly so appointed are Mr. Munene Samaritan, Mr. Earnest Mutembei, Mr. Henry Mzungu and Mr. Hillary Sandi with the appointments allegedly made to the offices of the Director of Special Programs, Director Monitoring and Evaluation, Director Administration and Director Communication respectively:
61. The County Assembly submitted a video and transcript with translation (*Kimeru* to English) of utterances made by one Hillary Mutuma Mugambi at Meru County Headquarters (Volume 1, page 55 of the County Assembly documents). Mr. Hillary Mutuma Mugambi is quoted as stating that he is a lawyer that was chosen as a Meru County Government’s Spokesperson, Director in charge of Press Services and Communication in Meru County.
62. The County Assembly also submitted a letter dated 19<sup>th</sup> October, 2022 from the Ethics and Anticorruption Commission to the Governor in which the Commission acknowledged receipt of various complaints raised against the Governor. Among the complaints was an allegation that the appointment of the acting Director of Communication, Mr. Hillary Mutuma Sandi did not follow the laid down public service recruitment regulations. The Commission noted that the allegations constituted serious ethical issues that if true would amount to a serious breach of chapter 6 of the Constitution, Leadership and Integrity Act, 2012, and the Public Officer Ethics Act, 2003. The Commission therefore requested the Governor to respond to the allegations.

63. In support of this allegation, the County Assembly called as its witness Hon. Dennis Kiogora, a Member and Minority Chief Whip of the Meru County Assembly and the mover of the Motion for the removal from office of the Governor in the Assembly. The witness produced a video in which Hillary Sandi acknowledges the appointment to the office of the Director of Press services and Communication. The witness further stated that the position was later advertised after the impeachment of the Governor which he believes is an acknowledgement of the illegality on the part of the Governor.
64. The County Assembly did not submit evidence supporting the alleged appointment of Munene Samaritan, Ernest Mutembei and Henry Mzungu, being unqualified persons.
65. In her response, the Governor stated that the appointment of Hillary Sandi was within the right of the Governor as per an advisory by the Intergovernmental Relations Technical Committee on political appointments to the office of the Governor and Deputy Governor and further guidance to the Governor by the Meru County Public Service Board to hire several officers allowed within the law. She stated that the allegation indicated an embarrassing failure by the County Assembly to know the law. She further stated that the allegation was false and had been alleged to whip up public emotions and create a false narrative.
66. The Governor stated that standing guidelines on appointments to the Office of County Governors allows the Governor discretion to make certain appointments of staff that attend to her more personally and forward the names to the County Public Service Board. She maintained that the respective role was appointive and not subject to competitive recruitment as alleged in the impeachment motion.
67. The Governor made reference to a letter dated 16<sup>th</sup> August, 2022 by the Intergovernmental Relations Technical Committee to the Chairpersons of County Public Service Boards (Volume 2, page 79 of the Governor's documents) which stated that the Committee had not replaced or changed the status of the advisory issued by the defunct Transition Authority on political appointments by governors and deputy governors.
68. The Governor also made reference to the said letter from the defunct Transition Authority to all interim County Secretaries dated 5<sup>th</sup> September, 2013 (Volume 2, page 81 of the Governor's documents). The letter advises that some officers, including the Director, Governor's Press Service, be identified by the Governor and appointed by the County Public Service Board on contract terms during the tenure of the Governor. The Governor further submitted an internal memorandum from the Office of the County Public Service Board dated 1<sup>st</sup> September, 2022 confirming the appointment of Mr. Mutuma Hillary Mugambi as Director, Communication.



69. The Governor made reference to an internal memo dated 22<sup>nd</sup> November, 2022 from the Governor's Chief of Staff to the Meru County Public Service Board (Volume 2, page 49 of the Governor's documents) which sought confirmation of the employment status of Mr. Murega Baichu, Mr. Munene Samaritan, Mr. Ernest Mutembei and Mr. Henry Mzungu. She also made reference to an internal memo (in reply to the memo above) dated 23<sup>rd</sup> November, 2022 from the Secretary, Meru County Public Service Board to the Governor's Chief of Staff (Volume 2, page 51 of the Governor's documents) stating that Mr. Murega Baichu, Mr. Munene Samaritan, Mr. Ernest Mutembei and Mr. Henry Mzungu had not been employed by the Board and that none of them appeared on the Meru County payroll. She further made reference to an internal memo dated 19<sup>th</sup> December, 2022 from the Secretary, Meru County Public Service Board to the Governor's Chief of Staff (Volume 2, page 52 of the Governor's documents) reiterating the contents of their former memo (dated 23<sup>rd</sup> November, 2022).
70. The Governor made reference to an internal memo dated 22<sup>nd</sup> November, 2022 from the acting Chief Officer, Legal Affairs, Public Service Management and Administration to the Governor's Chief of Staff (Volume 2, page 53 of the Governor's documents) stating that the payroll unit had verified and confirmed that Mr. Murega Baichu, Mr. Munene Samaritan, Mr. Ernest Mutembei and Mr. Henry Mzungu have never been employees of the County Government. The said memo had attached a copy of another memo dated 22<sup>nd</sup> November, 2022 from the Deputy Payroll Manager to acting Chief Officer, Legal Affairs, Public Service Management and Administration (Volume 2, page 54 of the Governor's documents) confirming the information made in the initial memo from the acting Chief Officer, Legal Affairs, Public Service Management and Administration.
71. The Governor further made reference to an internal memo dated 15<sup>th</sup> December, 2022 from the Governor's Chief of Staff to the Chief Officer, Legal Affairs, Public Service, Administration and Management (Volume 2, page 55 of the Governor's documents) which sought details of the substantive directors in the directorates of Monitoring and Evaluation, Administration and Special Programs. She also made reference to an internal memo (in reply to the memo above) dated 15<sup>th</sup> December, 2022 from the acting Chief Officer, Legal Affairs, Public Service Management and Administration to the Governor's Chief of Staff (Volume 2, page 56 of the Governor's documents) stating that the Director of Monitoring and Evaluation was Mr. Kigunda Patrick Gituma and the Director of Special Programs was Mr. Ngari Antony Kimathi. The Memo also indicated that Ms. Kiarie Christine Makena was the Director of Administration but her contract ended on 18<sup>th</sup> August, 2022.
72. The Governor also made reference to an internal memo dated 19<sup>th</sup> December, 2022 from the Secretary, Meru County Public Service Board to the Governor's Chief of Staff (Volume 2, page 57 of the Governor's documents) stating that the Director of Efficiency Monitoring Unit was Mr. Kigunda Patrick and the Director of Special Programs was Mr. Ngari Antony Kimathi. The Memo also indicated that Ms. Christine Makena was the Director of

Administration but her contract ended on 18<sup>th</sup> August, 2022. The said memo also attached signed Offers of Appointment for the three directors (Volume 2, page 58 of the Governor's documents).

73. Further, the Governor made reference to an Affidavit sworn by a Mr. David Muthungu on 17<sup>th</sup> December, 2022 (Volume 2, page 64 of the Governor's documents) where he states that he has never been an employee of Meru County Government. The Affidavit also indicates that whereas the deponent's name is not Henry Mzungu but David Muthungu, the allegation that a Mr. Henry Mzungu was irregularly employed as a Director of administration was targeted towards him due to the deponent's closeness with the Governor.
74. In addition, made reference to an Affidavit sworn by Mr. Salesio Munene Kanga on 17<sup>th</sup> December, 2022 (Volume 2, page 65 of the Governor's documents) where he states that he has never been an employee of Meru County Government. The Affidavit also indicates that whereas the deponent's name is not Munene Samaritan but Salesio Munene Kanga, the allegation that a Mr. Munene Samaritan was irregularly employed as a Director of Special Programs was targeted towards him due to the deponent's closeness with the Governor.
75. The Governor also made reference to an Affidavit sworn by Mr. Ernest Mutembei Jinja on 17<sup>th</sup> December, 2022 (Volume 2, page 66 of the Governor's documents) where he states that he has never been an employee of Meru County Government. The Affidavit also indicates that whereas the deponent's name is not Earnest Mutembei but Ernest Mutembei Jinja, the allegations that Mr. Earnest Mutembei was irregularly employed as a Director Monitoring and Evaluation was targeted towards him due to the deponent's closeness with the Governor.
76. The Governor also made reference to a document dated 22<sup>nd</sup> November, 2022 advertising various positions in the County Executive, including for Director, Monitoring and Evaluation and Director, Special Programs and Social Welfare (Volume 2, page 67 of the Governor's documents).

#### **Committee Observations**

77. Video evidence adduced quotes Mr. Hillary Mutuma Mugambi stating that he is a lawyer that was chosen as a Meru County Government's Spokesperson, Director in charge of Press Service and Communication in Meru County.
78. The office of the Director, Governors press Service is a political appointment in the Office of a County Governor's office as advised in the letter dated 5<sup>th</sup> September, 2013 from the defunct Transitional Authority. A letter dated 16<sup>th</sup> August, 2022 by the Intergovernmental Relations Technical Committee to the Chairpersons of County Public Service Boards



indicates that the advisory by the defunct Transitional Authority is still applicable. The advisory authorizes the governor to identify persons to be appointed in that position by the County Public Service Board on contract terms during the tenure of the Governor.

79. The County Assembly did not submit evidence supporting the alleged appointment of Munene Samaritan, Ernest Mutembei and Henry Mzungu to the County offices.

#### **Ground 4: Usurping and trashing the Constitutional and statutory functions of the County Assembly, the Meru County Public Service Board and the Meru County Youth Service Board.**

80. On or around 30<sup>th</sup> September 2022, the Governor usurped and trashed the constitutional and statutory functions of the County Assembly, the Meru County Public Service Board and the Meru County Youth Service Board in violation of Articles 10 (National values), 232, 235 and 236 of the Constitution, section 17 of the Public Officer Ethics Act, sections 55, 59, 59A, 60, 62, 63, 64 and 65 of the County Governments Act, section 6 and 11 of the Meru County Youth Service Act, 2018 and section 4 of the Public Appointments (County Assemblies Approval) Act, 2017, the County Assembly did not provide any evidence or make any submission to substantiate the allegation.
81. The Governor denied the allegation of unlawful appointments, unlawful dismissals and usurpation of the constitutional and statutory functions of county organs. She stated that she was a stranger to the allegations as the persons complained of being appointed have never occupied any office nor drawn any benefit from the County as ostensibly demonstrated by the County Public Service Board.
82. The Governor's Chief of Staff, Mr. Harrison Gatobu Gitonga in his testimony denounced the allegations that the offices of the Meru Hustlers Ambassador and the Patron for Youth Affairs are positions in the County Government of Meru. He further stated that the appointment of the First Gentleman to the positions did not amount to a usurpation of the constitutional and statutory functions of the Meru County Public Service Board and the Meru Youth Service Board.

#### **Committee Observations**

83. Evidence adduced demonstrated that the Governor made public pronouncements at the County Headquarters appointing the Meru County First Gentleman as the patron of Meru Youth Service and the Meru Hustler Ambassador where he was to work for free, without any allowances and be required to report to the Governor.
84. Article 260 of the Constitution defines public office as "*an office in the national government, a county government or the public service, if the remuneration and benefits*

*of the office are payable directly from the Consolidated Fund or directly out of money provided by Parliament”.*

85. Section 2 of the County Governments Act defines a county public officer as “any person appointed by the county government and holding or acting in any county public office whether paid, unpaid, or on contractual or permanent terms but does not include a person engaged on a part-time basis in a county public body paid at an hourly or daily rate”.
86. Evidence adduced demonstrated that the Meru County First Gentleman did not draw any salary or benefit from the Meru County Government.
87. Evidence adduced indicated that the Meru County First Gentleman was not on the County Government payroll.
88. The position the Meru County First Gentleman is alleged to have been appointed to is non-existent in the structure of the Meru County Government. In addition, the witnesses for the County Assembly acknowledged that the position does not exist in the structure of the Meru County Government.
89. In any event, no evidence was submitted to prove any of the alleged county office appointments by the Governor.
90. Further, no evidence was adduced to indicate the functions of the “patron of Meru Youth Service” that usurped the powers of the Meru Youth Service Board.

#### **Ground 5: Roadside appointments of County workers at Timau**

91. On or around 22<sup>nd</sup> September 2022, the Governor grossly violated (i) Articles 10, 232, 235 and 236 of the Constitution and (ii) grossly violated sections 55, 59, 59A, 60, 62, 63, 64 and 65 of the County Governments Act by:
  - (a) appointing firefighters at a public rally at Timau (in misguided and unsustainable populism) before conducting a transparent and competitive recruitment process;
  - (b) subjecting potential applicants for county jobs to public humiliation by converting the crowd at the public rally as the advertising, recruiting, shortlisting and appointing authority; and
  - (c) usurping and trashing exclusive constitutional and statutory mandates and functions of the Meru CPSB.
92. The County Assembly submitted a video and transcript with translation (*Kimeru* to English) of utterances made by the Governor on 22<sup>nd</sup> September 2022 at a public rally in Timau Ward (Annex 6 and Volume 1, page 63 of the County Assembly documents). The Governor is quoted as stating that she would do an honorable thing and employ four young men as firefighters from Timau. She is thereafter quoted as selecting four individuals from members of the public in the rally ostensibly for employment as county officers. She



finalizes the address by stating that she has (just) employed four people from that village and will employ many more as all county jobs will be “given” (sic) through public participation.

93. In support of this allegation, the County Assembly called as its witness Hon. Dennis Kiogora, a Member and Minority Chief Whip of the Meru County Assembly and the mover of the motion for the removal from office of the Governor in the Assembly. The witness stated that he became aware of the appointment of firefighters at Timau from the video adduced and that he was absent from the rally. He also stated that he had no confirmation from the County Public Service Board that the ‘recruited firefighters’ were ever employed into the County Public Service.
94. In her response, the Governor denied the allegation and stated that her public statements were taken out of context and extrapolated for ulterior motives as there was no record that the appointments emanating from political rallies were employed by the County Public Service. She stated that her statements merely encouraged members of the public to submit their names to the appointing bodies for consideration to solve unique challenges in their area.
95. The Governor stated that it is a routine procedure that all appointments in human resource are done through formal appointments in writing. She further stated that all political statements are implemented upon retreat to offices through due process and not in public rallies and that an impeachment motion cannot be based on unfulfilled political statements or involvement of the public in generating solutions to solve unique challenges. She noted that the County Public Service Board had confirmed that no such usurpation of its roles had occurred.
96. The Governor made reference to an internal memo dated 22<sup>nd</sup> November, 2022 from the Governor’s Chief of Staff to the Meru County Public Service Board (Volume 2, page 93 of the Governor’s documents) which sought the confirmation from the Board of the appointment of firefighters at Timau Fire Station. She also made reference to an internal memo from the acting Chief Officer, Legal Affairs, Public Service Management and Administration to the Governor’s Chief of Staff (Volume 2, page 95 of the Governor’s documents) stating that no firefighters were recruited in the County Fire Service in Timau on 22<sup>nd</sup> September, 2022.
97. The Governor further made reference to an internal memo dated 22<sup>nd</sup> November, 2022 from the Deputy Payroll Manager to the Chief Officer, Legal Affairs, Public Service Management and Administration (Volume 2, page 96 of the Governor’s documents) stating that no firefighters were recruited in the County Fire Service in September, 2022 and that the only staff included in the County payroll were personal staff of the Governor and the

Deputy Governor. She also made reference to an internal memo dated 23rd November, 2022 from the Fire Service in charge to the Chief Officer, Legal Affairs, Public Service Management and Administration (Volume 2, page 97 of the Governor's documents) stating that the Fire Service had not received any newly employed firefighters in any of the fire stations.

