

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 17th October, 2024

Special Sitting

*(Convened via Kenya Gazette Notice
No.13178 of 9th October, 2024)*

*The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.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)

Hon. Senators, please take your seats. We do have quorum. We will straightaway go to this afternoon's business.

Clerk, you may now call the first Order.

HEARING AND DETERMINATION ON THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HIS EXCELLENCY RIGATHI GACHAGUA, EGH, DEPUTY PRESIDENT OF THE REPUBLIC OF KENYA

The Speaker (Hon. Kingi): We will give ample time to parties, so that they can adequately present their cases. As of yesterday, the Deputy President had been allocated three hours. One hour was taken away for other businesses of yesterday and today. That is pursuant to a request by the counsel for the Deputy President.

The Deputy President will have two hours to present his case. Thereafter, the National Assembly will have one and a half hours, because they have also consumed a half an hour of the two hours that had been granted to them yesterday. You had borrowed 10 minutes, but ended up consuming 20 more minutes.

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(Mr. Eric Gumbo stood up in his place)

Counsel, this is not a matter to debate.

Mr. Eric Gumbo: Mr. Speaker, Sir, I just wanted to clarify that we had borrowed 10 minutes.

The Speaker (Hon. Kingi): Yes, you borrowed 10 minutes, but ended up consuming 20 more.

Mr. Eric Gumbo: We did not get that indication.

The Speaker (Hon. Kingi): Now you are getting the indication.

Mr. Eric Gumbo: We had budgeted our time knowing that we had one hour and 50 minutes.

The Speaker (Hon. Kingi): Just consume one and a half hours, so that we see where that takes you. We will thereafter engage after you have consumed one and a half hours.

Mr. Eric Gumbo: We are most obliged, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Thank you. Senior Counsel, Hon. Paul Muite, if you are ready, you may usher in your witness.

Hon. Paul Muite, SC: Mr. Speaker, Sir, just to get clarification, I was under the impression that the National Assembly will proceed and close their case then the counsel for the Deputy President will present the Deputy President, who is the only one that we are calling as a witness.

Thereafter, the National Assembly will make their closing remarks and we will have an opportunity at that time to also make our closing remarks. So, I would like to have clarification.

The Speaker (Hon. Kingi): Senior Counsel, maybe I should read the programme all the way to the end.

Hon. Paul Muite, SC: Thank you.

The Speaker (Hon. Kingi): For the record, I will ask the National Assembly to officially rest their matter to allow you to usher in your witness. Once your witness takes the stand, you will have two hours to present your case. The National Assembly will have one and a half hours for purposes of cross-examination. Thereafter, Senators will have one hour to seek clarifications or ask questions.

Once that is done, the Counsel for the National Assembly will have one hour to make closing remarks. Likewise, the team of the Deputy President will be given one hour to make his closing remarks. Once that is done, the Senate will have a closed session as per our Rules of Procedure.

That is the programme for this afternoon.

Hon. Paul Muite, SC: I am now clear, *Mheshimiwa* Speaker. I thank you. The situation is now clear.

Just before my colleagues on the other side close their case, can I, through *Mheshimiwa* Speaker, ask whether the National Assembly still wishes to call a witness whose affidavit was filed? I am talking about the Governor of the County Government of

Nairobi City, Hon. Johnson Sakaja. We have a copy of his affidavit. Is he going to be called or not?

If the National Assembly is not calling that witness, whose affidavit is part of the record that was availed to us and contains allegations that are extremely injurious to the Deputy President then we will be making an application for that affidavit to be expunged from the records of this honourable Senate. I thank you.

The Speaker (Hon. Kingi): Counsel for the National Assembly, you had listed quite a number of witnesses. For the record, are you going to call all of them, or are you going to close your case where we are?

Mr. Eric Gumbo: Mr. Speaker, Sir, on behalf of the National Assembly, we shall close our case where we are. With your permission, I could respond to the submissions by my learned senior, Hon. Paul Muite, SC.

The Speaker (Hon. Kingi): Please do.

Mr. Eric Gumbo: Mr. Speaker, Sir, at the beginning of these proceedings, this House invited parties to give indications as to the witnesses they wanted to call. We gave the list of the witnesses whom we thought were relevant for purposes of clarifying what we needed to have clarified. If Counsel for His Excellency the Deputy President did not do as much or did not take advantage of that window that was open, surely they cannot blame us for it.

Secondly, and more importantly, yesterday, in the course of deliberations in relation to one of the preliminary questions that had been raised, you gave a very clear ruling on the intendment of Rule 20 of the rules of this House. In particular, the understanding was that every material that was forwarded by the Speaker of the National Assembly to this House constituted evidence in support of the allegations that are the subject of inquiry by this House. It then follows that if the application that learned Senior Counsel, Hon. Paul Muite, is making is to be looked at in its totality, he is actually making an application to amend or to remove certain aspects of the evidence from the record.

Mr. Speaker, Sir, that is an issue that you settled and rested yesterday. I do not think it is an issue that is open for reintervention. It should also suffice to note that even on our side, there are affidavits that form part of the record that came from the National Assembly. In particular, there is an affidavit sworn and is in favour of His Excellency, the Deputy President by the joint executors of the Will; that is Mr. Njoroge Regeru together with the other executors. It is part of this record. We have not made an application to have it expunged. We have an opportunity to deal with it when the time comes.

Mr. Speaker, Sir, lastly, the nature of the sittings that this House currently is undertaking is quasi-judicial. It is inquisitorial in nature. If that is to be the correct position, then the rules of evidence as we know, it in the court would not necessarily bind the proceedings because what has been presented is a subject of what the hon. Senators will investigate. At the end of it, it is not a judgment they will be giving, but a vote.

I rest my case.

The Speaker (Hon. Kingi): Senior Counsel, Hon. Paul Muite proceed.

Hon. Paul Muite, SC: *Mheshimiwa* Speaker, first and foremost, the affidavits that my colleague, my learned friend referred to were sworn by the executors of the Will

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of the late brother to the Deputy President. They were filed in the proceedings of the National Assembly. They were never filed here as affidavits of witnesses that we proposed to call. With regard to the affidavit of Governor Sakaja, it was specifically filed in the Senate as an affidavit of a witness that they intended to call.

That affidavit has material injurious to the Deputy President. We were looking forward to cross-examining Governor Sakaja so as to bring out the truth to assist this honourable Senate to make a decision. If he is not being called, then in fairness to the Deputy President, all that we are asking is that affidavit be expunged together with the affidavit of Mr. Peterson Njomo and Ms. Mercy Wanjau who are not being called now.

It is not fair to file affidavits containing information, allegations injurious to the other party, then ask that those affidavits to remain as part of the record without calling them and availing them for cross-examination. My application is that the three affidavits be struck out.

I thank you.

Mr. Eric Gumbo: Mr. Speaker, Sir, just for clarity, there is absolutely no new material that was presented after the one that was sent to this House from the National Assembly. For instance, the affidavit by His Excellency Johnson Sakaja is to be found at volume one of the documents that have been filed.

The Speaker (Hon. Kingi): Counsel for the National Assembly, let me get it clear. Was the affidavit by the Nairobi City County Governor filed after the proceedings of the National Assembly or does it form part and parcel of the proceedings that came from the National Assembly?

Mr. Eric Gumbo: Mr. Speaker, Sir, it forms part and parcel of the proceedings that came from the National Assembly. In particular, all those affidavits constituted part of what came through public participation.

The Speaker (Hon. Kingi): Just so that we make progress. Senior Counsel, you have indicated that the affidavit by the Hon. Governor for Nairobi City County did not form part of the documents that emanated from the National Assembly. Now, the position as held by the Counsel of the National Assembly is to the contrary. These are things we can settle now. Did it come with a bundle of documents from the National Assembly, or was it filed after the Senate was seized of those documents?

Hon. Paul Muite, SC: Mr. Speaker, Sir, I have been corrected by my colleagues. The affidavit by Governor Johnson Sakaja was actually part of the public participation. It was part of the record of the National Assembly.

The Speaker (Hon. Kingi): Let us now move to the two. Have a seat, Senior Counsel. Counsel for the National Assembly.

Mr. Eric Gumbo: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Respond to the two more affidavits, because the contention from the Counsel of the Deputy President is that they were filed after the record was received from the National Assembly by the Senate.

Mr. Eric Gumbo: Mr. Speaker, Sir, I reiterate the position that we earlier on gave that there is no single document other than the document that was admitted yesterday, pursuant to our application that came in after the record had been presented before this House.

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The Speaker (Hon. Kingi): The affidavits were not filed after the Senate received the bundle of documents from the National Assembly.

Mr. Eric Gumbo: Absolutely not.

The Speaker (Hon. Kingi): Can you lead us to the volume and the page containing these affidavits from the National Assembly?

Mr. Eric Gumbo: Mr. Speaker, Sir, just give me one minute to consult with my colleagues here, so that I identify then bring it because it is not an issue that we were anticipating.

The Speaker (Hon. Kingi): Yes, so that we settle this matter. Let us settle it.

Mr. Eric Gumbo: Most obliged.

Hon. Paul Muite, SC: Mr. Speaker, Sir, is only the affidavit of Mr. Peterson Njomo that was filed in the Senate. It did not form any part of the National Assembly.

The Speaker (Hon. Kingi): Let us settle that and make progress. We need not argue on this matter.

Mr. Eric Gumbo: Mr. Speaker, sir, what happened is that we skipped the opportunity to identify the documents from both sides of what had been filed. The documents that we filed yesterday have a volume eight. That is the document that contains the affidavit of Peterson Njomo.

The Speaker (Hon. Kingi): If you understood the Senior Counsel, it is that affidavit that they are looking forward to cross-examining the deponent. Now that you have closed your case, the argument from the Counsel of the Deputy President is, how then are we going to test the truth of those affirmants? What do you say on that?

Mr. Eric Gumbo: Mr. Speaker, Sir, I gave an indication that, first, at the commencement of these proceedings, any party who wanted to cross-examine any of the deponents of any of the documents had an opportunity upon your invitation, to invite such parties to appear before them. If our counterparts appearing for His Excellency the Deputy President did not find it appropriate to call that witness at that point in time, they cannot now hold us to say that you had said you would call this person, you will not call them. The person we were to call was for purposes of clarifying what we thought was important for us.

This being an inquisitorial proceeding or a quasi-judicial proceeding, it would be a stretch to expect that if we did not call or avail any of the witnesses that were mentioned in any of the affidavits, then, as of necessity, that follows, that that record or that affidavit needs to be expunged. That is why I was saying, pursuant to your ruling yesterday, that is, evidence and material that was presented yesterday, forms part of your record.

The Speaker (Hon. Kingi): Let us hear from the Senator for Nairobi City County, before I give my way forward.

Sen. Sifuna: Hon. Speaker, Sir, the Counsel that are appearing in this case are people that I hold in extremely high regard. Senior Counsel, Hon. Paul Muite, appears not to have the confidence of the judges sitting here, that, we know how to treat evidence contained in an affidavit that is not tested at cross-examination. Even the judges who appear before in the courts that you practice in know what to do with evidence of a person who is not availing himself for cross-examination.

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So, Mr. Speaker, Sir, I really do not understand what the contention is because we, sitting here as judges, know how to treat that evidence.

I would like to take this opportunity to calm the anxiety of Senior Counsel, Hon. Paul Muite, that, indeed, we do know what to do with such evidence.

The Speaker (Hon. Kingi): I would like us to make progress. Senior Counsel has raised an important matter, which has been responded to by the Counsel for the National Assembly.

Hon. Senators, there is an affidavit sworn by one Njomo Muchira, who had been listed to appear as a witness, for and on behalf of the National Assembly. The National Assembly has closed its case without calling that particular witness, yet there is an affidavit that the Counsel for the Deputy President will not have an opportunity to cross-examine. The question, as you retire at the end of this hearing, is to look at the probative value of that particular document. Senior Counsel, Hon. Paul Muite, your point is valid. The Senators have noted.

Hon. Paul Muite, SC: This is a very important institution, a quasi-judicial function court of record. Permit me to put on record that there is a slight distinction between Counsel and the client.

I have absolute full faith in Hon. Senators, including my friend the Senator for Nairobi City County. However, I am carrying out instructions of my client.

The Speaker (Hon. Kingi): I have given direction on this particular matter. Let us move forward. Having said that, Senior Counsel Paul Muite, if you are ready, you may now usher in your witness.

The Speaker (Hon. Kingi): *Mheshimiwa* Speaker, we are anxiously waiting for the Deputy President. My colleagues can stand in for me as I make inquiries and find out where he is held up.

We certainly wish to call him as a witness.

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

The Speaker (Hon. Kingi): What is your point of procedure, Sen. (Dr.) Boni?

Sen. (Dr.) Khalwale: It is unprecedented, to the extent that when we stand down business in this House, it normally arises from a Communication from the Chair that you have temporarily, for a specific time, suspended the proceedings. You have not done this and we are seated in the Chamber with the Mace in place. I do not know whether we want this to be the new standard. Could you guide us? We have no idea how long we will wait and time is running out.

The Speaker (Hon. Kingi): Hon. Senators, at the rise of the House at 1.15 p.m., I made it clear that upon resumption, the Deputy President was going to take the stand. We came in here and I communicated the programme for the afternoon. I said we were going to execute with military precision owing to the fact that we need to conclude business today.

The Senior Counsel, Hon. Paul Muite, indicated that he cannot get hold of his client. That is not the concern of this House. Time is running.

(Loud consultations)

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Order, Hon. Senators. The Floor is available to the Deputy President and not any Senator or other element.

(Sen. Wambua spoke off record)

Sen. Enock, I used very basic English. I know you have such a wonderful grasp of language. You do not need to get any clarification.

(Loud consultations)

Order, Hon. Senators. Just take a seat.

Now, Senior Counsel, Hon. Paul Muite, your time started running---

Hon. Paul Muite, SC: Mr. Speaker, Sir, may I ---

The Speaker (Hon. Kingi): Let me just conclude, Senior Counsel. Your time started running at the time I requested you to usher in your witness. You indicated that you are getting hold of your witness. We will give you all the time you need to get hold of your witness, but to let you know that the clock is running and running on your client.

You can take all the time, but his time is running out. After two hours, if he will not have appeared, the Chair will make a ruling pursuant to the rules of procedure.

Hon. Paul Muite, SC: Mr. Speaker, Sir, may I start, first and foremost, by expressing apologies and regrets that the Deputy President is not here and by not being here, the inconvenience and delay has been caused to Mr. Speaker and hon. Senators. The position is that during that period given, I went to try and find out why he was not here.

As Mr. Speaker knows, the Deputy President has been coming here absolutely punctually every day. The sad reality is that the Deputy President of the Republic of Kenya has been taken very sick. As I address this honourable House, he is in hospital. That is the sad reality.

(Loud consultations)

The Speaker (Hon. Kingi): Order, hon. Senators. Now, Counsel for the National Assembly, you have heard Senior Counsel, Hon. Paul Muite, for and on behalf of the Deputy President. Considering that this is a time-bound process, what is your reaction?

Mr. Eric Gumbo: Mr. Speaker, Sir, this is a House governed by the rule of law. We truly empathise with the difficulty that His Excellency, the Deputy President, has found himself in. However, pursuant to Rule 11 of the rules governing this process, if I may read, with your permission---

The Speaker (Hon. Kingi): Counsel for the National Assembly, kindly take your seat before you make your rejoinder.

Senior Counsel, Hon. Paul Muite, having said whatever you have said, what is your proposed way forward, so that a reaction can be put from the National Assembly? Are you telling us to wait until your client gets here? What is your proposed way forward?

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Hon. Paul Muite, SC: Mr. Speaker, Sir, I have just received this information. My proposal is that you give me at least the rest of the day. I would like to go and assess his situation and maybe even come back here by 5.00pm. Right now, I would like to make an informed sort of situation, after I see the Deputy President and the doctor. I will need at least an hour or two. Thank you.

The Speaker (Hon. Kingi): Very well. Proceed, Counsel for the National Assembly.

Mr. Eric Gumbo: Mr. Speaker, Sir, having keenly listened to my learned senior colleague, Hon. Paul Muite, SC, it puts us in a bit of a difficulty. Whereas we may want to empathize with the situation, there appears to be no indication from their end as to a specific proposal.

Mr. Speaker, Sir, this being a House governed by rules and this being a time-bound process, I draw your attention to Rule 11 of the Rules of this House. If I may read, it says-

“Where the National Assembly or the President chooses not to appear before the Senate, that fact shall be put on record and the Senate shall proceed with its investigation without further reference to the National Assembly or the President, but the Senate may, for exceptional reasons to be recorded, permit a later appearance before the Senate by the National Assembly or the President.”

Mr. Speaker, Sir, I think this Rule would give us guidance. We may proceed. If it becomes necessary, then any additional material may then be availed. This is a time-bound constitutional process. I am most obliged.

The Speaker (Hon. Kingi): Let me pick the wisdom of my wonderful Senators before I make my decision on the way forward. I understand that all of you are wise men and women.

Hon. James Orengo, SC: Mr. Speaker, Sir, can I just say a word?

The Speaker (Hon. Kingi): Yes.

Hon. James Orengo, SC: Mr. Speaker, Sir, I have heard what the Senior Counsel, Hon. Paul Muite, has said. You have made it quite clear that these proceedings are time bound. It is not so much about the situation in which His Excellency the Deputy President finds himself. It is about the Senate complying with the provisions of the Constitution of Kenya that within that timeframe, you must make a decision.

Reading the Standing Orders that my learned friend Mr. Eric Gumbo has referred to, it would be useful to this House if Hon. Paul Muite, SC, could probably give us a way forward in terms of the time limitation that the Senate has.

I am saying this because we do not want somebody to say that the Deputy President was not given an opportunity to be heard. I think the Senate would want him to be heard. However, knowing the time limitation, what suggestions does the Senior Counsel have to ensure that we keep with the time parameters and at the same time the Deputy President is given his space to defend himself?

The Speaker (Hon. Kingi): We have two sides in the House; the Majority side and the Minority side. I will only allow the two leaders to speak. If you need to consult, you can do so in the next one minute.

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(Consultations)

Hon. Senators, the Standing Orders have not been suspended yet. It is only the Senate Minority Leader, Sen. Madzayo and the Senate Majority Leader, Sen. Cheruiyot. The rest, take your seats.

(Hon Senators resumed their seats)

The Speaker (Hon. Kingi): Order, Hon. Senators.

(Loud consultations)

The Speaker (Hon. Kingi): Order, hon. Senators. Now, Hon Senators, we are facing a very unprecedented situation. At the rise of this House at 1.15 p.m. I indicated that upon resumption we were going to hear the Deputy President.

Upon resumption when I asked Hon. Paul Muite, SC, to usher in the Deputy President for purposes of presenting him to give his evidence-in-chief, the Senior Counsel indicated that even he was unaware of the whereabouts of his client and he asked for a few minutes to go fetch him, wherever he was.

After a few minutes, Senior Counsel, Hon. Paul Muite, came back to the Chamber and indicated that he had gotten information, which he was yet to verify, that his client had fallen sick. He indicated that he needed time to go look for him in whichever hospital he is and that he should be given up to 5.00 p.m. today.

The Counsel for the National Assembly in response indicated that this is a time bound process. He referred to Rule 11 of Senate Rules of Procedure that where the Deputy President fails to appear, the Senate can proceed or for exceptional reasons to be recorded, permit a later appearance before the Senate of the Deputy President.

Having considered the two sides, my directions are as follows; that we will suspend this sitting and resume at exactly 5.00 p.m.

(Applause)

We expect the Deputy President of the Republic of Kenya to take the witness stand at 5.00 p.m. This is a time bound process, unfortunately. It is so ordered.

(The House adjourned temporarily at 3.33 p.m.)

(The House resumed at 5.03 p.m.)

The Speaker (Hon. Kingi): Order, hon. Senators. Sen. (Dr.) Boni take your seat.

Hon. Senators, I suspended the sitting of this House to allow Senior Counsel, Hon. Paul Muite, for the Deputy President, one, to locate his client and report back at 5.00 p.m., so that we may proceed with these proceedings.

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Senior Counsel, Hon. Paul Muite, you may now inform the House so that we proceed.

Hon. Paul Muite, SC: Mr. Speaker, Sir, I would like to inform hon. Senators that I have been able to contact the doctors at Karen Hospital. There is a team of doctors who are looking after the Deputy President because of his condition, I was not able to directly talk to him on the advice of his doctors. They said he must have complete rest for the time being. However, I was informed by his doctors that he is currently suffering intense chest pains and I did not want to enquire beyond that.

Perhaps, to save the time of this hon. House, as I sit down, let me invite you to look Article 145(6) of the Constitution. It says:

“If the Special Committee reports that the particulars of any allegation against the President - of course it applies to the Deputy President – has been substantiated, the Senate shall after according the President an opportunity to be heard, vote on the impeachment charges.”

Mr. Speaker, Sir, we are aware that this hon. Senate made a decision to hear the charges in the Plenary, so that what we are doing in these proceedings, I would suggest that we are proceeding under sub-article 6(b). Under this sub-article 6(b), this House by the Constitution is obligated to accord the Deputy President an opportunity to be heard.

Which is why Rule 11 of the Standing Orders of this House specifically provides where the National Assembly or the President chooses not to appear and I would like to submit that the Deputy President has not chosen not to appear. The choice of the language ‘chooses to appear’ in Standing Order No.11 is to be read with the Constitution Article 145(6); which obligates this hon. Senate to accord the Deputy President an opportunity to be heard.

I, therefore, leave the matter in your hands, Mr. Speaker, Sir, and hon. Senators. I would suggest Article 145(6)(b) does not have a time limit of 10 days. Give the Deputy President a couple of days, in the interest of justice, given the weight of removing a deputy president from office.

I thank you, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Senior Counsel, Hon. Paul Muite, if I understand you correctly, you are applying to the Senate for your client to be given a couple of days. Now, a couple of days does not mean much.

Hon. Paul Muite, SC: That is the application. What I had in mind, I would add the word, “humbly” request this honourable House, the Senate, a couple of days up to Tuesday. We should know when the Deputy President is able to come and defend himself.

I thank you.

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

Mr. Eric Gumbo: Mr. Speaker, Sir, permit me to start by registering our greatest sympathies and empathies from the team of the National Assembly. Of course, health issues are beyond our control.

That said, Mr. Speaker, Sir, we also would want to be cognizant of the fact that we are dealing with a constitutional moment. We are dealing with an item whose timelines are prescribed within our Constitution. Contrary to what learned Senior

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Counsel, Hon. Paul Muite, would want to persuade this House to believe, the proceedings before this House have not been the subject or have not been transacted pursuant to Article 145(6).

On the 9th October this year, this House passed a resolution pursuant to the provisions of Article 145(3). Pursuant to that resolution, there was a Gazette Notice that clearly indicated that this House was not going to determine the matter at hand from a committee perspective, but that the whole House would then be determining the matter. It then follows that the provisions of Article 145(6) would not be applicable.

In the same Gazette notice, you did Gazette the 16th and 17th of October to be the days assigned for the hearing and determination of the Motion that is before you. That said, we appreciate the place of a fair hearing and an opportunity to be accorded the chance and the facilities to defend oneself in a Motion such as this.

I would want to add that the opportunity to be heard does not have to be oral. The rules of this House permit that parties appearing could elect to be represented. They could elect to come in person. They could file documents.

His Excellency the Deputy President had participated robustly in the proceedings before the National Assembly, where they filed a detailed replying affidavit and a response. If my memory serves me right, let me just make a quick reference. Before the National Assembly, His Excellency the Deputy President filed a response dated 8th October, 2024.

When the proceedings before this House began, His Excellency the Deputy President again filed a very robust response dated the 12th of October 2024. Up to this point in time, His Excellency the Deputy President and his team have had a beautiful opportunity to present their case. They have had an opportunity to cross-examine in detail all the witnesses that were presented before this House.

If any prejudice were to be occasioned in the course of hearing this matter, that prejudice would be on us because our expectation would be that His Excellency the Deputy President would attend and avail an opportunity for the National Assembly to cross-examine him.

Taking into account the circumstances that we find ourselves in, having also very keenly heard learned Senior Counsel speak, matters of health are not matters to be taken lightly. On the same note, matters held cannot be given timelines.

There cannot be certainty that if an adjournment were to be given even for one week, then there would be clarity and certainty that we would proceed on that assigned day. We would urge that we borrow practise that is accorded to other similar organs created by the Constitution. I have the courts of law in mind.

Mr. Speaker, Sir, because it was earlier on submitted that Article 50 provides for the right to a fair hearing and that fair hearing does not necessarily have to be oral. We have had practice in our Supreme Court, where dealing with some of the most important decisions of our lifetimes, including decisions arising from presidential elections; had parties file submissions and their documents and that their advocates have had an opportunity to appear before the courts to highlight those documents and pleadings that have been filed.

On this occasion, because His Excellency the Deputy President has had an opportunity to present all the material that he wanted to present and also had the opportunity to cross-examine all the witnesses that he wanted to cross-examine, all that is left on their side is highlighting.

On our part, the part of the National Assembly, so that then we give progress to this matter, we are willing to take the painful decision to forego the cross-examination of His Excellency the Deputy President and only proceed with highlighting submissions in relation to the documents that we have filed before this House.

