

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 8th July, 2025

Special Sitting

*(Convened via Kenya Gazette Notice
No.8732 of 1st July, 2025)*

*The House met at the Senate Chamber,
Parliament Buildings at 9.07 a.m.*

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

The Speaker (Hon. Kingi): Clerk, do we have quorum?

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

Serjeant-at-Arms, kindly ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

Serjeant-at-Arms, kindly ring the Quorum Bell for another 10 minutes.

(The Quorum Bell was rung)

The Speaker (Hon. Kingi): Order, hon. Senators. We now have quorum. Kindly take your seats, so that we can start the business of the day.

Clerk, you may proceed to call the first Order.

COMMUNICATION FROM THE CHAIR

PRE-HEARING MEETING ON PROPOSED REMOVAL FROM OFFICE,
BY IMPEACHMENT, OF THE GOVERNOR OF ISIOLO COUNTY,
HON. ABDI IBRAHIM HASSAN

The Speaker (Hon. Kingi): Hon. Senators, I have a Communication to make relating to the business of the Senate scheduled for consideration during this solemn Sitting.

You will recall that at the Special Sitting of the Senate held on Monday, 30th June, 2025, I appointed today, Tuesday, 8th July, Wednesday, 9th July and Thursday, 10th July, 2025 as the days when the Senate will hear the charges for the proposed removal from office, by impeachment, of Hon. Abdi Ibrahim Hassan, the Governor of Isiolo County.

Vide *Gazette Notice* No.8732 dated 1st July, 2025, I notified the general public that pursuant to Standing Order No.80(1)(b)(ii) of the Senate Standing Orders, the Senate shall investigate the proposed removal from office, by impeachment, of Hon. Abdi Ibrahim Hassan, the Governor of Isiolo County, in plenary. Consequently, a Hearing Programme has been prepared and appended to the Order Paper of today.

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

Hon. Senators, during the pre-hearing, the parties (if they are present), all members of the public and the media will be expected to withdraw from the Chamber and the galleries, and any form of broadcasting from the chamber shall cease.

Consequently, I now direct the parties (if they are present), members of the public and the media, to withdraw from the Chamber and the galleries, and that any form of broadcast from the Chamber to cease forthwith. In accordance with the Hearing Programme for an Impeachment Hearing in plenary, the open session will commence at 10.00 a.m.

Thank you, Hon. Senators.

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

(The House went into an in-camera session)

(End of in-camera session)

*(Members of the public, the media and the parties
were ushered into the Chamber)*

(The House resumed at 10.35 a.m.)

The Speaker (Hon. Kingi): Order, hon. Senators! Kindly, take your seats.

(Several Senators stood in their places)

Sen. Chute and your team, please, take your seats.

Clerk, you may now proceed to 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**

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

Now, Hon. Senators, ladies and gentlemen, having dispensed with the pre-hearing meeting of the Senators, which was a closed session, it is now time to commence the proceedings of the proposed removal from office, by impeachment, of Hon. Abdi Ibrahim Hassan, the Governor of Isiolo County.

By a letter dated 27th June, 2025, the Speaker of Isiolo County Assembly informed the Speaker of the Senate that at a sitting of the Isiolo County Assembly held on Thursday, 26th June, 2025, the County Assembly of Isiolo approved a Motion for removal from office, by impeachment, of Hon. Abdi Ibrahim Hassan, the Governor of Isiolo County.

The Speaker of the County Assembly of Isiolo also forwarded the following documents to the Senate, being the record of proceedings of the County Assembly and evidence adduced in support of the Impeachment Motion-

(i) Copy of the approved Notice of Motion “the Motion” dated 17th June, 2025, laid on the Table of the Assembly on Wednesday, 18th June, 2025 (Morning Sitting) - Soft copy of the Notice of Motion and exhibits contained in the accompanying flash disk;

(ii) Copy of exhibits laid on the Table of the Assembly on Wednesday, 18th June, 2025 (Morning Sitting) - Video exhibits contained in the accompanying flask disk;

(iii) Order papers for the Assembly Sitzings of Wednesday, 18th June, 2025 (Morning Sitting) and Thursday, 26th June, 2025 (Afternoon Sitting) - Soft copy of the Order Papers are contained in the accompanying flash disk;

(iv) Certified HANSARD reports for the Assembly Sitting of Wednesday, 18th June, 2025 (Morning Sitting) and Thursday, 26th June, 2025, (Afternoon Sitting) - Soft copies of the HANSARD reports are contained in the accompanying flash disk;

(v) Copy of a letter dated 19th June, 2025, notifying the Governor of the Notice of Motion of removal from office by impeachment - A scanned copy of the letter is contained in the accompanying flash disk;

(vi) Certified copy of form for verification of signatures for Members in support of the Motion for removal of the Isiolo County Governor by impeachment, dated 26th

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

June, 2025, made pursuant to the provisions of Standing Order No.65(b) - A scanned copy of the form is contained in the accompanying flash disk.

(vii) Certified copy of the Roll Call Vote on the Motion of Impeachment of the Governor of Isiolo County held during the Assembly sitting of Thursday, 26th June, 2025 - A soft copy of the scanned roll call vote is contained in the accompanying flash disk;

(viii) Flash disk 32GB containing video annexures evidencing the particulars alleged in the Motion, as well as voice adverts on the public participation on the Motion run on various radio stations;

(ix) Pictures and videos of various public participation forums held on Tuesday, 24th June, 2025, are contained in the accompanying flash disk;

(x) Copy of a public participation report dated 25th June, 2025, laid on the Table of the Assembly on Thursday, 26th June, 2025 (Afternoon Sitting) - A scanned copy of the report is contained in the accompanying flash disk;

(xi) Written or printed memoranda from the different wards and regions submitted to the County Assembly during the public participation exercise on the Motion submitted both in support and against the Motion. The memorandum include submissions received by email - Minutes, attendance registration sheets and registration forms for memoranda of the public participation forum held on Tuesday, 24th June, 2025, are contained in the accompanying flash disk; and,

(xii) Soft copy of the Second Edition Standing Orders of the County Assembly of Isiolo is contained in the accompanying flash disk.

(Several Hon. Senators stood at the Bar)

Hon. Senators, you may walk in and take your seats.

(Hon. Senators walked into the Chamber and took their seats)

Pursuant to Section 33(3)(b) of the County Governments Act and Standing Order No.80(1)(a) of the Senate Standing Orders, at a Special Sitting of the Senate held on Monday, 30th June, 2025, the charges against the Governor of Isiolo County, as contained in the Motion of Impeachment by the County Assembly of Isiolo, were read to the assembled Senate.

Hon. Senators, as you are aware, the mandate of the Senate in relation to the proposed removal, by impeachment, of a County Governor is provided under Article 181 of the Constitution as read together with Section 33 of the County Governments Act, 2012, and Standing Order No.80 of the Senate Standing Orders.

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

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

- (a) gross violation of the Constitution or any other law;
- (b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;
- (c) abuse of office or gross misconduct; or

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

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

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

Section 33 of the County Governments Act, 2012, Senate Standing Order No.80 and the Third Schedule to the Senate Standing Orders provide for the procedure to be followed in the hearing and determination of the proposed removal from office, by impeachment, of a governor. Specifically, Section 33(3) and Standing Order No. 80(1)(b) of the Senate provide that the Senate may either, by resolution, appoint a Special Committee comprising 11 of its Members to investigate the matter; or investigate the matter in plenary.

Hon. Senators will recall that at the Special Sitting of the Senate held on Monday, 30th June, 2025, the Motion for the establishment of a Special Committee was deemed to have been withdrawn pursuant to Standing Order No.70. This paved the way for the default position, the hearing of the impeachment charges against the Governor of Isiolo County to be held in plenary.

Hon. Senators, by way of a status update, pursuant to Rules 4(a) and 6 of the Rules of Procedure, when considering the proposed removal of a governor in plenary, the Senate invited the Governor to appear and be represented before the Senate during its investigation. The Senate further invited the Governor, if he so chooses to appear before the Senate, to file an answer to the charges with the Office of the Clerk of the Senate by 5.00 p.m. on Friday, 4th July, 2025, setting out the following-

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

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

The County Assembly was further invited, if it so chooses to appear before the Senate, to file with the Office of the Clerk of the Senate by 5.00 p.m. on Friday, 4th July, 2025, documentation-

- (i) Designating the MCAs, being not more than three Members, if any, who shall attend and represent the Assembly in the proceedings before the Senate;
- (ii) Indicating the mode of appearance before the Senate; whether in person, by advocate, or in person and by advocate;
- (iii) Indicating the names and addresses of the persons to be called as witnesses, if any, and witness statements containing a summary of the evidence to be presented by such witnesses before the Senate; and,

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

(iv) Specifying any other evidence to be relied on.

On Friday, 4th July, 2025, the Office of the Clerk of the Senate, received a response, Ref. No.TW/LIT/027/2025, dated 4th July, 2025, to the invitation to appear issued to the Governor, from M/s Theuri Wesonga and Company Advocates, who indicated that the Governor had appointed the firm to represent him in the hearing before the Senate and that the Governor would also appear in person and by advocates. The letter also indicated the list of counsel representing the Governor and the list of witnesses for the Governor.

Similarly, on the same day, the Office of the Clerk of the Senate received a response, Ref. No.1/CA/1-001/ab/25, dated 4th July, 2025, to the invitation to appear issued to the County Assembly of Isiolo, from M/s Alex and Boniface Advocates, who indicated that the County Assembly of Isiolo had appointed the firm to represent the County Assembly in the hearing; and that the County Assembly would equally appear in person and by advocates. The letter also indicated the list of counsel representing the County Assembly and the list of witnesses for the County Assembly.

