

PARLIAMENT OF KENYA**THE SENATE****THE HANSARD****Friday, 14th February, 2014****Special Sitting**

*(Convened via Kenya Gazette Notice
No.826 of 12th February, 2014)*

*The Senate met at Parliament Buildings,
Senate Chambers, County Hall, at 4.00 p.m.*

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

PRAYERS**QUORUM CALL AT COMMENCEMENT OF SITTING**

The Speaker (Hon. Ethuro): Order, Senators. We need to determine if we have quorum.

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

The Speaker (Hon. Ethuro): Hon. Senators, we have quorum we may therefore commence our business.

COMMUNICATION FROM THE CHAIR

**CONVENING OF SPECIAL SITTING OF THE SENATE TO CONSIDER
THE REMOVAL FROM OFFICE OF THE GOVERNOR AND
DEPUTY GOVERNOR OF EMBU COUNTY**

The Speaker (Hon. Ethuro): Hon. Senators, I have a Communication to make.

As you are now fully aware, the County Assembly of Embu, pursuant, to Article 181 of the Constitution and Section 33 of the County Governments Act, No.17 of 2012, on 28th January, 2014 approved the following Motions:-

To remove from office by impeachment the County Governor and the Deputy Governor of Embu County. Notification of this approval was made to the Speaker of the Senate by the Speaker of Embu County Assembly by letters dated 29th January, 2014 reference CAE/ACA/1/28 and 29 respectively which were received in the Office of the Speaker of the Senate on 30th January, 2014. The Speaker of the County Assembly of

Embu also forwarded to the Speaker of the Senate the following documents in respect of both the Governor and the Deputy Governor:-

- (i)Particulars of the allegations thereon and related annextures;
- (ii)The results of the Division;
- (iii) The signatures in support of the Motion;
- (iv) The signatures in support of the Notice of the Motion;
- (v) The HANSARD report in respect of the Motion;
- (vi) The Attendance register.

In terms of Article 181 of the Constitution, Section 33(3)(a) of the County Governments Act and Standing Orders No.65(1)(a) of the Senate Standing Orders, the Speaker of the Senate was required within seven days after receiving notice of a resolution from the Speaker of the County Assembly of Embu, convene a meeting of the Senate to hear the charges against the Governor.

Hon. Senators, you will recall that on 4th February, 2014 the Speaker of the Senate, by Message, communicated the resolution of the County Assembly of Embu as communicated in the letter by the Speaker by the County Assembly of Embu and pursuant to Section 33(3)(b) of the County Governments Act and our Standing Order No.65(1)(a), the Senate, by resolution established a Special Committee comprising 11 of our Members to investigate the matter and to present a report to the Senate.

Section 33(5) of the County Governments Act provides that the Governor and the Deputy Governor shall have the right to appear and be represented before the Special Committee during its investigations. I have no doubt that the Special Committee adhered to the provisions of this section, and as to whether that is a fact or not will be evidenced in the context of the Special Committee Report to be tabled today.

Pursuant to Section 33(4) of the County Governments Act, a Special Committee appointed under Section 33(3) of the Act is required to undertake the following:-

- (a)Investigate the matter; and,
- (b)Report to the Senate within ten days on whether it finds the particulars of the allegations against the Governor and the Deputy to have been substantiated.

Section 33(6) of the County Governments Act provides that, and I quote;
“In the Special Committee reports that the particulars of any allegation against the Governor:-

- (a) have not been substantiated further proceedings shall not be taken under this section in respect of that allegation, or
- (b) have been substantiated, the Senate shall, after according the Governor an opportunity to be heard, vote on the impeachment charges.”

Hon. Senators, notice was given to all Senators on 12th February, 2014, through the Kenya Gazette Notice that pursuant to Article 181 of the Constitution, Section 33 of the County Governments Act, No.17 of 2012 and our own Standing Orders Nos.29 and 65, the Speaker of the Senate appointed this day, Friday, 14th February, 2014 as a day for a Special Sitting of the Senate to be held at the Senate Chamber, First Floor, County Hall, Nairobi, commencing at 4.00 p.m., pursuant to Section 33(4) of the County Governments Act.

The business, therefore, to be transacted at this sitting is consideration of a Motion for the noting of the report of the Special Committee on the proposed removal from office of the Governor and Deputy Governor, Embu County. The contents of the

report of the Special Committee shall guide the next course of action to be taken by the Senate as contemplated in Section 33(4) of the County Governments Act and Standing Order No.65(4) of the Senate Standing Orders.

Thank you.

PAPER LAID

REPORTS OF THE SPECIAL COMMITTEE ON THE PROPOSED REMOVAL FROM OFFICE OF THE GOVERNOR AND DEPUTY GOVERNOR OF EMBU COUNTY

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the House.

The Report of the Special Committee on the proposed removal from office of the Governor and Deputy Governor of Embu County, in the matter of the Governor.

(Sen. (Dr.) Khalwale laid the document on the Table)

Mr. Speaker, Sir, I beg to lay the following second Paper on the Table of the House.

Report of the Special Committee on the proposed removal from office of the Governor and the Deputy Governor of Embu County, in the matter of the Deputy Governor of Embu County.

(Sen. (Dr.) Khalwale laid the document on the Table)

The Speaker (Hon. Ethuro): Next Order.

NOTICE OF MOTION

NOTING OF REPORT OF SPECIAL COMMITTEE ON THE PROPOSED REMOVAL FROM OFFICE OF THE GOVERNOR / DEPUTY GOVERNOR OF EMBU COUNTY

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, the Senate notes the report of the Special Committee on the proposed removal from Office of the Governor of Embu County and the Deputy Governor of Embu County.

The Motion is in respect of the Deputy Governor of Embu.

The Speaker (Hon. Ethuro): Order, Senators! Now the House is seized of the Report. I will direct that we adjourn for one hour, so that we can read the Report and resume our Sitting. The view is that we will be able to conclude this matter today. Also, the Report will be available not only to the Senators, but also the Governor and Deputy Governor and, indeed, every other interested Kenyan.

We will resume at 5.30 p.m.

(The Senate adjourned temporarily at 4.23 p.m.)

(The Senate resumed at 5.40 p.m.)

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

PRAYERS

QUORUM CALL AT RESUMPTION OF SITTING

The Speaker (Hon. Ethuro): Order, Senators! I am told that we have quorum. We may, therefore, proceed.

We are going to use the Supplementary Order Paper. I hope that everybody has a copy. Circulate the copies.

NOTICE OF MOTION

IMPEACHMENT OF THE GOVERNOR OF EMBU COUNTY

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 28th January, 2014 the County Assembly of Embu approved Motions “*to remove from office, by impeachment---*,”

The Speaker (Hon. Ethuro): Order, Sen. Khalwale! Have the Members received copies of the Supplementary Order Paper?

Hon. Senators: No!

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Senators! This is not a market place. The Reports were tabled earlier. The Supplementary Order is being distributed.

(Copies of the Supplementary Order Paper were circulated to the Senators)

Order, Senators! I think that everybody now has received a copy of the Supplementary Order Paper. If that is the case, then we will allow the Chair to proceed with the Notice of Motion.

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker, Sir. I will continue.

I beg to give notice of the following Motion:-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 28th January, 2014 the County Assembly of Embu approved Motions “*to remove from office, by impeachment,*” the County Governor and the Deputy Governor of Embu County;

AND FURTHER, WHEREAS by letters dated 29th January, 2014 (*Ref: CAE/SCA/1/28 and 29*) and received in the Office of the Speaker of the Senate on 30th January, 2014, the Speaker of the County Assembly of Embu informed the Speaker of the Senate of the approval of the Motion by the County Assembly and further forwarded to the Speaker of the Senate documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 65(1)(b) the Senate, by resolution on Tuesday 4th February 2014 appointed a special committee comprising eleven of its Members to investigate the matter of the proposed removal from office of the Governor and Deputy Governor of Embu County and to report to the Senate within ten(10) days of its appointment on whether it finds the particulars of the allegations to have been substantiated;

AND WHEREAS, pursuant to section 33 (4) of the County Governments Act, 2012 and standing order 65 (2), the Special Committee has investigated the matter and tabled its Report on Friday 14th February 2014;

AND WHEREAS, pursuant to section 33 (4) and (6) (b) of the County Governments Act, 2012 and standing order 65 (4) (b), the Special Committee has found that the particulars of the following allegations against the Governor of Embu County have been substantiated; namely:-

(a) Violation of the Public Procurement and Disposal Act 2005 and Regulations 2013;

(b) Violation of the Public Finance Management Act, 2012;

(c) Violation of the Constitution of Kenya;

NOW THEREFORE, pursuant to section 33 (6) (b) of the County Governments Act, 2012 and standing order 65 (4) (b), the Senate after according the Governor of Embu County an opportunity to be heard, resolves to impeach the Governor of Embu County on the following grounds; namely:-

(a) Violation of the Public Procurement and Disposal Act 2005 and Regulations 2013;

(b) Violation of the Public Finance Management Act, 2012;

(c) Violation of the Constitution of Kenya;

MOTION

IMPEACHMENT OF THE GOVERNOR OF EMBU COUNTY

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, WHEREAS, pursuant to Article 181 of the Constitution and section 33 of the County Governments Act, 2012, on 28th January, 2014 the County Assembly of Embu approved Motions “*to remove from office, by impeachment,*” the County Governor and the Deputy Governor of Embu County;

AND FURTHER, WHEREAS by letters dated 29th January, 2014 (*Ref: CAE/SCA/1/28 and 29*) and received in the Office of the Speaker of the Senate on 30th January, 2014, the Speaker of the County Assembly of Embu informed the Speaker of the Senate of the approval of the Motion by the County Assembly and

further forwarded to the Speaker of the Senate documents in evidence of the proceedings of the Assembly;

AND WHEREAS, pursuant to section 33(3)(b) of the County Governments Act, 2012 and standing order 65(1)(b) the Senate, by resolution on Tuesday 4th February 2014 appointed a special committee comprising eleven of its Members to investigate the matter of the proposed removal from office of the Governor and Deputy Governor of Embu County and to report to the Senate within ten(10) days of its appointment on whether it finds the particulars of the allegations to have been substantiated;

AND WHEREAS, pursuant to section 33 (4) of the County Governments Act, 2012 and standing order 65 (2), the Special Committee has investigated the matter and tabled its Report on Friday 14th February 2014;

AND WHEREAS, pursuant to section 33 (4) and (6) (b) of the County Governments Act, 2012 and standing order 65 (4) (b), the Special Committee has found that the particulars of the following allegations against the Governor of Embu County have been substantiated; namely:-

(a) Violation of the Public Procurement and Disposal Act 2005 and Regulations 2013;

(b) Violation of the Public Finance Management Act, 2012;

(c) Violation of the Constitution of Kenya;

NOW THEREFORE, pursuant to section 33 (6) (b) of the County Governments Act, 2012 and standing order 65 (4) (b), the Senate after according the Governor of Embu County an opportunity to be heard, resolves to impeach the Governor of Embu County on the following grounds; namely:-

(a) Violation of the Public Procurement and Disposal Act 2005 and Regulations 2013;

(b) Violation of the Public Finance Management Act, 2012;

(c) Violation of the Constitution of Kenya;

Mr. Speaker, Sir, the hon. Senators will recall that at a Special Sitting of the Senate held on Tuesday 4th February, 2014, the hon. Speaker of the Senate, by way of a Communication from the Chair, informed the Senate that he had received correspondence from the Speaker of the County Assembly of Embu, communicating the approval of a Motion by the County Assembly of Embu, to remove from office the Governor and Deputy Governor of Embu County.

Mr. Speaker, Sir, thereafter, the Senate Majority Leader gave notice of a Motion that gave rise to the formation of the Special Committee which comprised of the following Senators-

1. Sen. Kipchumba Murkomen;
2. Sen. Kimani Wamatangi;
3. Sen. Zipporah Kittony;
4. Sen. (Prof.) Wilfred Lesan;
5. Sen. Naisula Lesuuda;
6. Sen. Peter Mositet;
7. Sen. James Orengo;
8. Sen. Boy Juma Boy;
9. Sen. (Eng.) Hargura Godana;

10. Sen. Judith Sijeny; and,
11. Sen. (Dr.) Boni Khalwale;

to investigate the proposed removal from office of the Governor and Deputy Governor of Embu County and report to this Senate within ten days of its appointment, on whether it finds the particulars of the allegations to have been substantiated.

Mr. Speaker, Sir, following deliberations on that Motion, this Senate resolved to establish this Committee to investigate and establish whether those allegations had been substantiated. Section 33 (4) of the County Governments Act, 2012, and Standing Order No. 65 (2) of the Senate Standing Orders set out the mandate of the Special Committee as follows:-

That a Special Committee appointed under subsection (3) (b) shall-

(a) investigate the matter; and,

(b) report to the Senate within ten days on whether it finds the particulars of the allegations against the Governor to have been substantiated.

The Committee in the execution of its mandate was guided by these provisions of the Act and Standing Orders.

Mr. Speaker, Sir, the Special Committee held its first meeting on the afternoon of Tuesday 4th February, 2014 following its establishment. Pursuant to Standing Order No.181, at that meeting, the Committee conducted the election of its Chairperson and Vice-Chairperson. Sen. Boni Khalwale and Sen. Kipchumba Murkomen were elected unopposed to the positions of Chairperson and Vice-Chairperson respectively.

Mr. Speaker, Sir, the Committee held a total of eight meetings and two working retreats. The first retreat was held prior to the commencement of the hearing of the evidence in the matter. The retreat provided an opportunity for the Committee to consider its mandate and develop rules of procedure that would guide the investigation, to consider the issues and questions that would require its determination and prepare for the hearing of the evidence in the matter. The second retreat was dedicated to the preparation and adoption of the Report.

Mr. Speaker, Sir, Section 33 and Senate Standing Order No.65 (3) provide that:-

“The governor shall have the right to appear and be represented before the special committee during its investigations.”

Pursuant to this provision of the law, the Committee invited both the Governor and the County Assembly of Embu to appear and be represented before the Committee. In this respect, the Committee received oral evidence from the parties, including 11 witnesses, who appeared to give evidence in support of the Governor.

Mr. Speaker, Sir, this is the first time in the history of this country that Parliament and, especially, the Senate has considered the matter of the removal of an officer, commonly referred to as impeachment. This has, therefore, been a period of learning and of testing the various provisions of the law relating to impeachment. The Committee has, therefore, made a number of recommendations of a policy and legislative nature that would benefit such processes in future.

Mr. Speaker, Sir, the Committee wishes to thank the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to it and in the execution of its mandate. The Committee further extends its appreciation to the parties to the matter; the County Assembly and its advocates and the Governor and his advocates, for their well researched and eloquent submissions in this matter.

Mr. Speaker, Sir, it was gratifying to note that in the case of the advocates of Embu County, they were two young Kenyans, and it proved that the youth of this Republic have come of age.

Mr. Speaker, Sir, the Committee also appreciates the media for the coverage of its proceedings during the course of its investigations. Furthermore, the Committee acknowledges the members of the public who expressed great interest in the matter; sitting in the galleries late into the night as they followed proceedings of the investigations.

Mr. Speaker, Sir, it is now my pleasant duty and privilege on behalf of the Special Committee to present to the Senate this Report of the Special Committee on the proposed removal from Office of the Governor of Embu County.

Mr. Speaker, Sir, before I give a brief background of what is at hand, allow me to acknowledge what Members of my Committee did. They sat through long hours most of the days into the wee hours of the morning. One such Senator was Sen. Zipporah Kittony, who in spite of her age and being a senior citizen of the Republic, demonstrated that she can still participate in the Olympics.

(Laughter and Applause)

Mr. Speaker, Sir---

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! I had no idea that the assignment that the House gave you was similar to a marathon in the Olympics!

(Laughter)

You may just as well assume your seat. I think at that juncture, I want to agree with the Mover of the Motion that the Committee deserves serious commendation for a job well done under very tight timelines.

(Applause)

I think at one stage they sat up to 2.00 a.m. and another couple of times it was almost midnight. Let me also take this opportunity to also just clarify a few procedural issues as the Mover proceeds.

Before we resumed the sitting earlier this afternoon, two Papers had been laid on the Table of the Senate by the Chairperson of the Special Committee on the proposed removal of the Governor and Deputy Governor of Embu County, Sen. (Dr.) Khalwale. For your recollection, these Papers were:

Office of (a) The Report of the Special Committee on the Proposed Removal from
Governor. the Governor and Deputy Governor of Embu County in the matter of the
Governor.

Office of (b) The Report of the Special Committee on the Proposed Removal from
Deputy the Governor and Deputy Governor of Embu County in the matter of the
Governor.

At the point at which these Papers were laid, the House was not seized of the contents of the two reports and it was, therefore, not known to the House which of the

two procedures provided for under Section 33(6) of the County Governments Act and Standing Order No.65(4) will be applicable.

Hon. Senators, now you have the benefit of perusing both reports, and it is clear that the report in respect of the Deputy Governor has been disposed off in the manner of the Standing Order and the County Governments Act 33(6).

For avoidance of doubt, the position is that the Special Committee, having found that none of the particulars of any allegations against the Deputy Governor have been substantiated, further proceedings in respect of the Deputy Governor shall not be taken in respect of those allegations.

(Applause)

As far as the Senate is, therefore, concerned, under the law, the matter of the Deputy Governor is concluded and will not be subject of any further deliberation in the Senate.

(Applause)

I will read to you the specifics. Pursuant to Section 33(4) of the County Governments Act:-

“A Special Committee appointed under subsection (3) (b) shall—

(a) investigate the matter; and

(b) report to the Senate within ten days on whether it finds the particulars of the allegations against the governor to have been substantiated.”

Section 33(6) of the County Governments Act provides that:-

“If the special committee reports that the particulars of any allegation against the governor—

(a) have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation; or

(b) have been substantiated, the Senate shall, after according the governor an opportunity to be heard, vote on the impeachment charges.”

So, as far as the matter of the Governor is, therefore, concerned, the Special Committee, having found that the particulars of certain allegations have been substantiated, the Senate shall, in accordance to Section 33(6)(b) of the County Governments Act as I read, vote on each of the impeachment charges, after according the Governor an opportunity to be heard. So, after the Motion is moved, seconded, question proposed, you debate, and this is a matter affecting counties, so before the question is put, we will give the Governor another opportunity to be heard, and he will be heard in silence.

(Applause)

Hon. Senators, arrangements have, therefore, been made for the Governor of Embu County to sit in the Gallery during the debate on the Motion at Order No.4 and at the appropriate time before I put the question on the Motion, to appear before the House. I wish to inform hon. Senators that if the Governor chooses to exercise the right to appear

and be heard by the Senate, the Governor shall be heard here either by himself or his advocate in total silence; and his speech shall not be followed by any question or any comment. He will have 30 minutes maximum to do so.

Sen. Billow: On a point of order, Mr. Speaker, Sir. I stand to seek your guidance; I am not an expert on the Standing Orders – I ought to be, but I am not. In the afternoon, there were two Reports that were tabled; one in respect of the Governor and the other one, as you said, in respect of the Deputy Governor. I thought – and that is why I seek your guidance – that if a Report is tabled by a Committee of the House, then that Report – whether it absolves the Deputy Governor or not – in my view is subject to debate and adoption by the House as is the case with all our reports. That is what I am seeking your guidance on because in the same way even in the other report, if in the same report on the Deputy Governor, did in fact find her guilty of those charges, it would still be subject to adoption or rejection by the House. So, I thought, maybe, you would clarify for me that one.

Sen. Keter: Mr. Speaker, Sir, following your ruling, when we met here, you made it clear that in the event that the allegations against either the Governor or the Deputy Governor are not proved, then the Report will end at the Committee level. I am just supporting what Sen. Billow is saying; therefore, this afternoon, we have had the two reports tabled here and I think it will be good for the Senate to dispose of the two Reports because already, it is on HANSARD; when the Chairman was tabling it, he put it very clearly and he put the two files here. Therefore, one report cannot disappear since we are here. So, we have to make a decision as a House.

The Speaker (Hon. Ethuro): Order, Senators! I did not have to communicate, but I was anticipating such misunderstandings to arise; and I thought I was trying to preempt them when I quoted the sections. Although Sen. Keter purported to be supporting Sen. Billow, I think towards the end he supported him but, initially, he was opposed. So, I will sort those two. The Order Paper we started with at 4.00 p.m. read that “the Senate notes the two reports”; so, the two Reports were being noted because they were being tabled. Then we adjourned the House in order to allow us to read the reports.

