



THIRTEENTH PARLIAMENT
THE SENATE
OFFICIAL REPORT



Fourth Session

Wednesday, 27th August, 2025 at
9.00 a.m. - Special Sitting

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 27th August, 2025

Special Sitting

*(Convened via Kenya Gazette Notice
No.11796 of 21st August, 2025)*

*The House met at the Senate Chamber,
Parliament Buildings at 9.05 a.m.*

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

PRAYER

DETERMINATION OF QUORUM
AT COMMENCEMENT OF SITTING

The Speaker (Hon. Kingi): Serjeant-at-Arms, kindly ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

Order, hon. Senators. We now have quorum. So let us get down to today's business.

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

Clerk, you may call the first Order.

COMMUNICATION FROM THE CHAIR

PRE-HEARING MEETING ON THE PROPOSED REMOVAL FROM OFFICE,
BY IMPEACHMENT, OF THE GOVERNOR OF KERICHO COUNTY,
HON. (DR.) ERICK KIPKOECH MUTAI

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.

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You will recall that at the Special Sitting of the Senate held on Wednesday, 20th August, 2025, I appointed today, Wednesday, 27th August, 2025; Thursday, 28th August, 2025 and Friday, 29th August, 2025, as the days when the Senate will hear the charges for the proposed removal from office, by impeachment, of Hon. (Dr.) Erick Mutai, the Governor of Kericho County.

Vide a Gazette Notice No.11796 dated 21st August, 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. (Dr.) Erick Kipkoech Mutai, the Governor of Kericho County, in plenary. Consequently, a hearing programme has been prepared and appended to the Order Paper for today.

Hon. Senators, ladies and gentlemen, 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, the County Governments Act 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 forthwith.

Consequently, I now direct the parties, all members of the public and the media to withdraw from the Chamber and the galleries and that any form of broadcast 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.

I thank you.

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

(The House went into an in-camera session at 9.27 a.m.)

(End of in-camera session)

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

(The House resumed at 10.55 a.m.)

The Speaker (Hon. Kingi): Hon. Senators, welcome back to the open session. Clerk, you may call the first order.

**HEARING AND DETERMINATION OF THE PROPOSED REMOVAL
FROM OFFICE, BY IMPEACHMENT, OF HON. (DR) ERIC KIPKOECH
MUTAI, THE GOVERNOR OF KERICHO COUNTY**

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

The Speaker (Hon. Kingi): Hon. Senators, ladies and gentlemen, having dispensed with the pre-hearing meeting of the Senators, which was a closed-door session, it is now time to commence the proceedings on the proposed removal from office, by impeachment, of Hon. (Dr.) Erick Kipkoech Mutai, the Governor of Kericho County.

By a letter dated 15th August, 2025, the Speaker of the Kericho County Assembly informed the Speaker of the Senate that at the sitting of the Kericho County Assembly held on 15th August, 2025, the County Assembly of Kericho approved a Motion for the removal from office, by impeachment, of Hon. (Dr.) Eric Kipkoech Mutai, the Governor of Kericho County.

Sen. Maanzo, you may take your rightful seat.

(Sen. Maanzo sat at his place)

Hon. Members, the Speaker of the County Assembly of Kericho also forwarded the following documents to the Senate being the record of proceedings of the County Assembly and the evidence adduced in support of the impeachment Motion. These are-

(1) A copy of an approved Notice of Motion dated 16th August, 2025 and laid on the Table of the Assembly on Wednesday, 6th August, 2025, the afternoon session.

(2) Certified copy of a list of members with signatures in support of a Motion for removal of the Kericho County Governor, by impeachment, dated the 6th August, 2025.

(3) Order Papers for the Assembly sittings of Wednesday, 6th August, 2025, afternoon sitting and Friday, 15th August, 2025 (Special sitting).

(4) A copy of the Gazette Notice for the Special Sitting of Friday, 15th August, 2025.

(5) Certified HANSARD reports for the Assembly sittings of Wednesday, 6th August, 2025, afternoon sitting and Friday, 15th August 2025, Special sitting.

(6) Copies of letters dated the 6th and 13th August, 2025, Ref.No.KCA/SP/3 Volume 1(37) and KCA/SP/3 Volume 1(38) respectively, inviting the Governor of Kericho County to respond to the tabled impeachment Motion.

(7) A copy of an affidavit of service by M/s Sharon Chepng'etich Mibey serving His Excellency the Governor of Kericho County with an invitation letter and a copy of a laid notice of impeachment Motion, together with evidence and another letter for supplementary evidence and memorandum on public participation and gazette notice on behalf of the Speaker, County Assembly of Kericho.

(8) Certified copy of electronic voting extracts (33 votes) on a Motion for the impeachment of His Excellency the Governor of Kericho County, held during the Assembly sitting of Friday, 15th August, 2025.

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(9) Documents tabled during the debate on the Motion for the removal of the Governor of Kericho County by impeachment, which are-

(a) The payment vouchers for Lands, Housing and Physical Planning Department made to-

- (i) Denbi Holdings Limited;
- (ii) Debral Ventures Limited; and,
- (iii) Crane Bee Group.

(b) Payment vouchers for the Agriculture, Livestock and Cooperative Management Department made to-

- (i) Derju Enterprise Limited;
- (ii) Lewry Enterprise Limited;
- (iii) Mabsa General Supplies Limited;
- (iv) Aksak Technologies Limited;
- (v) Pkendes Company; and,
- (vi) Joylee Group Limited.

(c) A procurement plan and a memorandum for supply and delivery of assorted office stationeries.

(d) Payment vouchers for Public Works, Roads and Transport Department made to the following:

- (i) Simron Construction Company Limited;
- (ii) Enreal Supplies Limited; and,
- (iii) Tokiila General Supplies.

(e) Payment vouchers for Finance and Economic Planning Department made to the following-

- (i) Alucraft Voucher;
- (ii) Roreki Limited;
- (iii) Darhk Limited;
- (iv) Finch Focus Limited;
- (v) Jomarcx Holding Limited; and
- (vi) Benlock Ventures Limited.

(f) Payment vouchers for Health Services Department made to the following-

- (i) Afroscape Limited; and
- (ii) Slick Solutions Limited.

(g) Payment vouchers for Water, Energy, Environment, Forestry and Natural Resources made to the following-

- (i) Chebema Construction Supply; and,
- (ii) Roley Ventures Limited.

(h) Report on the pending bills by Ad Hoc Committee.

(i) Report by the Committee on Water and Environment on FLLoCA projects.

(j) NAVCDP report by the Committee on Agriculture, Livestock and Fisheries.

(k) *Ad Hoc* Committee report on *Kazi Mtaani*.

(l) Report by the Department of Finance and Economic Planning (Strategic intervention Phase 2) and two photos.

(m) Four affidavits.

(n) One judgment and one ruling.

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- (o) *Ad Hoc* Committee report on Londiani incident.
- (p) Auditor-General reports.
- (q) Correspondence between the Governor and the Speaker dated 20th August 2024 and 3rd September, 2024.
 - a. Advertisement for vacancies by County Public Service Board-
 - (i) An internal memo on redeployment of staff under the Health Service Department.
 - (ii) A Facebook extract.
 - (iii) Letters of termination.
 - b. *Ad Hoc* Committee report on alleged fictitious payment.
 - c. Voucher for Mengro Products Limited retention.
 - d. Other companies that were paid retention money.
 - e. Evidence of public participation-
 - (i) An extract of *The Standard* newspaper advertisement for public participation on Notice of Motion for the removal of Hon. (Dr.) Erick Kipkoech Mutai, the Governor of the County Government of Kericho, by impeachment.
 - (ii) A scanned memorandum and submissions received in response to the notice of Motion for removal of Hon. (Dr.) Erick Mutai as Governor of Kericho County.
 - (iii) A Public Participation register for the collection of memorandum forms.
 - (iv) A report on public participation.
 - f. Governor's response and Volume one and two.
 - g. Kericho County Assembly Standing Orders.
 - h. Flash disc containing video evidence and three transcripts.

Now, pursuant to Section 33(3) of the County Governments Act and Standing Order No.80(1)(a), at a Special Sitting of the Senate held on Wednesday, 20th August, 2025, the charges against the Governor of Kericho County, as contained in the Motion of impeachment by the County Assembly of Kericho, were read out to the assembled Senate.

Hon. Senators, ladies and gentlemen, as you are aware, the mandate of the Senate in relation to the proposed removal from office, 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----

(Sen. Mbugua consulted loudly)

Sen. Mbugua, the Chair must be heard in silence.

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

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- (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, 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 county governor.

Specifically, Section 33(3) and Standing Order 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 Wednesday, 20th August, 2025, the Motion for the establishment of a Special Committee was withdrawn pursuant to Standing Order No.70 for failure to be seconded. This withdrawal paved the way for a default position, the hearing of the impeachment charges against the Governor of Kericho County to be held in plenary.

Hon. Senators, ladies and gentlemen, 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 the 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 Monday, 25th August, 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.
- (iv) Any other evidence to be relied on.

(Several hon. Senators stood at the Bar)

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

(Hon. Senators walked into the Chamber and sat in their places)

Hon. Senators, pursuant to Rules 4(b) and 7 of the Rules of Procedure, when considering the proposed removal of a governor or a deputy governor in plenary, the Senate notified the Kericho 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 Monday, 25th August, 2025, the following documents-

(i) Designating the Members of the County Assembly, 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.

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

Hon. Senators, ladies and gentlemen, on Monday, 25th August, 2025, the Office of the Clerk of the Senate received a response dated 23rd August, 2025, to the invitation to appear issued to the Governor, from M/S. Katwa and Kemboy Advocates, who indicated that the Governor had appointed the firm to represent him in the hearing before the Senate. The letter also indicated the counsel representing the Governor and the list of witnesses for the Governor. Counsel for the Governor also indicated that the Governor would appear before the Senate in person and by advocate.

