

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 7th November 2023

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

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

PRAYER

DETERMINATION OF QUORUM AT COMMENCEMENT OF SITTING

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

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

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

(The Quorum Bell was rung)

The Speaker (Hon. Kingi): Serjeant-at-Arms, proceed to ring the Bell for a further 10 minutes.

(The Quorum Bell was rung)

The Speaker (Hon. Kingi): Serjeant-at-Arms, we now have quorum. Kindly stop the Bell.

Hon. Senators, kindly take your seats.

The Senate Majority Leader (Sen. Cheruiyot): I do solemnly swear---

(Loud consultations)

The Speaker (Hon. Kingi): Senate Majority Leader, you will exchange greetings much later. Hon. Senators, kindly take your seats.

Order, hon. Senators. Sen. Olekina, kindly take your seat. Senate Majority Leader, you should be helping the Chair to bring calm in the House.

Clerk, you may proceed to call the first Order.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

COMMUNICATION FROM THE CHAIR**PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT,
OF THE GOVERNOR OF MERU COUNTY**

The Speaker (Hon. Kingi): Hon. Senators, you will recall that at the Sitting of the Senate held on Thursday 2nd November, 2023, I appointed Tuesday 7th and Wednesday 8th November, 2023 as the days when the Senate will hear the charges for the proposed removal from office, by impeachment, of Hon. Kawira Mwangaza, the Governor of Meru County.

Subsequently, a Procedural Motion for the alteration of the sitting time of the Senate for Tuesday, 7th and Wednesday, 8th November, 2023, to facilitate the impeachment hearing against the Governor of Meru County was considered and approved by the Senate on Thursday, 2nd November, 2023. Consequently, a hearing programme has been prepared and appended to today's Order Paper.

Hon. Senators, as is the tradition, and in line with the schedule of activities for an impeachment hearing in Plenary, the Senate will hold a closed preparatory session to discuss the management of the investigation. This is aimed at ensuring that the process is conducted seamlessly and concluded timeously in line with the requirements set out under the County Governments Act and the Senate Standing Orders.

I now, therefore, direct that all members of the public including the media, to withdraw from the Galleries and any form of broadcast from the Chamber to cease forthwith. The open session and hearing will thereafter commence at 11.00 a.m. as per the hearing programme.

I thank you.

You will signal, so that we proceed with the session. Once the media is out and there is no broadcast, you will let me know.

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

(The House adjourned temporarily at 10.37 a.m.)

(The House went into camera)

(End of in-camera session)

*(Members of the public and the media
were allowed into the galleries)*

(The House resumed at 11.00 a.m.)

The Speaker (Hon. Kingi): Serjeant-at-Arms, kindly, ring the Bell for five minutes to allow Senators to settle in.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

(The Quorum Bell was rung)

(Several Senators stood in their places and consulted loudly)

The Speaker (Hon. Kingi): Hon. Senators, kindly, take your seats. Sen. M. Kajwang' and your team settle down. Order, Senators. Kindly proceed to take your seats. Sen. Wafula, take your seat, we need to make progress. Sen. Nyamu and Sen. Wafula, take your seats. Hon. Shakila, proceed to take your seat.

(Sen. Madzayo and Sen. Omogeni stood at the Bar)

Sen. Madzayo and Sen. Omogeni, I will allow you this time around to take your seats while I am on my feet.

(Sen. Madzayo and Sen. Omogeni walked into the Chamber and took their seats)

Thank you.

HEARING AND DETERMINATION OF THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF HON. KAWIRA MWANGAZA, THE GOVERNOR OF MERU COUNTY

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

Hon. Senators, ladies and gentlemen, having dispensed with the pre-hearing meeting of Senators, which was a closed session, it is now time to commence the proceedings of the proposed removal from office, by impeachment, of Hon. Kawira Mwangaza, the Governor of Meru County.

By a letter, Ref. No. M/CARES/VOL.IV/43, dated Thursday, 26th October, 2023, the Speaker of Meru County Assembly informed the Speaker of the Senate that at a sitting of the Meru County Assembly held on Wednesday, 25th October, 2023, the Meru County Assembly approved a Motion for the removal from office, by impeachment, of Hon. Kawira Mwangaza, the Governor of Meru County.

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

(i) Copy of approved Notice of Motion for the proposed removal from office of the Governor dated 16th October, 2023;

(ii) Order Papers for the County Assembly sittings held on Tuesday 17th October - Morning Sitting) and Wednesday, 25th October, 2023 - Morning Sitting;

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

(Sen. Syengo and Sen. Oburu stood at the Bar)

Sen. Beth Syengo and Sen. (Dr.) Oburu, you may walk in and take your seats. This Communication is fairly lengthy.

(Sen. Syengo and Sen. Oburu walked into the chamber and took their seats)

(iii) Certified Hansard Reports of the Assembly sittings held on Tuesday, 17th October, 2023, Morning Sitting and Wednesday, 25th October, 2023, Morning Sitting;

(iv) Certified Hansard Reports of the Assembly sittings held on Wednesday, 18th October, 2023, Afternoon Sitting and Wednesday, 14th June, 2023, Afternoon Sitting;

(v) Copy of certified signatures of County Assembly Members in support of the impeachment Motion for the removal of the Governor of Meru County, dated 25th October, 2023;

(vi) Certified copy of roll call vote of Wednesday, 25th October, 2023, on the Motion for the impeachment of the Governor of Meru County;

(vii) Copies of the County Assembly reports referred to during the debate on the Motion for removal of the Governor of Meru County. The reports are-

(a) Report of the Select Committee on County Budget and Appropriations on the Budget Estimates of the County Government of Meru for the Financial Year 2023/2024 dated 13th June, 2023.

(b) Report of the Sectoral Committee on Justice, Legal Affairs and Cohesion on the complaint by H.E the Deputy Governor, Meru County, to the County Assembly against his alleged exclusion from County Executive Committee (CEC) meetings and non-facilitation of his Office, dated 17th October, 2023.

(c) Response to Petition No.4 of 2023 urging Meru County Assembly to investigate the alleged illegal employment of traffic marshals by H.E the Governor, Meru County, and alleged illegal traffic charges by the Meru County Enforcement Department.

(viii) Copy of a letter Ref. No.DOM/1/2023 dated 24th October, 2023 by Messieurs Danstan Omari & Associates Advocates, addressed to the Speaker of the County Assembly of Meru.

(ix) Copies of newspaper advertisements appearing on the *Standard* and *Daily Nation* of Wednesday, 18th October, 2023 and copies of invoices for radio advertisement in *Muuga FM*, calling for submission of memoranda on the Notice of Motion for the proposed removal from office of the Governor of Meru County.

(x) An HP flash disk 2GB containing video annexures evidencing the particulars alleged in the Motion as well as voice advertisements on the public participation on the Motion run on *Meru FM* and the approved Notice of Motion and Exhibits.

(xi) Copy of public participation report dated 25th October, 2023 laid on the Table of the Assembly on Wednesday, 25th October, 2023.

(xii) Copies of written Memoranda both in support and against the impeachment, from different sub-counties and regions, submitted to the County Assembly during the public participation exercise on the Motion.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

(xiii) Booklet of the Third Edition of the County Assembly of Meru Standing Orders.

