

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 13th March, 2024

Morning Sitting

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

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

The Speaker (Hon. Kingi): Clerk, do we have quorum?
Serjeant-at-Arms, kindly ring the Quorum Bell for 10 minutes

(The Quorum Bell was rung)

Hon. Senators, kindly take your seats.

(Several Senators sat in their places)

I am informed that we now have quorum. Clerk, kindly proceed to call the first Order.

COMMUNICATION FROM THE CHAIR

PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT OF THE DEPUTY GOVERNOR OF KISII COUNTY

The Speaker (Hon. Kingi): Hon. Senators, you will recall that at the Sitting of the Senate held on Thursday, 7th March, 2024, I appointed today, Wednesday, 13th March and tomorrow, Thursday, 14th March, 2024, as the days when the Senate will hear the charges for the proposed removal from office, by impeachment, of Hon. (Dr.) Robert Monda, the Deputy Governor of Kisii County.

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At the sitting of the Senate held yesterday, Tuesday, 12th March, 2024, a Procedural Motion for alteration of the sitting time of the Senate for Wednesday, 13th and Thursday, 14th March, 2024, was moved and approved to facilitate the impeachment hearing of the Deputy Governor of Kisii County. Consequently, a hearing programme has been prepared and appended to the Order Paper for today.

Hon. Senators, as is the tradition, and in line with the schedule of activities for an impeachment hearing in plenary, the Senate will hold a closed preparatory session to deliberate on the management of the investigation. The objective of the preparatory session is to ensure that the process is conducted seamlessly and concluded timeously, and in line with the requirements set out in the County Governments Act and the Senate Standing Orders.

I now, therefore, direct the parties, all members of the public and the media to withdraw from the Chamber and the Galleries, and that any form of broadcast in the Chamber to cease forthwith.

In accordance with the hearing programme for an impeachment hearing in plenary, the open session will commence at 11.00 a.m.

I thank you.

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

(The House adjourned temporarily at 9.19 a.m.)

(The House went into an in-camera session)

(End of in-camera session)

(Members of the public and the media were allowed into the galleries)

(The House resumed at 11.08 a.m.)

The Speaker (Hon. Kingi): Sen. Veronica and Sen. Orwoba, kindly take your seats.

Hon. Senators, welcome back to this Session. Clerk, proceed to call the Order.

Senator for Nandi County, and the Chairperson of the Standing Committee on Devolution and Intergovernmental Relations---

**HEARING AND DETERMINATION OF THE PROPOSED REMOVAL FROM
OFFICE, BY IMPEACHMENT, OF HON. (DR.) ROBERT MONDA, THE
DEPUTY GOVERNOR OF KISII COUNTY**

RECITAL OF THE MANDATE OF THE SENATE, RULES OF
PROCEDURE AND HEARING PROGRAMME

Hon. Senators, ladies and gentlemen, having dispensed with the pre-hearing meeting of Senators which was a closed-door session, it is now time to commence the proceedings of the proposed removal from office, by impeachment, of Hon. (Dr.) Robert Monda, the Deputy Governor of Kisii County.

By a letter dated 1st March, 2024, the Speaker of Kisii County Assembly informed the Speaker of the Senate that at a sitting of the Kisii County Assembly held on Thursday, 29th February, 2024, the County Assembly of Kisii approved a Motion for the removal from office by impeachment of Hon. (Dr.) Robert Monda, the Deputy Governor of Kisii County.

The Speaker of the County Assembly of Kisii also forwarded the following documents to the Senate, being the record of proceedings of the County Assembly and evidenced adduced in support of the impeachment Motion.

(1) Notice of Motion for the proposed removal from office of the Deputy Governor dated Monday, 13th February, 2024;

(2) List of Members in support of the Motion;

(3) Votes and proceedings of the Assembly sittings held on Tuesday, the 13th February, 2024, afternoon sitting, Wednesday 21st February, 2024, afternoon sitting and Thursday, 29th February, 2024, afternoon sitting;

(4) Order Paper and Supplementary Order Paper dated Tuesday, 13th February, 2024, Wednesday 21st February, 2024 and Thursday, 29th February, 2024;

(5) Motion dated Monday 21st February, 2024;

(6) List of Members in support of the Motion;

(7) Hansard for the sitting of the Assembly held on Tuesday, 13th February, 2024 and Wednesday, 21st February, 2024;

(8) Complaint from Dennis Mokaya Misati to Hon. Wyckliff Siocha Gesongori;

(9) Complaint from Dennis Mokaya Misati to Director Ethics and Anti-Corruption Commission (EACC);

(10) Affidavit by Dennis Mokaya Misati;

(11) Advert by Gusii Water and Sanitation Company (GWASCO), shortlisting by GWASCO, application for the post of GWASCO Commercial Manager, Dennis Mokaya;

(12) M-pesa Statement by Dennis Mokaya.

(13) Affidavit by Reuben Monda Orang'i Matundura;

(14) M-pesa Statement by Lucy Wahito;

(15) Statement by Lucy Wahito;

(16) Advertisement of public participation and report;

(17) Statement by David Haggai Oyagi;

(18) Statement by Gladys Aminga; and,

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(19) Statement by Enock N. Maranga.

Pursuant to Section 33(b) of the County Governments Act and Standing Order No.81(a) of the Senate Standing Orders, at the sitting of the Senate held on Thursday, 7th March, 2024, the charges against the Deputy Governor of Kisii County as contained in the Motion of impeachment by the County Assembly of Kisii were read to the assembled Senate.

Hon. Senators, ladies and gentlemen, allow me to remind you of the mandate of the Senate in relation to the proposed removal, by impeachment, of a county governor as provided for under Article 181 of the Constitution as read together with Section 33 of the County Government Act, 2012 and Standing Order No.80 of the Senate Standing Orders.

In particular, Article 181 of the Constitution provides as follows-

‘(1) A county governor may be removed from office on any of the following grounds:

- (a) Gross violation of the Constitution or any other law;
- (b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;
- (c) abuse of office or gross misconduct; or
- (d) physical or mental incapacity to perform the functions of office of county governor.

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

Section 33 of the County Government Act, 2012, Senate Standing Orders No.80 and the Third Schedule to Senate Standing Orders provide for the procedure to be followed in the hearing and determination of the proposed removal from office, by impeachment of a governor.

Specifically, Section 33(3)(b) of the County Government Act, 2012, and Standing Order No.80(1)(b) of the Senate provide that-

‘The Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter or investigate the matter.’

The matter can also be investigated in Plenary. Further, Standing Order No. 80(9) provides that the procedure for removal of a governor shall with necessary modifications apply in the case of a deputy governor.

Hon. Senators, you recall that at a sitting of the Senate held on Thursday, 7th March, 2024, the Motion for establishment of a Special Committee was withdrawn pursuant to Standing Order No.7. This, therefore, paved the way for the position, the hearing against of impeachment charges against the Deputy Governor of Kisii County to be held by the Senate sitting in Plenary.

Hon. Senators, ladies and gentlemen, by way of a status update, pursuant to Rule 4(a) and 6 of the Rules of Procedure on considering the proposed removal of a governor or a deputy governor in plenary, the Senate invited the Deputy Governor to appear and be represented before the Senate during the investigation.

The Senate further invited the Deputy Governor, if he so chooses, to appear before the Senate to file an answer to the charges with the Office of the Clerk of the Senate by 5.00p.m. on Monday, 11th March, 2024, setting out-

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

Lastly, any other evidence to be relied on.

Pursuant to Rules 4(b) and 7 of the Rules of Procedure when considering the proposed removal of a governor or deputy governor in plenary, the Senate notified the County Assembly of the date of the commencement of the investigation and invited the County Assembly to designate Members of the County Assembly (MCAs) who shall appear and be represented before the Senate during the investigation.

The County Assembly was further invited, if it so chooses, to appear before the Senate to file with the Office of the Clerk of the Senate by 5:00 p.m. on Monday 11th of March 2024 setting out documentation of the following-

- (1) Designated MCAs being not more than three Members, if any, who shall attend and represent the Assembly in the proceedings before the Senate;
- (2) Indicate the mode of appearance before the Senate whether in-person, by advocate or in-person and by advocate;
- (3) Indicating the names and addresses of the persons to be called as witnesses, if any, and witnesses' statements containing a summary of the evidence to be presented by such witnesses before the Senate;
- (4) Specifying any other evidence to be relied on.

(Several Senators stood at the entrance)

Before I proceed, I will allow hon. Senators to walk in and take their seats.

(Several Senators took their seats)

Hon. Senators, ladies and gentlemen, on Monday, 11th of March 2024, the office of the Clerk of the Senate received a response to the invitation to appear issued by the Deputy Governor by a letter referenced No.1/816/24/1 dated the 10th of March 2024, Messrs Katwa and Kemboy Advocates informed the Senate that the firm has been appointed by the Deputy Governor to represent him in the proceedings before the Senate and that the Deputy Governor would appear in person and by advocates.

The letter also indicated the list of counsel representing the Deputy Governor and the list of witnesses for the Deputy Governor. Similarly, on the same day, the Office of the Clerk of the Senate received a response to the invitation to appear issued to the County Assembly of Kisii vide a letter referenced No. CAK/3/1/Cs/003/2024 dated the 8th of March, 2024, the Speaker of the County Assembly of Kisii informed the Senate that Messrs Ndegwa and Ndegwa Advocates had been appointed by the County Assembly of Kisii to represent the County in the hearing and that the County Assembly will appear and be represented by the advocates.

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The letter also indicated advocates to represent the County Assembly and a list of witnesses for the County Assembly. Further, vide a letter referenced CAK/3/1/C/CS/002/2024 dated 8th of March 2024, the Speaker of the County Assembly of Kisii, pursuant to Rule 10 of the Third Schedule to the Senate Standing Orders made a request to the Senate to summon Mr. David Haggai Oyagi; the Acting Director Enforcement and Compliance, County Government of Kisii to appear before the Senate and produce his appointment letter and confirm, if persons who are said to be working in the Deputy Governor's home are officials in the county.

Pursuant to Rule 8 of the Rules and Procedures, on considering the proposed removal of a governor or deputy governor in plenary, the Clerk of the Senate furnished each party with the documentation filed by the other party in accordance with Rules 6 and 7 of Rules of Procedures.

Hon. Senators, ladies and gentlemen, the hearing programme, which has been appended to today's Order Paper, details the various activities in the hearing and determination of the matter and the time allocated to each activity.

It will be crucial, therefore, that all the parties comply with the time allocated. The parties will be notified of the balance of time on each activity through the Clerks-at-the Table.

In summary, the programme states that today, Wednesday, 12th of March, 2024, after we have dispensed with the preliminary matters, the charges against the Deputy Governor shall be read. The Deputy Governor will be given an opportunity to take a plea on the four charges. This will be followed by an opening statement of the County Assembly and thereafter the Deputy Governor.

After the conclusion of the opening statements, the presentation of the case of the County Assembly shall commence. After the presentation of the case by the County Assembly, Hon. Senators will be given an opportunity to ask questions or seek clarification from the County Assembly. This should take us up to the end of today's sitting.

At the sitting scheduled for tomorrow, Thursday, 14th of March, 2024, the Deputy Governor will have an opportunity to present his case before the Senate. Hon. Senators will also be given an opportunity to ask questions or seek clarifications from the Deputy Governor, following which the closing statements by the parties will be made for a period not exceeding one hour each.

The Senate shall then proceed to debate prior to voting on each of the charges. At this stage, a Supplementary Order will be issued to facilitate this debate. In accordance with Section 33(7) of the County Governments Act and Standing Order No.80 (6) of the Senate Standing Orders, the voting shall be by County Delegations.

The Deputy Governor shall cease to hold office if a majority of the county delegations in the Senate vote to uphold any impeachment charge. If, however, the vote in the Senate fails to result in the removal of the Deputy Governor pursuant to Standing Order No.80(7), the Speaker of the Senate shall notify the Speaker of the Kisii County Assembly accordingly.

