

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Monday, 19<sup>th</sup> August, 2024

### Special Sitting

*(Convened via Kenya Gazette Notice  
No.124 of 16<sup>th</sup> August, 2024)*

*The House met at the Senate Chamber,  
Parliament Buildings, at 9.00 a.m.*

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

### PRAYER

DETERMINATION OF QUORUM  
AT COMMENCEMENT OF SITTING

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

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

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

*(The Quorum Bell was rung)*

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

*(The Quorum Bell was rung)*

Order, hon. Senators, we now have quorum. We are ready to proceed with the morning session.

Clerk, you may proceed to call the first Order.

**COMMUNICATION FROM THE CHAIR****BUSINESS TO BE CONSIDERED DURING  
THE SPECIAL SITTINGS**

**The Speaker** (Hon. Kingi): Hon. Senators, I have a communication to make relating to the business of the Senate, scheduled for consideration during this Special Sitting. On request of the Senate Majority Leader vide a letter referenced SEN/MLS/GKM/012/2024 dated 14th August, 2024 and the requisite number of Senators, I appointed today, Monday 19th August, 2024 and tomorrow, Tuesday, 20th August, 2024 as the days of Special Sittings of the Senate.

Hon. Senators, the Special Sittings convened *vide* Gazette Notice No.10123 dated 16<sup>th</sup> August, 2024 shall consider the following business-

(a) The Joint Report of the National Assembly Departmental Committee on Administration and Internal Security and the Senate Standing Committee on National Security, Defence and Foreign Relations on the approval hearing for Mr. Douglas Kanja Kirocho, the nominee for appointment to the position of Inspector-General of the National Police Service.

(b) Motion on the alteration of Part IV of the Third Session of the Senate Calendar.

(c) Hearing and determination on the charges for the proposed removal from office, by impeachment, of Hon. Kawira Mwangaza, the governor of Meru County.

In accordance with Standing Order No.33(5), the business specified in the *Gazette* Notice referred to above and as outlined in the Order Paper, shall be the only business before the Senate during the Special Sitting.

At the conclusion of business tomorrow, the Senate shall stand adjourned until Tuesday, 3<sup>rd</sup> September, 2024 at 2:30 p.m., in accordance with the Senate Calendar or as resolved otherwise.

With regard to the hearing and determination on the proposed removal from office, by impeachment, of Hon. Kawira Mwangaza, a programme has been prepared and appended to the Order Paper for today.

As it is the tradition, and in line with the schedule of activities for an impeachment hearing in Plenary, the Senate will hold a closed preparatory session to deliberate on the management of the investigation after conclusion of business listed at Orders Nos.2 and 3 in today's Order Paper. The objective of the preparatory session is to ensure that the process is conducted seamlessly and concluded timeously, and in line with the requirements set out under the County Governments Act and the Senate Standing Orders.

During the pre-hearing, the parties, all members of the public and the media will be expected to withdraw from the Chamber and the galleries and that any form of broadcast from the Chamber shall cease forthwith. In accordance with the hearing programme for an Impeachment Hearing in Plenary, the open session will commence at 11.00 a.m. I now direct the Clerk to call the next Order.

The Senate Majority Leader.

**NOTICE OF MOTION**ALTERATION OF THE SENATE CALENDAR  
FOR THE THIRD SESSION

**The Senate Majority Leader:** Mr. Speaker, Sir, I beg to give Notice of the following Motion-

THAT, notwithstanding the Resolution of the Senate made on 15<sup>th</sup> February, 2024 (approval of the Senate Calendar), pursuant to Standing Order No.32(4), the Senate resolves to extend the recess so as to resume Regular Sittings on Tuesday, 17<sup>th</sup> September, 2024, and that the Senate Calendar (Regular Sessions) for the Third Session, 2024, be altered accordingly.

**The Speaker** (Hon. Kingi): Next Order.  
The Senate Majority Leader, proceed.

**MOTION**ALTERATION OF THE SENATE CALENDAR  
FOR THE THIRD SESSION

**The Senate Majority Leader:** Thank you, Mr. Temporary Speaker, Sir. I beg to move the following Motion-

THAT, notwithstanding the Resolution of the Senate made on 15<sup>th</sup> February, 2024 (approval of the Senate Calendar), pursuant to Standing Order No. 32(4), the Senate resolves to extend the recess so as to resume Regular Sittings on Tuesday, 17<sup>th</sup> September, 2024, and that the Senate Calendar (Regular Sessions) for the Third Session, 2024, be altered accordingly.

Mr. Speaker, Sir, this has been occasioned by something we are all aware of, that our recess has been interrupted and yet, recess is a very important period. There is work that goes on beyond the work that we do, either in committees or in the plenary, here in the House. Most of the time, committees take the recess period to expedite on work that is long standing before them, like Petitions and Bills. Members also get time to interact with their constituents. The work of a Senator is not an easy job. It involves a lot of twists and turns.

Being the only elected position in the Republic of Kenya that does not have specific funds set aside to carry out any development, this job of a Senator can be quite a task, especially with the mind of the average Kenyan voter who associates the work of an elected leader with physical, tangible projects. Therefore, in the absence of a Senator being present and carrying out their oversight responsibilities, many of them would otherwise be thrown out at the next election or easily be rendered politically irrelevant.

In fact, besides the position of Members of the County Assembly (MCAs), I do not think there is any other position that has a higher turnover than that of a Senator. It is on account of that I specifically left out the position of a Women Representative because that is an affirmative action position. Therefore, that one presents its own unique challenges. However, a position that is open for contest for all citizens such as that of the Senate, by its architecture and design, I hope

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that eventually when we get the opportunity to review this Constitution, we will do justice to the office of a Senator.

We should make it useful as was the intention, because when the people of Kenya voted for this Constitution, they were very clear about what they wanted, only that the fine print failed them. The spirit of what they intended to achieve with that of a Senator, is not what is actually before them by the office of a Senator.

Therefore, I was just saying that to remind Members of the importance of a recess period, especially in light of present-day conversation across the country where there is a push to have more accountability from both the national and the county governments, the citizens are increasingly demanding the voice of the MCAs and the Senate, which is the oversight wing of our county governments, to ensure that services are rendered to citizens. Therefore, I hope that with this change of calendar dates, Members will find time to go and be with their constituents, check on the progress of the ongoing works, and so on.

Therefore, that is the basis upon which you have made this simple request. With those very many remarks, I want to request the Senate Minority Leader to second this Motion.

**The Senate Minority Leader** (Sen. Madzayo): Asante Bw. Spika. Naunga mkono Hoja hii kwa sababu ni Hoja muhimu inayoikumba Seneti. Mara nyingi baada ya kwenda likizo tunaitwa turudi kwa sababu ya mambo ya dharura yanayotendeka katika nchi na yanahitaji Seneti kupeana mwelekeo.

Mara nyingi tumejipata baada ya kwenda likizo tunarudi hapa kwa sababu ya Hoja ambazo zinahitaji kuchukuliwa hatua. Pia ningependa kusesitiza ya kwamba *position* ya Seneta iko na changamoto sana. Katika *positions* zote zilizoko, Maseneta hawapati nafasi ya kutumia mgao wa pesa kikamilifu. Sio rahisi kupata kuwa Seneta amewekewa kitengo cha pesa anazoweza kutumia kwa miradi ya maendeleo. Mara nyingi Maseneta wanatumia pesa zao wenyewe.

Ni jambo muhimu kuzingatia ya kwamba mambo yaliyo mbele yetu ni mambo ya kitaifa. Kwa sasa tuko hapa kwa sababu ya jambo hili la gavana kuwachishwa kazi. Ni jukumu letu kuchukua hatua ya kufanya uamuzi dhidi ya hii kesi ya gavana Kawira. Itakuwa vyema ikiwa tutaweza kugeuza kalenda ili tuwapatie nafasi Maseneta ambao wamekuja, wako hapa, waweze kurudi na kushughulikia wananchi mashinani.

Naunga Hoja hii mkono.

Asante.

*(Question proposed)*

**The Speaker** (Hon. Kingi): Now, hon. Senators, this is a Procedural Motion. However, you may like to debate it, or with your concurrence, allow me to proceed to put the question and invite you to vote.

**Hon. Senators:** Put the question.

**The Speaker** (Hon. Kingi): Very well. I will now proceed to put the question.

*(Question put and agreed to)*

Next Order.