Hon. Senators, pursuant to Section 33(3)(b) of the County Governments Act and Standing Order No.80(1)(a) of the Senate Standing Orders, at the sitting of the Senate held on Tuesday, 31st October, 2023, the charges against the Governor of Meru County, as contained in the Motion of impeachment by the County Assembly of Meru were read to the assembled Senate.

Hon. Senators, ladies and gentlemen, allow me to remind you of the mandate of the Senate in relation to the proposed removal, by impeachment, of a county governor as provided for under Article 181 of the Constitution as read together with section 33 of the County Governments Act, 2012 and Standing Order 80 of the Senate Standing Orders.

In particular, Article 181 of the Constitution provides as follows-

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

- (a) gross violation of the Constitution or any other law;
- (b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;
- (c) abuse of office or gross misconduct; or
- (d) physical or mental incapacity to perform the functions of office of county governor.

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

Section 33 of the County Governments Act, 2012, Senate Standing Order No.80 and the Third Schedule to the Senate Standing Orders provide for the procedure to be followed in the hearing and determination of the proposed removal from office, by impeachment, of a Governor. Specifically, section 33(3) and Standing Order No.80(1)(b) of the Senate provide that;

“The Senate may -

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

(ii) investigate the matter in plenary.”

Hon. Senators, you will recall that at the sitting of the Senate held on Tuesday, 31st October, 2023, the Motion for the establishment of a Special Committee was defeated. Therefore, this paved the way for the default position, the hearing of the impeachment charges against the Governor of Meru County to be held by the Senate sitting in Plenary.

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

Further, the Senate invited the Governor, if she so chooses to appear before the Senate, to file an answer to the charges with the Office of the Clerk of the Senate by 5:00 p.m. on Saturday, 4th November, 2023, setting out the following-

- (i) The Governor’s response to the particulars of allegations.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

(ii) The mode of appearance before the Senate; whether in person, by advocate or in person and by advocate.

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

(iv) Any other evidence to be relied on.

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

The County Assembly was further invited - if it so chooses to appear before the Senate - to file with the office of the Clerk of the Senate by 5.00 p.m. on Saturday, 4th November, 2023, setting out documentation as follows-

(i) Designating the Members of the County Assembly, being not more than three Members, if any, who shall attend and represent the County Assembly in the proceedings before the Senate;

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

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

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

Hon. Senators, ladies, and gentlemen, on Saturday 4th of November, 2023, the Office of the Clerk of the Senate received a response to the invitation to appear, issued to the Governor dated 4th November, 2023 from Mutuma Gichuru and Associates Advocates, who indicated that the Governor had appointed the firm to represent her in the proceedings before the Senate and that the Governor would also appear in person and by advocates. The letter also indicated the list of counsel representing the Governor and the list of witnesses for the Governor.

Similarly, on the same day, the office of the Clerk of the Senate received a response to the invitation to appear issued to the County Assembly from M/s Muthomi and Karanja Advocates Reference No. T006/003/12023M dated 4th of November 2023, indicating that the firm had been appointed to represent the Council Assembly. The letter also indicated the list of advocates to represent the County Assembly and a list of witnesses for the Council Assembly.

Pursuant to Rule Eight of the Rules of Procedure, when considering the proposed removal of a governor in plenary, the Clerk of the Senate furnished each party with the documentation filed by the other party in accordance to Rules Six and Seven of the Rules of Procedure.

Hon. Senators, ladies and gentlemen, the hearing programme, which has been circulated details the various activities in the hearing and determination of the matter and the time allocated to each activity. It will be crucial that all the parties comply with the

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

time allocated. The parties will be notified of the balance of time on each activity through the Clerks-at-the-Table.

In summary, the programme states that today, Tuesday, 7th November 2023, after we have dispensed with preliminary matters, the charges against the Governor, as submitted by the County Assembly, shall be read to the Governor. This will be followed by an opening statement by the County Assembly and thereafter, an opening statement shall be made by the Governor.

After the conclusion of the opening statements, the presentation of the case of the County Assembly shall commence and shall take us up to the end of today's sitting.

At the sitting scheduled for tomorrow, Wednesday, 8th November, 2023, the Governor will have an opportunity to present her case before the Senate. This will be followed by closing statements by each of the parties for a period not exceeding half an hour each.

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

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

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

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

INTRODUCTION BY THE MERU
COUNTY ASSEMBLY TEAM

Dr. Muthomi Thiankolu: Thank you, Mr. Speaker and hon. Senators. My name is Dr. Muthomi Thiankolu, an advocate and Lead Counsel for the County Assembly of Meru. I am assisted by-

- (1) Mr. Muvengei Jacob Ngwele - Advocate
- (2) Mr. Maranya Domisiano Mari - Advocate
- (3) Mr. Ngure Benson Kinyua - Advocate
- (4) Mr. Mawira Bonface Mwereru - Advocate
- (5) Ms. Mutua Faith M'edeal - Advocate
- (6) Mr. Mwirigi Eric Muriuki - Advocate
- (7) Mr. Wanyenji Dennis Njoroge - Advocate
- (8) Mr. Kenson Mutethia - Legal Assistant

The witnesses that the County Assembly proposes to call are-

- (1) Mr. Arimi Paul Mwaki

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

- (2) Dr. Gitonga Jeremiah Luruti
- (3) Hon. Mawira Evans Kaaria, MCA
- (4) Hon. Mugambi Rindikiri Murwithania, MP, for Buuri Constituency;
- (5) Mr. Muroki Patrick Nkunga - former PA to the Deputy Governor;
- (6) Mr. Kaumbuthu Paul Gikamati

If and when we get your leave, we will call any other witness that we may deem relevant, subject to your direction.

We have brought the following MCAs as per your Clerk's directions-

- (1) Hon. Dennis Kiogora DMK - MCA
- (2) Hon. Kiramana Aurelio Murangiri - MCA
- (3) Hon. Zipporah Gakii Manyara - MCA

We also have three members of staff present-

- (1) Ms. Teresa Chokera - Senior Serjeant-at-Arms, Meru County Assembly
- (2) Ms. Lindsay Makena - Deputy Director of Research, Meru County Assembly
- (3) Mr. Edward Muriithi - Chief Serjeant-at-Arms, Meru County Assembly

That is the team from the County Assembly, Mr. Speaker, Sir.

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

INTRODUCTION BY THE MERU COUNTY GOVERNOR'S TEAM

Mr. Elisha Ongoya: Thank you, Mr. Speaker, Sir. My name is Mr. Elisha Ongoya, the counsel leading the team of the Governor. Other counsels appearing alongside me in this matter are-

- (1) Mr. Elias Mutuma - Counsel
- (2) Dr. Duncan M. Okubasu - Counsel
- (3) Mr. Robert Mutembei - Counsel
- (4) Ms. Bridah Kimathi - Counsel
- (5) Mr. Batista Mwirigi - Counsel
- (6) Mr. Anthony Mwenda - Counsel
- (7) Mr. Collins Mwenda - Counsel
- (8) Mr. Brianlee Maingi - Legal Assistant

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

In terms of the witnesses that the Governor's team shall call in this matter would be-

- (1) H.E Kawira Mwangaza
- (2) Hon. Nicholas Kinyua Josphat
- (3) Mr. Arayaru Adrian
- (4) Mr. Dickson Munene.