Hon. Senators, ladies and gentlemen, I now invite counsel for the County Assembly of Kisii to introduce the legal team of the County Assembly and the Members

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of the Kisii County Assembly representing the County Assembly by stating the full name and the designation of each person.

Kindly, proceed.

INTRODUCTION BY THE KISII COUNTY
ASSEMBLY TEAM

The Lead Counsel for the County Assembly (Mr. Ndegwa Njiru): Thank you, Mr. Speaker, Sir. My name is Mr. Ndegwa Njiru, Advocate for the Kisii County Assembly. The team from the Kisii County Assembly is as follows-

1. Mr. Ndegwa Njiru - Lead Counsel
2. Mr. Mwangi Ndegwa - Advocate
3. Ms. Ann Munyoki - Advocate
4. Mr. Gitari - Advocate
5. Hon. James Ondari - Member of the County Assembly
6. Hon. Jacob Bagaka - Member of the County Assembly
7. Hon. Henry Moracha - Member of the County Assembly

The Speaker (Hon. Kingi): Sen. Ledama, take your seat.

Hon. Senators, ladies and gentlemen, I now similarly invite counsel for the Deputy Governor to introduce the legal team representing the Deputy Governor by stating the full name of each person appearing.

INTRODUCTION BY THE TEAM OF THE KISII
COUNTY DEPUTY GOVERNOR

The Lead Counsel for the Deputy Governor (Mr. Silvanus Osoro): Mr. Speaker, Sir, this is the legal team that appears for the Hon. Deputy Governor-

1. Hon. Silvanus Osoro - Lead Counsel for the Deputy Governor
2. Mr. Katwa Kigen, SC - Advocate
3. Mr. Wilkins Ochoki - Advocate
4. Mr. Kelvin Michuki - Advocate
5. Mr. Wilgrida Amajong - Advocate
6. Hon. Amos Begi Onderi - Member of the County Assembly
7. Hon. Boss Mairura - Member of the County Assembly
8. Hon. Lilian Anyango Gor - Member of the County Assembly
9. Hon. Edna Kwamboka - Member of the County Assembly
10. Hon. Ibrahim Ongubo - Member of the County Assembly

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The Speaker (Hon. Kingi): Hon. Osoro, who are those people that you are mentioning?

The Lead Counsel for the Deputy Governor (Mr. Silvanus Osoro): Mr. Speaker, Sir, they are the Members of the County Assembly who form part of our witnesses.

The Speaker (Hon. Kingi): No! No, no. That is not what I asked you to do. I asked you to give the names of the legal team representing the Deputy Governor.

The Counsel for the Deputy Governor (Hon. Silvanus Osoro): Okay. Mr. Speaker, Sir, I also confirm that the client, His Excellency the Deputy Governor, Hon. (Dr.) Robert Monda is also present,

The Speaker (Hon. Kingi): Thank you.

Very well. Now, on behalf of the Senate, I welcome the team of the County Assembly, the team of the Deputy Governor, members of the public, and the media to the Senate and to these proceedings.

Finally, I will now invite the Clerk to read the charges against the Hon. Dr. Robert Monda, the Deputy Governor of Kisii County.

READING OF CHARGES AGAINST THE DEPUTY
GOVERNOR OF KISII COUNTY

The Deputy Clerk of the Senate (Ms. Gichangi): The Hon. (Dr.) Robert Onsare Monda, the Deputy Governor of Kisii County, kindly, take the stand.

(Hon. (Dr.) Monda took the stand)

Hon. (Dr.) Robert Onsare Monda, the Deputy Governor of Kisii County, the charges against you as received from the County Assembly of Kisii are as follows, and I quote-

(1) Gross Violation of the Constitution or any other law

The particulars of the charge are as follows-

Whereas Article 179(4) vests Deputy Chief Executive Power on the Deputy Governor, and whereas in consideration of the provisions of Article 10 and 73(1)(a)(iii) and (iv) of the Constitution of Kenya 2010, in so far as it connotes the manner in which a State Officer is expected to exercise assigned authority, Article 75(1) of the Constitution, as read with Sections 8, 9, 10, 11, 24, 32, and 34 of the Leadership and Integrity Act, 2012, and Sections 9 and 11(1), (2)(a), (1)(c) of the Public Officer Ethics Act, obligates a State Officer, to behave in all senses in a manner that is devoid of comprising public or official interest in favour of personal interest.

The Deputy Governor's actions of requesting for a bribe, receiving a bribe, is meant to compromise the integrity of the recruitment institution of Gusii Water and Sanitation Company (GWASCO), and the same is driven by nepotism, favoritism, improper and ulterior motives, and for corrupt purposes in complete disregard of the provisions of Article 73(2)(b) and Article 73(2)(c) of the Constitution.

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By virtue of the Deputy Governor requesting and receiving a bribe of Kshs800,000, he is in breach of the provisions of Article 232, which obligates public officers to observe the values and principles of public service that include high standards of professional ethics, fair competition, and merit as the basis of appointments and promotions, and Article 73(2)(d) of the Constitution that requires all state officers to be accountable to the public for their decisions and actions.

The Deputy Governor, Hon. (Dr.) Robert Onsare Monda violated Articles 10, 73, 75, and 232 of the Constitution, which binds state officers while discharging their duties in offices *inter alia*.

The Gusii Water and Sanitation Company (GWASCO), advertised for various job vacancies in April, 2023, and the said Deputy Governor alerted Mr. Dennis Mokaya's father that he could secure his son a job upon paying a bribe of Kshs800,000 only upon his shortlisting and being interviewed for the post.

The Deputy Governor used his office to improperly confer a benefit to himself when he solicited a sum of Kshs800,000 shillings from one Mr. Dennis Mokaya and his family in the pretext of securing for him a job for the said post of commercial manager of GWASCO, an entity of the Kisii County government.

The Deputy Governor received a sum of Kshs799,000 through the M-Pesa platform as follows: the first tranche on 28th May, 2023 of Kshs249,000, sent in three tranches of Kshs150,000, Kshs49,000, and Kshs50,000 by Mr. Dennis Mokaya Mosati on Mobile phone No.0725487300 to the Deputy Governor's Safaricom line being 0711860700.

The second one was Kshs260,000 to the Deputy Governor's Safaricom line being 0711860700 and the last tranche in the sum of Kshs300,000 which was delivered to his offices in Gusii Stadium in cash.

In an attempt to influence the award of a contract of employment to Mr. Dennis Mokaya, the Deputy Governor sent via M-Pesa a sum of Kshs100,000 to the Managing Director, GWASCO, in order to influence her to employ the said Mr. Dennis Mokaya, which request was not acceded to by the Managing Director, GWASCO, and the money returned via M-Pesa to the Deputy Governor.

While realising that the Deputy Chief Executive Authority vests in the Deputy Governor, was there need for the Deputy Governor to grease the palms of the Managing Director of GWASCO to give Mr. Dennis Mokaya the said post?

Mr. Dennis Mokaya complained to the County Assembly to intervene in its oversight capacity. Mr. Dennis Mokaya thereafter registered a complaint and recorded a statement with EACC and submitted, among other documents, the advertisement from GWASCO on the vacant post to be filled, his letter of application for the job, the invitation letter from GWASCO to attend the interview, and his M-Pesa Statement for the month of May 2023, detailing the transfer of the Kshs249,000 to the Deputy Governor.

Despite this huge payment made, Mr. Dennis Mokaya and his family never secured the job.

On informing the Deputy Governor that he would be forced to make a formal complaint to the Ethics and Anti-Corruption Commission (EACC), on the matter, the

latter threatened his life and his family. Consequently, it caused the former to go into hiding.

(2). Abuse of Office

The particulars of this charge are as follows-

The actions of the Deputy Governor, the Hon. (Dr.) Robert Monda, of using his office to solicit for Kshs800,000, thereby conferring a financial benefit on himself, and subsequently sending Kshs100,000 to the GWASCO Managing Director, so as to influence the award of a contract of employment to a preferred interviewee, he has abused the Office of the Deputy Governor and is in breach of Articles 73 and 75 of the Constitution of Kenya, Sections 8, 9, 10, 11, 13, 24, 32, and 34 of the Leadership and Integrity Act, by breach of public trust, failing to carry out the duties of his office in a professional, transparent, and accountable manner, using his office to unlawfully enrich himself, failing to conduct the duties of his office with impartiality and objectivity in accordance with Articles 10, 27, 73, 2(b) and 232 and practicing favoritism and engaging in corrupt or unethical practices and engaging in actions that bully a person.

The Deputy Governor is in violation of Section 11(1)(2)(a)(i), (c), of the Public Officer Ethics Act which provides that a public officer shall not use his office to improperly enrich himself or others and shall not accept favours from a person who has an interest that may be affected by the carrying out of the public officer's duties, and shall not for the person's benefit of himself or another use or allow the use of information that is acquired in connection with the public officer's duties as well as Section 6(1)(c), 2, and 3 of the Bribery Act provides that a person commits the offense of receiving a bribe if the person requests, agrees to receive, or receives financial or other advantage intending that a relevant function or activity be performed improperly by the person receiving the bribe and in anticipation of or as a consequence of a person requesting for or agreeing to receive or accept a financial or other advantage an activity is performed improperly by the person or another person.

The Deputy Governor unilaterally used the office to intimidate and cow his family into hiding fearing for their lives in contravention of Section 34 of the Leadership and Integrity Act, 2012.

In furtherance of abuse of his office, the Deputy Governor has continuously diverted county enforcement officers from their course of duty to work in his farm, a portion of land allocated to him by his father.

Since he came into office, there have been at least five officers working in the farm, a clear demonstration that the Deputy Executive in chief is misusing the staff of the county.

On the 20th December 2023, the Deputy Executive in chief deployed a contingency of about 20 county officers under the supervision of the sub-county administrator to arrest his brother, one Reuben Monda Orang'i, for cutting down trees that his brother Reuben Monda Orang'i had planted.

In exercise of his executive power, the Deputy Executive in-chief, ensured his handcuffed brother was bungled in the police vehicle and was incarcerated in Keumbu Police Station for three hours without an Occurrence Book (OB) booking.

At 1830hrs, the OCS denied the sickly Reuben Monda Orang'i (who suffers from

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high blood pressure and diabetes) and he was immediately transferred to Kisii Central Police Station.

At Kisii Police Station, the helpless Reuben Monda Orang'i was further detained without a booking on the OB and without the option of bail or bond pending presentation to court.

At one point, the sickly Monda Orang'i had to be rushed to Kisii Teaching and Referral Hospital for an urgent medical intervention. However, on reaching the hospital, Reuben Monda Orang'i was never attended to by any doctor as the OCS Kisii Central Police Station received instructions to immediately take him back to the police station.

With his condition now deteriorating, Reuben Monda Orang'i was sped back to the police station until 00.20hrs where he was issued with a cash bail of Kshs30,000.

The medical condition of the old man deteriorated to the extent the he was hospitalized in Coptic Hospital for about three weeks and since then, he has been on injected insulin a condition that was not there before.

(3). Gross Misconduct

The particulars of this charge are as follows-

The Deputy Governor interfered with the appointment of the vacant position of the Commercial Manager of Gusii Water and Sanitation Company (GWASCO) Limited by attempting to bribe the Managing Director, Ms. Lucy Wahito Wachira, with a sum of Kshs100,000. This was in May, 2023. This act contravened Article 75 of the Constitution of Kenya. The Deputy Governor's engagement, connivance and or complicit behaviour boils down to gross misconduct and gross abuse of office.

(4). Crimes under National Law

The particulars of this Charge are as follows-

The actions of the Deputy Governor, H.E Robert Monda, by using his office to solicit for Kshs800,000, thereby conferring a financial benefit to himself and subsequently sending Kshs100,000 to the GWASCO Managing Director so as to influence the award of a contract of employment to a preferred interviewee, he is in violation of Section 6(1)(a), (c), (2) (3) of the Bribery Act, that provides-

“A person commits the offence of receiving a bribe if the person requests, agrees to receive or receives a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly whether by that person receiving the bribe or by another person”.