Similarly, on Monday, 25th August, 2025, the Office of the Clerk of the Senate received a response, Ref. No.H&K/009/017/2025 and dated 24th August, 2025, to the invitation to appear issued to the County Assembly of Kericho, from M/S. H&K Law Advocates, who indicated that the County Assembly of Kericho had appointed the firm to represent the County Assembly in the hearing and that the County Assembly would also appear in person and by advocates. The letter also indicated the Counsel representing the County Assembly and the list of witnesses for the County Assembly.

Pursuant to Rule 8 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 6 and 7 of the Rules of Procedure.

Hon. Senators, ladies and gentlemen, the hearing programme which has been appended in today's Order Paper, details the various activities in the hearing and determination of the matter and the time allocated to each activity. Therefore, it will be crucial that all the parties comply with the time allocated. The parties will be notified of the balance of time on each activity through the digital clocks mounted on the Clerks' Table.

In summary, the programme states that today, Wednesday, 27th August, 2025, after we have dispensed with 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, Thursday, 28th August, 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 scheduled for Friday the 29th August 2025, the closing statements by the parties will be made for a period not exceeding one hour each. The Senate shall then proceed to debate prior to voting on each of the charges. At this stage, a supplementary order paper will be issued to facilitate this debate.

In accordance with Article 123 of the Constitution, the County Government Acts 2012 and Standing Order No.80(6) of the Senate, 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 No. 80(7), the Speaker of the Senate shall notify the Speaker of the Kericho County Assembly accordingly.

Hon. Senators, ladies and gentlemen, I now invite Counsel for the County Assembly of Kericho to introduce the legal team of the County Assembly and the Members of the Assembly (MCAs) of Kericho representing the County Assembly by stating the full name and the designation of each person.

Counsel for the County Assembly, you may now take to the Floor.

INTRODUCTION BY THE KERICHO COUNTY ASSEMBLY TEAM

Mr. Kimutai Bosek: Good morning, Mr. Speaker, Sir; Hon. Senators and Hon. Mutai, Governor, Kericho County.

For the County Assembly of Kericho, the representation is as follows-

- | | | |
|----------------------|---|--|
| (1) Vincent Kipronoh | - | Advocate |
| (2) Joel Wakhungu | - | Advocate |
| (3) Elvis Kipkorir | - | Advocate |
| (4) Evans Kiplangat | - | Advocate |
| (5) Victor Kibet | - | Advocate |
| (6) Geoffrey Langat | - | Advocate |
| (7) Brian Langat | - | Advocate |
| (8) Hilary Kiplangat | - | Advocate |
| (9) Elias Mutuma | - | Advocate |
| (10) Sharon Mibey | - | Advocate, Deputy Clerk of the
County Assembly |
| (11) Elisha Ongoya | - | Lead Counsel |
| (12) Kimutai Bosek | - | Advocate |

There are also the following Hon. Members from the Kericho County Assembly-

- | | | |
|---------------------------|---|---------------------|
| (1) Hon. Kiprotich Rogony | - | Mover of the Motion |
| (2) Hon. Albert Kipkoech | | |
| (3) Hon. Vincent Korir. | | |

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Now, similarly, I now invite Counsel for the Governor to introduce your legal team representing the Governor.

INTRODUCTION BY THE KERICHO COUNTY GOVERNOR'S TEAM

Ms. Doris Ng'eno: Mr. Speaker, Sir, Hon. Senators, Your Excellency, the Governor of Kericho County and my colleagues, good morning.

With the permission of my senior colleague, I wish to introduce to you, the legal team representing the Governor of Kericho County. First, I wish to confirm that the Governor of Kericho County, Dr. Eric Kipkoech Mutai is before the House. The following is the legal team-

- | | | |
|-------------------|---|--------------|
| (1) Katwa Kigen | - | Lead Counsel |
| (2) Peter Wanyama | - | Advocate |
| (3) Doris Ng'eno | - | Advocate |
| (4) Rose Thiong'o | - | Advocate |
| (5) Joash Mitei | - | Advocate |
| (6) Evanson Kirui | - | Advocate |

Mr. Speaker, Sir, that is our legal team.

Thank you for the opportunity to appear before this honourable House.

(Sen. Cherarkey stood in his place)

The Speaker (Hon. Kingi): Senator for Nandi County, take your seat.

(Sen. Cherarkey sat in his place)

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

Finally, I now invite the Clerk to call the next Order and thereafter to read the charges against the Hon. (Dr.) Erick Kipkoech Mutai, the Governor of Kericho County.

READING OF THE CHARGES AGAINST THE
GOVERNOR OF KERICHO COUNTY

The Clerk of the Senate (Mr. Nyegenye): The Hon. (Dr.) Erick Kipkoech Mutai, the Governor of Kericho County, please take the stand.

(Hon. (Dr.) Erick Kipkoech Mutai took the stand)

Hon. (Dr.) Eric Kipkoech Mutai, the Governor of Kericho County, the charges against you as received from the County Assembly of Kericho are as follows-

Ground One: Gross Violation of the Constitution and other Laws

Gross violation of the Constitution of the Republic of Kenya, 2010; the County Governments Act, 2012; the Public Procurement and Asset Disposal Act; the Public Finance Management Act, 2012; and Kericho County laws.

The particulars of this ground are as follows-

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Allegation 1: Misappropriation, Misallocation and Illegal Drawings of County Revenue and County Finances.

That, on various occasions since his election as a Governor and subsequent assumption of office, the Governor has engaged in various acts of gross violation of Articles 10, 183 and 201 of the Constitution, Sections 102 and 109 of the Public Finance Management Act, Cap. 412A and the provisions of the Kericho County Rating Act, No. 5 of 2019 as follows-

(a) Fictitious payment of works, goods and services

Between January, 2025 and July, 2025, the Governor engaged in gross violations of Articles 10, 183, 201, 207 and 208 of the Constitution, and Sections 102, 109, and 110 of the Public Finance Management Act 2012, and Section 30(3)(f) of the County Governments Act, 2012.

The Governor aided, abetted and/or condoned the fictitious payment of goods, services and works which were neither delivered nor done, occasioning the county loss of Kshs85,704,522.90 in-

(i) Services which were not rendered and or partially done, for example, the maintenance of 15 residential houses in Kipkelion West Sub-County at a cost of Kshs2.99 million;

(ii) Goods not delivered, including soya beans, maize germ, sunflower, seed cake and cotton seed cake alleged to have been supplied for Kshs14,980,640;

(iii) Overpriced goods, including sodas, alleged to have been bought for about Kshs500 per 300ml bottle and a bale of tissue paper alleged to have been bought for Kshs2,750 per bale of 10 tissue papers and a hand towel priced at Kshs3,600;

(iv) Works, goods and services alleged to have been procured for Kshs5,172,715.60 from companies, including Mengro Products Limited, Hildama Construction and Supplies Limited, Brissack Construction and Supplies Limited, Prospera Ventures Limited and IBM Pro Construction Limited without any supporting documents; and,

(v) Payment of contractors from the retention account for the works done for more than five years ago, some of which companies had already been paid and therefore misappropriating county funds through double payments.

(2) Some of the goods, services and works were procured without following the procurement processes. No tender opening committees were formed, contrary to Section 78 of the Public Procurement and Asset Disposal Act, 2015 as read together with Regulation 25 of the Public Procurement and Asset Disposal (Regulations) 2020. Similarly, there were no professional opinions done to the accounting officers contrary to Section 84 of the Public Procurement and Asset Disposal Act 2015.

(3) There was deliberate circumvention of competitive tendering of the same goods, services and works by splitting of contracts to suit the request for quotation method, therefore violating Section 54 of the Public Procurement and Asset Disposal Act 2015 as read together with Regulation 43 of the Public Procurement and Asset Disposal (Regulations) 2020.

(4) Most of the goods, services and works were procured outside the approved budget as required under Section 44(2)(a) of the Public Procurement and Asset Disposal Act, 2015.

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(5) The documents used by the departments were not clear and did not bear references to the procurement requirement, provision of debts, especially invoices generated and signatures of respective officers. Therefore, there was blatant violation of the provisions of Regulation 68 of the Public Procurement and Asset Disposal (Regulations) 2020.

(6) No market survey was conducted as required under Regulation 43(4) of the Public Procurement and Asset Disposal (Regulations) 2020. The contractors, therefore, supplied goods with exorbitant prices, contrary to Section 54(2) of the Public Procurement and Asset Disposal Act, 2015.

(7) All of the subject goods, services and works were paid for in advance, yet the county has accumulated pending bills over the last three years of Kshs1.1 billion, which have been verified and are yet to be paid from the time the Governor assumed office.

(8) The report of the *Ad Hoc* Committee on the Alleged Fictitious Payments, tabled before the Assembly on 5th August, 2024 made pertinent and damning findings and recommendations that point to the deliberate failure to act, neglect of duty and even conspiracy on the part of the Governor *to wit*:

(a) The documents shared with the *Ad Hoc* Committee by the departmental heads called to testify were not accompanied by the items invoice. This lends credence to the suspicion that the documents may have been prepared to cover up the theft after the whistle was blown.

(b) The payments were made in advance before goods, services and works were delivered or done. As at the date of the tabling of the report, some of those goods, services and works remained undelivered to date.

(c) Documents that were used to process payments bore the signatures that could not be authenticated. Subsequently, certain officers whose signatures appear in the said documents have denounced the documents.

(d) The gaps highlighted in the report point to serious governance concerns and weak internal controls in Kericho County that the appointing authority (the Governor), policy makers, accounting officers and, indeed, all the officers entrusted to deliver services to the county, have failed to do as required by law.

