



THIRTEENTH PARLIAMENT
THE SENATE
OFFICIAL REPORT



Fourth Session

Wednesday, 3rd December, 2025 at 9.00 a.m.

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 3rd December, 2025

Special Sitting

*(Convened via Kenya Gazette Notice
No.17613 of 2nd December, 2025)*

*The House met at the Senate Chamber,
Parliament Buildings at 9.03 a.m.*

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

PRAYER

DETERMINATION OF QUORUM
AT COMMENCEMENT OF SITTING

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

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

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

(The Quorum Bell was rung)

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

(The Quorum Bell was rung)

The Speaker (Hon. Kingi): Order, hon. Senators! We now have quorum.
Clerk, you may proceed to call the first Order.

COMMUNICATION FROM THE CHAIR

CONVENING OF SPECIAL SITTING OF THE SENATE

(Several hon. Senators stood at the Bar)

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The Speaker (Hon. Kingi): Sen. Osotsi and company, kindly take your seats.

*(Several hon. Senators walked into the Chamber
and sat in their places)*

Hon. Senators, you will recall that at the sitting of the Senate held on Thursday, 27th November, 2025, I appointed today, Wednesday, 3rd December, 2025 and tomorrow, Thursday, 4th December, 2025 as the days when the Senate will hear the charges for the proposed removal from office, by impeachment, of Hon. Amos Kimwomi Nyaribo, the Governor of Nyamira County.

Vide Gazette Notice No.17613 dated 2nd December, 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 the Governor of Nyamira County in plenary. Consequently, a hearing programme has been prepared and appended to the Order Paper for today, that highlights the various activities to be undertaken in the hearing.

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

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

Consequently, I now direct the parties, all members of the public and the media to withdraw from the Chamber and the Galleries, and any form of broadcast from the Chamber to cease forthwith. In accordance with the hearing programme for an impeachment hearing in plenary, the open session will commence at 10.00 a.m.

Thank you.

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

(The House went into an in-camera session)

(End of in-camera session)

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

(The House resumed at 11.03 a.m.)

The Speaker (Hon. Kingi): Clerk, kindly call the Order.

(Sen. Tabitha Mutinda walked into the Chamber)

Sen. Tabitha, kindly take your seat.

**HEARING AND DETERMINATION OF THE PROPOSED REMOVAL
FROM OFFICE, BY IMPEACHMENT, OF HON. AMOS KIMWOMI
NYARIBO, THE GOVERNOR OF NYAMIRA COUNTY**

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

Hon. Senators, ladies and gentlemen, having dispensed with the pre-hearing meeting of Senators, which was a closed-door session, it is now time to commence the proceedings for the proposed removal from office, by impeachment, of Hon. Amos Kimwomi Nyaribo.

(Sen. Cherarkey consulted loudly)

Order, Senator for Nandi County.

I will take that again.

Having dispensed with the pre-hearing meeting of Senators, which was a closed-door session, it is now time to commence the proceedings of the proposed removal from office, by impeachment, of Hon. Amos Kimwomi Nyaribo, the Governor of Nyamira County.

Vide a letter dated, Tuesday 25th November, 2025, the Speaker of the County Assembly of Nyamira informed the Speaker of the Senate that at a sitting of the County Assembly of Nyamira held on Tuesday 25th November, 2025, the County Assembly of Nyamira approved a Motion for the removal from office by impeachment of Hon. Amos Nyaribo, Governor of Nyamira County.

The Speaker of the County Assembly of Nyamira 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-

- (1) Copy of an approved Notice of Motion dated 11th November, 2025;
- (2) Copy of an approved Impeachment Motion containing grounds and particulars with annexes thereto;
- (3) Copy of the public participation report;
- (4) Copy of invitation letter to the Governor to appear before the County Assembly to respond to allegations dated 17th November, 2025;
- (5) Copy of the County Assembly HANSARD Report dated 25th November, 2025;
- (6) Copy of division of votes list;
- (7) Advocates for the County Assembly; and,
- (8) List of witnesses.

Now, pursuant to Section 33(3)(B) of the County Governments Act, and Standing Order No.80(1) of the Senate Standing Orders, at the sitting of the Senate held on Thursday, 27th November, 2025, the charges against the Governor of Nyamira County as contained in the Motion of Impeachment by the County Assembly of Nyamira were read to the assembled Senate.

Hon. Senators, as you are aware, the mandate of the Senate in relation to the proposed removal, by impeachment, of a county governor is provided for under Article 180(1) 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 180(1) 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.

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

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

Specifically, Section 33 and Standing Order No.80(1)(B) of the Senate provide-

“(b) the Senate may-

- (i) by resolution, appoint a Special Committee comprising eleven of its members to investigate the matter; or
- (ii) investigate the matter in plenary”

Now, Hon. Senators will recall that at a sitting of the Senate held on Thursday, 27th November, 2025, the Motion for the establishment of a special committee was withdrawn pursuant to Standing Order No.70. This paved way for the default position, the hearing of the impeachment charges against the Governor of Nyamira County to be held in plenary.

By way of status update, pursuant to Rule 4A and 6 of the Rules of Procedure, when considering the proposed removal of a governor in plenary, the Senate invited the governor to appear and be represented before the Senate during its investigation.

The Senate further invited the Governor, if he so chooses to appear before the Senate, to file an answer to the charges with the Office of the Clerk of the Senate by 5.30 p.m. on Monday, 1st December, 2025 setting out the following-

- (1) The Governor's response to the particulars of allegations;
- (2) The mode of appearance before the Senate, whether in person, by advocate, or in person and by advocate;

(3) The names and addresses of the persons to be called as witnesses, if any and witnesses' statements containing a summary of the evidence to be presented by such witnesses before the Senate; and,

(4) Any other evidence to be relied on.

Pursuant to Rules 4B and 7 of the Rules of Procedure, when considering the proposed removal of a governor in plenary, the Senate notified the County Assembly of the date for the commencement of the investigation and invited the County Assembly to designate members of the county assembly 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, 1st December, 2025, documentation as follows-

(1) 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;

(2) Indicating the mode of appearance before the Senate, whether in person, by advocate, or in person and by advocate;

(3) Indicating the names and addresses of the persons to be called as witnesses, if any, and witness statements containing a summary of the evidence to be presented by such witnesses before the Senate; and,

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

Hon. Senators, on Monday, 1st December, 2025, the office of the Clerk of the Senate received a response Ref: NCA-AKN/MGA/032-2025, dated 27th November, 2025, to the invitation to appear issued to the Governor from M/S Mutuma Gichuru & Associates Advocates, who indicated that the Governor had appointed the firm to represent him in the hearing before the Senate and that the Governor would appear in person and by advocates. The letter also indicated the list of counsel representing the Governor and the list of witnesses for the Governor.

Similarly, on the same day, the office of the Clerk of the Senate received response Ref:MNCA/Senate/1/2025 dated 1st December, 2025, to the invitation to appear issued to the County Assembly of Nyamira from M/S Mokua Ndubi & Co. Advocates, who indicated that the County Assembly of Nyamira had appointed the firm to represent the County Assembly in the hearing and that the county assembly would equally appear in person and by advocates. The letter also indicated the list of counsel representing the county assembly and the list of witnesses for the County Assembly.

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

In summary, the programme states that today, Wednesday, 3rd December, 2025, the charges against the Governor, as submitted by the County Assembly, shall be read out to the Governor. The Governor will be given an opportunity to take plea on each of those charges. 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. After presentation of the case by the county assembly, hon. Senators will be given an opportunity to ask questions or seek clarification from the county assembly. This should take us up to the end of today's sitting.

At the sitting schedule for tomorrow, Thursday, 4th December, 2025, 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 clarification from the Governor, following which the closing statements of parties will be made for a period not exceeding one hour each. This will be followed by the closing statements by each of the parties for a period of one hour each. The Senate shall then proceed to a debate prior to voting on each of the charges. At this stage, a supplementary Order Paper will be issued to facilitate this debate.

In accordance with Section 33(7) of the County Governments Act, 2012 and Standing Order No.86 of the Senate Standing Orders, the voting shall be by county delegations.

The Governor shall cease to hold office if a majority of the county delegations in the Senate vote to uphold any impeachment charge. If, however, the vote in the Senate fails to result in the removal of the Governor pursuant to Standing Order No.87, the Speaker of the Senate shall notify the Speaker of Nyamira County Assembly accordingly.

Hon. Senators, I now invite counsel for the County Assembly of Nyamira to introduce the legal team of the County Assembly and the members of the County Assembly of Nyamira representing the County Assembly by stating the full names and the designation of each person. You may now proceed.

INTRODUCTION BY THE NYAMIRA COUNTY ASSEMBLY TEAM

Ms. Doris Ng'eno: Mr. Speaker, Sir, thank you for granting us this opportunity to appear before you today. On behalf of the County Assembly of Nyamira, I wish to introduce the counsels representing the County Assembly of Nyamira.

- | | | |
|------------------|---|----------------|
| (1) Katwa Kigen | - | Senior Counsel |
| (2) Mokua Ndubi | - | Advocate |
| (3) Doris Ng'eno | - | Advocate |

We look forward to a constructive and productive engagement.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): I now similarly invite counsel for the Governor to introduce the legal team representing the Governor by stating the full names and designation of each person. You may proceed.

INTRODUCTION BY THE NYAMIRA COUNTY GOVERNOR'S TEAM

Mr. Elias Mutuma: Thank you, Mr. Speaker, Sir and good morning to distinguished Senators.