98. In his opening statement, Mr. Elias Mutuma, Counsel for the Governor, stated that these were political statements made by the Governor as a way of offering solutions to problems faced by the communities and that thereafter the Governor seeks advice and is guided according to the law. However, during the hearing, the Governor stated that at event in question, she merely identified young men and ladies as part of an 'Okolea Programme' that she runs privately and that these young men and ladies were to be recruited for the purpose of calling and liaising with the 'Okolea office' on issues of fire or firefighting within Timau in order to get assistance from the County Government. The Governor then testified that she did not declare that the appointment of firefighters was being done under the 'Okolea Programme' when identifying the four individuals.
99. During the hearing, the Chief of Staff in the office of the Governor indicated that he had sent letters to the office of the Chief Officer, Legal Affairs, Public Service Management and Administration who confirmed that the four individuals were not employees of the County Government of Meru. The Chief of staff also adduced letters from the payroll manager who indicated that the four individuals were not on the Meru County Payroll.

#### **Committee Observations**

100. The Governor made public pronouncements that she would employ four young men as firefighters from Timau and proceeded to select four individuals from members of the public in the rally, ostensibly for employment in the county government.
101. In making the pronouncement, the Governor did not mention or make any reference to the Okolea programme.
102. The evidence indicates that the Governor attempted to direct county government officials to employ the four individuals in the county government officials and the county secretary is not an employee of the Okolea programme.
103. The Governor did not adduce any evidence to demonstrate that the four individuals are employed by the Okolea programme.

#### **Ground 6: Roadside appointments of County workers at Nkubu**



104. On or around 9<sup>th</sup> September 2022, the Governor engaged in (i) gross misconduct, (ii) gross violation of (i) Articles 10, 232, 235 and 236 of the Constitution and (iii) gross violation of sections 55, 59, 59A, 60, 62, 63, 64 and 65 of the County Governments Act by:
- (a) appointing market guards at a public rally at Nkubu (in misguided and unsustainable populism) before conducting a transparent and competitive recruitment process; and
  - (b) usurping the exclusive constitutional and statutory mandates of the Meru CPSB.
105. The County Assembly submitted a video and transcript with translation (*Kimeru* to English) of utterances made by the Governor on 9<sup>th</sup> September 2022 at a Public rally in Nkubu in Nkuene Ward (Annex 7 and Volume 1, page 73 of the County Assembly documents). The Governor is quoted inquiring whether there was any watchman who needed a job. She thereafter quoted selecting, for employment, three watchmen from members of the public. She finalizes the address by stating that she has (just) employed the three watchmen.
106. Hon. Dennis Kiogora, a Member and Minority Chief Whip of the Meru County Assembly and the mover of the motion for the removal from office of the Governor in the Assembly testified that he learnt of the appointments at Nkubu from the video adduced and that he was absent from the rally. He also stated that he had no confirmation from the County Public Service Board that the 'recruited watchmen' were ever employed into the County Public Service.
107. The Governor denied the allegation and stated that her public statements were taken out of context and extrapolated for ulterior motives as there was no record of any appointments emanating from political rallies as confirmed by the County Public Service. She stated that her statements merely encouraged members of the public to submit their names to the appointing bodies for consideration to solve unique challenges in their area.
108. The Governor stated that it is a routine procedure that all appointments in human resource are done through formal appointments in writing. She further stated that all political statements are implemented upon retreat to offices through due process and not in public rallies and that an impeachment motion cannot be based on unfulfilled political statements or involvement of the public in generating solutions to solve unique solutions. She noted that the County Public Service Board had confirmed that no such usurpation of its roles had occurred.
109. The Governor made reference to an internal memo dated 22<sup>nd</sup> November, 2022 from the Governor's Chief of Staff to the Meru County Public Service Board (Volume 2, page 94 of the Governor's documents) which sought the confirmation from the Board of the

appointment of County workers at Nkubu. She also made reference to an internal memo from the acting Chief Officer, Legal Affairs, Public Service Management and Administration to the Governor's Chief of Staff (Volume 2, page 95 of the Governor's documents) stating that no county worker was recruited in Nkubu on 9<sup>th</sup> September, 2022.

110. The Governor further made reference to an internal memo dated 23<sup>rd</sup> November, 2022 from the Deputy Payroll Manager to the Chief Officer, Legal Affairs, Public Service Management and Administration (Volume 2, page 96 of the Governor's documents) stating that no County worker was recruited in September, 2022 and that the only staff included in the County payroll were personal staff of the Governor and the Deputy Governor.
111. During the hearing, the Governor testified that she was offering employment to the 'watchmen' at Nkubu in her capacity as the Director of the 'Okolea Programme' and not in her capacity as the Governor, Meru County.
112. Also during the hearing, the Chief of Staff in the Office of the Governor indicated that he had sent letters to the office of the Chief Officer, Legal Affairs, Public Service Management and Administration who confirmed that the three individuals were not employees of the County Government of Meru. The Chief of staff also adduced letters from the payroll manager who indicated that the three individuals were not on the Meru County Payroll.

#### **Committee Observations**

113. The evidence adduced indicates that the Governor made public pronouncements that she would employ three young men as guards. She selected three individuals for employment as watchmen.
114. The evidence indicates that the Governor attempted to direct the sub-county administrator to employ the three individuals in the county government and the sub-county administrator is not an employee of the Okolea programme.
115. In making the pronouncement, the Governor did not mention or make any reference to the Okolea programme.
116. The Governor did not adduce any evidence to demonstrate that the three individuals are employed by the Okolea programme.

#### **Ground 7: Roadside appointments of County workers at Kianjai**

117. On or around 9<sup>th</sup> September 2022, the Governor engaged in (i) gross misconduct, (ii) gross violation of Articles 10, 232, 235 and 236 of the Constitution and (iii) gross violation of sections 55, 59, 59A, 60, 62, 63, 64 and 65 of the County Governments Act by:



- (a) illegally directing Ward and Sub County Administrators to employ sweepers and market guards at a public rally in Kianjai (in misguided and unsustainable populism) before conducting a transparent and competitive recruitment process; and
  - (b) directing Ward and Subcounty Administrators to usurp exclusive constitutional and statutory functions and mandates of the Meru CPSB.
- 118. The County Assembly submitted a video and transcript with translation (*Kimeru* to English) of utterances made by the Governor on 11<sup>th</sup> November, 2022 at a Public rally at Kianjai Market (Annex 8 and Volume 1, page 79 of the County Assembly documents). The Governor is quoted as stating that before the following day, ward and sub-county administrators ought to have selected five people who would be sweeping Kianjai Market. She indicated that the selected people ought to be young men from that village who would be taken through the normal process so that they get employed to sweep the market. She further stated that before the sun sets the following day, ward and sub-county administrators ought to have selected two people to guard the market as watchmen.
- 119. The County Assembly also submitted a letter dated 19<sup>th</sup> October, 2022 from the Ethics and Anticorruption Commission to the Governor in which the Commission acknowledged receipt of various complaints raised against the Governor. Among the complaints was an allegation of the recruitment of county cleaners through a public declaration in contravention of the law and recruitment guidelines. The Commission noted that the allegations constituted serious ethical issues that if true would amount to a serious breach of chapter 6 of the Constitution, Leadership and Integrity Act, 2012, and the Public Officer Ethics Act, 2003. The Commission therefore requested the Governor to respond to the allegations.
- 120. Hon. Dennis Kiogora, a Member and Minority Chief Whip of the Meru County Assembly and the mover of the motion for the removal from office of the Governor in the Assembly testified that he learnt of the appointment of sweepers and market guards at Kianjai from the video adduced and that he was absent from the rally. The witness also stated that he had no confirmation from the County Public Service Board as to whether the proposed sweepers were ever recruited.
- 121. The Governor denied the allegation and stated that her public statements were taken out of context and extrapolated for ulterior motives as there was no record of any appointments emanating from political rallies as confirmed by the County Public Service. She stated that her statements merely encouraged members of the public to submit their names to the appointing bodies for consideration to solve unique challenges in their area.



122. The Governor stated that it is a routine procedure that all appointments in human resource are done through formal appointments in writing. She further stated that all political statements are implemented upon retreat to offices through due process and not in public rallies and that an impeachment motion cannot be based on unfulfilled political statements or involvement of the public in generating solutions to solve unique solutions. She noted that the County Public Service Board had confirmed that no such usurpation of its roles had occurred.
123. The Governor made reference to an internal memo dated 22<sup>nd</sup> November, 2022 from the Governor's Chief of Staff to the Meru County Public Service Board (Volume 2, page 92 of the Governor's documents) which sought the confirmation from the Board of the appointment of County workers at Kianjai. She also made reference to an internal memo from the acting Chief Officer, Legal Affairs, Public Service Management and Administration to the Governor's Chief of Staff (Volume 2, page 95 of the Governor's documents) stating that no county worker was recruited in Kianjai on 9<sup>th</sup> September, 2022.
124. The Governor further made reference to an internal memo dated 23<sup>rd</sup> November, 2022 from the Deputy Payroll Manager to the Chief Officer, Legal Affairs, Public Service Management and Administration (Volume 2, page 96 of the Governor's documents) stating that no County worker was recruited in September, 2022 and that the only staff included in the County payroll were personal staff of the Governor and the Deputy Governor.
125. Also during the hearing, the Chief of Staff in the office of the Governor indicated that he had sent letters to the office of the Chief Officer, Legal Affairs, Public Service Management and Administration who confirmed that the five individuals were not employees of the County Government of Meru. The Chief of staff also adduced letters from the payroll manager who indicated that the five individuals were not on the Meru County Payroll.

#### **Committee Observations**

126. The evidence adduced indicates that the Governor directed ward and sub-county administrators to select five people to sweep Kianjai Market and the ward and sub-county administrator are not employees of the Okolea programme.
127. In making the pronouncement, the Governor did not mention or make any reference to the Okolea programme.
128. The Governor did not adduce any evidence to demonstrate that the five individuals are employed by the Okolea programme to sweep Kianjai Market.

#### **Ground 8: Illegal Committee on Meru Municipality**

129. On or around 21<sup>st</sup> October 2022, the Governor (i) grossly violated Articles 10, 232, 235 and 236 of the Constitution, (ii) grossly violated sections 12, 14, 15 and 20 of the Urban Areas and Cities Act and (iii) grossly violated the Charter establishing Meru Municipality by:
- (a) illegally appointing a committee to manage Meru Municipality affairs at a public rally at Kinoru, yet the function is vested in the Meru Municipal Board;
  - (b) directing the aforesaid illegal committee to usurp the functions of the Meru Municipal Board;
  - (c) usurping the functions of the Meru CPSB;
  - (d) trashing the procedures for the appointment of County Public Officers; and
  - (e) spewing hate speech against the G4S company.
130. The County Assembly submitted a video and transcript with translation (*Kimeru to English*) of utterances made by the Governor on 21<sup>st</sup> October, 2022 at a Public rally at Kinoru Stadium Ward (Annex 9 and Volume 1, page 82 of the County Assembly documents). The Governor is quoted identifying members of an unnamed Committee and determining its chairperson, vice chairperson, treasurer and organizing secretary. The Governor, using the term 'we', states that she 'gives' the Committee the mandate to ensure it rescues those enslaved at the G4S offices around Mohamed Mute's building and make sure elections are well conducted and manned. She also indicates that the County Government intends to 'look' for a special squad, equip the squad with motorbikes, dress them in a 'special uniform' and send it to the roads in Meru County 'to make sure there are no vehicles hooting looking for passengers'.
131. In support of this allegation, the County Assembly called Hon. Dennis Kiogora, a Member and Minority Chief Whip of the Meru County Assembly and the mover of the motion for the removal from office of the Governor in the Assembly. The witness stated that the governor had appointed a Committee to deal with matters that are within the statutory mandate of the Municipal Board. However, upon cross examination, the witness indicated that he is not aware of any benefits drawn from County resources by the Committee members.
132. The Governor denied the allegation, stating that it was false as the Meru Municipal Board had not made any complaints or alleged any interference with their work on account of any of her actions. She stated that her utterances in the public rally alluded to in the allegation were taken out of context as she was actually reconciling groups of taxicab operators and asking rival groups to form a team for dispute resolution. She insisted that the Committee was an informal team that has never taken any functions of the Municipal Board and that



the Board confirmed the same through a letter. The Governor also maintained that she has never interfered with the working of the Meru Municipality Committee.

133. The Governor made reference to a written and signed statement by Bishop Edward Buria, the Chairperson of the Meru Municipality Board dated 16<sup>th</sup> December, 2022 (Volume 2, page 102 of the Governor's documents). The statement lists the membership of the Board and states that the Board has never felt that its duties and mandate have been taken away, transferred or performed by any person. Bsp. Edward Buria stated that he was making the statement to clear the allegation and that in his understanding the Governor's actions were '*a one-time instance*' done to quell matatu and taxi operators' unrest within Meru Town, a simple and specific mandate limited to three days.
134. The Governor further made reference to an Affidavit dated 16<sup>th</sup> December, 2022 by a Mr. Edward Bundi Geoffrey, a taxi driver operating within Meru Municipality (Volume 2, page 105 of the Governor's documents). In the Affidavit, Mr. Edward Bundi Geoffrey concurs with the Governor that she did not create a Committee to undertake municipal functions but rather intervened to settle a dispute among taxi owners, operators and other parties.

#### **Committee Observations**

135. The evidence adduced indicates that the Governor identified members of an unnamed Committee and determined its chairperson, vice chairperson, treasurer and organizing secretary.
136. No evidence was tendered on the functions of the Committee and whether or not the functions usurped the mandate of the Meru Municipality Board.

#### **CHARGE 2: INCITEMENT, BULLYING, VILIFICATION, AND MISLEADING CAMPAIGNS AGAINST OTHER LEADERS**

The particulars of this charge are as follows—

137. The Governor has (i) grossly violated Articles 10, 73 and 75 of the Constitution, (ii) grossly violated section 19 of the Public Officer Ethics Act, (iii) grossly violated sections 29 and 34 of the Leadership and Integrity Act and (iv) repeatedly engaged in gross misconduct by:
  - (a) holding public vilification, incitement and humiliation rallies against Members of the Assembly and other elected leaders;
  - (b) falsely accusing Members of the Assembly and other elected leaders of cartelism, blackmail, greed, corruption and intimidation;



- (c) holding public vilification, incitement and humiliation rallies against the Catholic Church and the Catholic clergy; and
- (d) inciting the public against the Members of the Assembly and other elected leaders while knowing that such conduct can easily trigger violent reactions and cause serious breaches of the peace.

### **Ground 1: Humiliation of the Minority Leader**

138. On or about 24<sup>th</sup> October 2022, the Governor (i) grossly violated Articles 10, 73 and 75 of the Constitution, (ii) grossly violated section 19 of the Public Officer Ethics Act, (iii) grossly violated sections 29 and 34 of the Leadership and Integrity Act and (iv) engaged in gross misconduct by:
- (a) bullying and inciting the public against the Minority Leader and the Member of Assembly for Akithii Ward, Hon. Mwenda Ithili (“the Minority Leader”), at a public rally held at Mweronkanga;
  - (b) requiring the Minority Leader to make a public apology for unknown and undisclosed wrongs at the public rally held at Mweronkanga;
  - (c) violently grabbing a microphone from the Minority Leader at the public rally held at Mweronkanga.
  - (d) offering to protect the Minority Leader against the Speaker of the Assembly from unknown and undisclosed dangers; and
  - (e) falsely accusing the Members of the Assembly and other elected leaders of cartelism, blackmail, greed, corruption and intimidation.
139. On the allegation that the Governor, on or about 24<sup>th</sup> October 2022, engaged in acts of bullying and inciting the public against the County Assembly Minority Leader, Hon. Mwenda Ithili, compelling him to make a public apology for unknown and undisclosed wrongs and violently grabbing a microphone from him at a public rally held at Mweronkanga; offering to protect the Minority Leader against the Speaker of the County Assembly from unknown and undisclosed dangers and falsely accusing the Members of the County Assembly and other elected leaders of cartelism, blackmail, greed, corruption, and intimidation in violation of Articles 10, 73 and 75 of the Constitution, section 19 of the Public Officer Ethics Act and sections 29 and 34 of the Leadership and Integrity Act:
140. The County Assembly submitted a video and transcript with translation (*Kimeru* to English) of utterances made by the Governor at a public rally at Mweronkanga in Akithii Ward on Monday 24<sup>th</sup> October, 2022 (Annex 11a and Volume 1, page 86 of the County Assembly documents). In the transcript, the Governor is quoted as requesting Hon. Mwenda Ithili to apologize to the public without disclosing the wrongs that Hon. Mwenda

Ithili had committed. She is further quoted as asking Hon. Mwenda Ithili not to fear the Speaker and that she would protect him.

