



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT

THE SENATE

VOTES AND PROCEEDINGS

SPECIAL SITTING

WEDNESDAY, AUGUST 27, 2025, AT 2.30 P.M.

1. The Senate assembled at Thirty Minutes past Two O'clock.
2. The proceedings were opened with Prayer said by the Speaker.
3. **QUORUM OF THE SENATE**

The Speaker, having counted the Hon. Senators present at the commencement of the Sitting and confirming that there was a Quorum, invited the Clerk to call the Orders of the day.

4. **COMMUNICATION FROM THE CHAIR – ON THE PRELIMINARY ISSUES RAISED IN THE PROCEEDINGS FOR THE REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HON. (DR.) ERIC KIPKOECH MUTAI, THE GOVERNOR OF KERICHO COUNTY**

The Speaker conveyed the following communication from the Chair:

“Honourable Senators, Ladies and Gentlemen,

On Monday, 25th August, 2025, as part of the bundle of documents submitted by the Governor pursuant to rule 6 of Part I of the Third Schedule to the Senate Standing Orders, M/s. Katwa and Kemboy Advocates, Counsel for the Governor sought leave to raise a preliminary objection to the hearing of the proposed removal from office, by impeachment, of Hon. (Dr.) Eric Kipkoech Mutai setting out a number of grounds.

At the start of the hearing today, Counsel for the Governor sought to be allowed to canvass the preliminary objection. In so doing, it became apparent that a number of the grounds that had been set out in the correspondence sent to the Senate on Monday, 25th August, 2025, were not urged before the Senate today and therefore I need not make any reference to them.

As is well known, the impeachment process belongs to the parties. The parties are best placed to navigate their case and the Senate can only make a

determination on matters urged before it. It is for this reason that I stopped Counsel Elisha Ongoya, for the County Assembly, in his tracks, when he sought to make reference to grounds of preliminary objection which the County Assembly had not prosecuted today before the Senate.

Honourable Senators, ladies and gentlemen,

The present Communication is therefore limited to the preliminary objection as raised and canvassed before the Senate today prior to our adjournment for lunch.

Honourable Senators, Ladies and Gentlemen,

Counsel for the Governor made submissions contesting the voting that took place at the County Assembly of Kericho and urging that the Senate finds that the threshold of two-thirds of all Members of the County Assembly in support of the impeachment motion was not achieved. In this regard, Counsel stated that of the 47 Members of the County Assembly, 18 Members did not vote and that consequently, the records as submitted by the County Assembly were incorrect and even fraudulent.

Counsel Katwa Kigen and Counsel Peter Wanyama made extensive arguments illustrating the inaccuracy of the technology deployed, including arguing variously that –

- (a) A number of Members of the County Assembly voted more than once;
- (b) Persons other than Members of the County Assembly and the administrator of the voting system could access the system;
- (c) That contrary to the Kericho County Assembly Standing Orders, the system did not indicate the number of Members who had abstained;
- (d) The system did not have provision for voting by means of pressing a button as required by the Standing Orders, instead a link was sent to the phone numbers of the Members; and
- (e) The use of payroll and ID numbers as passwords could easily and was indeed compromised and therefore the system was neither secure nor accurate.

The thrust of the County Assembly's response to the preliminary objection raised was to urge the Senate to find that this was not a proper preliminary objection and consisted of mere sensational allegations. Counsel drew the attention of the Senate to the decision of the High Court in the matter of Governor Sonko in High Petition No. E425 of 2020 in which similar contestations arose as between the County Assembly and the Governor on the number of Members of the County Assembly of Nairobi who had voted in favour of the impeachment motion and whether the two-thirds threshold had been reached. In that case, the Court held that in view of the contradictory evidence adduced by both parties, coupled with the lack of expert evidence, the court was unable to find that the two-thirds threshold had not been met.

Counsel further stated that the manner in which the system works and whether the allegations made by the Governor's side about the integrity of the system were sound, was a matter for ICT experts who would be required to adduce evidence in support of the County Assembly's position.

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

- (a) Whether the preliminary objection raised qualifies as a preliminary objection properly so called and whether therefore its determination must precede the further progress of the current impeachment process; and
- (b) If the answer to the first issue is in the affirmative, then, whether the voting on the impeachment motion in the County Assembly took place in accordance with the law and whether the threshold required under section 33(2) of the County Governments Act, Cap. 265 of the Laws of Kenya was therefore met so as to qualify the continued the continued progress of the present impeachment process.

Honourable Senators, Ladies and Gentlemen,

The question of what constitutes a preliminary objection was well set out in the leading of *Mukisa Biscuit Manufacturing Co Ltd v. West End Distributors* (1969) EA 696 as follows-

A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration. A preliminary objection raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.

A preliminary objection does not need evidence to be adduced as proof of its existence. It is limited to points of law and cannot be raised if a fact has to be ascertained.