It is our humble view that no prejudice would have been occasioned to His Excellency the Deputy President. We urge that if I had my learned senior colleague, Hon. Paul Muite, Senior Counsel, well, he seemed to have been imploring this House to consider adjourning.

Let me end by drawing the attention of this Court to Rule 12 of the proceedings, the rules governing the proceedings currently underway. Rule 12 of those rules dictates that once the hearing has commenced, it shall proceed up to the end. It does not provide for an option for the House to adjourn. If that is the dictate of the rules governing the proceedings before this House, we urge that being a country, being an organ of a Constitution that is controlled by the rule of law and the Constitution, you direct that we proceed with the hearing as had been planned.

Mr. Speaker, Sir, just before I leave again, maybe I would want to invite my leader, Senior Counsel, Hon. James Orengo, to also just add one word before you give your directions.

I am most obliged.

Hon. James Orengo, SC: Mr. Speaker, Sir, just briefly, in these proceedings, we are governed by Article 145. There is a unique provision in Article 145 that you do not find in legislation to do with even litigation in the courts.

The makers of this Constitution knew that these proceedings are time bound under Article 145(5); a very important provision. I think that Article is not there for cosmetic value. It is there to deal with a situation like we find ourselves in, because the makers of this Constitution knew that when processes are time bound, there must be a safety valve.

Article 145(5) which applies *mutatis mutandis* in relation to the removal from office by way of impeachment of the Deputy President, states as follows-

“The President, [and for that matter, it should be read, the Deputy President] shall have the right to appear and be represented before the special committee during its investigation.”

Now, this is the point that I want to make. Not in a lot of legislation do you find the right to be represented highlighted. The Deputy President can elect to be represented either by his advocate or by him appearing in person or having both the Deputy President and his advocate to appear.

Now, I want to put before the Senate, because many of you have this problem during election time. If in accordance with the election law, you are required to submit your nomination papers on a certain day and you fail--- You are running for President or Deputy President and you are told that you must present your nomination papers on a

certain day as it is there in the law. Would you feign sickness and fail to present your nomination papers on that particular day?

I can tell you, if you fail to do so, the law will not give you an accommodation. You will be out and there are a lot of decisions on this matter. I want to talk to this Senate very frankly. Senior Counsel, Hon. Paul Muite, was basically giving evidence. He has not told us where, or if he has told us, the medical institution where the Deputy President is. However, for the Deputy President to fail to bring credible evidence before the House that he has been admitted, we do not even have evidence that he has been admitted to a medical institution.

We would rely on the evidence from my senior, Senior Counsel, Hon. Paul Muite. That is evidence. However, in practice, I can say without a fear of contradiction, there are many times where people have presented even in medical documents and later on they have been found to be fake, if I may use that word.

For the Deputy President, we should have had one of the doctors here, at least, to tell us about his admission and about his condition. Up to 1.15 p.m., the Deputy President was here. He was not evacuated from here in an ambulance. If I can give evidence from the Bar, he went to his office.

Again, there is no evidence that he was evacuated in an ambulance. He went to Karen Hospital himself, to check in at the hospital. So, I think our constitutional duty is to live by what the Constitution requires of us. I was looking forward to cross-examine the Deputy President. Unfortunately, the story that has been told does not include cross-examination of the evidence of the Deputy President, which is on record.

Mr. Speaker, Sir, we are time bound, and as my learned friend, Eric Gumbo, has said, we are prepared to go by the evidence in record. The prejudice is to us. The sickness of the Deputy President is affecting us more because we would want to cross-examine him. However, he has evidence in record, which we cannot test by the way of cross-examination. There is no assurance that on Tuesday, the Deputy President would be here.

Finally, we can also say from here that there are many cases that have been filed all over, including in Malindi today that has to do with the proceedings that are going on here. So, I am in a position to say that this health condition in which the Deputy President is - and I sympathize - may be opportunistic in the absence of medical evidence from a doctor.

I saw him when he came in. I am not a doctor, but there was nothing to suggest that he was in the condition that hon. Counsel has been talking about. So, do the Senators now turn into a jury to make a decision on the basis of evidence presented from the Bar by Senior Counsel without documentary proof of where the Deputy President is and what ailments he is suffering from? I think more important duty for this Senate is to comply with the Constitution. We urge you to comply with the Constitution and proceed with the hearing of this impeachment proceedings.

The Speaker (Hon. Kingi): Senior Counsel, Hon. Paul Muite?

Hon. Paul Muite, SC: *Mheshimiwa* Speaker, Hon. Senators, we all live in Kenya. These gadgets we have here capture every word uttered accurately. If I was found tomorrow to have lied to these Senators, sanctions can be brought on me. I would have

thought that, that fear of telling a lie to this honourable Senate, to me, is more powerful than even bringing a medical report.

We have had many medical reports generated outside hospitals. We see them in courts almost on a daily basis. You will remember the rush that was there when I was asking to be given up to 5.00 p. m. It was a rush. Was I to fail to come back to this honourable House at 5.00 p.m. waiting for a medical report when the doctors there are busy attending to their patient, the Deputy President?

Medical reports, I can bring. If I have told lies, that is something that can be established. My learned friend, Hon. Orengo, talks about giving evidence from the Bar. Seated down, I was learning while he was giving evidence from the Bar about some cases filed in Malindi that I am not aware of. Perhaps, he should have given us a copy of that.

Article 145(6) is clear, and I do not want to take time of this august House, going back to it. It applies.

I would plead with you and hon. Senators to give us until Tuesday to see whether the Deputy President will be well enough. No one decides when to get sick or not.

I am sure many hon. Senators here have a story of their shock because of having spent an evening with somebody, then the following day they hear that person is gone, yet they were looking good and healthy. Let us be humane and compassionate. *Tuwe na utu kidogo*. On Tuesday, the heavens are not falling down to join the earth.

I thank you.

The Speaker (Hon. Kingi): Senior Counsel, Hon. Paul Muite, there is a hypothetical question that was raised by Senior Counsel Hon. Orengo. Assuming the Senate is inclined to grant your client up to Tuesday, and by then he is unable to attend the Senate, what then would be the way forward?

Hon. Paul Muite, SC: *Mhehimiwa* Speaker, I would submit the best thing is for this honourable Senate to make a decision on facts rather than assuming what may or may not happen.

Point number two, is the importance of hon. Senators to see with their own eyes how a witness withstands cross-examination. There are many times when different impressions will be given by a written document, and yet when cross-examination takes place, individuals change their minds.

One can only make a decision on whether this witness is believable or not when they see his demeanor in person. There is nothing to replace orality through cross-examination. There are many witnesses whose statements will be impressive and yet when they begin to give evidence orally, that impression changes completely on the mind of the jury.

The Deputy President wishes to subject himself to cross-examination and under oath to deal with the evidence given adverse to him by witnesses here, so that hon. Senators can have an opportunity of making a decision. Is it the Deputy President they shall believe, or those other witnesses?

That opportunity can only come through orality and cross-examination. What this House elects to do, they will make that decision on Tuesday. I am always an optimist, so I am living in the belief that the doctors will be able to put whatever is wrong with the Deputy President back in place, so that he can be here on Tuesday. If he is not here, let

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that decision of what this hon. Senate will then do be made on Tuesday. That is a humane way of going about a matter about that no one had control of.

I thank you.

The Speaker (Hon. Kingi): Now, hon. Senators, having listened to the Counsel for the Deputy President as well as the Counsel for the National Assembly, I need to consider those arguments and give my considered ruling in this matter. I will, therefore, suspend the sitting for five minutes and I will be back.

(The Senate adjourned temporarily at 5.35 p.m.)

(The Senate resumed at 6.06 p.m.)

The Speaker (Hon. Kingi): Hon. Senators, let me apologise for taking more than the five minutes. The matters that had been raised are weighty, but I am ready with my ruling. I will proceed to deliver it.

COMMUNICATION FROM THE CHAIR

ABSENCE OF THE DEPUTY PRESIDENT AT THE AFTERNOON SITTING OF THE SENATE HELD ON THURSDAY, 17TH OCTOBER, 2024

Hon. Senators, as you will recall, before the rise of the Senate at 1.15 p.m., the Senate had concluded the hearing of the case of the National Assembly. This included the evidence led by the National Assembly, including the calling of its witnesses who were examined, cross-examined by Counsel for the Deputy President and re-examined.

As the House adjourned, I directed that, as contained in the Hearing Programme in this matter of the determination on the proposed removal from office, by impeachment, of His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya, on resumption at 2.30 p.m., the Senate would hear the case of the Deputy President for two hours, comprising examination-in-chief and re-examination, while the National Assembly would have a period of one hour and 55 minutes for cross-examination.

When the Senate resumed at 2.30 p.m., when the opportunity came for the Deputy President's side to commence its case, Senior Counsel, Hon. Paul Muite, Counsel for the Deputy President, informed the Senate that he did not know the whereabouts of his client and sought to be allowed a little time to establish where he was.

Thereafter, he informed the Senate that he had learnt that his client had been taken ill. Asked how he proposed that the Senate proceeds, Counsel for the Deputy President requested for time, possibly up to 5.00 p.m. to try to meet his client before advising on the way forward.

Counsel for the National Assembly when asked to comment on the circumstances, argued that unfortunate as the situation was, this being a constitutionally time-bound process, it was imperative that pursuant to Rule 11 of Part 1 of the Second Schedule to the Senate Standing Orders, the proceedings proceed. Rule 11 provides as follows-

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“Where the National Assembly or the Deputy President chooses not to appear before the Senate, that fact shall be put on record and the Senate shall proceed with its investigations without further reference to the National Assembly or the Deputy President, but the Senate may, for exceptional reasons to be recorded, permit a later appearance before the Senate by the National Assembly or the Deputy President.”

Hon. Senators, Ladies and Gentlemen, it is also noteworthy that rule 12 provides as follows-

“Subject to these rules, the hearing of the evidence, once it commences, shall proceed and continue until the Senate concludes the hearing of the matter.”

Following the representations made by Counsel for the parties, I suspended the proceedings of the Senate up to 5.00 p.m. to allow Counsel for the Deputy President to report the status of his client.

When the sitting of the Senate resumed at 5.00 p.m., Senior Counsel, Hon. Paul Muite, informed the Senate that indeed he had contacted doctors at Karen Hospital who are attending to the Deputy President. He further stated that owing to the condition of the Deputy President, he had not been able to access the Deputy President or talk to him.

Senior Counsel then proceeded to cite Article 145(6) observing that although the Senate had opted to proceed by way of hearing the matter in plenary and while Article 145(6) provides for the hearing of the matter by way of Special Committee, the provision obligate the Senate to accord the Deputy President an opportunity to be heard before a vote is taken on the impeachment charges.

He further cited Rule 11 of Part 1 of the Second Schedule to the Senate Standing Orders, stating that in accordance with the provisions, the Deputy President had chosen to appear and be presented in these proceedings.

Counsel for the Deputy President further submitted that the right of the Deputy President to be given an opportunity to be heard under Article 145(6)(b) of the Constitution is not limited by the 10-day timeline otherwise provided for in this matter. In the end, relying on these provisions, Counsel for the Deputy President requested that the Senate adjourn the matter to Tuesday, 22nd October, 2024, to enable his client time to be attended to by his doctors.

In response, Counsel for the National Assembly, Mr. Gumbo, registered his sympathies to the Deputy President. On the other hand, he noted that health matters are matters that are beyond human control. However, he noted that the matter at hand was one that was governed by constitutional timelines. Counsel further indicated that Article 145(6) of the Constitution applied to impeachment proceedings in committee and was not, therefore, relevant to the present proceedings which had been convened by dint of Article 145(3) of the Constitution.

Counsel observed that the dates for the hearing had by Gazette notice been set at 16th and 17th October, 2024. Counsel, therefore, went ahead to observe that His Excellency the Deputy President had robustly participated in the proceedings by filing detailed responses to the allegations as set out by the National Assembly and through various submissions made in the course of the hearing, including cross-examination of witnesses.

Counsel then indicated that if any prejudice was to be suffered by the failure of the Deputy President to testify and be cross-examined, this will be on the part of the National Assembly, which had the legitimate expectation of testing the evidence of the Deputy President through cross-examination.

Counsel then referred to the parties in the courts, including the Supreme Court where parties are allowed to file respective submissions and the advocates are then allowed to appear and highlight their submissions. Counsel argued that noting the Deputy President had filed detailed responses and had the opportunity to cross-examine the witnesses of the National Assembly, the health status of the Deputy President and the constitutional timelines and borrowing the practices of the courts, the National Assembly was willing to forgo the cross-examination of the Deputy President and requested that both parties be allowed to highlight their submissions during their closing statements.

Senior Counsel James Orengo had similar sentiments and cited Article 145(5) of the Constitution. He argued that the right to appear and be represented include the right to be represented by counsel. He argued that the Senate's greater duty was to comply with the Constitution and that the Senate could not accordingly go outside the timelines as set out in the Constitution.

It is noted that the present hearing was convened via Gazette Notice 163, Volume CXXV1, dated 9th October, 2024. Vide that Gazette Notice, I appointed Wednesday, 16th October, 2024, as the date for the commencement of the hearing and further that the hearing will run up to the conclusion of the hearing on Thursday, 17th October, 2024. As presently convened, therefore, today at midnight, unless midnight finds the Senate in the cause of division, marks the end of the period for the hearing of the present impeachment matter.

As this process is time-bound by the Constitution, to be concluded in not more than 10 days pursuant to Article 145 as read together with Article 150 of the Constitution and noting that the period provided for ends on Saturday, 19th October, 2024, the only window open to the Senate, if it so obliged the request for adjournment sought by Counsel for the Deputy President, would be to Gazette Saturday the 19th October, 2024, as a further and final day for hearing of this matter.

Hon. Senators, ladies and gentlemen, such a request is not made to the Speaker, but to the Senate and is accordingly a matter for the Senate to determine. To facilitate this decision, I direct the Clerk of the Senate to circulate a Supplementary Order Paper incorporating a Notice of Motion and a Motion for adjournment sought. This being a procedural matter, the Motion, if carried will result in the Speaker gazetting Saturday, 19th October, 2024, as a sitting day to conclude the hearing and determination of this matter. This being the last day allowed by the Constitution of Kenya for these proceedings to conclude.

Needless to say, if the Motion is not carried, the decision of the Senate will be that this hearing continues to conclusion in the manner provided for under Rule 12. In such event, the hearing will continue as set out in the programme, with the parties moving to make their closing statements.

Hon. Senators, ladies and gentlemen, in conclusion, let me take this opportunity, on my own behalf and on behalf of the Senate, to convey our sincere sympathies and best

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wishes for quick recovery to His Excellency Rigathi Gachagua, EGH, the Deputy President of the Republic of Kenya.

(Applause)

Hon. Senators, you have been circulated with the Supplementary Order Paper. That is the Order Paper we will use from now going forward.

This being a Procedural Motion, you need not give notice. When the order is read out, the Senate Majority Leader will be called upon to move.

Clerk, call the Order.

(Several Senators stood in their place)

Hon. Senators, please, let us be seated.

Proceed, Senate Majority Leader

PROCEDURAL MOTION

RESOLUTION OF THE SENATE TO HOLD SITTINGS ON SATURDAY, 19TH OCTOBER, 2024

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I rise to move this Procedural Motion, for the Senate to hold sittings on Saturday, 19th October, 2024-

THAT, AWARE THAT, the National Assembly on 8th October, 2024, resolved, with the support of 282 Members, being at least two-thirds of all Members of the National Assembly, that pursuant to the provisions of Article 145(2) as read with Article 150(1)(b) and (2) of the Constitution and Standing Order No.65(2) of the National Assembly Standing Orders, His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya be removed from office, by impeachment, on the grounds specified in the Special Motion;

WHEREAS by letter Ref: NA/DLP/TBO/MTS/2024/(025) dated 8th October, 2024, and received in the Office of the Speaker of the Senate on 9th October, 2024, the Speaker of the National Assembly informed the Speaker of the Senate of the approval of the Special Motion by the National Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the National Assembly;

AND WHEREAS, vide Kenya Gazette No. 13178 Vol. CXXVI – No. 163 dated 9th October, 2024, and Article 145(3)(a) of the Constitution, the Speaker of the Senate appointed Wednesday, 16th October, 2024, and Thursday, 17th October, 2024, as sittings convened for the purpose of hearing the proposed removal from office, by impeachment, of His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya in plenary;

FURTHER WHEREAS, pursuant to Article 145 as read with Article 150(1)(b) and (2) of the Constitution and Standing Order Nos. 78 and 79 of the

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Senate Standing Orders, the Senate heard the National Assembly on the grounds for the proposed removal from office, by impeachment, of His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya;

AND FURTHER WHEREAS, pursuant to Article 145 as read with Article 150(1)(b) and (2) of the Constitution and Standing Order Nos. 78 and 79 of the Senate Standing Orders, the Senate also heard Counsel for His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya during cross-examination of the witnesses for the National Assembly on the grounds of the proposed removal from office, by impeachment, of the Deputy President of the Republic of Kenya;

NOTING THAT His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya did not appear during the afternoon sitting of the Senate on Thursday, 17th October, 2024;

FURTHER NOTING THAT Counsel for His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya sought an adjournment of the Senate until Tuesday, 22nd October, 2024, at 9.00 a.m. to allow His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya to appear and give evidence, if any, on the grounds for his proposed removal from office by impeachment;

FURTHER NOTING that pursuant to Article 145(4) of the Constitution, a proposed impeachment hearing for the removal from office of a Deputy President must be concluded within 10 days from the date of the reading of the charges, which period, in this case expires on Saturday, 19th October, 2024;

NOW THEREFORE, the Senate resolves –

- (i) to adjourn the afternoon sitting of Thursday, 17th October, 2024; and
- (ii) pursuant to Standing Order No. 34(4)(c) of the Senate Standing Orders, to hold sittings on Saturday, 19th October, 2024, commencing at 9.00 a.m. until 1.00 p.m. and 2.30 p.m. until conclusion of business in the Order Paper of the day;

In order to conclude the hearing and determination of the proposed removal from office, by impeachment, of the Deputy President of the Republic of Kenya.

Mr. Speaker, Sir, this is a self-explanatory Procedural Motion, that in light of the request by the Counsel for the Deputy President, this House adjourns until the closest time possible without violation of the Constitution within which we can sit and conclude on this matter.

As I move this Motion, I must note that the request that came from the Counsel for the Deputy President, Senior Counsel, Hon. Paul Muite, is that we actually sit on Tuesday. I am sure he knows well about the 10-days provision. However, I do not know why he wants this House to violate the Constitution or at least send us into a constitutional crisis.

Mr. Speaker, Sir, be that as it may, I want to urge my colleagues that let us sit on that Saturday, despite the fact that I know there are quite a number of Adventists, but duty calls. This is an important exercise that has the breadth of the country holding still, while watching what is happening in the Senate of the Republic of Kenya.

With those many remarks, I request the Senate Minority Leader, Justice Retired Stewart Madzayo, to second this Motion.

(Loud consultations)

The Speaker (Hon. Kingi): Order, hon. Senators. It pays to be attentive. I have just said this is a Procedural Motion. Therefore, it does not require a notice.

The Senate Minority Leader (Sen. Madzayo): Bw. Spika, naunga mkono Hoja hii ili tuwe na nafasi ya kumsikiliza Naibu wa Rais siku ya Jumamosi. Tunaelewa kwamba hii ni kesi muhimu sana na macho yote nchini yanaangalia Seneti.

Napeana pole zangu kupitia Senior Counsel, Mhe. Paul Muite, kwa sababu client wake ni mgonjwa. Ugonjwa ni jambo la Mwenyezi Mungu. Hatuwezi kusema kwamba mtu hawezi kuwa mgonjwa. Mtu yeyote anaweza kuwa mgonjwa. Kwa hivyo, ningependa afikishe pole za Seneti. Tunamtakia kila la heri. Mwenyezi Mungu ampe nafuu ili tupatane hapa.

Bw. Spika, tuko katika njia panda; ni mgonjwa. Je, tuendeleo ama tusiendeleo? Tumpe nafasi. Kama binadamu, hii ni nafasi nzuri ya kuonyesha ubinadamu kama Maseneta ama Seneti. Tumpe nafasi akiwa hospitalini ili aweze kupata nafuu anapoendelea kupokea matibabu.

Hoja hii imekuja wakati mwafaka. Kwa hivyo, tumpe nafasi.

Naunga mkono Hoja hii.

The Speaker (Hon. Kingi): Hon. Senators, I will propose the Question.

(Question proposed)

Now, hon. Senators, we have been here before. This is a Procedural Motion; we rarely debate Procedural Motions. It is either we agree with it or we do not agree with it.

With your consensus, I may move to put the Question.

(Question put and negated)

Hon. Senators, the Motion, having been defeated. We will proceed with the hearing programme as it had been circulated this afternoon, in which case, we will move to closing statements by the parties.

Yes, Hon. Paul Muite, SC, proceed.

Hon. Paul Muite, SC: *Mheshimiwa* Speaker, Sir, through you, let me recognise the right of this honourable Senate to decide any issue or question put to it democratically, which is what has happened.

Arising from that decision of this honourable Senate, we as the legal team representing the Deputy President, are not able to continue appearing without instructions. So, we humbly and with a lot of respect take your leave, and the leave of this honourable House.

I thank you.

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(The Legal team representing the Deputy President withdrew from the Chamber)

The Speaker (Hon. Kingi): Now, hon. Senators, we shall move to hear the closing statement by the Counsel for the National Assembly.

Clerk, you may now proceed to call the Order.

CLOSING STATEMENTS ON BEHALF OF THE
NATIONAL ASSEMBLY

The Speaker (Hon. Kingi): Counsel for the National Assembly, the Floor is yours. You have up to 60 minutes.

Mr. Eric Gumbo: Thank you, Mr. Speaker, Sir. On behalf of the National Assembly, we have a total of four advocates who will be sharing the time that is allocated to us. Leading the pack is Hon. Otiende Amolo, SC, to whom I will cede the Floor.

Hon. (Dr.) Otiende Amolo, SC: Mr. Speaker, Sir, and Hon. Senators, I thank you and this being my maiden appearance on this matter, I sincerely hope that I did not drive my learned friend and his team away.

Mr. Speaker, Sir, Kenya is indeed a mature democracy. We are so mature that we gave ourselves the most modern Constitution in recent history 14 years ago.

We are so mature that seven years ago, we had the nullification of the only Presidential election known to history.

(Loud consultations)

The Speaker (Hon. Kingi): Order, hon. Senators. Senator for Nandi County, take your seat. Sen. Kisang, may the Counsel for the National Assembly be heard in silence.

Hon. (Dr.) Otiende Amollo, SC: Thank you, Mr. Speaker, Sir. Seven years ago, we had the nullification of the only Presidential Election known to history.

Today, we are conducting impeachment proceedings unknown to this continent outside of the removal proceedings in a parliamentary system in South Africa.

Mr. Speaker, Sir, I thank you and the Senate for demonstrating the maturity of a democracy; so much so that even when the Deputy President is unable to appear without anything on record, this honourable Senate has accorded him the opportunity for his Counsel to be present, and they have voluntarily exited. The right to appear in person or by Counsel is a right under Article 145 of the Constitution. However, like every other right, you can choose to exercise it or not.

The idea and the fact of these Impeachment Proceedings being as open as they are and being so democratic, even to vote on the Procedural Motion, shows how mature our country has become. Before the 2010 Constitution, we would not have been here for this process for two days. We would not have been taking this process in the National Assembly. The President would sack the Vice President at whims, including for not liking the colour of his shoes.

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The fact that we are here in a situation where to impeach a Deputy President, we have to go through these processes, it shows our maturity. However, let it not be mistaken as some people have, that the process of impeachment is a criminal trial. When you hear people ask the Mover of the Motion, “do you have any proof? Can you demonstrate?” It means they are confusing this process with a criminal process. It is not a criminal process.

Mr. Speaker, Sir, what we have in impeachment is a halfway house between the whim before 2010 and the beyond reasonable doubt proof in a criminal trial. In the words of Article 50 of the Constitution, all you have to show is reason to believe. What the lawyers would call just a *prima facie* case. You do not have to demonstrate beyond reasonable doubt.

So, all the questions that I heard my learned friends putting to the Mover to prove and demonstrate look good to the public gallery, but add no value to the test for Impeachment.

Impeachment is like a vote of confidence or no confidence. Just the same way when you vote the President and the Deputy President, no one asks you to justify why because you exercise your discretion. When you lose that confidence, no one should ask you to demonstrate why. That is why it is a political process. Otherwise, it could have been a judicial or a religious process.

It is important to make two distinctions. First, that in this process, you do not have to prove anything beyond reasonable doubt. The beyond reasonable doubt can come later when the other processes come in, like the investigative agencies.

Secondly, our courts use an adversarial system, where you bring all the documents and are restricted to what you have brought. The process in this House is inquisitorial under Article 145 all the way to 149 of the Constitution. Therefore, it allows this House to go beyond what the Mover has brought or what the other witnesses have brought. This House has exercised that jurisdiction quite maturely.

Mr. Speaker, Sir, I suggest that the idea of impeachment is one which is legal in process only, but political in content and merit. As long as all the legal processes for fair hearing are observed, it is not open to anyone to question the merit in terms of the decision of the National Assembly or this Senate because the safeguard is in the numbers. That is why before you move it in the National Assembly, you need 117 members. For it to pass, you need at least two-thirds. Even in this House, you need two-thirds. That is the safeguard. The safeguard is not in the legal technicalities.