Pursuant to Rule Eight of the Rules of Procedure, when considering the proposed removal of a governor in plenary, the Clerk of the Senate furnished each party with the documentation filed by the other party in accordance with Rules Six and Seven of the Rules of Procedure.

Hon. Senators, the hearing programme, which has been appended to today's Order Paper, details the various activities in the hearing and determination of the matter and the time allocated to each activity. It will be crucial that all parties comply with the time allocated. The parties should keep track of the balance of time on each activity displayed through the digital cloaks.

In summary, the programme states that today, Tuesday, 8th July, 2025, after we have dispensed with the preliminary matters, the charges against the Governor shall be read. The Governor will be given an opportunity to take a plea on each charge. This will be followed by an opening statement by the County Assembly and thereafter by the Governor. After the conclusion of the opening statements, the presentation of the case of the County Assembly shall commence and shall not exceed five hours.

At the sitting scheduled for tomorrow, Wednesday, 9th July, 2025, Hon. Senators will be given an opportunity to ask questions or seek clarifications from the County Assembly. Thereafter, the Governor will have an opportunity to present his case before the Senate. The presentation shall also not exceed five hours. Hon. Senators will also be given an opportunity to ask questions or seek clarifications from the Governor.

At the sitting schedule for Thursday, 10th July, 2025, the closing statements about the parties will be made for a period not exceeding one hour each. The Senate shall then proceed to a debate prior to voting on each of the charges. At this stage, a Supplementary Order Paper will be published to facilitate this debate.

In accordance with Section 33(7) of the County Governments Act, 2012, and Standing Order No.80(6) of the Senate Standing Orders, the voting shall be by county delegations. The Governor shall cease to hold office if a majority of the county delegations in the Senate vote to uphold any impeachment charge. If, however, the vote in the Senate fails to result in the removal of the Governor, pursuant to Standing Order

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

No.80(7), the Speaker of the Senate shall notify the Speaker of the Isiolo County Assembly accordingly.

Now, Hon. Senators, I now invite Counsel for the County Assembly of Isiolo to introduce the legal team of the County Assembly and the Members of the County Assembly of Isiolo representing the County Assembly by stating the full name and designation of each person.

Counsel, you may proceed. Introductions only.

INTRODUCTION BY THE COUNTY
ASSEMBLY OF ISIOLO TEAM

Mr. Paul Nyamodi: Thank you very much, Mr. Speaker, Sir. The legal team for the County Assembly of Isiolo is comprised as follows-

- (1) Dr. Ekuru Aukot - Advocate;
- (2) Mr. Mwereru Boniface Mawira - Advocate;
- (3) Mr. Mwirigi Erick Muriuki - Advocate;
- (4) Mr. Jamal Abdikadir - Advocate;
- (5) Mr. Kyalo Kennedy Maweu - Advocate;
- (6) Mr. Paul Wafula - Advocate;
- (7) Mr. Kosgei Alvin Kemboi - Advocate;
- (8) Ms. Diana Nyaboke - Advocate;
- (9) Mr. Mugambi Mutua - Advocate;
- (10) Mr. Hussein Roba - Advocate;
- (11) Mr. Derick Kambo - Advocate; and,
- (12) Ms. Aromo Marion - Advocate.

Mr. Speaker, Sir, I lead that legal team.

The County Assembly is represented by the following Members. I am sorry, my name is Paul Nyamodi. Please, excuse me for that.

The Assembly is represented by the following members-

- (1) Hon. Abubakar Abdi Godana, MCA;
- (2) Hon. Lemantile David Ltirisian, MCA;
- (3) Hon. Lorot Ewoton, MCA;
- (4) Hon. Peter Loyan, MCA;
- (5) Hon. Anab Kasim, MCA; and
- (6) Hon. Abdirahman Ibrahim, MCA.

Thank you very much, Mr. Speaker, Sir.

(Sen. Wamatinga stood at his place)

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

Hon. Senators, I now similarly invite Counsel for the Governor to introduce the legal team representing the Governor by stating the full name and designation of each person.

You may proceed, Counsel.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

INTRODUCTION BY THE ISIOLO COUNTY
GOVERNOR'S TEAM

Mr. Eric Theuri: Hon. Speaker, Sir, on behalf of the Governor of Isiolo County, we have the following team of advocates. We have-

- (1) Mr. Elisha Ongoya - Advocate who is leading the team;
- (2) Mr. Eric Theuri - Advocate;
- (3) Mr. Elias Mutuma - Advocate;
- (4) Mr. Tali Israel Tali - Advocate;
- (5) Mr. Marcelino Leisagor - Advocate;
- (6) Ms. Miriam Rebbecca Abong - Advocate;
- (7) Ms. Ruth Kiunga - Advocate;
- (8) Ms. Nura Abdulkadir Nura - Advocate;
- (9) Mr. Brian Lee Maingi - Legal Assistant;
- (10) Mr. Brian Gathii - Legal Assistant; and,
- (11) Mr. Ali Fila - Legal Assistant.

Hon. Speaker, Sir, I believe you limited us to introductions of the advocate.

Thank you.

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

Now, Hon. Senators, on behalf of the Senate, I welcome the team for the County Assembly, the team for the Governor, members of public and the media to this Senate and to these proceedings.

Finally, I now invite the Clerk to call the next Order, and thereafter read the charges against the Hon. Abdi Ibrahim Hassan, the Governor of Isiolo County.

Clerk, you may proceed.

READING OF THE CHARGES AGAINST
THE GOVERNOR OF ISIOLO COUNTY

The Clerk of the Senate (Mr. Nyegenye): The Hon. Abdi Ibrahim Hassan, the Governor of Isiolo County, please, take the stand.

(Hon. Abdi Ibrahim Hassan took the stand)

Hon. Abdi Ibrahim Hassan, the Governor of Isiolo County, the charges against you as received from the County Assembly of Isiolo are as follows, and I quote-

Ground 1: Gross Violation of the Constitution and other laws

(1) The Governor has grossly violated section 30(2)(k) of the County Governments Act by failing to deliver an annual state of the county address for the three years that he has been in office.

(2) The Governor has grossly violated Articles 201(d) and (e) of the Constitution by employing a bloated workforce, including 36 advisors in the Office of the Governor, 31 chief officers, yet the county has only six departments, and two deputy county secretaries whose positions are not known in law. This has created an excessive wage bill that is 46

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

per cent of the annual revenue allocation, far beyond the 35 per cent limit set by section 25(1)(a) and (b) of the Public Finance Management (County Governments) Regulations, 2015.

(3) The Governor has grossly violated Articles 10(2), 73, 232 and 235 of the Constitution; and sections 59, 59A, 60 and 62 of the County Governments Act, 2012 by disregarding the criteria for the establishment of offices within the county public service by illegally creating offices for advisors and deputy county secretaries without the involvement of the County Public Service Board.

(4) The Governor has grossly violated Articles 10(2), 185, and 201 of the Constitution by refusing to implement the recommendations and/or resolutions of the County Assembly requiring the Governor to control and manage the county public debt in a manner that undermines the authority of the County Assembly thus resulting in unmitigated accrual of debt to unmanageable levels.

(5) The Governor has grossly violated Articles 201(d) and (e) of the Constitution by failing to utilise bursary funds in accordance with the approved budget, resulting in a discrepancy of Kshs30,000,000, which cannot be accounted for.

Ground 2: Abuse of office

(6) The Governor has engaged in acts and omissions which singularly and collectively amount to abuse of office and gross violation of, among others, Articles 201 and 232 of the Constitution, Sections 8, 9, 10, 11, 12, 13(1) and 35 of the Leadership and Integrity Act, 2012, by the following-

(a) appointing 36 advisors in the Office of the Governor contrary to the Salaries and Remuneration Commission (SRC) Circular dated 29th July, 2013, the Transition Authority (TA) Circular dated 6th September, 2013 and subsequent guidelines from the Intergovernmental Relations Technical Committee (IGRTC), all of which limit the maximum number of advisors to 3;

(b) appointing 31 Chief Officers (COs) instead of 18, which are provided for in the County Executive staff establishment of July, 2022, yet the county has only six departments;

(c) appointing Chief Officers under two-year contracts, thus creating a climate of fear and uncertainty which reduces public servants to be servants of the Governor and not the people, contrary to Article 73(1)(b) of the Constitution. The Governor failed to renew the contracts of thirty-one (31) COs, and instead directed them to hand over to County Executive Committee (CEC) Members, significantly affecting the continuity of service delivery in the County; and,

(d) appointing two Deputy County Secretaries, which positions are not known in law and are not in the County Staff Establishment.

Ground 3: Gross Misconduct

(7) The Governor has grossly violated (i) Articles 10(2), 27, 28, 73, 75 and 232 of the Constitution; (ii) Sections 3, 7, 8, 9, 11, 34 and 52 of the Leadership and Integrity Act; (iii) Sections 9, 10 and 21(2) of the Public Officer Ethics Act, 2003; (iv) Sections 2, 30(2) and 30(3) of the County Governments Act by engaging in acts which singularly and collectively amount to gross misconduct by the following-

(a) making disrespectful, sexist and demeaning statements against Sen. Fatuma Adan Dullo, MP publicly that are only meant to denigrate and degrade her as a woman leader, thus violating her right to dignity. The Governor's utterances do not demonstrate respect for the people and other public officers, nor do they bring honour, dignity or maintain public confidence in the office he holds. The Governor's statements amount to gender-based psychological violence and undermine the dignity and the integrity of the Governor's office;

(b) breaching public trust by making divisive, derogatory and discriminatory remarks against other clans residing in the County, thus undermining public confidence in the integrity of his office and sowing discord in the community; and,

(c) being continuously absent from the county and running its affairs remotely from Nairobi, thus stalling service delivery.