**COMMUNICATION FROM THE CHAIR****PRE-HEARING MEETING ON PROPOSED REMOVAL FROM OFFICE,  
BY IMPEACHMENT, OF THE GOVERNOR OF MERU COUNTY**

**The Speaker** (Hon. Kingi) Now, hon. Senators, as communicated at the beginning, we are proceeding to the pre-hearing meeting, which is a closed session. Therefore, at this juncture, I will request members of the public and the media to withdraw from the chamber and that live broadcast ceases forthwith.

Serjeant-at-Arms, kindly confirm that this is complied with and once it is complied with, we will proceed with the closed session.

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

*(The House went into an in-camera session)*

*(End of in-camera session)*

*(The House adjourned temporarily at 10.18 a.m.)*

*(The House resumed at 11.02 a.m.)*

**The Speaker** (Hon. Kingi): Hon. Senators, please, take your seats. Welcome back to this Sitting. Before we proceed with the business that is before us, allow me to make the following Communication.

**HEARING AND DETERMINATION OF THE PROPOSED REMOVAL  
FROM OFFICE, BY IMPEACHMENT, OF HON. KAWIRA  
MWANGAZA, THE GOVERNOR OF MERU COUNTY****RECITAL OF THE MANDATE OF THE SENATE, RULES OF  
PROCEDURE AND HEARING PROGRAMME**

**The Speaker** (Hon. Kingi): Hon. Senators, ladies and gentlemen, having dispensed with Order Nos.3 and 4 in today's Order Paper and the pre-hearing meeting of Senators, which was a closed session, it is now time to commence the proceedings on the proposed removal from office, by impeachment, of Hon. Kawira Mwangaza, the Governor of Meru County.

By a letter, Ref. No. MCA/RES/VOL.IV/79, dated Friday, 9<sup>th</sup> August, 2024, the Speaker of Meru County Assembly informed the Speaker of the Senate that at a sitting of Meru County Assembly held on Thursday, 8<sup>th</sup> August, 2024, Meru County Assembly approved a Motion for the removal from office, by impeachment, of Hon. Kawira Mwangaza, the Governor of Meru County.

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

(i) Copy of approved Notice of Motion “the Motion” dated 31<sup>st</sup> July, 2024, laid on the Table of the Assembly on Wednesday, 31<sup>st</sup> July, 2024 (Afternoon Sitting);

(ii) Copy of exhibits - laid on the Table of the Assembly on Wednesday, 31<sup>st</sup> July, 2024 (Afternoon Sitting);

(iii) Order Papers for the Assembly sittings of Wednesday, 31<sup>st</sup> July, 2024, (Afternoon Sitting), Tuesday, 6<sup>th</sup> August, 2024 (Afternoon Sitting) and Thursday, 8<sup>th</sup> August, 2024 (Morning Sitting);

(iv) Certified Hansard Reports for the Assembly sittings of Wednesday, 31<sup>st</sup> July, 2024 (Afternoon Sitting), Tuesday, 6<sup>th</sup> August, 2024 (Afternoon Sitting) and Thursday, 8<sup>th</sup> August, 2024 (Morning Sitting);

(v) Copy of letter dated 31<sup>st</sup> July, 2024, Reference Number MCA/GC/IVOL.I/24, inviting the Governor of Meru County to respond to the tabled Impeachment Motion;

(vi) Affidavits of Service:

(a) Copy of Affidavit of Service by Mr. Benson Kinyua Ngure serving H.E. the Governor of Meru County with an invitation letter and copy of the laid Notice of Impeachment Motion on behalf of the Speaker of the County Assembly of Meru;

(b) Copy of Affidavit of Service by Mr. Joel Maitehia M'Rukunga serving H.E. the Governor of Meru County with a copy of the laid Notice of Impeachment Motion on behalf of Hon. Zipporah Kinya; and,

(c) Copy of Letter dated 6<sup>th</sup> August, 2024, Reference Number MCA/GC/I/VOL.V26 forwarding to H.E. the Governor a copy of the laid report on public participation on the Notice of Motion.

(vii) Certified copy of a form for verification of signatures for Members in support of a Motion for removal of the Meru County Governor, by impeachment, dated 8<sup>th</sup> August, 2024, made pursuant to the provisions of Standing Order No.65 (4);

(viii) Certified copy of the Roll Call Vote on the Motion for the impeachment of H.E. the Governor of Meru County held during the Assembly Sitting of Thursday, 8<sup>th</sup> August, 2024;

(ix) Documents tabled during the debate on the Motion for Removal of the Governor of Meru County by impeachment:

(a) Appointment Letter for one Matiri Kenneth Mutua dated 13<sup>th</sup> February, 2023, Reference Number CGM/CPSB/APPT/VOL.3/2023(22);

(b) Copy of letter dated 6<sup>th</sup> August, 2024, Reference Number CAM/GEN/VOL.VII/40;

(c) Copy of letter dated 31<sup>st</sup> July, 2024, Reference Number CGM/CS/CA.023/26 Vo1.3(390);

(d) Copy of letter dated 17<sup>th</sup> July, 2024, Reference Number CAM/GEN/VOL.VII/39;

(e) Copy of letter dated 15<sup>th</sup> July, 2024, Reference Number CGM/CS/CA/VOL.3/023/382;

(f) Copy of letter dated 31<sup>st</sup> August, 2023, Reference Number CAM/GEN/VOL.VI/187;

(g) Copy of letter dated 31<sup>st</sup> August, 2023, Reference Number CAM/GEN/VOL.VI/187;

(h) Copy of letter dated 31<sup>st</sup> August, 2023, Reference Number CAM/GEN/VOL.VI/188;

(i) Copy of letter dated 20<sup>th</sup> July, 2023, Reference Number CAM/GEN/VOL.VI/168; and,

(j) Copy of letter dated 18<sup>th</sup> June, 2023, Reference Number CGM/CS/CA/VOL.I/023/17.

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*(Sen. Joe Nyutu consulted Sen. Miraj)*

Sen. Joe Nyutu, take your seat. You may greet your colleagues later after the session.

(ix) Evidence of Public Participation-

(a) Jhua technology flash disk 32GB containing video annexures evidencing the particulars alleged in the Motion, as well as voice adverts on the public participation on the Motion run on various radio and TV stations;

(b) Pictures and videos of the various public participation fora held on Monday, 5<sup>th</sup> August, 2024, contained in the accompanying flash disk;

(c) Copy of Public Participation Report dated 6<sup>th</sup> August, 2024 and laid on the Table on Tuesday, 6<sup>th</sup> August, 2024 during the afternoon Session; and,

(d) Written/printed memoranda from different wards and regions submitted to the County Assembly during the public participation exercise on the Motion submitted both in support and against the Motion. The memoranda inclusive of submissions received via email. Minutes, attendance registration sheets and registration forms for memoranda of the public participation held on Tuesday 13<sup>th</sup> December, 2022.

(xi) Soft copy of the Third Edition Standing Orders of the County Assembly of Meru contained in an accompanying flash disk.

Pursuant to Section 33(3)(b) of the County Governments Act and Standing Order 80(1)(a) of the Senate Standing Orders, at the sitting of the Senate held on Wednesday, 14<sup>th</sup> August, 2024, the charges against the Governor of Meru County as contained in the Motion of impeachment by the County Assembly of Meru were read to the assembled Senate.

Hon. Senators, ladies and gentlemen, allow me to remind you of the mandate of the Senate in relation to the proposed removal from office, by impeachment, of a Governor as provided for under Article 181 of the Constitution as read together with Section 33 of the County Governments Act, 2012 and Standing Order No.80 of the Senate Standing Orders. In particular, Article 181 of the Constitution states as follows-

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

(a) gross violation of the Constitution or any other law;

(b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;

(c) abuse of office or gross misconduct; or

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

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

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

Specifically, Section 33(3) and Standing Order No.80(1)(b) of the Senate provide that the Senate may, by resolution, appoint a special committee comprising 11 of its Members to investigate the matter, or investigate the matter in plenary.

Hon. Senators will recall that at the sitting of the Senate held on Wednesday, 14<sup>th</sup> August, 2024, the Motion for the establishment of a special committee was defeated. This, therefore,

paved the way for the investigation on the proposed removal from office by impeachment, of Hon. Kawira Mwangaza, the Governor of Meru County, to be heard in Plenary.

Hon. Senators, ladies and gentlemen, by way of a status update, pursuant to Rules 4(a) and 6 of the Rules of Procedure when considering the proposed removal of a governor in plenary, the Senate invited the Governor to appear and be represented before the Senate during the investigation.