Mr. Speaker, Sir, for that reason, while it looks juicy and very good to the gallery to have that intense cross-examination such as we saw of the Mover of the Motion, it is irrelevant. It is highly irrelevant and to the untrained eye, they might think you are achieving much, but you are not achieving much. It must be remembered that the impeachment here is of the Deputy President, not the Mover of the Motion. So, however much you discredit the Mover of the Motion, you do your client no justice when you do not address the substance of what is moved.

Allow me to refocus on Article 150 of the Constitution. It makes a very important distinction and I heard the lawyers of the Deputy President saying that there is precedent. There is no precedent in our court in terms of Impeachment. There is precedent in terms

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of removal from office of governors under Article 181. The word used is 'removal.' The word 'Impeachment' does not appear in Article 181.

When you come to Article 150, two words are used. You can remove the Deputy President first under Article 150 1(a). To that extent, the question of removal in Article 150, you can use the same standards in Article 181. Article 150 1 (b) says, or "on Impeachment". There is no other provision for Impeachment and we have not undertaken an impeachment in this country. For that reason, while the wording might look similar, the principles are different.

For removal, for example, under 150 1(a), it is a strict legal process. You have to show and demonstrate that the Deputy President has physical or mental incapacity. However, when it comes to impeachment, it is a different matter. It is more of a political matter.

Impeachment is a demonstration of impropriety of unfitness for office, of taking political responsibility. Indeed, in a representative democracy, it is the way of un-voting someone you had voted. Otherwise, you would be having a fresh election to decide should we now remove this person from office. It is too expensive. The fact that you have 82 per cent in the National Assembly voting for impeachment and two-thirds, if it succeeds in this House, you translate it to the millions that it represents.

In the National Assembly, 82 per cent translate to about 42 million out of the 50 million Kenyans. That is a significant number. If this House is equally to vote, you translate it to the equivalent number of people it is representing. It is not a heavy matter. If it was any less, it would have been a decision for a single judge.

Mr. Speaker, Sir, allow me to address two things, then I sit in terms of substance. One, you have 11 charges. Four of those charges oscillate around one issue, and that is the utterances by the Deputy President. The charge is he made insightful and discriminatory utterances to the effect that only those who voted for the Kenya Kwanza are entitled to resources and positions in Government in Kenya. That is the summary of that charge. That charge is contained in Ground 1, Ground 5, Ground 6 and Ground 10.

Mr. Speaker, Sir, I want to submit that if you find even only that one charge to have been satisfied, then I want to implore the Senators to vote 'yes' for all those four grounds together. Has it been satisfied? Those utterances are admitted by the Deputy President in the documents before you. The meanings of those words in their variety is known to you and Kenyans. The danger in words is something we know in this country way back in 2007.

In our neighbouring country, Rwanda, we know what words did. I heard the lawyers of the Deputy President suggest that he did not take any action. Under the law under Article 10 and 27, you do not have to take any action. Utterances are enough because they can do the very damage that the Constitution intends not to be done.

Mr. Speaker, Sir, what is his response to that charge? There are two. The first one is he was exercising free speech. That is the easiest to dismiss. I invite the Senators to look at Article 33 (2)(d) (ii). It is express and it says, freedom of expression cannot include advocacy for discrimination and that is what he was doing.

Mr. Speaker, Sir, what is the second defence? That whatever he was saying is contained in the various coalition agreements under the Kenya Kwanza Coalition that

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were filed and signed before election. With tremendous respect, allow me to remind the Deputy President that this is the Republic of Kenya, not the Republic of Kenya Kwanza

For that reason, you cannot elevate agreements under the Kenya Kwanza Coalition above the legislation of this country, above the Constitution of this country. Section 13 of the NCIC Act is clear; that those utterances are unlawful, in fact, criminal. Article 10 and Article 27 of the Constitution are equally clear that you cannot make such utterances.

So, to come and say that I uttered them because they are contained in a coalition for coalition is an admission of the violation of the Constitution. If Members wanted one clear admission of guilt, it is this one. It is not denied. The justification cannot stand. Indeed, one of the Senators asked for the justification and I had the lawyers refer to the Schedule Three of the Political Parties Act.

Mr. Speaker, Sir, I invite the Senators to look at Schedule Three, Clause 3(e). It is very specific. It talks of sharing positions in the coalition structure, not sharing positions in government. To try and mislead this august House makes it an aggravation of a wrong and I invite you to find that there was a breach of this. The worst of all is that we played a clip of the Deputy President showing what he had uttered, saying that he has no apology. He said he has no apology and the clip was played here.

I invite you to look at the 798 pages that he has filed. There is nowhere where he has rendered an apology. So, he leaves you in a position where he says, even if he was not impeached, he will continue doing that because, in his view, it is justified by the Kenya Kwanza Coalition.

Mr. Speaker, Sir, I invite the hon. Senators to find that this ground has been proved; and to impeach the Deputy President on Ground 1, Ground 5, Ground 6 and Ground 10 for breach of the NCIC Act, Section 13 and breach of Articles 10 and 27 of the Constitution.

My last point, Mr. Speaker, Sir, is on allegations of corruption. This House has had the various allegations of corruption. You heard the very direct evidence of Dr. Mulwa in terms of KEMSA. You heard the very direct evidence of the Deputy CEO of EACC. You heard the various evidence in terms of Olive Gardens Hotel, Vipingo, Outspan and many others. However, I will not go there. I will let you assess that and my colleagues will address that.

I will address one fundamental thing. In your bundle, hon. Senators, in Volume 2A of the exhibit, you will find reference to a particular court decision. It is on page 60 of 123. That is the decision in Asset Recovery Agencies Versus Rigathi Gachagua. I will take you directly to the finding on page 77.

This was a case that the Asset Recovery Agency filed against the Deputy President and this case was actually finalized 10 days before the last general election. What did the court find? The court found positively and declared that Rigathi Gachagua was found to have funds which were proceeds of crime and, therefore, liable for forfeiture to the State to the extent of Kshs200 million.

Mr. Speaker, Sir, it is important to note that in the 798 pages of the documents filed by the Deputy President, there is no single document that shows that this judgement has been set aside, has been compromised, or revoked. In an inquisitorial system, you do

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not need to restrict yourself. Where there is a judgment produced that shows that you have been found guilty of having proceeds of crime, the expectation would be that you would produce a document negating it.

The fact that no document has been produced, I invite you to invoke an adverse inference that either there is no such document, or if there is, it does not deal with that finding. I submit that there is good reason that document was not produced. Why would you produce all the agreements of Kenya Kwanza and produce all sorts of other things, except one page of a document that is the most important document? As it is, you do not have any document that shows that this finding was negated.

Mr. Speaker, Sir, I suggest that had it been produced, we would then have demonstrated that document is unlawful. This is because in law and I submit respectfully, once you have been found guilty of what amounts to a criminal offence, you cannot then subsequently compromise it, because this is not a civil claim.

A crime is a crime against the State. It is not personal to the Asset Recovery Agency and, therefore, those findings can only be set aside by positive findings of a superior court, and there is none. So, the record shows that Rigathi Gachagua was convicted of corruption. What that means is that, not only was he convicted, but even to come here and allege that he was convicted, and thereafter, entered some sort of negotiation, is in itself evidence of abuse of power, because he was convicted 10 days before elections. Shortly thereafter, it is alleged they compromised it in what would be an illegality.

Mr. Speaker, Sir, on that account, Ground 7 of the charge must succeed.

Respectfully, Mr. Speaker, hon. Senators, I plead with you to find the Deputy President guilty of the grounds as charged. I thank you very much.

Allow me now to introduce the hon. George Murugara to take over.

Hon. George Murugara: Thank you, Mr. Speaker, Sir, and hon. Senators. My name is George Gitonga Murugara, Member of Parliament, National Assembly and the Chairperson of Justice and Legal Affairs. I am here to represent the National Assembly with my colleagues.

I will deal with only one point which supports Ground 11 on the impeachment. It is insubordination and failure to act collectively with the other Members of the Cabinet and the Presidency. There was an argument that was raised that some of the alleged misconduct on the part of the Deputy President were actually committed when he was not the Deputy President, and therefore, do not apply to the proceedings before this House.

Reference is made to Article 150 (1)(b) of the Constitution, which provides that the ground for impeachment would only be serious consideration of serious reasons to believe that an offence has been committed. There is no time limit that is set. This is because once there are reasons to believe that an offence has been committed, then that stretches back to whatever time that offence would have been committed.

This is to say, if in the pendency of the life of the Presidency or the Deputy President, it is discovered that before you assumed office, you committed an offence, that forms a ground for impeachment. This leads me to the next argument, which are the admissions that the Deputy President made before the House.

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Clearly, he admitted that the issue of shareholding in Kenya was live, and he was part and parcel of it. Therefore, Kenyans were shareholders. He admitted in the House and also in the press in the country that he believed the President was behind this Motion.

He also admitted that he had gone against the principle of collective responsibility on the basis that the Cabinet had made unconstitutional decisions, which decisions he had to disobey.

He also dismissed this Parliament as a theatre of the absurd and said he did not expect much from it. The question is this and that, hon. Senators, you have to grapple with; if the Deputy President was to be saved by this House, with whom would he work? He would not work with the Kenyans who he has antagonised with his shareholding notion that he has spread across the country.

Number two, he would have difficulty serving with his boss, whom he has accused of being behind this Motion.

He would not actually work with the Cabinet, where he is responsible for everything that is done in the Cabinet, and the sub-cabinet committees brought together by the principle of collective responsibility. He would not be able to work with this Parliament, which he has called a theatre of the absurd. With whom would he work? This is the question you have to ask yourselves.

What we have before us today is like a marriage. I have to draw that analogy because, actually, the position occupied by the subject of that discussion and the Motion, the Hon. Rigathi Gachagua, is now untenable. He cannot hold that position because his position is irretrievable. He cannot work with any of the organs and bodies he is supposed to work with.

Mr. Speaker, Sir, the position being irretrievable, then it means he actually has to be impeached and I implore you to do so. Where a marriage is irretrievably broken, you cannot apply any law. The marriage is gone.

Whatever law you try to apply does not matter. For the Deputy President today, we cannot apply any measure of legalese because this is not likely to assist us in any way. The position remains.

This is a political process. These political offices are held. Therefore, they are irretrievably broken. As a pen-off, hon. Senators, I will refer you to a biblical book in the Old Testament; the Book of Jonah, Chapter One.

When the Senators retire, they can actually look at that, the entire Chapter. What happened here when Jonah disobeyed the command from his superior and that was the deity? He actually had to flee. When he fled, he took a ship to a different city, not where he had been commanded to go.

What remained was on the journey, the waters were faced with tempest, and eventually, the tempest had to be calmed by tossing Jonah out of the ship. The ship here is the Presidency. The ocean is actually Kenya. Jonah is the insubordinate Deputy President who cannot work with the entire Government and the country and whose position today he holds is untenable.

With those remarks, I urge you, hon. Senators, to uphold this Motion, and to the best of my belief and conviction, not only Ground 11, which I have submitted; the rest of the grounds have been proved.

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Two minutes to the hon. Zamzam, who will also make a statement and a submission.

Thank you.

Hon. Zamzam Mohamed: Bw. Spika, kama mwakilishi wa eneo Kaunti ya Mombasa na Bunge la Taifa ya Kenya. Leo nimekuja hapa kuwaletea yale mashtaka ambayo yameonekana katika Bunge yetu.

Mengi yamezungumzwa. Mimi sio mwanasheria lakini nazungumza kama Mkenya ambaye yuko pale chini, hajui sheria lakini anaomba amani. Video zimechezwa katika Bunge hili, tumeona Naibu Rais akijipiga kifua, hasa kule Taita-Taveta nimeona akiwaambia kuwa hawana *shares*. Na akawaambia kama wanataka hisa wangoje 2027, kwani hata Rais akieleza Naibu wake alete maendeleo nitamwambia asubiri aangalie mfuko wake kwenye orodha ya kupewa maendeleo.

Ifahamike kuna wakati moja Kenya iliingia kwenye vita. Tuliona maiti ya kina mama, mtoto hajui mama amekufa, alikuwa ananyonya matiti. Hatuwezi kutaka taifa hili lirudi kule tena. Ndani ya Mombasa nina wajane ambao wananitegemea. Waliniletea malilio yao.

Leo mimi kama mama Kaunti wa Mombasa nalia kwa sababu ya mayatima ambao waliwachwa na ndugu wa Naibu Rais. Haiwezekani kuwa leo mimi na mume wangu tutafute mali yetu na tuna watoto wetu, kisha akifa aende mbele ya Mwenyezi Mungu nije nipokonywe mali yangu niachwe na watoto wangu wakihangaika.

Ukiangalia umri wa watoto wa ndugu yake Naibu Rais wametoshea kupewa uridhi wao. Lakini hata kuna tetesi kuwa mwingine anaozea kule kwa jela. Nilisikia mwanasheria akisema *tu-save* makanga, mimi nasema makanga ameiba pesa ya abiria, dereva hana pesa ya kupelekea mwenye gari. Wamwache dereva apeleke abiria mpaka stesheni ya mwisho. Ikifika kule atajua atatafuta makanga mwingine namna gani.

Hatuna uchungu na watu wa ‘mlima’ lakini tunachosema tulikuwa na Uhuru, Kibaki na Kenyatta, lakini hatukuwahi ona mambo ambayo tumeona kwa *Deputy President*. Huyu ni sumu, atavuruga Kenya, ataharibu Kenya.

Naomba Bunge hili la Seneti, amani ya Kenya iko kwenye mikono yenu. Naomba mtoe uamuzi wa uhakika. Huyu jamaa hapendezi kisa kuwa katika nafasi ambayo yuko ndani sasa.

Nawaomba kwa heshima na taadhima tuweze kumpandua mamlakani leo ili Kenya iwezekupata mtu ambaye atamsaidia Rais kufanya kazi akiwa ameweka amani na umoja wa Wakenya mbele.

Asante Bw. Spika.

Mr. Eric Gumbo: Mr. Speaker, Sir, briefly, I will wrap up the National Assembly's submissions.

I will endeavour not to repeat what has already been captured on the record. I have agonised and reflected on the place of impeachment proceedings, not just in our country, but across the world and in other democracies.

I have had occasion to look at the history, particularly of the United States of America, from the days of Andrew Johnson in 1868 to Richard Nixon in 1974, Bill Clinton in 1998, and Donald Trump in 2019.

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I ask myself, what do impeachment proceedings seek to serve in a democracy? In my reflections, one of the clear conclusions is that it is a check and a balance through which the populace can then hold their leaders accountable.

It is an avenue through which the populace can ask their leaders whether they are doing that in keeping with the social contract or the understanding that they had at the point of election or delegating their direct powers to those elected leaders.

So, in the context of Kenya, where then do we find impeachment? Our history has taught us very bitter lessons. We remember the events that bedeviled our country after the 2007 elections.

It is after those events, that we gave ourselves a new Constitution. In that new Constitution, we found it necessary to, in an unprecedented way, speak about our values, speak about the fabric of our society, the things that pull us together, and the things that we share as a people. So, the preamble to our Constitution, in particular, paragraph 3, reads;

“We, the people of Kenya—

ACKNOWLEDGING the supremacy of the Almighty God of all creation:

HONOURING those who heroically struggled to bring freedom and justice to our land:

PROUD of our ethnic, cultural and religious diversity, and determined to live in peace and unity as one indivisible sovereign nation---”

and continues so on and so forth.

From those words, we realised what the thinking of the Kenyan people was, right from page one of the framing of our Constitution. We then went to substantive provisions. A lot has been said about Article 10 of our Constitution, to the extent that it speaks to the values that, as a people, we want to be associated with.

We have dedicated a whole chapter of our Constitution to the questions around leadership and integrity. It then tells us how central the values that we hold are to each other as a nation. Now, if we look at impeachment from that lens, then we will realise and appreciate that impeachment then comes in to hold our leaders at an even higher pedestal, so that we have a tone at the top that is acceptable, a tone that gives us what has been called elsewhere, political hygiene.

We have had occasions in this country where people who have been in positions of leadership have been treated in what other people have thought as harsh treatment. However, it is because when there is a tone at the leadership to be set, it must be clear, it must be vibrant and it must be the right tone.

We have had people from the leadership who have lost their office because of having pinched somebody. We have people who have lost their offices because of utterances that were considered inappropriate.

A slap has gotten somebody to go through a fairly painful process. The slap is not necessarily the issue, it is the message that it sends. So, similarly, when we talk about our leaders, we then must ask ourselves, what does one wrong word do to the fabric of our society? It is on the basis of that background that we then consider the impeachment Motion that is currently before this House.

My colleagues who have spoken before me have taken us through the provisions of Article 150 (1)(b) which then speaks to the very grounds that this House should consider, whether to impeach His Excellency, the Deputy President, or not. I would not want to go into those grounds, because the record before this House contains material in support of those grounds.

I would urge Mr. Speaker, Sir, that now that His Excellency the Deputy President, has had occasions to present material before this House that this House could consider in response to the Motion for impeachment, when you retire to debate, to deliberate, we urge that you take into consideration the entirety of that material.

We also ask that you take time to look at what the Mover of the Motion presented before this House, as well as all the witnesses, including what came from public participation, that would give us an opportunity to, in a very objective way, reflect on what and how to deal with the questions that have been presented. I need not go into the specifics of each of the charges.

If I were to give examples when we have a leader occupying the high office of the Deputy President of this country - somebody who is required by the Constitution to take an oath confirming or affirming to Kenyans that they will not divulge whatever comes out of secrecy, out of confidential conversations that come to their knowledge by virtue of the office that they occupy - if that person then defies that bond or that commitment that they have had with Kenyans, it is a gross violation.

Similarly, when we have somebody occupying the space of the high calling of the office of the Deputy President, admitting issues that would amount to conflict of interest between his personal interest, his family interest and which have financial implications, again, our laws then dictate that those are reasons that would be sufficient to impeach such a Deputy President.

We have had examples that have been given about utterances that have been considered to be unpalatable. Again, looking at the entire framework of what our Constitution anticipates, looking at what those words would mean to a man off the streets of Nairobi, off the streets of Mombasa, or any other place, if we all come to the understanding that those words taken in their natural meaning could cause some measure of discomfort, that they are considered to be divisive, they are considered to be of such a nature as to bring or sow seeds of discord between us, as people in this country, then it is the responsibility of this House to speak, and to speak on behalf of the people of Kenya. It is one way of ensuring that the checks and balances that flow from the constitutional powers vested in this House.

As it has been demonstrated through the many tonnes of documents that have been availed before this House, the cross-examination that has attended to the witnesses that have been before this House, and the material that has been placed by the Mover, by all the parties who have had an opportunity to participate in the proceedings of this House, we have absolutely no doubt that this House is perfectly capable of making the appropriate decision in each and every of those counts.

Just for emphasis, Article 150 (1)(b) gives us three grounds. We do not have to have beyond one. Any one of those is more than sufficient to make the call or to pull the trigger on an Impeachment Motion.

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Mr. Speaker, Sir, with that, I rest. We thank you for this opportunity, this evening. Most obliged.

The Speaker (Hon. Kingi): Are you done now with your submissions?

Mr. Eric Gumbo: Yes, Mr. Speaker, Sir, we are done.

The Speaker (Hon. Kingi): Thank you. Now, hon. Senators, I will refer you to the programme. You will notice that after the closing statements from the parties, the Senate is supposed to move to a closed session to deliberate on the issues that have been raised and that is pursuant to our Rules of Procedure. That is demanded of us by the Rules of Procedure. So at this juncture, I will allow the parties to retire as the Senate moves to a closed session. That closed session will take us no more than half-an-hour.

After that, we will come back. Once we are back, there will be a special Motion contained in an Order Paper. That is the Motion that will allow debate culminating into hon. Senators getting the opportunity to cast their vote on each of the eleven charges. So, Counsel for the National Assembly, you may now retire. Once we resume the open session, of course, you will resume your seats.

Mr. Eric Gumbo: Thank you very much, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): The media and live broadcast have to cease forthwith.

(The House adjourned temporarily at 7.19 p.m.)

(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 resumed at 7.39 p.m.)

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

Hon. Senators, there is a Supplementary Order Paper that has been circulated. Are you in receipt of that particular Order Paper? If you do not have a copy, please, indicate so that you are served with one.

Clerk, you may now proceed to call the Order.

Please, wait. Clerk, has the live broadcast started? Clerk, what could be the problem? Can you confirm that we are back on air?

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

Clerk, you may proceed to read the Order.

NOTICE OF SPECIAL MOTION

PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT,
OF H.E RIGATHI GACHAGUA, EGH, THE DEPUTY
PRESIDENT OF THE REPUBLIC OF KENYA

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I rise to move the following Motion; proposed removal from office by impeachment of His Excellency Rigathi Gachagua EGH, the Deputy President of the Republic of Kenya.

THAT, AWARE THAT, the National Assembly on 8th October, 2024 resolved, with the support of 282 Members, being at least two-thirds of all Members of the National Assembly, that pursuant to the provisions of Article 145(2) as read with Article 150(1)(b) and (2) of the Constitution and Standing Order No.65(2) of the National Assembly Standing Orders, His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya be removed from office, by impeachment, on the grounds specified in the Special Motion;

WHEREAS by letter Ref: NA/DLP/TBO/MTS/2024/(025) dated 8th October, 2024 and received in the office of the Speaker of the Senate on 9th October, 2024 the Speaker of the National Assembly informed the Speaker of the Senate of the approval of the Special Motion by the National Assembly and further forwarded to the Speaker of the Senate, documents in evidence of the proceedings of the National Assembly;

FURTHER WHEREAS, pursuant to Article 145 as read with Article 150(1)(b) and (2) of the Constitution and Standing Orders No.78 and No.79 of the Senate Standing Orders, the Senate heard the National Assembly on the grounds for the proposed removal from office, by impeachment, of His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya;

AND FURTHER WHEREAS, pursuant to Article 145 as read with Article 150(1)(b) and (2) of the Constitution and Standing Orders No.78 and No.79 of the Senate Standing Orders, the Senate also heard His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya on the grounds of his proposed removal from office, by impeachment, of the Deputy President of the Republic of Kenya;

NOW THEREFORE, pursuant to Article 145 as read with Article 150(1)(b) and (2) of the Constitution and Standing Orders No.78 and No.79 of the Senate Standing Orders, the Senate resolves to remove from office, by impeachment, His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya, on the following grounds:-

(1) Gross violation of Articles 10 (2)(a), (b) and (c); 27 (4), 73 (1)(a) and (2)(b); 75 (1)(c), and 129 (2) of the Constitution and Article 147 (1), as read together with Article 131 (2)(c) and (d) of the Constitution;

(2) Gross violation of Articles 147 (1) and 152 (1) of the Constitution by undermining the President and the Cabinet and the effective discharge of the national government's executive mandate;

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(3) Gross violation of Articles 6 (2), 10 (2)(a), 174, 186 (1), 189 (1) and the Fourth Schedule to the Constitution by undermining devolution;

(4) Gross violation of Article 160 (1) of the Constitution on the Institutional and Decisional Independence of Judges;

(5) Gross violation of Articles 3 (1) and 148 (5)(a) of the Constitution on the fidelity to the Oath of Office and Allegiance;

(6) Serious reasons to believe that H. E. the Deputy President has committed crimes under Sections 13 (1)(a) and 62 of the National Cohesion and Integration Act;

(7) Serious reasons to believe that H. E. the Deputy President has committed gross economic crimes under Sections 45 (1), 46, 47A (3) and 48(1) of the Anti-Corruption and Economic Crimes Act and Sections 2, 3, 4 and 7 of Proceeds of Crime and Anti-Money Laundering Act;

(8) Serious reasons to believe that H. E. the Deputy President has committed crimes by continuously misleading members of the public through false, malicious, divisive, and inciteful remarks that are contrary to the provisions of Section 132 of the Penal Code and Section 29 of the Leadership and Integrity Act;

(9) Gross misconduct that is incompatible with the high calling and dignified status of the office of the Deputy President and a member of the Cabinet and the National Security Council. H. E. the Deputy President has publicly attacked and undermined the work of the National Security Intelligence Service and its Officers;

(10) Gross misconduct by openly or publicly insubordinating the President, who is the Head of State and Government; and

(11) Gross misconduct by persistently bullying State and public officers.

Mr. Speaker, this is a very difficult exercise that the House of the Senate is being called to undertake. It is the first time in the history of this country that this is happening.

To the best of my recollection, under the old Constitution, pre-2010, such an elaborate process was not available. I do not remember this kind of an exercise where the Senate is being invited to agree to charges initiated by the sister House and confirm them after listening to both parties that appeared before us in the National Assembly versus His Excellency Rigathi Gachagua, the last two days.

Mr. Speaker, I do this with a heavy heart because His Excellency the Deputy President is somebody that is well known to me. I consider him more than a colleague in the leadership of this country and even more than a normal acquaintance in social circles.

The Speaker (Hon. Kingi): Majority Leader, you are called upon to give notice.

The Senate Majority Leader (Sen. Cheruiyot): Notice? Oh, okay. Apologies.

The Speaker (Hon. Kingi): Next Order.