That is the list, Mr. Speaker, Sir.

The Speaker (Hon. Kingi): Sen. Faki, please, take your seat.

On behalf of the Senate, I welcome the County Assembly team, the Governor's team, members of the public and the media to the Senate and to these proceedings today. I invite the Clerk to read the charges against Hon. Kawira Mwangaza, the Governor of Meru County.

READING OF THE CHARGES AGAINST
THE GOVERNOR OF MERU COUNTY

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

(Hon. Kawira Mwangaza took the stand)

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

(1) Misappropriation and Misuse of County Resources

The Governor has grossly violated, among others: Articles 10, 73, 201, 226 (5), 227 and 232 of the Constitution; Sections 8, 12, 13 (1), 16, 17 and 35 of the Leadership and Integrity Act, 2012 ("the Integrity Act"); Sections 55 and 66 of the Public Procurement and Asset Disposal Act, 2015 ("the Procurement Act") and Sections 45 (2) and 46 of the Anti-Corruption and Economic Crimes Act ("the Anti-Corruption Act") by engagement, connivance and/or complicity in the following-

(i) The embezzlement of county funds through the Governor's sisters (Rose Kinya Guantai and Miriam Guantai), brother (Kenneth Guantai Murangiri), brother-in-law (Nephat Kinyua) and the nephew to the Governor's husband (Edwin Mutuma Murangiri), all of whom are from now on collectively referred to as "the Governor's relatives";

(ii) The withdrawal of county funds, under the guise of payment for various supplies, by the Governor's relatives, yet they, the Governor's relatives, are ineligible to tender for or supply any goods or services to the County Government;

(iii) Paying full salary and benefits for more than a year to Dr. Ntoiti (CEO of County Revenue Board), Paul Mwaki (CEO of Liquor Board), Kenneth Kimathi Mbae (CEO of Meru Microfinance) and Joseph Kithure Mberia (CEO, Meru Water and Sewerage Services) (MEWASS) while knowing that those officers were not rendering any services to the county; and

(iv) The diversion and misuse of county resources, including funds and motor vehicles, to run the Governor's private charity dubbed "*Okolea*" despite a previous promise to the Senate, in the previous impeachment proceedings, to refrain from conflating official county operations and *Okolea* operations.

(2) Nepotism and Related Unethical Practices

The particulars of this charge are as follows-

The Governor has grossly violated among others:

(i) Articles 10, 232, 235 and 236 of the Constitution;

(ii) Sections 12, 17 and 24 of the Public Officer Ethics Act, 2003;

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

(iii) Sections 13 (1) (b), (f), 16 and 24 of the Leadership and Integrity Act, 2012; and

(iv) Sections 55, 59, 59A, 60, 62, 63, 64 and 65 of the County Government Act, 2012 (“the County Government Act”) by engagement, connivance and/or complicity in the following-

(i) Fraudulently misrepresenting the Governor’s relatives as a “technical team” for purposes of travel to China to inspect and certify cancer treatment equipment while knowing that the Governor’s relatives are not medical professionals;

(ii) Employing Edwin Mutuma Murangiri, who is a nephew to the Governor’s husband, as the CEO of Meru Youth Service (MYS) and Ag. Chief Officer of the Department of Finance;

(iii) The designation of Nephath Kinyua, who is the Governor’s brother-in-law, as the Director of External Linkages without transparent and competitive recruitment; and

(iv) Assigning diplomatic duties, namely engagements with foreign diplomats and dignitaries, to her unqualified sisters namely Miriam Guantai, PA and Rose Guantai, Bodyguard.

(3) Bullying, Vilification and Demeaning Other Leaders

The particulars of this charge are as follows-

The Governor has grossly violated, among others-

(i) Articles 10, 19 (2), 28, 73, 75 and 179 of the Constitution;

(ii) Sections 9 (b), 19 and 24 of the Public Officer Ethics Act;

(iii) Sections 29 and 34 of the Leadership and Integrity Act; and

(iv) Sections 30 (2) and (3) (c) and (d) of the County Government Act by engagement, connivance and/or complicity in (among others) the following-

(i) Exclusion of the Deputy Governor from County Executive Committee Meetings and other official functions;

(ii) Bullying, undermining and posting insulting and demeaning messages about the Deputy Governor in a WhatsApp Group styled “3rd Government 012,” whose membership includes several officers who are subordinate to the Deputy Governor;

(iii) Encouraging and condoning insubordination and the making of insulting and demeaning public utterances by subordinate staff against the Deputy Governor and other elected leaders;

(iv) Bullying, undermining and posting insulting and demeaning messages about the Deputy Governor in a WhatsApp Group styled “County Admin Services,” whose membership includes several officers who are subordinate to the Deputy Governor;

(v) Encouraging and condoning the removal of the Deputy Governor by junior officers from official county WhatsApp communication forums;

(vi) Arbitrary suspension, dismissal, withdrawal and frustration of the staff of the office of the Deputy Governor;

(vii) Illegally, irregularly and fraudulently hounding the Deputy Governor’s staff out of office by purporting to accept their non-existent resignations;

(viii) Arbitrary reduction, suspension and withdrawal of budgetary facilitation for legitimate operations of the office of the Deputy Governor;

(ix) Threatening to inflict bodily harm against the Deputy Governor, orally and in WhatsApp chats;

(x) Forceful breaking, entry and ransacking of the Deputy Governor's office;

(xi) Changing the locks to the Deputy Governor's office;

(xii) Arbitrary relocation of the Deputy Governor's office;

(xiii) Arbitrary withdrawal of security from the Deputy Governor's residences;

(xiv) Persistently making demeaning public utterances against other elected leaders despite the same issue featuring prominently in previous impeachment proceedings;

(xv) Making inciteful, insulting and demeaning remarks against other leaders, by falsely accusing them of cartelism at a presidential thanksgiving service held in Laare despite this issue arising in previous impeachment proceedings; and,

(xvi) Encouraging, conniving and condoning her husband's insulting and demeaning public utterances and musical performances against other elected leaders, despite this issue featuring in previous impeachment proceedings.