(e) There was an intention to defraud the county and violations of the Constitution, 2010, the Public Finance Management Act, 2012, the County Governments Act, 2012, the Leadership and Integrity Act, the Powers and Privileges (County Assemblies) Act, the Public Procurement and Asset Disposal Act, 2015.

(9) Under Article 179 of the Constitution and Section 30 (3)(f) of the County Governments Act 2012, the Governor has the overall responsibility of being accountable for the management and use of county resources.

(10) It is a matter of public notoriety that when the whistle was blown on these fictitious payments, the Governor on 26th July, 2025 while attending a function at Kamolok Village in Cheboin Ward, rubbished the claims and called for stern action against the whistleblower. This shows someone who is either unaware of the happenings in the county or was deeply involved in the scandal.

(II). Misappropriation of National Agricultural Value Chain Development Project (NAVCPD) funds

(11) On various dates between the year 2023 and 2025, the Governor has violated the provisions of Articles 10, 183, 201, 207 and 208 of the Constitution and Sections 48 and 159 of the Public Finance Management Act 2012 and Section 30(3)(f) of the County Government Act 2012 by aiding, abetting, condoning and or overseeing the massive looting, pilferage, misappropriation and misallocation of NAVCDP funds amounting to over Kshs351 million as at 10th June, 2025.

(12) From the report of the Committee of Agriculture, Livestock and Fisheries and Cooperative Management, Tourism and Wildlife on the implementation status of the NAVCDP in Kericho County, tabled in the County Assembly on 6th August, 2025, the County Assembly noted the following discrepancies in the use of the fund-

(a) The expenditure was used for farmers' cooperative societies, found only in 19 of 30 wards in Kericho County. This implies that the funds that were meant for agripreneurs, whose role was to enumerate farmers and organize them into Savings and Credit Cooperative Organizations (SACCOs) was not adequately utilized.

(b) Each ward SACCO was meant to get Kshs1 million yet the Committee found that out of the 19 SACCOs under the programme, only seven have ever received financial support since the inception of the fund.

(c) It is further indicated in the report that some SACCOs received nominal support in kind in form of office furniture and some farm inputs, while others have never received any support.

(d) Even those SACCOs and farmer producer organizations which received support in kind did not receive delivery notes when the furniture, computers and other supplies were delivered. They cannot, therefore, ascertain the prices, source and therefore quality of what was supplied.

(e) The procurement of furniture and equipment under the NAVCDP programme was conducted centrally with minimal involvement of key stakeholders. This does not only undermine the principle of transparency in procurement, decision making and lack of ownership, but also created room for pilferage and misappropriation of the fund.

(13) The office furniture and equipment supplied under the NAVCDP programme are largely of substandard quality. There was therefore no value for money and compliance with the Public Procurement and Asset Disposal Act, 2015, particularly Section 124, which obligates the procuring entity to select Quality and Cost-Based Selection (QCBS) method, as the preferred method to be used to evaluate proposals.

(14) The manner in which the few projects which were implemented was done shows that they were done without following the project implementation manual published by the World Bank to guide the implementation of the projects.

(15) Again, the Governor shirked his overall responsibility under Article 179(4) of the Constitution and Section 30(3)(f) of the County Governments Act 2012, to be accountable for the management and use of county resources.

(16) There is evidence that the Governor has been ordering withdrawals from the Fund for reasons other than those for which the fund was created by the donor. Evidence of this shall be availed at the hearing and consideration of this Motion. The Mover will as well be asking the Assembly to issue an order under Article 195(2)(b) of the Constitution

and Sections 27(1)(c) and (2) of the County Assemblies Powers and Privileges Act 2017, compelling the relevant banks where the funds were drawn from to furnish this House with the bank statements showing withdrawal of the funds from 2023 to date.

III. Misappropriation of funds and unfair distribution of projects under the Financing Locally-Led Climate Action (FLLoCA) Fund

(17). That, on various dates between 2023 and 2025, the Governor has violated the provisions of Articles 10, 179, 183, 201, 207 and 208 of the Constitution and Sections 102 and 107 of the Public Finance Management Act 2012 and Section 30(3)(f) of the County Governments Act, 2012, by presiding over unfair, skewed and nepotistic distribution of projects under FLLoCA funds, imprudent use, misappropriation and misallocation of FLLoCA funds as follows-

(a) Skewed and unfair distribution of projects under the Fund with the Governor's home ward, namely Chemosot Ward alone getting projects worth Kshs21,701,590 while there are many other wards not only in other sub counties, but even in the Bureti Sub-County which have received not a single project under the Fund. This nepotistically skewed distribution of projects under the Fund violates the national values and principles of governance under Article 10 of the Constitution and in particular the values of equity, non-discrimination, equality, good governance, integrity, transparency and accountability; the principles of public finance under Chapter Twelve of the Constitution; as well as the provisions of Sections 102 and 107 of the Public Finance Management Act, which enjoins the Governor to ensure fiscal responsibility and adherence to the values and principles of the Constitution in the management of the county funds.

(b) The Joint Committee on Water and Sanitation and Environment, Energy, Forestry and Natural Resources in their report on the Implementation Status of FLoCCA Programmes, noted that some projects under the Fund, namely Chemomul Water Project in Kabianga, Water and Environment Projects in Seretut-Cheptororiet Ward, Torochtany Cooperative Society Milk Cooling Plant in Kapsaos Ward, Soliat Water Tree Nursery Establishment Project in Soliat Ward, Ndonyo Mare Borehole Water Project and Lelaitich Water Project in Soliat Ward are marked as 100 per cent complete yet there are either defects in the works, incomplete and substandard works.

(18) As a result of this unfair distribution of projects, wards like Cheplanget, Litein, Chaik, Kipchebor, Chilchila and Kunyak did not get even a single project in all the categories under the Fund, namely; environment, agriculture and water.

IV. Misappropriation of County Funds under Equaliser Kazi Mtaani Initiative

(19) On or about 31st August, 2023, the Governor engaged in gross violation of Articles 10, 183, 201, 207 and 208 of the Constitution and Sections 102, 109 and 110 of the Public Finance Management Act, 2012 by launching a programme dubbed "*Equaliser Kazi Mtaani Initiative*" and drawing county funds towards the initiative without a legislation to anchor the initiative, public participation, prior approval of the County Assembly and the Controller of Budget and prior approval of the Budget and Appropriation Committee.

(20) Under the Fund, a total of Kshs39 million was paid without proper tendering, Local Service Orders (LSOs) and for the services which were not delivered.

(21) The County Assembly's report on the *Ad Hoc* Committee on *Kazi Mtaani* Project pointed out various violations of the Constitution and the law in the rolling out and implementation of the initiative. However, the Governor deliberately disregarded the report and it has hitherto not been implemented.

(22) The deliberate failure, omission and unwillingness to implement the report of the County Assembly on *Equalizer Kazi Mtaani Initiative* undermines devolution, the doctrine of separation of powers and is, therefore, antithetical to the values and principles of governance under Article 10 of the Constitution and the objects of devolution under Article 174 of the Constitution.

V. Misappropriation of Funds under the Strategic Intervention Projects (SIPs)

(23) In various dates during the Financial Year 2024/2025, the Governor engaged in gross violation of Articles 10, 183, 201, 207 and 208 of the Constitution and Sections 102, 109 and 110 of the Public Finance Management Act 2012 by overseeing misappropriation of various projects under the SIPs Fund.

(24) For instance, the project for upgrading of Kunyak Dispensary to Health Centre which is a retender project for the construction and renovation of various facilities within the Health Centre by Ms. Belitra Enterprises Limited for Kshs44,756,846, a total of Kshs8,575,186 has been paid for no works done. Indeed, when the County Assembly's Committee on Implementation visited the site, they found that the contractor had only supplied materials, contrary to the Finance Department's report to the Assembly that kitchen and staff house was at walling stage while the MCH is at slab level.

VI. Other Violations of the Constitution and the Law

(25) The present and former Chief Executive Committee Members (CECMs) and Chief Officers (COs) have variously reported coercion by the Governor to make financial allocations for Governor's own use from the funds allocated to their respective departments and which funds they were required to remit through the Governor's personal assistants.

(26) Violation of Article 201(a), (d) and (e) of the Constitution of Kenya, 2010 on principles of public finance management and Article 226 as read with Article 227 of the Constitution by presiding over glaring irregularities evidenced by-

- (a) Irregular award of contracts and evasion of accountability.
- (b) Willfully interfering in the procurement processes and the award of tenders.
- (c) Skewed tender awards to various contractors at inflated rate and in collusion with fraudulent contractors and suppliers.
- (d) Irregular implementation and unfair distribution of various programmes in the county.

(e) Intentionally and negligently presiding over massive theft of county public funds as evidenced by the Auditor-General's reports for the preceding financial years which have raised red flags over various projects.

(27) On 15th August, 2023, the Governor compensated the victims of Londiani Accident from the County Emergency Fund to cover up for the funds raised by the public and misappropriated by a committee he had formed to steer the fund drive without a cogent explanation of how the funds publicly raised for the victims had been expended.

Allegation 2: Misappropriating and/or Abetting Misappropriation of the Funds Publicly Raised for the Victims of the Londiani Accident

1. On various dates between 4th July, 2023 and 9th July, 2023, the Governor grossly violated the provisions of Articles 10, 73 and 75 of the Constitution and Sections 29 and 34 of the Leadership and Integrity Act, 2012 by-

(a) Overseeing misappropriation of the funds raised for the victims of the horrendous Londiani Junction accident tragedy in which over Kshs9 million of public raised funds were lost.

(b) Reneging on his undertaking to implement the Report of the County Assembly's Ad Hoc Committee formed to probe the misappropriation of funds meant for the victims of the accident. There is evidence that the Governor filed a suit and/or supported a suit by those implicated in the Report of the County Assembly's *Ad Hoc* Committee in Kericho ELRC Petition No. E006 of 2023 – Dr. Wesley Bor & 5 Others vs. the Governor, Kericho County Government & Others and Kericho ELRC Petition No. E014 of 2023 – Victor Tum & Others vs. the Governor, Kericho County Government & Others.