Hon. Abdi Ibrahim Hassan, how do you plead to the three grounds? Ground one, guilty or not guilty?

The Governor of Isiolo County (Hon. Abdi Ibrahim Hassan): I plead not guilty.

The Clerk of the Senate (Mr. Nyegenye): Ground two, guilty or not guilty?

The Governor of Isiolo County (Hon. Abdi Ibrahim Hassan): I plead not guilty.

The Clerk of the Senate (Mr. Nyegenye): Ground three, guilty or not guilty?

The Governor of Isiolo County (Hon. Abdi Ibrahim Hassan): I plead not guilty.

The Speaker (Hon Kingi): Next Order, Clerk.

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

Now, hon. Senators and the parties to this impeachment proceedings, before we embark on the main hearing, Rule No.14 of the Rules of Procedure demands that if there are any preliminary issues, they be raised at this juncture. So, if there is any party that has any preliminary issue, this is the moment to raise it.

PRELIMINARY MATTERS AND OBJECTIONS

OBJECTION TO PROCEED WITH IMPEACHMENT PROCESS DUE TO COURT PROCESSES AND PROCEDURAL ISSUES

Mr. Eric Theuri: Mr. Speaker, Sir, we had given an indication to the Senate that we intend to raise two issues for the consideration of the Senate. The issue is contained in Volume No.1 of the documents that we filed in response. We filed several documents, but Volume No.1 contains the preliminary issue that we intend to raise on the Speaker. With your leave, I can then quickly delve into that question.

Mr. Speaker, Sir, we noted from the order of proceedings that was supplied by the Senate, that this session will take about two hours, with one hour on our side. I propose to take about 30 minutes or less, introducing the first limb of the preliminary issue we intend to raise. Thereafter, my colleague, Mr. Elisha Ongoya, will take 20 minutes. I will

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

reserve 10 minutes for any rejoinders, which will be handled by our colleague, Mr. Elias Mutuma.

Mr. Speaker, Sir, and hon. Senators, with your permission, we would then move to raise the preliminary question.

The Speaker (Hon Kingi): Are you saying you require one hour for preliminary question? What you are saying is that you require one hour to effectively move your preliminary issue?

Mr. Eric Theuri: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Okay. I will grant you one hour and also grant the County Assembly one hour to respond to your preliminary issues.

You may proceed and time starts running from now.

Mr. Eric Theuri: Thank you, Mr. Speaker, Sir.

Mr. Speaker Sir, on the 26th June, 2025, the Speaker of the County Assembly of Isiolo issued a press communication at around 3.00 p.m. announcing that the County Assembly had resolved to impeach the Hon. Abdi Ibrahim Hassan, the Governor of Isiolo County. This communication will be found in Bundle No.3 of our volumes, that is Volume No.3, at pages two, three, four and five.

This release is significant in these proceedings as it marks, in our view, the announcement of a phantom impeachment of the Governor. We will shortly demonstrate the salient gaps and schemes and hopefully persuade the Senate to reject this phantom impeachment.

The press release by the Speaker of the County Government of Isiolo triggers a very important question, and that is the question upon which our first limb of the preliminary objection stands: What is in law, a resolution of the county assembly?

The County Assembly of Isiolo Standing Orders and specifically Standing Order No.65(8) provides that when a Motion for the removal of the governor is passed by at least two-thirds of all the members of the assembly, the Speaker shall inform the Speaker of the Senate of that resolution within two days. You will find this resolution from the County Assembly in the Assembly's Volume No.3 at page 100.

It is our submission that for the power of the Senate to be invoked under Standing Order No.80, the Speaker of the Senate must receive a resolution from the Speaker of the County Assembly. Therefore, there is a test that is two-fold. The first test is that there is a resolution and the next is that it is supported by two-thirds of the Members of the County Assembly.

In forwarding this resolution, the Senate Standing Orders, the Third Schedule of the Standing Orders and the Senate Guide Manual on the procedure and rules for removal of county governments developed in 2025, require certain documents to be submitted together with the resolution. That is: the Impeachment Motion, the County Assembly HANSARD, the Division of voters list, the advertisement of the summons to the governor, the list of witnesses of advocates, the list of advocates, list of witnesses, records and videos and other evidence. It is our submission that this requirement has a good purpose and it now fits into the preliminary objection or the preliminary issue that we raise.

I will then invite you to examine the documents that were presented alongside the resolution from the Speaker of the Isiolo County Assembly in support of the fact that there was a resolution adopted by the Assembly to remove the Governor.

I will refer the Senate to the County Assembly documents, and that is at Volume No.3 of the County Assembly documents, pages one to six, which has the Order Paper of the 18th June, 2025, and that Order Paper ultimately indicates that the Motion for the removal of the Governor was adjourned to Thursday, 26th June, 2025 at 2.30 p.m. That time is extremely material to these proceedings.

The HANSARD of 18th June, 2025 at pages seven to 14, that is still Volume No.3 of the County Assembly documents, indicates that the proceedings for removal of the Governor were also adjourned to the 26th June, 2025 at 2.30 p.m. At pages 15 and 16, that is still Volume No.3, there is an invitation to the Governor to attend. That invitation invites the Governor to attend the County Assembly on the 26th June, 2025, at 9.00 a.m.

Volume No.5 of the County Assembly's documents at pages three and four contains the Affidavit of Service of that invitation served by the Speaker. So, there is no doubt whatsoever that the Governor is invited to appear at 9.00 a.m. on 26th June, 2025.

The Speaker in Volume No.5 also presents a document for the special sitting of the Assembly. It is dated 23rd June, 2025 and that sitting is indicated to commence at 9.00 a.m. It is, therefore, not in any doubt that the Assembly set the hearing of the Motion for 9.00 a.m. on 26th June, 2025.

I now refer the Hon. Senate to the Standing Orders of the County Assembly of Isiolo and specifically, Standing Order No.1. It is found at Volume No.3, pages 85 and 86 on the times set for the sitting of the County Assembly; that is, 9.00 a.m. for Wednesdays and 2.30 p.m. for Tuesdays, Wednesdays and Thursdays. I do not need to say this because you are familiar with these times.

It therefore follows that if the County Assembly is to meet at any other time other than as set out in the Standing Orders, there must be a resolution to that effect. So, therefore, the logical question that we are asking the Senate is this: Is the HANSARD genuine? The HANSARD talks about a sitting conducted at 2.30 p.m., that is in line with the Standing Orders, but the notices, the invitation and the Special Sitting issued by the Speaker talk about a sitting to be conducted at 9.00 a.m.

So, therefore, Hon. Speaker and Hon. Senators, we invite you, the Senate, to take note of the above and then allow us to also review the HANSARD that is provided. You probably understand the HANSARD much better than we do. I refer you to the HANSARD of 18th June, 2025, which clearly shows that the County Assembly was adjourned to 26th of June at 2.30 p.m. I refer you to Volume No.3 still of the Assembly's documentation.

The issues that you will note when you review the HANSARD is that, first of all, it is not certified by the Clerk as is required. It just bears a stamp. It is, therefore, our submission that these latent, open, obvious and blatant contradictions and anomalies between the HANSARD and other records provided by the Assembly are major indicators not only of misrepresentation, but that the documents presented by the Assembly have been cooked and generated outside the Assembly.

This is further supported by the testimonies of the witnesses, which will be found at Volume No.2 of the Governor's response at page 14, where we have the affidavit of Salad Boru Guracha, who was the Clerk of the Assembly, who confirms that there was no sitting of the Assembly on either date.

There is an affidavit by the Leader of Majority, Jiba Ali, at pages 41 to 45, who confirms there was no sitting of the House Business Committee (HBC) to deliberate and set out the Order Papers. Further, we have the affidavit of Shaban Mzungu, who was in charge of security at the Assembly on that particular day, and he confirms that there was no sitting of the Assembly.

Hon. Speaker and Senators, we expect that the Assembly will try to persuade you that the issues we raise are not preliminary and they require a full evidentiary hearing. Allow me to refer you to the Assembly's submissions on the preliminary objection, because they have filed submissions and they have courted a decision.

Jurisprudence from the courts is that a preliminary question is determined on the presumption that the facts pleaded are true. The facts that we are raising are the facts that have been pleaded by the Assembly. That preliminary issue, when determined, may as well as dispose of the suit. It is for that reason that we raise it as a preliminary issue, because if this honorable House was to find that there was no sitting of the Assembly, then we cannot proceed with the hearing of the impeachment Motion.

So, we submit that these questions that we have raised satisfy this threshold, and we invite the Senate to look at the facts that have been pleaded by the Assembly and the documents that have been provided, and agree with us that this is a case of a phantom impeachment.

Finally, with one eye on the clock, we submit that this is a hallowed process. It is not just about whether the grounds set out in Article 181 of the Constitution have been met. If the Senate is to examine whether there was a valid resolution and agree with us that the documents that have been presented are forged and cooked, this phantom impeachment amounts to an affront on the Constitution. It sets a very dangerous precedent because it means that it is possible for the Speaker and a few Members of a rogue Assembly to, in a way, attempt a coup, sit somewhere, cook documents and present it to the Senate, and the Senate will then hear that matter. That, in itself, will be a violation of the Constitution, because this Senate has a mandate to protect devolution and the counties. That is the danger that we face in these phantom impeachment proceedings.

Hon. Senators, the impeachment proceedings not only put the Governor on trial. It does the same for the Constitution, the Senate, Members of the County Assembly, for the witnesses, for the lawyers on either side, and ultimately, the Kenyan people.

It is our humble submission that the Kenyan people vested the power of impeachment in the Senate, because they expected that the Senators had special qualities, numbers and temperament to rise to the occasion, and we urge this House to rise to that occasion.