141. The County Assembly relied on a witness statement by Hon. Mwenda Ithili, Member for Akithii Ward and the County Assembly Minority Leader (Volume 5, page 2 of the County Assembly documents). In the witness statement, Hon. Mwenda Ithili states that the Governor has been at loggerheads with the Members of the County Assembly, the Speaker of the County Assembly, the Senator, church leaders, Njuri Ncheke elders and Members of the National Assembly.
142. In the witness statement, Hon. Mwenda Ithili also states that on 24<sup>th</sup> October 2022, during a rally held in Akithi Ward, the Governor incited the crowd against him and other Members of the County Assembly and demanded that he makes an apology for unknown and undisclosed wrongs. He further states that he refused to apologize and his refusal immensely angered the Governor who violently grabbed the microphone from his hands while he was still addressing the rally. He states that the Governor thereafter "*hounded him off the stage*".
143. Hon. Mwenda Ithili, while referring to the actions of the Governor as bullying, belittling and humiliating, further states that the said actions before his constituents caused untold embarrassment, disrepute and odium to him and his office. He stated that he had received inquiries from various parts of the world on the reasons for the Governor's anger towards him.
144. The Governor, in her response, denied the allegation stating that there was no evidence adduced in support of the same. She stated that none of the alleged victims of vilification had sworn an affidavit or lodged a complaint with any of the relevant bodies such as the National Cohesion Integration Commission. She further stated there was no evidence constituting humiliation and that the video submitted in support of the allegation is taken out of context and misused in support of the false narrative.
145. The Governor denied humiliating the Minority Leader, stating that she actually expressed forgiveness for him despite the Minority Leader demonstrating spite for her. She stated that the Minority Leader could not be both the complainant and the judge on the same issue as he was the mover of the impeachment motion and participated in its approval without declaring a conflict of interest. In support of her response, the Governor relied on a video clip of a press address by Hon. Mwenda Ithili (Volume 2, page 108 of the Governor's documents) in which he is quoted stating that all the information being released by the Governor was false and that she was lying aimlessly and inciting people against Members of the County Assembly.



## **Committee Observations**

146. There is discord and public disagreements between the Governor and the County Assembly Minority Leader with accusations and counter-accusations.

## **Ground 2: Vilification of the Minority Chief Whip and Other Leaders**

147. On or around 25<sup>th</sup> October 2022, the Governor (i) grossly violated Articles 10, 73 and 75 of the Constitution, (ii) grossly violated section 19 of the Public Officer Ethics Act, (iii) grossly violated sections 29 and 34 of the Leadership and Integrity Act and (iv) engaged in gross misconduct by:
- (a) inciting the public against the Minority Whip and the Member of Assembly for Abogeta West Ward, Hon. Dennis Kiogora DMK (“the Minority Whip”) at a public rally held at Ngongo in Abogeta West Ward;
  - (b) falsely accusing the Minority Whip of “stoning” her; and
  - (c) falsely accusing the Members of the Assembly and other elected leaders of cartelism, blackmail, greed, corruption, and intimidation.
148. The County Assembly submitted a video and transcript with translation (*Kimeru* to English) of utterances made by the Governor at a public rally at Ngongo in Abogeta West Ward on Tuesday 25<sup>th</sup> October, 2022 (Annex 12 and Volume 1, page 91 of the County Assembly documents). In the transcript, the Governor is quoted as stating that the Member for Abogeta Ward stoned her.
149. The Governor in her response stated that the allegation on incitement, bullying, vilification and misleading campaigns against other leaders was a falsehood and an absurdity where the members of the County Assembly are said to have raised complaints as victims and yet went on to debate and participate in the impeachment process without declaring any conflict of interest. She stated that none of the alleged victims of vilification have sworn any affidavit or lodged any complaint with any of the national bodies such as the National Cohesion Integration Commission meant to investigate such accusations.
150. The Governor stated that the Minority Chief Whip had demonstrated personal differences with her and that he is even quoted in public questioning the Governor’s ability to govern the county way before the August 2022 General Elections and the allegations of vilification are not only biased but lack objectivity and do not meet the threshold for consideration in an impeachment motion having been presented by the same accuser. She further stated that the Minority Chief Whip cannot be a complainant and the judge at the same time,



considering that he moved the impeachment motion and also participated in the approval without declaring any conflict of interest.

151. In support of her response, the Governor relied on a video clip and transcript (in English) of utterances made by Hon. Dennis Kiogora DMK and sourced from Weru TV (Volume IV of the Governor's documents) and stated that the video relates to utterances made by the Minority Whip vilifying her, making false allegations touching on her character and accusing her of bringing thieves and goons to the county assembly. The transcript quotes Hon. Dennis Kiogora DMK stating that they (using the plural "we") need the Ward Fund and Bursary because 'they' were chosen by votes and people tell 'them' their problems. He thereafter states that 'she' hangs a cross on her neck, asking the Meru people to close their eyes and pray while 'she' steals from them.
152. In the said transcript, Hon. Dennis Kiogora DMK is further quoted as stating that 'she' is the number one looter and insinuating that 'she' constructed a "huge storey building" with NGAAF funds. He also states that 'she' brought goons to stone Members of the County Assembly and break their car windows. He further states that 'they' are ready to go back to the ballot in the event that 'she' asks the President to dissolve Meru County.

#### **Committee Observations**

153. There is discord and public disagreements between the Governor and the County Assembly Minority Whip with accusations and counter-accusations.

#### **Ground 3: Vilification of the Senator of Meru County**

154. On or around 12<sup>th</sup> September 2022, the Governor (i) grossly violated Articles 10, 73 and 75 of the Constitution, (ii) grossly violated section 19 of the Public Officer Ethics Act, (iii) grossly violated sections 29 and 34 of the Leadership and Integrity Act and (iv) engaged in gross misconduct by:
  - (a) inciting the public against the Senator of Meru County, Hon. Kathuri Murungi ("the Senator") at a public rally held at Laare in Ntunene Ward;
  - (b) falsely accusing the Senator of demanding a share of county government appointments;
  - (c) falsely accusing the Senator of antagonising and creating a wedge between the Governor and the President of the Republic of Kenya;
  - (d) falsely accusing the Senator of cartelism, blackmail, greed, corruption, and intimidation;
155. The County Assembly submitted a video and Transcript with translation (*Kimeru* to English) of utterances made by the Governor and the first gentleman, Mr. Murega Baichu

at a public rally at Laare on 12<sup>th</sup> September, 2022 (Annex 13 and Volume 1, page 98 of the County Assembly documents). In the transcript, Mr. Murega Baichu is quoted as stating that owing to her refusal to share her government with Hon. Franklin Mithika Linturi (Cabinet Secretary for Agriculture) and Hon. Kathuri Murungi (the Senator for Meru County), they ignited divisions between her and the President.

156. The Governor, in her response, stated that the allegation on incitement, bullying, vilification and misleading campaigns against other leaders was false, absurd and consisting of hearsay. She stated that the allegations are not only flimsy but also baseless and essentially expressions of political differences by her political competitors. She further stated that none of the alleged victims of vilification had sworn an affidavit or lodged a complaint with any of the national bodies such as the National Cohesion Integration Commission meant to investigate such accusations. The Governor also stated that the political differences between her and her political competitors could not form the basis of an impeachment motion.
157. In his opening statement, Mr. Elias Mutuma, Counsel for the Governor, stated that the allegation of vilification of the Senator of Meru County was a creation of the Members of the County Assembly and that the Governor and other leaders in Meru County were in good working relations. Further, the Counsel stated that the Governor has been willing to work with other leaders in Meru and had invited all elected leaders, including Members of Parliament and Members of the County Assembly for a consultative meeting at her official residence. In his submissions, he relied on a letter from the Governor addressed to the County Assembly, dated 31<sup>st</sup> October, 2022 inviting all elected leaders of Meru County to a consultative meeting. In support of this, the Counsel relied on the mentioned letter found in Volume II, page 42 of the Governor's documents.

### **Committee Observations**

158. Hon. Kathuri Murungi, Senator of Meru County and Deputy Speaker of the Senate has not made any complaints or representations on the allegations.
159. No documents were submitted by Hon. Kathuri Murungi either to the County Assembly or to the Senate raising the allegations herein.
160. The Committee has also not been provided with evidence that Hon. Kathuri Murungi has filed any proceedings on this matter against the Governor.
161. No evidence was adduced to demonstrate vilification of Hon. Kathuri Murungi, Senator of Meru County and Deputy Speaker of the Senate, by the Governor.
162. The evidence adduced refers to utterances made by someone other than the Governor.



#### **Ground 4: Vilification of the Cabinet Secretary for Agriculture**

163. On or around 12<sup>th</sup> September 2022, the Governor (i) grossly violated Articles 10, 73 and 75 of the Constitution, (ii) grossly violated section 19 of the Public Officer Ethics Act, (iii) grossly violated sections 29 and 34 of the Leadership and Integrity Act and (iv) engaged in gross misconduct by:
- (a) bullying and inciting the public against the Cabinet Secretary for Agriculture, Hon. Franklin Mithika Linturi (“the Cabinet Secretary”) at a public rally held at Laare in Ntunene Ward;
  - (b) falsely accusing the Cabinet Secretary of demanding a share of the county government appointments;
  - (c) falsely accusing the Cabinet Secretary of antagonising and creating a wedge between the Governor and the President of the Republic of Kenya; and
  - (d) falsely accusing the Cabinet Secretary of cartelism, blackmail, greed, corruption and intimidation.
164. The County Assembly submitted a video and transcript with translation (*Kimeru* to English) of utterances made by the Governor and the first gentleman, Mr. Murega Baichu at a public rally at Laare on 12<sup>th</sup> September, 2022 (Annex 13 and Volume 1, page 98 of the County Assembly documents). In the transcript, Mr. Murega Baichu is quoted as stating that owing to her refusal to share her government with Hon. Franklin Mithika Linturi (Cabinet Secretary for Agriculture) and Hon. Kathuri Murungi (the Senator of Meru County), they ignited divisions between her and the President.
165. In support of this allegation, the County Assembly called Hon. Dennis Kiogora, a member of the Meru County Assembly who is also the majority leader of the Assembly and the mover of the motion for the removal from office of the Governor. The witness relied on utterances made by the Governor in the supplied video. He indicated that he was not present at the public rally held at Laare on the 12<sup>th</sup> of September, 2022, in which event the utterances were made. The witness also stated he did not inform the Cabinet Secretary for Agriculture about the utterances before presenting the motion to the County Assembly. Further, the witness acknowledged that he is aware of the recent photos of the Governor and the Cabinet Secretary for Agriculture attending events together.
166. The Governor, in her response, stated that the allegation on incitement, bullying, vilification and misleading campaigns against other leaders was false, absurd and consisting of hearsay. She stated that the allegations are not only flimsy but also baseless and essentially expressions of political differences by her political competitors. She further stated that none of the alleged victims of vilification had sworn an affidavit or lodged a



complaint with any of the national bodies such as the National Cohesion Integration Commission meant to investigate such accusations. The Governor also stated that the political differences between her and her political competitors could not form the basis of an impeachment motion.

#### **Committee Observations**

167. Hon. Franklin Linturi, the Cabinet Secretary of Agriculture, has not made any complaints or representations on the allegations.
168. No documents were submitted by Hon. Franklin Linturi, the Cabinet Secretary of Agriculture, either to the County Assembly or to the Senate raising the allegations herein.
169. The Committee has also not been provided with evidence that Hon. Franklin Linturi, the Cabinet Secretary of Agriculture, has filed any proceedings on this matter against the Governor.
170. No evidence was adduced to demonstrate vilification of Hon. Franklin Linturi, the Cabinet Secretary of Agriculture.
171. The evidence adduced refers to utterances made by someone other than the Governor.

#### **Ground 5: Vilification of the MP for Tigania East Constituency**

172. On or around the 9<sup>th</sup> November 2022, the Governor and her husband (i) grossly violated Articles 10, 73 and 75 of the Constitution, (ii) grossly violated section 19 of the Public Officer Ethics Act, (iii) grossly violated sections 29 and 34 of the Leadership and Integrity Act and (iv) engaged in gross misconduct by:
  - (a) Inciting the public against the Member of Parliament for Tigania East Constituency, Hon. Mpuru Aburi (“the MP for Tigania East”) at a public rally held at Mbaranga in Karama Ward;
  - (b) Falsely accusing the MP for Tigania East of demanding that the Governor appoints the MP’s wife as a County Executive Committee Member;
  - (c) Falsely accusing the MP for Tigania East of demanding that the Governor prequalifies his twelve companies for the award of county tenders;
  - (d) Falsely accusing the MP for Tigania East of presenting fake pending bills for payment by the County Government; and
  - (e) Falsely accusing the MP for Tigania East of cartelism, blackmail, greed, corruption and intimidation.

173. The County Assembly submitted a video and Transcript with translation (*Kimeru* to English) of utterances made by the First gentleman Mr. Murega Baichu at a public rally at Mbaranga in Karama Ward on 9<sup>th</sup> November, 2022 (Annex 14 and Volume 1, page 102 of the County Assembly documents). In the transcript, Mr. Murega Baichu is quoted as stating that the reason why the MP for Tigania East hates the Governor is because his request for the governor to employ his wife to the County Executive Committee was declined. Mr. Murega Baichu is further quoted as indicating that he has phone recordings and SMS evidence and that if the MP wishes to go to court, he could do so. Mr. Murega Baichu is also quoted as stating that the MP had brought to his office twelve (12) companies seeking for a grant of road construction works for him to be in good terms with the Governor. In addition, the First Gentleman is quoted as stating that the MP had delivered to Governor Kawira Mwangaza a bill of Ksh. 10 million for payment for work done for the Government of Meru which was declined by the Governor who indicated that there was need for verification of the work done.
174. In support of this allegation, the County Assembly called Hon. Dennis Kiogora, a member of the Meru County Assembly who is also the majority leader of the Assembly and the mover of the motion for the removal from office of the Governor. The witness stated that the statements were made by the First Gentleman and not the Governor. Further, the witness stated that he had not taken any statements from the MP before introducing the impeachment motion. He also stated that he had not petitioned the County Assembly for
175. The Governor, in her response, stated that the allegation on incitement, bullying, vilification and misleading campaigns against other leaders was false, absurd and consisting of hearsay. She stated that the allegations are not only flimsy but also baseless and essentially expressions of political differences by her political competitors. She further stated that none of the alleged victims of vilification had sworn an affidavit or lodged a complaint with any of the national bodies such as the National Cohesion Integration Commission meant to investigate such accusations. The Governor also stated that the political differences between her and her political competitors could not form the basis of an impeachment motion.

#### **Committee Observations**

176. Hon. Mpuri Abuuri, the Member of Parliament for Tigania East, has not made any complaints or representations on the allegations.
177. No documents were submitted by Hon. Mpuri Abuuri, the Member of Parliament for Tigania East, either to the County Assembly or to the Senate raising the allegations herein.
178. The Committee has also not been provided with evidence that on. Mpuri Abuuri, the Member of Parliament for Tigania East, has filed any proceedings on this matter against the Governor.