Hon. (Dr.) Robert Onsare Monda, how do you plead to, Charge 1? Guilty or not guilty?

The Deputy Governor of Kisii County (Hon. Monda): Not guilty, Mr. Speaker, Sir.

The Deputy Clerk of the Senate (Ms. Gichangi): Hon. (Dr.) Robert Onsare Monda, how do you plead to Charge 2? Guilty or not guilty?

The Deputy Governor of Kisii County (Hon. Monda): Not guilty, Mr. Speaker, Sir.

The Deputy Clerk of the Senate (Ms. Gichangi): How do you plead to Charge 3? Guilty or not guilty?

The Deputy Governor of Kisii County (Hon. Monda): Not guilty, Mr. Speaker, Sir.

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The Deputy Clerk of the Senate (Ms. Gichangi): How do you plead to Charge 4? Guilty or not guilty?

The Deputy Governor of Kisii County (Hon. Monda): Not guilty, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Thank you. You may take your seat, Deputy Governor. Hon. Senators, ladies and gentlemen, at this juncture, I will allow the opening statements on behalf of the County Assembly. You have 30 minutes.

OPENING STATEMENT ON BEHALF OF
KISII COUNTY ASSEMBLY

The Lead Counsel for the County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, my name is Ndegwa Njiru. Perhaps, before I make my opening remarks, with assistance of my fellow counsel, permit me to draw the attention of the House to the letter dated 8th March, 2024; which invoked Rule No.10 of the Third Schedule of the rules governing these proceedings.

The Speaker (Hon. Kingi): Sen. Madzayo, what is the issue?

The Senate Majority Leader (Sen. Madzayo): Thank you, Mr. Speaker, Sir. It would be better if the counsel is able to guide by saying which volume he is referring to so that we are able to see.

The Speaker (Hon. Kingi): As you make your opening statement, please, pinpoint exactly which volume you are referring to and the page where the mentioned document is contained.

The Counsel for the County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, I am well guided. The letter I am referring to is the one sent by the Speaker and the Clerk of the County Assembly of Kisii to the Clerk of the Senate. It was seeking to invoke the provisions of Rule 10 in so far as the question of issuance of summons are *ab initio*.

Therefore---

The Speaker (Hon. Kingi): Where is the letter contained so that the hon. Senators can follow?

The Lead Counsel for the County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, the letter does not form part of the proceedings.

(The Clerk-at-the-Table approached the Chair)

The Speaker (Hon. Kingi): The Clerk has just informed me so and it is being made available to hon. Senators. May the copies be circulated.

The Lead Counsel for the County Assembly (Mr. Ndegwa Njiru): I am much obliged. As such, permit me to make an application pursuant to Rule 10 of this House proceedings equally assisted by Article 50 of the Constitution, that this honorable court be pleased to issue summons to Mr. David Hagai Oyagi. He works with the County Government of Kisii as a Director of Enforcement and Compliance.

The basis of our application is that while the charges were being read to His Excellence the Deputy Governor, there was one that involved the misuse of county

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resources to which 20 enforcement officers were unlawfully deployed to arrest and harass one Mr. Reuben Monda Orang'i.

Subsequently, the charges have also indicated that, at least, four county enforcement officers are deployed by the Deputy Governor of Kisii County to conduct and execute odd jobs such as milking cows and cooking for dogs at the residence of the Deputy Governor.

In the application for summons, we requested the Senate to indicate to the said, Mr. David Haggai Oyagi, to produce his appointment letter and any other relevant document that speaks to or against the allegations.

Mr. Speaker, Sir, the summons being sought will assist this House to meet its mandate under Section 33 of the County Governments Act, which provides that other than presiding over a hearing of a case such as this one, it also permits this House to initiate investigations into the allegations so as to determine the propriety or impropriety of the allegations contained therein.

If the summons sought by the County Assembly are, therefore, issued, the Deputy Governor will suffer. There will be no prejudice, whatsoever, as he will be granted an opportunity to test the veracity of the statements or evidence that shall be adduced before this House by the said David Haggai Oyagi.

These are clear tenets dictated by Article 50 of the Constitution. This is a non-derogable right. That is right to a fair hearing. In this case, a fair hearing and the interpretation of the County Assembly of Kisii means that the Senate shall be afforded an opportunity and the facilities available to determine the veracity of that case.

The refusal to issue the summons to the said David Haggai will deny this Senate an opportunity to test whether or not the Deputy Governor of Kisii County has been abusing his office by misapplication and misappropriating the county resources.

It is all known to us that human resource is a rare resource that facilitates and wheels movement and administration of a county. Therefore, the question when determining whether to issue the summons or not to grant is this: Will the Senate be afforded a proper opportunity to test the veracity of that issue?

Finally, Mr. Speaker, Sir, in the bundle of documents that were sent to us and shared and exchanged by the respondents herein, the Deputy Governor, we are making an application before this court that paragraphs 48 and 49 of the document be expunged because they are irrelevant to these proceedings. The same does not speak to the question or the case before the Senate.

The offending paragraphs that appear that the Deputy Governor---

The Speaker (Hon. Kingi): Hold on, counsel. Sen. Omogeni, what is the issue?

Sen. Omogeni: Mr. Speaker, Sir, the counsel is doing well. For purposes of following his submissions easily, we would like him to refer us to the particular volume of the document he is referring to. If possible, he should refer us to the page so that we move with him.

The Speaker (Hon. Kingi): Counsel, I thought I made that position clear.

The Lead Counsel for the County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, I was about to make the reference. I am referring to the bundle of documents

appearing in blue from the firm of my senior learned friend, Mr. Katwa Kigen and Mr. Kemboi, marked as “DG”. That is the response. The document is dated 10th March, 2024.

The Speaker (Hon. Kingi): Counsel, what is the title of that volume?

The Lead Counsel for the County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, it is labeled “DG”. It belongs to the Deputy Governor. It is indicated in black as “DG” perhaps to mean Deputy Governor. That is Page E(8).

The Speaker (Hon. Kingi): What is the issue, Senator for Nandi?

Sen. Cherarkey: Mr. Speaker, Sir, I had indicated earlier that I needed clarification under Article 71 of the Constitution and the impeachment procedure under the Standing Orders. I need your guidance and perhaps ruling. One of the lawyers representing the Deputy Governor of Kisii happens to be---

The Speaker (Hon. Kingi): Senator for Nandi, we will come to that. Counsel, proceed.

The Lead Counsel for the County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, I hope hon. Senators are with me. I am on page eight, Paragraph 48 all the way to page 15, Paragraph 64. The paragraphs that I have highlighted contain material facts that do not relate to the proceedings before the Senate. Secondly, the paragraphs I have indicated mention or make reference to individuals who are not party to these proceedings.

For example, a look at Paragraph 53 of the said document appearing on page nine makes reference to the Governor of Kisii County. Further to that, in Paragraph 61 on Page 13 of the document, the document makes reference to the spouse of the Governor of Kisii County. Equally, the pages refer to matters of budget. More so, paragraphs 56, 57, 58 all the way to Page 11. These are not matters that form part and parcel of these proceedings.

The consequence of this pleading will only embarrass individuals who are not party to these proceedings. It will not just embarrass, but also deny them an opportunity to appear and be heard by this distinguished House.

We all understand that in strike law, the doctrines of natural justice granting a party an opportunity to be heard is one of the principles elucidated under Article 50 of the Constitution. As such, in the aforementioned paragraphs, it is our humble prayer that the same should be expunged from the record as they do not form part and parcel of allegations contained in the charges read to the Deputy Governor.

Mr. Speaker, Sir, as I sum up and invite my learned friend, Mr. Mutuma for supplementary submissions, permit me to lead the House to page 12 of the document in paragraph (f), just to indicate the irrelevance of the evidence contained.

It refers to the members of the Judicial Service Commission (JSC). The allegations are that the JSC; I may read in verbatim. It says-

“That the effect of conducting county affairs and files at the personal residence is that, the governor's wife attends meetings, makes inputs to official county matters, and serves as both protocol officers and deputy governor, *inter alia*, the JSC.”

In determining the relevance of these averments contained in the foresaid paragraphs, we invite the Senate to interrogate the purpose and objective of such kind of averments and whether or not they inform the charge.

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Finally, Mr. Speaker, Sir, permit me to guide the House to page 15 at paragraph 64. Again, it makes references to individuals not before this Assembly and video clips and photos that did not form part and parcel of the evidence at the County Assembly.

Suffice to note, that during the proceedings at the County Assembly, the Deputy Governor appeared before the County Assembly and filed his response dated 29th February.

These video clips have no relevance to the proceedings. I am aware that it may prejudice the Senators' determination as to the relevance of these video clips because they have not yet been played.

We had the opportunity of reviewing and analyzing them. We made an opinion to which we invite the hon. Senators to hold that they have no relevance. It may perhaps be important for those video clips to be played for the Senators to determine their relevance when determining to expunge the said paragraphs.

Mr. Speaker, Sir, with your permission, permit me to invite, Mr. Mutuma, for further submissions.

The Counsel for the County Assembly (Mr. Elias Mutuma): Thank you, Mr. Speaker, Sir. For record purposes, my name is Elias Mutuma, part of the legal team representing the County Assembly of Kisii. I want to make additional submissions in addition to the relevant materials before this House.

Mr. Speaker, Sir, you will note that the charges as read by the House to the Hon. Deputy Governor, contain four charges. These are very specific charges that have been read and the Deputy Governor has been able to respond that he is not guilty of the four charges. It is the four charges that were prosecuted by the County Assembly of Kisii and that the Hon. Deputy Governor responded to. Additionally, it is the four charges that this House has been invited to make a determination on.

Those charges are contained on page 15 and page 21 of the County Assembly's bundle of documents. The same are; if I may read, page 15. Page 15 contains the Motion. On page 16, we have the first charge of Gross Violation of the Constitution or any other law.

Charge number two is contained on pages 18, which is Abuse of Office.

Charge number three, is contained on page 20 - Crimes under National Law and the last one is contained as Gross Misconduct on the same page.

Mr. Speaker, Sir, in response to those charges, the Hon. Deputy Governor of Kisii, responded through a response that has been filed in this Senate. He has introduced a raft of other charges that he has created for himself and made a response to them.

Those responses are the following-

Mr. Speaker, Sir, if you look at the Deputy Governor's response, the one my learned friend has referred to as from page eight, the Deputy Governor creates new charges that were not part of the County Assembly's charges.

Mr. Speaker, Sir, one of those charges is incompetence, budget absorption, budget variation, use of senior staff, mortgage provision, use of personal home for county functions and files and documents, not working with other leaders, use of unofficial personnel on county matters and he proceeds to make a defence on those charges.

Those charges have not been read to the Deputy Governor. However, this House is being invited to make a determination on those matters. It would be a waste of crucial time for this House to proceed and listen to a defence that contains a response to charges that were not part of the charges by the County Assembly.

Mr. Speaker, Sir, it is on that basis that we ask the hon. Senators to expunge that part of the response because it has no bearing or relevance to these proceedings.

That is all, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): The side of the County Assembly, are you done with your opening statement?

The Lead Counsel for the County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, we addressed the honourable House pursuant to Rule 10 on preliminary issues because our opening remarks or statements may not be material until this question is determined. Since it will inform on how then our opening remarks will be made and put across.

The Speaker (Hon. Kingi): Counsel, you could have made your opening remarks. In so doing, you raise these issues, so that the team representing the Deputy Governor, in their opening statement, will also have an opportunity to respond to your preliminary objections. Thereafter, then the Senate will decide on those issues.

The Lead Counsel for the County Assembly (Mr. Ndegwa Njiru): I am well guided, Mr. Speaker, Sir. However, as a practitioner, I think I am so fixated to the court proceedings, which dictates that preliminary issues ought to be addressed first.