Finally, before I cede ground to my fellow Counsel, allow me to just remind you of the words of Alexander Hamilton, one of the founders of the American Constitution, on the power and the question of impeachment. Hamilton explained that the Senators were seen as the ideal arbiters in an impeachment process, because the Senate would be a

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

tribunal sufficiently dignified and independent of the actual interests aligned in the subject of an impeachment.

We urge this House to rise to this occasion. We respectively urge the Senate to review the material that we have provided and find that there was no sitting of the Assembly that gave rise to the resolution that is before you for consideration. I thank you for the opportunity you have accorded us to address you on this issue and invite my senior, Mr. Elisha Ongoya, to take us on the second limb of our preliminary issue.

Mr. Elisha Ongoya: Thank you Mr. Speaker, and thank you, distinguished Senators. As indicated, my name is Elisha Ongoya, Lead Counsel for the Governor.

Before I address you on another substantive preliminary question on an existing court order touching on these matters, allow me to invite my learned colleague, Mr. Elias Mutuma, to wind up on that issue of the proceedings before the Assembly by drawing your attention to certain salient material aspects of the purported HANSARDS that have been presented before you, so that you have all that in consideration, then I will move to the next subject.

Mr. Elias Mutuma: Thank you, Mr. Speaker, Sir. The Counsel representing the County Assembly will be here shortly to try and convince you that what we have raised is not a preliminary objection, but requires an interrogation by way of listening to witnesses and making a determination based on what they will say.

Our submission is simple, that what we have raised is a pure preliminary objection that can be addressed and determined based on what has been presented by the County Assembly of Isiolo.

My understanding of HANSARD records is that they are a verbatim record of what transpires in the House proceedings. Therefore, they are able to tell us exactly what happened on the day that that Motion is said to have been passed. We have raised an issue with proceedings that are said to have taken place on 18th June, 2025 and 26th June, 2025.

Hon. Senators, with your kind permission, kindly hold your Volume No.3 of the County Assembly's documents. I will take a very short time to take you through the HANSARD. This being a House that is also very much familiar with proceedings of the House, you will be able to tell me whether there is anything that took place there.

At page seven of that bundle, we have been presented with what is said to be the proceedings of 18th June, 2025. We see the House purportedly sitting for the first time. There is no communication from the Chair. There is no calling of Orders by the Clerk. Straightaway, the Mover of the Motion proceeds to execute the business of the day. Look at it; it is straightaway withdrawal of the Motion on the impeachment of Isiolo County Government dated 10th June, 2025. What does it begin with, "Hon. Abubakar Godana."

Hon. Senators, who presided over this sitting? There is no invitation from the Speaker for the mover of the Motion to proceed and execute the business of the day.

Let us proceed. Hon. Abubakar Godana proceeds and proposes a Motion to withdraw the previous Motion. He invites two Members of the County Assembly (MCAs); Hon. Nicholas Lorot and Hon. David Nyoro, to second the motion. Without

again the intervention of the Speaker, these two members rise and they proceed to second the motion. Who invites them to the Floor? Who is presiding over this House?

Let us go on. The two Members support the withdrawal of the Motion and the Speaker is seen for the very first time. There is no question put for Members. There is no vote that has taken place. However, the Speaker proceeds to say-

“Members, the notice of the Special Motion on the Removal from Office, by Impeachment, of the Governor of Isiolo County, issued on Tuesday, 10th June, 2025 has been officially removed as requested by the Mover, Hon. Abubakar, Member for Sericho Ward. We now proceed to the next business.”

So, who approved this withdrawal? Where is the vote?

Hon. Senators, we proceed to the HANSARD of 26th when the Governor is being purportedly impeached. That is at page 23 of the same document. There is a Communication from the Chair. The first order of business, you will come across the Order Paper at page 17, where we have a total of eight orders of the day. However, when you go to page 23, we do not see the Clerk calling out the Orders. Just look at it. It is the Speaker directly proceeding to make a communication. Is that an anomaly, hon. Senators? We are all familiar with the business of the day.

What intrigues me more is that the first order of the day here is to lay on the table the purported public participation report, which is done by hon. David Lemantile, allegedly. He prosecutes his Motion and argues on the public participation.

Let us go to the end at page 31. Before that, let us go to page 30, where he completes his submissions. After laying the paper on public participation, we now see Hon. Peter Losu standing up to second this Motion. Who has invited him to second this Motion? Out of nowhere, he is not invited by anyone, but the HANSARD shows that he rose to second this Motion, and then the Speaker proposes the question and opens the floor to the Members of the House.

At page 31, the last Member seen to be speaking is Hon. Francisco Letimalo. The Speaker now puts the question. So, what happens after the question was put, hon. Senators? There is no record whatsoever of what transpired. Nothing. A question is put. There is no indication that the House actually endorsed the public participation report. That HANSARD is left hanging.

Hon. Senators, after that paper is laid, the Speaker does not even call for the next order. The Clerk is not seen anywhere calling for the next order. Instead, what do we see? Hon. Abubakar Godana is seen now on the floor.

HANSARDS are supposed to be capturing verbatim what transpired. So, who was in charge of this House? Where is the Speaker's recording inviting the Mover of the Motion to move the Motion? Where is the recording of the Clerk calling for the next order? There is nothing. Instead, we just see someone on the floor prosecuting the Motion and he proceeds and proceeds.

At page 35, he is done. Strangely, the first paragraph at the top of page 35, when he completes to execute his Motion, he does not invite anyone to even second. Records are there. However, we see one Hon. Major Goricha now standing up to second the Motion. Who has invited him? There is no one.

Strangely now, the House is suddenly in an autopilot. From Hon. Major, then we see the Speaker opening the Floor. You have Hon. Peter Losu. He continues. Without the intervention of the Speaker, there is another Member, Hon. Salesio Kiambi, who proceeds, as if the Speaker and the Clerk are not in the House.

Another Member just rises up from nowhere. There is no recording of the Speaker inviting any Member to make a contribution to this Motion, apart from, of course, page 39, when suddenly the person ‘cooking’ this HANSARD realizes the Speaker has not been captured in this. Now, we see the Speaker for the first time.

In conclusion, because I do not want to take more time on this since my senior is going to take time to address you on the other issue, look at page 41. After the Members purportedly complete to make their submissions, the Speaker makes very strange remarks and I quote-

“Clerk, is the Governor or his legal representative available? Serjeant-at-Arms, can you check around if the Governor or his legal representative are present?”

The Speaker does not even take time to communicate to the House whether the Governor had been invited. He does not even read that invitation notice as required. So, why is he calling for the Governor, whom learned counsel had told you was invited to appear at 9.00 a.m. and we are at 12 o'clock? The Speaker is not seen anywhere saying that we invited the Governor vide this letter and he has not come, but instead asked the clerk to check whether the Governor is available anywhere.

Let us proceed, I am concluding. This is going to shock you. When the Governor was confirmed not to be in the House, the Speaker proceeds to guide the House on the next move. At the end of that page 41, I read what the Speaker says. I am reading the last part.

“When the doors have been locked, the bar drawn and the names of the tellers have been announced, the Speaker shall put the question again in the presence of the tellers. When called out, each Member shall thereupon rise in his or her place and declare assent or dissent to the question in the following manner; I vote ‘yes’ or I vote ‘nay.’

It proceeds on page 42. Where does the Speaker put that question to the Members of the House present? There is no question put whatsoever. She has just told them that he needs to put that question again. There is no question put. So, what were these Members voting for or against? There is no question put. We then need to sit here and invite witnesses on the stand to demonstrate that there were no proceedings that took place on 26th and 18th. I rest my case.

Mr. Elisha Ongoya: Thank you, Mr. Speaker and distinguished Senators. I will proceed to argue the final limb of the objection, but just to cap up what my learned colleagues have told you, that before you is a purported HANSARD in the form and content that you have been taken through. If before you is a purported HANSARD that no one has taken the courage of his or her conviction to certify, if somebody brought before this House a HANSARD that is not certified, because certification is done by a particular officer whose signature we can tell, is what is before you a HANSARD of the County Assembly of Isiolo or a mere piece of paper?

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

If we conclude, as I invite you to, that what is before you is a mere piece of paper to the extent that it is not certified, can we take any other proceedings on the strength of that mere piece of paper? That is what makes this issue a proper preliminary objection for resolution one way or the other before we can go into the trial.

Secondly is the issue of the order of the court. I want to address this issue as follows. We are guided by the Constitution and other laws, the Standing Orders and to an extent, the manuals that this House publishes from time to time, to inform both these Members and the members of the public who interact with this House.

My research has revealed that the latest manual issued by this House is a manual entitled *“Removal from Office of County Governors and Deputy County Governors through Impeachment, an easy-to-use manual on the procedures and rules”*. That manual, on the face of it, was published by the Directorate of Legal Services and the Senate Liaison Office in the year 2025, which is this year. Part three of that manual is entitled *“Judicial Proceedings against Impeachment”*. This is the position this House has communicated in that manual at page 60, which is the very last page of that manual.

There are two subtitles at page 60 of that manual. Subtitle one, *Comply with Court Orders*. It says-

“Parliamentary Privilege and Immunity and the Principle of Separation of Powers do not shield the county assemblies and the Senate from court orders. When court orders are issued, they are binding on the County Assembly and the Senate and must be complied with. Failure to comply with court orders may result in the invalidation of the entire process of impeachment by the courts.”

The second subtitle is *“Participate Actively in Court Proceedings”*. This Senate has communicated to us through this manual that ignoring court orders against the County Assembly or the Senate is not the solution. If court orders are issued against a County Assembly or the Senate, the most preferable option is to participate actively in the court proceedings. The County Assembly or the Senate may apply for review of the court orders or appeal to the next court for variation or the setting aside of the court orders. That is the manual that this House has published as late as this year.