(4) Illegal Appointments and Usurpation of Statutory Powers

The particulars of this Charge are as follows -

The Governor has grossly violated, (among others)-

(i) Articles 10, 41, 201, 232, 235 and 236 of the Constitution;

(ii) Section 17 of the Public Officer Ethics Act;

(iii) Sections 45, 55, 59, 59A, 60, 62, 63, 64 and 65 of the County Government Act;

(iv) Section 4 of the Public Appointments (County Assemblies Approval) Act, 2017;

(v) Section 34 (3) of the Public Service Commission Act, 2017;

(vi) Section 9 (2) of the Meru County Revenue Board Act, 2014;

(vii) Section 4 (2) of the Meru County Alcoholic Drinks Control Act, 2014;

(viii) Section 11 (2) of the Meru County Microfinance Corporation Act, 2014; and

(ix) Section 18 (2) of the Meru County Water and Sanitation Services Act, 2014

by engagement, connivance and/or complicity in (among others) the following-

(a) appointing Kenneth Mwitii Riungu as a Chief Officer without County Assembly's approval;

(b) sending Dr. Ntoiti (CEO of County Revenue Board), Paul Mwaki (CEO of Liquor Board), Kenneth Kimathi Mbae (Managing Director of Meru Microfinance Corporation) and Joseph Kithure Mberia (CEO, MEWASS) on indefinite compulsory leave "with full salary and benefits" in the usurpation of the powers of the appointing authorities under the relevant Meru County laws;

(d) deploying other persons, in breach of a court order, to perform the functions of the persons alluded to in subparagraph (c) above;

(e) appointing unqualified persons (Edwin Mutuma Murangiri, Kenneth Mwitii Riungu and Gitobu Nkanata) as Acting Chief Officers without the requisite competitive recruitment and recommendation of the County Public Service Board;

(f) disregarding the criteria for the establishment of offices within the county public service by recruiting traffic marshals without the involvement of the County Public Service Board;

(g) usurping the powers of the County Public Service Board by creating offices of the traffic marshals, which is the sole preserve of the County Public Service Board;

(h) employing a bloated workforce, more than one hundred personal staff, in the office of the Governor;

(i) irregularly designating and paying various cleaners as Senior Support Staff (while having 16 support staff); and,

(j) appointing the following persons to hold county offices in an acting capacity for more than six months-

(1) Monica Kagwima (Chief Officer, Youth);

(2) Koome Muthuri (Director, Health Services);

(3) Francis Mungai (CEO, County Revenue Board); and,

(4) Silas Mbaabu Muguna (CEO, Liquor Board).

(5) Contempt of Court

The particulars of this Charge are as follows-

The Governor has grossly violated (among others)-

(i) Articles 10 and 73 of the Constitution;

(ii) Section 7 of the Leadership and Integrity Act; and,

(iii) Section 10 of the Public Officer Ethics Act by connivance and/or complicity in a contumacious stubborn refusal to obey lawful court orders.

(6) Illegally Naming a Public Road after Her Husband

The particulars of this Charge are as follows-

The Governor has grossly violated (among others)-

(i) Articles 10 and 73 of the Constitution;

(ii) Sections 7 and 11 (1) (c) of the Meru County Honours and Awards Act, 2018, by naming a public road after her husband without following the applicable statutory procedures.

(7) Contempt of the Assembly

The particulars of this Charge are as follows-

The Governor has grossly violated (among others)-

(i) Articles 10, 174 (i), 185 (3) and 195 of the Constitution;

(ii) Section 39 of the County Governments Act, 2012; and,

(iii) Sections 18, 22 and 27 of the County Assemblies Powers and Privileges Act, 2017 by engagement, connivance and/or complicity in the following –

(a) refusing to honour lawful summons to appear before the Assembly’s Sectoral Committee on Justice, Legal Affairs and Cohesion to answer questions on the matters raised in the preceding parts of this impeachment Motion;

(b) directing her Chief of Staff and accomplice and lackey in malfeasance to write a contemptuous letter to the Assembly in response to lawful summons to appear before the Assembly’s Sectoral Committee on Justice, Legal Affairs and Cohesion; and,

(c) in the refusal by her CECM Finance and County Secretary to furnish documents to the Assembly on the frivolous grounds that

(i) an inchoate audit process was underway; and,
(ii) the matters raised by the Assembly were sub *judice*,
the latter frivolous ground being also disingenuous and contrived when viewed against the fact that the Governor has already been convicted of contempt of Court.

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

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

The Speaker (Hon. Kingi): Thank you. You may proceed to take your seat, Hon. Governor.

(Hon. Mwangaza took her seat)

Next is opening statements on behalf of the County Assembly.

Counsel, you have exactly 30 minutes. Anything said after 30 minutes will be off record and may not be useful to your client.

OPENING STATEMENT ON BEHALF OF THE
MERU COUNTY ASSEMBLY

Dr. Muthomi Thiankolu: Mr. Speaker, Sir, thank you very much. I will be sharing the 30 minutes with my learned friend, Mr. Mari Maranya.

In summary, the impeachment Motion before you is the third one in barely a year, presented before the Assembly against the Hon. Governor Kawira Mwangaza.

The first impeachment Motion was presented before the Assembly on 22nd November, 2022. It did not reach the Senate because the High Court issued an order preventing the Members of County Assembly (MCAs) from debating it.

The second Motion was filed on the 5th December 2022 and was brought to this Assembly. It contained 62 charges of nepotism, legal appointments, usurpation of the Constitution and statutory functions of county organs. It contained allegations on incitement, bullying and vilification of other leaders; a matter now before you. The Motion revolved around disrespect to the Assembly through forceful entry and mobilization of riots against the Assembly; a matter now before you in different particulars. The second Motion involved violation of public finance, management laws; a matter before you, only the facts have changed but the fundamental problem remains. Then, of course, there is a third Motion that came here but did not succeed.

Notably, when we came here last time, the Governor took the posture of an innocent and vulnerable victim of toxic masculinity, harmful patriarchy, gender stereotyping, gender discrimination and political machinations. In short, the Governor took the posture that if something went wrong in Meru, as we submit something has been terribly wrong in Meru for a year now and counting, her defence was “it was not me”. It reminded us of the Shaggy’s song in which a young man is caught engaging in some hunky punky and even though the act is recorded on camera and he is caught in all the evidence, he is singularly responding through and through “*It wasn’t me.*”

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

After we moved from this Senate, even though the Senate dismissed the charges, it gave the Governor many pieces of free advice and lessons on how to run the county. After we left here, there was a brief honeymoon of peace in Meru lasting only a few weeks. This honeymoon was characterised by courtesy calls from various leaders pledging in public to support the Governor and promises by the Governor that she would turn over a new leaf and Meru would lastly be peaceful, orderly and running in accordance with the Constitution.

When we came here, I recall prefacing our presentation with a story of a leader in Europe who that time we were telling you, had waged wars on all four directions of the compass, including North, South, East and West. On each direction, this leader was at war with another country and another civilization for no good reason.

Today, we preface the Motion before you with yet another allegory from Europe about prodigy of a man from Russia called Kondraty Ryleyev. This was a multi-talented Russian citizen who was a poet, publisher, oralist, and military officer. He was an embodiment of all the nice things a single man can achieve in a single lifetime. He was implicated in a treasonable act called the Decembrist Uprising of 1825 in Russia, which sought to depose the Russian Monarch. Those days the monarchs were called ‘Sirs’ from office.

After he was convicted of these offences, he was sentenced to public execution by quartering. This is a method of execution that involved tying the four limbs to a horse and the horse is driven in different directions or cutting the body in four pieces and exposing the bowels.

Pleas were made to Sir. Nicholas who was the Monarch, that this was too macabre method of execution. Even though the sentence could not be vacated, the King was implored to impose a more humane way of execution. The king agreed that Kondraty Ryleyev could be executed by hanging which, I think is the method in our laws for executing people.