SPECIAL MOTION

PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT,
OF H.E. RIGATHI GACHAGUA, EGH, THE DEPUTY
PRESIDENT OF THE REPUBLIC OF KENYA

The Speaker (Hon. Kingi): Proceed, the Senate Majority Leader.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I beg to hereby move the Motion, which is the proposed removal from office by impeachment of His Excellency Rigathi Gachagua, EGH, the Deputy President of the Republic of Kenya—

THAT, AWARE THAT, the National Assembly on 8th October, 2024 resolved, with the support of 282 members, being at least two-thirds of all Members of the National Assembly, that pursuant to the provisions of Article 145(2) as read with Article 150(1)(b) and (2) of the Constitution and Standing Order No.65(2) of the National Assembly Standing Orders, His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya be removed from office, by impeachment, on the grounds specified in the Special Motion;

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FURTHER WHEREAS, pursuant to Article 145 as read with Article 150(1)(b) and (2) of the Constitution and Standing Orders No.78 and 79 of the Senate Standing Orders, the Senate heard the National Assembly on the grounds for the proposed removal from office, by impeachment, of His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya;

AND FURTHER WHEREAS, pursuant to Article 145 as read with Article 150(1) (b) and (2) of the Constitution and Standing Orders No.78 and 79 of the Senate Standing Orders, the Senate also heard His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya on the grounds of his proposed removal from office, by impeachment, of the Deputy President of the Republic of Kenya;

NOW THEREFORE, pursuant to Article 145 as read with Article 150(1)(b) and (2) of the Constitution and Standing Orders No.78 and 79 of the Senate Standing Orders, the Senate resolves to remove from office, by impeachment, His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya, on the following grounds -

(1) Gross violation of Articles 10 (2) (a), (b) and (c); 27 (4), 73 (1)(a) and (2)(b); 75 (1)(c), and 129 (2) of the Constitution and Article 147 (1), as read together with Article 131 (2)(c) and (d) of the Constitution;

(2) Gross violation of Articles 147 (1) and 152 (1) of the Constitution by undermining the President and the Cabinet and the effective discharge of the national government's executive mandate;

(3) Gross violation of Articles 6 (2), 10 (2) (a), 174, 186 (1), 189 (1) and the Fourth Schedule to the Constitution by undermining Devolution;

(4) Gross violation of Article 160 (1) of the Constitution on the Institutional and Decisional Independence of Judges;

(5) Gross violation of Articles 3 (1) and 148 (5) (a) of the Constitution on the fidelity to the Oath of Office and Allegiance;

(6) Serious reasons to believe that H. E. the Deputy President has committed crimes under sections 13 (1) (a) and 62 of the National Cohesion and Integration Act;

(7) Serious reasons to believe that H. E. the Deputy President has committed gross economic crimes under sections 45 (1), 46, 47A (3) and 48(1) of the Anti-Corruption and Economic Crimes Act and sections 2, 3, 4 and 7 of Proceeds of Crime and Anti-Money Laundering Act;

(8) Serious reasons to believe that H. E. the Deputy President has committed crimes by continuously misleading members of the public through false, malicious, divisive, and inciteful remarks that are contrary to the provisions of section 132 of the Penal Code and section 29 of the Leadership and Integrity Act;

(9) Gross misconduct that is incompatible with the high calling and dignified status of the Office of the Deputy President and a member of the Cabinet and the National Security Council. H. E. the Deputy President has publicly attacked and undermined the work of the National Security Intelligence Service and its Officers;

(10) Gross misconduct by openly or publicly insubordinating the President, who is the Head of State and Government; and

(11) Gross misconduct by persistently bullying state and public officers.

Mr. Speaker, Sir, I have observed that this is such a momentous task ahead. I never imagined a few years ago, that it would be possible after the journey that we have travelled with H.E. the Deputy President in the political side that I belong to, that hardly two years down the line, I will have the difficult task of having to move the Impeachment Motion against him. This is after listening to this case brought to this House by the National Assembly. In the case titled the National Assembly versus H.E. Rigathi Gachagua.

The last two days, together with other Kenyans, we have watched with lots of bewilderment, hard to believe pronouncements and difficulty to believe that here is where we find ourselves as a nation. Despite the many challenges that we have gone through over the years, it was our hope that public officials would have picked up a lesson or two, especially those that are slightly older than yours truly and many that are younger than me in this House.

Mr. Speaker, Sir, it was our hope that in their conduct, they would reflect better the skills, demeanor and pronouncements over leadership that this country continues to yearn for. Unfortunately, listening to the case that has been brought to us by the National

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Assembly, I have reason to believe beyond any doubt in my mind, that they have justified the case they have brought before us.

They have been able to ably demonstrate to us and to the country, that there is no other cure by design of our Constitution to the challenges either political, legal or otherwise that are being faced by the workings and the working relationship between the President and his Deputy other than by way of impeachment.

The National Assembly has moved this House on 11 charges, blow by blow, with citations and examples in broad daylight. They were showing and mapping each charge, how it has been committed and how it violates either the Constitution or various laws of the Republic of Kenya. Therefore, we are left with very minimal options.

I have observed before this House that the Deputy President is personally known to me. I consider him a friend. I have had the opportunity to interact with him, learn a lot from him and sometimes listen to his wise counsel. However, this evening, duty calls and there is very little that we can do.

I am afraid that as legislators and as servants of the people, we have to listen to what the people are telling us. We must appreciate that in 2010 when Kenyans went to the polls and brought about change via the new Constitution, it was a call for us to have a better Republic than had been observed previously since 1963.

There are various high ideals and demands that have been placed in all of us that are in leadership.

I must add quickly that as you rise in stature from a Member of a County Assembly (MCA), to a Member of the National Assembly, Senator, Governor, Deputy President and eventually even as President, that as you ascend in the hierarchy of leadership, the demands by the Constitution are even more.

Number one, because you occupy greater public space and you represent more people, when you speak, you say things that can affect either positively or otherwise the lives of millions of citizens.

Mr. Speaker, Sir, listening to the case that has been laid before us since yesterday by the lawyers of the National Assembly and reading through the bunch of documents that have been presented to us, attached with evidence, I confirm both to this House and to the country that unfortunately, this country must make the difficult decision of saying goodbye to His Excellency the Deputy President, Rigathi Gachagua. This is because the reasons that have been listed have consequences by law of what you do when this happens.

The National Assembly has demonstrated before us that on charge one, there are various Articles of the Constitution, either through his utterances or his actions that have led other Kenyans to seriously believe and feel lesser Kenyans, something that we thought we had slayed.

We thought that we had worked so hard to build a cohesive society where it did not matter after a political contest of who eventually wins that you would feel comfortable and safe. You would want to do business in any of our 47 counties and feel at home.

Unfortunately, listening to the utterances, reading through the response, the pleadings by his lawyers and the admission by his own affidavit, either my good friend

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the Deputy President does not appreciate the higher calling that the office he occupies demands of him or he has completely refused to accept the dictates of our Constitution.

When you get to that place, where there is conflict between man and our Constitution, then man must give way for our Constitution to thrive. That is a demand of a public office.

I know this is not an easy exercise. I have agonized and wondered whether there could be other ways we could resolve this issue. I know for a fact that there have been attempts, not just this time, but previously. There have been occasions where religious leaders, friends and people from business circles, have attempted to mediate through some of these conflicts. Unfortunately, instead of getting better, things have gotten worse.

What is the essence of this session that we are having? After listening through an impeachment process, the Senate sits as a jury to make a decision whether to find guilty or acquit. However, like has been observed many times and I have reminded this on all the occasions when I have moved impeachment Motions the last few years, that an impeachment is political and legal conjoined together. It is about political accountability. It is about legal consequences of our actions as well.

There are political challenges that must be addressed and there are legal issues that have been raised as well. I want to believe my colleague Senators will get the chance to address this House and convince each other. Perhaps people are watching and wondering what is it that Senators are doing at this hour.

I believe that all the 67 of us that are here have had occasion to peruse through the evidence and listen. This is a chance to share your thoughts about what you think and what is proposed as a solution.

I am not sure whether my colleague Senators will find the Deputy President guilty on all the 11 charges or one or two or none.

An hon. Member: It is possible.

The Senate Majority Leader (Sen. Cheruiyot): I am being quickly reminded by my colleague here that it is possible. That is fine. This is because it is based on what you heard, what your mind is convinced about these particular charges that have been drawn and what you think is best for this country.

I do not intend to be long because we have agreed that we will do this not for a very long time. I know there are so many of my colleagues that want to speak on this particular issue. However, there are about two or three charges that I want to just focus my thoughts on, and perhaps leave the rest to hear, to be convinced this way or the other by what my colleagues will pick.

There is Charge 8 on serious reasons to believe that His Excellency the Deputy President has committed crimes by continuously misleading members of the public through false, malicious, divisive and inciting remarks that are contrary to the provisions of Section 132 of the Penal Code and Section 29 of the Leadership and Integrity Act.

We have institutions that are charged with the responsibility of making sure that we are a cohesive society. By statute, after the Constitution of Kenya 2010, we set up the National Cohesion and Integration Commission (NCIC).

It was our sincere hope that that Commission would help us, especially we, as leaders, learn better from our utterances, say and do things that leave the rest of Kenyans feeling that they are proud patriots that make them feel at home in this Republic.

It is unfortunate that despite this NCIC being funded by taxpayers, I have not seen them live up to their expectation. Perhaps, part of the challenges that will emerge even after this impeachment process is to audit how some of these institutions continue to draw from the exchequer, yet they not live up to their mandate.

Mr. Speaker, in fact, the other day, I saw them issue a statement saying if we carry out this impeachment process, it will divide the country. I want to tell Rev. Kobia, that he better resigns. I have never seen a public officer that is as disgraced as that gentleman.

I say so, because I remember last time, this is the same institution that was so vigilant to ban us even from coining phrases like “*Hatupangwingwi*” and say that those phrases are divisive to the country. However, for the last two years, I have seen these narratives and clips that you are being shown being whipped and hurting Kenyans on a daily basis and have kept quiet about it.

When the National Assembly moved to say that we must put a stop to this, they finally show up on stage and say, this will divide Kenyans. Surely, do Kenyans not deserve better from their public institutions?

I hope that by the end of this particular exercise, all the commissioners of that particular institution will find it fit to resign, so that we can have Kenyans who understand how we can build a more cohesive society than those that are gatekeepers of those that push divisive narratives.

We have been invited and challenged that on Charge 10, there is gross misconduct by openly or publicly insubordinating the President, who is the Head of State and Government.

I listened to one of the lawyers urge us and say where is the complaint from the President? Surely, does the President need to complain to you, Sen. Onyonka, to notice that there is a dysfunction in that particular office?

If there is a lack of symphony in action, in word, in deed between the President and the Deputy, and there is a continuous spat, such as what has been witnessed the other day, then constitutional consequences might follow, so that you clean up and have an institution that works for the greater interest of all the people of the Republic.

Finally, I know that not everybody agrees with those of us that hold the view that the Senate has been sufficiently convinced by these charges, either one of them, all of them, or none. What I find difficult is to accept the proposal by those that want to reduce this House and claim that Parliament is a gathering of just a few people.

I have watched many people say that, including pundits on the television and none other than the Deputy President himself. On many occasions, including last weekend in Embu County, he said that his only faith is in the courts of the Republic of Kenya, and nothing about this particular House. Perhaps, it will be important for somebody to remind him the history of Parliament. Parliament is a gathering of all Kenyans.

I have said it many times that because it is not possible for all 50 million Kenyans to meet at one place and agree on issues, they agree to do so through their representatives

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under Article 2 of our Constitution. Therefore, a gathering of the House of Parliament cannot simply be wished away by being scared that a few members may either overturn or undermine the will of the people of Kenyans.

I believe Kenyans speak directly through the election or indirectly through their elected representatives, who are the Members of the National Assembly, the Senate and our County Assemblies. Therefore, when institutions of accountability are dispensing their constitutional mandate such as what we are doing today, if you respect our Constitution, then respect the outcome and the processes that have been initiated and concluded in Houses of Parliament just as you do with courts of law.

I appreciate that on many accounts, these processes has attracted close to 30 petitions to our courts of law. I agree with our learned judges that have made a determination that you allow Parliament to conclude on its processes such that anybody who is not satisfied with the outcome, can exercise their right to appeal.

Mr. Speaker, Sir, in the interest of time and knowing that many of my colleagues want to speak to this issue, I conclude at that. I request the Senate Minority Leader, Retired Justice Stewards Madzayo, the Senator for Kilifi County, to second this Motion.

I thank you, Mr. Speaker, Sir.

The Senate Minority Leader (Sen. Madzayo): Asante, Mhe. Spika. Naunga mkono Hoja hii inayohusu kumng'atua mamlakani Naibu wa Rais. Katika Kanuni zetu za Kudumu, Kipengele 145, kinaongea jinsi Rais ama Naibu Rais anavyoweza kuondolewa mamlakani.

Kwanza, mashtaka yote yalioko mbele yetu kuhusu ukosefu wa nidhamu au nidhamu kwa Wakenya, inasikitisha kusikia Naibu Rais akisema kwamba Kenya ni kampuni na kwamba iko na hisa na kama hukuwapigia kura kama walivyotaka, utangojea sana kupata maendeleo.

Mtu akiwa Naibu Rais anakuwa kiungo muhimu cha kuunganisha taifa. Ukiwa Naibu Rais uliyechaguliwa, maendeleo ni lazima yafike mashinani kote nchini kwa waliokupigia kura na hata wale ambao hawakukupigia kura. Wewe ni kama ndugu, baba, babu na mzee wa nchi hii. Kila unapoenda katika nchi yetu unafaa kuheshimika.

Jambo la kusikitisha ni kwamba hajaongea hivyo mara moja au mbili, pengine tugesema ulimi uliteleza. Katika hii miaka miwili yeye akiwa Naibu Rais, kila siku mahali popote alipoenda amehubiri maneno haya. Hata ameenda maeneo ya ndugu yangu, Sen. Cherarkey, ambaye ni Mkenya halisi na akatamka tena maneno hayo; maneno ya kutenganisha Wakenya kwamba sisi ndio tumepata kwa hiyo wale wengine watabaki.

Nchi ya Kenya ni moja na kila mtu analipa ushuru. Pia, sisi tunaotoka pande za Pwani, Kisumu, Western na kila mahali Kenya hii tunalipa ushuru. Kwa maoni yangu, ni jambo la kusikitisha kuona kwamba Naibu Rais akitamka kwamba Kenya ni kampuni na lazima uwe na hisa za kutosha kupata maendeleo.

Vilevile, nitaongea kuhusu ninakotoka Kilifi, mahali panaitwa Vipingo. Hapo ni mahali ambapo yeye ana hoteli ya familia. Hoteli ilikuwa ya ndugu yake lakini hatimaye akaichukua.

Kitu cha kusikitisha ni kwamba watu wa Kilifi tunahitaji maendeleo ya barabara sana. Mojawapo wa mambo tunayolalamikia zaidi upande ule ni kwamba barabara ya

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kutoka Mombasa hadi Malindi iligeuzwa katikati na ikaenda kwa hoteli inayoitwa Vipingo Beach Resort Limited.

Huo ni mradi ambao ungefaidisha zaidi watu wa Kilifi hususan wakulima, wafanyibiashara na wananchi lakini yeye akaigeuza ikaenda kwake. Nilipata fursa ya kuenda huko. Barabara hiyo imehepa mikanju na miembe ikienda kwenye hiyo hoteli. Hivyo sio namna barabara zinavyotengenezwa. Huo ni ukiukaji wa nidhamu.

Mhe. Spika, sisi sote tunaamini kwamba kuna Mungu na ukimkosea atakuadhibu wakati fulani. Wale waliokosewa sasa hivi, kuna malipo yanayoendelea. Ni jambo la kusikitisha kuona kwamba ukifa mali yako haitaenda kwa watoto wako bali kwa ndugu yako na bibi yake na watoto wake. Huo ni ukosefu wa nidhamu.

Kama kiongozi wa familia, unatakiwa uilinde na kuitunza na kuhakikisha wamepata maendeleo. Wajane wanapolia, Mwenyezi Mungu hujibu na wakati wake wa kujibu umefika. Asilaumu mtu yeyote. Bunge hili halina upendeleo wa upande wowote. Tunasema haki itendeke.

Mwisho, kama unaketi katika Baraza la Mawaziri, yeye akiwa mmoja ya wale watu wanaosimamia National Intelligence Service (NIS), alitamka mambo yasiyofaa ya kulaumu Kiongozi wa Ujasusi.

Kama alikuwa na nia ya kusema kitendo hicho, angemuita Kamshina wa Polisi na Mkuu wa Ujasusi na kuwaketisha pamoja. Angehoji Mkuu wa Ujasusi kama alipeleka ripoti yake kwa Kamshina wa Polisi. Lakini kuenda kwa mkutano wa hadhara na kusema mtu fulani hafanyi kazi ipasavyo kwa ofisi yake ni kosa sana. Hilo lilikuwa ni kosa kubwa sana na huwezi kuficha siri ya yale yanayotendeka katika kazi zao za ujasusi. Kwa vile nimeona ile njia ambayo ameelekea na kazi zake, hauelekei kisawasawa.

Kwa maoni yangu na najua pia ndio maoni ya wengi, nimeonelea kwamba, zile sababu zililetwa hapa, alikosea utendakazi wake na aondolewe katika mamlaka.

Ninaunga hoja hii.

Asante, Bw. Spika.

(Question proposed)

The Speaker (Hon. Kingi): Now, hon, Senators, the Floor is open to debate. The hon. Senator for Nandi Sen. Samson Cherarkey, as we have already agreed, you have a maximum of five minutes. You need not take the maximum five minutes.

Sen. Cherarkey: Thank you, Mr. Speaker, Sir. I want to say from the onset, this is very momentous. This is a true test of the Constitution of Kenya 2010 because in history, we are used to impeaching governors, not the Deputy President.

As I begin, I want to wish my brother and friend, Rigathi Gachagua, a quick recovery after that unfortunate incident.

This ongoing process has largely gone on well until the adherence of Article 50, where we have not succeeded in giving a fair hearing to the Deputy President. The reading of Article 145(4) does not specify the timeline in which the Deputy President removal can be listened. It is only by a special committee that it provides for 10 days. So, that was very unfortunate, in the principle that justice should not only be done, but to be seen to be done. Many Kenyans are asking questions, what really happened.

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Mr. Speaker, Sir, in observation, we did even allow state officers, a full-time governor to participate. This matter was decided in the Constitutional Petition No. 204 of 2019, where state officers were barred by Justice Eric Ogola.

When you look at the issues on various grounds, for example, on the ground for the renovation of the Office of the Deputy President, the funds were appropriated by the National Assembly, yet the same National Assembly is accusing the Deputy President, who is not even an accountant. The accountant is a different person.

Even on the KEMSA issue on the bullying, the grounds that they have been set on, they are saying that the Deputy President bullied KEMSA officials. However, there is no proof that tender was awarded to the specified companies that were provided.

There is the aspect of devolution. The Chairperson of IBEC is the Deputy President of the Republic of Kenya. It is unfortunate that we are coming to circumvent the same law and accuse the Deputy President of undermining devolution. Even on the Kambini, Vipingo Road, no one gave the evidence that this road is either public or private.

Mr. Speaker, Sir, even on the unexplained wealth. You saw the Mover of the Motion did not give us a wealth declaration form from the EACC to show us the unexplained wealth of the Deputy President of Kshs5.2 billion. The grounds that have been adduced before the House stand on quicksand.

You will realize that on the 11 grounds, the Mover was on a fishing expedition. They say and do know that impeachment proceedings are either political, because they are impeachable, they are neither high crimes nor criminal, but are based on the test of probabilities.

Mr. Speaker, Sir, I challenge hon. Members to look at the other aspects even as we go to vote.

Francis Imbuga, the one who wrote the play that was written in 1976, wrote that –
“If the madness of the nation disturbs a solitary mind, it is not enough to say that man is mad.”

We are at a crossroads as a country; whatever the outcome is today, this country must move on. We must proceed.

I know after today, the decision that we will make today is not about the Deputy President. It is about the justice of the Deputy President, justice to the people of Kenya, justice to each and every Kenyan who voted for the Deputy President.

I want to finish by reading the book of Zecharia, Chapter 8:16. I am preaching today. May it get to the souls.

Glen Washington and Morgan Heritage in Reggae say a man is not guilty until he is accused of being.

Zecharia 8:16-

“These are the things you shall do:

Speak each man the truth to his neighbour;

Give judgment in your gates for truth, justice, and peace.”

My colleagues, by the time you cast your vote, think about it. It is not about Hon. Rigathi; it is not about anybody else. It is about the Republic of Kenya, our children, and our nation.

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

Sen. Wambua: Thank you, Mr. Speaker. There is a reason why my colleagues call me a bishop and others call me a pastor.

The book of Deuteronomy, chapter 19:18-19 says that –

“And the judges shall make careful inquiry, and indeed, if the witness is a false witness, who has testified falsely against his brother,¹⁹ then you shall do to him as he thought to have done to his brother; so you shall put away the evil from among you.”

I did not know that I would be a Senator in Kenya at such a time as this being called upon to judge between the National Assembly and the Deputy President of the Republic of Kenya through a Motion brought here by one Hon. Mwangi Mutuse. However, here we are and where duty calls. I will answer the call with courage and be guided by a deep desire for what is good for our nation.

I would have expected that the crumbling relationships within the Kenya-Kwanza administration would, perhaps have been handled within their Parliamentary Group or their National Executive Council and resolved there.

Nonetheless, because they have chosen this path, they have made their bed; they must lie on it. The Mover of the impeachment Motion must have a very dim view of the Senate of the Republic of Kenya. He comes to us with innuendos, falsehoods, sensational statements and numbers that are dropped without a shred of evidence.

He begins his own illustration by saying that sometime in 2023, he goes on to speak about “at another forum in September 2024.” We are debating an impeachment Motion of the Deputy President of the Republic of Kenya. The least that these judges would have expected, the least that these candidates would have expected, is due diligence on the Mover of the Motion, getting every event and every date right, in fact, going down to the minute to the second.

This is a serious issue, but because of time, I will say two things. One, let it be known to this House and to this country that those of us who subscribe to the ideals of the Azimio One Kenya Alliance are totally and grossly opposed to the idea of a Government of shareholding. We do not subscribe to that idea. We believe in an all-inclusive Government where every person and every region has their space in this country.

Mr. Speaker, Sir, when that matter was presented to us as an accusation, as a ground for impeachment of the Deputy President, during cross-examination and going through the evidence table before the Senate, it is clear to this House and to the country that the idea of a government of shareholders is a foundational policy of the Kenya Kwanza administration.

The signature for that policy is appended by none other than the party leader of that coalition, the President of the Republic of Kenya, the Speaker of the National Assembly, the Chief Cabinet Secretary, and I would dare say, do not drag the Speaker of the Senate into this because he is not part of this.

You cannot punish the Deputy President, the principal assistant to the President, for undertaking the role of assistant to the President. He is just expounding on a policy that is both assigned and made public.

Lastly, if you allow me---

The Speaker (Hon. Kingi): Sen. Methu, proceed.

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Sen. Methu: Thank you, Mr. Speaker, Sir. From the onset, allow me to say that I rise to oppose the Motion of the removal by way of impeachment of the Deputy President of the Republic of Kenya.

For the last two days, today and yesterday, we have been treated to a charade of allegations and accusations, which, in my opinion, have not been substantiated either by the Mover of the Motion, Hon. Mwengi Mutuse or the advocates who he came with or the advocates that are on record for the National Assembly.

I am actually quite surprised that one of the advocates who appeared to represent the National Assembly tells us that the Hon. Mwengi Mutuse was only to allege. This is not a trial. He did not have to substantiate. He only needed to allege. Out of the allegation, then it should be carried out and we need to remove the His Excellency the Deputy President from office.

Looking at the evidence that the Hon. Mwengi Mutuse put in his Motion and the cross-examination here and the evidence that he brought to the House, he had two companies that he had listed. When he asked what problem he had with company number one. He would say that he did not have a problem with it. Maybe you will have a problem in the future, but the Deputy President must be removed from office.

When he asked; what problem do you have with company number two? He would say that he did not have a problem with it. However, it might have a problem in the future and that the Deputy President must be removed from office. He kept telling us that he did not have problems with the companies, but that the Deputy President had to be removed from office.

I posed a question to the Hon. Mwengi Mutuse. He alleged that the Deputy President has a dairy farm in Nyandarua County. The fairest thing, or the least, that anybody would do to such an accusation, you need to tell us where in Nyandarua County is the land. At least, remotely tell us the title number so that even if I ask the area Senator if I want to verify that the Deputy President has a dairy farm in Nyandarua, there is something that I can look at.

He said he did not know, but the Deputy President had to be removed from office because it was time to remove the Deputy President.

On the question about the land in Meru, where is the title number? He said he did not have it, but the Deputy President had to be removed from office.

He said his wealth was Kshs5.2 billion. Had he done an evaluation? He said he had not done an evaluation and did not mind because the Deputy President had to be removed from office. There is no evidence I have heard on record.

The other funnier question that we heard is that the Deputy President has an allegation of insubordination. Insubordination can only be sanctioned by the immediate supervisor of the Deputy President. The immediate supervisor of the Deputy President is the President. Is there any affidavit where the President has complained that there has been insubordination by his Deputy? Nothing.