Now, when you read the reports, there is a recommendation by the Committee that tells you the findings and determinations of the Committee. So, it says on charge 1, the Committee finds that this charge is not substantiated; on charge 2, the Committee finds that this charge is not substantiated; on charge 3, the Committee does not find this charge to be substantiated; on charge 4, it does not find this charge to be substantiated; on charge 5, it does not find this charge to be substantiated. Now, that is on the report of the Deputy Governor. Of course, the one for the Governor, has both.

Then, when you read Section 33(6), it is very clear. It says:-

“If the special committee reports that the particulars of any allegation against the governor—

And that applies to the Deputy Governor too:-

(a) have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation; or---

So, what would be the need to continue proceedings on matters that once it has been clarified, there is really no further debate? I hear Sen. Billow in the sense that as a Parliament, we need to debate. But we are careful; this is just to note. And to allay the fear of Sen. Keter who said that the Report has “disappeared”, the two Reports have not

disappeared! In fact, by being tabled, they are on the HANSARD; they are available to every citizen and, indeed, even to a foreigner to access as part of the proceedings of the Senate. So, it has not disappeared; it is just that we are agreeing with the Committee; and once we agree with the Committee in terms of allegations – the Committee’s job was to inform the Senate whether the allegations have merit or not. So, once the Committee decides that they have no merit, we have no further business. Once it says that it has merit, then your intervention is required, and that is what we are about to do now.

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. Mine is slightly different and it has to do with procedure. I am glad that you have just given us the provisions of Standing Order No.65 (4) (b) which provides or accords the Governor and opportunity to say something. Now, would I be in order to propose – although I know you said that the Motion will be moved, seconded, we debate and then we accord him time – since now this Senate is sitting as a jury, I think it will be good if we debate after hearing from both sides. So, my proposal would be that the Motion be moved, seconded, then you accord the Governor his 30 minutes that you have said you will accord him---

(An hon. Senator spoke off record)

No, no, he said the Governor will---

The Speaker (Hon. Ethuro): Order!

Sen. Khaniri: Mr. Speaker, Sir, protect me.

The Speaker (Hon. Ethuro): Sen. Khaniri, you are protected, especially from those ones who do not seem to have listened as carefully as you did.

(Laughter)

Proceed!

Sen. Khaniri: Thank you, Mr. Speaker, Sir. My proposal is that after the Mover moves the Motion and it is seconded, then you can accord the Governor his 30 minutes so that once we begin the debate, we would have heard from both sides.

Thank you.

The Speaker (Hon. Ethuro): Sen. Obure.

Sen. Obure: Yes, that is precisely what I had in mind, Mr. Speaker, Sir; so that when we debate, we debate from an informed position.

The Speaker (Hon. Ethuro): What is it, Sen. Muthama? And that is the last one.

Sen. Muthama: Mr. Speaker, Sir, my position and the way I am feeling is that the Governor should be given the very last chance so that what he says cannot be challenged because he will not be able to defend himself on the issues that will be raised here.

The Speaker (Hon. Ethuro): Order! Apologies to Sen. Abdirahman; I had not seen you, but I am now on my feet and I suspect that the issues have been properly canvassed.

First, I entertained the same thoughts as Sen. Khaniri, but then on further reflections you then realize that the bulk of the work was actually undertaken at the Committee stage. The Committee invited whoever needed to be invited, gave them an opportunity to raise the issues they needed to raise, asked questions and I am sure they were given answers, and that, really is the basis of the Report that is before us. So, in

consideration of that, we cannot turn again the plenary into another session of the Committee. So, this is really the last chance for the Governor to say his bit to the rest of us, which is really something in mitigation that he would wish to say; and he would wish to say that really towards the end before the voting. I think if you allow me, hon. Senators, I think before voting is an ideal time; it is just one last chance for you to decide.

(Applause)

Thank you. Let us proceed.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, in its entirety, this Report is guided mainly by the provisions of Article 181 of the Constitution and Section 33 of the County Governments Act. Allow me to reflect, just for purposes of recapping, on the provisions of those statutes.

Mr. Speaker, Sir, Article 181 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).”

Hon. Members, because most of you have copies of the Constitution here, take time to look at the provisions. They will show you why certain decisions have been made.

Section 33(3) states as follows:

33(1) A member of the county assembly may by notice to the speaker, supported by at least a third of all the members, move a Motion for the removal of the governor under Article 181 of the Constitution.

(2) If a motion under subsection (1) is supported by at least two-thirds of all the members of the County Assembly—

(a) the Speaker of the County Assembly shall inform the Speaker of the Senate of that resolution within two days; and

(b) the Governor shall continue to perform the functions of the office pending the outcome of the proceedings required by this section.

(3) Within seven days after receiving notice of a resolution from the Speaker of the County Assembly—

(a) the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the Governor; and

(b) the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.

(4) A special committee appointed under subsection (3) (b) shall—

(a) investigate the matter; and

(b) report to the Senate within ten days on whether it finds the particulars of the allegations against the Governor to have been substantiated.

(5) The Governor shall have the right to appear and be represented before the special committee during its investigations.

(6) If the special committee reports that the particulars of any allegation against the Governor—

(a) have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation; or

(b) have been substantiated, the Senate shall, after according the Governor an opportunity to be heard, vote on the impeachment charges.

(7) If a majority of all the members of the Senate vote to uphold any impeachment charge, the Governor shall cease to hold office.

(8) If a vote in the Senate fails to result in the removal of the governor, the Speaker of the Senate shall notify the Speaker of the concerned county assembly accordingly and the Motion by the assembly for the removal of the governor on the same charges may only be re-introduced to the Senate on the expiry of three months from the date of such vote.

(9) The procedure for the removal of the President on grounds of incapacity under Article 144 of the Constitution shall apply, with necessary modifications, to the removal of a governor.

(10) A vacancy in the office of the governor or deputy governor arising from this section shall be filled in the manner provided by Article 182 of the Constitution.

Hon. Members, it will help all of us if we looked at Article 182 and see the consequences of the decision we will make today. By letters dated 29th January, 2014, referenced CAE/ACA/12/28/29 which were received in the Office of the Speaker of the Senate on 30th January, 2014, the Speaker of the County Assembly of Embu informed the Speaker of the Senate of the approval of the Motion by the County Assembly of Embu and further forwarded to the Speaker of the Senate the following documents with respect of both the Governor and the Deputy Governor.

- (1) Particulars of the allegations and related annexure.
- (2) The results of the division.
- (3) The signatures in support of the Motion.
- (4) The signatures in support of the Notice of Motion.
- (5) The HANSARD record in respect of the Motion; and,
- (6) The attendance register.

Hon. Members, you will find all these documents that were submitted by the Speaker of the County Assembly of Embu because they are annexed to your Report which you can refer to as you speak.

The documents submitted by the County Assembly of Embu are annexed under annexure No.1.

In terms of Article 181 of the Constitution, Section 33(3)(a) of the County Governments Act and Standing Order No.65(1)(a) of the Senate Standing Orders, the Speaker of the Senate is required, within seven days, after receiving notice of the resolution of the Speaker of the County Assembly to convene a meeting of the Senate to hear the charges against the governor.

In this respect, by Gazette Notice No.627 of 31st January, 2014, which was published in a special issue of the Kenyan Gazette published on the same day, the Speaker of the Senate convened a Special Sitting of the Senate on Tuesday, 4th February, 2014 at the Senate Chamber on 1st Floor of the County Hall Building, Nairobi which commenced at 2.30 pm.

Pursuant to Standing Order No.29(5) of the Standing Orders, the Speaker specified the business of that sitting to be; one, Administration of Oath, which was administered to the Senator for Bungoma County and, two, hearing of charges against Mr. Martin Nyaga Wambora and Dorothy Nditi Muchungu, the Governor and Deputy Governor, respectively, of Embu County. The Gazette Notice is attached at annexure 2.

The Special Sitting was held on 4th February as Members will remember. The Order Paper and Votes and Proceedings are attached as annexure 3. I refer you to it. At that sitting, the Speaker of the Senate, by way of a Communication from the Chair informed the Senators that he had received communications from the Speaker of the County Assembly of Embu relating to Motion on the Removal of the Governor and Deputy Governor of the Embu County. The Communication of the Speaker, hon. Members, is attached on annexure 4.

Thereafter, the Senate Majority Leader gave notice and moved the Motion that I referred to earlier. The Motion say then led to the formation of the Committee I have referred to as a Special Committee. The mandate was; to investigate the Proposed Removal from the Office of the Governor and Deputy Governor of Embu County and to report to the Senate within ten days, as we will do this afternoon. This depends on whether we find the particulars of the allegations to have been substantiated.

Following the deliberations on the Motion, this Committee was formed and we assumed work. I would like to briefly mention the method of our work.

In execution of its mandate, the Committee conducted a number of activities which are set out below as follows. We held meetings of the Special Committee. The Special Committee held its first meeting on the afternoon of 4th February, 2014 following its establishment.

Pursuant to Article 181, at that meeting, the Clerk of the Senate conducted elections where we identified the Chairperson and the Vice Chairperson.

We then did indicative programme events. Following the conduct of the elections, at the first sitting of the Committee, the Committee considered an indicative programme of events which is attached as annexure 5.

The Committee observed that in terms of Section 33(4) (b) of the County Governments Act, 2012 and Standing Order No.65 (2) (b), the Committee had only ten days within which to investigate the matter in respect of both the Governor and Deputy Governor and, thereafter, to report to the Senate on whether it found the particulars of the allegations against the two to have been substantiated.

Mr. Speaker, Sir, the Committee further observed that from the experience of other jurisdictions, proceedings for the removal of persons from office, commonly referred to as Impeachment Proceedings are quasi-judicial in nature. The proceedings bear close resemblance to a courtroom trial complete with the examination and cross examinations of witnesses. Witnesses are represented by counsel.

It was evident, to the Committee, at that early stage bearing in mind the nature of the proceedings anticipated in the proceedings of removal from office of the Governor;

and further taking into account that the Committee's mandate extended to the consideration of the proposals of the removal from office of, not one, as is usually the case in the experience of other jurisdictions, but two office holders. The Committee had the onerous task of ensuring that the statutory timelines were adhered to.

The Committee, therefore observed then and throughout its proceedings that Section 33(4) (b) of the County Governments Act, 2012 and Standing Order No.65 (2) (b) of the Senate Standing Orders may require to be amended so as to provide for ample time for the Committee to fully and effectively discharge its mandate while at the same time taking into account the need to ensure expeditious disposal of the impeachment proceedings.

At the appropriate time, the Committee recommends that the period of time be revised upwards, possibly to 14 or 21 sitting days. We send out invitations to the concerned parties to appear. The Committee observed that Section 33(5) of the County Governments Act 2012 and Standing Order No.65(3) of the Senate Standing Orders provide that;

“The Governor shall have the right to appear and be represented before the special committee during its investigations.”

The Committee noted that that phraseology in these provisions of law required invitations to appear before the Committee as opposed to witness summons.

Witness summons, which are the tools used to compel attendance of witnesses before courts and Parliamentary Committees require the attendances of the witnesses summoned. In terms of Section---

The Speaker (Hon. Ethuro): I hope, Sen. Khalwale you are aware that you have a maximum time of 30 minutes although with the leave of the Speaker I allowed you an extra 15 minutes, at the rate you are moving, you may even exhaust that.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I am guided. I will see how to manage this better. The point I am trying to make is that this is a new thing and it has complex legal issues. Unless I go this route, the Senate may fail to see why we made such a decision as we made this afternoon. However, I am guided.

In terms of Section 23(a) of the National Assembly Powers and Privilege Act, CAP 6, as read together with Section 7 of the Sixth Schedule of the Constitution, a witness who is summoned by a Parliamentary Committee must appear before that Committee or court at the pain of payment of a fine not exceeding Kshs2,000 or imprisonment for a term not exceeding 12 months, or both such a fine and imprisonment where the witness fails to make an appearance.

A right to appear before a Committee, however, is not mandatory. A person who is invited to appear need not appear before the Committee. The Committee would, however, be required to demonstrate that it afforded that person – in this case the Governor – an opportunity to appear and be represented before the Committee.

It was for the Governor to determine whether to appear before the Committee and if so, whether to do it in person or by an advocate or by person and advocate. The Committee, further, observed that the County Assembly, as the originator of the resolution for the removal of the County Governor by their letter to the Speaker of the Senate dated 29th January, 2014, sent together with the resolutions to the Committee---. The County Assembly of Embu sent a number of documents in respect of their resolutions. The Assembly could have, therefore, had the option not to appear before the

Committee and to rely entirely on the written documents filed by the Office of the Speaker.

However, the Committee observed that in the interest of justice, it would also be necessary to invite the Assembly to appear before the Committee if it so desired and to produce further evidence if any, be it written or presented by way of a witness. It was noted, however, that whereas attendance by the Governor sought to be removed was a right, no such a right existed for the County Assembly.

Having made those observations and taking into account the limited time available, the Committee resolved to invite the Assembly and the Governor to appear before the Committee for the hearing of the evidence.

In inviting them, we considered three points. One, the personal service of the invitation to appear before the County Assembly and the Governor; invitations to appear duly served and acknowledged by the parties are attached as annex 5 and publications of invitations in the Kenya Gazette copies of which are annexed as 6; and, three, publication to appear in two daily newspapers annexed at 7.

Mr. Speaker, Sir, in the invitation to appear, the Governor was requested to indicate whether he would exercise his right to appear before the Committee. If he chose to exercise his right, the Governor was informed that he would be required, within three days to file an answer to the charges in the Office of the Clerk of the Senate which would set out the Governor's response and particulars of allegations and so on.

The invitation by the County Assembly was also clarified.

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Speaker, Sir. Given the fact that we received the Report earlier and read it and considering that time is of the essence, could I request the Mover of the Motion to leave out the administrative details and move to the meat of the Report which concerns the House so that we save on time?

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, indeed, you had already guided me. Hon. Members should appreciate that what I am doing has since changed from what I had intended to do in the beginning. I am just referring you to the annexure so that we do not appear as if we made the recommendations in space.

The Governor responded to appear, he came by person, he also came by advocate and finally he called witnesses. The County Assembly was represented by its Counsel. The rules that guided us during the deliberations are annexed as No.11. The Committee devoted a considerable amount of its time during the retreat to consider the number of issues we thought, in our view, and questions that would require the determination of the Committee. The following issues were required for determination and these included; the effects of the conservatory court order which was in existence, the decision is as on the document, determination of the proceedings before the County Assembly of Embu, the grounds of removal of the Governor, the charges against the Governor and the Deputy Governor and the burden of proof.

Before I go to the substance, the issue of burden of proof is critical. The question of standard of proof---

The Speaker (Hon. Ethuro): Order, Sen. Khalwale, I think you will do yourself a great favour, and the Senate, if you moved to the substance. Your task was to substantiate the allegations. The rest can be read by Members. You have already done a good job of putting it to your Report. I will add you another 15 minutes. You have already exhausted 45 minutes.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, the charges were read out to the parties and the parties responded. Evidence was collected from the parties and this is on pages 26, 27, 28, 29 and 30.

Mr. Speaker, Sir, I have outlined the evidence in line with the charges that have been read against the Governor. It goes from page 32 all the way to page 40. When we had heard all the evidence, we then found outstanding issues that required determination. Before pronouncing itself on the findings and determination in respect of whether the charges against the Governor have been substantiated, it is important to note that all the outstanding issues and questions that the Committee had put forward for itself as being germane to the matter were dealt with. I will not deal with those but invite Senators to look at page 40 which outlines how we dealt with those outstanding issues. They have been set out clearly from page 40 to 44.

Mr. Speaker, Sir, I now conclude by speaking to the findings and determinations of the Committee. I now wish to come to the crux of the matter. The place where we must state in unequivocal terms, whether pursuant to Section 33 (4) of the County Governments Act and Standing Order No.65 (2) of the Senate Standing Orders, we find the particulars of charges against the Governor of Embu, Martin Nyaga Wambora to have been substantiated.

Findings on specific charges

Charge No. 1: Violation of Public Procurement and Disposal Act of 2005 and Regulations, 2013)

The Committee observes that in its common ground, there were procurement irregularities and malpractices and outright violation of the relevant laws. The only question is one of liability and whether responsibility for violation could be placed on the Governor as the County Assembly had done or whether the liability resided solely in the responsible officers.

It is the view of the Committee that while primary liability for violations of procurement laws may lie with individual officers, Article 73 of the Constitution which provides for the responsibility of leadership as read with Article 179 of the Constitution and Section 33 (f) of the County Governments Act, 2012, lead to the conclusion that the Governor will be held liable for violations that occurred during his watch and in respect of which he or she does not take any action. The Committee finds charge No.1 to have been substantiated.

Charge No.2 – Violation of the Public Finance Act

The Committee observes that this ground like the previous ground points to a systems failure at the County Government. Although the ground cited may not be unprecedented or unique to the County of Embu, the inaction shown on the part of the Governor for which far from showing remorse or conceiving of remedial action, the Governor actually, severally and variously pleaded ignorance to the discharge of his own duties and continued shifting blame to the sub-ordinate officers or otherwise repeated the responsibility which led to the culpability complaint thereof.

Mr. Speaker, Sir, it was amazing that the Governor, instead of seizing that opportunity to convince us why we should find that this was not being substantiated, he chose to tell us how he was an altar boy, how was trying to be a priest and how he had pupilage in one of the Governments led by President Moi. This could not persuade us because we wanted evidence.

Charge No. 3 – Violation of County Governments Act, 2012

Mr. Speaker, Sir, I will not tell you what we went through, but I will just confirm that on this charge, we found the Governor to be innocent.

Charge No.4 – Violation of the Constitution of Kenya

The Committee observed once again that in matters of procurement in respect of which Article 227 of the Constitution had been sited, there had been considerable inaction and lack of oversight on the part of the Governor. Although pursuant to Article 179 (4) of the Constitution, the Governor is the Chief Executive Officer of the county, it appeared to the Special Committee that the Governor was a mere bystander and an observer in procurement debacles.

The Governor gave the impression that he had totally removed himself from the controversies surrounding works for the Embu Stadium and the defective seed maize, leaving these matters primarily to the County Secretary, if not to no one in particular. The Governor repeatedly argued that he would never involve himself in matters of procurement which should be an entirely different thing from taking action to deal with those responsible for the procurement.

Mr. Speaker, Sir, the Governor then went on and called two witnesses in respect of this matter; the maize seed which his own lawyer admitted that it was a fiasco. Believe me or not Senators, the very witnesses that the Governor brought turned against him and there was a serious verbal exchange between the counsel for the Governor and his own witnesses until we were forced to caution the counsel that he could not attempt to cross examine his own witnesses. This was after the Governor in his own document attempted to mislead our Committee by making annexures to his report and attributing them to the man who is in charge of the docket of agriculture. The man came and disowned those annexures by the Governor and brought his own accurate documents and the team of the Governor was lost for words. I could see it, hear it and feel it. It was pathetic.

Charge No.5 – Abuse of office

Mr. Speaker, Sir, this account was not proved and so I will not go into the details of the same.

Summary

The summary of the findings in the charges is that the Special Committee has found three out of five charges to have been substantiated. Namely; the Governor of Embu, Martin Nyaga Wambora violated the Public Procurement and Disposal Act, 2005

and Regulations 2003. As you make the decision, please proceed to the audit report by none other than the Auditor-General of the Republic of Kenya who gave evidence and confirmed violation by violation.

On cross examination, the Auditor-General also convinced the Committee that the attempt by the Governor to shift blame to subordinates could not hold even if those subordinates were the accounting officers, because finally, the buck not only stops at the doorstep of the Governor, but the Constitution expects the Governor to be alive to the running of the county and to ensure that he has systems in place that monitor those accounting officers to his satisfaction. This is something which the Governor said: I do not know, it was not me, I did not have to know. Then we wondered why he is in that office.

Mr. Speaker, Sir, for that reason, this House will be helping Governor Martin Nyaga Wambora by saving him the trouble and pain of having to be in a office where he has no idea what is going on. This office will give him high blood pressure and ulcers for nothing. Instead you will be giving him preventive treatment.