The Speaker (Hon. Kingi): Very well. If that is your position, then have your seat.

The Lead Counsel for the County Assembly (Mr. Ndegwa Njiru): However, I may be guided Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Well, I have guided you. You can start your proceedings.

The Lead Counsel for the County Assembly (Mr. Ndegwa Njiru): Perhaps I can make the opening remarks if you may allow me, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Please proceed.

The Lead Counsel for the County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, I will take the first 10 minutes then I will share with my colleagues in respect to the opening remarks.

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

The Speaker (Hon. Kingi): What is the point of order, Senator for Baringo County.

Sen. Cheptumo: Thank you, Mr. Speaker, Sir. I have listened keenly to the Counsel for the County Assembly.

Mr. Speaker, Sir, I thought your guidance was clear because the stage you are in as per the programme, is actually opening statements on behalf of the County Assembly. I am worried that if we allow further discussions, we are likely to lose track. This is not a case between this House and any of the parties. It is their case.

I want to plead that, perhaps you reconsider your position. For you to be directed that you will make a finding, at this point, it is not the Speaker, but the House.

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Mr. Speaker, Sir, guide us on that very sensitive matter. This House is being watched now across the country and the world.

The Speaker (Hon. Kingi): Sen. Sifuna, you do not have to beg. I will give you an opportunity.

Sen. Omogeni: Mr. Speaker, Sir, maybe just to assist the Counsel for the County Assembly, I thought his opening remarks would have given him an opportunity to summarise for us Senators, what the case for the County Assembly is, so that he sets the stage for us to make a following.

In terms of the objections that he has, when the time comes for that evidence to be adduced by the Deputy Governor, maybe he could raise his objection. However, he should utilise, with tremendous respect to him, the opening remarks to summarise for us because we just want to have a glimpse of the case that is facing the Deputy Governor.

Mr. Speaker, Sir, you have guided on that. Maybe we should also advise him that it is good to take the ruling of the Speaker, so that you follow and make these proceedings simpler for us to follow.

The Speaker (Hon. Kingi): Sen. Sifuna, proceed.

Sen. Sifuna: Mr. Speaker, Sir, with the greatest respect to all the Senior Counsel who have spoken before me, I believe that this is a quasi-judicial proceeding. The Counsel for the County Assembly is very much in order to require that a ruling be made on the preliminary request.

The only thing I fault them for is being too verbose on a very simple request. A request has been made pursuant to Rule 10 of these proceedings, that a witness be summoned by this House. We need to make a decision after hearing from the team for the Deputy Governor on whether there is going to be any prejudice if this gentleman called David Haggai Oyagi is summoned. That is a matter that has to be dispensed with before we hear opening remarks.

Mr. Speaker, Sir, the second request is expunging of certain paragraphs that are being claimed not to be relevant. That is all this counsel needed to say without going into too many stories because we would want to get into the meat of the argument.

Mr. Speaker, Sir, preliminary matters must be dealt with at the preliminary point so that it will set the tone on what we are going to hear and what we are not going to hear.

I request that the House makes a determination on the request to summon this gentleman. If it is after hearing the counsel for the Deputy Governor, then we make a decision on the other question. Whether we want to expunge those paragraphs now, or we wait until we see the irrelevance, then we expunge them at that particular point. That is the guidance that I wanted to give the House.

Mr. Speaker, Sir, I thank you for the opportunity.

The Speaker (Hon. Kingi): Senator for Nandi County, proceed.

Sen. Cherarkey: Mr. Speaker, Sir, I agree largely with my colleagues who have spoken before me. We needed to allow the Counsel for the County Assembly to make opening remarks. I thought, as is the tradition and precedent, we always dispense with the preliminary objections.

On the issue of expunging the paragraphs that they have requested and the summoning of witnesses, I thought you should have guided them so that we dispense with.

When you invited them to speak for 30 minutes, was it on the aspect of their opening remarks or raising preliminary objections? In my thinking, you would have allowed that the preliminary objections are raised, dispose of and then now it sets the tone for the engagement.

In the opening remarks, they should have given us an overview of their case. With no pun intended, it should have been like a woman's skirt, long enough to cover essentials and short enough to arouse curiosity so that it gives and sets the tone.

(Loud Consultations)

Mr. Speaker, Sir, I said, “no pun intended.” Can you be listening carefully, my colleagues? I was just saying---

Mr. Speaker, Sir, can you protect me?

The Speaker (Hon. Kingi): I will protect you if you are orderly.

Sen. Cherarkey: Yes, I am orderly.

The Speaker (Hon. Kingi): Proceed.

Sen. Cherarkey: I was saying that the opening remarks should be something that is long enough to cover essentials and short enough to arouse curiosity. That is what the opening statement is all about.

I request that you allow us to raise the preliminary objections, dispense with them and then allow them to give their opening remarks. I have given them a simple advice and I hope they will take it.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Hon. Senators, allow me to guide the House as follows-

If you look at the programme, between 11.45 a.m. to 12.15 p.m., that time was reserved for the opening statement of the County Assembly. Thereafter to be followed by the opening statement on behalf of the Deputy Governor.

Hon. Senators, as the County Assembly is making its opening statement, they can, on the same breath, raise the preliminary objections. Thereafter, when the Deputy Governor is making the opening statement, in the same breath, they can respond to the preliminary objections raised by the County Assembly.

The document before you contains some preliminary objections by the Deputy Governor. I want to believe, as they are making their statement, they will also canvass those preliminary objections to which then I will allow the County Assembly to respond.

Thereafter, hon. Senators, you will have an opportunity to deliberate on those preliminary objections, dispense with the same to allow then after the lunch break, to hear the evidence. This is because we cannot assign time to hear only preliminary objections, dispense with them, then come back for opening statements. Let us handle them at the same time.

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County Assembly, your 30 minutes is long gone. However, with this new direction that I have given, I will allow you to put the case of the County Assembly.

You have dealt more on the preliminary objections. Proceed to state your case before we allow the representation from the Deputy Governor to also give us their opening statement. That way we will save on time.

The Lead Counsel for the County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, we are most obliged. Our case is very simple. It is a case of a Deputy Governor who decides to use his office for personal gain. It is a case of a Deputy Governor gone rogue. It is a case of a Deputy Governor who has decided not to inspire the youths of this country.

In my opening remarks, permit me to refer to the Bible book of Exodus, Chapter 18 verse 21. It says-

“Moreover, look for able men from all the people, men who fear God, who are trustworthy and hate bribes.”

Mr. Speaker, Sir, equally, permit me to refer to Surah ya Pili or the Second Chapter, Verse 188 of the Quran -

“And their taking of bribe, to thou were forbidden, for taking it and the devouring of men substance worthful bribes, and we have prepared for the disbelief among them and a painful moment.”

Mr. Speaker, Sir, the County Government of Kisii through the Gusii Water and Sanitation Company (GWASCO) advertises for a job for the commercial manager. The job is carried on the newspaper. The Deputy Governor gets to know about it, he informs his friend Mr. Joseph Mosati, whom he alleges he has been friends with for the last 32 years, that here is an opportunity where your son can be absorbed into employment. He plans on how to extort, defraud and benefit with Kshs800,000.

He creates a scheme where he meets the Managing Director of GWASCO. He informs her in advance that he has a candidate who will be presenting his application before you. He attempts to convince her that at the appropriate time, “I will do the necessary--- ‘The necessary’ herein being bribing the Director of GWASCO for purposes of return of a favour in favour of Dennis Mosati.

Dennis Mosati is given the responsibility by his father to raise the Kshs800,000. A young, poor, jobless man, a family man who is destitute and desperate for a job, does all within his means. He sells his salon so as to raise the Kshs800,000, sells all his household; *sufurias* and everything else, so that he could raise the Kshs800,000 as sought by the Deputy Governor.

He succeeds in that mission, raises the money even from his friends. Upon the success of the mission of raising the Kshs800,000, he forwards the same. The father and the mother are involved in that scheme. Finally, the money lands to the Deputy Governor through M-pesa and cash.

The County Assembly shall give evidence to that extent that, ‘yes, money was sent from the M-pesa of Joseph Mosati, Dennis Mosati the complainant and equally money was sent from the M-pesa of Anne Mosati. All the money landed to the benefit or the M-pesa of the Deputy Governor.

Subsequently, on the same day, the Deputy Governor sends Kshs100,000 to one Lucy Wahito. Upon receipt of this Kshs100,000, Lucy Wahito, the Managing Director of GWASCO is perplexed, wonders why the Deputy has decided to be that generous. Upon placing a call to the Deputy Governor in search of the reason for the remittance of the said amount, the Deputy Governor merely makes a statement: “You remember what I told you? This is meant for what I had told you when summoned you in my office.”

The good Lucy Muhito decides to resend the said amount. Refuses to be influenced, bribed and corrupted. In essence, Lucy Wahito meets the qualifications of the persons described by the Bible and the Quran. She refuses to be corruptible.

Finally, the Deputy Governor receives the money, Kshs100,000, resent back to him and makes no further follow ups. In his defence, he says that this was made to Lucy as an error. He takes no efforts to reverse the same or even call Lucy for the reversal.

Mr. Speaker, Sir, the other limb of the case is where the Deputy Governor decides to abuse his office. Being the powerful man that he is and his brother being the miserable old man that he is, decides to have it fixed his way.

He mobilises the County Government enforcement officers to go and arrest the poor, sickly and hopeless, Reuben Monda. He is bundled into the police vehicle at the behest of Deputy Governor. At the county Assembly, the HANSARD bears us witness that yes he confirmed that he is the one who mobilised the said enforcement officers.

Be that as it may, the Deputy Governor with all the resources afforded to him, decides even to apply the county resources in applying four uniformed enforcement officers to do odd chores at his farm. Odd as even cooking for his dogs.

The Senate is presented with a case such as this one. Previously, the cases of impeachment have been pegged mostly on the question of the violation of the Constitution and the mismanagement of county resources. This is a unique case; it is a case where we are not inviting the Senators to look at whether or not there is any resource or funds that have been lost.

The question of oversight means, that the Senate also has to look and interrogate whether the person in the name of the County Deputy Governor squares out with Chapter Six of the Constitution. Is this a man full of integrity? Is this a man who can be trusted? Is this a man who can be held to account? Is this a man who is transparent? Is this a man who can inspire the youth? Is this a man who can be trusted with the county resources?

Evidence will bear us witness when we begin to tender the same that Dennis is not the only victim. The public participation processes that were conducted on the 26th February, we have people claiming that yes, the Deputy Governor is a man who is full of insatiable greed for resources to the extent that, he solicits resources as low as Kshs8,000 so that he can facilitate the Governor’s bursaries. That is the man that is being trusted to oversee the activities of the County Government of Kisii.

In the fullness of time, evidence will be tendered to prove that this is a man who does not deserve the mercy of this House or any further stay and holding that position of a Deputy Governor. How can a Deputy Governor solicit Kshs20,000, so that he can assist poor people and hustlers to access the bursary?

The Deputy Governor, you were elected by these individuals to serve them, but at the end of the day, you end extorting and defrauding them. He is not a man worth his salt or the favour of this House.

Permit me to invite Mr. Mwangi for further submissions.

The Counsel for the County Assembly (Mr. Mwangi Ndegwa): Mr. Speaker, Sir, my name is Mwangi.

The Deputy Governor receives money from Dennis Mosati at 8.33 p.m., he receives another bunch of Kshs49,000 at 8.37 p.m. on 28th May, 2023 and within a span of 40 minutes, he sends Kshs100,000 to the Managing Director of GWASCO, Lucy Wahito, at 9.24 p.m. on 28th May, 2023.

He further sends money to three other people on the same day of 28th May, 2023. The last transaction on that day was made at midnight. He sends Kshs100,000. In his defence, he raises the issue that this money was sent by an error. Surely, from 9.24 p.m. to midnight when he was sending the last transaction of that day, the Deputy Governor did not realise that he had sent money by an error until he is reminded by one Lucy the following morning.