There is only thing that I would want to hold on to on this particular allegation of insubordination of the supervisor by the Deputy President. This is because we have not heard any comment from the President since this Impeachment Motion started. We have not heard him say that what has been alleged by Hon. Mwengi Mutuse is not true. So, I

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want to believe that beyond the owner of the Motion, Hon. Mwengi Mutuse, the President is the bigger owner because he has not denied that there has been no insubordination.

My comment is this; this divorce that the President is looking for, he shall get it, but it will be painful, hurtful and catastrophic. It will have casualties. At the final vote that will be cast today, we might be the first casualties. However, the casualties of today are not necessarily the casualties of tomorrow.

I want to speak to our partners in the coalition and the other people from the Orange Democratic Movement (ODM) and the other parties. The vote that you will take today will not be in vain. It is not in vain that the Senators for Nyandarua, Kiambu, Murang'a, Laikipia, and Kirinyaga counties have strict instructions, from the people who elected this Government, to come and oppose the Motion that is on this Floor of the House.

(Loud consultations)

Mr. Speaker, Sir, I am being disrupted.

The point that I wanted to make is this. It is not in vain that we have been instructed not to sanction this divorce, but if it comes, we shall take it in our strides. I want to tell the people who are here that we shall put the votes that you will cast here in our hearts and not in our minds. The people of the region that I have mentioned are at their lowest. We are calling on the Senators who are here that it is time to stand with us.

Finally, this Motion had to be processed in a haste. We have to try a man who is in hospital because he has committed a political crime. That is the only crime that Hon. Rigathi Gachagua has committed. He has to be removed out of the way and it does not matter what it would take even if he is in hospital. Whatever it would take, he has to get out of the way. That can only happen if it has the direct sanctioning of the President of the Republic of Kenya, His Excellency William Samoei Ruto.

The Speaker (Hon. Kingi): Sen. Tom Odhiambo Ojienda, SC?

Sen. (Prof.) Tom Odhiambo Ojienda, SC: Mr. Speaker, Sir, it is with a heavy heart that I stand in the Senate today to comment on the Motion and the 11 charges that have been preferred against the Deputy President, His Excellency Rigathi Gachagua.

During today's session, when the Counsel for the Deputy President made a presentation, I posed a question to the advocate. The question related to the share question which informs count one. Count one is on Gross violation of Article 10 (2), 73, 75, 129, 147 and 131 of the Constitution of Kenya.

It is inconceivable that certain regions of this country, in the view of the Deputy President, cannot and do not form part of the so-called the shareholders in this country. To me, the shareholding question and the paradigm that the Deputy President has so eloquently for the longest time possible stuck to since the election, is the lowest that he has gone.

This morning, the advocate was unable to respond to the shareholding percentage for Kisumu, Siaya, Migori, Homa Bay and Mombasa counties, among many counties,

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including West Pokot, Trans Nzoia, Mandera Marsabit and Vihiga counties. The shareholding question expressly violates Article 10(2)(b) of the Constitution.

(Technical hitch)

The Speaker (Hon. Kingi): Senator Tabitha Karanja.

Oh! You have two more minutes. It is a system problem.

(Laughter)

Sen. Tom Odhiambo Ojienda, SC: Mr. Speaker, Sir, I thought that was rigging. May I move to just conclude?

We have moved under Article 145 to 155 of the Constitution to impeach the Hon. Deputy President. Under Article 131 of the Constitution of Kenya, the President is the embodiment of this country. He represents this country. Therefore, any coalition agreement of any nature must crumble in the face of Article 131 of the Constitution upon election. The President and his Deputy, who is his assistant, must embrace the principles of inclusivity under Article 10 of the Constitution. They have to be the face and represent all the people of this country.

Submissions were made by Counsel for the National Assembly to the effect that any instrument, be it a political agreement deposited with the registrar that violates this principle of necessity are unconstitutional. It is in the face of this first count that I will vote in favour of the impeachment of the Deputy President.

The other counts are those set out that relate to violation of the principles of national cohesion. They have been proven by the submissions made before this House this afternoon. Violation of Article 147 and 152 of the Constitution have been proved as set out in the charges framed by the National Assembly.

For the first time, this country must pull together in one direction. If the President and the Deputy cannot work together, then the interests of this nation cannot be safeguarded by allowing the Deputy President to continue being in office if his ideals are clearly in contravention or opposed to the ideals that are held by the President of this country. We must support His Excellency President Ruto to run this country in a coordinated manner that brings together all the citizens of this country in a manner that coalesces all the 45---

The Speaker (Hon. Kingi): Sen. Tabitha Karanja.

Sen. Tabitha Keroche: Thank you, Mr. Speaker, Sir. I take this opportunity to convey my *pole* to the Deputy President and wish him a quick recovery. The impeachment process is always tedious and tiring. Going through what His Excellency, the Deputy President, has gone through is not anything that you would wish for your relative or yourself. So, *pole* to him and wish him a quick recovery.

Our wish is that he would have been here when the Senators are talking in order for him to represent himself. Unfortunately, the procedure must go on because we are time bound. In leadership, we must make decisions for the people of Kenya.

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I, Tabitha Karanja, the Senator for Nakuru County, pray to God to give me wisdom to make the right decision for my people. I represent a county that is home for 42 tribes. Nakuru represents Kenya, meaning, I must make the right decision to ensure that there is peace in our county. I want my people of Nakuru County, who I represent, to trust that I will make the right decision for them.

We all know the people who lead in the economic front of this country; the manufacturing sector, hotels, insurances and finance institutions. Fortunately, I come from the business world. All that the people driving this economy want is to ensure that there is stability in this country. They want stability that can guarantee a conducive environment for them to do business.

The Deputy President's or Governor's position is one that we need to think about. If you look at the history, it is unlikely that a Deputy President will survive. We need to have the act of hiring and firing given to the same person that hires, rather than having them brought on the Floor of the Senate when they want to fire them. I wish we could go back to the Moi regime, where they used to be sacked and nothing changed. He would fire and hire another one the following morning.

Fortunately, the political formation in this country has representation from different communities. I know we are all asking where we are, but when the boss says he does not want a person they hired such as a manager, it is very hard to save that person. Even if you save them, where are they going to work? They may even find offices locked. We need to make the right decision to ensure that this country moves, because all we are looking for is the stability of this country.

Mr. Speaker, Sir, standing on this Floor, if we do not save the Deputy President of the Republic of Kenya, whom I come from one community with, I just pray that that position will be returned to the same community.

I thank you.

The Speaker (Hon. Kingi): Proceed, Sen. Okiya Omtatah.

Sen. Okiya Omtatah: Mr. Speaker, Sir, I stand here not to defend a good man. It is not important whether His Excellency the Deputy President is a good or bad man. I stand here to defend the Oath of Office that I took to defend the Constitution of Kenya. That includes giving the devil his due.

During public participation, when the people of Kenya were screaming; "*kufa makanga, kufa dereva*", they were opposing selective prosecution. They said if Parliament has to hold people accountable, it should not be selective.

I stand here to look at whether this House has complied with the Constitution. That is Article 150(2) on removal of the Deputy President from office.

The grounds for impeachment are set out in Article 145. Pursuant to Article 145, it is purely a political process, but bound by law, especially Article 25(c), which requires that somebody should be given a fair hearing.

The removal of a Deputy President from office, by impeachment, on any grounds under Article 145 is a grave matter that involves overturning the sovereign will of the people as expressed in a democratic election. Even more profoundly, it means that the person so removed is prohibited for life from enjoying the rights under Article 38(3)(c), to vie for, be elected, and hold office.

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The constitutional bar that must be cleared for the removal of the Deputy President from office is high. The Constitution requires that the removal must be well-founded in law. That is why it prescribes the thresholds and it must be objective. It is not a simple matter of numbers in the National Assembly and the Senate.

An impeachment is not a vote of no confidence. We must distinguish that. A vote of no confidence is a simple matter with no standards. It is just a political decision that you make. Somebody resigns from office, but he can come back and get the office again. This is an impeachment.

Article 150(2) provides that to remove the Deputy President from office, the provisions of Articles 144 and 145 relating to the removal of the President shall apply, with the necessary modifications to the removal of the Deputy President.

The Constitution does not anticipate a situation where we apply Article 145 on the removal of the Deputy President without modifying it. The phrase is; “shall apply with necessary modifications.”

What modifications has this House, the National Assembly, or Parliament has collectively made to Article 145 before applying it to the Deputy President? Can we impeach the Deputy President using the standard for impeaching the President when we know well that the President is immune to prosecution, therefore, certain standards that apply to him do not apply to the Deputy President?

Given that the Deputy President does not enjoy those immunities, how are we protecting him? How are we ensuring that this process is constitutional?

It is my submission that there is a total failure on Parliament to proceed to impeach the Deputy President without making the necessary modifications to Article 145.

We have seen the potholes we have fallen into. It is okay for the President because he is immune from judicial processes. However, is it okay that the Deputy President should be prosecuted using the same standard used for the President?

Drafters of the Constitution---

The Speaker (Hon. Kingi): Sen. Ali Roba, proceed.

Sen. Ali Roba: Mr. Speaker, Sir, I would like to time myself. My apologies.

Yesterday, the Counsel for the Deputy President spent a lot of time in trying to bring out non-issues, leaving out the critical substance of the case against the Deputy President. As I was seated here, I was hoping I would get an opportunity to get some clarification from the Deputy President. Unfortunately, that never happened.

Since we are here and the public is watching, there are issues that need to be responded to. On the issue of serious allegation to do with the proceeds of crime and money laundering, in the affidavit of the Deputy President, he himself acknowledged that Crystal Company Limited belongs to him. He further acknowledged that he transferred the company to his sons.

He went further to acknowledge, in his own sworn affidavit, that he borrowed Kshs600 million to purchase Outspan Hotel from Aberdare Safari Hotels. However, in the evidence that is filed and is before us, he only provided a letter of offer from a bank. He failed to provide the resolution of the company.

All of us understand the loan process and how tedious it is.

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If you are accused and threatened to be removed from the office of the Deputy President, I believe the least that was expected of the Deputy President and his legal team is to get with clarity a closed loop by providing the evidence that is required. For example, there is no provision in the evidence that is filed before us of what happened after an offer was made.

Normally, it is followed by a loan agreement. That evidence of loan agreement has not been filed. It is followed by a collateral document that was used, and the need to get the collateral document through the legal perfection in terms of valuation report of that asset.

He has not provided the charge document that indicates that that loan has been charged. In the evidence that is filed, he has not provided evidence of the fact that there is money credited to Crystal account, and that of money leaving Crystal account to go to Aberdares for acquisition of Outspan Hotel. The legal counsel expects by concentrating on non-issues with the Petitioner that these issues will be swept under the carpet.

There is another issue that I need to bring out. Yesterday, we were shown videos. The videos indicated utterances of the President in Murang'a County, where the President made a statement in trying to validate the statement of shareholding and the country being a company. They showed the President making a statement of, "*ninyi mmepata share yenu.*" However, that was a statement of inclusivity in context as opposed to the Deputy President's statement, everywhere he has gone, of assertive utterances of exclusivity within the population in this Republic.

Mr. Speaker, Sir, Article 145 of the Constitution and 146 (2)(a) indicates that should the unforeseen eventuality happen, where the President ceases to be, God forbid, the Deputy President takes over to finish the term of that Presidency. The question I kept on asking myself is: Can I really call this Deputy President my President in the context of this division that has been ongoing?

Mr. Speaker, Sir, when you are the second-in-command in the country and you sit---

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

Sen. Thang'wa: I would like to speak from the Floor.

Thank you, Mr. Speaker, Sir, for the opportunity to oppose this Motion. I stand to oppose and I will start from where I left by saying that, children deserve the most honest and thoughtful answers. Allow me, when I give my point, to talk to my children and the children of patriots of this country.

Mr. Speaker, Sir, cutting off the neck does not cure headache. It is one thing to condemn a healthy person and another, to condemn someone who is sick or bedridden.

Today, we were told the Deputy President fell ill and he requested for time for us to give him an opportunity so that we can hear him. However, that opportunity was not granted because we are in a hurry, and yes, I think we are. I do not know to where.

Mr. Speaker, Sir, this is an impeachment in absentia. I believe, without contradiction, that probably it is a flawed process. For some reason or at some point, I did not even know who we are impeaching. Is it the Deputy President or the Governor of Siaya County? I am saying that because our Standing Orders 80 and 81, says when a

governor should appear before us, yet we saw a governor standing there. I was telling myself, perhaps the Governor impeached himself by just appearing to us.

Mr. Speaker, Sir, when we asked Hon. Mutuse, the main witness, questions, he was saying this is just “*prima facie, prima facie, prima facie.*” Since I am not a lawyer, I googled. *Prima facie* means, on first sight. So, we are impeaching the Deputy President on allegation of ‘at first sight’. Nowadays, we do not even love at first sight, but we have made the process of impeaching a Deputy President easier than kicking out a nagging boyfriend or girlfriend.

So, I stand here from Kiambu County, to say that I am not going to impeach the Deputy President because listening to the accusations that were brought here, they are not enough and do not meet the threshold of removing somebody from the office.

You ask Hon. Mutuse, here you heard it, he says: Mr. Mutuse, I was not in an investigation journey. Mr. Mutuse, I just imagined. Mr. Mutuse, I do not know. Mr. Mutuse, I believe. Mr. Mutuse, Senate believe me, even if you do not believe me in one occasion or in one ground, just take one that you love.

Mr. Speaker, Sir, it is sad that my brother, a person from my area or region, the Deputy President of this country is being impeached.

I would like to talk to the Senate Majority Leader, a person I respect, and also the Senator for Bomet County, Hon. Sigei. When we help to save a brother, remember us when we ask you to save our brother.

As I conclude on this issue, he who assesses the integrity of others must exemplify an even higher standard of integrity on himself. I would like to ask you, Members, please, as I go down to write your names or the scenes on the ground. I am not calling myself Jesus, ask yourself, would you be the first one to throw this stone on the Deputy President?

I leave by saying I will vote ‘No’ on all 11 counts. I will vote no.

I leave you with one quote that I have read from a Member of Parliament (MP) from Gatundu North Constituency, who has said,

“The dog is not sick. It is just afraid, facing its last two hours of power, forever.”

Those are the MPs who kicked out the Deputy President. They are now calling him a dog. Maybe even this Motion was brought by some people who are suffering from mental issues. I say that because how do you call a Deputy President a dog and say that he is not sick, he is only waiting to get out of power in two hours. I ask you, brothers, please, do not play along the galleries. Respect the Deputy President and the people of Murima.

I leave you with Exodus 19:12. We were told if you touch a widow, you die. It says if you touch the mountain, you die.

I vote no.

(Applause)

The Speaker (Hon. Kingi): Sen. Edwin Sifuna.

Sen. Sifuna: Hon. Speaker, Sir, let me join you and the others who have sent their sympathies to His Excellency Rigathi Gachagua. We wish him a quick recovery so that he can come back.

Hon. Speaker, Sir, it is an unfair accusation that we are impeaching somebody whilst in hospital. It has been said here, that nobody can predict when you can be taken ill. It can happen to any one of us. Therefore, we did not plan that the Deputy President would not be here to present his case.

As Sen. Roba has said, many people were in fact waiting to also get some clarifications from some of the pronouncements that have come from the Deputy President.

Hon. Speaker, Sir, I would like to also thank the parties that have taken time to appear before us, the case by the National Assembly, and of course, the able representation of the Deputy President.

It is clear that the case by the National Assembly is not perfect, but I have agonised over some of the issues that have been raised by the National Assembly.

Mr. Speaker, Sir, allow me to begin with Ground 1 where the Deputy President is accused of violation of Articles 27(4), which makes it unconstitutional for you to discriminate on among others on the ground of belief. Secondly, there is also an express provision under Article 73 on the same and Article 33(3)(d) that specifically deals with speech that constitutes advocacy for hatred on the basis of discrimination.

Yesterday when I put this question to the legal team of the Deputy President, I was expecting a proper explanation. Of course, you all saw that they chose to throw snide remarks.

(Sen. Tabitha Keroche consulted Sen. Gataya Mo Fire)

The Speaker (Hon. Kingi): Sen. Gataya and Sen. Tabitha---

Sen. Sifuna: Please, pause my time.

The Speaker (Hon. Kingi): Sen. Tabitha, when you were speaking, the Senators gave you a pin drop silence. The same must be extended to the Senator for Nairobi City.

Sit down, Sen. Mo Fire.

Proceed.

Sen. Sifuna: Mr. Speaker, Sir, when I put this question yesterday, seeking clarification from the defense team, they chose to make snide remarks about appointments that have been made recently of members of my party, Orange Democratic Movement (ODM). I have agonised about some of the things that the Deputy President has said.

In fact, in my entire time as an elected leader, I have met the Deputy President once and this is the second occasion when he was in the House. Honestly, both of them were very sad events. The first one was a funeral and these proceedings can also be likened to a political death if the House decides to impeach him.

On that occasion, I told him to his face about my position on some of the utterances that have come from him, that, in fact, I strongly objected to those pronouncements. His legal team sought to hide behind these coalition agreements. I have

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agonized over what to do with an agreement that ousts the mandate of constitutional bodies. For instance, you are told that in the agreement, positions that essentially are supposed to be available to all Kenyans through advertisement by the Public Service Commission (PSC), like permanent secretaries, have already been dished out.

What am I supposed to do with a contract that ousts the mandate of the PSC, a constitutional body? What am I supposed to do with a contract that ousts the mandate of this House, for instance, to vote for the person who sits in the chair that you sit in?

If memory serves me right, Members who are not signatories to the coalition agreement of Kenya Kwanza, in fact, participated in voting for you to become the Speaker. Many of them were Members of my political party, ODM although, of course, I was not one of them.

Mr. Speaker, Sir, there is a position in law about what to do with illegal and unconscionable contracts. I feel that the Deputy President wasted an opportunity to give clarification on his pronouncements that he chose to hide behind a contract that I consider unconstitutional, something that I have agonized over.

I remember a discussion about what is the strongholds of Amani National Coalition (ANC) and FORD-K and somebody said that it is Western Kenya. As the Secretary General (SG) of ODM, I know for a fact that Busia is an ODM county. In fact, if you look at the statistics at the Register of Political Parties, the county with the highest membership in ODM is not Homa Bay or Siaya, but Busia County.

The question I am being asked by my Members from Busia is if a member of ODM who resides in Busia wanted to be a permanent secretary, does he take his application to the local FORD-K office so to access the 30 per cent for Western Kenya? That is the agony that people are going through.

Mr. Speaker, Sir, there was also the conversation around the public attacks on a judge. As a lawyer, an advocate of the High Court sworn to defend the Constitution, I agonize over what I am supposed to do with public attacks on judicial officers, people that I appear before seeking justice for my clients.

We also have a discussion around attacks on intelligence institutions in our country and the Director General of the Intelligence. It was argued here that, in fact, as a member of the National Security Council, the Deputy President has a forum to bring---

The Speaker (Hon. Kingi): Proceed, Sen. Karen Nyamu.

Sen. Nyamu: Thank you, Mr. Speaker, Sir. I can assure you none of us is enjoying these proceedings of an impeachment Motion against the Deputy President, particularly those of us from the Government side, the Kenya Kwanza Coalition, for obvious reasons. He has been our leader, we have been in the trenches with him fighting for this Government.

It has come to this and I can assure you we are not particularly very excited about it. I have personally interacted with him on numerous occasions. If you look in the Internet, you will see photos of me dancing with the Deputy President.

I have followed these proceedings very keenly. All the 11 counts starting with gross violations of the Constitution, Article 10(2); the one that talks about the conduct of public officials, including the Deputy President, the one that talks about him being a principal assistant of the President, and an extension of the presidency. Article 147 that

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talks about his insubordination and Article 160 that Sifuna has talked about, that deals with undermining public institutions, particularly the judges.

I was born and brought up in Nairobi County, Eastlands, where I come from. When growing up, we were not even aware of each other's tribe. Our neighbour could be from any other tribe. When I hear the Deputy President talking and allocating shares to citizens, I am aware that he is excluding more than half the population of Nairobians from service delivery. These are the same people that me and Sen. Sifuna are always here fighting for every day for allocation of resources and services.

As if that was not enough, he was in the Central Business District (CBD) the other day, addressing Nairobians in the Kikuyu language, assuming that all Marikiti traders are Kikuyus, nothing can be further from the truth.

Sowing seeds of tribalism in Nairobi is very dangerous. If you have seen the slums set up where all tribes live together, I do not want to imagine if you sensitize these people and make them aware of their tribes and their lack of shares in their own country.

Finally, in future, I want to call upon presidential candidates to make critical attributes of their running mates; to have political maturity and a national outlook. To some extent, we want to put some blame on the President because we are wondering what he looked at when he picked his running mates.

Thank you.

The Speaker (Hon. Kingi): Proceed, Sen. M. Kajwang’.

Sen. M. Kajwang’: Mr. Speaker, Sir, as I make my comments on this Motion, I would like to wish the Deputy President of the Republic of Kenya, Rigathi Gachagua, quick recovery.

He is still the Deputy President of the Republic of Kenya as at 9.19 p.m. on the 17th October until any decision is made. We pray that God gives him the strength and good health to continue pursuing that responsibility.

Mr. Speaker, Sir, the counsel for the National Assembly, that is, the venerable James Orenge began his opening statement with a quote from scripture. Allow me also to go to scripture.

This time I will go to the book of John. In the book of John, Chapter 8, we get the story of the adulterous woman. Jesus Christ is teaching his disciples at the temple early in the morning. The scribes and the Pharisees, drag a woman to his presence and say: ‘This woman has been caught in the act of adultery’. The Bible says that she has been caught “in the very act of adultery.”

What surprises me in this passage is that the woman who was caught in the very act of adultery has been produced, but the man who contributed to the adultery was not brought before Jesus Christ in the temple.

Mr. Speaker, Sir, we have a man who has been brought before us for impeachment. We have been told that he has been a political adulterer and has grossly violated the Constitution and the laws of the Republic of Kenya. Adultery takes two to tango. Like that woman in the book of John, I do not know whether they went for the men who cajoled, seduced, connived with her and who paid her for the act of adultery.

In this Republic of Kenya, we must drain the swamp of adultery. Today, just like back in the days when the Law of Moses required that a woman who had been convicted

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or accused of adultery be stoned to death, unfortunately, it looks like the same punishment was not prescribed for men. It was just for women to be stoned to death and yet it takes a man for a woman to commit adultery.

Tonight, because the Constitution of the Republic of Kenya is just like the Law of Moses, it says if you are found guilty of political adultery, you should be stoned to political death. It is called impeachment. You are sent into political purgatory for 10 years. You cannot run for office.

Mr. Speaker, Sir, we must deal with the law as is. The law as it is requires us that the woman or the man accused of adultery must be stoned to death in this Chamber. That is the law as it is. However, we must make sure that we bring those other men and women who commit and encourage people to go into adultery so that they also face the same sentence and judgement.

I am convinced that political adultery has been committed in the case before us. There has been a conversation about a dubious shareholding structure of the Republic of Kenya. If the Republic of Kenya was a corporation, as we have been told or if it was a political party, then we would have 56 million equal shareholders from Moyale to Vanga, Nyatike to Ndhiwa, Bumala to Malaba. It cannot be restricted to a geographical entity called a mountain.

Mr. Speaker, Sir, I am convinced that political adultery has been committed in the intimidation and threats to judicial officers and in public attacks on our intelligence service. Where I come from, if you find your father naked, you do not proclaim his nakedness, you cover him. We cannot then proclaim the nakedness of our intelligence service.

I am convinced that the Deputy Speaker has committed political adultery. Sorry the Deputy President.

(Laughter)

I am sorry, Deputy Speaker. The Deputy President has committed political adultery.

The Speaker (Hon. Kingi): Your time is up. Let us now listen to Sen. (Dr.) Murango.

Sen. (Dr.) Murango: Asante sana, Bw. Spika. Kwanza ningetaka kumuombea afueni haraka Naibu wa Rais.

Ningependa kusema hivi, fisi anapotaka kula mwanawe, husema kwamba ananuka kama mbuzi. Ni dhahiri shairi kuwa, mashtaka iliyo mbele yetu leo ni fisi anayetaka kumla mwanawe.

Wakati Sen. Thang'wa alikuwa anaongeo hapa, leo ulimwambia uombe msamaha. Alikuwa amemwambia Naibu Mkurugenzi Mkuu wa Idara ya Jinai kwamba anapojibu, ajibu na wanao.

Mashtaka ambayo imekuwa na kampuni zote zilizokuwa hapa, mingi zilikuwa za watoto wake Rigathi Gachagua. Ama kweli, chambilecho, mkuki kwa nguruwe, kwa binadamu mchungu. Kwa sababu hakuwezi kuwa na ubaguzi wa wanawe Naibu Rais, lakini kusiwe wale wengine wanaopewa heshima tofauti na hiyo.

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Mimi nimetoka Kirinyaga na ninajua mashtaka yote 11 ambayo yako hapa. Kuna jambo moja ambalo mpaka ufanye kama utadhihirisha hayo mashtaka na ni ushiriki wa umma ambao tuko na ushahidi mbele yetu.

Katika ushiriki wa umma ambao tuko nao mbele yetu, isipokuwa picha za maofisi za National Government – Constituency Development Fund (NG –CDF) na takwimu ambazo zimetoka katika Bunge la Kitaifa. Hii ni kwamba wale wote ambao walikuwa wametia sahihi kumuondoa Naibu wa Rais ndio walio ongoza katika ushiriki wa umma.