We proved that he violated the Public Finance Management Act and the Constitution of Kenya. Violating the Constitution of Kenya is not a small thing. Hon. Members will remember how each and every one of us, right from the President to the Senators, Governors, their deputies, Members of Parliament, Members of the County Assemblies and all the public officers take oath; one hand holding the Bible if you are a Christian or the Koran if you are a Muslim and the other hand placed on the Constitution of Kenya. Here is a Governor who does not care a hoot about the hand he placed on his own Constitution. This is a man who was tried in theology but cannot remember that he held the Bible and while the other hand touched the Constitution and goes on to visit on the people of Embu this kind of violation.

Mr. Speaker, Sir, it will bother the people of the Republic of Kenya that in his findings, the Auditor-General found that the Governor asked the Registrar of Motor Vehicles to register a public vehicle in civilian number plates. We thought it was for security reasons, but when the Auditor-General went and asked for the log book of that public vehicle, a Toyota Prado worth Kshs12.9 million, they refused to give him the log book. This means that they did not want him to establish that that log book could be in the name of somebody other than the county government.

This is a Governor, when he was challenged why he gave seed maize to farmers worth a whopping Kshs3.5 million, he said that Kshs3.5 million is little money that he does not normally bother about whereas Members of Parliament who control the Constituencies Development Fund (CDF) make use of Kshs3.5 million to move lives in their constituencies. The CDF was John the Baptist if I could quote Sen. Kajwang. We had though that devolved funds would be Jesus Christ of Nazareth, but it looks like John the Baptist in the name of CDF is doing better in the hands of Members of Parliament than Jesus Christ of Nazareth in the hands of an altar boy, a man who trained to be a priest but failed to be a priest.

Mr. Speaker, Sir, I have attached on this Report the other special observation and recommendations that we have given to this House; and I now want to end by pleading to honourable Senators that we are all men and women of this country and the hope of Kenyans when they went to the booth to vote for the new Constitution in 2010 - the premium thing was devolution. So, if we do not assert ourselves as an organ given that

mandate by the Constitution, to ensure that it succeeds, two things will happen; either we will fail and be recorded in history as leaders who failed or devolution will be replaced by a revolution in this country. We should get rid of non performing officers so that devolution works and so that we avoid revolution by our youths on the streets who have no jobs since we want them to be happy.

I beg to move and request Sen. Murkomen to come and second the Motion.

Sen. Murkomen: Mr. Speaker, Sir, today, I have mixed emotions. On one hand, I am very sad that less than one year since we started the devolved system of Government, I together with Committee Members presided over a process of impeachment of a Governor. The Constitution provides that the three years of devolution would be a transition period. No one imagined, including those who drafted our Constitution, that within the transition period, one of the transitional acts of the people of Kenya, one of the transitional functions of the Senate of the Republic of Kenya was to preside over the impeachment of a Governor of any county in this Republic.

I am happy because I stand here to also support a Motion that actually dissuades us and the public to understand that there is a difference between the concept of devolution in itself and those who are managing that process of devolution and managing the counties. This Senate is seized with great opportunity and time to demonstrate that we love devolution so much. We love our counties so much that we are willing to take the most difficult task to decide this evening as an evening that will go to the history of this Republic that Governor Martin Wambora shall go home. It is not purely because of the things he did, but because it is very clear that those things he did, if they are left unaddressed, it shall be what the Kiswahili saying, *usipoziba ufa utajenga ukuta* refers to.

Mr. Speaker, Sir, we were at great pains because we were given a very big responsibility, but that responsibility hinged on one thing; leadership. The impeachment process, as the Chairman of this Committee said, is not looking at the private conduct of an individual in his house or in his home. It is an opportunity for us to ask ourselves, the constitutional responsibility in Chapter 6 of the Constitution and the constitutional responsibility in Chapter 10 of the Constitution - whether an officer who has been entrusted with a responsibility to manage resources that are meant to benefit the people of Kenya is doing it in the right way.

Mr. Speaker, Sir, John C. Maxwell defined a leader as one who knows the way, goes the way and shows the way. When Governor Wambora came before our Committee, the most important question that actually pricked all of us when we asked about the existence of a tender committee, an evaluation committee or a technical tender committee, Governor Wambora told us that he does not know. When we asked the question about the procurement of maize, a very serious matter because this maize was procured using taxpayers' money and distributed by the Governor, the maize did not germinate---. The highest germination noted was 20 per cent.

This means that in two constituencies of Embu County, there are people who never harvested anything because a county government took tax payers' money and bought seeds using a fake company. In fact, the lawyer of Governor Wambora branded that procurement in the Committee hearings "a maize fiasco". In other words, it was a serious scandal that ensured that the people of Embu were unable to harvest anything. If you listen to the answer of Governor Wambora, he said: "I did not know". When we reminded him that he had presided over the distribution, he told the Committee that he

did not know that the maize was bad. We asked him the next important question; whether he called what they refer to as a cabinet meeting, although we reminded them that it is called an executive committee meeting, he told us that he did not call for it. We asked: "Were you aware about these things? He said: I do not know".

Really, is this what John Maxwell said about: "Know the way, go the way, show the way"? The questions that came before the Committee is: "Who is in charge in Embu County? Who presides over the taxpayers' money that was allocated to Embu County?" It becomes very clear that the person who the buck stopped with was not willing to take responsibility. It was President Truman who used to have a sign on his desk which read: "The buck stops here." But the answer the Governor of Embu County had for every allegation and misappropriation of money was: "It was not me." The question was: Where does the buck stop?

Mr. Speaker, Sir, tonight, we must decide that we are doing away with the culture of blame and reclamation; where every public officer will be saying: "It was not me." The question that really bothered me is that if it was not Governor Wambora, who was it? It became clear so soon in the Committee that it was not Governor Wambora who was running the County of Embu. It was not him; he did not know anything until he brought one witness known as Margaret Lorna Kariuki. This witness is the County Secretary. It became clear that the lady had the capacity on her fingertips. She knew everything that was going on in the County. The Governor told us the Secretary who presides over the minutes of the County Executive Committee was not known to him and never briefed him. He did not know anything about the affairs of that county. The question we must ask ourselves is: Should the affairs of the people of Embu County be left to bureaucrats that were hired by the Governor? Should we accept a lame excuse that an officer who was presiding over the taking of minutes will take the blame and run Embu County? Then why did the people elect the Governor?

Mr. Speaker, Sir, it also became apparent that there was dichotomy in Embu County between the big and small things. The Governor told us in as many instances. When we asked him about a contract of about Kshs1 million, Kshs2 million or Kshs3 million, the Governor was clear in his mind and he told us: "Those are small things." Those are things that do not concern him; they do not reach the desk of the Governor. It is time this House presided over these small things because it is the small things that make a difference in life.

(Applause)

Why did President Bill Clinton face impeachment charges? It was because of a small thing----

(Laughter)

Why did President Johnson face impeachment trials? In fact, he was saved by only one Senator. It is because it was about small things; appointment of so and so to stand in this office and moving so and so from this office to the other. It is the small things in life that make a difference. We must give a clear message to the people of Kenya that it is not the quantum that matters. In fact I must disclose this---

Sen. Ong'era: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. Ong'era?

Sen. Ong'era: Can the hon. Senator tell us: What are these small things?

Hon. Senators: Nooooo!

(Laughter)

The Speaker (Hon. Ethuro): Order, Senators! First, Senator Ong'era, that is not what you do under a point of order. You could have done that under a point of information. Since, obviously, it is not really that important to the debate, Sen. Murkomen may just proceed.

Sen. Murkomen: Thank you, Mr. Speaker, Sir. One of the worst failures of King David in the Bible was as documented in 2nd Samuel 11:1, when all men went to war and he was supposed to be the commander in chief to go together with these men to war, he remained at home. He hanged around. As a result of his remaining around, his mind wondered around small things!

(Laughter)

That became a nightmare for the King and almost brought down his government. Things like attitude are very important. If you are a Governor and you think that if you lose, for example, Kshs3 million that is a small thing, should you be allowed to continue presiding over the affairs of that county? If you are a Governor of a particular county and for over one month you have never held a County Executive Committee meeting, you do not know what the County Executive Secretary of Agriculture, Finance and so on are doing, you are saying: "They are their own responsibility." You do not even get reports and then you go and launch projects that you do not know where they are going. When these projects collapse you say: "It is not my responsibility." It is upon this House, tonight, this is the moment that we must make a decision and say that devolution will be rescued by this Senate from men and women who are not willing to take responsibility in their own counties.

Mr. Speaker, Sir, I want to run through a few issues in this report. One of the charges against the Governor was violation of the County Governments Act. This Act in Section 30 (3) (f), the Chairperson of the Committee has also pointed this out, it provides that:-

"In performing the functions under subsection (2), the Governor shall-
(f) be accountable for the management and use of the county resources"

We found out that by refusing to abide by this provision, the Governor had violated the County Governments Act. The County Governments Act requires that before any office is advertised in the County Public Service Office, that office must be approved by the County Assembly. Again, the Governor told us that he did not know and he did not do anything to correct that.

Mr. Speaker, Sir, there is the provision of the violation of the Constitution in these charges. If you read page 36 of the Report, it was the Assembly's case that the report of the face lifting of Embu Stadium was completed without input of the f the County Secretary, who was summoned to appear before the Committee. What we established in

Embu County is that there is a bad relationship between the County Executive and the County legislature. We established that in that relationship, the County Secretary under the supervision of the Governor, ignored summons of the County Assembly. The County Assembly was trying to inquire into issues about Embu Stadium. Ignoring summons from the County Assembly is violation of the Constitution. The Constitution says there is separation of powers between the County Executive and the County Legislature. Checks and balances cannot continue without a situation where the Executive will be respecting and responding to invitations from the County Legislature.

Finally, Mr. Speaker, Sir, I want to give a rider. This Committee did not find that the County Assembly was clean from impropriety. We must be very clear on this. We did not say that the Embu County Assembly is presided over by angels; neither are we saying that those Members of the County Assembly are free from culpability of certain acts of corruption. We just want to say that it was not one of the issues that we were dealing with. But in my inner spirit I believe that some county assembly members are equally culpable just like the Governor is. It will be the responsibility of a different committee of this House, if we have to be fair, to demand auditing of the use of finances in the county assembly so that moving forward, we are capable of inviting the Speaker of the County Assembly and Members of the County Assembly, so that we ensure that even those resources that are shared to be used by the County Legislatures are not misappropriated.

Mr. Speaker, Sir, as I conclude, there are many men and women who said that this Committee or who imagine that the Senate had made its mind in terms of the final outcome. I want to tell you clearly that we sat up to 2.00 a.m. on two occasions and up to mid-night on one occasion, just trying to find the truth. We together assembled last evening, sat in a particular corner and asked ourselves: What exactly is the finding of this Committee in relation to these charges? Those who imagine that we had pre-determined answers on this report are wrong. This report has been a product of hard work from my colleagues – as the Chairman was saying before you interrupted him, we even discovered that Sen. Zipporah Kittony can still run an Olympics because of the endurance that she had in going through this process---

The Speaker (Hon. Ethuro): Order, Sen. Murkomen. The Chair has no capacity to interfere, it can only give guidance. I guided your Chair and asked the House to appreciate the work you have done. How does that amount to interference?

Sen. Murkomen: Sorry, Mr. Speaker, Sir. I said when you were guiding him. I also stand guided. The report was a product of hard work and commitment by this Committee to look for the truth. In fact I remember, I do not know if I should disclose this---

Hon. Senators: Disclose!

Sen. Murkomen: We sat with the senior counsel, Sen. Orenge and as lawyers we went to a particular corner and asked ourselves: “Should we find this man guilty because the quantum, the amount of money misappropriated may not be compared with mega scandals in this country, but we said, even if the money is little, we must abide by the principle.

(Applause)

So, those who imagine that we made this decision by jumping around and saying that “Governors must go” must be reminded that we were guided by the search for the truth and fairness from the report from Embu County. In our findings, it is sad, but it is true that it is the finding of this Committee that Governor Martin Wambora must pave way as the Governor of Embu County, so that devolution goes on.

Mr. Speaker, Sir, thank you, I beg to second.

(Question proposed)

The Speaker (Hon. Ethuro): Hon. Senators, I wish to remind you that this Motion is based on Standing Order No. 98(4) in terms of time allocation. Each one of you will have a maximum of 30 minutes. But you can do your own self censorship and reduce that time to ten minutes if you so wish. But I am reading the provisions that apply for now.

Sen. Wako; On a point of order, Mr. Speaker, Sir!

The Speaker (Hon. Ethuro): What it, Sen. Wako?

Sen. Wako: Mr. Speaker, Sir, I want to know whether the Governor is here and if he has been told these proceedings are going on. This is so that when he comes and exercises his right to talk, he would have heard us. I am saying this because it is not yet on record. I want it on record that he is around.

The Speaker (Hon. Ethuro): Sen. Wako, thank you for that intervention. I wish to confirm that the Governor is here and that he will be given a maximum of 30 minutes to make his case just before we vote. I want to further confirm to everybody that this matter will be concluded today 14th February, 2014.

Sen. Wako: Following that, I do not know whether the Senate Majority or Minority Leaders can address this. We need to agree on the issue of time. I know each of us can speak for 30 minutes, but if each of us takes up the 30 minutes then your order that we finish before mid night will be violated. So, could we reach an understanding on this?

The Speaker (Hon. Ethuro): Order, Sen. Wako. You may not even wish to proceed because you do not canvass issues to do with the Majority and Minority Leaders through the Chair. You only do that when you are directing issues to me. You have better avenues to do so. In your case, you can just take two steps to your right.

Proceed, Sen. Orenge.

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

The Speaker (Hon. Ethuro): What is it, Sen. G.G. Kariuki?

Sen. G. G. Kariuki: With your permission, Mr. Speaker, Sir, now that we have heard from the Mover and the seconder of the Motion and we are told that the Governor is around, do you not think that this is the right time before we all say what we want to say, that he should come and say whatever he wants to?

The Speaker (Hon. Ethuro): Order, Sen. G. G. Kariuki. Maybe you were not here when that matter was settled. But you know the Chair has been very generous to you in more ways than one. You may just be running out of luck. We have disposed off that matter.

Sen. (Prof.) Kindiki.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, in light of the sentiments which have been made by my colleagues, I want to suggest that if the Chair could direct that each Senator limits themselves to 10 minutes, maximum.

The Speaker (Hon. Ethuro): Order. I just advised Sen. Wako on what to do. I want to see that process to its conclusion. It might as well come to the same conclusion, but I think the process is equally important. Let the Majority and Minority leadership consult. They know what to do; they should approach the Chair, so that when they do it, we proceed.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, if you allow me, instead of---

The Speaker (Hon. Ethuro): Order, Sen. Wetangula. You must also respect the Chair when it has made a communication. It is a ruling to be abided by, not to be challenged.

The Senate Minority Leader (Sen. Wetangula): I am not challenging your ruling.

The Speaker (Hon. Ethuro): You are about to challenge the ruling. Let us proceed along those lines.

Sen. Orenge.

Sen. Orenge: Mr. Speaker, Sir, I will try to limit my contribution to probably ten minutes to set the pace so that everybody can get a chance.

Mr. Speaker, Sir, I rise to support this Motion. As I do so, I want it to be known that in my practice of law over many years, I have tended to represent people who are accused of various offences in criminal cases over many years. The tendency that I have developed over the years is to act as a defence lawyer and therefore to presume the innocence of everybody who appears before any tribunal. From what Sen. Murkomen, who was the Vice Chairman said here, I was very much disturbed whether or not we were condemning a governor wrongly because the burden had not been met but as I speak now today, I have no doubt at all in my mind that this governor must go home.

I am saying this governor must go home because when you want to be a governor in this country, you must read the Constitution and understand your responsibilities. I have looked at the duties of the President of the Republic of Kenya. The President under the Constitution of Kenya exercises executive authority of the Republic of Kenya; that is not clear as much as the mandate of the governor. If you look at Article 179(4) of the Constitution of Kenya, it says the governor shall be the chief executive of the county. So, if you want to be a governor, you must be prepared to be the chief executive officer. If you have doubts in your mind that you cannot operate as a chief executive officer of a county, then you are doing the wrong job. If this Senate was leaking today, it would not reflect on the messenger of the Senate, it would not reflect on the Clerk, it would reflect on the Speaker of the Senate that is presiding in a Chamber that is leaking.

When I was confronted with the evidence that was coming from Governor Wambora and compared to the other evidence that was coming, he gave me the attitude that if he was in charge of a police station and his officers were taking bribes, Governor Wambora would say that it is not me taking the bribes, it is the officers doing so. If you are a proper commander leading a police station, you should not allow a situation where your own officers are taking bribes. It is your responsibility to make sure that it does not happen. If you have a house and you find it leaking, you do not say "I am not a *fundi*, therefore, there is nothing I can do about it". So, looking at Embu County, it is really unfortunate, it has a dysfunctional government and the only way to get it right is to send Governor Wambora home.

The thing that amazed me was the evidence in relation to the maize saga. There is an officer, a very dutiful officer, the director for agriculture. He consulted and went out to find out the proper variety that was proper for the County of Embu. That variety was exhibited to us, what he had given to the county executive, he said that the County of Embu should have a particular variety of maize called KDV1 or KDV6 and there was documentary evidence to that effect, that during procurement, you must make sure that you get the right variety of maize. What does the Governor and his officials do? When they went for the procurement of maize, they went for a completely different variety of maize. That is why I think even his own counsel was saying that “this whole thing was a fiasco”. It was a fiasco because when a Governor has a public event to launch the maize and yet it is maize that has been condemned, it was like the King who was naked and it took a child to tell him that he was naked. It was the director of agriculture who had told him that that was not the right variety of maize.

Mr. Speaker, Sir, I want to advance the argument that devolution either starts right or starts wrong. It will start right if we care about the small things. To put Sen. Ongera at peace, the small thing about Bill Clinton is not what Sen. Ongera is thinking about, I think she has a very fanciful imagination. It was about lying on oath; that a public officer in a responsible office should not lie under oath. The small thing about King David, I do not know. I do not want to talk about it. So, if we get devolution wrong, we are telling our governors that you need to steal Kshs1 billion before we can take action. I think the whole devolution process will die. The Constitution itself says that the objective of devolution is to promote accountability, democracy and efficient use of resources. The reason why I know Governor Wambora had abdicated because these are things, if he was really interested in knowing what was going on in his county---

In fact, I made the remark when these proceedings were on about what Chinua Achebe said about President Shehu Shagari. That Shehu Shagari was a very good president but he was not living in Nigeria. The things he knew about Nigeria was about another country and not Nigeria. So, Wambora equally, the things he knows about Embu County are not about Embu County. If he knew that it was about Embu County, he would have done something about what was happening right at his door step.

Mr. Speaker, Sir, the responsibility of the Committee was not as big as the responsibility of this Senate. The impeachment charges are before the Senate. They were not before the Committee. It is the Senate sitting in Plenary that is going to decide whether to impeach Governor Wambora or not. The duty of the Committee was to find out and establish whether the charges were substantiated and what could we do in the circumstances when the Auditor-General comes to give evidence and seven accounts, he enumerated what had gone on in procurement and abuse office. When he was finally asked a question: Whom do you consider responsible and accountable for this mess in Embu County, he said, the Governor. So, Governor Wambora has no alternative but to go home. If he was doing what his county secretary was doing, and I think she was not doing it for good reason, I was thinking that that lady is a cross between Rasputin and Maria Antoinette in the French Revolution.

I think Governor Wambora had completely abdicated his job to the county secretary; completely. If you ask anybody any question, it all ended up with the county secretary. Although these are not in the charges finally, because the chairman has talked about the charges on the question of responsibility, accountability and the specifics, I

would say that additionally sending Governor Wambora is not a matter that will weigh on your mind because he had already abdicated. He had already abdicated because if you have been given the executive authority to run a county and you leave it to the county secretary who is not a Member of the executive other than a person who attends that meeting for purposes of writing minutes, I can tell you, in those circumstances, the Governor must go home.

Finally in order to conclude, the thing that happened was that when they were found out on this matter of maize, the company that had supplied the maize, Agrotech Company - instead of chasing that company, they went to a company called Mosanto, although they are the manufacturers but not even a letter of demand has been written to the supplier to tell them you gave us the wrong maize. Instead they went to the manufacturer. If you go to the manufacturer who does not know that these things were being taken to Embu County; for them, they were just supplying the materials or the goods through the supplier who was buying on behalf of Embu County. So, there was a hidden agenda to protect the local company which was supplying this maize. These compounded the whole criminal and fraudulent activities.