My name is Elias Mutuma. I wish to confirm that pursuant to the notice to appear, the Governor is before the Senate in person. He is also represented by the following counsel-

- | | | |
|-----------------------|---|-----------------------------------|
| (1) Elias Mutuma | - | Advocate |
| (2) Zelmer Bonuke | - | Advocate |
| (3) Ombui Ratemo | - | Advocate |
| (4) Brianlee Mureithi | - | Advocate |
| (5) Sylvia Njoki | - | Legal Assistant |
| (6) Michelle Makandi | - | Legal Assistant |
| (7) Erastus Orina | - | County Attorney of Nyamira County |

The Speaker (Hon. Kingi): Senator for Kitui, kindly take your seat.

Hon. Senators, ladies and gentlemen, on behalf of the Senate, I welcome the team for the county assembly, the team for 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 Hon. Amos Kimwomi Nyaribo, the Governor of Nyamira County.

I thank you.

READING OF THE CHARGES AGAINST THE
GOVERNOR OF NYAMIRA COUNTY

The Deputy Clerk of the Senate (Mr. Mohamed Ali): Hon. Amos Kimwomi Nyaribo, the Governor of Nyamira County, please take the stand.

(Hon. Amos Kimwomi Nyaribo took the stand)

Hon. Amos Kimwomi Nyaribo, the Governor of Nyamira County, the charges against you, as received from the County Assembly of Nyamira, are as follows and I quote-

Ground One: Gross violation of the Constitution and other laws

Allegation 1: Gross violation of the Constitution, 2010 and the County Governments Act, 2012 through deliberate formal engagement, endorsement and support of unlawful, illegal and unconstitutional “*Bunge Mashinani*.”

Whereas Article 1, 10 and 73 of the Constitution, 2010 enshrine the principles of sovereignty of the people, the rule of law and the responsibility of state officers;

Whereas Article 176(1) of the Constitution of Kenya, 2010 unequivocally establishes a County Assembly of each county and Section 7B(2) and 14(1)(a) of the County Governments Act, 2012 govern the lawful sittings and procedure of the County Assembly;

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Whereas Section 6A(1) and the Third Schedule of the County Governments Act, 2012 specifies the location of Nyamira County Government as Nyamira Urban Area;

Whereas Section 7B(2) of the County Governments Act, 2012 provides that-

“Except for a sitting of a new County Assembly under Subsection (1), a sitting of a County Assembly may be held at any place within the county and may commence at any time as the County Assembly may appoint.”

Whereas Section 30(2)(a) of the County Governments Act, 2012 requires the Governor to *diligently execute the functions and exercise the authority provided in the Constitution and the legislation.*

Whereas Section 30(3)(c) of the County Governments Act, 2012 requires the Governor to *promote democracy, good governance, unity and cohesion within the county;*

(1) His Excellency Amos Kimwomi Nyaribo deliberately engaged, endorsed and supported an unlawful, illegal and unconstitutional *Bunge Mashinani* gazetted by Enock Ogori Okero vide Kenya Gazette Notice No. 14229 of 2024 dated the 29th October, 2024; and the appointment of an Ag. Clerk vide Kenya Gazette Notice No.14230 of 2024 despite knowledge of the fact that the said Enock Ogori Okero had been removed from the office of Speaker, by way of impeachment, as published in the Kenya Gazette Notice No.14050 of 2024 dated 25th October, 2024.

(2) The Senate of the Republic of Kenya on 15th May, 2025, while considering a progress report of the Standing Committee on Devolution and Intergovernmental Relations on the Operation and Leadership Crisis Affecting the County Assembly of Nyamira, resolved that the decision and resolutions made by the impeached Speaker and Members of the County Assembly that convened outside the gazetted precincts of the County Assembly are null and void. The same was communicated to the Clerk of the County Assembly of Nyamira and copied to the Governor of Nyamira County vide the letter reference SEN/RESOLS/17/2025 dated 22nd May, 2025.

(3) The impeachment of Enock Ogori Okero was affirmed by the judgment of the High Court at Bomet in Petition No.E004 of 2025, delivered on the 4th day of June, 2025. In paragraph 74 of the same judgment, it was the Court's finding that the seventh respondent, Enock Ogori Okero, the impeached Speaker, ceased to hold office on 24th October, 2024.

(4) Further, in paragraph 85 of the same judgment, the Court found that any actions or duties performed by the 7th respondent, Enock Ogori Okero, the impeached Speaker, were illegal, null and void as the seventh respondent either did not have the power or the locus to do so.

Whereas the Governor and his accomplices maintained there were court orders stopping the County Assembly from removing Enock Okero from the office of the Speaker.

(5) The High Court at Bomet, vide the judgment in Petition No.E004 of 2025, delivered on the 4th day of June 2025, settled this matter and held that there was no such order and that the County Assembly was not barred from impeaching Enock Ogori Okero from the office of the Speaker or exercising its constitutional mandate. The same is found in paragraph 72 of the same judgment, where the Court held that-

“This Court's critical interpretation of Order No.2, issued on 11th October, 2024 by Okwany J., was that she issued conservatory orders staying the suspension of the seventh respondent as Speaker. This effectively meant that the seventh respondent resumed his duties as Speaker of the County Assembly.

In regard to Order No.3, the judge issued conservatory orders that barred interference with the duties of the seventh respondent as Speaker. Order No.3, as worded above, did not mention that the County Assembly of Nyamira was barred from impeaching the seventh respondent or exercising its constitutional mandate.’

(6) His Excellency Governor Amos Kimwomi Nyaribo consistently and deliberately supported and engaged with gatherings of unlawful, illegal and unconstitutional *Bunge Mashinani*, which conducted its meetings from 31st October, 2024 up to June, 2025 in locations away from the lawful and official gazetted premises of the County Assembly and without lawful appointment.

(7) Further, the Governor made public pronouncements declaring Enock Ogori Okero and Sylvanus Ndemo Nyamora as the legitimate Speaker and clerk, respectively, while aware that Enock Ogori Okero was duly impeached.

(8) The Governor's actions to formally engage, endorse and support unlawful, illegal and unconstitutional *Bunge Mashinani* directly undermined the legislative, representation and oversight role of the County Assembly of Nyamira as established by the Constitution of Kenya, 2010 and County Governments Act, 2012, thereby constituting a gross violation of the rule of law and the principle of separation of powers.

Allegation 2: Gross violation of the Constitution of Kenya, 2010 and the County Governments Act, 2012 and the Public Finance Management Act, 2012 by assenting to the Nyamira County Supplementary Appropriation Bill, 2024 without the approval of the County Assembly of Nyamira

Whereas Article 175(a) of the Constitution of Kenya, 2010 requires that the county governments shall be based on the democratic principles and separation of powers, whereas Article 185(1) of the Constitution of Kenya, 2010 states that the legislative authority of a county is vested in and exercised by its County Assembly;

Whereas Article 224 of the Constitution of Kenya, 2010 states that on the basis of the Division of Revenue Bill passed by Parliament under Article 218, each County Government shall prepare and adopt its own annual budget and Appropriation Bill in the form and according to the procedure prescribed in an Act of Parliament;

Whereas Section 21(1) of the County Governments Act, 2012 requires that the County Assembly shall exercise its legislative power through Bills passed by the County Assembly and assented to by the Governor;

Whereas Section 130 of the Public Finance Management Act, 2012 provides for the procedures of processing a county budget, including transmission from the County Executive to the County Assembly for consideration and approval;

(1) The Governor, on 26th November, 2024, assented to the Nyamira County Supplementary Appropriation Bill, 2024 without the approval of the County Assembly of Nyamira in total defiance to the Constitutional principle of separation of powers.

(2) The Nyamira County Supplementary Appropriation Bill, 2024 is not among the business transacted during the Morning and Afternoon Sittings of the County Assembly of Nyamira on 26th November, 2024.

(3) The Nyamira County Supplementary Appropriation Act, 2024, as assented by the Governor, significantly altered the priorities and development programmes in the original approved budget.

(4) This conduct constitutes a gross violation of Articles 175(a), 185(1) and 224 of the Constitution of Kenya, 2010, Section 130 of the Public Finance Management Act, 2012, Section 21(1) of the County Governments Act, 2012 and Order No.137(1) of the County Assembly of Nyamira Standing Orders and the due process of the law which requires that the County Budget be approved by the County Assembly.

(5) The same undermined the representation and oversight role of the County Assembly. The Supplementary Budget was assented to, devoid of participation of the people and/or their representatives.

Allegation 3: Gross Violation of the Constitution of Kenya, 2010 and The County Governments Act, 2012 by Appointing Dr. Peris Nyaboke Oroko Alias Peris Mong'are to the County Executive Committee (CEC) without the Approval of the County Assembly

WHEREAS Article 179(2)(b) of the Constitution of Kenya, 2010 provides that the County Executive Committee shall consist of members appointed by the county governor, with the approval of the Assembly, from among persons who are not Members of the Assembly.

WHEREAS Article 259 of the Constitution emphasises the interpretation of the Constitution, which includes the respect for judicial pronouncements;

FURTHER WHEREAS Section 30(d) of the County Governments Act, 2012 requires the Governor to appoint, with the approval of the County Assembly, Members of the County Executive Committee;

WHEREAS Section 4 of the Public Appointments (County Assemblies) Approval Act, 2017 requires that an appointment under the Constitution or any other law for which the approval of a County Assembly is required shall not be made unless the appointment is approved by the relevant County Assembly in accordance with this Act.

(1) H.E Amos Kimwomi Nyaribo appointed Dr. Peris Nyaboke Oroko to the County Executive Committee without the approval of the County Assembly of Nyamira in total disregard of the due process of the law.

(2) In response to an inquiry by the County Assembly, the County Executive Committee Member for Public Service Management maintained that Dr. Peris Nyaboke Oroko is duly appointed.