Bw. Spika, ningeuliza itakuwaaje na itawezekanaje mtu ambaye ametia sahihi kumuondoa Naibu wa Rais anaongoza katika ushiriki wa umma? Mbuzi atapata haki wapi katika mahakama ya fisi?

Ningependa kusema ya kwamba ni rahisi kuangalia mashtaka na kuyaona kama inavyofaa kwa Naibu wa Rais ambaye ako hospitali. Najua ya kwamba naweza kuwa nimesimama hapa na ninapoteza kuni nikichemsha mawe. Najua hivyo. Lakini fisi aliambia mawe siku moja, ‘hata kama haujaongea umesikia kile nimesema.’

Katika mashtaka yaliyo hapa na sisi tunafaa kuongozwa na ushahidi sio riwaya, hekaya za abunwasi au fasihi’ Lakini tunazo hapa zote ni hekaya za abunwasi. Hakuna ushahidi wowote ambao tumepewa mbele yetu. Kwa hivyo, siwezi kusimama hapa halafu niweze kumhukumu Naibu wa Rais.

Katika Kitabu ya Wakolosai 3:12 inasema ukihukumu wengine, wahukumu vile wewe utataka kuhukumiwa.

Bw. Spika, sasa hii leo, tunafaa kuwaaminiaje waliyorodhesha mashtaka yaliyo hapa na kukosa kuleta ushahidi? Ni chuki ama ni uchungu gani ambao wako nayo na Naibu wa Rais. Ujuavyo, akuchukiaye huwa anakuambia unamtifulia vumbi hata wakati unaogelea.

Mahali nilikotoka, kitu ya kwanza nataka kufanya ni kuwakilisha watu wangu. Waliniambia ya kwamba hawakuhusishwa vilivyo katika ushiriki wa umma ambao uko hapa. Hii ni kwa sababu waliyoenda kule mashinani kufanya ushiriki wa umma, walienda kufanya ushiriki wa umma wakijua matokeo yake.

Kwa hivyo, mimi nimeambiwa na watu wangu kutoka Kirinyaga kwamba tumekuchagua wewe uende pale utuwakilishe, tafadhali ukienda, usikubaliane na yale mashtaka yote ambayo yamewekwa hapo.

Bw. Spika, Mswahili husema; “lililompata peku na ungo ni lilo.” Wewe ni Mswali na unajua kwamba ‘ungu’ ni uteo ambao ni mpya. ‘Peku’ ni uteo unaopepetea ambao ni nzee. Nawaambia siku ya leo Maseneta, tukimhukumu Naibu wa Rais, yanayompata leo, hata nyinyi mjue siku moja yanawezakumpata, na ambaye atachukua msumari wa kwanza kumpigilia Naibu wa Rais, ningeomba kwamba asiwe ni mtu kutoka kwa mlima. Huyu ni ndugu yetu na tunapokuja kumsulubisha msalabani, afadhali tuangalie akisulubiwa lakini mmoja wetu asichukuwe msumari na nyundo kuenda kumsulubu.

Bw. Spika, najua ya kwamba kuna wale ambao wanaelekeza vingine visivyo. Mswahili husema, “usiwe vita tange kuwatosa wengine ndemani.” Kama uko na msimamo tayari, usije ukapeleka mwenzako katika huo msimamo wako. Tunafaa

kuzingatia ushahidi na kuangalia kila jambo na maombi ambayo tuko nayo katika Seneti kuwa wenye haki na uaminifu.

Asante sana.

The Speaker (Hon. Kingi): Now, hon. Senators, we had had a consensus to terminate at 9.30, but again, breathe in and out. I am asking, with your consensus, if you can push it for another half an hour, so that we terminate at 10.00 p.m.

Is that okay?

(Loud consultations)

Hon. Senators, you know, we have to vote for 11 counts, individually. So, we will do an extra half an hour before we terminate.

Sen. Olekina, you have the Floor.

Sen. Olekina: Thank you, Mr. Speaker, Sir. This evening, let me disabuse this notion that an impeachment process is an attack of the mountain region. An impeachment process is a vital process of holding public officers and state officers, accountable.

I have heard on various occasions from my colleagues, those who oppose this Motion, that we are targeting the mountain. I beg to differ. I do so, with the following facts---

(Loud consultations)

The Speaker (Hon. Kingi): There is a lot of movement in the Chamber, let us take our seats, please. Let us hear the hon. Senator in silence.

Sen. Olekina: Thank you, Mr. Speaker, Sir. Let me begin again by saying I want to disabuse this notion that an impeachment process is an attack of a region; it is not. It is a constitutional process that this House has been given the task to be able to hold public officers accountable.

Today, we are discussing the impeachment of a Deputy President. Tomorrow, we might be discussing the impeachment of a President. We have constantly debated impeachment of governors here. I have never heard, at one given time, people come up and say we are targeting a particular community . We are not.

We have been entertained this afternoon, or the last two days, with the defence alleging that the shareholding utterances made by the Deputy President were in reference to the shareholding of a coalition agreement.

It was demonstrated here that the Kenya Kwanza Coalition agreed upon how they can share different positions in Government. In fact, I thought they would say that the Speaker of this House was also negotiated.

I believe when the Speaker of this House was proposed to be voted for, he was voted for by all the Senators. Never have I seen the Speaker giving preference to the people of the coastal region. So, I am not convinced by the defence that the shareholding being uttered by the Deputy President, is based on a coalition agreement.

The defence attempted to respond to the allegation on Ground 8, whereby they said that the utterances of the Deputy President violate Section 132 of the Penal Code. It

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is important for us to know what Section 132 of the Penal Code says. It actually makes it illegal to utter, print or publish words or acts that brings into contempt the lawful authority of a public officer.

The decision made by Justice Esther Maina in her capacity as a judge of the High Court is protected by the position that she holds. So, it is a bit nonsensical for the Deputy President to go out in public, instead of following the due process of the law to go out and appeal the decision of that judge.

Until today, coercion was used to return the Kshs200 million to the Deputy President. That money must go back to the public.

The Deputy President has a forum. Article 240 of the Constitution puts him as one of the key members in the National Security Council (NSC). He has a forum to go out there and express his dissatisfaction with the NIS.

When he called a press conference and outrightly says that the Director General of the NIS has completely brought that service into a halt, he was exposing the secrets of this country. What he was doing, he was actually saying that we have no control.

If for anything, today I will cast my vote based on various issues; one is on shareholding. The second one is on the violation of Section 132 of the Penal Code and the third one is on the issues of coercion. I listened to the gentleman from KEMSA this afternoon when he said that he had to sit for hours at EACC to come out with one bid bond. One! He was called on 11th.

When the defence were trying to justify that, instead of actually reading the recommendation made by the Senate, they were going through the submissions of one of the witnesses who appeared before my committee; the Committee on Health.

So, Mr. Speaker, Sir, I am convinced---

The Speaker (Hon. Kingi): Sen. Seki, the Senator who was elected by the people of Kajiado County.

(Laughter)

Sen. Seki: Thank you, Mr. Speaker, Sir. I also want to put my voice to this Motion on the proposal to remove, by impeachment, the Deputy President of the Republic of Kenya, Hon. Rigathi Gachagua.

Eleven grounds have been put to this House. I thank the legal counsel of the Deputy President for interrogating the witnesses, more so Hon. Mutuse, being the lead witness and the Mover of the Motion. I am able to see evidence that has been put in place for the 11 grounds in this Motion. Hon. Mutuse was unable to demonstrate issues that have been raised in this Motion.

Particularly, I can go to one or two. On Ground 7, the Deputy President was alleged to have acquired Kshs5.2 billion of assets within that small period of time. I understand that this witness was unable to explain or demonstrate that the Hon. Deputy President got the Kshs5.2 billion from Government contracts. He was unable to demonstrate that the Kshs5.2 billion was received or the Deputy President received it from this company, from another company or this other company. There was no evidence on this count.

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Mr. Speaker, Sir, I see impunity in the issue of listing 22 companies. However, there is no evidence to demonstrate that these companies are doing business with Government.

It is impunity of a high order to bring 22 companies and you are unable, as a Mover of the Motion, to explain that the 22 companies have received money from the Government institutions, but you put it on the Motion as evidence to impeach the Deputy President.

Hon. Speaker, we have seen where the Deputy President is alleged to have conspired with a company, Agrobriick Investment Limited, where the Controller of State House as an accounting officer of the State House signed the contract and it is brought to the Motion to remove the Deputy President.

This House, this afternoon, received a report from the legal counsel of the Deputy President that the Deputy President, is sick. Now, we are ready---

The Speaker (Hon. Kingi): Sen. Faki, proceed.

Sen. Faki: Asante, Bw. Spika, kwa kunipa fursa hii kuchangia Hoja ya kumbandua Naibu Rais kwa nafasi yake ya kuwa Naibu Rais wa Jamhuri ya Kenya. Kwanza, na jiunga na wenzangu kumtaka afueni ya haraka Naibu Rais. Ilikuwa ni matarajio yetu kwamba jioni ya leo atakuwa hapa kujitetea kwa madai kadhaa aliyoletewa katika Bunge hili ili kutakasa jina lake.

Bw. Spika, nimeangalia mashtaka yote 11. Baadhi ya mashtaka yaliyonigusa ni shtaka la kwanza. Anasema kwamba Kenya ina hisa na kwake wenye hisa ni wale waliopigia kura Kenya Kwanza katika uchaguzi wa mwaka 2022. Hiyo imebagua makabila zaidi ya 47 katika nchi yetu.

Sisi tunaotoka Pwani ambapo kutoka mwanzo Pwani ilikuwa sio koloni ya Kenya, ilitupa mshtuko mkubwa kwa sababu tumeona kwamba tunazidi kutengwa katika Jamhuri yetu ya Kenya.

Shtaka la pili lililonigusa ni kuhusu ukiukaji wa sheria. Nitaangazia shtaka la pili na sita ambapo amekiuka sheria unayohusu uwiano katika nchi yetu ya Kenya na kuleta makabila na jamii zote pamoja.

Shtaka la tatu ni ukosefu wa nidhamu kwa kumshambulia hadharani mkurugenzi wa shirika la ujasusu nchini. Hii ilitokea mnamo 26/06/2024 ambapo Naibu Rais alikuwa Mombasa na akatoa taarifa kwamba zilizohujumu usalama wa taifa. Kama Naibu Rais alikuwa na fursa ya kuzungumzia mambo haya Serikalini na hatua za kurekebisha zikachukuliwa.

Mhe. Spika, ninapoangalia makosa yote, haya yasingeweza kumfika Naibu Rais kwa sasa kwani masuala yote yaliyoangaziwa hapa, yaliangaziwa na Sen. Sifuna alipoleta Hoja yake wa kumkosoa Naibu Rais lakini Hoja ile ilikufa ndani ya Seneti.

Masuala ya ukiukaji wa kiapo hayana nguvu kwa sababu alipoapishwa siku ya kwanza aliapa viapo viwili. Hatujui ni kiapo kipi alikiuka wakati Mhe. Mutuse alileta mashtaka haya.

Nikimalizia nitamnukuu Sen. Orenge aliposema kaika Bunge lililopita kwamba mapinduzi yanakula watoto wao. Kwa kiingereza, *Revolutions eat their own children*. Tunaona mapinduzi yameanza kula watoto wa Kenya Kwanza yakianza na mtoto mkubwa ambaye ni Naibu Rais. Haya ni masuala yameendelea katika Bunge hili.

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Katika Bunge lililopita, tuliona Profesa Kindiki aliteta sana lakini mapinduzi yakamla. Lazima tujenge siasa za kusonga mbele katika nchi yetu. Tukichaguliwa kama viongozi tunafaa tuzungumze masuala ya kitaifa na sio masuala ya vijijini kwetu. Matarajio ya Wakenya wote ni kwamba tunafaa kuzungumzia masuala ya kitaifa.

Bw. Spika, napongeza Seneti kwa kuonyesha ukakamavu na umahiri mkubwa wakati tunasikiliza kesi ya Naibu Rais. Labda katika siku za usoni, tutapata fursa ya kusikiliza kesi ya Rais wa Jamhuri ya Kenya katika Bunge letu.

Asante kwa kunipa fursa hii.

The speaker (Hon. Kingi): Sen. Orwoba, proceed.

Sen. Orwoba: Thank you, Mr. Speaker, Sir. First, this is not about a relationship. It is not about a friendship that has deteriorated. I have been hearing people say, if it is about a relationship or marriage that has broken, why do they not go back and make peace and come together? No.

These two individuals, His Excellency the President and the Deputy President, did not come together so that they can live happily ever after and have children. They came together so that they could deliver development to the people of Kenya.

It pains me when I hear people saying about adultery and relationships. We have been here because of 11 grounds. It is a very serious Impeachment Motion because of not two or three, but 11 grounds. In my condition, I have had to sit here and go through all the 11 grounds to understand which has been substantiated and holds water. This is not about a relationship. We should not expect that because they came together, they should go and sit somewhere and make peace and stop disturbing us.

Mr. Speaker, Sir, 11 grounds of an Impeachment Motion is very serious. It is very unfortunate that of the 11 grounds about four were not even substantiated. It is very shocking to have a team of legal experts sitting down bringing 11 grounds. At the very least, they should have even substantiated nine.

In ground two, when you talk about undermining a Cabinet decision, how did we not have the witness come here to speak so that we can understand? Some of us do not sit in Cabinet and we need to understand what a Cabinet decision is and how it is undermined, but the witness was not produced.

We had another witness who did not come here to give evidence on undermining Devolution. Governor Sakaja signed an affidavit, but did not appear.

People must respect the Senate because when we are sitting here to analyse 11 grounds, honestly in all fairness, they should at least be substantiated to some level.

I have lived through the post-election violence of 2007/2008. It is very strange that 2007, I was also pregnant. I remember the things that triggered the post-election violence in January 2008, it was such utterances such as, "*Msiguse Mlima.*" They started as a joke and before you knew it, *matatus* were being stopped and people were being asked to get off the *matatu* and showcase their IDs. Arms and limbs were being chopped off. We might think this shareholding narrative is a joke.

Mr. Speaker, Sir, I remember very well that I had to choose the people who were to operate me in 2008 because I was afraid. As Kisiis, we love everyone. People always think we are traitors because we welcome everyone. At that time, the attack on us was from both sides. Therefore, I do not take this shareholding narrative as a light thing.

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I do not take the *msiguze mlima* as a light thing because I have been affected directly.

Mr. Speaker, Sir, on that count, I definitely have seen that it has been substantiated. We have seen the evidence and we have even seen repeated utterances of causing divisiveness in this country. Today, I say that this country is not about one person. It is not about William Ruto or Rigathi Gashagua, this country is about the 50 million Kenyans who have to live in peace and under the national unity.

For that reason, I say that on that shareholding narrative, I hold my ground. I will definitely vote that he should be impeached.

The Speaker (Hon. Kingi): Sen. Kavindu.

Sen. Kavindu Muthama: Thank you, Mr. Speaker, Sir, for giving me this opportunity and let me start by telling H.E the Deputy President of this country, *pole sana* and we wish you a quick recovery.

Secondly, I will quote a scripture which has been quoted here; John 8:7. Jesus told the people who took that woman before him, that whoever has not sinned to be the first to take a stone and throw at that woman. When he bent down and stood up, there was no one. All the men had gone and only the woman was standing there and he told her to go in peace, her sins forgiven.

Mr. Speaker, Sir, when I talk like this, the other day, we heard the Deputy President publicly ask for forgiveness. The Bible in the book of Matthew 6:14 and 15 says that, if we do not forgive men their sins when they sin against us, our Heavenly Father will never forgive us our sins.

When I talk like this, I want to say the Mover of this Motion, hon. Mutuse could not substantiate the allegations. He was asked questions and people even outside in the social media are laughing and asking what kind of a lawyer is he because he could not answer many of the questions. I believe he was not aware of the Motion. It seemed like it was drafted by somebody else and he was given it to table.

Even in the last speech of the National Assembly, they said on impeachment, it is not necessary or important to substantiate every allegation and even to make sure that you have all the evidence of the allegations, because this is not like a court. I thought, as a Senate, we sit here as a court and whatever ruling we give here is acceptable. Therefore, I wonder why one would stand and say that it is not a must that they substantiate beyond reasonable doubt.

I believe if we are impeaching a person, all the accusations must be substantiated and beyond reasonable doubt, because that is one's career, we are about to ruin and this person has a family and a career. When I think of hon. Waititu and hon. Sonko, for ten good years they cannot stand on any elective office.

(Sen. Methu and Sen. Cherarkey consulted loudly)

The Speaker (Hon. Kingi): Order, hon. Senators. Sen. Methu, you were heard in silence. The Senator for Nandi, you were heard in silence. Extend the same treatment to Sen. Kavindu.

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Sen. Kavindu Muthama: Thank you, Mr. Speaker, Sir. It was just the other day, I heard the Senate Majority Leader and many of us here, say that Sonko was impeached for no good reason. How do we reverse what we have already done in this Senate? Before we impeach anyone, we must substantiate all the charges and make sure that it is not something that we are going to eat back our words and start saying that we did a mistake.

Mr. Speaker. Sir, I stand here to say no to this Motion.

The Speaker (Hon. Kingi): Sen. Kathuri Murungi.

Sen. Kathuri: Thank you, Mr. Speaker, Sir, for this opportunity also to make one or two comments on this important exercise. Many Kenyans are wondering why the Deputy President is being impeached and they are saying that, if he is to be impeached, then both he and President should be impeached at the same time.

Our Constitution has given the National Assembly and the Senate this mandate to do this exercise of checks and balances on our public officers. Article 145, which we used this afternoon to determine whether to proceed or not, is very elaborate on the process of impeaching the deputy president or the president. Therefore, we are here because the Senate has on several occasions brought deputy governors, governors and now the Deputy President.

(Several Senators spoke loudly)

Mr. Speaker, Sir, kindly protect me from the noise from behind.

The Speaker (Hon. Kingi): Senator for Nandi, go back to your seat your usual seat. It may be lonely, but please stick there.

Proceed, Sen. Kathuri.

Sen. Kathuri: Mr. Speaker, Sir, I was trying to say that this House has brought deputy governors, governors and now the Deputy President. What we are doing is a constitutional mandate. Therefore, I will ask Kenyans to bear with the Constitution. It is the Constitution, which has brought us to where we are.

I also want to thank the parties representing the Deputy President and the parties representing the National Assembly that were here for the last two days. All these Senators have been sitting here as judges for the last two days and nights and this is a court like the high court. Only that the judges in the high court or in the courts do not discuss the cases they handle, but they meet, discuss and then make decisions and such a decision is read by the president of that court.

Mr. Speaker, Sir, that is why we find ourselves here because we make decisions through voting and this evening, these jury will make its decision in one or the other. I would request Kenyans from today that whatever decision will be made, they should maintain peace, love and unity as was envisaged since the independence in 1963.

This is because, a decision will be made by the Senate in one way or the other; either to impeach the Deputy President or not to impeach. I want to talk to the people that I represent, the Meru community. I assure them that whatever decision their Senator will make, is for the best interest of the Meru people and I assure them that their future will be bright, if not brighter.

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What they need is service delivery and not individuals. Whatever decision that I will make is for their best interest because they elected me to make some decisions. Some are soft decisions or hard decisions, but what they need, at the end of the day, is to ask their Senator what he has done for them for five years.

Mr. Speaker, Sir, as I finish, I encourage all of us from a Bible verse in the book of Thessalonians 5:18, which says that, in every situation, no matter what the circumstances, be thankful and continually give thanks to God, for this is the will of God for you in Christ Jesus. Therefore, in whatever you do, thank God and whatever happens to you, thank God because we always should give thanks to God.

I thank you.

The Speaker (Hon. Kingi): Sen. Crystal Asige.

Sen. Crystal Asige: Mr. Speaker, Sir, the Parliament of Kenya has gone through a great deal in a short amount of time. It is painful for me to note that the world keeps seeing us time and time again under such lugubrious circumstances. However, it has taught me many lessons. It has also reminded me of many that I have known for several years. One of which I was taught by Tony Evans which is-

“If all you see is what you see, then you do not see all that need to be seen.”

I have never met the Deputy President. In fact, the last two days are the first time we have shared any space together. To be honest, I do not think we have much in common. I feel there is a lot to be desired in his leadership style.

Mr. Speaker, Sir, instead of going to the Bible, I will go into my own experiences and draw some parallels. People know that I have glaucoma, and I have been fighting and battling it for several years of my life. When I first got my diagnosis when I was just a teenager in high school, I was told that I was imminent; there was no running away from my condition. I did not know at the time I had anything that was going on. I was going about my life, but inside of me and around me, there was a condition that was building up and I had no idea what was going to happen in the future.

Now I have been left blind; I cannot see in front of me, even when I put my hand in front of my face. The parallels I draw between my life and the hearing we are sitting in today are that the Deputy President did not foresee this happening to him either.

I have also drawn parallels of feeling out of control, which I assume he feels. He has given a diagnosis that seems imminent that he cannot stop. I also feel that he is probably feeling fear; that is what I have heard. Feeling betrayed and angry. I felt all those feelings because of situations that I can draw parallels with in this hearing. I have been fighting, pleading and praying. Trying everything in my power to mitigate, to stop, just like he has been doing in the last several weeks that this has been going on.

It is funny that October is blind awareness month because there are many lessons I have learnt and I wish that the public would take from this experience. I hope that the public understands that when they have their back to the wall, when there has been any battle, and even when they feel isolated, there is something called ‘golfer's elbow’, which I learnt. Golfers elbow is a condition that golfers have when they hold on to the grip of their club too tight for a long period of time. They end up injuring their wrist all the way up to the elbow because they are holding on too tight. I have learnt that sometimes you just have to let it go.

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I hope that the public can take that away from this situation. We must move away from hegemony. The idea of being dominated by one group or a person or a company or a state. We are a democratic Republic. We need to move away from such ideologies, utterances and behaviour. However, in the 11 counts, I have seen many that have no evidence and some that do have some evidence. However, I was not given confidence by the witness in chief, the Mover of this motion when I saw him on the stand.

Mr. Speaker, Sir, none of us can relate to what it is like to be a deputy president in this room. We can relate to the lessons I have mentioned. Make decisions today that will not betray you tomorrow. I also want to share that even though you are in a battle, whatever that might be, financial, personal, medical, whatever it is that you are going through at the moment. You feel like your back is on the wall and all the odds are against you. Remember that it gets better. You will do better, you will experience better, and we will become better.

I hope that the Senators will remember what I said to them yesterday from the Bible---

The Speaker (Hon. Kingi): Sen. Joe Nyutu, proceed.

Sen. Joe Nyutu: Thank you, Mr. Speaker, Sir. I cannot thank you more for affording me this opportunity at this late hour.

I stand from the onset to state that I oppose this Motion. I have reasons for doing so. The key witness or the Mover of the Motion came before this House yesterday. Although I am not a lawyer, I know that, in the rules of natural justice, whoever alleges it must prove it. The hon. Mutuse was not able to prove any of the allegations or any of the grounds that he laid against His Excellency, the Deputy President.

Kenyans were and are watching these proceedings. They saw the cross-examination and heard the cross-examination of the Hon. Mutuse. I urge this House that if we want to uphold its dignity and honour, you cannot impeach the Deputy President of the Republic of Kenya on allegations.

On the grounds that the Mover was not able to prove it, this is what prompted the question by Sen. Wambua, which Sen. Okiya Omatatah later asked. You stood down because it had already been asked. The question was: 'Was this Motion hon. Mutuse's? It was not his Motion. He had no proof of any of the allegations.

This is why this House in order for us to uphold dignity and honour, needs to vote no to this Motion. Many who have spoken before me have talked about the adulterous woman that was caught in the Bible. Sen. M. Kajwang put it even better; that they did not bring the man with whom she was caught in the act.

We need to ask ourselves; how good are we? How clean are you? Are we qualified to throw the first stone? This is the first question that we should ask ourselves. As we judge the Deputy President, how good are we? How many offences have we committed? God forgive us.

The most moving thing is that we did not give the Deputy President an opportunity. I know the Motion to adjourn up to Saturday did not pass. However, under Article 50 of the Constitution, we need to give a fair hearing unless the conduct of the accused person makes it impossible for the trial to proceed.

The Deputy President was taken ill, according to what the Counsel reported to this House, and we did not give him an opportunity. I draw your attention to Article 145(5) of our Constitution.

“The President shall have the right to appear and be represented before the Special Committee.”

We did not give him that opportunity. I can see my time is wearing out; if not for anything, I ask this House that we cannot condemn a sick person. Anyone of us can get sick. I appeal to my colleagues that nobody chooses when to get sick and when to be in good health. We cannot afford to judge and condemn a person when they are in hospital. I appeal to Members of this House, if not for anything else, you consider that the Deputy President has been taken ill and show the necessary compassion.

The Senate Majority Leader is here and he made a statement that was very disturbing, that even those that are saying that it can bring division should---

Sen. Omogeni: Mr. Speaker, Sir, first, on my own behalf and on behalf of the people of the great County of Nyamira, I want to send a message of quick recovery to His Excellency the Deputy President Rigathi. We wish him a speedy recovery.