179. No evidence was adduced to demonstrate vilification of on. Mpuri Abuuri, the Member of Parliament for Tigania East.
180. The evidence adduced refers to utterances made by someone other than the Governor.

**Ground 6: Vilification of the Catholic Church and Clergy**

181. On or around 17<sup>th</sup> October 2022, the Governor (i) grossly violated Articles 10, 73 and 75 of the Constitution, (ii) grossly violated section 19 of the Public Officer Ethics Act, (iii) grossly violated sections 29 and 34 of the Leadership and Integrity Act and (iv) engaged in gross misconduct by;
- (a) Inciting the public against the Roman Catholic Church (“the Catholic Church”) and the Bishop of the Catholic Diocese of Meru, Mr. Salesius Mugambi (“the Catholic Bishop”), at a public rally held at the former Igoji Boys Secondary School;
  - (b) Falsely accusing the Catholic Church of grabbing public land;
  - (c) Falsely accusing the Catholic Church of cartelism, blackmail, greed, corruption and intimidation;
  - (d) Conducting a mock public prayer to demean and humiliate the Catholic Church and Catholic Clergy; and
  - (e) Inciting the public against religious leaders while knowing that such conduct can easily trigger violent reactions and pose a serious breach of the peace.
182. The County Assembly submitted a video and transcript with translation (*Kimeru* to English) of utterances made by the Governor at the Former Igoji Boys Secondary School in Akithii Ward on 17<sup>th</sup> October, 2022 (Annex 15 and Volume 1, page 108 of the County Assembly documents). In the transcript, the Governor is quoted stating that even if ‘they’ wear red, purple or pink apparel and spin the fire, it would be blessings to the just. She states that she is protecting the wealth of Igoji children and Meru people. She further states that if the elections were repeated the results would be the same. She is also quoted stating that she is not worried by impeachment and that would not become a thief to avoid impeachment.
183. The County Assembly also submitted the witness statement of one Fr. Elias Kinoti, a Priest in the Catholic Diocese of Meru, Chaplain of the Meru University of Science of Technology and a member of the inaugural Meru Youth Service Board. In the witness statement, Fr. Elias Kinoti stated that around 17<sup>th</sup> October, 2022, the Bishop of the Diocese, Salesius Mugambi, requested him to attend a meeting convened by the Governor at the Meru Youth Service Centre to explain the agreement between the Catholic Church and the Meru Youth Service Board. Fr. Elias Kinoti further stated that the Governor addressed an



excited crowd at the Centre and began inciting the crowd against the Catholic Church and the Bishop of the Diocese. He further stated that during the meeting, he went forward to calm the charged crowd and informed the Governor that her queries on the payments to the Catholic Church for the lease of the land in question were best discussed at a closed-door meeting. He also stated that the Governor would not hear him and merely wanted to humiliate and coerce him to agree to her false claims that the Catholic Church was guilty of grabbing public land, cartelism, extortion, greed, corruption and intimidation.

184. Fr. Elias Kinoti also claimed, in his witness statement, that while speaking, the Governor's security personnel accosted him and falsely accused him of trying to hit the Governor. He further stated that he had later learnt that the Governor concluded her "false rants" by conducting a mock prayer demeaning the Catholic Church and its clergy.
185. Fr. Elias Kinoti testified that when he went to the venue, he expected that there would be a briefing with the Governor to address the issues between Meru Youth Service and the church. He stated that upon arrival at the meeting, he found the Governor talking and cross-examining people. He averred that upon inquiry by the Governor, he identified himself as a member of the board and further that the Governor accused him and Catholics of being cartels. While making reference to the lease agreement, Fr. Elias Kinoti also explained that the Governor stated that the lease was illegal.
186. Fr. Elias Kinoti stated that the Catholic Church developed facilities in the property and they have been using the same for the last 60 years. He also stated that in the event that there was dispute as to the ownership of the land, the National Land Commission was the body legally empowered to investigate the allegations. The priest further stated that he opted to testify in the matter because he was verbally abused and humiliated; that because of the utterances of the Governor he was apprehensive and feared for his life. He concluded that the Governor put negative emotions to the people in a manner likely to cause a breach of the peace.
187. On cross examination by Counsel for the Governor, Fr. Elias Kinoti stated that he gave his testimony in his own capacity and not on behalf of the church. He further confirmed that he was not giving evidence on behalf of the Meru Youth Service Board or anyone else as stated in his affidavit. He also stated that he neither recorded any statements nor filed any Affidavits with the County Assembly regarding the impeachment motion and that he did not participate at the proceedings before the County Assembly of Meru. He confirmed that the County Government of Meru was the registered owner of the property.
188. The Governor, in her response, stated that the allegation is baseless and not supported by evidence. She stated that her remarks were taken out of context as she was addressing a real problem facing the county. She stated that she was calling out specific members of the

Catholic Diocese of Igoji and praying for them to change as they had leased to Meru County land which, according to her investigations and land records, belongs to the Gikui Community and that Igoji Boys School was a public school that was illegally converted to a private school in the name of the Catholic Diocese of Meru.

189. The Governor further noted that the Catholic Church had not lodged a complaint on the allegations. She relied on the following documents to support her response:
- (a) A Lease dated 28<sup>th</sup> February, 2019 between the Catholic Diocese of Meru and the Meru County Government over property Title No. Igoji/Gikui/959 (Volume II, page 112 of the Governor's documents) for the monthly rent of Kshs. 324,000/- for a period of 5 years.
  - (b) The Governor's summary on the ownership and rental accruals on property Title No. Igoji/Gikui/959 (Volume II, page 137 of the Governor's documents).
  - (c) A Short History of Igoji Boys Secondary School by a Mr. Arthur M'Itimitu, a self-declared former chairperson of a Building Committee (P.T.A) for the school (Volume II, page 141 of the Governor's documents).
  - (d) Letter from the Catholic Bishop of Meru to the Clerk of the defunct Meru Central County Council dated 29<sup>th</sup> November, 2003 applying for the issuance of a Freehold Title Deed over property No. Igoji/Gikui/959 (measuring 13.2 ha) to be issued to the church (Volume II, page 143 of the Governor's documents).
  - (e) A letter from Gikui Community to the defunct Meru Central County Council dated 16<sup>th</sup> November, 2005 on the determination of the ownership of property No. Igoji/Gikui/959 (Volume II, page 144 of the Governor's documents).
  - (f) A letter from the defunct Meru Central County Council to the District Education Officer dated 19<sup>th</sup> December, 2005 stating that Land Parcel No. Igoji-Gikui/959 had not been transferred to the Catholic Diocese (Volume II, page 143 of the Governor's documents).
  - (g) An extract of the title document/search over property No. Igoji/Gikui/959 indicating the registered owner as Meru County Council with a restriction (Volume II, page 146 of the Governor's documents).
  - (h) Copies of Invoice Nos. 5669, 5751, 5752, 5753 and 5754 from the Catholic Diocese of Meru to the County Government of Meru - Office of the CEO, Meru Youth Service for payment of lease of Igoji Boys Centre of a total of Kshs. 7,776,000/= which is the issue that the Governor sought to address.
  - (i) A letter from the Catholic Diocese of Meru to the Chief Executive Officer dated 12<sup>th</sup> March, 2021 acknowledging receipt of Kshs. 5,530,344.85.

#### **Committee Observations**

190. The third witness for the County Assembly, Fr. Elias Kinoti testified that he did not represent the Catholic Diocese of Meru.



191. The alleged victim of vilification, that is the Catholic Diocese of Meru, did not send any formal representative or submit any documents to the County Assembly or the Senate to complain of the alleged vilification.
192. The evidence adduced demonstrated that the land belongs to the County Government of Meru.
193. No evidence was adduced to demonstrate vilification of the Catholic Church or clergy by the Governor.
194. As the Chief Executive Officer of the County Government and the custodian of the Meru County Government, the Governor was within her rights to intervene in the matter when the same was brought to her attention.

### **CHARGE 3: FORCEFUL ENTRY INTO THE ASSEMBLY PRECINCTS AND MOBILISATION OF UNLAWFUL RIOTS AGAINST MEMBERS OF THE ASSEMBLY**

The particulars of this charge are as follows—

195. On or around 19<sup>th</sup> October 2022, the Governor and her husband (i) grossly violated Articles 10, 73, and 75 of the Constitution, (ii) grossly violated sections 5 and 7 of the County Assemblies Powers and Privileges Act, 2017 and (iii) engaged in gross misconduct by:
  - (a) forcefully entering the precincts of the Assembly;
  - (b) Falsely accusing members of the Assembly and other elected leaders of cartelism, blackmail, greed, corruption and intimidation;
  - (c) organizing a violent demonstration against the Members of the Assembly at the Assembly precincts; and
  - (d) addressing a riotous crowd at the precincts of the Assembly
196. The County Assembly submitted a video and transcript of utterances made by the Governor at Meru County Headquarters on the 19<sup>th</sup> October, 2022 (Annex 17 and Volume 1, page 115 of the County Assembly documents). The Governor is quoted as stating that she had been barred from entering the Assembly which she managed to do by force or by God's grace. The Governor is also quoted stating that immediately she started addressing the Assembly, the members left the chambers.
197. The County Assembly also submitted a video and transcript with translation (*Kimeru* to English) of utterances made by the Governor at the County Assembly of Meru while addressing members of the public on the 19<sup>th</sup> October, 2022 (Volume 1, page 116 and Annex 16 of the County Assembly documents). The Governor is quoted as stating that she had done her work as the Governor to address the assembly but the members moved out. She is further quoted as stating that she will neither be intimidated nor scared and that she would not leave the government and their land to the Members of the County Assembly.



She is also quoted as stating that she would not be corrupted by the MCAs and that she is ready to go back to elections if the Members of the County Assembly want.

198. The Governor is quoted as stating that the Members of the County Assembly wanted her to give them Kshs. 5 million while at other times they wanted her to employ their wives and friends. She is further quoted as stating that the Members of the County Assembly are against them working together and that she would work alone without being scared. She is also quoted inviting anyone to contest with her for the Governor's seat including the Speaker.
199. The County Assembly also relied on the Witness Statement of Hon. Lucy Mukaria, Member of the County Assembly (Volume 5, page 8 of the County Assembly documents) who states that on or about the 19<sup>th</sup> October 2022 the Governor led a rowdy mob to the precincts of the County Assembly. She states that she was at the Assembly at around 1.00 p.m. when she heard loud noises from outside. She rushed outside where she saw the Governor leading a rowdy group of around fifty (50) people while advancing towards the Assembly chamber.
200. Hon. Lucy Mukaria states that the Sergeant-at-arms immediately closed the chamber doors and managed to secure the Assembly chamber from invasion by the rowdy mob. She further states that the Governor and the rowdy mob turned and walked towards the reception where she accosted Hon. Frida Naito (a nominated Member of the County Assembly) saying that she should contest an election instead of being "nominated under the blankets".
201. She states that the Governor went upstairs with the rowdy mob towards the Speaker's office. She further states that the Speaker entered his office moments after the Governor stormed into the same office as the rowdy mob chanted outside. The Speaker robed and led the Governor into the Assembly chamber where all the 69 Members of the County Assembly were in the Chamber waiting for her inaugural address.
202. Hon. Lucy Makaria states that as the Governor began her address, the Members of the County Assembly walked out in protest at the events of the afternoon coupled with the events of the preceding few days (which the Governor had spent vilifying Members of the County Assembly at various public forums). She further states that the walkout denied the assembly the quorum required to transact the afternoon's business wherafter the Speaker declared that there was no quorum and adjourned the session.
203. She states that the speaker escorted the Governor out of the Assembly chamber where she entered her vehicle and started addressing a riotous mob through the sunroof. She further states that as the Governor raged and ranted against the MCAs at the Assembly gate, the riotous mob started throwing stones occasioning damage to several cars.
204. Hon. Lucy Mukaria, MCA while being cross-examined by Mr. Elias Mutuma, Counsel for the Governor, acknowledged that the impeachment motion did not contain any specific allegations on the accusations against the Governor relating to the alleged statement of the nominated Members being "*nominated under the blankets*"; accosting Hon. Fridah Naito

(a nominated MCA); and that of the Governor threatening the Speaker's secretary at the County Assembly.

205. She further confirmed to the Committee that Hon. Fridah Naito and the Speaker's secretary were not witnesses in the case before the Senate Special Committee, and that she did not testify as a witness before the County Assembly.
206. The County Assembly also relied on the testimony of Hon. Dennis Kiogora, MCA. The MCA when placed on cross-examination by counsel for the Governor stated that a meeting of the County Assembly members was held a day before the material day of the Governors visit to the assembly. He however affirmed that the meeting was not intended at inciting the members of the County assembly.
207. In her response, the Governor denied the allegation of forceful entry into the County Assembly precincts and mobilization of unlawful riots against members of the assembly. She termed the allegation as a distortion of facts and circumstances and states that she was set up and became a victim of violence in a plan by the members to present her as a violent and uncooperative person.
208. The Governor states that she was invited by the County Assembly to make a gazetted address to the County Assembly and on that on the material day she was actually received by the speaker and granted the podium but the members walked out on her forcing the speaker to adjourn the session. The Governor states had she had forced her way to the County Assembly as alleged, the Speaker would not have accommodated her to take the podium and would have announced the presence of a stranger.
209. The Governor further states that she was subjected to violence when she started receiving greetings from a few members of the public who had gathered along the road which is outside the county assembly premises and that stones were even thrown from the County Assembly targeting her before the police intervened. She states that the matter was reported to the police and recorded as **O.B Number 72/19/10/2022** after her car window was hit by a stone from the County Assembly.
210. The Governor also states that prior to the address, she had faced difficulties where Members of the County Assembly raised conditions to dictate the contents of her speech before they could listen to her. She states that she found this request strange and contrary to the procedure for such an address since the members would have a chance to debate the address thereafter. She concludes that the MCAs had a hidden agenda in making such a request.
211. The Governor makes reference to Gazette Notice No. 12586 dated 12<sup>th</sup> October, 2022 (Volume 2, page 155 of the Governor's documents) which notified Members of the County Assembly of Meru and the general public of the opening of the Third County Assembly and address by the Governor on Wednesday, 19<sup>th</sup> October 2022.
212. The Governor further makes reference to a video clip and transcript with translation (*Kimeru* to English) of utterances she made outside the County Assembly of Meru on the 19<sup>th</sup> October, 2022 (Volume 2, page 156 of the Governor's documents) in which she is



quoted making an inquiry as to why the gates of the County Assembly were locked yet it was her duty to address them.

213. The Governor also makes reference to a video clip and transcript with translation (*Kimeru* to English) of the proceedings of the County Assembly of Meru County Assembly of Meru on the 19<sup>th</sup> October, 2022 (Volume 2, page 157 of the Governor's documents) in which the Speaker of the County Assembly, Hon. Ayub B. Solomon is quoted welcoming the Governor to make her address to the assembly.
214. The Governor further makes reference to a video clip and transcript with translation (*Kimeru* to English) of utterances she made while addressing members of the public outside the County Assembly of Meru on the 19<sup>th</sup> October, 2022 (Volume 2, page 158 of the Governor's documents). She is quoted as stating that she would safeguard public money and that she would protect the Government. The Governor also stated that she had performed her duty.
215. The Governor also made reference to a video clip and transcript of footage captured outside the County Assembly of Meru on the 19<sup>th</sup> October, 2022 (Volume 2, page 159 of the Governor's documents) which shows stones being pelted at the Governor from the County Assembly.