Mr. Speaker, Sir, on the issue of arresting his own blood brother, Rueben Monda, the Deputy Governor deploys not only one, two or three, but a contingency of 20 county enforcement officers, accompanying police officers to arrest and bundle him into a motor vehicle.

Surprisingly, his own brother, today, because of the ordeal that he went through on that day, he is now a diabetic man who has since started injecting himself with insulin, a condition that was not there before then.

Hon. Members, as I cede my 10 minutes to Mr. Mutuma, I invite this hon. House to make a determination on the issue of whether or not the hon. Deputy Governor should be removed from office by a way of impeachment. As we have shown, and we shall strictly indicate to you and bring out through the witnesses, there was a clear and well calculated way by the Deputy Governor who even confirms that he spoke to one Lucy to seek for favours. He also confirmed that during the County Assembly session and the HANSARD confirms so. He also confirms that he spoke to Lucy about the issues of the bribe, but Lucy told him that the interview will be done by way of merit.

Hon. Members, I cede my few minutes to Mr. Mutuma.

The Counsel for the County Assembly (Mr. Elias Mutuma): Thank you, Mr. Speaker, Sir, and the hon. Members of the Senate. The case of the Kisii County Assembly is simple. It is a cry by vulnerable members of our society who have suffered at the hands of their leaders. It is a case of vulnerable members of the society who have been exploited by those in positions, those that they pay through the taxpayers' money. That is what these hon. Senators are being invited to make a determination on.

Hon. Speaker, Sir, you will realise from the testimony of Dennis Misati that, as a result of this ordeal, his wife was depressed to the extent that she collapsed and lost their baby and this happened after 12 years of trying to get their second born. The thought of having sold everything that they had and losing everything that they called a source of livelihood was too much for her to bear that miscarried at the hands of the Deputy Governor.

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Hon. Senators, last year but one, I had the opportunity to appear before the Supreme Court where we were on the same side with my learned friend, Mr. Katwa Kigen. I want to quote what he said. He told the hon. Judges of the Supreme Court that, 'you have a right to be angry. You have a right to be bitter.' When a witness appears before you and concocts facts, twists events and lies to you while looking at you straight in the eyes and tries to twist a simple issue, then, as hon. Senators, you have a right to be angry.

When you listen to the testimony of the Deputy Governor, you have that right. Invoke it. Tell him that he is lying. Tell him that whatever he is telling you does not make sense. You do not receive money from an innocent person, send it to the very person that you are being accused of seeking favour from and you do not make attempts to reverse it 48 hours later. The person you are seeking to bribe asks you to reverse and you do not then you come before the Senate and look them straight in the eye and say that you had sent that money by mistake. You have a right to be angry. Exercise that right. Most obliged, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): The County Assembly team, have you concluded your Statement?

The Counsel for the County Assembly (Mr. Elias Mutuma): Yes, Mr. Speaker, Sir. However, I just want to mention that the simplicity of this case was witnessed on 31st December, 2012, when the Deputy Chief Justice, as then she was, Hon. Lady Justice Nancy Baraza, pinched someone's nose. The victim was Ms. Rebecca. Pinching the nose of an individual caused the Deputy Chief Justice of the Republic of Kenya to go home. That is the test.

The test is; can a State officer be allowed to behave in such a manner? Does the conduct of the Deputy Governor answer to the tenets of Article 10 of the Constitution? Is he accountable? Is he transparent? Is he a man of integrity? Does he respect his office? Does this conduct bring honour and reputation to the office of the Deputy Governor?

Equally, Mr. Speaker, Sir, we have the case of President Richard Nixon who faced impeachment in 1974 on the count of the Watergate Case. What had the President of the United States of America done? He sent individuals to break into the Democratic National Convention offices at Watergate. He later made attempts to conceal that evidence. On that basis, a President went home.

On the basis of soliciting and receiving Kshs800,000 from poor Kenyans, Mr. Monda must go home. On the basis of using the state resources to harass innocent and hopeless Kenyans, Mr. Monda must go home. On the count of misuse of the meagre county resources, Mr. Monda must go home. I so invite the Senators to keenly look at the case of Nixon and the case of Nancy Baraza. Most obliged.

The Speaker (Hon. Kingi): Thank you. I will now allow the team of the Deputy Governor to take us through their Statement. Counsel, there is a difference between an opening Statement and a final submission. What I have just heard from the last bit of the County Assembly are final submissions. So, let us hear your opening statement and not your final submission.

OPENING STATEMENT ON BEHALF OF THE
KISII DEPUTY GOVERNOR

The Counsel for the Deputy Governor (Mr. Katwa Kigen): Thank you, Mr. Speaker, Sir and Members of the Senate. When we come down to cross-examining the witnesses that will be called by the County Assembly and our witnesses, you will be surprised at how far the person they are describing is from what they have described him. You will be surprised by their use of exaggerated adjectives. You will realize that the Deputy Governor is, indeed, a man of integrity, a Christian and a man of conscience.

I would like to address the five counts. I know there is repeated contention that they are four, but they are five. The first one is whether or not he took a bribe from one Dennis Misati. The second one is whether he gave a bribe to one Lucy Wahito. The third one is whether he threatened one Dennis Misati. The fourth one is whether he misused the staff of the County Assembly and the fifth one is whether he misused his authority to have his brother arrested.

On the first count, the allegation is that the Deputy Governor received a sum of--- In some paragraphs of their claim, they say he received Kshs799,000. In others, they say he received Kshs800,000 which was meant to be a bribe to enable Dennis Misati get a job.

In the introduction of the said Dennis Misati, he is described as a 37 year old gentleman. Our case will be this; that the sum of Kshs800,000 was received by the Deputy Governor. However, that amount was a refund of money he had lent to the father of Dennis Misati. We will be calling the father of Dennis Misati to come and confirm that, indeed, he received that money from the Deputy Governor in the period around October-November, 2022.

Mr. Speaker, Sir, when he visited Mr. Monda, on the 28th of May, 2023, Mr. Monda asked him whether he could get his refund as he was travelling and the said father of Dennis – Joseph Misati said that he could refund him. He had the funds and he gave him the amount. We will show, from both M-Pesa and bank accounts that indeed the money came from the accounts of Mr. and Mrs. Misati.

Mr. Speaker, Sir, part of our defense team will address this. However, I draw your attention to this first point in our response to the first count. You will be subjected to the spectacle where a father is saying that money belongs to him and he was refunding his friend of 32 years, money he had borrowed eight or nine months ago. You will be subjected to a spectacle where you have to choose whether to believe the father or the son.

You will be subjected to a situation where you will have to determine whether the money belongs to the son or the father and the mother. You will be subjected to a situation where you would have to determine whether the allegation of having sold a saloon has anything to do with this case, or it was fabricated to whip up emotions.

Mr. Speaker, Sir, on the second count of the alleged giving of bribe. We do not deny that an amount of Kshs100,000 came from the M-Pesa account of the Deputy Governor to the account of Lucy Wahito. However, we have explained and we will show you the M-Pesa records showing that it was a mistake on the part of His Excellency, Dr.

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Monda in the remittance of the amount and that he had intended to remit the amount to someone who had given him service, one Gladys Aming'a who had given him transportation services.

We will show you that the phone book recording by the Deputy Governor was the names of the two people who are next to each other because they are both chief officers in the Kisii County Assembly and that was just a mistake. It is said that Lucy is eligible to become a saint because she returned the money and refused to be influenced.

Mr. Speaker, Sir, we will invite your attention to two details on this issue. The first one is that, by 28th May, 2013, interviews and scoring of the candidates had been done about 13 days earlier. This is so that by 28th May, 2013, the person who had successfully contested for that office had been determined because of the scores done by the various members of the Board. It could not possibly be a basis to influence who would be assigned this job.

The second issue that we will address on that issue is that in the explicit statement that was presented by Lucy in the County Assembly, she said that she received an amount of Kshs100,000 and that she called the Deputy Governor and asked him what the money was for. She also said that when she asked the Deputy Governor that question, he kept quiet.

We are saying on our part that the Deputy Governor told her that it was a mistake and that he meant to send it to Gladys. Taking Lucy's statement at its best, Lucy does not say that it was meant to influence the decision she or the Board was to make for the purpose of giving out the job.

Mr. Speaker, Sir, having appeared before the County Assembly and having presented our case, immediately the people sponsoring this Motion went back and did another affidavit; now Lucy suddenly remembers that there was a specific statement by Dr. Monda saying that money was meant to assist in employment.

Hon. Members, we pray that you give consideration to that change of mind and that this change of mind is caused by the way we conducted our defense at the County Assembly and is meant to fill gaps. We also emphasise that this statement was made after we had put in our defense and was meant to influence this Senate to think that her earlier statement stating that he kept quiet was not necessarily accurate.

The third thing I will be showing and request that you take into account is that it is said that Ms. Lucy received the money, asked for it to be reversed and eventually sent it back when it was not reserved. I pray that you keep in mind the dates. It is said that the money was received on 28th, Ms. Lucy returns the money two days down the line, on 30th.

We will take you through the M-Pesa to show you that Ms. Lucy must have celebrated the receipt of this money. If you look at the M-Pesa account, you will see how she immediately utilised the money upon receipt. So, the hero they are referring to is actually not a hero.

Our point of emphasis is to simply say that it was a mistake. The money was returned and Dr. Monda was constrained and compelled to look for another money to pay the said Aminga who was meant to be paid, whose name is next to Ms. Lucy.

One more statement on that issue of Ms. Lucy. We will be requesting that in fairness to Dr. Monda, we recall our lives and remember that from time to time, we have made mistakes by sending money to the wrong person when we intended to send to somebody else. That mistake cannot be taken away from Dr. Monda merely because he is standing trial.

On the issue of threats, Dennis Misati, the son of Joseph Misati who will be coming to testify says he was threatened and he relocated with his family. We will be showing that, indeed, there was no communication between Dr. Monda and the said Dennis Misati. We are not aware of the demand letter he said he made.

There is no demonstration of the alleged report to the Ethics and Anti-Corruption (EACC) which he says is the basis of that threat. It is a mere allegation. As a matter of rule of law, he has not made any report to the police that he was threatened. These allegations are made 8 months down the line.

On the allegation of the misuse of staff, we will be demonstrating that, indeed, a deputy governor is entitled to be assigned some members of staff to help at home. We will be demonstrating that the allegation that these members of staff---I am surprised by my colleagues that it is not anywhere in the pleading. I suspect that it is my colleagues who have come up with it, saying that these staff were cooking for dogs. I wonder why they have to choose on dogs. However, our point is that the Deputy Governor is entitled to members of staff. None of them have said anywhere that they have been misused. It is said that these staff were used to dig a well. This should be around 2023/2024.

We will be showing that there has been no well dug at the Deputy Governor's home in the last almost 10 years because it was dug in 2023. We will be showing that he does not have dairy. Therefore, the allegation that he was using the staff to manage dairy is not true. We will demonstrate that he does not run any farming in Kisii. He has planted trees on the farm assigned to him. He has no farm which he could deploy the staff to work in. This is a complete falsehood from his brother.

At this point, I want to hung on a minute to invite your attention to this. The first count of taking a bribe, on the third count of threatening Dennis, you will be having a situation where the father and mother are testifying against their son.

On this county of alleged misuse of staff and the next point being the arrest of the brother, you will be having a situation where this Senate is asked to take the place of the mother of the two brothers, preside and determine their dispute. We are saying that this Senate is being reduced to an unfortunate level by being asked to preside over family disputes. My colleague will address you on that.

Lastly, on the issue of the arrest of the brother, we draw your attention to the point that it is Dr. Monda's case that he planted those trees. The trees belong to him. He planted them back in the year 2007. We have called witnesses who were involved in the planting of those trees. The brother came in and started cutting the trees.