Allow me to make the following submissions then. The existence of the orders of court I am going to refer to is not a disputed fact. It is a fact admitted by the County Assembly in their written submissions. The existence of these orders is not a contested issue. It not being contested, it follows therefore that this Senate can proceed right away to resolve the question of the impact of those orders without investigating whether they exist or not. This is because between the parties, it is an admitted fact.

Allow me to begin by referring this Senate to an earlier ruling of the Speaker of the then only House of Parliament, which was the National Assembly, before the new Constitution. This was the ruling by Speaker Kenneth Otieno Marende on the question of nominations of Chief Justice, Attorney General, Director of Public Prosecutions and Controller of Budget. That ruling was made on the 17th of February 2011. You will find that ruling starting at page 165 of Volume No.IV of the Governor's documents.

The relevant Part I will refer to in the interest of time is at page 168 of that volume; Volume No.IV of the Governor's response. At page 168 is a continuation of that

ruling of the then Speaker of the National Assembly, Hon. Kenneth Otiato Marende. He says, and I quote-

“Hon. Members, between the time when Mr. Imanyara first raised the matter and now, I have had the benefit of considering a range of material addressing the various aspects of the matter. Specifically, I have benefited from, among others, the position taken by the Judicial Service Commission, the Commission on Implementation of the Constitution and the Law Society of Kenya. I have also carefully read and considered the ruling of the High Court relating to the matter of nominations, which was delivered on 3rd February 2011.”

I had the rare privilege of participating in that court proceeding. The first three of these bodies are constitutional or statutory and their views on matters of law, though not binding to this House, are of significant persuasive value.

As for the ruling of the High Court, despite my restatement of the constitutional relationship between the legislature and the judiciary; I have repeatedly emphasized that while subsisting judicial decisions cannot restrain the legislature - that is important to us because I am addressing this issue - from the discharge of its functions, are of binding persuasive value and should not restrain the legislature from the discharge of its functions and are of binding effect and may have a bearing on the products emanating from this House.

The learned Hon. Justice Musinga in his ruling in the above case found that the nomination of the Chief Justice was unconstitutional, for it was not in accordance with Article 166 of the Constitution.

I will then proceed to page 169 of that Volume in the interest of time, the third paragraph starting with “honorable Members”.

“Although I have read that this court decision does not stop the National Assembly from proceeding with its work and cannot determine for the House how to proceed; it must be noted, as matters currently stand, that any decision made by this House on the nomination, though perfectly procedural from the point of view of the legislature, outside the legislature, it is to the extent that it does not accord with the ruling of the court, null and void for all purposes.”

That is the guidance that Hon. Marende makes.

Mr. Speaker, Sir, allow me to come to the specific ruling that we wish to draw this Senate's attention to. I refer you to Volume No.4.

(Mr. Elisha Ongoya was given a different portable microphone)

Thank you, Mr. Speaker, Sir. As someone who has been here multiple times, I am always impressed by the support we get from the administrative teams in this Senate. That may have to go on record in the interest of posterity.

At page 13 of Volume No.4 is a decision of the court in Isiolo High Court Constitutional Petition No.A004 of 2025. The parties are Hon. Abdi Ibrahim Hassan, the Governor before you as the Petitioner and the County Assembly of Isiolo, now before you as the First Respondent. There are two other parties in that matter, but it is safe to

highlight that the parties before you are parties in that suit. They are, therefore, bound by the decision of that court.

I will just go straight page 27. You will find that paragraph 28 of that Ruling where the Judge observes as follows-

“It is important to note that there was no complaint raised when the first orders were issued by the court in respect of the Motion dated 10th June, 2025 that was to be debated on 17th June 2025.”

In fact, the sentiments by the Mover of that Motion, the contemnor, vindicates the court as he has in his affidavit, conceded that the Motion was defective in substance and marred with procedural irregularities; the very grounds that the Petitioner has sought to rely on. The Mover of this Motion went and told the court that, it is true that the orders you gave first were right because the Motion I had tabled was marred. It was defective in substance and marred with procedural irregularities.

Allow me to then take you to paragraphs 45, 46, and 47 of that Ruling at page 35 of Volume No.4. In paragraph 45, the Judge says-

“Therefore, it is the finding of this court that the Motion dated 18th June, 2025 and debated by the First 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. A court of law has found that this Motion which has now been brought here before you Senators, is null and void. It is of no legal consequence.

Paragraph 46 has stated that the resolution has evidently been submitted to the Speaker of the Senate. It is thus upon the Senate, once informed of the orders herein, which I am now doing, to determine if it will proceed to handle the said resolution, thus abating a blatant disregard of the rule of law or the respect of orders. The matter at hand calls for a stand to be taken by the constitutional organs involved. What they choose to do will have set a precedent on the necessity for compliance with court orders. It is a choice between anarchy and constitutionalism.

Distinguished Senators, the judge is saying this; I am aware and I cannot stop you from doing your work. He is saying; proceed and go to the Senate. To my mind, that was an extremely wise move by the Judge considering historical pleas for there to be an institutional committee between institutions and to respect the powers of each organ. However, the judge is also saying; you decide for yourselves how you will proceed. I have made a finding that that Motion is null and void and of no effect.

Mr. Speaker, Sir, I will contradistinguish this with other scenarios that the other side will draw your attention to shortly. The judge has not issued a conservatory order against the Senate. The judge has made a determination on the validity of the Motion purportedly debated and purportedly approved by the County Assembly of Isiolo. The Judge has made a determination that it is null and void, and of no legal consequence.

You are being invited to engage with this Motion on that strength of fact and on the strength of the finding by the Judge that the Motion as approved, and as brought before you, is null and void, and of no legal effect. We, therefore, invite you to introspect and make this determination. When the impeachment law calls upon you to determine a

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Motion that has been approved by the County Assembly, is it just any motion or a valid motion? If there is information before you that the Motion is invalid for any reason, what is the precedent that has been set by this Senate?

It is against that background that I wish to draw this Senate's attention to its resolution found from page 136 of Volume No.4 of the Governor's documents. This was the determination of the proposed removal from office by impeachment of the Governor of Kericho County, hon. (Dr.) Erick Kipkoech Mutai.

On that occasion, the validity of the resolution was questioned on the ground that the Motion had not met the threshold. Rightly, this House found that it could not move a step further because the validity of a Motion is an important precondition to the carrying out of the trial process on the Motion.

Mr. Speaker, Sir, similarly, by parity of reasoning, today, the validity of another Motion has been impugned on two grounds. Firstly, there was no sitting known to law of the County Assembly of Isiolo to approve the Motion. Secondly, in any event, a court of competent jurisdiction has made a finding that whatever came from the County Assembly of Isiolo is null and void, and of no legal consequences.

Will you, in the face of the precedents set by previous Speakers' rulings and by the resolution in the case of Kericho County Governor's case proceed to trial on that understanding? We beseech you with humility to find that there is no Motion known to law before you and thereby down your tools.

Mr. Speaker, Sir, I humbly submit and rest the Governor's submissions on that question of the preliminary objections. I reserve our 10 minutes for a rebuttal from this side once the County Assembly has finished their response.

I thank you.

The Speaker (Hon. Kingi): Counsel for the County Assembly, please, proceed.

Mr. Paul Nyamodi: Mr. Speaker, Sir, I will respond to the arguments that have been made by my learned colleagues for the Governor. I am the only member of the team for the County Assembly that will respond to those preliminary issues.

Mr. Speaker, Sir, I am grateful for the opportunity to respond to those preliminary issues. I shall constrain myself to the time that Mr. Speaker has gladly extended our way.

I wish to start my response to those preliminary issues by stating that a preliminary issue, by definition, must be an issue that goes to the ability of this House to entertain the Motion before it. It cannot be an issue that is merely important to the Governor---

Sorry, I cannot see my time.

Thank you.

It cannot be an issue that is merely important to the Governor and who then chooses to bring it forward and deal with it as a preliminary issue. Therefore, it does not go to the ability of this House to hear the Motion before it.

Mr. Speaker, Sir, it is settled that a preliminary issue assumes that the facts are settled. The consideration of what the Governor's counsel purports to be a preliminary issue involves the detailed consideration of evidence.

I was constrained to stand up on my feet and object towards my colleagues who were on their feet because it was apparent that what they were doing for the Governor was leading evidence. They were testifying and referring to contested statements in the panels of both documents and there are responses from the County Assembly in respect of those statements. Those statements must be tested by way of cross-examination and only once the evidence is laid before this House and it is tested, like the Assembly is entitled to do, then can this House make up their minds as to whether or not those issues hold any water.

I am not saying that this House should not consider those issues, but rather that this House should not consider those issues as issues that are preliminary to the determination of the Motion. There are issues in the Motion and I will demonstrate in a moment how those issues are indeed issues in the Motion.

I have chosen to respond to the issues that were argued by my learned colleagues for the Governor using a slightly different framework from what they did. We distilled three or four issues from the notice of preliminary objection that was served on the County Assembly, and I wish to crystallize the first issue I wish to respond to as follows-

That, the Governor challenges the validity of the impeachment Motion in light of the declaration by the High Court of Kenya sitting in Meru that the impeachment proceedings are a nullity. It is correct, as was submitted by Mr. Ongoya, that it is not contested that, indeed, there are orders that were issued by the High Court of Kenya sitting in Meru in respect of these proceedings. However, what is contested, and I doubt we will agree on this, is the effect of those orders on these proceedings. Mr. Ongoya and his colleagues say that the effect of those orders on these proceedings is to invalidate them and this Senate should, therefore, down its tools. We disagree.