(3) Failure to submit the name of Dr. Peris Nyaboke Oroko for vetting and approval by the County Assembly of Nyamira constitutes gross violation of Articles 179(2)(b) and 259 of the Constitution of Kenya, 2010 and Section 30(d) of the County Governments Act, 2012.

(4) The Governor has to date proceeded to retain Dr. Peris Nyaboke Oroko and supervised her integration into the payroll system since June 21, 2025 and authorised the

payment of her salary and allowances despite clear judicial and Senatorial pronouncements declaring all actions of "*Bunge Mashinani*" as illegal, null and void.

(5) The Governor willfully circumvented the legitimate constitutional approval process, rendering the appointment unlawful.

(6) This action brazenly bypassed the County Assembly, constituting a gross violation of the Constitution and statutory provisions governing appointments.

Allegation 4: Gross Violation of the Constitution of Kenya, 2010, the Urban Areas and Cities Act, 2011 and Public Appointments (County Assemblies) Approval Act, 2017 by Appointing Nyamira and Keroka Municipalities Board without approval of the County Assembly of Nyamira

WHEREAS Article 10 of the Constitution on National Values & Principles of Governance requires the observance of the rule of law, good governance, integrity, transparency and accountability;

WHEREAS Section 14(1) of the Urban Areas and Cities Act, 2011 [as amended 2019] requires that a Board of a Municipality shall consist of nine members appointed by the County Governor with the approval of the County Assembly;

WHEREAS Section 4 of the Public Appointments (County Assemblies) Approval Act, 2017 requires that an appointment under the Constitution or any other law for which the approval of a County Assembly is required shall not be made unless the appointment is approved by the relevant County Assembly in accordance with this Act.

(1) H.E Amos Kimwomi Nyaribo, vide Gazette Notice No.1965 of 2025 dated 30th February, 2025, appointed Members to the Boards of Keroka and Nyamira Municipalities without the approval of the County Assembly of Nyamira in direct defiance of the Constitution of Kenya, 2010, the Urban Areas and Cities Act, 2011 [as amended 2019] and the Public Appointments (County Assemblies) Approval Act, 2017.

(2) The approval of Members to the two Board Members was not among the business transacted during the Morning and Afternoon Sitzings of the County Assembly of Nyamira on 19th November, 2024.

(3) The Governor has to date retained the said Board Members in defiance of clear judicial and Senatorial pronouncements.

(4) This constitutes a blatant disregard for the rule of law and contempt for legitimate authority.

Allegation 5: Gross Violation of the Constitution of Kenya, 2010 and the County Governments Act, 2012 by Appointing the Selection Panel for the Recruitment of the Chairperson, Secretary and Members of the Nyamira County Public Service Board (CPSB) Without the Approval of the County Assembly of Nyamira

WHEREAS Article 10 of the Constitution on National Values & Principles of Governance requires the observance of the rule of law, good governance, integrity, transparency and accountability;

WHEREAS Articles 73 and 74 of the Constitution, 2010 outline the responsibilities of State Officers and the principles of public service, demanding objectivity, impartiality, and accountability;

WHEREAS Article 232(1) of the Constitution, 2010 sets the Values and Principles of Public Service, requiring efficient use of resources, transparency and fair competition and merit;

WHEREAS Section 4 of the Public Appointments (County Assemblies) Approval Act, 2017 requires that an appointment under the Constitution or any other law for which the approval of a County Assembly is required shall not be made unless the appointment is approved by the relevant County Assembly in accordance with this Act.

(1) The Governor appointed a Selection Panel for the recruitment of the Chairperson, Secretary and Members of the Nyamira County Public Service Board (CPSB) without the approval of the County Assembly of Nyamira.

(2) The Governor wilfully circumvented the legitimate constitutional approval process, rendering the appointment unlawful.

(3) The Selection Panel proceeded to invite, shortlist and conduct interviews for applicants for the positions of Chairperson, Secretary and Members of the Nyamira County Public Service Board in total defiance of clear Judicial and Senatorial pronouncements.

(4) These actions are contrary to constitutional principles and undermine public service integrity.

Allegation 6: Gross Violation of the Constitution of Kenya, 2010 and County Governments Act, 2012 by failing to appoint the Chairperson, Secretary and Members of the Nyamira County Public Service Board.

WHEREAS Article 235 of the Constitution of Kenya, 2010 provides that a County Government is responsible for-

- (a) establishing and abolishing offices in its public service;
- (b) appointing persons to hold or act in those offices, and confirming appointments; and
- (c) exercising disciplinary control over and removing persons holding or acting in those offices.

WHEREAS Section 58A(1) of the County Governments Act, 2012 provides that whenever a vacancy arises in a County Public Service Board, the Governor shall nominate and with the approval of the county assembly, appoint members to a selection panel for the purpose of selecting suitable candidates for appointment as members of the County Public Service Board.

AND WHEREAS Section 58(a)(7) provides that the Governor shall, within seven days of receipt of the names forwarded under subsection (6), nominate one person and at least three, but not more than five others for appointment as chairperson and members of the County Public Service Board respectively and forward the names to the county assembly for approval.

(1) The Governor, H.E Amos Kimwomi Nyaribo has to date failed to nominate for vetting, approval and appointment of the Chairperson, Secretary and Members of the Nyamira County Public Service Board despite vacancies arising in the Nyamira County Public Service Board as from 5th of July, 2025.

The absence of a County Public Service Board has created a lacuna in the management of the Human Resource function of the County Government of Nyamira. In

the obtaining circumstances, the provisions of Article 235 of the Constitution of Kenya, 2010 cannot be realised in the Nyamira County Public Service.

(2) Additionally, this has eroded confidence and public trust in the leadership of Governor Amos Kimwomi Nyaribo.

Allegation 7: Gross Violation of the Constitution of Kenya, 2010 and the County Governments Act, 2012 by Failing to Submit Annual Reports and Deliver an Annual State of County Address to the County Assembly for Two Consecutive Years

Article 183(3) of the Constitution of Kenya, 2010 provides that the county executive committee shall provide the county assembly with full and regular reports on matters relating to the county; and Section 30(2)(j) & (k) of the County Governments Act, 2012 mandates the Governor to-

“(j) submit to the county assembly an annual report on the implementation status of the county policies and plans;

(k) deliver annual state of the county address containing such matters as may be specified in county legislation.”

(1) The Governor has failed to submit annual reports and deliver annual state of the county address to the County Assembly of Nyamira for the past two consecutive years, FY2023/2024 and FY2024/2025, as required by law.

(2) This failure constitutes a gross violation of constitutional and statutory provisions, demonstrating a blatant disregard for transparency, accountability and the oversight role of the County Assembly. It further denies the residents of Nyamira County an opportunity to hold their Governor accountable.

(3) The Governor’s consistent and prolonged failure to deliver the constitutionally required State of the County Address demonstrates a deliberate act to evade accountability to the County Assembly and the people, thereby constituting a gross violation of constitutional and statutory mandates.

Allegation 8: Gross Violation of the Constitution of Kenya, 2010 by Failing to Appoint and Obey Court Orders regarding the Appointment of Clive Ogwora to the County Executive Committee

WHEREAS Article 159(1) of the Constitution of Kenya, 2010 provides for the exercise of judicial authority;

WHEREAS Section 14(1)(a) of the Contempt of Court Act, 2016 provides that contempt of court includes civil contempt which means wilful disobedience of any judgment, decree, direction, order or other process of a court or wilful breach of an undertaking given to a court;

WHEREAS the Employment and Labour Relations Court at Kisumu in ELRC JR No.10 of 2021 ordered the Governor to appoint and pay salaries to Mr. Clive Ogwora;

(1) H.E Amos Kimwomi Nyaribo failed to appoint Mr. Clive Ogwora, nominee for Member of the County Executive Committee, despite the fact that the nomination was cleared by law for appointment.

(2) The Governor's disobedience of the High Court order directing him to appoint Mr. Clive Ogwora resulted into the loss of a decretal sum of Kshs4,417,875.

(3) The actions of the Governor, including delayed settlement, resulted into loss of public funds amounting to Kshs6,922,203.75 being the decretal sum plus costs, interests and other incidentals.

Ground Two: Abuse of Office

WHEREAS Article 10 of the Constitution on National Values & Principles of Governance requires the observance of the rule of law, good governance, integrity, transparency and accountability;

WHEREAS Articles 73, 74 and 75 of the Constitution, 2010, outline the responsibilities of State officers and the principles of public service, demanding objectivity, impartiality and accountability, among others;

WHEREAS Article 232(1) of the Constitution, 2010, sets the Values and Principles of Public Service, requiring efficient use of resources, transparency, and fair competition and merit;

WHEREAS Section 46 of the Anti-Corruption and Economic Crimes Act of 2003 provides that: a person who uses his office to improperly confer a benefit on himself or anyone else is guilty of an offence-

H.E Amos K. Nyaribo abused his office in the management and administration of county affairs through the following acts as particularised below.

The particulars of this ground are as follows-

Allegation 1: Abuse of Office by Improper Use of his Authority in Recruitment of Staff without Approved Budget (The Recruitment Frenzy)

The Speaker (Hon. Kingi): Deputy Clerk, just give me a minute.

H.E. the Governor, we still have a long way to reading your charges. In the event that you are tired, you may take a seat. We do not want you to collapse while these charges are being read.

The Governor of Nyamira County (Hon. Amos Kimwomi Nyaribo): Thank you, Mr. Speaker, Sir.