Dr. Monda did nothing other than reporting to the police that my brother is cutting trees that belong to me. The police did the investigation and determined. Indeed, from the face of what they heard, it was the brother who was on the wrong by cutting trees belonging to Dr. Monda and had him arrested. That will be our case.

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One of the issues we will be asking is whether you want at the Senate level to make a choice of believing either the brother who is Reuben or Dr. Robert Monda. The second one is whether you want to take up the role of the police who are already investigating the issue.

My colleagues have tried to make the issue emotive by saying that over 20 people went to arrest Dr. Monda. Our position is that he went to report and the police arrested him. We do not know how many people went to arrest him. Assuming that 20 people went to arrest him, is the issue about the number of people who went to arrest or whether there is a culpable offence and whether the police were entitled or had a legitimate reason to effect the arrest?

To us, the issue of the number of people and summons to Haggai is irrelevant. It does not change anything. What matters is whether or not Dr. Monda was right to have reported and whether the police were acting within the scope of their duties in effecting the arrest.

On 21st February, 2024, the County Assembly resolved that before they determine the impeachment of the Deputy Governor, they should go for a public participation. They did public participation and one of the results was a memorandum written by one Benson. He brought a memorandum accusing Dr. Monda of some excesses.

Mr. Speaker, Sir, I request for your direction. Your assistant is threatening me with 15 minutes. I am aware that my colleagues used over one hour. I would only pray for equal time because I am yet to address the issue of expunging some documents.

The Speaker (Hon. Kingi): Counsel, that was not a threat. Indeed, you have 15 minutes. If you are not done within those 15 minutes, then you can make your plea and I will direct when we get there.

The Counsel for the Deputy Governor (Mr. Katwa Kigen): Thank you, Mr. Speaker, Sir. I request hon. Senators to look at the document filed by the Deputy Governor. It is marked "DG" in blue. If you look at page 56, it contains the only document we received from that public participation, being a memorandum written by one Benson Nyakaga Misario, saying that the Deputy Governor should be retired from his office for various reasons which in general amount to abuse of office.

That memorandum was part of the invite for public participation because public participation said you can bring either written or oral representation. So, the document was delivered to the Speaker and the Clerk as you can see on the face of it at page 56.

It was then copied and delivered to the Governor. In consequence, therefore, when the Governor went to the County Assembly, he defended himself on the five counts that I have just gone through plus the issues of abuse of office.

When my colleague, Mr. Ndegwa, says that you should expunge the contents of paragraphs 48 to 49 because it is new material that was not part of the charge, then it poses the question; what was the intention of public participation and what were we to do with it?

The notice was served on us and we knew it is an issue we had to respond to. Therefore, we did a response to it. We have responded to it from Paragraph 48 to the last paragraph.

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Therefore, we have factually responded to all the things that Mr. Nyagaka has raised. Our main defense is that these are not issues we are responsible for. It is more of in the hands of the Chief Executive, the Governor himself; the question of a budget that had been passed by the County Assembly having been manipulated and changed after the County Assembly had passed it. The issue of the Kisii County budget not having been utilized for the last over 18 months; the issue of the Deputy Governor's wife being the one who is actually in charge of the county; all those issues are accusations against the Governor, and we had to respond to them.

Mr. Speaker, Sir and hon. Members of the Senate, when you go back to reflect on whether you will expunge these paragraphs from paragraph 48, we request that you keep a clear mind about the dichotomy of this issue. If the reason for wanting to expunge is that it was not part of the case at the County Assembly, then that is wrong on the face of it. This is because it was part of the case. They went for public participation, we were served with this document. So, we had to come and respond to it. However, if their argument is that it is not part of the five grounds that Hon. Siocha moved when he was seeking impeachment before, then he asked for public participation, then that is a different issue.

Mr. Speaker, Sir, we pray that you please do not expand them merely because, or rather on the ground that it was not part of the case at the County Assembly. It indeed was part of the case at the County Assembly, and you will see it on the face of the documents.

You have been asked to remove those documents because they are not relevant. I would like to submit to you, hon. Senators and Mr. Speaker, Sir, that the question of whether those are relevant or not belongs to you. It does not belong to the judgment of the Assembly. It is not the Assembly that says, "We went for public participation. We enjoyed the part where they say, 'remove the County Deputy Governor because he disrespects the wife of the Governor and he has taken a bribe. We do not we want this, but we want this.'"

It is not for them to choose what should eventually come to you. It is for you to determine whether or not they are relevant. I insist that you retain paragraph 48 to the last and determine, at the end of the whole process, whether they are relevant or not. Nobody should take away your--- If I were in court, I would say, your jurisdiction to determine the relevance of that and to apply it in the question of whether or not you agree with the Motion for Impeachment.

My colleague was very specific; he says that, for instance, at paragraph 61, there is a reference to the wife and to the Governor, and that those people are not here to defend themselves. We are saying that, that is not the correct position. We are not here to determine the status, the faith, and the situation of the Governor and his wife.

We are here merely to defend ourselves. We received a notice from Mr. Benson telling us, that for these grounds, the Governor should additionally be impeached. We just come here to say, no, you should not impeach us for that reason because these are our reasons.

If it were to be then the case, that in our defense we are saying that it is not the Deputy Governor who is responsible for the changes in the budget and for non-use of the

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budget. If that is the case, that it is the Governor, that's our defense. It is not intended to bring into issue the Governor and his wife. It is merely meant to persuade you that, indeed, is not a ground upon which you should impeach the Governor.

We would, therefore, be asking you to determine the question of the place of public participation in these proceedings because that is actually a product of public participation.

I would probably just want to mention one thing to you. If you look at volume One of the County Assembly's bundle, on page 41, they have brought to you the product of public participation as they say, and, what was said at Birongo Ward is something that appears in quite a number of other places where public participation occurred.

The second bullet states as follows-

"The members also lamented that the Deputy Governor does not respect the County First Lady and, therefore, the Members of County Assembly (MCAs) should be allowed to perform their duty of impeaching him."

The public participation that was initiated by the County Assembly in many places stated that unless the Deputy Governor is prepared to go and kneel before the First Lady he should be impeached. We are not under any obligation to kowtow the wife of the Governor.

I would also like to invite you to page 36, on the output of the public participation. In Volume One of the County Assembly bundle, page 36, there is input from Masimba Ward. It is said that there were no members of the public at the venue when the secretariat arrived. Therefore, there was no product of the public participation. However - and this is our case - there has been a continuous, generation and fabrication of documents and materials to incriminate the Deputy Governor. There is a letter dated 8th March--- I am afraid the hon. Members might not have this.

There is a letter dated 8th March, 2024 written to Hon. Onsare Monda telling him to come and defend himself. It is written by one of your staff members, Mr. Ogo. He says that some of the people he shall respond to, at page three is Mzee Shamba from Masimba Ward. There is a public participation report from the county stating that nothing happened, yet you certainly have somebody who has been set up to come and say that this is what Masimba Ward is saying. This is part of the long and false fabrication of materials to incriminate the Deputy Governor.

Mr. Speaker, Sir, and hon. Senate, for those reasons, we pray you do not expunge Paragraph 48 to the end. Probably at this point I should just move to the preliminary objection and call it a day.

Mr. Speaker, Sir, unlike my colleagues I pray for just a few more minutes. Could I request for about 20 minutes, kindly?

(The Clerk-at-The-Table approached the Chair)

The Speaker (Hon. Kingi): I will give you a further 15 minutes.

The Counsel for the Deputy Governor (Mr. Katwa Kigen): Thank you, Mr. Speaker, Sir. Did you say 50 minutes?

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(Laughter)

Mr. Speaker, Sir, on the Deputy Governors bundle page “C”, the first part, we have come out very clearly and stated we shall be raising a preliminary objection. I would like to prosecute the preliminary objection and collaterally respond to the preliminary issue raised by my colleagues.

In the preliminary objection I have made reference to the Third Schedule, being the rules of procedure on impeachment. I have particular reference to Rules 14, 20 and 30.

Rule No.14 states-

“Any preliminary question or issue raised by the County Assembly or by the Governor shall be argued for not more than thirty minutes, unless the Speaker of the Senate otherwise directs.”

Rule No.20 is where I really want to place a lot of investment on-

“In presenting its evidence, the Assembly shall not introduce any new evidence that was not part of the allegations against the Governor by the County Assembly as forwarded by the Speaker of the County Assembly to the Speaker of the Senate.”

Hon. Members, that Section creates three thresholds. First, it targets the county assembly; it does not target the subject of the impeachment. It does not state that the governor or the Deputy Governor cannot introduce new evidence. It says, “The assembly shall not introduce new evidence.” I pray that the new evidence introduced to the Senate by the County Assembly after the close of the proceedings of the 29th be expunged from the record, and we limit our case to what was presented to the Assembly. One, it is a prohibition on the Assembly. Two, it prohibits new evidence. Three, it prohibits new allegations. Four, the limit was the conversation between the Speaker of the County Assembly and the Senate speaker.

For purposes of determining that preliminary objection, we will be making reference to the letter dated 1st March, 2024, which was the letter written by the Speaker of the County Assembly to the Speaker of the Senate. On pages seven to eight of that letter, they have listed the items that the Hon. Speaker read at the start of these proceedings: The Notice of Motion, Votes and Proceedings, the Order Paper, and so on. However, when the letter was being written to the Deputy Governor asking him to defend himself by a letter dated 8th March, the contents of what the Speaker of Kisii County Assembly had forwarded to this Senate were changed completely. We have a new case completely. The new document has three pages. The other one has about 20 documents, and document number 20 is excluded. The new one has 24 documents.

If we are being faithful to the wording of Rule 20, that there should be no new allegations or new evidence and it should be limited to what the Speaker communicated between themselves, then this letter written by your staff member from the Directorate of Legal Services is a scenario where your staff is changing the case that the Speaker of the Senate is aware of to another different case.

He now tells us that we need to respond to issues of a video in a flash disc brought from Jane Bonareri, James Orange, David Obiri, Shem Mombasa and Fred Anyona. It also asks us to respond to a report of public participation, which we have never seen. We

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are seeing it for the first time. We are looking at those flash discs for the first time as we come before you. It asks us to respond to contentions from David Akai and Gladys Aming'a. All these things were not part of what was in the County Assembly and what we responded to.

Mr. Speaker, Sir, we pray that you make a determination of the substantive issues in this case: Whether a case that was determined at the County Assembly can mutate so that by the time it reaches the Senate, it is a different case from what was at the County Assembly, or you receive it as an escalation and limited to what was done at the County Assembly, whether you have the original jurisdiction to entertain a question of impeachment.

In the flash disc, it is alleged that the Deputy Governor received Kshs20,000 from one person and Kshs5,000 from another person and that is not a case which we have had an opportunity to respond to. The gentleman by the name of Akai who is being asked to produce the summons--- I was told by the ward administrator that since this happened, it is hearsay. Secondly, this is not an issue we have had an opportunity to respond to.

For those reasons, we pray that the new evidence introduced be expunged. We have particular reference to the contents of paragraphs 14, 22, 23, 24 and 25 of the letter from your Directorate of Legal Services, which change the case from what the Speaker said.

In that same letter, the Directorate of Legal Services also says-
“Please find a letter from Mr. Ndegwa.”

That brings a new case. What is the wording of Rule 20? It says what the Speaker communicated to the other one. When did Mr. Ndegwa become ---

The Speaker (Hon. Kingi): Counsel, is the letter you are referring to specifically contained in our Volume?

The Counsel for the Deputy Governor (Mr. Katwa Kigen): Yes, Mr. Speaker, Sir. May I show you?

The Speaker (Hon. Kingi): Kindly direct the Hon. Senators to the Volume and to the page.

The Counsel for the Deputy Governor (Mr. Katwa Kigen): Mr. Speaker, Sir, it is in the County Assembly's bundle Volume One at Page 335. It is practically the last page on Volume One bundle.