So, I am happy about this and some people were telling us that if you do this for Embu nearly all governors are going to end up in the Senate, I am saying that even if all of them come here on account of things that we can substantiate, why not? They are safe from us so long as they are doing a good job for Kenyans; when they know that service to the common man is not having big cars; when they know that providing good services is not about securing a cook for yourself, when they know that providing services is not by the retinue of cars that are seen on the road escorting you. If we go that direction, then we are not living in the true spirit of the Constitution that we enacted in 2010.

With those few remarks, I support.

Sen. Wamatangi: Mr. Speaker, Sir, I stand to support this Motion. From the onset, I would like to begin by thanking the Senate for appointing me and giving me the responsibility as one of the 11 Members who sat in the Special Committee to look at this matter.

Secondly, I want to extend my apologies to the people of Embu County because these people went to an election in 2013 and elected a government expecting to get services from that government. In the confessions of the representative of the Embu people before the Special Committee, we were clearly told that since last year November, there has been no activity at all in running the affairs of Embu County. What has been happening since then, in the words of the officers elected in the office of Governor, Deputy Governor and the other people who came in front of the Committee? They stated very clearly that they have just been fighting, wrangling, chasing each other and doing all manner things that are of zero benefit to the people of Embu.

Mr. Speaker, Sir, the process of impeachment has been described as the process by which one can rescue citizens who have elected into office a political misfit; a person who cannot sit and execute the work bestowed upon him by the people that have elected him. As we sat in this Committee, we had to do a lot of work, even part of the work that was not envisaged in the mandate that we gave this Committee. We had to go out of our way to even start from sifting through several bundles of paper, to identify which are authentic and false documents. Most of the time, all the documents that were being tendered, especially by the side that came to defend the Governor, were non-authentic.

Some of them were photocopies and others unsigned, to the extent of even bringing documents to intentionally mislead the Committee. We heard a lot of things; I can assure you as the Senate.

Mr. Speaker, Sir, first, I want to assure the Senate that this Committee listened to all the evidence that was brought before us, completely in a non-partisan way and we kept our minds clear without any premeditated outcomes. Some of the things that we heard are not things that we would want visited on any of our voters. I can stand here and say, as one of those who sat in that Committee, that things in Embu County are not right. For example, we were told of tenders that were being procured and a tender is floated to be competed against even before computation of a bill of quantity has happened. You ask yourself: If a tender has been floated and not even one person has come along to say that this is what it would cost the county government of Embu to do this tender, and a cost has been affixed, and the tender is awarded--- The documents that were being signed now, to show that this is what it would cost the government are signed a month later.

We had to look at evidence of contracts which were labeled as “restricted” tenders, worth more than Kshs30 million of taxpayers’ money and comprising of about seven competitors. Six of those competitors are bogus companies, which do not qualify to participate in that tender. The purpose of restricting that tender or labeling it “restricted” is to make sure that, that one desired person, who is competing against himself, gets a tender.

Those kinds of things cannot be condoned in the present day Kenya.

Mr. Speaker, Sir, most of my colleagues whom we sat with have enumerated a very sentimental and emotional matter that we had to listen to, which made the people of Embu County face famine. You can imagine a county where the majority of the farmers are peasant farmers; people who till land in an acre and half-an-acre, and they are promised that they were going to be given free maize seed. This maize is procured using taxpayers’ money. The farmers line up and the person who comes to give this maize seed to these peasants is none other than the Governor. The process that has been used to secure this maize is completely fraudulent. There are documents which have been given to the Committee to procure the maize, including a research which says that if you plant this maize seed, it will have zero germination in this region. They go ahead to procure, but even to make it worse, the CEC in charge of agriculture says: “We want to procure eight tonnes of the right kind of maize seed.” The person who wants to defraud the people says: “We will procure 16 tonnes of the wrong seed.” All those people who come and get that maize seed go and plant it - you can visualize the image of that peasant farmer waiting for seeds to germinate for a month. The second month passes and nothing has germinated.

But the worst crime that happened is that after all that was done, we inquired from the Governor and his team: “What did you do to mitigate this problem? Have you ever sat down or gone back to the people and said this is the solution or even a simple “sorry”?” The answer that we were given is that there has not even been one sitting concerning that fiasco by the county government.

Mr. Speaker, Sir, we had to deal with evidence where a stadium in Embu was being renovated. This stadium that was being renovated was projected to cost Kshs50 million. But the tender was awarded even in advance, without ensuring that the amounts

that are supposed to be paid are ready and given to a person. Even today, this stadium has never been put to use.

Mr. Speaker, Sir, the long and short of this is: If the Senate, as the guardian of devolution, does not act right now, then we will have a situation in this country where no one else will say that devolution does not work, but the people of Kenya themselves. This is because if this is the kind of take-off that we are going to have for devolution, then it is only a matter of time that our people in this country are going to stand and say: We thought that devolution is our saviour; now it is not.

Mr. Speaker, Sir, as has been said by my colleagues here, the affairs of the county government of Embu were not in the hands of the Governor. At the end of the day the question that rested in the hands of the Committee was: Who is in charge of Embu County? As I end my support for this Motion, I would like to say that every Governor who sits in this office must be ready to serve the people who elected him and this Senate must stand behind the spirit of devolution and the people of Kenya, who voted for devolution in this election.

Mr. Speaker, Sir, I support the Motion.

Sen. Muthama: Mr. Speaker, Sir, I also stand to support this Motion and the Report.

Mr. Speaker, Sir, I read this Report and saw the allegations and charges. Three out of five charges have been substantiated. I participated in the nomination of this Committee Members and believe that the names that I submitted to this House were those of men and women of substance. I believed that they would do justice in their Report. Since we trusted the work that would be done by that Committee, we have no further evidence that we can put before us and debate other than the Report that was brought to this House.

Mr. Speaker, Sir, looking at what is happening in my county, I think that the rot in Machakos is over and above the issues in Embu. The report of the Auditor General has been sent to your office. I kindly wish to ask you to have copies given to the Members of the Senate, so that they can start preparing themselves for what will follow. This is because if a Governor moves and creates an account known as “confidential expenditure of the Governor”, withdraws Kshs3 million, Kshs2 million and another Kshs3 million in cash – public funds – then truly, if that is the kind of service that we are going to give to our people in the counties---

Sen. (Prof.) Lonyangapuo: On a point of order, Mr. Speaker, Sir. Is it in order for Sen. Muthama to deviate from the Report that is before this House?

Sen. Muthama: Mr. Speaker, Sir, I am just trying to say that issues are about to come. They are on their way coming.

(Laughter)

The Speaker (Hon. Ethuro): Order! Order, Sen. Muthama! First, you must be relevant to the Motion before the House. It is Embu County and not Machakos County. Secondly, you do not anticipate debate. So, whatever will be coming in the future, we will deal with it at that particular time.

Sen. Muthama: Mr. Speaker, Sir, I do not want to challenge the ruling of the Chair, but what I am saying is within the report that was sent to the Office of the Speaker

of the Senate by the Auditor General. I am not talking about something which is not in the public domain. The report is in your office and you will produce copies and give them to the Members of the Senate.

Mr. Speaker, Sir, without wasting time, I want to say the following. I know Governor Wambora and he is a good friend of mine. I knew him even when we were dealing with the issues of the Kenya Airports Authority, where he was the Chairman. But my brother, Wambora, seems to be out of control completely. He does not know what is happening in his office. So, if he lacks the capacity to be a true administrator and manager, I do not think that he has any other option than to say: This work is too much for me and I cannot cope with it. I do accept the ruling that will be given by the Senate. To me, the ruling and the verdict that is about to be delivered is: "Mr. Wambora, please, this work is too much for you. Go home and look for another job."

Mr. Speaker, Sir, I beg to support.

Sen. Wangari: Mr. Speaker, Sir, I rise to support this Motion. I have a saying that goes: In the world there are sets of people who are evil. There are those who actually orchestrate evil deeds and those who actually just sit back and watch. We hear from the Committee that, regarding everything, Governor Wambora was saying that it was not him. The buck must stop somewhere.

Mr. Speaker, Sir, the Constitution vests the sovereignty to the people of this country. It can only be delegated to the leadership that we elect. That said, it means then that everyone in the leadership of this country must take responsibility; whether you are a ward representative, Speaker, Senator or Governor. There is nobody who is above this Constitution. It pains me when we are trivializing matters, to touch on the stomach. A report was published the other day and we read it in the media. We actually saw people starving; women who cannot even have milk to breastfeed their children. They may not have come from Embu, but that is exactly where they were being taken by this Governor. It is not trivial; it is quite a business.

Mr. Speaker, Sir, when I listen to some of the things the Governor was saying as has been presented in this House, when you trivialize Kshs8 million, and you say, surely, that Kshs8 million can only be used to plant grass in a field, how many people can I feed with Kshs8 million? Very many! It is not only contempt, it is disgrace and it is lack of respect for the people of this county.

Mr. Speaker, Sir, history will judge us very harshly if we sit back and watch as this happens, not only in Embu; we must send out very clear signals that even if we will protect devolution, if we have to protect counties from the County Governments, then we will have to do so; because that is the role that has been vested on this House. We cannot sit back and look as children are starving, and we are thinking that money is small money. It is public money. So, there are no two ways about it; everyone must be held accountable; transparency must be ensured in the counties; transparency must be ensured in every office. When Kenyans voted for this Constitution, they were hopeful that services would get closer to them. They were hoping that they would not have to rely on going to Nairobi for services; they would not have to come all the way from Maralal or Mandera to Nairobi to even get a small service done.

This Constitution was meant to bring service closer to the people, and they were really hopeful. It was a savior because they had seen it work with the Constituencies Development Fund (CDF) and they had seen it transform their life. Now, this was a

bigger kitty which could transform the whole country. So, when we watch devolution and get people doubting whether really this is what they wanted, I think we really must feel sorry for this country because we are hoping that by the end of these five years of transition that we have been given, that we will sit back and audit, and say that devolution was the best thing that happened to this country.

But we have seen consistently offices, even the ones that are supposed to help us monitor – the Office of the Controller of Budget; the Office of the Auditor-General – being trashed even in public; and they say it does not matter, we do not need prefects. This must stop! This must stop and it must stop now. We have that responsibility and we cannot run away from it. We cannot postpone it to tomorrow; we have to take it today, and that has to be done before we sleep tonight. The message must be sent out.

Mr. Speaker, Sir, I support and support strongly.

Thank you, Mr. Speaker, Sir.

(Applause)

Sen. Munyes: Thank you very much, Mr. Speaker, Sir. Let me take this opportunity to thank the people of Embu and the great Parliament of Embu Assembly for bringing this issue to this point. It is happening all over the country; all counties are facing this particular problem. Turkana was the first one, but this House downplayed the impunity that the Governor of Turkana brought against by undermining the County Assembly of Turkana. I take exception to the maize scandal in Embu. If this was China, maybe Governor Wambora would have been shot!

(Laughter)

I think it is high time we became serious and passed this Motion, because Kenyans are getting restless. If we do not take this action, they might demonstrate all over the country and evict some of these Governors; because their appetite for misappropriation, misallocation of resources that are meant to help people is growing every day. We are suffering in Turkana; there is a famine and yet we know what is happening. The Governor has decided to misallocate all the money to buy vehicles, to inflate tenders, throwing away all the money that was meant to help the people of Turkana.

The Speaker (Hon. Ethuro): Order, Sen. Munyes! I thought you were in the House when I was informing the Senator for Machakos that the Motion before us is only for one county known as Embu County.

(Laughter)

Sen. Munyes: Thank you, Mr. Speaker, Sir. I am just trying to alert the Senate that there is something coming from the north; and the people of Turkana will not sit to see Governor Nanok undermine the spirit of the Turkana people.

Mr. Speaker, Sir, I want to thank the Committee for substantiating the allegations. Violation of the Constitution is a grave matter to a point where there were various summons---

Sen. Mbuvi: On a point of order, Mr. Speaker, Sir. Is the Senator for Turkana – the guy who rigged you out – in order to discuss other Governors who were not mentioned in this Report?

The Speaker (Hon. Ethuro): Order, Sen. Mbuvi! Order!

(Several hon. Senators stood up in their places)

Order! Order! I have to dispose that matter.

Sen. Munyes, proceed!

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

The Speaker (Hon. Ethuro): You are out of Order!

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, that is the kind of talk that we do not want to hear here.

Sen. Munyes: Mr. Speaker, Sir, I want to clarify or inform my brother, Sonko---

The Speaker (Hon. Ethuro): Order! Order, Sen. Munyes! Just leave that matter alone; proceed on with your contribution!

Sen. Munyes: Well, that is no respect for the Chair and I think we must raise that and condemn it. There was no rigging---

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

The Speaker (Hon. Ethuro): Order! I will not allow the Chair to be discussed!

Sen. Munyes: Mr. Speaker, Sir, I think Wambora's case is a very good example of a Governor who wanted to undermine the spirit of devolution. When the Governor decides to abrogate his responsibility and the job that he has been given - which he is supposed to do - to his juniors and claims he can actually pass the buck---. I think he is a very good example in this country today; that all Governors should take full responsibility for what is happening in their counties.

I think we cannot leave this matter without surcharging those officers who might have helped Governor Wambora in the misappropriation and misallocation of resources in that county. The plunder of resources in that county should be further investigated.

I think I must give another example of Turkana, if you can allow me, Mr. Speaker, Sir.

(Laughter)

The Speaker (Hon. Ethuro): Sen. Munyes, I cannot allow you to talk irrelevant things to the Report! But it is up to you if you can use it creatively; that is where the trick is.

(Laughter)

Sen. Munyes: Mr. Speaker, Sir, there is something that the Governors are learning, and it is happening all over. There is a Committee of Governors that is just passing information---

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

(Sen. Wako speaks off record)

We are a quasi-judicial body now and you must address the issue of Embu alone without making any reference to the possibilities that may be there in future. If I am accused as somebody who has committed robbery, there is no use saying that “O, maybe my brother may also one day be a robber” in those court proceedings; I cannot! So, really, in order to preserve the respect and integrity of what we are doing now, let us not belittle what we are doing now. Let us not give the impression that the Senators are there now to go for Governors. The Committee has done a very good job---

The Speaker (Hon. Ethuro): Order, Sen. Wako! You are on a point of order; you are not making your contribution. I think you have made your point.

Sen. Wako: Thank you very much, Mr. Speaker, Sir. My case is made.

The Speaker (Hon. Ethuro): Your case is made and I am sure the House appreciates it.

Sen. Munyes: With those few remarks, Mr. Speaker, Sir, let me say we are very sorry for our brother, Governor Wambora – who I know very well and we have had time together in the previous Parliaments – and I hope that this will serve as a very good case and example for the rest of Governors who do not want to follow the right channels.

(Laughter)

Thank you very much, Mr. Speaker, Sir. I beg to support.

POINT OF ORDER

LIMITATION OF CONTRIBUTION TIME PER SENATOR

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. I am rising on a point of order to seek direction from the Chair.

Notwithstanding the provisions of Standing Order No.98(4), I rise on a point of order to request that the Speaker allows each Senator speaking on this Motion on the Impeachment of the Governor for Embu County to do so in five minutes so that as many Senators as possible can have an opportunity to contribute.

Mr. Speaker, Sir, with your indulgence, allow a maximum of 10 minutes for the Senate Majority Leader and the Senate Leader of Minority, at the discretion of the Chair.

The Speaker (Hon. Ethuro): Sen. Wetangula?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, that is a Procedural Motion that we had discussed and informed you, and I fully support it so that we give as much space as possible to Members to speak, knowing that we are debating a precedence setting Motion in this House.

Mr. Speaker, Sir, I beg to second.

(Question proposed)

(Question put and agreed to)

(Debate on the Motion resumed)

The Speaker (Hon. Ethuro): Okay; hon. Senators, we will reduce the amount available to you from the maximum 30 minutes to a maximum of five minutes so that everybody has an opportunity to contribute. The Senate Majority and Minority Leaders will have 10 minutes each.

Sen. (Prof.) Anyang’Nyong’o.

Sen. (Prof.) Anyang’Nyong’o: Mr. Speaker, Sir, I will be very brief. One of the things that I wanted to draw the attention of the House to is that, at the end of the Report which says “the general state of affairs in Embu County”---

(Loud consultations)

If I could be heard in silence, Mr. Speaker, Sir.

An hon. Senator: On which page?

Sen. (Prof.) Anyang’Nyong’o: Page 48.

Mr. Speaker, Sir, I think this Senate has a very special responsibility; a responsibility of rescuing the counties from sinking. I must thank the Embu people for coming forward to be the first to be dissected so that we can know what to do in future.

Mr. Speaker, Sir, the Committee has carefully pointed out that although their mandate was to look at the Governor and the Deputy Governor, the problem is much wider. For record, let me read paragraph 110:-

“Although comprehensive analysis of the state of affairs in Embu County was not part of the mandate of the Special Committee, it would be an omission on the part of the Special Committee not to mention that in the course of the investigation, particularly in the public hearings, it became apparent that matters in that county were in a far less than satisfactory state. The toxic relations between sections of the County Assembly and the Executive were on parade, as was the state of confusion, disarray and lack of synergy in the County Executive Committee. Accusations of witch hunting and bad faith were thrown back and forth. There is going to be need, whichever way the present matter concludes, for a concerted effort of seeking reconciliation and cohesion.”

Mr. Speaker, Sir that is the crux of the matter. Definitely, we will impeach the Governor and that is a foregone conclusion.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. I am sorry. I know that my brother, Prof. Anyang’-Nyong’o is a seasoned Parliamentarian. However, is he in order to preempt the final decision of this House?

Sen. (Prof.) Anyang’-Nyong’o: That is an opinion, Mr. Speaker, Sir.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, he did not say it was an opinion. He said that it is a foregone conclusion that this House will impeach the Governor of Embu. Is he in order?

The Speaker (Hon. Ethuro): Order, the two professors. The professor who was contributing is perfectly in order to state his opinion. He does not have to substantiate that it is an opinion because everybody contributing is giving an opinion. When you contribute to a Motion of this nature, you are either saying that you support or you do not support. So, when you support, the consequences are obvious. I think he was just being a professor.

Sen. (Prof.) Anyang'-Nyong'o: Having said that, Mr. Speaker, Sir, I feel, as Jesus did on the Cross, like saying; forgive them for they know not what they are doing. However, on the other hand, I am persuaded by the Committee that the person whom the Governor was defending ought to have known what she was doing. That is the most important thing. This cannot be taken too far and be forgiven precisely because we want to make these matters straight so that the counties can move forward properly. It is a painful act and I speak with a heavy heart. It is painful. Nonetheless, following the law and this Committee was composed of men and women of tremendous capacities and capabilities, we, in this House, have no other alternative but to follow the recommendations of the Committee. Otherwise, the proceedings and procedures of this House will be very difficult if we cannot abide by the decisions of a Committee which had ten days; working day and night. I must thank them for having sacrificed so much time to come to this conclusion.

The other thing I wanted to say is that---

The Speaker (Hon. Ethuro): Order, Sen. Anyang'-Nyong'o. I will allow you more time because of the interruptions that have eaten into your time. Since I defended you, I will also explain to you when you are not on the right track. Your good neighbour, Sen. Orengo, put it very clearly that what the Committee did was to substantiate the allegations. This plenary is doing the impeachment. I just wanted you to be keen on that. It is up to this plenary to decide and even to disagree with the Committee.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Speaker, Sir, I was trying to persuade the House to agree with the committee. This is my role here. I beg the House not to divert me from my role. My role is to persuade you that the Committee has done very good work. If, indeed, it was my wish, I would, in fact, terminate the discussions now and call for a conclusion but I will not do that. I appreciate that other Senators too must speak to this Motion.

One of the things that are very important in a process like this is that there is usually an early warning system. What happened in Embu was an early warning system. We have had a tremendous malaise that we are reluctant to talk about; which we must be conscious of. The decision we make today will help us make other decisions which are helpful to this nation.