The Deputy Clerk of the Senate (Mr. Mohamed Ali): The particulars of this ground are as follows-

Allegation 1: Abuse of Office by Improper Use of his Authority in Recruitment of Staff without Approved Budget (The Recruitment Frenzy)

WHEREAS Article 10 of the Constitution on National Values & Principles of Governance requires the observance of the rule of law, good governance, integrity, transparency and accountability;

WHEREAS Articles 73, 74 and 75 of the Constitution, 2010 outline the responsibilities of State officers and the principles of public service, demanding objectivity, impartiality and accountability;

WHEREAS Article 201(a), (b) and (e) of the Constitution of Kenya, 2010 state as follows-

(a) there shall be openness and accountability, including public participation in financial matters;

(d) public money shall be used in a prudent and responsible way;

(e) financial management shall be responsible and fiscal reporting shall be clear.

WHEREAS Article 232(1) of the Constitution, 2010, sets the Values and Principles of Public Service, requiring efficient use of resources, transparency, and fair competition and merit;

AND WHEREAS Section 107(2)(c) of the Public Finance Management Act, 2012 (PFM Act), require that: the County Government's expenditure on wages and benefits for its public officers shall not exceed a percentage of the County Government's total revenue as prescribed by the County Executive Member for Finance in regulations and approved by the County Assembly;

WHEREAS Section 8(1)(c) of the County Governments Act, 2012 which provides for the role of the County Assembly, including approve the budget and expenditure of the County Government in accordance with Article 207 of the Constitution, and the legislation contemplated in Article 220(2) of the Constitution, guided by Articles 201 and 203 of the Constitution.

(1) H.E. Amos Kimwomi Nyaribo presided over and influenced the approval of recruitment of staff without an approved budget as demonstrated in County Executive Committee Minutes: MIN No.04/02/2021 of 26th February, 2021, in his response to an inquiry from the Controller of Budget (CoB). This recruitment was approved by the County Executive with full knowledge that there was no budgetary provision. In the said response to issue No.4 in question, the Governor alleged that in lieu of a budget, "the recruitment was based on the savings made from various separations which included, but not limited to retirement and resignations".

(2) Despite a resolution of the County Assembly to freeze new employments on account of lack of budgetary provision for any new recruitment dated 1st July, 2021; which freezing was never vacated by a resolution of the County Assembly.

(3) Further, in spite of an advisory from the Secretary of the County Public Service Board dated 29th July, 2021 to the County Executive to put the impugned recruitment in abeyance considering that there is no budgetary provision for any new recruitment.

(4) H.E. Amos Kimwomi Nyaribo, has to date proceeded with a recruitment frenzy that has ballooned the county wage bill making it unsustainable, irresponsible and imprudent contrary to the provisions of the Public Finance Management Act, 2012.

(5) The Governor's influence over the recruitment of hundreds of staff without a budget, in defiance of the Ethics and Anti-Corruption Commission (EACC) advisory and County Assembly resolutions for political expediency and personal gain, constitutes a clear abuse of office aimed at fiscal plunder and violation of constitutional values and principles of governance.

(6) Since the year 2021, when H.E Amos K. Nyaribo assumed office as Governor, he has influenced the recruitment of staff without budgetary provision and approval of the County Assembly of Nyamira and particularly-

(a) in February to April, 2021, there was a recruitment of 49 officers;

(b) the recruitment of the Deputy County Secretary, County Attorney, Support Staff, Ward and Sub-County Administrators;

(c) on March 9th, 2023, the County Public Service Board advertised for 358 vacancies despite lack of an approved budget for recruitment, a recruitment freeze by the

County Assembly and disregard for EACC advisories. This recruitment, projected to add Kshs325 million annually, proceeded without any budgetary allocation or approval;

(d) outstanding arrears to the tune of Ksh60 million arising from unpaid salaries to healthcare workers for a period of seven months.

Allegation 2: Abuse of Office by Influencing the Appointment of Godfrey Kiriago and Elmelda Nyaberi as Director of County Human Resource Management and Assistant Director Human Resource Management (Payroll Manager) Respectively

WHEREAS Article 179 of the Constitution designates the County Governor as the Chief Executive of the County;

WHEREAS Article 232(1)(g) of the Constitution of Kenya, 2010, mandates fair competition and merit as the basis for appointments and the right to equality and freedom from discrimination;

WHEREAS Articles 75, 76 and 77 of the Constitution govern the conduct and financial probity of State Officers;

WHEREAS Section 30 of the County Governments Act, 2012 provides for the functions of the Governor;

WHEREAS Section 45 of the Anti-Corruption and Economic Crimes Act of 2003 provides for protection of public property and revenue;

WHEREAS Section 46 of the Anti-Corruption and Economic Crimes Act of 2003 provides that: a person who uses his office to improperly confer a benefit on himself or anyone else is guilty of an offence.

(1) In a letter dated 18th January, 2021, the County Secretary communicated the decision of the County Executive, an organ presided over by H.E Amos Kimwomi Nyaribo, to the County Public Service Board seeking the secondment of two cherry-picked officers, Godfrey Kiriago Nyangau and Elmelda Nyaberi to the positions of Director, Human Resource and Payroll Manager, respectively. In response, the Chairperson of the County Public Service Board wrote back to the County Secretary demanding that the said offices ought to be vacant and that the process must follow the laid down procedures and legal provisions.

(2) The Governor influenced the transfer of substantive office holders to create room for the cherry-picked officers and caused irregular integration into the county payroll.

(3) By initiating the non-competitive appointment and retention of the cherry-picked officers, the Governor violated the principle of meritocracy and demonstrated a profound abuse of his office, leading to a direct and quantifiable loss of public funds since the two offices were hitherto substantively occupied.

(4) The Governor further influenced the appointment of Mr. Godfrey Kiriago to the position of Deputy County Secretary and influenced the renewal of Ms. Elmelda Nyaberi's contract post her retirement date.

Allegation 3: Abuse of Office through Personal Enrichment from Receipt of Irregular Salary Arrears of Kshs5,649,706

WHEREAS Article 201(a), (d) and (e) of the Constitution of Kenya, 2010 state as follows-

“(b) there shall be openness and accountability, including public participation in financial matters;
(f) public money shall be used in a prudent and responsible way;
(g) financial management shall be responsible, and fiscal reporting shall be clear.”

WHEREAS Article 230(4)(a) of the Constitution of Kenya, 2010, mandates the Salaries and Remuneration Commission (SRC) to set and regularly review the remuneration and benefits of all State officers;

WHEREAS Section 97 of the Public Finance Management Act, 2012 (PFM Act), requires public funds to be used in accordance with the law and for the purpose for which they were appropriated;

WHEREAS Section 46 of the Anti-Corruption and Economic Crimes Act of 2003 provides that: a person who uses his or her office to improperly confer a benefit on himself or anyone else is guilty of an offence.

(1) In September, 2021, through the facilitation of the two cherry-picked officers; Mr. Godfrey Kiriago, the Director, Human Resource and Ms. Elmelda Nyaberi, the Payroll Manager, the Governor conferred upon himself an irregular salary payment christened as "arrears" amounting to Kshs5,649,706. It is apparent that there was no outstanding arrears due to the Governor since his assumption to office and neither was he owed any arrears as Deputy Governor.

(2) The Governor's self-authorized receipt of Kshs5,649,706 in salary arrears outside of the Salaries and Remuneration Commission (SRC) guidelines is a clear act of personal enrichment, abuse of office and a direct violation of the Public Finance Management (PFM) Act, 2012.

(3) The Governor has publicly confessed that he received the above irregular payment. The people of Nyamira lost services and development programmes to the tune of Kshs5.6 million, on account of this abuse of office and or his actions.

(4) The Governor has formed a habit of conferring upon himself irregular benefits going by other incidences. For instance, in the year 2019, the Governor caused to be paid a retrospective compensation of Kshs13 million in allowances for housing, which a benefit, not an allowance. He made a double medical claim in form of ex-gratia despite full settlement of his medical bills by the defunct National Health Insurance Fund (NHIF). This is all outside the SRC guidelines, which clearly demonstrate a pattern of personal enrichment, abuse of office and a direct violation of the PFM Act.

(5) This direct financial benefit to the Governor constitutes a direct loss of public funds and demonstrates a clear case of personal enrichment through corrupt practices and abuse of office.

Allegation 4: Abuse of Office through Systematic Payroll Fraud and Syndicate (The Kshs32 Million Payroll Heist)

(1) Besides an irregular receipt Kshs5,649,706 as already established in Allegation 2.3; the Governor presided over a well-orchestrated syndicate of payroll fraud, which led to massive loss of public funds through huge, irregular and unexplained salaries and special allowances paid to: Ms. Rose Bosibori Guto, an ECDE Teacher

(Kshs25,018,852); Ms. Gladys Moraa Nyambane, an ECDE Teacher (Kshs1,100,467) and Mr. Isaac Kerongo Onchiri, an ECDE Teacher (Kshs700,836).

(2) While under oath during his appearance before the Senate's Public Accounts Committee, the Governor admitted to have received the illegal benefit.

Allegation 5: Abuse of Office by Influencing Dual Appointments Outside the Lawful Establishment

WHEREAS Article 235 of the Constitution of Kenya, 2010, states that a county government is responsible, within a framework of uniform norms and standards prescribed by an Act of Parliament, for-

- (a) establishing and abolishing offices in its public service;
- (b) appointing persons to hold or act in those offices, and confirming appointments; and,
- (c) exercising disciplinary control over and removing persons holding or acting in those offices.

WHEREAS Section 50(1) of the County Governments Act, 2012, provides that there shall be established at the level of each sub-county the office of the sub-county administrator;

AND WHEREAS Section 51(1) of the County Governments Act, 2012, provides that there is established for each ward in a county the office of the ward administrator;

FURTHER WHEREAS these offices were already substantively filled in the year 2014;

UPON ASSUMPTION OF OFFICE IN 2021, the Governor Hon. Amos K. Nyaribo, aware that these offices were substantively filled, deliberately allowed the recruitment of sub-county and ward administrators to fill the "artificial" vacancies leading to double appointments and hence double payment of salaries depriving the county of development funds.