On the day of execution and in those days, executions were done in public stadiums like Nyayo Stadium full of people and spectators. So, on the day of execution, this gentleman was led to the gallows, crowd watching in the full stadium. He was supposed to fall so that your neck breaks and he dies--- The rope broke and Kondraty Ryleyev fell to the ground. After a few seconds of dizziness, he dusted himself, addressed the gathering telling the crowd, “You see in Russia, they do not know how to do anything properly. They do not even know how to make a rope.”

We are submitting that by the Governor persisting in the very series of misconduct that brought us here one year ago, the only change being these particulars, she is telling you, you see in Kenya, the Senate does not know how to do anything properly, including impeaching a rogue Governor.

Anyway, after this guy fell to the ground, in Russia this was considered a message from the gods that they did not intend the prisoner to be executed. The King was allowed to grant a pardon if this type of miracle happened. So, a messenger was sent on horseback to the Monarch in a large white horse to tell him about this miracle and request him as was the custom in Russia, to sign the pardon.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Indeed, the Monarch began drafting the pardon and just as he was about to sign it, he asked the messenger, by the way, did Kondraty Ryleyev say anything when this miracle of breaking of the rope in a public hanging occurred? The messenger told the King, 'Yes, he said, in Russia, they do not know how to do anything; not even how to make a rope'. The Monarch said in that case, let us prove the contrary. He tore the pardon and directed that the execution be repeated the following day. This time, the rope did not break marking the end of the sad story of Kondraty Ryleyev, the Russian poet, singer, military officer and many other things.

Why do we tell this story? We will be presenting evidence before you and even as the charges were read, you heard the Clerk say several times, these issues were alive in the previous proceedings. What happened? The Governor after the brief few weeks of camaraderie, adopted a defiant stance in which she has it even in her own evidence, of several public rallies defiantly telling whoever cared to listen, *kaende kaende, kabati kabati*. *Kaende kaende* is sheng; it is Nairobi's slang for 'I do not care, whatever will be, will be, I will do what I do'.

In Swahili, they say, '*na liwe liwalo*'. That is the meaning of *kaende kaende*. We will be showing you how, throughout the last one year, even after the graceful lessons from Senator Tobiko, I recall, and the other Senators, the Governor's mantra in persisting on this series of misconduct is, 'I do not care, whatever will be, will be *que sera que sera*'. She does not care about the consequences, the future and what not.

That is why we have come before you with the Motion arranged under the seven thematic counts, setting out 39 specific forms of gross violations of the law and the Constitution and which, in our humble submission, are conduct unbecoming of any leader. We expect and it will happen, although I am not a prophet, just like last time, the Governor will appear on this podium taking the posture of an innocent and vulnerable victim of toxic masculinity, harmful patriarchy, gender stereotyping and political schemes. That is what her response tells you.

It is back to '*It wasn't me*' by Shaggy. If you want to confirm it, at page two of her response she tells you, this Motion should not be here, it is a scheme of her deputy who is power hungry to take the governorship through the backdoor. She tells you, it is the *Njuri Ncheke*, she tells you, if her own officials, secretary, chief of staff has done anything wrong, even on the things she acknowledges, she says, they bear their own responsibility, it was not me.

In short, she will come to you looking as meek as a lamb. Luckily, we have lived through the experience, our message to the Senate, if you acquit her this time, she will walk out of this door, and it will be *kaende kaende, que sera que sera*, whatever will be, will be, I do not care *na liwe liwalo* and Meru will be back to perpetual endless crisis that has engulfed it for a year.

We will be showing you that the Governor has made several admissions before the county assembly. What we find strange is that now in her response to you, she produces documents she failed to produce before the Assembly. We will be able to show you beyond any shadow of doubt that those documents are forgeries.

In conclusion, so that my learned colleague takes the remaining bit, just like last time, Mr, Speaker, Sir, we are telling you not to fall for the looks. If you see a humble

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

meek, polite looking governor, it is because the occasion of the day requires that you look meek, humble, vulnerable and what not. However, if you make the mistake, this time round, it will be *que sera, sera* (whatever will be, will be). I do not care, *kaende, kaende*. That is what she will do.

For those reasons, for purposes of my part, we are asking you to borrow from Nicholas I of Russia in 1825/1826, to prove that the Senate of the Republic of Kenya can actually do things properly by impeaching a rogue governor.

I leave the Floor to my learned colleague, Mr. Mari Maranya.

Mr. Maranya Domisiano Mari: Thank you, Mr. Speaker, Sir, and the hon. Members of the Senate. My name is Mari Maranya and for the interest of time, allow me to jump right into it.

I will start by setting out the mandate of the Senate, as has been clearly set out previously by the Apex Court. The Court of Appeal in Wambora's case, as well as the Supreme Court in the Sonko's case, set the mandate of this House clearly. Its role is to investigate and confirm that there exists sufficient evidence to substantiate the allegation made against the governor. Therefore, the Supreme Court noted that the Senate does not see it as an appellate forum. Theirs is a single role that is to investigate and confirm that the allegations, as well as the evidence that has been adduced by the Senate, is substantiated.

We have gone ahead to state that impeachment proceedings are not in the nature of criminal proceedings. They are not proceedings to establish culpability or criminal culpability against the Governor. However, the court has stated that the impeachment proceedings is all about accountability, political responsibility and political governance.

As a result of that, we have set the standard of proof. Unlike in criminal cases where the standard of proof is beyond reasonable doubt, in the impeachment proceedings, it is not required to prove beyond reasonable doubt. Indeed, the Senate went ahead and stated that the proof is way below beyond reasonable doubt, but slightly above that of a balance of probability.

Mr. Speaker, Sir, in the fullness of time, we shall produce evidence upon your leave to call evidence to prove that the Governor has failed or breached the political responsibility. She is in breach of accountability and political governance in a manner that warrants her impeachment.

We shall again demonstrate to this honourable House that the conduct of the Governor, over time, over the one year she has been in office, has not been beyond reproach as is required.

The conduct of a state officer should be beyond reproach. Indeed, it is likened to that of a Caesar's wife, but instead or to the contrary, the Governor has behaved in a manner that has been construed by this House as well as the court to amount to an impeachable conduct. We shall demonstrate that one upon the opportune time when we shall be required to call witnesses as well as to adduce evidence.

We shall demonstrate that the Governor, once a pedigree person, has disastrously turned tragic and has been likened in Meru County to King Saul.

We shall demonstrate that the relationship between the Governor and the people of Meru, the relationship between the Governor and the leaders of Meru, both elected,

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

political and non-political, her relationship with women organizations in Meru, and all actors, including the informal government called *Njuri-Ncheke* and all other leaders, including her deputy, has irretrievably broken down. Therefore, there exist irreconcilable differences between the Governor and everybody, all actors within Meru. We shall demonstrate that one clearly when we will have a chance to adduce evidence.

We shall also demonstrate to you in the fullness of time, how the Governor has placed the county resources that is appropriated by this honourable House to Meru County, under the domain of her relatives. That is a relative with very close blood consanguinity, that is sister, brother, for one reason, which is to plunder it.