#### **Committee Observations**

216. A sitting of the County Assembly was published in the *Kenya Gazette* for the opening of the 3<sup>rd</sup> County Assembly of Meru and address by the Governor on Wednesday, 19<sup>th</sup> October, 2022.
217. Standing Order 21(1) of the Meru County Assembly Standing Orders provides that "*the Governor shall address each newly elected Assembly*".
218. Standing Order 24 (2) of the Meru County Assembly Standing Orders provides that the Governor's address shall be heard in silence and the evidence adduced shows that the Members of the County Assembly walked out when the Governor started giving her address to the Assembly.
219. Despite the gazettement of the sitting and the anticipated address of the County Assembly by the Governor, the Members of the County Assembly, led by the Speaker, held a press conference the day preceding the gazetted sitting and warned the Governor to stay away from the County Assembly.
220. There was no evidence adduced to show that the scheduled sitting was degazetted.
221. The walkout by the Members of the County Assembly appeared to have been pre-meditated.
222. The Speaker of the County Assembly of Meru has an obligation to remain neutral at all times and failed to discharge his duties to the high standard required of the presiding officer of a House of Parliament.



223. No evidence was tendered of the alleged assault of Hon. Fridah Naito and Hon Fridah Naito herself has not filed any documents to complain of the alleged assault.
224. The evidence adduced indicates that there was a commotion when the Governor tried to access the County Assembly.
225. The adduced video evidence indicates the Governor stating that she had been barred from entering the County Assembly but that she managed to do so by force or by God's grace. During the hearing, the Governor clarified that the entry to the County Assembly was by God's grace.

#### **CHARGE 4: VIOLATION OF THE PUBLIC FINANCE MANAGEMENT LAWS**

The particulars of this charge are as follows—

##### **Ground 1: Directing Meru Teaching and Referral Hospital to spend all revenue at source**

226. On or around 6<sup>th</sup> September, 2022, the Governor, (i) grossly violated Articles 201 and 207 (1) of the Constitution, (ii) grossly violated sections 159 of the Public Finance Management Act, 2012, (iii) grossly violated sections 12 and 24 of the Public Officer Ethics Act, (iv) grossly violated sections 16 and 35 of the Leadership and Integrity Act, (v) engaged in gross abuse of office by directing the Meru Teaching and Referral Hospital to spend all revenue at source, whereas all monies raised or received by or on behalf of the County should be paid into the County Revenue Fund.
227. The County Assembly submitted a Video and Transcript with translation (*Kimeru* to English) of utterances made by the Governor on 6<sup>th</sup> September, 2022 at Meru Teaching and Referral Hospital (Volume 1, page 122 of the County Assembly documents) where the Governor is quoted stating that that from that day, that the money collected in the hospital '*should not go to the County Government*' and that such monies should be retained by the hospitals. She further states that '*no SAGA or parastatal should be remitting its money to other bodies*'. She further states that she asks that from the monies already with the hospital, averaging Kshs. 30 Million, Kshs. 20 Million be used to procure medicine.
228. In support of this allegation, the County Assembly called Hon. Dennis Kiogora, a member of the Meru County Assembly who is also the Minority Chief Whip of the Assembly and the mover of the motion for the removal from office of the Governor. The witness adopted the video and a transcript translation as indicated in the motion. The witness further stated no money had been lost in the County. The witness also indicated that no money had been expended without a budget.

229. The Governor stated that the allegation is misconceived and intended to whip up public emotions with a view to superficially clothe the impeachment motion with an appearance of substance that it does not have. She stated that pursuant to the Meru County Teaching & Referral Hospital Board Act, the Meru Teaching and Referral Hospital is a gazetted Level 5 Hospital that is also a Semi-Autonomous County Government Agency (SAGA) and is therefore authorized to have its own budget and not required to remit its collections to the County revenue account. The Governor made reference to the Meru County Teaching & Referral Hospital Board Act (Volume 2, page 162 of the Governor's documents).
230. The Governor further stated that the evidence in support of the impeachment motion is an unverified video clip where the Governor is quoted directing that the hospital should use its funds in accordance with its status as a Semi-Autonomous County Government Agency to address its unique needs rather than sending the money to the County Revenue Collection Account.
231. The Committee was referred to (**annex KM-S22 (pg 178 of Volume I)**) as follows—
- (a) Statement and clarification from the Meru Teaching and Referral Hospital on the allegations against the Governor on spending at source.
  - (b) Minutes of the finance sub-committee held on 5<sup>th</sup> July, 2022 at the CEO's office;
  - (c) Minutes of the Hospital Board of Directors meeting on 14<sup>th</sup> July, 2022 approving the sub-committee reports including finances; and,
  - (d) Approval of the annual budget estimates for the year 2022-2023.
232. The Governor denied the allegation and stated that her public statements were taken out of context and extrapolated for ulterior motives as there was no record of any appointments emanating from political rallies as confirmed by the County Public Service. She stated that her statements merely encouraged members of the public to submit their names to the appointing bodies for consideration to solve unique challenges in their area.
233. The Governor stated that it is a routine procedure that all appointments in human resource are done through formal appointments in writing. She further stated that all political statements are implemented upon retreat to offices through due process and not in public rallies and that an impeachment motion cannot be based on unfulfilled political statements or involvement of the public in generating solutions to solve unique solutions. She noted that the County Public Service Board had confirmed that no such usurpation of its roles had occurred.



### **Committee Observations**

234. The evidence indicates that Governor, while addressing the staff of Meru Teaching and Referral Hospital, stated that money collected by the Hospital should not be remitted to the County Revenue Fund and that such monies should be retained by the hospitals.
235. Article 207(1) of the Constitution states that “*there shall be established a Revenue Fund for each county government, into which shall be paid all money raised or received by or on behalf of the county government, except money reasonably excluded by an Act of Parliament*”.
236. Section 109(2)(b) of the Public Finance Management Act states that “*the County Treasury for each county government shall ensure that all money raised or received by or on behalf of the county government is paid into the County Revenue Fund, except money that may, in accordance with other legislation, this Act or County legislation, be retained by the county government entity which received it for the purposes of defraying its expenses.*”
237. There is evidence that the Meru Teaching and Referral Hospital is a semi-autonomous government agency pursuant to the Meru County Teaching and Referral Hospital Board Act, 2019.
238. Section 14(1)(b) as read together with section 14(2) and (3) of the Meru County Teaching and Referral Hospital Board Act allow the utilization of funds collected by the Meru Teaching and Referral Hospital to defray its expenses.
239. However, no evidence was adduced to confirm that the Hospital retained any funds collected and utilized it at source.

### **Ground 2: Issuing waivers and fees at the Meru Teaching and Referral Hospital**

240. On or around 6<sup>th</sup> September 2022, the Governor, (i) grossly violated Articles 201 and 207 (1) of the Constitution, (ii) grossly violated sections 159 of the Public Finance Management Act, 2012, (iii) grossly violated sections 12 and 24 of the Public Officer Ethics Act, (iv) grossly violated sections 16 and 35 of the Leadership and Integrity Act, (v) engaged in gross abuse of office by issuing waivers on fees at the Meru Teaching and Referral Hospital, whereas the County Executive Committee member for Finance is the only person legally empowered to grant such waivers.
241. The County Assembly referred the Committee to a screenshot of a social media post (**Annex 18(b) on pg 128 of Volume I**) made by the account of the Governor on 6<sup>th</sup> September 2022. The Governor is quoted as stating that she has waived all hospital bills for patients who are extremely poor deserving with huge bills that are held at the facility.



242. In the Governor’s written response submitted to the Senate on Saturday 24<sup>th</sup> December 2022, the Governor through her Advocates on record, responded to this allegation as follows—
- (a) The Governor urged the hospital to consider cases of waiver of bills for the extremely poor and deserving members held at the hospital and that this was a practice normally done within the approved budget of the hospital;
  - (b) The practice of waiving hospital bills for the needy is not unique to Meru County and other hospitals including Kenyatta Hospital has provisions for such considerations which are done within the law and on a need basis; and
  - (c) the Meru Teaching and Referral Hospital has already established a waiving committee that considers deserving cases for the waiver and the Governor merely urged the hospital to hasten what it was already doing.
243. The Committee was referred to **annex KM-S23 (pg 193 of Volume II)** – Forwarding letter from the Chief Executive Officer, Meru Teaching and Referral Hospital enclosing a report on waiving process and procedures at the hospital; and, a summary of the waiving report for the hospital for the week ending 28<sup>th</sup> October, 2022.

#### **Committee Observations**

244. The video evidence adduced indicates that the Governor, while addressing the staff of Meru Teaching and Referral Hospital, stated that money collected by the Hospital should not be remitted to the County Revenue Fund and that such monies should be retained by the hospitals.
245. Evidence shows that the governor made a public pronouncement urging the hospital to waive all hospital bills for patients who are extremely poor and deserving with huge bills that are held at the Meru Teaching and Referral Hospital.
246. Section 159(1) of the Public Finance Management Act states that—
- The County Executive Committee member for finance may waive a county tax, fee or charge imposed by the county government and its entities in accordance with criteria prescribed in regulations provided that—*
- (a) *the County Treasury shall maintain a public record of each waiver together with the reason for the waiver and report on each waiver in accordance with section 164 of this Act;*
  - (b) *a State Officer may not be excluded from payment of a tax, fee or charge by reason of the office of the State Officer or the nature of work of the State Officer; and*

*(c) such waiver or variation has been authorised by an Act of Parliament or county legislation.*

247. No evidence was adduced to indicate that any fees or charges were waived by the Governor as alleged.

**Ground 3: Directing County government officers to participate in furthering and advancing the interests of Baite TV**

248. On or around 6<sup>th</sup> September 2022, the Governor, (i) grossly violated Articles 201 and 207 (1) of the Constitution, (ii) grossly violated sections 159 of the Public Finance Management Act, 2012, (iii) grossly violated sections 12 and 24 of the Public Officer Ethics Act, (iv) grossly violated sections 16 and 35 of the Leadership and Integrity Act, (v) engaged in gross abuse of office by directing County government officers to participate in furthering and advancing the interests of Baite TV, a media station owned by Mwangaza Advertiser Limited (a private company owned by the Governor through her close relatives as proxies).

249. The County Assembly attached a letter from the Ethics and Anti-Corruption Commission in which the Commission acknowledged receipt of various complaints raised against the Governor. Among the complaints was an allegation of conflict of interest, where it was alleged that the Governor directed County employees to participate in furthering the interest of Baite TV, a media station allegedly owned by the Governor's spouse, Mr. Murega Baicu. It was reported to the Commission that the Governor directed employees of the County to promote political activities on social media platforms and that those who fail to comply were threatened with termination of their employment.

250. The County Assembly referred the Committee to **annexure 18(c)(pg 130 of Volume I)** which contains registration records relating to Mwangaza Advertiser Limited Company and Baite Television held at the Companies Registry.

251. In the Governor's written response submitted to the Senate on Saturday 24<sup>th</sup> December 2022, the Governor through her Advocates on record, responded to this allegation as follows –

- (a) that there is no evidence of the alleged directive to county officers to further the interests of Baite TV; and,
- (b) that the evidence of the letter by the Ethics and Anti-Corruption Commission is merely a letter in response to a complaint by the same mover of the impeachment motion, where the Governor had been invited by the Commission to respond and the investigations are ongoing.



### **Committee Observations**

252. The evidence adduced did not support this allegation.

### **CHARGE 5: MISCONDUCT RELATING TO THE NOMINATION OF COUNTY EXECUTIVE COMMITTEE MEMBERS**

The particulars of this charge is as follows—

253. On or around the 8<sup>th</sup> day of November 2022, the Governor engaged in (i) gross misconduct (ii) grossly violated Articles 10, 73 and 75 of the Constitution, (iii) grossly violated section 10 (1) of the Public Appointments (County Assemblies Approval) Act, 2017 and (iv) grossly violated sections 3, 4, 10 and 11 of the Meru County Retention Enhancement Fund Act, 2016 by:
- (a) Vilifying Members of the Assembly for refusing to approve some County Executive Committee (“CEC”) nominees at a public rally held at Kiangua in Igoji West Ward;
  - (b) Falsely accusing Members of the Assembly of short-changing Casty Micheni and other nominees for the appointment to the CEC;
  - (c) Illegally instructing Casty Micheni to usurp the statutory functions of the Igoji West Ward retention Enhancement Fund Committee by identifying the persons that would benefit from county bursary funds;
  - (d) Failing to submit names of other candidates to the County Assembly for approval for appointment to the CEC (after the Assembly rejected some nominees);
  - (e) Reorganizing her government to six departments and three (3) CEC Members, after the rejection of some nominees, instead of submitting names of other candidates to the County Assembly for approval; and
  - (f) Swearing to appoint to her government and actively work with losers of the 2022 county elections instead of duly elected MCAs to stir wrangles within the Assembly.
254. The County Assembly stated that the Governor carried out acts of misconduct in relation to nomination of County Executive Committee Members the Governor in gross violation of the provisions of Articles 10, 73 and 75 of the Constitution, section 10 (1) of the Public Appointments (County Assemblies Approval) Act, 2017 and sections 3, 4, 10 and 11 of the Meru County Retention Enhancement Fund Act, 2016:
255. The County Assembly submitted to the Speaker of the Senate in a flash disc on 16<sup>th</sup> December, 2022, a video, transcript and English translation of utterances (*in kimeru*)



(attached as Annex 19, 19(a), 20 and 20(a) on pg 132 of Volume I) made by the Governor, at a public rally at Kiangua in Igoji West Ward on 8<sup>th</sup> November 2022, in which the Governor is quoted stating that one Casty Mucheni will remain in the Governor's government. The Governor is quoted as stating that Casty Mucheni will deal with the issues of Igoji including the issuance of bursaries to the children of Igoji.

256. In the Governor's written response submitted to the Senate on Saturday 24<sup>th</sup> December 2022, the Governor through her Advocates on record, responded to this allegation as follows –
- (a) that the Members of the County Assembly rejected qualified CEC nominees that the Governor had submitted, particularly for political reasons as a wider scheme to frustrate her government;
  - (b) that the Governor denies violation of any law in the steps taken in reducing the number of County Executive Committee Members to ensure that the government remained functional and that Article 179(3) of the Constitution provides a maximum and not a minimum hence no violation of the law; and,
  - (c) that the appointment to a bursary committee of one of the members who was rejected as a County Executive Committee Member nominee is a role done within the exercise of the powers of the Governor and cannot be cited as an act of misconduct.
257. The Governors Chief of Staff, Mr. Harrison Gatobu stated that the Governor did not refuse to forward the names of various County Executive Committee Members to the County Assembly for approval. During cross examination, the witness stated that Members of the County Assembly had vowed not to pass any list of County Executive Committee Members until their demands are met.

#### **Committee Observations**

258. The Governor submitted names to the County Assembly for approval and some of the nominees were rejected.
259. After the County Assembly rejected some of the nominees for the position of member of the Count Executive Committee, the Governor reorganized the structure of the county government ostensibly to facilitate the smooth running of the county government.

## **8.0 OTHER ISSUES**

### **Public participation before the Meru County Assembly**

260. The County Assembly of Meru stated that it conducted adequate public participation prior to the impeachment of the Governor. In support of this position, the County Assembly through Hon. Dennis Kiogora DMK produced the following documentation;
- (a) Two newspaper advertisements dated 7<sup>th</sup> December, 2022 calling for public participation (Volume 4, pages 3 & 4 of the County Assemblies documents);
  - (b) Two invoices for radio advertisements on Muuga FM dated 9<sup>th</sup> December, 2022 (Volume 4, pages 5 & 6 of the County Assemblies documents);
  - (c) The attendance sheet at the public participation meetings conducted at the various sub-counties on the 13<sup>th</sup> day of December, 2022 (Volume 4, page 21 of the County Assemblies documents);
  - (d) A report of the public participation on the motion to impeach the Meru County Governor conducted at various sub-counties in Meru on the 13<sup>th</sup> December, 2022 (“the public participation report”) (Volume 4, page 7 of the County Assemblies documents);
  - (e) The minutes of attendance at the public participation forum conducted at the various sub-counties on the 13<sup>th</sup> day of December, 2022 (Volume 4, page 17 of the County Assemblies documents).
  - (f) Memoranda received from the public on the 13<sup>th</sup> day of December, 2022 in response to the notion to impeach the Meru County Governor (Volume 4, page 133 of the County Assembly documents).
261. In her response, the Governor challenged the proceedings at the County Assembly for want of public participation. In his opening statement, Mr. Elias Mutuma, Counsel for the Governor, stated that the purported public participation in support of the impeachment motion was a *‘sham, a creation and an affront to the Constitution’*.
262. The Governor stated that she was elected to office by over 209,148 voters in Meru County and consequently a public participation exercise involving a paltry 1,000 constituents was inadequate for purposes of the impeachment motion. She further stated that the public

participation exercise conducted fell below the standard and threshold set out in the law as the voters of Meru were not given a chance to consider the allegations against her or even know what they were called to express their views about.

