

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 8th July, 2025

Special Sitting

*(Convened via Kenya Gazette Notice
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*The House met at the Senate Chamber,
Parliament Buildings at 2.30 p.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?

(The Clerk-at-the-Table consulted with the Speaker)

We do have quorum. Therefore, we shall proceed with the business of the afternoon.

Clerk, kindly call the first Order.

HEARING AND DETERMINATION OF THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HON. ABDI IBRAHIM HASSAN, THE GOVERNOR OF ISIOLO COUNTY

REPLY BY THE GOVERNOR'S COUNSEL TO SUBMISSIONS
MADE BY THE COUNTY ASSEMBLY

The Speaker (Hon. Kingi): Before we adjourned for lunch counsel for the Governor had 10 minutes to respond to the submissions made by the County Assembly. So, counsel for Governor you may now proceed to utilize your 10 minutes in response to the submissions that have been made by the County Assembly.

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Mr. Elias Mutuma: Thank you, Mr. Speaker, Sir, for the opportunity. I am here to do a very brief rejoinder based on the submissions done by the counsel for the County Assembly. I begin by stating that the County Assembly of Isiolo has to a great extent misunderstood our preliminary objection, the extent of that preliminary objection, the nature and the effect of the preliminary objection. I say this because when we started to listen to the responses, all counsel appearing took the position that we were telling this honourable Senate that it has no jurisdiction to entertain this matter. That is not the nature of our preliminary objection.

We all agree that there is no court order that can bar or gag this Senate from entertaining a Motion for impeachment of a governor. That one is not in any disagreement.

Hon. Senators, our preliminary objection is based on the fact that there is nothing in law that has been brought before you for consideration to invoke your powers under Section 33 of the County Governments Act and Article 181 of the Constitution because for the Senate to sit to discharge that mandate, there has to be a valid Motion of impeachment.

Our simple request to this Senate is that there has been no valid or competent Motion that has been forwarded to you to warrant your interrogation of the same. Why? For two reasons. That Motion that has purportedly been brought before you is a Motion that the court had killed before it got to you. So, there is no Motion.

Secondly, the law anticipates that you will sit here to listen to a resolution that has been passed by a House constituted under the Standing Orders. Our argument has been simple. The County Assembly of Isiolo did not sit to deliberate on the impeachment of the Governor of Isiolo County. So then, what would you be sitting to listen to?

Section 33 of the County Governments Act and Article 181 of the Constitution gives this House powers to hear whether charges against the Governor have been substantiated. So, it presupposes that once you begin the trial, you are actually listening to the actual charges, actual violations, and counts that the Governor is being accused of. Once we cross this bridge, we will not be looking at technicalities. We will only be addressing ourselves to the charges that the Governor is being accused of.

Hon. Senators, a month ago, a young man was brutally murdered. The police presented a dead body of that young man, Albert Ojwang', to Mbagathi Hospital expecting that the hospital was going to admit that dead body and treat that dead body. Mbagathi Hospital stood their ground and said: "Our duty is simple, to treat patients". What you are bringing here is not a patient known by nature or in medical terms. He is dead not even on arrival, but was dead even before arrival.

That is the same thing the County Assembly is doing, bringing you a dead body in the name of a dead Motion and expecting you to invoke your powers under Article 181 and Section 33 of the County Governments Act. We dare submit that it is not even a dead Motion; this Motion is a still birth. It never got to be born. Why? It was never debated and it was never resolved to impeach the Governor of Isiolo County.

Hon. Senators, when you look at the arguments by the County Assembly, they are telling you that we need to go to trial to establish whether the HANSARD that we took time to impeach communicate of a House having sat. Now, what witness is being brought

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before this Senate to address you on things that are clear? Documents speak for themselves. The HANSARD reports that we took time to take you through are not our documents. They are not documents hinged on an affidavit. They are documents supplied by the County Assembly.

None of the counsel who appeared before you took time to address you on any issues that we address you on to suggest that there is no way a sitting could have taken place. So, do you then call a witness here to come and address you on issues that are glaring, that are very obvious on the face of it? It would be a total waste of your time, hon. Senators.

There has been also an attempt by the County Assembly to portray the Governor of Isiolo County as a person who advances a self-defeating argument just because it is seen that he approached the High Court to impinge this process. It has been said that the Governor acknowledged that proceedings took place. Nothing can be further from the truth.

Hon. Senators, the hon. Governor of Isiolo County went to the High Court in Isiolo based on a press release by the Speaker of Isiolo County Assembly purporting to communicate a resolution to remove him from office; a press release that was not backed by any other evidence that, indeed, there were proceedings that took place.

Hon. Senators, you will not come across any broadcast of the proceedings that are said to have taken place on 26th June, 2026. Nothing; not from mainstream media, not from local media, nothing. The only communication that the Governor got was a press release that the Speaker of the County Assembly had to demonstrate that there were proceedings that took place. Therefore, hon. Senators, we urge you to invoke your powers.

I stood here last year in October representing the County Assembly of Kericho. A question arose as to the propriety of that Motion. Debate was held here and I stood to defend the position that preceded and hear the charges on merit and if there is any question on the propriety of that Motion, deal with it at that juncture.

Hon. Senators, I remember the words of the distinguished Senator for Kakamega, Sen. (Dr.) Boni Khawale. He told me-

“Mr. Mutuma, (he called me my name), what do you want the Governor to prove?”

That question is the same question I expect the hon. distinguished Senators to ask today. Are you inviting the Governor to prove that, indeed, there were proceedings that took place? It was the duty of the County Assembly before they even started submitting to establish that, indeed, a sitting took place. There is only one way to demonstrate that, by providing this House with credible HANSARD reports. Documents speak for themselves. We do not need a witness to take the witness stand to interpret the HANSARD reports. HANSARD reports are supposed to communicate verbatim what transpired without the need of calling a witness to explain. Their own HANSARD reports do not demonstrate a likelihood of a sitting having taken place.

Therefore, the same way you set precedents, because this is the House of precedents, that your mandate under Article 181 and Section 33 of the County

Governments Act encompasses the right to, first of all, interrogate (*prima facie*) whether that Motion has met that threshold; that is exactly what we are inviting you to do.

If you find that the HANSARD reports and the documents on record do not support the existence of a valid Motion, you do not need to proceed to the next stage. Once we proceed to the next stage, there is only one duty left for you, which is to look at the charges on merit and establish whether the Governor is guilty or not of the charges that have been preferred against him. I rest my case.

Thank you.

CLARIFICATIONS BY HON. SENATORS ON SUBMISSIONS MADE BY
COUNSELS FOR THE GOVERNOR AND THE COUNTY ASSEMBLY

The Speaker (Hon. Kingi): Hon. Senators, we will now move to clarifications for half-an-hour. If you get an opportunity to seek for clarification, kindly, keep it under two minutes, so that we can hear a number of you.

As you take to the Floor to seek your clarifications, kindly, indicate from whom you are seeking that clarification. We will do that for half-an-hour and thereafter, I will give 15 minutes to the Governor's team and 15 minutes to the County Assembly team to respond to the clarifications that will have been addressed to them.

Proceed, Sen. Cheruiyot, the Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, this is a very complex matter, but simple at the same time. I am struggling as I read the documents from the Assembly and the response from the Governor to establish who is the Clerk in the County Assembly of Isiolo.

If you read the sworn affidavits from the County Assembly - and I have the two documents here - there is a gentleman quoted who confirms that, indeed, there was a sitting. The response from the Governor also has a gentleman insisting that he is the Clerk for the County Assembly and he insists that there was no sitting.

I would wish to hear from both counsel on who between these two gentlemen is the Clerk of the Assembly and as at the time when they swore these affidavits that are before us, was that the position at that particular time? Maybe there was a difference in time or whatever, but to help my mind be clear as I seek to unravel the truth, I would wish to establish that.

Thank you.

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

Sen. Maanzo: Mr. Speaker, Sir, thank you for giving me the opportunity to seek clarification. I would like to seek clarification from the advocates of the County Assembly. I listened to the preliminary objection and the answers the counsel gave, I know they are very brilliant counsel, I had an opportunity to appear with them in court.

Out of the points given, could you point out your rebuttals, so that we can know the points? Otherwise, I just heard a big lecture, but I did not pick out the rebuttal points.

Thank you.

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

Sen. Thang'wa: Thank you very much, Mr. Speaker, Sir. I understand that every House has a department of the HANSARD. In most cases, like at the Senate, we have video recordings. Do we have the same for the County Assembly of Isiolo? Have they submitted the HANSARD, audio Hansard plus the video Hansard for that day? That goes to the County Assembly and probably also to the Governor. The next question is to the Governor. On that day that the Governor was invited to appear at 9.00 a.m., did he appear at that particular time?

Thank you.

The Speaker (Hon. Kingi): Proceed, Sen. (Prof.) Tom Ojienda.

Sen. (Prof.) Tom Odhiambo Ojienda, SC: Thank you, Mr. Speaker, Sir. I would wish to seek a few clarifications from counsel on both sides. Let me start with counsel for the Governor. I will ask counsel Elisha Ongoya this question.

Counsel, your preliminary objection is premised one, that there is no Motion because there were no sittings on 18th and 26th June, 2025. I want you to go straight to address the Senate on the affidavits that have been sworn in support of the fact that there were no sittings. Were there sittings? Were there Assembly proceedings? I ask this because the response from the Assembly is not clear as to whether or not there were sittings.

Mr. Nyamodi, perhaps, this is to you to clarify as well. You said that the sittings on 18th and 26th informed the basis for orders obtained from the High Court in Meru before Judge Nyaga and that the doctrine of estoppel should apply to the Governor's team that they cannot approbate and reprobate at the same time. Now, please, give us a response. Was there or was there no sitting? Number two---

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

Sen. Mungatana, MGH: Thank you, Mr. Speaker, Sir, for giving me the opportunity to seek a clarification. I want to hear from counsel for the County Assembly. There is a question that has arisen about the High Court sitting in Meru that nullified the decision that was taken through a Motion.

I want to know if they took time to appeal that decision, to seek a stay in that decision or whether that decision of the High Court is still holding firm. If so, what does it mean then for their arguments?

I submit.

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

Sen. Osotsi: Mr. Speaker, Sir, I want to direct my question to counsel for the Governor and this is based on the affidavit by Counsel Theuri where he has stated that there was no sitting.

Mr. Speaker, Sir, I find this to be a very fundamental issue in this case, which will determine the direction that this matter will take. I would want him to weigh that against the provision of Article 159(2) of the Constitution with regard to judicial authority.

It states as follows-

“(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—

(a) justice shall be done to all, irrespective of status;

(b) justice shall not be delayed;

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(c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);

(d) justice shall be administered without undue regard to procedural technicalities; and

Most importantly regarding principle (d) that justice shall be administered without undue regard to procedural technicalities.”

Does this sit in on this principle considering that having a sitting and gazetted place is very fundamental issue that this House will consider?

Thank you.

The Speaker (Hon. Kingi): Senator for Nandi, Sen. Cherarkey.

Sen. Cherarkey: Thank you, Mr. Speaker, Sir. One, I want to find out from the County Assembly whether their proceedings are live-streamed or if they have a YouTube channel where we can refer to.

Number two, to the County Assembly again; I have seen the affidavit of a clerk; how many clerks do you have? Do you have a *Gazette Notice* because when you look at Standing Order No.65 of the County Assembly of Isiolo, there is a procedure for impeachment.

Number three is to the counsel, Mr. Ongoya. As a House, we have already disregarded the issue of conservatory orders. What is the difference between conservatory orders and this High Court decision?

Number four; I saw the presence of Military Army outside the County Assembly Chambers. Who invited them and who was the Clerk then?

Finally, when you conducted the public participation, did you disregard the court order that was in place?

I submit, Mr. Speaker, Sir.

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

Sen. Wambua: Thank you, Mr. Speaker, Sir. Mine is to the counsel for the County Assembly. There are two quick issues.

The HANSARD is the official record of debates and proceedings in any legislative body. You have attached a copy of the HANSARD in your documents. Is that the official record? If it is, then perhaps what the HANSARD report is in Isiolo is probably different from what we know. Address us on the issue of the HANSARD reports.

Secondly, is the Motion that the court in Meru pronounced itself on, is the very same Motion that is here before us or are there any alterations to that Motion?

I thank you.

The Speaker (Hon. Kingi): Sen. Wakili Sigei, proceed.

Sen. Wakili Sigei: Thank you, Mr. Speaker, Sir. My clarification is to the counsel for the Governor, my senior, Mr. Ongoya, which is with regard to the validity of the Motion that is before the House.

You have said that the Motion before the Senate must be solid, valid and meet the threshold. Other than the decision or determination from the court as to the validity of the

Motion before the County Assembly, is there any other deficiency in the Motion that is before this House?

This is because you have made reference to the precedence set by this House in the Impeachment Motion against the Governor of Kericho County. On page 147 of Volume No.4, you will note that the validity of the Motion before the House was not one of the three issues that the Speaker in his determination highlighted as subjects that were to be determined at this stage.

Secondly to Mr. Nyamodi, the counsel for the County Assembly; could you, please, speak to this aspect in validity of the Motion of Impeachment where you have said it has no effect on the proceedings that is before the House, if I got you right? There was no rebuttal on that particular submission from your end.

Thank you, Mr. Speaker, Sir.

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

Sen. Mumma: Thank you, Mr. Speaker, Sir. My question is to the counsel for the County Assembly on the HANSARD reports. Are the HANSARD reports that you have provided an abridged or a verbatim version?

Secondly; do you have an audio version of these HANSARD reports?

The Speaker (Hon. Kingi): Sen. (Dr.) Boni, proceed.

Sen (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. Mine is to the County Assembly Attorneys. My brother Nyamodi, I have listened to you and your four other colleagues and none of you has attempted to respond to the grave allegation that the documents purported to be the HANSARD reports are cooked documents. None of you has tried to tell us that they are not. Is it your position that the documents before us here from you are cooked as alleged by the counsel from the Governor's Office?

Secondly and lastly; I draw the attention of Mr. Nyamodi to page 23 of Volume No.4 of the Governor's response where the Governor's advocates are reminding us what the court said.

The court said that they do not wish to stop us from listening to this matter. However, the court pricked our conscience and told us in bullet 24 that the matter at hand calls for a stand to be taken by constitutional organs involved. What they choose to do will have set a precedent on the necessity for compliance with court orders. It concluded by saying that it will be a choice between anarchy and constitutionalism.

Counsel Ongoya is---

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

Sen. Munyi Mundigi: Asante, Bw. Spika. Swali langu ni kwa *Advocate* wa county assembly. Sheria inasema kwamba watu wanafaa kufanya public participation wakati wa impeachment. *Advocates* wa Governor wanasema *public participation* haikufanywa vile inavyofaa. *Advocate* wa county assembly ako na thibitisho ya kuonyehsa kwamba walifanya *public participation* kwa wodi ngapi kwa vile wako na wadi 20?

The Speaker (Hon. Kingi): Sen. Mundigi, yale mambo ambayo yamezungumziwa na mawakili kutoka upande wa Bunge la Kaunti ya Isiolo na upande wa Gavana ndio mambo ambayo unashurutishwa uulize ikiwa una tashwishwi yeyote. Usichukue mambo ambayo haikujadiliwa na hayajatokea kwa upande wa Kaunti

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Assembly au Gavana uyazungumzie. Ni yale yaliyozungumziwa peke yake ndio unaweza kuuliza ufafanuliwe zaidi ukiwa na tashwishwi.

Sen. Munyi Mundigi: Bw. Spika, hata hilo swali ninalo uliza linafanana na yale majibu alikuwa anajibu.

(Laughter)

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

Sen. Kavindu Muthama: Mr. Speaker, Sir, I am seeking a clarification from the County Government of Isiolo.

When they stood to talk against this Motion, I did not hear them clarify beyond reasonable doubt if there was a sitting on the 18th and on the 26th of June.

Number two is a clarification from the lawyers; will it be right for this Senate to go against the court order?

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Sen. Karen Nyamu, proceed.

Sen. Nyamu: I seek clarification from the advocate of the county assembly.

Were all the procedures met? Was there a quorum? Was there a notice of Motion given to the Members of the County Assembly (MCAs) of this sitting and was the Governor given due notice? This is to just try and establish if all the procedural rules that pertain to this kind of Motions were met?

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

Sen. Okiya Omtatah: Mr. Speaker, Sir, thank you for the opportunity. I would like to clarify from the counsel for the County Assembly whether or not there was a court order issued against the proceedings that eventually resulted in the impeachment that is before us for trial.

Thank you.

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

Sen. Methu: Thank you very much, Mr. Speaker, Sir. I seek a clarification from the team from the County Assembly. There has been a fundamental issue that has been raised by the counsel for the Governor; that the County Assembly of Isiolo did not sit. They have gone ahead to give us reasons why they believe that the County Assembly did not sit.

In your rebuttal, I have not heard an attempt to prove to this House that the County Assembly of Isiolo actually sat because that is an extremely fundamental issue. The counsel for the Governor has gone ahead to say that then if there was no sitting of the county assembly, then there is no Motion before this House.

That is an extremely fundamental issue that we must get to understand, especially from the County Assembly, whether, indeed, there was a sitting of the on this particular matter or not.

The Speaker (Hon. Kingi): Sen. Peris Tobiko, proceed.

Sen. Tobiko: Mr. Speaker, Sir, that was actually my question, but I want to ask it directly. Can they confirm---

The Speaker (Hon. Kingi): If it has already been asked, Hon. Senator---

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Sen. Tobiko: Mr. Speaker, Sir, let me put it differently; just to remind them that they are under oath. They must confirm if there was a sitting of the County Assembly of Isiolo on the 26th June, 2025---

The Speaker (Hon. Kingi): Hon. Senator, the advocates are not under oath because they are not witnesses in this matter.

Sen. Mo Fire, proceed.

Sen. Gataya Mo Fire: Thank you, Mr. Speaker, Sir. My concern was pre-empted by Sen. (Dr.) Boni and Sen. Maanzo. My concern was that---

The Speaker (Hon. Kingi): If it has already been preempted, then just take your seat.

Sen. Gataya Mo Fire: I thought I could make some further clarification---

The Speaker (Hon. Kingi): No.

Sen. Essy Okenyuri, proceed.

Sen. Okenyuri: Thank you, Mr. Speaker, Sir. I would wish to seek clarity from the counsel representing the County Assembly on whether the HANSARD recording, which is now in doubt, was conducted in the County Assembly or outside.

Thank you.

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

Sen. Kinyua: Mr. Speaker, Sir, my issues were raised by Sen. Maanzo.

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

SUBMISSIONS BY THE COUNSEL FOR THE GOVERNOR AND THE
COUNTY ASSEMBLY ON CLARIFICATIONS BY HON. SENATORS

Hon. Senators, we shall now move to hearing clarifications from the two teams, starting with the County Assembly.

I had already indicated the time available to you, that is; 15 minutes to the team from the County Assembly and 15 minutes for the Governor's team. You may proceed, counsel.

Mr. Paul Nyamodi: Thank you very much, Mr. Speaker, Sir. I will start from the top.

Sen. Cheruiyot, you are right. This matter is as complex as it is simple. Who is the clerk? Is it the clerk who swears an affidavit in the Governor's Statement? Is it the Clerk who swears an affidavit in support of the Impeachment Motion?

It is the position of the County Assembly that the Governor captured the Clerk. That is a matter of evidence and that is evidence that we want to lead. When I said we want to cross-examine the Clerk, it will become apparent when you listen to that testimony that the Governor captured the Clerk, and the Clerk, for all intents and purposes, became a saboteur to the impeachment proceedings.

You will see in the Clerk's statement, where he says "I cancelled the public participation". That is what I meant. It is important that the Senate enables this Motion to get to the point where the evidence is laid before you, so that you can then make up your determination about what happened, who captured who and who did not capture who.

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It is the County Assembly's position that the Governor cannot capture the Clerk, hold the Clerk and then say that because there was no Clerk, there can be no impeachment. It is apparent in law; you cannot do things like that and seek to benefit from them. Therefore, this Motion must then get to the point where evidence is laid.

Sen. Maanzo asked us: What is our rebuttal to the points given? I had stated that a preliminary objection is, in our humble understanding, an issue of law that is raised. There are several factual rebuttals, but we as counsel, in the privileged position we occupy, are unable to testify. Our witnesses have rebutted those things that counsel have said and it is vitally important that this Motion gets to the point where the Senate can hear that testimony from the witnesses themselves.

We say, yes, there were sittings that took place and we have said further that from the conduct of the Governor who took those proceedings to court, they acknowledge that the County Assembly did take place.

There is an affidavit from a Senior Superintendent of Police in Isiolo, who says that he went and the proceedings in the County Assembly were disrupted. Surely, the Senate must hear from that superintendent of police. We have cross-examination to put to him, so that you make up your mind about what happened in those proceedings, who sabotaged those proceedings and who took part so that you can make up your mind.