(c) Being personally and directly complicit in the flawed award of direct tenders for service providers during the fundraiser and requiem mass of the victims of the accident.

(d) The County Governor has, in this regard, committed numerous and various acts in the course of his duties that are contrary to and in violation of the Constitution and the Laws of Kenya. These include:

(i) The authenticity of various payments made cannot be confirmed. The fact that the exact amount of money expended from the sum collected during the fundraiser points to impropriety and suggests a clear fraud on those whom the funds ought to have benefited.

(ii) A total of Kshs13,682,660 was collected at the fund raiser. A sum of Kshs423,000 was purportedly expended as: Pastor's facilitation, transport refund, field preparation, lunches and refreshments, printing, publishing and radio announcements. Other payments that were approved from the fund were: Kericho County Referral Hospital - Kshs2,037,524; Londiani Hospital - Kshs1,534,190; Supertix Limited - Kshs2,945,000; Supershine Limited - Kshs411,000; Rays Hotel Kshs100,000; County Commissioner's fuel- Kshs300,000 *et cetera*.

(iii) That when Kenyans from all walks of life voluntarily made contributions to aid the victims of the tragedy, it was never intended or anticipated, that the funds would be misappropriated with the blessings of the Governor, who had a higher calling to ensure the money was accounted for to the last coin and on whom the people bestowed their trust.

(iv) The Governor issued contradictory statements insofar as the use of the funds is concerned. The contradictory statements point to him being complicit in the matter.

(v) While the Governor is on record indicating that the medical bills for all the victims would be waived and taken care of by the County Government, it is not clear why money had to be paid out from the fund collected to various public hospitals against the express and unequivocal representations of the Governor.

(e) By his acts of omission and commission, the Governor has grossly violated the provisions of Article 75 of the Constitution, which demands that a state officer shall, whether in private or in public, behave in a manner that avoids conflict of interest between personal interests and public or official interests, or compromises public interest in favour of personal interest.

(f) By overseeing the misappropriation of the funds aimed at assisting the victims of the accident, the Governor violated Article 73(2), which demands from him selfless service based solely on public interest, demonstrated by honesty in the execution of his duties, accountability to the public for decisions and actions and discipline and commitment in service.

(g) By allowing himself to be a master of doublespeak in such a grave matter that shook the conscience of the nation, the Governor violated Article 73(1)(a)(ii), (iii) of the Constitution which demand that he at all times demonstrates respect to the people and brings honour and dignity to the office he holds.

(h) By allowing himself and senior officials close to him to benefit from the funds, the Governor violated Article 76(2)(b) of the Constitution, which prohibits a state officer from accepting a benefit in circumstances that compromise the integrity of the State officer.

(i) By failing to ensure that decision-making in the executive office of the County Governor is not influenced by corruption, nepotism and other callous and improper motives, the Governor has failed to exercise objectivity and impartiality thus violating Article 73(2)(b) of the Constitution of Kenya, 2010.

Ground Two: Abuse of Office

The Particulars of this ground are as follows:

Allegation 1: Illegal Appointments, Unlawful Dismissals and Transfers, and Usurpation of the Constitutional and Statutory Functions of County Public Service

The Governor has variously engaged in:

- (i) Gross misconduct, and
- (ii) Gross violations of Articles 10, 73, 75, 232, 235 and 236 of the Constitution.
- (iii) Gross violation of section 17 of the Public Officer Ethics Act, Sections 55, 59, 59A, 60, 62, 63, 64 and 65 of the County Governments Act, Section 4 of the Public Appointments (County Assemblies Approval) Act, 2017, and variously abused his office by-

(a) Skewed, uncompetitive and nepotic appointments of the county employees of various cadres. For instance, the Governor recently hired his own brother, one Victor Mutai, as a revenue clerk. Similarly, the Governor's personal assistant's wife, one Chepkirui Mercy, who was recently hired as a nurse on contract basis, was confirmed and yet there are several nursing staff who have been serving on contract for long without confirmation.

(b) Illegally appointing one Mrs. Alice Bett (now Judge of the High Court) as the County Attorney when there was a substantive office holder, an act which the Employment and Labour Relations Court (Hon. Lady Justice Wasilwa) affirmed was irregular, unprocedural and unlawful in *Sang verse Governor Kericho County & 2 others* (Petition E001 of 2023). In that case, the Governor was found by the court to be in gross violation of Articles 73 and 232 of the Constitution, his actions found to be illegal and

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unconstitutional and ordered to pay costs of Kshs2,000,000 and costs personally. Therefore, Governor has already been adjudged to be in gross violation of the law by and all the Assembly and the Senate.

(c) Causing the advertisement of the positions of doctors, nurses, early childhood education (ECDE) teachers just to endear himself politically when he knew the County Government did not have the capacity to hire. The applicants were subsequently not shortlisted nor the alleged vacancies filled up.

(d) Illegally deploying health staff vide the Notice dated 22nd July, 2024 without any justification, authority and involvement of the County Service Board, thus creating a crisis in the health sector.

(e) Since his assumption of office, the Governor has dismissed a total of 10 County Executive Committee Members (CECMs), six Chief Officers (CO's), two Chiefs of Staff, among other senior county staff without any cause or reason thus exposing the county to protracted litigation and the risk of huge compensation in damages. The Governor has perpetuated this firing-spree not for any reason, but as a show of might, power and authority. That is where the abuse lies.

Allegation 2: Subversion, Discrediting and Impeding of the Oversight Role of the County Assembly

On 3rd September, 2024, the Governor engaged in-

- (i) gross misconduct; and,
- (ii) grossly violated the provisions of Articles 10, 73, 75, 174 and 185(3) of the Constitution and abused his office by writing to the Speaker purporting to direct the Speaker on, among other things, the timelines the Speaker should give the chief officers who are summoned by the Assembly for questioning in exercise of the Assembly's oversight mandate.

Ground Three: Gross Misconduct

The Particulars of this ground are as follows-

Allegation 1: Bullying, Incitement, Vilification of People and County Staff

On various occasions, the Governor has engaged in-

- (i) gross misconduct; and,
- (ii) gross violation of the provisions of Articles 10, 73 and 75 of the Constitution, and Sections 29 and 34 of the Leadership and Integrity Act by-

(a) The Governor has been operating with impunity as though he is above the law. On the second day of being sworn into office, the Governor led a mob to invade a private land owned by one Mr. Joseah Kiplangat Kogo within Kericho Town and tore down the fence. The Governor has since designated the subject land as an illegal dumpsite operated by the County Government without the consent of the registered proprietor, the National Environment Management Authority (NEMA) approval, gazettelement by the county designating the parcel as a dumpsite and in total disregard of a court order issued by the Environment and Land Court in Kericho in *ELC Petition No.E001 of 2022- Joseah Kiplangat Kogo vs. County Government of Kericho*. The Governor has also obstructed the enforcement of the orders by the Administration Police . The actions are illegal, contemptuous to the authority and dignity of the court and the rule of law, unethical and demeaning the office the Governor holds.

Further, as a result of the illegal actions of the Governor, the county was condemned to pay the costs.

(b) None of the dismissed CECMs, COs and Chiefs of Staff and other senior county staff were given fair administrative, due process and hearing thus violating the provisions of Articles 41, 47 and 50(1) of the Constitution.

(c) The Governor has persistently intimidated, molested, harassed county officers who do not sing to his tune, leaving officers jittery and creating an atmosphere of fear, uncertainty and despondency in the county and thus creating a toxic work environment. This violates the provisions of Sections 11 and 13 of the Leadership and Integrity Act, 2012.

(d) The Governor has persistently used divisive and unbecoming language which undermines the office he holds contrary to Section 8 of the Leadership and Integrity Act, 2012.

(e) The acts of the Governor enumerated above have collectively brought dishonour and disrepute into the Office of the Governor in violation of Chapter 6 of the Constitution and the Leadership and Integrity Act, 2012.

Hon. (Dr.) Erick Kipkoech Mutai, how do you plead to the three grounds? How do you plead to Ground One?

The Governor of Kericho County (Hon. (Dr.) Erick Kipkoech Mutai): I plead not guilty.

The Clerk of the Senate (Mr. Nyegenye): How do you plead to Ground Two?

The Governor of Kericho County (Hon. (Dr.) Erick Kipkoech Mutai): Not guilty.

The Clerk of the Senate (Mr. Nyegenye): How do you plead to Ground Three?

The Governor of Kericho County (Hon. (Dr.) Erick Kipkoech Mutai): Not guilty.

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

The Speaker (Hon. Kingi): Governor, you may be seated.

The Governor of Kericho County (Hon. (Dr.) Erick Kipkoech Mutai): Thank you, Mr. Speaker, Sir.

(The Governor of Kericho County (Hon. (Dr.) Erick Kipkoech Mutai) resumed his seat)

The Speaker (Hon. Kingi): Now, I will call upon the County Assembly. You have 30 minutes to make your opening statement. Thereafter, it will be followed by the Governor's opening statement. It will also take 30 minutes.

Mr. Elisha Ongoya: Thank you so much, Mr. Speaker, Sir. Before we make the opening statement, there are certain preliminary matters that the County Assembly wished to raise. With your permission, I wish to be given the opportunity to raise them first.

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

PRELIMINARY MATTERS AND OBJECTIONS

SPECIAL ARRANGEMENTS FOR A WITNESS WITH MOBILITY IMPAIRMENT

Mr. Elisha Ongoya: Thank you so much. Allow me to begin by raising the fairly simple and straightforward preliminary issue. By a letter dated 24th August, 2025, by the firm of H&K Law Advocates, on behalf of the County Assembly---

Sorry, the record may not have caught up my name. My name is Elisha Ongoya for the County Assembly of Kericho. Members of the Senate, on a light note, may wonder whether Mr. Mutuma and I are on this side. We may say that the Cab Rank Rule has placed us on this side today. Mr. Speaker knows that better than I do.