The Senate further invited the Governor, if she so chooses, to appear before the Senate to file an answer to the charges with the Office of the Clerk of the Senate by 5.00 p.m. on Saturday, 17<sup>th</sup> August, 2024, setting out-

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

Pursuant to Rules 4(b) and 7 of the Rules of Procedure, when considering the proposed removal of a governor in plenary, the Senate notified the County Assembly of the date for the commencement of the investigation and invited the County Assembly to designate Members of the County Assembly, who shall appear and be represented before the Senate during the investigation.

The County Assembly was further invited, if it so chooses, to appear before the Senate to file with the office of the Clerk of the Senate by 5.00 p.m. on Saturday, 17<sup>th</sup> August, 2024, setting out documentation as follows-

- (i) Designating the Members of the County Assembly, if any, who shall attend and represent the Assembly in the proceedings before the Senate;
- (ii) Indicating the mode of appearance before the Senate; whether in person, by advocate, or in person and by advocate;
- (iii) Indicating the names and addresses of the persons to be called as witnesses, if any, and witness statements containing a summary of the evidence to be presented by such witnesses before the Senate; and,
- (iv) Specifying any other evidence to be relied on.

Hon. Senators, ladies and gentlemen, on Saturday, 17<sup>th</sup> August, 2024, the Office of the Clerk of the Senate received a response, Ref. No. HKM-CAM/IM-24/CGA/2024-034, to the Invitation to Appear issued to the Governor, dated 17<sup>th</sup> August 2024, from M/s Mutuma Gichuru & Associates Advocates, who indicated that the Governor had appointed the firm to represent her in the proceedings before the Senate and that the Governor would also appear in person and by advocates. The letter also indicated the list of counsel representing the Governor and the list of witnesses for the Governor.

Similarly, on 17<sup>th</sup> August, 2024, the office of the Clerk of the Senate received a response, Reference No.1/CAM-001/ab/24, dated 17<sup>th</sup> August, 2024, to the invitation to appear issued to the County Assembly from M/s A&B Advocates LLP, indicating that the firm had been appointed to represent the County Assembly. The letter also indicated the advocates representing the County Assembly and the witnesses for the County Assembly.



Pursuant to Rule 8 of the Rules of Procedure when considering the proposed removal from office of a governor in plenary, on Saturday, 17<sup>th</sup> August, 2024, the Clerk of the Senate furnished each party with the documentation filed by the other party in accordance with Rules 6 and 7 of the Rules of Procedure.

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

In summary, the programme states that today, Monday, 19<sup>th</sup> August, 2024, after we have dispensed with preliminary matters, the charges against the Governor, as submitted by the County Assembly, shall be read. The Governor will be given an opportunity to take a plea on the charges. This will be followed by an opening statement by the County Assembly and, thereafter, by the Governor.

After the conclusion of the opening statements, the presentation of the case of the County Assembly shall commence. After presentation of the case by the County Assembly, hon. Senators will be given an opportunity to ask questions or seek clarifications from the County Assembly. This should take us up to the end of today's sitting.

At the sitting scheduled for tomorrow, Tuesday, 20<sup>th</sup> August, 2024, the Governor will have an opportunity to present her case before the Senate. Hon. Senators will also be given an opportunity to ask questions or seek clarifications from the Governor, following which the closing statements by the parties will be made for a period not exceeding one hour each.

The Senate shall then proceed to a debate prior to voting on each of the Charges. At this stage, a supplementary Order Paper will be issued to facilitate this debate.

In accordance with Section 33 (7) of the County Governments Act, 2012 and Standing Order No.80(6) of the Senate Standing Orders, the voting shall be by county delegations.

The Governor shall cease to hold office if a majority of all county delegations of the Senate vote to uphold any impeachment charge. If, however, the vote in the Senate fails to result in the removal of the Governor, pursuant to Standing Order No.80(7), the Speaker of the Senate shall notify the Speaker of the Meru County Assembly accordingly.

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

You may proceed.

INTRODUCTION BY THE MERU  
COUNTY ASSEMBLY TEAM

**Mr. Ndegwa Njiru:** Thank you, Hon. Speaker. My name is Ndegwa Njiru. I will be appearing for the Meru County Assembly together with-

- (1) Mr. Mwangi Ndegwa - Advocate
- (2) Mr. Mwirigi Eric Muriuki - Advocate
- (3) Mr. Mwereru Boniface Mawira - Advocate
- (4) Mr. Mwenda Antony - Advocate

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- (5) Mr. Ngure Benson Kinyua - Advocate
- (6) Mr. Baptista Muriki Kanyaru- Advocate
- (7) Ms. Linda Nkirote Kithinji- Advocate

The County Assembly shall call the following witnesses-

- (1) Hon. Zipporah Kinya – MCA
- (2) Hon. Aurelia Murangiri Kiramana – MCA
- (3) Hyrene Kawira Kamenchu - MCA.

Mr. Speaker, Sir, those are the witnesses. I am most humbled.

**The Speaker** (Hon. Kingi): Thank you. Order, hon. Senators.

Sen. Faki, take your seat, please.

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

You may proceed, Counsel.

INTRODUCTION BY THE MERU COUNTY  
GOVERNOR’S TEAM

**Mr. Elisha Ongoya:** Thank you so much, Mr. Speaker, Sir. The Governor’s team is as follows-

The Governor, Her Excellency, Hon. Kawira Mwangaza, is present.

My name is Elisha Ongoya, the Counsel leading the team of the Governor. I am assisted by-

- (1) Mr. Elias Mutuma - Advocate
- (2) Ms. Bridah Kimathi - Advocate
- (3) Robert Mutembei - Advocate
- (4) Mr. Edgar Busiega - Advocate
- (5) Mr. Collins Mwenda - Advocate
- (6) Mr. Brian Lee Maingi - Legal Assistant
- (7) Ms. Michelle Makandi - Legal Assistant
- (8) Ms. Sylvia Njoki - Legal Assistant
- (9) Mr. Victor Koome - Legal Assistant
- (10) Ms. Noble Wandera - Legal Assistant

We shall also be joined by witnesses in this matter. They include-

- (1) H.E. Hon. Kawira Mwangaza
- (2) Mr. Ibrahim Mutwiri Kirimi
- (3) Mr. Dickson Munene Nkanata
- (4) Hon. Evans Mawira Kaaria – MCA
- (5) Hon. Fridah Naito Gitobu – MCA
- (6) Hon. Jacob Mwirigi Muthuri - MCA

That is the Governor’s team. Thank you so much.

**The Speaker** (Hon. Kingi): Thank you. Hon. Senators, ladies and gentlemen, on behalf of the Senate, I welcome the County Assembly’s team, the Governor’s team, members of the public and the media to the Senate and to these proceedings.

Finally, I will now invite the Clerk to read the Charges against Hon. Kawira Mwangaza, the Governor of Meru County.

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Clerk, you may proceed.

READING OF THE CHARGES AGAINST  
THE GOVERNOR OF MERU COUNTY

**The Clerk of the Senate** (Mr. Nyegenye): Hon. Kawira Mwangaza, Governor of Meru County, please, take the stand.

*(Hon. Kawira Mwangaza took the stand)*

Hon. Kawira Mwangaza, the Governor of Meru County, the charges against you as received from the County Assembly of Meru are as follows-

**1. Gross violation of the Constitution and other Laws**

The Governor has grossly violated, among others-

- (i) Articles 10(2), 27, 41, 47, 73, 232, 235, 236, and 251 of the Constitution;
  - (ii) Sections 10, 15, 19 and 24 of the Public Officer Ethics Act, 2003;
  - (iii) Sections 3, 7, 8, 9, 10, 11, 13 (1)(b), (f), 21, 29 and 52 of the Leadership and Integrity Act, 2012;
  - (iv) Sections 2, 30(3), 45, 55, 58, 59, 59A, 63, 64, 65 and 69 of the County Governments Act, 2012;
  - (v) Section 4 of the Public Appointments (County Assemblies Approval) Act;
  - (vi) Section 4 of the Fair Administrative Action Act;
  - (vii) Section 6 of the Meru County Investment and Development Corporation Act;
  - (viii) Section 9 (7) (b) of the Meru County Revenue Board Act;
  - (ix) Section 10 (6) of the Meru County Investment and Development Corporation Act; and,
  - (x) Section 19 of the Meru County Water and Sanitation Services Act, by engagement, connivance and/or complicity in the following-
    - (1) Illegally revoking the appointment of CPA Virginia Kawira Miriti as Secretary/CEO of the Meru County Public Service Board, without a vote of not less than 75 per cent of all the Members of the County Assembly (MCAs) and in usurpation of the powers of the County Assembly, contrary to Sections 58 (4) and (5) and 59A of the County Governments Act.
    - (2) Failing to appoint the Chairpersons of the Meru County Revenue Board, Meru Microfinance Corporation, Meru Youth Service Board and Meru County Investment and Development Corporation Board as required by law, thus failing to operationalize the said Boards, and/or illegally appointing the said Chairpersons without vetting and approval by the County Assembly contrary to Section 4 of the Public Appointments (County Assemblies Approval) Act.
- The respective secretariats of the said boards continue to draw and expend public funds without duly appointed board members to exercise a supervisory role over the boards' secretariats in order to ensure accountability in the spending of funds, thus jeopardizing service delivery.
- (iii) Refusing to implement the recommendations and/or resolutions of the County Assembly requiring the Governor to-

(a) To dismiss the County Secretary, Dr. Kiambi Atheru Thambura, and the Chief of Staff, Mr. Harrison Gatobu Nchamba Mbithi from office for gross violation of the Constitution and other laws; and,

(b) Blatantly ignoring or failing to submit a report to the County Assembly on the implementation of the said recommendations within 60 days as required in the Report of the County Assembly dated 23<sup>rd</sup> December, 2023, contrary to Article 183(3) of the Constitution.