Some of the things that have happened in Embu may appear very simple, for instance, overlooking the law. However, Governments work by law. Governments work by following procedures and regulations. If the procedures and regulations were not important then the Senate, as a House, would not be here. We are here as a law making body. I belong to the Devolved Government Committee and we know the importance of the County Governments Act. I belong to the Committee on Finance, Commerce and Economic Affairs and I know the importance of the Public Finance Management Act.

So, if we know the importance of the laws that we have made in Parliament, as a whole, we cannot just sit and watch as these laws are abrogated without doing something about it.

I beg to support.

Sen. (Eng.) Muriuki: Thank you Mr. Speaker, Sir. I will say a few words regarding the matter before us. When the Committee was set up, the Senators who spoke at that time - I was not one of them - went out of their way to advise the Committee not to listen to side shows and to concentrate on the matter which was; whether the resolution by the Embu County Assembly can be substantiated or not.

I think we are all happy, as a Senate, to see that the Committee did its job; it did not listen to side shows. The media would come up with other matters like, for example, whether the Governor is popular and whether the Deputy Governor is popular. Those issues have their place in the Constitution. There is the issue of whether the people of Embu or any other county would want to remove their Governor on a particular issue if he messes up. That is there.

However, in this particular case, we are talking about specific issues like violating the Constitution, violating the Public Procurement and Disposal Act and abuse of office. The Committee found out that some allegations had not been substantiated. So, we would like to use this opportunity, as a Senate - I propose - to send a message to the other County Assemblies. Some of them have quarrels with their Governors and may rush for impeachment. It is not done like that. This is not a question of popularity between the Governor and the Members of the County Assemblies (MCAs) but whether the Governor has violated this or that law, starting with the Constitution. Wherever the MCAs are, it is good for them to take up responsibility.

We, as the Senate, should take this as an example. One contributor said that CDF showed us that we could go into devolution and it could work. However, it will be disastrous for the real devolution to come and not to work simply because some offices were taken up by individuals who, in other circumstances, could have been working very well but given the responsibilities of a Governor or a Chief Executive, are not doing their job well.

With those few words, I beg to support.

Sen. Omondi: Thank you, Mr. Speaker, for giving me this opportunity. I want to support this Motion. First, I want to thank the Embu MCAs for coming out as real representatives of the people who elected them. They recognized and made sure that they looked at issues that affect the citizens of Embu County.

I support this Motion by, sincerely, observing that the Embu Governor acted sarcastic in his responses by behaving as if he could not offer solutions to the people who seek services from him. He cannot understand the issues that are within, then the people of Embu County must have lacked the quality leadership that they deserved when they were electing the Governor.

It is high time Government got servant leadership and not the boss-like leadership. Someone may be in the office as a leader but he wants to behave as a boss who wants to sit and watch things as they get out of hand. That is what happened in Embu County.

The violation of the Constitution among other findings of the Report is something I agree with. That means that the violation of the rights of people with disability within

Embu County cannot miss out. This is something that is happening in the 47 counties. If the violation of the rights of people with disabilities has happened, then it is unfortunate that it was not brought up. However, if this was brought up, that information would have formed part of this Report.

I think the kind of leadership in our county governments makes Kenyans regret why voted for this Constitution. They do not get services as it had been promised, closer to them. This is happening. The employees working in the county governments are becoming a hindrance to those who seek services from the county governments.

I thank the Embu MCAs for representing their people well. I want to conclude my support on this Motion by saying that the hands-off leadership that the Governor of Embu County was practicing is embarrassing. How can we have leaders who believe in hands-off while other people work for them?

With those few remarks, I support the Motion.

Sen. Keter: Thank you Mr. Speaker, Sir for giving me this opportunity. I came here with an open mind; in the sense that Martin Wambora served in the Ninth Parliament, with you and me. He has had a long serving career as a civil servant, a very good legislator and, therefore, I was keen while listening to the Committee presenting its case. I have no doubt, therefore, that if my friend was the first one to have won the race of facing the Senate, I have no option other than to say that I support the recommendations by the Committee.

I thank the Committee. For the first time, I agree with Dr. Boni Khalwale. I always disagree with him. At one time, I thought that he would not prosecute very well. However, I congratulate the entire Committee for the good work.

Devolution does not mean that we also devolve corruption. If you see the work that the CDF did; with those of us who were in the Ninth or Tenth Parliament, you will see that it is a lot of work. When you compare that with what is happening at the counties, you will worry. Therefore, we as the Senate, have to take a strong position to defend devolution.

On most occasions, when we talk about corruption in our counties, people think that we do not want devolution to succeed. We want devolution to work. This is a way of uplifting the poverty levels within where we come from.

I want to thank the Committee because it went further to make a very good recommendation on page 36, 79(3), that;

Until cleared by the Ethics and Anti-Corruption Commission (EACC), the County Secretary and the Tender Committee Members who were involved in the unprocedural procurement acts should step aside and be discharged of their duties immediately to allow for investigations.

This is a good recommendation. As my friend goes home, the team that has to take responsibilities, immediately we adopt this Report, must step aside. These are the County Secretary and the Tender Committee. The whole lot must also face investigations so that the people of Embu know the truth about this. We are, merely, implementing our role as the Senate. After this, the EACC and the Auditor-General must move in and carry out investigations regarding the allegations; not only in Embu County but in the 47 counties that we represent.

We are not saying that there are problems where we come from. However, we are saying that we do not want another Governor before the Senate. We want to do

meaningful work which is the oversight role of our counties and not presiding over the impeachment of our Governors. It is prudent for our Governors to work with us, as a team.

Our role, as the Senate, is to protect devolution. We have no ill motives but if you go against the Constitution, we will meet here.

In conclusion, I have listened to the Committee and at one time I was asking myself whether this is really the description of my friend Wambora. I wondered whether what is happening to him is true. On the maize issue, I think it is economic sabotage which can deny anybody entry into heaven for doing this to his people. It is the worst crime a human being can do; to starve his or her people.

With those few remarks, I beg to support.

Sen. Mutula Kilonzo Junior: Mr. Speaker, Sir, today we mark very many events. The first one is that we have had a sitting on St. Valentine's Day when people are given roses and the proverbial rose has got its thorns. So, maybe Governor Wambora will never forget this particular Valentine's Day where we delivered to him a rose flower with many thorns.

Mr. Speaker, Sir, when you summoned this Senate to form the Special Committee, we had various issues of law raised. Some were raised by Sen. Wako and myself. I am happy to say that for purposes of legal precedence, those issues have been answered very well by this Committee. Those Deputy Governors who thought that there is no provision for impeachment of a Deputy Governor should read this Report carefully where it says that the provisions of impeachment of a Governor apply equally to them; *mutatis mutandis*. Those Governors who thought that their Deputy Governors are flower girls of their counties should read this Report carefully because the Deputy Governor has been exonerated in full, in so far as her role in this impropriety is concerned.

I want to thank the Committee for following the Constitution and not being swayed by mob justice of removing the Governor and not creating a constitutional crisis, because under Article 182 (2), the Constitution has provided for a method in case the people of Embu were wondering whether there would be an election if their Governor is impeached. I am happy that these issues have been addressed. I am also happy to say that this Committee has followed the rules of natural justice. They gave Governor Wambora and the Deputy Governor a fair hearing. It was in public and they were given time to give their evidence.

This Committee sat late hours and made sure that every piece of document or evidence was scrutinized. Governor Wambora will blame himself for imputing and talking about his character because this Committee has, in fact, found that the defence of his character based on his previous work does not apply. So, any Governor who thinks that their previous records, either in Government or any other place, will protect them from these provisions should read this Report carefully.

Mr. Speaker, Sir, I am happy to support this Motion to the extent that we have shown as a Senate that we can comply with the law. The people of Kenya in promulgating and passing this Constitution will celebrate and put the naysayers to shame. It proves that this Constitution is workable. It will put the naysayers to shame that devolution is indeed workable. The Governor obviously did not take these proceedings seriously if what my good friend Sen. Murkomen and Sen. (Dr.) Khalwale have said is anything to go by. Therefore, the indictment that follows would be of his own making.

Mr. Speaker, Sir, although there are several recommendations in what we would call abutter at the end of this Report, I think that we should also insist as the Senate that the money that was paid for purposes of purchase of maize should be recovered. The person who supplied this maize must be taken to court so that the people of Kenya can get value for their money.

I beg to support.

Sen. Mungai: Thank you Mr. Speaker, Sir, for giving me this opportunity to contribute to this very important Motion touching on the impeachment of the Governor of Embu. My heart goes out to the people of Embu because when they elected their Governor, they thought that they had elected someone who would change their lives. They thought that they had elected someone who is transparent. As Sen. Keter has said, they thought that his past experience in Parliament would make him competent and that they could entrust the lives of their children with him. It is unfortunate that you had to recall this Parliament to come and discuss this particular issue touching on Governor Wambora.

Mr. Speaker, Sir, there is the issue about Governors removing Senators from the road so that they can pass. It is very unfortunate that right now, we are discussing some of the excesses of Governors. The issue of public finances and personal finances is supposed to come out very clearly. There seems to exist a very thin line between personal and public money. So, it is important that this particular occasion will serve to show people that public money cannot be used to buy fake seeds and fake tractors. So, it is very wrong when the whole country is treated to what we are witnessing today because of an individual who has refused to serve his people as envisaged in the Constitution.

I take special recognition of the County Assembly of Embu who despite all these challenges waited patiently for this work to be completed by the Senate. To Kenyans who were almost losing hope in devolution, this is an indication to them that the Senate is there for them and that it will crack the whip when things go wrong. We are there for them.

Mr. Speaker, Sir, I have my personal reservations with regard to the case touching on the Deputy Governor and I wish not to contribute on that issue. There is one point that has come out clearly with regard to the County Secretary. It is unfortunate that a whole Governor can rely on a County Secretary to run a county government. I do not want to mention names but this should not happen. The Governors that are doing it should realize that it will land them in the same hot soup. This is a weakness that is with most Governors and they must realize that this is not the way to go. The responsibility of running counties is with them.

Mr. Speaker, Sir, when farmers are supplied with fake maize seeds, that normally means the earning of farmers for a whole year have been destroyed. Therefore, the people of Embu should not expect any maize harvest this year. It is very unfortunate that because of actions of their Governor, they are going to suffer for the whole year. My heart also goes to the Senator of Embu. For this to reach this level, he had tried his best, just like many of us to ensure that responsibility takes place to ensure that delivery of services in the counties is done within the shortest time possible.

With those few remarks, I beg to support.

Sen. Mohamud: Thank you Mr. Speaker, Sir. I rise to support the Motion. I think the Constitution is clear that the Governors are the Chief Executive Officers of the

counties and ignorance of the law is no defence. Governors must take responsibility in their counties. As I recommend for the exit of the Governor, I also recommend that the sub-ordinate staff should also step aside until further investigations are done. It is very unfortunate when the County Assembly which is supposed to play the oversight role does not receive quarterly reports from the County Treasury. The revenue collection receipt cash book is also not maintained. This is unfortunate. The Governor must take full responsibility for that.

The finding of the Committee is clear. The Committee has substantiated three out of the five charges. We appointed this Committee and we trust them. The Members are men and women of substance. I beg that the House adopts their report. The findings of the Committee must be recommended. I beg all Governors to respect and abide by what the Constitution says.

Mr. Speaker Sir, with those few remarks, I support the Motion.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I also rise to support this Motion and to remind ourselves that in Article 1 of the Constitution of Kenya 2010, it talks about the sovereignty of the people of Kenya. It says in Article 1(1)(2) (3):-

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

(2) The people may exercise their sovereign power either directly or through their democratically elected representatives

(3) Sovereign power under this Constitution is delegated to the following State organs, which shall perform their functions in accordance with this Constitution—

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

(b) the national executive and the executive structures in the county governments; and

(c) the Judiciary and independent tribunals.

(4) The sovereign power of the people is exercised at—

(a) the national level; and

(b) the county level.

Mr. Speaker, Sir, I also want to read the last one in Article 179(6) which says:-

“Members of a County Executive Committee are accountable to the County Governor for the performance of their functions and exercise of their powers.”

What this tells us is that the buck stops at the feet of the Governor, at night or during the day. It defeats logic when we are reading from this report that: “Seemingly the Chief Executive feigns ignorance in almost some of their functions and activities that were done.”

Mr. Speaker, Sir, I come from a county where people are suffering from drought and as a result of this, there is hunger. It looks absurd that a county like Embu will follow and suffer like some of us who come from more arid areas just because the chief executive closed his eyes when decisions and matters were supposed to be taken. It, therefore, calls upon all of us in this House, that we should not bring any issue to the effect that anybody else was witch-hunting this Governor. The decision we are taking today should send out a signal that nobody is above or under the law in Kenya, be it the County Assembly as the people who have given us to exercise this sovereign power or the National Assembly. We should be able to realise that this Constitution came to guide

us in the new dispensation. We can now see that the Constitution is beginning to put order and sense in the direction in which devolution should go.

Mr. Speaker, Sir, with those remarks, I support the Motion.

Sen. (Dr.) Machage: Shukrani, Bw. Spika. Yale niliyo yasikia kutoka kwa viongozi wa Kamati tuliyoitunda ni kama hadithi za Alfu Lela U Lela. Mengine ni zaidi ya hekaya za abunuasi kwa sababu kuwapa wananchi mbegu za kupanda zisizo ota ni kama vile abunuasi alimulikiwa na mwanga wa tochi kwamba apate joto la baridi.

(Laughter)

Hilo ni jambo la upuzi ambalo sisi tukiwa viongozi hatuwezi kulikubali.

Nimefanya kazi na Gavana Wambora katika Bunge la Tisa. Ni rafiki yangu kabisa. Huenda aliyoyafanya akiulizwa asema: "Sijui, nimesahau." Huenda ni huruma tumpe, labda ni mgonjwa kwa sababu sio kawaida. Kama walimu wake walikuwa huko alipofundishwa kuwa kasisi na mwingine mwalimu Moi, sidhani kwamba tutatubaliana na hayo kwa sababu tunamfahamu Moi, sidhani anatosha kuitwa mwanafunzi wa Moi. Iwapo ni hivyo singependa hawa wawe walimu wangu.

Bw. Spika, tunasema hivi kwa magavana wa nchi hii: Ukiona cha mwenzio cha nyolewa, chako tia maji.

(Applause)

Huu ni ukweli kwa sababu hatutaki kuyasema hapa kwa sababu leo tunaongea mambo ya Kaunti ya Embu. Lakini yaliyoko huko ni mazito hata kuliko ya Embu kwa sababu walikataa kusia la mkuu. Sisi Maseneta tukiwambia hawasiki, wakatudharua, hawataki kusikia wasia wetu, basi majuto ni mjuku. Walijitosa kwa ulimwengu wa anasa, magari makubwa makubwa, ma askari wawafuatilia na magari mengi na bendera ya kupepea, wakasahau ya kwamba mbio za sakafuni huishia ukingoni. Sasa wamejua mkubwa ni nani.

(Applause)

Tunajua kwamba viongozi wa Embu, MCAs sasa hivi labda baada ya hapa wataanza kusherekea kwa sababu wamenyewa na mvua. Aisifuye mvua imemnyea. Lakini wajue ya kwamba kuna mengi ya kurekebisha, kuleta uiano kwa Kaunti ya Embu baada ya Hoja hiyo. Kutakuwa na vita na vituko, warudi wakajipige konde waone walipotea wapi na watafakari yaliyotokea ili wajenge Kaunti ya Embu.

Bw. Spika, Kipengele cha 182 cha toa uongozi utakavyokua baada ya hili jambo. Huenda kama tutakubaliana, na mimi nimekubaliana kabisa kupitisha Hoja hii, tutakuwa na Gavana wa kwanza mwanamke nchini Kenya. Lakini Katiba haisemi, iko kimya kabisa kwa jambo la Deputy Governor. Hili ni jambo ambalo tutahitaji kutafakari, kutakuwa na nini kama Kaunti ya Embu huenda ikaongozwa bila Deputy Governor? Lakini hata huyu ambaye amepata bahati ya mtende akachukua mamlaka ya kuwa Gavana Embu ajue kwamba pia akodolewa na janga la yaliyotendeka kwa Kaunti hiyo. Ingawa amepata hiyo bahati bado ako taabuni kuanza kuangalia kwamba shida ilianza wakati gani na suluhu ni ipi. Ingawa sisi hatukuona shida kwake, viongozi wa huko

walifikiria naye pia aende. Huenda baada ya miezi mitatu akajipata hapa. Lakini twamuomba dua na maulana kwamba bahati nzuri imnyee asijipate hivyo.

The Speaker (Hon.Ethuro): Muda wako umekwisha.

Sen. (Dr.) Khalwale: Asante sana, Bw. Spika.

Sen. Billow: Thank you, Mr. Speaker, Sir. I lend my support to this Motion. As the Deputy Chair of the Committee, Sen. Murkomen said, it is really a sad thing, but at the same time it is also positive. It is sad because we are the custodians of devolution, but this is happening too early in devolution. But it is always better to excise a tumor when it is first discovered than to leave it until it spreads to the rest of the body.

Mr. Speaker, Sir, we owe our duty to the Constitution and our citizens. I want to clarify three things. There is a fundamental question that has come up in recent weeks with regard to the question of accountability by the Governors. In the last meeting to which we invited the Council of Governors, the question of accountability came up: They said "We are not accountable; it is the county executive committee that is accountable." This is what they used and refused to come. Next week we have summoned up to nine Governors to appear under Article 125.

Mr. Speaker, Sir, I want to clarify that in Article 179 it is very clear that the executive authority of the county government is vested in the county executive which comprises of the governor, the deputy governor and the county executive committee members.

It is also clear that the county executive in general, as my colleague, Sen. (Prof.) Lonyangapuo said is accountable to the governor for the exercise of its functions and powers. There is a collective responsibility, that each one of them is responsible. That institution is like a Cabinet at the national level. That is what the county executive is. But when you go to the County Governments Act, it is even clearer. What it says in Section 30 where it lists the functions and responsibilities of the Governor, it says in subsection (3)(a)(b), it gives very specific reference to the leadership of the Governor. It says:-

"In performing the functions under subsection(2) the Governor shall:

- (a) provide leadership in the county's governance and development;
- (b) provide leadership to the county executive committee and administration based on the county policies and plan;"

It is very clear that the county governor is responsible. But in the same Section 30(3) (f), and this is one which we use in our committee to hold the county governors responsible for accountability, it says:-

"(f) be accountable for the management and use of the county resources;"

I do not understand what is not clear when county governors come and say they are not responsible when, in fact, it is very clear that they are not only responsible for the management, but the use of the county's resources. The buck stops with them.

Mr. Speaker, Sir, if you look at the report by this Committee, unfortunately, the defense used by Governor Wambora, who is a close friend and a neighbour, if you look at the charges on the procurement and under the Public Finance Management Act, both of them, based on the reports by the Auditor-General, the argument he used was: "I am not responsible for those things." But from what I have read earlier in the law, it clear that the county governors are directly responsible for what happens under their administration.

Mr. Speaker, Sir, even if there were 10 or 20 charges, if one of those charges sticks, and I want to give an example in the US history, there was an impeachment of the

Governor of Oklahoma in 1929 by the Senate. There were 11 charges, but he was convicted only on one. That one was a very interesting charge. It was a charge of general incompetence. When you look at the same County Governments Act, among the grounds that the Governor himself has been given---

The Speaker (Hon. Ethuro): Order, Sen. Kerrow. Your time is up but being the Chair of the Committee on Finance--- I will give you one more minute.

Sen. Billow: Thank you very much, Mr. Speaker, Sir. In the same County Governments Act, the first ground that the Governor has been given in terms of powers for sacking or dismissing a county executive officer, do you know what it is? It is incompetence. It is very important for us to appreciate that the county governor must be in charge. To the extent that he is not in charge of what is happening in the administration, then, unfortunately he has to pay for the consequences.

I appreciate the report by the team and I want to urge Kenyans that this not about witch-hunting or trying to send a lesson to other governors, it is about facts and we are here as a quasi-judicial organ. Based on the facts which have been laid down out here, for example, paragraph 59 especially on the irregularities by the auditor, then you go to paragraph 64 to 66 again by the auditor, if you read that and based on facts, I do not think this House has any other option but to uphold the verdict as proposed.

I support.