By a letter dated 24th August, 2025, H&K Law Advocates acting for the County Assembly of Kericho requested the Clerk of this House to make special arrangements for one witness who suffers a physical disability in the nature of mobility impairment when that time comes. So that we do not struggle the last minute, I wish that Mr. Speaker directs that those arrangements be made as and when that witness is required to be put on the stand.

The Speaker (Hon. Kingi): Those arrangements are going to be made.

Mr. Elisha Ongoya: Thank you so much.

The second preliminary issue is also relating to another letter dated 24th August, 2025 and addressed to the Clerk of this House. In context, you will notice that among the filings made by the Governor in his defence was a notice of preliminary objection, which was brought to the attention of the County Assembly when the documents were being exchanged at the Clerk's designated area.

In the circumstances, the County Assembly wrote to this House informing it that it will be seeking the leave of this House to file a response to the notice of preliminary objection---

The Speaker (Hon. Kingi): Counsel, that preliminary objection has not been raised yet. It is on record, but it is yet to be raised. You will be given an opportunity to make that application once that preliminary objection has been raised.

ADMISSION OF DOCUMENTS BY THE COUNTY ASSEMBLY OF KERICHO

Mr. Elisha Ongoya: Thank you. Having said that, the final is a set of documents that we also wish to be permitted to be circulated to the Senators. I will just lay a brief context for this.

These are documents which, when you were informing the Senators, you drew their attention to the documents that the County Assembly brought to this House accompanying their resolution. Some of those documents, unfortunately, when we were now preparing the volumes for circulation, because of the number of volumes involved, were omitted among the documents that were delivered. Other documents were also referred to the various witness affidavits, and those documents were also omitted when we were produced.

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Mr. Speaker, Sir, if you give me permission, I can then draw your attention to the specific documents, so that then you can consider whether or not to allow them.

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

Mr. Elisha Ongoya: Mr. Speaker, Sir, thank you. You will remember you read among the documents that the County Assembly presented to the Senate as payment vouchers for the Department of Agriculture. You also read payment vouchers for the Department of Lands and Physical Planning. Those documents, although accompanying the Motion and duly presented, were not reproduced in the volumes that have been given to the Hon. Senators. We beseech you to grant us leave to have those documents circulated among the Senators.

We also have documents that are mentioned in the various witness affidavits, but which, unfortunately, were not reproduced when the volumes were being made. By name, we have a staff redeployment memo dated 10th January, 2025, an internal memo of the County Government of Kericho. We have certain printouts of M-PESA statements that are referred to in the affidavit of Erick Koech. We have the letter dated 21st August, 2025 with regard to the report of the *Ad Hoc* Committee on *Kazi Mtaani*, which, Mr. Speaker, Sir, you have alluded to. It is referred to in the affidavit of the Mover of the Motion.

We have certain RTGS payment extracts that are referred to in the affidavit of Albert Koech. We have the termination letter of Enoch Koech that is referred to in the affidavit of Eric Koech. We have an invitation for a meeting with the Joint County Assembly Committee on Water and Sanitation, and Environment, Forestry and Natural Resources and minutes.

The report of that committee is before this House, but only the invitation letter that was omitted in the course of the photocopying. Then we have bundles of invitation letters dated 18th July, 2025 to appear before the *Ad Hoc* Committee of the County Assembly of Kericho on Fictitious Payments. Again, the report of that committee is already before this House, so the only documents that were omitted were the invitation letters, which we seek that you permit to be presented to this House so that we have a complete record.

Mr. Speaker, Sir, then finally, we have certain photographs and an attendant certificate of electronic evidence. The photographs are referred to in the affidavit of Kiprotich Rogony and the certificate of electronic evidence is also in that affidavit, but, unfortunately, in the course of mass production of the documents, they were omitted. Those documents, Mr. Speaker, Sir, we beseech you to allow the Senators to have access to, so that we can have a comprehensive view of the situation.

The other documents are the ones relating to the preliminary objection. I would suspend dealing with those ones as directed by the Speaker. I will deal with them as and when that preliminary objection becomes a relevant issue before this House.

My learned colleague should draw my attention to something, so that we do not waste time. I will ask him to just present it to the Senate right away so that the Senate can make a decision.

Mr. Elias Mutuma: Thank you, Mr. Speaker, Sir. For record purposes, my name is Elias Mutuma. I just wanted to confirm that the documents that my learned senior has alluded to have already been supplied to counsel for the Governor through email yesterday and physical copies were delivered this morning.

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Thank you.

The Speaker (Hon. Kingi): Counsel for the Governor, do you have any objections to that request?

Mr. Katwa Kigen: Mr. Speaker, Sir, and hon. Senators, we very strongly object. We strongly object to the attempt to introduce new evidence at this point. It is true that this morning as we were waiting to walk in here, we were served with the documents referred to by my colleague.

The first point of our objection is that we will not have had an opportunity to have looked at them and to prepare ourselves to respond to them, considering that today is scheduled for hearing.

The second objection is that you already gave a timetable within which the filings were to be done, and we all struggled to file within that time, including ourselves, who are also equally have voluminous documents. So, the mere contention that it was for voluminous is not good enough reason.

The third objection is that they were not part of the documents that were used during the proceedings at the County Assembly. For purposes of that point, I wish to make reference to your Standing Orders, the Standing Orders of the Senate, particularly the Third Schedule Standing Order No.80(8): Rules of Procedure when considering the proposed removal in Plenary. Rule No.20 states as follows:

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

Mr. Speaker, Sir, it is our contention that this Standing Order clearly prohibits the introduction of this new evidence. It is also our argument that if that evidence had been brought to the Assembly, there is also the possibility that the Assembly could have brought it differently. So, we take objection to the introduction of the new evidence and we insist that the matter proceeds as per the documents that were filed within the timelines that you had given.

Mr. Speaker, Sir, I would like my colleague, Mr. Wanyama, to make supplementary submissions on the issue.

Mr. Peter Wanyama: Mr. Speaker, Sir, and Hon. Senators, just an additional remark. If you look at paragraph 16 of the Motion and the entire Motion, there is certainly evidence which the Mover of the Motion wanted to adduce before the County Assembly. At paragraph 16 of the Motion, the Mover specifically said on the Floor that the evidence will be sought after asking the House to issue summons. Throughout the Motion, you will see that then there is no evidence. An allegation has been made and no attaching evidence has been adduced. So, that was the evidence which was submitted before the County Assembly and a decision made on them.

Therefore, in accordance with your Rules - and we strongly object to this - the County Assembly cannot introduce new evidence. Even if it was mentioned in the pleadings before the County Assembly, it cannot introduce that new evidence before this House at this stage for only one reason. It is extremely prejudicial to the Governor.

Secondly, the Governor has not had the opportunity to prepare on this evidence; but more importantly, this evidence requires comment from the Governor. Therefore, the

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right to fair hearing will be severely breached if this evidence, which the County Assembly is now doing a patchwork, is introduced at this stage.

Lastly, it will contravene your express, clear and unequivocal rules that no new evidence shall be introduced in the Senate if it is not part of the evidence submitted against the Governor in the County Assembly.

Thank you.

Mr. Elisha Ongoya: Mr. Speaker, Sir, may I have a brief right of reply?

The Speaker (Hon. Kingi): Counsel, let me just make a ruling on this matter so that we make progress.

Mr. Elisha Ongoya: Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): We have heard your position. We have heard the Governor's position.

If I heard the counsel for the County Assembly correctly is that the evidence related to those documents is already in our bundles, the original bundles. These documents were omitted by mistake during the compiling of those bundles. They do not introduce any new evidence as is being submitted by the Counsel for the Governor. Therefore, pursuant to Rule 30 of the Rules of Procedure, I will allow those documents to be admitted.

Counsel for the Governor, you may take the stand and make your opening statements.

ACCURACY AND THRESHOLD OF VOTE TAKEN ON IMPEACHMENT
MOTION BY COUNTY ASSEMBLY OF KERICHO

Mr. Katwa Kigen: Mr. Speaker, Sir, we had indicated that we are raising a preliminary objection, but allow me to make an observation that as much as you have made your ruling based on the premise that they were excluded although they were part of the evidence, they were not part of the evidence. These are new documents that were not part of this case. We can only say that they were referred to or alluded to in the charges, but they were never part of the evidence.

We filed a notice of intention to raise a preliminary objection and the same was part of the filings we did within the timeline you gave us. The nature of our preliminary objection is to contend that there was no voting that took place. Therefore, it implicates the requirement that firstly, the voting must have been at the Assembly and secondly, a two-thirds threshold should have been achieved.

It is our contention that the approach adopted by the Speaker in the County Assembly that the documents filed, including the audit of the logs of the process will show that there was no voting system. I pray that you allow us to raise that preliminary objection to the effect that, indeed, no voting took place and two-thirds was not achieved and, therefore, your jurisdiction has not been triggered as a Senate.

The Speaker (Hon. Kingi): Counsel for the Governor, you have 15 minutes to raise your preliminary objection. Counsel for the County Assembly, you will also have 15 minutes to respond and thereafter, the Senate will make a determination on the matter.

Mr. Katwa Kigen: Mr. Speaker, Sir, the issues we raise in our preliminary objection is that we invite your attention to the contents of Annex 4(a) from the

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Assembly, which provides an audit of the logging process and details of how the voting went on. That is contained in the affidavit by an IT expert at pages 79 to 85 and also in the affidavit sworn by the Clerk, pages 93 to 95.

(Loud consultations)

It is at Volume II.

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

Pause the time for the Governor, please.