The Bible says in the book of Ecclesiastes 3:1 that there is a season for everything. There is a season to be born politically and a season to die politically. That is biblical. I have agonized and gone through a lot of soul searching as I listened to the evidence that was tendered, against---

(Loud consultations)

The Speaker (Hon. Kingi): Just pause the time for Sen. Omogeni. Let us allow Sen. Omogeni to be heard in total silence, please.

Sen. Omogeni: As a lawyer and a person who witnessed the birth of the 2010 Constitution, I strongly believe that Kenya belongs to all the 42 plus tribes. What has disturbed me for the two days I have sat here is this: What will happen to my community in Kisii and Nyamira if we ran our Government through this theory of shareholding?

As I speak tonight, the people of the two counties of Omogusii; Nyamira and Kisii are victims of that theory of shareholding. That community called Omogusii does not even have even a single Principal Secretary serving in the Government.

As I speak this evening, the Omogusii people have been the biggest victims of this theory of shareholding. The Constitution that we enacted in 2010, in Article 27 clearly states that we should not discriminate. I hope when I cast my vote tonight, I will be sending a message from the people of Nyamira that a government is formed for all the tribes in the Republic of Kenya.

I have agonized on the issues that have been brought in this Motion, touching on the widow and the children of the late Governor for Nyeri, Gachagua.

I wondered if adverse statements and inferences have been made touching on the conduct of the Deputy President against the widow of the former governor and the children of the late governor who are the nephews of the Deputy President; I ask as a father, why did the widow and the children of the late governor not swear an affidavit to dispel all the things that have been said against the scheme of swindling those children.

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Why did they not swear an affidavit? That has troubled me a lot. As I cast my vote tonight, I will be casting my vote for those children who lost their mother, who lost their father, but who were not given an opportunity to appear before this House and tell us that there has not been any wrongdoing from the Deputy President to those children.

Count No.1 and Count No.8, is about the utterances that were made by the Deputy President. I hope that the person who will occupy that coveted position of the Deputy President will reflect on what John says in Chapter 3:5. The Bible says that the tongue is a small part of the body, but the tongue is also fire and it is a world of evil among parts of the body”

If the Deputy President had checked these utterances, perhaps we would not be having this Motion this evening. So, as we vote tonight, let us also learn about what the tongue has done to Hon. Gachagua.

I will vote where I am convinced that allegations against the Deputy President have been proved. I reserve my vote to be cast at the right time.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, the position of the Deputy President of Kenya is very high. It is a very high calling. Therefore, as we make a decision on the Deputy President of Kenya, I want to remind him that of those to whom more is given, indeed more is expected of them.

He should not feel that he is being victimized because due to the high standard of this Constitution, in 2013 by dint of lack of integrity, the Deputy Chief Justice, Nancy Barasa, lost her job, merely because she pinched the nose of Kwamboka.

The Deputy President indeed did worse than pinching the nose of somebody. The Deputy President, seeing the allegations against him, I cannot imagine that he moves around with the moniker of “man of faith” and “truthful man”.

If really, we must talk about faith, may I remind the Deputy President of a man of faith, a man of letters called Bill Paul. Bill Paul said that integrity is like virginity. You lose it only once. When you lose it, you can never get it back. The Deputy President has lost that virginity of leadership.

Coming from a community that paid the price for inflammatory speeches in the Likoni, Molo and Trans Nzoia, if I had time, I would discuss what some of my relatives went through, including Pastor Liyai from Ichina Village during the tribal clashes of 1992 and 1997.

I would like to remind the Deputy President of the post-election violence of 2007/2008, one of the reasons why we had to have this progressive Constitution that will be removing him hopefully this evening from office.

Even as we ask the Deputy President to leave office, we must insist that the DCI and the EACC and other investigative institutions must pursue this matter beyond this vote.

I have in mind the activities of the intricate web of companies up to 22, so to speak. The reason I believe young Mutuse could not bring all these, dear Senators, is because effort requires money. It requires time to do all that research. Some of it, you have to do it clandestinely for you to get information.

I believe that if the Deputy President had taken the dock, we were going to completely undress him. We would have asked him to justify what activities each and every one of those companies was doing. It is part of the reason why he stepped down.

Mr. Speaker, Sir, I have evidence, which I do not wish to be part of the case; that as soon as the Deputy President's brother died, the wife went to the corporate branch of the Cooperative Bank and started crying there that the manager should stop the Deputy President from operating these accounts.

Finally, the Deputy President must be investigated for the role---

The Speaker (Hon. Kingi): Sen. Oketch Gicheru proceed.

Sen. Oketch Gicheru: Thank you, Mr. Speaker, Sir. I recognize the pressure of time. I am here because of the kindness of the people of Migori County who sent me here. At such a time, I need to be cautious of Article 125 of the Constitution, which requires us, as a House, that in matters such as this we must behave like judges.

Under Article 125 of the Constitution, we sit as a High Court. In the words of Socrates, a judge is required to listen courteously, to answer wisely, to consider soberly, and definitely to decide impartially. There were 11 charges that were put before us. They were put to us in the context of Constitution 2010. The Constitution 2010 came in the backdrop of two very important historic moments in this country that I must reflect on.

First, is the Sessional Paper No. 10 of 1965. That Paper divided this country into those who are important and those who are not. The language that was used then, was the idea of Northern Frontier District, that then discriminated upon some communities against others.

Second, in 2007, this country was divided on the basis of ethnicity. Therefore, I rise to support this Motion. My grounds after listening courteously and considering soberly are more than half of the charges. I find that Ground 1, 5 and 6 on the utterances of the Deputy President, violate Article 91 and Article 232 of the Constitution. We cannot have political parties that are founded on the basis of ethnicity and dividing national resources on the basis of ethnicity.

Ground 4 which also happens to be reason number four for why the Deputy President must leave office is the violation of Article 160 of the Constitution of undermining the judiciary. There was an imminent threat to the judges. You realize that in my judgment, I excuse Ground 8 on the basis that there was no proof of a petition that was not filed. However, on the threat, I think that the Deputy President stands impeached.

Ground 9, on the National Intelligence Service (NIS). We know that this country has faced serious terror attacks. The moment the Deputy President showcases the secrecy of deficiency in our security infrastructure. We know that under Article 240, he has platforms to express himself; it is a violation of the Constitution.

Lastly, Ground 11 on bullying KEMSA officials. It has been proven here beyond reasonable doubt that the Deputy President is not a member of the company that was listed. He is not an employee of that company, yet he goes ahead and makes calls on behalf of that company. That is impeachable.

Lastly, I must call the Counsel of the Deputy President to order, especially hon. Paul Muite, SC, for actually practicing law in deceit. You cannot say that at the level of

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the Deputy President, he was okay in this House the entire time, and then when asked, you are saying you cannot be able to account for his whereabouts.

We know that the Deputy President must also be taken care of by the Director General (DG) of Health who could have given us a document to substantiate whether the Deputy President was sick. While I say so to the Deputy President, this kind of deceit should also be tantamount to further impeachment.

Grounds 2, 3, 7, 8 and 10, were not substantiated. Grounds 1, 5, 6, 4, 9 and 11 were substantiated. This is a fight against tribalism that is done by one individual that then we must---

The Speaker (Hon. Kingi): Sen. Osotsi, proceed. Unfortunately, you only have four minutes, because we terminate at exactly 10.30 p.m.

Sen. Osotsi: Thank you, Mr. Speaker, Sir. I will be so quick. When the Deputy President was here, I remembered the saying of a famous philosopher, 19th Century, Lord Acton, who said, power tends to corrupt, and absolute power corrupts absolutely. A few of us here served with the Deputy President in the National Assembly. He was a very humble, simple and social man. It was rare for him to talk.

Mr. Speaker, Sir, listening to the charges and having seen what has been happening around, this is not the same man. This is a different man. Indeed, I agree with this philosopher that power tends to corrupt and absolute power corrupts absolutely. This may affect all of us here. So, there is something we need to learn from what has happened today.

I also congratulate the Members here for their decency and maturity in conducting a fair trial. It is not true that the Deputy President has not been given a hearing. We had to adjourn this House for two hours to wait for the witness to come, but he did not.

The tradition of this House is that sometimes we receive written submissions. We do that in our committees and public participation. Some Members are saying that he was not given a fair hearing is, but that is not true. This House tried as much as possible to get the Deputy President to come.

A lot has been said about various laws and articles of the Constitution that the Deputy President has violated. However, one important article of the Constitution that runs through all the charges, is Article 131 of the Constitution, which read together with Article 147, clearly says that the Deputy President is a symbol of national unity.

Mr. Speaker, Sir, that is not the case. Article 131(2) says that the Deputy President, by dint of Article 147, should respect and uphold and safeguard the Constitution. That is not the case. The Deputy President should promote and enhance the unity of the nation. That is not the case. The Deputy President should promote respect for diversity of the people and communities in Kenya. That is not the case.

If there is any piece of law that is going to send the Deputy President home, it is a clear violation of Article 131 of the Constitution because the Deputy President is a principal assistant to the President and therefore exercises powers of the President as per Article 131 of the Constitution.

Mr. Speaker, Sir, if there is one charge, because we have 11 charges, that will send the Deputy President home, it is charge No.1. I listened to the evidence that was

brought here by his Counsel. That evidence of the coalition agreement of Kenya Kwanza was not sufficient and convincing.

In fact, the Deputy President conveniently--

The Speaker (Hon. Kingi): Your time is up.

The Senate Majority Leader, you may move to reply.

The Senate Majority Leader (Sen. Cheruiyot): Mr. Speaker, Sir, I beg to hereby reply, having listened to the contributions of my colleagues on this important Motion, on trial by impeachment of the Deputy President, Hon. Rigathi Gachagua.

I would like to thank colleagues that have taken time to give their views, both in support and those opposing this Motion, because that is how you grow a democracy. We may not all have to agree on the same subject matter, but the chance to even speak and say what you feel about an issue is an important attribute.

Indeed, I agree with the contribution that was made by one of the advocates for the National Assembly. That, comparing what you are doing today with previously what used to happen, where in the 1 o'clock news, vice presidents would be changed without any notice, and the elaborate process that you have gone through up to this point is great for our country.

Mr. Speaker, Sir, I appreciate the National Assembly and the team of the Deputy President, that has presented us with information to help us make a fair judgment of this case.

I strongly disagree with those that hold the view that the Senate has not been as fair to the Deputy President as perhaps they would have expected. To the best of my knowledge, as a House, we did the best that was within our means. We granted him the opportunity and sufficient notice.

It is only in the unfortunate circumstance of this afternoon where he was taken ill. I wish to take this time to extend my message of goodwill to him and wish that he can quickly recover and get on with his other duties, both as a human being and, whichever way this vote goes, because it is not in my hands, but in the hands of the 67 jury that are here, that he shall continue to thrive.

I wish him well. Like I observed earlier, this is a friend, and friends wish each other well under all circumstances.

Mr. Speaker, Sir, as a final thought. I thought about the journey of the Deputy President and the tribulations that have occurred to him because of either his conduct or utterances, I am reminded of a book I once read, Mr. Speaker, by Senegalese satirist, Ousmane Sembene, a book called *Xala*, where, a very rich businessman by the name El Hadji looks at and desires a beautiful young lady by the name N'Gone and finally takes her in as a third wife. Unfortunately, on the same night that he marries her, he develops erectile dysfunction and is not able to consummate their marriage.

Sometimes in life, when you fall down, you have to prepare to get down before you eventually can rise up. I do hope that even in this particular process, the Deputy President will emerge stronger, better, as a human being, as a leader, and that there can be better days ahead for him.

With those remarks, I beg to reply and wish that our colleagues in this House make a decision in the best interest of the country.

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I thank you.

The Speaker (Hon. Kingi): Thank you. Hon. Senators, these are the guidelines on how we will move forward-

One, all hon. Senators are eligible to cast their votes.

Secondly, the threshold is 45 Senators, so there ought to be 45 Senators in the Chamber. We will vote for the charges separately. So, we will vote 11 times. I now direct that the Bell be rung for two minutes.

(Division Bell was rung)

Hon. Senators, please take your seats. We need to do a head count. Take your seats.

(Several Senators stood up in their places)

Hon. Senators, please take your seats. If you take your seats, we will be able to know who is not in.

Sen. Mundigi, is there any problem?

(Sen. Mundigi spoke off record)

Thank you. Serjeant-at-Arms, kindly close the Doors and draw the Bar.

(The Bars were drawn and the Doors closed)

Clerk, can you do a head count to confirm that we have a minimum of 45 Senators in the House?

(Loud consultations)

The Senate Majority Leader, you may take your seat.

Hon. Senators, we are moving to Division. Voting shall be electronically and we shall be voting on separate charges. Therefore, we will vote 11 times this evening. I will proceed to put the question.

As I have already indicated, voting shall be done electronically. At this juncture, I will ask hon. Senators to pull their cards out of the Delegate Unit.

Serjeant-at-Arms, kindly go around and pick all the unattended Delegate cards. If you are done collecting the unattended cards, we are good.

Hon. Senators, you may log in back. As indicated earlier, we will be casting our votes 11 times. The vote you will cast at the moment is for charge allegation 1, which is gross violation of Articles 10(2)(a), (b) and (c); 27(4), 73(1)(a), and 2(b); 75(1)(c); and 129(2) of the Constitution and Article 147(1), as read together with Article 131(2)(c) and (d) of the Constitution.

I had already read it out. From this moment, it will be beamed on the screens.

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Hon. Senators, once you have logged in, you may proceed to vote.

Sen. Tabitha Keroche, move to the Dispatch Box in order for you to get some assistance.

(Sen. Tabitha Keroche approached the Clerks-at-the-Table)

(Electronic voting in progress)

We are now going to Allegation No.2. It has beamed on the screen. You may now vote.

(Electronic voting in progress)

We shall now move to Allegation No.3. Can you beam it? There we are. Hon. Senators, you may now proceed to vote on Allegation No.3.

(Electronic voting in progress)

We are now going to allegation number four. Let it be beamed on the screen. Hon. Senators, you may now proceed to vote on Ground No.4.

(Electronic voting in progress)

Hon. Senators, we are now moving to vote on Charge No.5. You may now proceed to vote on Charge No.5.

(Electronic voting in progress)

Hon. Senators, we are now going to Allegation No.6. You may proceed to vote.

(Electronic voting in progress)

Hon. Senators, we are now moving to Allegation No.7. You may proceed to vote.

(Electronic voting in progress)

Hon. Senators, we are now moving to Ground No.8. You may now proceed to vote.

(Electronic voting in progress)

Sen. Thang'wa, please approach the Clerks-at-the-Table to cast your vote.

(Sen. Thang'wa approached the Clerks-at-the-Table)

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(Electronic voting in progress)

Hon Senators, we are moving to Charge No.9. You may proceed to vote.

(Electronic voting in progress)

Hon Senators, we are moving to Charge No.10. You may proceed to vote.

(Electronic voting in progress)

Sen. Khalwale, proceed to the Dispatch Box and cast your vote.

(Sen. (Dr.) Khalwale approached the clerks-at-the Table)

Hon Senators, we are moving to Charge No.11. You may proceed to vote.

(Electronic voting in progress)

Sen. Methu, proceed to the Dispatch Box. Likewise, Sen. Nyamu, Sen. Chesang' and Sen. Thang'wa.

(Sen. Methu, Sen. Nyamu, Sen. Chesang and Sen. Thang'wa approached the Dispatch Box)

(Electronic voting in progress)

The Speaker (Hon. Kingi): Sen. Miraj, Sen. Tom Ojienda, proceed to the Dispatch and cast your votes.

(Loud Consultations)

Order, hon. Senators. Sen. Okoiti Omtatah, Sen. Abass and Sen. Orwoba, please take your seats.

Hon. Senators, the results of the Divisions are as follows-

DIVISION

ELECTRONIC VOTING

*(Question, that now therefore, pursuant to Article 145 as read with Article 150(1)(b) and (2) of the Constitution and Standing Order 78 and 79 of the Senate Standing Orders, the Senate resolves to remove from office, by impeachment, His Excellency Rigathi Gachagu, EGH, Deputy President of the Republic of Kenya on **GROUND 1: Gross violation of Articles 10(2)(a), (b) and (c); 27(4), 73(1)(a) and (2)(b); 75(1)(c) and 129(2) of the***

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Constitution and Article 147(1), as read together with Article 131(2)(c) and (d) of the Constitution put, and the Senate proceeded to vote)

AYES: Sen. Abass, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Ali Roba, Mandera County; Sen. Beth Syengo, Nominated; Sen. Boy, Kwale County; Sen. Cheptumo, Baringo County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Chimera; Sen. Chute, Marsabit County; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. (Prof.) Kamar, Nominated; Sen. Kathuri, Meru County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kibwana, Nominated; Sen. Kisang', Elgeyo Marakwet County; Sen. Korir, Nominated; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lemaltian, Nominated; Sen. Lomenen, Turkana County; Sen. M. Kajwang', Homa Bay County; Sen. Madzayo, Kilifi County; Sen. Mandago, Uasin Gishu County; Sen. Mariam Omar, Nominated; Sen. Mbugua, Nominated; Sen. Miraj, Nominated; Sen. Montet Betty, Nominated; Sen. Mumma, Nominated; Sen. Mungatana, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. Murgor, West Pokot County; Sen. Mwaruma, Taita Taveta County; Sen. Nyamu, Nominated; Sen. (Dr.) Oburu, Siaya County; Sen. Ogola, Nominated; Sen. Okenyuri, Nominated; Sen. Oketch Gicheru, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Onyonka, Kisii County; Sen. Orwoba, Nominated; Sen. Osotsi, Vihiga County; Sen. Sifuna, Nairobi City County; Sen. Tabitha Keroche, Nakuru County; Sen. Tabitha Mutinda, Nominated; Sen. Tobiko, Nominated; Sen. (Prof.) Tom Ojienda, SC; Sen. Veronica Maina, Nominated; Sen. Wafula, Bungoma County; Sen. Wakili Sigei, Bomet County; Sen. Wamatinga, Nyeri County

NOES: Sen. Crystal Asige, Nominated; Sen. Joe Nyutu, Murangá County; Sen. Githuku, Lamu County; Sen. Manzo, Makueni County; Sen. Methu, Nyandarua County; Sen. (Dr.) Murango, Kirinyaga County; Sen. Kavindu Muthama, Machakos County; Sen. Kinyua, Laikipia County; Sen. Okiya Omtatah, Busia County; Sen. Seki, Kajiado County; Sen. Shakila Abdalla, Nominated; Sen. Thang'wa, Kiambu County; and, Sen. Wambua, Kitui County.

The Speaker (Hon. Kingi): The results of the Division are as follows-

AYES: 54

NOES: 13

ABSENTIONS: Nil

The "Ayes" have it.

(Question carried by 54 votes to 13)

DIVISION

ELECTRONIC VOTING

*((Question, that now therefore, pursuant to Article 145 as read with Article 150(1)(b) and (2) of the Constitution and Standing Order 78 and 79 of the Senate Standing Orders, the Senate resolves to remove from office, by impeachment, His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya on **GROUND 2: Gross violation of Articles 147(1) and 152(1) of the Constitution by undermining the President and the Cabinet and effective discharge of the national government's executive mandate put, and the Senate proceeded to vote)***

AYES: Sen. Ali Roba, Mandera County; Sen. Beth Syengo, Nominatted; Sen. Boy, Kwale County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Chimera, Nominated; Sen. Dullo, Isiolo County; Sen. (Dr.) Oburu, Siaya County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Faki, Mombasa County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. Korir, Nominated; Sen. Lemaltian, Nominated; Sen. Lomenen, Turkana County; Sen. Mandago, Uasin Gishu County; Sen. Miraj, Nominated; Sen. Montet Betty, Nominated; Sen. Mumma, Nominated; Sen. Murgor, West Pokot County; Sen. Mungatana, Tana River County; Sen. Mwaruma, TaitaTaveta County; Sen. Nyamu, Nominated; Sen. Ogola, Nominated; Sen. Onyonka, Kisii County; Sen. (Prof.) Kamar, Nominated; Sen. (Prof.) Tom Ojienda, SC; Sen. Tabitha Keroche, Nakuru County; Sen. Wakili Sigei, Bomet County.

NOES: Sen. Abass, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Crystal Asige, Nominated; Sen. Cherarkey, Nandi County; Sen. Chute, Marsabit County; Sen. Cheptumo, Baringo County; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. (Dr.) Murango, Kirinyaga County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murangá County; Sen. Kathuri, Meru County; Sen. Kavindu Muthama, Machakos County; Sen. M. Kajwang', Homa Bay County; Sen. Kibwana, Nominated; Sen. Kinyua, Laikipia County; Sen. Kisang', Elgeyo Marakwet County; Sen. Maanzo, Makueni County; Sen. Madzayo, Kilifi County; Sen. Mariam Omar, Nominated; Sen. Mbugua, Nominated; Sen. Methu, Nyandarua County; Sen. Munyi Mundigi, Embu County; Sen. Okenyuri, Nominated; Sen. Oketch Gicheru, Migori County; Sen. Okiya Omtatah, Busia County; Sen. Omogeni, Nyamira County; Sen. Olekina, Narok County; Sen. Orwoba, Nominated; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi City County; Sen. Shakila Abdalla, Nominated; Sen. Tabitha Mutinda, Nominated; Sen. Thang'wa, Kiambu County; Sen. Tobiko, Nominated; Sen. Veronica Maina, Nominated; Sen. Wamatinga, Nyeri County; Sen. Wafula, Bungoma County; and, Sen. Wambua, Kitui County.

The Speaker (Hon. Kingi): The results of the Division are as follows-

AYES: 28

NOES: 39

ABSENTIONS: 0

The "Nays" have it.

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(Question negatived by 39 votes to 28)

DIVISION

ELECTRONIC VOTING

*(Question, that now therefore, pursuant to Article 145 as read with Article 150(1)(b) and (2) of the Constitution and Standing Order 78 and 79 of the Senate Standing Orders, the Senate resolves to remove from office, by impeachment, His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya on **GROUND 3: Gross violation of Articles 6(2), 10(2)(a), 174, 186(1), 189(1) and the Fourth Schedule to Constitution by undermining Devolution put, and the Senate proceeded to vote)***

AYES: Sen. Abass, Wajir County; Sen. Beth Syengo, Nominated; Sen. Boy, Kwale County; Sen. Cherarkey, Nandi County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Korir, Nominated; Sen. Lemaltian, Nominated; Sen. Lomenen, Turkana County; Sen. Mariam Omar, Nominated; Sen. Miraj, Nominated; Sen. Montet Betty, Nominated; Sen. Murgor, West Pokot County; Sen. Nyamu, Nominated; Sen. (Dr.) Oburu, Siaya County; Sen. Ogola Nominated; Sen. Onyonka, Kisii County; Sen. (Prof.) Tom Ojienda, SC; and, Sen. Wakili Sigei, Bomet County.

NOES: Sen. Abdul Haji, Garissa County; Sen. Ali Roba, Mandera County; Sen. Cheptumo, Baringo County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Chimera, Nominated; Sen. Chute, Marsabit County; Sen. Crystal Asige, Nominated; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murangá County; Sen. (Prof.) Kamar, Nominated; Sen. Kathuri, Meru County; Sen. Kavindu Muthama, Machakos County; Sen. Kibwana, Nominated; Sen. Kinyua, Laikipia County; Sen. Kisang', Elgeyo Marakwet County; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. M. Kajwang', Homa Bay County; Sen. Maanzo, Makueni County; Sen. Madzayo, Kilifi County; Sen. Mandago, Uasin Gishu County; Sen. Mbugua, Nominated; Sen. Methu, Nyandarua County; Sen. Munyi Mundigi, Embu County; Sen. (Dr.) Murango, Kirinyaga County; Sen. Mwaruma, Taita Taveta County; Sen. Okenyuri, Nominated; Sen. Oketch Gicheru, Migori County; Sen. Okiya Omtatah, Busia County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Orwoba, Nominated; Sen. Osotsi, Vihiga County; Sen. Shakila Abdalla, Nominated; Sen. Seki, Kajiado County; Sen. Tabitha Keroche, Nakuru County; Sen. Tabitha Mutinda, Nominated; Sen. Thang'wa, Kiambu County; Sen. Tobiko, Nominated; Sen. Veronica Maina, Nominated; Sen. Wafula, Bungoma County; Sen. Wamatinga, Nyeri County; and, Sen. Wambua, Kitui County.

ABSENTIONS: Sen. Mumma, Nominated; Sen. Mungatana, Tana River County; and, Sen. Sifuna, Nairobi City County.

The Speaker (Hon. Kingi): The results of the Division are as follows-

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AYES: 19

NOES: 45

ABSENTIONS: 3

The “Nays” have it.