WHEREAS Section 10(5) of the Employment Act, 2007, provides for the procedure of change of contract terms for an employee, the Governor through letter Ref: NCG/CS/TRANSF/18/VOL.III/283 dated 27th June, 2024 redeployed 10 officers, ward and sub-county administrators, to positions in which they had no requisite competencies so as to create room for the dual appointments.

Allegation 6: Abuse of Office Through Usurpation of Powers of the Auditor-General and the County Public Service Board and Violation of Due Process through Illegal Payroll Audit and Demotions

WHEREAS Article 47 of the Constitution of Kenya, 2010 and the Fair Administrative Action Act, 2015, enshrine the right to fair administrative action and due process;

WHEREAS Article 229(4)(a) provides that within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, the accounts of the national and county governments;

WHEREAS Section 59(a) of the County Governments Act, 2012, provides that the County Public Service Board (CPSB) shall—

- (a) be independent and shall not be subject to the direction or control of any other person or authority; and

WHEREAS Section 59(f) and Section 60(1)(g) of the County Governments Act, 2012, vest the power to exercise disciplinary control over and to remove persons holding office in the county public service squarely in the CPSB;

WHEREAS Section 35 of the Audit Act, 2015, provides for the procedure and manner of auditing public entities;

(1) In September, 2021, the Governor purported to demote more than 1,000 staff which action was reversed by the Employment and Labour Relations Court (ELRC) sitting in Kisumu.

(2) Further, in May/June, 2024, he demoted another 254 staff on the basis of a payroll audit report without due process, usurping the function that falls squarely under the purview of the CPSB.

(3) The Governor appointed a payroll audit team without due regard to Section 35 of the Audit Act, 2015, approval by the County Assembly or the Auditor-General, contrary to legal requirements.

(4) Human Resource payroll relates to use of public funds and can only be audited as envisaged by Article 229 of the Constitution of Kenya, 2010.

(5) The Auditor-General is the only constitutionally mandated body to audit all state organs, including county governments and it has not delegated any of her mandates to any institution to carry Nyamira County payroll audit.

(6) The action of the Governor to carry county payroll audit without proper authorisation or delegation is straight usurpation of the constitutional mandate of the Auditor-General and therefore in violation of Article 229 of the Constitution of Kenya, 2010.

(7) Article 226(3) of the Constitution states that the accounts of all governments and state organs shall be audited by the Auditor-General. The action of the governor to carry out county payroll audit without proper authorisation by the Office of the Auditor-General (OAG) is in contravention of the Constitution.

(8) Article 229(1) of the Constitution creates the independent of the Auditor-General and Article 229(4) of the Constitution cuts what the Auditor-General ought to undertake. The action of the governor to carry out county payroll audit without proper authorisation by the Auditor-General and without the knowledge of the office undermines the independence of a constitutional office and is in contravention of the Constitution.

(9) Article 229(5) of the Constitution states that the Auditor-General has the liberty to audit and report on the accounts of any entity that is funded from public funds. Section 34 of the Public Audit Act, 2015 provides for periodic audits to be undertaken by the Auditor-General at his or her own initiative or upon request by an entity. The Auditor-General has audited Nyamira County. There are audit reports, but there is no explanation whether the county government found existing audit reports inadequate. The governor has not requested the Auditor-General to carry out any audit. The governor has not requested for the County Assembly of Nyamira to sanction the Auditor-General to undertake any audit.

(10) Section 23 of the Public Audit Act, 2015 provides for outsourcing of audit services, while Section 24 of the Public Audit Act, 2015, provides for engagement of services of technical experts or consultants and professionals in fulfilment of Article

229(6) of the Constitution, which states the principal purpose of the audit is to confirm whether or not public money has been applied lawfully and in an effective way. The Auditor-General did not establish the firm that did the county payroll audit.

(11) An audit is a process that follows cardinal guidelines which the purported auditors of the county executive payroll did not follow before coming up with the purported payroll audit report. Section 31 of the Public Audit Act, 2015 provides how the process of the audit shall be undertaken.

(12) Section 36 of the Public Audit Act, 2015 provides that the audit report is to be submitted to Parliament or county assembly for tabling and debate. How the county payroll audit report which was not done or authorised by the Auditor-General will be placed before Parliament or the county assembly for debate and consideration has not been explained.

(13) Section 37 of the Public Audit Act, 2015 provides for forensic audits, upon request by Parliament or county assemblies, to establish fraud, corruption or financial improprieties in state organs and public entities. The audit report is then placed before Parliament or the county assembly for debate and consideration where appropriate resolutions and actions to be taken emanate.

(14) The Governor, therefore, usurped the constitutional mandate of the Auditor-General which he arrogated himself to initiate payroll audit without authorisation.

(15) The County Public Service Board (CPSB), in their submissions in the county appeals matter before the Public Service Commission through the respondents reply to appeal in paragraphs 12, 13 and 20, affirmed that the Governor singularly commissioned the payroll audit, including appointment of an *ad hoc* committee that will digest the findings of the audit.

(16) The CPSB, in a communication dated 15th January, 2025, reversed the Governor's purported demotions, explicitly implying that the demotions were processed without the board's involvement or approval, confirming the usurpation of the board's mandate.

(17) The County Executive Committee sitting in September, 2025, resolved that it was aggrieved by the CPSB's reversal and will be appealing against this decision, fully aware that it has no provision for appealing. An advisory from the County Attorney affirmed that it was an advisory to the Chief Officer (CO), Public Service Management. This further demonstrates a governor that is hell-bent in usurping the role of the CPSB.

(18) The Governor's actions bypassed the established legal framework for personnel management, denying the affected staff due process, leading to demoralization and disruption of service delivery.

(19) The Governor's decision to personally initiate and execute disciplinary action or demotions based on an irregular audit without reference to constitutionally mandated CPSB or following due process is a clear and unconstitutional usurpation of power and violation of staff members' fundamental rights.

(20) The Governor's intention to appeal the decision of the CPSB was in any case an act in futility as the decisions of the CPSB are deemed to be made for and on behalf of the county government.

(21) Additionally, the county assembly, while considering a report of the Sectoral Committee on Public Service Management on Staff Progression, passed resolutions that included among others-

(i) The reinstatement of demoted officers to their rightful job groups and payment of their full emoluments.

(ii) The censure of the Chief Officer, Public Service Management, Mrs. Rael Omanyi and a further resolution to have her step aside for contempt of the county assembly and its committees.

(22) The Governor has to date failed to enforce Resolution (ii) above and equally failed to implement the resolutions of the county assembly in this report.

Allegation 7: Abuse of office by purporting to suspend the Secretary to the County Public Service Board

Whereas Section 58(5)(b) of the County Governments Act, 2012, as read together with Article 251(1) of the Constitution of Kenya, 2010, provides that members of the board may only be removed from office by a vote of not less than 75 per cent of all the Members of County Assembly (MCAs)-

(1) The above article and/or section do not anticipate or confer power upon the governor to cause such an action as suspension of a Secretary to the CPSB.

(2) His Excellency Amos Kimwomi Nyaribo acted *ultra vires* by purporting to suspend the Secretary to the CPSB vide the letter referenced NCG/GVN/LEGAL/VOL.1, dated 2nd May, 2023, beyond his powers as provided for in Section 31 of the County Governments Act, 2012.

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

The Deputy Clerk of the Senate (Mr. Mohammed Ali): Hon. Amos Kimwomi Nyaribo, how do you plead to the two grounds; guilty or not guilty? Ground 1?

The Governor of Nyamira County (Hon. Amos Kimwomi Nyaribo): Not guilty.

The Deputy Clerk of the Senate (Mr. Mohammed Ali): Ground two?

The Governor of Nyamira County (Hon. Amos Kimwomi Nyaribo): Not guilty.

The Speaker (Hon. Kingi): Now, the plea having been taken, we will move to hear opening statements from both teams, unless there are preliminary matters that the parties would wish to raise. If there are no preliminary matters, we shall move to opening statements starting with the county assembly.

Yes, counsel for the governor.

PRELIMINARY MATTERS AND OBJECTIONS

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

Mr. Elias Mutuma: Thank you, Mr. Speaker, Sir, and hon. distinguished Senators. My name is Elias Mutuma, representing the Governor in this matter.

Mr. Speaker, Sir, you will recall that on 1st December, we did formally raise a Preliminary Objection (PO) dated 29th November, 2025, which is seeking to have the proceedings before the Senate terminated in a summary manner before proceeding for

full trial. I will be arguing this main preliminary objection with your leave and my learned friend, Mr. Ratemo, will also raise two applications at the end of my presentation.

Hon. Senators, the preliminary objection before you is the one dated 29th November, 2025.

The Speaker (Hon. Kingi): Counsel for Governor, you were to indicate that you are going to raise a preliminary objection, so that I give time indication.

Now, if you look at Rule 14 of the Rules of Procedure, in the Third Schedule, we have 30 minutes to conclude matters of a preliminary nature. I will, therefore, give you 20 minutes to argue your preliminary objection. I will give the County Assembly 20 minutes to respond and five minutes to make your rebuttal. Then, the Senate can deal with that.

You may now proceed.

Mr. Elias Mutuma: Thank you for that guidance, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Your time starts running from now.

Mr. Elias Mutuma: Thank you, Mr. Speaker, Sir, for the opportunity. Like indicated earlier, we have raised a preliminary objection dated 29th November, 2025, and it is contained in the Governor's documents at Volume I. It is a very thin document.

The objection that we have raised in this preliminary objection is not just about a procedural issue. It boils down to the very core and principles of our Constitution because the Motion that has been presented before you and the resolutions by the County Assembly of Nyamira do not meet the legal threshold. At the end of my presentation, you will have no doubt in your mind that the Motion before you is based on a foundation that is constitutionally rotten, procedurally fraudulent and mathematically impossible.