Hon. Members, I know you might not have the letter that was written to Dr. Monda asking him to come and defend himself. Nonetheless, allow me to read the first paragraph. It says-

“The Speaker of the Senate on 2nd March, 2024, received communication dated 1st March, 2024, together with a bundle of documents/records from the Speaker of the County Assembly of Kisii for removal from office of the Deputy Governor of Kisii, Dr. Monda, for impeachment.”

It is then listed.

When you go to the first page of that document, item number one states; a letter dated 1st April---

(An Hon. Member spoke off record)

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Sorry, I am referring to the letter that was written to the Deputy Governor asking him to defend himself.

The writer of that letter, who is from your Directorate of Legal Services, introduced things that the Speaker of the County Assembly of Kisii had not said anywhere and amongst them is the letter from Mr. Ndegwa. We have seen the letter from Mr. Ndegwa in this Assembly, for the first time. They are saying, 'a fair copy of an affidavit from Mr. Dennis.' We never saw that. I am now looking at page 335.

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

The Speaker (Hon. Kingi): What is the issue, Sen. Kavindu Muthama.

Sen. Kavindu Muthama: Mr. Speaker, Sir, I thought we should be having copies of what he is taking us through so that we can follow with him. He taking us through a process so that we can give a ruling. Therefore, we should have those documents.

The Speaker (Hon. Kingi): Very well, hon. Senator.

Counsel, again, kindly as you make your opening statement, if you are referring to a document, please indicate the volume and the page.

The Counsel for the Deputy Governor (Mr. Katwa Kigen): Yes, Mr. Speaker, Sir. It is Volume One of the County Assembly's document. It is practically the last page. Unfortunately, I have to cross reference it to the letter that was written to Dr. Monda, telling him to come and defend himself.

The Speaker (Hon. Kingi): So, is the letter to Dr. Monda contained in a different Volume? It is not within your bundle of documents?

The Counsel for the Deputy Governor (Mr. Katwa Kigen): Mr. Speaker, Sir, it is not in any of the bundles.

The Speaker (Hon. Kingi): So, can it be circulated? Clerk, that is a document from the Senate. So, can the copies be done and circulated. According to Counsel, it emanated from the Senate.

The Counsel for the Deputy Governor (Mr. Katwa Kigen): Yes, Mr. Speaker, Sir. It emanated from the Senate and it is a letter directly responding to the letter from the County Assembly, forwarding the material that was used to impeach the Deputy Governor.

Hon. Members, Rule 20 says that the case of the County Assembly shall not change in terms of evidence and shall not change in terms of allegations and will be limited to what the County Assembly Speaker communicated to the Speaker of the Senate. That is the scope of the law under Rule 20.

Now, the letter from the Senate, which is a response notifying us to come and defend ourselves, immediately changes what the Speaker from the County Assembly had done and introduces new evidence which begs the question; who intervened and introduced new evidence? One of them is the letter from Mr. Ndegwa which is at page 335.

In that letter, we are being asked for a fair copy of the affidavit of Mr. Dennis Misati. Hon. Members, I am looking at Paragraph three. It says, a fair copy of the affidavit of Mr. Dennis Misati, a flash disk containing video clips emanating from public participation, including the one I told you about Masimba.

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Three, an affidavit of Oreng Aiyenda, saying I was manipulated on a land sale agreement and two crucial protected witnesses.

Mr. Speaker, Sir, the preliminary objection we are saying is, expunge everything that was not communicated to you by the Speaker of the County Assembly as prescribed by Rule No.20.

Let the case be limited to the five counts plus what Mr. Benson says, and exclude everything else that was not part of it, which is what I have just referred to, being those in paragraphs 14, 22, 23, 24 and 25 of the letters from the Directorate of Legal Services.

I would just want to close by saying this. If you constrained us to respond to some of these new things, including Mr. Haggai, the flash disk and all these, you will be taking away our constitutional rights under Articles 47 and 50 for a fair hearing. We are entitled to at least three days' notice of the case we are supposed to face. We are seeing these things for the first time as we appear before you for purposes of defending ourselves.

Mr. Speaker, Sir, I beg you to please allow me another 10 minutes for my colleagues to just say something very briefly in support of my preliminary objection and opening address.

Very kindly, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): I give you five minutes.

The Counsel for the Deputy Governor (Mr. Katwa Kigen): Okay. I will ask Mr. Ochoki first, then my colleague. I hope, my friend Hon. Cherarkey will not mind.

The Counsel for the Deputy Governor (Mr. Wilkins Ochoki): Hon. Speaker and Members of the Senate, for the record, my name is Wilkins Ochoki, part of the team representing the Deputy Governor, Kisii County.

Hon. Speaker, what is before this honourable House is not a Motion that meets the threshold that will send the Deputy Governor home. Allow me very respectfully to refer to this as nothing more like what we see in Chinese martial arts movies. It is all fiction. My senior, Mr. Katwa Kigen, has referred you to Standing Order No.88 of this honourable House, which pursuant to Standing Order 88, Rule No.20 of the Rules of Procedure for hearing and determination of the removal of either governor or deputy governor was created. That Rule, as my seniors have very well addressed you on, does not allow the County Assembly to bring in new evidence.

Hon. Speaker, because of the time limit, allow me to just say that what the County Assembly is doing is nothing more than a fishing expedition. The HANSARD is clear that upon the Speaker of the County Assembly being asked whether the public participation documents were going to be used in the proceedings of the County Assembly, he was clear that there was nothing at all that was being used.

Now, you are being told that there are video clips and witness statements that were not there that have been brought. Hon. Speaker, I respectfully submit that the same ought to be disregarded.

Mr. Speaker, Sir, there was an application by my learned brothers that you expunge part of the affidavit of the Hon. Deputy Governor. You will notice that from precedent, this House has allowed governors and deputy governors who did not defend themselves in the county assemblies, to come here and defend themselves.

In any case, the House needs to know the genesis of the problems in Kisii County. What exactly is on trial? It is not common that the honorable Members of the County Assembly (MCAs) can wake up one morning and determine that a deputy governor who was elected should just go home. What we want to bring out is the genesis of the problem. Very briefly, allow me just address preliminary point two within a minute, because my senior, Mr. Katwa Kigen, has addressed one.

Hon. Speaker, you noticed, and the Hon. Deputy Governor agrees that Article 181 of the Constitution, Section 33 of the County Governments Act and Standing Orders No.s60 to 64 of the Kisii County Assembly Standing Orders, allow for the impeachment of a Governor and a Deputy Governor. However, some timelines are provided. You will notice that in the County Assembly of Kisii---

I refer the hon. House to page five of the documents titled "DG". You will notice that at page five of the bundle, there is a document titled notice of Motion that is dated 13th February, 2024. That document was the Motion that was brought to the House by the Hon. Wickliffe Siocha.

Somehow, it mutated and by the time it was being brought again to the House on 21st February, we now had another document, which starts at page six of that document titled DG. You will get that the Deputy Governor was defending himself on two documents dated two different dates. Even then, based on the document on page five that was received in the County Assembly on 13th February, Standing Order 60-64 provides that the Motion ought to have been heard within 10 days.

Whereas we do not want to bring out substantial procedural issues in this House, but you will consider and look at the timelines within which the county assembly sat and you will notice that they sat and determined that Motion beyond the 10 days that is provided for in the Senate.

We will explain and you will notice that this is beyond the character of the DG. This is all politics. It is all about the hard and tough questions that the DG is asking. That, we promised to deliver to the people of Kisii County and we are not delivering. Upon asking those very simple questions, he is now being brought to you and you are being told to send him home.

Thank you, Mr. Speaker, Sir. Allow us very kindly, because I believe I did not take a lot of time, to bring in Hon. Osoro, our colleague, to take only two minutes to finish up and give a final brief on our opening remarks.

POINT OF ORDER

APPEARANCE OF HON. SILVANUS OSORO AS LEAD
COUNSEL FOR THE DEPUTY GOVERNOR

The Speaker (Hon. Kingi): Sen. Cherarkey, what is your intervention?

Sen. Cherarkey: Mr. Speaker, Sir, so that we dispense of this matter and also for posterity, because traditions and precedent are important, I rise under Article 75 on the conduct of State officers.

I beg to read and I shall be very quick-

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“A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids-

- (a) any conflict between personal interests and public or official duties;
- (b) compromising any public or official interest in favour of a personal interest;

or,

- (c) demeaning the office the officer holds.

Mr. Speaker, Sir, I also invite you to look at our Standing Orders No.252 in quick succession, on attendance before the National Assembly and reverse.

Mheshimiwa Silvanus Osoro is a Member of Parliament (MP) of South Mugirango, where the Deputy Governor is facing impeachment allegations.

Two, he is the Majority Chief Whip in the National Assembly. So, my concern is that in as much as I am aware of Article 50, you must also interpret the Constitution for both Articles 50 and 73 together.

I am aware that the Deputy Governor Dr. Monda is allowed to have a legal representative of his own choice. Is it in order for my brother *Mheshimiwa* Silvanus Osoro, the MP of South Mugirango, to appear on behalf of Robert Monda, the Deputy Governor? This is because one, he is a State officer and two, of conflict of interest that he might send mixed signals that he is a Chief Whip of the Majority Side of the National Assembly.

Third, looking at Standing Order No. 252, is whether the procedure allows him to appear before the Senate not only as an advocate but also as a MP?

Under Article 93, a Member of Parliament (MP) is both a Senator and a Member of the National Assembly. Some of us, who are learned friends, would have wished to appear on behalf of either side. If we allow Hon. Osoro, it means that as MPs as defined under Article 93 of the Constitution, we can also appear on behalf of either side involved in impeachment Motions.

Mr. Speaker, Sir, secondly and finally, it is in the public domain that the Governor of Kisii County, *Mheshimiwa*. Simba Arati, and Hon. Sylvanus Osoro have had a public altercation. I beg that we do not use the Senate as a playground for local politics of what is happening in Kisii County.

Could it be that Hon. Osoro and Governor Simba Arati are extending their political ground to the Senate, whereas we are here to listen to charges that have the basis of evidence and can stand the test of legal, constitutional and our Standing Orders?

Mr. Speaker, Sir, I beg that you rule that Hon. Osoro should relinquish himself from representing Hon. (Dr.) Monda, go back to the National Assembly and serve our party, the United Democratic Alliance (UDA) and the Kenya Kwanza Government. He is the Majority Chief Whip in the National Assembly. We might lose some Bills in the National Assembly while Hon. Osoro is busy representing for personal and financial gain and propelling his profession at the expense of the position that we gave him in the National Assembly.

Hon. Osoro should go and serve the people of South Mugirango and Members of the National Assembly and allow this House to proceed. I know Senior Counsel, Katwa Kigen, and his retinue of learned colleagues, can do their job well. Hon. Osoro can continue fighting with Governor Arati in funerals in Kisii County, but not in this House.

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Mr. Speaker, Sir, I submit.

The Speaker (Hon. Kingi): Sen. Boni, please proceed. I hope it is a new matter altogether, not related to what has already been raised. Is it something new, Sen. Boni?

Sen. (Dr.) Khalwale: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Proceed.

Sen. (Dr.) Khalwale: It is new to the extent that he has raised four issues upon which you should rule.

Mr. Speaker, Sir, I am inviting you to consider ruling on a fifth issue. Whereas this is the Senate, in this Chamber this morning and for the next two days, we will convert ourselves to a trial chamber. Therefore, any MP seated in this Chamber is here as a judge on what is going on.

Mr. Speaker, Sir, if you allow Hon. Osoro to sit in this House and do something other than what an MP is supposed to do in a trial chamber, is it not tantamount to having a sitting of the High Court, for example, where a judge who would have sat on that matter jumps and becomes an advocate in the same court?

Mr. Speaker, Sir, since we are going to be setting a precedent, we request you to consider this issue long and hard because we have eminent lawyers in the National Assembly and Parliament at large who will start abusing this process to the extent that it will be to the disadvantage of the impeachment process.

The Speaker (Hon. Kingi): Sen. Sifuna, please proceed.