(iv) Illegally dismissing Dr. Ntoiti, Chief Executive Officer (CEO) of County Revenue Board, Mr. Paul Mwaki, CEO of Liquor Board, Mr. Kenneth Kimathi Mbae, Managing Director of Meru Microfinance Corporation and Mr. Joseph Kithure Mberia, CEO of MEWASS; in the usurpation of the powers of the appointing authorities, contrary to Section 9(7)(b) of the Meru County Revenue Board Act and Section 10(6) of the Meru County Investment and Development Corporation Act. As a result of which, the County Government of Meru has been slapped with costs and damages amounting to Kshs4 million by the Employment and Labour Relations Court.

### **(2) Gross Misconduct**

The Governor has engaged in gross misconduct by-

Deliberately and knowingly misleading the public by giving false information that Kshs86,000,000 had been raised through the Paybill Number 247247, Account Number 0400163917899, established after the murder of Daniel Muthiani alias Sniper, while the correct position is that only Kshs286,516. was raised, thus violating the moral and ethical requirements expected of State Officers, contrary to Section 19 of the Public Officer Ethics Act and Section 29 of the Leadership and Integrity Act.

### **(3) Abuse of Office**

The Governor has engaged in acts and omissions, which singularly and collectively amount to abuse of office and gross violation of (among others) Articles 10, 73, 201, 226(5) and 232 of the Constitution, Sections 8, 12, 13(2) and 35 of the Leadership and Integrity Act, 2012 and Sections 45(2) and 46 of the Anti-Corruption and Economic Crimes Act by the following-

(i) The irregular payment of emergency call allowances to 161 doctors and medical officers using the wrong rates leading to excessive payment of Kshs74,340,000, contrary to Sections 45(2) and 46 of the Anti-Corruption and Economic Crimes Act and Sections 11 and 15 of the Public Officer Ethics Act and Section 12(1) of the Leadership and Integrity Act;

(ii) Use of manual payroll to pay personnel emoluments amounting to Kshs102.94 million, which is 3.1 per cent of personnel emoluments costs, contrary to Section 6.7.6 of the County Financial Accounting and Reporting Manual;

(iii) Employing a bloated workforce of at least 111 personal staff in the office of the Governor, thus contributing to an increase in the wage bill by more than Kshs500 million, and an excessive wage bill that is 49 per cent of the annual revenue allocation, far beyond the 35 per cent limit set by Section 25 (1)(a) and (b) of the Public Finance Management (County Governments) Regulations, 2015; and,

(iv) Paying Kiambi Christus Manyara, a Public Communication Officer in the office of the Governor his full salary and benefits while in remand and despite being accused of murder, contrary to Section 4.2 of the Public Service Commission Discipline Manual for the Public Service.

Hon. Kawira Mwangaza, how do you plead to the three charges; guilty or not guilty?

**The Governor of Meru County (Hon. Mwangaza):** Not guilty.

**The Speaker** (Hon. Kingi): Hon. Senators, pursuant to Rule 17 of the Rules of Procedure as contained in the Third Schedule to the Senate Standing Orders, each party will have not more than 30 minutes to make their opening statements.

We will start with the County Assembly. The Floor is yours.

**Mr. Ndegwa Njiru:** Mr. Speaker, Sir, I seek your guidance and leave before we make our address on Rule 10 of the Standing Orders and Article 50 of the Constitution, in respect to a preliminary issue that has arisen and Rule 14 as well. Any preliminary questions or issues raised by the County Assembly or the Governor shall be argued for not more than 30 minutes, unless the Speaker otherwise directs.

Mr. Speaker, Sir, I seek your guidance in respect to a communication that was done to this House by the County Assembly via a letter dated 17<sup>th</sup> August, 2024 and another one dated 18<sup>th</sup> August, 2024. In the letter dated 17<sup>th</sup> August, 2024, we sought the indulgence of this House to exercise its powers to summon a witness who was not within our ability; one CPA Virginia Kawira Miriti, who is currently the CEO of Meru County Public Service Board (CPSB).

In our letter, we laid out the basis upon which our application is premised and also sought that she comes with any relevant information that relates to the proceedings before this House this morning. Currently, Virginia works at the County Government of Meru and she is the CEO who should speak to the various issues raised in our Motion.

Mr. Speaker, Sir, this means that she is an integral infrastructure in respect to laying the case and the basis of our Motion for impeachment, to the extent that if her availability is not secured, we will end up prejudicing the case for the County Assembly.

I also seek your guidance because we were served with the documents and responses from the Governor's response team, and as correctly put and captured by your address this morning, we noted that there were some serious issues that had been raised. Some of them bordered between criminality or forgery of documents.

Mr. Speaker, Sir, in that respect, we noticed from the Governor's response, a letter from Ms. Linda Gakii Kiome, the Legal Advisor to the Governor as at 23<sup>rd</sup> February, 2024. We equally noted a purported letter from Jacob Kirari, the Clerk of the County Assembly. This letter is purportedly received by the Speaker of the County Assembly of Meru.

Mr. Speaker, Sir, those two letters have been addressed and annexed as KM5, appearing on pages 11 to 12 of the Governor's response at Vol.1B. Additionally, the County Assembly of Meru seeks to summon one Linda to come and speak to the authenticity of that letter. When she saw the response, she filed an affidavit, which is yet to be placed on record before this honourable Senate, with the office of the Clerk of the Assembly, dated 18<sup>th</sup> August 2024.

The risk of us not summoning these two individuals, and especially Mr. Jacob to come and tell us whether the County Assembly ever received those letters from the County Governor, will be that we shall proceed based on evidence that has criminal liability and aspects. We will proceed to answer and hear a case and a defence that is tainted with illegality. That means that Article 50 of the Constitution on the right to a fair hearing, which must and shall not be derogated, shall be infringed. It is alleged by the response in paragraphs 54 and 56 of the Governor's response---

**The Speaker** (Hon. Kingi): Counsel for the County Assembly, are you still on the request?

**Mr. Njiru Ndegwa:** Yes, Mr. Speaker, Sir.

**The Speaker** (Hon. Kingi): Are you still on the preliminary issue?

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**Mr. Njiru Ndegwa:** I seek your guidance. I pen off that. We seek the summoning of Virginia Kawira.

**The Speaker** (Hon. Kingi): So, let us dispense with that first. Then you may proceed to make your opening statement.

**Mr. Njiru Ndegwa:** In the alternative, if these are not going to be summoned, we seek to expunge from the record the affidavit of one Nkanata Dickson Munene, and most importantly the offending paragraph three, and the Governor's response that has cited those particular letters that claim to be an illegality and a forgery. However, I would appreciate it if they were summoned.

I am most humbled.

**The Speaker** (Hon. Kingi): Counsel for the Governor, what say you in response to that request?

**Mr. Elisha Ongoya:** Mr. Speaker, Sir, there appears to be multiple requests wrapped up as one. So, I will respond to it as follows. There is a formal request before this House for the summons to Virginia Kawira as a witness. We have no objection to that.

There is a statement made by the counsel that he has to produce relevant documents. Now, one of the things that these rules of procedure frown upon is trial by ambush. Therefore, we concede to summons to Virginia Kawira to attend this Senate and make such comments as are necessary on the documents already filed and shared between the parties.

On the request in respect of the summons for Linda Koome, we have not been served with any such request. We are hearing it for the first time here. We also do not know the justification for that because there is no document, letter or request served upon us.