Yes, it is complex and simple at the same time.

Sen. Karungo asked: Do we have audio and video of the HANSARD reports of the day? I will allow my colleague to respond to that question.

Sen. (Prof.) Ojienda, SC, sittings were the basis of the orders obtained in the High Court sitting in Meru. Yes, we allege that there is an estoppel. Was there a sitting? Yes, there was a sitting and that is why there is a HANSARD report that the Governor's advocates seek to now criticise at the preliminary stage. If there were no sittings, there would be no HANSARD reports. If there were no sittings, there would then be no foundation for the Governor's advocates to go to court in Meru on the 26th of June and get the orders that they did. That those orders exist from where we sit is proof that those sittings took place.

Sen. Mungatana asked: Has the Meru decision been appealed or stayed? Our position is that in respect to the impeachment proceedings, the Supreme Court in the Martin Nyaga Wambora's matter gave guidance, not just to courts below, but to the county assemblies and to the Senate, as to what to do with orders that were issued, like the ones that were issued by the High Court in Meru in respect of incomplete impeachment proceedings.

Those orders, according to the decision of the Supreme Court in Martin Nyaga Wambora - I think the wording used by the Supreme Court is that - 'they should not then be immediately effected'. That is the guidance that has been given by the Supreme Court.

Sen. Cherarkey wanted to know how many clerks are there in the County Assembly of Isiolo. I believe I have attempted to answer that question. Yes, there is a question as to how many clerks there were and who was the Clerk, but that is a matter of evidence. They have their position about who the Clerk was. We have our position about who the clerk was.

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As I have said, it is our thesis that they captured the Clerk, but the County Assembly needed to continue. That is a matter of evidence that will then need to be tabled. As an advocate, I am unable to testify to it, but I know those affidavits exist in the record.

The other question was: Who invited the Army? Like I said, in the Governor's documents, there is an affidavit by a Senior Superintendent of Police. It is apparent that if he is swearing an affidavit for the Governor, then the answer as to who invited the police or the Army is answered by the fact of who the police or the Army testified in favour of.

Was public participation done? Yes, public participation was done. Was public participation done in disregard of the court order? I want the answer that I have replied in respect of Sen. Mungatana's question as to what should be dealt with, court orders of the nature or of the species that was issued in Meru in respect of these impeachment proceedings, to also apply to that issue.

Sen. Wambua asked: Is this the official HANSARD of the recorded proceedings? I will say yes, but my colleague, Mr. Mawira, will come and deal with that issue in more detail. He will explain to this House why those are the official HANSARD reports in respect of the proceedings.

Sen. Wakili Sigei asked whether the ruling that the Motion was of no effect is that the Motion before this House. Yes, it is. I urge this House then to consider that ruling in respect or together with the ruling of the Supreme Court or the guidance of the Supreme Court as to what should be done with rulings of that nature.

If I may state during my response to the questions from the Senators, if this House stops this Impeachment proceedings in respect of a court order like the one that has been issued, then as an advocate who has practised law for not an insignificant time, I can say without any fear of contradiction that this is the last impeachment that this House will do because the court orders will delay, delay and delay.

There is a good reason why the Supreme Court took the position it did in the Martin Nyaga Wambora matter. There is no reason to depart from that position.

There was a question as to whether the HANSARD report is full or abridged. Do we have an audio recording? Again, my colleague, Mr. Mawira, will respond to that.

Sen. (Dr.) Khalwale said that there was no response from our part to the allegation that the documents were cooked. That is an issue of fact and because it is an issue of fact, it cannot fall from the mouth of the advocate that the documents were cooked. That can only come from a witness. From our corner, it can only come from our witnesses. That is their position.

We have an answer and it is in the response or it is in the documents that were brought in support of the Motion. Since it is an issue of fact, it is not an issue that can be brought forward and tried as a preliminary issue as the legal team for the Governor seeks to invite this House to do. That is a contested issue in the Motion. I beseech this House to allow the Motion to get to the point where those who are competent and capable to testify to those contested facts are able to do it.

Sen. (Dr.) Khalwale, in respect of finding at page 23 of Volume No.4; again, I will repeat my answer to that question. This is an order, the species of which was envisaged by the Supreme Court in the Martin Nyaga Wambora matter. Compliance does

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not need to take place immediately. The Supreme Court then is clear that such an order, when issued by the High Court, should not and cannot get in the way of impeachment proceedings.

The High Court's jurisdiction only arises once the impeachment proceeding is complete. When I was on my feet earlier on, I made the statement that what the Supreme Court envisages is an instance where even where the impeaching house is making a mistake, allow them to complete the mistake because that is how institutions grow and that is why the Supreme Court held as they did. Again, I will emphasise that these are time-bound proceedings. If we then expose ourselves to the judicial process, we will never finish.

Sen. Kavindu Muthama asked us to clarify if there were sittings held on the 18th and the 25th of June, 2025. Yes, and that is the only way that the Motion could have gotten to the Senate. My colleague will demonstrate by reference to the HANSARD in the evidence in support of the Motion when and how those proceedings took place.

Mr. Speaker, Sir, would it be in order for the Senate to proceed against a court order? I will ask to perhaps add a word in the question that was put to us by Sen. Muthama. Will it be in order for the Senate to proceed against an unlawful court order?

We have gone to great lengths to demonstrate that the order is unlawful, and is made without jurisdiction, in circumstances where it is clear. There are binding pronouncements both of the Court of Appeal and of the Supreme Court that, that court disregarded, and that the court's jurisdiction only arises upon the completion of the impeachment proceedings. Those proceedings have not been completed and that order is therefore to be ignored.

I cede the rest of my time to my learned colleague so that he can cover the other important issues.

Mr. Boniface Mawira: Mr. Speaker, Sir, my name is Mwereru Boniface Mawira.

On the first question by the Senate Majority Leader on who the Clerk of the Assembly at the moment is, from Salad Boru's affidavits, the Clerk of the Assembly, he has sworn an affidavit in support of the Governor's case. From his affidavit, he confirms that he was sent on compulsory leave on 16th June, 2025. The Court suspended the decision sending him on compulsory leave on 1st July, 2025.

The Motion that is before you was tabled on 18th of June, when the Clerk was on leave. It was debated on 26th June, 2025, still when the Clerk was on leave. Therefore, the Clerk cannot be a witness of fact as to what transpired in the Assembly on these two days, when the Motion was tabled and when it was debated because he was on compulsory leave. He only resumed after the Employment and Labour Relations Court granted him interim relief on 1st of July.

In reference to the question by Sen. Karungu, the video and audio proceedings of the HANSARD has not been filed. It was not anticipated by the Assembly at the time of filing his documents that the Governor would be challenging whether there was a sitting. However, I have just been informed by the Speaker that the Assembly has an audio recording of the HANSARD. So, if it is required, it shall be filed with the Office of the Clerk of the Senate.

Mr. Speaker, Sir, I have checked the rules and they do not provide for filing of additional documents after documents have been exchanged between parties on Friday, when we came and served the Office of the Clerk of the Senate with the documents for the respective parties. So, if the audio recording of the HANSARD is required, it shall be provided.

On the question by Sen. Mumma on whether there is a social media site for the County Assembly, there is no social media site for the Assembly proceedings. So, there is no record either on YouTube on the Assembly sitting for that day. For other previous proceedings, if there are members of the press who are allowed in the Chamber, there are proceedings for those days. However, on this specific day, there was violence and as I have said, this is a matter of evidence. If you go to our Volume No.1, you will find an Occurrence Book (OB) report on page 42. This OB report is on the breaking in of the County Assembly on the date of the debate.

Mr. Speaker, Sir, with your leave, I would request that our Video No.6 be played. That video will demonstrate that the entire HANSARD Department of the County Assembly was vandalized on the 26th June, 2025, when the debate on the Motion was ongoing. Therefore, all the County Assembly's records, including the HANSARD of the 18th, were stolen. What is more curious, from our Video No.9 in our folder, is that the only office in the entire County Assembly that was spared is the Office of the Clerk. This Clerk is a witness for the Governor.

On the question by Sen. Nyamu on whether the Governor was invited, it is, indeed, true. On our Volume No.5, page five, there is a letter of invitation sent to the Governor. It was served and an affidavit of service is filed in that regard.

On the last question by Sen. Omtatah on the effect of that court order, a court order that is given by a court lacking in jurisdiction, as my senior said, is a nullity in law. It is of no legal consequence, to borrow the words by the Governor's lawyers.

On the question by Sen. Mundigi, indeed, public participation was undertaken. We have two volumes, Volume No.4A and Volume No.4B on that question. I would request your indulgence for time to have those two videos played. They are crucial to this question of whether, indeed, the Assembly sat, because they demonstrate the violence and the vandalism that took place in the Assembly on the 26th of June.

In that regard, I would request for maybe additional time to play those two videos.

(The Clerk-at the Table consulted the Speaker)

The Speaker (Hon. Kingi): Counsel for the Governor, there is a request that has been put forth by the Counsel for the County Assembly, to play a certain video in proof that indeed the sittings took place.

Mr. Elisha Ongoya: Thank you, Mr. Speaker, Sir. May I seek your indulgence to understand the issue? Do I understand the request by the County Assembly Counsel to be that a video can be played here, which will show that the sitting took place? If that is the request that they are making, they can play it for us to see where that the sitting took place. We would also be glad to see it.

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The Speaker (Hon. Kingi): Counsel for the County Assembly, it is your case. In regards to the question that is before you, there has been an assertion from the team of the Governor that no sitting took place. However, you have decided to play a video in response to that allegation. Is that video going to show us a sitting taking place or is it a video showing us a sitting never took place because of certain reasons?

Mr. Boniface Mawira: Mr. Speaker, Sir, as I have stated, due to the unique circumstances of the proceedings of that day, the vandalism, violence and mayhem in the Assembly precincts on the 26th of June, the video that we are about to play is not a video of the sitting of the Assembly. It is a video showing the entire destruction of the HANSARD office in the County Assembly.

(Loud consultations)

The Speaker (Hon. Kingi): No, Hon. Senators! Again, I am going to say, it is your case. If that video proves that the conditions were such that a sitting could not take place, how is it going to aid your case? However, it is your case, you can proceed.

(Loud Consultations)

The Speaker (Hon. Kingi): Let the counsel play his--- Sen. Omtatah, what is your clarification?

Sen. Okiya Omtatah: I thought we were handling a preliminary objection. We therefore cannot begin examining evidence.

The Speaker (Hon. Kingi): Sen. Omtatah, I hear you. Just take your seat. The clarifications that have been sought here is for the County Assembly to, indeed, confirm that a sitting took place. Several Senators rose to seek that clarification. In response to that, the County Assembly has requested to play a video.

(Sen. Okiya Omtatah spoke off record)

Sen. Okiya Omtatah: It is a question of evidence that is contested. That is what we need to know. If it is a question of evidence, then we shall deal with the evidence when we get there. If we begin looking at the evidence now---

I would rather we deal with matters of law, which are matters of preliminary objection. They argued and said it is a matter of evidence. If it is their case that it is a matter of evidence, then what is the fate of the preliminary objection?

The Speaker (Hon. Kingi): Very well, hon. Senator. You will make that decision when you debate and vote on the Motion. Just hear what the County Assembly wants to show you. It is upon you, using that same line of argument, to either take or leave it when the time for making a decision arrives.

You may proceed.

Mr. Boniface Mawira: Mr. Speaker, Sir, we are about to play a video, and I am responding to the concern that was raised. It is not to demonstrate that the circumstances were that it was not possible to hold a sitting. Our position is that there was a sitting of

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the Assembly. However, due to violence and disruption--- I do not want to go to affidavits because that is a matter of evidence as Sen. Omtatah submitted.

The circumstances after that sitting were that the HANSARD Office was vandalised. That is why as we exchanged documents with the Senate, the HANSARD report that was filed was not a recording of the actual sitting of the Assembly. The HANSARD was vandalised after the sitting.

Mr. Speaker, Sir, with your leave, if the Assembly can be allowed to play that video clip---

(Loud consultations)

The Speaker (Hon. Kingi): Hon. Senators, kindly, view the recording and make a decision at a time when we are supposed to make a decision.

Proceed.

(A video clip was played)

Mr. Boniface Mawira: There is also Video No.9 that shows the Office of the Clerk.

(A video clip was played)

Mr. Speaker, Sir, those are the two videos.

My final comment on that issue is that the violence and mayhem at the Assembly was perpetrated by the Governor. We will be calling witnesses and lead them to give evidence in support of that submission.

Mr. Speaker, Sir, it cannot be that the Governor can perpetrate such violence and ultimately, he is the beneficiary of his own violence. He cannot benefit from his own mischief. That is the entire point we are making and that was the importance of showing those two videos.

Finally, Mr. Speaker, Sir, may I get direction on where the audio for the HANSARD recording can be filed with the Office of the Clerk? The Speaker has just availed it to me.

The Speaker (Hon. Kingi): Absolutely! It will be considered when making a decision on this preliminary matter.

Mr. Boniface Mawira: I am most obliged, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Counsel for the Governor, you may proceed. You have 15 minutes to make your rebuttal.

Mr. Elisha Ongoya: Thank you, Mr. Speaker, Sir. May I have a sight of my time? I will take seven minutes and my learned colleague, Mr. Theuri, will take eight minutes. For the record, my name is Elisha Ongoya.

Allow me to start with the question raised by the Senate Majority Leader on who the Clerk of the County Assembly of Isiolo is. In answer to that question, Mr. Nyamodi

answered what happened to the Clerk, instead of giving a simple and straightforward answer, who is the Clerk?

The simple and straightforward answer is to be found in the County Assembly's own documents, Volume No.5 at page eight. The County Assembly has attached, as part of its evidence, a document signed by the Clerk. That is Salad Boru Guracha. That is the simple and straightforward answer to that question.

Distinguished Senators, every time you ask a question and people have to scatter around it for five minutes - a question that requires a name of a person - it is manifest evidence there is a problem with that team.

Secondly, to the question raised by Sen. Ojienda directly to me on the question of affidavits and whether the County Assembly, in fact, sat, the following affidavits of the following deponents show that the County Assembly did not sit on 18th June, 2025, when this Motion is said to have been introduced in the House and on 26th June, 2025, when this Motion is purported to have been approved. The first one is the affidavit of Salad Boru Guracha, the Clerk.

Hon. Senators, you know the role of the Clerk in the business of the House. He is a person likely to know whether the House sat or not in two respects. Firstly, when he is physically present, and secondly, as the custodian of the official records of the House. He says by reference to both records, either by physical presence or by reference to records of the House, where he is the sole custodian, the House did not sit.

The second one is by Abdinoor Dima Jillo, Member of County Assembly (MCA) for Kinna Ward. By virtue of being an MCA, he is a person who can know when the Assembly has sat or not.

The third one is the affidavit of Diba Abdirashid Ali, the Leader of Majority in the County Assembly of Isiolo. That is a Member of the House Business Committee (HBC) who is likely to know, number one, whether this business was ever scheduled for those days and whether the House, in fact, sat and transacted that business.

Each of these crucial witnesses bring before you evidence that the Assembly did not sit on 18th June, 2025, when this Motion is said to have been introduced and 26th June, 2025, when this Motion is said to have been approved.

Allow me to move the next question by Sen. Mungatana on whether the decision from the High Court in Meru--- My apologies. There is one more affidavit that I overlooked. My apologies for that. There is an affidavit of Shaban Mzungu, the Superintendent of Police. He was the person in charge of security at that important public installation, the County Assembly premises, which also houses the County Governor. It is the County Government premises in Isiolo. He also confirms that there was no business transacted in the House on that day because of the circumstances in which he deposes to in his own affidavit.

The question raised by Sen. Mungatana on whether there has been an attempt to appeal that decision and whether the decision still holds, this is also another simple and straightforward question because an appeal is a particular act. I expect the senior counsel, Mr. Nyamodi, to respond more directly to this question. I had him to answer the effect of this decision.

Sen. Mungatana, the simple and straightforward answer to this question is that not even a notice of appeal, forget about the appeal itself, has been logged in respect of this decision. Not only has the County Assembly not appealed to this decision, but they have not even shown an intention to appeal, which is normally signaled by a notice of appeal.

To the question raised by Sen. Cherarkey, my answer is as follows. This was not a conservatory order. This House has historically had issues which conservatory orders granted *ex parte*. The order we have here was granted after both parties were heard. In fact, the ruling of the court narrates the order of events. The Assembly lawyers were given time to go to their clients, take instructions, then come back and address themselves. So, this order was made after hearing both parties to the dispute. This is what distinguishes this from the other conservatory orders that this House has had occasion to deal with in the past.

Sen. Wambua asked us another straightforward question. He asked if the Motion we are dealing with in this House is the same as the Motion that the court dealt with in Meru. Sen. Wambua, the simple and straightforward answer is yes, it is the same Motion that the court declared null and void and of no effect.

Sen. Wakili Sigei asked an important question about validity of this Motion and our answer is as follows. The deficiency of this Motion is on multiple grounds. One, there is an order of the court declaring it null and void. When it is declared null and void, it is not a valid Motion. Number two, it is a piece of paper as I told you earlier.

I will explain the reason why I say that it is a piece of paper. For a Motion to be said to be a Motion in this House, the distinguished Senate, it must go through the procedures known to the Constitution and the Standing Orders, be voted upon and be a resultant Motion. Even for this House, it cannot be proper for the Speaker and a few Members to sit somewhere, outside this House, and craft material that look like HANSARD and say that this is a Motion. So, it becomes invalid.

The video that has just been played and the submission of the counsel prior to playing that video confirms this more than ever before. The counsel said that the HANSARD was completely vandalized. Therefore, they could not produce the HANSARD reports. This begs the question: Where did they get the material they have presented before you purporting to be HANSARD reports? That is not a legitimate origin of a valid Motion of a house.

Sen. Kavindu Muthama raised an important question. She asked if it is right for the Senate to go against an order of the court. Generally, court orders involve two disputants. It can be a public interest matter like this, a matrimonial case or whatever case it is. It usually involves two disputants. It is never right for any person to disregard a court order with abandon. We are all consumers of legal judicial services one way or another. When we get a court order in our favor, we desire a country where that order means something. That would, therefore, be my answer to your question.

Sen. Nyamu asked if all procedural steps were met. My answer is no. Procedural steps were not met. The Motion was not tabled. The Motion was not debated. The question was not put. There was no sitting of an Assembly. Therefore, there could have been no resultant Motion underpinning whatever has been brought before you.

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Allow me, in the interest of time, to invite my colleague, Mr. Eric Theuri, to continue with the responses to the various questions. Thank you, for your audience.

Mr. Eric Theuri: Hon. Speaker, I will take a minute or two in view of the substantive responses that have come from my colleague, Mr. Ongoya. The only question I have to respond to is one that was posed by Sen. Thang'wa. At the time when the Governor was invited, he was in his office and at 9.00 a.m. or at no time was there a sitting. So, the Governor could not attend any sitting because none was held.

A question was posed by Sen. Osotsi with regards to Article 159 of the Constitution. My answer is that the question we are raising is not one of technicalities. It goes to the root of the dispute that is before the Senate. There must be a resolution and in the absence of a resolution, the jurisdiction of the Senate has not been properly invoked. Therefore, it is not a technical procedural issue that can be cured by Article 159(2) of the Constitution, but rather, it goes into the question of the merit and whether the authority of the Senate has been properly invoked. We have submitted that has not happened. I think those were the only questions posed to our side that had not been responded to.

Hon. Senators, let me just remind you that the question with regards to the sitting is one that is extremely critical and our position still remains that there was no valid sitting of the 18th or the 26th June. That is abundantly clear when you listen to the responses that are coming from the Assembly. You do not know on which side of the mouth they are speaking from. In one instance, they have said that the HANSARD Office was destroyed and, in another instance, the HANSARD is a true record of the reflection of the proceedings that were held in the House. So, that is the question that we have submitted on and we urge this Hon. Senate to find that there are no proceedings known in law. Therefore, there cannot be a resolution that has been presented to this Hon. Senate to deliberate on. I rest my case.

Mr. Boniface Mawira: If I may, Hon. Speaker. With your leave, Hon. Speaker, I request to clarify something that the Mr. Ongoya, Counsel, has misquoted me.

The Speaker (Hon. Kingi): No. If you go that route, we will never come to the end of this matter.

Mr. Boniface Mawira: It is just one clarification.

The Speaker (Hon. Kingi): You may proceed.

Mr. Boniface Mawira: Hon. Speaker, what I said was stolen is the video records of the HANSARD of the 26th. The audio recording of the proceedings of that day is available. That is what we request your leave, Hon. Speaker, to file with the Office of the Clerk. The audio recording of the proceedings of the 26th is available.