Sen. Abdirahman: Mr. Speaker, Sir, thank you for allowing me to contribute to this very important debate this afternoon. When this issue came up a few weeks ago, I was in Mombasa and I consulted a number of friends, it was really a hard thing to think about. We laboured so much and asked what the next step is. I was in a state of bewilderment and saying probably, it would be good to look at the merits and demerits of the case of impeachment that has come up from the County of Embu, knowing that devolution is a very important process which this Senate spearheaded in terms of protecting. It is really a hard decision to come to what we are planning to do but I think we have no choice.

Just like my brothers Sen. Kerrow, the Senator from Kericho and Sen. (Dr.) Machage have mentioned, I served with Mr. Wambora in the 9th Parliament and the truth of the matter is we have to call a spade a spade and not a big spoon. I also want to thank the Committee we appointed on 4th February, 2014. Given the short time they have had, they have really done a comprehensive job and I want to say thank you to the 11-Member team. It clearly demonstrates the ability from the various skills and competencies this team has had.

Mr. Speaker, Sir, it is important that county governments know that this is the beginning and we should set good precedence for people to follow in future. Prudent financial management and strict adherence to procurement laws should become the cornerstone or the pillar within which people can live, eventually.

I will also want to bring out that Members of County Assemblies have an oversight role in the counties. As the team collected information based on this, there were loud murmurs and silent talk about what the outcomes can be like. It is important that we delineate these boundaries clearly. The other day, they were showing on television a number of county assemblies--- We do not want this to be an uprising. We do not want an uprising in county governments where we will have Members of the County Assemblies (MCAs) trying to use issues of out of malice at times to impeach. I am not saying that in

this particular case there is malice. The Committee has proved beyond reasonable doubt in a number of areas, the charges have been substantiated.

Mr. Speaker, Sir the report of the Auditor-General has further shed light in a number of these areas. So, I would say that as a House, it is our primary responsibility to guard devolution and ensure that services reach the local. It is our primary responsibility to ensure that the devolution that Kenyans yearned for many years gains roots.

With those few remarks, I support the deliberations of this House this afternoon.

Sen. Mbuvi: Mr. Speaker, Sir, thank you for granting me this opportunity to contribute to this important Motion. I support the Motion and let me start by saying that we are not the originators of this Motion.

This Motion originated from Embu County Assembly and it is time for MCAs to be involved in the affairs of running counties countrywide. As we are seated here, sympathizers of corruption and their lawyers are holding press conferences. We have seen on twitter and we have received messages where people are conducting press conferences, challenging us as to whether we are supposed to hold this debate today. Let me assure Kenyans that we are not breaching any law, we respect the rule of law and we are not above the law.

Mr. Speaker, Sir, I want to touch on *sub judice* rule. I know a little law because when I was in Kamiti Maximum Prison and Shimo La Tewa, I learnt some law.

(Applause and laughter)

We are not violating any law. The *sub judice* rule section 6 which falls under the Civil Procedure Act, does not supersede the Constitution. In other words, nobody should stop us from discharging our constitutional duties as provided for in Article 96(4). Nobody should stop us from discharging our parliamentary duties. If I do this interpretation, we are one of the arms of this Government. The judiciary is there to interpret the Constitution or the law but not to stop us from working. If it is the matter of violation of law, it is Governor Wambora who violated the *sub judice* rule. I am saying so because he first went to Embu Court to stop us from discussing him, before that matter was concluded in Embu Court, he went to Kerugoya Court to seek the same orders and then he came here in Nairobi to seek some orders in a Nairobi court. This is *sub judicature*, in other words, abuse of court process.

(Applause)

There are so many lawyers here and they can bear me witness. Between us, Members of the Upper House and Governor Wambora, his team and all the sympathizers of corruption, who is violating the law?

So, I think Governor Wambora is a lucky man and I would like to concur with my friend Sen. Munyes in his remarks because in China such offenses are punishable with death.

For this House to gain its credibility and to be respected and I think all Members can bear me witness here today, we have been called names, and some politicians have been referring to us as *nyumba ya wazee*, house of retirees and some politicians have been demanding to disband this House for the reasons that they do not know our work.

Let them look at the Constitution and I repeat myself, Article 96(4). We have the oversight responsibility over all state officers. If anybody wants to remove one of the Senators, he has to go to the people. He has to amend the Constitution to send one of us home.

I wish to support this Motion but there is one point which we need to correct. The initial Motion which was brought to this House by MCAs of Embu County, proposed that both the governor and his deputy must be shown the door---

The Speaker (Hon. Ethuro): Order, Senator. Your time is up.

Sen. Mbuvi: I rest my case, Mr. Speaker, Sir. Thank you very much.

Sen. Kanainza: Mr. Speaker, Sir, thank you for giving me this opportunity to add my voice in this intricate and delicate matter about Embu County. As we carry out our primary role as Senators, it is important that we take into account that it is a matter of choosing between defending the counties and devolution. If we do not do this, then we will be killing it.

I have read in the history books how devolution was killed by the first government we had in this country. It was because of incitement by some people to demonize *Majimbo* and eventually the Senate died. Looking at the findings of the Committee, I concur with what they have done. It is a good job and in ten days they have been able to give us a report with supporting documents that we can look at and see that there was an offence committed. As the governor of this county faces these charges, it is important that even his executive be part of this because they sit in the cabinet and know how things are done.

As we deliver our mandate on the issue of Embu County Government, I want to request Treasury to fund county governments in time so that they can abide by the laws of Public Procurement and Disposal Act. Last week it was in the papers about the absorption of funds in the county government and it was found to be low. This is because they get funds when it is late so they are unable to follow the law where they are supposed to take four to nine months to procure anything for the county government.

Mr. Speaker, Sir, I know that the Members of the County Assemblies (MCAs) are watching and they are so excited about this issue of impeachment and how loyal the Governors are to them. It is important that MCAs, who represent the people at the grassroots, come up with Bills that will benefit our people in terms of development, and not look for petty issues just to impeach our Governors.

Mr. Speaker, Sir, finally---

Sen. Okong'o: On a point of order, Mr. Speaker, Sir. Is my good friend, Sen. Kanainza, in order to say that we are dealing with petty issues of impeaching Governors?

The Speaker (Hon. Ethuro): Did you say so, Sen. Nyongesa?

Sen. Kanainza: Mr. Speaker, Sir, my able Senator is wrong, because I am not talking about us dealing with a petty issue. I am talking about MCAs focusing on personal issues or differences with the Governors, just to come up with impeachment motions.

Mr. Speaker, Sir, finally---

Sen. Omondi: On a point of order, Mr. Speaker, Sir. I want to request Sen. Daisy to apologize because we are dealing with a matter that came from the MCAs. If the MCAs came up with issues that are affecting the common citizen, and she is treating them as petty things, is she in order?

The Speaker (Hon. Ethuro): Sen. Nyongesa, did you say that we are dealing with a petty issue or that they should not be dealing with petty issues?

Sen. Kanainza: Mr. Speaker, Sir, I think that the two Senators are not concentrating. What we are doing here is very important. I am talking about personal issues that people bring on board just to impeach a Governor.

Mr. Speaker, Sir, in conclusion we are Senators and know about all these issues, especially those that arise in funerals.

The Speaker (Hon. Ethuro): Order, Senator! Your time is up.

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. Considering that we listened to the able Chairman, his deputy, other Members of the Committee and so many other Members who have contributed and we have to give the Governor 30 minutes, so that we can listen to what he has to say in mitigation, and not all of us have the stamina of Sen. Zipporah Kittony to work into the wee hours of the night, will I be in order to ask you to request the Mover to be called upon to reply?

(Loud consultations)

The Speaker (Hon. Ethuro): Order! Order, Members! I see that the mood is like we should continue, but we cannot continue for eternity. We, definitely, cannot go beyond midnight. Secondly, we must vote. So, we really have to balance these things.

My suggestion, if it is acceptable to you - and this is not a directive for now - is that we take three, three. Those are six and, at least, another 30 minutes. That is excluding the Senate Majority Leader and the Senate Minority Leader who will also take almost another 20 minutes. So, we are really talking of another 50 minutes. Is that acceptable?

Hon. Senators: Yes!

The Speaker (Hon. Ethuro): So, let us proceed now along those lines.

Sen. Elachi! If you really care for your other colleagues, minimize your contribution.

Sen. Elachi: Thank you, Mr. Speaker, Sir. From the outset, I want to support this Motion and thank the Committee for, indeed, making us proud in this House. It is unfortunate that, indeed, the Governor of Embu could not, at least, consider Article 73 of the Constitution that requires him to be consistent with the purpose and objects of this Constitution and also his responsibility to serve the people rather than the power to rule. Indeed, the Governor used his power to rule.

Mr. Speaker, Sir, when you look at Article 227 of the Constitution that talks about procurement of public goods and services and the maize saga in Embu, you will find that the Governor did not care about cost effectiveness. When he talks of small things and we see what the Constituencies Development Fund (CDF) does with small things, indeed, it is an insult to Kenyans who pay tax.

Mr. Speaker, Sir, I want to thank the Auditor General for following his responsibility and also the Committee for ensuring that, indeed, he submits that report, so that we do not appear to be violating or trying to put the Governor to task or trial, but to show him that, indeed, he violated the Constitution and put himself on trial. Today the highest authority and institution of this county is also sending a warning to those who

work in the public service that they need to take care of public funds. Indeed, corruption is taking down our country.

However, corruption is not just about money. It is also about how you manage the office which you have been given, and that is what the Governor of Embu has done. He used his powers to corrupt and found himself in this mess. He forgot that, indeed, he is the custodian of the public resources of Embu. He decided to flush taxpayers' money down the drain. These are people who are sleeping hungry, but trying their best to pay taxes to this country, so that they can receive services. But what the Embu people received was maize that could not be planted or harvested. He even forgot that there was a maize saga in this country and he knows where it ended.

Mr. Speaker, Sir, as I support, this House will do Kenyans proud. The Governors have been given an opportunity to look at the mechanisms that have been put in place and work closely with the Senators, so that when there are issues they are able to manage them so that we do not get to this level. However, some of them have refused because of power corrupting their heads. Today, it is unfortunate for Mr. Wambora, but he will be an example of how power can corrupt and take you home.

Mr. Speaker, Sir, I beg to support.

Sen. Musila: Mr. Speaker, Sir, from the outset, I want to say that I have known Governor Wambora for a very long time, from our shared history in the public service and later in the Ninth Parliament as Member for Runyenjes. I think that it is very sad that Governor Wambora is likely to go down in history as the first Governor to be impeached by this Senate, under the new constitutional dispensation.

Mr. Speaker, Sir, like Sen. Keter, I came into this House this afternoon with an open mind. I wanted to be convinced by this Committee that we selected whether truly the allegations made against Governor Wambora, a friend that I have known for a long time, could be substantiated. Having looked at this Report by this Committee - which I want to commend the Committee for making - and particularly the report of the Auditor General, my conclusion is that my friend Governor Wambora has failed to provide leadership to the government of Embu County.

Mr. Speaker, Sir, I was touched particularly, by the procurement that the government of Embu has made quite irresponsibly. I was particularly touched by the maize seed. This is irresponsible and a matter that I think, other than the Governor, even many more heads in Embu should roll. We are aware that there is hue and cry in the way county governments are being managed throughout the country. Indeed, it is possible that even what my friend, Governor Wambora is accused of doing, is not much compared to others elsewhere. We want to set an example here. Let all Governors in this country know that we, as a Senate, are not going to tolerate abuse of the Constitution and misuse of public funds which have been entrusted to them. As we even move towards the beginning of a new financial year, we expect that prudent management of public resources will be exercised from now on.

Mr. Speaker, Sir, we have been told by the Chair of the Committee that there are even issues with the county assembly. I would like to believe that this Senate will, in due course, find mechanisms of investigation the Embu County Assembly, because they also have issues, as reported by the Committee in this Report.

Mr. Speaker, Sir, indeed, it is painful to support the impeachment of an old friend. But as painful as it is, I support this Motion.

Sen. Moi: Mr. Speaker, Sir, let me take this opportunity, first, to wish the 17 ladies in this House a happy valentine.

(Laughter)

Mr. Speaker, Sir, secondly, I was going to make an expression saying “*saalaalee!*” This is because I have sat here and heard my friends and esteemed colleagues starting from Sen. Keter, Sen. Musila and Sen. Billow, saying that they are great friends of Governor Wambora and some were even neighbours. With friends like these, do you need enemies, honestly? Anyway, I understand that they are doing what they are doing as a matter of principle and that is what it is all about.

Mr. Speaker, Sir, I find myself in a very awkward position because all of us stand in judgement of our colleague. I say a “colleague” because the Governors and Senators are meant to be joined at the hip. The Governors and Senators are one. The paycheck that we get today is because our role is the protectors and custodians of the county. So, it pains me, in particular, to have to stand here in judgement over my colleague. Sad too, because, personally, I know that Governor Wambora is a good and decent human being. Unfortunately, he has brought himself in this situation. We have talked of abdication. Did he delegate to the point of abdication? Those are issues which came up and the Committee gave a resounding “yes.”

Mr. Speaker, Sir, all that I would like to say is that we thank God for the justice system and for your wise counsel that today he is going to come here and put his case across. All that I will ask my colleagues is that we should have an open mind and listen to him. This is because there is a saying “only fools do not change their minds.”

(Loud consultations)

You will have an opportunity to hear. Anyway, my point is---

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

Proceed, Sen. Moi!

Finally, I would like to agree with my colleagues that today you are holding judgment on Governor Wambora; but the real culprits are the County Officers, the County Assembly and the accounting officers with who – and I agree with Sen. Musila – we should have a mechanism to make sure that even they come here to be judged in abdicating their roles.

So, Mr. Speaker, Sir, I just would like to conclude and ask my colleagues that the same enthusiasm that we have today, and it seems in saying that we support, I hope that the same enthusiasm will be here when the Revenue Allocation Bill comes here and we all want to give the counties Kshs300 billion.

Thank you very much, Mr. Speaker, Sir.

Hon. Senators: Support! Support! Support!

Sen. Moi: Whether I support or not, you will know when I vote.

Thank you.

The Speaker (Hon. Ethuro): Sen. Obure.

Sen. Obure: Thank you very much, Mr. Speaker, Sir. First, I want to thank the Committee for doing a good job and making these recommendations to us within a very short time which was at their disposal.

Mr. Speaker, Sir, I want to make reference to a statement which was read from this Report by Sen. Anyang'Nyong'o of Kisumu, which is contained in page 48 of the Report. From that, you can see that the Committee itself has described a situation in Embu County as being toxic: "Toxic relations between a section of the County Assembly Members and the Executive." I am very concerned about that relationship because as a consequence of that relationship, we are told that there is confusion, disarray and lack of synergy among the various players in Embu. This suggests the existence of an unhealthy, hostile working arrangement or environment. What is the cause? We do not know. Could it be intensity of the differences between the various clans in that county? Could it be witch-hunting? It could be anything. So, I am appealing to the players in Embu – the leadership – to try and sort that out through dialogue and engagement because the people of Embu deserve better than that.

Coming to the substance of the Report, Mr. Speaker, Sir, the question which this Senate must answer, in my opinion, is whether the Governor of Embu passes the leadership and integrity test. In my own opinion, he does not.

(Applause)

I find him guilty of all the three counts as charged because he has been involved in violation of the procurement law; he has failed to constitute the various procurement committees in his county; he has embarked on development projects – the construction of the town hall, the probation offices, the stadium project – without any budgetary provision. If you recall, this is really what led to all this white elephants around the country because projects were started in the 1980s and 1990s, and they stalled because there were no budgetary provisions. This is exactly what the Governor for Embu is trying to do within Embu County.

Mr. Speaker, Sir, he has engaged contractors who are not even registered, and this is contrary to the National Construction Authority Act, which was passed in Parliament. All contractors engaged in public projects are required to be registered under that Act, and he has violated that Act. As a consequence, by violating all these procurement laws, look at what he has done to the procurement of maize seeds. This amounts to economic sabotage, and I think it is a serious offence as it impoverishes families and communities. It subjects communities to extreme conditions like hunger, famine and all that. That is why I think that this Governor must be impeached, despite the fact that he might be a good person, as I have understood.

(Laughter)

He might be a very good person, but he has not done the right thing. He has failed to put control systems in place in his own county and, as a result, he has failed to provide quarterly reports; he has failed to ensure that proper records of accounts are in place and because of all this mess, allowances have been paid to people who are not even members of staff plus irregular payments to other staff and all this.

Mr. Speaker, Sir, if we are going to learn from this, we must all operate under the law, regulations and the procedures for our counties to succeed.

Thank you, Mr. Speaker, Sir. I beg to support.

The Speaker (Hon. Ethuro): Order! Your time is up.

Sen. Joy Gwendu.

Sen. Gwendu: Thank you, Mr. Speaker, Sir, for giving me this chance to also add my voice to this important Motion.

Mr. Speaker, Sir, as I stand to speak, I bear two sets of pain with me; the first pain is that Sen. Wambora shares a party with me; and the second pain is that my mothers were given fake seeds to plant. So, in this case, I will go with my mothers, because I know I am in a party that has no tolerance to corruption. After listening to the report given by Sen. (Dr.) Khalwale and Sen. Murkomen, somebody who has actually wronged the people who voted for him comes before a Committee and says “I do not know;” is that somebody who respects the Constitution? Yet that is somebody who has an obligation to uphold and respect that Constitution, because he was voted into office to actually use that Constitution to lead his people.

The people of Embu right now are looking up to this Senate to save them, because as it is, Governor Wambora did not look after them. After what we decide, will save the other Kenyans from all the things that we have disregarded; like having the Governors come into this town from their counties with the sirens and giving the people the impression that they are very powerful. But what are they doing back there; having people suffer? We have given them the responsibility of ensuring that the people have the power. The people have what they asked for; that is the reason they voted for them.

Mr. Speaker, Sir, I beg to support.

The Speaker (Hon. Ethuro): The last one from this side, Sen. Khaniri.

Sen. Khaniri: Thank you very much, Mr. Speaker, Sir, for the opportunity.

Mr. Speaker, Sir, when Kenyans voted for the new Constitution in 2010, the biggest gain Kenyans got was devolution. Kenyans had a lot of expectations; that devolution will turn around their lives; devolution will improve their lives and it will bring development closer to them. But from the look of things, eight months after elections, I think it is turning out to be a pipe dream.

Mr. Speaker, Sir, this House was established under the Constitution, and Article 96(1), on the role of the Senate states that:-

“The Senate represents the counties, and serves to protect the interests of the counties and their governments.”

The moment you touch on devolution and on the county governments, you become the enemy of this particular House; we will not spare you. This is a very strong message to the Governors out there; we are telling you that you should either shape up or ship out.

(Applause)

Devolution did not come to enrich a few individuals; devolution came so that Kenyans can benefit at the grassroots level. The trend we are seeing – and I am sure there will be so many more Motions coming to this House – I know there are Senators who are worried that “O, it will look like we are witch hunting;” no! I am telling the Members of

County Assembly (MCAs), you be vigilant! Give us more Motions! Give us reasons, and if you give us reasons, we will not hesitate.

(Applause)

In Nigeria, when they adopted the Constitution that brought in Governors and counties, the first lot of Governors – about a half of them – were impeached for abuse of office and sent to jail. So, it is not just about impeaching; people must take responsibility for their actions. If you are found to be guilty, we take you to court and you are jailed or surcharged for the monies that the county government has lost.

Therefore, Mr. Speaker, Sir, just like Sen. Musila and the rest, Governor Martin Wambora is a personal friend. But when it comes to the dispensation of my constitutional duty, I do not know a friend, I do not know a brother; if you are on the wrong, you are on the wrong and I will not side with you. I have been convinced by the Chairperson of the Committee – and I want to thank them for the good job they have done and within the timelines that they were given. The timelines were so short, but they did their job and they have brought their report that this House must adopt today.

Mr. Speaker, Sir, I beg to support.

(Applause)

Hon. Senators: Well done!

The Speaker (Hon. Ethuro): Yes, I think we have exhausted the three contributions from each side; so, now we will allow the Senate Minority Leader.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Speaker, Sir, for the opportunity to speak to this Motion. Like many colleagues have said, Martin Wambora is a very good friend of mine; we sat together in the Ninth Parliament. When I was a Magistrate in Nakuru, he was a deputy to the Provincial Commissioner then, and we have worked very well together. But we stand here on a very grave matter. The people of Kenya voted for devolution. They hoped and continue hoping that the contradictions of our history, the mismatch in development was going to be cured by devolution; and we created counties to take power and resources to the people of Kenya. The custodians of this are the Governors.