We shall demonstrate how Meru County is having a very high prevalence of cancer. It is even said that we top not only in the country, but the entire world. For quite a long time, Meru has been leading in cancer.

The county got an opportunity from an international well-wisher where they sent us a group of technical persons in terms of cancer treatment to come and partner with us. They were to inspect the cancer treatment machines for purposes of equipping Meru Cancer Treatment Centre.

The Governor was audacious enough to get clearance from the Ministry of Devolution. You will be surprised that instead of getting for the oncologist, the radiologists serving within the Cancer Centre in Meru was audacious enough to put into the flight her sister, brother and brother in law, to go for two weeks in China and be frolic of themselves.

This is an opportunity that we lost as a county to equip the only cancer centre that we have in Meru. We shall demonstrate that at the opportune time. That is not even shocking enough as the letter that was sent to the Ministry of Devolution as well as to the Chinese Embassy, read:-

“The following persons; (a clear case of misrepresentation) are technical persons matters of cancer.”

Yet for most of them, their education qualification cannot be accounted for.

The most educated in that team of sisters and brothers was one holding a Diploma in Pharmaceutical Technology. That is an assistant to a pharmacist and even a pharmacist is not qualified in that. Remember, this is done while leaving out qualified oncologists, radiologists and all manner of experts in relation to cancer treatment.

We shall demonstrate to you, at the opportune time, how the Governor has employed eight extra chief officers without an approval of the County Assembly, at all. It is like the President appointing a Minister and not subjecting them to the National Assembly for approval.

Most of these chief officers are completely unqualified. They do not even have the minimum academic requirements. We shall demonstrate that when we will be allowed to call evidence on how the Governor has used our *Okolea* Programme to swindle Government money.

We shall demonstrate, at the opportune time, how Government vehicles have been staged to pursue the *Okolea* Programme, which is a programme not meant to help people, but vilify leaders and other persons who it is assumed should not to be raising any issue.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

We shall demonstrate, at the opportune time, how the Governor has used her sister and brother to swindle the Government money. Just a cursory look at it, Kshs78 million going to an individual in the name of prepayments, where her sister would hold eight imprests in one day. We shall demonstrate that when we will be required to call evidence.

Mr. Speaker, Sir, we shall also urge you, that the Governor in front of you is not a first-time offender. Indeed, she is a repeat offender who does not require of deserve the favours of this court.

I will also reiterate the role of Senate as far as the devolution is concerned. Honourable Senate, you spend a whole lot of time to pass budgets for the interest of counties and devolution, only for it to be placed at the disposal of sisters or relatives for purposes of plunder. You have a sword and you are the custodian of devolution. You cannot lie down for long. You will spare the rod and the child will be spoilt.

Mr. Speaker, Sir, we shall be asking you to crack the whip against the Governor for the interest of Meru. You will be faced with two competing interests. The first is for devolution to work in Meru for the interest of Meru and secondly, to help the Governor save her private job. The good thing is that you will be confronted with public interest against her private interests. Kindly, save the Governor, sorry save Meru at the expense of saving the Governor.

My apologies Mr. Speaker, Sir.

(Laughter)

Mr. Speaker, Sir, save all the people of Meru. At the opportune time, we shall demonstrate that the centre cannot hold any more. We will be urging you to save the MCAs the back-and-forth and the to-and-from the Senate. If someone was brought here barely 10 months ago, then there must be an issue. It is not just in vain, but it is because the centre cannot hold any more.

We shall demonstrate how the Governor has completely violated a court order just like she has shown contempt to this Senate by making a mockery of their advisory. Sorry, Mr. Speaker, Sir, I am reminded it is for a year. The Governor has completely usurped the County Public Service Board (CPSB). We will give you an example where the Governor advertised for three officers in her office – her personal Public Communication Officers I and II. She shortlisted 17 for purposes of recruiting three. Out of them, she recruited six. What surprises me and should also surprise this Senate is that out of the six that were recruited, only one was in the shortlist. The other five were not in the shortlist and were not even applicants.

Mr. Speaker, Sir, I have had a cursory look at her defence and on the misappropriation of funds, the Governor has only attempted to prove by accounting for Kshs2.3 million instead of Kshs78 million. Ninety-nine per cent of the documents used for the Kshs2.3 million (the work tickets and the voucher) are not signed by the examiner or the director of accounts and, therefore, were prepared hurriedly for purposes of the Senate's consumption.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

We shall demonstrate how a certain work ticket has been used to account for 17 imprests and has been used 17 times. The same registration and serial number have been used 17 times and we shall give this evidence when called upon. We shall also demonstrate how the work tickets that have been used do not follow the natural chronology. It is indicated that on 7th October, the Governor went to Nairobi. The next one that follows is for 10th October and the one after is for 4th April. You wonder whether the Governor returned the access bag some months ago.

Mr. Speaker, Sir, that is a clear demonstration of forgery. You will look at some documents and you will realise that she has zero defence. She only has a mere counter-claim. She is asked why she stole Government money and she says it is *Njuri Ncheke*. She is asked why she stole this one, she says it is Hon. Mpuru Aburi. She is asked why she usurped the powers of the County Assembly, she says it is the Deputy Speaker. You ask this one, she says ooh that, instead of clearly saying that she has not done anything and giving the evidence to that effect.

I remember I was taught by Sen. (Prof.) Tom Ojienda, SC, that if you decide to answer a wrong question other than the one that was asked, you should try and answer it correctly. Instead, the Governor did not address those claims. In her defence, she produced her own counter-claims in form of a Motion to impeach. She answered that claim wrongly. That is a double jeopardy. You get the question wrong and you answer it wrongly.

Mr. Speaker, Sir, because of the interest of time, we shall adduce all the evidence in respect to the matters we have raised.

I thank you.

The Speaker (Hon. Kingi): Thank you. Next is the opening statement on behalf of the Governor. Counsel, you have 30 minutes. At the end of the 30 minutes, the microphone will go off. Anything you say after that will be off record and of no use to your client.

OPENING STATEMENT ON BEHALF OF THE MERU COUNTY GOVERNOR

Mr. Elisha Ongoya: Thank you, Mr. Speaker, Sir and distinguished Senators. My name is Elisha Ongoya for the record. It gives me great pleasure to address you representing the Hon. Kawira Mwangaza, the Governor of Meru County.

We find it necessary to open our remarks by reflecting on the wisdom that informed the framers of our Constitution in prescribing a two-tier process of removal of a governor from office. This case has taught us that the framers of this process were, indeed, wise. I say this because this House occupies a higher *quasi*-judicial pedestal in these proceedings for three reasons.

The first one is that in this House, the accuser, prosecutor and the judge is not one and the same person unlike the process below where the Motion is moved and supported by the same persons who will be prosecuted and make a determination by the vote. That was wise on the part of the framers of our Constitution and the law.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

Secondly, the diversity of this House in terms of the origin of the decision makers implies also that the members of this House are not contaminated by local politics. Thirdly, this House in terms of the architecture, design of the Constitution and the decision-making process in this matter is expected to bring the much desired objectivity in this process.