Drawing from the decision in *Mukisa Biscuit* case, the issue of whether the impeachment of the Governor met the threshold required under section 33(2) of the County Governments Act, Cap. 265 of the Laws of Kenya is a factual question that is contested. The Governor has raised questions on the manner and integrity of the voting process which calls for the Senate to interrogate the documentation and pleadings presented before it by both the County Assembly and the Governor of Kericho. It is noteworthy that Counsel for the Governor, in their submissions, repeatedly asserted that their contestation was based on the facts of what actually transpired. Indeed, the Governor has called the 18 Members of the County Assembly whose vote is contested as witnesses for his

case. No summary determination of this matter is possible without these witnesses taking the stand to give evidence and being subjected to cross-examination in the usual manner.

The factual question of the number of members of the County Assembly who voted for the impeachment motion is a matter that calls for determination by the Senate. The only way for the Senate to determine this question is to receive evidence on the matter, evaluate the same and make a finding one way or another based on the preponderance of evidence.

It is important to recall that the Senate did on 14th October, 2024 vote to uphold a preliminary objection raised by the Governor of Kericho on the ground that the threshold required for removal of the Governor from office, by impeachment, provided for under Section 33 of the County Governments Act and standing order 74 of the Standing Orders of the County Assembly of Kericho had not been met.

In those impeachment proceedings, there was no dispute as to the fact that the documents submitted in evidence by the County Assembly included a list of 31 out of 47 members of the County Assembly of Kericho that had voted in favour of the motion for the removal from office, by impeachment, of the Governor of Kericho.

The question for determination by the Senate in those impeachment proceedings was whether, the two-thirds constitutional threshold was 31 or 32 Members of County Assembly. There was no dispute or contestation between the Governor and the County Assembly as to the following facts –

- (a) The County Assembly of Kericho has 47 members.
- (b) Only 31 members of County Assembly voted in favour of the impeachment motion.

The Senate in those impeachment proceedings held on 14th October, 2024 was only left with the task of determining the legal question as to whether the two-thirds constitutional threshold was 31 or 32 Members of County Assembly. That determination did not require the production of any evidence.

On 14th October, 2024 the Senate by its vote determined that the two-thirds threshold is 32.

In the current impeachment proceedings, there is contestation between the Governor and the County Assembly as to the following facts-

- (a) The members of County Assembly who voted in favor of the motion; and
- (b) The transparency and integrity of the electronic voting platform was deployed on 14th August, 2025.

This is not to say that the objection raised by the Governor is not important. In fact, it is of the greatest importance. It would set a very dangerous precedent if the Senate will be sent on a wild goose chase to conduct impeachment proceedings and vote on charges which are defective ab initio on the ground that no lawful impeachment was undertaken. It therefore means that the Senate must make a determination one way or the other whether the threshold for impeachment was met. The real question before us, therefore, is only the stage at which that question is mature for determination.

I therefore rule that since this is a matter of fact requiring the adducing of evidence, it will best be determined by hearing both parties and entertaining the evidence that they have in respect thereof. This preliminary objection is accordingly disallowed for being premature at this stage.

In light of the importance of the question, though, the Senate shall determine the disputed facts prior to making a determination on the impeachment charges.

I therefore further rule that at the conclusion of the impeachment proceedings and prior to voting on the charges, the Senate will pronounce itself on its finding on the matter of the threshold and whether it was met.

In the event that the Senate finds that the two-thirds threshold of 32 member of County Assembly was not met, then the impeachment proceedings shall immediately determine and the Senate shall not proceed to determine the impeachment charges. If, however, the Senate finds that the two-thirds threshold of 32 Members of County Assembly was met then the Senate shall proceed to determine if the impeachment charges have been substantiated by voting thereon.

The preliminary objection therefore fails as the same shall be subsumed in the main hearing of the impeachment proceedings.

It is so ordered.”

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

Pursuant to the Standing Orders, the Speaker invited the parties to make their opening statements for not more than thirty minutes each.

(a) **OPENING STATEMENT BY THE COUNTY ASSEMBLY OF KERICHO**

Counsel for the County Assembly, Mr. Elisha Ogoya made an opening statement on behalf of the Assembly.

(b) OPENING STATEMENT BY THE GOVERNOR, KERICHO COUNTY

Counsels for the Governor, Messrs Katwa Kigen and Peter Wanyama made opening statements on behalf of the Governor.

Presentation of the case by the County Assembly of Kericho

Counsel for the County Assembly commenced the presentation of the case of the Assembly, by leading the following witnesses in presenting testimonies before the Senate: -

a) Mr. Kipng'eno Geoffrey Bett – Former County Officer in charge of Information, Communication and Technology (ICT), Gender, Sports and Youth Affairs at the County Government of Kericho