On the request to expunge the affidavit or part of the affidavit of Dickson Munene Nkanata, and certain paragraphs from the response, our reply is simple. Evidence, the credibility or otherwise of evidence, is tested in cross-examination. We shall present each of these witnesses here. The Assembly side will have an opportunity to test whatever theories and hypotheses they have about the candour of their testimony by an instrument of cross-examination.

We humbly submit.

**The Speaker** (Hon. Kingi): Thank you, Counsel for the Governor. Now, Counsel for the County Assembly has made two requests. One, to the effect that summons are issued to three additional witnesses to come and support the case of the County Assembly. Two, certain paragraphs of two affidavits be expunged.

This is the ruling of the Senate. The request to issue summons to three witnesses to come and support the case of the County Assembly is hereby granted. The request to expunge certain paragraphs of two affidavits is deemed premature at this juncture, and therefore it is denied.

Counsel for the County Assembly, you may now proceed to take not more than 30 minutes to make your opening statements.

OPENING STATEMENT ON BEHALF OF THE  
COUNTY ASSEMBLY

**Mr. Njiru Ndegwa:** I am humbled by the directions and the ruling of the Senate.

Mr. Speaker, Sir, I shall take the first 15 minutes and equally share the same with my learned friend.

Mr. Speaker, Sir, you are being called this morning for the third time---

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**The Speaker** (Hon. Kingi): Counsel for the County Assembly, if I heard the Counsel for the Governor correctly, the letter indicating that you had intended to summon Linda Gakii Kiome and Mr. Jacob Kirari was not made available to the Governor's Team. Let it be made available immediately.

You may proceed. Your time starts running from now.

**Mr. Njiru Ndegwa:** Mr. Speaker, Sir, you are being called for the third time to interrogate the character and the ability of Governor Kawira to govern the County Government of Meru. It is unusual that an individual can be called and be brought before this Assembly without a reason. There is a fundamental reason that underlies her ability to govern.

You are being called for the third time to interrogate the ability of Governor Kawira to manage the resources of the County of Meru. You are being called upon, for the third time, to interrogate the ability of Governor Kawira to ensure that there is effective service delivery to the people and residents of Meru County.

Accountability is a measure of leadership. Accountability is the ability of an individual to be held to account for her actions. It is not a call for interrogating the weakness of an individual, but the ability of that individual to execute her constitutional mandates. For the third time, there cannot be malice. This cannot be a personal vendetta. There is no relationship that is unconstitutional between the Governor and the County Assembly that can make the County Assembly aggrieved on behalf of the people of Meru County for the third time. Accountability is the gateway to earning trust.

We are here because there is a serious trust deficit with the ability of Governor Kawira to govern the County of Meru. We shall bring evidence before you of reckless statements that fly over the face of chapter six of the Constitution in respect of the ability of an elected leader at the status of a Governor to be able to earn confidence in the office that she holds. We will show you how families are broken down courtesy of reckless statements that are unaccountable, made and attributed to the Governor.

Mr. Speaker Sir, we shall bring before you evidence of how money and resources that Kenyans are on a day-to-day basis working hard to generate are being misused at the heart and the behest of the Governor's inability to govern the resources, to manage the County Government of Meru and to be in charge of the county.

That is the case that we have before you. When she is called to answer to the same, she always has an escape route. She has manufactured a serious safety valve that makes sure that she is never held to account for her actions. She blames others. She keeps on saying, that it was not her. As we speak, she is in charge of the county that has embezzled Kshs212 million courtesy of maintaining a manual payroll; hard-earned money due to the inability to manage the county.

We have a Governor who is serving in the Meru County Government and is unable to manage her Human Resource (HR). When proper procedures are called out by the employees, they are victimized because she wants to maintain a system that is not accountable. This House has risen to the occasion. Whenever I appear before this House, I leave with confidence that whether we win or lose the case, this House has done its work.

This is the House that will go down in the history of this Republic as one that has been out to hold individuals accountable, irrespective of gender or political association. This House has remained true to its calling. It has remained very impartial to the processes. That is why we are bringing a case against Governor Kawira for the third time because we have confidence that this House will look through the facts of the case and dispense with substantive justice.

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The first step towards success is taking responsibility for your actions. The measures of one's character is attributed to the ability to manage the responsibilities that have been bestowed and granted unto you. What is your role if you cannot be held accountable and always blame others? When others are making that mistake and embezzling funds, where are you? What actions have you taken? We will bring cases where the County Assembly has attempted to hold the Governor accountable. Reports have been made before the County Assembly, summons issued and recommendations made, yet the Governor declines with contempt, ridicule and spite on the part of the County Assembly. That is the case that we have.

Hon. Senators, holding people accountable is a show of love. When you hold somebody accountable, you are simply saying, that you are capable of doing bigger things. This is not out of malice or any personal vendetta. It is to show the love that the County Assembly has for the people of Meru. We will present before you evidence that public participation was effectively carried out and 85 per cent of the participants gave a verdict that supports the County Assembly's case.

We will give you evidence that 49 Members of the County Assembly (MCAs) voted in support of the Motion. These are not the Governor's relatives neither do they have any fraternal association with her. They are people who are simply executing their mandate as bestowed on them by the Constitution. That is the simplicity of the case that we have. We will bring you evidence of a witness who is currently displaced from her matrimonial home, courtesy of the irresponsibility of the Governor and her inability to manage how she relates to the members of the public.

We will bring you the sniper's wife case, which is before the County Assembly. Not to prosecute the murder case, but to prosecute chapter six of the Constitution in respect to the Governor's inability to manage the county. Hon. Senators, as I pen off and invite my learned friend, we invite objectivity in the case. You shall be brought evidence by Governor Kawira. Former individuals who moved this Motion before for her impeachment have now been staged as witnesses.

What happened? What donned to this MCAs who just the other day, a few months ago, were moving for the impeachment of the Governor? Now they have become darlings of the Governor. Is that a conduct that is consistent with innocence, integrity, accountability and transparency? We will bring you that evidence. We will show you why this is a serious turn of events. Hon. Senators, kindly, allow me to invite Mr. Mawira for further submissions. I am most humbled.

**Mr. Boniface Mwereru Mawira:** Mr. Speaker, Sir, my name is Mwereru Boniface Mawira. I will proceed from where my learned Senior, Mr. Ndegwa, was left. As I was preparing to make this statement, I found myself pondering about this third impeachment process that is before you. The question that came to my mind is if Meru County Assembly is before you for the third time merely for the joy of it. Is it merely for the joy of it?

Hon. Senators, clearly and logically, there is a problem. The Meru County Assembly has diagnosed that problem. The Assembly is beseeching you to find a remedy and a cure to this problem. Meru County is ailing and this House has the proper medication for this problem. We are going to demonstrate through various testimonies and exhibits that we have already filed, that there is a serious breakdown of governance in Meru County.

How is the Meru County Assembly expected to function if its oversight function has been crippled by the County Executive? How is the Meru County Assembly expected to exercise its

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oversight role if its summons, statements, resolutions and even recommendations are ignored and disregarded by the County Executive under the watchful eye, cover and protection of the Governor? The County Assembly summons witnesses to appear before it but members of the Executive do not heed such summons. What redress is the County Assembly left with other than coming before you?

This House is a protector of devolution and we beseech you to protect devolution that is on its deathbed in Meru County. Hon. Senators, we shall demonstrate countless discreditable acts, all of which amount to gross violation of the Constitution and other laws, abuse of office and gross misconduct. I am not belittling what my learned Senior said, that money has been lost. However, there is a lot of misinformation out there that for you to succeed in an impeachment process or for an impeachment charge to be upheld, you need to show that money has been lost or there was misappropriation.

I will refer to Article 181 of the Constitution and its replica in Section 33 of the County Governments Act. The Constitution talks about gross violation of the Constitution, gross misconduct or abuse of office. That provision is to be read holistically and together with Article 75(1) of the Constitution, which talks about the conduct of state officers. I will read it-

“A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids--

- (a) any conflict between personal interests and public or official duties;
- (b) compromising any public or official interest in favour of a personal interest; or
- (c) demeaning the office the officer holds.”

That is a provision. It is not just a matter of misappropriation or loss of money. Your conduct as a state officer, whether in public and official life or private life, would equally meet the threshold for impeachment. I will not state names, but we have seen in this very Republic, gross misconduct by state officers elsewhere. They have been held to account notwithstanding that there was no loss of money.

Mr. Speaker, Sir, we will show you specific acts by the Governor in her own name. Therefore, the defense of; “it was not me” does not avail itself. Of course, attempts have been made by the Governor to deflect these specific acts on her part, including, forgery of documents. Those documents have been filed and are before you, hon. Senators.