With respect to the 18th, the audio recording was stolen when the HANSARD room was vandalized on the 26th June. However, it is after that audio had been produced into the HANSARD that is now on the floor in our documents. That is the clarification I wanted to make.

Thank you, Hon. Speaker.

The Speaker (Hon. Kingi): Now, hon. Senators, having concluded the hearing of the preliminary issues raised, pursuant to Standing Order No. 38, as read together with Standing Order No.1, for the convenience of the Senate, I hereby suspend the sitting for 30 minutes to allow for the preparation and circulation of a Supplementary Order Paper

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that will enable the Senate to make a fair and just determination on the issues that have been raised.

You may rise.

(The Senate was suspended at 3.49 p.m.)

(The Senate resumed at 5.10 p.m.)

The Speaker (Hon. Kingi): Hon. Senators, welcome back. Clerk, proceed to call the first Order.

COMMUNICATION FROM THE CHAIR

PRELIMINARY ISSUES ON THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HON. ABDI IBRAHIM HASSAN, GOVERNOR OF ISIOLO COUNTY

The Speaker (Hon. Kingi): Hon. Senators, following the commencement of the process of the proposed removal from office, by impeachment, of Hon. Abdi Ibrahim Hassan as Governor of Isiolo County, the firm of Theuri Wesonga, the advocates representing the Governor raised in writing, pursuant to Rule 14 of the Third Schedule of the Rules of Procedure for Hearing and Determination of the Proposed Removal from Office by Impeachment of a Governor, a preliminary objection. In particular, the advocate stated as follows-

(a) That there was no valid or competent Motion for removal, by way of impeachment, of the Governor of Isiolo County, passed by a resolution of the County Assembly of Isiolo for the following reasons-

(i) On 27th June, 2025 and 2nd July, 2025, the High Court in Isiolo vide Isiolo High Court Constitutional Petition Number E004 of 2025 Hon. Abdi Ibrahim Hassan vs County Assembly of Isiolo and two others, invalidated the proceedings of the County Assembly of 26th June, 2025, giving rise to the impugned impeachment and further declared the resolutions to impeach the Governor as null and void and of no legal consequence. In particular, the Governor's Advocates drew the attention of the Senate to paragraphs 45 and 46 of the Court's Ruling which stated as follows, and I quote-

“45. Therefore, it is the finding of this court that the Motion dated 18th June, 2025 and debated by the 1st Respondent on 26th June, 2025 was in contravention of the Conservatory Orders of this Court issued on 25th June, 2025 hence the Resolution arising therefrom is null and void. Once an act is declared null and void, it is of no legal consequence.

46. As stated, the Resolution has evidently been submitted to the Speaker of the Senate. It is thus upon the Senate, once informed of the orders herein, to determine if it will proceed to handle the said Resolution, thus abetting a blatant disregard of the rule of law, or respect the orders.”

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(ii) The law contemplates that impeachment proceedings can only be commenced and/or sustained before the Senate, upon the passage of a valid resolution by a county assembly in compliance with the procedures laid down in the law governing the removal of the Governor from office. However, in this instance, the County Assembly of Isiolo did not sit on 18th June, 2025 and 26th June, 2025, to table, debate, pass and/or vote on the Motion for removal of the Governor from office by way of impeachment.

(b) That the purported HANSARD reports of 18th June and 26th June, 2025 relied upon and furnished to the Senate by the County Assembly were forged, concocted, manufactured and engineered at a venue outside the County Assembly Chambers and further that there exist no votes and proceedings, voice transcripts and video recordings to corroborate the HANSARD reports. Counsel invited the Senate to conduct a preliminary inquiry by way of a trial-within a trial *in limine*, with a view of establishing the authenticity of the HANSARD reports presented by the County Assembly in support of the impeachment proceedings.

(c) That the purported impeachment Motion as presented by the County Assembly of Isiolo fails to meet the criteria and legal threshold under Article 181 of the Constitution, Section 33 of the County Governments Act, the Standing Orders of Isiolo County Assembly and the Standing Orders of the Senate.

(d) That the impeachment Motion forwarded by the County Assembly of Isiolo is a sham, null and void and of no legal consequence to warrant admissibility, interrogation or any other action of the Senate hence the same should be struck out *in limine*.

In response to the preliminary objections raised by the Advocate for the Governor, the firm of Alex & Boniface Advocates LLP, advocates for the County Assembly of Isiolo stated in writing-

(a) That the preliminary objections raised by the Governor do not meet the threshold of a pure point of law as established by the time-honoured case of *Mukisa Biscuit Manufacturing Co Ltd vs West End Distributors (1969) EA 696*.

(b) That with regard to the first preliminary objection, the question of court orders that seek to prevent the Senate from fulfilling its constitutional duties has been settled by the Supreme Court of Kenya in *Mate & another vs Wambora & another [2017] KESC 1 (KLR)* and the Court of Appeal in *Mwangaza v County Assembly of Meru & another; Council of Governors (Interested Party) [2023] KECA 1599 (KLR)* whereby the two courts held that courts lack jurisdiction and are forbidden from interfering with the constitutional mandate of county assemblies and the Senate.

(c) That on the same question, the Speaker of the Senate recently ruled during the impeachment proceedings of the former Deputy President, that any injunction interfering with the work of Parliament has no effect on Parliament in the exercise of its constitutional functions.

(d) That, consequently, the Senate through the Speaker of the Senate ought to dismiss the preliminary objection and proceed unabated, unfettered and unhindered in line with its established precedents affirmed by both the Supreme Court and the Court of Appeal.

(e) That, in respect to the second preliminary objection (whether there was a sitting of the County Assembly to table, debate, pass and or vote on the Motion for removal of

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the Governor from office by way of impeachment), the same is purely a factual and evidential matter that can only be resolved at the full trial.

(f) That the Governor's request for a preliminary inquiry or trial within a trial is untenable as it is a misguided attempt to obstruct and derail the proper proceedings of the House and it is only necessary when the subject matter of the mini-trial cannot be established in the full trial.

(g) That on the alleged fraud and forgery relating to the HANSARD reports, fraud must be specifically pleaded and particulars of the fraud alleged must be stated on the face of the pleadings. Moreover, considering that the standard of proof for fraud is more than a balance of probability, the allegations can only be established after a full trial.

(h) That the second preliminary objection is fatally defective and ought to be disallowed in the best interests of justice.

(i) That in respect to the third preliminary objection, whether the impeachment Motion meets the criteria and legal threshold under Article 181 of the Constitution, Section 33 of the County Governments Act and the Standing Orders of the Isiolo County Assembly, the issue can only be determined once the Senate has interrogated all the facts and evidence in the impeachment Motion against the standard of impeachment as laid out by the Supreme Court in *Sonko v County Assembly of Nairobi City & 11 others [2022] KESC 76 (KLR)*.

(j) That the third preliminary objection is also fatally defective as it calls upon the interrogation of the merits of the impeachment Motion at a preliminary stage, before the Senate has had the opportunity to hear the witnesses and consider the evidence led by the parties.

(k) That the preliminary objections ought to be dismissed and the matter proceeds to a full trial for a determination on the merits.

Now, Hon. Senators, counsel for the parties have this morning made oral submissions on the preliminary objections and responses thereto following which a number of Senators, including Sen. Cheruiyot, Sen. Daniel Maanzo, Sen. Thangwa, Sen. Tom Odhiambo Ojienda, SC, Sen. Mungatana MGH, Sen. Osotsi, Sen. Cherarkey, Sen. Wambua, Sen. Wakili Sigei, Sen. Mumma, Sen. Munyi Mundigi, Sen. Kavindu Muthama, Sen. Nyamu, Sen. Okiya Omtatah, Sen. Methu, Sen. Tobiko, Sen. Gataya Mo Fire and Sen. Okenyuri, sought clarifications on the same.

In the clarifications, the Senators sought to be informed among other things, the identity of the Clerk of the County Assembly, whether there was a sitting of the County Assembly of Isiolo on the impeachment process; whether the HANSARD recording of the Assembly proceedings was submitted to the Senate in full and its validity in the proceedings before the Senate.

The status of the decision of the High Court to nullify the proceedings of the County Assembly; whether the proceedings of the County Assembly are transmitted or broadcast live; the deployment of security officers at the County Assembly; whether the Impeachment Motion that was quashed by the High Court is the same Motion submitted to the Senate and its validity for impeachment proceedings against the governor; whether the sittings of the County Assembly were properly convened and whether or not there was a court order issued against the County Assembly on the impeachment process.

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Subsequently, counsel for the County Assembly gave responses to the questions and clarifications sought by Senators by stating *inter alia* that the Governor captured the Clerk and that the County Assembly had evidence in this respect and that the impeachment process ought to proceed. He further said that the primary objections are primarily founded on issues of law and that the County Assembly had witness statements to counter the allegations made by the Governor. Counsel also stated that the County Assembly held settings to impeach the Governor and evidence on the same will be adduced, and that the Supreme Court, in the case of Martin Nyagah Wambora gave guidance in respect to incomplete impeachment proceedings.

Likewise, counsel for the Governor responded to the issues raised by Senators by stating *inter alia* that with respect to the questions relating to who the Clerk of the County Assembly is, the County Assembly's own submissions of Volume 5 and page 8 settled the matter; that there were no sittings of the County Assembly and that affidavits of the deponents in the proceedings indicated that there were no sittings of the County Assembly; that no appeal has been lodged on the court orders against the County Assembly and that the Motion before the Senate was the same Motion declared null and void by the High Court.

Arising from the preliminary issues canvassed, the following are the issues that require determination by the Senate-

(i) Whether the County Assembly of Isiolo held settings on the 18th June, 2025 and 26th June, 2025 to table, debate, pass or vote on a Motion for a proposed removal from office by impeachment of the Governor of Isiolo County; and,

(ii) Whether in light of the court orders nullifying the proceedings of the County Assembly of 26th June, 2025, the Senate is able to proceed with the hearing on the proposed removal from office by impeachment of the Governor of Isiolo County.

Hon. Senators. It is not in doubt that the trial court in impeachment matters is the Senate. Accordingly, the preliminary objection raised by the counsel for the Governor will be determined by a vote of the Senate.

The procedure for proceeding to this vote will be by a Motion in the usual manner proceeded by a Notice of Motion. The vote will be taken upon the conclusion of debate.

To this end, I have directed the Clerk of the Senate to prepare and circulate a Supplementary Order Paper containing two Notices of Motions and the respective Motions speaking to each of the preliminary issues raised.

Hon. Senators, the decision on the proposed removal from office, by impeachment, of a county governor and any consequential or incidental decision thereto are matters concerning counties and has been previously ruled in all impeachment processes undertaken by the Senate. These decisions are made by the Senate by vote; by county delegations. Accordingly, the preliminary issues will be upheld only if supported by the votes of at least 24 delegations.

It is clear that if the preliminary issue contesting whether the County Assembly of Isiolo held sittings on the 18th June, 2025 and 26th June, 2025 to table, debate, pass and all vote on the Motion for the proposed removal from office, by impeachment, of the Governor of Isiolo County is upheld, this impeachment shall terminate forthwith and it

will not be necessary to proceed on the Motion or vote on the second preliminary issue, as doing so will be an academic exercise.

If, however, the first preliminary issue is negated, the Senate will proceed to consider and determine the Motion on the preliminary issue relating to the court orders and the effect. It is so directed.

I thank you.

Yes, counsel, proceed

Mr. Paul Nyamodi: Mr. Speaker, Sir, I just wish to seek clarification from you. During the proceedings that took place earlier on today, we as counsel for the County Assembly understood you as having directed that the Members of this House when they retire to consider the preliminary objections you have just framed for their consideration; will have the benefit of listening to the audio of the proceedings in question.

When my colleagues who I act with for the County Assembly attempted to supply the audio to the office of the Clerk of the Senate, the office of the Clerk was of the view that they did not hear you make the direction in respect of this audio being available for the Members of this House to consider. They asked us to come back to you and ask you to make an express direction to that effect.

I am on my feet this evening asking that, that direction be made so that the material before Members is complete pursuant to directions that you had made earlier on.

Thank you very much.

The Speaker (Hon. Kingi): Counsel, maybe there was a misunderstanding. My directive was to the effect that while the Senators retired to deliberate on this matter, they will also exercise their minds on the two videos that had been played; that was my understanding. That is why I upheld and agreed to the request that was made, so that the Senators can look at those two videos that had been played.

Mr. Paul Nyamodi: Mr. Speaker, Sir, when Mr. Mawira was on his feet, I believe he asked the question on the direction that suggested that even the audio should be supplied to the office of the Clerk for that purpose.

The Speaker (Hon. Kingi): Well, there is certainly no way we can accept further evidence that had not been submitted as part and parcel of your bundle of evidence.

Mr. Paul Nyamodi: I am guided, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Next Order. The Senate Majority Leader, you may proceed.

NOTICES OF MOTIONS

RESOLUTION OF THE SENATE TO UPHOLD PRELIMINARY ISSUE ON WHETHER THE COUNTY ASSEMBLY OF ISIOLO HELD SITTINGS ON 18TH AND 26TH JUNE, 2025

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I beg to give Notice of the following Motion-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, on Thursday, 26th June, 2025, the County

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Assembly of Isiolo approved a Motion for the removal from office by impeachment, of Hon. Abdi Ibrahim Hassan, the Governor of Isiolo County;

AND FURTHER, WHEREAS by letter Ref. CA/RES/VOL.I/001, dated 26th June, 2025 and received in the Office of the Speaker of the Senate on 27th June, 2025, the Speaker of the County Assembly of Isiolo informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly, including the list of 16 out of 18 Members of the County Assembly that voted in favour of the removal from office, by impeachment, of Hon. Abdi Ibrahim Hassan, the Governor of Isiolo County;

NOTING that a preliminary issue was raised by the Governor of Isiolo County on whether the County Assembly of Isiolo held sittings on 18th June, 2025 and 26th June, 2025, to table, debate, pass and/or vote on the Motion for the proposed removal from office by impeachment, of the Governor of Isiolo County;

NOW THEREFORE, the Senate resolves to uphold the preliminary issue raised on whether the County Assembly of Isiolo held sittings on 18th June, 2025 and 26th June, 2025, to table, debate, pass and/or vote on the Motion for the proposed removal from office by impeachment of the Governor of Isiolo County and accordingly terminates the proceedings for the proposed removal from office, by impeachment, of Honourable Abdi Ibrahim Hassan, the Governor of Isiolo County.

RESOLUTION OF THE SENATE TO UPHOLD PRELIMINARY ISSUE ON
COURT ORDERS NULLIFYING PROCEEDINGS OF THE COUNTY
ASSEMBLY OF ISIOLO OF 26TH JUNE, 2025

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I beg to give notice of the following Motion-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, on Thursday, 26th June, 2025, the County Assembly of Isiolo approved a Motion for the removal from office by impeachment, of Honourable Abdi Ibrahim Hassan, the Governor of Isiolo County;

AND FURTHER, WHEREAS by letter Ref. CA/RES/VOL.I/001, dated 26th June, 2025, and received in the Office of the Speaker of the Senate on 27th June, 2025, the Speaker of the County Assembly of Isiolo informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly including the list of 16 out of 18 Members of the County Assembly that voted in favour of the removal from office, by impeachment, of Honourable Abdi Ibrahim Hassan, the Governor of Isiolo County;

NOTING that a preliminary issue was raised by the Governor of Isiolo County on whether in light of the Court Orders nullifying the proceedings of the County Assembly of 26th June, 2025, the Senate is able to proceed with the hearing

on the proposed removal from office by impeachment, of the Governor of Isiolo County;

NOW THEREFORE, the Senate resolves to uphold the preliminary issue raised in light of the Court Orders nullifying the proceedings of the County Assembly of 26th June, 2025 and accordingly terminates the proceedings for the proposed removal from office, by impeachment, of Honourable Abdi Ibrahim Hassan, the Governor of Isiolo County.

The Speaker (Hon. Kingi): Next Order.

Motion

MOTION

RESOLUTION OF THE SENATE TO UPHOLD PRELIMINARY ISSUE ON
WHETHER THE COUNTY ASSEMBLY OF ISIOLO HELD SITTINGS
ON 18TH AND 26TH JUNE, 2025

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I beg to move the following Motion-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act, on Thursday, 26th June, 2025, the County Assembly of Isiolo approved a Motion for the removal from office by impeachment, of Honourable Abdi Ibrahim Hassan, the Governor of Isiolo County;

AND FURTHER, WHEREAS by letter Ref. CA/RES/VOL.I/001, dated 26th June, 2025, and received in the Office of the Speaker of the Senate on 27th June, 2025, the Speaker of the County Assembly of Isiolo informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the Assembly including the list of 16 out of 18 Members of the County Assembly that voted in favour of the removal from office, by impeachment, of Honourable Abdi Ibrahim Hassan, the Governor of Isiolo County;

NOTING that a preliminary issue was raised by the Governor of Isiolo County on whether the County Assembly of Isiolo held sittings on 18th June, 2025 and 26th June, 2025, to table, debate, pass and/or vote on the Motion for the proposed removal from office by impeachment, of the Governor of Isiolo County;

NOW THEREFORE, the Senate resolves to uphold the preliminary issue raised on whether the County Assembly of Isiolo held sittings on 18th June, 2025 and 26th June, 2025, to table, debate, pass and/or vote on the Motion for the proposed removal from office by impeachment, of the Governor of Isiolo County and accordingly terminates the proceedings for the proposed removal from office, by impeachment, of Honourable Abdi Ibrahim Hassan, the Governor of Isiolo County.

Mr. Speaker, Sir, there are certain things I want to set on record first about this Motion. One is that to me this is a Procedural Motion, which as duty would have me as

Leader or Majority in this House, I get to move. It does not necessarily mean that I believe in what the Motion is asking the House to do.

Secondly, it is also important for it to go on record that we have split the two preliminary objections as you have explained in your communication. Just for emphasis sake, we will be invited to debate two Motions.

I like the emphasis because I listened to you much as I was not seated here, that should this Motion passes in the affirmative, there will be no need to even go to the second Motion. This is because it would mean these proceedings are terminated. This is a very serious matter which, I want to invite colleague Senators to sit, listen and reason with me. That is why I had to give the first disclaimer.

Isiolo County is one of the 47 devolved units. When we come into this House, we do not swear to protect the interests of the specific counties that vote us, but the interest of devolution in the country of Kenya. Isiolo County being part and parcel of Kenya, has brought very serious issues to this House that require very serious perusal. I do not think there is another county one can think of that has two clerks and two Speakers. I do not think there is another Governor besides the one who is here.

To reduce these matters to be purely procedural of whether there was a sitting or not, to me, is that justice will have aborted. I strongly hold the view that for us to serve justice to the people of Isiolo County--- Sometimes I agonize over the things one has to do in leadership because I explained this and I have said I am moving this Motion procedurally.

As expected all Motions have to be moved in the positive; then the House either negates or affirms the proposal. It is not every other day that I get to move a Motion, but then move on to argue why it should be defeated. This is perhaps either the first or second time. I do so with a heavy heart.

Mr. Speaker, Sir, while the debate on the preliminary objection was going on, I took time to also read the documents before us. I invite colleagues Senators to read the bulky bundle of documents; they contain the things that residents of Isiolo County said during the public participation. They have high hopes in this House that we will grant them justice. That they will have an opportunity to correct a decision they made on the 8th August, 2022. Whichever way, when we eventually consider these matters, they will feel that their county can work as a normal county.

As it is, if we move ahead and make this decision in the affirmative and say that we confirm these preliminary objections, then we send these people back to Isiolo, what exactly are we sending them to do? What does it say of us a House?

I speak like this because I have been a victim of this process. When the people of Kericho County came before this House last year in October, the case terminated at preliminary objection level. Many of those issues that were not solved at that time continue to occur even as we speak. I would not wish that the same happens to Isiolo County or any of the 47 counties.

I, therefore, plead with colleagues that this is an opportunity we have been granted. I do not know what the hurry will be about. As I had said in the morning, we do not have, as a House, the procedure for threshold of a preliminary objection that reaches the level where we have to determine by way of voting, especially a preliminary

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objection that in their consideration, would render the process fatal. We need to retreat as a House and consider our procedure.

From history since I came to this House, this will only be the second time that we are voting on a preliminary objection and terminating an impeachment hearing at that level, if this Motion was to pass as is. The first one was in the case for impeachment of the Governor of Kericho County. This will be the second time. I do not believe that is justice. Justice should not be that simplistic.

Mr. Speaker, Sir, I believe that there is a way in which the spirit of the Constitution does not guide us by letter on what to do, but also by spirit. That this is a House of reflection where when two entities of the same Government; the Executive and the County Assembly of Isiolo argue and present their issues before you, you sit as a neutral arbiter and observe.

I do not know how Members will vote on the issue of whether to uphold impeachment or otherwise. However, at the very least, we owe the people of Isiolo County a chance to be heard. We owe them an opportunity to air their issues.