I wish to submit and emphasize that elections to offices such as those occupied by the Members of this House are conducted by the people of Kenya in furtherance of primordial sovereignty. The exercise of removal of an elected official such as the removal of a governor is, therefore, in my submission, the flipside of that exercise of primordial sovereignty.

Mr. Speaker, Sir, as authority to my submission, I wish to refer you and Members of this House to the provisions of Article 1 of the Constitution. Article 1(1) of the Constitution provides as follows-

“All power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.”

That is an affirmation of sovereignty by the people of Kenya, and it is clear where the sovereignty lies.

Article 1(2) of the Constitution goes on to say-

“The people may exercise the sovereign power either directly or through their democratically elected representatives.”

The important provision of Article 1, which I wish to emphasize, is the next provision, Article 1(3) of the Constitution. It says-

“Sovereign power under this Constitution is delegated to the following State organs, which shall perform their functions in accordance with this Constitution-

(a) Parliament and the legislative assemblies in the county governments;

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

- (b) the national executive and the executive structures in the county governments; and
- (c) the Judiciary and independent tribunals.”

Mr. Speaker, Sir, the function of the removal of the Governor is delegated to the Senate of the Republic of Kenya by virtue of Article 1(3). The election of the Members of the National Assembly, Members of the Senate and any elected office is done directly by the people of Kenya.

Mr. Speaker, Sir, as I have said, impeachment is the flipside of election and it is done again here by the people's representatives. I wish to emphasize this point. The Speaker gave a correct and appropriate direction at the beginning of these proceedings. That, voting on this Motion is by delegation. Voting on this Motion is not by all Members of the Senate, but by delegation. I submit that, that is in recognition of the special role or function that this House is being called upon to perform when you sit to consider the Motion for impeachment. It is not legislative, but it is delegated and the House has correctly interpreted that role as being exercisable only by delegations and not by all Members.

Mr. Speaker, Sir, it is my submission that a correct interpretation of the doctrine of separation of powers is as follows and it has been held not just by this House, but also the High Court, the Court of Appeal and the Supreme Court; that, the role of the Judiciary in examining impeachment proceedings arises or kicks in once the impeachment proceeding is complete. Yes, the Judiciary has a role, but the Judiciary, as has been correctly held, does not have the ability to intervene at every stage.

In our written submissions, we have referred you to the relevant decisions of the Court of Appeal in *Kawira Mwangaza* and the decision of the Supreme Court rendered earlier in the matter of *Martin Nyaga Wambora*.

I wish to suggest a reasoning, perhaps, why the law is as it is. Impeachment proceedings and many proceedings under our Constitution are time-bound. Therefore, if judicial intervention is allowed in some of these time-bound proceedings as they proceed, it is not clear whether the Judiciary has the ability to suspend constitutional time, so as to allow the judicial proceedings to proceed, or whether it is better off to allow the impeachment proceeding to proceed and be completed, after which, a completed process review of the proceeding is taken to court.

What am I saying? The correct interpretation of the doctrine of separation of powers, and it has been held repeatedly by this Senate and the courts, is that, even where an impeaching Assembly is making a mistake, allow it to complete the mistake. What is justiciable is the completed mistake. Do not interfere in between because of timelines. I submit that is a modern interpretation of the view of the doctrine of separation of powers as to how it applies to the power of county assemblies and this House to carry out their function of impeachment.

Mr. Speaker, Sir, there was reference to a decision that was made by Hon. Kenneth Marende when he was the Speaker. It was a decision in respect to the appointment of the Chief Justice of this Republic. I wish to distinguish that decision from the matter that is before you for this important reason.

Mr. Speaker, Sir, I have stated and I ask for your permission to emphasise that impeachments are time-bound proceedings. The appointment of the Chief Justice was a

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

constitutional process, but it had no time limit. The process of that appointment had the luxury of time; it could take as long as it needed to take. It then made room for judicial interventions during the process of appointment of the Chief Justice.

I have stated and I will emphasise that impeachment proceedings are time-bound. If they are not concluded in time, we would then be faced with a ridiculous situation where somebody may run to court and say that “Assembly X” or the Senate of the Republic of Kenya did not complete its mandate on time.

I believe I was seated here a few months ago when the impeachment proceedings of the Deputy President of the Republic of Kenya were being conducted and that was an important consideration. There are strict timelines that guided many of the directions that Mr. Speaker you made during those proceedings. I urge you to call on that wisdom. If you are persuaded to consider this as a preliminary issue, that because of the strict nature of the timelines, then the role for court is *ex post facto* considerations of completed processes of impeachment.

There is a decision that has been referred to, which we, advocates, all know. Mr. Speaker, Sir, I am glad that you are an advocate and I am sure you are familiar with the decision. It is a decision that was referred to in the submissions by the Governor. That is the decision of Lord Denning in the famous case of *MacFoy versus United Africa Company Limited*. In citing that decision, the Counsel for the Governor sought to persuade you that since the proceedings are a nullity, then you should not proceed any further with these impeachment proceedings.

Mr. Speaker, Sir, I wish to rely on that decision in an attempt to persuade you that it is, indeed, the proceedings before the High Court of Kenya in Meru that were a nullity, coming as they did, contrary to the established law and interpretation of the modern doctrine of separation of powers. Prior to the completion of the impeachment proceedings that decision or references to that decision are a nullity. Therefore, you should disregard that decision and proceed.

Mr. Speaker, Sir, I had a few passages from the decision. The learned Counsel for the Governor seems to be suggesting that the Judge of the High Court, in some way, may have been directing this House as to what to do with its orders. I submit that this House is completely independent under the Constitution of the Republic of Kenya. Therefore, you should be guided properly as you consider this preliminary issue.

In conclusion, I wish to state that this is not a preliminary issue. It is based on contested issues of fact which we should then get the opportunity to look into.

The second issue that I wish to respond to is an issue that I was a little bit concerned when I first encountered it. That is the submission that has been made by my learned colleagues for the Governor, and they took some time on it. They said that there were no sittings of the County Assembly of Isiolo on 18th and 26th June, 2025. They have used that submission in support of several grounds of their appeal, and I wish to respond to that. I wish to ask the House to apply it to all instances where they have made reference to the fact that, indeed, there were no sittings on 18th and 26th June, 2025.

With tremendous respect to the Governor and his team, I wish to submit that, that argument is self-defeating. It is a self-defeating argument if you look at it from this perspective.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Mr. Speaker, Sir, it is the proceedings of 18th and 26th June, 2025, of the County Assembly of Isiolo that the Governor went to the High Court in Meru resulting to the decision of Mr. Justice Nyaga sitting in the High Court in Meru, which set out--- The order arising from Mr. Justice Nyaga's decision is on pages six and seven of Volume No.3 of the Governor's documents. The ruling itself is to be found between pages 13 and 37 of Volume No.4.

Having based substantive legal proceedings on the proceedings of the County Assembly of Isiolo on 18th and 26th June, 2025, it then cannot fall from the Governor's mouth to come here before you this morning and assert that there were no proceedings. They have based substantive legal proceedings on the fact that there were proceedings. They got certain orders from the High Court in Meru, which orders they seek to bring before you and urge you to declare the proceedings a nullity. I submit that they cannot.

For the completeness of the record, an estoppel arises against them approbating and reprobating in the manner in which they do. For the purposes of my submission, an estoppel is a legal principle which precludes a person from asserting something contrary to their previous action or statement.

The contrary provision is that there were no proceedings. The previous action is that they took those proceedings to the High Court, persuaded a judge of the High Court that there were proceedings and obtained orders. They cannot do both. For that reason, I submit that, that ground must fail.

There is the issue that my good learned friend, Mr. Theuri, brought up. I wish to crystal that as a threshold issue. The short and sharp answer to the threshold issue is that the determination of whether or not a Motion surpasses the threshold required in law requires the consideration of testimony of evidence from both sides.

Mr. Speaker, Sir, the consideration of evidence must of necessity include the testing of that evidence. There are witnesses that the Governor has brought and their testimony was referred to in support of this submission. We, advocates, who are present for the County Assembly, wish to test that testimony. We do not believe that what has been stated in those statements is correct.

Those facts are, therefore, contested. If they are contested facts, they then cannot form the basis in law or otherwise for a preliminary issue. That must go on full trial. In the context of these proceedings, that means the hearing of the Motion that has been brought.

Mr. Speaker, Sir, one of the reasons the Governor gave in support of the submission that the threshold has not been surpassed was the fact that the HANSARD reports in support of those two proceedings were not signed. We note that one of the Governor's witnesses is the Clerk of the County Assembly of Isiolo. That is most unusual in the circumstances because it is the Clerk's responsibility to sign HANSARD reports.

Mr. Speaker, Sir, we look forward to the opportunity to test the testimony of the Clerk and get the Clerk's explanation. We believe this House will benefit from the explanation from the Clerk, who is charged with the primary responsibility of certifying those reports, as to why those reports were not certified. The Clerk is a witness. He has put in a witness statement or an affidavit and we wish to test his testimony. It is my

submission that with the facts contested as they are, it is then difficult to use those facts to make a determination on the preliminary issue.

The next issue that I wish to submit on and emphasize is that the material that the Governor wishes to rely on for his preliminary issue is the same material that the Governor has brought forward, or has brought or seeks to rely on, as testimony in opposition to this Motion. I wish to refer you to Volume No.2 of the Governor's response to the Motion that is before you. In Volume 2, there is the statement of one Salad Boru Guracha on page 24, which runs all the way to page 32. Salad Boru Guracha is the Clerk of the County Assembly of Isiolo.