Those documents which the County Assembly has are outright forgeries. They are meant to hoodwink and deflect the attention of this House from the real issues. For example, that forgery relates to a specific act by the Governor in revoking the appointment of the Chief Executive Officer (CEO) of the Meru County Public Service Board. Letters have been forged to cover up and hoodwink this honourable House to divert attention from that specific act in her own name by her own signature and under her own hand.

Mr. Speaker, Sir, we are going to demonstrate that the Governor has persisted in a path of impunity through the County Secretary and the Chief of Staff. This has been raised in previous impeachment proceedings and the Governor said it was not her. Luckily, the law envisages such a situation as the one before you where, a state officer or a public officer says; “it was not me, it was so-and-so”.

Section 24 of the Public Officer Ethics Act and Section 35 of the Leadership and Integrity Act are about the conduct of a state officer acting through others. Those provisions are expressed that public officer is still liable for the acts that are done through others. So, even if

that act was done by someone else, the law envisages that acting through others is not a defense to certain acts by the state officer.

What recourse does the County Assembly have if it made recommendations pursuant to previous impeachment proceedings that the Governor takes action against these specific officers? The Governor disregarded and ignored those recommendations of the Assembly. So, should the County Assembly sit pretty as this cabal of officers continues to take Meru County down the drain? These officers must be stopped in their tracks.

Mr. Speaker, Sir, the events leading to this day, the fact that this Motion is before you, are what I would call an act of grace by God Himself. That, the County Assembly has an opportunity to be heard before this House today. There have been many threats, intimidation and attempted arson to the County Assembly on the eve of the debate of the impeachment Motion yet this is the County Assembly that is expected to oversight the Governor.

Clearly, all attempts have been made to hamstring the County Assembly and this House, in the exercise of its oversight mandate. At some point, we were told that the County Assembly and even this House does not have jurisdiction, that, we should appear before Njuri Ncheke for hearing of the charges.

The Governor will, of course, tell you that the County Assembly is abusing its oversight role. That, the County Assembly has been held captive by some external forces. However, my question is: How is that an answer to any of the charges? For instance, how is that an answer to the allegation that the Governor illegally revoked the appointment of the CEO of the Meru County Public Service Board by her own hand, signature and name? How is this purported capture by external forces a response to these specific allegations against the Governor?

Many other attempts will be made to divert attention from the real issues. Videos will be played by some common man or ordinary people in Meru abusing even this honourable House, the Speaker and the Senators saying that this is a House of greed and bribery. How is that an answer to the specific charges?

All these videos are not by Members of the County Assembly (MCAs) or elected leaders, they are just by wannabes or whatever you may call them. Probably, even political activists. There is a real attempt to shift your attention from the issues that are in the Motion, so that you consider other extraneous material that is not in any way associated with the County Assembly and of course, pass a verdict that is not just to the County Assembly. Although leadership is vested in a state officer, it is a public trust. Pursuant to Article 73, it should be exercised in a manner that promotes public confidence and integrity of that office, bring honor and dignity to that office and should equally demonstrate respect for the people.

We are going to play video evidence before you of some utterances by the Governor that are not only insensitive, but actually, fall short of the constitutional requirement that, a Governor, in his or her conduct, should demonstrate respect for the people.

Mr. Speaker, Sir, all these allegations fall within chapter six of the Constitution of Kenya, specifically, Article 75 which provides that; any person who is involved in conduct that falls short of the constitutional requirements, may be dismissed or otherwise removed from office. So, this is not an invention of the County Assembly, it is the Constitution.

The Constitution says that such conduct is not only to be rebuked or condemned, but it is conduct that amounts to grounds for removal from office. Of course, the underlying tone of the Governor's response, that is, a posture that she will take when she takes the stand is that; she is a victim of misogyny, male chauvinism, toxic masculinity and all these other gender attacks

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against her. Even in her own response, she says that she is a woman governor and we appreciate that. It is the people of Meru who elected her, including, the men in Meru County. Some of them are even here while others are MCAs. Is gender a shield? Should your gender be a cover that you cannot be held accountable because you are male or female?

As I pen off, there is the issue of the thresholds for impeachment. The Supreme Court has on occasion, in a single case stated with precision, the threshold requirement for impeachment proceedings. It has stated that the threshold is not the threshold required to prove criminal culpability in criminal cases, it is not the threshold of beyond reasonable doubt, it is the threshold of above a balance of probability, but below reasonable doubt.

Therefore, that intermediate standard of proof through the various exhibits and testimonies that we will play and present before you is a result that would not only be met at the County Assembly. We equally discharge the barren on its path in line with that interpretation by the Supreme Court.

Another question is on what amounts to grossness. The Constitution talks about gross violation of the Constitution and gross misconduct. Therefore, the Supreme Court, while quoting the decision in Martin Nyaga Wambora from the Court of Appeal, clarified that the allegations must be serious, substantial and weighty and there must be annexures. Specific acts done by the Governor and others through officers who are working under her watchful eye, cover and protection, are all attributable to her. She disregarded resolutions of the Assembly to take action against them. Therefore, it must be that they were doing those illegal acts under instructions.

Mr. Speaker, Sir, we will demonstrate through our various pieces of evidence that the County Assembly has no recourse, but to turn to this House for redress and to redeem the devolution that has clearly died in Meru. The Governor is at war with doctors, Members of the County Assembly (MCAs), the church and even contractors.

The Governor has even shifted contracts that are supposed to be done by the people of Meru or other Kenyans to the national Government while the devolution is about taking resources to the county. How is this Governor supposed to deliver for the people of Meru?

Mr. Speaker, Sir, that is all. Thank you for listening to me. My learned senior, Mr. Ndegwa can take the remaining minutes.

**Mr. Ndegwa Njiru:** Yes. Thank you, Mr. Speaker, Sir.

In summary, joining issues with the submissions made by my learned friend, especially on the issue of the attempted arson, it is not a coincidence that attempts to burn down the County Assembly of Meru was at the night of 8<sup>th</sup> August, 2024, when the County Assembly was seized with the impeachment Motion. It is not a coincidence that individuals have been charged before the court of law as a result of that attempt.

Hon. Senators, the proposals being made out there, some of which are constitutional, including the dissolution of the County Government of Meru is not a solution to the problem that we have. Why? This is because we have identified the problem. The problem is one individual, Governor Kawira. It is a problem of mismanagement and accountability, which rests with Governor Kawira. Service delivery has been compromised. We will play to you videos of babies being born outside a health centre in a *karai*.

*(Technical hitch)*

The facility is closed at 11.00 o'clock in the morning when you expect it to be fully functional. No service is being delivered and expectant mother delivers outside. The people of Meru County expected that with the inception of devolution and with the health sector being apportioned to the County Government of Meru, they will have proper stewardship, proper managers and people who care about the health status of the people of Meru County.

As we speak, no explanation has been ever given by the Governor on why an expectant mother had to deliver outside a facility in a *karai ya maji*. That is a pathetic situation in Meru County. No apology has ever been given by the Governor. No actions has ever been taken to ensure that such action does not occur. No disciplinary actions taken in respect to that particular facility.

That is the case for the County Assembly. We urge you, hon. Senators, to listen to us, give us time to substantiate the simple charges that we shall place before you. It is a case of mismanagement, unaccountability, bad governance, a Governor gone rogue, victimization of the officers serving under the office of the Governor, a case of making sure that systems clog to the benefit of few individuals. That is the simplicity of our case.

We will present you with concrete evidence to prove that simple case; the case that meets the threshold as enshrined in Article 181 and as read together with Section 33 of the County Governments Act. It is a case about the status of the Governor of the Meru County Government. As I pen off, some of the proposals being made can be resolved with actions being taken before this Senate.

Most obliged.

**The Speaker** (Hon. Kingi): I will now invite the Counsel for the Governor to proceed to make an opening statement. Your time starts running from now. Not more than 30 minutes.

#### OPENING STATEMENT ON BEHALF OF THE MERU COUNTY GOVERNOR

**Mr. Elias Mutuma:** Thank you, Mr. Speaker, Sir. I will do five minutes. My learned senior, Mr. Ongoya, will do the remaining bit. Before I cede ground to my learned friend, I thought that I should remind you of remarks made by the team representing the County Assembly in November, 2023 when we were here for the last impeachment. Counsel representing the County Assembly predicted or rather prophesied that we will be back here.

Counsel then was very quick to put a disclaimer that though he is not a prophet, neither does he come from a family of prophets, he was sure that we would be here. For sure, we are here today. So, the question is, if counsel was not a prophet neither does he come from a family of prophets, how could he predict with precision that indeed we will be here and the prediction comes to pass?