Sen. Sifuna: Mr. Speaker, Sir, first of all, I join---

The Speaker (Hon. Kingi): Is it on the issue of---

Sen. Sifuna: It is a separate issue.

The Speaker (Hon. Kingi): Is it on the issue of Hon. Osoro?

Sen. Sifuna: Mr. Speaker, Sir, I would like to go on record to support the positions taken by the two Senators. However, since one of the parties has asked us to make a decision on the matter, with your great indulgence, I would like to get some clarification on the understanding of the rules of procedure for this particular process.

Mr. Speaker, Sir, allow me to find out from the Advocate for the Deputy Governor, whether in their understanding, there is a distinction between evidence and an allegation. My understanding of the Standing Orders as I have read them is that for as long as there is evidence supporting an allegation that was present in the County Assembly---- I will give a specific example. If you are being accused of say, corruption and there are 10 pieces of evidence and seven are used in the County Assembly, is it possible or their position that the remaining three pieces of evidence supporting the same allegation that was present in the County Assembly cannot be presented before the Senate? That is the question I want them to answer for me as I ponder what to do with their objection.

Secondly, whether it is their understanding that a public participation is an evidence collection forum. In my view, when you go for public participation, you are presenting the case against the Deputy Governor as framed in the County Assembly for the public to engage with that case. This is so that if I am being accused of corruption and that is what goes to public participation, is it possible that other people upon hearing

those allegations might also say that they were also victims. Therefore, what in their understanding are we supposed to do with that material?

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Counsel?

The Counsel for the Deputy Governor (Mr. Katwa Kigen): Thank you, Mr. Speaker, Sir, and hon. Members. Our emphasis on Rule 20 is that it prohibits both new evidence and allegations. On the face of that Rule, that is not clear and that is an issue I have belaboured on. That, whether the intention is that evidence that supports an already existing count is tenable. However, the words used are “Assembly is prohibited from introducing new evidence that was not part of the allegations.” If there is an allegation already in place and evidence was already adduced to support that allegation, you cannot bring new evidence in addition to what was canvassed at the Assembly and that is my understanding.

Mr. Speaker, Sir, I can see Sen. Sifuna disagreeing with me, but that is my understanding of it, that it is cast in stone. What was done in the Assembly to the extent of the material in support of those counts is what should be brought here. This is because the inverse argument---

The Speaker (Hon. Kingi): Counsel, you have made your point.

The Counsel for the Deputy Governor (Mr. Katwa Kigen): Mr. Speaker, Sir, there is the second limb of what he was asking that what becomes of public participation. Public participation in itself is a wild animal. You would not know what will come out of it. However, my position is that if in the public participation, someone was to say that they had been victims of corruption from the same person facing an impeachment, that should then be a stand-alone case that goes back to the Assembly. It cannot be a basis of a case before the Senate because you will be placing the subject of the impeachment in a situation where he has no chance of responding to the new allegation brought in through the public participation.

Mr. Speaker, Sir, if the evidence collected from the public participation was to say that person was present when the M-Pesa was being sent to Lucy Wahito or when Dennis was paying the bribe, that can in a way be accommodated. However, when he says that he was also asked for a bribe, then that is a new case, which should go through the whole process of impeachment, right from the point of Notice of Motion, Motion and so forth.

Mr. Speaker, Sir, that is my answer.

The Speaker (Hon. Kingi): Sen. Orwoba.

Sen. Orwoba: Thank you, Mr. Speaker, Sir. I would like to bring to the attention of the House the issue of expunging certain submissions. It is imperative that we understand that the individual on trial here is the Deputy Governor. I am looking at some of the submissions and where we are being pulled towards. For instance, the reference on page 56, we are told that we have to listen to certain issues that have been submitted with regards to the Governor’s wife.

We have all seen previously, we have tried as Senate to stay away from the issue of the office of the First Lady or the First Gentleman. More often than not, including in this submission that I have heard being discussed in terms of being expunged, it is a way of disgracing this House for focusing on the charges. The charges before us are four.

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They are of gross violation, abuse of office, gross misconduct and crimes under the national law. None of these charges are directing us to the wife of the Governor.

Mr. Speaker, Sir, as you make that ruling, I implore that you understand this issue of the office of the First Lady and the First Gentleman is often being used to bring non-issues to this House.

I point out to both parties that first of all, the Governor's wife is not going to appear before us. It is not forming part of this impeachment. If you can therefore guide that we do not reduce to discuss matters of patriarchy or feminism or the issue of the First Lady.

The person who is here is the Deputy Governor and we should limit our discussion on whether this particular impeachment has weight to impeach a deputy governor and leave away the issue of trying to bring about the spouse of a governor or any other person in this impeachment.

Thank you, Mr. Speaker.

The Speaker (Hon. Kingi): Proceed, Sen. Olekina.

Sen. Olekina: Thank you, Mr. Speaker, Sir. I want to bring to your attention, Rule 30.

The Speaker (Hon. Kingi): You have less than two minutes under Rule 23.

Sen. Olekina: Mr. Speaker, I was trying to make sense of what the two parties, the County Assembly and the Deputy Governor were trying to allege in terms of the introduction of new evidence.

Rule 30 of our impeachment rules states as follows-

“When a particular question or matter including but not limited to questions of evidence, materiality, relevant competence or admissibility of evidence and any question, consequential or incident thereon, no provision has been made in the Standing Order or this rules, the Speaker shall rule on the questions on matters and the ruling of the Speaker shall be final.”

I stood up because of the parity of the evidence. In this case, I have heard both parties alleging that there is an introduction of new evidence. I would like to request that you apply Rule 30, so that during our closed session, you can determine that matter then we can progress.

The Speaker (Hon. Kingi): To make progress, I would wish to hear from the Deputy Governor's team. A response to the preliminary objection by the Senator of Nandi. I would also wish to hear a response from the County Assembly on the preliminary objection by the Senator of Nandi.

Hon. Senators, I am informed that the Senator of Kisii cannot hear me because you are making noise. Kindly be silent.

Proceed.

The Counsel for the County Assembly (Mr. Katwa Kigen): Mr. Speaker, Sir, my understanding is that you are inviting me to respond to Sen. Olekina's point in reference to Rule 30.

The Speaker (Hon. Kingi): The appearance of Hon. Osoro?

The Counsel for the County Assembly (Mr. Katwa Kigen): Mr. Speaker, Sir, I will be as brief as this. Our position is that this hon. Senate and the National Assembly

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have different functions. Secondly, the impeachment jurisdiction that you are exercising today is not a function that is exercised at the National Assembly. For that reason, there is no conflict in Hon. Osoro appearing here considering that there will be no occasion and no situation where he would have to influence or contribute to the question of whether the impeachment can proceed or not.

I would also want to identify myself with the submissions of Sen. (Dr.) Khalwale and say that up to the last minute we were together in the sense that if you are sitting already as judges, then we know that your Members have appeared before the court and conducted proceedings there. In so far therefore, you are sitting as a court, Hon. Osoro as long as he is not a Member of this Senate, can participate the same way your other Members have been able to make contributions in the court precincts. I pray that you allow Deputy Governor Hon. (Dr) Robert Monda to enjoy the services of an advocate of his choice.

Thank you, Mr. Speaker, Sir. .

The Lead Counsel for the County Assembly (Mr. Ndegwa Njiru): Mr. Speaker, Sir, part of the benefit of attending law school and being a Senator as distinguished as they are is that--- Allow me to address the Senator for Nandi as my junior learned friend; that he has correctly put it right that constitutionally, there is no distinction between the National Assembly and the Senate. Pursuant to Article 93, there is established a Parliament of Kenya which shall consist of the National Assembly and the Senate.

As such, my learned friend Hon. Osoro, with all due respect, cannot then behave like a ping pong. He cannot have his bread and eat it. He must choose whether he wants to be a legislator or he wants to be an advocate. The tragedy of premising a case such as this one on the misconception of facts is that Hon. Osoro wants to convert this distinguished Senate to a field day somewhere in Nyarbari Cache.

As such, Hon. Osoro cannot then continue to appear as an advocate and as a Member of Parliament. He has to choose which coat he wants to wear.

The Speaker (Hon. Kingi): Hon. Senators, it is now 1.38 p.m. We are going to adjourn and resume at 2.30 p.m. I will be delivering my ruling at 2.30 p.m. before we adduce the evidence by the County Assembly. Now, the issues that have been raised that require my determination are-

(1) Whether we should allow to summon Haggai; an application that has been made by the County Assembly.

(2) Whether to expunge certain paragraphs for being irrelevant as submitted by the County Assembly. Whether to expunge certain paragraphs and documents for introducing new evidence and material as submitted by the Deputy Governor and whether the documents as submitted by the County Assembly of Kisii did violate a mandatory rule that required the County Assembly to deliberate on this matter within 10 days. It is the submission of the Deputy Governor that the County Assembly of Kisii County violated that Rule by sitting outside the 10 days. That is a matter that I will rule on.

(3) Lastly, whether Hon. Silvanus Osoro, can appear for and on behalf of the Deputy Governor. We will rule on those issues before we proceed to take evidence from the County Assembly.

Yes, Counsel.

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The Counsel for the County Assembly (Mr. Mwangi Ndegwa): Mr. Speaker, Sir, I seek your guidance. I can read the mood of the House. On that particular issue of 10 days, can we be given an opportunity to respond to the same because it is an allegation against our client?

The Speaker (Hon. Kingi): I gave you the opportunity to respond and you chose not to.

The Counsel for the County Assembly (Mr. Mwangi Ndegwa): Mr. Speaker, Sir, you invited me to respond to the question of Hon. Silvanus Osoro, but I leave it to the Senate. I believe---

The Speaker (Hon. Kingi): Yes, just leave it to us; this Senate is wise enough. Proceed, Sen. Sifuna.

Sen. Sifuna: Mr. Speaker, Sir, I want further clarification because we are all seated here as judges. I hold the position that these decisions are to be taken by the House. At what point do we input, as the judges, before you render your decision. I hope that it will not be the decision of the Speaker but the decision of the House.

The Speaker (Hon. Kingi): Sen. Sifuna, arm yourself with the Standing Orders of the Senate. Just pick one of them and read Rule No.30.

Sen. Sifuna: Mr. Speaker, Sir, I am very well versed with Rule 30.

The Speaker (Hon. Kingi): Just read Rule 30.

Sen. Sifuna: Mr. Speaker, Sir, I am well versed with the Rule. I just want to say--

The Speaker (Hon. Kingi): I am not versed; read it.

Sen. Sifuna: Mr. Speaker, Sir, you cannot direct me to read.

The Speaker (Hon. Kingi): Sen. Sifuna, read Rule 30.

Sen. Sifuna: Mr. Speaker, Sir, I am well-versed with the Rule. Let me say what I want to say.

(A Member spoke off record)

The Speaker (Hon. Kingi): Order! Order.

Sen. Sifuna: Mr. Speaker, Sir, let her read for us to see what it contains. I do not think there is a Rule that requires that I be directed to read.

The Speaker (Hon. Kingi): Okay, Sen. Sifuna, please, take your seat.

Sen. Sifuna: Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): If you have a problem reading English, I will proceed to read it for you. In Part 1 of the Rules of Procedure for the Hearing and Determination of the Proposed Removal from Office by Impeachment of a Governor, Senate Standing Orders, Rule No.30 states that-

“Where a particular question or matter, including but not limited to questions of evidence, materiality, relevance, competency or admissibility of evidence and any questions consequential or incidental thereto, no provision has been made in the Standing Orders or in these Rules, the Speaker of the Senate shall rule on the question or matter and the ruling of the Speaker shall be final.”

I have not given you the Floor, Sen. Sifuna. I have not given you the Floor.

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Hon. Senators, please be upstanding.

ADJOURNMENT

The Speaker (Hon. Kingi): Hon. Senators, the Senate is adjourned until today, Wednesday, 13th March, 2024, at 2. 30 p.m.

The Senate rose at 1:43 p.m.