I will be submitting that there is only one remedy available for this kind of an incompetent Motion; that is, to terminate it before moving for trial. For allowing the procedure to go on to full trial, would be to let annulity in law assume a cloak of legitimacy.

Mr. Speaker, Sir, the core of our objection is that the Motion before you does not meet the two-thirds threshold that has been set by our Constitution and the other enabling provisions of the law. This ground is premised on two main issues.

The first one is that, whereas our Constitution at Article 181 which gives these Senators the power and the mandate to hear and make a determination on matters of impeachment requires that if the impeachment proceedings were to succeed, then it must have been supported by at least two-thirds of all the members of the County Assembly. Therefore, before even interrogating the issues before you, the first call of duty is for you to satisfy yourself that the resolution that has been forwarded by the County Assembly meets that threshold.

Hon. Senators, there are only three legal provisions that guide on matters of impeachment. One is Article 181 of the Constitution which requires that the County Assembly, through the operationalisation of Section 33, must meet that threshold. When you look at Section 33 of the County Governments Act, it provides as follows.

Before I go there, hon. Senators, let me submit as follows: Matters of impeachment must begin from Article 181 which gave Parliament the power to enact a law that provides for the procedure of removing a governor from office. Pursuant to that

mandate, this Parliament enacted Section 33 of the County Governments Act. The provisions of Article 33 are very clear that the threshold must be two-thirds of all the members of the County Assembly.

Mr. Speaker, Sir, now, the County Assembly will appear before you and argue that the threshold had been reduced by vacancies that had resulted from death, resignation or other factors, but the constitutional threshold remains fixed. It cannot be altered. It cannot be amended. Therefore, what is the total number of Members in the County Assembly of Nyamira? At Volume 2A of the Governor's document, you will come across the official determination of the total number of Members of the County Assembly of Nyamira.

Who makes a determination on the total number of Members of a county assembly? It is not the speaker of a county assembly. It is not the leader of majority. It is not even the mover of the motion and it is not any Member of a county assembly. That determination on the total number of the Members of county assembly is predetermined by the very institution that has been mandated with matters election in Kenya, which is the Independent Electoral and Boundaries Commission (IEBC).

At page 42 all the way to page 46 of Volume 2A of the Governor's documents, you will come across a Gazette Notice that was published way back in 2022, confirming the total number of Members of the County Assembly of Nyamira. That is the total number legally declared, legally fixed, that cannot be changed or altered by any Member. That number is 35. It comprises of 20 elected Members of the County Assembly, 11 Members for gender top-up and four representing the marginalised. That is the position. That is the legal position. It has never changed at any given moment.

Mr. Speaker, Sir, we have no doubt in our minds that the County Assembly of Nyamira has a total of 35 members of the County Assembly. That number cannot be reduced by interpretation, by innovation or by improvising of any Member. Hon. Senators, having that in mind, then what is two-thirds of 35?

I may not be good in maths, but we were here before with the Kericho and Isiolo matters. This Senate was very clear; that you cannot have half a person. Therefore, when I do my maths correctly, at least two-thirds of 35 must remain to be 24. The question then that this Senate will have to ask itself is whether 24 Members of the County Assembly resolved to impeach the Governor. Should you find that you do not have 24 people who voted in favour of this Motion, there is only one remedy; to send the County Assembly back to the drawing board for them to meet that threshold.

Hon. Senators, the record before you will demonstrate two things. The first one is that there were 19 Members present on 25th November, 2025 who voted to impeach the Governor. That is on record; the HANSARD speaks for itself. However, strangely, 23 votes were generated from a total of 19 Members who were present in the Chambers. Section 20 of the County Governments Act gives directions on the procedure of voting. It says as follows-

“That any decision of the county assembly shall be made by Members present and voting.”

Section 20 of their own Standing Orders No.67 speaks verbatim and says that any decision of the County Assembly shall be made by members present and voting. Now, if

we only had 19 Members in Chambers - they have given you that list, how could they generate more than 19 votes?

Hon. Senators, it is a joke of the year. I may not be good in mathematics, but I am sure, a total of 19 will never generate 23. On that ground alone, this is a flawed Motion. It cannot be entertained. I know my learned friends will come here and try to persuade you to proceed to full trial and make a determination. The question is: What will you be calling witnesses to confirm or to adduce evidence on? Their own numbers confirm that they had 19 people, but 23 votes were cast.

What is the explanation they are giving? That they were voting by proxy. I went looking through our Constitution, the County Governments Act and their own Standing Orders. There is nothing known as proxy voting. What is this concept of voting by proxy that is being introduced?

Hon. Senators, the mandate of a legislator in a county assembly or in the Senate such as this is delegated by mwananchi. You cannot delegate that mandate further by giving someone else that mandate to vote on your behalf. They will produce letters that incidentally- and this is very important- were never tabled on 25th November, 2025 before the Floor of the County Assembly. Those letters were not forwarded at the beginning when this resolution was forwarded to the Senate. Those letters only emerged on 1st December, 2025 when now, they were presenting their second set of documents.

Hon. Senators, what is this voting by proxy? Section 20 - I repeat because this is very important - says that unless otherwise provided by the Constitution, written law or any other law, decisions shall be by members present and voting. I dare the County Assembly to give us evidence of where voting by proxy has been provided elsewhere, either in the Constitution, the County Governments Act or their own Standing Orders; there is none. Where the law is clear on the procedure, you cannot innovate, improvise or interpret it to suit your illegal intentions.

Assuming for a moment, that even voting by proxy is allowed, was there then voting by proxy? Before you are affidavits by the four Members that are said to have given instructions to vote. One of them, Edna Moraa, has confirmed in her affidavit that she is not even in Kenya. She is in Kansas, United States of America (USA). On the very day, she had no idea that this was happening. She had not seen the Motion or read the contents and yet, someone purports to have instructions on her behalf to vote.

We have Julius Obonyo, Elijah Sagwe and Priscilla Nyatichi who have all sworn affidavits stating that they were in Mombasa on 25th when this Motion was being passed. They have sworn under oath that they did not give anyone instructions to vote on their behalf, assuming even proxy voting was allowed. This is a clear case of not just fraudulent misrepresentation and forgery, but an issue that this Senate should take seriously and recommend criminal charges against the perpetrators of this heinous act.

Hon. Senators, there was a reason why the framers of our Constitution demanded that decisions must be made by members present and voting. I have been here before. There are two ways of being present and voting; either, you are physically present in the Chambers where bars are drawn or, you appear virtually. Even as you appear virtually, the Speaker must confirm that it is this person who is a known legislator of this

House that is voting virtually. The Speaker goes further to confirm that you are actually properly dressed in a parliamentary attire. It is not automatic that you will be allowed to vote even virtually. How then would a letter suffice?

Hon. Senators, this Motion cannot be allowed to proceed to the next level. Doing so would be to legitimise a process that is fraud and meant to thwart the will of the people through their elected representatives.

Luckily, this is not the first time this is happening. Months ago, I was here with Katwa Kigen representing the Governor. The same arguments I am raising are the same arguments he raised during Kericho I and Kericho II impeachment motions and he succeeded. That is why I have crossed the Floor. I am surprised that my learned friend is on the other side now. I do not know what he will be telling you when the very submissions he raised are the very submissions I am raising today.

Hon. Senators, you do not need to call witnesses. My learned friend, Katwa Kigen, brought 18 witnesses here in the Kericho matter. How cumbersome was it? That thing ought to have been ended at the preliminary stage. I dare submit; do the same today. You did it in Kericho I and in Isiolo. These are not proceedings that can be allowed to go to the next level.

Hon. Senators, let me just raise the other issue because of time, I only have three minutes left. Should this Motion proceed to the next level, we have made an application through a letter that we forwarded to this Senate. This letter is dated 2nd December, 2025 and it makes an application to have the Speaker of the County Assembly and the Clerk of the County Assembly summoned to appear before you and produce the original letters that are purportedly given to the Speaker allowing for proxy voting.

I see I have three minutes left, I want to spare them for the rejoinder. My humble submission to you is that, we could be done before lunch hour today because, there is nothing that is before you. What you have is a stillborn child; a lifeless Motion that cannot be entertained.

Hon. Senators, unless you have any questions for me, I beg to submit that these Senators have other crucial businesses to attend to other than attending to a stillbirth Motion.

Thank you. I rest my case.

The Speaker (Hon. Kingi): Counsel for the County Assembly, your 20 minutes starts running from now.

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

Mr. Katwa Kigen: Good morning, Mr. Speaker, Sir, and hon. Senators. It is our argument that the issue being advanced in respect to Nyamira is very different from the one for Kericho and I will come back to that. However, I would like to start from where Kericho left, being that when we raised the preliminary objection, the general position of the Senate was that the people of Kericho, on their complaint brought through the MCAs, should be heard.

Mr. Speaker, Sir and hon. Senators, we pray that the same be applied in respect to Nyamira. That this matter proceeds and you hear the concerns of the people of Nyamira and if it necessarily will entail your having to combine a determination of the preliminary objection together with the merits of the issues, we pray that that be applied.

The second issue is that my learned friend's argument on the preliminary objection was that we could probably just agree on the bottom lines. The first bottom line is that we agree that in the year 2022, there were 35 Members of County Assembly (MCAs) who were sitting or were supposed to sit in Nyamira County. However, as of November, 2025, there were only 32. With that understanding, my learned friend then proceeds to say that you should determine the two-thirds based on the figures determined by the Independent Electoral and Boundaries Commission (IEBC). For purposes of advancing that argument, they brought in Volume two at page nine to 42, in which they provide the list of the MCAs that had been elected and say that IEBC has determined the issue of the number of MCAs for Nyamira and cast it in stone.