263. The Governor noted that the public participation exercise was done in short notice and within 24 hours, before the motion was debated (Volume 2, page 217 of the Governor's documents). She further states that there was no meaningful public participation as the proponents conducted a predetermined and box ticking public participation process, where any dissenting voice and anyone against her impeachment at the public hearing gatherings were roughed up and chased away. She also stated that the public was not informed of the grounds of impeachment nor was the public participation done in a way to give voters of Meru a chance to express their views. She further testified that the public participation exercise conducted by the MCA's was marred with violence, harassment, bribery and intimidation (Volume 2, page 219 of the Governor's documents).
264. By way of cross examination of Hon. Dennis Kiogora DMK, the Governor questioned the authenticity of the memoranda on the basis that all of them were received on the 13<sup>th</sup> December, 2022 and further that some of the memoranda were similar in content and handwriting yet there were purportedly sent by different people. The Governor made reference to the memoranda in pages 153 and 211 of Volume 4 of the County Assemblies Documents in support of this position. She further questioned why the public participation report was generated and signed by Hon. Dennis Kiogora DMK who was the mover of the impeachment motion thereby creating a conflict of interest.
265. The Governor also questioned the memoranda on the basis that all they were all received on the 13<sup>th</sup> December, 2022. She also questioned the mode of advertisement of the impeachment motion on the basis that the same was not widely circulated as required by law. The Governor made reference to the Meru County Public Participation Act, 2014 and concluded that the public participation exercise for the impeachment was conducted contrary to the principles and expectations of law.



## **OTHER ISSUES**

266. The Committee observed that some of the Memoranda submitted for public participation appeared to have been generated from a central place and not from genuine submissions from the residents of Meru County.

## **9.0 THE IMPEACHMENT PROCESS**

267. Article 96(1) of the Constitution provides that the “*the Senate represents the counties and serves to protect the interests of the counties and their governments*” Impeachment is one of the mechanisms by which the Senate exercises its role of protection of the Counties and their Governments.

268. The Black’s Law Dictionary<sup>1</sup> defines impeachment as “the act (by a legislature) of calling for the removal from office of a public official, accomplished by presenting a written charge of the official’s alleged misconduct”.<sup>2</sup>

269. In order to assist the Special Committee to make an informed decision on the proposed impeachment, it is important that the Committee examines the historical origin of the impeachment of public officials.

### **Historical foundation of impeachment**

270. According to Professor Ben Nwabueze, ‘concentration of government powers in the hands of one individual is the very definition of dictatorship and absolute power is by its very nature capricious and despotic.’<sup>3</sup> The concept of impeachment evolved as man got wiser and the need to preclude the exercise of arbitrary power became necessary. Impeachment has now become the most potent tool that is being used to keep public officers’ actions

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<sup>1</sup> Garner, B.A. (ed.) Black’s Law Dictionary, Thomson Reuter, St. Paul Minesota, 9th Edition (2009) p. 820

<sup>2</sup> Historically, impeachment was a political process, with the House of Representatives or Senate performing the function of a quasi-political court. See M. A. Owoade, “Impeachment of Chief Executives under the 1999 Constitution: New Problems, New Solutions” in Journal of Constitutional Development (2007) Vol. 7 NO. 4, p. 1

<sup>3</sup> Ben Nwabueze, The Presidential Constitution of Nigeria. (Hurst and Co, 1982) P.32

within the boundaries of the law; it has long reaffirmed the principles of the rule of law and constitutionalism in the Nation.<sup>4</sup>

271. Impeachment developed because certain officers of government were, for various reasons, placed beyond the reach of ordinary courts. High judicial and executive officers were not subject to complaints of private individuals in the ordinary courts. Private persons aggrieved by the actions of such officers, turned to parliament for redress.<sup>5</sup>
272. The origin of impeachment process dates back to British parliamentary practice in the 14th century<sup>6</sup>, when in 1376 Lord Latimer was impeached by the British Parliament – the ‘Good Parliament’<sup>7</sup>. Latimer was accused of surrendering key military defences to the French. At the time England was fighting the Hundred Years War, and currently losing. The reigning king, Edward III, was very old and there were popular concerns that Latimer and other officials were abusing their position and profiting from the situation.<sup>8</sup> The Commons impeached Latimer and demanded that he was tried before the House of Lords, who agreed. A trial took place and Latimer was found guilty and, as a consequence, lost his position at the court.<sup>9</sup>
273. Consequently, parliament developed the impeachment as a means to exercise some measure of control over the King. An impeachment proceeding in England was a direct method of bringing into account the King's ministers and favourites men who might have otherwise been out of reach. Impeachment, at least in its early history, has been called "the most powerful weapon in the political armoury, short of civil war".<sup>10</sup> It played a continuing role in the struggles between King and Parliament that resulted in the formation of the unwritten English constitution. In this respect impeachment was one of the tools used by

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<sup>4</sup> Mitong Dapal (Author), 2019, The concept and procedures of impeachment. A comparison between Nigeria and the United States of America, Munich, GRIN Verlag.

<sup>5</sup> Chris Monaghan, 'Impeachment: The American Phenomenon's English Origins' available at <https://www.worcester.ac.uk/about/news/academic-blog/impeachment-the-american-phenomenon/s-english-origins.aspx>

<sup>6</sup> Peter Woll, America Government Readings and Cases (5th Edn, Little, Brown and Company Canada Ltd.) P.102-103

<sup>7</sup> Jack Simson Caird, 'Impeachment: Briefing Paper' <http://researchbriefings.files.parliament.uk/documents/CBP-7612/CBP-7612.pdf> accessed 12th October, 2019

<sup>8</sup> Ibid, Note 5.

<sup>9</sup> Ibid.

<sup>10</sup> Plucknett, "Presidential Address" reproduced in 3 Transactions, Royal Historical Society, 5th Series, 145 (1952).

English Parliament to create more responsive and responsible government and to redress imbalances when they occurred.<sup>11</sup>

### **United States of America**

274. The United States Constitution gives the House of Representatives the sole power to impeach an official, and it makes the Senate the sole court for impeachment trials. The power of impeachment is limited to removal from office but also provides a means by which a removed officer may be disqualified from holding future office.<sup>12</sup>
275. The House of Representatives brings impeachment charges against federal officials as part of its oversight and investigatory responsibilities. Individual Members of the House can introduce impeachment resolutions like ordinary bills, or the House could initiate proceedings by passing a resolution authorizing an inquiry. The Committee on the Judiciary<sup>13</sup> ordinarily has jurisdiction over impeachments. The committee then chooses whether to pursue articles of impeachment against the accused official and report them to the full House. If the articles are adopted (by simple majority vote), the House appoints Members by resolution to manage the ensuing Senate trial on its behalf. These managers act as prosecutors in the Senate and are usually members of the Judiciary Committee.<sup>14</sup>
276. The House of Representatives has initiated impeachment proceedings more than 60 times but less than a third have led to full impeachments. Just eight (all federal judges) have been convicted and removed from office by the Senate. Outside of the 15 federal judges impeached by the House, three Presidents (Andrew Johnson in 1868, William Jefferson (Bill) Clinton in 1998, and Donald J. Trump in 2019 and 2021), a cabinet secretary (William Belknap in 1876), and a U.S. Senator (William Blount of Tennessee in 1797) have also been impeached. In only three instances—all involving removed federal judges—has the Senate taken the additional step of barring them from ever holding future federal office.<sup>15</sup>

### **Nigeria**

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<sup>11</sup> See generally C Roberts, *The Growth of Responsible Government in Stuart England* (Cambridge 1966).

<sup>12</sup> U.S. Constitution, Article II, Section 4.

<sup>13</sup> Judiciary Committee was created in 1813.

<sup>14</sup> Impeachment, US House of Representatives: History, Art & Archives, available at <https://history.house.gov/Institution/Origins-Development/Impeachment/>

<sup>15</sup> *Ibid.*



277. Under the Constitution of the Federal Republic of Nigeria, 1999, the procedures for the impeachment of the President of Nigeria and State Governors are basically the same; except for the involvement of a bicameral Legislature in the impeachment of the President and a unicameral Legislature in the impeachment of the Governors. The procedures are contained in **Sections 143** and **188** of the Constitution.
278. Unlike, the American procedure, the impeachment procedure under the Nigerian Constitution is not initiated in the House of Representatives, but by a notice of Allegation signed by at least one third of the members of the National Assembly. Both Chambers of the National Assembly are involved in considering the notice of allegation and in resolving, by motion supported by two thirds of its members, whether to investigate the allegation or not.<sup>16</sup>
279. A distinguishing feature of the procedure under the Nigerian Constitution is the provision for an independent Panel set up by the Chief Justice or Chief Judge to investigate the allegations made against the office holder. Thus, unlike the procedure under the American Constitution where the entire process is carried out by the legislature from inception to conclusion, the procedure under the Nigerian Constitution precludes the legislature from conducting investigations into the allegations levelled by it against the office holder. However, the Nigerian National Assembly must still resolve, by motion, supported by two thirds majority of members, to adopt or reject the report of the Panel of investigation.<sup>17</sup>
280. On the 15<sup>th</sup> day of July 2014, Governor Murtala Nyako was impeached as the governor of Adamawa State after the Adamawa State House of Assembly adopted a report of a panel set up to investigate him for alleged corruption. The report found the governor guilty of all the 16 allegations of gross misconduct. The Court of Appeal however overturned the impeachment on the basis that the same was not done in accordance with the provision of the law.

### **The impeachment process and procedure in Kenya**

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<sup>16</sup> Udofa, Dr., The impeachment power of the legislature under the Nigerian and American constitutions compared, Available at <http://ijlljs.in/wp-content/uploads/2015/06/THE-IMPEACHMENT-POWER-OF-THE-LEGISLATURE-3.pdf> (Accessed: December 16, 2022).

<sup>17</sup> Ibid.

281. The Senate is established pursuant to the provisions of **Article 93(1)** of the Constitution of Kenya, 2010. **Article 96(1)** thereof provides that the “*the Senate represents the counties and serves to protect the interests of the counties and their governments*”. Under this role the Senate exercises an oversight mandate over the counties. One such mechanism of oversight is the removal of a governor from office by impeachment.

282. The procedure and the grounds for the removal of a governor from office is provided for under the provisions of **Article 181** of the Constitution as read with **Section 33 of the County Governments Act, 2012** (“the County Governments Act”). **Article 181** of the Constitution provides as follows;

*“181. (1) A county governor may be removed from office on any of the following grounds –*

*(a) gross violation of this Constitution or any other law;*

*(b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;*

*(c) abuse of office or gross misconduct; or*

*(d) physical or mental incapacity to perform the functions of office of county governor.*

*(2) Parliament shall enact legislation providing for the procedure of removal of a county governor on any of the grounds mentioned in clause (1)... ”*

**Section 33** of the County Governments Act provides as follows;

*“(1) A member of the county assembly may by notice to the speaker, supported by at least a third of all the members, move a motion for the removal of the governor under Article 181 of the Constitution.*

*(2) If a motion under subsection (1) is supported by at least two-thirds of all the members of the county assembly — (a) the speaker of the county assembly shall inform the Speaker of the Senate of that resolution within two days; and (b) the governor shall continue to perform the functions of the office pending the outcome of the proceedings required by this section.*

*(3) Within seven days after receiving notice of a resolution from the speaker of the county assembly — (a) the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the governor; and (b) the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.*

(4) A special committee appointed under subsection (3)(b) shall — (a) investigate the matter; and (b) report to the Senate within ten days on whether it finds the particulars of the allegations against the governor to have been substantiated.

(5) The governor shall have the right to appear and be represented before the special committee during its investigations.

(6) If the special committee reports that the particulars of any allegation against the governor — (a) have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation; or (b) have been substantiated, the Senate shall, after according the governor an opportunity to be heard, vote on the impeachment charges.

(7) If a majority of all the members of the Senate vote to uphold any impeachment charge, the governor shall cease to hold office.

(8) If a vote in the Senate fails to result in the removal of the governor, the Speaker of the Senate shall notify the Speaker of the concerned county assembly accordingly and the motion by the assembly for the removal of the governor on the same charges may only be re-introduced to the Senate on the expiry of three months from the date of such vote.

(9) The procedure for the removal of the President on grounds of incapacity under Article 144 of the Constitution shall apply, with necessary modifications, to the removal of a governor.

(10) A vacancy in the office of the governor or deputy governor arising under this section shall be filled in the manner provided for by Article 182 of the Constitution.

283. During the Senate's consideration of the report of the special committee investigating the proposed removal from office of the Governor of Kericho County, the Senate adopted with approval the exposition of Senator Miriam Defensor Santiago of the Senate of the Philippines who in a keynote address at a workshop said that, "***an impeachment trial is a unique process, because it is a hybrid. Impeachment is both quasi-judicial and quasi-political. It is neither a civil case nor a criminal case. A criminal case is designed to punish an offender and to seek retribution. In contrast, impeachment is the first step in a process that tries to remedy a wrong in governance. It has been said that the purpose of impeachment is not personal punishment, but rather to maintain Constitutional government, through the removal of an unfit official from a position of public trust.***"



284. The Court of Appeal in the case of **Martin Nyaga Wambora & 3 others –vs- Speaker of the Senate & 6 others [2014] eKLR, Civil Appeal No. 21 of 2014** stated as follows concerning impeachment of Governors in Kenya:

*“Our reading and interpretation of Article 181 of the Constitution as read with section 33 of the County Governments Act shows that removal of a Governor is a Constitutional and political process; it is a sui generis process that is quasi-judicial in nature and the rules of natural justice and fair administrative action must be observed. The impeachment architecture in Article 181 of the Constitution reveals that removal of a Governor is not about criminality or culpability but is about accountability, political governance as well as policy and political responsibility. Section 33 of the County Governments Act provides for the procedure of removal of an erring Governor. The organ vested with the mandate at first instance to move a motion for the removal of a County Governor is the County Assembly. Neither the Courts nor the Senate have the Constitutional mandate to move a motion for the removal of a County Governor. The Senate’s Constitutional mandate to hear the charges against the Governor and may appoint a Special Committee to investigate the matter. It is our considered view that the jurisdiction and process of removal of a Governor from office is hierarchical and sequential in nature. There are three sequential steps to be followed; first is intuition of a motion to remove the Governor be a member of the County Assembly; second there is consideration of the motion and a resolution by two thirds of all members of the County Assembly and third, the Speaker of the County Assembly is to forward the County Assembly’s resolution to the Senate for hearing of the charges against the Governor... The Constitutional and statutory mandate to initiate and consider a motion to remove a County Governor is vested in the County Assembly and the Senate...”*

285. It is therefore clear that the purpose of impeachment is not to apportion culpability, criminal or otherwise but to ensure that the residents of a county are governed in a manner consistent with the Constitution and laws of Kenya. Consequently, impeachment is all about accountability, political governance as well as policy and political responsibility.