I listened very carefully, Mr. Speaker, Sir, to the distinguished Members of this Committee who stood to speak. I want to salute the Committee chaired by Sen. (Dr.) Khalwale; his Vice Chairperson, Sen. Murkomen and all the good ladies and gentlemen who served diligently.

Mr. Speaker, Sir, this Senate, in debating and deciding this Motion, is itself on trial to demonstrate to the people of Kenya whether you fit the bill as the true custodians of devolution at the counties or not. It must be said very clearly that dealing with an impeachment of a Governor should not be equated to being a threat to devolution, because devolution is not about Governors; devolution is a complex matter that involves the people of this country, their resources, their aspirations, their dreams, their hopes and “their everything”.

Mr. Speaker, Sir, God help this country when the warders become poachers. God help this country when herdsmen become rustlers. I, truly, sympathise with Governor

Wambora. However, I sympathise more with the people of Embu, the people who voted my brother, Martin, to office. They never intended to vote in a Governor who would bring them fake seeds. They never intended to vote for a Governor to get embroiled in petty procurement issues that would result in loss of money.

As many Senators have said, this is probably a tip of the iceberg. Many Governors out there are hiring their cronies, are involved in business in their counties and doing exactly what one Senator said, lining up six fake companies and one genuine one, all linked to one person, and awarding contracts. This has to be brought to an end. In a nutshell, you can describe the conduct of some of the Governors as what the French call *megalomanie* or megalomaniacs in English, forgetting the narrow path and taking the highway to nowhere.

I want to urge this Senate, today, to stand up and be counted, to maintain and sustain the pride that the people of this country have in this Senate. Senators, you know that at every poll, more Kenyans have voted in support, not only of the existence of this Senate but in approval of the work that the Senate is doing.

Tomorrow, the people of this country will wake up with a higher level of confidence in this House, that yes, as the custodians of the Constitution, we have Senators; men and women who have the capacity, ability and courage to stand up and say that yes, I know you. We grew up together but you have done it wrong and you do not deserve to be there. This is the calling of this Senate today.

Mr. Speaker Sir, whether it is your Senator, your brother, your cousin or whoever; once you transgress the law, it matters little the quantum of money involved. It matters little that it is a small section of the people who elected you that have suffered. It is a violation nonetheless and the consequences are very clear. When you make a bed, nobody else will sleep on it. You will. We have a situation here where our very good friend, Wambora, unfortunately decided to make a bed but poured water on it. He has to sleep on that wet bed.

We will, today, assure Kenyans that the suffering that people undergo out there while queuing at Governor's offices, day in day out, waiting to pick jobs when jobs have been given out through back doors to cronies is something that this Senate will correct. This Senate will defend the public against errant Governors. This Senate will work hand in hand with Kenyans of good will.

We urge County Assemblies to carry out their responsibilities under the Constitution, of representation, legislation and oversight. Where they find such transgression, they should neither fear to act nor act in fear. They know that this House is there to defend and look at what they do with open minds, within the law and within the Constitution.

I urge the distinguished Senators seated here today that perhaps, we are opening a Pandora box. However, if the Pandora box will clean the worms and leave the can clean, so be it. We want devolution to work and it will work, not because we are sending a message with Mr. Martin Wambora as an example, but because a wrong in one county is a wrong in all counties of this country. This Senate will rise to the occasion and say no, no, no!

I urge you, Members, to vote in the affirmative because the Committee has given you a very comprehensive, well reasoned, well presented and well argued report that nobody in his right frame of mind would cast a descending view.

With those few remarks, I fully support the Motion on the Report and congratulate the men and women who sat on the Committee and brought this precedence setting Motion to the Floor.

I beg to support.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you Mr. Speaker, Sir. I have been resisting using the microphone that the Senate Minority Leader, my brother and friend and my senior Moses Wetangula, used.

Today, I stand here with a lot of confusion in my mind. I want to start by saying; like the tragic hero, Okwonkwo, *Things Fall Apart*, I stand here to discuss and to contribute to a Motion that relates to the fate of a Governor who comes from the political divide or the Coalition I represent in this House.

Just like in *Things Fall Apart*, when the oracle of the hills and the caves decided that the sacrificial boy, Ikemefuna must die, the warning that the oracles of the hills and caves gave to Okwonkwo was; the boy will be killed but do not have a hand in his death because he calls you “father”.

I say so because I make this contribution with the full knowledge and disclosure that Martin Wambora is my friend. Martin Wambora is my political comrade. In fact, the whole afternoon, I have been reminiscing through the difficult times that we spend with Martin Wambora in Embu trying to wrestle that area from parties that were hostile to The National Alliance (TNA) party. I have to disclose this so that you understand where I am coming from. We succeeded amidst a lot of difficulties and we bonded in the process. I am speaking about Martin Wambora who is my neighbour in terms of sharing counties. I am lost for words.

That be as it may, if the oracle of the hills and the caves has decided, all I can say is; let justice be done. However, I want to be very clear that I am not excited. There is nothing to excite any Kenyan tonight. There is nothing to excite any person from Embu County or any other county. Among all the responsibilities that this House is vested with, the most painful, difficult and complicated is the issue of removing a public officer from office. This is about their career, their future, relationship with fellow county men and women and it is a very serious responsibility.

For the reasons I have given, I would like to say that, with a very painful and heavy heart, I support this Motion.

The Speaker (Hon. Ethuro): Order, Senators. That is the end of contributions. I will now invite the Mover to reply. After the Mover, we will give the Governor an opportunity to be heard, just before voting.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I want to pay special tribute to Senators in this Chamber who belong to the TNA and, in general, to Senators who belong to the Jubilee Coalition. They have, through their contributions, demonstrated that if we must attack and defeat the monster of corruption, then loyalty to our political parties will not be in the interest of the Republic of Kenya.

Thank you.

Mr. Speaker, Sir, I will make only three small points as I thank everybody. The first one is; who was the recipient of the free seed? The rich of Embu who own 20 acres, 50 acres and beyond did not line up for the free seeds. The people who went for the free seed are the owners of half-an-acre, 1.5 acres, one-quarter of an acre and so on. Who are these people? These people are the first ones who meet the challenge of how they will do

the first ploughing of their field. They sell a goat, chicken and somehow manage to do the first ploughing. Sometimes, they ask their children - who are in class 8 – to be absent from school to help them in ploughing. They were given seed that could not germinate.

Mr. Speaker, Sir, we should ask ourselves, besides pursuing the Governor for seed, who will compensate the farmers for the seed? Who will compensate the farmers for what they lost in the first and second ploughing and the cost of planting?

The second point I want to make is on grass. One of these days, I will tour the stadium of Embu to see what kind of grass is planted on a pitch of around 150 metres by 150 metres that costs Kshs8 million. Were they trying to establish a golf course that has special grass? I do not know.

The last point is; the Audit Report you have before you is for a very short period. For that short period, the money that the Governor was calling “small money” amounts, in quick arithmetic to Kshs101,800,000. Therefore, if in that short period there is this kind of impropriety, what else will happen if you leave this Governor in office for a total of five years?

Since the Governor is responding, I want to speak to his family, friends and tell them there is nothing personal. Maybe the Governor in addressing us, he is going to tell us to forgive him. Yes, we might forgive him. But even if we have to forgive him, for the Kshs6.9 million which the Auditor-General found on page 30 that you paid to doubtful creditors, how shall we pay you and forgive you for the first Kshs5.3 million found on page 32 by the Auditor-General which you refused to transfer to the Exchequer account of Embu account and left it in the local authority account? Governor, how are we going to forgive you for the Kshs21.4 million that you refused to open a cash book for and refused to receipt as the money was being paid to your office on page 32 of the Auditor’s report?

Mr. Speaker, Sir, even if we forgive the Governor, how is he going to convince this House to think that the Auditor-General was wrong when he found, on page 34, that tenders were awarded to contractors who were not registered with the Ministry of Works? Finally, even if we must forgive him, how will he convince us that the Kshs366,000 that he paid to members of his County Executive Committee (CEC) as sitting allowance was deserved? It is an audit query from the Auditor-General.

We want to conclude as a Committee by begging you that in the same spirit that you have supported this Motion, you move and vote for it because there is a whopping Kshs66 million which the Governor paid out without any supporting vouchers. People just went to his office and he paid them Kshs66 million without any supporting vouchers. This is on page 56 of the Auditor-General’s report.

I beg to move and thank you for your support.

The Speaker (Hon. Ethuro): That submission by the Mover brings us to the closure of this particular debate. But before we vote, there is a requirement of the Constitution and the County Governments Act that the Senate shall after according the Governor an opportunity to be heard, vote on the impeachment charges. So, we will now allow the Governor and his lawyer to come and we will give them a maximum of 30 minutes; if they could use less time, the better.

I shall, therefore, call the Chief Serjeant-at-arms to find one Martin Nyaga Wambora and bring him to the Senate Chamber.

*(Hon. Martin Nyaga Wambora and his advocate
Were brought into the Chamber)*

THE GOVERNOR FOR EMBU COUNTY (HON. MARTIN NYAGA WAMBORA)
AND HIS ADVOCATE BEFORE THE SENATE

The Speaker (Hon. Ethuro): Order Senators! Governor Martin Nyaga Wambora has been brought to the Senate. I will, therefore, ask the Clerk to read the Charges and then I will ask him to respond. Hon. Martin Nyaga Wambora, we want to thank you for your cooperation so far. You have always appeared before the Committee when you are required, and here you are. This is an opportunity for you to tell the Senators what you may wish to tell them. You have 30 minutes and you can share that time with your lawyer but you have to start because this is to do with you, then you can introduce your lawyer and then conclude. Let us proceed along those lines.

Clerk, proceed and read out the charges.

The Clerk-at-the-Table: The Charges are as follows:

- (a) Violation of the Procurement and Disposal Act, 2005 and Regulations, 2013;
- (b) Violation of the Public Finance Management Act, 2012 and,
- (c) Violation of the Constitution of Kenya.

The Speaker (Hon. Ethuro): Those are the charges, Mr. Martin Nyaga Wambora; what do you have to say?

The Governor of Embu County (Hon. Martin Nyaga Wambora): Thank you Mr. Speaker, Sir, for giving me the opportunity to present my position. On my right is Mr. Wilfred Nyamu, my legal counsel.

I will take 15 minutes and then the legal counsel will take the other 15 minutes. May I reiterate my impeccable career both in the Civil Service and in the political arena as a DC, Under Secretary, Deputy Secretary, Chief Finance Officer and Deputy Director of Budget. For 25 years I have done this work including serving in one of the biggest Ministries, the office of the President, for six years with a budget of billions of money and I have never been faulted for taking even a shilling of the public funds.

I have undertaken my work with efficiency and vision. This work of Governor is not the first one I have done. In the political arena, I was a Member of Parliament in the Ninth Parliament and I administered the CDF very well. I was even commended by the Board of CDF as among the best. I was the Chairman of the Kenya Airports Authority (KAA) for two and a half years, during which period Jomo Kenyatta International Airport got three awards under my watch. As a Governor, for the short period I have been there, I have led my county with vision and mission.

I want to state here that I am a firm believer that great leaders do not get involved in details. As a Governor I cannot do procurement. I do policy and procurement oversight, just to make sure that things are moving on well. However, I want to inform this honourable House the major challenges which we faced as the first Governors in this country. One of them is that we had to live by the County Government Public Finance Transitional Act which was effective from January to September, 2013. That law gave exceptional powers to the Interim County Secretaries with clear instructions to account for use of funds as well as procurement to the Transitional Authority (TA) headquarters.

If you listened to the hearings during the Committee sittings, Mr. Makori, the Chief Executive Officer of the Transition Authority confirmed that in the case of Embu, they sent an AIE of over Kshs61 million for rehabilitation of the county assembly, the rehabilitation of the Governor's office, among other projects. The Accounting Officer was directly accounting to the CEO of the Transitional Authority. Our hands were tied and they made sure that the Governors could not get anywhere near procurement. This is not abdication. After they left on 30th December, there is no information I do not get from the accounting officers or the county secretaries. After that, things became open, and anything that happened after that time, I would take responsibility.

Mr. Speaker, Sir the Auditor-General's report which is highly being quoted here traversed the period between March and June. This is one quarter when our hands were tied and we could not play an effective role in the areas of procurement. So that was a major handicap. I would again repeat that great leaders focus on vision, policy and mission, but not on detail.

On the issue of the Embu Stadium, it suffices to say that not a single cent has been spent on that stadium to date. Investigations are being done by the Ethics and Anti Corruption Commission (EACC). The same applies to the maize seed whose germination rate was between 10 and 15 per cent, partly also contributed to by the rains which came very late. Investigations by the EACC are going on and the results are being awaited.

On the issue of unregistered contactors, the Auditor-General was wrong. People are no longer required to be registered by the Ministry of Works. The contractors who were contracted by the Interim County Secretaries are all registered by the National Construction Authority. So, there he got it wrong and I was surprised. So, that should be very clear.

On the issue of the Toyota Prado VX series, registration No. KBU 683T; we presented to the Special Committee of the Senate the details; that it is registered under the Embu County Government. So, there is no doubt about that.

With regard to the Public Finance Management Act, in the entire Act, and also in the Procurement and Disposal Act, there is no clause which talks about the Governor. It is only about accounting officers and procurement officers. This is one area the authors of our Constitution and these Acts were very clear, that all the Governors should keep off money and procurement and that was the right thing to do. Let me refer to the Article in the Constitution which is talking about oversight role in terms of procurement, to ensure fairness, equitability, transparency, competitiveness and all that. We were accused that we have been giving all the contracts to one person. We were able to produce a schedule of more than 40 contractors who have benefitted from procurement.

Sections 148 and 149 of the Public Finance Management Act, the Constitution of Kenya, Article 226(5) is very clear. This work is left in the hands of accounting officers so that the governors can do the oversight.

In conclusion so that I can allow my counsel to contribute, may I say that the impeachment process by the Embu County Assembly was a fraud. They never gave me any notice or any chance to be heard. When it came to the voting, there was no secret balloting. People were voting in full view of those who were supporting the Motion.

Having said that, may I add that the issue of Embu County executive and the Embu County Assembly, as some of the Senators have said, became very bad from 30th December, 2013. Why? That is the day when my county executive went to meet the

Salaries and Remuneration Commission (SRC) and Controller of Budget to get guidelines on why the County Assembly Members were paying themselves illegal funds and they are paying funds to Ward employees and Ward office managers which are not grounded on any framework of law.

The three letters - which followed that meeting - from the Controller of Budget, the SRC and from the chairman of the Transition Authority, were harsh on the County Assembly members who have employed their relatives who do not even work in the County Assembly. So, the report is correct in the conclusion that the issue must be looked at.

What I want to emphasize here is that there was malice in trying to fix the governor on this one for discovering financial improprieties. We have written to the Ethics and Anti-Corruption Commission. I am happy to hear that the Senate will also champion that line.

Mr. Speaker, Sir, I am here and I am taking the bullet. The Oracle has spoken but I will leave this place with my head high. I can assure you I will continue contributing to the economy of Kenya in various ways, even if I leave this work of a governor because I have been a spiritual person who works hard professionally.

The threshold for impeachment for all those three charges which have been confirmed by the Committee - the threshold for impeachment has not been reached. That should be the last level of punishing the governor.

I wish to thank all those who have supported and prayed for me. There are those who are very sad from Embu that 22 MCAs can initiate an impeachment of a governor who was elected by thousands and thousands of voters. I now wish to leave there and thank you very much. My counsel can now have the floor.

The Advocate for Hon. Martin Nyaga Wambora (Mr. Wilfred Nyamu): Mr. Speaker, Sir, my names are Wilfred Nyamu and I am counsel for the Governor, Martin Wambora. I am actually humbled and I think I will go into history as the first counsel to appear before the Senate.

Just as this goes into history as the first impeachment proceedings, I would urge this honourable House to consider that the same sword that is applied to my client, Mr. Wambora, today, will apply to future governors. So that if procurement improprieties are going to be grounds for the impeachment of my client today where he only participates on policy matters, then many governors will go and will this will apply, many years from now, even to governors for the future who may be in this House.

Mr. Speaker, Sir, hon. Members, I am actually grateful to the Special Committee that we went through along with my client for a period of four days where we had sleepless nights, sleeping for one hour and going back and forth. As it is, I am happy because they exonerated my client from a very serious charge of abuse of office and gross misconduct. The only charge that remains now to be dealt with, as charges have been read before the House, is a charge under Article 181(1)(a), that is; gross violation of the Constitution and any other law. My client has been exonerated from having breached the County Governments Act and that is very clear. Even where it has been said that he breached his responsibility under Section 30(3), basically that must go because it was found not have been substantiated owing to the fact that the violation of the County Governments Act is not part of what is before this House.

Hon. Members, as it is, it is very clear that the laws forming part of the charge are the Public Finance Management Act, the Public Procurement and Disposals Act and the Constitution of this country. My submission on that issue is that the basis upon which these two laws apply is Article 226 of the Constitution in respect to the Public Finance Management Act where provisions are made in terms of financial operations in a county government. I would urge hon. Members, before they vote, let them refer to that Act. They will find that there is nowhere that is indicated that the governor has responsibility. The governor, in respect to that part, has a responsibility as a member of the county executive committee and being chairman where only policy formulation is their role. Once it is determined that a certain project is to be approved and the budget is approved, implementation work goes to the accounting officers as defined under Section 148 of the Public Finance Management Act.

I would kindly ask Members to look at Sections 148 and 149 of the Public Finance Management Act ask themselves this question. Who is in charge of financial matters under Article 226 of the Constitution? Article 226 itself states:-

“(1) An act of parliament shall provide for-

(a) the keeping of financial records and auditing of accounts of all governments and other public entities and prescribe other measures for securing efficiency and transparent fiscal management.” - That is the genesis of the Public Finance Management Act.

“(b) the designation of an accounting officer in every public entity at the national and county level.”

Actually as it is, under that Constitution, in fact the County Assembly has the mandate to even summon those accounting officers. They appear before them and answer on any query regarding financial systems. Actually, paragraph 2 states very clearly that county public entities shall be accountable to the County Assembly for financial management. So, in these entities, the governor is not included

Hon. Members, paragraph 5 of Article 226 states that:

“if the holder of a public office including, a political office, directs or approves the use of public funds contrary to the law on instructions, the person is liable for any loss arising from that and shall make good the loss, whether the person remains the holder of the office or not.”

What this states is this - it goes on and says that “if a public officer directs or approves”. Basically the question before this House would be this: Did the Governor approve for the procurement of maize seed that was specifically not supposed to germinate? Absolutely not! As a matter of policy, the governor - in the CEC, he sat and approved a budget where maize was to be purchased and distributed to the citizens. He did that but did he say that “you go and procure maize seed that does not germinate.” Certainly not! So, the person who will be responsible is that accounting officer, the tender committee, whose appointment the Governor does not participate in; this is very clear under the law. So, where would he be faulted?

Matters touching on procurement are actually provided for under Article 227 of the Constitution and that is from where the Public Procurement law springs. Actually paragraph 2 states that an Act of Parliament shall prescribe the framework within which policies relating to procurement and asset disposal shall be implemented. So, on matters touching on implementation of policies, does the governor have a role? The governor has

a role at the point of policy formulation. That is a fact. That is what the governor has done. It was proved that the tender committee is in place and the accounting officers are also in place, this is not in dispute. So the governor has performed his role.

The question that now lingers in our mind is this; has the governor then violated the Constitution of Kenya? Certainly not! The provisions that are actually cited, being a chief executive officer does not mean that you become a driver or departmental head. Actually, it is going to be a very painful thing for governors, if this impeachment is going to pass, because it is going to be very easy for a political opponent of a governor to go and tell an accounting officer to mess up because if they mess up, it becomes ground for the governor to be impeached and that will be brought into this House. So, it would be very difficult to deal with such matters.

Finally, I wish to point out the following: Even as it has been stated that there were contracts that were awarded without following procedure and contracts in respect of contractors that are not listed, no list was provided by the auditor, a list of contractors that are registered under the relevant law. It was just something that was stated and it never occurred to that House that they were shown any list. The benchmark here would be that; look at the governor, knowing that you are a quasi-judicial body. You are actually acting in your quasi-judicial capacity and not in your legislative capacity. Even as you vote, I would urge you to vote with conscience and remember that under Section 149(2)(d)(f) is where matters touching on finance and responsibility are provided.