Sen. Sifuna: Mr. Speaker, Sir, we have been through this process many times and these are experienced lawyers. Part of the thing they should do before they start is to introduce to us, the Senate, their documents. You cannot just refer to documents and we have volumes upon volumes here. I would expect the Counsel for Governor starts by telling us what his documents look like, so that we go together. Other than that, he is speaking to himself, with due respect.

The Speaker (Hon. Kingi): Counsel for the Governor, be guided accordingly.

Mr. Katwa Kigen: Mr. Speaker, Sir, my apologies. I am referring to Volume II of the County Assembly's bundles and I will be juxtaposing that bundle Annex 4(a) from the County Assembly.

On our preliminary objection, the first point I wish to address is what has been referred to by the IT expert. His affidavit is at pages 79 to 89. At page 81, paragraphs 10, 11 and 12, he indicates that they have been using certain software for purposes of payments, budgeting, meetings and so forth.

He says in October, 2024, an enactment was made of Standing Order No.77 and attendant to the enactment of that section, they developed a system for voting by upgrading what they had already had for purposes of implementing that Standing Order. He then proceeds at paragraphs 23, 30 and 31 to say that the system is accurate, verifiable, secure, user-specific and friendly. That is where our preliminary objection lies.

Mr. Speaker, Sir, if it was tailored to meet the intention of Standing Order No.77, Standing Order No.77(a) requires that in the event an MCA chooses not to vote, he must be deemed to have abstained. When we look at Volume I of the Governor's bundle, which is pink in colour, at page 98 to 101, it will be noted that if, indeed, it was tailored to meet the intentions of Standing Order No.77, it should also have complied with the provisions of 77(8) which says that-

"Any MCA who has not voted should be reflected as having abstained."

You will notice at page 98, the votes reflected in that report say that 33 voted and there was zero abstain. If we can go to Volume II of the Assembly's bundle, you will find an affidavit by the Clerk of the County Assembly at pages 90 to 93, paragraph 17. The Clerk is specific that there were 47 MCAs in the Assembly on that day. Our case is that 18 MCAs did not vote at all and we have produced those affidavits and I will provide them in a minute.

I will now make my first point. If the system that they say was tailored to meet the intention of Standing Order No.77, then Standing Order No.77(8) requiring that it should reflect abstention should have reflected that 18 MCAs abstained or in the alternative, if it

were to be the case that 33 voted, but which we contest, then it should have reflected that 14 of them abstained.

Mr. Speaker, Sir, that is our first attack on that pretense that there was any voting that happened. It is our contention that a piece of paper was prepared.

The second argument we are making is that 18 MCAs did not vote and the maximum number of votes that system should have reflected is 29. The affidavits we have produced for purposes of supporting that proposition are at pages 117 to 120 of the Governor's bundle. There is an MCA called Kiptegan, another one called Kibet at page 121 to 122, there is Amos at pages 125 to 127, then there is Edna and Martin at page 128 to 131, then there is also an MCA whose nickname is "broker" at page 132 to 134. There is Gabriella at page 135 to 137.

Mr. Speaker, Sir, I am struggling with the 15 minutes I was given. There are affidavits sworn by all the 18 jointly at page 113 to 116. In the same set of documents, we have shown how they have already reported to the Directorate of Criminal Investigations (DCI) for purposes of investigation of the impersonation of their votes. All the 18 MCAs are our witnesses and we intend to probably call 17 or the 18.

Mr. Speaker, Sir, it is our contention that to the extent to which 18 of them did not vote, the representation that the 33 MCAs voted is inaccurate and should have been only 29.

We have particularly identified four MCAs whose votes were fraudulently captured as having voted in favour of the impeachment. They have said they did not vote. To the extent to which the report on the voting at page 98 to 106 is bundle one of the Governor's report purports that the four also voted is a forgery.

The other issue which we want my learned friend to highlight is that it will be noted that there are individuals based on the log in audit that the County Assembly has produced, there were three MCAs who voted twice; that is Hon. Rogony Kiprotich, who is the Mover of the Motion.

Not only is it reflected on the audit report, but he is also in the audio as telling one of the people he voted on behalf of that, "please let me give you some money in exchange for you vindicating having voted on your behalf."

The other one is Hon. Moses Rotich who voted twice and Hon. Beatrice Chepkoech.

The other issue we wish to advance is the Standing Order No.77(4) enacted by the County Assembly which requires that when you implement the use of electronic voting, the MCAs will be allowed to one, not only to press, but to press a button.

Mr. Speaker, Sir, it should be a common ground between myself and our learned colleagues from the County Assembly that there was no gadget which could be pressed and there was not button to be pressed. They sent a link to mobile phones and asked MCAs to open the link and vote. To the extent to which the Standing Order requires that you press a button, there was no device which could satisfy that requirement for electronic voting at that point in time.

We also point out that the affidavit sworn by the IT expert multiple times at pages 79 to 85 is that there was a unique criterion to enter the portal. It will be noted, as my learned colleague will demonstrate, that their identifiers were merely the payroll number and the Identification (ID) number. Anybody who knows the ID and payroll numbers

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could enter and vote and that as far as we are concerned is what happened. This is why we are saying that the voting system was not accurate, verifiable and auditable.

Lastly, as I hand over to my learned friend, Mr. Wanyama, is to point out that immediately after the voting, the site was pulled down. We are made to understand that in response to our having filed our objection, an attempt was made to set up the same link yesterday, but between the time of voting on 15th of August, 2025 and yesterday and Monday, the site had been down.

We contend that the voting system does not satisfy the requirements that a voting should have happened and should have achieved two-thirds of the MCAs to warrant your having to entertain and determine this preliminary objection.

We pray that you decline to accept this Motion into the House.

Mr. Speaker, Sir, I request for five minutes for my colleague, Mr. Wanyama.

Mr. Peter Wanyama: Mr. Speaker, Sir, there is a thorny issue which is creeping from our Motion. The County Assembly of Kericho has 47 MCAs. The document submitted by the County Assembly shows that 33 voted in favour of the Motion. There are 18 MCAs before this House who say they never voted for the Motion.

Outside the legalities, the Senate can determine that question factually by asking all these 18 MCAs whether they voted for the Motion or not. This is because Section 33(2) of the County Governments Act gives this House the jurisdiction. We submit that there is no proper Motion before the House because of that question. It was not supported by the requisite two-thirds majority as required by law.

Allow me to invite you to look at Volume 4(a) of the County Assembly's documents because this is where the explanation comes in. The County Assembly say they used a system which they were deploying for the first time in the voting. How would an MCA access the system? They would need their payroll number and ID number.

Yesterday, I attempted to access the system. I was able to access the system which they had restored after pulling it down and was able to vote using the IPPD number and the ID of MCAs. The IPPD number is available in Volume 4 of the document. The same is in the Governor's bundle at page 259.

From the County Assembly's documents page one of Vol.4(a), you will see the ID numbers of the MCAs. These were the passwords to access the system. The username is contained at page 4 of the County Assembly's document. You will see the IPPD system which is the unique payroll number of each MCA. This system, fortunately, leaves an audit trail. At page 13 of the County Assembly's documents, you will see the trail of whatever happened to that system. Anyone could have accessed the system. Before I go to this audit trail, the persons who could have accessed the system were the Clerk, the MCAs and the IT personnel. The system will tell you the whole story.

From page 13 to 15, you will see the audit trails. Allow me to show you this because it is very significant.

The Speaker (Hon. Kingi): Counsel for the Governor, you have two minutes.

Mr. Peter Wanyama: This audit trail will show that there are three MCAs who voted twice. Remember this is from the County Assembly's own document. Can I show you their IPDD and names? Yes!

At page 16 of Vol.4(a), you will see that an MCA IPPD number which is 20200251726. These are the credentials based on the County Assembly's document of an MCA known as Moses Rotich. The log says he voted "Yes" to the Motion.

On page 17 of the County Assembly document, look at the IPPD number. It is of the same person. The same Member of County Assembly (MCA), Moses Rotich. It is said he voted again, "yes". So, he voted twice in this system. That is the first entry on page 17. The first entry at the top there is the same IPPD number of the MCA who is appearing on the call logs as having voted twice. He appears at page 16 and page 17, the first entry.

The second MCA who voted twice is Beatrice Chepkemai. On the ninth line at page 16, you will see an MCA voting yes and the credentials, as you can see there, the IPPD number is again 202-96089. This MCA, based on the County Assembly document, you can identify the name is Beatrice Chepkemai, voted yes. At page 17, on the fourth line, you will see the same credentials for Beatrice Chepkemai, again voting yes. Then the last MCA who voted twice is the mover of the Motion.

The Speaker (Hon. Kingi): Counsel for Governor, conclude, please.

Mr. Peter Wanyama: Yes, I am concluding, Mr. Speaker, Sir. The Mover of the Motion appears on page 16 of Vol.4(a) at line six and the credentials at line six is again 202-96039. These are the credentials of a gentleman known as Hon. Kiprotich Rogony, the Mover of the Motion and he voted yes.

On page 17, line seven, the same credentials of the same Mover of the Motion, the MCA. You can see the number. Again, he voted yes. From these reports which the County Assembly has submitted as their evidence, there are 36 yes votes from the log-in trail. However, as part of the demonstration of fraud, they were able to say that only 33 voted yes. The answer is that from their own document, which they have submitted to the Senate, 36 MCAs allegedly voted for this Motion and some were voting twice.

Secondly, from this system audit trail, you can see there were 47 attempts to log in at that time. The major attempt was done by a gentleman known as Peter, of course, not myself. Peter attempted to log into this system seven times using the IPPD number of the MCAs. You cannot see the ID number because the ID number was the password. So, you cannot see it. Instead, you will see the IPPD number. So, you can see a gentleman known as Peter has attempted to log in seven times. The log-in trail will indicate that there were 47 successful log-in attempts.