286. In the case of **Hon Mike Mbuvi Sonko –vs- The Clerk, County Assembly of Nairobi City & 11 Others (Petition 11 (E008) of 2022) [2022]** the Supreme Court observed as follows;

*“[14] “Impeachment”, “recall” and “removal” are therefore the Constitution's final answer, a safety valve, to a State officer or a public servant who mistakes himself for a monarch. As they say,*

*power corrupts, and the framers of the Constitution being cognizant of this fact, built guardrails against autocratic exercise of power by the leaders...*

*[17] The removal process of a Governor is, therefore, part of the oversight mandate of County Assembly and the Senate. The process is intended to serve as a reminder to the holders of office of Governor that the immense power vested in that office is to be exercised for the benefit of the people and is not a license for lawlessness...*

*[18] It must, however, be stressed for avoidance of doubt, that the power of impeachment, removal or recall is not one expected to be in constant or frequent exercise. It is only in the face of credible evidence of extraordinary wrongdoing that the conduct of a State officer will be investigated and even then, only upon sufficient proof of the allegations that impeachment, removal or a recall would be warranted..."*

287. The Senate has the responsibility to set and maintain the standard for impeachment that adheres to the constitutional edicts of due process, fairness and justice. This it has endeavored to accomplish in the previous impeachments undertaken as evidenced by the reports of its special committees in :-

- (a) The 1<sup>st</sup> impeachment of the Governor of Embu County - the Report is dated 14<sup>th</sup> February 2014;
- (b) The 2<sup>nd</sup> impeachment of the Governor of Embu County - the Report is dated 13<sup>th</sup> May 2014;
- (c) The impeachment of the Governor of Kericho County - the Report is dated 3<sup>rd</sup> June 2014;
- (d) The impeachment of the Deputy Governor of Machakos County - the Report is dated 15<sup>th</sup> August 2014;
- (e) The impeachment of the Governor of Murang'a County – the Report is dated 6<sup>th</sup> November, 2015.
- (f) The impeachment of the Governor of Nyeri County which was conducted in plenary;
- (g) The impeachment of the Governor of Taita Taveta County- the Report is dated 24<sup>th</sup> October, 2019;
- (h) The impeachment of the Governor of Kiambu County which was conducted in plenary.
- (i) The impeachment of the Governor of Kirinyaga County – the Report is dated 22<sup>nd</sup> June 2020.
- (j) The impeachment of the Governor of Nairobi County which was conducted in plenary.
- (k) The impeachment of the Governor of Wajir County – the Report is dated 17<sup>th</sup> May 2021



288. It is worthy of note that the Senate has only found the charges in support of removal from office of a Governor substantiated in four cases; the Governor of Embu County, the Governor of Kiambu County, the Governor of Wajir and the Governor of Nairobi County. The charges were found to be unsubstantiated in the cases of the Governor of Kericho County, the Deputy Governor of Machakos County, the Governor of Murang'a County, the Governor of Nyeri County, the Governor of Taita Taveta County and the Governor of Kirinyaga County.

#### **10. 0 THRESHOLD FOR IMPEACHMENT – BURDEN AND STANDARD OF PROOF FOR IMPEACHMENT**

##### **Gross misconduct**

289. Micheal J. Gerhardt, visiting Professor of Law, Duke University, in “**The Special Constitutional Structure of the Federal Impeachment Process**”, while reviewing the impeachment trial of then US President Bill Clinton states as follows;

*“The first such feature of the Constitutional allocation of power for impeachment and removal is that it facilitates and rewards a pragmatic or flexible analysis and impedes a formalistic analysis of the fundamental questions at the core of President Clinton’s impeachment proceedings - whether his misconduct constituted a “high crime or misdemeanor”. A pragmatic analysis of this issue entails balancing various practical considerations or factors, including the magnitude of harm that an impeachable official’s misconduct has caused society or the Constitutional order, the nexus between the official’s duties and his misconduct, public opinion, and other possible avenues of redress, such as electoral process or legal proceedings. In contrast, a formalist analysis employs rigid criteria for, or extremely well-defined elements of impeachable offences, such as treating every violation of the federal criminal law or every breach of the public trust as justifying removal.*

*By vesting the impeachable authority in the politically accountable authorities of the House and the Senate, the framers of the Constitution deliberately chose to leave the difficult questions of impeachment and removal in the hands of officials well versed in pragmatic decision making. Members of Congress are pragmatists who can be expected to decide or resolve issues, including*



*the appropriate tests, by recourse to practical rather than formalist, calculations. In fact, members of Congress decide almost everything pragmatically, and decisions about impeachment and removal are not exception. The vesting of impeachment authority in political branches necessarily implies the discretion to take various factors, including possible consequences, into consideration in the course of exercising such authority....*

*Moreover, if formalist reasoning were the norm in impeachment proceedings, many questions posed by the President's misconduct would not have been nearly as heart-wrenching or politically divisive as they were. Removal would have been extremely easy and straightforward. In addition, the American people flatly rejected the strict liability notion of impeachment; most Americans acknowledged that the President had broken the law, but still did not regard his misconduct as constituting an impeachable offence or as justifying his removal. Most Americans favored a less rigid approach that balanced the harm and wrongfulness of the President's misconduct against the public interest or welfare.*

290. In the Supreme Court Nigerian Case of case of **Hon. Mujiwa Inakoju & others -vs- Hon. Abraham Adeolu Adedeke and 3 others S.C. 272 of 2006**; quoted and relied upon by the Supreme Court of Kenya in the case of **Martin Nyaga Wambora & 4 others –vs- Speaker of the Senate & 6 others [2014] eKLR** the court observed as follows;

*“It is not a lawful or legitimate exercise of the constitutional function in section 188 for a House of Assembly to remove a Governor or a Deputy Governor to achieve a political purpose or one of organized vendetta clearly outside gross misconduct under the section. Section 188 cannot be invoked merely because the House does not like the face or look of the Governor or Deputy Governor in a particular moment or the Governor or Deputy Governor refused to respond with a generous smile to the Legislature qua House on a parliamentary or courtesy visit to the holder of the office. The point I am struggling to make out of this light statement on a playful side is that Section 188 is a very strong political weapon at the disposal of the House which must be used only in appropriate cases of serious wrong doing on the part of the Governor or Deputy Governor, which is tantamount to gross misconduct within the meaning of subsection (11). Section 188 is not a weapon available to the Legislature to police a Governor or Deputy Governor in every wrong doing. A Governor or Deputy Governor, as a human being, cannot always be right and he cannot claim to be right always. That explains why Section 188 talks about gross misconduct.*

*Accordingly, where a misconduct is not gross, the Section 188 weapon of removal is not available to the House of Assembly.”*

291. The duties and responsibilities of a state officer are encapsulated under the provisions of **Article 73** of the Constitution as follows;

***Responsibilities of leadership***

*73. (1) Authority assigned to a State officer — (a) is a public trust to be exercised in a manner that — (i) is consistent with the purposes and objects of this Constitution; (ii) demonstrates respect for the people; (iii) brings honor to the nation and dignity to the office; and (iv) promotes public confidence in the integrity of the office; and (b) vests in the State officer the responsibility to serve the people, rather than the power to rule them.*

*(2) The guiding principles of leadership and integrity include — (a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections; (b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favoritism, other improper motives or corrupt practices; (c) selfless service based solely on the public interest, demonstrated by — (i) honesty in the execution of public duties; and (ii) the declaration of any personal interest that may conflict with public duties; (d) accountability to the public for decisions and actions; and (e) discipline and commitment in service to the people.*

292. In High Court Constitutional Petition No. 3 of 2014 being **Hon. Martin Nyagah Wambora & 4 others –vs- The Speaker of the Senate & 5 others**, the High Court held as follows:

*“To our minds therefore, whether a conduct is gross or not will depend on the facts of each case having regard to the Article of the Constitution or any written law alleged to have been violated. We find that it is not every violation of the Constitution or written law that can lead to the removal of Governor, it has to be a gross violation.*

*The question therefore is how to measure what constitutes gross violation. We are of the view that the standard to be used does not require a mathematical formula, but it must take into account the intendment of Article 181(1) of the Constitution. In our view therefore whatever is alleged against a Governor must;*

*(a) be serious, substantial and weighty.*



*(b) there must be a nexus between the Governor and the alleged gross violations of the Constitution or any other written law.*

*(c) The charges as framed must state with a degree of precision the Article(s) or even Sub-Articles(s) of the Constitution or the provisions of any other written law that have been alleged to be grossly violated.”*

293. In the case of **Hon. Mike Mbuvi Sonko –vs- The Clerk, County Assembly Of Nairobi City & 11 Others (Petition 11 (E008) Of 2022) [2022]** the Supreme Court quoted approval of the decision of the Court of Appeal in **Martin Nyaga Wambora & 3 others –vs- Speaker of the Senate & 6 others, Civil Appeal No. 21 of 2014; [2014] eKLR**, where the court considered the standard for the impeachment of a Governor as follows; “...that standard is neither beyond reasonable doubt nor on a balance of probability. Noting that the threshold for removal of a governor involves “gross violation of the Constitution”, we hold that the standard of proof required for removal of Governor is above a balance of probability but below reasonable doubt.”

294. During the Senate’s consideration of the report of the Special Committee investigating the removal of the Governor of Kericho on 3<sup>rd</sup> June 2014 the Senate adopted the Committee’s recommendation that the threshold for impeachment should take into account the following considerations-

- (i) The allegations must be serious, substantial and weighty;*
- (ii) The violation must be a flagrant and glaring violation;*
- (iii) There must be a nexus between the violation and the Governor;*
- (iv) The violation must have led to harm, loss or damage to society;*
- (v) The violation must have led to a loss of dignity in the office held and loss of confidence or trust in the person holding office to carry out the functions of that office with integrity and accountability.*

295. The Supreme Court in the case of **Hon. Mike Mbuvi Sonko (supra)** quoted approval of the decision of the Court of Appeal in **Martin Nyaga Wambora (supra)** which outlined the elements identified by High Court as constituting proof of the charges of gross violation of the Constitution or written law. The court held as follows; “i. the allegations must be serious, substantial and weighty.



- ii. *There must be a nexus between the Governor and the alleged gross violations of the Constitution or any other written law.*
- iii. *The charges framed against the Governor and the particulars thereof must disclose a gross violation of the Constitution or any other written law.*
- iv. *The charges as framed must state with degree of precision the Article(s) or even sub-article(s) of the Constitution or the provisions of any other written law that have been alleged to be grossly violated.”*

296. This Special Committee adopts the above threshold for removal of a Governor as adopted by the Senate on 3<sup>rd</sup> June 2014. The threshold was also used by the Senate in the subsequent consideration of the proposed removal from office, by impeachment, of Honourable Mwangi wa Iria, the Governor of Murang’a County in November, 2015 and the Honourable Granton Samboja, the Governor of Taita Taveta County.

Standard of proof

297. On the threshold or standard of proof for impeachment, Yale Law professor Charles Black Jr. in **“Impeachment: A Handbook”** observes as follows;

*“Weighing the factors, I would be sure that one ought not to be satisfied, or anything near satisfied, with the mere ‘preponderance’ of an ordinary civil trial, but perhaps must be satisfied with something less than the ‘beyond a reasonable doubt’ standard of the ordinary criminal trial, in the full literal meaning of that standard. ‘Overwhelming preponderance of the evidence’ comes perhaps as close as can to denoting the desired standard.”*

298. The question of the standard of proof in impeachment proceedings has been a subject of debate across the world. By way of example, Senator Miriam Defensor Santiago of the Senate of the Philippines while contributing to the debate was of the view that, ***“an impeachment trial is a unique process, because it is a hybrid. Impeachment is both quasi-judicial and quasi-political. It is neither a civil case nor a criminal case. A criminal case is designed to punish an offender and to seek retribution. In contrast, impeachment is the first step in a process that tries to remedy a wrong in governance. It has been said that the purpose of impeachment is not personal punishment, but rather to maintain Constitutional government, through the removal of an unfit official from a position of public trust.”***

299. Impeachment proceedings are neither civil in nor criminal in nature. Justice Joseph Story of the United States Supreme Court held that, *“The design of impeachment is to remove the impeachable officer from office, not to punish. An impeachable act need not be criminal. That explains why the Constitution states that the officer removed shall be subject to prosecution in an ordinary criminal case”*.
300. In the United States there has been debate on the burden of proof required in impeachment proceedings. The argument of beyond reasonable doubt i.e. the highest threshold in proving a case has been argued by those facing impeachment proceedings, on the other hand the members of the Houses of Senate and Congress have argued for a lower standard of proof.
301. The argument on the appropriate standard of proof in impeachment proceedings played out in the 1986 Senate impeachment trial of Judge Harry Claiborne, where the attorneys of the judge filed a motion to designate beyond a reasonable doubt as the applicable standard for the Senate. In reaching its determination in support of the motion, they argued that the Constitutional language made it clear that an impeachment trial was in the nature of a criminal proceedings which is beyond a reasonable doubt.<sup>18</sup>
302. The response of the House Managers in opposition to the Claiborne motion noted that the reasonable doubt standard was designed to protect criminal defendants who risked forfeitures of life, liberty and property.<sup>19</sup> They argued that such a standard was inappropriate because the Constitution limits the consequences of a Senate impeachment trial to removal from office and disqualification from holding office in the future. Consequently, the United States Senate has left the choice of the applicable standard of proof to each individual Senator.
303. In the case of Martin Nyaga Wambora (supra) the Court of Appeal reviewed the impeachment of the County Governor of Embu County. The court in considering the nexus or conduct analogous to *mens rea* required for removal of a Governor observed as follows; *“...The process of removal of a Governor from office is neither a civil nor criminal trial; it is sui generis political and quasi-judicial process that must adhere to constitutional criteria and*

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<sup>18</sup> Gray & Reams, ‘The Congressional Impeachment Process and the Judiciary: Documents and Materials on the Removal of Federal District Judge Harry E. Claiborne’, Volume 5.

<sup>19</sup> *Brinegar –vs- United States*, 338 U.S. 160, 174 (1949)

*threshold. The process involves policy and political responsibility and is a tool for ensuring good governance... ”*

304. Similarly, in the case of **Hon. Mike Mbuvi Sonko (supra)** the Supreme Court while considering whether the charges were substantiated to the prescribed standard to warrant the Appellant’s impeachment held as follows;

*“[148] It has been observed at the beginning of the Judgment that impeachment or removal proceedings, though quasi-judicial are not in the nature of criminal proceedings. They do not necessarily require or depend on criminal culpability to succeed. All that is required is that the allegations be substantiated. But as a constitutional remedy, impeachment serves as an important check on the exercise of executive power. The purpose of impeachment is generally to protect public interest and to preserve constitutional norms, while at the same time observing the rules of natural justice throughout the process. Both interests must be balanced.*

*[149] As to the standard of proof in impeachable charges, the Court of Appeal in its judgment in **Martin Nyaga Wambora & 3 others –vs- Speaker of the Senate & 6 others, Civil Appeal No. 21 of 2014; [2014] eKLR**, found that, to impeach a Governor requires a high threshold but;*

*“ ... that standard is neither beyond reasonable doubt nor on a balance of probability. Noting that the threshold for removal of a governor involves “gross violation of the Constitution”, we hold that the standard of proof required for removal of Governor is above a balance of probability but below reasonable doubt.”*

305. The Special Committee is therefore obliged to determine whether the various charges brought against the Governor are offences that can form the basis for impeachment while factoring in the threshold set by **Article 181(1) of the Constitution**.



## **11.0 OTHER OBSERVATIONS AND RECOMMENDATIONS OF THE SPECIAL COMMITTEE**

### **Statutory timelines for conclusion of the impeachment process**

306. The Committee observed that the impeachment process provided for in Article 181(2) of the Constitution is one requiring utmost judiciousness and circumspection. A ten-day period from the reporting of charges for the investigation or hearing, the analysis of evidence, decision and report-writing and presentation to the Senate and its deliberations is inadequate. The Committee notes that there is the Impeachment Procedure Bill which lapsed in the previous parliament should be fast tracked as it addresses some of the concerns.