Hon. Senators, I came across a quotation by Abraham Lincoln and Peter Drucker who said, the surest way to predict the future is to create it. So, they went and created this moment. That is why they were able to predict that we would be here. They created another impeachment while they were still standing, prosecuting their previous impeachment Motion. How did they do this? We will have evidence to show that one day after the Senate discharged the Governor of all the charges, they were gathered in Nairobi, retreats were held to create a new impeachment Motion based on lies. So, the people before you today, the County Assembly of Meru, are pathological liars.

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They went and created lies. Not just the ordinary lie, but pathological lies. A pathological lie is a lie that is not only untrue, but a lie that is created and believed by the very person who has created that lie. What they did is to create a lie---

**The Speaker** (Hon. Kingi): Sen. Mungatana, you will have an opportunity to make intervention on this opening statement when the time arises.

*(Sen. Mungatana spoke off record)*

What is your issue on the use of language? Are you saying there is a language that is unparliamentary?

**Sen. Mungatana, MGH:** Mr. Speaker, Sir, I am not making any intervention but just to point out that as a Senate, we must obey the rules. "Lies" should not be a language that is allowed here.

**The Speaker** (Hon. Kingi): Sen. Mungatana, if it is their case that the County Assembly is lying, then they can say so. This case is before two parties; the Governor and the County Assembly. The Governor is saying that we are being fed with untruths. You may want to romanticize that word, but say as it is because it is what it is. If in their own case, whatever has been presented to the Senate is not true, they are warranted to state as they are calling it now; a lie.

Proceed, counsel.

**Mr. Elias Mutuma:** Thank you, Mr. Speaker, Sir. I hope my time was frozen when the intervention came.

Indeed, Mr. Speaker, Sir, our case is that simple. That what you are being fed with are lies that were created while we were still on the Floor of this House defending the previous Motion. So, my choice of the word "lie" was very deliberate.

The argument is that the County Assembly has created and told the lie and repeated it so many times that it started sounding like the truth. They actually went ahead and believed that lie and want everyone else in this room and the entire country to believe in it. When we look at them in the eye and tell them it is a lie, they get bitter and mad. They accuse Senators of being bribed and the Governor because they want us to believe a lie that they have created and believe in.

Hon. Senators, Shakespeare states that; a rose by any other name shall still smell as sweet. No matter how much mud they smear on the Governor, she will remain clean and blameless. All they are hoping is that they will bring the Governor so many times here and that they will keep on repeating one thing so that we all believe that, indeed, there might be some truth in it. It does not make it the truth just because they keep on repeating that same lie.

Hon. Senators, you are sitting here as judges. Analyze and scrutinize the evidence. Ask questions to the witnesses that we will produce here. If it does not add up, send them back. Tell them it is a lie and the fact that you are repeating that lie will not make it the truth.

I yield to my learned friend to proceed.

**Mr. Elisha Ongoya:** Thank you, Mr. Speaker, Sir, and distinguished Senators. For the record, once again, my name is Ongoya.

Mr. Speaker, Sir, in view of the early interventions, may I know how many minutes I still have for ease of time management?

**The Speaker** (Hon. Kingi): Just proceed. It shall be indicated to you as you proceed.

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

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Mr. Speaker, Sir, on 8<sup>th</sup> November, 2023, I had the privilege of appearing before the Senate and addressing this House on a Motion for removal from office of Governor Kawira Mwangaza. That was the third attempt that had been made to remove Her Excellency, Hon. Kawira Mwangaza, from office by impeachment. It was, however, the second time that attempt was reaching this House. As I stand here today, this is the fifth attempt to remove Hon. Governor Kawira Mwangaza from office, although it is the third time for those attempts to reach this House.

Mr. Speaker, Sir, and distinguished Senators, it means that between the time we came here and today, two attempts have been made to remove this Governor from office, between 8<sup>th</sup> November, 2023, and today. That determination on the part of the County Assembly either smirks of extreme commitment to salvage Meru County from some funny evil or extreme malice. I submit respectfully that I doubt that there can be any middle ground.

In my oration before this House on 8<sup>th</sup> November year, I said, and I quote-

“It matters not whether she shall be brought here 100 times. You cannot victimise her because those who torment her are tireless in their torments against her.”

I retrieved these words from the HANSARD of this House.

Let me take a step back and ask: why did I include these words in my oration? I said those words because while we were before this debating that Motion, the Mover of the present Motion sounded a warning to this House. We did not have an opportunity then to adduce that evidence because we had already finished our filings.

We have an opportunity now to adduce this evidence. She said, and I quote-

“I want to urge our Senate, if they reinstate Kawira Mwangaza, they should know we have six more times to impeach her.”

When we were here debating the last Motion, they did not need any new grounds. They were sounding a warning to this House that if you release her, they shall come back here six times. If you reinstate her, they will impeach her until the sixth time, so that they tell the people of Meru County that they did their best. That is to mean that they tried to impeach but the Senate reinstated her.

At an appropriate time, not now, we shall play for you Clip VKM1, where you will hear those words verbatim. It means we are here today as a matter of statistical count on the part of Hon. Zipporah Kinya. She has five more times to go.

The question is, hon. Senators and with due respect, what can you do as a House tasked to protect devolution to stop this plainly nefarious use of the impeachment power? Let me pose the critical question on the mind of everybody, including mine. What is ailing Meru County?

Mr. Speaker, Sir, and distinguished Senators, I make an argument that this question will attract both negative and positive answers. The negative answer is useful for the determination of the matters before you, while the positive answer is useful for a long-term engagement with Meru County. The negative answer is this-

The problem with Meru County is not Her Excellency Hon. Kawira Mwangaza. With humility, let me repeat in clear, unambiguous and unequivocal terms. Nothing in the acts or omissions on the part of Hon. Kawira Mwangaza warrants her removal from office by way of impeachment, at least as far as that principle is established by law.

Let me try to deal with the positive answer. To help us supply a positive answer to this question, we have lined up Hon. Evans Mawira Kaaria, a witness for the Governor in these proceedings. Hon. Evans Mawira is significant to these proceedings in four significant ways-

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(i) He is a two-time elected Member of County Assembly (MCA) in Meru County Assembly, carrying with him a measure of institutional memory.

(ii) He is the immediate former Leader of Majority in the County Assembly of Meru, therefore exposed to the workings of that Assembly to a fairly high level.

(iii) He was the Mover of the Impeachment Motion against the Governor that engaged us here in November, 2023. Therefore, he is best placed to explain to us the undertones and intricacies in those proceedings.

(iv) He will give us a detailed account on how these Impeachment Motions are conceptualized and what is the thinking behind them.

Mr. Speaker, Sir, distinguished Senators, at this juncture I can do no better than to take refuge in the voice of one of Africa's perhaps best literary experts, Chinua Achebe, whose voice continues to address us as follows-

“If the alligator were to come from the water and tell us Mr. Crocodile is sick, who are we to doubt him?” Mr. Evans Mawira Kaaria will play that role today.

Mr. Speaker, Sir, allow me to derive some lessons from the teachings of an American jurist by the name Robert Jackson. He is a jurist worth listening to or reading from for three reasons-

First, he served as the Federal Attorney General of the United States of America. Secondly, he served as the prosecutor at Nuremberg; and thirdly, he served as an associate justice of the Supreme Court of America. No other jurist in America's or world history has met this combination of influential portfolios in his lifetime this far.

On 1<sup>st</sup> April, 1940, at 10.00 a.m., Mr. Robert Jackson delivered a speech to the Second Annual Conference of the United States Attorneys, and he was reflecting on the power of prosecutors. I would juxtapose that with the power of impeachers. He observed-

“The prosecutor has more control over life, liberty and reputation than any other person in America. His discretion is tremendous. While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst. If the prosecutor is obliged to choose his cases, it follows that he can choose his defendants and therein lies the most dangerous power of the prosecutor, that he will pick people that he thinks he should, rather than cases that need to be prosecuted.

In such a case, it is not a question of discovering the commission of a crime and then looking for the man who has committed it. It is a question of picking the man, then searching the law books, and putting investigators to work to pin some offense on him.

It is in this realm in which the prosecutor picks some person whom he dislikes or desires to embarrass, or selects some group of unpopular persons, and then looks for an offense, that the greatest danger of abuse of prosecuting power lies. It is here that law enforcement becomes personal, and the real crime becomes being unpopular with the predominant or governing group.”

Distinguished Senators, I want to make it unequivocal here. The County Assembly of Meru has not discovered wrongs against Governor Kawira Mwangaza. It has discovered Hon. Kawira Mwangaza first, and has put anything and everything at play to say “what allegation we can we make against her to possibly embarrass her.”