The Hon. Kawira Mwangaza also takes this opportunity to reflect on the constitutionally prescribed grounds for removal of a governor from office.

Mr. Speaker, Sir, we appreciate that this was one of the first Orders you took Members through. It is critical that throughout this process, we keep these criteria at the back of our minds.

The drafters of our Constitution grafted grounds using specific adjectives. First, the gross violation of the Constitution. I have been asking myself why not just “violation of the Constitution?” Secondly, where there are serious reasons for believing that the County Governor has committed a crime under national or international law. Again, I was reflecting on the question, why not just “reasons to believe” but “serious reasons to believe”. Thirdly, the abuse of office and gross misconduct.

Mr. Speaker, Sir, and distinguished Senators, I asked myself why not just “misconduct?” It is our humble submission that it cannot be for nothing that the framers of our Constitution and the law used these descriptive words.

Whereas the Constitution and the statute does not give us the definition of gross misconduct, the Supreme Court of this country, which is an important institution in giving meaning to our Constitution, has supplied us with the meaning of those terms in a process that involves the removal of a judge from office. This was in the case of Muya versus the tribunal appointed to investigate the conduct of Justice Martin Mati Muya. In the interest of time, I will pick out the attributes that the Supreme Court said constitute gross misconduct. The Supreme Court used the following words-

“It must be atrocious, colossal, deplorable, disgusting, dreadful, enormous, gigantic, grave, heinous, outrageous, odious, and shocking”. These are not my words, but those of the apex court of the Republic of Kenya giving all of us guidance on how to deal with matters such as this.

The standard for removal of a governor in office considering the adjectives used by the drafters of our Constitution as interpreted by our Supreme Court suggests that the process must be rigorous. I was trying to rationalize it. Why did the lawmaker insist on such a rigorous standard? It must be consistent with the rigors of assuming the office itself. The process of assuming the office of governor is not mild. I am aware that Members are sitting in this House who have attempted to vie for the Office of Governor and will bear with me that the process is rigorous.

In the case of Meru County, it must be borne in mind that there are 772,000 registered voters whose voices were heard and out of those voices Hon. Kawira Mwangaza assumed the office of Governor of Meru County.

Mr. Speaker, Sir, Hon. Kawira Mwangaza beseeches this House to employ the above test as the constant north ‘the guiding star’ in these proceedings. What the Governor is telling this House in simple terms is not to be preoccupied with the allegories from Europe and to look at the evidence presented before you.

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

The law of evidence, which my learned colleague Dr. Muthomi Thiankolu has taught for many years at the university, presents that evidence is not counted, but weighed. Eventually, put this evidence on the weighing scale and come to a conscious conclusion. Can we in good conscience remove a fellow citizen from the high office of the Governor on the strength of the material presented before us?

One may ask, where the evidence the Governor presented before the Senate was before the Assembly undertook the first impeachment process. The HANSARD of the Assembly will bear the Governor out that the Governor's legal team went before the Assembly with this evidence and asked the Speaker of the Assembly to direct us on how to present the evidence before the house. The Speaker of the Assembly ruled that the legal team and the Governor were in parliamentary parlance 'strangers' and could not table material before the county assembly.

Mr. Speaker, Sir, and hon. Senators, 2,400 years ago, that great Greek philosopher, Socrates, is documented to have prescribed the four essential attributes of anyone who sits in the position of a judge as you do today and tomorrow. He observed-

"Four things belong to a judge; to hear courteously, to answer wisely, to consider soberly and to decide impartially."

Hon. Senators, today and tomorrow, in relation to the business that keeps us here, you sit as judges. The humble plea of the Governor of Meru County to this distinguished House is that you apply this four-part Socratic test. If you do that, she asks for no more favour. The chips will fall in their place and she will naturally be vindicated.

The Governor has furnished evidentiary material before you in the nature of-

- (i) Her response;
- (ii) Affidavits in support of that response;
- (iii) An index of annexures which are documentary exhibits; and,
- (iv) Two flash disks with various video clips that will contextualise for you what the political atmosphere in Meru County is.

Despite that political atmosphere, which is the reality in which this Governor operates, the Controller of Budget (CoB) report has indicated that this Governor leads a county that has a 71 per cent absorption of its development budget.

Hon. Senators, you sit here oversighting many counties and you know better than I do, the degree efficiency one requires in this country to even achieve that fit. The latest Infotrak research, which is less than a week old, has ranked Governor Kawira Mwangaza among the top four performing governors in this country. That is the person that is presented before you and who has been treated to the descriptive epithets that the learned counsel for the Assembly have described just a few minutes ago.

We had the privilege of following debate on the Motion on whether this House will go the Committee or Plenary way. We were persuaded by the following submissions by the Members of this Senate; "We want to know what is happening in Meru". Evidence will show you what is happening in Meru County.

When you look at the evidence presented before you by the County Assembly, I emphasize that because the burden of proving these charges is the burden of the County Assembly. This is because at the end of it all, this Senate has to make a finding whether the charges have been established or have been proved. The evidence by the Assembly

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

will fall into nine broad categories. You will realise that all the evidentiary material before you presented by the Assembly is information that was generated between August and September 2023. It was solely that period for purposes of these impeachment proceedings and nothing more. So, you will be told there is a complaint by a public citizen before the EACC and that complaint before the EACC is the basis of these impeachment proceedings. You will notice all that material was generated between August and September of 2023.

You will be told that there is a summon before the County Assembly that was disobeyed. However, when you look at the record, you will discover that that summon was issued in this period. So, you will see a period where there is a spirited, deliberate design to generate material to start an impeachment process.

The second category of claims - and some of this may be overlapping - is that you come across claims before you, whose evidence are claims elsewhere. We are claiming before you that the Governor is misusing county resources, not because the Auditor-General's report says that; not because we have evidence from IFMIS saying that, no. It is because there is another complaint before EACC saying that. So, you use a complaint as the supporting material for the complaint before you.

The third category is that of all the claims made before you, we shall be asking this Senate to seek clarification by way of asking, and we shall be asking this Senate to bear in mind, as it makes a decision, which of those claims shows what action, or inaction, on the part of the Governor.

The county government is an entire system of government. A lot of things may happen. A county government driver may be driving and may knock down somebody with the vehicle; that is wrong. The question we will be asking is how do you tie that to the governor?

So, of all these claims, we shall be demonstrating to you that there is a failure to show the causal link between the case presented before you and the past one presented before you for removal from office.

The fourth category of matters will be what you call - my learned colleague gave me these words - dead matters that have been resurrected for purposes of infusing an element of meaning to this Motion.

You will discover that the claims and the supporting material before you will be the same claims and supporting material that were presented before this Senate, a while back as against the same governor and this Senate voted to find that those claims on that material, that very material now coming before you, did not pass the threshold for removal of the governor from office.

You will then come across matters that are pending before other constitutional bodies; complaints pending before the courts and complaints pending before EACC, over which no determination has been made that is adverse against the Governor.

Then, the sixth category is that you will come across very contradictory claims. Allow me to just demonstrate this by way of example in two cases. When you look at count five of the grounds in support of the Impeachment Motion, you will see a claim of contempt of court. You will see that claim.