We need to understand; how did we end up with two clerks in one assembly? What was the process that was followed? I have seen in the bundles of document that there is even gazettment. While the impeachment of the Governor was going on, there appears to have been a separate impeachment of the Speaker of the same county assembly as well. I do not know which assembly voted. It appears perhaps there are two assemblies as well in this county. That points that there are serious issues.

Colleagues, the decision is ultimately yours. I have only one vote out of the 47 delegations that are in this House. However, as a leader in this House, I plead with you that these issues are not as light as somebody would want to determine them and say, "Do we find out---

By the way, make no mistake, colleagues. I am not asking of you to pass judgment based on the elementary issue of whether there was an impeachment process that followed the due process of law or not. Given that these issues arose at preliminary objection level, you have not had the opportunity at the time.

You saw the struggle of the Counsel for the County Assembly just minutes ago. I thought I heard him right. By the way, I am not being biased. I am saying what I heard the Counsel say when he presented their issue, I thought they asked you to allow them to produce a HANSARD of the Assembly's sittings on that day.

What I heard at that time was that you had accepted. I am not challenging your decision. You have said that the time for production of evidence is over. However, if we grant them this opportunity, we will make an even more informed decisions, colleagues. This is because at that time, you will now be able to determine whether, indeed, there was a sitting on the 18th and 26th that eventually led to the impeachment of this governor when we go the full process.

Mr. Speaker, Sir, this is not a very easy exercise. This is a moment where each Senator uses very different ways to arrive at a decision. However, much as this Motion proposes that we confirm, I ask of the House that we give justice to the people of Isiolo County. Let us listen to their issues, then eventually make a determination based on what you have seen on the evidence that has been presented before you.

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When we eventually consider that earlier matter that I raised on the threshold for appeal that can be fatal to an impeachment hearing here in the Senate, perhaps we can put it in law that even if we make that determination, let us also listen to some of the issues and propose solutions.

I do not believe necessarily that the end of an impeachment process should just be about removal or staying in office of a county governor. There are other administrative issues that we can address as a House.

(Applause)

It will be possible to establish and understand many of these things that have been raised before, involving Government officials and police officers that have sworn affidavits. It will be good to understand what their reasoning is.

I will, therefore, be proposing to the House after this process, that let us not handle another impeachment without considering this process that we began in October of last year and making an amendment. Even if it means amending our Standing Orders. We need to amend our Standing Order, so that an impeachment process does not terminate at preliminary objection level. It is not a good thing. I have said that today and I said it during the time of impeachment of the Governor for Kericho County. I will say it in the future because that is what I believe.

Mr. Speaker, Sir, having said that, I leave it to colleagues to reflect and consider. Today is Isiolo County. Tomorrow it may be your county. When you get an opportunity to present your issues before this House, there is a way citizens of your county will expect this House to treat matters.

I have been in the House long enough to understand when colleagues begin to tell you that we have heard you and we know what we need to do. I believe in moving this Motion, I have reached that point. I can hear the consultations and I can also read what the faces are saying.

Mr. Speaker, Sir, with those very many remarks, I beg to move. I request the Senator for Kilifi County, Sen. (Rtd) Justice Stewarts Madzayo, to second me in this Motion and lead the House in making the right decision.

I thank you.

The Senate Minority Leader (Sen. Madzayo): Asante mstahiki Spika. Kwanza najua tuko katika hali ya panda kwa sababu mashtaka yaliyoko mbele yetu ni mazito. Hii ni kazi mojawapo ambayo lazima Maseneta waifanye. Ni jukumu langu kuunga mkono yote aliyoyasema Kiongozi wa Walio Wengi kwamba Hoja iliyopo hapa ni ya kumng'atua gavana kutoka kwa mamlaka. Hata hivyo, hivi sasa tunajadiliana kama tutaendelea ama hatutaendelea na hii kesi kwa sababu ya yale yaliopo mbele yetu.

Kwanza, ningependa kufahamisha Maseneta wenzangu kwamba mashtaka yalio mbele yetu yana uzito sana. Ikiwa yatadhihirishwa kuwa kweli, basi hatua itakayochukuliwa ni kukubaliana na ile *preliminary objections* iliyopo hapa ama kuikataa. Kuna uzito wa aina yake. Kwa hivyo, katika uamuzi wetu, tunafaa tupime na kuchunguza iwapo kweli kuna shida ndani ya Kaunti ya Isiolo.

Ndugu zetu wa Isiolo, ni jambo la kusikitisha kwamba tunajadili Hoja ambayo mungeelewana nyinyi wenyewe ili isifike hapa. Kisu hukata pande zote mbili. Tutajaribu tutakavyoweza kujadiliana na mwisho tutachukua hatua.

Mstahiki Spika, pili, kumekuwa na sintofahamu za mikutano. Baadhi ya mawakili waliosimama mbele yetu wameeleza kuwa kumekuwa na mikutano. Zile stakabadhi zote ambazo mmetupatia hapa tuziangalie. Vile vile kuna rekodi zake. Wengine walisema kwamba kulikuwa na mikutano na wengine wanasema hakukuwa na mikutano. Hili ni jambo gumu na tutaliambia ili watu wa Kaunti ya Isiolo wapate haki yao.

Nataka pia kuongezea ya kwamba, tukisimamisha kulingana na hii *preliminary objection*, tujue ya kwamba tutakuwa tumechukua hatua ya juu sana. Vile vile ikiwa tutaachilia, tutakuwa tumechukua hatua ya juu. Hii ni kwa sababu tunajua vile mashtaka huwa kwamba Gavana aking'atuliwa kwenye mamlaka, huwa hana mbele wala nyuma kwa kuenda au kufanya chochote. Atakuwa hana haki ya kushika kazi ndani ya ofisi ama kupewa kazi yoyote.

Ni jukumu letu sisi kuangalia kama mashtaka haya yana haki ya kuendelea mbele kulingana na zile stakabadhi ambazo tuko nazo au la. Naona huu ni mtihani mkubwa sana kwa Bunge la Seneti. Lakini niko na imani na hili Bunge la Seneti. Wengi wetu hapa ni mawakili, wafanyibiashara na watu waliobobea katika nyanja mbalimbali. Tuko na magavana wazamani ambao wameweza kutoka katika kaunti zao na wako hapa ndani. Wataweza kutueleza katika ujuzi waliyokuwa nao. Mimi naona hili ni jambo ambalo sisi sote lazima tulizingatie.

Bw. Spika, ikiwa nitasimama hapa na kuunga mkono Kiongozi wa Walio Wengi kwa Hoja hii ni kwamba sote, nyoyo zetu tuziweke wazi, tuangalie hii kesi kikamilifu na tuwe na uwezo wa kuamua ili haki itendeke. Niko na imani vile Wakenya wote wako na imani na Bunge la Seneti.

Leo ni mtihani mkubwa sana kuona ya kwamba sisi tutasimamia haki kuona kwamba kama ni udhaifu ambao umeletewa gavana, basi tunaweza kusimamisha. Pia kama ni udhaifu umeletewa watu wa Kaunti ya Isiolo, tunaweza kusimamisha. Tutatenda haki kulinganisha na vile tulivyoinua Katiba na tukasema tutalinda Katiba kama kiongozi wa nchi yetu.

Asante, Bw. Spika. Naunga mkono Hoja hii.

The Speaker (Hon. Kingi): Hon. Senators, before I proceed to propose the question, just a little advice to our Majority Leader. I fully understand your pains. However, going forward, if you have some misgivings because of your personal persuasion and you are called upon to move such a Motion, kindly delegate.

(Applause)

It will save you a lot of pains because you were almost tearing. I could see you were almost tearing. That will help you.

Hon. Senators, I will now proceed to propose the question.

(Question proposed)

Now, hon. Senators, the Floor is open for debate. Yes, Sen. Methu. Certainly, it cannot be a point of order.

Sen. Methu: A point of clarification.

The Speaker (Hon. Kingi): Please proceed.

Sen. Methu: Mr. Speaker, Sir, I rise pursuant to Standing Order No.111 of our own Standing Orders on limitation of debate. I need not to buttress the fact that this is an extremely important Motion. I am sure many colleagues would want to comment on this Motion, especially on the fact of the futility of the process if this Motion was to be carried. If each of us was to take 15 minutes, certainly we may not all of us get a chance to comment on this very important Motion.

Number two, I looked at the schedule that you already gave us on how we shall conduct this impeachment hearing of Governor Guyo and I think we are way behind. On dispensing the preliminary objection, I think it was not meant to take this long. Therefore, if it is agreeable to colleagues here, so that we can have as many colleagues comment on this matter, I propose that that the debate is limited to four minutes---

(Loud consultations)

The Speaker (Hon. Kingi): Order, hon. Senators, allow the Senator to move his Motion for limitation, thereafter we will see if we can strike a consensus on the time.

Sen. Methu: Thank you. I hear many colleagues are proposing three minutes. I am also agreeable to three minutes, so that many of us can comment on this matter. We can condense our thoughts and have them in three minutes. If this Motion is not carried, then the rest of what we want to say, we can say it in the main Motion. If you allow me, I will invite my leader, Hon. Wambua, to second.

Sen. Wambua: Mr. Speaker, Sir, I second the proposal to limit debate to three minutes.

The Speaker (Hon. Kingi): Hon. Senators, to save time, if we have a consensus, we need not to go through the procedural Motions to prosecute this Motion. It has been suggested that each Senator getting to the Floor to speak, to do so under three minutes. If that is the consensus, then we proceed.

(Loud consultations)

So, three minutes it is.

(Applause)

The Senator for Nairobi City County, Sen. Edwin Sifuna. Before you speak, what is your clarification, Sen. Mwaruma?

Sen. Mwaruma: I would like to request that instead of all of us really debating, because it is our appeal that you can limit to maybe six Members each from both sides so that we do not use a lot of time.

(Loud consultations)

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The Speaker (Hon. Kingi): Hon. Senators, the Motion as proposed by Sen. Methu has been dispensed with. We are not going to amend midway. Senator for Nairobi City County, you may proceed.

Sen. Sifuna: Mr. Speaker, Sir, when we come here and take oath to uphold the law, there really is no room for sentiment. You have to do what is right by the law. It does not matter what personal feelings you have. In fact, I have a problem with the way this Motion was framed. The question as to whether there was a sitting on the 26th has already been answered by the Assembly itself. The Assembly has told us that, in fact, there was no sitting on the 26th because of the circumstances. That is the truth.

Secondly, there is reason why I feel like this is a moot question. As a lawyer, I took an oath on 2nd October in 2008, to uphold the Constitution and the law. Impeachment processes are guided by the Constitution and the law. If a court of competent jurisdiction has said it does not matter whether there was a sitting on 26th or not, whatever happened on that day is null and void, then there is nothing to discuss. It is that simple.

Mr. Speaker, Sir, for me, I am clear in my mind there has been a tacit concession by the Assembly that there was no sitting. There is a second limb that there is a court decision---

The Speaker (Hon. Kingi): The Senator for Nairobi City County, that is the second Motion that is yet to be moved.

Sen. Sifuna: I understand that these two matters are related.

The Speaker (Hon. Kingi): I have given guidance.

Sen. Sifuna: Mr. Speaker, Sir, I was speaking to the Motion which is whether there was a sitting and the question of whether it is a question to be put is what I am addressing, with due respect.

I have heard senior colleagues in the profession and I have tremendous respect for all of them. It will be the darkest day for me as a lawyer who is an appointed officer of the court; the person who has been crying all over the place saying we need to respect the rule of law and that the cornerstone of the rule of law is obedience of court orders. I was one of the lawyers for Miguna Miguna. We got almost 12 court orders. They were all disobeyed by some people who are now running around telling us about court orders in this country.

For me, the question as to whether there was a sitting has already been answered by the Assembly and the HANSARD can be played back. You will hear Counsel admitting that, in fact, the circumstances on that day did not favour a sitting. They have had to go, repair and look for HANSARD material because of those circumstances they have told us about. It does not matter if you do not follow procedure.

There are conversations that the Senate Majority Leader was inviting us to have, but we have committees of this House whose work is to look into affairs of county governments. We have done that in the County of Nyamira.

Mr. Speaker, Sir, my position is that I am not convinced that there was a sitting on 26th June to do this impeachment and having that process--

The Speaker (Hon. Kingi): The Senator for Nairobi City County, take your seat. Sen. Mandago, what is your point of order?

Sen. Mandago: Mr. Speaker, Sir, I did not want to interrupt lawyer Sen. Sifuna, but I believe I heard clearly the County Assembly said there was a sitting only that there was destruction of the HANSARD evidence. It cannot be true to say that there was no sitting.

The Speaker (Hon. Kingi): Is that a point of information?

Sen. Mandago: I am lost.

The Speaker (Hon. Kingi): The Senator for Nairobi City County, you may use that information, if need be.

Sen. Sifuna: The beauty with our proceedings unlike the ones in Isiolo County Assembly is that we are live on TV, the HANSARD is here and it can be read back. He said it was not possible, the circumstances obtaining on that day.

The Speaker (Hon. Kingi): Hon. Senators, once you get an opportunity to debate this Motion, remember we are debating on whether there was a sitting. The Motion on the court orders shall come next depending on the outcome of this Motion.

Proceed, Sen. (Dr.) Murango.

Sen. (Dr.) Murango: Asante, Bw. Spika, kwa kunipa hii nafasi. Hapo awali kabla sijakuwa Seneta, nilikuwa mwakilishi wadi katika Gatuzi ya Kirinyaga. Zaidi, nilikuwa Kiongozi wa Wengi. Wakati huo huo, tuling'atua gavana, tukamleta hapa na akarudi, na ni sawa, bado pia yuko.

Kuna umuhimu kwa kikao cha bunge la gatuza kukaa mahali ambapo panajulikana na pamewekwa kwa gazeti la Serikali. Ninakumbuka wakati huo, vichwa vyetu vilikuwa vinatajikana lakini, sisi zote tuliokuwa tumeamini na kuamua ni lazima gavana aende, tulilala katika Bunge la Gatuzi la Kirinyaga ili kuhakikisha tumefanya kazi yetu.

Ni kwa nini? Ili kufuata sheria na kanuni zilizowekwa. Kwa hivyo, uhitaji wetu kama Seneti ni kufanya jambo lililo halali na sheria. Chumvi haina maana kwa mtu anayekunywa chai. Vile vile, sukari haina maana kwa mtu anayekunywa supu. Sisi tutakuwa hatuna maana kama tutafanya uamuzi ambao unakizana na sheria za nchi hii.

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

Sen. Maanzo: Thank you, Mr. Speaker, Sir, for the opportunity to contribute to this Motion. We have sworn to uphold the law and every process which goes on in the county assemblies, in this Senate or in any House has to follow the law. In the case of Kenya, it has to be the Constitution of Kenya and the Acts of Parliament dealing with that matter. Anything outside that becomes a different scenario and the law has to apply as it is decided.

The issue of an impeachment of a governor is a serious matter and has very serious consequences. Therefore, the law must be followed to the letter, so that an assembly does not get involved in an exercise in futility. This House should also not get involved in an exercise in futility. The moment we make a decision; the governor can go to a court to seek further justice. Even an assembly can also go to a court to seek further justice if we never followed the process. Therefore, it is important that we adhere to the process.

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This is a matter of a vote. We will vote according to our conviction and a decision will be carried one way or another. It is a vote and the law recognizes that vote, whichever way it goes. It has serious consequences and, therefore, it has to be fair. The best way to make sure that the decision is fair is the adherence of the Constitution, the relevant statutes and the procedures laid in our Standing Orders so that justice is accorded to all the parties involved.

Mr. Speaker, Sir, I look forward to this vote. This debate is important as it guides the House. The whole country is following what this House is doing because it takes the Senate seriously as the place where we all sit as judges and pass judgment in one way or another. The judgment has to be fair and in accordance with the law.

I support the Motion and I will be voting.

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

Sen. Mungatana, MGH: Mr. Speaker, Sir, every time we come to this House, the Senate Business Committee (SBC) must have sat down, balloted the Motions, prepared which Motions are significant or prioritized and then an Order Paper is prepared. When that Order Paper is prepared and it has a Motion, the notice of Motion will be moved like we did today. Once that notice is given, then there will be debate. There is no question about that.

When we say that a meeting or a debate took place, I expected that there would be minutes of the House Business Committee of the County Assembly of Isiolo. I expected that there would be evidence of a notice of Motion or at least one referring that there was a notice of Motion on that day. Nothing has been even mentioned in passing.

Let us not disregard the processes we have known, the way we have done things in these Houses and it cannot be different for Isiolo County Assembly. It is the same here in this House and the National Assembly. Let us not debate this matter. Let us agree there was no meeting that took place on 18th June. If there was something else, they would have given us those audio or video clips. They did not even talk about that. I wonder why we are even discussing this matter because it is clear that there was no meeting, even without going to the issue of the court orders.

Mr. Speaker, Sir, I want to disabuse my colleagues of the idea that we are being unfair. No, we are not being unfair and we are not denying anyone justice. Somebody, in the argument, tried to move the idea that we are denying someone justice. What do you mean?

When we are moving Petitions in this House, one of the things that you swear to is that matter that is in the Petition - under Standing Order No.235, if I am not wrong - you are swearing that there is no matter pending before court.

Mr. Speaker, Sir, I remember very well when our chairperson was Hon. Wamatinga, we went to Uyombo, where there was a nuclear plant that was being proposed to be built. It was a Petition of the honourable distinguished Sen. Okiya Omtatah. When we went there, one of the things we asked the people was if they had taken that matter to court. They said they have---

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

Sen. Osotsi: Thank you, Mr. Speaker, Sir. The matter before us is very weighty. The issue of there not being a sitting is not a matter that we can take lightly. I have

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listened to my good friend, the Senate Majority Leader. However, I would like to tell him that we cannot violate the law just because we want to listen to evidence which looks weighty. We must look at what the law says.

In the matter of Kericho County Assembly, we had a serious issue of two-thirds threshold. Consequently, this House decided that because of that issue of the two-thirds threshold, we dispense with the matter at the appeal. In this case, there was no sitting.

Article 181 of our Constitution, Section 33 of County Governments Act, and Standing Order No.65 of Isiolo County Assembly are clear on the need to have a sitting and a Motion tabled. There was no sitting nor tabling of any Motion. We are sitting here and asking for video recordings, which we are not being given.

Mr. Speaker, Sir, we are considerate as a Senate. We have thrown out a number of Motions. For example, the one for Meru County Assembly, because we wanted to teach the Members of the County Assembly (MCAs) what to do right. They went, did the right thing, and we impeached the Governor.

In this case, we need to send them back to do the right work, so that when they bring a proper impeachment Motion here, this House will have the obligation, exercising Article 96 of the Constitution, to send the Governor away. However, you cannot allow people to meet in a bar, present a Motion to us and this House sends away a governor who has been duly elected by the people. That will be setting a wrong precedence.

Mr. Speaker, Sir, I would like to dissuade colleagues. Let us deal with this preliminary objection in an objective manner and follow the law, because we cannot continue listening to a Motion that is a nullity.

I support this Motion.

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

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I thank you. County assemblies are starting to become fearless. They do not fear the law, the people and this Senate. Remember the dilemma that we have in Nyamira County Assembly. They have even gone as far as cheating the Controller of Budget (CoB) to approve budgets that were not done by the actual County Assembly.

I would like to appeal to the people of Isiolo County that we are here. We are your friends. You have set a precedence through your county assemblies. You brought a 1,570-page document to prove your case. We cannot ignore that. However, you must know that the process is just as important as the reason for removing the governor. The reason for removing the governor is what you have in the 1,570-page document. However, the process is in the preliminary objection.

Mr. Speaker, Sir, I am very disappointed, by the Counsel of the County Assembly. Since you are procured at a very high cost, how could you come here and think that you would pull the mat from under our feet and get away with it? That, a qualified lawyer, not one, but five of them, can imagine that a preliminary objection would never come if they came here. You should have anticipated this preliminary objection and come with the videos and audios. The reason why you do not have is because they are not there.

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

Sen. Kathuri: Hon. Speaker, Sir, I have a lot of respect for my colleague, Sen. Boni Khalwale. However, as much as we want to put our points across, demeaning learned friends, people who have been to school, and lecturing professionals is not the right thing that we should do. You can just give the---

(Sen. (Dr.) Khalwale stood in his place)

Why are you standing up when I am---

(Applause)

The Speaker (Hon. Kingi): Conclude on your point of order.

Sen. Kathuri: He is a senior Senator and should know the ropes of this House. First, I do not understand. To be very clear and on record, those two young men are from my county.

(Loud consultations)

Sen. Kathuri: Wakili Mawira Mwereru---

(Loud consultations)

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

Sen. Kathuri: I am representing them in the Senate. Yes. *Wakili* Mutuma is from my county. We are proud because of these senior lawyers from Meru County, who have done a lot to bring devolution to order. However, when Boni Khalwale---

The Speaker (Hon. Kingi): Senator for Meru County, what is your point of order, please? Go straight to your point of order.