Mr. Speaker, Sir, lastly, I would like to mention, and it is just as a matter of courtesy, with due respect to this House, that this is a matter that was commenced when there were court proceedings. Therefore, we are here without prejudice to the matters that are before the court. Our position is that while acting as a quasi-judicial body, under Article 165, paragraph 6, you are a body whose Report will be subject to the High Court's determination.

That is all. Thank you very much.

(Loud consultations)

The Speaker (Hon. Ethuro): Order! Order, Senators! I had ruled that they will be heard in silence. So, let them also leave in silence.

Governor Martin Wambora and your Counsel, you may take leave.

*(Hon. Martin Nyaga Wambora and his
advocate walked out of the Chamber)*

Order, Senators! I, therefore, wish to put the Question. This is a matter affecting the counties. In a matter affecting the counties, it means that we will require the requisite number of 24. If you look at our Standing Orders and the County Governments Act, there is a provision for all the Senators. I want to clarify that the correct reading is the one of the Constitution, Article 123(2) which says:-

“When the Senate is to vote on any matter other than a Bill, the Speaker shall rule on whether the matter affects or does not affect counties.”

I have, therefore, ruled that it affects counties. If this one does not affect counties, which one does? So, we will take the Roll Call vote. I order the Bell to rung for eight minutes.

An hon. Senators: Five minutes!

The Speaker (Hon. Ethuro): The provision is eight minutes. Unless you know how to undo it, we will have to go by the eight minutes.

(The Division Bell was rung)

(Loud consultations)

The Speaker (Hon. Ethuro): Order! Order, Senators! Order! Order, Sen. Orengo! Order! The eight minutes are actually meant for other Senators who are outside to come in, not for others to go away.

Order! Order, Senators! Order, Sen. (Prof.) Anyang’Nyong’o! The names of the Tellers are as follows:-

Ayes – Sen. Joy Gwendo

Noes – Sen. Halima Mohamud.

Senators, as you do the vote, it is important for us to remember the importance of the exercise you are about to embark on. Again, this is a vote by county delegation and I just would like to remind the words---

(Sen. Orengo spoke off record)

Order, Sen. Orengo! What we are contesting is the issue of all Senators; this is by county delegation. Article 123(2) of the Constitution is the one operational here. Both the County Governments Act and our Standing Orders did not capture it correctly.

I would like to remind you of the importance of this; the Committee has substantiated the allegations. Your task is to do the impeachment or otherwise. I would like to get the quote that Sen. Orengo used by Luther Martin who said:-

“I see two honorable members of this Court, Messrs. Dayton and Baldwin, who were with me in Convention, who like myself, know perfectly why this power to try to impeach me was placed in the Senate. It was because, among all our speculated systems, it was thought this power could know where it would be less likely to be abused.

(Applause)

I think that very well describes our own circumstances in the 21st Century.

So, I therefore wish to put the Question as previously read, because it is a lengthy one.

(Question put and the Senators proceeded to vote by county delegations)

Proceed! Clerk, call out the names.

Sen. Wako: Mr. Speaker, Sir, I just want to get some guidance or some clarification and also to inform. There are three counts here; some of us may feel, on some counts, they have not really been substantiated; but on one, they have been substantiated. Now, the direction I want from you is that since we are voting on impeachment, I would like a directive that if you feel that one of the counts has been proven, then you impeach.

(Loud consultations)

So, what are we voting for? Are we going to vote count by count?

(Several hon. Senators stood up in their places)

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order! Order! Have you finished your point of order, Sen. Wako?

Sen. Wako: Actually, I just wanted some clarification from you on how we are proceeding because some of us may feel that on one count, the charge has not really been substantiated; but on another one, it has very well been substantiated. As Sen. Billow said, in America, the Governor of Oklahoma had 11 counts, but was impeached on only one. Now, what I would want to hear from you is a reconfirmation of that; that even if I feel that there is one, I should vote for impeachment. Otherwise, for me, maybe one or two are not clearly proven.

The Speaker (Hon. Ethuro): Order! Order, Sen. Wako! Why are you in a hurry? I have given you the opportunity to show your preference; you do not need to explain, you will explain when you are actually saying 'yes' or 'no.' I will give the procedures that you have requested for.

Sen. Wako: Okay.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, it is important that the Senate appreciates that some of the issues being raised by Sen. Wako - we agonized over them. It is our considered view that at this stage, all that we are doing is that we are deciding whether to impeach him or not. A Governor in this circumstance is impeachable if on any of the five charges, he is found that he had committed a wrong. So, to try and go any otherwise and start creating benefit of doubt, I think the former Attorney-General will be well advised to go slow and appreciate that impeachment is not because you have substantiated many or all the charges; it is a question of substantiating any of the charges, even just one.

Thank you, Mr. Speaker, Sir.

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

The Speaker (Hon. Ethuro): Yes, Sen. Murkomen?

Sen. Murkomen: Mr. Speaker, Sir, as much as I became an able deputy of Sen. (Dr.) Khalwale, I disagree with him. If you read Section 33(8), it says:-

“If a vote in the Senate fails to result in the removal of the governor---“
Sorry; it is Section 33(7):-

“If a majority of all the members of the Senate vote to uphold any impeachment charge, the governor shall cease to hold office.”

That means it is a charge by charge voting. The idea here, which I agree with the former Attorney-General; and Sen. (Dr.) Khalwale agreed towards the end of his point, is that when the Senator is voting, you have to say “Yes to all charges” or “Yes” to this and this and “No” to the other.”

The Speaker (Hon. Ethuro): Order! Order, Senators! I think the issue raised by Sen. Wako is a valid one in terms of the procedure, because earlier I had ruled that we will be voting on each charge. And then the issue that Sen. (Dr.) Khalwale was trying to offer unsolicited advice, which might be useful, is; do you impeach a Governor on account of one, two or three? So, I think those are very important issues that require clarification.

In terms of procedure, instead of going through the lengthy process of calling out each charge and calling out every county delegation, we will make it simple, but it will realize the same objectives. When the county is called, bear in mind that there are three charges – and everybody has an Order Paper – there is (a), which is procurement, just to summarize because you can read for yourself; there is (b), which is public finance management; and there is (c), which is the violation of the Constitution. I would imagine a county delegation voting like: “Yes to all the three;” or “No to all the three;” or you can decide, in the words of Sen. Wako, maybe one or two. So, in that instance, the county delegation would state that “Yes for A; No for B and Yes for C; or “No for C.” We can use A, B, C to make it simpler since we already have the Order Paper. Is that very clear?

Hon. Senators: It is very clear.

The Speaker (Hon. Ethuro): The second one is what will constitute an impeachment. I think that has already been answered by Sen. Murkomen. Section 33(7) stipulates that you if uphold any one of the three charges--- So, failure to do so means that all the three have been negated. Is that also very clear?

Hon. Senators: It is very clear.

The Speaker (Hon. Ethuro): Then let us proceed. And the tellers, for your convenience, have three lists; so, there is a list for A, there is a list for B and there is a list for C. So, a vote on all the three will be taken at once, but it will be as if you are voting per charge, except that we will spare you the opportunity to keep rising from your seat to declare your position; you can only do it once.

(Sen. Orenge spoke off record)

That is why I asked Sen. Wako why he was in a hurry!

(Laughter)

Sen. Wako: I was not in a---

The Speaker (Hon. Ethuro): Order! But we do appreciate Sen. Wako, having been Attorney-General Emeritus, he has reason to be concerned about law.

Proceed!

DIVISION

ROLL CALL VOTING

COMMENCEMENT OF VOTING

*(Senators proceeded to vote as their names
Were called out by the Clerk-at-the-Table)*

The Clerk-at-the-Table: Senator Billow Adan Kerow, Mandera County.

Sen. Billow: Mr. Speaker, Sir, on behalf of the County of Mandera I vote yes to “a”, yes to “b” and yes to “c”.

The Clerk-at-the-Table: Sen. Boy Juma Boy, Kwale County.

(Sen. Boy Juma Boy cleared his throat loudly)

The Speaker (Hon. Ethuro): Order, the Standing Orders are very clear on this one. They do not include what you have just done.

Sen. Boy Juma Boy: Mr. Chairman, I was not voting but clearing my throat. The vote is now coming. I vote yes for the three counts.

The Clerk-at-the-Table: Sen. Bule Ali Abdi, Tana River County.

Sen. Chiaba Abu Mohamed, Lamu County.

Sen. Chiaba: Thank you Mr. Speaker, Sir. On behalf of Lamu County, I vote yes for “a,” yes for “b” and yes for “c.”

The Clerk-at-the-Table: Sen. Haji Mohammed Yusuf, Garissa County.

Sen. Hargura Godana, Marsabit County.

Sen. Hargura: Mr. Speaker, Sir, I vote yes for “a,” yes for “b” and yes for “c.”

The Clerk-at-the-Table: Sen. Hassan Ali Abdirhman, Wajir County.

Sen. Abdirhman: Mr. Speaker, Sir, I vote yes for “a,” “b” and “c.”

The Clerk-at-the-Table: Sen. Hassan Omar Hassan, Mombasa County.

Sen. Kajwang Gerald Otieno, Homa Bay County.

Sen. Karaba Dickson Daniel, Kirinyaga County.

Sen. Karaba: I vote yes for “a,” “b” and “c.”

The Clerk-at-the-Table: Sen. Kariuki Godfrey Gitahi, Laikipia County.

Sen. G.G. Kariuki: I vote yes for all the charges.

(Applause)

The Clerk-at-the-Table: Sen. Kembi-Gitura James, Murang’a County.

Sen. Kembi-Gitura: Mr. Speaker, Sir, Murang’a County votes yes on “a,” “b” and “c.”

The Clerk-at-the-Table: Sen. Keter Charles Cheruiyot, Kericho County.

Sen. Keter: I vote yes for “a,” “b” and “c.”

The Clerk-at-the-Table: Sen. Bonni Khalwale, Kakamega County.

Sen. (Dr.) Khalwale: Mr. Speaker, I vote yes for “a,” yes for “b” and yes for “c” after consultations with the entire delegation of Kakamega.

The Clerk-at-the-Table: Sen. Khaniri George, Vihiga County.

Sen. Khaniri: Mr. Speaker, Sir, I vote yes for “a,” yes for “b,” and yes for “c.”

The Clerk-at-the-Table: Sen. Kimani Paul Wamatangi, Kiambu County.

Sen. Wamatangi: Mr. Speaker, Sir, I vote yes on all charges.

The Clerk-at-the-Table: Sen. Kindiki Kithure, Tharaka-Nithi County.

The Senate Majority Leader (Sen. (Prof) Kindiki): Mr. Speaker, Sir, with a very heavy heart, Tharaka-Nithi County votes yes for “a,” “b” and “c.”

The Clerk-at-the-Table: Sen. Kioko Mike Sonko Mbuvi, Nairobi County.

Sen. Mbuvi: Mr. Speaker, Sir, on behalf of the Nairobi delegation and the people of Nairobi County, I vote yes to “a”, “b”, and “c.” This should act as a warning to all corrupt governors countrywide.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order. I am worried. This is a national exercise. I wonder whether my brother, Sen. Sonko is in order to put this House into public ridicule. The whole nation is watching these proceedings. Is he in order? Should he not withdraw and apologise?

The Speaker (Hon. Ethuro): Sen. Sonko, you have been challenged and rightly so. You had demonstrated to us, a bit earlier how much you can achieve in prison. Standing Order No.74(5) says;

“When called out, each Senator shall, thereupon rise, in his or her place and declare assent or dissent to the question on the following manner – I vote “yes”, I vote “no” or “I abstain” or use appropriate Kenyan sign language.”

This is, of course, not applicable to you.

So, you only have three options; that you either vote “yes”, “no”, or “abstain.” So, withdraw and apologise.

Sen. Mbuvi: Mr. Speaker, Sir, I think I was clear. I voted “yes” to all the three allegations; “a”, “b” and “c.” However, I only gave a warning. That was my opinion.

The Speaker (Hon. Ethuro): Order!

Sen. Mbuvi: I withdraw and apologise.

The Clerk-at-the-Table: Sen. Kivuti Lenny Maxwell, Embu County.

Sen. Kivuti: The Embu County delegation, after consultations, abstains on all the three counts.

(Applause)

The Clerk-at-the-Table: Sen. Kiyonga John Munyes, Turkana County.

Sen. Munyes: I vote yes for “a,” “b” and “c.”

The Clerk-at-the-Table: Sen. Kuti Mohammed Abdi, Isiolo County.

Sen. (Dr.) Kuti: Isiolo County votes yes to “a”, “b” and “c.”

The Clerk-at-the-Table: Sen. Lesan Wilfred Rotich, Bomet County.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, Bomet County votes yes for “a”, “b” and “c.”

The Clerk-at-the-Table: Sen. Leshore Sammy Prisa, Samburu County.

Sen. Leshore: Samburu County delegation votes “yes” to “a”, “b” and “c.”

The Clerk-at-the-Table: Sen. Lonyangapuo John Krop, West Pokot County.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, West Pokot County delegation votes yes for “a,” “b” and for “c.”

The Clerk-at-the-Table: Sen. Machage Wilfred Gisuka, Migori County

Sen. (Dr.) Machage: Mr. Speaker, Sir, Migori County votes yes for “a,” “b” and “c.”

The Clerk-at-the-Table: Sen. Madzayo Steward, Kilifi County.

Sen. Madzayo: Mr. Speaker, Sir, Kilifi votes “yes” to all the counts.

The Clerk-at-the-Table: Sen. Melly Isaac Kipkemboi, Uasin Gishu County.

Sen. Melly: Mr. Speaker, Sir, Uasin Gishu County votes “yes” for “a,” “b,” and “c.”

The Clerk-at-the-Table: Sen. Moi Gideon Kipsielei, Baringo County.

Mr. Moi: Mr. Speaker, sir, after heavy consultations and a very heavy heart, Baringo County votes no for “a,” no for “b” and “no” for “c.”

The Clerk-at-the-Table: Sen. Mositet Peter Korinko, Kajiado County.

Sen. Mositet: Mr. Speaker, Sir, Kajiado County delegation votes “yes” for all charges.

The Clerk-at-the-Table: Sen. Mungai James Kiarie, Nakuru County.

Sen. Mungai: Mr. Speaker, Sir, Nakuru County delegation votes “yes” for “a,” yes for “b,” and yes for “c.”

The Clerk-at-the-Table: Sen. Muriuki Karue Muriuki, Nyandarua County.

Sen. (Eng.) Muriuki: Mr. Speaker, Sir, on behalf of the Nyandarua delegation of one, I vote “yes” for “a,” yes for b, and yes for c.

The Clerk-at-the-Table: Sen. Murkomen Onesmus Kipchumba, Elgeyo-Marakwet County.

Sen. Murkomen: Mr. Speaker, Sir, Elgeyo-Marakwet votes yes on a, yes on b and yes on c.

The Clerk-at-the-Table: Sen. Murungi Kiraitu, Meru County.

Sen. Musila David, Kitui County.

Sen. Musila: Mr. Speaker, Sir, on behalf of the Kitui delegation and with a very heavy heart, I vote “yes” to the three charges.

The Clerk-at-the-Table: Sen. Mutahi Kagwe, Nyeri County.

Sen. Kagwe: Nyeri votes yes for a, b and c.

The Clerk-at-the-Table: Sen. Muthama Johnson Nduya, Machakos County.

Sen. Muthama: Mr. Speaker, Sir, Machakos votes yes for “a,” yes for “b” and yes for “c.”

The Clerk-at-the-Table: Sen. Mutula Kilonzo Junior, Makueni County.

Sen. Mutula Kilonzo Junior With a very clear mind, Makueni votes yes for “a,” yes for “b” and yes for “c.”

(Applause)

The Clerk-at-the-Table: Sen. Mwakulegwa Danson Mwazo, Taita Taveta County.

Sen. Mwakulegwa: Taita Taveta votes yes for “a,” yes for “b,” and yes for “c.”

The Clerk-at-the-Table: Sen. Ndiema Henry Tiolo, Trans Nzoia County.

Sen. Ndiema: The Trans Nzoia delegation of three votes yes for “a,” yes for “b” and yes for “c.”

The Clerk-at-the-Table: Sen. Ntutu Stephen Kanyinke, Narok County.

Sen. (Prof.) Anyang’-Nyong’o, Kisumu County.

Sen. (Prof.) Anyang’-Nyong’o: Kisumu County votes yes for “a,” yes for “b” and yes for “c.”

The Clerk-at-the-Table: Sen. Obure Christopher Mogere, Kisii County.

Sen. Obure: Mr. Speaker, Sir, Kisii County delegation votes yes on all the three counts.

The Clerk-at-the-Table: Sen. Okong’o Kennedy Mongare, Nyamira County.

Sen. Okongo: Mr. Speaker, Sir, Nyamira County votes yes for all the charges.

The Clerk-at-the-Table: Sen. Orengo James, Siaya County.

Sen. Orengo: Siaya County votes yes on all the counts.

The Clerk-at-the-Table: Sen. Sang Stephen Kiopyego, Nandi County.

Sen. Sang: Mr. Speaker, Sir, on behalf of Nandi County, I vote yes for “a”, yes for “b” and yes for “c”.

The Clerk-at-the-Table: Sen. Amos Sitwila Wako, Busia County.

Sen. Wako: Mr. Speaker, sir, after due consultations, the delegation, although there were some doubts on (a) and (b), in view of the clear provisions of Section 149(2) and (f), Busia County votes yes to “a,” yes to “b” and yes to “c.”

(Laughter)

The Clerk-at-the-Table: Sen. Wetangula, Moses, Masika, Bungoma County.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, the entire Bungoma delegation votes “yes” on “a,” yes on “b” and yes on “c.”

**END OF VOTING AND ANNOUNCEMENT
OF RESULTS OF THE DIVISION ON THE
IMPEACHMENT ON THE FOLLOWING
GROUNDS:**

GROUND A – VIOLATION OF THE PUBLIC PROCUREMENT
AND DISPOSAL ACT, 2005 AND REGULATIONS, 2013.

GROUND B – VIOLATION OF THE PUBLIC FINANCE MANAGEMENT ACT

GROUND C – VIOLATION OF THE CONSTITUTION
OF KENYA

AYES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang’-Nyong’o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juna Boy, Kwale County; Sen. Chiaba, Lamu County; Sen. Hargura, Marsabit County; Sen. Kagwe, Nyeri County; Sen. Karaba, Kirinyaga County; Sen. G. G. Kariuki, Laikipia County; Sen. Kembi-Gitura, Murang’a County; Sen. Keter, Kericho County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Dr.) Kuti, Isiolo County; Sen. (Prof.) Lesan, Bomet County; Sen. Leshore, Samburu County; Sen. (Prof.) Lonyangapuo, West Pokot County; Sen. (Dr.) Machage, Migori County; Sen. Madzayo, Kilifi County; Sen. Mbuvi, Nairobi County; Sen. Melly, Uasin Gishu County; Sen. Mositet, Kajiado County; Sen. Mungai, Nakuru County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County;; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula

Kilonzo Junior, Makeni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

Teller of the Ayes: Sen. Gwendu

NOES: Sen. Moi, Baringo County.

Teller of the Noes: Sen. Mohamud.

ABSTENTION: Sen. Kivuti, Embu County.

The Speaker (Hon. Ethuro): Hon. Senators, we have the results of the Division on all the three grounds of impeachment. The results are as follows:-

AYES: 39

NOES: 1

ABSENTIONS: 1

(Question carried by 39 votes to 1)

The Speaker (Hon. Ethuro): Now, therefore, pursuant to Section 33 (6) (b) of the County Governments Act, 2012 and Standing Order No.65(4) (b), the Senate, after according the Governor of Embu an opportunity to be heard, has resolved to impeach the Governor of Embu County on the grounds specified.

ADJOURNMENT

The Speaker (Hon. Ethuro): Order hon. Senators; it is now time to adjourn the Senate after we have exhausted the business for the Special Sitting. The House stands adjourned until Tuesday, 25th February, 2014, at 2.30 p.m.

The Senate rose at 11.09 p.m.