This is maybe the second last point as I sit down. While this system was running for voting, the technical people accessed this system two times. Allow me to just point out the last one at page 17 down there. On the second last entry on page 17, you will see log user admin. It is the same log user then accessing the system again at the end of it.

At page 15, this is in the middle of voting, on line four, you will see the admin accessing the system. If I have time, I will actually show you that there are persons who were able to access the system because the voting duration was between 14 and 45 seconds. You log in, it shows that you have logged in, then you log-out for between 14 and 45 seconds. However, there are some persons who accessed the system for more than two minutes. They just logged-in and then they were there throughout. We were wondering what they were doing in the system.

Lastly, if you look at page 13, when the voting is now about to come to an end, at entry No.7, you will see an MCA who had voted, but then accessed the system. You can see a log-in attempt. They have accessed the system, then they never left the system. So, the question that we are asking is really pre-emptory as I wind up my submissions on this inquiry. Is this system secure? Is this system, based on this evidence, accurate?

We have an affidavit of an MCA who says that someone else voted for him. If I, as an advocate, can access the system and vote, so what about persons who have knowledge to the system, including the user developers? They say this system was developed by the IT Department internally. Remember, it was being used for the first time by the County Assembly on a very serious matter which has heavy constitutional implications, that is the impeachment of a Governor. So, we are asking, is this system accurate? Is it verifiable?

In our submissions - and we conclude this by saying - because we have laid the basis of fraud, a fraudulent pattern by the persons who are in charge of this system and because the 17 or 18 MCAs are here, this Senate, being a House of record, has an ultimate responsibility to inquire on that question now, as part of the preliminary inquiries, and vote on it. Ask all these MCAs. If you remove 47---

The Speaker (Hon. Kingi): Your time is up, Counsel for the Governor. You are repeating yourself.

Mr. Peter Wanyama: Thank you, Mr. Speaker, Sir. I will sit down.

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

Mr. Elisha Ongoya: Mr. Speaker, Sir, my name is Elisha Ongoya. I beg to reply. For starters, in response to this notice of preliminary objection, the County Assembly has filed grounds of opposition named Volume 7. It is a small volume. If it has gone around, it is just a short while ago. An affidavit named Volume 7(a), being the affidavit of Edina Chepkirui Tonui. I begin by begging that these documents be deemed to be validly on record. They are the documents I alluded to earlier.

Having said that, I begin by saying that if you look at the written notice of preliminary objection, there are two elements of the objection that my learned colleagues for the Governor have either abandoned or not alluded to, specifically alleging violation of a court order and reintroduction of the Motion, because they have not argued it---

The Speaker (Hon. Kingi): Counsel for the County Assembly, respond to the preliminary objection, not the proposed preliminary objection.

Mr. Elisha Ongoya: Thank you, Mr. Speaker, Sir. I am comfortable with that. Having said that, allow me then to start with the issue that my learned counsel, Mr. Wanyama, raised here by saying he personally logged into this system and voted.

That qualifies him to be a witness who needs then to demonstrate to this House how he logged into this system and how he voted and, therefore, be a proper subject of cross-examination. Anything short of that, is nothing more than mere sensationalism and I beseech you to treat it as such.

The second issue is on the allegation of the logs that you have just been taken through. It is amazing how sensationalism can arise. If you go to page 13 of Volume 4(a) of the County Assembly documents, the audit logs run from page 13 all the way to page 17.

Allow me to demonstrate why you cannot determine this objection on the grounds raised by my learned colleague, Mr. Wanyama, by referring to a decision of the High Court on a similar issue. This Senate impeached another governor called Mike Sonko Mbuvi Gideon Kioko and an issue of electronic voting arose in that matter. When that matter went to the High Court, there was a petition number A4 25 of 2020 that was considered by the High Court and the judgment is publicly available on the National Council for Law Reporting (NCLR). At paragraphs 169 and 170 of that judgment, the three-judge bench of the High Court observed-

“The court is now left with two separate sets of affidavits that present contradictory positions. On the one hand, some MCAs aver that their login credentials were forged---”

Same thing you are hearing here.

“--- and that they never participated in the voting process on 3rd December, 2020, and even went to the extent of making a report at Kwale Police Station.”
It is the same argument you will hear here.

“On the other hand, 20 of the same 39 MCAs swore affidavits for the Governor, 20 of them swore fresh affidavits on 4th December, 2020, stating that they willingly voted on 3rd December, 2020.”

You will find the same scenario in this case before you. Same scenario. The High Court says-

“The HANSARD, which is the official record of the County Assembly, shows that 90 MCAs voted in respect to Hon. Ogada's Motion. In view of the contradictory averments by some of the MCAs who are alleged to have been in Kwale, coupled with the lack of any expert evidence in support of the alleged hacking---”

Let me stop there by demonstrating that Mr. Wanyama is a lawyer like me. He is no expert in ICT. He will not guide you on the functionality of ICT.

“--- coupled with lack of evidence to support the alleged hacking, we find that petitioners did not establish that the two-thirds statutory requirement for the impeachment of the Governor was not met.”

Having said that, let me go to the logs at page 13 to 17. These are logs in an ICT system. They told you what you have before you is a printout of those logs. It means one must copy the logs then print them out. That is the only way we can present the evidence of the logs here. Otherwise, this ICT expert has put the link in his affidavit. When he takes the witness stand when the trial starts, he will demonstrate to you how this system works and you will see the logs themselves. However, to give you a print out, which is a requirement of the rules of procedure, one has to copy the logs and put them here. Therefore, if the logs are copied twice, it does not mean that somebody voted twice.

Allow me to take you through the exact entries that my colleague, Mr. Wanyama, has alluded to. At page 16 is a log called 15th August, 2025 at 19:25:29 hours, 7:15 p.m. and 29 seconds. He alleges that there is a vote cast by that IPPD number and you go to page 17, you see where he is alluding to the first line. On 15th August, 2025 at 9:15:29 vote cast by that IPPD number.

Let us look at the next log on 15th August, 2025, 19:15:26. Let us go to the corresponding log on the following page 17 on 15th August, 2025 at 19:15:26. The same hour, same minute and same second.

Senators, go to the third entry. This is 19:15:23. Then you go to the following log, 19:15:23, failed log. You see the same entries of the same IPPD number by the same person at the same hour, same minute and same second. This is a product of the copying of the logs for purposes of printing. It is not the logs in the system. When you copy the log to print, you can copy twice.

The results of this election, which my learned friend of course--- The results are at pages 21 to 28. On page 22, the second box from the bottom, that is Hon. Chepkemai Beatrice, you notice she voted “yes” at 19:15:19 hours and you do not see her in any other entry in the results of the vote. These are the results of the vote. This is what the Speaker declared. You run from page 21 to page 28. You will see every MCA who voted “Yes” captured once.

I juxtapose this data and possibly, Mr. Speaker, when the Members will be contributing, fortunately for us, this Senate is a crucible of talent. There are multiples of talent here and there are ICT experts among you. They will demonstrate very clearly that you cannot take a copying of the logs to print when it is copied twice. Therefore, somebody voted twice. Otherwise, it would mean that these people were so meticulous that from that entry that Mr. Wanyama began with up to the second last entry on that page, and when you go to page 17 from the first entry up to the 11th entry, those people transacted meticulously at the same time, second, minute, hour. It makes no sense. That is number one.

Number two, in their submissions, my learned colleagues have said they will call witnesses to prove these facts. It means what they have raised before you, are questions about credibility of witnesses. The forum for testing credibility of witnesses is in the trial itself, so that this ICT expert will take the stand, take you through the procedure and logs and field questions. Then you will be able to test the credibility. That will be the case for any other person, including MCAs.

I am making out a case that what has been argued before you is not a preliminary objection by any stretch of imagination of that word, preliminary objection. These are contentious, convoluted matters of law which even you have seen, my learned colleague, Mr. Wanyama, wishes to convert himself into a witness and also tells you how he participated in this voting process himself. We have no problem with that, Senators. If my learned colleague, Mr. Wanyama, wishes to take the witness stand and adduce that evidence, we have been here long enough to demonstrate that we deal with that in cross examination. It is the only tool known to law for testing veracity of evidence.

Allow me then to go to the Standing Orders. Standing Order No.77 of the Kericho County Assembly Standing Orders is the operating Standing Order for this process. I will also briefly allude to Standing Order No.83. Standing Order No.77 provides that-

“Unless the Speaker, for the convenience of the Assembly, otherwise directs, voting on a division in the Assembly shall be by electronic voting.”

So, the first grievance that my learned colleagues for the Governor are raising is, why did the Speaker comply with Standing Order No.77? That is the essence of the objection.

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Standing Order No.77(3) provides that-

“During electronic voting, members shall cast their votes by pressing either “Yes”, “No” or “Abstain” button.”

I sat hear listening to my learned colleague, Mr. Katwa Kigen, the politest and a courteous colleague that I know, saying that the word “button” means a manual button. Technology has evolved. When an electronic system prompts you with three electronic buttons; “Yes”, “No” and “Abstain” and you press one, I respectfully submit that you have pressed a button.

Partly if this objection was based on a very manual understanding of the word “button”--- I do not know how much more I can say about that, but I think that is the best I can do.

To say that because Kericho County Assembly has technologically advanced that people can press electronic buttons as we do with M-Pesa on our smartphones by pressing “Yes”, “No” or “Cancel” without pressing a manual button, or like we do at Automated Teller Machines (ATMs). An ATM machine prompts you, for example, to select bank statement or withdrawal on the screen. To say that because Kericho County Assembly is at pace with that technology and we must therefore fault it, it will be a sad day in the history of governance of this country if we reached that verdict.