I would like to read the phrase used by the IEBC on that issue. Page nine, Volume 2A of the Governor's Bundle. I will read the last three lines. Page nine, that is where the declaration of the results is set out.

Mr. Mokua Ndubi: Hon. Senators, it reads-

“The IEBC declares that the persons whose names are listed in the schedule hereunder were elected as members of the various county assemblies”.

The Speaker (Hon. Kingi): You may be having a different volume.

Mr. Katwa Kigen: Hon. Senators, it is Volume 2A of Governor's Bundle of documents.

The Speaker (Hon. Kingi): Which page?

Mr. Katwa Kigen: Page nine. It is titled The Constitution of Kenya.

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

Mr. Mokua Ndubi: Mr. Speaker, Sir, it reads that-

“The IEBC declares that the persons whose names are listed in the schedule hereunder were elected as members of the various county assemblies, having received the majority of the votes cast in the election held on 9th August, 2022 and complied with the provisions of the Elections Act, 2011 and the Constitution.”

Mr. Katwa Kigen: Thank you very much.

Mr. Speaker, Sir, our argument then is that the IEBC was not saying that is the limit and the absolute number of the members that were at that time or at any time to sit in the County Assembly of Nyamira. The specific issue of the County Assembly of Nyamira is captured at page 42, where the numbers are set out and then thereafter the top-up figures are provided for.

Mr. Speaker, Sir, and hon. Senators, the point I am making is that when the Constitution and the County Governments Act states that it is two-thirds of all county assembly MCAs, it can only be referring to the MCAs at the material time. It cannot be an absolute, that, for instance, if 10 people have died, or their election has been nullified, then the county assembly cannot function, or if you have somebody who is misconducting himself, like in this case, the MCAs' case in respect to the governor, then you cannot do anything. I pray that you juxtapose that argument with the fact that in

Kenya, we had, for a very long time, a lack of IEBC. Is it the case, then, or will the Senators then take the proposition that where we have limitations in the process of filling up the positions in the county assembly, then no activity should go on?

Secondly, the county assembly has, over time, enacted legislation. If you were to hold that the two-thirds must be out of the 35, the ideal 35, are you then saying that all the legislation that has been passed, all the appropriation bills that have been passed, were all null and void? We argue that the intention of the Constitution and the County Governments Act is that it is two-thirds of the people who are there at the material time. Now, I should probably just explain and account for the three that brought the shortfall from 35 to 32. The first one was one Hon. Thaddeus Nyabao, who was elevated to be a speaker and resigned. He was replaced by another MCA on 1st December.

The next MCA who left the scene was Elijah Osiemo, who passed on in August, 2023. The third one is Dennis Kebaso of Nyansiongo Ward, whose election was nullified. Therefore, the County Assembly of Nyamira has been conducting its affairs using two-thirds of the MCAs that remained. So it is my argument that you do agree with us that the use of the word “all”, both in the Constitution and in the County Governments Act, was contemplating and expecting the use of the people in office. Short of which it would mean that the county assemblies and probably the Senate, for that matter and probably the National Assembly, cannot conduct some affairs until vacancies arise in the body of the membership.

It is also our argument that to the extent to which it will be necessary to determine whether it was intended that two-thirds is an absolute figure from the total number of the elected MCAs and whether the IEBC's notice is to be treated as an absolute, as casting the total in stone. Those two questions are questions of fact and it is our argument that you should allow this issue to go into full hearing and a determination be made on that issue.

Mr. Speaker, Sir, I would like to move on to the issue of proxies. My learned friend has said that the letters upon which the people who exercise voting rights on behalf of others were not produced in the Assembly. In our disclosure, in our documents, we have shown the letters by which the powers were delegated to some individuals to vote on behalf of others.

Now, my learned friend argued that you should take it for a fact that indeed those letters were not at the Assembly. It is my argument that to the extent that you will need to determine whether indeed those letters were there is a question of fact and therefore we should go to a full trial. Secondly, my learned friend has argued extensively, saying there is no provision for the use of proxies.

Mr. Speaker, Sir and hon. Senators, I pray that right away, you take judicial notice of the fact that you yourself, as a Senate or Assembly, use proxies. Therefore, to the extent that the Senate uses proxies as a means of determining its affairs, it be treated that the use of proxies is a normal process of legislative processes. Therefore, the fact that it has been used in Nyamira is not necessarily wrong, considering that it has been used in this.

Mr. Speaker, Sir, I just want to invite you to the fact that the Nyamira County Assembly has previously used the proxies and we would like to have an opportunity to adduce evidence to that effect when we come to the full hearing.

My learned friend said that I will not be able to refer to any of the Standing Orders supporting the proposition. Standing Order No.67 of the Nyamira County Assembly Standing Orders provides for three means of voting; that is, secret voting, roll call voting and electronic voting.

Now, roll call and electronic voting is extensively described in the Standing Orders. The secret ballot voting system is not extensively explained in the Standing Orders and that, therefore, leaves room for the Speaker to use Standing Order No.1 and give guidance.

In the specific case of this voting, which is the subject of the impeachment that has been placed before you for determination, the issue of the use of the proxy was presented to the Speaker. The Speaker was invited to the fact that some people have sent proxies, authorising and giving proxies powers to vote on their behalf. Those documents were produced. They are in the HANSARD.

The Speaker of the County Assembly, in exercise of his authority under Standing Order No.1, authorised the use of the proxies. Therefore, it is our argument that the use of the proxy was properly considered, evaluated and determined and that it is properly allowed by Standing Orders No.1 and 67.

I would like to cede the remainder of my minutes to my learned friend, Mr. Mokua, on the two preliminary issues.

Mr. Mokua Ndubi: Thank you, Mr. Speaker, Sir and Hon. Senators. For record purposes, my name is Mr. Mokua Ndubi. In determining this preliminary objection by the Governor's side, we urge this Senate to be guided by the elements of our preliminary objection as espoused in the most celebrated case of Mukisa Biscuit.

Mr. Speaker, Sir, you will agree with us that this particular preliminary objection fails all the three tests that were set out in that very old case. First of all, a preliminary objection is supposed to be purely on a question of law. Wherever there are questions of facts to be interrogated, then a preliminary objection ought to fail, as is the case before this Senate.

There is a contestation as to the exact number of the MCAs in Nyamira as at 25th November, 2025, when this impeachment Motion was taken.

On the Governor's side, they are contending that the MCAs in Nyamira were 35 in number. On the Assembly side, we are contending that the total number of MCAs were 32 in number. Therefore, there is a contested question of fact, even on the baseline, on the total number of MCAs that were present in Nyamira County Assembly as at 25th November, 2025.

The second reason as to why this preliminary objection does not meet the second element in the Mukisa Biscuit case is that a preliminary objection is raised and argued on the assumption that all the facts that have been raised by the other side are correct. The Governor has filed an affidavit together with his witnesses. This, therefore, means he is contesting the factual issues that have been raised by the county assembly.

To that extent, the matter has to go for full trial, so that the Senators can make their own independent determination on the factual issues that have been contested.

In the Kericho I impeachment, there was general consensus, both by the Governor's side and the Assembly, that the total number of MCAs were 47 and that those who voted were 31. So, what was left for the Senate was to determine the threshold; whether it is 31 or 32. That impeachment collapsed at that juncture.

In Kericho II, there were contested factual issues. That is why the matter had to go for full trial and then eventually the Senators had to rule on the issue of the threshold. It is our submission that the position in Kericho Impeachment II is the one that is obtaining in the present impeachment proceedings. There are highly contested issues of fact which cannot be determined.

Finally, on the third limb as to why this preliminary objection ought to collapse is that a preliminary objection ought not to be raised where issues of discretion are to be determined.

Mr. Speaker, Sir, the County Assembly of Nyamira Standing Orders, especially Standing Order No.1 vests power upon the Speaker to exercise discretion and to rule on procedural aspects which are not expressly provided for in the Standing Orders.

To the extent that the Governor's side is challenging the Speaker's exercise of his discretion to allow voting by proxy, the preliminary objection ought to collapse.

Counsel for the Governor has indicated that these four MCAs never delegated their power to vote. On our end, it is our case that they did delegate. Sincerely speaking, at this juncture, how can a Senate sitting believe the Governor's side and fail to believe our side merely because we are being told affidavits have been filed?

Mr. Speaker, Sir, if we are allowed to proceed to full trial, we will bring for you a phone where one of the MCAs sent a letter on WhatsApp. We will provide the phone in its original form. We will also provide email correspondence by these MCAs who are alleging that they never allowed to be voted for by way of proxy.

Under the doctrine of silence of laws, where an Act of Parliament is silent on a particular item, then generally, that Act does not provide for a certain action and at the same time, it does not prohibit a certain action. To the extent that the Nyamira County Assembly Standing Orders are silent on the aspect of proxy voting, they do not prohibit or provide for. The general provision of law is that where an Act of Parliament is silent on any item, that action is allowed. It is therefore our case that voting by proxy is allowed under the Nyamira County Assembly Standing Orders.

Finally, a calculation of two-thirds of 32 translates to 71.875. It is our case that the two-thirds threshold was not just met but, in fact, surpassed. We can only demonstrate that once we proceed to full trial.

On the second limb on summoning the Clerk and the Speaker of the County Assembly of Nyamira, we pray if our colleague can drop that request. We undertake to avail one witness; the one who was given the four documents. He will avail the documents, his mobile phone and the email to which the document was sent to him.

Mr. Speaker, Sir, we pray that you dismiss this preliminary objection; allow this matter to proceed to full trial, so that the whole world can see the atrocities that have been

committed on the people of Nyamira by His Excellency the Governor Amos Kimwomi Nyaribo.