### **Toxic relationship between the County Executive and the County Assembly**

307. The Committee observes that during the proceedings, it became apparent that there the relationship between the County Assembly and the County Governor is acrimonious, contemptuous and cold and threatens to grind the County to a halt. It is inconceivable that in these circumstances the people of Meru County can be enjoying the benefits of devolved government that the Constitution avails. Urgent measures require to be taken to bring the protagonists to the table to find an amicable solution.
308. The Committee further observed that in the course of its investigation it became apparent that matters in Meru County relating leadership and governance were not in satisfactory state. In the interest of the residents of Meru, the Committee recommends urgent need for a concerted effort to reconcile and create a conducive environment for the county to realise meaningful the development.

### **Enhancing the capacity of the County Executive and the County Assembly**

309. The Committee recommends capacity building for County Assemblies in order to ensure that they were able to conduct the impeachment process at the County Assembly level more

effectively, specifically the conduct of widespread and meaningful public participation exercise.

310. The committee further recommends proper induction for new governors on governance, systems, policies and procedure of running an effective government.

**Consideration of the report the special committee by the Senate**

311. The Committee recommends that **Section 33** of the **County Governments Act** be **amended** to ensure that the Committee report is considered by the House whether or not the Committee finds any charge(s) to have been substantiated.

## 12.0 FINDINGS OF THE SPECIAL COMMITTEE

312. Having considered all these matters, it then fell to the Special Committee to discharge its mandate under section 33 of the County Governments Act, standing order 80 and Part 2 of the Third Schedule to the Senate Standing Orders. Section 33(4) of the County Governments Act, standing order 80 (2) and rule 2 of Part 2 of the Third Schedule to the Senate Standing Orders mandates the Special Committee to-
- (1) investigate the matter; and
  - (2) report to the Senate within ten days on whether it finds the Particulars of the Allegations against the Governor to have been substantiated.
313. The Committee takes the position that, in line with the precedents of the Senate in impeachment proceedings, in order to find that any particular of an allegation of the charges is substantiated, a determination must be made both that evidence has been adduced pointing to wrongdoing in the manner alleged in the Charge and that the threshold for an impeachable offence has been attained.
314. The thrust of the jurisprudence in successive impeachment proceedings before the Senate, which the Committee upholds, has been that, it is not every aberration, even if established, that will lead to the impeachment of a Governor.
315. The Committee's findings on each of the Particulars of the Allegations are therefore as follows –

### **Charge 1: Nepotism, Illegal Appointments, Unlawful Dismissals and Usurpation of the Constitutional and Statutory Functions of County Organs**

#### **Ground 1: Appointment of Husband to County Offices**

316. Evidence adduced before the Committee demonstrated that the positions the First Gentleman is alleged to have been appointed to are non-existent and ordinarily and appointment cannot be made to a non-existent position in the public service. The Governor's husband had not drawn any salary or benefit from the Meru County Government and was not in the county payroll. No evidence was submitted to prove any



of the alleged appointments by the Governor or disregard for the criteria for the establishment of offices within the County Public Service.

**The Committee therefore finds that the allegation was not proved and is therefore not substantiated.**

**Ground 2: Reappointing Rufus Miriti as the County Secretary without the approval of the Assembly**

317. Evidence adduced before the committee showed that the Governor made public pronouncements reappointing Mr. Rufus Miriti to the position of the County Secretary and this was further corroborated during the oral testimony. Evidence also showed that the Governor did not seek the approval of the County Assembly in the reappointment of the county Secretary. Evidence further demonstrated that the alleged appointment was not actualized with the issuance of an appointment letter as required by law.

**The Committee therefore finds that there was a violation of the law in failing to seek the approval of the County Assembly for the reappointment of the County Secretary but the violation does not meet the threshold for removal from office. The allegation is therefore not substantiated.**

**Ground 3: Appointment of unqualified persons namely: Munene Samaritan, Ernest Mutembei, Henry Mzungu and Hilary Sandi**

318. Evidence adduced before the committee showed that Mr. Hillary Mutuma Mugambi is a lawyer that was chosen as a Meru County Government's Spokesperson, Director in charge of Press Service and Communication in Meru County. The office of the Director Governors press Service is political appointment in the governor's office as advised in the letter dated 5<sup>th</sup> September 2013 from the defunct Transitional Authority. The letter authorizes the governor to identify persons to be appointed in that position by the County Public Service Board on contract terms during the tenure of the Governor.

319. No evidence was presented by the County Assembly to the Committee supporting the alleged appointment of Munene Samaritan, Ernest Mutembei and Henry Mzungu, being unqualified persons.

**The Committee therefore finds that the allegation was not proved and is therefore not substantiated.**

**Ground 4: Usurping and trashing the Constitutional and statutory functions of the County Assembly, the Meru County Public Service Board and the Meru County Youth Service**

320. Evidence adduced before the Committee demonstrated that the positions the First Gentleman is alleged to have been appointed to are non-existent and ordinarily and appointment cannot be made to a non-existent position in the public service. The husband had not drawn any salary or benefit from the Meru County Government and was not in the county payroll. No evidence was submitted to prove any of the alleged appointments by the Governor or disregard for the criteria for the establishment of offices within the County Public Service.
321. Further, no evidence was adduced to indicate the functions of the “patron of Meru Youth Service” that usurped the powers of the Meru Youth Service Board.
322. The pronouncements were however misguided and based on populism.

**The Committee therefore finds that the allegation was not proved and is therefore not substantiated.**

#### **Ground 5: Roadside Appointment of County Workers at Timau**

323. Evidence adduced before the committee showed that the Governor made public pronouncements that she would employ three young men as guards. She selected three individuals for employment as watchmen. Evidence further showed that the appointments were not actualized with the issuance of an appointment letters to the three individuals as required by law.

**The Committee therefore finds that the allegation was not proved and is therefore not substantiated.**

#### **Ground 6: Roadside Appointment of County Workers at Nkubu**

324. Evidence adduced before the committee demonstrated that the Governor made public pronouncements that she would employ three young men as guards. She selected three individuals for employment as watchmen. The appointments were however not actualized with the issuance of an appointment letters to the three individuals as required by law.

**The Committee therefore finds that the allegation was not proved and is therefore not substantiated.**

#### **Ground 7: Roadside Appointment of County Workers at Kianjai**

325. Evidence adduced before the Committee showed that the Governor directed ward and sub-county administrators to select five people to sweep Kianjai Market. The appointments

were however not actualized with the issuance of an appointment letters to the five individuals as required by law.

**The Committee therefore finds that the allegation was not proved and is therefore not substantiated.**

#### **Ground 8: Illegal Committee on the Meru Municipality**

326. Evidence adduced before the committee showed that the Governor identified members of an unnamed Committee and determined its chairperson, vice chairperson, treasurer and organizing secretary. The evidence did not indicate the functions of the Committee and whether or not they performed similar functions to that of the Meru Municipality Board thereby usurping its mandate.

**The Committee therefore finds that the allegation was not proved and is therefore not substantiated.**

#### **Charge 2: Incitement, Bullying, Vilification and Misleading Campaigns Against Other Leaders.**

##### **Ground 1: Humiliation of the Minority Leader**

327. Evidence adduced and presented before the Committee demonstrated the existence of discord and public disagreements between the Governor and the County Assembly Minority Leader with accusations and counter-accusations and public exchanges. No evidence was adduced before the committee to demonstrate incitement, bullying or vilification campaign.

**The Committee therefore finds that the allegation was not proved and is therefore not substantiated.**

##### **Ground 2: Vilification of the Minority Chief Whip and Other Leaders**

328. Evidence adduced demonstrated to the Committee that the Governor and the Minority Chief Whip had personal differences with each other. Evidence showed that some of the accusations happening before the general elections of 2022. The Minority whip is shown in videos questioning the Governor's ability to govern the county way before the August 2022 General Elections and further allegations of theft of public resources as a governor while the governor making allegations of the Member for Abogeta Ward stoning her.



**The Committee therefore finds that the allegation was not proved and is therefore not substantiated.**

**Ground 3: Vilification of the Senator of Meru County**

329. The committee did not receive any evidence to demonstrate vilification of the Senator and the Deputy Speaker of the Senate by the governor. The evidence adduced before the committee made reference to utterances made by someone other than the Governor.

**The Committee therefore finds that the allegation was not proved and is therefore not substantiated.**

**Ground 4: Vilification of the Cabinet Secretary for Agriculture**

330. The Committee did not receive any complaints made by the Cabinet Secretary for Agriculture against the governor. No evidence was adduced before the Committee to demonstrate vilification of the Cabinet Secretary for Agriculture by the Governor. The evidence adduced made reference to utterances made by someone other than the Governor

**The Committee therefore finds that the allegation was not proved and is therefore not substantiated.**

**Ground 5: Vilification of the MP for Tigania East Constituency**

331. The Committee did not receive any complaints made by the MP for Tigania East Constituency against the governor. No evidence was adduced before the Committee to demonstrate vilification of the MP for Tigania East Constituency by the Governor. The evidence adduced made reference to utterances made by someone other than the Governor.

**The Committee therefore finds that the allegation was not proved and is therefore not substantiated.**

**Ground 6: Vilification of the Catholic Church and Clergy**

332. While the charge related to the vilification of the Catholic Church and the clergy, the witness presented before the committee to demonstrate the evidence testified that he did not represent the Catholic Diocese of Meru. No evidence was adduced to demonstrate vilification of the Catholic Church or clergy by the Governor.

**The Committee therefore finds that the allegation was not proved and is therefore not substantiated.**

### **Charge 3: Forceful Entry into the Assembly Precincts and Mobilisation of Unlawful Riots Against Members of the Assembly.**

333. Evidence adduced before the Committee demonstrated that a sitting of the Assembly was gazetted for the opening of the 3<sup>rd</sup> County Assembly of Meru and address by the governor on Wednesday, 19<sup>th</sup> October 2022 and that the standing order 21(1) of the Meru County Assembly standing orders provides that the governor shall address of each newly elected Assembly. Further evidence adduced before the committee showed that despite the gazetting of the sitting and the anticipated address of the Assembly by the governor, the Members of the County Assembly led by the Speaker warned the governor not to appear for the special sitting of the Assembly as gazetted. Further evidence was adduced to demonstrate commotion when the Governor tried to access the County Assembly. Evidence also showed the governor stating that she had been barred from entering the Assembly which she managed to do so by force or by God's grace.
334. A witness adduced evidence before the committee that the Governor led a rowdy mob of around 50 people to the precincts of the County Assembly. However, video evidence presented before the committee and evidence from a witness demonstrated that a number of the persons accompanying the governor were officers of the county executive. No evidence of forceful entry to the precincts of the assembly was presented before the committee.

**The Committee therefore finds that the allegation was not proved and is therefore not substantiated.**

### **Charge 4: Violation of Public Finance Management Laws**

#### **Ground 1: Directing Meru Teaching and Referral Hospital to spend all revenue at source**

335. Evidence adduced before the Committee showed the Governor stating that money collected by Meru Teaching and Referral Hospital *should not be remitted to the County Revenue Fund* and that such monies should be retained by the hospitals. Further evidence was adduced that Article 207(1) of the Constitution states that *“there shall be established a Revenue Fund for each county government, into which shall be paid all money raised or received by or on behalf of the county government, except money reasonably excluded by an Act of Parliament”* and that section 109(2)(b) of the Public Finance Management Act states that *“the County Treasury for each county government shall ensure that all money raised or received by or on behalf of the county government is paid into the County Revenue Fund, except money that may, in accordance with other legislation, this Act or County legislation, be retained by the county government entity which received it for the purposes of defraying its expenses.*

336. Evidence was also presented before the committee to show that the Meru Teaching and Referral Hospital was a semi-autonomous government agency pursuant to the Meru County Teaching and Referral Hospital Board Act, 2019. It was further demonstrated to the Committee that section 14(1)(b) as read together with section 14(2) and (3) of the Meru County Teaching and Referral Hospital Board Act allow the utilization of funds collected by the Meru Teaching and Referral Hospital to defray its expenses.
337. Section 109 (2) (b) of the Public Finance Management Act provides that county legislation may provide for money that may be retained by the county government entity which received the money.

**The Committee therefore finds that the allegation was not proved and is therefore not substantiated.**

## **Ground 2: Issuing waivers and fees at the Meru Teaching and Referral Hospital**

338. Evidence adduced before the Committee showed that the governor made public pronouncement to waive all hospital bills for patients who are extremely poor and deserving with huge bills that are held at the Meru Teaching and Referral Hospital. Further evidence was adduced that section 159(1) of the Public Finance Management Act states that—

*The County Executive Committee member for finance may waive a county tax, fee or charge imposed by the county government and its entities in accordance with criteria prescribed in regulations provided that—*

- a) the County Treasury shall maintain a public record of each waiver together with the reason for the waiver and report on each waiver in accordance with section 164 of this Act;*
  - b) a State Officer may not be excluded from payment of a tax, fee or charge by reason of the office of the State Officer or the nature of work of the State Officer; and*
  - c) such waiver or variation has been authorised by an Act of Parliament or county legislation.*
339. No evidence was adduced to the committee to demonstrate that the said fees were waived by the governor.

**The Committee therefore finds that the allegation was not proved and is therefore not substantiated.**



**Ground 3: Directing County government officers to participate in furthering and advancing the interests of Baite TV**

340. No evidence was presented to the committee to support this allegation.

**The Committee therefore finds that the allegation was not proved and is therefore not substantiated.**

**Charge 5: Misconduct Relating to Nomination of County Executive Committee Members.**

341. Evidence was adduced before the committee that where the Governor submits nominees for the positions of County Executive Committee to the County Assembly and the rejects the nominees, Section 10 of the Public Appointments (County Assemblies Approval) Act does not prescribe a time limit within which the Governor should submit new names or resubmit new names for appointment.

342. Further evidence was adduced that Section 30 (2) (e) of the County Governments Act provides that the Governor has the power to constitute the County Executive Committee portfolio structure to respond to the functions and competencies assigned to and transferred to each county

343. Additional evidence was adduced before the committee that that the appointment to a bursary committee of one of the members who was rejected as a CEC nominee by the County Assembly was a role done within the exercise of the powers of the Governor and cannot be cited as an act of misconduct.

**The Committee therefore finds that the allegation was not proved and is therefore not substantiated.**

**13.0 CONCLUSION**

344. The Committee having investigated the matter in accordance with its mandate under section 33(4) of the County Governments Act and standing order 80(2) of the Senate Standing Orders reports to the Senate that it finds that the five Charges against the Governor of Meru County **have not been substantiated.**

**SPECIAL COMMITTEE ON THE PROPOSED REMOVAL FROM OFFICE, BY  
IMPEACHMENT, OF THE GOVERNOR OF MERU COUNTY**

**ANNEXTURES**

This Report contains the following Annexures:-

<b>No.</b>	<b>DESCRIPTION</b>	<b>FOLIO</b>
1.	Letter dated 15 <sup>th</sup> December, 2022 from the County Assembly of Meru informing the Speaker of the Senate of the approval Motion	1
2.	Senate Special sitting Order Paper of 20 <sup>th</sup> December, 2022	2
3.	Communication from the Speaker of the Senate on the proposed removal from office by Impeachment of the Governor of Meru County	3
4.	Special Committee Minutes	4
5.	Indicative Programme of events	5
6.	Invitations to appear (a) County Assembly (b) County Governor	6
7.	Letter of Appointment and Response by the County	7
8.	Letter of Appointment and Response by the Governor of Meru County	8
9.	Hearing Programme	9
10.	Hansard of Hearings 27 <sup>th</sup> & 28 <sup>th</sup> December, 2022	10
11.	Mandate of the Special Committee	11
12.	Charges	12

**Clerk's Chambers  
The Senate  
NAIROBI**