Sen. Kathuri: Mr. Speaker, Sir, I would like Sen. Boni Khalwale to withdraw those words that he has used and apologize to those lawyers, because if we go that way we are degenerating to very funny things.

Mr. Speaker, Sir, you know I chair this House. If you discuss anything to do with the doctors, Sen. (Dr.) Boni Khalwale can even remove his shoes and throw to Members. Respect the other professionals, including Sen. Methu, the potato farmer.

(Applause)

The Speaker (Hon. Kingi): Sen. Boni of Kakamega County, the competence or otherwise of Counsel is not a matter of debate before this House. Kindly proceed to withdraw and apologize to Counsel seated there.

Proceed.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. As a competent professional--

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(Loud consultations)

The Speaker (Hon. Kingi): Order, Hon. Senators! Allow the Hon. Senator to proceed.

Proceed to withdraw.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, as a competent professional, I see and feel no shame in withdrawing. Going forward, I would like to remind the House that the decisions we make today---

(An hon. Senator spoke off record)

I have withdrawn. What more do you want me to do?

(Loud consultations)

The Speaker (Hon. Kingi): Order, hon. Senators! There is only one Chair in this proceeding.

(Loud consultations)

Order, hon. Senators! Sen. Chimera, I am giving you the caution of the day. If you proceed, I will throw you out.

Conclude.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I do not know whether you paused my time.

The Speaker (Hon. Kingi): Absolutely. You have one minute to conclude.

Sen. (Dr.) Khalwale: One minute?

The Speaker (Hon. Kingi): Yes. That is the time we held.

Sen. (Dr.) Khalwale: Mr. Speaker, I would like to strongly support that this Motion sails, so that the MCAs can go and put their act together. We would like to sit on an impeachment process which---

The Speaker (Hon. Kingi): Hon. Senator, for the record, you were to withdraw and apologize, then proceed to conclude your submissions. You have done only one limb; that is to withdraw. Kindly complete by apologizing, then conclude your submissions.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, as I apologise, I conclude---

(Laughter)

Mr. Speaker, Sir, again, my one minute was taken away. I conclude by requesting MCAs across the Republic to respect the process of removing governors, just as they find it important to have reason to remove them from office. Law is not like medicine. It is only in medicine where---

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

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Sen. Wambua: I thank you, Mr. Speaker, Sir. I can see excitement, but I do not why.

Mr. Speaker, Sir, I stand here to say only two things. The first one is to try and give comfort to the Senate Majority Leader, Sen. Cheruiyot. He should not worry so much about what happened in the Kericho County case. The Senate is still here. He should go and tell the MCAs of Kericho to meet the threshold and bring the case here. We are here and we are not going anywhere.

Secondly, Mr. Speaker, Sir, when you took me for training the other day and the trainer kept saying that---

(Loud consultations)

The Speaker (Hon. Kingi): Order, hon. Senators. Order, Senator for Nandi. Proceed, Sen Wambua.

Sen. Wambua: Mr. Speaker, Sir, the trainer kept saying that as leaders, the process is as important as the outcome. I did not know that I was being prepared for such a time as this.

When I reflect back, in 1995 in the O.J. Simpson case, everybody in the courtroom believed that O.J. Simpson was guilty of murder. Evidence was adduced by the counsel of a glove that they said was used in the murder. O. J. Simpson was told to try the glove on, but it did not fit and the counsel moved the court and said; if it does not fit, you must acquit.

Mr. Speaker, Sir, it does not matter what the Governor of Isiolo County has done. I can tell you that he has appeared before me once in the County Public Accounts Committee (CPAC) and I have serious issues with the way that county government is being run. Those issues aside, the process must bear us out.

We are here debating the process by which the Governor was brought here. We cannot be the people who circumvent the same process to fast-track the hearing. Let the MCAs of Isiolo get the process right. The Senate is here---

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

Sen. Joe Nyutu: Mr. Speaker, Sir, I want to submit, just like my colleagues have submitted, that the process of anything is as important as the result because justice must be served to all parties. In this particular case, we have the County Assembly on one side and the Governor of Isiolo County on the other. Much as each side wants justice to be delivered, process and procedure must be followed.

The Senate Majority Leader here has argued that we should go ahead to listen to this particular Motion in order for us to afford or accord the people of Isiolo and opportunity to correct the decision they made in 2022. This does not only relate to Isiolo County Government. Any time we impeach a governor, the deputy governor takes over. What assurance do we have if we say that we want to throw out the County Governor to correct a mistake made in 2022? What guarantee is there that the Deputy Governor then becomes the desirable person to run that particular county?

Still on that, Mr. Speaker, Sir, I would like to tell the Senate Majority Leader that some of us may also want to correct a mistake we made in 2022 of electing the sitting

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President, but we have to follow the procedure. Therefore, we cannot stand here and say that just because---

(Loud consultations)

Mr. Speaker, Sir, can be heard in silence?

Sen. Munyi Mundigi: On a point of order!

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

Sen. Joe Nyutu: Please freeze my time.

Sen. Munyi Mundigi: Bw. Spika, Sen. Nyutu hafai kutaja jina la Mhe. Rais wa Kenya wakati hapa tunazungumza mambo ya *devolution* na kuokoa gavana. Kwa hivyo, amekosea kutaja jina la Mhe. Rais wa Kenya katika kikao hiki.

The Speaker (Hon. Kingi): Order, hon. Senators. What Sen. Nyutu has said is that if you need to remove our President from office, you need to use the constitutional means, which is a fact.

Please conclude.

Sen. Joe Nyutu: Mr. Speaker, Sir, thank you for educating Sen. Mundigi and telling him to be a better listener than a talker.

What I was saying is that we cannot forget about the procedure and process just because we want any public officer out of office. We must follow the procedure, just like we are waiting to remove President Ruto in 2027 by a way of vote, the people of Isiolo County will have to wait---

(Loud consultations)

The Speaker (Hon. Kingi): Order, hon. Senators. Sen. Nyutu, just take your seat.

(Sen. Joe Nyutu sat at his place)

Sen. Nyutu, I have given you latitude; do not abuse it. As you make your comments, leave alone the name of the President.

Please proceed.

Sen. Joe Nyutu: Mr. Speaker, Sir, I am advised.

I join my colleagues in saying that the County Assembly of Isiolo must put its acts together. It must not be motivated by the need to remove the County Governor and forget about procedure and process.

Mr. Speaker, Sir, no sittings were held on 18th and 26th June because there is no evidence, whatsoever, audio or even written, anywhere. I believe the images we saw there cannot be proof enough that even audio recordings were destroyed just because of the incidences that the Counsel for the County Assembly showed through those videos.

Mr. Speaker, Sir, let the County Assembly bring a better Motion after they have sat---

The Speaker (Hon. Kingi): Next is Sen. Faki.

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Sen. Faki: Asante, Bw. Spika, kwa kunipa fursa hii. Nafikiri suala ambalo tunatakiwa kuamua ni; je, tuendeleo na kesi hii mpaka mwisho ama tuimalizie hapa ilipofika? Ijapokuwa tuko hapa kama mahakama, sio hivyo ukizingatia hilo kwa undani. Kwa hivyo, hatuwezi kufungwa mikono kwa sababu ya masuala ya mwelekeo.

Kama Seneti, tuna jukumu la kuhakikisha kwamba haki inapatikana. Je, haki itapatikana kwa watu wa Isiolo na wengine wakati tutakapomaliza kesi hii katika *preliminary objection stage*, ama itapatikana wakati itasikilizwa mpaka mwisho?

Seneti ikifanya makosa kumbandua gavana mamlakani, huyo gavana ana nafasi ya kuenda Mahakama ya Juu au High Court, Mahakama ya Rufaa na hata Mahakama ya Upeo zaidi katika nchini yetu. Hapa hatuamui kama tunambandua gavana ama hatumbandui. Kile tunachoamua ni kama tutasikiza ushahidi wote kamili ili tuweze kupata taswira ya yale ambayo yalitokea kule Isiolo.

Kama ushahidi ambayo utasikizwa hautaweza kufikia kile kiwango kinachohitajika na sheria, basi itakuwa hatuna budi ya kumuachilia. Kwa sasa, itakuwa ni kinyume na dhulma kwa watu wa Isiolo iwapo tutaweza kumaliza kesi hii katika mahali ambapo imefikia ambayo ni hatua ya mwanzo kulingana na sheria.

Ninapinga hoja ya kupitishwa kwa hii *preliminary objection*. Tuache kesi iendeleo mpaka mwisho kwa sababu hakuna kile ambacho tutapunguza ama kuongeza tukienda mpaka mwisho.

Sen. Ali Roba: Thank you, Mr. Speaker, Sir. I will obey the fact that the time given to us is very short. The issue that is to be determined by the Senate is the impeachment of the governor. Justice can only be arrived at if we look at the substance of the case to its logical conclusion other than killing the case before it even starts.

Listening to this case, the sad point is that Isiolo County is at a very desperate situation and it does not matter whether the governor is impeached or not. The situation will not improve because of lawlessness that has prevailed in that county. I see no harm with the Senate of Kenya, just like any other court, listening to the substance of the case, despite the fact that preliminary objection have been raised, then make a determination after all the evidence have been presented and processed.

What we are trying to do is to kill the case before it even starts yet the same issues will be brought forth in the substance of the case when we debate. This is not about whether the governor can be impeached or not. It is on whether the Senate can listen to the case exhaustively then make a determination from an informed point of view. It should be able to ascertain that this case has been substantiated or not on the basis of the evidence that will be presented before us. The issues that have been shared will come to life with more evidence. It could even give a very decisive position for us to make serious reference to the evidence produced by the county assembly or the counsel for the governor.

I oppose this Motion and seek to convince my colleagues that we are better off determining this case after listening to the substance of the case, exhaustively, to its logical conclusion.

I oppose.

Sen. Okiya Omtatah: Thank you, Mr. Speaker, Sir, for the opportunity. Allow me to read from a section of this book, '*A Man for All Seasons*.'-

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“William Roper: So, now you give the devil the benefit of law!

Sir. Thomas More: Yes! What would you do? Cut a great road through the law to get after the devil?

William Roper: Yes, I’d cut down every law in England to do that!

Sir Thomas More: Oh? And when the last law was down, and the devil turned ‘round on you, where would you hide, Roper, the laws all been flat? This country is planted thick with laws, from coast to coast, Man’s laws, not God’s! And if you cut them down, and you are just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I would give the devil benefit of law, for my own safety's sake!”

Mr. Speaker, Sir, those words that were written in 1960 in the play “*A Man for All Seasons*” underscore my position that we must uphold the rule of law in this country. Article 3(1) of the Constitution, calls upon us to do just that.

Having listened to the Motions here, from the way the matter was conducted, we clearly had two Motions before this House. We had an application for dismissal based on the fact that there was no hearing and there was a preliminary objection based on the fact that there was a court order. So, disposing off that Motion when you allow evidence to be adduced, it morphed into a Motion.

Having listened to what was presented, there was no sitting of the Assembly that meets the threshold in law. The Assembly has got a designated place where it sits and it has clear procedures to be followed. Unfortunately, the evidence before us is such that the sitting did not take place.

Number two, we were told that we could ignore the court orders. I would like to persuade the learned counsel who are saying that the High Court had no business to intervene to look at Article 165 of the Constitution.

The Speaker (Hon. Kingi): Senator from Busia County, just restrict your submissions to the Motion on the sittings. When we come to the second Motion, you will make these comments.

Sen. Okiya Omtatah: I am fully persuaded that there was no sitting that---

Sen. Nyamu: Mr. Speaker, Sir, with all due respect, this is a joke and a dangerous one. Where does the team of the County Assembly of Isiolo get the audacity to walk into this Senate without a shred of evidence that a sitting of a County Assembly ever took place? This is not a WhatsApp group. This is a constitutional institution. Where is the HANSARD? Where is the attendance record? I want to be very clear that there was no sitting. Therefore, there was no impeachment.

With those very few remarks, I support.

Sen. (Prof.) Tom Odhiambo Ojienda, SC: Mr. Speaker, Sir, the jurisprudential contours of impeachment are embedded both in procedure and in substance and now well set in the case of Martin Nyaga Wambora and County Assembly of Embu. I took part in the case. I also took part in the case of Mohammed Abdi Mohammad and the County Assembly of Wajir and we got the Governor back to office because there was a court order. Lastly, we have the case of Kawira Mwangaza and the County Assembly of Meru and the recent case of Onyango Oloo versus County Assembly of Kisumu.

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The question as to whether there was a sitting is answered by the documents filed before the Senate. The affidavit of Salad Boru Guracha speaks to whether or not there was a sitting and it is emphatic that there was no sitting. The second affidavit that we have on record is by Habiba Galgalo Jirma, who is the Chief Finance Officer, who also confirms that there was no sitting. The third affidavit is by Hon. Abdinoor Dima Jillo, who is an elected Member of Kinna ward who confirms that there was no sitting. The next affidavit is by Hon. Diba Abdirashid Ali who is the duly elected County Assembly of Isiolo Member for Garbatulla Ward who also confirms that there was no sitting.

Lastly, Mr. Speaker, Sir - and this is important - Shaaban Mzungu, whose affidavit appears on page 46, confirms that on 18th the Assembly was locked. On 26th the Members were able to get to the Assembly for 10 minutes and walked out. That is where there is a substantive question as to whether there were proper recordings.

This afternoon, I thought that Counsel for the County Assembly would respond to the technical issues raised as to whether or not there was a sitting through the law. Unfortunately, Counsel Mawira fell into the tricks of his submissions by playing two videos that did not have voice recordings and that went to admitting that there were no proceedings at the Assembly. It is very, very unfortunate that this case has to die. I was prepared to proceed to the substance of the hearing---

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

Sen. Seki: Mr. Speaker, Sir, I also wish to support this Motion by saying that the County Assembly of Isiolo has not demonstrated to this House that there was a sitting in the County Assembly. Some years back, I used to work as a clerk in the county councils back then before devolution. In the county councils in municipalities, councillors also respected the law. They used to work or even to deliberate in the chamber. There is a reason as to why we have the chamber.

It is very difficult and it will not be proper for the county assembly to come to this House with an allegation that they had a meeting. The Assembly sat, but there was no video or audio to this House and they believe that we will agree to them. This is not right.

Mr. Speaker, Sir, we may have so many things against the Executive of Isiolo through the Governor, after looking at the documentation that presented or even before. However, the procedure and the law must be upheld.

I support this Motion.

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

Sen. Mumma: Thank you, Mr. Speaker, Sir. I stand to support the Motion, albeit reluctantly. The reason is that this preliminary objection had two counts. One is clear, in my view and the other one - the one we are discussing currently - unfortunately, we did not get the instance to interrogate all the evidence.

Mr. Speaker, Sir, it is important for us to affirm that at a time when the rule of law seems to be a problem in Kenya, we must be that House that must stand for the rule of law. The rule of law applies to the county assembly, as it does to the county executive and as it does to the Senate. Therefore, procedures are important. It is important that county assemblies, not just of Isiolo, follow the rules and their standing orders to ensure that everything they bring and represent for their people, are actually able to be executed in accordance with the procedures.

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I feel that the first count might have been prosecuted better through interrogation of evidence. Unfortunately, the lawyers for the County Assembly have made no attempt to actually respond to the issue as to whether there was a sitting or not. They simply said there was a sitting, but the little evidence there is, shows that there was no sitting. So, they have actually not properly assisted in making this decision.

In my view, the real preliminary objection is the second Motion that we will go to. As the Senate, I think we also need to address ourselves to our own procedures around the preliminary objection. We had the issue of the preliminary objection in the Kericho County matter. We had the issue of a preliminary objection the last Hon. Kawira matter, but we ignored it as a Senate.

So, we need now to determine whether we will work on matters preliminary objection selectively or whether we should have rules. As we have those rules, I would want to state that matters procedures are matters that involve every Senator in this House. So, we should all be involved in terms of voting on matters that are preliminary. It is because that is about procedures. So, to the extent that the county---

The Speaker (Hon. Kingi): Sen. Thang'wa, proceed.

Sen. Thang'wa: Thank you, Mr. Speaker, Sir. As I rise to contribute to this Motion, I beg to start with a question; what defines an assembly sitting? It is the speaker, the mace, the quorum, the notice, the gazetted precincts.

Mr. Speaker, I think going forward - because even the HANSARD and the voting list are part of it - this Senate should come up with a resolution that for any other impeachment to go on, the county assemblies should provide video evidence of whether that vote was taken. Why am I saying that? A few years ago, I was seated at the Gallery where I see the good people of Isiolo County seated, when the then Governor of Kiambu County was brought in this House. At that particular time, I knew there were no numbers to remove him from office, but I was over there. The Senate voted the way it voted. I swore that I wanted to come to this Senate, so that I could do the right thing. It is because the strength of justice is not seen in how we treat innocent people, but in how you handle the guilty ones. So, we have to follow the processes, so that we make sure that even those that are brought here, go through due process.

Mr. Speaker, Sir, this begs the question; if we were to allow the full hearing, that means we will listen to whether the County Assembly of Isiolo sat, then we will have the witnesses and they will be cross-examined. Then, instead of voting on that particular issue, will be told; "Wait! Let us now go to ground one, two and three." What if, after we go all through these grounds, we realise they never sat? So, why are we taking the governor through the grounds, yet probably, the County Assembly never sat?

I think we should also come up with a proper procedure as the Senate, that before we even think of listening to the grounds, we are certain whether for sure, the county sat. We had the cases of Machakos where I think there were two clerks. We had the case of Nyamira, which had two clerks, two speakers and two assemblies. So, we have seen we have rogue assemblies somehow. If we do not cure that now, we might never be able to cure this in future. Probably, we may come here as governors also. We want the procedures to be followed.

I stand here to support the Motion, so that the Isiolo MCAs can now go, look at it, bring it here, with the procedure and everything, and we will listen to them.

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

Sen. Kavindu Muthama: Thank you, Mr. Speaker, Sir, for giving me this opportunity. Before I contribute, I want to correct the Senator for Kiambu, that Machakos did not have two clerks at any time. Maybe you are referring to another county in Ukambani, but not Machakos.

Mr. Speaker, Sir, I wish to say very clearly that impeachment was meant to be a tool to bring good governance to counties. If we allow county assemblies to come up with issues without proper process, bring them to this Senate and we contribute to them, I do not think we will be doing justice to the counties and yet we, the Senators, are defenders of devolution.

I know there are issues in Isiolo County, but it is yet to be determined whether they are issues for impeachment. Before that is determined, we want to know if due process was followed. Listening to the County Assembly lawyers, they did not clarify completely to us that there was any sitting on the 18th of June and the 26th of June.

According to how they represented themselves, there was no sitting at the County Assembly. So, I support this Motion and I say that we cannot move to the next stage because there was no sitting. We have to follow due process to the letter as we impeach the governors.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Sen. Kinyua, you may proceed.

Sen. Kinyua: Asante sana, Bw. Spika, kwa kunipa fursa hii. Kwanza kabisa, swali ambalo tunapaswa kujiuliza pingamizi hii ya awali inaletwa kwa nini? Ni vizuri kwa sababu, katika Seneti hii na vile vile katika gatuji zetu, tunapaswa kufuata sheria.

Ni kinaya ikiwa tunatunga sheria, lakini hatuzifuati sheria zenyewe. Ukiangalia katika Taarifa Rasmi ya Bunge la Isiolo, hakuna kikao chochote kilichofanyika. Kwa hivyo, ikiwa hakukuwa na kikao chochote, sioni kwa nini tunapaswa kushughulikia jambo hili.

Ikiwa hapakuwa na kikao chochote na hapo ndipo kungeshughulikiwa mambo haya, Seneti hii inapaswa kusema kwamba hilo pingamizi la awali tunalikubalia ndiposa sheria zifuatawe. Utaratibu wa sheria usipofuatwa, basi hakuna jambo ambalo tutalifanya hapa.

Nilimsikia Sen. Faki akisema ya kwamba tuendeleo kusikiliza ushahidi wa kutosha ndio tunaweza tukapata mambo mengi zaidi. Ikiwa sheria haikufuatwa kuanzia mwanzo, sioni haja yoyote ya sisi kusikiliza kesi hii kwa sababu, wahenga wanasema kwamba “Usikate kanzu kabla ya mtoto kuzaliwa.” Sisi hatuwezi kusikiliza.

Tunajua ya kwamba katika gatuji nyingi kuna shida nyingi. Laikipia, Nandi, Isiolo na kaunti nyingi kuna shida. Hata hivyo, hatutatua shida bila kufuata utaratibu wa sheria.