As I have said, in a most unusual way, he is a witness for the Governor. He makes certain averments in that affidavit, which we need to test. Those averments have been repeated by other witnesses. It is those averments that have been relied on by my learned colleagues on the other side, in support of their assertion that there is, indeed, a preliminary issue that requires consideration and needs to be determined as a preliminary issue.

Mr. Speaker, Sir, I wish to cede the remainder of our time to my colleague, Mr. Mawira. As I take my seat, I wish to make the following suggestion. It is apparent in a rather blatant manner that the issues that have been brought as preliminary issues before you are not preliminary issues, whereas they may be issues that are fit and proper for the determination of this House, but they are not fit and proper for determination as preliminary objections.

My suggestion is that the preliminary objections be dismissed and that the Governor has an opportunity to ventilate those issues as in his evidence in opposition to the Motion, and that this House then makes a determination on those issues once it has had the benefit of hearing testimony from both sides and both sides have had an opportunity to test that testimony.

I am much obliged.

Mr. Boniface Mawira: Mr. Speaker, Sir, my name is Mwereru Boniface Mawira. I will take the remaining time to buttress the submission that have been made by learned senior.

For most, Mr. Speaker, Sir, and Members of this House, it is not contested that there is no conservatory order stopping the Senate from considering the Impeachment Motion that is before you. There is no order by court injunction or enjoining this House not to proceed with the business of the hearing. What the Governor is challenging or impugns is the validity or otherwise of the Impeachment Motion that is before you.

I submit that the question of validity of the Impeachment Motion is a question of interpretation and is reserved for the judicial arm or branch of Government at the opportune time. As my learned senior, Mr. Nyamodi, has already submitted, we have authorities in the submission that we filed in response, and this honourable House has given rulings in previous matters, including the previous ruling in the matter of the impeachment of the Governor of Kericho on the legislative processes that are before Parliament.

The moment this House or Parliament is seized with a resolution by a county assembly to remove a governor from office, this House becomes irreversibly seized of

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

that impeachment motion and no order of court can stop this honourable House from conducting its business.

More importantly, our position has been adopted not only by the Senate or this Parliament, but by other parliaments world over. We have authority in the report of the Committee on the proposed removal from office of the Governor of Embu County, that the Senate becomes irreversibly seized of the matter, the moment the Speaker of the Senate receives a letter from the speaker of the county assembly communicating the resolution of the assembly to remove a governor from office. The committee went ahead to quote similar positions adopted by parliaments in other jurisdictions, including Ghana, Sri Lanka and the United States.

The position that has been taken by this House in previous impeachment proceedings has been adopted by the highest court in the Republic. The Supreme Court in the matter of the former Governor of Embu County, Martin Nyaga Wambora and the Court of Appeal have agreed with this House that the judicial arm of the state cannot direct Parliament on what to do and what not to do.

Mr. Speaker, Sir, therefore, it follows that at the opportune time when this honourable House has conducted its proceedings, these proceedings will then fall before the judicial arm of the state. At that time, the judicial arm of the state will have every opportunity to test the proceedings of this House for constitutional compliance.

It is common ground that the proper judge of compliance with the Constitution and the Standing Orders of this House and the statutes relating to removal proceedings of a governor is the Judiciary. The question or the point that is not agreeable by both sides is, at what point the courts can stop an inquiry for an ongoing constitutional process that is before the legislative assemblies.

The Supreme Court in the matter of Martin Nyaga Wambora had occasion to deliberate on this issue. On pages six and seven of our submissions, you will find an exposition of what the Supreme Court said. It explicitly forbids the courts from granting orders that stop ongoing proceedings that are before legislative assemblies.

I will quote what the court said on page 7. It states-

“No Governmental agency should encumber another to stall the constitutional motions of the other. The best practices from the comparative lesson signal that the judicial organ must practice the greatest care in determining the merits of each case.”

A question then arises. The governor impugns or challenges the validity of the impeachment motion due to the validity of the court order that was given, yet the court order which is the basis of the challenge that the governor has put up to the propriety of these proceedings is also in question.

The validity of that court order is in question because the highest court in the Republic has affirmed what this House has stated on numerous occasions; that the judicial arm of the State, though it can intervene to stop or to check for constitutional compliance, that process before the legislative assembly should be left to run its full course, and at the opportune time, the judicial arm of the State can intervene to check the propriety of those proceedings.

Mr. Speaker, Sir, Section 5 of the Judicial Act provides for the hierarchy of laws in our Republic. The Constitution is at the top. The apex court in the Republic as per our Constitution is the Supreme Court. The Court of Appeal is next. The decision of the Supreme Court as per Article 163(5) of the Constitution, are binding on the High Court. The same goes for the decision from the Court of Appeal. The question, therefore, is: can these honourable House be stopped by a court that has disregarded binding precedent? Can this court be stopped by a court that itself is lacking in jurisdiction? Our answer to that question is that you should proceed unhindered, undeterred and render a decision or determination on the impeachment Motion on the merits, upon hearing the witnesses that are to be called by the respective parties.

The danger is, if this honourable House was to terminate the proceedings at this stage, then it would set a very dangerous precedent. That dangerous precedent is that all that a governor would need to do is to move to court and obtain an order, either quashing the impeachment proceedings before they even begin or stopping this House from considering the impeachment Motion before it is even seized with that impeachment Motion. Therefore, the Senate would have abdicated its role as a defender of devolution and its oversight mechanism in the removal from office proceedings of county governance.

Mr. Speaker, Sir, as you deliberate on that issue, we sound that caution that whatever is established today, will have an implication on future impeachment processes that will be brought before this House.

On the second ground, Counsel for the Governor has referred to affidavits by the Clerk of the Assembly and the AP Commander of Isiolo County. All these affidavits have been referred to, to persuade you that there was no sitting by the Assembly on the 26th June, 2025, when the impeachment Motion was approved by the County Assembly. The question that arises, is whether the contents of those affidavits are to be believed without testing the evidence of those witnesses under oath.

So, the way I see it, the Governor is asking for a full trial. By making a reference to those affidavits, it must be taken that the Governor concedes that, that preliminary objection is not based on a pure point of law that can be canvassed by counsel without reference to affidavits by witnesses. The reason we file affidavits before you is to give advance notice to the other party, so that the other party can prepare on how to test the truthfulness, credibility and veracity of those witnesses, when they take the stand to give evidence before this House.

Mr. Speaker, Sir, the contents of those affidavits, the depositions that are contained in those affidavits, would have to be tested by way of cross-examination of the witnesses for this honourable House to make a conclusion on that question as to whether there was a sitting. The same goes for the HANSARD that is impugned by the Clerk of the County Assembly on oath. With regard to the question of the alleged forgery of the HANSARD, all the Counsel of the Governor has done, is to make reference to an affidavit by a witness. Counsel was submitting on a preliminary on what is supposed to be a preliminary point of law. It is no longer a preliminary point of law, if counsel does not restrict himself and now takes the posture of the witness and testifies on behalf of a

witness, on what they have deposed under oath in an affidavit. At the opportune time, we will be praying to cross-examine those witnesses in order to establish the truth.

The further question that arises, as I conclude, is the Clerk of the Assembly, under the County Assembly Services Act, is required to render expert, non-partisan advice to the Speaker and to the House on procedural matters and on all other matters that are before the House. We will be craving for an opportunity to cross-examine the Clerk on all the issues that counsel has alluded to, in trying to persuade you, Hon. Speaker and the House, that you dispose of the issue of whether there was a sitting and whether there was forgery of the HANSARD at this preliminary trial.

A mini trial that the Governor requested for - a trial within a trial - is not necessary if the issues that are to be canvassed during that mini trial, can be established in the full trial. The issues of the sitting of the Assembly, alleged fraud and alleged forgery are matters that belong to the full trial. It is for the Governor to prove that, indeed, there was forgery because he is the one who alleges forgery of the HANSARD report and that there was no sitting. It is for the Government to prove, through evidence, that is going to be tested by way of cross-examination at the trial.

Therefore, reducing that issue - and it is a very germane issue - of the cheating and alleged forgery to a matter that can be handled at this stage without leading evidence, is not only inappropriate, but against the best interest of justice. It is because the County Assembly will not have the opportunity to cross-examine the witnesses that are being called and whose affidavits have been referenced to by the Governor's council in making that preliminary point.

In conclusion, it is only after a lengthy and a drawn-out hearing in the main trial that all these issues that are couched as preliminary objections, can be sufficiently addressed.

I will say one last thing on that issue of the court order before I sit and give a few minutes to my colleague, Mr. Muriuki. The court order that the Governor has alluded to, is not to be looked at just as a standalone issue. It is essentially an attack on the jurisdiction of the House to hear the impeachment Motion that this House is seized of. The question, as I said before, is if a court whose jurisdiction is challenged--- In fact, Mr. Speaker, Sir, I was in those proceedings and the jurisdiction of the court was challenged. The court has not rendered a decision on a preliminary objection that was filed, but the court proceeded to grant the orders that were granted.

Can a court whose jurisdiction is challenged and which court, the apex court in the Republic together with the Court of Appeal, have held that, that court is bereft of jurisdiction, take away the jurisdiction of this House, which is constitutional in nature? The jurisdiction of this House to oversight county assemblies is constitutional in nature. Can a court acting in excess of jurisdiction take away the constitutional mandate of this House?

As Mr. Nyamodi quoted just before I took the stand, the decision on the validity of that court order comes into play. There is no need for that court order to be set aside. The moment that court order was given by a court that has disregarded binding precedence from the Supreme Court, from the Court of Appeal and acted in excess of jurisdiction, that order is a nullity in law.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

So, much as the court order says that the proceedings before the County Assembly were a nullity in law, the court order itself is a nullity in law. There is no further order of court that is required to set aside that order, because that order itself is nullity in law; it cannot stand.