We humbly pray that you dismiss this preliminary objection. In the alternative, allow us to proceed to full trial and in the end, the Senators will determine on the preliminary objection as their first issue. We humbly submit.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Now, hon. Senators, pursuant to Standing Order No.34(2)(a), I will allow later interruption of the proceedings to 1.15 p.m. to allow a rejoinder from the team of the governor and thereafter allow honorable Senators if they wish, to seek clarifications, to ask questions to any of the parties present.

Counsel for the Governor, you may proceed with your agenda for five minutes.

Mr. Elias Mutuma: Thank you, Mr. Speaker, Sir. With your permission, I had reserved three minutes.

The Speaker (Hon. Kingi): Okay, then those are eight minutes.

Mr. Elias Mutuma: I will use three minutes, then my learned friend will proceed.

Mr. Speaker, Sir, pleadings in respect of this impeachment were closed on 1st December, 2025. All parties were required to file their respective documents at the close of business on 1st December, 2025. There has been no attempt by the County Assembly to respond by way of affidavits controverting their affidavits that are on record by the four MCAs. None. They had that opportunity, but they did not do it.

Therefore, in respect of that piece of evidence, it is uncontroverted. That is the position. That is a fact that has been admitted because they had the opportunity to file their own affidavits and to respond to this issue. They have not. Therefore, we are squarely within the mandate of a preliminary objection because this is a fact that is not controverted.

Secondly, and lastly, the learned counsel has sought to seek refuge under Standing Order No.1 of the County Assembly of Kericho. Let me remind him what Article 181 of the Constitution of Kenya, 2010 states. It states as follows-

“That Parliament shall enact legislation providing for the procedure of removal of a county governor on any of the grounds specified in Clause 1.”

Pursuant to that power, this House enacted Section 20 of the County Governments Act, which, in case the learned counsel has not read, states as follows-

“Except as otherwise provided by this Constitution, this Act (the County Governments Act), or any other legislation, any question proposed for decision by the county assembly shall be determined by a majority of the Members of the County Assembly present and voting.”

Can you be present in absentia? It is an oxymoron when he runs and seeks refuge at Standing Order No.1, which provides for issues that have not been expressly provided for. Section 20 provides for the voting procedure. Therefore, the Speaker cannot run and innovate when there is a clear provision of the law.

Thank you, my learned Friend.

Mr. Zelmer Bonuke: Thank you, Mr. Speaker, Sir. For the record, my name is Zelmer Bonuke, counsel for the governor. I will address the issues that have been referred to by the other side of the county Assembly.

I have heard them raise the issue of Kericho County and how the proceedings of this House were concluded. It will be noted and on record that upon the proceedings being terminated, the Senate resolved to vote on the preliminary objection first before delving into the other grounds. What then does that mean, hon. Senators? We do not have to waste time on an illegality in this space.

As my colleagues said, the hon. Senators have a lot to do and we have highlighted a significant point or question of law on the threshold. Let me take you through what constitutes the Nyamira County Assembly. It has 20 elected Members, 11 Members form part of the gender top-up; four in the marginalised category, which makes them 35. Nothing changes.

I will put in context that while referring to the Constitution of Kenya, under Article 138 on the election of the President. Allow me hon. Senators to refer to Article 138(4)(a), which says-

“A candidate shall be declared elected as President if the candidate receives-

-
(a) more than half of all the votes cast in the election.”

Hon. Senators, we have 47 counties in Kenya. Half of them, my quick mathematics tells me, it is 24. Therefore, the express provision of the Constitution is that we cannot then say that if 38 counties voted, then they did not meet the threshold because the law is clear that they have to be more than half of it. So, what you are being told here is that we need to subtract the members who are not present and then lay the basis for having the two-thirds.

Allow me to refer to the Constitution once again on the process of the removal of a governor. It is very clear. It is not something that has been created out of anything else, but it is in the Constitution. The framers of the Constitution were very specific under Article 33(1), and I will read. Sorry. This is the County Governments Act, Section 33(2)-

“Specifically, a Motion under subsection one is supported by at least two-thirds of the members of the county assembly.”

Hon. Members, this is a specific Motion. It is not a Bill or any other Motion that can be brought to the House. It is particular to the removal of a governor. We do submit that even if the County Assembly Speaker sought to create his own rules on how to conduct this voting exercise, then Standing Order No.1, which they have sought to rely on is very specific and they have read selectively Standing Order No.1(1). What they did not tell you is that Standing Order No.1(2) provides as follows-

“The decision made in paragraph (1) shall be based on the Constitution of Kenya, Statute of law and the usage of forms, precedent, custom procedures, traditions of the County of Nyamira, the County Assembly, and the Republic of Kenya within this jurisdiction.”

They have failed to refer you to any statute that provides for a proxy.

You have also been told that this is the norm at the County Assembly of Nyamira to use proxy voting. Then we pose this question. Should we then counter an illegality on the face of it, which has these serious ramifications, including impeaching an elected governor on a basis that does not exist in law?

Hon. Senators, we urge you to consider our preliminary objection and especially on this point, on the threshold. If you are told that the issue of proxy has to be called as witnesses, that is fine, but then we will determine the first question on whether this Motion met the threshold. The answer is a resounding no.

We yield to that, hon. Senators. I thank you.

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

The Speaker (Hon. Kingi): Now, hon. Senators, we have six minutes. Kindly shoot straight, so that we can extract the most out of these six minutes.

Proceed, the Senator for Nairobi City County.

Sen. Sifuna: Mr. Speaker, Sir, very interesting arguments have been made about membership and I want to seek clarification, especially from counsel for the Governor on the question of membership.

You have stated very well what Section 33(2) of the County Governments Act speaks to, that the Motion has to be supported by two-thirds of all the members of the assembly. I want you to tie that to the provisions of Article 103(1)(a) on the vacation of office upon the death of somebody. Can that person still be referred to as a member of the assembly for purposes of the determination of membership?

Therefore, there is a very interesting point that was raised by counsel for the County Assembly. For instance, if by catastrophe, we have 35 members in the assembly, 15 of them are in a bus and the bus plunges into a river and they are no longer MCAs. If an issue of impeachment were to arise in determining two-thirds of those MCAs, is it the case for the governor that we will still use the number that was determined at the election in August of 2022?

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Yes, counsel for the Governor, you may proceed.

Mr. Elias Mutuma: Thank you, Mr. Speaker, Sir, and thank you, Senator for Nairobi City County, for that question.

My answer to that question is, the impeachment process is governed by three pieces of legal provisions- Article 181, Section 33 and the Standing Orders. It does not anticipate a scenario whereby there will be a vacancy that will have to last for so long, such as to affect the business of the House.

Let me just give this as an example. Assume that for a moment, half of the House is not present, either by tragedy or disaster. What happens to that House? Do we then reduce the threshold to the remaining ten or five? We cannot do that. So, if there is a vacancy, it does not affect the threshold because the law has a mechanism of filling that vacancy. That would be my short answer to that issue. Thank you.

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

Sen. Wambua: Mr. Speaker, I have a similar question, but this time to the Counsel for the Assembly, Katwa Kigen.

I would like the lawyer to address me and this House on the question of the membership of any Assembly. At what point does that membership determine? Does it

determine immediately after elections and after political parties have had an opportunity to discharge their obligation to nominate members? Or is it a moving target? Is it one number today, a different number tomorrow, a different number next week? At what point does this number determine?

I thank you.

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

Mr. Katwa Kigen: Thank you, Mr. Speaker. The direct answer to the question from us is that it is a moving target. The reality of it is that at every given time, the representation has to continue. Various activities have to be done. There is a need to approve budgets and determine issues. Therefore, the fact that there is a continuous need to attend to issues on behalf of the public makes it a moving target. Therefore, at every given time, the people who are available to transact business on behalf of the people who elected them is the determining factor of the total bottom line number of people who are to vote. That is my answer to the question.

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

Sen. (Dr.) Khalwale: Mr. Speaker, I am convinced by what the Counsel for the Governor, Mutuma, has said; that, you cannot find voting by proxy anywhere in the Standing Orders of the County Assembly or anywhere else yet, this is going to guide us to decide on your preliminary objection, Mr. Mutuma. Do you not think reading the Standing Order in its entirety, we should give the County Assembly an opportunity to demonstrate to the House that the Speaker proceeded under Standing Order No.1 of the County Assembly, allowed by proxy, and maybe he did so because of some usage or tradition that preceded that decision? Do you not think we should allow this to proceed, so that we hear evidence to make a decision instead of just condemning them and telling them they are wrong?

The Speaker (Hon. Kingi): Counsel for the Governor, you have a few seconds to respond.

Mr. Elias Mutuma: Thank you, Sen. Boni Khalwale. An argument based on points of law or the interpretation of law cannot be a factual issue. It is based on legal arguments. They had the opportunity to submit, and that is why this Senate directed us to prepare written submissions and bring them before the House. That is why they have given us 20 minutes to demonstrate to you through legal arguments how the Speaker can rely on Standing Order No.1.

There is no witness who is coming to testify on a question of law. It is purely an interpretation issue which does not require evidential interrogation. The purpose of going through a trial, Hon. Senators, is for you to look at the facts, cross-examine the witnesses on their version of factual issues, and then render a decision of fact. Questions of law---

The Speaker (Hon. Kingi): Counsel for Governor, time is up.

Hon. Senators, I will be giving my ruling at 2.30 p.m., on this particular matter.

ADJOURNMENT

The Speaker (Hon. Kingi): All rise. Hon. Senators, it is now 1.15 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until later today, Wednesday 3rd of December 2025 at 2.30 p.m.

The Senate rose at 1.15 p.m.