When you look at count one, ground (c), there is a claim that the Governor paid full salary and benefits to Dr. Ntoiti, Mr. Paul Mwaki, Mr. Kenneth Kimathi Mbae and Mr. Joseph Kature Mbae. So, you are accused of contempt of court in one count, then you are accused of paying salary and benefits in another count.

First, this Senate will reflect on the question of whether the function of employment of these employees and their remuneration is a function of the Governor within the county government structure. However, for now, let me inform you that that act of paying these five people is in compliance with that very order. If the relevant county official fails to comply with the order to pay, he is accused of attempt of court. If he complies by paying, he is accused of making the same payment to the same people. In good conscience, that is the case in respect of which the Governor has been most dramatically described by the assembly representation.

The next category of claims would be claims focusing on the person of the deputy governor. I will briefly address some of these claims in my next limb.

The next category of claims are plainly false claims. One of the hardest parts of my preparation for this case is how you prepare to respond to a lie apart from saying that it is a lie. For example, you will get a claim that somebody by the name Kathure Rukaria, James Karimi and Lydia Nkatha are relatives of the Governor. They simply are not her relatives. How much more do you say to that?

You have been told that the Governor has employed Rose Guantai and Hellen Guantai in the county government. These are employees of the National Police Service (NPS). They are police officers employed by a completely different constitutional body. Hon. Senators, you know better than I do that as protected state officials, the level of latitude 1, is given to consult with the authorities in the police services for purposes of allocating new security. You do not become an employer of that person.

You will be told that the governor has embezzled county funds through one Miriam Guantai. The evidence in support of that will be some attachments in pages 17 all the way to page 29 of the exhibits in support of the impeachment Motion. You will then go there looking for the name of Miriam Guantai as a recipient of the money and you will not get it there because it is false.

You will be told that Nephath Kinyua is a brother-in-law to the Governor. I have had to reflect on the meaning of the word ‘brother-in-law.’ We have presented before you a marriage certificate of Nephath Kinyua. This is because the name brother-in-law is a relationship that arises out of a marital relationship to show you who he is married to in a monogamous union. That person is neither a relative of the Governor nor the Governor’s husband. I do not know how one generates a brother-in-law relationship outside that context.

You will be told that the Governor has employed Edwin Mutuma Murangiri, a nephew of the first gentleman. Evidence will show that Edwin Mutuma Murangiri was employed by this county in 2017. This Governor became Governor in 2022. Even if she intended to employ him, did she re-employ him a second time? Those are questions that this Senate will have to deal with; factually incorrect statements. Edwin Mutuma Murangiri is not related to the first gentleman as a matter of fact. So, it is false. You will be told that Edwin Mutuma Murangiri is one of the people through whom the governor is

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

swindling the county funds. We will take you to the IFMIS extract that they have presented and ask show us the name of Edwin Mutuma Murangiri receiving any sum of money for any purpose in that IFMIS extract. You will not get it there; it is just false.

Then, there are falsehood that are also very courageous because they also lie about this Senate. You will be told that this Senate, so to speak, stopped the Governor in the last impeachment exercise from running the private charity project dubbed *Okolea*. On that one, this Senate will be our witness that you did not do that.

You will be told, that two county vehicles, KAX 574V and KCB 845F were damaged in one of the *Okolea* charity events. We have presented before this court the officials search from the National Transport and Safety Authority (NTSA), which can be the only source of information on who owns these vehicles. These are private vehicles not owned by the county at all. All they have is falsehood.

Hon. Senators, you will be told that the Governor has assigned diplomatic duties to her unqualified sisters. I was reviewing the law on this. Function number one on the Fourth Schedule of the national Government is foreign relations. How does the Governor engage in foreign relations? It is just falsehood.

You will be told that the Governor has named a public road after the husband. I was reflecting on this. If you were to tell the Assembly side to take you to Meru and to a road named after the first gentleman, you will get the meaning of what is called a wild goose chase. You will not get into any particular road located anyway with the name of the first gentleman. They will instead tell you “let us remain on Facebook”. There is some post somewhere on Face book.

Then, you will come across just distorted claims. For example, you run offices here and know that your offices here are supplied with hospitality supplies such as sugar for your guest, some soft drinks, water, *et cetera*. Someone would go to IFMIS and find an entry of hospitality supplies which are things ordinarily bought from petty cash imprest.

They will then make a report and say these are hospital supplies in their report to you to create an impression that this person in the governor’s office is actually supplying our hospitals. How do you deal with that? These are the things that have been brought here. When you hear my learned colleagues on the other side making very dramatic representations, let me manage your expectations. There is something called an anti-climax.

You will be told the Governor is culpable of bullying, undermining and posting insulting and demeaning messages about the deputy governor. These are sad claims and I must emphasize this. I want you to finally contextualize this matter. There is a video clip that we will play here of the deputy governor chanting with a group of youths in Meru County saying-

“Kawira does not have a home oh yey, oh yey, she does not have a home, oh yey, oh yey, she is a prostitute, ey yey, Mutuma, kindly strategize, ey yey.”

You will see that it is the video that the Governor replies to. In reply to that video calling her a prostitute, she replies that,

“I cannot be intimidated or be cowed by this childish, mannerless mobilized people.”

Disclaimer: *The electronic version of the Senate Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Director, Hansard and Audio Services, Senate.*

You will be told to focus on these words that “I will not be cowed by this childish mannerless people,” but forget the video she is responding to in the same *WhatsApp* group calling her a prostitute.

Hon. Senators, the voting that you will make in this Senate is a constitutionalized prescribed voting governed by your conscience and oath of office. The bundles presented by the Assembly side are certainly bigger in volume than the bundles the governor presented here because as I told you, how do you respond to a lie other than saying that all these 100 pages are lies and then keep quiet? They have given you a big house in stature, but if you look carefully at the pillars of that house, if you look carefully at the columns of that house, you will discover that their constituent material are biscuits.

We urge you to accordingly vote by putting that house of biscuits on the weighing scale and see whether it will collapse the scale as a dominant consideration in your voting in this matter. That is the Governor’s opening statement.

Thank you, Mr. Speaker, Sir, for the audience.

The Speaker (Hon. Kingi): Let me take this opportunity to thank the parties for keeping to the time schedule. I believe that going forward, if we keep it the way we have expedited here now, we should be able to cover ground.

Now we are moving to adjourn the House. However, as just a matter of housekeeping, lunch will be served to the parties for the County Assembly and the Governor’s side. You will be served with lunch. You will be guided accordingly as to where you will have this lunch. You will later on resume. So, do not take lunch and disappear because we will need you here at 2.30 p.m.

Now, Hon. Senators, kindly be upstanding.

ADJOURNMENT

The Speaker (Hon. Kingi): Hon. Senators, it is now four minutes to 1.00 p.m.

(Sen. Nyamu sat in her place)

Sen. Nyamu, do you have any medical condition?

Hon. Senators, it is now 1.00 p.m., time to adjourn the Senate. The Senate, therefore, now stands adjourned until today Tuesday, 7th November, 2023 at 2.30 p.m.

The Senate rose at 1.00 p.m.