Allow me to make some general comments on the Impeachment Motion before you, conscious of the language of this House, but again mindful to speak the truth in its most manifest form.

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I repeat, distinguished Senators, Vol.1 of the document in front of you from the County Assembly, which essentially is the Impeachment Motion, is simply and squarely a manifesto of lies. This language is actually strong, and I begin by conceding that, and it requires justification. Let me therefore proceed to justify by making a promissory note.

I promise you that at the tail end of this hearing, you will have discovered the following- First, when you will retire to consider count one, paragraph four of the Impeachment Motion before you, it will read-

“Illegally dismissing Dr. Ntoiti, CEO, County Revenue Board; Mr. Paul Mwaki, CEO of Liquor Board; Mr. Kenneth Kimathi Mbae, Managing Director of Meru Finance Corporation; and, Mr. Joseph Kithure Mberia, CEO MWAS, in the usurpation of the powers of the appointing authorities.”

When you look at the Motion you dispensed with last November, count No. four, you will see paragraph 16(b) it will be the same about sending persons on indefinite compulsory leave. You are re-debating the same matter you debated and voted on here in all its substantive content.

Secondly, when you look at Count three, paragraph three of the Motion before you, you will find a charge of allegation of employing a bloated workforce of at least 111 personal staff in the Governor's Office.

Good people, Count four, paragraph G of the last Impeachment Motion read-

“Employing a bloated workforce, more than 100 personal staff in the office of the Governor.

In Kiswahili, they say, “Ukistaajabu ya Musa utayaona ya Firauni.” You will be surprised that the documentary evidence, the piece of paper that was used to support count four, paragraph G of the last Impeachment Motion, is the same piece of paper with the same names in the same order that has been attached to the Motion before you. That thing that you voted and said has not been proved. I think the County Assembly is trying to embarrass this Senate so that if you vote to the contrary, there will now be in the blogosphere saying how inconsistent you are in your decision making.

Evidence will show that any attempt by the County Public Service Board (CPSB) of Meru to add any staff in the Governor's Office since November, the Governor has responded by declining those staff and saying-

“You employ staff and send them here, and then you will take me to Senate.”

You will see those letters of the Governor rejecting any staff. There is no additional staff with the Governor's approval in her office since we left here. The words used by the Governor in her rejection letter are that “you are sending here this staff to create grounds for my impeachment.”

Allow me to then give you a promissory note on what my colleague, Mr. Mutuma, addressed here. You will come across the following claims at the end of this impeachment exercise that are factually false-

(a) Ground one, paragraph 3a; you will be told the Governor failed to implement the recommendations of the County Assembly requiring the governor to dismiss the County Secretary, Dr. Kiambi Atheru, and the Chief of Staff, Mr. Harrison Gitobu Nchamba.

(b) That the Governor ignored or failed to submit a report to the County Assembly on the implementation of the recommendations within 60 days.



Distinguished Senators, you will go through all the six volumes that the County Assembly has brought before you and will not see any HANSARD or any resolution of the County Assembly to any of these two facts.

Secondly, you will not see any letter by the Clerk or other official of Meru County Assembly transmitting a resolution of this nature from the Meru County Assembly.

Distinguished Senators, how else can you describe this than a lie? Can there be another word in the dictionary of Englishmen and women that can describe this if not a lie?

Ground No.1, paragraph four, illegally dismissing Dr. Ntoiti. By the way Senators, before I forget, Dr. Ntoiti is an employee of the County Government of Nairobi as we speak today and not Meru. He has been so since 2007. This is something that is going to emerge from these proceedings. Dr. Ntoiti, Paul Mwaki, Kenneth Kimathi, and Joseph Kithure Mberia, have never been dismissed from service. You will see from evidence, these were people on fixed term contracts, some of whom their contracts came to an end. Others among them discovered they had maneuvered and gotten their way to two Governments and they ran away by themselves. One of them is Dr. Ntoiti from the County Government of Nairobi. We will show you the correspondence from the County Government of Nairobi revealing this fact. Therefore, how else can you describe this? You will see that the Governor has not dismissed any of them as a matter of fact.

Ground No.2, paragraph six, you will be told or you are told that the Governor deliberately and knowingly misled the public that “Kshs86 million” had been raised through Pay Bill No.247247, Account No.0400163917899. There will be no documentary, video or witness evidence showing that the Governor has ever mentioned this pay bill number or account number anywhere. It is a fact, we will prove by evidence. The leaders who have waged war against the Governor have collected money across multiple pay bill numbers such as the M-pesa platforms and cash accounts that have not been presented to this Senate.

It is our submission, if the County Assembly has decided to make the money collected in relation to the unfortunate death of ‘Sniper’ an issue in this Senate, they must make a full and candid disclosure of how much money was collected across all these platforms.

Ground No.3, paragraph eight, irregular payment of emergency call allowances to 161 medical doctors, using the wrong rates –

As a matter of fact, the Governor is neither a salary processing nor a salary paying officer in the County Government of Meru. Nonetheless, two and more importantly, substantively, the emergency call allowance complained of here is expressly contained in the Collective Bargaining Agreement (CBA) negotiated between the national Government, the Ministry of Health, and the Kenya Medical Practitioners Pharmacists Dentists Union (KMPDU).

The instructions were cascaded down from the Principal Secretary to the Council of Governors (CoG) and to all counties. No cent has been paid outside the figure set out in that CBA.

Let me use the brief time I have here because the public is also listening to us, to make it clear to the doctors in Meru, that the County Government of Meru complied, hard-fought and negotiated the CBA. We all know in the public domain, some officials of KMPDU went to jail for some days in the course of these 2017 negotiations. However, the implementation is landing the Governor in problems.

Ground No.3, paragraph nine, use of a manual payroll to pay personnel emoluments -

(1) This is something we find very paradoxical. As at 25<sup>th</sup> June, 2024, the County Assembly of Meru had raised this question with the County Executive on whether there is a manual payroll. The County Executive had answered satisfactorily that there was no longer use of a manual payroll in the County Government of Meru.

(2) The same audit report that the County Assembly will give you showing that there may have been use of manual payroll previously, will show use of manual payroll in the county itself as well in the same financial year.

We are not here to equal terms. We are making a simple case that the procedure of processing the Integrated Payroll Personnel Database (IPPD) numbers takes time. Therefore, the employees who are in the meantime accommodated on the manual payrolls are there for the limited purpose when we are waiting for the Directorate of Personnel Management (DPM) in the Ministry of Public Service and Human Capital Development to generate IPPD numbers.

Mr. Speaker, Sir, these are nursery school teachers whom we cannot keep for eight months as they wait for their IPPD numbers before they begin earning. There is no allegation of loss of any coin in these circumstances.

I have addressed the issue of the alleged bloated workforce in the Governor's office, but they have said there are 111 personal staff in the Governor's office. As a matter of fact, we do not have 111 personal staff in the Governor's office. It is simply not true.

On the allegation that one Kiambi Chrispus Manyara was paid-

(1) The Governor is not the head of the County Public Service involved in interdiction or suspension of staff.

(2) The Governor does not process or pay any staff of the county government.

The allegation therefore that this Governor has paid Kiambi Chrispus Manyara is false.

Mr. Speaker, Sir, and the distinguished Senators, I have spent my two minutes to address certain overall---

Mr. Speaker, Sir, may I just have one minute to summarize up something?  
I did not know my time was up. I thought it was two minutes.

We have said before and we reiterate that the County Assembly of Meru brings here the Governor because it lacks respect for this oversight institution. If the team upstairs has access to video number VKM18---

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

**Mr. Elisha Ongoya**: My apologies.

**The Speaker** (Hon. Kingi): I will give you one more minute.

**Mr. Elisha Ongoya**: Thank you so much. So, may I just ask the team upstairs to run for me video VKM18 at minute 1.18 to 1.17 strictly in the interest of time?

*(A video clip was played)*

Thank you so much. That is the General Secretary of the Devolution Empowerment Party (DEP), a party with 20 members in the Meru County Assembly that has partly sponsored the Motion before you. I rest the Governor's opening arguments.

**The Speaker** (Hon. Kingi): Hon. Senators, kindly be upstanding.

**ADJOURNMENT**

**The Speaker** (Hon. Kingi): Hon. Senators, it is now 12.49 p.m., time to adjourn the Senate. The Senate, therefore, stands adjourned until today, Monday, 19<sup>th</sup> August, 2024 at 2.30 p.m.

Thank you.

The Senate rose at 12.49 p.m.