(Question negatived by 45 votes to 19)

DIVISION

ELECTRONIC VOTING

*(Question, that now therefore, pursuant to Article 145 as read with Article 150(1)(b) and (2) of the Constitution and Standing Order 78 and 79 of the Senate Standing Orders, the Senate resolves to remove from office, by impeachment, His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya on **GROUND 4:** Gross violation of Article 160(1) of the Constitution on the institutional and decisional independence of Judges put, and the Senate proceeded to vote)*

AYES: Sen. Abass, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Ali Roba, Mandera County; Sen. Beth Syengo, Nominated; Sen. Boy, Kwale County; Sen. Cheptumo, Baringo County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Chimera, Nominated; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. (Prof.) Kamar, Nominated; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kibwana, Nominated; Sen. Kisang’, Elgeyo Marakwet County; Sen. Korir, Nominated; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lemaltian, Nominated; Sen. Lomenen, Turkana County; Sen. M. Kajwang’, Homa Bay County; Sen. Madzayo, Kilifi County; Sen. Mandago, Uasin Gishu County; Sen. Mariam Omar, Nominated; Sen. Miraj, Nominated; Sen. Montet Betty, Nominated; Sen. Mumma, Nominated; Sen. Mungatana, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. Murgor, West Pokot County; Sen. Mwaruma, Taita Taveta County; Sen. Nyamu, Nominated; Sen. (Dr.) Oburu, Siaya County; Sen. Ogola, Nominated; Sen. Okenyuri, Nominated; Sen. Oketch Gicheru, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Onyonka, Kisii County; Sen. Orwoba, Nominated; Sen. Osotsi, Vihiga County; Sen. Sifuna, Nairobi City County; Sen. Tabitha Keroche, Nakuru County; Sen. Tabitha Mutinda, Nominated; Sen. Tobiko, Nominated; Sen. (Prof.) Tom Ojienda, SC; Sen. Veronica Maina, Nominated; Sen. Wafula, Bungoma County; Sen. Wakili Sigei, Bomet County; and, Sen. Wamatinga, Nyeri County.

NOES: Sen. Crystal Asige, Nominated; Sen. Chute, Marsabit County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murangá County; Sen. Kathuri, Meru County; Sen. Kavindu Muthama, Machakos County; Sen. Maanzo, Makueni County; Sen. Methu, Nyandarua County; Sen. Mbugua, Nominated; Sen. (Dr.) Murango, Kirinyaga County; Sen. Kinyua, Laikipia County; Sen. Okiya Omtatah, Busia County; Sen. Shakila Abdalla,

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Nominated; Sen. Seki, Kajiado County; Sen. Thang’wa, Kiambu County; and, Sen. Wambua, Kitui County.

The Speaker (Hon. Kingi): The results of the Division are as follows-

AYES: 51

NOES: 16

ABSENTIONS: Nil

The “Ayes” have it.

(Question carried by 51 votes to 16)

DIVISION

ELECTRONIC VOTING

*(Question, that now therefore, pursuant to Article 145 as read with Article 150(1)(b) and (2) of the Constitution and Standing Order 78 and 79 of the Senate Standing Orders, the Senate resolves to remove from office, by impeachment, His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya on **GROUND 5: Gross violation of Articles 3(1) and 148(5)(a) of the Constitution and fidelity to the Oath of Office and Allegiance put, and the Senate proceeded to vote)***

AYES: Sen. Abass, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Ali Roba, Mandera County; Sen. Beth Syengo, Nominated; Sen. Boy, Kwale County; Sen. Cheptumo, Baringo County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Chimera, Nominated; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. (Prof.) Kamar, Nominated; Sen. Kathuri, Meru County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kibwana, Nominated; Sen. Kisang’, Elgeyo Marakwet County; Sen. Korir, Nominated; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lemaltian, Nominated; Sen. Lomenen, Turkana County; Sen. M. Kajwang’, Homa Bay County; Sen. Madzayo, Kilifi County; Sen. Mandago, Uasin Gishu County; Sen. Mariam Omar, Nominated; Sen. Mbugua, Nominated; Sen. Miraj, Nominated; Sen. Montet Betty, Nominated; Sen. Mumma, Nominated; Sen. Munyi Mundigi, Embu County; Sen. Murgor, West Pokot County; Sen. Mwaruma, Taita Taveta County; Sen. Nyamu, Nominated; Sen. (Dr.) Oburu, Siaya County; Sen. Ogola, Nominated; Sen. Okenyuri, Nominated; Sen. Oketch Gicheru, Migori County; Sen. Olekina, Narok County; Sen. Onyonka, Kisii County; Sen. Orwoba, Nominated; Sen. Osotsi, Vihiga County; Sen. Sifuna, Nairobi City County; Sen. Tabitha Keroche, Nakuru County; Sen. Tabitha Mutinda, Nominated; Sen. Tobiko, Nominated; Sen. (Prof.) Tom Ojienda, SC; Sen. Wafula, Bungoma County; Sen. Wakili Sigei, Bomet County.

NOES: Sen. Crystal Asige, Nominated; Sen. Chute, Marsabit County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murangá County; Sen. Kavindu Muthama, Machakos County; Sen. Kinyua, Laikipia County; Sen. Maanzo, Makueni County; Sen. Methu, Nyandarua County; Sen. (Dr.) Murango, Kirinyaga County; Sen. Omogeni,

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Nyamira County; Sen. Okiya Omtatah, Busia County; Sen. Seki, Kajiado County; Sen. Shakila Abdalla, Nominated; Sen. Thang'wa, Kiambu County; Sen. Veronica Maina, Nominated; and, Sen. Wambua, Kitui County.

ABSENTIONS: Sen. Mungatana, Tana River County; Sen. Wamatinga, Nyeri County.

The Speaker (Hon. Kingi): The results of the Division are as follows-

AYES: 49

NOES: 16

ABSENTIONS: 2

The "Ayes" have it.

(Question carried by 49 votes to 16)

DIVISION

ELECTRONIC VOTING

*(Question, that now therefore, pursuant to Article 145 as read with Article 150(1)(b) and (2) of the Constitution and Standing Order 78 and 79 of the Senate Standing Orders, the Senate resolves to remove from office, by impeachment, His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya on **GROUND 6:** Serious reasons to believe that H.E. the Deputy President has committed crimes under sections 13(1)(a) and 62 of the National Cohesion and Integration Act put, and the Senate proceeded to vote)*

AYES: Sen. Abass, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Ali Roba, Mandera County; Sen. Beth Syengo, Nominated; Sen. Boy, Kwale County; Sen. Cheptumo, Baringo County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Chimera, Nominated; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. (Prof.) Kamar, Nominated; Sen. Kathuri, Meru County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kibwana, Nominated; Sen. Kisang', Elgeyo Marakwet County; Sen. Korir, Nominated; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lemaltian, Nominated; Sen. Lomenen, Turkana County; Sen. M. Kajwang', Homa Bay County; Sen. Madzayo, Kilifi County; Sen. Mariam Omar, Nominated; Sen. Miraj, Nominated; Sen. Montet Betty, Nominated; Sen. Mumma, Nominated; Sen. Mungatana, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. Murgor, West Pokot County; Sen. Mwaruma, Taita Taveta County; Sen. Nyamu, Nominated; Sen. (Dr.) Oburu, Siaya County; Sen. Ogola, Nominated; Sen. Okenyuri, Nominated; Sen. Oketch Gicheru, Migori County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Orwoba, Nominated; Sen. Osotsi, Vihiga County; Sen. Sifuna, Nairobi City County; Sen. Tabitha Keroche, Nakuru County; Sen. Tabitha Mutinda, Nominated; Sen. Tobiko, Nominated; Sen. (Prof.) Tom Ojienda, SC; and, Sen. Wafula, Bungoma County; Sen. Wakili Sigei, Bomet County.

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NOES: Sen. Crystal Asige, Nominated; Sen. Chute, Marsabit County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murangá County; Sen. Kavindu Muthama, Machakos County; Sen. Kinyua, Laikipia County; Sen. Maanzo, Makueni County; Sen. Mandago, Uasin Gishu County; Sen. Mbugua, Nominated; Sen. Methu, Nyandarua County; Sen. (Dr.) Murango, Kirinyaga County; Sen. Okiya Omtatah, Busia County; Sen. Onyonka, Kisii County; Sen. Seki, Kajiado County; Sen. Shakila Abdalla, Nominated; Sen. Thang’wa, Kiambu County; Sen. Veronica Maina, Nominated; and, Sen. Wambua, Kitui County.

ABSENTIONS: Sen. Wamatinga, Nyeri County.

The Speaker (Hon. Kingi): The results of the Division are as follows-

AYES: 48

NOES: 18

ABSENTIONS: 1

The “Ayes” have it.

(Question carried by 48 votes to 18)

DIVISION

ELECTRONIC VOTING

*(Question, that now therefore, pursuant to Article 145 as read with Article 150(1)(b) and (2) of the Constitution and Standing Order 78 and 79 of the Senate Standing Orders, the Senate resolves to remove from office, by impeachment, His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya on **GROUND 7: Serious reasons to believe that H.E the Deputy President has committed gross economic crimes under Section 45(1), 46, 47A(3) and 48(1) of the Anti-Corruption and Economic Crimes Act and Sections 2, 3, 4 and 7 of Proceeds of Crime and Anti-Money Laundering Act put, and the Senate proceeded to vote)***

AYES: Sen. Abdul Haji, Garissa County; Sen. Cheptumo, Baringo County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Chimera; Sen. Chute, Marsabit County; Sen. Crystal Asige, Nominated; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murangá County; Sen. (Prof.) Kamar, Nominated; Sen. Kathuri, Meru County; Sen. Kavindu Muthama, Machakos County; Sen. Kibwana, Nominated; Sen. Kinyua, Laikipia County; Sen. Kisang’, Elgeyo Marakwet County; Sen. Korir, Nominated; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lemaltian, Nominated; Sen. M. Kajwang’, Homa Bay County; Sen. Maanzo, Makueni County; Sen. Madzayo, Kilifi County; Sen. Mandago, Uasin Gishu County; Sen. Mbugua, Nominated; Sen. Methu, Nyandarua County; Sen. Miraj, Nominated; Sen. Montet Betty, Nominated; Sen. Mumma, Nominated; Sen. Mungatana, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. (Dr.) Murango, Kirinyaga County; Sen. Mwaruma, Taita Taveta County; Sen. (Dr.) Oburu, Siaya County; Sen. Okenyuri, Nominated; Sen. Oketch Gicheru, Migori County; Sen.

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Okiya Omtatah, Busia County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Onyonka, Kisii County; Sen. Orwoba, Nominated; Sen. Osotsi, Vihiga County; Sen. Shakila Abdalla, Nominated; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi City County; Sen. Tabitha Keroche, Nakuru County; Sen. Tabitha Mutinda, Nominated; Sen. Thang'wa, Kiambu County; Sen. Tobiko, Nominated; Sen. Veronica Maina, Nominated; Sen. Wafula, Bungoma County; Sen. Wamatinga, Nyeri County; and, Sen. Wambua, Kitui County.

NOES: Sen. Ali Roba, Mandera County; Sen. Beth Syengo, Nominated; Sen. Boy, Kwale County; Sen. Cherarkey, Nandi County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Lomenen, Turkana County; Sen. Mariam Omar, Nominated; Sen. Murgor, West Pokot County; Sen. Nyamu, Nominated; Sen. Ogola, Nominated; Sen. (Prof.) Tom Ojienda, SC; and, Sen. Wakili Sigei, Bomet County.

ABSENTIONS: Sen. Abass, Wajir County.

The Speaker (Hon. Kingi): The results of the Division are as follows-

AYES: 13

NOES: 53

ABSENTIONS: 1

The "Nays" have it.

(Question negatived by 53 votes to 13)

DIVISION

ELECTRONIC VOTING

*(Question, that now therefore, pursuant to Article 145 as read with Article 150(1)(b) and (2) of the Constitution and Standing Order 78 and 79 of the Senate Standing Orders, the Senate resolves to remove from office, by impeachment, His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya on **GROUND 8:** Serious reasons to believe that H.E. the Deputy President has committed crimes by continuously misleading members of the public through false, malicious, divisive and inciteful remarks contrary to the provisions of Section 132 f the Penal Code and Section 29 of the Leadership and Integrity Act put, and the Senate proceeded to vote)*

AYES: Sen. Abass, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Cherarkey, Nandi County; Sen. Beth Syengo, Nominated; Sen. Boy, Kwale County; Sen. Chimera, Nominated; Sen. Faki, Mombasa County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lemaltian, Nominated; Sen. Lomenen, Turkana County; Sen. M. Kajwang', Homa Bay County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Madzayo, Kilifi County; Sen. Miraj, Nominated; Sen. Montet Betty, Nominated; Sen. Murgor, West Pokot County; Sen. Mungatana, Tana River County; Sen. Mwaruma, Taita Taveta County; Sen. Nyamu, Nominated; Sen. (Dr.)

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Oburu, Siaya County; Sen. Ogola, Nominated; Sen. Olekina; Narok County; Sen. Orwoba, Nominated; Sen. Tabitha Keroche, Nakuru County; Sen. (Prof.) Tom Ojienda, Kisumu County; and, Sen. Wakili Sigei, Bomet County.

NOES: Sen. Ali Roba, Mandera County; Sen. Cheptumo, Baringo County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Chute, Marsabit County; Sen. Crystal Asige, Nominated; Sen. Dullo, Isiolo County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murangá County; Sen. (Prof.) Kamar, Nominated; Sen. Kathuri, Meru County; Sen. Kavindu Muthama, Machakos County; Sen. Kibwana, Nominated; Sen. Kinyua, Laikipia County; Sen. Kisang', Elgeyo Marakwet County; Sen. Korir, Nominated; Sen. Maanzo, Makueni County; Sen. Mandago, Uasin Gishu County; Sen. Mariam Omar, Nominated; Sen. Mbugua, Nominated; Sen. Methu, Nyandarua County; Sen. Mumma, Nominated; Sen. Munyi Mundigi, Embu County; Sen. (Dr.) Murango, Kirinyaga County; Sen. Okenyuri, Nominated; Sen. Oketch Gicheru, Migori County; Sen. Okiya Omtatah, Busia County; Sen. Omogeni, Nyamira County; Sen. Onyonka, Kisii County; Sen. Osotsi, Vihiga County; Sen. Shakila Abdalla, Nominated; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi City County; Sen. Tabitha Mutinda, Nominated; Sen. Thang'wa, Kiambu County; Sen. Tobiko, Nominated; Sen. Veronica Maina, Nominated; Sen. Wafula, Bungoma County; Sen. Wamatinga, Nyeri County; and, Sen. Wambua, Kitui County.

The Speaker (Hon. Kingi): The results of the Division are as follows-

AYES: 27

NOES: 40

ABSENTIONS: 0

The "Nays" have it.

(Question negated by 40 votes to 27)

DIVISION

ELECTRONIC VOTING

*(Question, that now therefore, pursuant to Article 145 as read with Article 150(1)(b) and (2) of the Constitution and Standing Order 78 and 79 of the Senate Standing Orders, the Senate resolves to remove from office, by impeachment, His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya on **GROUND 9:** Gross misconduct that is incompatible with the high calling and dignified status of the Office of the Deputy President and a member of the Cabinet and the National Security Council. H.E. the Deputy President has publicly attacked and undermined the work of the National Security Intelligence Service and its Officers put, and the Senate proceeded to vote)*

AYES: Sen. Ali Roba, Mandera County; Sen. Beth Syengo, Nominated; Sen. Boy, Kwale County; Sen. Cheptumo, Baringo County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Chimera; Sen.

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Crystal Asige, Nominated; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. (Prof.) Kamar, Nominated; Sen. Kathuri, Meru County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kibwana, Nominated; Sen. Kisang', Elgeyo Marakwet County; Sen. Korir, Nominated; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lemaltian, Nominated; Sen. Lomenen, Turkana County; Sen. M. Kajwang', Homa Bay County; Sen. Madzayo, Kilifi County; Sen. Mandago, Uasin Gishu County; Sen. Mariam Omar, Nominated; Sen. Miraj, Nominated; Sen. Montet Betty, Nominated; Sen. Mumma, Nominated; Sen. Mungatana, Tana River County; Sen. Munyi Mundigi, Embu County; Sen. Murgor, West Pokot County; Sen. Nyamu, Nominated; Sen. (Dr.) Oburu, Siaya County; Sen. Ogola, Nominated; Sen. Okenyuri; Sen. Oketch Gicheru, Migori County; Sen. Olekina, Narok County; Sen. Onyonka, Kisii County; Sen. Orwoba, Nominated; Sen. Sifuna, Nairobi City County; Sen. Tabitha Keroche, Nakuru County; Sen. Tabitha Mutinda, Nominated; Sen. Tobiko, Nominated; Sen. (Prof.) Tom Ojienda, SC; Sen. Wafula, Bungoma County; and, Sen. Wakili Sigei, Bomet County.

NOES: Sen. Abass, Wajir County; Sen. Chute, Marsabit County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murangá County; Sen. Kavindu Muthama, Machakos County; Sen. Kinyua, Laikipia County; Sen. Maanzo, Makueni County; Sen. Mbugua, Nominated; Sen. Methu, Nyandarua County; Sen. (Dr.) Murango, Kirinyaga County; Sen. Mwaruma, Taita Taveta County; Sen. Okiya Omtatah, Busia County; Sen. Omogeni, Nyamira County; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Shakila Abdalla, Nominated; Sen. Thang'wa, Kiambu County; Sen. Veronica Maina, Nominated; Sen. Wamatinga, Nyeri County; and, Sen. Wambua, Kitui County.

ABSENTIONS: Sen. Abdul Haji, Garissa County.

The Speaker (Hon. Kingi): The results of the Division are as follows-

AYES: 46

NOES: 20

ABSENTIONS: 1

The "Ayes" have it.

(Question carried by 46 votes to 20)

DIVISION

ELECTRONIC VOTING

*(Question, that now therefore, pursuant to Article 145 as read with Article 150(1)(b) and (2) of the Constitution and Standing Order 78 and 79 of the Senate Standing Orders, the Senate resolves to remove from office, by impeachment, His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya on **GROUND 10:** Gross misconduct by openly or publicly insubordinating the President, who is the Head of State and Government put, and the Senate proceeded to vote)*

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AYES: Sen. Abdul Haji, Garissa County; Sen. Beth Syengo, Nominated; Sen. Boy, Kwale County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chimera, Nominated; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. (Prof.) Kamar, Nominated; Sen. Lomenen, Turkana County; Sen. Miraj, Nominated; Sen. Montet Betty, Nominated; Sen. Mumma, Nominated; Sen. Mungatana, Tana River County; Sen. Murgor, West Pokot County; Sen. Nyamu, Nominated; Sen. (Dr.) Oburu, Siaya County; Sen. Ogola, Nominated; Sen. Orwoba, Nominated; Sen. (Prof.) Tom Ojienda, SC; and, Sen. Wakili Sigei, Bomet County.

NOES: Sen. Abass, Wajir County; Sen. Ali Roba, Mandera County; Sen. Cheptumo, Baringo County; Sen. Chesang, Trans Nzoia County; Sen. Chute, Marsabit County; Sen. Crystal Asige, Nominated; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murangá County; Sen. Kathuri, Meru County; Sen. Kavindu Muthama, Machakos County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kibwana, Nominated; Sen. Kinyua, Laikipia County; Sen. Kisang', Elgeyo Marakwet County; Sen. Korir, Nominated; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lemaltian, Nominated; Sen. M. Kajwang', Homa Bay County; Sen. Maanzo, Makueni County; Sen. Madzayo, Kilifi County; Sen. Mandago, Uasin Gishu County; Sen. Mariam Omar, Nominated; Sen. Mbugua, Nominated; Sen. Methu, Nyandarua County; Sen. Munyi Mundigi, Embu County; Sen. (Dr.) Murango, Kirinyaga County; Sen. Mwaruma, Taita Taveta County; Sen. Okenyuri, Nominated; Sen. Oketch Gicheru, Migori County; Sen. Okiya Omtatah, Busia County; Sen. Olekina, Narok County; Sen. Omogeni, Nyamira County; Sen. Onyonka, Kisii County; Sen. Osotsi, Vihiga County; Sen. Shakila Abdalla, Nominated; Sen. Seki, Kajiado County; Sen. Sifuna, Nairobi City County; Sen. Tabitha Keroche, Nakuru County; Sen. Tabitha Mutinda, Nominated; Sen. Thang'wa, Kiambu County; Sen. Tobiko, Nominated; Sen. Veronica Maina, Nominated; Sen. Wafula, Bungoma County; Sen. Wamatinga, Nyeri County; and, Sen. Wambua, Kitui County.

The Speaker (Hon. Kingi): The results of the Division are as follows-

AYES: 22

NOES: 45

ABSENTIONS: Nil

The "Nays" have it.

(Question negated by 45 votes to 22)

DIVISION

ELECTRONIC VOTING

*(Question, that now therefore, pursuant to Article 145 as read with Article 150(1)(b) and (2) of the Constitution and Standing Orders 78 and 79 of the Senate Standing Orders, the Senate resolves to remove from office, by impeachment, His Excellency Rigathi Gachagua, EGH, Deputy President of the Republic of Kenya, on **GROUND 11: Gross misconduct by persistently bullying state and public officers put, and the Senate proceeded to vote)***

AYES: Sen. Ali Roba, Mandera County; Sen. Beth Syengo, Nominated; Sen. Boy, Kwale County; Sen. Chimera, Nominated; Sen. Gataya Mo Fire, Tharaka Nithi County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kibwana, Nominated; Sen. Korir, Nominated; Sen. Lomenen, Turkana County; Sen. Madzayo, Kilifi County; Sen. Mariam Omar, Nominated; Sen. Montet Betty, Nominated; Sen. Mungatana, MGH, Tana River County; Sen. Murgor, West Pokot County; Sen. Okenyuri, Nominated; Sen. Oketch Gicheru, Migori County; Sen. Olekina, Narok County; and, Sen. (Prof.) Tom Ojienda, SC Kisumu County;

NOES: Sen. Abass, Wajir County; Sen. Abdul Haji, Garissa County; Sen. Cheptumo, Baringo County; Sen. Cherarkey, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Chesang, Trans Nzoia County; Sen. Chute, Marsabit County; Sen. Crystal Asige, Nominated; Sen. Dullo, Isiolo County; Sen. Faki, Mombasa County; Sen. Githuku, Lamu County; Sen. Joe Nyutu, Murang'a County; Sen. Kathuri, Meru County; Sen. Kavindu Muthama, Machakos County; Sen. Kinyua, Laikipia County; Sen. Kisang' Elgeyo Marakwet County; Sen. (Dr.) Lelegwe Ltumbesi, Samburu County; Sen. Lemaletian, Nominated; Sen. M. Kajwang', Homa Bay County; Sen. Maanzo, Makueni County; Sen. Mandago, Uasin Gishu County; Sen. Mbugua, Nominated; Sen. Methu, Nyandarua County; Sen. Miraj, Nominated; Sen. Mumma, Nominated; Sen. Munyi Mundigi, Embu County; Sen. (Dr.) Murango, Kirinyaga County; Sen. Mwaruma, Taita Taveta County; Sen. Nyamu, Nominated; Sen. (Dr.) Oburu, Siaya County; Sen. Ogola, Nominated; Sen. Okiya Omtatah, Busia County; Sen. Omogeni, Nyamira County; Sen. Onyonka, Kisii County; Sen. Orwoba, Nominated; Sen. Osotsi, Vihiga County; Sen. Seki, Kajiado County; Sen. Shakila Abdalla, Nominated; Sen. Sifuna, Nairobi City County; Sen. Tabitha Keroche, Nakuru County; Sen. Tabitha Mutinda, Nominated; Sen. Thang'wa, Kiambu County; Sen. Tobiko, Nominated; Sen. Veronica Maina, Nominated; Sen. Wafula, Bungoma County; Sen. Wakili Sigei, Bomet County; and, Sen. Wambua, Kitui County.

ABSTENTIONS: Sen. (Prof.) Kamar, Nominated; and Sen. Wamatinga, Nyeri County.

The Speaker (Hon. Kingi): Hon. Senators, for charge No.11, the results are as follows-

AYES: 18

NOES: 47

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ABSTENTIONS: 2

The “Noes” have it.

(Question negated by 47 votes to 18)

The Speaker (Hon. Kingi): Hon. Senators, the results of the Division indicate that the Senate has upheld the following impeachment grounds –

Ground Number One - Gross violation of Articles 10(2)(a), (b) and (c); 27 (4), 73 (1)(a) and (2)(b); 75 (1)(c), and 129 (2) of the Constitution and Article 147 (1), as read together with Article 131 (2)(c) and (d) of the Constitution.

Ground Number Four - Gross violation of Article 160(1) of the Constitution on the Institutional and Decisional Independence of Judges.

Ground Number Five - Gross violation of Articles 3(1) and 148(5)(a) of the Constitution on the fidelity to the Oath of Office and Allegiance.

Ground Number Six - Serious reasons to believe that H. E. the Deputy President, has committed crimes under sections 13(1)(a) and 62 of the National Cohesion and Integration Act.

Ground Number Nine - Gross misconduct that is incompatible with the high calling and dignified status of the Office of the Deputy President and a member of the Cabinet and the National Security Council. H. E. the Deputy President has publicly attacked and undermined the work of the National Security Intelligence Service (NIS) and its officers.

Hon. Senators, pursuant to Article 145(7) and 150(1)(b) and (2) of the Constitution and Standing Order No.78(8) of the Senate, the Senate has resolved to remove from office, by impeachment, His Excellency Rigathi Gachagua E.G.H, the Deputy President of the Republic of Kenya.

Accordingly, His Excellency Rigathi Gachagua E.G.H ceases to hold office.

Thank you.

Hon. Senators, you may rise.

ADJOURNMENT

The Speaker (Hon. Kingi): Hon. Senators, there being no business on the Order Paper, the Senate stands adjourned until Tuesday, 22nd October, 2024 at 2.30 p.m.

The Senate rose at 11.33 p.m.