Mr. Speaker, Sir, I urge you, as I conclude, not to accede to the request by the Governor's lawyers to take away the jurisdiction of this honourable House on this important question that is before you for determination.

I will give the remaining minutes to my colleague, Mr. Muriuki.

Mr. Erick Muriuki: Mr. Speaker, Sir, and esteemed Members of this House, my name is Mr. Erick Muriuki. I am privileged to appear before you once again. I represent the County Assembly of Isiolo.

Mr. Speaker, Sir, to continue with our submissions where my colleague has left off, the question that should seize this House and the Hon. Speaker when you go to make your determination is this: On a balance of conveniences, what ought to happen?

We submit that this House ought to proceed with these proceedings because, as has been held in numerous court decisions, the Governor will have the opportunity to challenge these proceedings in court. However, neither the court nor this House can freeze the statutory and constitutional timelines that are set for impeachment proceedings.

So, allowing the preliminary objection in the way that the Governor's team asks this House to do would irreparably prejudice the County Assembly. This is because there is a chance for the Governor to challenge these proceedings, but there is no chance for the County Assembly to reinstate or to pause this process and then come back.

The proper time to question the validity of impeachment proceedings, as has been ably submitted by my senior, Mr. Nyamodi, is after the process is complete. This is what the court held in the case of Hon. Kawira Mwangaza versus the County Assembly of Meru.

Mr. Speaker, Sir, this position had been earlier held in the Justus Kariuki Mate matter. Allow me to read an excerpt from the decision of the Court of Appeal Mwangaza versus County Assembly of Meru and Another, 2023 KECA-

“We observe that the applicant’s right to be heard and to defend herself on the allegations made against her in the impeachment debate at the County Assembly of Meru are provided under the Standing Orders of the County Assembly. If she is impeached [*emphasis on this part Mr. Speaker, Sir*] she will have another opportunity to present, her case before the Senate during the hearing of the impeachment Motion. [*Further emphasis*] Even after the Senate makes its decision the applicant still has the avenue of petitioning the court for an appropriate relief if the decisions were to go against her. We are, therefore, of the considered view that the applicant’s right to be heard will not be circumscribed. Enough said, this court lacks jurisdiction to consider the application before it for the reasons stated in the ruling.”

Mr. Speaker, Sir, that is the Court of Appeal speaking.

The second question that this House should ponder is where the public interest is in this matter of the preliminary objection. This is an important question. The impeachment process has commenced.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

The Supreme Court of Kenya and the Court of Appeal have in very clear and no uncertain terms forbidden lower courts from granting the kind of order the Governor has brought here today claiming to rely on to scuttle these proceedings. Even where such orders are issued, what does the Supreme Court of Kenya say? It says should those orders be issued in error, then the Court Assembly is entitled to not immediately comply with them.

Mr. Speaker, Sir, these are not my words, but of the Supreme Court of Kenya in the Mate decision.

Paragraph 95 of that decision found on page eight of our submissions, the Supreme Court says –

“It is our understanding that the exceptional circumstances of this case with a complex scenario of justiciabilities from contracted standpoints would lend justification to the non-effectuation of contempt orders at the beginning and consequently we would accommodate the reality of there not having been immediately compliance as would otherwise be required.”

The Supreme Court is recognizing that sometimes court orders are issued in error and where the effect of those orders is to encumber a legislative House from performing its duties, the Supreme Court is accommodating the reality that those order do not have to be immediately complied with.

Mr. Speaker, Sir, on this basis we, therefore, submit that it in the public interest that this House dismisses this view and proceeds to hearing bearing in mind what the Supreme Court and the Court of Appeal have said.

I want to touch on the issue of forgery that has been alleged in the Governor’s preliminary objection. The only submission I will add to what my colleagues have said--
-

(Interruption of submissions on preliminary objections by the County Assembly team)

The Speaker (Hon. Kingi): Counsel for the County Assembly, just take your seat I have a communication to make.

COMMUNICATION FROM THE CHAIR

EXTENSION OF SITTING TIME

The Speaker (Hon. Kingi): Now, hon. Senators, ladies and gentlemen, the time now is 1.00 p.m., and in terms of our programme as set out in the Order Paper, we are set to adjourn at this time. I note, however, that the County Assembly still has 10 minutes of their time.

I, therefore, wish to invoke Standing Order No.34 (2) and 2A of the Standing Orders, which permit the Speaker, for the convenience of the Senate, to direct later interruption of the business for a period of not more than 15 minutes.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

I, therefore, direct that the County Assembly may utilise its remaining 10 minutes, so that the Senate shall adjourn at 1.10 p.m. or such earlier time as the County Assembly concludes its submissions.

The Senate then, will resume sitting at 2.30 p.m. when the Governor's Counsel will have his 10 minutes to respond before the Senate proceeds to make a determination on the preliminary objection. It is so directed.

Counsel, you may proceed to utilise your 10 minutes.

(Resumption of submissions on the preliminary objections by the County Assembly team)

Mr. Erick Muriuki: Thank you, Mr. Speaker, Sir. As I was submitting, hon. Senators, is that my colleagues have indeed said, and I agree completely, that forgery must be specifically pleaded and proven. The mere word of the Governor's counsel on this pulpit cannot be taken as evidence of forgery.

Indeed, in a decision of the Court of Appeal, *Jennifer Nyambura Kamau versus Humphrey Mbaka Nandi*, the court held that it is also a settled law that fraudulent conduct must be distinctly alleged and distinctly proved. It is not allowable to leave fraud to be inferred from the facts. An allegation of forgery is an issue of fraudulent conduct.

Hon. Senators, you have been told that it is a preliminary issue whether there was a sitting and whether from that sitting the threshold for impeachment was reached. This issue can only be determined after a conclusive hearing of these proceedings. The Governor's Counsel has stated that they will rely on the affidavits of the Clerk, who is an employee of the County Assembly, to tell you that there was no sitting.

Hon. Senators, as a matter of fair hearing, we must then be allowed to test the veracity of those averments by the Clerk under oath through cross-examination. For that reason, this issue cannot form the basis of a preliminary objection.

Hon. Senators, from the *locus classicus* on preliminary objections of Mukisa Biscuit, as was again affirmed in the decision that we have quoted in our submissions of Ali Hassan Joho and another versus Suleiman Said Shabhal, for a preliminary objection to succeed, it must be a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct.

It cannot be erased if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. I would perhaps just amend that we also include quasi-judicial discretion because this House now sits as a quasi-judicial body.

Hon. Senators, that issue of whether there was a sitting is at length canvassed in both the County Assembly's documents and the Governor's responses. For that reason, it cannot form part of a preliminary objection. We shall be, of course, adducing evidence to show that there were sittings of the Assembly on those two dates, even though there were attempts to scuttle them.

As I conclude my submissions, we shall lead evidence at the opportune time to show that there was vandalism at the offices of the County Assembly and that the said vandalism was orchestrated by the Governor or at his direction. That is the evidence that we shall bring here.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

We shall also lead evidence to show that there has been a pattern of attempts to scuttle these impeachment proceedings right from the start and these attempts were made by the Governor. We shall adduce evidence to show that the Governor took every possible step, whether legal or otherwise, to try and stop and scuttle these impeachment proceedings. For these reasons, we submit that it is necessary, and this House ought to rule that the preliminary objection is untenable and that we proceed with hearing of the full case.

My colleague will finalise our submissions.

Mr. Paul Wafula: Mr. Speaker, Sir and Members of the Senate, I will take a few minutes just to conclude our remarks on behalf of the County Assembly. I would just like to highlight the two-faced approach to the contest raised by the Governor. On one hand, the Governor is saying that there was no Motion, no resolution passed that is capable of coming before this Senate---

The Speaker (Hon. Kingi): Counsel, for the sake of the HANSARD, kindly state your name.

(Technical hitch)

Mr. Paul Wafula: Mr. Speaker, Sir, before I proceed, my name is Paul Wafula. I am an advocate and I am part of the team representing the County Assembly. Given the disruption, I kindly request that I be added some time since I have not utilized my time.

The Speaker (Hon. Kingi): Four minutes.

Mr. Paul Wafula: Most obliged. I kindly request to conclude the remarks of the County Assembly by demonstrating the two-faced nature of the contest that the Governor has raised. On one hand, you are being told that there was no resolution passed by the County Assembly to impeach the Governor. It is for that reason that my learned friends took detailed time to take you through the HANSARD and evidence to show that there was no Motion or resolution that was passed.

On the other hand, they have made it a point to say that there is a resolution, but that resolution has been declared null and void by a High Court order. *Ipsa facto*, what the Governor is saying on the other hand is that the County Assembly sat and passed a resolution, and on second hand, they took that resolution and went to the court, where the court adjudicated on that resolution and found it to be null and void.

Mr. Speaker, Sir, the Governor needs to take a position. Is it that there was no resolution or there was a resolution? You have not been told in any uncertain terms that there is any constitutional or statutory provisions barring this House from conducting its business today. You have not been told that there is court order barring these proceedings. In the absence of those two parameters, it is our submission that there is no preliminary objection capable of being sustained in these proceedings.

As I conclude, you will note from the various remarks made by my learned friends for the Governor and us, that the record of whether or not the County Assembly of Isiolo sat is contested. There is a rebuttable explanation for that. That can only be made when the County Assembly is given an opportunity to present this case.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

On that basis alone, we kindly ask this House to disregard the preliminary objection raised in the manner it deserves and it proceeds to hearing.

The Speaker (Hon. Kingi): Thank you.

ADJOURNMENT

The Speaker (Hon. Kingi): Hon. Senators, it is now 1.14 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until later today, Tuesday, 8th July, 2025 at 2.30 p.m.

The Senate rose at 1.14 p.m.