Hon. Senators, you have been told that certain MCAs have sworn affidavits distancing themselves from the vote. We have demonstrated to you that this is not a new game in town. Firstly, in the Mike Mbuvi Sonko Case that happened, the court determined that the HANSARD is the authoritative source of information. The only way to counter that is when those witnesses come here in the trial itself and their evidence is tested.

Secondly, when you finally look at Volume 7A, this is an affidavit of one of the said 18 MCAs denying swearing those affidavits that the Governor has brought before you. One of them who swore an affidavit is here before you.

Distinguished Senators, can we resolve this matter without putting the actual people on the stand at the trial? I submit respectfully that is impossible.

Mr. Speaker, Sir, I know my time is up. May I have just two minutes to sum up my arguments? Apologies, Mr. Speaker, Sir, because my time is up. I wanted just two minutes to sum up the arguments.

The Speaker (Hon. Kingi): You have two minutes.

Mr. Elisha Ongoya: Thank you so much, Mr. Speaker, Sir.

Mr. Speaker, Sir, what are we saying? In a nutshell, we are saying that there is a witness affidavit supported by documents running from page one of Volume 4A--- My apologies. It runs from page four of Volume 4A to page 44 of Volume 4A, giving you an audit trail of the voting process. Nothing can be a clearer explanation of a verifiable and accountable system of voting than a system that generates this kind of audit trails. You cannot fault a system that can generate this volume of audit trails and say it is faulty.

Secondly, you have been told that these MCAs are not technologically advanced and could not vote. Pages one to three of that Volume 4A is evidence of Kericho County Assembly buying for these MCAs laptops to technologically enable them. That was way back in September, 2024. Therefore, the Assembly has done its part.

What is the correct approach to this objection, Mr. Speaker, Sir? I suggest that the matters raised in this objection be subsumed in the trial. These matters should be tested through the trial and determined as part and parcel of the questions of fact and law that this Senate shall deal with at the voting stage of this Motion.

Mr. Speaker, Sir, I respectfully rest the County Assembly's case.

The Speaker (Hon. Kingi): Hon. Senators, pursuant to Standing Order No.34(2A), I will allow not more than 15 minutes from 1.00 p.m. to enable the Counsel for the Governor to respond to what has just been submitted by the team from the County Assembly.

You may proceed. You have no more than 15 minutes because the House must rise at exactly 1:15 p.m. You do not need to take the entire 15 minutes.

Mr. Katwa Kigen: Mr. Speaker, Sir, the first point we wish to observe is that in response to our preliminary objection, one of the issues we raised is that the entry credentials being the use of the Identification Card number as a password and use of payroll number as username has not been contested and the emphasis in it is that those two particulars are publicly available.

Anybody who works with the county can easily access the ID number and the payroll number. Therefore, it should have been possible and it happened that other people intercepted the system. This buttresses the arguments made by my friend, Mr. Wanyama, when he pointed out somebody called Peter and others who logged in, including the admin, who in the audit report, is indicated as having entered, whilst it is the clerk who is said to be the admin of the system.

The second argument - I know my friend from the County Assembly has tried to belittle the point we are making about the issue of the button and pressing. If it were intended that you could use electronic means and not necessarily a device that is secure, then even the Senate would have otherwise had to use a different system.

First of all, you would recall that the enactment of Standing Order No.77 was made in October, 2024. It is hardly a year ago, and so if the Kericho County intended to be very electronically advanced, then they should have in place of using the word button, said, we will use a link to vote.

If it was intended that they should not necessarily press, but click to vote, then they should have used the word in that Standing Order No.77(3) to say that "we will vote by clicking, not pressing". I insist that the intention of Standing Order No.77(3) was to ensure that there is accountable, responsible and verifiable voting.

My learned friend, in response to the arguments we have made in respect to Standing Order No.7, has invited your attention to Standing Order No.80 and he puts her on the prerogative that the Speaker has in allowing the use of electronic voting. In reaction to his invitation to you to make reference to Standing Order No.80, we would like to invite you to the Standing Order that is immediately before the one he has referred, which is Standing Order No.79, which says that-

"If MCAs insist that they want to vote by roll call, then the Speaker has no choice, provided there is somebody who has objected and is supported by up to five people".

In this case, we have invited your attention to the fact that there were 18 people who are opposed to this style of voting and wanted a roll call voting. For that reason, it is

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our argument that the only reason why the Speaker defied the provisions of Standing Order No.79 is that there was an intention to fraudulently misrepresent the votes that were cast by the MCAs.

Lastly, as I hand over to my learned friend, Mr. Wanyama, it is said that this system was secure and that point is buttressed by the affidavit by the IT expert that my learned friend, Mr. Ongoya, has repeatedly made reference to. One of the things that comes up for your consideration in our preliminary objection is this; can we determine for a fact that the four MCAs who say they did not vote, indeed voted?

Mr. Speaker, Sir, and Hon. Senators, it is my submission that the only way we can verify that is to determine whether the link was sent to that respective MCA and that MCA voted using the number that the link was sent to. You will see from the audit logs that it does not indicate anywhere the numbers to which the link was sent nor the IP address of the device that it was sent. Therefore, it goes into the question of the scheme to manipulate these votes.

The inference of that and the only way that the county could possibly say they have an absolute answer to the question of whether or not the votes were manipulated is if they could demonstrate that, indeed, the link was sent to an individual and the IP address of that phone gadget was the one that cast those votes. To the extent that the audit report brought to you avoids by design to give you that information creates a doubt in your mind.

Mr. Speaker, Sir and Hon. Senators, in closing part of my submission, as I hand over to my learned friend, this is our argument: that indeed there was no voting and, therefore, the threshold of two-thirds was not achieved. It is our argument that even if, as my learned friend says, there is a possibility that this system was okay, if there is doubt in your minds that, indeed, this system might not have been foolproof, that is enough reason for you to decline entertaining and determining this Motion.

For all those reasons, we pray that you reject this Motion on the basis that you are not satisfied that there was a Motion that was properly considered, that it was properly voted for and the purport that there were 33 MCAs supporting the Motion has been achieved.

That is all, Mr. Speaker, Sir.

Mr. Peter Wanyama: Mr. Speaker, Sir, I will stick to the time. In quick rebuttal, I would like to invite the Hon. Senators to look at Volume No.1 of the Governor's response at page 113. My colleague, Mr. Ongoya, talked about one MCA. Ultimately, for the Senate to determine that the Motion is properly before it, it must be satisfied on the threshold. From the 47 MCAs in the County Assembly, at least, the threshold requires that 32 of them vote in favour of the Impeachment Motion.

Now, at page 113, it is true what Mr. Ongoya has said, that one MCA has sworn an affidavit. Principally, they jumped ship. They swore an affidavit saying that they did not mean what they said. However, there are 17 other MCAs who have evidence in support of the preliminary objection at page 113. Ultimately, this is a process that follows the law.

The Senate is a House of record; a House that follows the Constitution, the law and the Standing Orders and looks and listens to the evidence. What is the evidence that I

am showing you here? At page 115 is the evidence of 17 MCAs who have said they never supported the Motion.

What does it mean? Do we have contrary evidence to rebut the cogent allegations by these 17 MCAs? If you do a quick calculation, minus the 17 from 47, how many numbers do we have? We have 30. Does 30 meet the threshold in Section 33(2) of the County Governments Act, 2012? The answer is definitely not. Do we need to wait for this question to be subjected to trial the way Mr. Ongoya has invited? The answer is no.

The evidence is before the Senate to determine the issue. What about the logs? We are relying on the logs given to us by the County Assembly. They are the ones with access to the system. They printed it out and submitted to the Senate. We are simply relying on it, and we are pointing out, we have pointed out more than 10 mistakes on the logs. Why can they not just do impeachment on the right thing? Why are they hiding in technology trying to manipulate the votes for purposes of achieving an objective, which the Constitution requires a very high threshold?

Mr. Speaker, Sir, just to finish, we have also audio evidence, KB1, which we request that when you retire, you can have opportunity to look at. That is KB1. It just fortifies you. It fortifies this fundamental point that we have a problem on this matter that is before the Senate at the threshold question.

(Mr. Wanyama consulted his colleague)

Mr. Speaker, Sir, one of my colleagues is asking if we can play the audio. We have time for the audio. With your permission, can we play it?

The Speaker (Hon. Kingi): Proceed. You have two minutes to do that. The Senate will rise at exactly 1.15 p.m.

Mr. Peter Wanyama: Yes, we are requesting that KB1 be played.

Mr. Elisha Ongoya: Mr. Speaker, Sir, subject to your guidance, I am just wondering whether with introduction of new evidence in this matter, I will be able to respond to it. This is because that is now new evidence.

The Speaker (Hon. Kingi): It is part of the bundle. It is part of the evidence that is already on record.

Mr. Elisha Ongoya: Mr. Speaker, Sir, this is because we cannot comment on it once they have played it, but we could have commented on it if they had played it earlier, then we can comment in our response.

The Speaker (Hon. Kingi): Just proceed and play the video.

Mr. Peter Wanyama: Mr. Speaker, Sir, we request for the KB1 to be played by the ICT staff.

(An audio clip was played)

(The screen went off)

Mr. Speaker, Sir, it seems the screens are off. There was a transcription.

(The screen went on)

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(An audio clip was played)

The Speaker (Hon. Kingi): Time is up.

Mr. Peter Wanyama: Yes, Mr. Speaker, Sir, thank you very much.

The Speaker (Hon. Kingi): I am afraid we cannot transact beyond 1.15 p.m.

Mr. Peter Wanyama: Thank you very much, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Just take your seat.

Hon. Senators, I will deliver my ruling at exactly 2.30 p.m. today on the matters that have been raised.

Senate, arise.

(Hon. Senators stood up in their places)

ADJOURNMENT

The Speaker (Hon. Kingi): Hon. Senators, it is now 1.15 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until today, Wednesday, August 27th, 2025, at 2.30 p.m.

The Senate rose at 1.15 p.m.