The witness took oath and informed the Senate that-

- i) he was a former County Officer in charge of Information, Communication and Technology (ICT), Gender, Sports and Youth Affairs, appointed by the County Public Service Board in 2022;
- ii) his employment was on a 5-year contract running from 2022 to 2027;
- iii) on several occasions, the Governor demanded money from him directly and through his personal assistants, and he sent the money via M-Pesa and cash. The money sought from him were from his meagre earnings and savings and amounted to over Ksh. 200,000;
- iv) the demands extended to other colleagues in the county public service;
- v) the Governor coerced him to divert departmental funds and make financial allocations for non-administrative use;
- vi) over time, he was unable to meet the demands, and therefore, stopped sending the Governor money;
- vii) he suspected that to be reason the Governor removed him from office;
- viii) in 2024, when he opposed the Governor's plan to procure a Revenue Management Information System externally, the Governor uttered demeaning and humiliating words about his physical condition as a person with disability, revoked his IFMIS credentials and sent him on compulsory leave;
- ix) the Governor convened a meeting where he coerced County Executive Committee Members (CECMs) and Chief Officers (COs) to sign undated resignation letters, which could be used at a later date in the event that the Governor was unhappy with the officers;

- x) in January 2025, the Governor forced Chief Officers to sign a review of contracts from 5 years to 3 years under the guise of performance management;
- xi) due to mounting pressure, coercion, vulgar statements and condescending attitude by the Governor towards him, he opted to terminate his employment by resignation on 20th June, 2025; and
- xii) the Governor's actions were a blatant affront to the rule of law, due process and fairness, amounting to abuse of Executive Authority and Article 54(1)(a) of the Constitution, that persons with disability are entitled to dignity, respect and non-demeaning treatment.

The witness was cross-examined by Counsel for the Governor and re-examined by Counsel for the County Assembly.

b) Hon. Edina Chepkirui Tonui – Former County Executive Committee Member (CECM) in charge of the Department of Agriculture, Livestock and Cooperative Management at the County Government of Kericho

The witness took oath and informed the Senate that -

- i) she was a former County Executive Committee Member (CECM) in charge of the Department of Agriculture, Livestock and Cooperative Management;
- ii) on 23rd December, 2024, the Governor issued a public statement via his personal Facebook account announcing the termination of her contract as well as the contracts of five (5) other CECMs;
- iii) she was not subjected to a performance appraisal or any disciplinary process prior to the termination of her contract, and that the reason provided for the termination of the contract was that the County Executive was being reorganized;
- iv) during her tenure as a CECM, the Governor would routinely call her after official working hours to demand that she sends money to him or his personal assistants' registered Mpesa numbers;
- v) she had sent approximately Kshs. 1,600,000 to the Governor and his personal assistants pursuant to the demands, and that the funds were from her savings, farming and business earnings;
- vi) she believed that the termination of her contract was because she could no longer keep up with demands for money from the Governor;
- vii) on 27th March, 2024, the Governor summoned all County Executive Committee Members (CECMs) and Chief Officers (COs) to his office, but she did not honour the summon because she was informed that the

Governor was coercing the CECMs and COs to sign undated resignation letters;

- viii) at a joint meeting of CECMs and COs convened by the Governor to discuss the procurement of a Revenue Management Information System, the Governor made demeaning statements directed at Mr. Kipng'eno Geoffrey Bett, then CO in charge of the Department of ICT, Gender, Sports and Youth Affairs; and
- ix) the Governor would often make demeaning statements against CECMs at County Executive Committee meetings.

The witness was cross-examined by Counsel for the Governor and re-examined by Counsel for the County Assembly.

Thereupon, Senators sought clarifications on the testimony, following which the witness was discharged.

c) Mr. Alfred Korir Kimutai – Head of Information, Communication and Technology (ICT) Department at the County Assembly of Kericho

The witness took oath and informed the Senate that –

- i) he was the administrator for the County Assembly of Kericho Internal Financial Management and Reporting System, which encompassed the County Assembly's Information, Communication and Technology (ICT) system;
- ii) in 2018, the County Assembly developed and installed a fully digitized and paperless system for its day-to-day operations;
- iii) Members of the County Assembly were issued with laptops or tablets to facilitate their work;
- iv) the system had been used in the current and preceding term of the County Assembly without any errors, technicalities or inconsistencies, and that Members of the County Assembly had been trained on its use;
- v) the County Assembly Standing Orders were amended on 8th October, 2024 to provide for electronic voting as the primary mode of undertaking Divisions;
- vi) following the amendment to the Standing Orders, the ICT Department developed an electronic voting system which had forty-eight (48) users, being the 47 Members of County Assembly and the administrator;
- vii) only the Members of the County Assembly had voting rights, and that the login credentials for the electronic voting were set as the respective Member's Integrated Personnel and Payroll Database (IPPD) number as

the username and the national identification card number as the password;

- viii) the link for voting as well as the IPPD numbers for Members of the County Assembly were shared with every Member via Short Message Service (SMS) to their personal mobile phone numbers after the Speaker of the County Assembly directed the voting to commence;
- ix) the link for voting had a time limitation, and that no Member could vote after the expiry of the designated time; and
- x) as the administrator, he logged into the system to facilitate Members to undertake the vote seamlessly.

And the time being thirty minutes past Six O'clock, the Temporary Speaker (Sen. Catherine Mumma, MP) interrupted the proceedings and adjourned the Senate without Question put, pursuant to the Standing Orders.

6. **SENATE ROSE** – at thirty minutes past Six O'clock.

M E M O R A N D U M

The Speaker will take the Chair on
Wednesday, August 28, 2025 at 9:00 a.m.

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