Ni kinaya kwa sababu sisi ndio tunatunga sheria. Gatuji hiyo ya Isiolo wanatunga sheria. Ikiwa hatutaweza kufuata Kanuni za Kudumu ambazo sisi tumeziweka, hakuna haja ya kuketi hapa; tunapaswa kuwa tumefunga virago na kuenda nyumbani.

Ndiyo, ninajua ya kwamba Gavana wa Kaunti ya Isiolo anaweza kuwa na shida, lakini tunapaswa kufuata sheria. Sheria zikifuatwa sina hofu rohoni mwangu. Watu wa Isiolo wanataka haki itendwe lakini, sheria ni kama msumeno; inakata mbele na nyuma. Kwa hivyo, tufuate sheria na tukifuata sheria ukweli utapatikana lakini kwa leo ninaunga mkono pingamizi ya hapo awali kwamba hakukuwa na vikao katika Bunge la Isiolo.

The Speaker (Hon. Kingi): Sen. Shakila Abdalla, you may proceed.

Sen. Shakila Abdalla: Asante, Bw. Spika. Hii ni Hoja muhimu sana leo. Ni muhimu kwa Bunge hili la Seneti kutoa uamuzi ambao utaridhisha kila mtu katika Kenya yetu kwa sababu utakuwa ni mfano mwema wa usoni.

Hapa ninaona mambo ni mawili. Kuna mchakato na kuna ushahidi. Pengine watu wa Kaunti ya Isiolo wako na ushahidi na kesi ya kwamba wana haki ya *kuiimpeach* gavana wao lakini mchakato ambao ni *process* haukufuatwa. Kwa hivyo, tunaomba ikiwezekana, huu mvutano uishe, kufuatwe mchakato ambao umewekwa kikamilifu. Mswada uletwe hapa tumalize hii kazi.

Changamoto ambayo nimeona hapa ni kwamba mchakato ama *process* haikufuatwa. Kwa hivyo, kama kuna ushahidi na kama wako Hoja ya kutosheleza *kumuiimpeach* gavana wao wafuate mchakato, walete hiyo Hoja na kazi ifanyike.

Asante, Bw. Spika.

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

Sen. Cherarkey: Mr. Speaker, Sir, you need to protect me from the Senate Majority Leader because he is telling me something in my local language.

Under Article 126, the law is very clear on the sittings of Parliament. If some of us are saying that the process is not important, however, the process and the outcome is as important as the law. In the Raila Odinga case in the petition of 2017, Uhuru Kenyatta's win as President was nullified because of only process. So, if the highest court, the Supreme Court of the Republic of Kenya has given direction and weight on the issue of process, who are we? The Senate cannot participate in settling clannism, regional or any politics. We only deal with the rule of law, which involves the Constitution and the process.

The reading of Standing Order No.65 of the Isiolo County Assembly, Standing Orders and Standing Order No.36 is very clear on the sittings and the procedure of impeachment of the governor. We have had cases where there were two clerks and there were conflicting gazette notices. For a House to be functional, it should be in a gazetted place; we should have a speaker, a mace and a House Business Committee that organizes the business of the House. We should have necessary modification to ensure there is proper sittings. On this aspect, the County Assembly has struggled.

I am the greatest champion of MCAs. I have always wished that their welfare be looked at. I have always wished that they have the Ward Development Fund, but they must follow the law. We cannot hang an innocent man as Lord Denning would say, "I better send 10,000 guilty men than to hang in gallows one innocent man." Today evening we are invited to decide.

We have set the precedent. With all due respect, I want to advise the Senate Majority Leader to have faith in his own committees. If there is a problem in Isiolo County Assembly, the Standing Committee on Devolution and Intergovernmental

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Relation chaired by Sen. Mohamed Abass should pick it up immediately the way we did with Nyamira and sort out that issue, once and for all. That is why we have committees.

By the time we agree, I even asked a question whether they have a YouTube channel. Senate proceedings are being televised live. You can realize there was no media, there was no live stream; they do not have a YouTube channel and there is a website, but it does not function. We just needed that evidence to know whether the sitting was done, including the recordings. In fact, my colleague, learned senior said that the HANSARD was vandalized. Then how did you cook the HANSARD reporting before the House? We know there are people who are experts in cooking *chai* and *mandazi*, but the Senate cannot be part of icing or putting any *kachumbari* into the process that have been---

Mr. Speaker, Sir, I support this Motion.

Sen. Kibwana: Asante, Bw. Spika. Mchakato wa kung'oa kiongozi aliyechaguliwa na watu sio jambo rahisi; ni jambo nzito. Hapa Seneti, wanauliza kitu kidogo tu: Ushahidi uko wapi?

Sitazungumza sana lakini ningependa kuuliza tu: Kama kuna ushahidi wowote ungeletwa na tuweze kuendelea. Tulikuwa hatuna haraka yoyote. Kama hamuna ushahidi wowote na kweli tumeona video, tukajaribu kuuliza maswali na tukajibiwa kwamba hapakuwa na kikao. Kwa hivyo, tunasikitika sana kuwa labda huu ushahidi uliletwa bila kujitayarisha vilivyo. Huyu kiongozi anafaa kung'olewa lakini pia ang'olewe kwa njia ya haki.

Ninaunga mkono Hoja hii. Bado tunangoja kama kuna ushahidi wowote. Kama hamna ni masikitiko makubwa kuwa hatuwezi kuendelea na kukata kesi hii.

Sen. Wamatinga: Thank you very much, Mr. Speaker, Sir, for also giving me this opportunity to add my voice to the debate. Allow me to divert a bit and play the devil's advocate. This is the second time we are dealing with matters preliminary objection. We are living in an age where, artificial intelligence has become the way of doing things. I throw a challenge to each and every Senator sitting in this room.

For the second time, we are hearing allegations where the threshold has not been met and meetings did not take place. We have committees such as the Committee of Devolution and Intergovernmental Relations shared by my good friend here. We have several committees that attempt to solve some of these issues, so that they do not even make in the first place their way into this House.

Mr. Speaker, Sir, I request each and every one of us, we must make devolution work and empower MCAs to do what they need to do and do it rightfully. In a House where we have gurus of law let us also take it upon ourselves to go to our counties and educate the MCAs on the procedures that they must follow. It is very unfortunate that the MCAs have sat many hours trying to work on something where the process that they are following is not right.

As the Senate Majority Leader said before here, we had a Kericho case here where the threshold was not met. In this this House we have lawyers. Why can we not volunteer ourselves to go and educate our colleagues because the success of this country is the success of every one of us? It is important that we who have lived to our age take it upon ourselves to ensure that we leave a country to a younger generation; a country we

people reason. Where do not see wanton destruction of property because of misinformation.

Mr. Speaker, Sir, let us leverage technology and artificial intelligence so that we do not have this question of whether there was coverage. At this age you only need to scroll your phone and see a sitting that was held in every county anywhere in this country.

Mr. Speaker, Sir my prayer and my humble request to us Senators is that we do something for this country.

Sen. (Dr.) Oburu Odinga: Thank you, Mr. Speaker, Sir. This is a very important case before the Senate and we must do justice. To do justice, we must strictly follow the law.

The burden of proof lies with the accuser. The person who is accusing is the one who has the burden of proof. We cannot teach people bad habits. We do not want to teach our counties bad habits where they bring half-baked evidence or maybe they hide some or bring that which is not convincing to Senators yet, they expect us to just act and approve whatever they are bringing.

The process is just as important as the substance itself. I would have liked to hear this case through, so that we know the problems in Isiolo. I have not been to Isiolo for a very long time and I would have liked to know. We do not want the people of Isiolo to continue suffering. If this case is as serious as the MCAs want us to believe, let them go back and prepare properly and bring it back so that we can and follow all the procedures.

Mr. Speaker, Sir, I do not want to say much more than that. I support that we send this matter back. From the facts presented to us here, personally I am persuaded that there was no meeting to impeach the governor. Therefore, we cannot act on facts, which were created thereafter. They should have been created before and thought about thoroughly.

Sen. Chimera: Mr. Speaker, Sir, I have no doubt in my mind that there was an attempt by the County Assembly of Isiolo to sit, table and debate an impeachment Motion against the governor. As to whether, Mr. Speaker, the County Assembly of Isiolo indeed sat is a crux of the matter that this Senate has been invited to make a determination on.

I have listened to arguments from my many colleagues. The good Senator for Nandi, with tremendous respect being my learned has told this House, that the law is clear. In this matter, the law is not clear.

Sen. Cherarkey: On a point of order.

Sen. Chimera: The law is two pronged. Can I be heard in silence?

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

Sen. Cherarkey: Mr. Speaker, Sir, I rise under Standing Order No.101 on Contents of Speech. Why is he discussing my competence and ability, which precedes me? Instead, he should withdraw and apologize. He should not behave like a librarian somewhere who tried silence me.

The Speaker (Hon. Kingi): Order, Senator.

Sen. Cherarkey: Mr. Speaker, you had made a ruling that a Senator should not be discussed. He should withdraw and apologize or we can go and bring a court order against him.

The Speaker (Hon. Kingi): Order, Senator Maanzo. Senator for Nandi when were you admitted to the bar?

Sen. Cherarkey: Mr. Speaker, I declined to answer because I am not on trial. So, he should withdraw and apologize.

Sen. Cherarkey: Senator Chimera, conclude your submissions.

Sen. Chimera: Thank you, Mr. Speaker, Sir, for that protection. I was telling the good Senator and by extension the whole Senate that the law is two pronged; it is procedural and equally substantive.

We all know there is a procedure, even in county assemblies, as to the question of trying to remove a sitting governor. Counsel for the Governor have ably tabled documents in the form of affidavits that speak to whether the Assembly sat or not. On the contrary, we have not seen any document from the County Assembly that seeks to either concoct and say that there was even an Order Paper just to prove to this House that, indeed, there was a special sitting that sat, debated and passed a resolution towards removing the governor. What is good for the goose---

The Senate Majority Leader (Sen. Cheruiyot): On a point of order, Mr. Speaker, Sir.

The Speaker (Hon Kingi): What is your point of order, Senator for Kericho?

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I have really tried to restrain myself not to interrupt colleagues because I believe it is a respectful thing to do. However, I also I wish that the same respect that we accord to each other, we pass it to the County Assembly because they are an equal entity just like us.

It is not proper for a colleague to rise and state that there was nothing that shows that there was a sitting in the County Assembly, including an Order Paper while Volume No.3 of the County Assembly has all those documents. Is it really fair?

Colleagues, even as you debate, I am not saying I want to inform how you will vote, but be fair to the County Assembly. Do not castigate them on lies.

The Speaker (Hon Kingi): Sen. Chimera, be factual in your submissions. Proceed.

Sen. Chimera: Mr. Speaker, Sir, what I am saying is what is good for the goose must equally be good for the gander. The last impeachment we had was for the Governor of Kericho County and this Senate unanimously terminated proceedings at a preliminary objection level. What has fundamentally changed? There was an issue of threshold then. Right now, there is a preliminary objection that is equally technical and we are being told to close our eyes and allow the Senate to proceed and listen to this Motion yet in the earlier impeachment Motion, we pronounced ourselves on the same.

Mr. Speaker, Sir, I support this Motion. With those many remarks, I thank you.

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

Sen. Wafula: Asante sana, Mhe. Spika, kwa kunipa nafasi hii nijadili iwapo kulikuwa na kikao, kumbukumbu ama rekordi za vikao, na kama vikao hivi vilikuwa na kina nani na wahusika walikuwa kina nani. Jinsi nimeona vitabu vikiinuliwa hapa, vikao

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vilikuwepo. Jambo la muhimu ni kwamba, je vilikuwa vikao halisi ama gushi? Iwapo vilikuwa vikao halisi, ni lazima wajieleze.

Jambo la pili ni video ambayo nimeona iliyoonyesha ofisi iliyovunjwa na vifaa kuharibiwa. Imenipa taswira ya maandamano yaliyokuwepo juzi kwamba Isiolo kuna wahuni na majambazi. Iwapo ni hivyo, lazima tuwafuate na wakamatwe kwa sababu wanahujumu shughuli za Kaunti ya Isiolo.

Mwisho, waswahili husema kuku akijipata kwenye kesi ambayo mwewe ndiye hakimu, atapata haki? Iwapo umewafuga kuku na wamevuka ua, na unaona mbweha anawaandama kuku wako, utamfurusha mbweha ama umukung'ute na fimbo halafu umkamate kuku umrudishe kwenye boma?

Asante sana, Mhe. Spika.

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

Sen. Kathuri: Thank you, Hon. Speaker, for this opportunity to make a brief comment.

(Loud consultations)

Hon. Speaker, protect me from this line here.

The Speaker (Hon. Kingi): You are duly protected. Proceed, Deputy Speaker.

Sen. Kathuri: Mr. Speaker, Sir, I have heard many stories about Isiolo County from Senate committees when they visit the county. Personally, I was very happy that this week I would finally understand the issues in Isiolo County, as it is my next-door neighbour. Looking at this big document, which is evidence of public participation, I thought I would be able to scrutinise all these issues this week to understand exactly what is happening in Isiolo County.

I have never interacted with what happens there because I am not a member of any of those committees. However, based on what has happened through the preliminary objection, it seems I have lost that opportunity. Listening to my colleagues, it seems I am, indeed, losing the chance to understand what is going on there.

If the only House that can help Isiolo County solve its problems is the Senate, then we cannot run away from our responsibility. The committees mentioned: the Standing Committee on Devolution and Intergovernmental Relations, the County Public Accounts Committee (CPAC), the County Public Investments and Special Funds Committee (CPIC), the Health Committee and any other committee that I saw visit Isiolo County, have a responsibility to assist the county in its work. So, this House has a big responsibility.

Even though we will make a decision today one way or another, we were elected by the people of Kenya to defend devolution. I would be very happy if committees of this House, even if five, six, seven or 10, could join and visit Isiolo.

As all this happens, I would also request my brother, Governor Guyo, to be a friend of this House. Whatever decision will be made, be a friend of this House. We want to sort out all the issues in Isiolo County. This House is very friendly. I also request the County Assembly of Isiolo to be serious and bring proper documents to this House. As I said, I am---

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

Sen. Oketch Gicheru: Mr. Speaker, Sir, the question we are discussing today is about procedural technicality versus substantive justice. Under Article 181 of the Constitution, the requirement and process for removing a governor are stipulated. Under that Article, the Constitution tells us that Parliament shall enact laws to guide the removal of a governor.

Those laws are found under Section 33 of the County Governments Act. This is where we are invited to look at the issue of removing a governor. The law states-

“A Member of the County Assembly may, by notice to the Speaker, supported by at least a third of all the Members, move a Motion for the removal of the governor under Article 181.”

I want you to note the word “may”—not “shall.”

Secondly, if you read Article 159 of the Constitution, we are guided by the understanding that the framers of the Constitution anticipated that, in the process of removing a governor or even the President or Deputy President, there can be procedural technicalities caused by factors such as violence, impunity or other circumstances that make it impossible to exercise your duty.

I am perturbed that in this House, after listening to my colleague Senators, no one is asking the question: under what circumstances did the 16 MCAs, who are given this power by the people under that Article, sit? Does it matter? Do we want to elevate procedural technicality over substantive justice under Article 159 of the Constitution?

We are invited to consider that Article. We are sitting here in a quasi-judicial process. Article 125 of the Constitution makes us a court. In this quasi-judicial process, we must apply the Constitution. There can be circumstances under which we must invoke this Article, because even this sitting is part of the procedure. That is why we are here.

We need to accord Isiolo County a fair trial, a fair hearing to the governor, and a fair hearing to the MCAs who have been given powers under Article 181 of the Constitution. That can only happen by ensuring that we go to a full trial. Only then can we truly protect devolution under---

The Speaker (Hon. Kingi): Sen. Mo Fire.

(Loud consultations)

Sen. Gataya Mo Fire: Hon. Speaker, please protect me. There are loud consultations.

I support this Motion from the onset. As much as Isiolo residents deserve justice, the MCAs and the governor also deserve justice. I am an authority as far as county assembly matters are concerned. I have sat in a county assembly for a decade as an MCA. I know all the procedures. A county assembly, just like this House, is a House of Rules. We cannot have a situation where people would want to sit in some funny corners and purport to have sat down to impeach a governor.

Hon. Speaker, we do not want to dispute precedent. We are senior brothers. We must be seen to be teaching county assemblies the best way to perform their duties. I listened to the evidence adduced by both parties. I was not able to capture any tangible

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evidence from the counsels of the county assemblies. Though I am not a lawyer, I could easily guess from the counsels of the county assemblies that most of the evidence that they brought before this House were cooked. In this matter, I want to categorically state that the county assembly never sat. Let them go back. The Senate will be here tomorrow, on the next day and up to 2027. Put your House in order and follow the law.

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

The Speaker (Hon. Kingi): What is the point of order, Sen. Mandago?

Sen. Mandago: Hon. Speaker, under Standing Order No.105, I want to ask the Senator for Tharaka-Nithi County, who was also a former MCA, that we have said that we need to respect the county assembly. There are is much evidence here of public participation. Is it fair for the Senator of Tharaka-Nithi County to say all this evidence was ‘cooked’? What does it take to use the correct parliamentary language, so that we can have a sober debate?

The Speaker (Hon. Kingi): Sen. Gataya Mo Fire, we have not had a chance to go through the evidence as contained in the bundles. So, whether it was ‘cooked’ or not, we cannot tell at this juncture. Kindly refrain yourself from making such assertions.

Sen. Gataya Mo Fire: Well guided. However, I am trying to dilate how I captured the evidence, because I did not capture any tangible evidence to showcase that the County Assembly really sat. In that respect, I beg you to support the Motion. I request my good friends from Isiolo to go back, put their House in order and let them follow the law. We are here tomorrow, we will be here the day after tomorrow, and we are going to assist them and make sure that Isiolo, the Governor and the county assembly get justice.

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

Sen. Korir: Mr. Speaker, Sir, the county assembly is a replica of Parliament and there are rules and procedures that are used in the two levels of Parliament. I have had a number of colleagues trying to defend the debate that is on the Floor of the House. It looks weird for this House, and even before the eyes of Kenyans, that we are discussing the procedure, which is well stipulated in the Standing Orders. Today, we are discussing how the Assembly conducted their business.

That aside, the biggest question that is running through my mind is what we do with the issue because it seems there is forgery of documents and doctoring of minutes. What example are we setting as a House? What are we debating as a House? What are we telling other assemblies?

There is an issue that was raised by Hon. Sifuna. I am not a lawyer, but what are we telling the rest of the Kenyans in terms of the documents that have been doctored that the Senate right now is wasting time deliberating on? What kind of business are we handling as a House? What precedent are we setting as a House? I am one disappointed person today in this House. We are dealing with forged documents. We are trying---

(Loud consultations)

The Speaker (Hon. Kingi): Sen. Joyce, kindly, on the aspect of documents having been forged, you need a document expert examiner.

Sen. Korir: Why then are we discussing whether the Motion at hand is---

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(Laughter)

It is so weird. Why are we discussing the merits of this Motion that is on the Floor of this House? It is because the documents are doctored. That is the issue. If the documents are not doctored, then the Motion would not be here. Why are we discussing whether the Assembly held a sitting or not? Either it was a legal sitting or an illegal sitting. Why are we debating?

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

Sen. Kisang: I also rise to support this Motion because the County Assembly of Isiolo needs justice and the Governor also requires justice. In the morning, before we broke for lunch, there were two questions you posed to the counsel for the County Assembly; that if you play those videos, is it going to show that there was a sitting or no sitting? You repeated twice, and I picked it, that this is what is going to cook this particular Motion. This is because it exposed that there was no sitting. Basically, we would have proceeded to discuss the entire trial if that particular evidence was not shown. So, it is the counsel who has assisted us to bring this thing to a premature end. It is important that this is a House of precedent.

In October last year, a similar impeachment of the Governor for Kericho County was brought here, and we debated. We said that they required 32 MCAs, but those who voted for the Motion were 31. So, we discussed, debated and then passed. Thirty-four Senators voted yes, and then 10 Senators were nays. So, basically, we stopped at that particular place.

We want to tell the County Assembly of Isiolo, please, either you go back with your Governor, agree and work together or disagree and bring a Motion that has been put through the proper procedures. We are here; the Senate is going nowhere. We are still here for the next two years. So, if you do not agree to work, please, we are ready. It is our job to impeach or not impeach. Bring him back again; we are ready.

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

Sen. Miraj: Bw. Spika, kulingana na gumzo ambalo linaendelea, ni dhahiri shahiri ya kwamba kuna hitilafu katika kutimuliwa kwa Gavana wa Isiolo. Nikiunga mkono kauli za wengi ambao wameweza kuzungumza katika Seneti hii, niweze kuzungumza kinaga ubaga ya kwamba ni dhahiri shahiri pia kuwa Wawakilishi Wadi wa Bunge la Isiolo wako na ari na ushahidi wa kutosha kuonyesha kwamba katika gatuza la Isiolo, kuna matatizo ambayo yanahitaji Bunge la Seneti kuweza kuwasaidia kuyatatua. Hayo ndio majukumu tuliyotwikwa na Katiba yetu ya Kenya, ni vyema wasitumie njia za mkato kumtimua Gavana aliye chaguliwa na wananchi wa Isiolo.

Nikifunga changizo zangu, ningependa kuwarai na kuwaomba Maseneta wenzangu ambao wako katika Seneti hii kuwa tuko na majukumu ya kuleta sheria ambayo itawapatia uwepesi Wawakilishi Wadi wetu kuweza kuwaleta Magavana wao hapa. Nina imani kubwa ya kwamba asilimia kubwa ya MCAs na *Assembly* zetu katika Taifa la Kenya wangependa kuwaleta Magavana wao hapa. Lakini, jinsi sheria zilivyotungwa, hazisaidii mabunge yetu kuweza kuleta lalama zao katika Bunge hili la Seneti. Haiwezekani ya kwamba ushahidi wa kutosha uko mbele yetu lakini kwa sababu

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ya sheria ambazo tumezitunga sisi kama wajumbe katika Taifa hili, zinaweka vikwazo na kutufanya kuwa hatuwezi kuingia kuangalia ushahidi ule. Sheria lazima isimame kwa sababu msumeno unakata mbele na nyuma.

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

Sen. Munyi Mundigi: Asante, Bw. Spika, kwa kunipa nafasi ya kuchangia mjadala wa kutimua Gavana wa Isiolo. Si vizuri sana kwa sababu kuna mipangilio pale mwanzo Wawakilishi wa Wadi wangepanga ili wawe na kikao kwa bunge la kaunti. Haionyeshi vizuri vile walikaa kwa sababu, katika sheria, kuna pahali wangekaa.

Kwa miaka mingi wakati wawakilishi wadi na *councillors* wakitaka kutimua yeyote, walikua wanaenda wanajificha mahali, lakini hakuna mahali hayo yalikua yanazungumziwa. Lakini, siku ya mwisho ya kikao, hata kama kuna vita vya mishale au bunduki, ni mpaka wangeingia kwa kile kikao ili kuonekana wanafanya kazi gani. Ninaunga mkono Gavana arudishwe kwa sababu, kuna mambo hayajafuatiwa.

Ningetaka kumwambia rafiki yangu, Sen. Eddy, kwamba haimaanishi hatujafuata njia ile inafaa. Kwa Bibilia na Quran, kuna mtu mmoja alijenga nyumba kwa mawe na mwingine akajenga kwa mchanga na wakati mvua ilinyesha, ile nyumba ya mchanga ilianguka. Kwa hivyo, wacha hii nyumba ya Wawakilishi Wadi wa Isiolo iteremke ili iwe funzo kwa kaunti zote 47 ndio wawe na mwanzo wa kufatilia sheria ya kutimua magavana.

Ningependa kujibu Kiongozi wa Wengi, Sen. Cheruiyot, kwa mambo yale amesema kwamba kuna tofauti ya Kericho na Isiolo. Ningependa kumueleza kwamba hakuna tofafauti kwa sababu ile haikua na mmoja na ikatemwa mbali. Hii naye kutoka mwanzo, hakuna pahali inaonyesha vile wangetimua yule Gavana.

Ningependa kujibu Sen. Joyce aliyesema tunatupa wakati. Seneti saa hizi haijatupa wakati sababu tuko Maseneta 67 na tunataka kuonyesha nchi ya Kenya na wanaotuangalia kwamba tuko na ukweli wa kuchambua mambo ya Seneti na watu wengine wakitimua gavana, watafuata njia ile inafaa.

Bw. Spika wa Muda, nikimalizia, ninasema turudishe Gavana. Tumejua mambo mengi lakini tunamuomba Gavana akirudi pale - Bibilia inaseme watu wawili hawawezi kutembea bila kuelewana - akae chini na Wawakilishi Wadi, waelewane ndio kaunti ya Isiolo iendelee vizuri. Kwa Wawakilishi Wadi, kama Gavana hataenda wakae kikao kimoja ili kubadilisha Isiolo, tungewaomba wamrudishe na tutamtimua kama watafata ile njia inafaa.

The Speaker (Hon. Kingi): Sen. Wakili Sigei.

Sen. Wakili Sigei: Thank you, Mr. Speaker, Sir, allow me to read an excerpt from a decision on court on impeachments. The court said-

“Impeachments are vested in the county assemblies and the Senate to check the executive powers and ensure good governance. It is a means of trying the governors for offences they may perpetrate while in office. It is an additional sanction for wrongdoing.”

I read that excerpt because I have agonized over the debate that is going on in the House as regards the preliminary objection. The Mover of this Motion, the Senate Majority Leader, ran us through what he also felt is a struggle with the challenge that is existing in the County of Isiolo. Reading through parts of the documents, which

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unfortunately we have not gone through substantively, there is indeed a challenge. There are areas where we have the people of Isiolo having genuine and valid concerns about governance, a subject which impeachments are meant to do.

When in the morning I sought clarification on two issues from the Counsel for the County Assembly as well as the Counsel for the Governor, it was to clear the aspects in my mind with regard to the issue which we are now debating, whether there was any sitting or not. The response I got from the respective counsels led me to look at the Standing Orders of the County Assembly of Isiolo.

Part 25 of the Standing Orders of the County Assembly of Isiolo provides on the journal, the records and the proceedings and the custodian of those proceedings. It guides us to understand, especially in the form and manner of the documents which have been filed by the Governor as well as the County Assembly in this House and whether there was a sitting on 18th and 26th June, 2025. In these records, contrary to the response that I got, there is an aspect that is still not clear on my mind. This aspect speaks to the substantive issue which, with a heavy heart, we are called upon as a House to determine at a preliminary stage, whether we proceed or we terminate.

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

Sen. Veronica Maina: Mr. Speaker, Sir, thank you for this opportunity. At the very onset, any time you find impeachment proceedings knocking at the door of the Senate, it means that there is some fire burning somewhere in that county. Looking at the question that has come before this House on whether there was a sitting on the specific days or no sitting, we have been presented a video evidence, which was not fully backed.

(Loud consultations)

The Speaker (Hon. Kingi): Order, hon. Senators. Kindly hear Hon. Veronica in silence.

Sen. Veronica Maina: We have been presented with video evidence, which was not fully backed with a certificate and, unfortunately, it came before the time when evidence should be adduced in these impeachment proceedings. Looking at the procedure that is supposed to be adopted, this House in discharging its mandate to conduct impeachment proceedings is bound by Article 181 of the Constitution, Section 33 of the County Governments Act. It is also bound by the Standing Orders from the respective Houses, both the County Assembly of Isiolo and Schedule Three of the Senate Standing Orders.

Unfortunately, unless there is full compliance with the process and the procedure that is laid down in all the Acts of Parliament that are supposed to be read as these impeachment proceedings are done, then it will not meet the basic threshold that is supposed to be ticked as having been fully complied with. When I looked at the video, I only saw a room or an office, which had broken computers and broken items, and which looked like what we saw yesterday during *maandamano* in Kenya.

Mr. Speaker, Sir, I must say it is very unfortunate that in the County Assembly of Isiolo, business was conducted on that day and what ended up may have been the vandalizing of the HANSARD. We, therefore, do not have the advantage of seeing what

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happened in the County Assembly and in place of the HANSARD and in place of using technology, which is supposed to ease the evidence that should be adduced before this House, we instead have explanations and pictures that do not even show the County Assembly.

In actual fact, that video did not display any House sitting. Conclusively, without looking at any other documents, if that is the basis on which we should determine whether there was a sitting or not, those videos do not show any sitting.

The Speaker (Hon. Kingi): Sen. Crystal Asige.

Sen. Crystal Asige: Thank you Mr. Speaker, Sir. I have been sitting here and I have only one question. Are we here to prosecute a Motion or are we here to prosecute emotion? In this preliminary stage, I have heard both and inevitably in any impeachment hearing, both will be baked into the process; but here we are being asked to determine between two truths. One truth from the Governor's side; which is that there was no sitting. That is his truth. The other is from the County Assembly side, which is that there was a Sitting, and that is their truth. However, I believe in everything, there is always three sides to every story. Contrary to what I have heard from other Members, I actually believe that there was a sitting.

I just do not, at this preliminary stage, feel convinced by the County Assembly side that it was a valid sitting. Unfortunately, that is the conclusion that I have come to at this stage. Therefore, if we are to proceed, we must proceed, as everyone has said, in one way or the other, by the rule of law.

If that threshold to convince or persuade this House, or majority at least of this House, that there was a valid sitting that took place, and therefore we should proceed into full trial, then I am afraid we might have to, unfortunately, for the County Assembly, because I also believe that they must have a case that they strongly believe in and have put effort to bring to this House. However, in this case, I would encourage them to go back, bring something that is procedural and correct, and dot all of their i's and cross all of their t's before coming back to the House, and we will listen to them with the rule of law in our hand.

I thank you.

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

Sen. Mandago: Thank you, Mr. Speaker, Sir. First, I rise to oppose this Motion, that we should not terminate these proceedings at these preliminary stages, because there is evidence that there was a sitting, as per what has been adduced by the County Assembly. The Governor of Isiolo County was impeached by 16 Members of the County Assembly out of 18. That is a record of over 95 per cent attendance of impeachment.

I would, however, like my colleagues to reflect on the roles of Parliament, and the powers of this House. Under Article 125, this House has the power to summon appearance and evidence. That is why we are here today. In exercising that authority, the Senate and Parliament is acting to the level of a Judiciary. If you look at the judicial authority under Article 159, there is no reason absolutely as to why at this stage, we should terminate the proceedings on technicalities.

Mr. Speaker, Sir, in Article 159(1) states-

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“Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution.”

If you read Section D, it says-

“Justice shall be administered without undue regard to procedural technicalities.”

Therefore, we should allow this process to go to its logical conclusion. At this stage, we are not saying that the Governor for sure is guilty of the grounds that have been said, but we would want to listen to what the County Assembly has given.

I would like to also tell my friend, the Senator for Kakamega County, Sen. (Dr.) Boni Khalwale, a non-practicing gynaecologist, that when a mother is due to deliver, and there is no delivery coach, you cannot ask that the baby goes back. You just deliver as is.

Mr. Speaker, Sir, this Motion of impeachment has started. We must proceed with it as is, so that we can help the people of Isiolo County realize what they have said, considering that there has been substantive public participation---

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

Sen. Methu: Mr. Speaker, Sir, the Senate cannot be reduced to a theatre of absurdity. The question before us in this Motion is not merely a procedural question; it is a deep constitutional question that must be answered.

Mr. Speaker, Sir, just imagine if you were to carry this precedent and allow this Motion to go to full hearing. What stops a Speaker of another County Assembly from conveying a Message to you, even without any writing? What would stop them? We have been told by the Senate Majority Leader, who has been very sensational here when he was speaking, that we want to keep this Motion at this level. That is actually not true. I disagree with the Senate Majority Leader.

If the Members of the County Assembly have numbers, let them go back, bring a good Motion, and we shall prosecute it. The Senate has not said that we are not ready to prosecute this particular Motion. The Senator from Mombasa County has also alluded that we should deal with this Motion. That, if Governor Guyo is impeached, he can go to court. The prescription that the Senator from Mombasa County has given is, let us take poison, and then we can take milk later. That shall not happen and we cannot do it. We cannot take poison, as we are seeing.

This Motion is defective. There was no sitting by the County Assembly and, therefore, there is no recourse to it. I would want to say, while being careful with the words that I will use, so that I am not disrupted by many people who want to disrupt us as we are speaking here---

I do not like the leadership style of President William Ruto, but the Constitution does not give me a recourse. The Constitution does not allow me to, and has no room for my feelings. It does not have any room for what I feel about his leadership. The Constitution allows me to only wait until 2027, painfully.

So, Mr. Speaker, Sir, even for the Members of the County Assembly, theirs is not a long wait, as mine and Sen. Wambua. Theirs is just going back. In fact, in my opinion, if they were to just go back to the County Assembly and process this Motion as it is supposed to be, we cannot say that this Motion has been lost, so they have to wait for six months because there was no Motion and sitting, anyway. They can sit tomorrow, process

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this Motion, and bring it here and convey a Message to you on Thursday. We shall be here.

Mr. Speaker, Sir, I woke up very early. You can see how I needed to take care of my hair. You can see that I was ready to prosecute the business of Isiolo County. So, we shall be here and available. Even if you call us on a Sunday or Monday, we shall be here, so that we give justice to the people of Isiolo County, including the Governor, who is also a son of the County---

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

Sen. Lemaletian: Thank you, Mr. Speaker, Sir. I believe the Members of the County Assembly (MCAs) deserved a fair hearing because they represent the people at the grassroots. That means, their voice is powerful and it matters. Since most of them are young people, I will stand with them.

Mr. Speaker, Sir, we are a House of rules and procedures. While I am not a lawyer, I know that laws were formulated, or rather the history of law was for purposes of balancing situations of too much cruelty and mercy. I know that there is no limit to how many counts we need to impeach a governor. One count is enough to impeach a governor. I was very eager to impeach him, given the fact that he had made very derogatory remarks against women, and on so many instances, he has rubbed shoulders very badly with various committees of the Senate, and most importantly, because I want our northern counties, which have been marginalized for so many years, to be examples of counties that can have true leadership to liberate our people from marginalization.

Mr. Speaker, Sir, however, as a House of rules and procedures, there have been questions as to how the MCAs have approached this impeachment. I know that it pokes a lot of questions as to how the Senate has been handling this issue. That means, we need to do a lot of amendments.

Firstly, on at what level the Senate decides that this is a matter that can now come to the floor of the Senate, and henceforth demand attention of the Senators. I do not know whether that is a failure on the Clerk or our legal team.

Secondly, we also need to amend the time-frame that we need between one impeachment and another, so that issues that were burning the MCAs of Isiolo County Assembly can be addressed in a just manner.

With those remarks, I support.

The Speaker (Hon. Kingi): Next is Sen. Peris Tobiko.

Sen. Tobiko: Thank you, Mr. Speaker, Sir, for this opportunity. I would like to join my colleagues to reiterate the fact that we would have wanted to listen to the substantive Impeachment Motion. However, the County Assembly has not sufficiently demonstrated to this House that there was a sitting.

Even when counsels for the County Assembly were given a chance to give evidence in terms of video clips, they did not take that opportunity to show us the sittings that took place at the Assembly. What they did was to show some place looking like an office, which definitely had been ramshackled in a way. It did not look like a chamber because there were no Members. Therefore, there was no way for this House to tell whether there were sittings or not.

Mr. Speaker, Sir, we have heard a lot about Isiolo County and we were eager to go through the rigours of this impeachment proposal. As it is, this is a House of rules and procedures, but procedures and processes have not been followed. We have no choice other than to send back the County Assembly to follow the law.

We did not want to bring our biases into this case. If it were, maybe we would have gone the direction that Sen. Hezena proposed because female Senators in this House had a bone to pick with the Governor. The way it is, it has failed at least the initial test for us to proceed to full hearing.

Mr. Speaker, Sir, to cut the long story short, it has not been proven that there was a sitting and there is no way we can proceed if there was no sitting.

I thank you.

The Speaker (Hon. Kingi): Proceed, Sen. Joseph Githuku Kamau.

Sen. Githuku: Mr. Speaker, Sir, I thank you for giving me this opportunity to also add my voice on this very important matter. We are here to interrogate whether the County Assembly of Isiolo really sat to deliberate on issues of impeachment of the Governor.

I had an opportunity of listening to the counsel for the County Assembly of Isiolo. I can confirm that the counsels were really struggling to convince this House, that indeed the County Assembly of Isiolo sat to deliberate on issues of impeachment of the Governor.

Mr. Speaker, Sir, Article 96(1) of the Constitution of Kenya provides that this Senate is mandated to take care of counties and their governments. When we retreat to have deliberations on whether this Motion should continue or not, I urge this House to do the right thing and set a good precedent, so that we are not judged wrongly by generations to come.

With that, Mr. Speaker, Sir, I support this Motion.

The Speaker (Hon. Kingi): Proceed, Sen. Tabitha Keroche.

Sen. Tabitha Keroche: Thank you, Mr. Speaker, Sir, for giving me this opportunity to also contribute to this important Motion. As I think about what to say about this Motion, I also feel the pain of Sen. Joyce Korir.

I think we need to amend Article 181 of our Constitution because if you look at what we have been doing here since morning, we have been deliberating on something we know did not follow the right procedure. When we amend the Constitution, the Directorate of Legal Services of the Senate should ensure that before any document on impeachment is brought to this House, they check whether it has attained the threshold and if the right procedure was followed.

The MCAs of Isiolo have denied us an important Impeachment Motion we would have liked to listen to. By telling us that there are two speakers and two clerks, I would have wanted to know how they passed that in the County Assembly. As far as I know, they are the people who are supposed to approve the team that is usually brought to the Assembly by the Governor.

I advise you to be looking at that because at the end of it, you are the people who will be going home and not the Governor if you bring such a Motion. Everybody will ask

how you ended up with two speakers. To me, MCAs are the ones who approve any team brought by the Governor on the Floor of the Assembly.

We should be careful about what people are complaining about the county assemblies. The minute you bring a Motion here and the people of Isiolo who elected you are watching, they also wonder and ask themselves such questions that we are asking ourselves. How was that Motion taken to the County Assembly without following the right procedure?

There are accusations, but they are the people who are supposed to do oversight and ensure that the Governor does not do such things. How do you approve to allow the Governor to have two Speakers and two Clerks---

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

Sen. Mwaruma: Mr. Speaker, Sir, where there is smoke, there is fire. Simply by the virtue of the fact that the Assembly has escalated a resolution to impeach the Governor, then it is a pointer to a problem in the general running of the County Government of Isiolo.

There is a lot of harm career-wise for a governor or any public who is impeached. That is why we should scrutinise carefully the process and the product of impeachment. It should have been our wish to scrutinise the allegations and evidence that pointed towards the Governor. However, we must start with the preliminaries.

Mr. Speaker, Sir, impeachment takes place in the county assemblies. What happens in the Senate is a trial. We must ask ourselves; if an impeachment takes place in a county assembly, then it must be in the correct manner. The procedure must be followed.

Looking at the evidence that has been adduced by the Assembly to show that there was impeachment, I am not convinced that a sitting took place. It is because the HANSARD report that has been given by the Assembly has not been certified. What was the challenge in certifying the HANSARD?

Mr. Speaker, Sir, we have seen some semblance of violence that took place showing destruction of the video evidence and that transcription of the HANSARD was not done through the video evidence and that the audio is available, but it has not been brought here.

If there was a challenge of sitting in the County Assembly of Isiolo, they could have asked for another venue. The procedure is clear. That venue must be gazetted and there must be a resolution to sit in a different venue other than the gazetted Assembly. We have not been shown any *Gazette* Notice to show or to convince us that a different venue was gazetted for the Assembly to sit.

I urge the Assembly to go back and do a proper procedural impeachment. We, as Senators or the Senate, are not running anywhere. Let them bring another impeachment Motion if they want. I also want to let them know that there is another process through the Committee on Devolution and Intergovernmental Relations. That Committee can go to Isiolo and diagnose the problems in that County with a view of making sure that devolution works.

Sen. Okenyuri: Thank you, Mr. Speaker, Sir. I also want to place emphasis on the significance of procedure in the impeachment process. The essence of following

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procedure is to ensure that we protect the integrity of the whole process. We do not want to have the impeachment process as a weak tool to restrain people who want to misuse their public offices.

While I feel for the people of Isiolo County and the County Assembly, I wish that the case they brought here--- Earlier, I sought clarity on whether the HANSARD recordings can be displayed if they conducted their sittings in a room or outside and there was no evidence on the same. That makes me feel that the right procedure was not followed.

We want to make this process credible, so that any other governor who is brought to this Senate, the House of reason, will go home knowing that substantive justice was rendered to them. Substantive justice cannot be talked about where due process has not been followed. When due process has not been followed, then going into the evidences will not help because the whole process was not followed from the beginning. We should abide by the rule of law.

I pray that we put emotions aside and look at this issue critically. Impeachments that have happened all over the world have followed the rule of law. It is not about dislike for someone and even when you dislike someone, you should ensure that you follow the correct process to remove them from office.

Thank you, Mr. Speaker, Sir.

Sen. Mariam Omar: Thank you, Mr. Speaker, Sir, for giving me this opportunity. I stand here to oppose the Motion. This is because 16 Members of the County Assembly (MCAs) cannot just come together and pass a Motion of impeachment without following procedures.

Volume No.3 has Order Paper, HANSARD and everything. If no procedure was followed, then these documents could not have been availed to the Senate. On that ground, I oppose and say that a meeting took place.

Thank you.

Sen. (Prof.) Kamar: Thank you, Mr. Speaker, Sir, for giving me the opportunity.

I sit in the Committee on Devolution and Intergovernmental Relations and I was involved in the case of Nyamira County. We were also involved in the case of Machakos County where the Speaker decided to close the Assembly *sine die* without involving anybody.

One would look at these cases and ask, “what kind of advice can we give, as a Committee?” In the case of Nyamira County, we reached a point where we invited the Controller of Budget who was paying one line in the Assembly and leaving out the other line. We asked the Controller of Budget, who unfortunately or fortunately comes from Nyamira County, who she was paying because they had two speakers and two clerks.

Why am I saying this? I am saying this because we, as Senate, need to advise and help our counties properly. Our county assemblies need to be protected. One of the two features that came out in both counties that we handled was the violence that took place. The violence that took place in Machakos County was similar to the violence that took place in Nyamira County and it is the same violence that we are being told about though we did not see the actual violence, but the aftermath.

When MCAs are handling a serious agenda like impeachment, which borders on who is right between the executive and the assembly, then the protection of the MCAs is paramount. In this case, if the House finds that the procedure was not done properly and they go back, we need to be assured that they will have protection, as a House, when they go back. What we saw in Nyamira County was a case where---

The Speaker (Hon. Kingi): I thought that Professor had six more seconds. Professor, could it be that you got emotional and could not speak?

Sen. (Prof.) Kamar: No, Mr. Speaker, Sir. I saw the red light and was shocked that I had finished three minutes.

We have to come out, as a Senate, to define the norms even if it means going back to our own Standing Orders. We need to deal with that because the protection of a House dealing with impeachment must be assured. If they are not assured of their protection, then they have nowhere to go to. They will be hiding from each other and we will not be able to---

The Speaker (Hon. Kingi): Lastly, we will hear from the Senator for Isiolo County. As is our tradition, the host Senator normally gets more time. Therefore, Hon. Senator, I will give you 10 minutes.

Sen. Dullo: Thank you, Mr. Speaker, Sir, for this opportunity and for agreeing to give me more minutes.

I have sat in this House for the last 13 years. What I have seen today has never happened in the history of this House. We have the matters of procedure, but I want to state that this is not a court of law. Killing a Motion at the preliminary objections level is disastrous.

I have heard people stand here and say, "oh, we did not see this, oh, the Assembly did not sit." I wish the people who are talking negatively about the Assembly knew what they have gone through. Some of them almost lost their lives in the circumstance. There are people who are saying the sitting did not take place here. The circumstance under which the Assembly sat was actually very difficult because they were almost losing their lives.

Before this Motion, this House was crying for the blood of the Governor of Isiolo. We know each other and I know what transpired even 30 minutes ago. I think it is good for the people of Isiolo and the public to know what happened. The so-called *soko huru* is taking over this House. I must say that---

An hon. Senator: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): You cannot impute improper motive on your colleagues. If you want to proceed in that manner, you know what to do; substantive motions.

Sen. Dullo: Mr. Speaker, Sir, let me proceed and I will leave it at that. Isiolo is bleeding and it is not safe today. The Assembly is not safe after today. I am not safe after today. Isiolo people will not be safe after today. I can see the people who normally fight me on social media are all here watching. Already, tonight, you will see the chaos that will happen in Isiolo County.

If only this House had looked at the proceedings to the end, then you would be able to understand the veracity of this particular impeachment. As it is today, I do not

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think the Assembly will have guts to bring a Motion to this House; not only Isiolo, but the whole country and even the governors themselves. We always stand here criticising counties and talking about oversight. The oversight has been killed today by the same House.

If the direction you are going to take is to kill the preliminary objection, I must be on record for this. Apparently, we have two speakers where two Members of the Assembly have elected a speaker. The so-called clerk forged documents for election of the Assembly Members. The Government Printer, a very sensitive department of this country, the heart of this country, gazetted a speaker who was elected by two members of the Assembly. Where are we heading as a country?

There was an Administration Police Commander who was brought here to produce evidence in favour of the Governor. Does he sit in the House? What is his role? Security, as far as that proceeding was concerned, was actually compromised. Today in Isiolo, you report a matter to the Directorate of Criminal Investigations (DCI) or Police Commander, nobody takes action.

Mr. Speaker, Sir, there is a young man who was beaten two days ago and is fighting for his life in the Intensive Care Unit (ICU), simply because he is just a blogger. In this impeachment, there are people who have actually been injured and maimed. Somebody stood here and said; "Go and bring another Motion." Let me say here that if the Senate is going to take the direction of killing the preliminary objection, you have thrown Isiolo and the Assembly to the dogs. If anything happens tomorrow, this House will be blamed.

Thank you.

The Speaker (Hon. Kingi): Now, Hon. Senators, I do not have any name on my dashboard of any Senator indicating to speak or contribute to this Motion. Therefore, I call upon the Mover to reply.

Sen. Dullo: On a point of order, Mr. Speaker, Sir. Please, allow me.

The Speaker (Hon. Kingi): Senator for Isiolo, what is your intervention? Certainly, it cannot be a point of order.

Sen. Dullo: Mr. Speaker, Sir, I will say on the Floor of this House, I need protection. The Assembly requires protection from the security agencies.

Thank you.

The Speaker (Hon. Kingi): You may proceed to reply.

The Senate Majority Leader (Sen. Cheruiyot): Thank you, Mr. Speaker. I appreciate colleagues who have taken time to speak to this Motion and the things that they have said, some of which I agree with and as is the case with democracy, quite a number that I do not agree with. I have said it, including the point of order that I raised, that many of the things that Members are alleging do not exist, actually do exist in the bundle and the volume of documents. I could excuse them perhaps because we did not get to the substance of the matter before us; that perhaps many of them did not take time to read. However, those things you are asking about, Members, to ascertain in your minds whether the Assembly sat, are before your eyes. It is barely 10, 20, 30 centimeters from where you are seated.

Mr. Speaker, Sir, be that as it may, I appreciate that there has been a protracted debate before us since morning, with both counsels for the Assembly and those of the Governor trading accusations against the other, on whether a sitting actually happened. You know, Members, we live in Kenya. Do not be like these elitists in Nairobi City, who talk about Kenya from a perspective of an urban centre.

How many times do we go to far flung counties, including the very last one we went to in Turkana? Do you know part of the things the County Assembly asked us to donate to them? Even Hansard recordings alone, we did that when we last went to Turkana. We must also appreciate that our county assemblies need our support big time, both in terms of technical and even material support.

Mr. Speaker, Sir, some of these counties are so small that if you were to judge them with the standard of a county like Nairobi City or here in the Senate, we will be aloof. If you expect that they have CCTVs or cameras, you are asking too much of this county. In 2016, I was part and parcel of the Committee on Budget that looked at the state of counties such as Isiolo and Nyandarua. I accepted that despite the fact that we have 47 counties, there are five counties that there was no way, without being granted a conditional grant, were going to have a county headquarters. In fact, it is in this year's Division of Revenue Act, that we have given them the last contribution.

That is why the counsel for the Assembly did not do a good job at expounding to you, Members, to understand that actually the Governor and the County Assembly share an office. That is how bad that situation is in that particular County. As we speak today, what you saw in that video is what these people are returning to, should this preliminary objection be upheld. A place that has been completely broken, has no order and there are two clerks and two speakers. I believe that we can find a way of resolving this particular conflict.

Mr. Speaker, Sir, I listened to those who say that procedure is as important as a product, but also the product must be informed by the process. If at the time of voting there were guns that were blazing outside and stones being thrown into the County Assembly as the County Assembly is saying, how good a record can you keep? There must be an issue beyond procedure that we need to look at.

I listened to colleagues here who have said that we should take some of these matters that are beyond the governor and the county assembly to the Committee on Devolution and Intergovernmental Relations. However, what is the record on us as a House resolving such matters?

As we speak today, I saw a news flash yesterday that Nyamira has, again disrupted the County Assembly. Remember the matter that we had here before us. Either eight or 10 MCAs were expelled yesterday, meaning we have never been able to resolve these issues.

Our colleagues that serve in the Committee on Devolution and Intergovernmental Relation, I want to request of them, that they treat these matters with the urgency they deserve. I have served in the Committee on Devolution and Intergovernmental relations before. This is one of the premier committees of this House. It is a committee that, on their own volition, anytime you notice a matter of this magnitude in a county, even before an impeachment Motion is brought, we used to visit.

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So, Sen. Abass and the team that serves with you in the Committee on Devolution and Intergovernmental Relations, I want to request that the same way that you have committed and said that there are many issues that you think need to be resolved--- For example, Sen. Fatuma Dullo, our colleague, has raised a very important question; When you tell the County Assembly to go back and follow the right procedure, under which Speaker now? First of all, where will they meet?

There are very serious issues. I want to request Sen. Abass---

(Sen. (Dr.) Khalwale spoke off record)

(Laughter)

The Senate Majority Leader (Sen. Cheruiyot): I have known Sen. (Dr.) Boni Khalwale to be a very decent man. I do not know what has happened to him today. How can he heckle his leader while he is speaking? I would have said something else that Sen. Moses Wetangula once said, but I do not want to say it.

(Sen. Methu spoke off record)

The Senate Majority Leader (Sen. Cheruiyot): No, no, no. I refuse the incitement of the man from Nyandarua. You know, these are political issues and people change their persuasions.

Mr. Speaker, Sir, I heard my good friend, the Senator for Murang'a County say that once you make a vote, there should be a process through which you can unmake it. People change their minds; that is allowed.

I know, for example, that there is no Senator that pushed me and kept on telling me that you need to bring the Impeachment Motion against the former Deputy President, Rigathi Gachagua more than Sen. Joe Nyutu, but by the time the Motion came to the Floor, he had changed his mind.

(Laughter)

So, these things happen. There is no problem, people change their minds.

(Loud consultations)

The Speaker (Hon. Kingi): Senate Majority Leader, please take your seat. There is a point of order directed at you.

Sen. Joe Nyutu: Mr. Speaker, Sir, the Senate Majority Leader is a respectable person having been elected to this House three times. For him to say that I pushed him to move the Motion of impeachment against the former Deputy President Hon. Rigathi Gachagua, there cannot be a worse liar than the Senate Majority Leader.

I have always made my stand known. We---

(Loud consultations)

No, this my right of reply! This my right of reply!

(Loud consultations)

The Speaker (Hon. Kingi): Order, hon. Senators.

Sen. Joe Nyutu, I gave you the opportunity to raise a point of order. First, you need to state under what Standing Order you are rising on.

Sen. Joe Nyutu: Mr. Speaker, Sir, it is Standing Order No.105. It provides that a Senator shall be responsible for the accuracy of any facts that the Senator alleges to be true and may be required to substantiate any such facts instantly.

Mr. Speaker, Sir, following that particular Standing Order, the Senate Majority Leader should go ahead and substantiate and provide evidence that I pushed him. I cannot push the Senate Majority Leader to move any Motion. I am only a first-term Senator.

If I was going to be that powerful, that I can push the Senate Majority Leader to move a particular Motion then, in fact, now if I had that power, I would be pushing him to initiate a Motion to impeach the President. That is what I would push him really hard to do, but of course I know he cannot do that.

So, let the Senate Majority Leader withdraw and apologize to me and to this House for soiling my name and to the people Murang'a who brought me to this particular House and who respect me.

I thank you, Mr. Speaker, Sir.

(Loud consultations)

The Speaker (Hon. Kingi): Order, hon. Senators.

Now, Senate Majority Leader, you have made a certain allegation to the effect that the Senator for Murang'a, Sen. Joe Nyutu, pushed you into filing a Motion of Impeachment against the former Deputy President, an assertion that has been disputed vehemently by the Senator for Murang'a.

Could you please proceed to substantiate that allegation and if you are unable, please, withdraw?

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, how can you allege something against yourself? I said that he pushed me on so many occasions saying: "Bring this damn Motion."

For example----

(Loud consultations)

Mr. Speaker, Sir, can I be protected?

The Speaker (Hon. Kingi): Order, hon. Senators. Allow the Senate Majority Leader to substantiate.

The Senate Majority Leader (Sen. Cheruiyot): Yes. On the day the former Deputy President went to Meru and said there is a Senator who is “talking mud” or in Kiswahili “*anaongea matope*” in referring to the Senator for Murang’a; Sen. Joe Nyutu came fuming into the House and told me, “Have you heard what that man said? Can you bring the Motion to impeach him?”

(Laughter)

On so many other occasions, he talked to me. So, if he talked to me, who do I need to convince and yet, I am talking about myself and the things he told me?

(Laughter)

The Speaker (Hon. Kingi): Now, hon. Senators, we have some serious matters to handle.

Hon. Senators, a conversation that took place between two people; it is the word of the Majority Leader, against the word of the Senator for Murang’a. Certainly, hon. Senators, it is up to you to judge.

The Majority Leader has clearly indicated that this was a conversation between him and the Senator for Murang’a. So, hon. Senators, let that matter rest.

Majority Leader, proceed to conclude moving of the Motion.

The Senate Majority Leader (Sen., Cheruiyot): Thank you, Mr. Speaker, Sir.

Like I have said, people will have the opportunity to determine this matter whichever way they want, but there are very serious issues that the people of Isiolo County are inviting us to arbitrate amongst them.

It would be unfortunate this afternoon, or this evening, if we were to sit down and tell the people of Isiolo that for all the things that you are alleging and that you have brought before us, since we are not satisfied whether you sat or you did not sit, those matters do not matter to us anymore.

I plead with you, dear colleagues, that see the pain of Sen. Dullo. There are certain things she said which personally maybe I am not privy to and I would have wished that she never said so. See beyond the words. See the pain of the people of Isiolo through Sen. Dullo. I do not intend to take long because I believe I have been in this House long enough to know when you have said enough. I can see from the body posture of Prof. Ojienda, that he is telling me to conclude.

Reading the mood of the House, there are many things I would have wished to say. It reaches a point where sometimes as a man, even if you are wooing a woman; you have said everything that you needed to say, then you surrender to the fate of humanity and say, “you have heard what I have said.”

I believe, even if it is fare, I have said to these people. If they choose to “eat the fare” I cannot be blamed any more. I have said everything that I need to say.

Therefore, with those many remarks, I beg to reply and hope that in all that we do, we will find a solution for the people of Isiolo.

Thank you, and God bless the Senate.

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The Speaker (Hon Kingi): Hon. Senators, I direct the Serjeant-at-Arms to ring the division bell for five minutes.

(The Division Bell was rung)

Order, Hon. Senators. The five minutes rung for the Division Bell is a long spent. Kindly take your seats. Serjeant-at-Arms, you may now proceed to lock the door and draw the bars.

(The door was closed and the bars drawn)

Hon. Senators, voting shall be by county delegations as I had already indicated and it shall be electronically. To echo my own words, we are voting on the Motion as to whether there was, indeed, a sitting on the 18th and 26th June, 2025.

If you vote, “Yes”, you are basically saying, there was no sitting. If you vote, “No”, you are saying there was a sitting. If the, “Ayes” carry the day, we are not going to proceed to the second Motion. However, if this Motion is negated, then we will move to the second Motion.

I hope we are clear, so that we avoid mistakes going forward. Now that we are ready and it is clear, I will now proceed to put the question.

(Question put)

Hon. Senators, kindly log out.

(Sen. Madzayo stood at the Bar)

Senator for Kilifi County, you may proceed to your seat.

(Sen. Madzayo walked into the Chamber and sat in his place)

Serjeant-at-Arms, kindly go round and pick any unattended card. Once that exercise is complete, kindly signal. Thank you.

Hon. Senators, kindly log back into the delegate units. Once you have done that, kindly proceed to vote and time starts running from now.

(Hon. Senators proceeded to vote)

(Sen. Abdul Haji stood in his place)

The Speaker (Hon. Kingi): Order, Hon. Senators. Senator for Garissa County, kindly take your seat.

(Sen. Abdul Haji took his seat)

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DIVISION**ELECTRONIC VOTING**

(Question, that now therefore, the Senate resolves to uphold the preliminary issue raised on whether the County Assembly of Isiolo held sittings on 18th June, 2025 and 26th June, 2025, to table, debate, pass and/or vote on the Motion for the proposed removal from office, by impeachment, of Hon. Abdi Ibrahim Hassan, the Governor of Isiolo County put and the Senate proceeded to vote by county delegations)

AYES: Sen. Abass, Wajir County; Sen. Cherarkey, Nandi County; Sen. Chute, Marsabit County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang'a County; Sen. Kathuri, Meru County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kinyua, Laikipia County; Sen. Kisang, Elgeyo Marakwet County; Sen. Lomenen, Turkana County; Sen. Maanzo, Makueni County; Sen. Madzayo, Kilifi County; Sen. Methu, Nyandarua County; Sen. Mungatana, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. (Dr.) Murango, Kirinyaga County; Sen. Murgor, West Pokot County; Sen. Mwaruma, Taita Taveta County; Sen. (Dr.) Oburu, Siaya County; Sen. Ogola, Homa Bay County; Sen. Okiya Omtatah, Busia County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi City County; Sen. Tabitha Keroche, Nakuru County; Sen. Thang'wa, Kiambu County; Sen. (Prof.) Tom Ojienda SC, Kisumu County; Sen. Wafula, Bungoma County; Sen. Wamatinga, Nyeri County; and, Sen. Wambua, Kitui County.

NOES: Sen. Abdul Haji, Garissa County; Sen. Ali Roba, Mandera County; Sen. Boy, Kwale County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Kavindu Muthama, Machakos County; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Mandago, Uasin Gishu County; Sen. Oketch Gicheru, Migori County; and, Sen. Wakili Sigei, Bomet County.

ABSENTIONS: Nil

The Speaker (Hon. Kingi): The results of the division on this Motion are as follows-

AYES: 31

NOES: 12

ABSTENTIONS: Nil

(Question carried by 31 votes to 12)

The Speaker (Hon. Kingi): Now, hon. Senators, as you may recall, in my Communication earlier this afternoon, I made it clear that if the preliminary issue contesting whether the County Assembly of Isiolo held sittings on the 18th June, 2025 and 26th June, 2025 to table, debate, pass and/or vote on the Motion for the proposed removal from office, by impeachment, of the Governor of Isiolo County was to be upheld, these

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impeachment proceedings would terminate forthwith and it would not be necessary to proceed to the Motion or vote on the second preliminary issue as listed in the Supplementary Order Paper.

This Motion having been passed, the impeachment proceedings in the matter of the proposed removal from office of the Governor of Isiolo County have forthwith terminated. The termination of the impeachment proceedings also leads to the lapse, by operation of law, of the three days of special sittings terminating on Thursday the 10th July, 2025, which I had earlier gazetted.

Accordingly, the regular sittings of the Senate pursuant to the Senate Calendar for the Fourth Session, approved on the 19th of February, 2025, shall resume tomorrow, Wednesday 9th of July 2025 at 9.30 a.m. The relevant Order Paper will be prepared and circulated in the usual manner.

Hon. Senators, there is one last matter, which is of grave concern. In the course of our contribution, the Senator for Isiolo County, Sen. Fatuma Dullo, has expressed serious fears about the security situation in Isiolo County. Sen. Dullo has expressed concern particularly that after these impeachment proceedings, neither the County Assembly of Isiolo or herself as the Senator for Isiolo County are safe. The security of all persons is not a matter to be taken lightly. The security of the Senator, similarly, must be assured.

I, therefore, direct that the extract of the HANSARD in relation to the concerns expressed by Sen. Dullo, be obtained by the Office of the Clerk of the Senate and be addressed in a letter to the Inspector General of Police as well as the County Commissioner of Isiolo County for the information and necessary action.

Now, to the Governor, let me offer you unsolicited advice. This is not a win and, therefore, the Senate does not expect you to go out there chest-thumping. This is a postponement of your case. It is a postponement of your hearing. Depending on how you are going to carry yourself from today going forward, that case may never be heard. Similarly, depending on how you are going to behave out there, your case may be back here in a matter of days. It is up to you.

From the little that we have gathered through the preliminary objection, clearly there are cracks on the walls of Isiolo County. If I were you, I would go mend those cracks. I would not bring the walls of Isiolo County, because that is the big fear expressed by the Senator for Isiolo County. We expect that, as the top leader in Isiolo County, you need to have a sitting with your Senator, even if it is through a third party. As the top leader in Isiolo County, you need to mend your relationship with the County Assembly, even if it means through a third party. This is an advice that you may take or leave, but the consequences are there. We do not expect you to go carry out celebrations in Isiolo County because of this verdict that has been handed in by the Senate.

Hon. Senators, having said that, Hon. Senators, kindly be upstanding.

(Hon. Senators stood up in their places)

ADJOURNMENT

The Speaker (Hon. Kingi): Now, having come to the end of the business of the day, the Senate now stands adjourned until tomorrow, Wednesday, 9th July, 2025, at 9.30 a.m.

The Senate rose at 8.59 p.m.